ANALYSIS OF ARMENIAN MIGRATION LEGISLATION AND PRACTICE AS COMPARED TO EU STANDARDS
ANALYSIS OF ARMENIAN MIGRATION LEGISLATION AND PRACTICE AS COMPARED TO EU STANDARDS
The Analysis of Armenian Migration Legislation and Practice as Compared to EU Standards was conducted within the framework of the Project “Strengthening Evidence-Based Management of Labour Migration in Armenia” funded by the European Union and the IOM Development Fund.

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Prepared for publication by IOM Project Development and Implementation Unit in Armenia.

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Foreword

The “Analysis of Armenian Migration Legislation and Practice as Compared to EU Standards” was conducted by the IOM under the auspices of the Armenian Ministry of Justice and aims to study if and how the national legislation on migration is aligned with EU legislation.

The study has been prepared in the framework of the project “Strengthening Evidence-Based Management of Labour Migration in Armenia” which was funded by the European Commission and the IOM Development Fund as well as Georgetown University and implemented by the International Center for Human Development and the IOM Mission in Armenia. One of the objectives of the project is to raise awareness towards possible approximation of legislation on migration management with EU aquis. To achieve this goal the project included several activities, including the analysis of Armenian migration and asylum legislation and practice as compared to EU standards.

The study is IOM’s technical support to the “2012-2016 Action Plan for Implementation of the Concept for the Policy of State Regulation of Migration in the Republic of Armenia” and in particular its Activity 1.2.1. “Analysis of the RA legislation regulating migration in Armenia in terms of compliance to the standards accepted in the EU.”

The analysis encompasses the whole cycle of migration starting with entry (including travel documents, visas), residence (employment, study, family migration) to exit, return, readmission and removal. Irregular migration and human trafficking are also tackled on as well as integration and data protection and data collection. The analysis is made from the prism of protection of migrants' rights and non-discrimination. 150 concrete recommendations are suggested in order to address the gaps.

We would like to acknowledge the great work done by our main experts, Ms Christina Vasala Kokkinaki and Ms Maria Temesvári, as well as the project manager Ms Kristina Galstyan, Mr Daniel Redondo, national legal adviser, Ms Siranush Sahakyan, the IOM Headquarters International Migration Law Unit and Legal Department, who all contributed to the analysis.

We would like to thank the Project Donor, the European Union, for the opportunity to provide technical assistance in migration management and international migration law in Armenia. We would like to express our gratitude to the IOM Development Fund and Georgetown University for their financial support to co-fund the Project.

The assessment report benefited greatly from the input and guidance of Armenian Government officials, NGO representatives and the international community in Armenia. We would like to express our gratitude to the Armenian Ministry of Justice and in particular Deputy Minister Yeghishe Kirakosyan for his valuable guidance and support.

The assessment team could not have efficiently carried out its task without the valuable support of the Armenian Government, which provided help and direction in welcoming and guiding the expert team – particularly, the Ministry of Labour and Social Issues and its State Employment Service, the Police, the Ministry of Territorial Administration and its State Migration Service, the National Security Service and its Border Guards Troops, the Ministry of Diaspora, the Ministry of Health, the Ministry of Education and Science, the Ministry of Foreign Affairs, the State Revenues Committee, the National Statistics Service, the National Security Council, the Ministry of Economy, E-Governance Infrastructure Implementation Unit, the Office of the Human Rights Defender, the Judicial Department, the Chamber of Advocates, the National Assembly. We would also like to thank the Confederation of Trade Unions of Armenia, the European Commission Delegation to Armenia, the International Labour Organization Office in Armenia, and the United Nations High Commissioner for Refugees Country Office.

The IOM also collaborated towards coordination of work and results with the Twinning Project “Support the State Migration Service for strengthening Migration Management in Armenia” (implemented by the Swedish Migration Board and Polish Ministry of Interior and Administration),
which had an activity to analyze current Armenian law on migration and exchange knowledge and best practices on implementation of EU law.

We hope that the findings of this report will serve as a point of reference for the implementation of the national plan of action for migration the implementation of the EU-Armenia Mobility Partnership, and the EU-Armenia readmission and visa facilitation processes. We also hope that the recommendations provided will help steer the reforms of migration management in view of the creation of an efficient and comprehensive migration management system in Armenia, aiming at the right balance between facilitation and control of migratory flows.

Grigor Muradyan
First Deputy Minister of Justice of Armenia

Ilona Ter-Minasyan
Head of Office, IOM Mission in Armenia
ACKNOWLEDGMENTS

The publication of this Gap Analysis Report would not have been possible without the contribution of a broad range of persons.

The authors would like to thank first and foremost Kristina Galstyan, Head of the Project Development and Implementation Unit of IOM Armenia for making this publication possible through her continuous coordination and support. Equally, warm thanks go to Ilona Ter-Minasyan, Head of Office of IOM Armenia.

Many IOM colleagues should also be thanked for their precious contributions: Alice Sironi from the International Migration Law Unit, Adel-Naim Reyhani, legal assistant, Katharina Lughoffer, regional immigration and border management coordinator at IOM Vienna as well as Katharine Ranharter, intern at IOM Vienna.

The authors are also grateful to all the Armenian governmental authorities that provided essential inputs to the report through interviews, written comments or participation in the presentation of the first draft of the Gap Analysis in Yerevan on 16 April 2013. These are: the Ministry of Justice, Ministry of Foreign Affairs, State Migration Service of the Ministry of Territorial Administration, Ministry of Labour and Social Affairs, Armenian Police, Ministry of Diaspora, Ministry of Health, National Security Service, State Revenues Committee, E-Governance Infrastructure Implementation Unit, National Statistics Service, Ministry of Education and Science, Confederation of Trade Unions, Procuracy General, Office of the Human Rights Defender, Chamber of Advocates, Judicial Department.

Last but not least the inputs from Ms. Siranush Sahakyan, Armenian lawyer with expertise in migration and asylum legislation, were indispensable.

Mária Temesvári
Christina Vasala-Kokkinaki
Vienna and Geneva, 2013
I. INTRODUCTION

A. BACKGROUND

The study at hand has been prepared under the auspices of the Armenian Ministry of Justice in the framework of the project “Strengthening Evidence-Based Management of Labour Migration in Armenia” which was funded by European Commission Thematic Programme "Cooperation with Third Countries in the areas of Migration and Asylum" and the IOM Development Fund and implemented by the International Center for Human Development and the IOM Mission in Armenia. One of the objectives of the project was to raise awareness towards the approximation of the Armenian legislation on migration and asylum with the EU acquis.

The study looks at the migration and asylum legislation and implementation practice in Armenia, ascertains to what extent the legal framework is comparable with the EU legislation, identifies the main gaps and provides concrete recommendation on the alignment of the legislation with the EU acquis.

B. SCOPE AND METHODOLOGY

The study covers a wide range of areas: travel documents, visa, entry, border control, residence, employment and labour migration, research and study, family migration including family reunification, integration, migrants’ rights and non-discrimination, asylum, unaccompanied minors, measures to combat irregular migration, trafficking in human beings, refusal of entry, return and removal and expulsion, readmission, migration data collection and data protection. For each of the areas the EU legal framework is presented which is then followed by the relevant Armenian legislation. The gap analysis is structured in two levels: first, the gaps between the Armenian legislation and implementation in practice are indicated; second, the gaps between the Armenian legislation and the EU acquis are identified. Finally concrete recommendations are made in order to address the aforementioned gaps.

The EU acquis provides the starting point of the analysis, thus the study addresses only those areas of migration and asylum law where the EU has legislative competence; in particular the study does not cover issues related to emigration and diaspora, citizenship, regularisation. Moreover, the study primarily focuses on binding EU documents: treaties, regulations and directives, where necessary it is referred to the jurisdiction of the Court of Justice of the European Union.

The study is based on a desk research and the review of the Armenian and EU and legislation, policy documents, reports, studies and websites related to the area of migration and asylum. The methodology further included consultations and semi-structured interviews with senior government officials, representatives of civil society as well of international organisations resident in Armenian and of the EU Delegation. These were carried out in the framework of a five-day visit to Armenia. The sections on the Armenian legislation were reviewed by Siranush Sahakyan, a lawyer with expertise in the Armenian the migration and asylum legislation.

The study reflects the migration management situation in Armenia and the EU acquis as of January 2013. As the some of the Directives in the area of asylum were at the time of the drafting under legislative review, these Directives were not included in the study.

1The schedules of interviews with members of the Government are provided in Annex 2.
II. EXECUTIVE SUMMARY

The study at hand has been prepared under the auspices of the Armenian Ministry of Justice in the framework of the project “Strengthening Evidence-Based Management of Labour Migration in Armenia” which was funded by European Commission Thematic Programme “Cooperation with Third Countries in the areas of Migration and Asylum” and the IOM Development Fund and implemented by the International Center for Human Development and the IOM Mission in Armenia. One of the objectives of the project was to raise awareness towards the approximation of the Armenian legislation on migration and asylum with the EU acquis. The study looks at the migration and asylum legislation and implementation practice in Armenia, ascertains to what extent the legal framework is comparable with the EU legislation, identifies the main gaps and provides concrete recommendation on the alignment of the legislation with the EU acquis.

The report is divided in 17 chapters, each examining a different migration- or asylum-related topic. The topics are: (1) travel documents, (2) visas, (3) general conditions of entry and border control (4) long-term residence, (5) labour migration, (6) study and research, (7) family and marriage, (8) migrants’ rights and non-discrimination, (9) integration, (10) asylum, (11) unaccompanied minors, (12) irregular migration, (13) trafficking in human beings, (14) exit, (15) return and removal/expulsion, (16) readmission, (17) data protection and data collection. In line with the EU acquis the study addresses primarily immigration and asylum policies and does not specifically focus on emigration and diaspora or citizenship.

1. Travel Documents

Regarding the travel documents of foreigners, it is noted that a foreigner can enter Armenia through the state border crossing points holding (1) a valid passport, (2) an entry visa or (3) a residency document when there is permission by the border control authorized governmental bodies. However, the Armenian legislation does specify what constitutes a “valid passport”. This needs to be clarified and it is recommended to mention that the travel document needs to be valid for the duration of the intended stay. It is also suggested that the Armenian legislation refers to the requirement that the travel document guarantees the return of the foreigner, which is included in the EU acquis.

Regarding the passports of Armenian citizens, the 2012 Law on Passport refers to the issuance of new passports with biometrics. Passports are a valid identification document both in and outside Armenia, whereas identity cards are not a valid identification document outside Armenian borders. The new biometric passports that started being issued by Armenia in 2012 are in full compliance with the EU acquis (see Wong 2012). However, the issuance of new passports is not mandatory and Armenian nationals can continue travelling with their old passports, which do not fulfil the EU security requirements.

Recommendations:

- **Single list of acceptable travel documents**
  It is important to have one legislative act that enumerates all the types of acceptable travel documents. The list of acceptable travel documents should be widely shared, in particular on the Internet, so that foreign travellers and carriers are facilitated.

- **Definition of valid passport**
  The law should also clearly state when a passport is considered to be valid. This should include, for example, the period of validity of a passport that should exceed by three months the timeframe of the use of the visa, the guarantee of return and not be amended, falsified or counterfeited.

- **Definition of passport**
  The passport definition should be amended so as not to equate passport and travel document and to include that such documents should be issued by foreign states or international organizations
recognized by the Republic of Armenia. Reference should also be made to travel documents issued according to the Convention on the Status of Refugees or the Convention on the Status of Stateless Persons.

**Security of travel documents**

Since the new biometric passports comply with the EU security requirements, it is necessary that all Armenian nationals are provided with this type of passports, which should replace the old ones. The creation of a central database of false and counterfeit travel documents should also be explored. In the future, the information from such a database could be shared with the FADO system, the European image-archiving system aiming at exchanging computerized means, information concerning genuine and false documents that have been recorded.

### 2. Visas

The most important gaps in the Armenian visa legislation are the issuance of visas at the border and the issuance of visas by two different authorities: the Ministry of Foreign Affairs (through its consular offices) and the Police (Directorate for Passports and Visas). It is recommended that only one body is authorized to issue visas and also, that visas are issued only in exceptional cases at the Armenian border. In addition, there should be no possibility of applying for a visa inside the Armenian territory. Furthermore, it is recommended that the Armenian legislation provides for the right of the foreigner to appeal the decision that refuses the issuance of his/her visa, as the EU acquis states that there is such a right to appeal and the appeal is governed by the Member States’ national law. Apart from the above, the visa legislation provides for the establishment of two databases: one for visa applications and one for undesirable foreigners, in particular persons who have been refused entry at the border, whose application for issuance or extension of a visa has been denied or whose visa has been revoked. However, it is not clear whether such databases are in existence.

**Recommendations:**

1. **Issuance of visa at the external border and responsible authority**
   
The issuance of visas at the Armenian border should only be permitted in exceptional cases, when it is not possible to submit a visa application beforehand, taking into account the conditions provided in the EU acquis. In addition, the border checks authorities should only exceptionally be responsible for issuing visas.

2. **Issuance of visas inside the Armenian territory**
   
   Article 10 para. 3, Law on Foreigners needs to be amended in order to make clear when it is possible to issue a visa inside the Armenian territory. The EU acquis does not provide for the issuance of visas inside the territory of the Member States; this is possible only for visa extensions.

3. **Visa revocation**
   
The governmental decree related to work permits needs to be issued; otherwise the provision concerning visa revocation in the case of absence of work permit cannot be applied.

4. **Grounds for refusal of issuing a visa**
   
The following could be added in the list of grounds for refusal of issuing a visa (Article 8 para. 1 of the Law on Foreigners): when there is no verification of means of subsistence for the duration and purpose of the stay, when there is no justification of the purpose and conditions of stay, in case of

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3 Article 6 of the Visa Code.

4 Article 33 para. 4 of the Visa Code.
exhaustion of the visa period and in case of non-provision of proof of medical insurance (in specific cases).

- **Administrative liability** should not be included in the grounds of refusal of issuing a visa (Article 8 para. 1 of the Law on Foreigners).

  Article 8 para. 2 of the Law on Foreigners could be further amended to include grounds of refusal of entry provided for in the EU acquis. The EU acquis prohibits, for example, the entry in the territory of the Member States when there are serious grounds for believing that the third-country national has committed serious criminal offences, such as sale of narcotic drugs and psychotropic substances of whatever type and possession of such products for sale or export, or there is clear evidence of the intention of the third-country national to commit such offences in the territory of a Contracting Party.\(^5\)

  The ground of threat to the state security or public order of the Republic of Armenia (Article 8 para. 1 lit. f, Law on Foreigners) should be further clarified and it could include similar clarifications, as those provided by the EU acquis.\(^6\) Even though Article 8 para. 1 and 8 para. 2 of the Law on Foreigners contain similar grounds of refusal to the EU acquis, such as the commission of serious criminal offences, previous expulsion from Armenia, these do not fall under the more general ground of “threat to public security or public order”.

- **Period of validity of the travel document**

  The provisions on visas included in the Law on Foreigners could mention that when applying for a visa the valid travel document presented needs to (1) extend at least three months after the intended date of departure of the foreigner, (2) have two blank pages, (3) have been issued within the previous ten years.

- **Biometric identifiers**

  The Armenian authorities should consider collecting biometric identifiers, from persons applying for visas and collect those in an appropriate database. Currently only photos are collected but no fingerprints.

- **Appeal against refusal of entry**

  Article 8 of the Law on Foreigners needs to be modified in order to include the right to appeal the decision of refusal of entry that will include also sufficient information on the procedure, the competent authorities and timeframes for the appeal, or appropriate references to the acts and articles containing those provisions.

- **Supporting documents and medical insurance**

  When applying for a visa, it would be useful if the applicant would provide supporting documents, apart from an invitation (if needed), such as documents indicating the purpose of the journey, accommodation, proof of sufficient means of subsistence and medical insurance, in order to comply with the EU acquis.\(^7\)

- **Database for issued visas**

  It needs to be clarified whether there is only one visa database operated by the Police, which includes all visa applications (also those issued electronically by the Ministry of Foreign Affairs) or if there are two such systems in place. Ideally, there should only be one visa database managed by one authority.


\(^6\)Articles 96 para. 2 and 96 para.3, of the Convention implementing the Schengen Agreement.

\(^7\)Articles 14, 15 and Annex II of the Visa Code.
Database for undesirable foreigners
It needs to be clarified whether the database for undesirable foreigners provided in Article 8 para. 6 of the Law on Foreigners is in operation. If yes, it is necessary to inform accordingly all governmental authorities that might need to obtain information from such a database.

Types of visas
The types of visas provided by the Armenian legislation could be amended in order to be closer to the types of visas provided by the EU acquis. It would definitely be more practical if the same criterion was used to divide the visas into categories, instead of using three different ones (duration of visit, purpose of visit, type of passport). The criterion used by the EU acquis is the duration of the visit (transit or short-stay) as the long-term visas over 90 days are issued by the Member States.

Visa extension
The Law on Foreigners needs to include detailed provisions on the extension of a visa, which could only be allowed when there are serious personal reasons justifying it. Provisions included in Governmental Decree No.1268-N\(^8\) could be transferred to the Law on Foreigners together with additional clarifications on when extension is permitted and which procedure there is to follow.

Decision on the visa application
The Law on Foreigners should include provisions relating to the time period within which the decision on the visa application needs to be made. This should be at least within 15 days, to comply with the EU acquis\(^9\) with an extension up to 30 or 60 calendar days in very specific cases.\(^10\)

3. General entry conditions and border control
The main legal instruments related to border controls and general conditions of entry in Armenia are the Law on State Border, the Law on Border Guard Troops and the Law on Foreigners while the National Security Service (NSS) is responsible for developing Armenia’s border management policy. It is important to note that the Armenian legislation does not provide for the right to appeal the decision of the border authorities to refuse entry to a foreigner, contrary to the EU acquis. It is recommended to have such a provision and also to align the ground for refusal of entry with those provided in the EU acquis. In addition, the Armenian legislation needs to state that the precise reasons for the refusal of entry must be provided to the foreigner by use of a separate form. Last, the database for undesirable foreigners provided is designed to contain the information of all persons who have been refused entry at the border or whose application for issuance or extension of a visa has been denied. However, it is not clear whether this database is currently in place.

Recommendations:

Entry when holding a residency document
This provision needs to be clarified. In particular, explanation needs to be provided on when and on what grounds this entry permission is provided. It needs to be made clear that a travel document would need to be provided as well.

Appeal against refusal of entry
Article 8 of the Law on Foreigners needs to be modified so as to include the right to appeal the decision of refusal of entry that will include also sufficient information on the procedure, the competent authorities and timeframes for the appeal, or appropriate references to the acts and articles containing those provisions.

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\(^8\) Appendix 1 and Appendix 2 of Governmental Decree No.1268-N.
\(^9\) Article 23 para. 1 of the Visa Code.
\(^10\) Article 23 para. 1 and 23 para.2 of the Visa Code.
Grounds for refusal
- Article 8 para. 2 of the Law on Foreigners could be amended to include grounds of refusal of entry provided for in the EU acquis. The EU acquis prohibits, for example, the entry in the territory of the Member States when there are serious grounds for believing that the third-country national has committed serious criminal offences, such as sale of narcotic drugs and psychotropic substances of whatever type and possession of such products for sale or export, or there is clear evidence of the intention of the third-country national to commit such offences in the territory of a Contracting Party\textsuperscript{11}.
- The ground of threat to the state security or public order of the Republic of Armenia\textsuperscript{12} should be further clarified and it could include similar clarifications, as those provided by the EU acquis.\textsuperscript{13} Even though Articles 8 para. 1 and 2., Law on Foreigners contain similar grounds of refusal to the EU acquis, such as the commission of serious criminal offences, previous expulsion from Armenia, these do not fall under the more general ground of “threat to public security or public order”.
- The verification of means of subsistence for the duration and purpose of the stay and return of the foreigner could be included as well in the list of grounds of refusal\textsuperscript{14} whereas administrative liability should not be included.\textsuperscript{15}

Permission of entry in “strongly justifiable cases”
The exception provided in Article 8 para. 4 of the Law on Foreigners, that allows entry even when there are certain grounds to refuse it, according to Article 8 para. 1 lit. a and b, “in strongly justified cases” needs to be further clarified so as not to allow arbitrary decisions.

Database of undesirable foreigners
It needs to be clarified whether the database for undesirable foreigners provided in Article 8 para. 6 of the Law on Foreigners is in operation. If yes, it is necessary to inform accordingly all governmental authorities that might need to obtain information from such a database.

Information provided when performing second line check
It would be advised to include in the Law on Foreigners a provision similar to the one existing in Article 7 para. 5 of the Schengen Borders Code, according to which, third-country nationals subject to a thorough second line check are to be given information on the purpose of, and procedure for, such a check. This should include the name or service identification number of the border guards carrying out the thorough second line check, the name of the border crossing point and the date on which the border was crossed.

Form of refusal of entry
Article 8 para. 5 of the Law on Foreigners needs to be amended in order to state that the precise reasons for the refusal of entry must be provided to the foreigner by use of a separate form.

4. Residence
The EU acquis on legal migration mainly focuses on the admission of certain categories of migrants, such as students, researchers or family members. Additionally, it provides harmonized procedures to attain long-term residence status. In general, the study identified that the Armenian legislation does not provide clear categories of admission and systematic requirements for the issuance, renewal and withdrawal of the residence permits. In particular, regarding permanent residence permit the personal scope of the permanent residence permit appears to be very limited.

\textsuperscript{11}Article 71 para. 1, Article 71 para. 2, 96 para. 2, 96 para.3 of the Convention implementing the Schengen Agreement.
\textsuperscript{12}Article 8 para. 1.lit. f of the Law of the Republic of Armenia on Foreigners 2006 (hereinafter Law on Foreigners).
\textsuperscript{13}Articles 96 para. 2, 96 para.3 of the Convention implementing the Schengen Agreement.
\textsuperscript{14}Article 8 para. 1 of the Law on Foreigners.
\textsuperscript{15}Article 8 para. 1 of the Law on Foreigners.
Recommendations:

- **General**
  It is recommended to establish clear categories for residence in Armenia, such as studies, research, employment, self-employment, family reunification and to introduce systematic and transparent requirements for the issuance, renewal and withdrawal of the various residence permits, such as health insurance, accommodation, means of subsistence, etc.

- **Scope of the long-term residence permit**
  In view of the limited area of application of the permanent residence permit it is suggested to expand the scope to foreigners residing for a certain number of years in Armenia for not merely temporary purposes including refugees.

- **Conditions for granting a long-term residence permit**
  - Issue long-term residence permit only after a concretely defined waiting period e.g. after three years and define the waiting period in a non-discriminatory way for the different groups of migrants. It is further considered essential to introduce systematic and transparent requirements for the issuance, renewal and withdrawal of the various residence permits.
  - Armenia should consider the introduction of the requirement of a health insurance and of stable and regular resources without recourse to the social assistance system for a permanent residence permit as stipulated in Article 5 of the Directive.
  - It is recommended to limit the grounds for refusal of a permanent residence permit to grounds of public policy and security and in case of refusal to carry out a balancing between the severity of the offence, the danger emanating from the person and the duration of the residence as well as the existence of links with the country of origin before refusal.

- **Withdrawal of the permanent residence permit**
  It is recommended to adopt provisions that provide protection against expulsion, in particular the duration of residence in Armenia, existence and type of family relations in Armenia, ties to the country of origin, labour market integration, and language knowledge should be taken into account. Where the loss of the permanent resident status does not lead to removal and in particular where the continuation of a family and private life is not possible in another country it is further recommended to grant the foreign national temporary residence status in Armenia.

- **Procedural guarantees**
  It recommended introduce possibilities of appeal in case of the rejection of the renewal and withdrawal of a residence permit.

5. **Labour migration**

Labour migration to Armenia is not perceived as a significant phenomenon. Reliable data on the stock and inflow on labour migrants is, however, not available and recent research suggested that labour migration to Armenia is underestimated. Although the Law on Foreigners envisages the admission of foreigners for the purpose of work and foresees a work permit, in practice due to lack of secondary legislation, the system is not implemented and the national labour market is totally open to foreigners. The EU acquis in the field of labour migration is limited to the Blue Card system which aims to facilitate the immigration of highly qualified third-country nationals. Furthermore, recently the EU has introduced a harmonized single application and permit system for labour migrants. Against this background it is recommended to revise the Law on Foreigner and establish a single application and single permit scheme for labour migration and introduce facilitated procedures for highly-qualified foreign nationals. In connection, it appears essential to analyse Armenian labour market needs and adapt the permit system according to the national labour force demands. To increase transparency it is furthermore essential to define the conditions to obtain a residence permit in the law clearly.
Recommendations:

- **Admission of labour migrants**
  - Create clear categories for admission for labour migrants and specify clearly the admission conditions for foreign nationals (such as a valid travel document, health insurance and that the applicant does not pose a threat to public security, policy and health, eventually a work contract or binding job offer, professional qualifications, etc).
  - The immigration of highly-qualified foreign nationals could be particularly facilitated.
  - Provide updated information about the admission and work conditions as well as on the rights linked to the permit in an easily accessible way in different languages.

- **Single permit and single application procedure**
  - Create a single application procedure for the admission to reside and work in Armenia and establish a single work and residence permit for foreign nationals.
  - Guarantee single permit holders equal treatment with regard to working conditions, including pay and dismissal as well as health and safety at the workplace; freedom of association and affiliation and membership of an organisation representing workers or employers, education and vocational training, recognition of diplomas, certificates and other professional qualifications, social security, tax benefits, access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing; advice services afforded by employment offices.

- **Analysis of the national labour market**
  - The EU acquis does not envisage a particular system, how to measure labour market needs and also there is no harmonized system in place to regulate the inflow of labour markets in the EU. Depending on the socio-economic needs, policy priorities and immigration traditions, Member States have different approaches. Thus it is recommended in general that Armenia identifies the labour market needs and gaps in order to create a demand driven labour immigration system. A single permit shall facilitate the immigration of labour migrant particularly in shortage occupations and with high qualification.
  - Regular evaluation of the system is further essential for an efficient and targeted labour migration policy.

6. Study and research

For some time Armenia aims to be an education service provider for neighbouring countries and participates also in the Erasmus Mundus programmes with the aim to increase scientific mobility to Armenia. At the same time the regulatory framework for the admission of students and researchers is limited. While conducting studies in Armenia is listed as a specific purpose to obtain a residence permit, the conditions and criteria for the permit are not clearly defined. Compared to the EU acquis, which establishes an admission scheme (including procedural guarantees) and clear criteria for researcher, students, au pairs, pupils in school exchange programmes, unpaid trainees and volunteers to facilitate their immigration there are no specific residence permits envisaged in the Armenian legislation. In order to prevent abuse of the system, it is further essential to track the performance of the non-national students when amending the residence permit regulations.

Recommendations:

- **Admission of students**
  - It is strongly recommended to regulate the criteria and conditions for the admission of students explicitly. In accordance with the EU acquis following requirements should be considered: proof of sufficient resources, acceptance of the foreign national at higher education institution,
parental authorisation for minors, health insurance and eventually payment of the application fee.

- Limit the grounds for refusal of an application for a residence permit in accordance with public security, public order and public health requirements of the Students Directive.
- Review the level of the application fee for the residence permit. The level of the application fee should not exceed the costs occur when processing an application.
- Provide information, preferably via internet, on the admission conditions and procedures, publish in particularly the amount of the necessary, monthly subsistence, study and travel costs once introduced.

➢ Withdrawal and non-renewal of the student residence permit
Review the criteria for the non-renewal of a residence permit, in particular, implement legislative measures to monitor the progress and completion of studies.

➢ Access to the labour market for students
Regulate the access to the labour market for students in accordance with Article 17 of the Directive and to implement measures to monitor the amount of hours students work.

➢ Admission of pupils, trainees and volunteers
Establish a legislative framework in accordance with the provision Students Directive as described above.

➢ Admission of researchers
- It is recommended to implement a legislative framework in accordance with Researchers Directive to facilitate the admission and residence of foreign national researchers. A specific residence permit could be created for this purpose.
- Once the legal framework is implemented, it is recommended to provide up-to-date information, in particular via the Internet, on the research organisations and on the conditions and procedures for entry and residence on its territory for the purposes of carrying out research.

7. Family and marriage
Armenia is party to the European Convention of Human Rights (ECHR), thus Art. 8 on the right to private and family life is directly applicable to Armenia. Nevertheless, there are gaps concerning its implementation, in particular there is no guarantee that a proportionality test is carried out, when refusing an application or of the renewal or withdrawal of a residence permit and that the interest of the State in public policy and security is balanced against that of the individual to maintain family life. Moreover, the limitations on foreign nationals to adopt an Armenian national child do not appear to be in conformity with Art. 8 ECHR.

Compared to the EU acquis, the range of foreign nationals who are eligible as sponsors for family reunification in accordance with the Law on Foreigners is very limited. The EU acquis mandates Member States to allow family reunification for sponsors who hold a residence permit for a period of validity of one year or more who has reasonable prospects of obtaining a right of permanent residence. According to the Armenian legislation family reunification is practically limited to person holding a permanent residence status which can be obtained after three years of residence. Notably, however, access to permanent residence permit is also quite limited.

Recommendations:
➢ Guarantees under Article 8 ECHR
It is recommended to establish legal and procedural guarantees that Article 8 ECHR is taken into account and a proportionality test is carried out, when refusing the application, the renewal or withdrawal of a residence permit.
Adoption
It is recommended to provide equal right to adoption for foreign nationals in Armenia. Differential treatment of foreign nationals should be only allowed in case of the prevalence of serious grounds, e.g. in the best interest of a child.

Scope of family reunification
- Extend the scope of the right to family reunification to family members of sponsors who hold a residence permit for a period of validity of one year or more who has reasonable prospects of obtaining a right of permanent residence.
- Grant the right to family reunification to minor children of the spouse where the spouse has custody and the children are dependent on him/her the right to family reunification.
- In terms of family reunification of refugees, Armenia should grant unaccompanied minors family reunification with parents, legal guardians or for any other member of the family, where the minor has no relative in the direct ascending line or such relatives cannot be traced.
- Due to the limited EU competence in the area of family reunification, the Family Reunification Directive applies only to foreign national, nevertheless it is recommended to review also the rules concerning family reunification with Armenian sponsors and grant them equal rights.

Conditions of refusal, renewal as well as withdrawal of the residence permit
- Review the conditions of refusal, renewal as well as withdrawal of the residence permit of Article 19 of the Law on Foreigners. In particular the severity or type of offence, or the dangers that are emanating from such person, the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin are examined before an application is refused or a permit is withdrawn.
- Examine the prevalence of the conditions for the issuance of a residence permit in case of the renewal of the permit.
- Regarding refugees, an exception should be made from certain procedural requirement. Where a refugee cannot provide documentary evidence Armenia should take into account all evidence of the family relationships of a refugees and a decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Autonomous residence permit
Provide family members - at least spouses, unmarried partners and children who reached majority age - with an autonomous residence permit after at least five years of residence. Moreover, it is recommended to issue an autonomous residence permit in particularly difficult circumstances e.g. in case of domestic violence or if the sponsor dies and the return to the country of origin would create particularly difficult living circumstances, etc.

8. Migrants’ Rights and Non-Discrimination
Armenia has signed and ratified almost all international and regional conventions relating to the protection of human rights. According to the Armenian Constitution, ratified international and regional treaties become automatically part of Armenia’s domestic legislation and in case of conflict with a national law, treaties prevail. The Constitution of the Republic of Armenia also contains provisions guaranteeing the fundamental human rights and freedoms. Regarding discrimination, the discrimination definition provided in the Armenian legislation could differentiate between direct and indirect discrimination, as the EU acquis does. Moreover, the Armenian legislation should contain provisions prohibiting public incitement to violence or hatred on the basis of race, colour, religion, descent or national or ethnic origin. It is further recommended that the Armenian legislation complies
with the EU acquis in effectively applying the principle of equal treatment by shifting the burden of proof to the respondent when evidence of discrimination is brought. Additional provisions should be included to protect the individuals from suffering adverse consequences as a reaction to a complaint or to proceedings aimed at enforcing compliance with equal treatment, contrary to the EU acquis.

Recommendations:

- **Article 6 of the Armenian Constitution**
  Notwithstanding Article 6 of the Armenian Constitution stating that international treaties are a constituent part of the national legal system, Armenia should consider the transposition of certain provisions in the national legislation in order to ensure holistic implementation. The definitions of torture and discrimination are pertinent examples.

- **Legislation on the human rights of migrants**
  The human rights of foreigners in Armenia are not included in one singular act. Relevant provisions are included mainly in the Constitution and the Law on Foreigners. A separate legislative act could contribute to the understanding that migrants (and not only refugees) need to be perceived by the Armenian legislation as a vulnerable group of people, in need of special human rights protection.

- **Anti-discrimination legislation**
  Armenia needs to adopt comprehensive and holistic legislation with regards to equal treatment and non-discrimination. The legislation should include a definition of discrimination that would also distinguish between direct and indirect discrimination, following the EU acquis. It should also include a provision that the burden of proof is to be borne by the respondent in cases of prima facie discrimination. This can ensure the effective application of the principle of equal treatment.

- **Protection against victimization**
  Armenia should incorporate in its legislation necessary measures to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment. Access to judicial and/or administrative redress for victims of discrimination needs to be ensured as well as the inclusion of the concept of protection against victimization in the legislation and the guarantee that the public is informed of all the provisions concerning equal treatment.\(^{16}\)

- **Definition of discrimination against women**
  The Armenian legislation should include an explicit and comprehensive definition of discrimination against women (both direct and indirect), as suggested by the Committee on the Elimination of Discrimination against Women.\(^{17}\) This could be included in a general anti-discrimination law that the Republic of Armenia can develop.

- **The role of the Human Rights Defender**
  Armenia should take positive action to ensure that foreigners receive all information required on the role of the Human Rights Defender and that they make use of this important institution in cases of violation of their human rights by public authorities. In addition, it is important that the Human


\(^{17}\) See also the comments of the Committee on the Elimination of Discrimination Against Women, Armenia, 44th Session, CEDAW/C/ARM/CO/4/Rev.1, 2 February 2009.
Rights Defender collects statistics of the violations of migrants’ rights. The collection and analysis of statistics will contribute to understanding how well migrants are protected and if the international and national legislation is being appropriately applied.

- **Public incitement**
  The Armenian Criminal Code could include a provision prohibiting public incitement to violence or hatred on the basis of race, colour, religion, descent or national or ethnic origin.

- **Ratification of human rights treaties**
  Armenia could consider ratifying:
  - Protocol No.13 to the European Convention on Human Rights on the abolition of death penalty at all circumstances.
  - The European Convention on the Legal Status of Migrant Workers, to which 11 states are already parties.
  - The European Agreement on the Abolition of Visas for Refugees, which it signed on 11 May 2011 and to which 23 states are already parties.
  - The Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty.
  - The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
  - The European Convention on Nationality, to which 20 states are already parties.
  - The European Convention on the Participation of Foreigners in Public Life at Local Level, to which eight states are already parties.
  - In addition, Armenia could consider making a declaration under Article 14 of the International Convention on the Elimination of Racial Discrimination, thus recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any rights set forth in the Convention.

9. **Integration**
Currently, Armenia does not have integration measures in place, it is thus strongly recommended to adopt policies in this area. In order to develop targeted policy and measures, first it is advisable to carry out an assessment of the composition and the needs of the foreign national population. The assessment should include labour market situation, housing, education level, language knowledge, availability of support mechanisms, etc. Due to a relatively low number of immigrants, the measures could be connected to re-integration measures of returning Armenian nationals and to integration measures for refugees. It is recommended that Armenia adopts and provides integration measures in a timely manner.

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Recommendaions:

- **Language courses**
  Provide accessible Armenian language courses for all migrants, in particular to women and children, as language knowledge is a key tool for integration and participation in the host societies.

- **Information provision**
  Provide transparent and easily accessible information on immigration conditions and access to the labour market for foreign nationals as well as on labour rights, access to social security, antidiscrimination, etc.

- **Activities toward prevention of xenophobia and discrimination**
  In order to prevent the emergence of negative attitudes, xenophobia and discrimination of foreign nationals, provide information to the wider public on the realities and benefits of immigration for Armenia as well as on Armenia’s international humanitarian obligation.

- **Policies based on analysis of in-migration flows**
  Collect data, analyse and research the composition and characteristics of foreign nationals coming and residing in Armenia (age, educational background, etc.) in order to develop targeted integration policies and measures.

- **Integration of vulnerable groups**
  It is recommended to pay particular attention to the situation of refugees, victims of trafficking and other vulnerable groups and provide support in housing, in searching for employment and entry in the labour market, acquiring Armenian language knowledge, education and schooling, minimizing isolation and facilitate access to social and health services.

- **Coordination and cooperation**
  Integration is a crosscutting area involving various ministries, local and state authorities, NGOs, religious organisations, NGOs thus enhanced cooperation and partnership are essential for effective integration policies. For the coordination of the development and implementation of integration policies, the appointment of a coordinator and definition of clear responsibilities is also advisable.

10. Asylum
Compared to the EU acquis several gaps have been identified in the asylum legislation. The lack of a (subsidiary) protection status for persons who do not qualify as refugees in accordance with the Convention Relating to the Status of Refugees but who cannot be removed from Armenia, shortcomings in the asylum determination procedure and limited rights and integration and support measures granted to refugees and persons who cannot be removed due to the principle of non-refoulement appear to be, however, of major concern. Moreover, although the legislation envisages temporary protection procedures in case of mass influx of asylum seekers, also due to its limited scope, it does not seem to be guaranteed that Armenia can in practice provide protection to all persons in need.

Recommendations:

- **Subsidiary protection status**
  - It is recommended to use the definition and the terminology of the Qualifications Directive when defining asylum seekers, refugees and persons with subsidiary protection status;
  - Establish a subsidiary protection status for persons who do not qualify as a refugee but in respect to whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his
or her country of former habitual residence, would face a real risk of suffering serious harm and is and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country. Serious harm should consists of the death penalty or execution; or torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict;

- Additionally, to granting of protection status and residence in Armenia, it is equally essential to guarantee the rights (education, housing, integration, family reunification, etc.) to person with subsidiary protection status as set out in the Qualifications Directive;
- In procedural terms, it is recommended that international protection (refugee and subsidiary protection status) is processed and granted in a single procedure by the authority responsible for the asylum procedure, in this regard asylum applications are treated as applications for international protection, if not explicitly stated differently.

➤ **Assessment of asylum applications**

It is recommended regulate the assessment of an asylum application in more detail and to expand Article 52 of the Law on Refugees and Asylum and, in particular adopt an obligation to assess protection need sur place, define actors of prosecution and of protection as well as the possibility of internal protection.

➤ **Ending of the protection status**

It is recommended to align the grounds for cessation, cancellation of and exclusion from refugees status with the grounds stipulated in the Directive, in particular delete the provision that the refugee status ceases if the person leaves Armenia and the Convention Travel Document expires during this period and concerning the change of the circumstances in the country of origin or of former habitual residence as a ground for cessation, introduce the requirement that the changes are significant and non-temporary;

➤ **Rights of persons with international protection status**

- Issue persons with international protection status a residence permit in accordance with Article 24 of the Qualification Directive;
- Introduce the explicit obligation for the authorities to take the specific situation of vulnerable persons into account and to consider the best interest of the child;
- Regarding information provision and counselling it is suggested to provide asylum seekers and refugees information on their legal status, rights and obligation, additionally independent legal counselling should be provided to asylum seekers, in particular, if their application was rejected;
- Facilitates access to activities such as employment-related education, vocational training, including training courses for upgrading skills, practical workplace experience and counselling services, which are not provided for in the Armenian legislation;
- Grant minors with international protection status full access to the education system under the same conditions as nationals;
- Provide equal treatment with nationals for beneficiaries of international protection and endeavours to facilitate full access for those who cannot provide documentary evidence of their qualification;
- Ensure access to accommodation for beneficiaries of international protection under equivalent conditions as other legally residing foreign nationals in Armenia;
- Provide integration measures in general (languages courses, cultural orientation courses, information on daily life, facilitate participation in public life, etc.).
Temporary protection
- Expand the personal scope of temporary protection to all displaced persons in accordance with the Temporary Protection Directive;
- Regarding the rights of the persons with temporary protection status it is essential to grant them rights stipulated in the Temporary Protection Directive, in particular
  - provide persons to be admitted to the territory for the purpose of temporary protection are provided with every facility for obtaining necessary visas, free of charge or at a minimum cost;
  - provide medical and other assistance not only to unaccompanied minors but also to other persons who have special needs (i.e. victims of rape, torture, serious forms of physical, psychological or sexual violence;
  - make voluntary return possible and consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases;
  - regarding persons who have returned voluntarily before the temporary protection has ended, give favourable consideration to requests of return;
  - concerning the exclusion of a person from temporary protection due to a serious non-political crime introduce a balancing of the severity of the expected persecution and the nature of the offence. Particularly cruel actions even if committed with an allegedly political objective may be classified as serious non-political crime.
- Define mass-influx of foreign nationals and stateless persons in accordance with the definition of the Temporary Protection Directive.

11. Unaccompanied minors
So far no unaccompanied minor was identified in Armenia. Although the Armenian legislation provides for specific provisions for unaccompanied minor asylum seekers and refugees, it appears questionable whether the responsible authorities have the capacity to provide appropriate care and support for them. The lack of specific provisions in the legislation for unaccompanied minors who are victims of trafficking and do not apply for asylum constitute another significant gap.

Recommendations:

➢ UAMs as victims of trafficking
  - Provide a comprehensive legislation for children who are victims of trafficking or sexual exploitation.
  - Even though the provisions of the Residence Permit for Victims of Trafficking Directive are not mandatory, it is recommended that they are also implemented by Armenia.

➢ Care and support for UAMs
  - Provide access to health care and rehabilitation services for unaccompanied minors regardless of their status.
  - Regulate and provide access to suitable and specialized accommodation for unaccompanied minors (foster parents, specialised facilities, etc.) both asylum seekers, refugees and victims of trafficking and carry out regular training of the legal guardians and of other staff who are working with unaccompanied minors.
  - Grant full access to education for unaccompanied minors who are asylum seekers, refugees or victims of trafficking as well as to those who cannot be removed from Armenian due to the principle of non-refoulement.

➢ Return
  It is recommended to provide for specific guarantees for unaccompanied minors in the return procedure as envisaged in the Returns Directive.
Data collection
It is recommended to collect disaggregated data on unaccompanied minors who are apprehended and/or identified in Armenia.

12. Irregular migration
Combating irregular migration receives increased attention in Armenia; nevertheless the legal framework compared to the EU acquis is rather limited. Due to the relatively low-level entry conditions irregular migration to Armenia is not perceived as a significant phenomenon. It appears problematic that the penalties imposed for different offences related to irregular migration vary greatly. In particular in light of the jurisdiction of the Court of Justice of the European Union instead of the current criminal penalty administrative penalties should be imposed for migration-related offences (when no further criminal intent has been established). Regarding carriers responsibilities and facilitation of irregular migration a legal framework is non-existent. Also the legislation regarding employment of irregular migrants is rudimentary and there are significant gaps compared to the EU acquis.

Recommendations:

- **Sanctions for irregular migration and facilitation of irregular migration**
  - Apply administrative penalties for migration-related offences, in particular for irregular border crossing (when no further criminal intent has been established), instead of the current criminal penalty and harmonise the level of penalties related to irregular migration.
  - It is recommended to introduce criminal penalties for human smuggling and effective, proportionate and dissuasive sanctions for the facilitation of irregular migration.

- **Legislation concerning carries liability**
  - It is recommended to establish the carriers’ liability for travelling foreign nationals without valid travel document and/or visa to Armenia and impose sanctions in case of non-compliance.
  - It is recommended to require air carriers to collect and transmit passenger data to the Armenian authorities.

- **Employment of irregular migrants**
  - Establish a comprehensive legislative framework sanctioning the employment of irregular migrants as stipulated in the Employers Sanction Directive.
  - Create a legal framework to protect the rights of irregular migrant workers and to support them to claim outstanding wages, social security benefits, etc., also in cases where they returned or they have been returned to the country of origin.
  - It is recommended to carry out awareness raising campaigns and to inform foreign national employees about their rights and entitlements and to facilitate their access to support mechanisms, such as trade unions and other counselling services.

13. Trafficking in human beings
Armenia is a country of origin and transit and to a lesser extent a country of destination for trafficking in human beings. It is reported that, Armenia has made significant improvements in the fight against human trafficking over the last years, nevertheless, in light of the approximation of the legislation to the EU acquis several areas would require further improvement. In particular, there is no solid legal base for a recovery period and a residence permit for victims of trafficking. Moreover, it does not appear to be guaranteed that victims have effective access to assistance and protection (including witness protection) regardless of whether they cooperate with the law enforcement authorities. From the criminal justice perspective, it is problematic that legal entities have no criminal liability.
Recommendations:

- **Criminalisation**
  - Increase the level of minimum punishment to ten years imprisonment if trafficking is committed under aggravating circumstances.
  - Establish criminal liability for legal entities. Penalties against legal persons shall include criminal and non-criminal fines, and other sanctions such as exclusion from public aid and benefits, disqualification from the practice of commercial activities, temporary or permanent closure of establishments of the legal entity as well as placing it under judicial supervision, or judicial winding-up.
  - It is recommended to establish clearly in the law that the consent of the victim is irrelevant.

- **Victim protection**
  - Create a legal basis for a recovery and reflection period of up to 30 days and to ensure that victims of THB are systematically informed of the recovery and reflection period and they are effectively granted such a period.
  - Establish a residence permit for victims of trafficking and to regularly inform (potential) victims of trafficking of the possibility to obtain a permit.
  - It is recommended to define rules under which holders of a residence permit for victims of trafficking have access to the labour market, to vocational training and education.
  - Introduce programmes that facilitate the return of victims to their countries of origin.
  - It is recommended to introduce a witness protection and legal aid scheme for victims of trafficking.
  - It is recommended to guarantee that victims of THB have effective access to assistance and protection they need, regardless of whether they co-operate with the law enforcement authorities and to provide adequate assistance measures, including accommodation, to men and child victims of THB as well as that the necessary human and financial resources are made available.

- **Prevention**
  - It is recommended to develop targeted awareness raising campaign and to address root causes of trafficking through socio economic empowerment of the most vulnerable.

14. Exit

The Constitution provides for the right to leave the Republic of Armenia. Foreigners may exit the Republic of Armenia if they hold (1) a valid passport and (2) a valid document attesting lawful stay or residence in the territory of the Republic of Armenia until the moment of exit, unless other procedure is applicable according to Armenian law or international treaties. Regarding the exit of Armenian nationals, it must be mentioned that the old Armenian passports are serving both as national identifications cards and as travel documents. When exiting the country, Armenians need to collect a validation stamp which works as an exit permit and authorizes the person to travel in foreign states. This validation stamp is obtained by the Directorate for Passports and Visas of the Armenian police. The requirement of a validation stamp on the passport of an Armenian citizen to allow for international travel is clearly a restriction of the right to leave the country, and it is recommended that it is amended.

Recommendations:

- **Requirement of validation stamp for international travel**
  - The requirement of a validation stamp on the passport of an Armenian citizen to allow for international travel needs to be abolished in order to comply with Article 25 of the Constitution of Armenia providing the right of Armenian citizens and foreigners to leave the country.
Exit of overstayers

Article 12 needs to include a specific procedure as to what happens if a foreigner has overstayed in Armenia and is presented at the border willing to depart.

15. Return and Removal/Expulsion

The issues of return and removal/expulsion arise either when foreigners enter Armenia without authorization or when foreigners are found to be illegally present in Armenian territory. In the first case, the entry is refused, according to the Armenian legislation, and foreigners shall be returned as soon as possible to their state of origin or to the state where they arrived from with the same carrier, except when they are seeking refugee status or political asylum. In the second case, the voluntary return and expulsion of foreigners from the Armenian territory is provided. If the foreigner does not leave voluntarily the territory of Armenia, the responsible administrative body of the police files with the court an action of expulsion for the foreigner. The court will decide on the expulsion or refusal of expulsion of the foreigner.

It is recommended that the Armenian legislation includes a definition of return, similar to the one provided by the EU acquis. The Armenian legislation should also explicitly state that the procedure of return of foreigners who are found illegally in the Armenian territory need to be in accordance with fundamental human rights, as provided by national and international law. In addition, it is very important that a period of voluntary departure is granted to a foreigner together with the return decision, during which specific obligations are imposed in order to prevent them from fleeing. Last, even though the right to appeal an expulsion decision is provided in the Armenian legislation, it is also important to include the provision of free legal assistance and representation, which is provided for in the EU acquis.

Recommendations:

- Creation and operation of Special Accommodation Centres (SACs)
  The currently existing legislation on SACs needs to be implemented in practice so that SACs are created at all border crossing points and inside the Armenian territory. SACs also need to comply with the standards already provided by the existing legislation. In addition, a more detailed procedure regarding the creation and operation of SACs is necessary, that could be introduced with an additional governmental decree on this issue, following the Article 37 para. 6 and 38 para.4 of the Law on Foreigners. This new decree could further specify the operation of the SACs in order to safeguard the rights of the detained foreigners so that the EU and international standards are met.
  Apart from this, Articles 37 and 38 of the Law on Foreigners could further specify that in the absence of SACs foreigners could be detained in prison accommodations, however only in separate parts of them and not together with convicts (following Article 17 of the Return Directive).

- Expulsion procedure
  Article 31 of the Law on Foreigners could be amended in order to provide more information on the initiation of the expulsion procedure and especially how the expulsion action is file, what does it need to contain, which court is competent and what is the deadline for filing it. Article 33 of the Law on Foreigners could also be amended to list specifically the rights that foreigners subject to expulsion enjoy. This could be done also by citing the relevant Armenian legislation provisions. Article 34 para. 1 of the Law on Foreigners needs to clarify which is the competent court and Article

24 Decree No. 127-N of February 7, 2008 on approving procedures for functioning of special accommodation centers on the RA border crossing points and transit zones and for accommodating foreigners in these center, and Decree No. 827-N on approving the procedure of the operation of a special accommodation center in the territory of the Republic of Armenia and the procedure of holding arrested foreigners in this Center of 10 July 2008.
34 para. 2 should specify that it does not include an exhaustive list. It needs to be further clarified in which cases certain obligations are imposed upon a foreigner during the expulsion procedure.

- **Appeal procedure**
  Article 35 of the Law on Foreigners could be amended in order to further specify the procedure of the appeal, either by elaborating it in this provision or citing the relevant provisions of the Armenian legislation.

- **Execution of the expulsion decision**
  Article 36 of the Law on Foreigners needs to be amended in order to specify how the expulsion is carried out and especially if coercive measures can be used. It also needs to refer to the provisions of the Law on compulsory enforcement of judicial acts, if this is the legal act that needs to be followed.

- **Registration of expelled foreigners**
  It needs to be clarified whether the database of undesirable foreigners is in operation. If it is, the governmental authorities need to be appropriately informed about it. Expelled foreigners are also registered in the database of undesirable foreigners.

- **Definition of return and return decision**
  The Armenian legislation does not provide for a definition of return or of a return decision. The following definition could be adopted by adapting the EU acquis definition: “return is the process of a foreigner going back — whether in voluntary compliance with an obligation to return, or enforced to: (1) his or her country of origin, or (2) a country of transit in accordance with bilateral readmission agreements or other arrangements, or (3) another third-country, to which the foreigner concerned voluntarily decides to return and in which he or she will be accepted. A return decision is a judicial decision, stating or declaring the stay of a foreigner to be illegal and imposing or stating an obligation to return. The return decision seems to be similar to an expulsion decision, according to the Armenian legislation. Even if the above-mentioned definitions are not followed, it is crucial to create a comprehensive list of definitions to ensure legal clarity.

- **Definition of expulsion/ removal**
  If the above-mentioned definitions of return and return decision are adopted, the definition of expulsion (or removal) would need to be aligned accordingly. A suggested definition, following the EU acquis, could be the following: Expulsion is the enforcement of the obligation to return, namely the physical transportation out of the Republic of Armenia. Even if the above-mentioned definitions are not followed, it is crucial to create a comprehensive list of definitions to ensure legal clarity.

- **Respect of human rights**
  The Law on Foreigners should explicitly state that the procedure of return of foreigners who are found illegally in the Armenian territory needs to be in accordance with fundamental human rights, as provided by national and international law. In particular the interests of the child, family life, state of health of the foreigner and the principle of non-refoulement need to be taken into account.

- **Voluntary return period**
  Article 31 of the Law on Foreigners should include the maximum voluntary return period, after the expiration of which the police can file an expulsion action at the court. It could also be mentioned when the voluntary return period can be extended (the specific circumstances of the individual case need to be taken into account, such as the length of the stay, the existence of children attending school and the existence of other family and social links) and in which cases such a voluntary return period is not granted.

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Obligations imposed during the voluntary return period

Article 34 of the Law on Foreigners could explicitly mention that specific obligations are imposed to the foreigner during the voluntary return period. Apart from the ones already mentioned in Article 34 para. 2 (obligation to appear regularly before the relevant subdivision of the public administration body authorized in the field of police as well as the ban on leaving the place of residence without permission) more could be added, such as a deposit of an adequate financial guarantee or submission of certain documents.

Use of coercive measures to carry out the removal

Since in certain cases coercive measures might need to be used in order to carry out the expulsion, it is necessary that Article 36 of the Law on Foreigners includes a provision on the use of coercive measures which should be used as a last resort and they should be proportionate and not exceeding reasonable force. The respect of fundamental rights and the dignity and physical integrity of the persons being removed should also be highlighted.

Postponing the removal

The Law on Foreigners could include a specific Article on when the expulsion of a foreigner can be postponed. This would include the suspensive effect of an appeal, but also the violation of the non-refoulement principle, the consideration of the foreigner’s physical and mental state as well as technical reasons, such as lack of the foreigner’s identification or lack of transport capacity.

Provisions during the period of voluntary departure

After the period of voluntary departure is defined, a provision could be included to further ensure that certain principles will be in place during this period. This could include, following the EU acquis, ensuring that: (1) the family unity with family members present in their territories is maintained, (2) emergency health care and essential treatment of illness are provided, (3) minors are granted access to the basic education system subject to the length of their stay, and (4) special needs of vulnerable persons are taken into account.

Entry ban

Chapter 5 of the Law on Foreigners could include a provision on an entry ban to be issued together with the court’s expulsion decision, if deemed necessary.

Information provided together with expulsion decision

Article 34 of the Law on Foreigners needs to be amended to explicitly state that the expulsion decision is transmitting to the foreigner in a language that he/she understands and that all the necessary information on available remedies is also provided to him/her.

Detention for the purpose of removal

Article 38 of the Law on Foreigners could be amended in order to include the case when a foreigner avoids or hampers the preparation of the return or the expulsion, as a ground for detention.

Condition of reasonable prospect of removal

Chapter 6 of the Law on Foreigners needs to include a provision stating that the foreigner should be immediately released when it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions of detention no longer exist.

Responsibility of carriers

Article 6 of Law on Foreigners could be amended so as to point out the obligation of carriers to assume responsibility of the foreigners who are being refused entry. It could be clearly stated that the border authorities should order the carrier to transport the foreigner without delay to the

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country from which he/she was brought, or to the country which issued the document authorizing him/her to cross the border, or to any other third-country where he/she is guaranteed admittance, or to find means of onward transportation.\(^{27}\)

- **Minimum guarantees**

  It would be advised to draft an additional Article in Chapter 5 of the Law on Foreigners, that would include the minimum guarantees that need to be respected at all times when a foreigner is to be removed from the Republic of Armenia. These minimum guarantees, could be, in compliance with the EU acquis, the following: adequate treatment and level of protection (no less favourable than as set out in Article 8 para. 4 and 5 of the Return Directive), possibility to postpone the removal (Article 9 para. 2 lit. a of the Return Directive), provision of emergency healthcare and taking into account needs of vulnerable persons (Article 14 para. 1 lit. b and d of the Return Directive), provision of minimum detention conditions (Articles 16 and 17 of the Return Directive) and respect of the non-refoulement principle.

16. **Readmission**

With the entry into force of the Partnership and Cooperation Agreement (PCA) between the EU and Armenia, the two parties have agreed to readmit their own nationals that are found illegally in the territory of the other. To this end the Republic of Armenia agreed to readmit any of its nationals illegally present on the territory of a Member State, upon request by the latter and without further formalities, and each Member State agreed to readmit any of its nationals, as defined for community purposes, illegally present on the territory of the Republic of Armenia, upon request by the latter and without further formalities. In addition, the conclusion of the EU-Armenia Readmission Agreement was signed on 19 April 2013 after the adoption of the Visa Facilitation Agreement in December 2012. The EU-Armenia Readmission Agreement provides for the reciprocal obligation of the two parties to admit their nationals (third-country nationals and stateless persons as well in some cases) which are found to be present in an irregular situation on the territory of the other party. Armenia has also concluded bilateral readmission agreements with several countries in order to regulate the issue of return and readmission of irregular migrants.

**Recommendations:**

- **Evaluation**

  Armenia should ensure that the already concluded bilateral readmission agreements with third countries are properly implemented. For this, an evaluation of the implementation of these agreements which are in force is useful. It could also be useful to evaluate at the same time any ongoing negotiations for the conclusion of readmission agreements as well as the monitoring of the implementation of readmission agreements, including human rights safeguards. In order to implement the evaluation the evaluation conducted for the EU Readmission Agreements in 2011 could be used as a starting point.

- **Readmission agreements with third countries**

  Armenia could consider initiating negotiations with additional countries in order to sign bilateral readmission agreements. Such agreements could be concluded with the main countries of origin, transit or destination of migrants in Armenia while priority could be given to neighbouring countries. It is understandable that currently there are no large scale immigration flows towards Armenia; however it is best to prepare for possible future changes towards that direction.

Content of readmission agreements

Armenia could follow the Recommendation on a specimen bilateral readmission agreement as well as the Recommendation on Guiding Principles for Protocols on the implementation of readmission agreements. Armenia can ensure that future readmission agreements include the following minimum content:

- The mutual obligation to readmit both the nationals of the contracting parties but also third-country nationals and stateless persons.
- A clause stating that the readmission of a person of another jurisdiction will not be requested if the person concerned has applied for asylum in the requesting country, for as long as a final decision on the merits of the application has not been reached, unless an agreement on the allocation of responsibility for examining an asylum application is in force between the requesting and the requested countries.
- A clear list of documents required as means of proof of nationality or presumption of nationality.
- Clear procedures and timeframes for the implementation of the readmission, including regulation of transit and covering the costs.
- Clauses on data protection and respect of the non-refoulement principle. A clause stating that the agreement does not affect any obligations arising from the 1950 Convention on the Status of Refugees, international conventions on extradition and transit, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, international conventions on asylum and international conventions and agreements on the readmission of third-country nationals.

17. Data collection and protection

The Armenian legislation does not contain a separate legislative act relating to the collection of data and statistics in the area of migration. Different laws, however, make reference to the existence of specific databases/registries of certain data with regards to foreigners. It is recommended that one comprehensive act is drafted with relation to collection and protection of migration-related data. Regarding data protection in particular, two gaps are evident in relation to the EU acquis: the absence of a specialized national data protection authority that would supervise issues related to data protection and the regulation of transfer of personal data to third countries. Both issues would need to be accordingly amended in the Armenian legislation.

Recommendations:

- One comprehensive legal act on migration-related data
  It would be useful to include in one legal act all the different databases, registries and other data-storing systems provided already by the Armenian legislation. This would ensure a comprehensive and holistic overview of the data collection, analysis and storage systems provided and their function regulations. Armenia needs also to ensure that it collects all useful types of migration-related data (the ones collected by EU Member States and provided to Eurostat could be used as an example).

- Database of undesirable foreigners
  It needs to be clarified whether the database for undesirable foreigners provided in Article 8 para. 6 of the Law on Foreigners is in operation. If yes, it is necessary to inform accordingly all governmental authorities that might need to obtain information from such a database.

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Database of foreigners having obtained an entry visa

Article 9 of the Law on Foreigners needs to include a provision relating to the database of foreigners having obtained an entry visa and Article 42 needs to refer to it accordingly. It seems that the Directorate of Passports and Visas of the Police is already functioning such a database according to Appendix 5 of the governmental decree No 1268-N.

Definitions included in the Data Protection Law

It is important to provide comprehensive definitions in the Data Protection Law in order to ensure legal clarity, to avoid arbitrary decisions and ensure maximum protection. The definitions of data and data processing were mentioned as examples but it would also be useful to align with the EU acquis the definitions of data controller, data processor and consent of the data subject.

Supervising authority

The Armenian Law on Personal Data needs to include an additional chapter for the establishment of a specialized national data protection authority that would supervise issues related to data protection. The aim, structure and functions of the authority also need to be specified. Similar authorities of EU Member States could be taken as example.

Transfer of data to third countries

The Armenian Law on Personal Data needs to include a provision on the transfer of personal data to foreign countries. Adequate level of protection of data needs to be guaranteed and this could follow the EU acquis where the level of protection is assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations and particular consideration is given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third-country in question and the professional rules and security measures which are complied with in that country. The authority supervising the transfer should also be clearly identified.

Rights of the data subject

Articles 11 and 12 of the Armenian Law on Personal Data need to be redrafted to clearly state the rights of the data subject to access the data concerning him and to object. The relevant provisions of the EU acquis could be used as a basis.

Judicial Remedy and Liability

Articles 14 and 15 of the Armenian Law on Personal Data need to be amended to provide further details on the procedure that needs to be followed for judicial remedy and liability, the responsible judicial authority etc. In addition, the sanctions in the event of a breach need to be mentioned. The relevant provisions of the Data Protection Directive could be used as an example as they are much more detailed.

Draft Law on Personal Data

It would be advised to further amend the draft Law on Personal Data so that, first and foremost, the definitions contained in Article 3 are comprehensive and contribute to legal clarity. The definition of

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30 See the Chapter 2.
31 Appendix 5 of the Governmental Decree No.1268-N.
33 Articles 12-14 of the Data Protection Directive.
34 Articles 22 and 23 of the Data Protection Directive.
“consent” as well as the distinction between a “data controller” and a “data processor” would need to be revised, for example. The definitions provided in Article 2 of the EU Data Protection Directive could be used as examples. It is important also to clearly state the principle that “personal data must be processed fairly and lawfully”.35

Apart from this, it needs to be guaranteed that the data protection authority supervising the implementation of the data protection legislation of the Republic of Armenia is an independent body so that adequate control over the executive is assured.

Last, the new draft law needs to contain provisions about the transfer of personal data to third countries, which should only be allowed when adequate safeguards of data protection are guaranteed.36

➢ **Ratification of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data**

Even though the recently ratified Convention prevails over national law,37 there are numerous provisions of the current Data Protection Law that do not comply with the provisions of the Convention. It is important to revise the current law or the new draft law in the view of the Convention. By aligning the data protection legislation with the EU Data Protection Directive, compliance with the Council of Europe Convention is achieved as well.

**Conclusion**

The Armenian legislation on migration and asylum could benefit from certain amendments in order to be aligned to the relevant EU acquis. It is further advised to clarify certain provisions of the Armenian legislation, in order to increase transparency and legal clarity and facilitate their implementation. The recommendations provided could serve as a pathway to the necessary changes. Most importantly, it is vital to implement in practice the legal provisions on migration and asylum in order to achieve the needed results. At the same time, it has to be kept in mind that the EU acquis was developed against a different historical, socio-economic and political context and does not cover all areas in the area of migration and asylum which has to be taken into account when improving a national migration management system. The EU acquis especially does not address the issue of emigration, citizenship or the institutional framework and provides only a limited labour migration framework. For a successful migration management which protects the human rights of the migrants and the takes into account the interest of Armenia it is essential to address also these issues.

35 Article 6 para. 1 of the Data Protection Directive.
36 See Chapter IV of the Data Protection Directive.
37 According to Article 6 of the Constitution of the Republic of Armenia.
III. OVERVIEW OF THE MIGRATION SITUATION IN ARMENIA

Migration has been and continues to be one of the most important social and economic phenomena affecting Armenia.\(^{38}\) Outflows of Armenians (emigration) are particularly important, as they are also linked to the history of the large Armenian diaspora. Immigration, however, is not perceived as a large-scale phenomenon, and the majority of non-nationals coming to Armenia are asylum-seekers.\(^{39}\) Due to the lack of reliable data on immigration flows and stocks the actual size of foreign nationals is unknown. However, previous research suggests that labour immigration to Armenia has been underestimated. (Devillard 2012: 10).

The Armenian diaspora has been formed throughout the centuries and in particular after World War I with the fall of the Ottoman Empire and in the beginning of the 1990s with the collapse of the Soviet Union. Initially emigration was taking place for humanitarian reasons but it turned into economic migration, making remittances an important part of Armenia’s economy. Due to economic problems in the Soviet Union in the 1970s and 1980s and the signature of the 1970s Helsinki Agreements, there was an increase in economic migrants (seasonal workers, but also persons migrating permanently for work, especially in the US). The Spitak earthquake in 1988 led to the emigration of about 200,000 people, the majority of whom returned, however during the 1990s. Following that, the 1989-1990 conflict at the Nagorno-Karabakh region, led to many ethnic Azerbaijani populations leaving Armenia and also ethnic Armenians leaving Azerbaijan and migrating afterwards mostly to the Russian Federation and the US. In the last decade, approximately three-quarters of the Armenian emigrants have settled in the US, Russian Federation, Ukraine and other former Soviet Union countries.\(^{40}\) Emigration has changed radically Armenia’s demographics as around one million persons, or about the 25% of the population, has left the country since the beginning of the 1990s.\(^{41}\) According to OSCE, from 2002 to 2007 labour migrants constituted the vast majority of external flows from Armenia, and most of them migrated to Russia.\(^{42}\) At that period, only 3% left Armenia with the purpose to permanently reside abroad, while 94% were temporary labour migrants and 2% were migrating to study.\(^{43}\) This is a different pattern compared to the 1990s, when the majority of Armenian migrants were migrating permanently joining the Armenian diaspora in Russia, Ukraine, US and Europe.\(^{44}\) Remittances from Armenian migrants play a key role in the Armenian economy. From 2007-2011, remittances constituted in average 16% of the country’s GDP.\(^{45}\) The main countries of destination for Armenian migrants are the Russian Federation, the United States, Ukraine, Georgia, Germany, Israel, Turkmenistan, Greece, Spain and Belarus.\(^{46}\) According to UNDP, during 1988-2001 more than 1 million people emigrated from Armenia, while during 2002-2007 there were 150,000 emigrants.\(^{47}\) The Armenian diaspora communities of the beginning of the 20th century are mainly comprised of persons of Armenian ethnic origin, which do not necessarily hold Armenian nationality. Generally, the loss of Armenian statehood during Armenia’s history contributed to the increasing importance of Armenian origin. The more recent Armenian diaspora communities, created in the beginning of the 1990s are comprised mostly of Armenians holding the Armenian nationality. With the aim of reinforcing the ties with the diaspora, the Ministry of Diaspora was created by the Armenian

\(^{38}\) Armenia Migration Profile, IOM, 2008.
\(^{39}\) Armenia Migration Profile, IOM, 2008.
\(^{40}\) Armenia Migration Profile, IOM, 2008.
\(^{44}\) See ILO, Migration and Development, Armenia, 2009 for more information on emigration from Armenia.
\(^{45}\) International Monetary Fund, Remittances in Armenia: Dynamic Patters and Drivers, 2011.
\(^{46}\) World Bank, Development Prospects Group: Migration and Remittances Factbook, 2005.
\(^{47}\) UNDP, Migration and Human Development: Opportunities and Challenges, Armenia, 2009.
Government in 2008. In 2009, the Government developed the “Concept Paper on Development of Armenia and Diaspora Cooperation” while a Law on Repatriation is currently being drafted. According to the Concept Paper, contemporary Armenian diaspora includes the Armenian communities established outside of the territory of the Republic of Armenia and Nagorno-Karabakh Republic. More than 10 million Armenians live in different parts of the world while 3.2 million live in Armenia.

Currently, there is no provision specifying what constitutes “Armenian origin/ethnicity”. A draft law for the acquisition of citizenship for diaspora members is currently being developed and it will include the concrete definition of Armenian origin/ethnicity. In _ad hoc_ cases, such as during the Syrian crisis, specific documents were considered to be proof of Armenian origin/ethnicity, such as certificate of baptism from the Armenian Apostolic Church and birth certificate.

Until 2000, Armenia had not developed a state migration policy and migration was regulated by legislation that had not been amended for several years, such as the 1994 Law on the Legal Status of Aliens. In November 2000, Armenia developed the first “Concept of State Regulation of Migration in Armenia. It was accompanied by the 2012-2016 Action Plan, adopted in 2011. The Action Plan envisages the approximation of the legal and administrative framework to the relevant EU legislation and EU best institutional structures taking into consideration national state interests, the introduction of electronic passports with biometric indicators and identity cards with the purpose of raising the level of protection of documents for identification of persons, facilitating the mobility Armenian citizens, improvement of the border management system, development of an information system for recording of migration flows, protection of rights and interests of Armenian citizens employed in other countries, regulation of the condition of employment for foreign citizens in Armenia, prevention of irregular migration originating form Armenia and improvement of the legal framework as well as the support to the return of Armenian citizens and their further reintegration. During the 2000s, significant migration-related legislation was adopted that is currently still in force: the 2006 Law on Foreigners, the 2001 Law on Border Guards and the 2001 Law on State Border.

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IV. OVERVIEW OF THE ARMENIAN INSTITUTIONAL FRAMEWORK

The institutional framework in Armenia in the area of migration and asylum is decentralized and is described as rather complex. Various ministries and authorities are involved in the migration policy development and implementation and previous assessments observed that often different institutions have overlapping mandates. The overall coordination and the development of migration policies in Armenia lie with the State Migration Service (SMS), a public agency of the Ministry of Territorial Administration. As such, it is responsible for the coordination and monitoring of the 2012-2016 Action Plan for Implementation of the Concept for the Policy of State Regulation of Migration in the Republic of Armenia. At the same time, the SMS is responsible for the processing of asylum application and granting asylum at first instance. The Ministry of Foreign Affairs through its Consular Department, Migration Desk and Legal Department is coordinating international projects and is responsible for issuance of visas, passports, and return certificates as well as for the issuance of the special resident permits. The responsibility of issuing visas and passports is shared with the Police. The Ministry of Labour and Social Issues with its State Employment Service Agency is not only the competent authority for the development and implementation of labour and social security policies and management of issues related to the labour emigration, but is also responsible for unaccompanied minor asylum seekers and refugees. At the time of the drafting of this study there was no agency responsible for the regulation of access to the labour market for foreigners in Armenia. For the development and implementation of partnership with the Armenia diaspora, the Ministry of Diaspora has been established in 2008 and since then it carries out various activities and projects with the Armenian diaspora related to education, dissemination of Armenian cultural heritage, strengthening of the Armenian identity, repatriation of Diaspora Armenians, support to the pilgrimage of diaspora youth to Armenia, etc.

The National Security Service (NSS) deals with border management and control and is also involved in the implementation of policies related to combatting irregular migration. The Police is on the one hand responsible for combatting irregular migration (including trafficking in human beings), mainly originating from Armenia (Division of Combating Illegal Migration and for International Collaboration) and on the other hand the Department of Passports and Visas is in charge of the issuance of visas and residence permits and registration of foreign nationals in Armenia. Beyond that, various other actors, such as the Ministry of Justice (i.e. detention of irregular migrants, return procedures, civil registry and state register of legal persons), Ministry of Health (i.e. provision of health care for asylum seekers and refugees) are involved in specific aspects of migration management. Specifically for the coordination of activities in the area of trafficking in human beings the Council to Combat Trafficking in Human Beings in Armenia was formed in 2007. The Council is

51 Idem. See also Rossi-Longhi, P.; Prutsch, F.; Galstyan K., Progress Review of Migration Management in the Republic of Armenia, p. 26, IOM, 2001, Yerevan: Although the report observed some progress, the central management of migration policies was entrusted with a single agency, the State Migration Service, it was underlined that the functions and responsibilities of other agencies dealing with migration management has not been adjusted.
chaired by the Deputy Prime Minister, Minister of Territorial Administration and is composed of the various ministers and high ranked officials of the Public Prosecution, Police, National Assembly, the Human Rights Defender, etc. Adoption of advisory decisions in the fields of prosecution, making proposals for legislative improvements, prevention (including measures to increase public awareness, prevention of child trafficking and increasing the role of mass media) and provision of assistance to victims of trafficking as well as matters related to inter-agency, regional and international cooperation and research are the main tasks of the Council. As the EU acquis does not prescribe a specific institutional framework for migration management in general or for specific areas and as the EU Member States have very different institutional structures in this area, the study at hand did not analyse the institutional set-up in detail.
V. OVERVIEW OF EU-ARMENIA RELATIONS ON MIGRATION ISSUES

The main agreement regulating the relations between Armenia and the EU is the 1996 EU-Armenia Partnership and Cooperation Agreement (PCA). The objectives of the agreement are: (1) to provide an appropriate framework for the political dialogue between the Parties allowing the development of political relations, (2) to support the Republic of Armenia’s efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy, (3) to promote trade and investment and harmonious economic relations between the Parties and so to foster their sustainable economic development, and (4) to provide a basis for legislative, economic, social financial, civil, scientific, technological and culture cooperation. Article 72 of the Partnership and Cooperation Agreement refers to the cooperation on prevention and control of illegal immigration, according to which Armenia needs to readmit any of its nationals illegally present on the territory of a Member State and each Member State agrees to readmit any of its nationals illegally present in Armenia. The Republic of Armenia concludes bilateral agreements with Member States which so request in order to regulate specific obligations for readmission. Armenia has already signed such agreements with Benelux, Bulgaria, Czech Republic, Denmark, Germany, Lithuania, Norway, Sweden, and Switzerland. However, the adoption of the EU-Armenia readmission agreement is expected in 2013. This readmission agreement will set out clear obligations and procedures for the authorities of the EU Member States and Armenia as to when and how to take back people who are illegally residing on the territories of the parties. It will cover not only illegally staying nationals but also third-country nationals and stateless persons being in an irregular situation.

In 2004, Armenia joined the European Neighbourhood Policy (ENP) and the Armenia ENP Action Plan was adopted in 2006. The 2005 Armenia Country Report highlights areas in which bilateral

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56 Article 1 of the Partnership and Cooperation Agreement.
57 The agreement between the Benelux countries and the Republic of Armenia on readmission, 2009.
66 The EU-Armenia Readmission Agreement is expected to enter into force at the same time as the EU-Armenia Visa Facilitation Agreement, which was adopted in December 2012.
67 The European Neighbourhood Policy (ENP) was developed in 2004 with the objective of strengthening the relationship between the EU and its neighbour countries. The ENP is further enriched with regional and multilateral cooperation initiatives: the Eastern Partnership, the Union for the Mediterranean and the Black Sea Synergy. ENP is proposed to Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia and Ukraine. For more information see the 2011 Review of the ENP, A New Response to a Changing Neighbourhood, 25 May 2011 and the 2012 Communication on Delivering on a new European Neighbourhood Policy, Brussels, JOIN (2012) 14 final, 15 May 2012.
cooperation could be feasibly and valuably strengthened. It points out the large migration flows produced by Armenia that resulted in a drop in the country’s population. Armenia is described as a country of origin and transit of both migrants and victims of trafficking. Specific reference is made to refugees, most of which are ethnic Armenians displaced from neighboring countries due to conflicts. Refugees are granted basic social and economic rights however, their integration is challenge. Victims of trafficking are transiting from Armenia to the United Arab Emirates, Turkey and Russia for both sexual and labor exploitation. The 2006 ENP Action Plan contains a comprehensive list of specific areas of cooperation under migration issues, which include enhanced dialogue on prevention and control of illegal migration and readmission of own nationals, stateless persons and third-country nationals, modernization of the national refugee system in line with international standards, facilitation of movement and fight against organized crime and trafficking in human beings.

The ENP Country Strategy Paper 2007-2013 for Armenia contains the main EU-cooperation objectives, policy responses and priority fields. It states that “the principal objective of EU-Armenia cooperation at this stage is to develop an increasingly close relationship between the EU and Armenia, going beyond past levels of cooperation to a deepening of political cooperation and accompanied by continued economic growth and continued results in poverty reduction”. The EC assistance priorities described in the Strategy Paper include the cooperation in the field of Justice, Freedom and Security which, in line with the ENP Action Plan, mention that the EC assistance in this area should promote institutional reform and capacity building on migration issues including readmission and asylum, fighting terrorism and organized crime, including trafficking in human beings and drugs, the illicit spread of small arms, light weapons and money laundering, document security/biometric, effective border management and effective management of migration flows. The instruments and means to achieve this include the five ENPI thematic programmes, one of which is on Migration and Asylum which is of relevance for Armenia. Progress reports on implementation of the ENP for Armenia have been developed annually and the 2012 Progress Report notes as progresses in the area of cooperation on justice, freedom and security, inter alia: (i) the adoption of the 2011 implementation Action Plan for the Border Security and Border Management Strategy 2011-2015, (ii) signature of a draft working agreement between Armenia and FRONTEXT in 2012, (iii) the adoption in 2011 of a National Action Plan 2012-2016 for the implementation of the Concept for the Policy of State Regulation of Migration, (iv) the 2011 adoption of legislation for the introduction of biometric passports, (v) the 2012 launch of negotiations for the EU-Armenia visa facilitation and readmission agreements, (vi) the adoption of the EU-Armenia Mobility Partnership in 2011, (vii) the 2011 amendments to the Armenian Criminal Code that toughened punishment for trafficking in children and persons with mental health problems, (viii) the establishment of an anti-trafficking board under the Ministry of Territorial Administration, and (ix) signing the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.


72 In consultation with the Armenian authorities, a National Indicative Programme (NIP) was adopted for 2007-2010. An indicative amount of 98.4 million EUR was allocated on the basis of bilateral priorities. The indicative allocation for NIP 2011-2013 increased to 157 million EUR.


In 2009, the EU adopted the Eastern Partnership\textsuperscript{76}, as a specific eastern dimension of the ENP Instrument\textsuperscript{77}. The Eastern Partnership aims to deepen and strengthen the relation between the EU and Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The stronger political engagement envisaged with the EU includes, inter alia, the prospect of a new generation of Association Agreements, visa liberalization and measures to tackle illegal immigration. According to the Roadmap to the autumn 2013 Summit of the Eastern Partnership,\textsuperscript{78} by the autumn of 2013 negotiations on the Association Agreement with Armenia should be well advanced, if not finalized. Armenia and the EU started negotiating an Association Agreement in 2010 in order to replace the Partnership and Cooperation Agreement. The Association Agreement will also include a Deep and Comprehensive Free Trade Area (DCFTA).\textsuperscript{79} DCFTA negotiations with Armenia should also be well advanced, if not finalized by autumn 2013, and substantial progress should have been made in the area of regulatory approximation, in accordance with the Commission’s recommendations.

In 2011, the EU-Armenia Mobility Partnership was adopted regulating cooperation in four areas: (1) legal migration and integration, (2) migration and development, and (3) fight against irregular immigration, and (4) asylum and international protection.\textsuperscript{80} This is the third EU Mobility Partnership with an Eastern Partnership country, after the ones with Moldova and Georgia. Mobility Partnerships are innovative and comprehensive tools to foster cooperation on migration and mobility issues, including legal migration, the fight against irregular migration, international protection, and migration and development. Important aspects of the EU-Armenia Mobility Partnership along the four areas of cooperation are the following: the facilitation of temporary and circular migration, strengthening of Armenia’s capacity to manage migration, the provision of information to potential migrants on opportunities for legal migration to the EU accompanied by pre-departure training, the prevention of brain drain and brain waste (especially through return policies), the support of voluntary return and sustainable reintegration, the enhancement of cooperation with the Armenian diaspora, the fight against irregular migration and human trafficking through strengthened implementation of border management, the enhancement of security of identity documents, the provision of international protection according to best international standards, the facilitation of the asylum seekers’ reception and submission of asylum requests and the improvement on exchanging information and best


\textsuperscript{79} In 2011, Armenia made significant progress in the preparations for the DCFTA negotiations by advancing with the implementation of necessary reforms, focusing on sanitary and phytosanitary issues, technical barriers to trade and on intellectual property rights. Following a recommendation from the Commission, in February 2012 the Trade Policy Committee agreed that Armenia had made sufficient progress on implementation of the Commission’s key recommendations and that negotiations on a DCFTA could start soon.


\textsuperscript{80} Joint Declaration on a Mobility Partnership between the European Union and Armenia, 27 and 28 October 2011, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dsca/dv/dsca_20121128_15/dsca_20121128_15en.pdf (accessed on 17 February 2013). The following EU Member States participate in the Mobility Partnership Agreement: the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the French Republic, the Republic of Italy, the Kingdom of the Netherlands, the Republic of Poland, Romania and the Kingdom of Sweden.
practices for the fight against irregular migration. There has been no evaluation of the progress of implementation of the Mobility Partnership Agreement so far.

Regarding cooperation in labour migration issues, apart from the provisions included in the Mobility Partnership Agreement, Armenia has also signed bilateral labour agreements with certain EU Member States, such as Denmark, Germany and Sweden. The aim of these agreements is to increase labour mobility and at the same time protect the rights of migrant workers. Armenia has established bilateral labour agreements with Russia, Belarus, Ukraine and Georgia. Agreements with some EU Member States (Bulgaria and Czech Republic) as well as with Oman, Qatar and the United Arab Emirates are currently being negotiated. A working group for the implementation of the bilateral labour agreements has been established and it is headed by the State Migration Service. The 2011 Armenian Concept for the Policy of State Regulation of Migration as well as its Action Plan include as priority activity the launch of discussions on concluding bilateral agreements on labour issues and acceding to the existing international treaties related to the interests of labour migrants with a view to enlarging the opportunities of leaving for field work from the Republic of Armenia on a treaty basis, as well as protecting the rights and interests of the Armenian labour migrants.

In 2012, Armenia and the EU started negotiations for a Visa Facilitation Agreement and a Readmission Agreement. Visa Facilitation Agreements are signed as an intermediate step towards visa-free travel. The Visa Facilitation Agreement was signed on 17 December 2012 and its aim is to facilitate the issuance of visas for an intended stay of no more than 90 days per period of 180 days to the citizens of Armenia. Issues not covered by the Visa Facilitation Agreement, such as the refusal to issue a visa, recognition of travel documents, proof of sufficient means of subsistence, refusal of entry and expulsion measures are regulated by the national law of Armenia or of the Member States or EU law. The agreement facilitates the issuance of visas for Armenian citizens, especially frequent travellers, reduces the visa fee and waives the visa fee for certain categories of persons. The Readmission Agreement between Armenia and the UE was signed on 19 April 2013. It covers both readmission of own nationals as well as of third-country nationals and stateless persons. However, strict conditions need to be fulfilled for the readmission of third-country nationals or stateless persons to take place.

Advice is provided to the Armenian authorities by the EU Advisory Group in areas such as human rights and democracy, justice, liberty security and the DCFTA. In particular with regards to migration, the EU Advisory Group is assisting Armenia in (1) monitoring and providing advice on the implementation of the Migration Action Plan, (2) raising awareness on the Mobility Partnership Agreement and Visa Facilitation Agreement, (3) elaborating terms of reference for an EC funded support project to the EU-Armenia Mobility Partnership, and (4) advising the State Migration Service in its coordinating role regarding migration management.

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81 See the complete text of such bilateral labour agreements (in Russian only) at http://www.carim-east.eu/database/legal-module/?ls=3&ind=biag&country=Armenia&country_fin=%D0%90%D1%80%D0%BC%D0%B5%D0%BD%D0%B8%D1%8F&lang=(accessed on 17 February 2013).
83 Article 2, EU-Armenia Visa Facilitation Agreement.
84 See the Chapter on Readmission for more information.
VI. COMPARATIVE ANALYSIS OF THE ARMENIAN LEGISLATION WITH THE EU ACQUIS AND STANDARDS

1. Travel Documents
   1.1 EU Acquis

   The Schengen area and cooperation has been included in the legal and institutional framework of the EU since the entry into force of the Treaty of Amsterdam in 1999 which brought all the developments of the Schengen Agreement into the EU framework. The Schengen acquis comprises of a set of legal regulations having as a core the 1985 Schengen Agreement.²⁷ Twenty-two Member States⁸⁸ of the European Union belong to the Schengen Area while other states have chosen to opt out.⁸⁹

   Free movement of persons is guaranteed in the Schengen area and the Member States have agreed to the abolishment of all internal borders and the creation of a single external border. The fundamental right of free movement is guaranteed for EU citizens since they can cross internal borders within the Schengen area without being subject to border checks. The absence of controls once they are in the Schengen area is also guaranteed for legally present non-EU nationals as well. Common set of rules are applicable to the people crossing the external border and the conditions of entry and visa rules are harmonized while member states have committed to an enhanced police and judicial cooperation.

   Travel documents of third-country nationals

   According to the 2005 Common Consular Instructions on Visas for the Diplomatic Missions and Consular Posts⁹⁰, travel documents need to have the following characteristics in order to be considered acceptable:

   (1) be valid for the purpose of affixing a visa, i.e.⁹¹:
       a) confirm the holder’s identity,
       b) confirm the holder’s nationality or citizenship: (i) if the travel document has been issued in accordance with international rules applied by countries or regional and local bodies recognized by all Member States (ii) although issued by countries or international bodies not recognized by all Member States, guarantee the alien’s return, provided that the Executive Committee recognizes them as valid document to which to affix a joint visa. The Executive Committee should unanimously approve the list of these travel documents and the list of countries or entities which are not recognized and which have issued these documents.
       c) If they are travel documents for refugees, they need to be issued in accordance with the 1951 Convention on the Status of Refugees, in case of travel documents for refugees.
       d) If they are travel documents for stateless persons, they need to be issued in accordance with the 1954 Convention on the Status of Stateless Persons, in case of travel documents for stateless persons.

   (2) have territorial validity, i.e. be valid for entry into the territory of the Schengen Contracting Parties.

⁸⁸ These are: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden. In addition, four non-EU Member States participate in the Schengen area. These are Switzerland, Iceland, Norway and Lichtenstein. Ireland and the United Kingdom have opted out from the Schengen Agreement.
⁸⁹ However, opting out is no longer possible for new EU Member States.
⁹¹ Annex 11, Criteria for determining whether a travel document may bear a visa, Common Consular Visa Instructions.
have a validity period that exceeds the period of use of the visa by three months. Exceptionally and only if the validity of the visa does not exceed that of the travel document and if the return of the holder of the travel document is not compromised, it is possible to have an affixed visa to a travel document with validity of less than three months in cases such as urgent humanitarian grounds, national interest and international obligations.

be complete and not be amended, falsified or counterfeited.

The length of previous stays in the territory of the Contracting Parties needs to be verified as well. The Convention implementing the Schengen Agreement provides, in addition, that travel documents should:

1. Not be expired.
2. Not have an affixed visa if they are not valid for entry in the territory of the Contracting Parties. If the travel document is valid only for one or more Contracting Parties then the affixed visa will be limited to these exact Parties. An authorization can be issued in place of a visa if the travel document is not recognized as valid by one or more of the Contracting Parties.
3. Enable aliens to return to their country of origin or to enter a third country.
4. Carriers should be obliged to take all the necessary measures to ensure that a third-country national carried by air or sea is in possession of the travel documents required for entry into the Schengen territory.

The Council of the European Union recently issued a useful list of travel documents that entitle the holder to cross the external borders and which may be endorsed with a visa. The list notes whether several travel documents are accepted to enter each of the Schengen Member States (ordinary passport, diplomatic passport, service passport, special passport, collective passport, children’s identity document, seaman’s book, refugee’s travel document, stateless person’s travel document, alien’s travel document, other travel documents). The note also includes information concerning known fantasy and camouflage passports to which a visa may not be affixed.

**Travel documents of EU nationals**

The EU has taken several measures in order to ensure the security of the travel documents of EU nationals and the prevention of falsification and counterfeiting. Advanced security features and biometrics (facial image included in a storage medium and fingerprints in interoperable format) need to be included in passports, visas and residence permits. The data needs to be secured and the storage medium needs to have the sufficient capacity to guarantee the integrity, authenticity and confidentiality of data. Biometrics in particular guarantee a reliable link between the travel document and its holder.

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92 Article 13 para. 2 of the Convention implementing the Schengen Agreement.
93 V.1.3, Verification of travel documents, Common Consular Visa Instructions.
94 Article 13 and 14 of the Convention implementing the Schengen Agreement.
95 Article 26 para. 1 lit. b of the Convention implementing the Schengen Agreement.
96 Note from the General Secretariat of the European Union Council to the Visa Working Party, Part I Table of travel documents entitling the holder to cross the external borders and which may be endorsed with a visa, 1 February 2012, 5762/12.
97 Fantasy passports are issued by minorities, sects and population groups and also include identity documents, etc. issued by private organisations and individuals. Camouflage passports are passports of former States no longer in existence. Part V, Note from the General Secretariat of the European Union Council to the Visa Working Party, 1 February 2012, 5762/12.
Even though there is no “European passport”, EU Member States passports have a common layout: they have the same cover (burgundy colour, EU and State’s name on it) and include a biometrics chip containing the passport holder’s data (image and fingerprints). With the aim of further assisting the distinction between genuine and falsified documents, the EU has set up a “False and Authentic Documents Archiving System” (European Image Archiving System – FADO) that offers EU Member States the opportunity to store, share and validate information of authentic and false documents. A Public Register of Authentic Identity and Travel Documents (PRADO) is also set up online to assist citizens, organizations and businesses in distinguishing between authentic and false documents.

Last, the EU acquis provides for the issuance on an emergency travel document (ETD) to EU citizens for a single journey back to the EU country of which they are national, to their country of permanent residence or, in exceptional cases, to another destination (inside or outside the EU). An ETD might only be issued in cases when travel documents have been lost, stolen, destroyed or are temporarily unavailable and not when the travel document has expired.

1.2 Legal framework in Armenia

Travel documents of foreigners

The main law governing the entry of foreigners into Armenia is the 2006 Law on Foreigners with its amendments. A “foreigner” is defined in the Article 2 of the Law as any person who is not a citizen of the Republic of Armenia and who is a citizen of another state or who has no citizenship (stateless people). Chapter 2 of the Law on Foreigners defines in particular the entry, exit and transit of foreigners.

A foreigner can enter Armenia through the state border crossing points holding (1) a valid passport, (2) an entry visa or (3) a residency document when there is permission by the border control authorized governmental bodies.

A passport or travel document is, according to the Armenian legislation, an internationally recognized travel document verifying identity, which is issued by a foreign State or an international organization and entitles to cross the state border.

The passport needs to be valid, otherwise entry in the Republic of Armenia is not permitted and the foreigner holding an invalid passport shall be returned to the country of origin or to the country where he/she arrived from. If it is impossible to return the foreigner, he/she may be detained.

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99 The United Kingdom and Ireland are not bound by these rules, whereas Iceland, Norway, Switzerland and Lichtenstein are.
100 This obligation does not apply to identity cards or to temporary passports and travel documents with a validity of one year or less.
105 Article 6 para. 1 of the Law on Foreigners.
106 Article 3 of the Law on Foreigners.
107 Article 6 para. 3 of the Law on Foreigners. See the Chapter on Return and Removal for more information.
108 Article 7 of the Law on Foreigners.
Article 201 of the Administrative Violations Code further states that the violation of the procedure for transiting through the area of the Republic of Armenia entails the imposition of a fine in the amount of fifty to one hundred times the minimum salary established in Armenia.

*Travel documents of Armenian nationals*

Regarding the security features of Armenian passports, with the entry into force of the new Law on Passport in 2012, Armenia introduced biometrics in both passports and identity cards for its citizens. According to the new Law on Passport, a passport is a document identifying a citizen of the Republic of Armenia (henceforth referred to as citizen) and confirming his/her citizenship of the Republic of Armenia, which is to be used only for leaving the Republic of Armenia and returning to the Republic of Armenia. The passport contains biometric data, which are personal data, developed in accordance with procedures established by law, describing the citizen’s physiological characteristics and make it possible to identify the citizen (photo, signature and fingerprints). Children’s fingerprints are collected from the age of six, while a photograph is taken every time a passport is issued, regardless of age. The new passport has a 5-year validity period and can be issued at any age. Passports for citizens under the age of 16 are issued for a period of three years while for male citizens under 16 the validity of the passport cannot go beyond the draft conscription age. When they reach conscription age, passports may not be issued beyond military service deferment date. The passports of persons registered for the mandatory military service are taken away temporarily by military commissariats until they complete their military service.

An identification card is the main document identifying a citizen of the Republic of Armenia and confirming his/her citizenship, which is to be used only within the territory of the Republic of Armenia. Identity cards are only to be used inside the Armenian territory whereas passports allow international travel. Passports are a valid identification document both in and outside Armenia, whereas identity cards are not a valid identification document outside Armenian borders. The two documents are gradually replacing the previous Armenian passport, however this is not mandatory. The identity card is valid for 10 years and can be issued for every Armenian citizen over 16 years old (voluntarily). One reason for which the old passports cannot be substituted by the new ones concerns elections. Armenian citizens eligible to vote receive a stamp on their old passports; however, this is not possible to do with the new identity cards. Therefore, the old passports are still in use in order for Armenian nationals to be able to vote. There has been no solution so far on what could replace the voting stamp on the old passports.

The electronic storage of data on identity cards and passports is protected by an individual cryptographic key, electronic signature and identification certificates. There are plans to incorporate more data in the new identity cards, such as driver license and employment history. The introduction of biometric passports was an important requirement for the progress in the negotiations for signing

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111 Article 3 of the Law on Passport.
112 Article 3 of the Law on Passport.
113 Article 5 para. 5 of the Law on Passport.
114 Questionnaire on Identity Management, Entry and Visas, Refusal of Entry and Residence answered by the Police of the Republic of Armenia, Directorate for Passports and Visas, November 2012.
115 Article 8 para. 4 of the Law on Passport.
117 Interview with the Police of the Republic of Armenia, Directorate for Passports and Visas, September 2012.
the Visa Facilitation and Readmission Agreements between Armenia and the EU. As of 16 November 2012, there have been 22,714 applications for new identity cards and 1,201 applications for new biometric passports. At the same time, 4,585 identity cards and 1,003 passports have been issued.\textsuperscript{118}

Armenian diplomatic or consular authorities can issue a Return Certificate to the Republic of Armenia. The Return Certificate is a temporary one-way travel document issued to Armenian citizens who lost their passport, as well as persons who have refugee status in Armenia, or residing in Armenia as stateless persons.

1.3 Gap analysis

1.3.1 Gap analysis within the Armenian legislation and implementation in practice

\textit{List of acceptable travel documents and definition of valid document}

The Armenian legislation does not contain in one single act a full list of acceptable travel documents. In addition, the Law on Foreigners specifies that a foreigner needs to hold a valid passport in order to enter the country (if no visa is required) but no further explanation is provided on what constitutes a valid passport. The Law on State Border and Law on Border Guards do not provide any additional clarifications. Appropriate reference between the different acts is also not in place.

\textit{Passport definition in the Law on Foreigners}

The definition of a “passport” in the Law on Foreigners (Article 7) can lead to the conclusion that the terms “passport” and “travel document” have the same meaning, thus suggesting that there is no other acceptable travel document apart from a passport. At the same time however, a passport/travel document can be issued by a state or international organization. The definition seems confusing and does not contain any reference to travel documents issued according to the Convention on the Status of Refugees or the Convention on the Status of Stateless Persons.

1.3.2 Gap Analysis between the Armenian Legislation and the EU Acquis

\textit{The guarantee of return}

The EU acquis specifically refers to the requirement of the travel document guaranteeing the return of the foreigner. However, this is not specifically included in the Armenian legislation. The Law on Foreigners simply states that a foreigner may enter Armenia when holding a passport, a visa or a residency document. The guarantee of return is also not included in the passport definition, where it is only stated that a passport must entitle its holder to cross the state border. Return might not be guaranteed for documents, such as a laissez-passer, which are issued for a one-way travel.

\textit{Definition of passport}

The passport definition provided in the Law on Foreigners does not mention that a passport should be issued by foreign states or international organizations recognized by Armenia. Instead the Law on Passport states that a passport is an “internationally recognized travel document”. In addition, there is no restriction on the time and expiration of the travel document relating to its validity. The Law on Foreigners does not specifically mention that the travel document needs to be valid for the duration of the intended stay. According to the EU acquis, the time of validity of the travel document should be exceeding by three months the time of validity of the use of the visa.

\textsuperscript{118} Questionnaire on Identity Management, Entry and Visas, Refusal of Entry and Residence answered by the Police of the Republic of Armenia, Directorate for Passports and Visas, November 2012.
Security of travel documents
The new biometric passports that started being issued by Armenia in 2012 are in full compliance with the EU acquis (see Wong 2012). However, the issuance of new passports is not mandatory and Armenian nationals can continue travelling with their old passports, which do not fulfil the EU security requirements. For the time being, there is no plan to replace all the old passports with the new ones. In addition, with the issuance of a new passport the old one is not automatically cancelled, therefore Armenian nationals might have two passports at one time.

1.4 Recommendations

Single list of acceptable travel documents
It is important to have one legislative act that enumerates all the types of acceptable travel documents. The list of acceptable travel documents should be widely shared, in particular on the Internet, so that foreign travellers and carriers are facilitated.

Definition of valid passport
The law should also clearly state when a passport is considered to be valid. This should include, for example, the period of validity of a passport that should exceed by three months the timeframe of the use of the visa, the guarantee of return and not be amended, falsified or counterfeited.

Definition of passport
The passport definition should be amended so as not to equate passport and travel document and to include that such documents should be issued by foreign states or international organizations recognized by the Republic of Armenia. Reference should also be made to travel documents issued according to the Convention on the Status of Refugees or the Convention on the Status of Stateless Persons.

Security of travel documents
Since the new biometric passports comply with the EU security requirements, it is necessary that all Armenian nationals are provided with this type of passports, which should replace the old ones. The creation of a central database of false and counterfeit travel documents should also be explored. In the future, the information from such a database could be shared with the FADO system, the European image-archiving system aiming at exchanging computerized means information concerning genuine and false documents that have been recorded.

2. VISAS

2.1. EU Acquis

The Schengen common visa policy facilitates the entry of third-country nationals in the EU. Schengen visas are issued only for a short stay up to three months within a six-month period.\(^{120}\) For a longer period, national procedures of each member state regulate the visas for non-EU nationals.

A Schengen Visa is an authorization issued by a Schengen State with a view to:

- transit through or an intended stay in the territory of the Schengen States of a duration of no more than three months in any six-month period from the date of first entry in the territory of the Schengen States,
- transit through the international transit areas of airports of the Schengen States.

The EU has included in Regulation No 539/2001 the lists of countries whose citizens (1) are required to have a visa when crossing the external border of the Schengen Area (Annex I - negative list)\(^{121}\) and, (2) are exempt from this requirement (Annex II - positive list).\(^{122}\) The Visa Code also lists the countries whose nationals are required to have a transit visa when passing through the Schengen area.\(^{123}\) Armenia is in the list of countries whose citizens are required to have a visa; however, the issuance of visas for Armenian nationals is facilitated with the recently signed Visa Facilitation Agreement.\(^{124}\) A variety of criteria are assessed in order to determine the countries whose nationals are subject to the visa requirement. These criteria include considerations of illegal immigration, public policy and security and the external relations between the EU with third countries taking into account implications of regional coherence and reciprocity.\(^{125}\)

Visa waiver

Apart from the nationals of countries, which are exempt from the issuance of Schengen visas, the following categories of non-EU nationals are exempt as well\(^{126}\):

i. holders of local border traffic permit\(^{127}\)

ii. school pupils residents of a Member States when on a school excursion

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\(^{121}\) Currently there is a proposal to further amend Regulation 539/2001 that will result in certain countries from the Caribbean and the Pacific to be transferred from the negative to the positive list. South Sudan is to be included in the negative list while the proposal includes also a transfer to the positive list for British citizens who are not nationals of the UK for the purposes of Union law. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement, COM/2012/0650 final, 2012/0309 (COD), 7 November 2012, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0650:FIN:EN:PDF (accessed on 17 February 2013).


\(^{123}\) Annex IV of the Visa Code.


\(^{125}\) Preamble (5) of the Council Regulation on possession of visas.

\(^{126}\) Article 1 para. 1 of the Council Regulation on possession of visas.

recognized refugees and stateless persons and other persons who do not hold the nationality of any country and are residents of a Member State holding a travel document issued by that State. However, recognized refugees and stateless persons are required to have a visa when crossing the external borders of a Member State if the third country where they reside and hold their travel document from is a third country whose nationals are subject to the visa requirement.

In addition, Member States can optionally exempt the following persons from the visa requirement:

i. holders of diplomatic passports, official-duty passports and other official passports;
ii. civilian air and sea crew;
iii. the flight crew and attendants on emergency or rescue flights and other helpers in the event of disaster or accident;
iv. the civilian crew of ships navigating in international waters;
v. the holders of laissez-passer issued by some intergovernmental international organisations to their officials;
vi. persons who perform a paid activity during their stay
vii. school pupils that are nationals of a non-EU country whose nationals require a visa, but that are residing in a non-EU country that is exempt from this requirement or in Switzerland or Liechtenstein, and that are travelling with their schools for the purpose of a school excursion;
viii. recognised refugees and stateless persons residing in and having a travel document from a non-EU country exempt from the visa requirement;
ix. holders of North Atlantic Treaty Organisation (NATO) identification and movement orders, and members of the armed forces travelling within the framework of NATO or Partnership for Peace operations.

The principle of reciprocity is central in the Schengen visa system. A reciprocity mechanism has been established in order to ensure reciprocity towards non-EU countries requiring a visa for citizens of certain EU Member States for a less than three months stay when the EU does not apply similar visa requirements for their citizens. The mechanism allows for the visa requirement to be in place for the non-EU countries concerned. A detailed procedure is to be followed when a third country listed in Annex II (positive list) introduces a visa requirement for nationals of a Member State, that might lead to temporarily introducing a visa requirement for the nationals of the particular third country.

Visa types and procedures
The Visa Code establishes the conditions and procedures for issuing short stay or transit visas. All Schengen visas have a uniform format (sticker). Uniform visas are the authorisation or decision taking the form of a sticker affixed by a Contracting Party to a passport, travel document or other

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128 Article 4 of the Council Regulation on possession of visas.
131 Article 1 para. 4 of the Council Regulation on possession of visas.
document which entitles the holder to cross the border. The uniform visa allows the foreigners subject to the visa requirement to present themselves at the external border of the Member State which issued the visa or that of another Member State and request, depending on the type of visa, transit or residence, provided that the other transit or entry conditions have been met. Mere possession of a uniform visa does not confer automatic right of entry.

The different types of visas are the following:

A type: Airport transit visas for transit through the international transit area of airports on the territory of the Member States. They can be issued for a single or multiple airport transits. The validity period corresponds to the time needed for the transit.

B type: Transit visas. They were issued until 2010 (entry into force of the EU Visa Code) for transit through the Member States territory but now they are merged with short stay visas.

C type: (1) short stay visas for a stay of maximum period of 90 days within 180 days in all the territories of all Member States. They can be issued for a single or multiple entries with a maximum validity of five years. (2) with limited territoriality (LTV) for a stay of maximum period of 90 days within 180 days only in the territory of the Member State for which the visa is valid.

D type: Long-stay visas for stays exceeding three months. They are national visas issued by Member States according to their national legislation.

The visa application is examined by the Member State of destination/transit of the applicant or the Member State of first entry/transit. It is generally examined by the consulate of the responsible Member State. Under exceptional circumstances, the visa application can be submitted at the external border of the destination state, if the following conditions are met: (a) the applicant fulfils the conditions laid down in Article 5 para. 1 lit. a, c, d and e of the Schengen Borders Code; (b) the applicant has not been in a position to apply for a visa in advance and submits, if required, supporting documents substantiating unforeseeable and imperative reasons for entry; and (c) the applicant’s return to his country of origin or residence or transit through States other than Member States fully implementing the Schengen acquis is assessed as certain. The visa issued at the borders is a uniform visa of maximum 15 days or the time necessary for the purpose of transit. Where the conditions laid down in Article 5 para. 1 lit. a, c, d and e of the Schengen Borders Code are not fulfilled, the authorities responsible for issuing the visa at the border may issue a visa with limited territorial validity, for the territory of the issuing Member State only.

The visa application must be submitted three months before the intended visit by the applicant in person or an accredited commercial intermediary. Holders of a multiple-entry visa may lodge the application before the expiry of the visa valid for a period of at least six months. The application includes: (1) an application form, (2) a valid travel document, (3) a photograph, (4) collection of fingerprints, (5) payment of visa fee. (6) provision of supporting documents (according to Article 2 para. 1 of the Common consular instructions on visas for the diplomatic missions and consular posts, Official Journal C 326, 22 December 2005 (hereinafter Common consular instructions on visas), available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:326:0001:0149:EN:PDF (accessed on 17 February 2013).
14. Visa Code that includes documentation relating to the purpose of the journey, documentation allowing for the assessment of the applicant’s intention to leave the territory of the Member States and documentation in relation to the applicant’s family situation) and proof of sponsorship and/or accommodation if requested by the Member State, (7) proof of possession of adequate and valid travel medical insurance, if applicable. According to Article 12 of the Visa Code, the valid travel document of the applicant must satisfy the following criteria: (a) its validity must extend at least three months after the intended date of departure from the territory of the Member States or, in the case of several visits, after the last intended date of departure from the territory of the Member States. However, in a justified case of emergency, this obligation may be waived; (b) it shall contain at least two blank pages; (c) it shall have been issued within the previous 10 years.

A visa application is admissible, according to Article 19 of the Visa Code, if it has been lodged no more than three months before the start of the intended visit, contains the necessary items referred in Article 10 para. 3 lit. a to c of the Visa Code, the biometric data of the applicant and the visa fee have been collected.

If the application is found to be admissible, an application file is created in the Visa Information System (VIS) according to the VIS Regulation. Following that, the application is examined to ensure that the conditions of the Schengen Borders Code are fulfilled and that the applicant does not pose a risk of illegal immigration or a security threat and that he/she intends to leave the Schengen territory before the visa expires.

The decision on the visa application itself must be made within 15 calendar days of the date of the lodging of an application which is deemed to be admissible. That period may be extended up to 30 days in individual cases, notably when further scrutiny of the application is needed or in cases of representation where the authorities of the represented Member States are consulted. When additional documentation is needed in specific cases, the period can be extended up to a maximum of 60 days.

Refusal of a visa
The visa application will be refused if the applicant:

i. presents a false, counterfeit or forged travel document;

ii. gives no justification for the purpose and conditions of the intended stay;

...
iii. provides no proof of sufficient means of subsistence for the duration of the stay nor for the return to his/her country of origin/residence, or for the transit to a third country into which he/she is certain to be admitted, or is not in a position to acquire such means lawfully;

iv. has already exhausted the three months of the current six-month period;

v. is a person for whom an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry;

vi. is considered to be a threat to the public policy, internal security or public health or to the international relations of any of the Member States;

vii. provides no proof of adequate and valid travel medical insurance, if applicable;

viii. presents supporting documents or statements whose authenticity or reliability is doubtful.

In certain cases, a visa might be annulled or revoked. A visa is annulled where it becomes evident that the conditions for issuing it were not met at the time when it was issued, in particular if there are serious grounds for believing that the visa was fraudulently obtained. 148 A visa is revoked where it becomes evident that the conditions for issuing it are no longer met. 149 Annulment and revocation of a visa is done in principle by the competent authorities of the Member State which issued it.

There is a standard form for notification of the decision to refuse, annul or revoke a visa (Annex VI of the EU Visa Code). The applicant has the right to appeal the decision to refuse, annul or revoke his/her visa in the Member State that took the decision according to that State’s national law. 150 Member States need to provide the applicants information on the procedure to be followed in the event of an appeal.

The period of validity and/or the duration of stay of an issued visa can be extended in the following cases:

(1) when the competent authority of a Member State considers that a visa holder has provided proof of force majeure or humanitarian reasons preventing him from leaving the territory of the Member States before the expiry of the period of validity of or the duration of stay authorised by the visa. 151 Such an extension shall be granted free of charge.

(2) if the visa holder provides proof of serious personal reasons justifying the extension of the period of validity or the duration of stay. A fee of EUR 30 shall be charged for such an extension. 152

Unless otherwise decided by the authority extending the visa, the territorial validity of the extended visa remains the same as that of the original visa. Visa extensions also have the form of a visa sticker.

National authorities can cancel the Schengen visa of third-country nationals, when 153: (1) the visa holder is the subject of an alert in the SIS for the purposes of being refused entry unless the third-country national holds a visa or re-entry visa issued by one of the Member States and wished to enter for transit purposes in order to reach the territory of the Member State which issued the document, and (2) there are serious grounds to believe that the visa was obtained in a fraudulent way.

2.2 Armenian legal framework

Article 3 of the Law on Foreigners provides that a permit or entry visa is an authorization by the authorized public administration body of the Government of the Republic of Armenia, which entitles a foreigner to enter the Republic of Armenia, transit through the territory of the Republic of Armenia,

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148 Article 34 para. 1 of the Visa Code.
149 Article 34 para. 2 of the Visa Code.
150 Article 32 para. 3 of the, Visa Code.
151 Article 33 para. 1 of the Visa Code.
152 Article 33 para. 2 of the Visa Code.
stay in the Republic of Armenia and exit from the Republic of Armenia, for the purposes, under the conditions, and within the terms indicated therein.

With regards to the visa requirement, persons entering Armenia may be:

i. Nationals of certain countries which are exempt from the visa requirement.\textsuperscript{154} They can enter Armenia with their travel document and stay for maximum three months in a one-year period. A notation is made to their passport on the day of arrival. The exemption from the visa requirement is based on the principle of reciprocity.\textsuperscript{155}

ii. Nationals of countries which are required to have an invitation-based visa\textsuperscript{156} issued only by Embassies or Consulates of the Republic of Armenia in foreign countries.\textsuperscript{157} The number of countries in this category increased by more than half in 2011.\textsuperscript{158} The Ministry of Foreign Affairs is responsible for issuing the visa in this case. The invitation to visit the Republic of Armenia can only be given by specific persons (Armenian citizens or foreigners holding residence status), legal entities or state bodies.\textsuperscript{159} The procedure of approval and registration of the invitations is regulated by the Decree 62-N on registration and approval of visa-related invitations by the Ministry of Foreign Affairs.\textsuperscript{160} Together with the invitation, the invitee also needs to submit information on covering of the expenses related to the stay, possible medical care and travel from Armenia by the invitee or responsibility of coverage of such expenses by the inviting person.\textsuperscript{161} The invoice of payment of the state duty also needs to be submitted.

iii. Nationals of countries which are required to have a visa issued either at the port of entry or by Embassies or Consulates of the Republic of Armenia in foreign countries. The police of the Republic of Armenia is responsible for issuing visas at the ports of entry. Persons under this category can also apply for a visa electronically.\textsuperscript{162} At the port of entry only three-day transit visas and 21/120 days visitor visas can be issued.

\textsuperscript{154} Article 9 para. 5 of the Law on Foreigners. See also Document of 11 October 2012, Who needs visa to travel to Armenia?, available at the website of the Ministry of Foreign Affairs at http://www.mfa.am/u_files/file/consulate/Visa/whoneedsvisaeng.pdf (accessed on 17 February 2013). The document includes the countries whose citizens do not need to apply for a visa and also which types of travel documents are accepted.

\textsuperscript{155} Article 7 of the Law on Foreigners. In the basis of reciprocity principle or in case of necessity unilaterally for some countries’ citizens the entry regime without entry visa can be defined or persons of some categories can be exempted from the entry visa requirement.

\textsuperscript{156} The updated list, according to Government Decree 823-N of 28 June 2012 on Amending Decision 823-N of 4 April 2008, is available at the official website of the Ministry of Foreign Affairs http://mfa.am/u_files/file/consulate/Visa/Invitation_eng.pdf (accessed on 17 February 2013).

\textsuperscript{157} Decision of the Government of the Republic of Armenia No. 329-N of 4 April 2008 on the list of the States whose citizens can apply for an invitation-based entry visa only in the consular and diplomatic authorities of Armenia in foreign countries, Official Journal of Armenia No. 24 (614), 23 April 2008, subsequently amended on 14 July 2011 by the decision No. 966-N, on 28 June 2012 by the decision No. 823-N, on 26 July 2012 by the decision No. 941-N (hereinafter Governmental Decision No. 329-N). The citizens of the following countries need to apply for an invitation-based entry visa: Afghanistan, Bangladesh, Cameroon, Egypt, Iraq, Niger, Nigeria, Pakistan, Saudi Arabia, Somalia, Sri Lanka, Sudan, Syria, Vietnam, Nepal, Palestine, Cote d’Ivoire, Ghana, Sierra Leone, Algeria, Morocco, Libya, Mauritania and Tunisia. Citizens of the Republic of China and India can apply for a visitor’s visa only at the diplomatic representations and the consular posts of the Republic of Armenia abroad without need for an invitation.

\textsuperscript{158} The 2011 amendment included the following countries: Angola, Kenya, Ethiopia, Tanzania, Uganda, Zimbabwe, Equatorial Guinea, Botswana, Democratic Republic of the Congo, Gabon, Senegal, Namibia, Congo, Mozambique, Mauritius, Mali, Burkina Faso, Madagascar, Zambia, Chad, Benin, Rwanda, Malawi, Guinea, Swaziland, Togo, Lesotho, Eritrea, Central African Republic, Cape Verde, Burundi, Djibouti, Gambia, Liberia, Seychelles, Guinea Bissau, Comoros Islands, Sao Tome and Principe, Saint Helen and South Sudan.

\textsuperscript{159} Article 11 of the Law on Foreigners.

\textsuperscript{160} Decree of the Government of the Republic of Armenia No. 62-N of 20 January 2011 on registration and on the approval of visa-related invitations by the Ministry of Foreign Affairs, Official Journal of Armenia No. 7 (810), 2 September 2011 (hereinafter Decree on invitations).

\textsuperscript{161} Article 3 of the Decree on invitations.

\textsuperscript{162} Information on electronic visas is provided on the website of the Ministry of Foreign Affairs at http://www.mfa.am/eVisa/ (accessed on 17 February 2013).
The entry visa for the categories (ii) and (iii) is provided for 120 days and can be extended for an extra 60 days for one or multiple entry. An entry visa is given to individuals but it may be given to a group, when necessary.\textsuperscript{163} A fee needs to be paid by the visa applicant, according to the Law on State Duties;\textsuperscript{164} however, citizens of particular countries or persons of some categories can be exempt\textsuperscript{165}.

According to the 2012 Governmental Decree No.1255-N\textsuperscript{166}, the citizens of EU Member States are exempt from the visa requirement for travel and stay in Armenia as of 10 January 2013. They are entitled to stay in the Republic of Armenia without a visa for maximum 90 days.

In addition, Governmental Decree 1650-N established a visa-free regime for entry into the Republic of Armenia for persons who are granted the citizenship of the Republic of Armenia by the order of the President of the Republic of Armenia though have not yet obtained the passport of the citizen of the Republic of Armenia.\textsuperscript{167}

Types of visas
There are four different types of visas, according to Article 10 of the Law on Foreigners:

1. **Visitor entry visa** (for single entry, or multiple entries with a validity period of up to one year): for visiting relatives, friends; family reunification; tourism; medical treatment; studying; participating in cultural, sport, scientific and other activities; participating in conferences; implementing technical assistance, humanitarian, charitable, financial support short term projects; taking part in business negotiations; carrying out work activities; launching economic activities; for the members of personnel of means of transport carrying out international air or land carriage of passengers.

2. **Official entry visa**: for persons holding official (service) passport; for employees (not holding diplomatic status) of embassies and consular offices accredited in the Republic of Armenia, international organisations with residence in the Republic of Armenia or their representations, as well as members of their families (multiple entries for a term of up to three years); for officials of foreign States or international organisations arriving in the Republic of Armenia for service purposes, at the invitation of state bodies of the Republic of Armenia or embassies, consular offices, international organisations or their representations accredited in the Republic of Armenia (for a single entry, or multiple entries with a validity period of one year); for members of official delegations with ordinary passports (for a single entry, or multiple entries with a validity period of one year)

3. **Diplomatic entry visa**: for persons holding diplomatic passport or diplomatic status: - for employees (not holding diplomatic status) of embassies and consular offices accredited in the Republic of Armenia, international organisations with residence in the Republic of Armenia or their representations, as well as members of their families (for multiple entries for a term of up to three years); for members of delegations arriving in the Republic of Armenia for official, state, working visit, or service purposes, for members of their families, as well as for state officials (for a single entry, or multiple entries with a validity period of up to one year); for those arriving in the Republic of Armenia not for service purposes (for a single entry with a validity period of up to 120 days)

\textsuperscript{163} Article 9 para. 3 of the Law on Foreigners.

\textsuperscript{164} The State Duties 2012 for consular services, including visas, are available at the website of the Ministry of Foreign Affairs at http://www.mfa.am/u_files/STATE_DUTIES_2012_EUR_ENG.pdf (accessed on 17 February 2013).

\textsuperscript{165} Article 9 para. 7 of the Law on Foreigners.

\textsuperscript{166} Decree of the Government of the Republic of Armenia No. 1255-N of 4 October 2012.

4. **Transit entry visa**: for those travelling by air or land transport across the territory of the Republic of Armenia (for a single entry, or multiple entries with a validity period of one year, for a period of stay for up to three days, with the possibility of extension for a maximum term of up to four days).

The entry visas can be issued by: (1) the authorized body of the Ministry of Foreign Affairs for the official and diplomatic entry visas and for electronic entry visas, (2) the authorized body of the Police for visitor and transit entry visas, (3) the authorized body of the Police and the Ministry of Foreign affairs when the application is lodged at border crossing points or in the territory of the Republic of Armenia, when necessary. In foreign States, entry visas shall be issued by diplomatic representations or consular offices of the Republic of Armenia, whereas at the border crossing points and inside the territory by the authorized body of the Police and the Ministry of Foreign Affairs. The application for an entry visa can be lodged maximum four months in advance to the intended visit. The following documents need to be submitted together with the visa application: Passport or internationally recognized travel document of identification, a colour photo, a document certifying the invitation in case the visa needs to be invitation-based, note verbale for official or diplomatic entry visas and receipt of paid state duty paid.

The data of the visa application are entered into a database, maintained by the Passport and Visas Department of the Police according to the specifications provided in Appendix 5 of the governmental decree No 1268-N. The following data of foreign citizens are entered in the database: country of citizenship, type/series/number/validity period of identification document, sex, date of birth, first/last/patronymic name, the number of persons registered in the document of identification, type/code/validity period/number of visa. The Passport and Visa Department of the Police is also responsible for providing information on visas issued to governmental authorities when prescribed by law.

When foreign nationals apply for a visa electronically, the data is recorded into a computerized repository. The Ministry of Foreign Affairs provides the electronic entry visas. Citizens of Armenian origin of foreign states which are included in the invitation-based only visa list, and persons of Armenian origin who have travel documents in order to obtain an entry visa to the Republic of Armenia at the border-crossing points should also submit one of the following documents: 1) a passport or internationally recognized travel document of identification which contains a notice of being of Armenian origin, 2) a birth certificate which contains a notice of being of Armenian origin, 3) another document that certifies the circumstance of being of Armenian origin which is verified by diplomatic representation or consular institution of the Republic of Armenia in foreign states.

In addition, a more recent Ministerial Order from the Ministry of Foreign Affairs states that persons of Armenian origin holding travel documents who can apply for a visa only upon invitation and only to...
the consular offices of Armenia shall submit to the diplomatic missions or consular offices of Armenia.\textsuperscript{178}

1. Document on christening/baptism issued by the Prelacy of the Armenian Apostolic Church or other religious Armenian institutions with a reference of the ethnicity of the baptized person or his/her parents, or

2. Document with a reference of the ethnicity issued by competent authorities of the state of residency and certified by an apostille or consular certification (document certifying ethnic identity, excerpt of birth certificate, etc.).

If there is no suspicion concerning the authenticity of the documents, a certificate on the fact of being of Armenian origin is being issued.

Governmental Decree 1154-N establishes the procedure for obtaining an entry visa under special conditions by nationals of Armenian origins and having certain categories in states, which are included in the list of states approved by the Governmental Decree 329-N.\textsuperscript{179} This Procedure considers as special conditions the provision of entry visa to nationals of foreign states by the diplomatic missions and consular offices of the Republic of Armenia without an invitation as well as possession of a diplomatic or service (official, special) passport by nationals of foreign states. The following nationals of foreign states may be entitled to obtaining an entry visa of the Republic of Armenia under special conditions:

a) Nationals of Armenian origin of foreign states based on documents proving the Armenian origin provided by religious and community organizations, as well as state entities;

b) Close relatives of Armenian nationals and foreign nationals of Armenian origin (parent, brother, sister, spouse, child, grandmother, grandfather, grandchild) based on official documents proving the relationship.

c) Persons having diplomatic and service (official, special) passports of foreign states, if there is no arrangement with the foreign state for visit of such people without an entry visa, based on note from the Ministry of Foreign Affairs of the foreign state or diplomatic mission or consular office of the foreign state accredited to the host country of the diplomatic mission of the Republic of Armenia;

d) Members of official delegations of foreign states based on note from the Ministry of Foreign Affairs of the foreign state or diplomatic mission or consular office of the foreign state accredited to the host country of the diplomatic mission of the Republic of Armenia;

e) Nationals of foreign states working at international organizations having diplomatic status based on notes from the headquarters or representations of these organizations;

f) Nationals of foreign states, whose activities in the Republic of Armenia contribute to the development of economic ties between the Republic of Armenia and foreign states based on the note from the Ministry of Foreign Affairs of Armenia provided in response to the request of diplomatic mission or consular office of the Republic of Armenia;

g) At the discretion of the head of diplomatic mission or consular office of Armenia entry visa of the Republic of Armenia may be granted without an invitation also to nationals of foreign states

\textsuperscript{178}Order of the Ministry of Foreign Affairs No. 1/1199-N of 22 August 2012 on the procedure on submitting the document confirming Armenian identity/origin to a diplomatic mission or consular institution of the Republic of Armenia in foreign states and certification of the submitted document by a diplomatic mission or consular institution of the Republic of Armenia.

\textsuperscript{179}Decree of the Government of the Republic of Armenia No. 1154-N of 8 October 2008 on approving the list of documents to be submitted together with the applications for obtaining entry visa to the Republic on approving the procedure on obtaining an entry visa of the Republic of Armenia under special conditions by citizens of Armenian origin and having other specific categories in states which may apply only to the bodies of diplomatic service and consulates of the Republic of Armenia in foreign states and only upon the availability of an invitation for obtaining an entry visa of the Republic of Armenia, based on on para. 2 lit. 1 of the Government of Armenia Decree No. 329-N.
(except for the African continent (except for Egypt), Afghanistan, Pakistan and Saudi Arabia) having a status of permanent resident in the United States, Australia, Canada, Japan, the United Kingdom, New Zealand, Schengen states (except for Greece, Spain and Portugal) and Swiss Confederation;

h) Persons of other category - in accordance with agreement between the foreign state and Armenia based on the instruction of the Ministry of Foreign Affairs of Armenia provided to the diplomatic mission or consular office of Armenia accredited to a foreign state.

Refusal of visas

Article 8 of the Law on Foreigners refers to the cases when a person shall be refused an entry visa to Armenia from reasons related to administrative or criminal offences. A person will be refused a visa to enter Armenia when:

i. he or she has been expelled from the territory of the Republic of Armenia or has been deprived of residence status, and three years have not elapsed upon the entry into force of the decision on expulsion or deprivation of residence status;

ii. he or she has been subjected to administrative liability for violating this Law and has not fulfilled the responsibility imposed on him or her by the administrative act, except for cases when one year has elapsed upon being subjected to administrative liability;

iii. there exist reliable data that he or she carries out activities, participates in, organises or is a member of such an organisation, the objective of which is to: - harm the state security of the Republic of Armenia, overthrow the constitutional order, weaken the defensive capacity; - carry out terrorist activities; - illegally transport across the border arms, ammunition, explosives, radioactive substances, narcotic substances, psychotropic substances; or - carry out human trafficking and/or illegal border crossings;

iv. he or she suffers from an infectious disease which threatens the health of population, except for cases when he or she enters the Republic of Armenia for the purpose of treating such a disease.

v. while seeking an entry authorisation, he or she has submitted false information on himself or herself, or has failed to submit necessary documents, or there exist data that his or her entry into, or stay in, the Republic of Armenia pursues an objective other than the declared one; or

vi. there are other serious and substantial threats posed by him or her to the state security or public order of the Republic of Armenia.

vii. he or she has been convicted of committing in the Republic of Armenia a grave or particularly grave crime provided for by the Criminal Code of the Republic of Armenia, and the conviction has not been cancelled or has not expired in the prescribed manner. The provisions of this part do not extend to persons having close relatives (spouse, child, father, mother, sibling [sister, brother], grandmother, grandfather) in the Republic of Armenia.

In addition to the reasons stated above, the visa of a person will be revoked if he/she has taken up employment without a work permit. The refusal of a visa is noted in the applicant’s passport. In addition, the data of persons whose entry to Armenia is refused is stored in a database of foreigners regarded as undesirable maintained by the National Security Service.

A foreigner can be granted a visa, if:

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180 These are grounds for refusing the issuance of a visa, refusing its extension, revoking a visa, or banning the entry into the Armenian territory according to Article 8 of the Law on Foreigners.

181 The list of infectious diseases is provided in the Decision of the Government of the Republic of Armenia No. 49-N introducing the list of the infectious diseases preventing the entry of foreign citizens or stateless persons into the Republic of Armenia. The infectious diseases listed in the decision are: plague (pneumonic form), cholera, active tuberculosis of respiratory organs (all forms of virus excretion), tropical malaria, atypical pneumonia and bird flu.

182 Article 8 para. 1 lit. a and b of the Law on Foreigners.
i. he or she has been expelled from the territory of the Republic of Armenia or has been deprived of residence status, and three years have elapsed upon the entry into force of the decision on expulsion or deprivation of residence status;

ii. he or she has been subjected to administrative liability for violating this Law and has fulfilled the responsibility imposed on him or her by the administrative act and one year has elapsed upon being subjected to administrative liability.

It is also important to note that foreigners who reside in the Republic of Armenia without a valid visa or residence status or with invalid documents will be imposed a fine in the amount of fifty to one hundred times the minimum salary established in Armenia. The same fine is imposed to invitors who are violating the obligation to take care of the living expenses of the invitee, including expenses of his/her possible health care and departure from Armenia.

2.3 Gap analysis

2.3.1 Gap analysis within the Armenian legislation and implementation in practice

Visa issued inside the Armenian territory
Article 10 para. 3 of the Law on Foreigners states that when necessary, visas shall be issued in the territory of the Republic of Armenia by the police, as well as by the Ministry of Foreign Affairs. “When necessary” is not further clarified in this provision. In practice, it seems that this provision is applicable in two cases:

(1) For extensions of visas of foreigners already present in the Armenian territory.
(2) When an Armenian citizen who holds a second nationality decides to officially give up his/her Armenian citizenship and needs to apply to receive an entry visa to Armenia.

However, the wording of the provision is not clear.

Visa revocation
According to Article 8 para. 3 of the Law on Foreigners, the visa of a person will be revoked if he/she has taken up employment without a work permit. Considering that the governmental decree related to work permits has not yet been issued and consequently no work permits are issued in Armenia, the aforementioned provision cannot be applied.

Database for undesirable foreigners
The database for undesirable foreigners provided in Article 8 para. 6, Law on Foreigners, is designed to contain the information of all persons who have been refused entry at the border, whose application for issuance or extension of a visa has been denied or whose visa has been revoked. However, it is not clear whether such a database is in existence.

Link between visas and residency status
In Armenia, visa status and residency status are separate and one is not conditional of the other. However, most European Union countries link visas to different forms of residency status in order to be able to control the influx of foreigners in their territory. This relates to visas that are issued for more than three months, therefore they do not fall under the EU acquis but under the national legislation of the Member States.

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183 Article 201 of the Administrative Violations Code.
184 Article 201 of the Administrative Violations Code.
185 Questionnaire on Identity Management, Entry and Visas, Refusal of Entry and Residence answered by the Police of the Republic of Armenia, Directorate for Passports and Visas, November 2012.
2.3.2 Gap analysis between the Armenian legislation and the EU acquis

Bodies responsible for issuing visas
According to the Armenian legislation, there are two responsible bodies for issuing visas: the Ministry of Foreign Affairs (through its consular offices) and the Police (Directorate for Passports and Visas). According to the EU acquis, only the diplomatic and consular authorities of the Member States are responsible for issuing visas and only in exceptional cases the authorities responsible for border checks.\(^{186}\)

Visa issued inside the Armenian territory
According to the EU acquis\(^{187}\), the visa application is examined and decided on by the consulate of the competent Member State in whose jurisdiction the applicant legally resides. If the applicant has provided justification for lodging the application at a particular consulate, the consulate can examine it even if the applicant does not reside in its jurisdiction. The EU acquis, therefore, does not provide for a visa application to be submitted in the territory of the Member State after arrival. On the contrary, the Armenian legislation provides for the examination of visas in the Armenian territory, when necessary.\(^{188}\)

Database for issued visas
Governmental Decree No.1268- N provides, inter alia, for the operation of the visa database, which is managed by the Passport and Visas Department of the Police. At the same time, it is mentioned that an electronic repository is in place for visa application that are submitted online, for which the Ministry of Foreign Affairs is responsible. It is not clear whether these constitute two different visa databases or whether their data is consolidated in the one managed by the Police.

Issuance of visas at the external border
The EU acquis allows the issuance of visas at the external border only at exceptional cases and only when certain specific conditions are fulfilled.\(^{189}\) In particular, the applicant must not have been able to apply for the issuance of a visa in advance. However, the issuance of visas at the border by the Armenian Police is a common practice and not pointed out as an exception under the Armenian legislation.\(^{190}\)

Supporting documents and medical insurance
The EU acquis provides that the applicant is required to submit supporting documents with his/her application for a visa, such as documents indicating the purpose of the journey, documents in relation to accommodation, or proof of sufficient means to cover the accommodation and documents proving that the applicant has sufficient means of subsistence for his/her stay and return.\(^{191}\) In addition, the EU acquis provides that in certain cases proof of travel medical insurance in required by the applicant.\(^{192}\) The Armenian legislation does not require the submission of such supporting documents by the applicant or proof of medical insurance. Some supporting documents are only required for persons who can apply for a visa only when submitting an invitation.\(^{193}\)

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186 Article 4 para. 2 of the Visa Code.
187 Article 6 of the Visa Code.
188 Article 10 para. 3 of the Law on Foreigners.
189 Article 35 of the Visa Code. Article 36 of the Visa Code refers to the issuance of visas at the external border to seafarers in transit.
190 Article 10 para. 3 of the Law on Foreigners.
192 Article 15 of the Visa Code.
193 Article 11 para. 4 of the Law on Foreigners.
Grounds for refusal of issuing a visa

The ground of administrative liability (Article 8 para. 1 lit. b, Law on Foreigners), as a ground of refusal of issuing a visa, is incompatible with the EU acquis, which admits as valid cases of refusal on grounds of cases of serious offence and convictions for offences carrying a custodial sentence of at least one year.

The ground of threat to the state security or public order of the Republic of Armenia (Article 8 para. 1 lit. f of the Law on Foreigners) does not provide any further clarifications, as to when a foreigner constitutes such a threat. The EU acquis is more specific in that regard: the situation of threat to public policy or public security or to national security may arise in particular in the case of a third-country national who has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year, or (2) a third-country national in respect of whom there are serious grounds for believing that he has committed serious criminal offences or in respect of whom there is a clear evidence of an intention to commit such offences in the territory of a Contracting Party.194

The Armenian legislation states that the entry into the Republic of Armenia may be banned, if he/she has been convicted of committing in a grave or particularly grave crime in Armenia, provided for by the Armenian Criminal Code, and the conviction has not been expired.195 This provision does not extend to persons having close relatives (spouse, child, father, mother, siblings, grandmother, and grandfather) in the Republic of Armenia.

The Armenian legislation does not include as a grounds for refusal of issuing a visa (1) the provision of no justification for the purpose and conditions of the intended stay, (2) the provision of proof of sufficient means of subsistence for his/her stay and return, (3) the exhaustion of the visa period, (4) the provision of proof of holding adequate and valid travel medical insurance in certain cases. These grounds are included in the EU acquis.196

Period of validity of the travel document

The EU acquis requires that a valid travel document is presented upon application for a visa, which has a validity that (1) extends at least three months after the intended date of departure of the foreigner (this requirement can be waived in a justified case of emergency), (2) contains two blank pages, and (3) has been issued within the previous ten years. No such requirements are provided for in the Armenian legislation.

Biometric identifiers

The EU acquis requires that the fingerprints of the applicant are collected upon applying for a visa198, whereas there is no such requirement in the Armenian legislation.

Right to appeal the refusal of a visa

The Armenian legislation does not provide for the right of the foreigner to appeal the decision that refuses the issuance of his/her visa. The EU acquis, on the other hand, states that there is a right to appeal and the appeal is governed by the Member States’ national law.199

Countries whose nationals are not subject to visa requirements

The list provided by the Armenian legislation regarding the countries whose national are not subject to the visa requirement is different than the EU list. This is, however, reasonable taking into account

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194 Article 96 para. 2 of the Convention implementing the Schengen Agreement.
195 Article 8 para. 2 of the Law on Foreigners.
196 Article 32 of the Visa Code.
197 Article 12 of the Visa Code.
198 Article 13 para. 7 of the Visa Code.
199 Article 32 para. 3 of the Visa Code.
Armenia’s international obligations and geopolitical realities that lead the country to apply a different visa-free regime.

**Visa validity**

According to Article 9 of the Law on Foreigners the entry visas of Armenia are issued for up to 120 days, with the possibility of extension for a maximum of 60 days. The validity period of an entry visa for a single entry issued by diplomatic representations or consular offices must exceed by two months the period of stay in Armenia, whereas when issued at the border the validity period corresponds to the period of stay in Armenia.\(^{200}\) The maximum validity period is different for each type of visa (ranging from one to three years). Visas are issued for a single entry, unless otherwise provided by the law or international treaties. However, the EU acquis sets that a visa can be issued with duration of 90 days within a total period of 180 days. A visa can be issued for one, two or multiple entries and its period of validity cannot exceed five years.

**Types of visas**

The types of visas provided by the Armenian legislation are different to the ones of the EU acquis. The EU acquis provides for a type A visa for airport transit, a type C visa for short-stay of maximum 90 days (with or without limited territorial validity) and a type D visa for long-stay over 90 days (national visas). Visas of the Armenian legislation, on the other hand, are divided into categories according to different criteria: there is the transit entry visa (criterion: duration of visit), the visitor’s visa (criterion: purpose of visit), the official entry visa (criterion: type of passport) and the diplomatic entry visa (criterion: type of passport).

**Visa extension**

The EU acquis provides detailed provisions on the extension of a visa.\(^{201}\) The extension is free of charge when the visa holder proves force majeure or humanitarian reasons preventing him from leaving the territory of the Member State while it costs EUR 30 when the visa holder only proves serious personal reasons justifying the extension of the period of validity or duration of stay. In the Armenian legislation, even though extension is mentioned in the Law on Foreigners\(^ {202}\) and further clarifications are provided in Governmental Decree No. 1268-N (including that the application needs to be submitted 15 days prior to the expiration date of the entry visa)\(^ {203}\), there is no concrete provision stating when an extension is possible and what procedure needs to be followed.

**Decision on the visa application**

The norm according to the EU acquis is that visa applications are decided on within 15 calendar days of the date of the lodging of the admissible application.\(^ {204}\) The total period can be extended up to a maximum of 30 or 60 calendar days in very specific cases.\(^ {205}\) The Armenian legislation does not contain any provision on the time necessary for deciding on a visa application.

### 2.4 Recommendations

**Issuance of visa at the external border and responsible authority**

The issuance of visas at the Armenian border should only be permitted in exceptional cases, when it is not possible to submit a visa application beforehand, taking into account the conditions provided in

\(^{200}\) Article 10 para. 5 of the Law on Foreigners.

\(^{201}\) Article 33 of the Visa Code.

\(^{202}\) For example in Article 9 para. 1 it is stated that an extension for a visa can be provided for 60 days.

\(^{203}\) Appendix 1 on the list of documents to be submitted together with the application for entry visa to the Republic of Armenia and the application for extending the term of entry visa Appendix 2 on the procedure of review of the application for obtaining entry visa to the Republic of Armenia and the application for extending the term of entry visa, provision of entry visas and extension of the term of entry visa, Governmental Decree.

\(^{204}\) Article 23 para. 1 of the Visa Code.

\(^{205}\) Article 23 para. 1 and 23 para. 2 of the Visa Code.
the EU acquis. In addition, the border checks authorities should only exceptionally be responsible for issuing visas.

**Issuance of visas inside the Armenian territory**

Article 10 para. 3, Law on Foreigners needs to be amended in order to make clear when it is possible to issue a visa inside the Armenian territory. The EU acquis does not provide for the issuance of visas inside the territory of the Member States; this is possible only for visa extensions.

**Visa revocation**

The governmental decree related to work permits needs to be issued; otherwise the provision concerning visa revocation in the case of absence of work permit cannot be applied.

**Grounds for refusal of issuing a visa**

The following could be added in the list of grounds for refusal of issuing a visa (Article 8 para. 1 of the Law on Foreigners): when there is no verification of means of subsistence for the duration and purpose of the stay, when there is no justification of the purpose and conditions of stay, in case of exhaustion of the visa period and in case of non-provision of proof of medical insurance (in specific cases).

Administrative liability should not be included in the grounds of refusal of issuing a visa (Article 8 para. 1 of the Law on Foreigners).

Article 8 para. 2 of the Law on Foreigners could be further amended to include grounds of refusal of entry provided for in the EU acquis. The EU acquis prohibits, for example, the entry in the territory of the Member States when there are serious grounds for believing that the third-country national has committed serious criminal offences, such as sale of narcotic drugs and psychotropic substances of whatever type and possession of such products for sale or export, or there is clear evidence of the intention of the third-country national to commit such offences in the territory of a Contracting Party.

The ground of threat to the state security or public order of the Republic of Armenia (Article 8 para. 1 lit. f, Law on Foreigners) should be further clarified and it could include similar clarifications, as those provided by the EU acquis.

Even though Article 8 para. 1 and 8 para. 2 of the Law on Foreigners contain similar grounds of refusal to the EU acquis, such as the commission of serious criminal offences, previous expulsion from Armenia, these do not fall under the more general ground of "threat to public security or public order".

**Period of validity of the travel document**

The provisions on visas included in the Law on Foreigners could mention that when applying for a visa the valid travel document presented needs to (1) extend at least three months after the intended date of departure of the foreigner, (2) have two blank pages, (3) have been issued within the previous ten years.

**Biometric identifiers**

The Armenian authorities should consider collecting biometric identifiers, from persons applying for visas and collect those in an appropriate database. Currently only photos are collected but no fingerprints.

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206 Articles 35 and 36 of the Visa Code.
207 Article 6 of the Visa Code.
208 Article 33 para. 4 of the Visa Code.
209 Articles 71 para. 1, 71 para. 2, 96 para. 2 and 96 para. 3 of the Convention Implementing the Schengen Agreement.
210 Articles 96 para. 2 and 96 para. 3, of the Convention Implementing the Schengen Agreement.
Appeal against refusal of entry

Article 8 of the Law on Foreigners needs to be modified in order to include the right to appeal the decision of refusal of entry that will include also sufficient information on the procedure, the competent authorities and timeframes for the appeal, or appropriate references to the acts and articles containing those provisions.

Supporting documents and medical insurance

When applying for a visa, it would be useful if the applicant would provide supporting documents, apart from an invitation (if needed), such as documents indicating the purpose of the journey, accommodation, proof of sufficient means of subsistence and medical insurance, in order to comply with the EU acquis. 211

Database for issued visas

It needs to be clarified whether there is only one visa database operated by the Police, which includes all visa applications (also those issued electronically by the Ministry of Foreign Affairs) or if there are two such systems in place. Ideally, there should only be one visa database managed by one authority.

Database for undesirable foreigners

It needs to be clarified whether the database for undesirable foreigners provided in Article 8 para. 6 of the Law on Foreigners is in operation. If yes, it is necessary to inform accordingly all governmental authorities that might need to obtain information from such a database.

Types of visas

The types of visas provided by the Armenian legislation could be amended in order to be closer to the types of visas provided by the EU acquis. It would definitely be more practical if the same criterion was used to divide the visas into categories, instead of using three different ones (duration of visit, purpose of visit, type of passport). The criterion used by the EU acquis is the duration of the visit (transit or short-stay) as the long-term visas over 90 days are issued by the Member States.

Visa extension

The Law on Foreigners needs to include detailed provisions on the extension of a visa, which could only be allowed when there are serious personal reasons justifying it. Provisions included in Governmental Decree No.1268-N 212 could be transferred to the Law on Foreigners together with additional clarifications on when extension is permitted and which procedure there is to follow.

Decision on the visa application

The Law on Foreigners should include provisions relating to the time period within which the decision on the visa application needs to be made. This should be at least within 15 days, to comply with the EU acquis 213 with an extension up to 30 or 60 calendar days in very specific cases. 214

211 Articles 14, 15 and Annex II of the Visa Code.
212 Appendix 1 and Appendix 2 of Governmental Decree No. 1268-N.
213 Article 23 para. 1 of the Visa Code.
214 Article 23 para. 1 and 23 para.2 of the Visa Code.
3. GENERAL CONDITIONS OF ENTRY AND BORDER CONTROL

3.1. EU Acquis

Controls at the common external border are tight, as the internal borders within the Schengen Area have been abolished. The 2006 Schengen Borders Code is the main set of common rules governing the external border checks on persons, entry requirements and duration of stay in the Schengen Area. The entry of third-country nationals residing in bordering countries and crossing frequently the EU external border is facilitated and governed by a special Local Border Traffic Regime.

The Convention implementing the Schengen agreement states that external borders may in principle only be crossed at border crossing points and during fixed opening hours. According to Article 5 para. 1 of the Schengen Borders Code, even though EU nationals are only subject to a minimum check when passing the external borders, third-country nationals undergo thorough checks. Third-country nationals intending to stay for a period not exceeding three months per six-month period, must: (a) have a valid travel document authorizing them to cross the border, (b) have a valid visa, if required, except where they hold a valid residence permit or a valid long-stay visa (c) justify the purpose and conditions of the stay and have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country to which they are certain to be admitted, or are in a position to acquire such means lawfully (d) not have an alert issued for them in the SIS for the purpose of refusing entry and (e) not to be considered a threat to public policy, internal security, public health or the international relations of EU countries. A non-exhaustive list of supporting documents which the border guard may request from the third-country national in order to verify the fulfilment of the above conditions is included in Annex I of the Schengen Borders Code (e.g. invitations for business trips, certificate of enrolment in university, confirmation of booking of an organized trip etc.). The means of subsistence are assessed in accordance with the duration and purpose of stay and by reference to average prices in Member States concerned for board and lodging in budget accommodation, multiplied by the number of days stayed.

Carriers should be obliged to take all the necessary measures to ensure that a third-country national carried by air or sea is in possession of the travel documents required for entry into the Schengen territory.

Third-country nationals not fulfilling the conditions of Article 5 para. 1 of the Schengen Borders Code but holding a residence permit, long-stay visa or a re-entry visa issued by one of the Member States (or, when required, a residence permit or a long-stay visa and a re-entry visa), they are authorized to enter the territories of Member States for transit purposes in order to reach the territory of the Member State which issued the residence permit, long-stay visa or re-entry visa. Third-country nationals who fulfil all the conditions of Article 5 para. 1 of the Schengen Borders Code, except from the visa requirement, and who present themselves at the border may be authorized to enter the Schengen Area.

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215 However, according to the Preamble of the Schengen Borders Code, where there is a serious threat to public policy or internal security, an EU country may exceptionally reintroduce border controls at its internal borders for, in principle, a limited period of no more than thirty days. If such controls are to be reintroduced, the other EU countries and the Commission should be informed as soon as possible. The European Parliament should also be informed.


217 Article 3 of the Convention implementing the Schengen Agreement.

218 Article 26 para. 1 lit. b of the Convention implementing the Schengen Agreement.

219 Article 5 para. 4 lit. a of the Schengen Borders Code.
territories of the Member States, if a visa is issued at the border, according to Council Regulation (EC) No 415/2003. Third-country nationals who do not fulfil one or more of the conditions of Article 5 para. 1 may be allowed entry on humanitarian grounds, on grounds of national interest or because of international obligations.

When a third-country national does not fulfil the conditions referred in Article 5 para. 1 and does not fall under the exceptions of Article 5 para. 4 the entry to the territories of the Member States is refused. This is without prejudice to special provisions concerning the right to asylum and to international protection or the issue of long-term visas. Entry may only be refused by a substantial decision stating the precise reasons for the refusal in a standard form and the decision of refusal must be taken by an authority empowered by national law. The decision takes effect immediately, or, when appropriate, on expiry of the time limit according to national law. The decision is given by means of a standard form, which is handed to the third-country national and he/she should acknowledge receipt of it. The persons refused entry have the right to appeal the decision in accordance with national law; however, lodging such an appeal does not have a suspensive effect on a decision to refuse entry. If the appeal concludes that the decision to refuse entry was ill-founded, the third-country national is entitled to correction of the cancelled entry stamp, and to any other cancellations or additions that have been made by the Member State that refused entry. Member States collect statistics and share them with the Commission on the number of persons refused entry, the grounds for refusal, their nationality and the type of border where they were refused entry.

An alert is issued in the Schengen Information System (SIS) for the purposes of refusing the entry of certain third-country nationals. This includes third-country nationals who pose a threat to the public policy or national security and third-country nationals who have been subject to measures involving deportation, refusal of entry or removal which have not been rescinded or suspended, including or accompanied by a prohibition on entry or, where applicable, a prohibition on residence, based on a failure to comply with national regulations on the entry or residence of aliens.

A third-country national may pose a threat to the public policy, national security or international relations of any Member State, in particular where: (1) the third-country national has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year; (2) there are serious grounds for believing that the third-country national has committed serious criminal offences, such as sale of narcotic drugs and psychotropic substances of whatever type and possession of such products for sale or export, or there is clear evidence of the intention of the third-country national to commit such offences in the territory of a Contracting Party.

National border guards are performing checks at cross-border movements at external borders. These checks may also cover the means of transport and objects in the possession of the persons crossing the border. All persons undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorizing the legitimate holder to cross the

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220 Article 5 par. 4 lit. b of the Schengen Borders Code.
221 Article Spara. 4 lit. cof the Schengen Borders Code.
222 Article 13 of the Schengen Borders Code.
223 Article 13para. 2 lit. 1 of the Schengen Borders Code.
224 Article 13 para. 2 lit. 2 of the Schengen Borders Code.
225 Article 13 para. 5 of the Schengen Borders Code.
226 Article 96 of the Convention implementing the Schengen Agreement.
227 Articles 96para. 2 and 96 para.3 of the Convention implementing the Schengen Agreement.
228 Article 71 para. 1 and 71 para.2 of the Convention implementing the Schengen Agreement.
border and of the presence of signs of falsification or counterfeiting. This minimum check is performed to persons enjoying the right of free movement and only on a non-systematic basis the border guards may consult national and European databases in order to ensure that the persons do not represent a genuine threat to internal security, public policy, international relations or public health.

Third-country nationals are subject to thorough checks upon entry, which include verification of the conditions of entry of Article 5 para. 1 Schengen Borders Code and, where applicable, of documents authorizing residence and the pursuit of professional activity. This includes a detailed examination that covers:

i. verification of possession of a document valid for crossing the border and not expired and accompanied, if applicable, with a visa or residence permit;
ii. thorough scrutiny of the travel document for signs of falsification or counterfeiting;
iii. examination of entry and exit stamps on the travel document to verify that the maximum duration of authorized stay in the territory of the Member States has not been exceeded
iv. verification of the point of departure and destination and of the purpose of the intended stay;
v. verification that the third-country national has the sufficient means of subsistence for the duration and purpose of the intended stay, return to the country of origin or transit, where he/she is certain to be admitted, or that he/she is in a position to acquire such means lawfully;
vi. verification that the third-country national or his/her means of transport and transporting objects are not likely to jeopardize public policy, internal security, public health or international relations of any of the Member States.

When the third-country national holds a visa according to Article 5 para. 1 lit. b of the Schengen Borders Code, the thorough checks also include the verification of the holder of the visa and of the authenticity of the visa by consulting the Visa Information System (VIS). When entering and exiting the Schengen Area, the travel documents of third-country nationals are stamped.

Third-country nationals subject to a thorough second line check are to be given information on the purpose of, and procedure for, such a check. This information should be available in all the official languages of the EU and in the languages of the countries bordering the specific Member State concerned and it should indicate that the third-country national may request the name or service identification number of the border guards carrying out the thorough second line check, the name of the border crossing point and the date on which the border was crossed.

National border guards are responsible for carrying out border checks while respecting human dignity and not discriminating against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. It is the responsibility of the EU Member States to ensure that properly specialized and trained border guards will guard the external border at sufficient numbers. The EU acquis contains special provisions regarding border checks on minors. Border guards need to pay particular attention to minors (accompanied or unaccompanied). Minors crossing an external border are subject to the same checks on entry and exit as adults. When minors are travelling unaccompanied, border guards need to ensure by means of thorough checks on travel documents and supporting documents, that the minors do not leave the territory against the wishes of the person(s) having parental care over them.

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229 Article 7 para. 2 of the Schengen Borders Code.
230 Article 7 para. 3 of the Schengen Borders Code.
231 Article 7 para. 5 of the Schengen Borders Code.
232 Article 6 para. 1 of the Schengen Borders Code.
233 Article 7 para. 5 of the Schengen Borders Code and Article 6, Annex VII of the Schengen Borders Code.
234 Article 6, Annex VII of the Schengen Borders Code.
The European Agency for the Management of Operational Cooperation at the External Borders (Frontex) coordinates the operational cooperation between EU Member States. Member States facing particular pressures at their borders can benefit from the Rapid Border Intervention Teams (RABITs). Frontex also coordinates joint operations deployed to assist Member States in the management of migration flows at their external border.

The establishment of a Registered Traveller Programme is currently being assessed by the EU in order to facilitate the entry of pre-screened travellers that comply with certain criteria (bona fide travellers). At the same time, an Entry/Exit System is being developed to identify overstayers. In addition, the European Parliament voted in November 2012 on plans for a new border surveillance system (EUROSUR) after a proposal from the Commission in order to reinforce control of Schengen external borders, particularly southern maritime and eastern land borders. EUROSUR is a European border surveillance system based on the sharing and exchange of operational information and cooperation between the national authorities in charge of border control.

The Schengen Information System (SIS) serves for the collection and sharing of data on persons who do not have the right to enter or stay in the EU, suspected criminals, missing persons and stolen, misappropriated or lost property. Together with the Visa Information System (VIS) and EURODAC, they are information sharing mechanisms used by Member States for cooperation in border management in order to ensure the security of citizens and travellers in the EU.

3.2 Armenian legal framework

The Republic of Armenia is bordering with Georgia, Turkey, Iran and Azerbaijan. The country has 12 border crossing control points: nineland borders checking points (six with Georgia, two with Turkey, one with Iran) and three airports. The borders with Turkey and Azerbaijan are closed. Armenian border guards are present at Armenia’s borders with Georgia and Azerbaijan whereas Russian Federal Border Guards Troops supervise Armenia’s borders with Turkey and Iran.

The main legal instruments related to border controls and general conditions of entry in Armenia are the Law on State Border, the Law on Border Guard Troops and the Law on Foreigners. In addition, Armenia adopted in 2010 the “Strategy of Border Security and Integrated Border Management” and the 2011-2015 Integrated Border Management (IBM) Action Plan.

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237 Currently, a second generation Schengen Information System (SIS II) is being designed. This new system will allow the use of biometrics, introduce new types of alerts and possibility to link different alerts and will include a facility for direct queries on the system while ensuring better data protection. It is expected to be the world’s largest IT system in this field starting in 2013. Regulation (EC) No. 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second-generation Schengen Information System (SIS II), Official Journal L 381, 28 December 2006, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:381:0004:0023:EN:PDF (accessed on 17 February 2013).


242 Decree No. 482 on the approval of 2011-2015 IBM Action Plan, adopted on 21 April 2011, aiming at the modernisation of all border crossing points.
The National Security Service (NSS) is responsible for developing Armenia’s border management policy. Armenian border guard troops are responsible for performing checks at the Armenian borders of the persons entering the country. Border guards perform passport and visa checks at the borders and manage the Border Management Information System (BMIS) database. Police officers are also at the borders and they are responsible for the issuance of visas.

The aim of the creation of the BMIS database was to support the protection of the state border, increase efficiency of the law enforcement agencies struggle against combating terrorism, organized crime and illegal migration. The objective of BMIS was the creation by the beneficiary ministries and state authorities of a unified information system on registration of persons and vehicles entering/exiting to and from the Republic of Armenia, the collection, storage and processing of the information, as well as provision of the required data to the relevant beneficiary authorities. The data sources required for the exploitation of the BMIS include, inter alia, data received from

1. the Armenian police on visas issued at the state border and visa extensions,
2. the Ministry of Foreign Affairs on visas not issued at the state border,
3. the State Migration Agency on temporary asylum certificates issued for the foreign citizens and stateless persons seeking for asylum, and
4. the National Security Service on data (i) describing the types of identification documents of persons, vehicle titles, recognized as acceptable for border crossing, including documents security features, within three days after receiving the samples from the Ministry of Foreign Affairs, (ii) on the persons and vehicles entering/exiting to and from Armenia and depending on the border crossing point features, also scanned copy of the travel document and the passenger’s biometrical data to compare with the ones contained in the travel document, and (iii) on deported passengers. All data are kept in the BMIS system for 7 years. The National Security Service, as the BMIS coordinating authority, has to maintain the efficient exploitation of the BMIS, its expansion and maintenance. Currently, the BMIS covers the following border crossing points: Zvartnots, Bagratashen, Gyumri-Bavra, Gogavan-Privolnoye, Ayrum, and Agarak-Meghri. The BMIS users are the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Transportation and Communication, the Ministry of Defense, the National Security Service, the State Customs Committee, the Police of Armenia, the Department of Civil Aviation, the Office of the Prosecutor General, the National Statistical Service, the Department of Migration and Refugees under the Ministry of Territorial Administration, the State Tax Inspectorate and the judicial authorities of the first instance and cassation courts. However, not all of these authorities have access to the database currently.

The passports of citizens arriving at or departing from the Republic of Armenia are checked by the border guard troops when entering or departing by land transport. Generally, a foreigner can enter Armenia through the state border crossing points holding (1) a valid passport, (2) an entry visa or (3) a residency document when there is permission by the border control

244 Annex 1 of the Decision on BMIS.
245 Annex 1, para. 10 of the Decision on BMIS.
246 Questionnaire on Entry, Border Control, Refusal of Entry, Return and Expulsion, Irregular migration and Human trafficking, Migration data collection and data protection, answered by the National Security Service, November 2012.
247 Annex 2 of the Decision on BMIS.
250 A visa can also be issued at the state border according to Decree No. 200 of 1998.
authorized governmental bodies. The entry is not allowed, and the foreigner should be returned as soon as possible to their state of origin or to the state, from where he/she arrived, in the following cases (Article 6 para. 3 of the Law on Foreigners): (1) not holding a passport, a document substituting it or holding an invalid passport, (2) having been refused entry visa at the crossing point of the state border, (3) having not obtained an entry authorisation from the border carrying out border control.

There is an exception in the case that the foreigner has arrived in Armenia for the purpose of seeking refugee status or has right to political asylum. In addition, according to Article 8 para. 1 of the Law on Foreigners the grounds for refusal to issue a visa (or to extend a visa) are also grounds for not allowing entry into the territory of Armenia. These are: (a) previous expulsion from the territory of Armenia or deprivation of residence status, and three years have not elapsed since the entry into force of the relevant decision, (b) administrative liability for violating the Law on Foreigners without fulfilling the penalty imposed, except when one year has elapsed, (c) existence of reliable data that the foreigner carries out activities, participates in, organizes or is a member of an organization whose objective is to harm the state security of Armenia, overthrow constitutional order, weaken the defensive capacity, carry out terrorist activities, illegally transport across the border arms, ammunition, explosives, radioactive substances, psychotropic substances or carry out human trafficking and/or illegal border crossings, (d) suffering from an infectious disease which threatens the health of the population, except if the foreigner enters Armenia for the purpose of treatment, (e) submission of false information on himself/herself or failure to submit the necessary documents, or existence of data that the foreigner’s entry in Armenia pursuers an objective other than the declared one, (f) constitution of serious and substantial threats by the foreigners to the state security or public order of the Republic of Armenia. Last, according to Article 8 para. 2 of the Law on Foreigners, the entry into Armenia is also prohibited if the foreigner has been convicted of committing in Armenia a grave or particularly grave crime according to the Armenian Criminal Code and the conviction has not yet expired.

An exception noted in the Armenian legislation regarding entry is the following: even if a foreigner has been previously expelled from the Armenian territory of has been deprived of residence status (and three years have not elapsed since the relevant decision), or if a foreigner has been subjected to administrative liability for violating the Law on Foreigners and has not fulfilled the responsibility imposed on him/her by the administrative act (and a year has not elapsed since), the entry of the foreigner may still be allowed in strongly justified cases. This provision is not further clarified and as such, it is not used in practice.

A notation regarding the refusal of entry into the territory of Armenia is made in the form established by the Government of the Republic of Armenia in the foreigner’s passport. The data of the persons who are refused entry at the border or who are refused the issuance/extension of a visa are entered...
in a “database of undesirable foreigners”. The database is to be maintained by the National Security Service.

Persons, animals, vehicles, luggage and other goods crossing the border are subject to border and customs control. While border guards perform the clearance of persons entering Armenia, custom authorities are responsible for the clearance of vehicles, luggage and other goods.

Border guard troops have the duty, inter alia:
- control the protection of the state border regime, border regime and border crossing regime
- prevent state border crossing by persons and vehicles outside the border crossing points or in illegal ways; detect and apprehend transgressors of the state border
- clear persons, vehicles, luggage and other good across the state border, given the required documentation is provided
- ensure the protection of the rights of persons suspected, arrested or imprisoned for transgression of the state border as stipulated by the legislation of the Republic of Armenia, and if necessary, arrange medical and other assistance, and inform the relatives of the arrested or imprisoned persons of their whereabouts in the order and terms stipulated by the legislation.

The activity of the border guard troops is based on the principle of legality, publicity, protection of rights and freedoms of citizens, cooperation with state entities, NGOs and the population.

The rights of the border guard troops include, inter alia:
- Checking the exit and entry documents of persons, making relevant notes in them, and if necessary temporarily confiscate them, preventing entry or exit of persons without relevant documentation until the person acquires due papers, or clarification of circumstances in case of citizens of the Republic of Armenia having lost documents during temporary stay abroad;
- In a manner prescribed by law, check the documents of persons and vehicles, examine the means of transport and the luggage.
- Implement the border crossing regime, border regime and place under administrative arrest citizens of the Republic of Armenia, foreign citizens or stateless persons who have violated the border regime and state border crossing regime;
- Investigating cases of State Border transgression and taking required operative-investigation measures in compliance with the legislation of the Republic of Armenia.
- Arresting persons having violated the State Border regime for a period of up to three hours required for drawing up a report, and if necessary, for a period of up to three days required for clarification of identity and circumstances of the case, notifying the public prosecutor within 24 hours from the moment of apprehension, or if sanctioned by public prosecutor, for a period of up to 10 days, in case the transgressors have no personal identifications; examining the apprehended persons, conduct a search and if necessary confiscate their belongings.
- Arrest foreigners or stateless persons having transgressed the State Border, and hold them for the required period if a decision has been taken to give them to the border authorities of the neighbouring state, as stipulated by the law and on the basis of the sanction of the public prosecutor.
- Holding apprehended persons in temporary isolation wards or other spaces designated for that purpose. Separate reports shall be drawn up for the acts of apprehension, search and examination

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258 Article 8 para. 6 of the Law on Foreigners.
259 Article 11 of the Law on State Border.
260 Article 14 of the Law on State Border.
261 Article 28 of the Law on State Border and Article 8 of the Law on Border Guard Troops.
262 Article 24 of the Law on State Border.
263 Article 28 of the Law on State Border and Article 7 of the Law on Border Guard Troops.
of the apprehended person, inspection and confiscation of his/her belongings, and notifications forwarded to the public prosecutor.

- Independently or jointly with the customs services, examining the persons, luggage and other goods crossing the State Border, as stipulated by the law;
- Confiscating goods prohibited for import or export, as well as smuggled goods being transferred across the State Border, as stipulated by the law;
- Register the people who cross the border, calculate factual data, statistics and for those purposes use information systems, in accordance with the Armenian legislation

Since 2002, Armenia is applying a two-stage inspection system when implementing border controls. At a first stage the travellers’ documents are checked to decide whether the entry will be allowed or not. If there anything suspicious shows from the document screening or from other entry procedures, then a secondary control takes place with more scrutiny concerning all the qualifications of entry. Both controls are applied by the border guards but at the second stage specialized expertise is required (this might include collaboration with the National Security Services and State Police). Border guard troops employ different forces and equipment for providing border security, including personnel, field/operations forces and equipment, weapons, technology, animals, engineering facilities and barriers. Currently the border guard troops use a combination of wire-mesh barriers, alarm system, mobile patrolling teams and animals to provide border security.

Border guards are allowed to keep foreigners in special accommodation facilities at border crossing points and transit areas in order to establish their identity. Persons of different sex as well as citizens of different countries shall be placed in different rooms. Food is provided at the expense of the foreigner while there is possibility of emergency medical care. However, even though the procedures for the operation of the Special Accommodation Centres (SACs) for the detention of foreigners have been included in a government decision, only two such centres have been established while there is no central migrant accommodation centre. Foreigners are held in a SAC until their identity has been established or when a decision is made about them only if it is not possible to send him/her back to the country of origin or the country they arrived from when they do not hold passports, or hold invalid passports, or have been denied a visa or entry in general at a crossing point. The body authorized to perform border control needs to request within 24 hours of the placement in the SAC the court for a permission to hold an adult foreigner in a SAC for a maximum period of 90 days. A temporary residence permit of maximum one year is issued for the foreigner after the expiration of the 90 days if it is not possible to send him/her back to the country of origin.

In February 2012, a Working Arrangement was signed between the National Security Council (NSC) of Armenia and Frontex with the objectives of (1) combating irregular migration and cross-border crime by border control, (2) strengthening security at relevant borders between the EU and Armenia, (3) developing good relations and mutual trust between border guard authorities of the EU Member States and Armenia, (5) facilitating measures taken by Frontex and the NCS and,(6) seeking to develop through common efforts the operational capacities of the competent Armenian authorities involved in

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264 Republic of Armenia Governmental Decision on Implementation of Border Control through the System of Two-Tier Inspection, 2002.
265 Questionnaire on Entry, Border Control, Refusal of Entry, Return and Expulsion, Irregular migration and Human trafficking, Migration data collection and data protection, answered by the National Security Service, November 2012.
266 Decision of the Government of the Republic of Armenia No. 127-N on the operation of and conditions in special facilities for detention of foreigners at the border crossing points and transit areas, Official Journal of Armenia No. 21 (611), 2 February 2009 (hereinafter Decision on detention facilities).
267 Decision on detention facilities.
268 Article 37 of the Law on Foreigners.
269 See the Chapter 15 for more information on detention at the SACs.
border management. Topics included in the Arrangement include the information exchange and risk analysis, experience and best practices sharing, professional trainings and participation in joint operations.

3.3 Gap analysis

3.3.1 Gap analysis within the Armenian legislation and implementation in practice

Entry when holding a residency document
According to the Article 6 para. 1 of the Law on Foreigners, a foreigner may enter Armenia if he/she holds a residency document when there is permission by the border control authorized governmental bodies. No further explanation is provided on when and on what grounds this permission is provided and on whether a travel document is required as well.

Permission of entry in "strongly justifiable cases"
According to the exception provided in Article 8 para. 4 of the Law on Foreigners, entry is permitted even when there are certain grounds to refuse it (according to Article 8 para. 1 lit. a and b of the Law on Foreigners) in strongly justified cases. The wording “strongly justified cases” is not clear and allows for arbitrary decisions.

Database for undesirable foreigners
The database for undesirable foreigners provided in Article 8 para. 6, Law on Foreigners, is designed to contain the information of all persons who have been refused entry at the border, whose application for issuance or extension of a visa has been denied or whose visa has been revoked. However, it is not clear whether such a database is in existence.

3.3.2 Gap Analysis between the Armenian legislation and the EU acquis

Appeal against refusal of entry
The Armenian legislation does not provide for the right to appeal the decision of the border authorities to refuse entry to a foreigner. The grounds of refusing entry are stated in Articles 6 para. 1 and 8 of the Law on Foreigners; however no provision is made for an appeal.

Information provided when performing second line check
According to the EU acquis, third-country nationals subject to a thorough second line check are to be given information on the purpose of, and procedure for, such a check. This should include the name or service identification number of the border guards carrying out the thorough second line check, the name of the border crossing point and the date on which the border was crossed. No such provision exists in the Armenian legislation.

Grounds for refusal
The ground of administrative liability (Article 8 para. 1 lit. b of the Law on Foreigners), as a ground of refusal of entry, is incompatible with the EU acquis, which admits as valid cases of refusal on grounds of cases of serious offence and convictions for offences carrying a custodial sentence of at least one year.

According to Article 8 para. 2 of the Law on Foreigners, the entry into Armenia is also prohibited if the foreigner has been convicted of committing in Armenia a grave or particularly grave crime according to the Armenian Criminal Code and the conviction has not yet expired. The EU acquis further prohibits the entry in the territory of the Member States when there are only serious grounds for believing that the third-country national has committed serious criminal offences, such as sale of narcotic drugs and

271 Article 7 para. 5 of the Schengen Borders Code.
psychotropic substances of whatever type and possession of such products for sale or export, or when there is clear evidence of the intention of the third-country national to commit such offences in the territory of a Contracting Party (even if there is no conviction).  

The ground of threat to the state security or public order of the Republic of Armenia (Article 8 para. 1 lit. f of the Law on Foreigners) does not provide any further clarifications, as to when a foreigner constitutes such a threat. The EU acquis is very specific in that regard in Articles 96 para. 2 and 96 para. 3 of the Convention Implementing the Schengen Agreement. In particular, according to the EU acquis, a third-country national may not enter the territory of the Member States when he/she has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year. The Armenian legislation states that the entry into the Republic of Armenia may be banned, if he/she has been convicted of committing in a grave or particularly grave crime in Armenia, provided for by the Armenian Criminal Code, and the conviction has not been expired. However, this provision does not extend to persons having close relatives (spouse, child, father, mother, siblings, grandmother, and grandfather) in the Republic of Armenia.

The Armenian legislation does not include as a ground for refusal the verification that the foreigner has sufficient means of subsistence for his/her stay and return. This ground is included in the EU acquis (Article 5 para. 1 lit. c of the Schengen Borders Code)

**Form of refusal of entry**

The EU acquis provides for a substantial decision stating the precise reasons for the refusal of entry, whereas the Armenian legislation simply mentions the notation of the refusal of entry in a form in the foreigner’s passport.

**3.4 Recommendations**

**Entry when holding a residency document**

This provision needs to be clarified. In particular, explanation needs to be provided on when and on what grounds this entry permission is provided. It needs to be made clear that a travel document would need to be provided as well.

**Appeal against refusal of entry**

Article 8 of the Law on Foreigners needs to be modified so as to include the right to appeal the decision of refusal of entry that will include also sufficient information on the procedure, the competent authorities and timeframes for the appeal, or appropriate references to the acts and articles containing those provisions.

**Grounds for refusal**

Article 8 para. 2 of the Law on Foreigners could be amended to include grounds of refusal of entry provided for in the EU acquis. The EU acquis prohibits, for example, the entry in the territory of the Member States when there are serious grounds for believing that the third-country national has committed serious criminal offences, such as sale of narcotic drugs and psychotropic substances of whatever type and possession of such products for sale or export, or there is clear evidence of the intention of the third-country national to commit such offences in the territory of a Contracting Party.

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272 Articles 71 para. 1, 71 para. 2, 96 para. 2 and 96 para. 3 of the Convention implementing the Schengen Agreement.
273 Article 8 para. 2 of the Law on Foreigners.
274 Article 13 para. 2 of the Schengen Borders Code.
275 Article 8 para. 5 of the Law on Foreigners.
276 Articles 71 para. 1, Article 71 para. 2, 96 para. 2, 96 para. 3 of the Convention implementing the Schengen Agreement.
The ground of threat to the state security or public order of the Republic of Armenia should be further clarified and it could include similar clarifications, as those provided by the EU acquis. Even though Articles 8 para. 1 and 2., Law on Foreigners contain similar grounds of refusal to the EU acquis, such as the commission of serious criminal offences, previous expulsion from Armenia, these do not fall under the more general ground of “threat to public security or public order”.

The verification of means of subsistence for the duration and purpose of the stay and return of the foreigner could be included as well in the list of grounds of refusal whereas administrative liability should not be included.

Permission of entry in “strongly justifiable cases”
The exception provided in Article 8 para. 4 of the Law on Foreigners, that allows entry even when there are certain grounds to refuse it, according to Article 8 para. 1 lit. a and b, “in strongly justified cases” needs to be further clarified so as not to allow arbitrary decisions.

Database of undesirable foreigners
It needs to be clarified whether the database for undesirable foreigners provided in Article 8 para. 6 of the Law on Foreigners is in operation. If yes, it is necessary to inform accordingly all governmental authorities that might need to obtain information from such a database.

Information provided when performing second line check
It would be advised to include in the Law on Foreigners a provision similar to the one existing in Article 7 para. 5 of the Schengen Borders Code, according to which, third-country nationals subject to a thorough second line check are to be given information on the purpose of, and procedure for, such a check. This should include the name or service identification number of the border guards carrying out the thorough second line check, the name of the border crossing point and the date on which the border was crossed.

Form of refusal of entry
Article 8 para. 5 of the Law on Foreigners needs to be amended in order to state that the precise reasons for the refusal of entry must be provided to the foreigner by use of a separate form.

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277 Article 8 para. 1 lit. f of the Law on Foreigners.
278 Articles 96 para. 2, 96 para. 3 of the Convention implementing the Schengen Agreement.
279 Article 8 para. 1 of the Law on Foreigners.
280 Article 8 para. 1 of the Law on Foreigners.
4. RESIDENCE

4.1. EU acquis
The EU competencies in the area of immigration have evolved significantly since 1985, the entry into force of the Schengen Agreement, however the harmonisation of the immigration legislation of the EU Member States has remained rather segmented and limited to specific areas. Since the entry into force of the Amsterdam Treaty in 1999, since the creation of the legal base for the action in the area of migration and asylum policies, the European Commission tabled ambitious policy plans and proposals to create a harmonized immigration policy, for instance the horizontal Directive on the conditions for entry into and residence in the EU of third-country nationals and also the European Council envisaged in the Tampere Programme the approximation of the rights of third-country nationals to those of EU citizens, however these initiatives failed due to the reluctance of the Member State to adopt common rules on the admission of third-country nationals. (Comp. Boswell and Geddes 2011: 94)

Today, EU measures on legal immigration and residence of third-country nationals cover the conditions of entry and residence for certain categories of immigrants: highly qualified third-country nationals and students and researchers. The EU acquis further addresses family reunification and creates a long-term resident status for third-country nationals. Most recently, the EU established a single permit application procedure for third-country nationals who reside or enter a Member State under certain conditions. Two further Directives are currently under negotiation on the conditions of entry and residence for seasonal workers and intra-corporate transferees. The aim of these legislative measures is to simplify migration procedures and give migrants clear employment-related rights on the conditions of entry and residence for seasonal workers and intra-corporate transferees. However, as these Directives have not been adopted at the time of the drafting of the present report, they could not be covered by the analysis.

EU Directives in the area of immigration and asylum usually set basic principles or minimum standards and allow the Member States to adopt or maintain more favourable conditions. In the current analysis particular attention is paid to the binding provisions of the respective Directives.

This Chapter deals with procedures and rights related to long-term residence status as provided in the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (Long-term Residence Directive) as these relate to different categories of third-country nationals. The legal framework concerning the admission of certain categories of third-country nationals is described in separate chapters. The Long-term Residence Directive aims to

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281 Before 1999 migration and asylum policy belonged to the Justice and Home Affairs pillar was part of the intergovernmental cooperation.
284 Please note that EU Directives are not directly applicable in the Member State, but require additional implementation. When transposing the Directives in national law, Member States have a leeway and room for manoeuvre on how to meet the requirements. Regularly, the Directives provide a certain timeframe for the implementation. On the contrary, Regulations are directly applicable as soon as they are adopted and they enter into force. They have binding legal force throughout every Member State, on a par with national laws. National governments do not have to take action themselves to implement EU regulations.
provide a legal status and uniform rights to third-country nationals which are as near as possible to those EU citizens. The Directive determines both a) the terms for conferring and withdrawing long-term resident status by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto, and b) the terms of residence in Member States other than the one, which conferred to long-term status on them.286

Scope
The scope of the Directive covers third-country nationals residing legally in the territory of a Member State.287 As most Directives also the Long-term Resident Directive contains a more favourable treatment clause.288 Generally, the Directive mandates the Member States to grant a long-term residence status after five years of legal and continuous residence prior to the submission of the application for a long-term resident status.289 Third-country nationals who reside solely on temporary grounds, such as students and persons who pursue vocational training, persons with temporary protection status and those who applied for such a status and persons with other subsidiary forms of protection statuses, asylum seekers, seasonal workers, au pairs, posted workers and frontier workers as well as person with diplomatic legal status are not covered by the scope of the Directive.290 In 2012 the Directive was amended and beneficiaries of international protection were explicitly included in the scope of the Directive.291

Periods of residences on temporary grounds (such as seasonal work, posted workers, etc.) or persons with diplomatic legal status must not be taken account when calculating this period. Regarding students half of the period of residence of study purposes can be calculated, if the person has obtained a residence title, which enables him/her to apply for a long-term residence status.292 Absences from the EU country for periods of less than six consecutive months (and not exceeding ten months in total within the five-year period) or for specific reasons provided for by national law (e.g. military service, secondment for work purposes, serious illness, maternity, research or studies) will be regarded as not interrupting the period of residence.293

Conditions for long-term residence status
Article 5 stipulates the conditions for obtaining a long-term resident status. Accordingly, third-country nationals must prove that they have, for themselves and their family (if dependent): stable resources sufficient to live without recourse to the social assistance system and sickness insurance. Optionally, EU Member States may require third-country nationals to comply with further integration conditions (such as sufficient knowledge of a national language of the EU country concerned).

EU Member States may refuse to grant long-term resident status on grounds of public policy or public security. Public policy and security are not defined in the text of the Directive, however the Commission referred to public policy in the context of the Free Movement Directive as aiming to „prevent (.) disturbance of social order”, while public security „cover(s) both internal and external security along the lines of preserving the integrity of a Member State and its institutions”.294

287 Article 3 para. 1 of the Long-term Residence Directive.
288 Most EU Directives on immigration and asylum contain the principle whereby the Directive shall not affect the possibilities of the Member States to adopt or maintain more favourable provisions.
290 Article 3 para. 2 of the Long-term Residence Directive.
293 Article 4 para. 3 of the Long-term Residence Directive.
security covers according to the Court of Justice of the European Union (Court of Justice) internal and external security of a country and involves matters of fundamental importance of a country’s existence. Support of terrorism and extremist aspiration are encompassed by the notion of public security and policy. Although Member States have an area of discretion to determine public policy and public security, Member State cannot determine unilaterally the scope of these Directives. According to the Court of Justice public policy derogation presupposes in addition to the perturbation of the social order a genuine, present and sufficiently serious threat to one of the fundamental values of society. (Handoll in Hailbronner 2010: 627). This interpretation was developed in the context of the freedom of movement of EU citizens, in the literature it is suggested that these principles cannot be applied directly to third-country nationals, but that Member States have a wider margin of discretion concerning the latter. Concretely, the Preamble refers to conviction for committing a serious crime in the context of public policy. In deciding so Member States must, however consider the severity or the type of offence or the danger that emanates from the person concerned, while also taking into account the duration of residence and the existence of links with the country of origin.295

The Member States are thus required carrying out a balancing of interest of the State versus the interest of the individual, similarly as in case of Article 8 ECHR on the right to private and family life. Additionally, Article 6 para. 1 explicitly regulates that solely economic considerations must not provide a ground for refusal in the interest of public policy and security.

**Procedures**

Article 7 regulates the procedural requirements. Accordingly the application must be lodged with the competent authorities of the Member State in which the third-country national resides. The application must be accompanied by documentary evidence. The competent authority must take a decision on whether to grant long-term resident status no more than six months after the application is lodged.

Decisions to reject an application must be notified in writing to the person concerned, in accordance with the procedures under national legislation, stating the reasons and indicating the redress procedures available and the deadline for action on the part of the applicant.296 If the conditions of Article 4 and 5 (duration of residence, sufficient resources and health insurance) are met, and the person does not represent a threat to public policy and security, the Member State is mandated to grant the third-country national long-term resident status. Long-term residents will receive a permanent residence permit that is standard for all EU countries, valid for at least five years and automatically renewable.297

**Withdrawal and loss of residence status**

Article 9 sets out the conditions for the withdrawal or loss of status. Long-term resident status may be withdrawn only on certain grounds that are set out in the Directive: absence from the EU territory for more than 12 consecutive months, fraudulent acquisition of the status or adoption of a measure to expel the person concerned. Member States may, however, allow absences exceeding 12 consecutive months or specific or exceptional reasons, which do not entail withdrawal or loss of status. Optionally, Member States may provide that the long-term resident must no longer be entitled to maintain his/her long-term resident status in cases where he/she constitutes a threat to public policy. Furthermore, long-term resident who has resided in another Member State must no longer be entitled to maintain his/her long-term resident status acquired in the first Member State when such a status is granted in another Member State. In any case after six years of absence from the territory of

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296 This also applies to cases of withdrawal of the long-term resident status. See Article 10 of the Long-term Residence Directive.
297 Article 8 of the Long-term Residence Directive.
the Member State that granted long-term resident status the person concerned is no longer entitled
to maintain his/her long-term resident status. However, Member States may provide that for specific
reasons the long-term resident maintains his/her status in the said Member State in case of absences
for a period exceeding six years. Moreover, where the withdrawal or loss of long-term resident status
does not lead to removal, the Member State must authorise the person concerned to remain in its
territory if he/she fulfils the conditions provided for and/or if he/she does not constitute a threat to
public policy or public security. 298

Article 9 para. 5 requires Member States to facilitate the re-acquisition of long-term residence status
in case of absence from the territory of the Member State, in particular in cases where the person has
resided in a second Member State to pursue of studies. However, the Directive does not reveal what
the term “facilitation” entails.

In terms of procedural guarantees Member States must provide reasons when rejecting an application
for long-term resident status or withdrawing that status.299 Third-country nationals must be notified
of the decision and the notification must specify the redress procedures available and the time within
which the person may act. Furthermore, Member States must provide legal remedies.300

Protection against expulsion
Long-term residents enjoy enhanced protection against expulsion. The conduct on which expulsion
decisions are based must constitute an actual and sufficiently serious threat to public policy or public
security. Such decisions may not be founded on economic considerations. Additionally, EU Member
States must consider specific factors before taking a decision to expel a long-term resident (age of the
person concerned, duration of residence, etc.). Where an expulsion decision has been adopted, a
possibility for appeal must be granted and legal aid must be provided to long-term residents lacking
adequate resources.301

Equal treatment
Persons who have acquired long-term resident status will enjoy equal treatment with nationals as
regards: access to paid and unpaid employment, conditions of employment and working conditions
(working hours, health and safety standards, holiday entitlements, remuneration and dismissal);
education and vocational training, recognition of qualifications and study grants; welfare benefits
(family allowances, retirement pensions, etc.) and sickness insurance; social assistance (minimum
income support or retirement pensions, free health care, etc.); social benefits, tax relief and access to
goods and services; freedom of association and union membership and freedom to represent a union
or association; free access to the entire territory of the EU country concerned.302

In certain cases, EU Member States may, however, restrict equal treatment with nationals with
respect to access to employment (which involve the exercise of public authority) and to education
(e.g. by requiring proof of appropriate language proficiency). In the field of social assistance and
protection, EU Member States may limit equal treatment to core benefits.303 They are nevertheless
free to add to the list of benefits in which they grant equal treatment with nationals as well as to
provide equal treatment in additional areas.304
In terms of more favourable national provisions, the Directive allows EU Member States to issue permanent residence permits on more favourable terms. Nevertheless, such residence permits do not confer the right of residence in the other EU countries.\textsuperscript{305}

\textit{Mobility in the EU:} As stated in the introduction the second aim of the Directive is to grant the right of residence for third-country nationals with long-term resident status in the other EU Member States. The respective provisions are regulated in Chapter III of the Directive. These provisions are currently less relevant in the Armenian context, as Armenia is not an EU Member State and due to the lack of a bilateral agreement with the EU, third-country nationals will not be allowed to enter the EU Member States under the present Directive, thus they are not described here. Nevertheless, Armenia could consider admitting third-country nationals with a long term-residence status of an EU Member State to Armenia under the conditions of the Directive.

\subsection*{4.2. Armenian legal framework}

Although the EU acquis in the area of legal migration and the admission of third-country nationals is rather limited, for the sake of coherence and completeness, the Armenian legislation with regard to residence of foreign nationals is described here. When analysing the implementation of the legislation and comparing it to the EU acquis, it is, however only referred to the provisions, which are relevant for the alignment with the EU Long-term Residence Directive and with more general principles that can be derived from the EU acquis on legal migration.

On the policy level the 2012-2016 Action plan of the concept for the policy of the state regulation of migration in the Republic of Armenia identifies the improvement of the mechanisms for admission of foreign nationals, including the issuance of residence permits as a key priority. Currently, the Law of the Republic of Armenia on Foreigners (Law on Foreigners) provides the legal base for the residence of foreign national in Armenia. The Directorate for Passports and Visas of the Police of the Republic of Armenia is the responsible institution for the implementation of the legislation concerning the granting of residence permits. The Law on Foreigners distinguishes three different residence statuses for foreign nationals: temporary, permanent and special.\textsuperscript{306}

Temporary residence status is granted for the purpose of study, work, entrepreneur activities as well as for spouses of Armenian nationals or of foreigners lawfully residing in Armenia and for other relatives (parent, brother, sister, spouse, child, grandmother, grandfather, grandchild) of an Armenian citizen or of a foreigner holding permanent residence status; finally it can be granted to persons of Armenian origin.\textsuperscript{307} The temporary residence status is issued for one year with the possibility of extension for another year. An application for extension has to be submitted at least 30 days prior to the expiry of the term of the status.\textsuperscript{308} For students a shorter term may be established, however the government has not made use of this authorisation so far.

Permanent residence status is granted to foreign nationals who have close relatives (parent, spouse, brother, sister, child, grandmother, grandfather, grandchild), an accommodation and means of subsistence in Armenia and who have lawfully resided in Armenia for at least three years, moreover, to a foreigner of Armenian origin or to a foreigner carrying out entrepreneurial activities in the Republic of Armenia. The wording of Article 16 is, however, unclear as it is ambiguous whether the conditions are cumulative or at least partially alternative. Sufficient means of subsistence are available, if the foreigner can cover his/her subsistence expenses and the subsistence expenses of his/her family members under his/her care, or has a family member or members who are able and have undertaken

\textsuperscript{305} Article 13 of the Long-term Residence Directive.
\textsuperscript{306} Article 14 of the Law on Foreigners.
\textsuperscript{307} Article 15 of the Law on Foreigners.
\textsuperscript{308} Article 15 para. 2 of the Law on Foreigners.
to provide means for his/her living. The permanent residence status is granted for five years with a possibility of extension for the same term each time. An application for extension of a permanent residence card must be filed at least 30 days prior to the expiry of the previous permit.\textsuperscript{309}

Special residence status can be granted to persons of Armenian origin as well as to other foreigners who carry out economic or cultural activities in Armenia. The permit is granted for ten years and it can be extended.\textsuperscript{310}

The residence permits have to be applied for in Armenia at the Residence and Visa and Department of the Police, which is also responsible for the granting of the permit. Additionally, the application for a special residence permit can be filed in the country of origin with the diplomatic representation or the consular office. The decision on the issuance of a special residence permit lies with the President of the Republic of Armenia. The decision on the application has to be taken within 30 days. Appeals against a refusal of a negative decision are permitted, with the exception of decisions on granting special residence status, which are not subject to appeal.\textsuperscript{311}

A residence permit can be refused, if
\begin{itemize}
  \item[(a)] a person has been expelled from Armenia or was previously deprived of residence status within three years,
  \item[(b)] he or she has been convicted in Armenia of committing a grave, medium grave or particularly grave crime
  \item[(c)] there is reliable data that he or she is engaged in an activity, participates, organises or is a member of an organisation, that aims to harm the state security, overthrow the constitutional order, weaken the defensive capacity; carry out terrorist activities; irregularly transport across the border arms, ammunition, explosives, radioactive substances, narcotic substances, psychotropic substances; or carry out human trafficking and/or illegal border crossings;
  \item[(d)] he or she suffers from a certain disease specified;
  \item[(e)] for reasons of state security or public order;
  \item[(f)] if the person has submitted false information, or has failed to submit necessary documents, or there exist data that his/her stay in the Republic of Armenia pursues an objective other than the declared one; (g) he or she has been subjected to administrative liability for violating the Law on foreigners and has not performed the responsibility imposed on him or her by the administrative act within one year.\textsuperscript{312}
\end{itemize}

A residence permit can be withdrawn
\begin{itemize}
  \item[(a)] if it has been found out that the application was based on false information or there exist data that the objective of the person’s stay is other than the declared one;
  \item[(b)] the marriage which served as a basis for granting residence status to the foreigner, has been dissolved or invalidated within one year;
  \item[(c)] if the person constitutes a threat to state security or public order.
\end{itemize}

A permanent residence permit can be further withdrawn, if the foreigner has been absent from the Republic of Armenia for more than six months or has permanently departed without informing the responsible police authority. An application of a foreigner on extension of a residence status may be refused on the same grounds.\textsuperscript{313} Person who have obtained their residence permit based on a

\textsuperscript{309} Article 16 of the Law on Foreigners.  
\textsuperscript{310} Article 18 of the Law on Foreigners.  
\textsuperscript{311} Article 18 para. 5 and 20 para.1 of the Law on Foreigners.  
\textsuperscript{312} Article 19 of the Law on Foreigners.  
\textsuperscript{313} Article 21 para. 1 of the Law on Foreigners.
marriage, have an independent residence permit after one year, the residence permit can be extended after one year also if the marriage was dissolved or divorced.314

4.3 Gap Analysis
4.3.1 Gap Analysis between the Armenian Legislation and Implementation in Practice
In terms of the permanent residence permit, the interviews did not reveal differences between the national legislation and implementation practice.

4.3.2 Gap Analysis between the National Legislation and the EU acquis
When comparing the Armenian legislation with the EU acquis concerning long-term residence status, the permanent residence status is of particular attention. At first glance the scope of the term “permanent” implies a broader scope; however it was shown that the residence permit is (only) issued for five years with the possibility of extension. At the same time the EU long-term residence permit is defined as a “long-term”, however it is also granted for a five-year term with the possibility of renewal. Beyond these semantic differences, the residence permits appear to be comparable.

Scope and conditions for the issuance of the permit
Compared to the five years of previous residence required by the Long-term Residence Directive, the Armenian Law on Foreigner grants permanent residency after only three year or in specific cases without waiting period as first residence permit. As the Directive allows more favourable treatment, there is no need to increase the waiting period. This could be only important, if the permanent residence permit would also entitle to mobility right, which is not the case. However, the issuance of a permanent residence permit without waiting period cannot be understood as a favourable treatment and does not appear to be in line with the Directive. While the EU acquis does not count periods of residence on temporary grounds (such as students, seasonal workers, etc.), the scope of the Armenian legislation is even narrower, as it appears to be limited to persons with close relatives in Armenia, to foreigners of Armenian origin or to foreigners carrying out entrepreneurial activities.

With regard to absences from the territory during the waiting period, the EU acquis stipulates that absences over six months interrupt the waiting period for the residency permit, while the Law on Foreigners prescribes only a notification requirement for absences of longer than six months. The Directive further requires sufficient resources and a health insurance, at the same time the Armenian legislation prescribes sufficient resources and accommodation in certain cases, no health insurance is necessary. Also, the definition of sufficient resources is more flexible than that of the Directive as it does not exclude incomes from the social assistance system.

Concerning the grounds of refusal, the Directive mentions reasons of public policy and security, which appear to be comparable to the Article 19 lit. b conviction for grave or particularly grave crimes, c engagement in certain criminal activities and e threat to state security and public order. Moreover, the Law on Foreigners enumerates further grounds for refusal, such as previous expulsion or administrative liability for violating the Law in Foreigner, these grounds appear to be beyond the scope of the Directive.

Renewal and withdrawal
While the renewal of the EC long-term residence permit is unconditional, this is at least unclear in case of the Armenian permanent residence permit. The Law on Foreigner is silent on the conditions of renewal and specifies only the grounds for refusing the renewal of a residence permit. However, the absence of specific provision may be interpreted that the authorities are only entitled to examine whether any of the conditions for the refusal of a residence permit exist.

314 Article 15 para. 3 and 21 para.1 of the Law on Foreigners.
With regard to withdrawal, the EU acquis provides that absence from the EU territory for more than 12 consecutive months, fraudulent acquisition of the status or where the person constitutes an actual and sufficiently serious threat to public policy and security.\textsuperscript{315} Fraudulent acquisition, threat to public security and order and absence from the territory of Armenia are also applied in Armenia, however the period for absence is regulated differently: the foreign national loses his/her residence status after 6 month of absence, if he/she fails to notify the absence. Also the Law on Foreigners does not provide for a definition of public order and state security, thus it is unclear if it corresponds to the serious threat to public policy and security of the Directive, moreover Article 19 enumerates grounds for refusal which appear to go beyond the notion of public policy and public security of the Directive, such as expulsion and deprivation of a residence status within three year prior the application or administrative liability for violation of the Law on Foreigners within one year prior the application. Finally, in contrary to the requirements of the Directive, the Armenia law does not provide residence status to persons who lose the permanent residency status, but who do not have to leave the territory.

Protection against expulsion
The Armenian legislation does not provide protection against expulsion for holders of a permanent residence permit and there is no also protection provided in case of family life, longer periods of residence, absence of links to the country of origin etc. Although in the latter case one could argue that these criteria must be taken into account in case of withdrawal, as Armenia is bound to carry out a balancing of the state interest of national security, public safety or the economic well-being of the country against those of the individual to maintain private and family life in accordance with Article 8 ECHR.

Equal treatment
In general, the Law on Foreigners guarantees equal treatment to foreign nationals, unless it is regulated differently in the Constitution, laws and international treaties. With regard to the labour market access the Law on Foreigner grants free access, which is accordance with the Directive. Due to time constraints and lack of access to all the relevant laws in English, in the framework of the analysis at hand it was, however not possible to examine all areas if equal treatment is provided. It is nevertheless recommended to check the relevant laws if there are discriminatory clauses which would contradict the obligations deriving from the Directive.

Procedural guarantees
In terms of procedural guarantees the Law on Foreigners does not provide for legal remedies in case of withdrawal or refusal of renewal of a (permanent) residence permit and also it does not regulate whether and how to inform foreign nationals about a negative decision or in case of the withdrawal of the permit as it is provided in Article 10 of the Directive.

The period of 30 days that is granted to Armenian authorities to take a decision is fully in line with Directive, which sets maximum 6 months for decision making.

\textsuperscript{315} The Directive contains further provisions for the absence of the residence status in case of residence in another EU Member State, however, these are not relevant for the Armenian context.
4.4 Recommendations

Scope
In view of the limited scope of the permanent residence permit it is recommended to amend the law and grant permanent residence permit to foreigners residing for a certain number of years in Armenia for not merely temporary purposes in accordance with Article 3 of the Directive and to refugees in accordance with the amendment of the Directive. It is recommended to define clearly in the law who is eligible for permanent residence after how many years and who cannot apply for a permanent residence permit.

Conditions for granting a long-term residence permit

- It is recommended to issue long-term residence permit only after a concretely defined waiting period e.g. after three years, the waiting period should be defined in a non-discriminatory way for the different groups of migrants. It is further considered essential to introduce systematic and transparent requirements for the issuance, renewal and withdrawal of the various residence permits.
- Armenia should consider the introduction of the requirement of a health insurance and of stable and regular resources without recourse to the social assistance system for a permanent residence permit as stipulated in Article 5 of the Directive.
- It is recommended to limit the grounds for refusal of a permanent residence permit to grounds of public policy and security and in case of refusal to carry out a balancing between the severity of the offence, the danger emanating from the person and the duration of the residence as well as the existence of links with the country of origin before refusal.

Withdrawal of the permanent residence permit
It is recommended to adopt provisions that provide protection against expulsion in accordance with Article 12 of the Directive as well as in accordance with Article 8 ECHR, in particular the duration of residence in Armenia, existence and type of family relations in Armenia, ties to the country of origin, labour market integration, and language knowledge should be taken into account. Where the loss of the permanent resident status does not lead to removal and in particular where the continuation of a family and private life is not possible in another country it is further recommended to grant the foreign national temporary residence status in Armenia.

Procedural guarantees
It recommended introduce possibilities of appeal in case of the rejection of the renewal and withdrawal of a residence permit in accordance to Article 10 of the Directive.

Mobility rights
The Republic of Armenia might consider allowing mobility of foreign nationals holding an EC long-term residence status of one of the EU Member States in accordance with Chapter III of the Directive.
5. LABOUR MIGRATION & EMPLOYMENT

5.1. EU acquis

Labour migration is an integral part of Europe's history; nevertheless the EU competencies in this area remained limited. Despite numerous initiatives of the European Commission and the openness towards labour migration of EU nationals, until today EU Member States are very reluctant to give up their national sovereignty when it comes to labour immigration. (Boswell/Geddes 2011: 76) In particular the Lisbon Treaty states that measures on migration “shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.” (Boswell/Geddes 2011: 76).

In terms of labour migration, the Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (Single Permit Directive) and the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Blue Card Directive) are currently relevant. The European Commission has recently tabled two further legislative proposals: the Directive on seasonal employment and the Directive for intra-corporate transfer of non-EU skilled workers, which are currently under discussion within the European Parliament and the Council. As the texts of these legislative pieces are not yet finalized, they are not included in the analyses at hand, however it is strongly recommended to take their provisions into account once they are adopted.

5.1.1 Single permit and single application procedures

The Single Permit Directive aims at simplifying administrative requirements for third-country nationals by enabling them to obtain work and residence permits via a single procedure and grant them a standard set of rights comparable to those enjoyed by EU workers. The adoption of the Directive after four years of negotiations was seen as “a first step towards a common European policy on economic migration”, however its scope and impact has been criticized to be rather limited.

Scope: The Directive applies to (a) third-country nationals who apply to reside in a Member State for the purpose of work; (b) third-country nationals who have been admitted to a Member State for other purposes than work and who are allowed to work and (c) third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law. At the same time, several groups of third-country nationals are exempted from the Directive: third-
country nationals who are family members of citizens of the Union who have exercised, or are exercising, their right to free movement; persons who, together with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of citizens of the Union under agreements either between the Union and the Member States or between the Union and third countries; posted workers; to intra-corporate transferees; seasonal workers or au pairs; persons who enjoy or applied for temporary protection, asylum seekers and beneficiaries of (inter)national protection; persons who are long-term residents in accordance with Directive 2003/109/EC; whose removal has been suspended on the basis of fact or law; self-employed workers; to seafarers. Furthermore, the Directive stipulates that Member States may decide that the provisions concerning single permit and single application procedure do not apply to third-country nationals who have been either authorised to work in the territory of a Member State for a period not exceeding six months or who have been admitted to a Member State for the purpose of study. Additionally, these provisions do not apply to third-country nationals who are allowed to work on the basis of a visa.

As most Directives of the EU migration and asylum acquis, also the Single Permit Directive contains a more favourable conditions clause.

Application procedure

An application to issue, amend or renew a single permit has to be submitted by way of a single application procedure. Member States must determine whether applications for a single permit are to be made by the third-country national or by the third-country national’s employer or from either of the two. If the application is to be submitted by the third-country national, Member States must allow the application to be introduced from a third-country or, if provided for by national law, in the territory of the Member State in which the third-country national is legally present.

A decision to issue, amend or renew the single permit must constitute a single administrative act combining a residence permit and a work permit, without prejudice to the visa procedure, which may be required for initial entry. The decision on the complete application must be adopted as soon as possible and in any event within four months of the date on which the application was lodged. The applicant must receive a written notification. In case of incomplete applications the competent authority must notify the applicant in writing of the additional information or documents required, setting a reasonable deadline to provide them.

The single permit must be in accordance with the uniform format as laid down in Regulation (EC) No 1030/2002 and must indicate the information relating to the permission to work. No additional permits should be issued as proof of authorisation to access the labour market.

Procedural guarantees

In case of a negative decision the applicant must be informed about the reasons for the rejection and about the appeal and a possibility for an appeal must be granted. Upon request the third-country national and the future employer must be provided with adequate information on the documents

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323 Article 3 para. 2 of the Single Permit Directive.
324 Article 3 para. 3 of the Single Permit Directive.
325 Article 3 para. 4 of the Single Permit Directive.
326 Article 13 of the Single Permit Directive.
327 Article 4 para. 1 of the Single Permit Directive.
328 Article 4 para. 2-3 of the Single Permit Directive.
329 Article 5 of the Single Permit Directive.
331 Article 8 of the Single Permit Directive.
required for the application.\textsuperscript{332} The level of the application fees must be proportionate and must be based on the services actually provided.\textsuperscript{333}

\textit{Rights of single permit holders}

The Directive grants following minimum rights on the basis of the single permit: right to enter and reside in the Member State issuing the single permit; free access to the entire territory of the Member State, employment activity authorised under the single permit; information about the rights linked to the permit.\textsuperscript{334}

Moreover, third-country who have been admitted to a Member State for a purpose other than work and who are allowed to work as well a third-country nationals who are admitted to the Member State for the purpose of work are granted equal treatment with nationals of the Member State with regard to working conditions, including pay and dismissal as well as health and safety at the workplace; freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security; education and vocational training, recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures; social security, tax benefits, access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law; advice services afforded by employment offices.\textsuperscript{335}

Member States, however, may restrict equal treatment under certain conditions: (a) with regard to education and vocational training to those third-country workers who are in employment or who have been employed and who are registered as unemployed; excluding those third-country workers who have been admitted to their territory in conformity with Directive 2004/114/EC, excluding study and maintenance grants and loans or other grants and loans; or by laying down specific prerequisites including language proficiency and the payment of tuition fees, in accordance with national law, with respect to access to university and post-secondary education and to vocational training which is not directly linked to the specific employment activity; (b) by limiting the rights with regard to social security (as defined in Regulation (EC) No 883/2004), except for third-country workers who are in employment or who have been employed for a minimum period of six months and who are registered as unemployed. In addition, Member States may decide with regard to family benefits that these do not apply to third-country nationals who have been authorised to work in the territory of a Member State for a period not exceeding six months, to third-country nationals who have been admitted for the purpose of study, or to third-country nationals who are allowed to work on the basis of a visa; (c) by limiting the rights with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the third-country worker for whom he/she claims benefits, lies in the territory of the Member State concerned; (d) by limiting the access to goods and services and the supply of goods and services made available to the public (including housing) limiting its application to those third-country workers who are in employment; restricting access to housing.\textsuperscript{336}

Finally, the Directive stipulates with regard to third-country workers moving to a third-country, or their survivors who reside in a third-country and who derive rights from those workers, must receive, in relation to old age, invalidity and death, statutory pensions based on those workers’ previous

\textsuperscript{332} Article 9 of the Single Permit Directive.
\textsuperscript{333} Article 10 of the Single Permit Directive.
\textsuperscript{334} Article 11 of the Single Permit Directive.
\textsuperscript{335} Article 12 para. 1 of the Single Permit Directive.
\textsuperscript{336} Article 12 para. 2 of the Single Permit Directive.
employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country.

Article 14 mandates Member States to provide regularly updated information on the admission and work conditions.

5.1.2 Immigration of highly qualified labour migration

Highly qualified migrants are seen to play a key role in strengthening the EU’s competitiveness. As international competition for highly qualified workers is increasing, it was considered that Europe can only appeal if it speaks with one voice. The aim of the Blue Card Directive\(^{337}\) is to put in place attractive conditions for non-EU workers considering taking up highly skilled employment in the EU states, creating a harmonised fast-track procedure and common criteria (a work contract, professional qualifications and a minimum salary level) for issuing a special residence and work permit called the "EU Blue Card". The Blue Card facilitates access to the labour market and entitles holders to socio-economic rights and favourable conditions for family reunification and movement around the EU. The EU Blue Card does not create a right of admission; it is demand-driven, i.e. based on a work contract. Its period of validity is between one and four years, with possibility of renewal. The aims of the Directive appears ambitious, however it impact might remain rather limited, as it will be shown the scope of the Directive addresses only a very specific group. (Boswell/Geddes 2011: 102). The EU Blue Card Directive also promotes ethical recruitment standards to limit – if not stop entirely – active recruitment by EU States in developing countries already suffering from serious "brain drain".

Scope

The Directive applies to highly qualified third-country nationals seeking to be admitted to the territory of a Member State for more than three months for the purpose of employment, as well as to their family members.\(^{338}\) The Directive does not create a right to admission; in particular Member States may control the number and type of workers and are also allowed to implement labour market tests. (Hailbronner 2010: 709)

Admission

Article 5 regulates the admission conditions. Beyond the general admission conditions, which are common to those of other Directives of the EU migration acquis, such as a valid travel document, health insurance and that the applicant does not pose a threat to public security, policy and health, the applicant must produce: a work contract or binding job offer of at least one year with a salary of at least 1,5 times the average gross annual salary paid in the Member State concerned (Member States may lower the salary threshold to 1,2 for certain professions where there is a particular need for third-country workers); for regulated professions, documents establishing that she/he meets the legal requirements, and for unregulated professions, the documents establishing the relevant higher professional qualifications. In addition, she/he may also be required to provide his/her address in that

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\(^{338}\) Asylum seekers, persons who enjoy temporary or international protection or who have similar national protection status, applicants for a residence permit for researchers according to Directive 2005/71/EC, family members of EU citizens who are covered by Directive 2004/38/EC, third-country nationals who enjoy EU long term residence status in accordance with the Directive 2003/109/EC, posted workers, seasonal workers and persons who entered a Member State under a commitment contained in an international agreement as well as persons whose expulsion has been suspended are exempted from the scope of the Directive. (Article 1 of the Blue Card Directive).
Member States are furthermore entitled determine the number of third-country nationals they admit.\textsuperscript{339}

Member States are free to decide whether the application for an EU Blue Card has to be made by the third-country national and/or his/her employer.\textsuperscript{340} If the candidate fulfils the above conditions and the national authorities decide to admit him/her, she or he is issued an EU Blue Card, which is valid for a standard period of one to four years.\textsuperscript{341} If the work contract is issued for a shorter period,\textsuperscript{342} the permit is to be issued for the period of the work contract plus three months. The application has to be accepted or rejected within 90 days of filing.\textsuperscript{343} If the application is accepted, the applicant will be given every facility to obtain the requisite visas. Negative decision on applications and renewal as well as the withdrawal of a permit must be communicated in written including a specification of the reasons for the decisions and possibilities and timeframe for an appeal.\textsuperscript{344}

The application for an EU Blue Card or for its renewal can be rejected if the applicant does not meet the admission conditions, if it was drawn up on the basis of false or fraudulently acquired documents\textsuperscript{345} or if, given the state of the labour market, the Member State decides to give priority to EU citizens; third-country nationals with a preferred status under Community law who are legal residents or who are EC long-term residents and wish to move to that Member State. However, the latter is only allowed in the first two years of residence.\textsuperscript{346} The application may also be rejected on the grounds of volumes of admission established by the Member State,\textsuperscript{347} ethical recruitment\textsuperscript{348} or if the employer has been sanctioned due to undeclared work or illegal employment.\textsuperscript{349} Ethical recruitment is not defined in the Directive; in this context reference is only made in the Preamble to the health and education sector. (Hailbronner/Schmidt 2010: 748).

**Withdrawal and non-renewal**

The EU Blue Card must be withdrawn or refused to renew, if it has been fraudulently acquired, falsified or tampered with, if the holder does not or no longer meet the conditions of entry, does not respect certain limitations — i.e. in the first two years the Blue Card holder is limited to exercise paid employment activities, the change of employer is subject to previous authorisation, every change which may concern admission conditions is subject to prior communication. Unemployment of more than three months or repeated unemployment are further reasons for obligatory withdrawal of the residence permit.\textsuperscript{350} Optionally, Member States may withdraw or refuse the renewal of a residence permit if the third-country national does not have sufficient resources to maintain him-/herself and family members without social assistance or if s/he has been unemployed for more than three consecutive months or more than once during the period of validity of the card, for reasons of public politic, public security or public health, if she/he has not communicated his/her address, or if she/he applies for social assistance.\textsuperscript{351}

\begin{itemize}
\item Article 6 of the Blue Card Directive.
\item Article 10 of the Blue Card Directive.
\item Article 7 para. 1-2of the Blue Card Directive.
\item Article 7of the Blue Card Directive.
\item In case additional information is requested by the authorities because the application is incomplete or inadequate, the authorities, the timeframe for the decisions-making is prolonged. (Article 11of the Blue Card Directive).
\item Article 11 para. 3of the Blue Card Directive.
\item Article 8 para. 1of the Blue Card Directive.
\item Article 8 para. 2of the Blue Card Directive.
\item Article 8 para. 3of the Blue Card Directive.
\item Article 8 para. 4of the Blue Card Directive.
\item Article 6 para. 5of the Blue Card Directive.
\item Article 9 para. 1-2of the Blue Card Directive.
\item Article 9 para. 3of the Blue Card Directive.
\end{itemize}
Rights of EU Blue Card holders

The EU Blue Card grants following rights to third-country nationals and their families: right to entry, re-entry and stay in the issuing Member State and pass through other Member States; access to the labour market. Access to labour market is limited in the first two years of residence to an employment that corresponds the admission criteria, additionally changes of employers is subject to authorisation, after two years of legal employment third-country nationals receive equal treatment with nationals as regards access to any highly qualified employment, changes however that affect the admission conditions must be communicated to the authorities. Member States must, however, respect EU preference. Moreover, third-country nationals enjoy equal treatment with nationals as regards, for example, working conditions, social security, pensions, recognition of diplomas, education and vocational training.

Regarding temporary unemployment, as described above, this should not constitute a ground for withdrawal of the permit, as it does not exceed three months and occurs only once. In terms of family reunification, the conditions of the Directive 2003/86/EC apply with a few exceptions which shall facilitate the procedures. In particular, it is not required that the sponsor (the EU Blue Card holder) has reasonable prospect of obtaining the right of permanent residence; integration conditions and measures may only be applied after the person has been granted family reunification, residence permits must be granted after six month from the lodging of the application; the duration of validity of the residence permit of family members must be the same as that of the EU Blue Card holder, no time limit should be applied in terms of the labour market access; for the acquisition of an autonomous residence permit after five years residence in different member states may be cumulated.

Long-term residence status

With respect to the acquisition of the EC long-term status according to the Long-term Residence Directive, the Blue Card Directive stipulates that for the continuous residence of five years which is required for the EC long term residence status, residence in various Members States may be cumulated, if the applicant has legal and continuous residence for two years immediately prior to the submission of the relevant application for the long-term within the Member State where the application for the EC long-term residence permit is lodged. Additionally, there are differences in the periods of absences from the territory of the EU: in particular periods of absence of shorter than 12 months (of a total of 18 months) must not interrupt the period for the calculation of the five years of legal and continuous residence within the territory of the EU. In total 24 month of absence from the territory of the EU must be allowed for EC long-term residents. The Member States may restrict these absence only to cases where the third-country national can prove that she/he has been absent to exercise self-employed or employed economic activity, to conduct studies or to perform voluntary service in his/her country of origin.

Mobility rights of third-country nationals

Under specific circumstance the Blue Card Directive provides mobility rights for third-country nationals. In the Armenian context these mobility rights are, however, of limited relevance. In the absence of a bilateral agreement between the EU and the Republic of Armenia, foreign nationals who

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353 Article 12 para. 5 of the Blue Card Directive.
357 Article 14 para. 3 of the Blue Card Directive.
358 Article 14 para. 4 of the Blue Card Directive.
359 Article 14 para. 5 of the Blue Card Directive.
are eventually admitted under an EU Blue Card scheme in Armenia will not be entitled to residence in EU Member States, thus these provision are not included in the current analysis.

5.2. Armenian legal framework
The interviews and most of the previous research (Devillard 2012) revealed the labour migration is not perceived as a significant phenomenon to Armenia, Armenia is primarily a country of emigration. Reliable data on the stock and inflow on labour migrants is, however, not available, thus other more recent sources suggested that “labour migration to Armenia is underestimated” (Devillard 2012: 10). Although the Law on Foreigners envisages the admission of foreigners for the purpose of work and foresees a work permit, in practice due to lack of secondary legislation, the system is not implemented. Nevertheless, the Action Plan for the implementation of the concept for the policy of state regulation of migration in the republic of Armenia 2012-2016 envisages the regulation of the condition of employment for foreign citizens in Armenia in line with the labour market requirements.362 At the time of the drafting of the study at hand the Report on analysis of legislative framework of the Republic of Armenia on labour migration of the Armenian citizens and employment of foreigners in the Republic of Armenia and the Report on recommendations about the feasible model of the system for work permits to foreigners and on authorized state body for issuance of work permits to foreigners were published by a working group consisting of the International Center for Human Development, IOM and the Ministry of Labour and Social Issues. The working group developed three possible models on how to issue a residence and a work permit. One model envisages a separate application procedure for the residence permit and for the work permit, while the other two models foresees a single application procedure. The two models vary primarily in the sequence in which the Police and the State Employment Service Agency are involved in the procedure. As the IOM’s International Migration Law Unit has commented the models in detail and as this report primarily focuses on legislation in force, the models are not analysed here in detail.

The Law on Foreigners provides the legal bases for the access to the labour market of foreigners in Armenia. Generally, foreigners may be employed in Armenia on the basis of a work permit. Several groups of foreigners are however, exempted from the obligation of obtaining a work permit. In particular, persons holding a permanent or special residence status as well as holding temporary residence permit as spouses or close relatives, workers of border regions as well as culture and sport specialists arriving for a short term; founders, directors, or authorised representatives of commercial organisations with foreign capital; lecturers of foreign education institutions invited to deliver lectures at educational institutions of the Republic of Armenia; accredited representatives of foreign media organisations; persons holding refugee status, having obtained political asylum in the Republic of Armenia, students performing work in the framework of work exchange programmes during holidays based on relevant international treaties, etc.

The work permit is only issued if the state of the labour market allows and is subject to a labour market test: employers are primarily obliged to fill a vacancy with Armenian citizens. If the

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363 Article 4 of the Law on Foreigners.
364 Article 22 para. 1 of the Law on Foreigners.
365 Article 23 of the Law on Foreigners.
employment services do not nominate any candidate meeting the job requirements within a certain time-limit, the employer can hire a foreign national and file an application for a work permit. A work permit has to be refused in case of document fraud or provision of false information, if the future employer has previously breached the requirements of admitting foreigners to employment, for security reasons or if the employer does not hold a respective licence for engaging in activities subject to licensing. Appeals against a negative decision can be filed within five days upon the refusal. The permit is issued to the foreigner for a specific term for a specific employer and is renewable. A foreigner having obtained a work permit shall be granted temporary residence status or its term shall be extended for the term specified in the work permit.

The Law on Foreigners further requires that the work contract has to be in accordance with the requirements of the labour legislation and has to have the same duration as the validity period of the work permit. Additionally, the contract has to cover issues related to transportation of a foreign employee and his/her family members, social security and insurance, accommodation, registration in the place of residence, and return. The contract has to be submitted for registration to the public administration body authorised in the field of employment and occupation of foreigners within three days after conclusion.

A work permit has to be revoked, if it was obtained in a fraudulent manner, if the work contract was not concluded within one month after obtaining the work permit, or if the foreigner has taken up another employment without a permit. The work permit is terminated if the work contract has expired, or the contract has been rescinded.

In terms of preventing and combatting irregular migration the Law on Foreigners sets out that if an employer does not provide a foreign worker — who has legally entered the Republic of Armenia — with the work for which he or she has obtained a work permit, the employer has to cover the foreigners’ and his/her family members expenses related to their return (i.e. transportation and living expenses, as well as expenses of carriage of personal property). Furthermore, the foreign workers have to be provided free assistance and service, consultation aimed at combating misleading information. The responsible public administration body is responsible also for the verification of the actual compliance the provisions of the employment contract.

5.3 Gap Analysis

3.3.1 Gap analysis between the Armenian legislation and implementation in Practice

The provisions concerning work permits and labour market tests which would allow the management of labour migration is not implemented due to the lack of secondary legislation. Currently, the national labour market is totally open to foreigners — with the exception of jobs reserved to Armenian nationals, such as the public administration.

3.3.2 Gap analysis between the national legislation and the EU acquis

Admission of labour migrants

The EU Blue Card Directive was developed against the background of rather restrictive labour migration regimes and requires facilitated admission conditions for highly qualified third-country nationals, however as the admission requirements for labour migrants including highly skilled foreign
nationals to Armenian are currently significantly lower no gaps can be identified. Although the EU Blue Card Directive was introduced only recently in most EU Member States – the end of the transposition period was 19 June 2011 – and thus only limited experiences are available, it suggested that in most Member States the Directive is of limited importance as the requirements to be fulfilled are rather high. For instance in Austria in 2012 under the EU Blue Card scheme only very few residence permits were issued compared to the national admission scheme “Red-White-Red Card”. The additional value of an EU Blue Card residence permit lies also in the mobility rights attached to the permit, however, the provision granting mobility in the EU for third-country nationals would not be applicable to Armenia. Nevertheless, for the sake of harmonization and alignment of the labour migration policies Armenia could consider implementing an immigration scheme for highly qualified third-country nationals.

Beyond the facilitation of the admission of highly qualified third-country nationals, the EU acquis does not require the admission of other categories of labour migrants and EU Member States have different systems and approaches to economic migration in place. Some Member States, such as Sweden have a rather open policy towards labour immigrants, while others are more restrictive and allow only the entry of specific groups.\(^{371}\) When admitting third-country nationals to the labour market, several Member States require a work permit, which is often subject to a labour market test, that looks at whether their own or other EU/EEA nationals are available for the position, prior to employing a third-country national worker.\(^{372}\) Other tools to regulate labour immigration are quotas or shortage occupation lists, moreover some Member State apply a point-based system, according to which the immigrant has to reach a certain amount of points in order to be admitted. Points can be issued for education, language knowledge, work experience, innovation, etc.

**Procedures**

In terms of procedural requirements the situation is different. Generally, the Armenian legislation does not provide for a single permit and a single application procedure for any categories of migrants, as it is required by the Single Permit Directive. On the contrary, the Law on Foreigners envisages a separate residence and work permit, even though, the provision concerning work permit are not applied in practice.

Thus there is need to implement all the provision of the Directives regarding application procedure and the permit for the categories of migrants who are covered in the Directive. Regarding the rights granted and the equal treatment provisions of the Directive, Armenia appears to fulfil most of the requirement as it guarantees equal treatment of foreign nationals with Armenian nationals.

### 5.4 Recommendations

**Admission of labour migrants**

- It is recommended to create clear categories for admission for labour migrants and to specify clearly the admission conditions for foreign nationals (such as a valid travel document, health insurance and that the applicant does not pose a threat to public security, policy and health, eventually a work contract or binding job offer, professional qualifications, etc).

- The immigration of highly-qualified foreign nationals should be particularly facilitated.

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\(^{371}\) For example Austria, Germany, the United Kingdom.

It is recommended to provide updated information about the admission and work conditions as well as on the rights linked to the permit in an easily accessible way in different languages.

**Single permit and single application procedure**

- It is suggested to create a single application procedure for the admission to reside and work in Armenia and to establish a single work and residence permit for foreign nationals.
- It is recommended to guarantee single permit holders equal treatment with regard to working conditions, including pay and dismissal as well as health and safety at the workplace; freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security; education and vocational training, recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures; social security, tax benefits, access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law; advice services afforded by employment offices.

**Analysis of the national labour market**

- The EU acquis does not envisage a particular system, how to measure labour market needs and also there is no harmonized system in place to regulate the inflow of labour markets in the EU. Depending on the socio-economic needs, policy priorities and immigration traditions, Member States have different approaches. Thus it is recommended in general that Armenia identifies the labour market needs and gaps in order to create a demand driven labour immigration system. A single permit shall facilitate the immigration of labour migrant particularly in shortage occupations and with high qualification.
- Regular evaluation of the system is further essential for an efficient and targeted labour migration policy.
6. STUDY AND RESEARCH

6.1 EU acquis

One of the objectives of EU action in education “is to promote Europe as a whole as a world centre of excellence for studies and vocational training. Promoting the mobility third-country nationals to the Community for studies is a key factor in that strategy.” Migration in this case is seen as a form of mutual enrichment: for the migrants concerned, their country of origin and the host EU State, and helps to promote familiarity with other cultures. The EU acquis sets common rules of admission for third-country nationals who request entry to an EU Member State for one of the following: studies leading to a higher education qualification (students); to follow a recognised programme of secondary education (pupils); to pursue a training period without remuneration (unremunerated trainees); or to take part in a national or EU volunteer programme. These common rules, which are laid down in the Council Directive 2004/114/EC on the conditions of admission of non-EU nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (so called Students Directive), will be analysed here.

Beyond students, the EU migration policy targets researchers in particular. Researchers are seen to play an essential role in driving EU’s growth and competitiveness. The Commission considered it necessary in January 2000 to establish the European Research Area as the lynchpin of the Community’s future action in this field. Subsequently, the Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world by 2010. Against this background it opened up its programmes further to researchers from outside the European Union. To achieve the target set by the Barcelona European Council in March 2002 of 3% increase of GDP invested in research it is estimated at 700 000 researchers will be needed by 2010. To achieve this aim various measures were to be implemented, fostering the admission and mobility for research purposes of third-country nationals through harmonised EU action was one of these measures.

With the Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, the so called Researchers Directive the EU acquis provides for procedures for the admission of third-country national researchers for stays of more than three months if the researcher has a hosting agreement with a research organisation. Research organisations play a major role in this process: once included in a list of “approved research organisations”, they certify the status of the researcher in a hosting agreement with the researcher. The document confirms the existence of a valid research project, as well as the possession of the necessary scientific skills, sufficient resources and health insurance by the researcher. A non-EU researcher coming to the EU to carry out independent research would not be covered by the Directive.

In this section first the conditions of for the entry and residence of students, pupils in organized school exchange programmes, volunteers and unremunerated trainees are described. Than the legal framework set out by the Researchers Directive is analysed.


375 Please note that the EU action in the area of education is wider and includes in particular the Bologna Process and the European Higher Education Area (EHEA), however, as these measures are not part of the EU migration and asylum acquis, their implementation in Armenia is not analysed.
6.1.1 Admission of students, pupils, volunteers and unremunerated trainees

In general, the Students Directive provides mandatory provisions concerning students, while the implementation of the procedures concerning unremunerated trainees, pupil exchange or voluntary service optional and their implementation is left to the discretion of the EU Member State. The Directive is without prejudice to more favourable conditions of bilateral and multilateral agreements and national legislation.

General provisions

The Students Directive provides general entry conditions common to all four groups, such as a valid travel document, a health insurance or — in the case of a minor — parental authorisation and the person should not be regarded threat to public policy and public security or public health.

Moreover, there are common rules concerning the withdrawal and non-renewal of the residence permit as set out in Article 16: Member States may withdraw or refuse to re-new a permit when it has been fraudulently acquired or the holder does not (or no longer) meets the requirements of entry or residence or for reasons of public policy, public security or public health. In terms of procedural guarantees Article 18 provides that the decision on the application must be taken and the applicants must be informed within a period that does not hamper the studies. If the information is inadequate, the processing of the application may be suspended, however, the applicant must be informed thereof. In case of a negative decision the authorities must inform the third-country national and must specify the possibilities of redress. Both in case of a rejection and withdrawal the applicants must be provided with the possibility of appeal. The authorities and the establishments of higher education or the organisation operating pupil exchange may conclude an agreement on fast track procedures for issuing residence permits and visas. Finally, Member States are allowed to require application fees for processing of an application.

Specific conditions regarding students

The specific conditions regarding students stipulate that students have to prove that they have been accepted by the establishment of higher education, need to prove either the availability of sufficient resources to cover subsistence, study and return or, if the EU Member State so requires, sufficient knowledge of the language. The residence permit issued for students has to be for one year or shorter, if the duration of the course of the study is shorter than one year and the permit has to be renewable. The renewal of the permit may be refused or the permit may be withdrawn by the Member State, if the student does not respect the limit imposed on the access to economic activities

376 Article 3 para. 1 of the Students Directive. Asylum seekers, holders of subsidiary or temporary forms of protection, persons whose expulsion has been suspended, family members of EU citizens who have exercised their right to free movement, long-term-resident third-country nationals who are moving to another Member State.

377 Also here the Directive does not define public policy and public security, however, the literature interpret the terms similarly as in the Long-term Residence Directive. (See above Chapter 1.1). Concretely, the Preamble refers to perpetration of a serious crime and to cases where the third-country national belongs or belonged to, supports or supported an association that supports terrorism or had extremist aspirations. (Hailbronner 2010: 326f.)

378 Article 6 of the Students Directive.

379 Article 18 para. 1 of the Students Directive.

380 Article 18 para. 2 of the Students Directive.

381 Article 18 para. 4 of the Students Directive.

382 Article 19 of the Students Directive.

383 Article 20 of the Students Directive.

384 Article 7 of the Students Directive.

385 Article 12 para. 1 of the Students Directive.
or he/she does not make acceptable progress in his/her studies in accordance with the national law or practice.\(^\text{386}\)

**Rights**

Generally, students should be entitled to employment or to exercise self-employed activities. This enables them to cover part of the study costs. This right may be subject to certain requirements or limitations (including a work permit, limitations on the number of working hours, etc.). However, EU Member States must allow the students to work at least 10 hours per week.\(^\text{387}\)

The Directive facilitates studies in a second Member State in order to meet the growing demand for student mobility: the Directive stipulates that students who have already been admitted in a Member State and apply to follow parts of the study or complement the study in another Member State must be admitted by the latter Member State, provided that he/she meets the general and specific conditions for students according to the Directive, has provided full application and documentation and the person participates in an EU or bilateral exchange programme or has been admitted for at least two years in a Member State.\(^\text{388}\)

**Pupils**

Concerning pupils the Directive covers only organised mobility through exchange schemes managed by specialised organisations. The following conditions apply: age limits set by the Member State concerned; evidence of the pupils acceptance by a secondary education establishment, the exchange organisation must be recognised by the Member State concerned; the exchange organisation must accept responsibility for subsistence, study, healthcare and return travel costs; accommodation by a host family. The Member State retains some room for manoeuvre to reserve exchanges for third countries that offer exchange possibilities for its own school pupils.\(^\text{389}\) The residence permit must be valid for maximum one year.\(^\text{390}\)

**Unremunerated trainees**

With regard to unremunerated trainees the Directive requires that the applicant has signed a training agreement, sufficient resources to cover his/her subsistence, training and return travel costs; that the applicant receives basic language training so as to acquire the knowledge needed for the purposes of the placement, if the Member State so requires.\(^\text{391}\) The period of validity of the residence permit must correspond the duration of the placement or have a maximum of one year, and it may be renewed once under specific circumstances.\(^\text{392}\)

**Volunteers**

For volunteers the Directive provides for the following conditions: age limits as set by the Member State concerned; an agreement giving a description of tasks, the conditions in which the volunteer is supervised in the performance of those tasks, the working hours, and the resources available to cover travel, subsistence and accommodation costs throughout the stay; the organisation responsible for the voluntary service scheme must accept responsibility for the volunteer's activities and subscribe a third-party insurance policy and for subsistence, healthcare and return travel costs; the volunteer must, if the host Member State specifically requires it, receive a basic introduction to the language, history and political and social structures of that Member State.\(^\text{393}\) The residence permit is valid for

\(^{386}\) Article 12 para. 2 of the Students Directive.

\(^{387}\) Article 17 of the Students Directive.

\(^{388}\) Article 8 of the Students Directive.

\(^{389}\) Article 9 of the Students Directive.

\(^{390}\) Article 13 of the Students Directive.

\(^{391}\) Article 10 of the Students Directive.

\(^{392}\) Article 14 of the Students Directive.

\(^{393}\) Article 11 of the Students Directive.
maximum one year, in exceptional cases longer, if the duration of the respective programme is longer.394

6.1.2 Admission of researchers

Scope
The Researchers Directive applies to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of carrying out a research project.395 Asylum seekers, applicants for temporary protection, PhD candidates having a student residence permit in accordance with the Directive 2004/114/EC, seconded researchers from another Member State, as well as third-country nationals whose expulsion has been suspended for reasons of fact or law are exempted from the scope of the Directive.

Research organisations396
Any research organisation wishing to host a researcher must first be approved by the Member State in which it is located.397 The Directive does not set out procedures for the approval. To make it easier to access information, lists of approved research organisations must be published each year in the Member States.398 Unless there are exceptional circumstances, authorisations granted to a research organisation will be valid for a minimum of five years.399

Optionally, the Member States may require a written commitment from the research organisation, stating that if the researcher resides unlawfully in the territory of the Member State concerned, the organisation will be responsible for reimbursing the cost of the researcher’s subsistence or return paid out of public funds. The research organisation’s financial responsibility will end six months after the end of the hosting agreement at the latest.400 Beyond the registration, the research organisation must sign a hosting agreement with the researcher, i.e. a legal contract whereby the researcher undertakes to complete the research project and the organisation undertakes to host the researcher subject to the researcher being issued with a residence permit. Research organisations may sign hosting agreements only if: the research project has been accepted by the relevant authorities in the organisation after examination of the purpose and duration of the research, the availability of the necessary financial resources and the researcher’s qualifications; the researcher has sufficient monthly resources, including all-risk sickness insurance, to avoid having recourse to the host State’s social welfare system.401 The hosting agreement specifies the legal relationship of researchers and their working conditions.402 The hosting agreement ends automatically if the researcher is not admitted or once the legal relationship between the researcher and the research organisation comes to an end.403 Research organisations must promptly inform the authority designated for the purpose by the Member States of any occurrence likely to prevent implementation of the hosting agreement.404

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394 Article 15 of the Students Directive.
395 Article 3 of the Researchers Directive. Research in the context of the Directive refers to creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications. (Article 2 lit. bof the Researchers Directive).
396 According to the Directive research organisations are public or private organisations which conduct research and which have been approved by a Member State.
397 Article 5 para. 1 of the Researchers Directive.
398 Article 5 para. 5 of the Researchers Directive.
399 Article 5 para. 2 of the Researchers Directive.
400 Article 5 para. 3 of the Researchers Directive.
401 Article 6 para. 2 of the Researchers Directive.
402 Article 6 para. 3 of the Researchers Directive.
403 Article 6 para. 4 of the Researchers Directive.
404 Article 6 para. 5 of the Researchers Directive.
Entry conditions
The admission of researcher is regulated in Article 7 of the Directive, according to which Member States must admit researchers if they: present a valid passport or equivalent travel documents; present a hosting agreement signed with a research organisation; present a statement of financial responsibility issued by the research organisation; are not considered to pose a threat to public policy, public security or public health. If the conditions are fulfilled the third-country national has the right to be issued a residence permit.

The residence permit is to be issued for one year or more and is to be renewed annually. If the research project is scheduled to last less than one year, the residence permit must be issued for the duration of the project. For family members the Directive stipulates that when a Member States awards a residence permit to a researcher’s family members, the permit has to be of the same duration as the researcher’s (provided that their travel documents are valid) and it must not be made dependent on the requirement of a minimum period of residence of the researcher. There is, however, no general obligation to allow family reunification. For the application procedure Member States must determine whether the applications are to be made by the researcher or by the research organisation concerned. As a general rule, applications must be submitted in the researcher’s country of residence, however Member States may allow the submission directly in the Member State, if the researcher is lawfully present there.

Procedural rights
Article 15 obliges Members States to adopt the decision as soon as possible, if appropriate in an accelerated procedure, however, compared to other Directives, there is no maximum duration set out. The relevant authorities in the Member State must further, notify the applicant in writing of their decision. Reasons must be given for any decision refusing, amending, refusing to renew or withdrawing a residence permit. Third-country nationals must have the right to appeal to the courts of the Member State concerned against any decision.

Withdrawal and renewal
According to Article 10 Member States may withdraw or refuse to renew a previously issued residence permit if the latter was acquired fraudulently or if it transpires that the holder of the permit did not meet or no longer meets the entry and residency conditions stipulated, or if he or she is residing in the country for reasons other than those authorized as well as for reasons of public policy, security or health.

Researchers’ rights
Researchers admitted under the Directive have the right to enter and reside on the territory of the Member State to conduct the research project there, they are allowed to teach (the number of maximum hours may be determined by the Member States). When a researcher receives a residence permit, it automatically grants the right to work: there is no need for a separate work permit or a labour market test to prove that the research cannot be carried out by an EU researcher. Moreover, the Directive guarantees the holders equal treatment with nationals as regards to recognition of diplomas, certificates and other professional qualifications; working conditions, including pay and dismissal, social insurance as defined by national legislation; tax concessions; access to goods and

405 Article 8 of the Researchers Directive.
406 Article 9 of the Researchers Directive.
407 Article 14 para. 1 of the Researchers Directive.
408 Article 14 para. 2-3 of the Researchers Directive.
409 Article 15 para. 1 of the Researchers Directive.
410 Article 15 para. 3 of the Researchers Directive.
411 Article 15 para. 4 of the Researchers Directive.
412 Article 10 of the Researchers Directive.
services and the supply of goods and services made available to the public. The Directive further allows mobility for part of the research project to be conducted on the territory of another Member State.

6.2 Armenian legal framework

6.2.1 Students

Attracting foreign national students, being an “education service provider”, has been one of the aims of the Armenian migration policy for many years. There are about 4,000 – 5,000 foreign students studying in Armenian high education institutions every year. Almost half of these students are persons of Armenian origin residing abroad. Main countries of origin are Russian Federation, Georgia, Iran, India, and Syria. The Armenian Constitution establishes the right to education. Due to the equal treatment provision in the Law on Foreigners, this is equally applicable to foreign citizens.

Entry conditions

Foreigners wishing to study in Armenia can enter the country with a visitor entry visa, if there is a visa requirement for the respective country and have to apply for a temporary residence permit for the purpose of studies in Armenia. For Iranian students the application fee for a residence permit was waived in order to increase the attractiveness of Armenia for Iranian. It is, however, not clear what is the legal basis for such an action.

When applying for a temporary residence permit, the applicant has to substantiate that there are circumstances justifying his/her residence in Armenia, studies can constitute such a circumstance. Furthermore, the Government Decree on approving list of document accompanying application for receiving temporary or permanent residence status (extending residence status), procedure for reviewing application, description and formats of temporary residence card, permanent residence card and Republic of Armenia special passport stipulates that the applicant must submit documents justifying the need for receiving a residence status (extending the term of the residency status). According to the interviewees, students have to prove that they are enrolled in a university, in Armenia. This is usually provided in form of a letter from the universities. Additionally, the National State Security Service (NSS) carries out a security check and verifies the validity of the documents.

413 Article 11-12 of the Researchers Directive.
414 Article 13 of the Researchers Directive.
418 Article 5 of the Law on Foreigners.
419 Article 10 para. 1 lit. a of the Law on Foreigners.
420 Article 15 para. 1 lit. a of the Law on Foreigners.
421 The authorities experience showed that Iranian students rather commuted from Iran to save the costs of a residence permit.
422 Government Of The Republic Of Armenia Decree No. 134-N of February 7, 2008, On approving list of documents accompanying application for receiving temporary or permanent residency status (extending the term of the residency status), procedure for reviewing application, description and formats of temporary residence card, permanent residence card and RA special passport.
423 Interview with the Police of the Republic of Armenia, Directorate for Passports and Visas, September 2012.
A residence permit for students, as any other residence permit, can be refused, if (a) a person has been expelled from Armenia or was previously deprived of residence status within three years, (b) he or she has been convicted in Armenia of committing a grave or particularly grave crime (c) there is reliable data that he or she is engaged in an activity, participates, organises or is a member of an organisation, that aims to harm the state security, overthrow the constitutional order, weaken the defensive capacity; carry out terrorist activities; illegally transport across the border arms, ammunition, explosives, radioactive substances, narcotic substances, psychotropic substances; or carry out human trafficking and/or illegal border crossings; (d) he or she suffers from a certain disease specified; (e) for reasons of state security or public order; (f) if the person has submitted false information, or has failed to submit necessary documents, or there exist data that his/her stay in the RA pursues an objective other than the declared one; (g) he or she has been subjected to administrative liability for violating the Law on foreigners and has not performed the responsibility imposed on him or her by the administrative act within one year.424

The residence permits have to be applied for in Armenia at the Residence and Visa and Department of the Police, which is also responsible for the granting of the permit. The decision on the application has to be taken within 30 days. Appeals against a refusal of a negative decision are permitted.425

The temporary residence permit, as every residence permit, is issued for one year with the possibility of extension for another year. An application for extension has to be submitted at least 30 days prior to the expiry of the term of the status. For students a shorter term may be established, however the government has not made use of this authorisation so far.426

Withdrawal

The general rules for withdrawal described in chapter 4.2 are relevant. However, in the context, of students the following grounds appear to be relevant: if it has been found out that the application was based on false information or there exist data that the objective of the person’s stay is other than the declared one if the person constitutes a threat to state security or public order. An application of a foreigner on extension of a residence status may be refused on the same grounds.427

Pupils, volunteers and unremunerated trainees

The Law on Foreigners does not envisage specific provisions for these groups.

6.2.2 Researchers

The Law on Foreigners does not provide specific conditions for the entry of researchers, however if they are employed by university or other research institution, the same provisions will apply as for other foreign employees: they have to first obtain a visitor entry visa and then they can apply for a temporary residence permit for the purpose of work.

6.3 Gap Analysis

6.3.1 Gap analysis between the Armenian legislation and implementation in practice

The Armenian Law on Foreigners provides a very limited regulatory framework concerning the admission of students to Armenia. In particular, the Law does not set out specific entry requirements for students and (prior) admission to the university is not required. In contrary to that the interviews revealed that admission to the university is a precondition to residence in Armenia. Furthermore, the legal base for the lowering of the administrative fees for specific countries of origin is unclear.

424 Article 19 of the Law on Foreigners.
425 Article 18 para. 5 and 20 para.1 of the Law on Foreigners.
426 Article 15 para. 2 of the Law on Foreigners.
427 Article 21 para. 1 of the Law on Foreigners.
6.3.2 Gap analysis between the national legislation and the EU acquis

*Entry conditions for students*

The general admission conditions for a temporary residence permit in Armenia is comparable with the general conditions according to the Directive: both require a valid passport, no threat to public policy, public security and payment of the fee for processing the application. The public health requirement of the Directive is comparable with the diseases that constitute a ground for refusal in Article 19 lit.d of the Law on Foreigners. However, the definition of public policy and public security of Directive appears to be narrower as the grounds for refusal listed in Article 19 of the Law on Foreigner. While conviction for a grave crime or particularly grave crime, engagement in terrorist and other activities raised in lit.c, serious threat to state security and public order are in line with the Directive, previous expulsion and administrative liability appear to be beyond the scope of the Directive. Moreover, in contrary to the Directive, the Armenian legislation does not require a health insurance when applying for a permit only a medical proof of the health status, which is however rather relevant to examine that the applicant does not have one of the diseases according to Article 19.Beyond that, the Armenian Law on Foreigners provides very limited regulatory framework for the admission and residence of students in Armenia and does not provide for specific admission conditions for students. Article 15 of the Law on Foreigners stipulates merely that the foreigner must substantiate the circumstances of his/her residence. In particular, it is not clearly defined what documents are required and how the substantiation is carried out, compared to the clear obligation in Article 7 of the Directive that the third-country national is accepted by the establishment of higher education. Furthermore, the Armenian legislation does not require the proof of sufficient resources. Similarly as in most Member States, in Armenia there are no specific conditions provided regarding language knowledge of students. In many Member States this requirement is implicitly proven by the fact that the applicant has been accepted by the university.

*Period of validity*

Regarding the period of validity of the permit Article 15 corresponds the requirement of the Directive.

*Access to labour market*

The Directive obliges Member State to grant access to the labour market of at least 10 hours per week. Due to the lack of secondary legislation foreign students, as any foreign national, have free access to the labour market.

*Withdrawal and non-renewal*

The Directive provides wider room for the withdrawal and non-renewal of a residence permit as the respective provision in the Armenian legislation, such as the continuous fulfilment of the entry requirements (required travel document, suspension from the education institution, annulment of the training agreement, and lack of sufficient resources). In particularly, the progress and completion of studies is not sufficiently monitored in Armenia; it is thus unclear whether the students ever complete their study cycle in Armenia. Furthermore, the Directive provides that a residence permit can be withdrawn or the renewal can be refused if the student does not respect the limits on the access to economic activities. Due to the lack of secondary legislation there are currently no limits on the access to economic activities for foreign students in Armenia.

Grounds for public security and policy as well as fraudulent acquisition of the residence permit constitute in both legislative frameworks a ground for withdrawal and non-renewal.

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Procedural guarantees
The Directive allows a wide margin of discretion regarding the timeframe, the time limit in Member State vary greatly between seven working days and six months. Thus the 30 days envisaged in the Armenia legislation are in line with requirement of the Directive. Regarding the notification requirement in case of missing documents and a negative decision in the Directive, the Armenian legislation does not mandate the authorities to notify the applicants. The Directive allows the payment of the fees for the purpose of funding the processing of the application. However, they must not make the Directive ineffective.

Admission and residence of pupils, volunteers and unremunerated trainees
The Armenian legislation does not provide for the entry and residence of the above mentioned groups.

Admission and residence for the purpose of scientific research
The Armenian legislation does not provide for the entry and residence of the above mentioned groups.

6.4 Recommendations

Admission of students
- It is strongly recommended to regulate the criteria and conditions for the admission of students explicitly. In accordance with the EU acquis following requirements should be precondition for the admission of students: proof of sufficient resources, acceptance of the foreign national at higher education institution, parental authorisation for minors, health insurance and eventually payment of the application fee. Monthly resources could be determined in accordance with the minimum subsistence or wage levels as well as the level of scholarships granted to national students.
- It is recommended to review and to limit the grounds for refusal of an application for a residence permit in accordance with public security, public order and public health requirements of the Students Directive.
- It is recommended to review the level of the application fee for the residence permit. The level of the application fee should not exceed the costs occur when processing an application.
- It is suggested to provide information, preferably via internet, on the admission conditions and procedures, publish in particularly the amount of the necessary, monthly subsistence, study and travel costs once introduced.

Withdrawal and non-renewal of the student residence permit
It is recommended to review the criteria for the non-renewal of a residence permit, in particular, implement legislative measures to monitor the progress and completion of studies.

Access to the labour market for students
It is recommended to regulate the access to the labour market for students in accordance with Article 17 of the Directive and to implement measures to monitor the amount of hours students work.

Admission of pupils, trainees and volunteers
The provision of the Students Directive concerning school pupils, unpaid trainees and volunteers are not obligatory, however, as the Armenian legislation does not provide for the admission and residence of these groups, it is recommended to implement a legislative framework in accordance with the provision Students Directive as described above.
Admission of researchers

- It is recommended to implement a legislative framework in accordance with Researchers Directive to facilitate the admission and residence of foreign national researchers. A specific residence permit could be created for this purpose.

- Once the legal framework is implemented, it is recommended to provide up-to-date information, in particular via the Internet, on the research organisations and on the conditions and procedures for entry and residence on its territory for the purposes of carrying out research.
7. FAMILY AND MARRIAGE

7.1. EU acquis

7.1.1 The EU Fundamental Rights Charter and the European Convention of Human Rights
The right to family life and the right to marry and found a family are fundamental human rights protected in the EU Fundamental Rights Charter (FRC) and the European Convention on Human Rights (ECHR). The right to found a family and to protect family unity is considered as a general principle of EU law, also the Court of Justice of the European Union has considered Article 8 ECHT as European law. Regarding third-country nationals these rights can be relevant in different ways: firstly, whether the Member States allow to found a family and marry for third-country nationals in the respective Member States, secondly, if and under what conditions family reunification with family members outside of the EU is permitted and thirdly, whether enforcement measures in the legislation concerning foreigners such as expulsion, deportation and residence or a return ban can violate these rights. (Grabenwarter/Pabel 2012: 278).

Article 9 Fundamental Rights Charter guarantees “The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.” Article 12 “The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.” is the corresponding provision in the ECHR. These provisions precede the right to private and family right according to Article 8 ECHR and 7 FRC, as they protect the formation of a marriage and family. The scope of application of Article 9 FRC is broader as that of the ECHR as it can also protect same-sex marriages depending on the tradition of the Member States (Schwarze 2012: 2635), while the ECHR explicitly mentions men and women. Both documents, however, protect the rights of transsexuals. (Schwarze 2012: 2635). The right to marry includes both under Article 9 FRC and Article 12 ECHR the positive right to marry and also the negative right not to marry, but not the right to divorce. (Schwarze 2012: 2636 and Grabenwarter/Pabel 2012: 274f) The second part of both articles, the right to found a family encompasses primarily the right to have children including also through adoption, however, it does not provide a right to adoption as such (Grabenwarter/Pabel 2012: 274f). According to Article 7 FRC family is not limited to the union of parents and children, but it can also entail other close relatives and covers also unmarried same-sex and heterosexual couples as far as children are involved (Schwarze 2012: 2636). According to Grabenwarter/Pabel it is questionable whether Article 12 ECHR also protects unmarried couples. (2012:275f).

An expulsion, a residence or an entry ban can constitute a violation of Article 12 ECHR, however, the person concerned has to prove that he or she had concrete plans for marriage and the marriage cannot be celebrated in another country. Article 12 ECHR as well as Article 9 FRC do not prohibit measures to combat and prevent marriages of conveniences, however, these measures cannot limit the right to choose the partner freely. In particular, the European Court of Human Rights (ECtHR) found that a fee imposed on foreign nationals subject to immigration regulation before marriage can violate Article 12 ECHR as it can be used to prevent a marriage, especially if the fee is so high, that an asylum seeker in need cannot afford it. (Grabenwarter/Pabel 2012: 278f)

\footnote{Similar provisions can be found in the Universal Declaration of Human Rights (Article 16) and the International Covenant on Civil and Political Rights (Article 23 para. 2) the International Covenant on Economic, Social and Cultural Rights (Article 10 (1) to which Armenia is also State Party.}

\footnote{EComMR, 12.7.1976.}
Article 8 ECHR and Article 7 FRC protect the right to private and family life. The scope of the provisions is almost the same.\textsuperscript{431} Although the Convention and the Charter protects both citizens of the respective Member State and third-country nationals ("... everyone within their jurisdiction") and prohibit discrimination based on nationality\textsuperscript{432} and Article 8 does create in certain cases the right to entry and the right to family reunification, but there is no general obligation for the Member States to respect the choice of a family or couple to live in a certain country they are not nationals of. In this context the ECtHR refers to the sovereignty of the state to regulate the immigration of foreign nationals within its international obligations. According to the case law of the ECtHR the scope the state sovereignty depends to a large extent on the individual case. Following criteria were identified by the Court when balancing the right to family life against the state sovereignty: the possibility to realise private and family in life in another country, especially in the country of origin, if the person has decided freely and voluntarily to live in another country separately from other family members. Generally, the Court recognises the legitimate interest of the State to require the proof of adequate living conditions, sufficient income, etc. (Grabenwarter/Pabel 2012: 268ff)

The expulsion of a foreign national can also violate the right to private life regardless the existence of a family and children in the host country, in particular due to the duration of stay and social, cultural, professional connections.

When balancing the interest of the person to stay against the interest of the state to expel criminal offender, the ECtHR takes following criteria into account: criminal record, nature and severity of the offence, duration of residence, citizenship of the various persons concerned, family situation (duration of a marriage, existence of family life), knowledge of the partner of the criminal activities of the person concerned, existence of and interest of the children, possible difficulties in the country of origin as well as the social, cultural, and family connections to the expelling state. The ECtHR provides a stronger protection for second-generation immigrants who were born in the host country, even in case of a criminal offence. In particular, the Court takes the links to the country of residence and to the country of origin into account, language knowledge, family relations, integration perspectives in the country of origin into account when evaluating the proportionality of the measure.

7.1.2 Family reunification

Beyond these human rights obligation resulting from the ECHR and FRC, the EU acquis provides for the harmonisation of the right to family reunification in the EU: The competencies of the EU in the area of immigration and family rights are limited to family reunification of third-country nationals.\textsuperscript{433} The regulation of family reunification with a sponsor who is national of a Member State belongs to national competence.\textsuperscript{434} (Graßhof in Schwarze 2012: 1032) The Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification\textsuperscript{435} determines the conditions under which family reunification is granted to third-country national family members of third-country nationals, as well as the rights of the family members concerned.\textsuperscript{436}

\textsuperscript{431} The difference between the scope of two articles is only that the FRC uses the term communication instead of correspondence and that the FRC establishes specifically the right to the protection of personal data (Article 8 FRC).
\textsuperscript{432} Article 1 and 14 of the ECHR.
\textsuperscript{433} Article 79 para. 2 lit. a of the Lisbon Treaty
\textsuperscript{434} Please note that the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States guarantees the right to family reunification of EU nationals with third-country nationals if the EU national has made use of his/her right to freedom of movement. However, as Armenian citizens do not enjoy the right to freedom of movement according to the Directive, these provisions are not relevant in the context of the study at hand.
\textsuperscript{436} Article 1 of the Family Reunification Directive.
**Scope**

The Directive applies to sponsors who hold a residence permit for a period of validity of one year or more who has reasonable prospects of obtaining a right of permanent residence. ⁴³⁷ However, also the Family Reunification Directive contains a more favourable conditions clause. ⁴³⁸ Sponsors according to the above definition can bring their spouse, under-age children and the children of their spouse (including adopted children) to the EU Member State in which they are residing. Additionally, the children must be unmarried. In case of children over the age of 12 years and who arrive independently of the rest of the family, Members States may examine if the child meets the integration conditions before entry. ⁴³⁹

EU Members States may, moreover, also authorise reunification with an unmarried (in a duly attested stable long-term relationship) or registered partner, ⁴⁴⁰ adult dependent children, or first-degree relatives of the sponsor or his/her spouse, where they are dependent on them, and the adult unmarried children of the sponsor or his/her spouse, where they are objectively unable to provide for their own needs on account of their state of health. ⁴⁴¹ In case of polygamous marriages Member States must not authorise the family reunification of more than one spouse. Additionally, Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her. ⁴⁴²

**Application procedure and examination of the application**

It is the competence of the Member States to determine whether the application is to be submitted either by the sponsor or by the family member or members. ⁴⁴³ The applicant has to submit documentary evidence of the family relationship of the fulfilment of the requirement for family reunification and certified copies of family member(s)' travel documents. If appropriate, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary. When examining an application concerning the unmarried partner of the sponsor, Member States must consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, and registration of the partnership and any other reliable means of proof. ⁴⁴⁴ The application is to be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides, however, Member States may derogate from this and applications may be accepted also when the family members are already in the territory. ⁴⁴⁵

The right to family reunification (and the renewal and non-withdrawal of the permit) is subject to respect for public order, public security and public health. ⁴⁴⁶ In case of renewal and withdrawal Member States must consider, however, the severity or type of offence, or the dangers that are emanating from such person, the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties.

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⁴³⁷ Article 3 para. 1 of the Family Reunification Directive. Asylum seekers, persons with temporary or national protection statuses or those who are applying for such statuses as well as family members of EU citizens are not covered by the Directive. (Article 3 para. 2 of the Family Reunification Directive).
⁴³⁸ Article 3 para. 4 and 3 para. 5 of the Family Reunification Directive.
⁴³⁹ Article 4 para. 1 of the Family Reunification Directive.
⁴⁴⁰ Article 4 para. 3 of the Family Reunification Directive.
⁴⁴¹ Article 4 para. 2 of the Family Reunification Directive.
⁴⁴² Article 4 para. 5 of the Family Reunification Directive.
⁴⁴³ Article 5 para. 1 of the Family Reunification Directive.
⁴⁴⁴ Article 5 para. 2 of the Family Reunification Directive.
⁴⁴⁵ Article 5 para. 3 of the Family Reunification Directive.
⁴⁴⁶ Article 6 para. 1 of the Family Reunification Directive.
with his/her country of origin. Member States may not remove a person on the sole ground of illness or disability suffered after the issue of the residence permit.

Beyond that, EU States may also choose to impose other conditions: adequate accommodation, sufficient resources (without recourse to the social assistance system) and health insurance, integration measures and may impose a qualifying period of no more than two years. Family reunification can also be refused for spouses who are under 21 years of age.

Article 16 provides for reasons for rejection of an application for entry and residence, for withdrawal, or refusal to renew a family member’s residence permit. It is suggested to read the Article 16 together with Article 6 of the Directive which provides the legal base for the rejection of an application, withdrawal or refusal of the renewal of a permit on ground of public policy, security and health (Hailbronner 2010: 271).

Member States may reject or withdraw a residence permit, where the conditions of the Directive are not or are no longer satisfied. In case of renewal of a residence permit, when the condition of sufficient resources is not fulfilled any longer, Member States must consider also the contribution of family members to the household income. Hailbronner (2010: 272) argue that this also applies to cases of withdrawal although this is not explicitly mentioned in the Directive. No real family relations, such as common household, regular communication and visits, care, financial support, etc. (Hailbronner 2010: 273), relationship with another person – if the sponsor or the unmarried partner is married or lives in a stable relationship with another person also constitute grounds for rejection, withdrawal or the refusal to renew a residence permit.

Moreover, if the application was fraudulent, or where the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State (relationships and marriages of convenience), the residence permit may be withdrawn or the application (for the renewal) of the residence permit may be rejected. For marriages and other relationships of convenience also the Council Resolution on measures to combat marriages of convenience from December 1997 becomes relevant. Finally, Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor’s residence comes to an end and the family member does not yet enjoy an autonomous right of residence. Article 16 para. 4 entitles Member States to conduct specific checks and inspections where there is reason to suspect that there is fraud, marriage, partnership or adoption of convenience. Checks may also be conducted in case of renewal of the permit.

When rejecting an application, withdrawing or refusing to renew a residence permit or deciding to order the removal of the sponsor or members of his/her family member Member States must consider – according to the nature and solidity of the person’s family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin.

According to Hailbronner this provision aims to ensure compliance with the principles of Article 8 ECHR and in the Charter of Fundamental Rights of the European Union concerning family and private life. (2010: 277).

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447 Article 6 para. 2 of the Family Reunification Directive.
448 Article 6 para. 3 of the Family Reunification Directive.
449 Article 7 of the Family Reunification Directive. With regard to refugees and family members of refugees integration measures may only be applied once the persons concerned have been granted family reunification.
450 Article 8 of the Family Reunification Directive.
451 Article 4 para. 5 of the Family Reunification Directive.
452 Article 16 para. 1 of the Family Reunification Directive.
453 Article 16 para. 2 of the Family Reunification Directive.
454 Article 17 of the Family Reunification Directive.
Procedural guarantees
The Member State are obliged to give written notification of the decision as soon as possible and no later than nine months from the date on which the application was lodged, except for in exceptional circumstances. For negative decisions reasons must be given. Additionally, the Directive requires that when examining an application, the Member States shall have due regard to the best interests of minor children.455

Article 18 guarantees the right legal remedy against refusal of an application, renewal of a residence permit, withdrawal or order of removal of the territory of a Member State. Hailbronner argue the right to appeal also applies to rights not explicitly mentioned in Article 18, such as access to labour market. (2010: 281).

Rights of family members
Once the application is positively decided, Member States must authorise and facilitate the entry of the family member or members, and the Member State must grant the family members a first renewable residence permit of at least one year’s duration. However, the duration of the residence permits granted to the family member(s) must not go beyond the date of expiry of the residence permit held by the sponsor.456 Regarding the rights of the family members Article 14 grants equal treatment and stipulates that they must be entitled, in the same way as the sponsor, access to education, employment, and training.

Exceptions can be made: Member States may decide on conditions under which family members shall exercise an employed or self-employed activity and may examine the situation of their labour market, to be applied in the first 12 months; and Member States may restrict access to employment for first-degree relatives in the direct ascending line and for adult unmarried children.457 Generally, residence permits of family members are dependent on that of the sponsor (see Hailbronner 2010: 265). After five years of residence, the spouse or partner and a child who has reached majority must be entitled, upon application, if required, to an autonomous residence permit.458 It may be limited, however, in cases of breakdown of the family relationship to spouse or unmarried partner. At the same time, optionally, Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line.459 Moreover, in the event of widowhood, divorce, separation, or death of first-degree relatives in direct ascending or descending line, an autonomous residence permit may be issued before the five years are up. 460 Finally, in particularly difficult circumstances461 Member States are obliged to grant autonomous residence permit. The condition and duration of the residence permit is subject to national law.462

Family reunification
In contrast to many other Directives in the field of immigration the family reunification does not exclude refugees from the scope of the Directive, it contains rather specific conditions for them and provides derogation from some the provisions of the Directive. The aim is to take into account the particular situation of refugees. In particular, the Member States must allow family reunification of minor children of refugees irrespective of a condition of integration. Optionally, Member States may

455 Article 5 para. 4 of the Family Reunification Directive.
456 Article 13 of the Family Reunification Directive.
457 Article 14 para. 2 of the Family Reunification Directive.
458 Article 15 para. 1 of the Family Reunification Directive.
459 Article 15 para. 1 of the Family Reunification Directive.
460 Article 15 para. 3 of the Family Reunification Directive.
461 The term “particularly difficult circumstance” is not defined by the Directive, Hailbronner suggests that a breakdown of the family relationship alone does not justify such circumstances. According to the Explanatory Memorandum of the original proposal, it aims to protect e.g. women who have suffered domestic violence.
462 Article 15 para. 4 of the Family Reunification Directive.
authorize family reunification of any other family member (not covered by Article 4 of the Directive), if the family member is dependent on the refugee. For unaccompanied minor refugees the Directive sets out that Member States must grant family reunification for parents regardless whether they are dependent on the sponsor or the family support in the country of origin. Optionally, the Directive allows family reunification for legal guardians or for any other member of the family, where the minor has no relative in the direct ascending line or such relatives cannot be traced. Article 11 sets further procedural derogations: where a refugee cannot provide documentary evidence Member States must take into account all evidence of the family relationships of a refugees and a decision rejecting an application may not be based solely on the fact that documentary evidence is lacking. Member States often conduct interviews, carry out investigations abroad, provide DNA test. (Hailbronner2010: 254). Article 12 prohibits Member States to require family members who are part of the nuclear family to provide evidence that the refugee fulfills the requirements such as accommodation, health insurance, stable and regular resource (according to Article 7). Two exception limit, however, the application of this rule: first, if family reunification is possible in a third-country with which the sponsor and his/her family has a special links Member States may require the fulfilment of the additional conditions mentioned above. Second, Member States may require that the application for family reunification is not submitted within the first three months after the granting of the refugee status.

Moreover, according to Article 12 Member States are not allowed to apply a two-year qualifying period for family reunification according to Article 8.

7.2 Armenian legal framework
Foreign nationals enjoy equal treatment regarding the right to marry, dissolve a marriage and to form a family with Armenia nationals. Limitations are only imposed on the right of foreigners to adoption: adoption by foreign nationals and stateless persons is allowed only in cases if it is impossible to give these children for care to the families of Armenian citizens permanently living in the RA territory or adopt children by their relatives.

Family reunification of foreign nationals is regulated in the Law on Foreigners, while family reunification of refugees and persons granted asylum is regulated in the Law on Asylum and Refugees. In this section family reunification of Armenian nationals with foreign nationals and foreign nationals with foreign nationals is discussed. The legislation applicable to refugees and persons granted asylum is analysed in Section 6.

Scope
Family reunification is granted to spouses of Armenian citizen and of lawfully residing foreign nationals. Precisely, Article 15 para. 1 lit c) stipulates that a marriage with an Armenian citizen or a lawfully residing foreign national constitute a circumstance that justifies the granting of a temporary residence permit.

Furthermore, close relatives of Armenian citizens and of foreigners holding permanent residence status in Armenia can obtain a temporary residence permit. Parents, brothers, sisters, spouses, children, grandmothers, grandfathers, grandchildren are defined as close relatives. Thus spouses enjoy a preferential treatment compared to other relatives as family reunification is allowed with a

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463 According to Hailbronner – referring to theECtHR case law – dependency may take different forms: financial, psychological, physical depending on the family member concerned. (Hailbronner 2010: 253).
464 Article 10 para. 3 of the Family Reunification Directive.
465 Article 141 ff. of the Family Code.
466 Article 112 para. 4 of the Family Code.
467 Article 15 para. 1 lit. c of the Law on Foreigners.
468 Article 15 para. 1 lit. d of the Law on Foreigners.
469 Idem.
sponsor who is legally staying in Armenia and is not limited to persons with a permanent resident status.

The temporary residence status is issued for one year with the possibility of extension for another year. An application for extension has to be submitted at least 30 days prior to the expiry of the term of the status. A temporary residence permit which was issued to spouses a marriage with an Armenian national or with a foreign national lawfully residing in Armenia (Article 15 para 1 lit c) can be extended even in case of dissolving or invalidation of that marriage, if he or she has been married and resided in Armenia for more than one year.

Family members (close relatives as described above) are granted a permanent residence status, if the foreigner, (a) proves the existence of close relatives (parent, spouse, brother, sister, child, grandmother, grandfather, grandchild) in Armenia and (b) has an accommodation and means of subsistence in the Republic of Armenia and (c) has resided legally in Armenia for at least three years prior to filing an application for obtaining permanent residence status. Sufficient means of subsistence are available, if the foreigner can cover his/her subsistence expenses and the subsistence expenses of his/her family members under his/her care, or has a family member or members who are able and have undertaken to provide means for his/her living. A residence permit can be refused, if (a) a person has been expelled from Armenia or was previously deprived of residence status within three years, (b) he or she has been convicted in Armenia of committing a grave or particularly grave crime, (c) there is reliable data that he or she is engaged in an activity, participates, organises or is a member of an organisation, that aims to harm the state security, overthrow the constitutional order, weaken the defensive capacity; carry out terrorist activities; illegally transport across the border arms, ammunition, explosives, radioactive substances, narcotic substances, psychotropic substances; or carry out human trafficking and/or illegal border crossings; (d) he or she suffers from a certain disease specified; (e) for reasons of state security or public order; (f) if the person has submitted false information, or has failed to submit necessary documents, or there exist data that his/her stay in the Republic of Armenia pursues an objective other than the declared one; (g) he or she has been subjected to administrative liability for violating the Law on Foreigners and has not performed the responsibility imposed on him or her by the administrative act within one year.

Procedures

As all other foreigners who are entitled to apply for a temporary residence permit in Armenia, family members need first a visa to enter and to file an application for a residence permit in Armenia. According to Article 10 para. 1 lit a person seeking family reunification in the above described cases can apply for visitor entry visa. Close relatives are in privileged position compared to other visa applicants and holders as their visa (or the extension of their visa) cannot be refused or revoked and they cannot be banned from entry due to the conviction for a grave or particularly grave crime provided for by the Criminal Code of the Republic of Armenia. The residence permits have to be applied for in Armenia at the Residence and Visa and Department of the Police, which is also responsible for the granting of the permit. The permanent residence status is granted for five years with a possibility of extension for the same term each time. An application for extension of a

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470 Article 15 para. 2 of the Law on Foreigners.
471 Article 15 para. 3 of the Law on Foreigners.
472 Article 16 para. 1 of the Law on Foreigners.
473 Article 19 of the Law on Foreigners.
474 Article 8 of the Law on Foreigners.
permanent residence card must be filed at least 30 days prior to the expiry of the previous permit. The decision on the application has to be taken within 30 days. Appeals against a refusal of a negative decision are permitted.

Withdrawal

A residence permit can be withdrawn (a) if it has been found out that the application was based on false information or there exist data that the objective of the person’s stay is other than the declared one; (b) the marriage which served as a basis for granting residence status to the foreigner, has been dissolved or invalidated within one year; (c) if the person constitutes a threat to state security or public order. A permanent residence permit can be further withdrawn, if the foreigner has been absent from the RA for more than six months or has permanently departed without informing the responsible police authority. An application of a foreigner on extension of a residence status may be refused on the same grounds.

Person who have obtained their residence permit based on a marriage, have an independent residence permit after one year, the residence permit can be extended after one year also if the marriage was dissolved or divorced.

Access to the labour market

Both spouses in accordance with Article 15 para. 1 lit.c and close relatives according to Article 15 para. 1 lit.d have free access to the labour market and do not require a work permit.

Family reunification of refugees

Family reunification of refugees is regulated in the Law on Refugees and Asylum, according to which family reunification is granted to spouse, minor children and to any other person under the lawful care of a refugee, if they reside together with the refugee in the territory and do not possess any other citizenship providing effective protection and additionally other relative or in-laws of a refugee, if they are dependent on the refugee and do not possess any other citizenship. In case of a minor recognized as a refugee family reunification is granted with the parents, minor or disabled siblings, if they reside together with the minor and if they do not possess any other citizenship providing effective protection.

Family members are entitled to refugee status and asylum in Armenia, even if they are outside the country. The application has to be filed in such cases at the diplomatic representations and consular department of the Republic of Armenia in the country of origin or in the closest country where a representation is established. The information and the existence of the family relations are verified by the State Migration Service in co-operation with the Ministry of Foreign Affairs.

In case of a positive decision the relevant diplomatic representation and consular department is obliged to issue the family members granted asylum with valid visa for entering the Republic of Armenia. Upon arrival the SMS is obliged to issue the family members a Convention Travel Document.

In case of a negative decision the diplomatic representation or the consular department must inform the asylum applicant. The sponsor is entitled to appeal the negative decision.

475 Article 16 of the Law on Foreigners.
476 Article 18 para. 5 and 20 para.1 of the Law on Foreigners.
477 Article 21 para. 1 of the Law on Foreigners.
478 Article 15 para. 3 and 21 para.1 of the Law on Foreigners.
479 Article 23 lit. and b of the Law on Foreigners.
480 Article 7 para. 1-2 of the Law on Refugees and Asylum.
7.3 Gap Analysis

7.3.1 Gap analysis between the Armenian legislation and implementation in practice

There is only limited information available on the implementation of family reunification. The interviews revealed that in case of the refusal of an application or the renewal or withdrawal of a residence permit no proportionality test is carried out according to Article 8 ECHR, even though it is directly applicable in Armenia.

7.3.2 Gap analysis between the national legislation and the EU acquis

7.3.2.1 European Convention of Human Right and the EU Fundamental Rights Charter

Armenia is a State Party of the ECHR and the ECHR is directly applicable in Armenia, also without secondary legislation. In terms of Article 12 ECHR the Family Code provides equal treatment to foreign nationals concerning conclusion marriage and dissolution (including cancellation of a marriage and divorce). The preferential treatment of Armenian nationals in case of adoption as set out in Article 112 para. 4 Family Code appears, however, problematic in light of the equal treatment obligations provided in Article 14 ECHR. Article 14 stipulates that the enjoyment of the rights and freedoms set forth in the Convention must be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. According to the jurisdiction of the ECtHR adoption can fall under the application of Article 14 in connection with Article 8 ECHR, if the national law provides for the right to adoption, as also in the case of Armenia. Regarding differential based on citizenship, the case law of the ECtHR established that it is only allowed in exceptional cases and must be based on particularly profound arguments. The Family Code does not provide for an argumentation for the preferential treatment of Armenian citizens, best interest of a child could maybe justify a differential treatment in singular cases; however a general discrimination does not appear justifiable.

In view of Article 8 ECHR, the absence of a proportionality test to be carried out by the authorities before the refusal of an application for or the renewal or withdrawal of a residence permit appears to be problematic. The Law on Foreigners stipulates only regarding visa procedures that the visa (or the extension of it) cannot be refused or revoked for close relatives and they cannot be banned from entry due to the conviction for a grave or particularly grave crime provided for by the Criminal Code of the Republic of Armenia. Moreover, the expulsion of foreigners is prohibited in particular cases that encompass Article 8 ECHR, e.g. in case of a minor if the parents legally reside in Armenia, in case of a person who has a minor under his/her care, however there is no residence permit foreseen for such cases, thus it appears that in such cases the person remains irregularly in Armenia.

Even though the scope of application of Article 9 FRC is broader as that of the ECHR, as the FRC can also protect same-sex marriages. However, EU Member States have room for manoeuvre as the applicability of Article 9 to same-sex marriages depend on the tradition of the Member States.

7.3.2.2 Family reunification

Scope of family reunification

Compared to the EU acquis, the range of foreign nationals who are eligible as sponsors in accordance with the Law on Foreigners is very limited. The EU acquis mandates Member States to allow family

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481 ECtHR 22.01.2008, E.B./.FRA, Nr. 43546/02.
483 Article 8 of the Law on Foreigners.
484 Article 32 of the Law on Foreigners. For further information see Chapter 15.
reunification for sponsors who hold a residence permit for a period of validity of one year or more who has reasonable prospects of obtaining a right of permanent residence. According to the Armenian legislation family reunification is practically limited to person holding a permanent residence status that can be obtained after three years of residence. Notably, however, access to permanent residence permit is also quite limited.

Moreover, the Family Reunification Directive grants minor children of the spouse where the spouse has custody and the children are dependent on him/her the right to family reunification, while in the Armenian legislation these family members are not encompassed.

Application procedure and examination of the application
Generally, the application procedure appears to be in line with the Family Reunification Directive, as the procedures prescribed by the Directive allow a wide room for manoeuvre for the Member States. For instance, the Directive envisages application to be filed from the country of origin; however, the Member State may accept application also in the country as in case of Armenia.

The conditions of refusal, renewal as well as the withdrawal of the residence permit according to the Armenian legislation do not fully correspond to the requirements of the EU acquis: the public policy and public security requirement of the Directive is in particular narrower as the similar provision in Article 19 of the Law on Foreigners. The EU acquis requires in particular that the severity or type of offence, or the dangers that are emanating from such person, the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin are examined. At the same time, if the conditions for the issuance of the permit no longer prevail, e.g. the sponsor/family do not have sufficient resources, the residence permit may be withdrawn or the renewal may be refused in accordance with the Directive.

Rights of family members
It appears that the Armenia legislation provides for equal treatment of foreigners in the areas required by the Directive, in particular regarding employment family members have unlimited access to the labour market.

Autonomous residence permit
The Armenian legislation envisages an autonomous residence permit for spouses after one-year-residence and marriage; however it is at least unclear whether other family members can keep their residence status independently of that of the sponsor, which is foreseen in the Directive. Contrary to that the Directive envisages an independent residence permit after five years or residence. Moreover, the Directive requires the issuance of an independent residence permit in particularly difficult circumstances, i.e. in case of domestic violence, which is not provided in the Armenian legislation.

Family reunification of refugees
In general, the Armenian legislation corresponds the EU acquis, gaps could be identified in two areas: Firstly, the Armenian legislation does not allow family reunification for unaccompanied minor refugees parents, legal guardians or for any other member of the family, where the minor has no relative in the direct ascending line or such relatives cannot be traced. Secondly, in procedural terms, the Family Reunification Directive makes an exception for refugees - where a refugee cannot provide documentary evidence Member States must take into account all evidence of the family relationships of a refugees and a decision rejecting an application may not be based solely on the fact that documentary evidence is lacking – which is not contained in the Armenian legislation.

485 The latter two are only optional.
7.4 Recommendations

Adoption

It is recommended to provide equal right to adoption for foreign nationals in Armenia. Differential treatment of foreign nationals should be only allowed in case of the prevalence of serious grounds, e.g. in the best interest of a child.

Guarantees under Article 8 ECHR

It is recommended to establish legal and procedural guarantees that Article 8 ECHR is taken into account and a proportionality test is carried out, when refusing the application, the renewal or withdrawal of a residence permit. In particular the links to the country of origin, the possibility to realise private and family life in another country, especially in the country of origin, if the person has decided freely and voluntarily to live in another country separately from other family members should be taken into account; the situation of second generation migrant should be particularly taken into account.

Scope of family reunification

- Extend the scope of the right to family reunification to family members of sponsors who hold a residence permit for a period of validity of one year or more who has reasonable prospects of obtaining a right of permanent residence according to the Article 3 of the Directive.
- Grant the right to family reunification to minor children of the spouse where the spouse has custody and the children are dependent on him/her the right to family reunification.
- In term of family reunification of refugees, Armenia should grant unaccompanied minors family reunification with parents, legal guardians or for any other member of the family, where the minor has no relative in the direct ascending line or such relatives cannot be traced.
- Due to the limited EU competence in the area of family reunification, the Family Reunification Directive applies only to foreign national, nevertheless it is recommended to review also the rules concerning family reunification with Armenian sponsors and grant them equal rights.

Conditions of refusal, renewal as well as withdrawal of the residence permit

- It is recommended to review the conditions of refusal, renewal as well as withdrawal of the residence permit of Article 19 of the Law on Foreigners. In particular the severity or type of offence, or the dangers that are emanating from such person, the nature and solidity of the person’s family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin are examined before an application is refused or a permit is withdrawn.
- Examine the prevalence of the conditions for the issuance of a residence permit in case of the renewal of the permit.
- Regarding refugees, an exception should be made from certain procedural requirement. Where a refugee cannot provide documentary evidence Armenia should take into account all evidence of the family relationships of a refugees and a decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Autonomous residence permit

It is recommended that family members - at least spouses, unmarried partners and children who reached majority age - are provided with an autonomous residence permit after at least five years of residence. Moreover, it is recommended to issue an autonomous residence permit in particularly difficult circumstances e.g. in case of domestic violence or if the sponsor dies and the return to the country of origin would create particularly difficult living circumstances, etc.
8. MIGRANTS’ RIGHTS AND NON-DISCRIMINATION

8.1 EU acquis

*Migrants’ rights in general*

Human rights are a core value of the European Union. They are included in the founding treaty of the EU \(^{486}\) while the 2009 Treaty of Lisbon provides that the European Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), adopted in the framework of the Council of Europe \(^{487}\). Protocol 8 of the Lisbon Treaty further clarifies that the EU accession will not affect the competences of the EU, the powers of the EU institutions and the specific characteristics of the EU and EU law. \(^{488}\) The 2010 EU draft accession agreement to the ECHR provides that the EU accedes to the ECHR and to Protocols 1 and 6, which are the ones who are already binding for all EU Member States. \(^{489}\)

In addition, with the entry into force of the Lisbon Treaty in 2009, the EU Charter of Fundamental Rights became legally binding. The EU Charter is consistent with the ECHR and when the Charter contains rights that stem from the ECHR, their meaning and scope are the same. The Charter applies to the EU institutions, bodies and organs with due regard for the principle of subsidiarity and to the national authorities of the EU Member States when they are implementing EU law. It complements, but does not replace, the national constitutional systems and the protection guaranteed by the ECHR.

The EU Charter has an important role to play for the human rights of migrants and asylum seekers. The Charter contains a comprehensive list of fundamental rights, the majority of which are of particular importance for migrants in the territory of the EU. First, the prohibition of inhuman or degrading treatment is included in the EU Charter, a provision particularly relevant when performing border controls at the Schengen area external borders according to the common standards and procedures for controls and surveillance. The Schengen Borders Code provides as well that border guards must fully respect human dignity, should act in a proportionate manner and should not discriminate on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. \(^{490}\) The rules governing Frontex, the EU borders agency, were amended in 2011 \(^{491}\) in order to include mandatory trainings in fundamental rights for persons participating in border control. All incidents, including those in relation to fundamental rights, must be reported to the national authorities and followed up and Frontex needs to develop guidelines on how to treat TCNs who are being returned to their home country. Following the amending Regulation, the Frontex Management

\(^{486}\) Articles 2, 3, 6 and 21 of the Treaty on the European Union. Articles 208-211 and 218 of the Treaty on the functioning of the European Union.

\(^{487}\) According to Article 6 para. 2 of the consolidated version Treaty on the European Union (OJ 326, Volume 55, 12 October 2012) ‘The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties.’ The European Union’s accession to the European Convention on Human Rights is also foreseen by Article 59 of the ECHR as amended by the Protocol No. 14 to the ECHR, amending the control system of the ConventionCETS No. 194.

\(^{488}\) Protocol No. 8 relating to article 6 para. 2 of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms.


\(^{490}\) Article 6 of the Schengen Borders Code.

Board has already designated a Fundamental Rights Officer and adopted working methods for the Consultative Forum on Fundamental Rights. The Consultative Forum provides information and advice in all Frontex activities on the promotion and respect of fundamental rights. In case of violation of fundamental rights, the Member State hosting a Frontex operation must provide for the appropriate disciplinary or other measures and the operation must be suspended or terminated if the violation is of serious nature. Frontex has also developed a Code of Conduct, which contains specific provisions on the respect of fundamental rights and the right to international protection and behavioural standards for Frontex staff involved in joint operations.

Protection in the event of removal, expulsion or extradition is also included in the EU Charter. Collective expulsions are prohibited and no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. In its evaluation of the negotiation and conclusion of the EU readmission agreements, the European Commission recommended to further strengthen the protection of fundamental rights and the international protection of refugees during readmission procedures. The Commission is also in favour of suspending a readmission agreement in case of persistent human rights violation in a third country. The Commission also plans to establish a “post-return monitoring mechanism” by monitoring the wellbeing of persons after they have been readmitted to a third country.

The EU Charter guarantees the right to working conditions that respect health, safety and dignity for every worker while everyone residing and moving legally within the EU is entitled to social security benefits according to EU law and national laws and practices. The 2011 Single Permit Directive for third-country nationals granted equal treatment to legally residing third-country nationals in a number of fields, especially working conditions, social security, recognition of diplomas, tax benefits, education but also freedom of association.

Everyone has the right, according to the EU Charter, to access preventive health care and the right to benefit from medical treatment under the conditions established by national law and practices. The EU Agency for Fundamental Rights published a report in 2010 on the access to healthcare for irregular migrants in 10 EU Member States noting that irregular migrants are usually not seeking healthcare due to the risk of detention and deportation, even if it is legally available, therefore healthcare should not be linked with immigration control.

The 2011 Report on the Application of the EU Charter refers in particular to the union citizenship as additional to the citizenship of every national of an EU Member State. The Court of Justice of the EU had two cases in 2011 concerning the deprivation of the enjoyment of the substance of EU citizens’ rights. The Court held that irregular migrants having minor dependent children nationals of an EU Member State were entitled to the same rights as EU citizens.

493 Article 19 of the EU Charter.
495 Article 15 and 34 of the EU Charter.
496 Article 35 of the EU Charter.
497 EU Agency for Fundamental Rights Report, Migrants in an irregular situation: access to healthcare in 10 European Union Member States, October 2010.
499 European Court of Justice, C 34/09, Judgment of 8 March 2011, Gerardo Ruiz Zambrano v Office national de l’emploi (ONEm) and European Court of Justice, C-256/11, Judgment of 15 November 2011, Murat Dereci and other v Bundesministeriumfürinrienes.
Member State, must be allowed to reside and work there because the children’s rights as Union citizens would be deprived otherwise as they would be forced to leave the EU territory. However, this applies only when the EU citizen is forced to leave the territory of the EU as a whole (not just one Member State’s) and just the fact that the EU citizen wishes to reside together with a third-country national family member is not sufficient to accept that he/she will be forced to leave the Union territory if the family member is not granted a residence right.

In any case, the EU Member State should assess if a refusal to grant a residence right violates the right to protection of family life (Article 7 of the EU Charter or Article 8 of the ECHR if the EU law is not applicable)\(^{500}\).

**Non-discrimination**

Non-discrimination is a core principle of the protection of the rights of migrants, including irregular migrants. The principle of non-discrimination is recognized, *inter alia*, in the Universal Declaration of Human Rights,\(^{501}\) the International Convention on the Elimination of all forms of Racial Discrimination,\(^{502}\) the UN Covenant on Civil and Political Rights,\(^{503}\) the UN Covenant on Economic, Social and Cultural Rights,\(^{504}\) the European Charter of Fundamental Rights, the Treaty on the European Union and Treaty on the Functioning of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms,\(^{505}\) to which all EU Member States are also separate members.

In particular, Article 18 of the Treaty on the Functioning of the EU\(^{506}\) provides that “within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited” and Article 19 provides that the Council of Ministers “may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation “. The principle of non-discrimination is applicable to third-country nationals and to stateless people but it does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation.\(^{507}\) Under very specific circumstances, a difference of treatment may be justified when a characteristic related to racial or ethnic origin constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate.\(^{508}\)

The EU Charter prohibits any discrimination based on any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. It also prohibits discrimination on grounds of nationality, within the scope of application of the Treaties and without prejudice to any of their specific provisions. Discrimination based on racial or ethnic origin is a

\(^{500}\) See Chapter 7.

\(^{501}\) UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).


\(^{506}\) Former Article 12 on the founding Treaty – Treaty establishing the European Community.

\(^{507}\) Para. 13 of the Preamble and Article 3 para.2 of the Equal Treatment Irrespective of Racial or Ethnic Origin Directive. Also para. 12 of the Preamble and Art 3 para.2 of the Equal Treatment in Employment and Occupation Directive.

\(^{508}\) Article 4 of the Equal treatment irrespective of racial or ethnic origin Directive.
violation of the principle of equal treatment. In the area of employment and occupation, EU legislation prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation. The 2011 “European Agenda for the Integration of Third-Country Nationals”509 stresses the importance of guaranteeing the fundamental rights for migrants and the need for equal treatment. The reasons for protection when granting refugee status to Lesbian, Gay, Bi-sexual and Transgender (LGBT) persons was strengthened in the revised Qualification Directive510 where gender identity was for the first time mentioned as a protected ground. The 2011 Qualification Directive enhanced the rights granted to refugees and beneficiaries of subsidiary protection in the EU (Articles 18 and 19 of the EU Charter).

The EU acquis refers specifically to the burden of proof in cases of prima facie discrimination. In order for the principle of equal treatment to be applied effectively, the burden of proof must be shifted to the respondent when evidence of discrimination is brought. EU Member States do not need to apply the rules on the burden of proof to proceedings in which it is for the court or other competent body to investigate the facts of the case. The procedures referred to are those in which the plaintiff is not required to prove the facts, which it is for the court or competent body to investigate.511

The principle of equal treatment means that there should be no direct or indirect discrimination based on racial or ethnic origin. The EU acquis defines in particular direct and indirect discrimination. Direct discrimination, according to the EU acquis, is taking place when one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin, religion, belief, disability, age or sexual orientation.512 Indirect discrimination is occurring when an apparently neutral provision, criterion or practice would put persons of a particular ethnic or racial origin or having a particular religion or belief, disability, age or sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.513 Harassment is deemed to be discrimination when an unwanted conduct related to racial or ethnic origin, religion or belief, disability, age or sexual orientation takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. The provisions of the EU acquis cover the prohibition of discrimination in employment, training, education, social protection, social advantages and the supply of, and access to, goods and services, including housing.514

Armed forces are excluded from discrimination on grounds of disability and age.515 Apart from that, Member States may provide that a difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the

511Recital (21), (22) of the Equal Treatment Irrespective of Racial or Ethnic Origin Directive. Also Recital (31), (32) of the Equal Treatment in Employment and Occupation Directive.
512Article 2 of the Equal Treatment Irrespective of Racial or Ethnic Origin Directive and Article 2 of the Equal treatment in employment and occupation Directive.
514Article 3 para. 1 of the Equal Treatment Irrespective of Racial or Ethnic Origin Directive and Article 3 para.1 of the Equal Treatment in Employment and Occupation Directive.
515Article 3 para. 4 of the Equal Treatment in Employment and Occupation Directive.
particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.\textsuperscript{516} Another exception relates to different treatment on grounds of age, if within the context of national law, differences of treatment are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and it the means of achieving that aim are appropriate and necessary.\textsuperscript{517}

The EU Member States are required to incorporate into their national legal systems necessary measures to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.\textsuperscript{518} They are also obliged to ensure access to judicial and/or administrative redress for victims of discrimination, to include the concept of protection against victimization in their legal systems, to designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the ground of racial or ethnic origin and to ensure that the public is informed of all the provisions concerning equal treatment.\textsuperscript{519}

In order to combat racism and xenophobia the EU adopted in 2010 the Framework Decision on combating racism and xenophobia penalising public incitement to violence or hatred on the basis of race, colour, religion, descent or national or ethnic origin.\textsuperscript{520} The 2000 Directives on equal treatment irrespective of racial or ethnic origin\textsuperscript{521} and on equal treatment in employment and occupation\textsuperscript{522} also contribute to combating racism and xenophobia together with the 2010 Audio-visual Media Services Directive\textsuperscript{523}, which bans incitement to hatred in audio-visual media services and the promotion of discrimination in audio-visual commercial communications.

\textbf{8.2 Armenian legal framework}

Armenia has signed and ratified almost all international conventions relating to the protection of human rights,\textsuperscript{524} such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment\textsuperscript{525} and the Convention relating to the Status of Refugees.\textsuperscript{526} At a regional level, Armenia is also a member, amongst others, to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention on the Legal
Status of Migrant Workers and it has recently ratified the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Armenia has also ratified in 2004 Protocol No. 12 to the European Convention on Human Rights on the general prohibition of discrimination. As a member of the Commonwealth of Independent States (CIS), Armenia has ratified the Convention on Human Rights and Fundamental Freedoms, the Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers, the Convention on the Legal Status of Migrant Workers and Members of their Families of the CIS Member States and others. Armenia has also ratified many ILO Conventions, including the Migration for Employment Convention and the Migrant Workers’ Convention. Armenia has also ratified Protocol No.6 to the European Convention on Human Rights on the Elimination of the Death Penalty in times of peace in 2003 and the death penalty has been removed from the new Criminal Code.

However, Armenia has not ratified Protocol No.13 to the European Convention on Human Rights on the abolition of death penalty at all circumstances. Armenia has also not ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. According to the Armenian Constitution, ratified international and regional treaties become automatically part of Armenia’s domestic legislation and in case of conflict with a national law, treaties prevail. The Constitution of the Republic of Armenia also contains provisions guaranteeing the fundamental human rights and freedoms. Such provisions include the prohibition of discrimination on all grounds, such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances. The Armenian Strategy of State Regulation of Migration 2010-2014 and its Implementation Action Plan are based on a series of fundamental principles, including the principle that all migrants are equal in rights regardless of their

532 Commonwealth of Independent States, Convention on the Legal Status of Migrant Workers and Members of their Families of the CIS Member States, 2008.
533 See the full list of international and regional conventions related to migration and ratified by Armenia in Annex 3.
534 ILO, Migration for Employment Convention (Revised), C97, 1 July 1949.
535 ILO, Migrant Workers (Supplementary Provisions) Convention, C143, 24 June 1975.
537 The new Criminal Code was adopted on 18 April 2003 and entered into force on 1 August 2003.
gender, race, colour, ethnic and social origin, genetic peculiarities, language, religion, world outlook, political or other convictions, belonging to ethnic minorities, property status, birth, disability, age or another circumstance of personal and social nature.\(^{542}\)

The Constitution also guarantees\(^{543}\) the right to be equal before the law, right to life, right to personal liberty and security, access to justice, respect for privacy and family life, freedom of thought, conscience and religion.\(^{544}\) The prohibition of torture or other inhuman or degrading treatment or punishment and the prohibition of forced labour are also included in the Constitution as well as the right to freedom of movement and choice of residence in the territory of Armenia (for anyone who is legally residing in the territory), the right to leave the country and the right to return to Armenia for every Armenian citizen and everyone legally residing in Armenia. Regarding in particular the prohibition of torture, the definition included in the Criminal Code is “wilfully causing strong pain or bodily or mental sufferance to a person, if this did not cause consequences envisaged in Articles 112 and 113”.\(^{545}\) This definition is not in line with the Convention Against Torture Article 1 as it lacks, in particular, the requirement of intentional infliction of severe pain or suffering for a specific purpose, such as obtaining a confession, intimidation, or punishment.

There is also no responsibility of public officials who are not directly involved in the act of torture but who instigated or consented or acquiesced to such an act.\(^{546}\) An amendment to the Criminal Code is bringing the definition of torture in line the UN Convention, according to the response of the Republic of Armenia to the Committee Against Torture in May 2012\(^{547}\). The Government has drafted the new amendments to the Criminal Code and the Draft has been sent to the National Assembly, however it is not yet included in the agenda.

In 2003, Armenia adopted the Law on the Human Rights Defender\(^{548}\) (Ombudsman), which is recognized as the national preventive mechanisms according to the Optional Protocol of the Convention against Torture.\(^{549}\) The Human Rights Defender provides services to all persons, irrespective of their nationality, including legal and psychosocial support. In relation to migration, the Human Rights Defender’s work concerns primarily the protection of the human rights of refugees, as there are few cases of other migrants’ rights violations. It is worthwhile mentioning that the Human Rights Defender has placed posters in border crossing points, and a video clip in the airport, which contain information on the basic rights of border crossers, including migrants, refugees, asylum seekers, as well as on the hot line of the Defender, which functions twenty-four-hour.

The problem of housing for refugees in Armenia has been noted many times in the Human Rights Defender’s Annual Report. This issue concerns primarily refugees that came from Azerbaijan. Progress was noted in 2008 thanks to the monitoring, preventive activities and expert advice provided by the

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\(^{542}\)Chapter 2 of the Concept for the Policy of State Regulation of Migration of the Republic of Armenia, 2010.

\(^{543}\)See Galstyan K., Migration Management and HR, Yerevan, 2010 for a complete analysis of migrants’ human rights in Armenia.

\(^{544}\)The law on Freedom of Conscience and Religious Organizations is the main law regulating the activities of religious organisations while law on Alternative Service was adopted in 2003. In 2009, there were 66 registered religious organisations. See the Report of the Working Group on the Universal Periodic Review on Armenia, Human Rights Council, Fifteenth session, 6 July 2010.

\(^{545}\)Article 119 of the Criminal Code of the Republic of Armenia. The consequences envisaged in Articles 112 and 113 concern infliction of heavy or medium-gravity damage to health.

\(^{546}\)Report of the Human Rights Defender to the UN Committee Against Torture on Application of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2012.

\(^{547}\)Concluding Observations of the Committee Against Torture, Armenia, para. 10, 48th session, 6 July 2012, CAT/C/ARM/CO/3.


\(^{549}\)UN General Assembly, Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 9 January 2003, A/RES/57/199.
Ombudsman and NGOs. In 2011, however, the issue deteriorated as the relevant financial application of the Ministry of Territorial Administration was not approved. The living conditions of refugees from Azerbaijan continue to be difficult especially for those living in remote areas.

Armenia stated in its latest Universal Periodic Review (UPR), that it has taken all possible measures to ensure the protection of human rights of persons seeking asylum and recognized as refugees in Armenia. However, more than 400,000 refugees coming from Azerbaijan have not yet received housing, even though a housing programme, with the support of UNHCR, dealt with the most vulnerable category of refugees.

According to the Law on Foreigners, all foreigners have the rights, freedoms, and responsibilities equal to the citizens of the Republic of Armenia, unless otherwise provided for by the Constitution, law and the international treaties of the Republic of Armenia. Foreigners are obliged to respect the Constitution and law, other legal acts, national customs and traditions. Foreigners bear liability equal to the citizens of the Republic of Armenia, except for cases provided for by the international treaties.

Everyone in Armenia, including migrants, enjoys the right to education, irrespective of ethnicity, race, sex, language, religion and political or other views. Education is compulsory on the basic level and on secondary level it is free of charge at the public educational institutions. Regarding the right to health, it is important to note that the government proceeded in 2008 and 2009 to a reform in the area of reproductive health, and since then every woman in the country has the right to gain access to reproductive health services free of charge. Last, concerning the labour rights of foreigners in Armenia, the Partnership and Cooperation Agreement between the Republic of Armenia and the EU states that the Republic of Armenia shall ensure that the treatment accorded to the nationals of a Member State legally employed in the territory of the Republic of Armenia shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals. The Law on Foreigners further states that foreigners have the right to freely manage their working skills, choose the type of profession and activities, be engaged in economic activities not prohibited by the legislation of Armenia, by complying with the restrictions prescribed by the Armenian legislation. The principle of equal rights of the parties to employment relationships established by the Labour Code is guaranteed irrespective of their sex, race, national origin, language, citizenship and other circumstances not related to the employee’s practical skills.

Regarding removal and expulsion, the Law on Foreigners prohibits the expulsion of foreigners to a State where human rights are being violated, particularly if he/she is threatened with persecution on the grounds of racial, religious affiliation, social origin, citizenship, or political convictions, or if the foreigners concerned might be subjected to torture or cruel, inhuman or degrading treatment or punishment or to death penalty.
8.3 Gap analysis

8.3.1 Gap analysis within the Armenian legislation and implementation in practice

Article 6 of the Armenian Constitution

Article 6 of the Armenian Constitution states that international treaties come into force only after being ratified or approved. The international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. The international treaties not complying with the Constitution cannot be ratified.

As mentioned earlier, Armenia has signed and ratified almost all international conventions relating to the protection of human rights. However, there are still provisions of the national legislation that are not compatible with the international treaties (for example, the definition of torture). This consequently leads to implementation that is not compatible with the international human rights treaties.

Definition of discrimination against women

The Armenian legislation does not include an explicit and comprehensive definition of discrimination against women (both direct and indirect), that is suggested according to Article 1 of the Convention on the Elimination of Discrimination Against Women.561

Protocol No.13 of the European Convention on Human Rights

Armenia has not ratified Protocol No.13 to the European Convention on Human Rights on the abolition of death penalty at all circumstances.562 On the other hand, the majority of EU Member States have ratified it.563

The role of the Human Rights Defender

An individual has the right to appeal to the Human Rights Defender irrespective of his/her nationality; consequently foreigners are also entitled to appeal.564 The Defender considers the complaints concerning violations by central and local government agencies or their officials of human rights and fundamental freedoms provided by the Constitution, laws, other legal acts and the international treaties of the Republic of Armenia, as well as by the principles and norms of international law.565 However, even though the necessary legal provisions are in place, not many cases concern discrimination against migrants in Armenia or violation of their rights. Only issues relating to the refugees from Azerbaijan seem to be pertinent.

8.3.2 Gap analysis between the Armenian legislation and the EU acquis

Protection against victimization

The Armenian legislation does not contain specific provisions to protect the individuals from suffering adverse consequences as a reaction to a complaint or to proceedings aimed at enforcing compliance with equal treatment. Victims should be empowered to make use of the anti-discrimination legislation without the fear of reprisals, otherwise, legislation remains ineffective. According to the EU acquis,

561 See also the comments of the Committee on the Elimination of Discrimination Against Women, Armenia, 44th Session, CEDAW/C/ARM/CO/4/Rev. 1, 2 February 2009.
563 All EU Member States have ratified Protocol No. 13 with the exception of Poland. It is important to note, however, that Protocol No. 13 is not included in the draft accession agreement of the EU to the ECHR.
564 Article 8 of the Law on the Human Rights Defender.
565 Article 7 para. 1 of the Law on the Human Rights Defender.
the EU Member States are required to incorporate into their national legal systems necessary measures to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment. They are also obliged to ensure access to judicial and/or administrative redress for victims of discrimination, to include the concept of protection against victimization in their legal systems, to designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the ground of racial or ethnic origin and to ensure that the public is informed of all the provisions concerning equal treatment.

**Burden of proof**
The EU acquis refers specifically to the burden of proof in cases of prima facie discrimination. In order for the principle of equal treatment to be applied effectively, the burden of proof must be shifted to the respondent when evidence of discrimination is brought. The Armenian legislation, on the other hand, does not mention that in cases of discrimination the burden of proof is borne by the respondent.

**Definition of discrimination**
The definition of discrimination provided in the Armenian constitution does not differentiate between direct and indirect discrimination, as the EU acquis. Direct discrimination, according to the EU acquis, is taking place when one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin, religion, belief, disability, age or sexual orientation. Indirect discrimination is occurring when an apparently neutral provision, criterion or practice would put persons of a particular ethnic or racial origin or having a particular religion or belief, disability, age or sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

**Public incitement**
The Armenian legislation does not contain provisions prohibiting public incitement to violence or hatred on the basis of race, colour, religion, descent or national or ethnic origin. In 2010, the EU adopted the Framework Decision on combating racism and xenophobia penalising public incitement to violence or hatred on the basis of race, colour, religion, descent or national or ethnic origin which contains detailed provisions on this issue.

**8.4 Recommendations**

**Article 6 of the Armenian Constitution**

Notwithstanding Article 6 of the Armenian Constitution stating that international treaties are a constituent part of the national legal system, Armenia should consider the transposition of certain...
provisions in the national legislation in order to ensure holistic implementation. The definitions of torture and discrimination are pertinent examples.

**Legislation on the human rights of migrants**
The human rights of foreigners in Armenia are not included in one singular act. Relevant provisions are included mainly in the Constitution and the Law on Foreigners. A separate legislative act could contribute to the understanding that migrants (and not only refugees) need to be perceived by the Armenian legislation as a vulnerable group of people, in need of special human rights protection.

**Anti-discrimination legislation**
Armenia needs to adopt comprehensive and holistic legislation with regards to equal treatment and non-discrimination. The legislation should include a definition of discrimination that would also distinguish between direct and indirect discrimination, following the EU acquis. It should also include a provision that the burden of proof is to be borne by the respondent in cases of prima facie discrimination. This can ensure the effective application of the principle of equal treatment.

**Protection against victimization**
Armenia should incorporate in its legislation necessary measures to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment. Access to judicial and/or administrative redress for victims of discrimination needs to be ensured as well as the inclusion of the concept of protection against victimization in the legislation and the guarantee that the public is informed of all the provisions concerning equal treatment.572

**Definition of discrimination against women**
The Armenian legislation should include an explicit and comprehensive definition of discrimination against women (both direct and indirect), as suggested by the Committee on the Elimination of Discrimination Against Women.573 This could be included in a general anti-discrimination law that the Republic of Armenia can develop.

**The role of the Human Rights Defender**
Armenia should take positive action to ensure that foreigners receive all information required on the role of the Human Rights Defender and that they make use of this important institution in cases of violation of their human rights by public authorities. In addition, it is important that the Human Rights Defender and other responsible authorities collect statistics of the violations of migrants’ rights. The collection and analysis of statistics will contribute to understanding how well migrants are protected and if the international and national legislation is being appropriately applied.

**Public incitement**
The Armenian Criminal Code could include a provision prohibiting public incitement to violence or hatred on the basis of race, colour, religion, descent or national or ethnic origin.

**Ratification of Human Rights Treaties**
Armenia could consider ratifying:

- Protocol No.13 to the European Convention on Human Rights on the abolition of death penalty at all circumstances.

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572 Articles 7, 8, 14 and 15 of the Equal Treatment Irrespective of Racial or Ethnic Origin Directive and Articles 9, 10, 16 and 17 of the Equal Treatment in Employment and Occupation Directive.

573 See also the comments of the Committee on the Elimination of Discrimination Against Women, Armenia, 44th Session, CEDAW/C/ARM/CO/4/Rev. 1, 2 February 2009.
The European Convention on the Legal Status of Migrant Workers\(^{574}\), to which 11 states are already parties.

The European Agreement on the Abolition of Visas for Refugees\(^{575}\), which it signed on 11 May 2011 and to which 23 states are already parties.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty\(^{576}\).

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse\(^{577}\).

The European Convention on Nationality, to which 20 states are already parties\(^{578}\). The European Convention on the Participation of Foreigners in Public Life at Local Level, to which eight states are already parties\(^{579}\).

In addition, Armenia could consider making a declaration under Article 14 of the International Convention on the Elimination of Racial Discrimination, thus recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any rights set forth in the Convention.

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9. INTEGRATION

9.1. EU acquis
The Treaty of Amsterdam of 1997 covered for the first time EU action in the area of integration in a wider sense, however without mentioning integration explicitly. In 2007 the Lisbon Treaty for the first time provided a legal basis for the promotion of integration at EU level: "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States." Event though, the EU does not have the legislative power to enact integration legislation, integration of third-country nationals has always been high on the political agenda. Various policy documents explicitly address integration and also the multi-annual programmes, most recently the Stockholm Programme adopted a programme on integration. In particular, it states that “Member States’ integration policies should be supported through the further development of structures and tools for knowledge exchange and coordination with other relevant policy areas, such as employment, education and social inclusion.” It invites the Commission to support Member States' efforts "through the development of a coordination mechanism using a common reference framework, which should improve structures and tools for European knowledge exchange". It also invites the Commission to identify European modules to support the integration process and to develop core indicators for monitoring of the results of integration policies. Moreover, the Europe 2020 Strategy, which sets shared targets for the EU and its Member States which must be achieved until 2020, fully recognises the potential of migration for building a competitive and sustainable economy and it stipulates, as a clear political objective, the effective integration of legal migrants. In particular, the first headline target aims to raise the employment rate of 20 to 64-year olds in the EU to 75 %, one of the means by which to do this is by better integrating legal migrants.

Most recently, the European Agenda for the Integration of Third-country Nationals was adopted focusing on action to increase economic, social, cultural and political participation by migrants and putting the emphasis on local action. This new agenda highlights challenges that need to be solved if the EU is to benefit fully from the potential offered by migration and the value of diversity: prevailing low employment levels of migrants, especially for migrant women, rising unemployment and high levels of over-qualifications, increasing risks of social exclusion, gaps in educational achievements,
public concerns with the lack of integration of migrants. The Agenda proposes actions focussing on a) integration through participation, b) more actions on local level as well as c) involvement of countries of origin in the integration process. Integration through participation involves measures that support acquiring language knowledge, participation in the labour market – including facilitation of the recognition of qualifications, provision of information, support provided by the public employment services, introduction programmes for newly-arriving migrants – efforts in the education system, such as adaption of the school system, training of teachers and recruitment migrants as teachers; ensuring better living conditions – in particular in case of persons enjoying international protection by minimising isolation as well as fight against discrimination, involvement of migrants in the democratic process and of migrant representatives. More actions at local level refer to measures addressing disadvantaged urban areas and improvement of multi-level cooperation. Pre-departure measures encompass support of integration, support of contacts between diaspora communities and their countries of origin, facilitation if circular migration and development of countries of origin are mentioned as measures to reinforce involvement of countries of origin.

A Commission Staff Working Paper annexed to the Communication and contains a list of EU initiatives supporting the integration of Third-country nationals. As part of this agenda, the Commission is putting together a flexible ‘tool-box’, from which national authorities will be able to pick the measures most likely to prove effective in their specific context, and for their particular integration objectives. There are plans to develop modules offering an established, but at the same time flexible, point of reference to support integration policies in EU States.

9.2. Armenian legal framework
There is no policy or legislative framework in force in Armenian to regulate the integration of foreign nationals nor as refugees or as migrants in Armenia. There are also no policy or other practical measures available for these persons.

9.3. Gap Analysis

9.3.1 Gap Analysis between the Armenian legislation and implementation in practice
Not applicable.

9.3.2 Gap Analysis between the national legislation and the EU acquis
Not applicable.

9.4. Recommendations
Even though the EU and the Member States’ integration policies are designed against a different migration history and setting, in particular, as several Member States have a significantly higher inflow and stock of third-country nationals as migrants, asylum seekers or persons with international protection status, it is recommended that Armenia adopts and provides integration measures in a timely manner. Over decades, Member States, such as for example Austria and Germany, neglected the integration of immigrants under the assumption that the foreign nationals will only stay temporarily. However, this assumption turned to be wrong with the result that these countries started the development of integration policies with a significant delay, which again caused discrimination of migrants and tensions in the society. In the Armenian immigration context the following measures can be recommended:

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586 Idem. p. 3.
587 See also the Family Reunification Directive.
- Provide accessible Armenian language courses for all migrants, in particular to women and children, as language knowledge is a key tool for integration and participation in the host societies.
- Provide transparent and easily accessible information on immigration conditions and access to the labour market for foreign nationals as well as on labour rights, access to social security, antidiscrimination, etc.
- In order to prevent the emergence of negative attitudes, xenophobia and discrimination of foreign nationals, provide information to the wider public on the realities and benefits of immigration for Armenia as well as on Armenia’s international humanitarian obligation.
- It is suggested to collect data, analyse and research the composition and characteristics of foreign nationals coming and residing in Armenia (age, educational background, etc.) in order to develop targeted integration policies and measures.
- It is recommended to pay particular attention to the situation of refugees, victims of trafficking and other vulnerable groups and provide support in housing, in searching for employment and entry in the labour market, acquiring Armenian language knowledge, education and schooling, minimizing isolation and facilitate access to social and health services.
- Integration is a crosscutting area involving various ministries, local and state authorities, NGOs, religious organisations, NGOs thus enhanced cooperation and partnership are essential for effective integration policies. For the coordination of the development and implementation of integration policies, the appointment of a coordinator and definition of clear responsibilities is also advisable.
10. ASYLUM

10.1. EU acquis

Article 78 of the EU Treaty provides the legal base for the EU action in the field of asylum. Accordingly, this should comprise: “(a) a uniform status of asylum for nationals of third countries, valid throughout the Union; (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection; (c) a common system of temporary protection for displaced persons in the event of a massive inflow; (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status; (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection; (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection; (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.”

The first generation of the EU asylum legislation was adopted between 2000 and 2004. Subsequently, the Hague Programme 2005-2009 and the Stockholm Programme 2010-2014 called for the establishment of a Common European Asylum System (CEAS). The CEAS is to be based on three pillars 1) Bringing more harmonisation to standards of protection by further aligning the EU States’ asylum legislation 2) Effective and well-supported practical cooperation, in particular through the Asylum Support Office 3) Increased solidarity and sense of responsibility among EU Member States, and between the EU and non-EU countries, in particular through the improvement of the Dublin and the EURODAC system. The aim was Programme\textsuperscript{588} to reach this goal by the end of 2012.

Currently, the most important legislative measures of the EU comprise

- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (so called Qualifications Directive)\textsuperscript{589}
- 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 (so called Dublin Regulation).

Moreover, Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (the so called Temporary Protection Directive)\textsuperscript{590} is to be mentioned. This Directive was the first legislative

\textsuperscript{590} Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such
instrument that was adopted by the Council in the area of asylum in reaction to the Kosovo crisis of 1999. However, the Directive has never been applied so far. The Dublin Regulation determines which EU State is responsible for examining an asylum application. This Dublin system is facilitated by the EURODAC, a biometric database for comparing fingerprints, which helps EU Member States to verify whether an asylum applicant has previously claimed asylum in another EU Member State, or whether an asylum applicant has been previously apprehended when entering EU territory unlawfully.\(^{591}\)

The Reception Condition and the Asylum Procedures Directives are currently under legislative review. The amended Directive on qualifications for becoming a refugee or a beneficiary of subsidiary protection status was adopted in December 2012. As the scope of the directives that were under legislative review was not defined at the time of the drafting of the report, they are not included in the gap analysis. In the context of gap analysis the Dublin and the EURODAC Regulation are also of limited relevance as it relates to the responsibility and distribution of asylum seekers in the EU. Thus the focus of the assessment lies on the Qualification Directive and on the Temporary Protection Directive.

### 10.1.1 Qualification Directive

The purpose of the Qualification Directive is to lay down standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.\(^{592}\)

**Scope**

Thus international protection covers two protection statuses: refugee status which is granted to third-country nationals who owing a well-founded fear of being prosecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or owing to such fear is unwilling to avail himself or herself of the protection of that country or a stateless person, who being outside of the country of habitual residence for the same reasons is unable or owing to such fear unwilling to return\(^{593}\) in accordance with the definition of the Geneva Convention\(^{594}\) and subsidiary protection status which entails third-country nationals and stateless persons who do not qualify as a refugee but in respect to whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.\(^{595}\) Serious harm consists of the death penalty or execution; or torture or inhuman or degrading treatment or punishment in the country of origin; or serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.\(^{596}\)

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\(^{592}\)Article 1 of the Qualification Directive.

\(^{593}\)Article 2 lit. d of the Qualification Directive.

\(^{594}\)The exclusion grounds of the Directive are not identical with those of the Convention, thus, the two definitions are not identical. The differences in the exclusion ground will be explained further below.

\(^{595}\)Article 2 lit. f of the Qualification Directive.

\(^{596}\)Article 15 of the Qualification Directive.
Assessment of the asylum application

Chapter II, comprising Articles 4-8, sets out the conditions for assessing the applications for international protection. As stipulated in Article 4, Member State may establish that it is the applicant’s duty to submit all the elements needed to substantiate the application for international protection as soon as possible.\(^{597}\) The elements include the applicant’s statements, available documentation regarding the age and background, information about relevant relatives, identity, nationality, countries of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.\(^{598}\) Generally, an application has to be considered on an individual basis, whereas taking into account all relevant facts in context with the country of origin (including laws and regulations and the implementation practice) at the time of taking decision\(^ {599}\) and all relevant statements and documentations of the applicant.\(^ {600}\) Furthermore, the applicant’s personal circumstances (such as background, gender, age) and the question whether the applicant’s activities since leaving the country of origin have had the main purpose of creating the necessary conditions for applying for international protection,\(^ {601}\) and whether the applicant could make use of another country’s protection in which he or she could assert citizenship.\(^ {602}\) The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.\(^ {603}\)

Where Member States apply the duty of the applicant to substantiate the application for international protection and where aspects of the applicant’s statements cannot be confirmed by documentary evidence, those aspects do not need to be proven if the applicant has made a genuine effort to substantiate his/her application, if all available elements have been submitted and if the applicant’s statements are coherent and credible, the applicant has applied international protection at the earliest possible time and if the general credibility of the applicant has been established.\(^ {604}\)

The conditions for international protection needs arising sur place are stipulated in Article 5, involving the risk of suffering harm caused by events which have taken place since the applicant left the country of origin or by activities which the applicant has engaged in since he/she left the country of origin.\(^ {605}\)

Actors that can be sources of persecution or serious harm (as well as sources of protection against persecution or serious harm) are states, parties or organisations in a position of power within the state or a substantial part of the state, and non-state actors in case the other mentioned actors are unable or unwilling to provide protection against persecution or serious harm.\(^ {606}\)

Article 8 sets out the conditions for eventual internal protection as an alternative to international protection. If an applicant can legally travel to and can be expected to settle in a part of the country of origin in which he/she has access to protection against persecution or no well-founded fear of being persecuted, Member States may determine that an applicant is not in need of international protection. Therefore, Member States must be sure to acquire precise, up-to-date information from trustworthy sources such as the UNHCR or the EASO.\(^ {607}\)

\(^{597}\) Article 4 para. 1 of the Qualification Directive.

\(^{598}\) Article 4 para. 2 of the Qualification Directive.

\(^{599}\) Article 4 para. 3 lit. a of the Qualification Directive.

\(^{600}\) Article 4 para. 3 lit. b of the Qualification Directive.

\(^{601}\) Article 4 para. 3 lit. d of the Qualification Directive.

\(^{602}\) Article 4 para. 3 lit. e of the Qualification Directive.

\(^{603}\) Article 4 para. 4 of the Qualification Directive.

\(^{604}\) Article 4 para. 5 of the Qualification Directive.

\(^{605}\) Article 5 of the Qualification Directive.

\(^{606}\) Article 6 of the Qualification Directive.

\(^{607}\) Article 8 of the Qualification Directive.
Refugee:
Chapter III defines the qualifications for being a refugee.\textsuperscript{608} This includes a definition of acts of persecution within the meaning of the Geneva Convention – such acts have to be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the right to life, prohibition of torture, prohibition of slavery and forced labour an no punishment without law\textsuperscript{609} or be an accumulation of various measures, including violations of human rights which is sufficiently severe and can involve physical or mental violence (including sexual violence), legal, administrative, police and/or judicial measures which are discriminatory; persecution or punishment which is disproportionate or discriminatory; denial of judicial redress; persecution or punishment for refusal to perform military service in a conflict, and acts of a gender-specific or child-specific nature.\textsuperscript{610}

While assessing the reasons for persecution, Member States must take into account the following elements: the concept of race (including colour, descent, membership of a particular ethnic group); the concept of religion (including non-theistic and atheistic beliefs); the concept of nationality (which shall not be restricted to citizenship but to the fact of being a member of a group determined by common features like, for instance, culture, ethnicity, linguistic identity); the concept of a social group (as defined by a common background that cannot be changed or the changing of it would constitute a fundamental interference with identity or conscience – this concept of social group may, depending on the circumstances in the country of origin, include sexual orientation); and the concept of political opinion.\textsuperscript{611} Generally, in considering the reasons for persecution, it is irrelevant whether the applicant actually possesses those characteristics or if those characteristics are only attributed to him/her by the actor of persecution.\textsuperscript{612}

As stated in Articles 11 and 12, a third-countrysnational or a stateless person can either cease to be or be excluded from being a refugee. The former is, among others, the case when he/she has voluntarily re-availed himself/herself of the protection of the country of origin, when he/she has acquired a new nationality or when the circumstances determining the refugee status have ceased to exist.\textsuperscript{613} The latter happens, amongst others, if the refugee has committed a crime against peace, a war crime or a crime against humanity; if he/she has committed a serious non-political crime outside the country of refuge prior to his admission as refugee; or if he/she has acted against the principles of the United Nations as laid out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.\textsuperscript{614} Article 14 furthermore stipulates that Member States must revoke, end or refuse to renew the refugee status if he or she has ceased to be a refugee in accordance with Article 11.\textsuperscript{615} Member States have to demonstrate it on an individual basis that the person concerned has ceased to be or has never been a refugee.\textsuperscript{616} Moreover, Member States must revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if the person has or should have been excluded from being a refugee; if he/she has omitted or misrepresented facts or has used false documents;\textsuperscript{617} if he/she can – on reasonable grounds - be regarded as a danger to the security or to the community of the Member State.\textsuperscript{618}

\textsuperscript{608} Article 9 para. 2 of the Qualification Directive.
\textsuperscript{609} Article 9 para. 1 lit. a of the Qualification Directive.
\textsuperscript{610} Article 9 para. 3 of the Qualification Directive.
\textsuperscript{611} Article 10 para. 1 of the Qualification Directive.
\textsuperscript{612} Article 10 para. 2 of the Qualification Directive.
\textsuperscript{613} Article 11 of the Qualification Directive.
\textsuperscript{614} Article 12 of the Qualification Directive.
\textsuperscript{615} Article 14 para. 1 of the Qualification Directive.
\textsuperscript{616} Article 14 para. 2 of the Qualification Directive.
\textsuperscript{617} Article 14 para. 3 of the Qualification Directive.
\textsuperscript{618} Article 14 para. 4 of the Qualification Directive.
Subsidiary protection

Chapter V determines the qualifications for being granted subsidiary protection, which is the case when the applicant is threatened by serious harm, including death penalty or execution, torture or inhuman or degrading treatment or punishment and serious and individual threat by reason of indiscriminate violence in situations of international or internal armed conflict.619

As laid out in Article 16, a third-country national or a stateless person must cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.620

In this context, Member States must consider whether the circumstances have changed in such a significant and non-temporary way that the person eligible for subsidiary protection no longer faces a real risk of serious harm.621

Article 17 defines the framework for the exclusion of persons from subsidiary protection. This should be the case when the person has committed a crime against peace, a war crime, or a crime against humanity;622 when he or she has committed a serious crime;623 when he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;624 or when he/she constitutes a danger to the community or to the security of the Member State in which he/she is present.625 A third-country national or stateless person may also be excluded from being eligible for subsidiary protection if he/she has, prior to the admission to a Member State, committed one or more crimes outside the scope of those mentioned above, which would be punishable by imprisonment if they had been committed in the Member State concerned, and if he/she left his/her country of origin with the purpose of avoiding sanctions resulting from those crimes.626

As stated in Article 19, Member States must revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.627 This shall also be the case if the person concerned should have been excluded from being eligible for subsidiary protection in accordance with Article 17;628 or if he/she has omitted or misrepresented facts or used false documents that were decisive for the granting of the subsidiary protection status.629 Those conditions must be demonstrated by the respective Member State on an individual basis.630

Content of international protection

In Articles 20-35 the specific content of international protection are defined, applying to both refugees and to persons eligible for subsidiary protection. More specifically, this includes general rules (like the principle of acting in the best interest of a child, if involved, and the special consideration that shall be given to vulnerable persons);631 the principle of protection from refoulement unless the

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619 Article 15 of the Qualification Directive.
620 Article 16 para. 1 of the Qualification Directive.
621 Article 16 para. 2 of the Qualification Directive.
622 Article 17 para. 1 lit. a of the Qualification Directive.
623 Article 17 para. 1 lit. b of the Qualification Directive.
624 Article 17 para. 1 lit. c of the Qualification Directive.
625 Article 17 para. 1 lit. d of the Qualification Directive.
626 Article 17 para. 3 of the Qualification Directive.
627 Article 19 para. 1 of the Qualification Directive.
628 Article 19 para. 2-3 of the Qualification Directive.
629 Article 19 para. 3 lit. b of the Qualification Directive.
630 Article 19 para. 4 of the Qualification Directive.
631 Article 20 of the Qualification Directive.
refugee concerned constitutes a danger to the security of a Member State or he/she has been convicted by a final judgement of a particularly serious crime and constitutes a danger to the community of the Member State; the duty of Member States to provide beneficiaries of international protection with access to information in a language they understand; the commitment on behalf of the Member States to maintain a family unit; the conditions of granting residence permits (which must be valid for at least 3 years in the case of refugees and at least 1 year in the case of beneficiaries of subsidiary protection status) and travel documents. Furthermore, equal treatment with nationals within a Member State has to be ensured, particularly with regards to access to employment, education, procedures for recognition of qualifications and healthcare. Regarding social welfare, refugees have to be treated as nationals, however, Member States may limit social assistance granted to beneficiaries of subsidiary protection status to core benefits.

The Directive also provides for freedom of movement within a Member State, access to accommodation under equivalent conditions as other third-country nationals legally residing in the Member State and for access to integration facilities. If this is in the interest of beneficiaries of international protection, assistance in repatriation may be provided by the Member State.

The Directive provides for specific conditions regarding unaccompanied minors. As determined in Article 31, unaccompanied minors must be represented by a legal guardian, an organisation responsible for the care and well-being of minors or by any other appropriate representation. They must, furthermore, be placed with adult relatives, with a foster family, in centres specialised in accommodation for minors or in another accommodation that is suitable for minors. If possible, siblings should remain together. Additionally, Member States are obliged to try to trace the family members, on a confidential basis, if this is necessary. Furthermore, it is required that those working with unaccompanied minors must have had and continue to receive appropriate training concerning their needs. Finally, Member States must ensure that authorities and other organisations implementing this Directive have received the necessary training and are bound by the confidentiality principle, as defined in the national law, in relation to any information they obtain in the course of their work.

10.1.2 Temporary Protection

The Council Directive 2001/55/EC was created against the background of the refugee flows from the former Yugoslavia and aims at setting minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between

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632 Article 21 of the Qualification Directive.
633 Article 22 of the Qualification Directive.
634 Article 23 of the Qualification Directive.
635 Article 24 of the Qualification Directive.
636 Article 25 of the Qualification Directive.
637 Article 26 of the Qualification Directive.
638 Article 27 of the Qualification Directive.
639 Article 28 of the Qualification Directive.
640 Article 29 of the Qualification Directive.
641 Article 30 of the Qualification Directive.
642 Article 31 para. 5 of the Qualification Directive.
643 Article 31 para. 6 of the Qualification Directive.
644 Article 32 of the Qualification Directive.
645 Article 33 of the Qualification Directive.
646 Article 34 of the Qualification Directive.
647 Article 35 of the Qualification Directive.
648 Article 37 of the Qualification Directive.
Member States in receiving such persons and bearing the consequences thereof. 649 Like many EC Directives, this one also contains a more favourable conditions clause. 650

Scope
As defined in Article 1, the scope of the Directive covers third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated and are unable to return in safe and durable conditions. Mass influx refers the arrival of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the EU was spontaneous or aided for example through an evacuation programme. 651 This includes persons who have fled areas of armed conflict or endemic violence and persons at serious risk of systematic or generalised violations of their human rights. 652 Temporary protection must not prejudge the recognition of refugee status under the Geneva Convention.

Procedures
Chapter II regulates the framework conditions of duration and implementation of temporary protection. As stipulated in Article 4, the duration shall be one year, but it may be extended automatically by six monthly periods for a maximum of one year. 653 A Council Decision based on a proposal from the Commission adopted by a qualified majority is necessary to determine the existence of a mass influx of displaced persons. The Commission, however, shall examine any request by a Member State. 654 The Commission proposal has to include
(a) a description of the specific groups of persons;
(b) the date on which the temporary protection will take effect;
(c) an estimation of the scale of the movements of displaced persons.

Temporary protection for displaced persons is introduced by the Council Decision, which has to include
(a) a description of the specific groups of persons;
(b) the date on which the temporary protection will take effect;
(c) information on the reception capacity of the Member States;
(d) information from the Commission, UNHCR and other relevant international organisations. 655

The Council Decision shall be based on:
(a) an examination of the situation and the scale of the movements of displaced persons;
(b) an assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures;
(c) information received from the Member States, the Commission, UNHCR and other relevant international organisations. The European Parliament has to be informed of the Decision. 656

As laid down in Article 6, temporary protection shall end when either the maximum duration has been reached or at any time, if the Council decides so. Such a decision has to be based on the fact that the situation in the country of origin is safe and taken with due respect for human rights and fundamental freedoms regarding non-refoulement. 657

649 Article 1 of the Temporary Protection Directive.
650 Article 3 para. 5 of the Temporary Protection Directive.
651 Article 2 lit. d of the Temporary Protection Directive.
652 Article 2 lit. c of the Temporary Protection Directive.
653 Article 4 para. 1 of the Temporary Protection Directive.
654 Article 5 para. 1 of the Temporary Protection Directive.
655 Article 5 para. 3 of the Temporary Protection Directive.
656 Article 5 para. 5 of the Temporary Protection Directive.
657 Article 6 of the Temporary Protection Directive.
Content of temporary protection:

Chapter III, comprising Articles 8-16, defines the obligations of the Member States towards persons enjoying temporary protection, which are as follows:

- provide persons enjoying temporary protection with residence permits for the entire duration of the protection; if necessary, provide persons to be admitted for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas. Formalities must be reduced to a minimum because of the urgency of the situation. Visas should be free of charge or their cost reduced to a minimum;658

- provide persons enjoying temporary protection with a document in a language they understand containing the provisions relating to temporary protection;659

- take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State660

- grant access to employed or self-employed activities, educational opportunities for adults, vocational training and practical workplace experience; for reasons of labour market policies, Member States may give priority to EU/EEA citizens and also to legally resident third-country nationals who receive unemployment benefit;661

- grant access to suitable accommodation or means to obtain housing as well as to social welfare, means of subsistence and medical care, if necessary;662

- provide assistance to persons enjoying temporary protection who have special needs, for instance to unaccompanied minors or persons who have experienced torture or sexual violence;663

- ensure that minors enjoying temporary protection have access to the education system under the same conditions as nationals;664

- reunite family members of the nuclear family in other Member States or who are in need of protection. The Member State may reunite other close relatives who were dependent on the sponsor, who are in need of protection, taking into account on a case by case basis the extreme hardship which they would face if the reunification did not take place.665 The best interest of the child always has to be taken into consideration.666

Unaccompanied minors

According to Article 16 Member States must ensure that unaccompanied minors are represented by a legal guardian or an organisation which is responsible for the care and well-being of minors or by any other appropriate representation. Generally, Member States must ensure that unaccompanied minors are placed either with adult relatives, with a foster-family, in reception centres with special provisions for minors or with the person who looked after the child when fleeing. The opinion of the child shall be taken into consideration in accordance with its age and maturity.667

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658 Article 8 of the Temporary Protection Directive.
659 Article 9 of the Temporary Protection Directive.
660 Article 11 of the Temporary Protection Directive.
661 Article 12 of the Temporary Protection Directive.
662 Article 13 of the Temporary Protection Directive.
663 Article 13 para. 4 of the Temporary Protection Directive.
664 Article 14 of the Temporary Protection Directive.
665 Article 15 para. 2 of the Temporary Protection Directive.
666 Article 15 para. 4 of the Temporary Protection Directive.
667 Article 16 of the Temporary Protection Directive.
In Article 17, the right of persons enjoying temporary protection to lodge an application for asylum at any time is stipulated. The Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration. Where, after an asylum application has been examined, refugee status or, where applicable, other kind of protection is not granted to a person eligible for or enjoying temporary protection, the Member States shall provide for that person to enjoy or to continue to enjoy temporary protection for the remaining of the period of protection.

**Ending of temporary protection and return**

Chapter V determines the framework conditions for return and measures after temporary protection has ended. After the temporary protection period expires, general laws on protection and on aliens in the Member States applies. However, Member States are responsible for enabling the voluntary return of persons enjoying temporary protection or whose temporary protection has ended. For such time as the temporary protection has not ended, the Member States must, on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to a voluntary return. If forced return is necessary, Member States should guarantee that it is conducted with due respect for human dignity and that humanitarian reasons making a return impossible or unreasonable are being considered. Furthermore, Member States should not expel persons who would suffer serious negative effects with regards to their state of health. Children shall be granted the right to complete the current school period.

**Exclusion**

As stipulated in Article 28 Member States may exclude a person from temporary protection for the following reasons: there are serious reasons for considering that: (i) he/she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (ii) he/she has committed a serious non-political crime outside the Member State of reception prior to his/her admission to that Member State as a person enjoying temporary protection. The severity of the expected persecution is to be weighed against the nature of the criminal offence of which the person concerned is suspected. Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators; (iii) he/she has been guilty of acts contrary to the purposes and principles of the United Nations; (b) there are reasonable grounds for regarding him/her as a danger to the security of the host Member State or, having been convicted by a final judgment of a particularly serious crime, he or she is a danger to the community of the host Member State.

**10.2. Armenian legal framework**

**Legal basis**

The Constitution of the RA, the Law on Political Asylum and the Law of the RA on Refugees and Asylum provides the legal basis for granting asylum and treatment of asylum seekers and refugees in Armenia. The Armenian asylum legislation distinguishes between two different forms of asylum: “political asylum” that is granted according to the Law on Political Asylum to publicly well-known...
foreigners who experienced persecution in their countries of origin. Political asylum is granted by the decision of the President of Armenia. At the same time the Law on Refugees and Asylum of the Republic of Armenia (Law on Refugees and Asylum) provides protection to foreign nationals or stateless person in accordance with the provisions of the 1951 Convention Relating to the Status of Refugees (Geneva Convention), in accordance with the principle of non-refoulement as well as to foreign citizen or stateless person recognized as a refugee by another State, if he/she has legally entered Armenia and has a valid residence permit in Armenia. The Law on Political Asylum is not applied in practice in Armenia, thus only the Law on Refugees and Asylum is analysed here.

The first Chapter of the Law on Refugees and Asylum contains general provisions and provides for general definitions. The rights and obligations of refugee and asylum seekers are regulated in Chapter 2. The Law on Refugees and Asylum further establishes the duties of responsible state authorities on asylum issues and the UNHCR Representation in Armenia. (Chapter 3), it determines the asylum procedure, including that on granting of refugee status to unaccompanied minor asylum seekers, procedures for family reunification, voluntary return procedures (Chapter 4), the granting of temporary protection in case of mass-influx (Chapter 5). Finally, it contains transitional provisions on persons forcibly displaced to the Republic of Armenia in 1988–1992 from Azerbaijan and persons granted temporary asylum in the Republic of Armenia (Article 64).

**Institutional framework**

Various authorities are involved in the reception and treatment of asylum seekers and refugees in Armenia: The State Migration Service (SMS) is the main responsible body, it is responsible 1) to conduct the centralised registration of asylum seekers and refugees, maintain an informational database and constantly update all information in this database; 2) to implement the asylum procedures; 3) to apply, if necessary, National Security Service for advice in cases of asylum seekers and refugees, who irregularly entered the country, where there could be a possible danger to the national security as well as for support in the verification of the identity of asylum seekers; 4) to inform the Police on the cases of asylum seekers rejected by a final decision; 5) to cooperate with other authorities and the UNHCR in order to fulfil its responsibilities with regard to the realization of the rights granted to the asylum seekers and refugees; 7) to provide UNHCR with all information relevant to refugees and asylum, including statistics and lists of names of registered asylum seekers and refugees as well as individual files of asylum seekers and refugees, with their consent; 8) to apply, in cases of unaccompanied and/or separated minor or disable asylum seekers, to the Ministry of Labour and Social Issues and, if necessary, to the Child Protection Units in order to arrange for the accommodation and care for the unaccompanied and/or separated minor or the disabled asylum seeker.

Government is responsible for the adoption and approval of various legal acts related to asylum and refugees, provision of financial means for the implementation of the policies and legislation, establishment of a temporary reception centre, etc.

The National Security Service supports the SMS in the verification of the identity of the asylum seeker and of the facts presented and evaluates the potential danger of the asylum seeker for the national security. The Border Guards check the documentation of asylum seekers at the border crossing points and inform asylum seekers that entered regularly Armenia that they have to submit their asylum application at the SMS; the border guards further accept asylum claims of irregularly entering asylum seekers and register the claims, they subsequently inform the SMS and the Police. The Ministry of

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675 Article 55 para. 15 Constitution of the Republic of Armenia.
676 Article 2 para.1 in connection with Article 9 of the Law on Refugees and Asylum.
677 Article 2 para. 2 of the Law on Refugees and Asylum.
678 Article 34 of the Law on Refugees and Asylum.
679 Article 33 of the Law on Refugees and Asylum.
Labour and Social Issues is responsible for issues related to the employment of and for the granting of social benefits for asylum seekers and refugees. It is further in charge of the placement and care for unaccompanied minor asylum seekers in cooperation with the Guardianship Bodies and the Child Protection Units.\textsuperscript{680} The Ministry of Health is responsible for the health care of refugees and provides free of charge medical examination and is responsible for the implementation of preventive and restrictive measures. Finally, the Ministry of Education is responsible for the realization of the right to education of asylum seekers.\textsuperscript{681}

Definitions
The Law on Refugees and Asylum defines refugees as a foreign national, who owns a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her citizenship and is unable, or owing to such fear, is unwilling to avail him/herself of the protection of that country;\textsuperscript{682} or who, not having a citizenship and being outside the country of his/her former residence is unable or, owing to such fear, unwilling to return to it or as well as a foreign citizen, who has been compelled to leave his/her country of citizenship, or, in case of a stateless person, his/her former residence due to generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other serious events which have disturbed public order.\textsuperscript{683} The latter group does not enjoy all rights set out in the law; in particular they are exempted from temporary protection. Moreover, persons officially recognised as a refugee by the State Parties to the Geneva Convention are also considered a refugee.

Article 9 contains the definition of non-refoulement, accordingly “the principle of non-refoulement means not to return a refugee in any manner whatsoever to the frontiers of the territories where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion; or where external aggression, occupation, foreign domination, internal conflicts, massive violation of human rights or other serious events disrupting public order prevail. No asylum seeker shall be refouled from the territory of the Republic of Armenia prior to the final decision on his/her asylum application (...). No foreign citizen or stateless person shall be expelled, returned or extradited to another country where there are substantial grounds for believing that he/she would be in danger of being subject to inhuman or degrading treatment or punishment including torture.” The first paragraph refers to the non-refoulement protection of the Geneva Convention, while paragraph three covers the state’s obligation that derives from Article 3 ECHR.

Beyond the definition of refugee and non-refoulement, the asylum legislation also provides a definition of the term asylum: Asylum is defined as the protection granted to a foreign citizen or stateless person in, which guarantees the application of the principle of non-refoulement, as well as all the rights granted under the Geneva Convention and the Armenian asylum legislation. Asylum is further extended to a foreign citizen or stateless person recognised as a refugee by another country, if he/she has legally entered Armenia and has a resident permit.\textsuperscript{684}

Notably, the Law on Refugees mostly uses the terms “refugee” and only in limited cases it refers to “refugees granted asylum”, sometimes also “to refugees not granted asylum”. The background for this terminological differentiation and whether it has influence on the status of the refugees is unclear. Nevertheless, the differentiation is problematic as the asylum definition also includes person who do not qualify as refugees but enjoy non-refoulement protection in accordance with Article 9 para. 3 Law on Refugees and Asylum, however the legal position of this group is not regulated by the law. 

\textsuperscript{680} Article 38, 41 and 42 of the Law on Refugees and Asylum.
\textsuperscript{681} Article 39 of the Law on Refugees and Asylum.
\textsuperscript{682} Article 6 para. 1of the Law on Refugees and Asylum.
\textsuperscript{683} Article 6 para. 2of the Law on Refugees and Asylum.
\textsuperscript{684} Article 3 of the Law on Refugees and Asylum.
58 para. 3 regulates solely that the Police has to solve the residence status of this group, however the Law on Foreigners does not contain a corresponding provision.

Rights of asylum seekers and refugees
In general, asylum seekers and refugees have the same rights and obligations as other foreign nationals and stateless persons in Armenia.\(^{685}\) Asylum seekers and refugees have the right to apply to UNHCR at any time and all authorities have to inform them about this right. They have free access to employment;\(^{686}\) additionally refugees have the right to engage in entrepreneurship.\(^{687}\) In terms of social security and medical care, asylum seekers have the right to free access to medical care equally as Armenian nationals. Asylum seekers and refugees are granted the same rights as Armenian citizens to the acquisition and transfer of movable property and with regard to leases and rent of immovable property as well as with regard to other property legal relations. Additionally, refugees have the right to state benefits and other financial assistance equally as Armenian nationals (e.g. unemployment benefits, pension, work accident insurance etc.). Refugees must be granted the most favourable treatment accorded by the legislation of the Republic of Armenia to foreign citizens in legal relations with regard to acquisition, possession, ownership, usage and transfer of immovable property. Furthermore, asylum seekers and refugees have the right to basic education equally to Armenian citizens; refugees have additionally access to studies, the recognition of school certificates, diplomas and academic degrees, remission of fees and charges and awards of scholarships as other foreign nationals in Armenia. Documents and certificates issued by UNHCR instead of the country of origin have to be recognized by all authorities, verifications of the documentation where necessary have to be done by the Ministry of Foreign Affairs through the diplomatic representations.\(^{688}\) Asylum seekers and refugees enjoy the freedom of movement in Armenia; limitations can be imposed on failed asylum seekers, on those who stayed irregularly in Armenia before applying for asylum and in some cases on family members of asylum seekers.\(^{689}\) Asylum seekers and refugees are exempted from the criminal or administrative liability for irregular entry and presence in Armenia, however if the asylum seekers fails deliberately to cooperate or to comply with restrictions of the freedom of movement or delays the extension of his/her identity papers, he/she may be subject to liability.\(^{690}\) Asylum seekers are issued identity papers during the asylum procedure to certify the legal residence in Armenia, the documents are valid within the entire territory of Armenia for three months or one week until the final negative decision on the asylum claim or in case of a positive decision until the issuance of a Convention Travel Document.\(^{691}\) The Convention Travel Document certifies the legal residence of the refugee in Armenia and serves as a travel document. It should further enable the refugee to exercise his/her rights and freedoms according to the Law on Refugee and Asylum. The Convention Travel Document is valid for two years – renewable - or until the cancellation or cessation of the status.\(^{692}\)

Asylum procedure
The Armenian legislation distinguishes between asylum request and asylum application. The asylum request can be submitted orally, with the help of sign language, in writing or by any other means of communication to the border guards or to the police,\(^{693}\) while the asylum application is submitted in written to the SMS.\(^{694}\) Different procedures apply to irregular and regular asylum seekers and their

\(^{685}\) Article 15 of the Law on Refugees and Asylum.  
\(^{686}\) Article 21 of the Law on Refugees and Asylum.  
\(^{687}\) Article 22 of the Law on Refugees and Asylum.  
\(^{688}\) Article 26 of the Law on Refugees and Asylum.  
\(^{689}\) Article 27 of the Law on Refugees and Asylum.  
\(^{690}\) Article 28 of the Law on Refugees and Asylum.  
\(^{691}\) Article 29 of the Law on Refugees and Asylum.  
\(^{692}\) Article 30 of the Law on Refugees and Asylum.  
\(^{693}\) Article 13 para. 1-2, Article 46 of the Law on Asylum and Refugees.  
\(^{694}\) Article 13 para. 3, Article 47 of the Law on Asylum and Refugees.
family member. While regular asylum seekers enjoy freedom of movement, irregular asylum seekers can be detained for up to 72 hours in a special shelter from where they are subsequently transferred to the temporary reception centre for asylum seekers. UNCHR and representatives of the SMS should be granted access to the asylum seekers. The law further prescribes the provision of translators free of charge and of assistance to contact UNHCR or an advocate when completing the asylum application. According to Article 49 asylum seekers are to be provided free counselling on their rights and obligations by the SMS. The counselling includes in particular information on the obligation to cooperate, deadlines, and extension of validity of asylum application, provision of information, right to hire a translator or lawyer on own expenses and to apply to UNHCR. The Law on Asylum and Refugees further provides that interviews are conducted by the SMS in order to establish the facts underlying the asylum application. However, there is no obligation to conduct an interview, if there is sufficient information in a particular case for making asylum decision. Upon request female officers can conduct interviews with female asylum seekers. During interviews asylum seekers are to be provided with translators free of charge.

The asylum procedure has to be suspended, if the asylum seeker does not follow the invitation for an interview without justified reasons, or refuses to co-operate, so that the SMS cannot arrive at a decision concerning the asylum application, if the asylum seeker does not approach the SMS within two weeks after a notification has been delivered to the asylum seeker. A suspended asylum procedure may be reopened, upon written communication of the asylum seeker based on reasonable argumentation within three months after the delivery of the decisions to suspend his/her asylum procedure. The SMS must terminate the asylum procedure for granting asylum, if the asylum seeker in writing withdraws his/her asylum application; if the asylum seeker whose asylum procedure has been suspended does not provide a reasonable explanation for his/her lack of cooperation within three months; if there is an adopted administrative or judicial act concerning the same asylum application.

Asylum decision

Article 52 establishes that the decision must be based on the information provided by the asylum seeker and other interested parties, on country of origin information and on the definitions in the Law on Asylum and Refugees. Insufficiency of evidence cannot serve as a basis for a failure to make of a decision or for a negative decision and the asylum seeker should be granted the benefit of doubt. The decision on recognising an asylum seeker as a refugee must also include the decision on granting or rejecting the asylum seeker with asylum in the Republic of Armenia. Granting of asylum may only be rejected, if the asylum seeker comes from a safe third-country where he/she can return to regularly and the asylum seeker must be informed in writing about the reasons for not granting asylum.

With regard to an asylum seeker who has been already recognised as refugee by any Signatory State to the Convention, the State Migration Service is obliged to make a decision only on granting or not granting asylum.

The written negative decision must also include the description of the reasons for the rejection of the asylum application, as well as the possibility of applying the non-refoulement principle, particularly the permission for deportation of the person to the country of his/her origin or any other country. Attached to the decision a written notification must be also given which includes information on the legislation regulating issues related to his/her further residence for refugees, and in case of a negative

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695 Article 48 para. 7 of the Law on Asylum and Refugees.
696 Article 47 of the Law on Asylum and Refugees.
697 Article 49 of the Law on Asylum and Refugees.
698 Article 55 of the Law on Refugees and Asylum.
decision – necessary information on appealing the decision. The decision must be sent to the asylum seeker within three days from the date of its adoption.

**Appeals**

Asylum seekers and refugees shall have the right to appeal to the court against any negative decisions issued by the SMS to them in the course of the asylum procedure or any other administrative procedure based on the Law on Refugees and Asylum. Appeals may be launched within 30 days after notification on decision. The period for launching an appeal may be renewed if there are valid reasons, which do not fall within the sphere of influences of the appellant. After the reason (reasons) for missing the appeal period disappears, the asylum seeker can present an appeal to the court within 15 days, but not later than within 3 months starting from the day s/he got acknowledgement of the decision by the SMS regarding his/her asylum application. Negative decision must include information on the right to appeal and the periods for launching an appeal, as well as on applying to respective court.699

Subsequent asylum applications are allowed and the asylum seekers enjoy the same rights as during the first asylum procedure including refoulement protection. In the subsequent asylum procedure the SMS must consider only events and facts which occurred during the previous examination of asylum seekers’ application after the last interview of the asylum seeker.700

**Exclusion, cessation and cancellation of the refugee status**

According to Article 10 the following constitutes a ground for cessation of the refugee status and of the granting of asylum. If the person 1) has voluntary re-availed him/herself of the protection of the country of his/her citizenship; 2) having lost his/her citizenship, he/she has voluntary re-acquired it; or 3) has acquired a new citizenship, and enjoys the protection of the country of his/her new citizenship; or 4) has voluntary re-established him/herself in the country which he/she left or outside which he/she remained owing to a fear of persecution; or 5) if the circumstances in connection with which he/she has been recognised as a refugee have ceased to exist; 6) for personal reasons is not willing to remain any longer a refugee 7) if there are reasonable grounds for regarding the person as a danger to the national security, or who, having been convicted for committing a serious or particularly serious crime, 8) if the person leaves the Republic of Armenia and remains outside its territory after the expiration of the Convention Travel Document.

The grounds for exclusion from the recognition of refugee and for refusal of granting asylum are defined in Article 11. Accordingly, a foreign citizen or stateless person, must not be considered a refugee, if there are serious reasons to believe that 1) he/she has committed a crime against peace, a war crime, or a crime against humanity, according to the international instruments drawn up to make provisions in respect of such crimes; 2) he/she has committed a serious non-political crime outside the Republic of Armenia, before he/she became an asylum seeker; 3) he/she has been guilty of acts contrary to purposes and principles of the United Nations. Asylum may be further denied to any refugee, who arrives from a safe third-country and he/she can lawfully return to that country.

Finally, Article 12 stipulates the cancellation of the refugee and asylum status: the status must be cancelled when it becomes evident that the person has manifestly not been fulfilling the requirements for the recognition as a refugee, because newly discovered evidence confirms that the statements initially made or documents provided were fraudulent.

The same procedures apply for the cessation and cancellation of the refugee and asylum status as for the asylum procedure, including the right to an interview and the right to appeal. However, during the

699 Article 57 of the Law on Refugees and Asylum.
700 Article 59 of the Law on Refugees and Asylum.
cessation and cancellation procedures asylum authority should not reconsider the applicability of the “refugee” definition, but should decide whether the person should be granted non-refoulement, stipulated in Article 9 para 3 of Law on Refugees and Asylum. A refugee granted asylum in the Republic of Armenia, for whom a cancellation or cessation procedure has been initiated, shall continue to hold a Convention Travel Document and shall fully enjoy the right to asylum until the final decision is made. The SMS is the responsible authority to decide on the cessation and cancellation of the asylum status.

Temporary protection
Chapter 5 in connection with Article 3 on the granting asylum in case of mass-influx sets out the provisions concerning granting of temporary protection. The main difference between the temporary protection and the asylum protection concerns the procedures, concretely that in case of temporary protection no individual procedure is carried out. The scope of the rights and the protection granted does however not differ from the general asylum protection; on the other hand group of beneficiaries is more limited. The decision to grant temporary protection to a certain group is taken by the Government, upon proposal of the SMS, the Police, the National Security Service, the Ministry of Foreign Affairs, UNHCR or IOM.

Scope
Article 3 in connection with Article 6 establishes the scope of application of temporary protection: accordingly asylum has to be granted to refugees in the sense of the Geneva Convention, who flee the bordering countries of the Republic of Armenia without undergoing an individual asylum procedure. Foreign nationals who are granted asylum this way should receive the same rights and have the same obligations as refugees individually granted asylum.701

Procedures
The respective authorities, that accept asylum applications, must inform the persons concerned to apply to the SMS, which registers the applicant in a common file. The State Migration Service is only entitled to check if their data satisfy the criteria of the decision of the Government of the Republic of Armenia on granting temporary protection to this group.

It this is not fulfilled the person is allowed to submit an individual asylum application. The same rule applies if there are clear indications that a member of the temporary protected group may have committed acts which could warrant an exclusion from the recognition as a refugee and possible exclusion reasons in the course of the individual asylum procedure must be examine.

According to Article 62 para. 7 the refugees granted temporary protection must be issued Identity Documents for Refugees Granted Temporary Protection, which must be replaced by a Convention Travel Document subsequently. The procedure for the exchange of documents and the specimen of the identity document for refugees granted temporary protection must be approved by the Government of the Republic of Armenia.

Ending of temporary protection
Concerning cessation of the refugee status Article 63 stipulates that if there are strong indications that the situation in the country of origin has normalised, or, if the national security situation warrants, the Government of the Republic of Armenia may, upon joint suggestion of the Ministry of Foreign Affairs and National Security Service, cease the temporary protection for the particular group concerned. In such cases the members do no longer benefit from the rights defined for temporary protected persons. They have the right to launch an individual asylum application, which has to be examined in an individual asylum procedure.702 The cessation, as well as cancellation of refugee status and asylum

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701 Article 62 para. 1 of the Law on Refugees and Asylum.
702 Article 63 para. 2 of the Law on Refugees and Asylum.
with regard to individual members of the group must be according to the same rules as for refugees, who have received asylum in an individual procedure.\footnote{Article 63 para. 3 of the Law on Refugees and Asylum.}

10.3. Gap Analysis

10.3.1 Gap analysis between the Armenian legislation and implementation in practice

The interviews conducted with various actors in Armenia revealed differences in the legislation and the implementation practice. However, due to limited time it was not possible to conduct a thorough analysis of the implementation practice, thus only a few issues are highlighted here, which were identified during the interviews. The interviewees noted that Armenian authorities have little experience with the identification and treatment of asylum seekers and with handling of asylum application. An individual asylum procedure was introduced only recently and generally there is a lack of experienced lawyers in this area who could provide legal advice or represent asylum seekers. Asylum law and law on foreigners is not taught at universities and only limited literature is available in Armenian.\footnote{Interview with UNHCR Representation in Armenia, September 2012.} Moreover, it was noted that it was difficult to provide legal advice and representation pro bono, as lawyers were often accused for tax fraud.\footnote{Interview with the Chamber of Advocates, September 2012.}

UNHCR further noted that the asylum decisions are not always based on a sound legal analysis and country of origin information is not sufficiently used as a resource to analyse the situation in the countries of origin. Moreover, access to the asylum procedure does not appear to be guaranteed, as it happens that asylum seekers are rejected at the border and as there is no proper referral mechanism in place.\footnote{Interview with UNHCR Representation in Armenia, September 2012.}

Another concern relates to the provision of health care: access to medical services is very limited or not available for asylum seekers or persons with refugee status. In general, the system does not appear to be prepared to provide specific services according to the needs of vulnerable persons as refugees and asylum seekers. Medical service providers are not aware of their obligations to provide health care and it is sometimes only provided after significant administrative efforts (i.e. the Head of the SMS has write a letter in individual cases to the responsible health authorities to provide the required health care).\footnote{Interview with the Ministry of Health and State Migration Service, September 2012.}

In practice the availability of independent, well-qualified interpreters does not appear to be guaranteed.

Regarding unaccompanied minors or the temporary protection, the implementation practice cannot be analysed, as these provision were never applied so far. However, it is questionable whether the Armenian child-care system is prepared to receive an unaccompanied minor without specific training. Regarding temporary protection, in light of the growing number of asylum application due to the Syrian crisis, it doubtful whether the authorities are prepared to receive a large number of asylum seekers at once. In particular, the increased number of asylum seekers arriving from Syria caused a shortage in reception places.

10.3.2 Gap analysis between the national legislation and the EU acquis

Personal scope of protection

The personal scope of the Qualifications Directive is broader as it grants international protection both to refugees and person who are granted subsidiary protection status, even though the rights of the two groups differ to some extent. At the same time, in Armenia the legal status of persons who do not
qualify as refugees as defined in Article 6 of the Law on Asylum and Refugees but who cannot be removed due to the principle of non-refoulement for Armenia is not clear in the asylum legislation. Even though, as it was also claimed by the SMS the definition of refugee is broader than that of the Geneva Convention and that of the Qualifications Directive as it includes also persons who had to leave their countries of origin due to generalized violence, foreign aggression, internal conflicts, massive human rights violations or serious events which have disturbed public order, this definition does not provide non-refoulement protection.

Firstly, it does not appear to be guaranteed that the violation of the right to life (protection against death penalty and execution) and the freedom from torture or inhuman or degrading treatment or punishment would be covered by the term “massive human rights violations”, in particular because the term “massive” is not defined. Secondly, the refugee definition of Article 6 lit. 2 is based on an occasion which occurred in the past (“who has been compelled”), while refoulement protection is forward looking and encompasses protection against violations which might occur in the future.

While Article 9 para. 3 explicitly states that not foreign citizen or stateless person shall be expelled, returned or extradited to another country where there are substantial grounds for believing that he/she would be in danger of being subject to inhuman or degrading treatment or punishment including torture and also Article 2 sets out that asylum applies to persons who enjoy non-refoulement protection, the rights and obligations regulated in the asylum legislation apply only to refugees and asylum seekers. The legal position of person who enjoy non-refoulement protection (and at least according to the terminology to the Law on Asylum and Refugee also asylum) is not defined and consequently, they do not have the rights or at least similar rights as set out in the Law. It has to be admitted that the asylum legislation provides that the Police has to “solve the residential status of the foreigner citizen”\(^\text{708}\); however no corresponding Article could be identified in the Law on Foreigners.

Assessment of the asylum application

The provisions of the Qualifications Directive are more detailed regarding the assessment of the asylum application than the Armenian legislation. In particular, the Law on Refugees and Asylum does not explicitly stipulate the obligation of the asylum authority to analyse the protection need sur place, i.e whether there are events that have taken place since the applicant left the country of origin and that might result in a well-founded fear of being persecuted or a real risk of suffering serious harm. Furthermore, actors of prosecution, actors of harm and the possibility of international protection are not explicitly part of the assessment. In this context, UNCHR stressed that the decision should permit the applicant to know on what specific grounds the decision has been taken. Therefore, the decision should state the material facts of the application and sufficient details to permit the applicant to know the evidence which was taken into account, whether it was accepted and if not what was the reason for the refusal as well as the reasons why the accepted evidence does not render the applicant eligible for international protection status.\(^\text{709}\)

Qualification for being a refugee

Both the Article 6 in connection with Article 52 Law on Refugees and Asylum and the Qualification Directive apply the definition of the Geneva Convention as a basis for the qualification of a person as a “refugee”. The Qualification Directive, however, provides for further explanation and clarification of persecution and includes in particular non-state actors among the actors of persecutions in line with

\(^{708}\) Article 58 para. 3 of the Law on Refugees and Asylum.

\(^{709}\) UNCHR, 

\textit{Withdrawal, exclusion and various forms of cancellation of the refugee status}

The provisions on withdrawal, exclusion as well as different forms of cancellation of the protection status as set out in the Armenian asylum legislation are comparable with those of the Qualification Directive. However, there are a few discrepancies:

- According to the Law on Refugees and Asylum a refugee status ceases if the person is not willing to remain a refugee any longer for personal reasons. It is unclear which situations are covered by this cases and how it is this established. Moreover, the refugee status ceases if the person leaves Armenia and the Convention Travel Document expires during this period. These are two grounds for cessation that are not provided for in the Directive.

- Concerning the change of the circumstances in the country of origin or of former habitual residence, the Directive requires that the changes are significant and non-temporary, this additional requirement cannot be found in the Armenian legislation.

- Furthermore, the Directive lists additional grounds for exclusion, namely, if the person receives protection and assistance from other organs and agencies of the UN than the UNHCR or when the person enjoys rights comparable to the citizens’ rights in another country.

- Moreover, regarding serious crimes committed outside of the country of refuge the Directive classifies particularly cruel actions, even if committed with an allegedly political objective, as serious non-political crimes.

- According to the Law of Refugees and Asylum, persons coming from a safe third-country can be excluded from protection, if he/she can lawfully return to that country. Even though coming from a safe third-country does not constitute a ground for exclusion from the asylum protection in the EU acquis, it is taken into account in the asylum procedure as stipulated in the Asylum Procedure Directive. Additionally, to the criteria mentioned also in the Law on Refugees and Asylum, the Asylum Procedure Directive also requires that the principle of non-refoulement in accordance with the Geneva Convention is respected; the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.\footnote{Article 27 of the Reception Conditions Directive.}

- Regarding ending of the refugee status, the Directive establishes that prevalence of exclusion grounds also constitute a ground for ending the status. Additionally, reason of national security and conviction for a serious crime are considered as a ground for revocation, ending or refusal to renew the permit in the Directive and not a ground for cessation as in the Law on Refugees and Asylum, however beyond the terminological difference, the provisions appear to be comparable. In the Armenian legislation fraud constitutes a ground for refusal.

\textit{Withdrawal, exclusion and various forms of cancellation of the subsidiary protection status}

As subsidiary protection status is not clearly regulated in the Armenian legislation, also the grounds for cessation, exclusion and different forms of ending of the status are not established in the Law on Refugees and Asylum.
Content of international protection

The rights provided in Chapter 2 of the Law on Refugees and Asylum can be compared with Chapter VII of the Qualification Directive on the content of international protection. Several discrepancies can, however, be observed:

- In general, the lack of a subsidiary protection status in Armenia leads to the unsatisfactory outcome that the rights established in Chapter 2 of the Law on Refugees and Asylum only refer to refugees and asylum seekers. Persons with subsidiary protection status, persons who cannot be removed due to the non-refoulement protection are not provided any rights.

- Moreover, while the Qualification Directive mandates Member State in general to take the specific situation of vulnerable persons into account and to consider the best interest of the child, there is no comparable article in the Law on Refugees and Asylum, the latter established only specific provisions concerning unaccompanied minors.

- While the Directive establishes the obligation of the Member States to provide beneficiaries of international protection with information, the Armenian legislation only provides for the counselling of asylum seekers, however, there is no obligation for information provision of refugees (and persons with subsidiary protection status).

- Armenia does not grant a specific residence permit to refugees (and persons with subsidiary protection status) and their family members as set out in Article 24 of the Directive, it provides a Convention Travel Document in accordance with the Annex of the Geneva Convention, which serves also as an identity document. It is issued for a validity period of two years and is renewable.

- Beyond free access to employment and self-employment, the Directive explicitly mandates Member States to facilitate access to activities such as employment-related education, vocational training, including training courses for upgrading skills, practical workplace experience and counselling services, which are not provided for in the Armenian legislation.

- Regarding education the Directive requires that minors with international protection status are granted full access to the education system under the same conditions as nationals, in the Armenian law this is limited to basic general education.

- Concerning the recognition of qualifications, the Directive stipulates equal treatment with nationals for beneficiaries of international protection, while in the Law on Refugees and Asylum Seekers they are only treated as other foreign citizens. Moreover, the Directive additionally requires endeavouring to facilitate full access also for those who cannot provide documentary evidence of their qualification.

- Compared to Article 32 of the Qualification Directive, the Law on Refugees and Asylum does not regulate the access to accommodation to refugees, the Law stipulates only regarding the acquisition, possession, ownership, usage and transfer of immovable property that refugees should be granted the most favourable treatment granted to foreign nationals.

- The Armenian legislation does not grant access to integration facilities, there are no integration measures implemented in general, thus the requirements of Article 34 of the Qualification Directive are not fulfilled.

Temporary protection

The Law on Asylum and Refugees provides for temporary protection in case of mass-influx. The Armenian legislation does not create a separate status, but grants asylum without an individual asylum procedure in case of mass influx of foreign citizens and stateless persons. This is, however, not contrary to the Temporary Protection Directive.

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712 Notably, the determination of the application of temporary protection is done by different bodies, however, this due to the fact that Armenia is not part of the EU.

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Scope: The personal scope of the provisions is, however, narrower as that of the Temporary Protection Directive. Firstly, the Armenian legislation limits temporary protection only to persons arriving from neighbouring countries, compared to third countries as defined in the EU acquis. Secondly, the Armenian legislation grants temporary protection only refugees defined in the Geneva Convention. Persons falling under Article 6 para. 2 of the Law on Refugees and Asylum who had to leave their country of origin due to generalized violence foreign aggression, internal conflicts, massive violations of human rights, who are encompassed by the definition of displaced persons of the Temporary Protection Directive are not provided temporary protection.

The term mass influx is not defined in the Armenia legislation, as these rules have not been applied so far, there is also no case law available for which could be used to interpret the term, thus it is not clear whether the Armenian legislation corresponds to the EU acquis in this regard.

Compared to the one year set out in the Directive, the duration of temporary protection is not regulated by a fix term. It is stipulated that temporary protection should come to an end when the situation in the country of origin has normalised or the national security situation warrants, which is comparable with the requirements of the Directive.

The rights granted to persons enjoying temporary protection according to the Law of Refugees and Asylum are, with a few following exceptions, in compliance with the Directive:
- The Directive set out that Member States must provide persons to be admitted to the territory for the purpose of temporary protection are provided with every facility for obtaining necessary visas, free of charge or with a minimum cost and that formalities are reduced to a minimum;
- The Directive contains the obligation to take back persons enjoying temporary protection;
- The Directive requires to provide medical and other assistance not only to unaccompanied minors but also to other persons who have special needs (i.e. victims of rape, torture, serious forms of physical, psychological or sexual violence;
- Regarding return the Directive requires that Member States make voluntary return possible and consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases;
- Regarding persons who have returned voluntarily before the temporary protection has ended, the Directive requires Member States to give favourable consideration to requests of return;
- Concerning the exclusion of a person from temporary protection due to a serious non-political crime the Directive requires a balancing of the severity of the expected persecution and the nature of the offence. Particularly cruel actions even if committed with an allegedly political objective may be classified as serious non-political crime. Additionally, a third-country national is regarded as a danger to the security of the host Member State or having been convicted by a final judgement of a particularly serious crime, he or she is a danger to the community of the host Member State;
- Persons excluded from temporary protection or from family reunification must be entitled to appeal.

10.4. Recommendations

Subsidiary protection status

- It is recommended to use the definition and the terminology of the Qualifications Directive when defining asylum seekers, refugees and persons with subsidiary protection status;

- In particular, it is essential to establish a subsidiary protection status for persons who do not qualify as a refugee but in respect to whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm and is and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country. Serious harm should consists of the death penalty or execution; or torture or inhuman or
degrading treatment or punishment of an applicant in the country of origin; or serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict and provide persons with these status the rights as set out in the Qualification Directive;

- Additionally, to granting of protection status and residence in Armenia, it is equally essential to guarantee the rights (education, housing, integration, family reunification, etc.) to person with subsidiary protection status as set out in the Qualifications Directive;
- In procedural terms, it is recommended that international protection (refugee and subsidiary protection status) is processed and granted in a single procedure by the authority responsible for the asylum procedure, in this regard asylum applications are treated as applications for international protection, if not explicitly stated differently.

Assessment of asylum applications
It is recommended regulate the assessment of an asylum application in more detail and to expand Article 52 of the Law on Refugees and Asylum and, in particular adopt an obligation to assess protection need sur place, define actors of prosecution and of protection as well as the possibility of internal protection in the Law of Refugees and Asylum in accordance with Chapter II of the Qualification Directive. Also the asylum decisions should be more detailed.

Ending of the protection status
It is recommended to align the grounds for cessation, cancellation of and exclusion from refugees status with the grounds stipulated in the Directive, in particular delete the provision that the refugee status ceases if the person leaves Armenia and the Convention Travel Document expires during this period and concerning the change of the circumstances in the country of origin or of former habitual residence as a ground for cessation, introduce the requirement that the changes are significant and non-temporary;

Rights of persons with international protection status
- It is recommended to issue persons with international protection status a residence permit in accordance with Article 24 of the Qualification Directive;
- It is important to introduce the explicit obligation for the authorities to take the specific situation of vulnerable persons into account and to consider the best interest of the child;
- Regarding information provision and counselling it is suggested to provide asylum seekers and refugees information on their legal status, rights and obligation, additionally independent legal counselling should be provided to asylum seekers, in particular, if their application was rejected;
- It is recommended that Armenia facilitates access to activities such as employment-related education, vocational training, including training courses for upgrading skills, practical workplace experience and counselling services, which are not provided for in the Armenian legislation;
- It is recommended to grant minors with international protection status full access to the education system under the same conditions as nationals;
- It is recommended to provide equal treatment with nationals for beneficiaries of international protection and endeavours to facilitate full access for those who cannot provide documentary evidence of their qualification;
- It is recommended to ensure access to accommodation for beneficiaries of international protection under equivalent conditions as other legally residing foreign nationals in Armenia;
- It is recommended to provide integration measures in general (languages courses, cultural orientation courses, information on daily life, facilitate participation in public life, etc.).

Temporary protection
- It is recommended to expand the personal scope of temporary protection to all displaced persons in accordance with the Temporary Protection Directive;
Regarding the rights of the persons with temporary protection status it is essential to grant them rights stipulated in the Temporary Protection Directive, in particular:

- provide persons to be admitted to the territory for the purpose of temporary protection are provided with every facility for obtaining necessary visas, free of charge or at a minimum cost;
- provide medical and other assistance not only to unaccompanied minors but also to other persons who have special needs (i.e. victims of rape, torture, serious forms of physical, psychological or sexual violence);
- make voluntary return possible and consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases;
- regarding persons who have returned voluntarily before the temporary protection has ended, give favourable consideration to requests of return;
- concerning the exclusion of a person from temporary protection due to a serious non-political crime introduce a balancing of the severity of the expected persecution and the nature of the offence. Particularly cruel actions even if committed with an allegedly political objective may be classified as serious non-political crime.

Furthermore it is suggested to define mass-influx of foreign nationals and stateless persons in accordance with the definition of the Temporary Protection Directive.
11. UNACCOMPANIED MINORS

11.1. EU acquis

The EU legislative instruments on asylum, immigration and trafficking in human beings directly or indirectly address the specific situation of unaccompanied minors and provide for enforced protection of their rights. In particular the Asylum Procedures Directive, Qualifications’ Directive, Reception Conditions’ Directive, the Temporary Protection, the Return Directive and the two Directives in the area of combatting human trafficking provide specific conditions for unaccompanied minors.

On the policy level, the Stockholm Programme identified that “the exchange of information and best practice, minor’s smuggling, cooperation with countries of origin, the question of age assessment, identification and family tracing, and the need to pay particular attention to unaccompanied minors in the context of the fight against trafficking in human beings” is of particular importance for EU action and asked the European Commission to “examine practical measures to facilitate the return of the high number of unaccompanied minors that do not require international protection” and putting in this way a particular emphasis on the return of unaccompanied minors. The European Parliament underlined in its Resolution on the Stockholm Programme, that an EU Action Plan should address issues such as protection, durable solutions in the best interests of the child and cooperation with third countries.

As a reaction the European Commission developed an Action Plan on Unaccompanied Minors. According to the Action Plan the EU common approach on unaccompanied minor is to be based on the rights guaranteed under the UN Convention on the Rights of the Child (CRC) and the FRC, in particular on the principle of the best interests of the child which must be the primary consideration in all action related to children taken by public authorities. It is fundamental to ensure that any child needing protection receives it and that, regardless of their immigration status, citizenship or background, all children are treated as children first and foremost.

The Action Plan targeted the following areas: data collection on unaccompanied minors, implementation of actions aiming at preventing of unsafe migration and trafficking, actions regarding assistance child victims of trafficking in human beings, protection programmes in third countries, enhancement and harmonisation of standards of reception and assistance for unaccompanied minors (regardless of their status: asylum seekers, victims of trafficking or arriving at the borders), support of Member States in age assessment and family tracing, finding durable solutions including integration in the host Member State, return to the country of origin and resettlement.

The approach of the EU acquis is to provide specific provisions for unaccompanied minors in various areas and directives, instead of creating a single legal document that regulates all situations that concern unaccompanied minors. In this context in the EU Action Plan the EC highlights the need to adopt higher standards for unaccompanied minors in the asylum context and more comprehensive legislation on trafficking and sexual exploitation of minor. The EU acquis uses the term unaccompanied minor and defines unaccompanied minor as “a person below the age of 18 who...”

716 Article 24 of the FRC and Article 3 of the CRC.
717 It should at least include the measures provided for by the Directive on victims of trafficking in human beings.
arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States.” Generally, most Directives stipulate that the best interest of the child should be a primary consideration of Member States when implementing this Directive, in line with the CRC. The obligation to grant access to education and health care, appoint a legal guardian or an organisation responsible for the care of the minor, provide specialized suitable accommodation, initiate family tracing is stipulated in most Directives. In the following, the specific provisions of the Directives will be described.

**Directives in the field of asylum**

The Qualifications Directive stipulates specific provisions for unaccompanied minors granted international protection. Article 31 includes the obligation to ensure the representation of unaccompanied minors by a legal guardian, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation as well as the obligation to regularly assess those representatives. Moreover, Member States must ensure that unaccompanied minors are placed either with adult relatives, with a foster family, in centres specialised in accommodation for minors or in other accommodations suitable for minors. Generally, siblings should be kept together and changes of residence shall be limited to a minimum. In terms of family tracing Member States are furthermore obliged to take immediate actions to trace family members, on a confidential basis if this is necessary for safety reasons. Additionally, adequate training for those working with unaccompanied minors has to be provided. Access to education and adequate healthcare must be provided for all minors granted international protection under the same conditions as nationals. Regarding the best interest determination the Directive underlines that it should consider the child’s well-being and social development, safety, security and the family unity when implementing the Directive.

Similarly as the Qualifications Directive, the Temporary Protection Directive stipulates the obligation to ensure the necessary representation of unaccompanied minors enjoying temporary protection, either by legal guardianship, by an organisation which is responsible for the care and well-being of minors or by any other appropriate representations. Unaccompanied minors shall be placed either with adult relatives, with a foster-family, in reception centres with special provisions for minors, in other accommodations suitable for minors or with the person who looked after the child when fleeing. According to the age and maturity of the child, its views shall be considered. Minors enjoying temporary protection shall furthermore be granted access to the education system under the same conditions as nationals.

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719 E.g. Preamble Qualifications Directive.

720 Article 31 para. 1 of the Qualifications Directive.

721 Article 31 para. 2 of the Qualifications Directive.

722 Article 31 para. 3 of the Qualifications Directive.

723 Article 31 para. 4 of the Qualifications Directive.

724 Article 31 para. 5 of the Qualifications Directive.

725 Article 31 para. 6 of the Qualifications Directive.

726 Article 27 para. 1 of the Qualifications Directive.

727 Article 30 para. 2 of the Qualifications Directive.

728 Preamble, Article 20 para.5 of the Qualifications Directive.

729 Article 16 para. 1 of the Temporary Protection Directive.

730 Article 16 para. 2 of the Temporary Protection Directive.

731 Article 14 para. 1 of the Temporary Protection Directive.
Both Directives, namely the Reception Condition Directive and the Asylum Procedure Directive, provide additional guarantees for unaccompanied minors, such as access to education, health care and rehabilitation, guardianship/legal representation as well as family tracing. The Asylum Procedures Directive additionally regulates the interviewing and age assessment of unaccompanied minors, however the implementation of these provisions is optional. At the same time, the Reception Conditions Directive prescribes that unaccompanied minors have to be placed either with adult relatives, with a foster-family, in accommodation centres with special provisions for minors or in other accommodations suitable for minors. If, however, unaccompanied minors are aged 16 or older, they can be placed in accommodation centres for adult asylum seekers. Generally, changes of location of unaccompanied minors shall be reduced to a minimum and siblings shall be kept together.732

**Trafficking Directives**

Regarding children victims of trafficking the Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (Residence Permit Directive)733 and the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Trafficking Directive) must be considered:

The Residence Permit Directive covers primarily only adult third-country nationals; however, Member States may decide to apply this Directive to minors under the conditions laid down in their national law.734 In practice, most Member States apply the Directive also to minors; in particular, in Germany the scope of the implementing provisions was extended to minors, as unaccompanied minors were identified as typical victims of trafficking. (Hailbronner 2010: 461f)

Article 10 sets out the conditions for minors: Generally, Member States must take due account of the best interests of the child when applying the Directive. The procedure has to be appropriate to the age and maturity of the child, and therefore also includes the option of extending the reflection period, if this is in the interest of the child. Furthermore, access to the educational system under the same conditions as nationals has to be granted to minors.735 As far as unaccompanied minors are concerned, Member States are obliged to take measures to establish their identity, nationality and the fact that they are unaccompanied. Additionally, every effort to locate their families shall be made and legal representation shall be provided.736 Additionally, Article 9 provides for necessary medical or other assistance to third-country nationals who do not have sufficient resources and have special needs, mentioning explicitly also minors.737

Regarding children, the Trafficking Directive provides for specific assistance, support and protection measures. The basic principles are laid in Article 13: the best interest of the child must be primary consideration when applying the Directive and additionally in case of doubt concerning the age of the person, authorities apply the benefit of the doubt and treat the person as minor.738 In particular, children must benefit from specific measures taking due account of the child’s views, needs and concerns with a view to finding a durable solution: individual assessment, access to education for child

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732 Article 19 para. 2 of the Reception Conditions Directive.
734 Article 3 of the Residence Permit Directive.
735 Article 10 lit. b of the Residence Permit Directive.
736 Article 10 lit. c of the Residence Permit Directive.
737 Article 9 para. 2 of the Residence Permit Directive.
738 Article 12 para. 2 of the Trafficking Directive.
victims and the children of victims, appointment of a guardian or a representative assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States.\textsuperscript{739} During the criminal proceedings Member States must guarantee that a representative is appointed and that the child has access to free legal counselling and representation (also to claim compensations). With regard to interviews and hearings specific guarantees are provided: interviews with the child victim must take place without unjustified delay, where necessary, in premises designed or adapted for that purpose and that the interviews are carried out by trained professionals and if possible by the same persons, and that the number of interviews is as limited as possible.\textsuperscript{740} Member States must further take the necessary measures to ensure all interviews may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings,\textsuperscript{741} the hearing takes place without the presence of the public and the child victim to be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies. Unaccompanied minors are particularly mentioned in the Directive requiring Member States to adopt assistance and support measures that take into account their particular situation.\textsuperscript{742}

\textit{Return Directive}

Finally, regarding return and detention of minors who do not have or no longer have a legal residence status, the EU Return Directive provides that before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child. Furthermore, before removing an unaccompanied minor from a Member State, the authorities should be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities.\textsuperscript{743} Moreover, the Directive stipulates that unaccompanied minors should only be detained as a measure of last resort and for the shortest appropriate period of time, they should be provided as far as possible with accommodation in institutions provided with personnel and facilities, which take into account the needs of persons of their age.\textsuperscript{744}

\textbf{11.2 Armenian legal framework}

The Law on Asylum and Refugees provides the legal basis for the treatment of asylum-seeking unaccompanied minors; to a more limited extent it also contains provisions for unaccompanied minor refugees. The Law defines an unaccompanied minor or separated child as “a child, who is an asylum seeker or refugee and under the age of 18, do not have a legal representative (parents (parent), guardian, custodian) in the territory of the Republic of Armenia.”\textsuperscript{745} The term unaccompanied minor and separated child is used interchangeably.

According to Article 38, the Ministry of Labour and Social Issues in cooperation with the Guardianship Bodies and Child Protection Units is responsible for the placement and care of unaccompanied minor asylum seekers. The Ministry of Education and Science upon the request of the Guardianship Bodies is in charge of the organization of the admittance of unaccompanied minor asylum seekers and refugees to educational institution. The SMS is responsible for contacting the responsible authorities upon receipt of the asylum application to arrange the placement and the care for unaccompanied minors.\textsuperscript{746}

\textsuperscript{739} Article 14 of the Trafficking Directive.
\textsuperscript{740} Article 15 para. 1-3 of the Trafficking Directive.
\textsuperscript{741} Article 15 para. 4 of the Trafficking Directive.
\textsuperscript{742} Article 16 of the Trafficking Directive.
\textsuperscript{743} Article 10 of the Return Directive.
\textsuperscript{744} Article 17 of the Return Directive.
\textsuperscript{745} Article 8 of the Law on Refugees and Asylum.
\textsuperscript{746} Article 34 para. 8 of the Law on Refugees and Asylum.
Finally, the Law stipulates that all the officials involved in the asylum procedure of an unaccompanied minor asylum seeker should consider the special situation, opinion and maturity of unaccompanied minors, provide them with all possible assistance and act in the best interest of the minor within their competence. 747

The Law on Asylum and Refugees sets out that unaccompanied or separated minors should undergo the general asylum procedure and enjoy the same rights as asylum seekers and refugees, if not specified differently. 748 The Law on Refugees and Asylum establishes the following specific provisions concerning unaccompanied minors: unlike accompanied minors, unaccompanied refugee minors and asylum seeking minors under the age of 16 should receive a Convention Travel Document or identity paper on their own, respectively. 749 The Convention Travel Document cannot be used for leaving the Republic of Armenia without a guardian. 750 Article 50 provides further guarantees: in cases of unaccompanied minor asylum seeker(s) the SMS has to immediately inform the Ministry of Labour and Social Issues, in order to assist the appointment of a guardian (custodian) for unaccompanied minor asylum seekers. The Ministry of Labour and Social issues has to initiate tracing of the children’s parents or any other relatives for the purpose of family re-unification, except in cases when the latter is not in the interests of the child. It has to further initiate jointly with the Child Protection Units the process of accommodating and appointment of guardian for unaccompanied minor asylum seekers. When accommodating the children, the Guardianship Bodies have to ensure the joint residence of minor asylum seekers, who are members of one family, proceeding from the protection of the children’s interests. The guardian(s) are obliged to present the interests of minor asylum seekers appropriately during the asylum procedure and the SMS has to involve the guardian in any steps regarding the asylum procedure and has to ensure that the interview is conducted in the presence of the latter and by an officer who has the necessary knowledge and skills for working with minors. 751

Concerning unaccompanied minors who do not apply for asylum and/or who are victims of human trafficking the Armenian legislation does not envisage specific mechanisms, due to the general equal treatment provision as set out in Article 5 of the Law on Foreigners they must be provided equal treatment with Armenian nationals. Furthermore, the return of unaccompanied minors who do not or no longer have a residence permit is not regulated specifically in the Armenian legislation.

11.3 Gap Analysis

11.3.1 Gap analysis between the Armenian legislation and implementation in practice

According to authorities interviewed the provisions concerning unaccompanied minors were not implemented until today, thus it is not possible to analyse the implementation practice.

11.3.2 Gap analysis between the national legislation and the EU acquis

Both the EU acquis and the Armenian asylum legislation stipulate the principle of best interest of the child as primary consideration for the authorities when implementing the laws. While the Armenian legislation provides for specific provision for unaccompanied minor asylum seekers and refugees, no comparable specific provision could be identified for unaccompanied minors who are victims of trafficking and do not apply for asylum.

Guardianship

While the Armenian asylum legislation in general envisages the appointment of guardians for both unaccompanied minor asylum seekers and refugees, as required by the EU acquis, it is unclear whether the national guardianship and care system is prepared for the reception of unaccompanied minors. This also the case because the placement is not specifically defined in the Law on Refugees and Asylum, it contains only a provision that unaccompanied minors who are family member should be accommodated together.

747 Article 8 para. 4 of the Law on Refugees and Asylum.
748 Article 8 para. 2 of the Law on Refugees and Asylum.
749 Article 29 para. 1 and 30 para.2 of the Law on Asylum and Refugees.
750 Article 30.2 of the Law on Asylum and Refugees.
751 Article 50 and Article 47 para.8 of the Law on Asylum and Refugees.
**Education**

Regarding access to education most Directives described above require full access to education for minors under the same conditions as nationals, only one reservation is made in the Directive allowing that the access can be limited to public education system. At the same time, the Law on Refugees and Asylum stipulates only access to basic general education for minors.

**Healthcare and rehabilitation**

The Armenian legislation does not provide for specific healthcare or rehabilitation services for unaccompanied minors, asylum seeking minor and minor recognized as refugees have access to healthcare under the same conditions as nationals. However, as it was noted above, the access to medical services appears to be very difficult or not available in practice, thus it is questionable, if necessary and specific services could be provided for unaccompanied minors who are in an even more vulnerable situation.

**Training:**

In contrast to the EU acquis, in the Armenian legislation there is no specific provision that would prescribe specific trainings for persons involved in the treatment of unaccompanied minors. The Armenian legislation does not provide specific provisions for unaccompanied minors under the temporary protection scheme, however as the rights and standards granted are the same as for refugees and asylum seekers in/after an individual asylum procedure, the concerns can raised there are also valid here.

**11.4. Recommendations**

**UAMs as victims of trafficking**

- The Armenian legislation does not provide for specific provisions for unaccompanied minor who are victims of trafficking, it is thus strongly recommended to implement the provisions of the Directive 2011/36/EU regarding unaccompanied minors and provide a comprehensive legislation for children who are victims of trafficking or sexual exploitation.
- Even though the provisions of the Residence Permit for Victims of Trafficking Directive are not mandatory, it is recommended that they are also implemented by Armenia.

**Care and support for UAMs**

- It is recommended to provide access to health care and rehabilitation services for unaccompanied minors regardless of their status.
- It is recommended to regulate and provide access to suitable and specialized accommodation for unaccompanied minors (foster parents, specialised facilities, etc.) both asylum seekers, refugees and victims of trafficking and carry out regular training of the legal guardians and of other staff who are working with unaccompanied minors.
- It is recommended to grant full access to education for unaccompanied minors who are asylum seekers, refugees or victims of trafficking as well as to those who cannot be removed from Armenian due to the principle of non-refoulement.

**Return**

It is recommended to provide for specific guarantees for unaccompanied minors in the return procedure as envisaged in the Returns Directive.

**Data collection**

It is recommended to collect disaggregated data on unaccompanied minors who are apprehended and/or identified in Armenia.
12. IRREGULAR MIGRATION

12.1. EU acquis
Prevention of and the fight against irregular migration is a constituent of the EU immigration policy. Article 79 of EU Treaty provides the legal base for the EU action in this area; accordingly the EU Parliament and Council shall adopt measures in the area of “illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation”. The Commission Communication on Policy priorities in the fight against illegal immigration of third-country nationals identifies cooperation with non-EU Member States, integrated management of external borders, secure identity and travel documents, integrated technological approach - e-borders, fight against human trafficking, combating irregular employment, return policy, improving information exchange and carriers’ liability as key priorities. Similarly, the Communication on Migration mentions combating irregular employment, referring to the Directive 2009/53/EC, fight against human trafficking, effective return policy and readmission agreements in the context of irregular migration. Also recent Council Conclusions and the EU Action on Migratory Pressures- A Strategic Response reinforce these priorities. Fight against irregular migration is also a fundamental element of the EU Mobility Partnership including, also of that with Armenia. In the Joint Declaration the EU and Armenia have committed to enhance their “efforts to fight further irregular immigration and trafficking in human beings, to strengthen the implementation of the integrated border management, including through further improvement of border surveillance and border management capacities and cross-border cooperation, according to the best international standards; to strengthen the security of travel documents, identity documents and residence permits, and to fully cooperate on return and readmission.”


12.1.1 Facilitation of irregular migration
The Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence requires Member States to take measures to combat the aiding of illegal immigration. Accordingly, they have to impose sanctions on persons who intentionally assists a foreign

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755 Idem, p. 4.
national to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens (except if the aim of the action is to provide humanitarian assistance); and on persons who, for financial gain, intentionally assists a foreign national to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens. \textsuperscript{758} Instigating, assisting in or attempting to commit these acts shall be also punishable. \textsuperscript{759} The sanctions must be effective, proportionate and dissuasive sanctions for these infringements. \textsuperscript{760}

12.1.2 Legislation concerning carries liability


Article 26 of the Schengen Convention implementing the Schengen Agreement obliges carriers that brought foreign nationals who are refused entry, immediately to assume responsibility for them again. At the request of the border surveillance authorities the carrier is obliged to return the foreign national to the country from which they were transported or to the country which issued the travel document on which they travelled or to any other country to which they are certain to be admitted. Carriers are, furthermore, obliged to take all the necessary measures to ensure that a foreign national carried by air or sea is in possession of the travel documents required for entry. If carriers do not fulfil this obligation Member States can impose penalties.

Complementary to the Schengen Convention Council Directive 2001/51/EC is intended to combat illegal immigration through the harmonisation of financial penalties on carriers who are breaching their obligations. Accordingly, national legislations must require that carriers ensure that third-country nationals who intend to enter the territories of EU countries possess the necessary travel documents and, where appropriate, visas. Carriers have the obligation to return a third-country national in transit who has been refused entry to the territories of EU countries when the third-country national is also refused boarding onto the carrier that was to transport him/her to the country of destination or entry by the country of destination, which has sent him/her back to the EU country of transit. \textsuperscript{763} A carrier that is unable to carry out the return of a third-country national is responsible for finding the means for his/her onward transportation. If this transportation cannot be effectuated immediately, the carrier must assume responsibility for the costs of the stay and return of the non-EU national. \textsuperscript{764} EU countries must impose dissuasive, effective and proportionate financial penalties against carriers in breach of their obligations. They must ensure that the: maximum amount of the penalties is not less than EUR 5 000; minimum amount of the penalties is not less than EUR 3 000; maximum amount of the penalty imposed as a lump sum for each infringement is not less than EUR 500 000. \textsuperscript{765} These

\textsuperscript{758} Article 1.
\textsuperscript{759} Article 2.
\textsuperscript{760} Article 3.
financial penalties do not apply to cases where the third-country national is seeking international protection.\textsuperscript{766} EU countries may in addition adopt penalties of a different type, such as seizure of the vehicle or withdrawal of the operating license.\textsuperscript{767} Carriers against whom proceedings have been brought for failure to fulfil their obligations have the right to defence and appeal.\textsuperscript{768} Finally, the Carriers Sanction Directive aims to improve border control by the transmission of passenger data by carriers to national authorities.\textsuperscript{769} The Directive requires air carriers to collect and transmit passenger data to the authorities of the Member State of destination responsible for control. Non-compliance may lead to fines being imposed and even, in the case of serious infringement, confiscation of the means of transport or withdrawal of the operating licence. With regards to data transmission, Member States must adopt necessary measures in order to oblige carriers to transmit relevant data on passengers who are carried to an authorized border crossing point, by the end of check-in, at the request of authorities.\textsuperscript{770} The information transmitted has to include: the number and type of travel document, nationality, full names, the date of birth, the border crossing point of entry into the territory of the Member States, the code of transport, departure and arrival time of the transportation, the total number of passengers carried on that transport and the initial point of embarkation.\textsuperscript{771} If the information transmitted is either incomplete or false, dissuasive, effective and proportionate sanctions on carriers must be imposed by the Member States. Such sanctions are imposed for each journey for which the relevant data were transmitted incorrectly or not transmitted at all. The maximum charge must not be less than EUR 5000; the minimum charge must not be less than EUR 3000 (or the equivalent in a national currency).\textsuperscript{772} Furthermore Member States may adopt or retain other sanctions like immobilisation, seizure and confiscation of the means of transport, temporary suspension or withdrawal of the operating licence.\textsuperscript{773} Article 5 stipulates that the Member States are responsible for ensuring the effective rights of defence and appeal to carriers. Article 7 sets out the conditions for data processing, committing the carriers to collect and transmit data electronically. The authorities responsible for performing checks on persons at external borders are obliged to save the data in a temporary file, which has to be deleted within 24 hours (unless it is needed for exercising statutory functions in accordance with national law).\textsuperscript{774} The Member States not only have to take the necessary steps to enforce carriers to delete these data,\textsuperscript{775} but also to oblige the carriers to inform the passengers about the ongoing procedures.\textsuperscript{776}

2.1.3 Case law of the European Union Court of Justice

In the context of irregular migration the El Dridi PPU (C-61/11) judgment of 28 April 2011 is also relevant. The judgement concerned Mr El Dridi, a third-country national who had entered Italy irregularly and was imposed a removal order. As he did not comply with the removal order, he was

\textsuperscript{769} Article 1 of the Carriers Sanction Directive.
\textsuperscript{770} Article 3 para. 1 of the Carriers Sanction Directive.
\textsuperscript{771} Article 3 para. 2 of the Carriers Sanction Directive.
\textsuperscript{772} Article 4 para. 1 of the Carriers Sanction Directive.
\textsuperscript{773} Article 4 para. 2 of the Carriers Sanction Directive.
\textsuperscript{774} Article 6 para. 1 of the Carriers Sanction Directive.
\textsuperscript{775} Article 6 para. 1 of the Carriers Sanction Directive.
\textsuperscript{776} Article 6 para. 2 of the Carriers Sanction Directive.
sentenced to one-year imprisonment by an Italian court. In its ruling the Court found that Member States may not provide for a custodial sentence on the sole ground that an illegally staying third-country national has not complied with an order to leave, but must pursue their efforts to enforce the return decision, which continues to produce its effects.

**12.1.4 Employment of irregular migrants**

According to the conclusion of the European Council meeting of 14 and 15 December 2006 cooperation among Member States should be strengthened in the fight against illegal immigration and in particular measures against illegal employment should be intensified at Member State and EU level. The possibility of obtaining work in the EU without the required legal status was identified as a key pull factor for illegal immigration into the EU is the possibility of obtaining work in the EU. To counter this, the European Council adopted the Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, the so-called Employers Sanction Directive. The Directive aims at the prohibition of the employment of illegally staying third-country nationals in order to fight illegal immigration. It sets minimum common standards on sanctions and measures to be applied against employers who infringe that prohibition. Generally, the Directive stipulates that Member States must prohibit the employment of irregularly staying third-country nationals including the implementation of sanctions and measures. Member States may grant an exception to irregularly staying third-country nationals whose removal has been postponed and who are allowed to work in the Member State.

**Employers’ obligations**

It defines respective obligations on employers, namely the requirement to keep a copy or record of the residence permit of the third-country national he/she employs (at least for the duration of the employment) which must be available for possible inspection by the competent authorities. Also, the employer must notify the competent authorities designated by the Member States of the start of employment of third-country nationals. Simplified notification may be granted where the employer is a natural person and the employment is for their private purposes, notification may not be required in case of third—country nationals holding an EC long-term residence permit. Employers who have fulfilled their obligations must not be held liable for an infringement of the prohibition unless they knew that the document presented was forged.

**Sanctions**

As referred to in Article 5, Member States must take the necessary measures to ensure that infringements are subject to effective, proportionate and dissuasive sanctions against the employer. Sanctions must include financial sanctions that increase in amount according to the number of irregularly employed third-country nationals and payments of the cost of return of irregularly-employed third-country nationals. Article 5 para. 3 specifies that Member States may provide for reduced financial sanctions if the employer is a natural person for his/her private purposes where no particularly exploitative working conditions are involved.

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778 Article 1Employers Sanction Directive.
779 Article 3Employers Sanction Directive.
780 Article 3 para. 3Employers Sanction Directive.
781 Article 4 para. 1 lit. bEmployers Sanction Directive.
782 Article 4 para. 1 lit. cEmployers Sanction Directive.
783 Article 4 para. 3Employers Sanction Directive.
The employer is also liable to pay any outstanding remuneration\textsuperscript{784} to the irregularly employed third-country national,\textsuperscript{785} an amount equal to any taxes and social security contributions that the employer would have paid if the employee had been legally employed including penalty payments for delays\textsuperscript{786} as well as any cost arising from sending back payments to the country to which the third-country national has or has been returned.\textsuperscript{787}

Other obligatory measures stipulated by the Directive are, if appropriate, the employer’s exclusion from entitlement to some or all public benefits, aid or subsidies, the recovery of such benefits for up to 12 months preceding the detection of the irregular employment, the exclusion from participation in a public contract, the temporary or permanent closure of the establishments or withdrawal of the licence that have been used to commit the infringement, if justified by the gravity of the infringement.\textsuperscript{788} Member States may choose not to apply those sanctions to employers that are natural persons and the employment was for private purposes.\textsuperscript{789}

The Directive provides specific provisions in case the employer is a subcontractor: Member States must ensure that the contractor may be liable to pay the financial sanctions as well as any back payments in addition to or in place of the employer\textsuperscript{790} unless the contractor has undertaken due diligence obligations.\textsuperscript{791} Additionally, the main or other intermediate subcontractor, where they knew about the employment of the irregular third-country nationals, must be held liable in addition or in place of the employing sub-contractor or contractor.\textsuperscript{792} Member States may decide to implement more stringent liability rules under national law.\textsuperscript{793}

Article 9 defines the cases in which the infringement of the prohibition of irregular employment constitutes a criminal offence provided that those actions have been committed intentionally: (1) in case the infringement continues or is persistently repeated, (2) in case of simultaneous employment of a significant number of irregularly staying third-country nationals, (3) if particularly exploitative working conditions occur, (4) if the employer knows that the person she/he irregularly employs is a victim of trafficking in human beings, (5) if a minor is affected.\textsuperscript{794} The Member States have to ensure that effective, proportionate and dissuasive criminal penalties are applied.\textsuperscript{795} As stipulated in Article 10, the Member States have to ensure that effective, proportionate and dissuasive criminal penalties are applied on natural persons committing such a criminal offense.\textsuperscript{796} Article 11 states that Member States must ensure that legal persons may be held responsible for an offence as defined in Article 9, if it has been committed for their benefit by a person holding a leading position within the legal person – this involves both individual acting and acting as part of an organ of the legal person.\textsuperscript{797} Legal persons may also be held liable if the criminal offence has been made possible due to a lack of supervision and control.\textsuperscript{798}

\textsuperscript{784} The level of remuneration must be presumed to have been at least as high as the minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages.

\textsuperscript{785} Article 6 para. 1 lit. aEmployers Sanction Directive.

\textsuperscript{786} Article 6 para. 1 lit. bEmployers Sanction Directive.

\textsuperscript{787} Article 6 para. 1 lit. cEmployers Sanction Directive.

\textsuperscript{788} Article 7 para. 1Employers Sanction Directive.

\textsuperscript{789} Article 7 para. 2Employers Sanction Directive.

\textsuperscript{790} Article 8 para. 1Employers Sanction Directive.

\textsuperscript{791} Article 8 para. 3Employers Sanction Directive.

\textsuperscript{792} Art 8 para. 2Employers Sanction Directive.

\textsuperscript{793} Article 8 para. 4Employers Sanction Directive.

\textsuperscript{794} Article 9 para. 1Employers Sanction Directive.

\textsuperscript{795} Article 10Employers Sanction Directive.

\textsuperscript{796} Article 10Employers Sanction Directive.

\textsuperscript{797} Article 11 para. 1Employers Sanction Directive.

\textsuperscript{798} Article 11 para. 2Employers Sanction Directive.
As with natural persons, penalties that are applied against legal persons must be effective, proportionate and dissuasive. Furthermore, Member States may publish a list of employers being legal persons who have been held responsible for a crime as referred to in Article 9.799

Legal position of irregular migrants

The Directive furthermore lays down the Member States’ obligation to enact mechanisms that ensure that irregularly employed third-country nationals may introduce a claim and enforce a judgement against their employers for an outstanding remuneration,800 or, when provided for by national legislation, may call on the competent authority of the Member State to start procedures to recover outstanding remuneration without the need for them to introduce a claim in that case.801 Third-country nationals must be systematically and objectively informed about these rights and possibilities to file complaints against the employer before the enforcement of any return decision. Member States must provide that an employment relationship of at least three months duration be presumed unless, among others, the employer or the employee can prove otherwise.802 Member States must further ensure that the necessary mechanisms are in place to ensure that the third-country nationals are able to receive any back payment of remuneration including in cases in which they have, or have been, returned.803 If the Member State decides to grant a temporary residence permit, it must define conditions under which the duration of these permits may be extended until the third-country national has received any back payment of his or her remuneration recovered.804

In order to facilitate complaints Member States must provide for effective mechanisms for irregularly employed third-country nationals that can be used directly or through third parties, for instance trade unions or other authorities designated by the Member States. Member States shall, on a case-by-case basis, define conditions in national law, under which they may grant permits of limited duration to the third-country nationals for the length of such proceedings. Assisting third-country nationals in complaint procedures must not be interpreted as facilitation of unauthorised residence under Council Directive 2002/90/ES of 28 November 2002.805

Member States are obliged to conduct effective and adequate inspections that are based on a risk assessment determining the sectors of activity in which the employment of irregularly staying third-country nationals is prevailing. The Commission has to be informed about those sectors, the numbers of inspections and their outcomes each year before July 1st.806

12.2. Armenian legal framework

Armenia is primarily seen as country of origin and country of transit for irregular migration;807 however, there is no reliable estimation on the number or irregular migrant transiting or residing in Armenia. Due to the rather liberal entry conditions to Armenia which grants visas and residence permits fairly easily, it is suggested that often migrants enter legally but with an irregular intent of utilising Armenia only as a transit route to other destinations. Combating irregular migration is a priority area in the Concept for the Policy of State Regulation of Migration.808 The Action Plan deals

799 Article 12Employers Sanction Directive.
800 Article 6 para. 2 lit. aEmployers Sanction Directive.
801 Article 6 para. 2 lit. bEmployers Sanction Directive.
802 Article 6 para. 3Employers Sanction Directive.
803 Article 5 para. 4Employers Sanction Directive.
804 Article 5 para. 5Employers Sanction Directive.
805 Article 13Employers Sanction Directive.
806 Article 14Employers Sanction Directive.
both with issues concerning irregular migration from and to Armenia, with the focus being rather on prevention of irregular migration of Armenian citizens through awareness raising, enhanced document security and through signing of readmission agreements, included that with the EU. The alignment of the Armenian legislation concerning irregular migration is also one of the envisaged activities. In December 2011 the Government adopted a Concept on Studying and Preventing Irregular Migration Originating from the Republic of Armenia. In the Concept Armenia was identified as a country of origin for irregular migration and irregular migration to Armenia is considered insignificant, thus the Concept deals exclusively with irregular migration from Armenia. High level of unemployment, low income level and “issues in the area of human rights” are considered as main reasons for emigration, while complicated admission and employment procedures, lack of information, high fees as well as a legislative gaps and organizational/structural barriers are considered to be reasons for irregular migration from Armenia. Regarding the latter two grounds particularly the lack of legislation on irregular migration and lack of licensing tourism, employment and other similar agencies as well as the lack of cooperation between authorities and the inadequate mechanisms for registration of migration flows were highlighted in the Concept. The interviews revealed that irregular entry and residence, as well as human smuggling to Armenia are not perceived as a significant issue for Armenia.809 On the one hand it is argued that the conditions to enter Armenia are very low and can be easily fulfilled, on the other hand Armenia, does not have many border crossing points as the borders with Turkey and Azerbaijan are closed.810 Armenia is party the UN Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime and ILO Convention on Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. Moreover, Armenia signed the Agreement of Cooperation of Commonwealth of Independent States Against Illegal Migration and participates in other activities of the CIS countries combating irregular migration.

Fight against irregular migration is also a priority area of the EU-Armenia Mobility Partnership, amongst others Armenia and the EU committed to enhance the fight further irregular immigration and trafficking in human beings, to strengthen the implementation of the integrated border management, including through further improvement of border surveillance and border management capacities and cross-border cooperation, according to the best international standards; to strengthen the security of travel documents, identity documents and residence permits, and to fully cooperate on return and readmission; to develop effective mechanisms and concrete initiatives for preventing and combating irregular migration, including through actions aiming at raising public awareness; as well as to improve the joint fight against irregular immigration and related cross border crime through joint operational measures. The EU - Armenia readmission agreement was signed on 19 April 2013. Armenia has already signed bilateral readmission agreements with several other countries, such as Denmark, Switzerland, Lithuania, Germany, Bulgaria, Sweden, Belgium, Luxembourg, the Netherlands, Czech Republic, Norway and the Russian Federation.

The Armenian Police, the Division for Combating Irregular for International Cooperation within the General Directorate of the RA Police for Combating Organized Crime, is the central authority in the field of combating irregular migration in Armenia.

Irregular migration as such is not defined by the Armenian legislation. The Criminal Code criminalizes irregular border crossing, swindling, theft and damage to documents, stamps, or seals, forgery,
sale or use of forged documents, stamps, seals, letter heads, vehicle licence plates, sale purchase of official documents or state decorations, and other articles. In particular, irregular border crossing is punishable with the imposition of a fine of an amount of 100-200 minimal salaries or with imprisonment for up to 3 years. Violations of the procedures of entering and living in border areas and of procedures of stay constitute an administrative offence. According to Article 200 Administrative Offences Code violating the rules for entering and living or registering in border areas is punishable with a warning or the imposition of a fine in the amount of thirty times the minimum salary. At the same time residence without a valid visa or residence permit, or with invalid documents, as well as violating the procedure for transiting through Armenia entails the imposition of a fine in the amount of fifty to one hundred times the minimum salary established in the Republic of Armenia. Violating the obligation of the inviter of a foreign national to Armenia to take care of the living expenses of the invitee, including the expenses of his/her possible health care and departure from Armenia is punishable with the imposition of a fine in the amount of fifty to one hundred times the minimum salary.

Moreover, hiring of foreign nationals (in the event of legal entities, their executive directors) without an appropriate residence status or work permit entails the imposition of a fine in the amount of one hundred to one hundred and fifty times the minimum salary.

12.3. Gap Analysis

13.2.1 Gap analysis between the Armenian legislation and implementation in practice

Although Armenian legislation criminalises irregular border crossing and irregular residence, however, as already previous assessments observed there is no system in place that would alert Armenian migration authorities of overstayers (both on visa and residence permit expiration). The residence status of foreign nationals is not tracked, also there are no checks carried out in the country.

Even though Armenia is State Party to UNTOC and the Smuggling Protocol, human smuggling is not criminalized in the Armenian Criminal Code, which hinders in practice the enforcement of the obligations deriving from the Protocol.

13.2.2 Gap Analysis between the national legislation and the EU acquis

Armenian legislation regarding irregular migration is rather limited, which is partly due to the perception of Armenia being a country of origin of irregular migrants. However, there is no reliable evidence that Armenia would not be also a country of transit or destination of irregular migrants. The legislation regarding employment of irregular migrants is rudimentary and there are significant gaps compared to the EU acquis. In particular, there is no obligation for employers to keep a copy of the residence or work permit of the foreign nationals and there is also no obligation to notify the employment of a foreign national. The sanctions imposed on employers who employ irregular foreign nationals does not relate to the number of irregularly employed foreign nationals and does not include the payments of the cost of return or the exclusion from entitlement to public benefits, aid or subsidies, etc. There are no guarantees in place for the payment of outstanding remuneration of irregular migrants. Furthermore, there are no criminal sanctions imposed in more severe cases of employment of irregular migrants, such as if the infringement continues or is persistently repeated, in case of simultaneous employment of a significant number of irregularly staying third-country nationals, if particularly exploitative working conditions occur, if the employer knows that the person

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812 Article 178 of the Criminal Code.
813 Article 324 of the Criminal Code.
814 Article 325 of the Criminal Code.
815 Article 326 of the Criminal Code.
she/he irregularly employs is a victim of trafficking in human beings, or if a minor is affected. The possibility to sanction legal persons and cases of subcontracting is not regulated in the Armenian legislation. There is no legislation that would regulate the obligations and the sanctions that can be imposed on carriers. Contrary to the EU acquis, human smuggling and facilitation of irregular migration is not criminalised in Armenia. Moreover, previous assessments of IOM and the Swedish Migration Service concluded that there is “an excessive divergence in the definition of “irregular/illegal migrant” with disproportionately high (criminal) penalties for illegal border crossing, as opposed to limited and lax (administrative) penalties for other immigration offences, such as over-stay.” Moreover, imposition of criminal penalties due to irregular migration appears to be problematic in view of the El Dridi PPU (C-61/11) judgment of the ECJ. Regarding detention of irregular migrants, there are no specific detention facilities for persons who are found irregularly in Armenia or who crossed the border irregularly and are to be removed from Armenia; theoretically irregular migrants may be put in prisons with criminal offenders, although the Armenian authorities highlighted that the case load is very low.

12.4. Recommendations

Sanctions for irregular migration and facilitation of irregular migration

➢ It is recommended to applying administrative penalties for migration-related offences on the migrants themselves, in particular for irregular border crossing (when no further criminal intent has been established), instead of the current criminal penalty and harmonise the level of penalties related to irregular migration.

➢ It is recommended to introduce criminal penalties for human smuggling and effective, proportionate and dissuasive sanctions for the facilitation of irregular migration.

Legislation concerning carries liability

➢ It is recommended to establish the carriers’ liability for travelling foreign nationals without valid travel document and/or visa to Armenia and impose sanctions in case of non-compliance.

➢ It is recommended to require air carriers to collect and transmit passenger data to the Armenian authorities.

Employment of irregular migrants

➢ It is recommended to establish a comprehensive legislative framework sanctioning the employment of irregular migrants as stipulated in the Employers Sanction Directive.

➢ It is recommended to create a legal framework to protect the rights of irregular migrant workers and to support them to claim outstanding wages, social security benefits, etc., also in cases where they returned or they have been returned to the country of origin.

➢ It is recommended to carry out awareness raising campaigns and to inform foreign national employees about their rights and entitlements and to facilitate their access to support mechanisms, such as trade unions and other counselling services.

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13. HUMAN TRAFFICKING

13.1. EU acquis

The political commitment at EU level to address the problem of trafficking in human beings (THB) is reflected in the large number of initiatives, measures and funding programmes established in the area both within the EU and third countries as early as in the 1990s. In the meantime, a number of EU instruments in various policy areas contribute to addressing trafficking in human beings. EU legislation on the right of victims of human trafficking to reside in the EU, on the sexual exploitation of children, and on sanctions against employers who knowingly employ irregularly staying third-country workers, complement the main legal instrument of the EU in this area, the Directive on Trafficking in Human Beings. The EU Internal Security Strategy in Action further addresses THB. The overarching framework of the EU external migration policy — the Global Approach to Migration and Mobility — highlights the importance of cooperating with third countries of origin, transit and destination and identifies as one of its four pillars the prevention and reduction of irregular migration and trafficking in human beings.

The most recent EU policy instrument is the EU Strategy towards the eradication of trafficking in human beings 2012-2016. The objective of the Strategy is to provide a coherent framework for existing and planned initiatives, to set priorities, to fill gaps and therefore complement the Directive 2011/36/EU. It focuses, therefore, on prevention, protection, prosecution and partnerships and also on ways to increase knowledge on emerging concerns related to trafficking in human beings. The five priorities of the EU Strategy are the following:

1. Strengthening the identification, protection and assistance to victims, with a special emphasis on children (including the development of an EU transnational model referral mechanism);
2. Stepping up the prevention of trafficking in human beings, including by reducing demand;
3. Increasing prosecution of traffickers;
4. Enhancing coordination, cooperation and coherence within the EU, with international organisations, and with third countries, including civil society and the private sector;
5. Increasing knowledge of, and effective response to, emerging trends in human trafficking.

Trafficking in human beings is specifically prohibited by Article 5 of the Charter of Fundamental Rights of the European Union. Beyond that two, Directives, the Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (Directive 2004/81/EC) and the Directive 2011/36/EU of the European

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Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (Trafficking Directive) deal with trafficking human trafficking. The Trafficking Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. Furthermore, it introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims.

Definitions

The definition of trafficking, as provided in Article 3, aligns with the definition of the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children of the UN Convention against Transnational Organized Crime (“Palermo Protocol”), accordingly the following acts are considered as punishable: the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation includes for example, exploitation for prostitution or other forms of sexual exploitation; forced labour or services (including begging, slavery or practices similar to slavery, servitude, exploitation for criminal activities, or the removal of organs). Exploitation exists when a constraint has been exerted on a person (by means of threat or use of force, abduction, fraud, deception, etc.), regardless the consent of the victim. When the victim is a child (a person below 18 years of age), the Directive requires that these acts of exploitation are automatically deemed to be an offence of trafficking in human beings, even if none of the means of constraint set forth in the paragraph above has been used. Equally, Member States must punish inciting, aiding and abetting or attempting trafficking in human beings.

Criminalisation of THB and criminal procedures

The Directive sets the maximum penalty of at least five years of imprisonment and to at least ten years when the following aggravating circumstances can be identified: the offence was committed against a victim who was particularly vulnerable (children always come under this category); the offence was committed within the framework of a criminal organisation; it deliberately or by gross negligence endangered the life of the victim; the offence was committed by use of serious violence or has caused particularly serious harm to the victim. The Directive further requires that if a public official in the performance of his/her duties has committed the offence it is regarded as an aggravating circumstance.

According to Article 5 legal persons can also be held liable if the offences are committed for their benefit by a person who has a leading position. The same applies if a lack of supervision or control on the part of this person enabled another person placed under his/her authority to commit these acts.

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820 Article 1 of the Trafficking Directive
822 A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved. (Article 2 para. 2)
823 Article 2 para. 4.
824 Article 2 para. 5.
825 Article 3.
826 Article 4 para. 1-2.
offences. Penalties against legal persons include criminal and non-criminal fines, and other sanctions such as exclusion from public aid and benefits, disqualification from the practice of commercial activities, temporary or permanent closure of establishments of the legal entity as well as placing it under judicial supervision, or judicial winding-up. Member States must further ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds.827

Concerning victims Member States must take necessary measures that the authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities, which they have been compelled to commit.828

With regard to investigation and prosecution of offenders, the Directive provides that it must not be dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his/her statement.829 Moreover, the Directive requires enabling the prosecution of the offence for a sufficient period of time after the victim has reached the age of majority.830 Member States must provide training and ensure effective investigative tools.831

Regarding jurisdiction Article 10 obliges Member States to prosecute offences committed in whole or in part of their territory or by their nationals. In case a Member State establishes jurisdiction for offences outside of its territory - if the offence is committed against a national or a person with habitual residence in the territory, the offence is committed for the benefit of a legal person established in its territory or the offender is a habitual resident in its territory – Member States must inform the EC. Member States must further guarantee that offence committed outside of the territory can be prosecuted in the Member State.832

Victim protection

Member States must ensure that assistance and support are provided to victims before, during and after criminal proceedings in order to enable them to exercise the rights conferred upon them by the standing of victims in criminal proceedings.833 The assistance measures should be provided as soon as the competent authorities have reasonable-grounds indication for believing that the person might have been subjected to human trafficking, at the same time assistance and support for a victim must be regarded the victim’s willingness to cooperate in the criminal investigation, prosecution or trial.834 Member States are obliged to implement early identification, assistance and support for victims.835 Support may consist of the provision of accommodation and material assistance, medical treatment including psychological assistance, as well as information,836 counselling, and interpretation and translation services, if necessary. Particular attention must be paid to victims with special needs.837

In additions to the rights set out in Framework Decision 2001/220/JHA, Article 12 grants further protection measures: access to legal counselling and representation, free of charge if necessary, and access to a witness protection programme, where appropriate.838 Protection must be granted on the basis of an individual risk assessment, by having access to appropriate victim protection

827 Article 7.
828 Article 8.
829 Article 9 para. 1.
830 Article 9 para. 2 of the Trafficking Directive.
831 Article 9 para. 3-4 of the Trafficking Directive.
832 Article 10 para. 3 of the Trafficking Directive.
833 Article 11 para. 1 of the Trafficking Directive.
834 Article 11 para. 2-3 of the Trafficking Directive.
835 Article 11 para. 4 of the Trafficking Directive.
836 Information must cover, where relevant, information on a reflection and recovery period and on the possibility of granting international protection.
837 Article 11 para. 6 of the Trafficking Directive.
838 Article 12 para. 1-2 of the Trafficking Directive.
programmes. Any further trauma to the victim should be avoided, for example by sparing him/her any contact with the accused.

Regarding children the Directive provides for specific assistance, support and protection measures. The basic principles are laid in Article 13: the best interest of the child must be primary consideration when applying the Directive and in case of doubt concerning the age of the person, authorities apply the benefit of the doubt and treat the person as minor. In particular, children must benefit from specific measures taking due account of the child’s views, needs and concerns with a view to finding a durable solution: individual assessment, access to education for child victims and the children of victims, appointment of a guardian or a representative assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. During the criminal proceedings Member States must guarantee that a representative is appointed and that the child has access to free legal counselling and representation (also to claim compensations). With regard to interviews and hearings specific guarantees are provided: interviews with the child victim must take place without unjustified delay, where necessary, in premises designed or adapted for that purpose and that the interviews are carried out by trained professionals and if possible by the same persons, and that the number of interviews is as limited as possible. Member States must further take the necessary measures to ensure all interviews may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, the hearing takes place without the presence of the public and the child victim to be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies. Unaccompanied minors are particularly mentioned in the Directive requiring Member States to adopt assistance and support measures that take into account their particular situation. Finally, victims of trafficking in human beings must have access to compensation for victims of violent crimes of intent.

Prevention of THB
In terms of prevention, the Directive mandates Member States to discourage demand through education and training, lead information and awareness-raising campaigns; train the officials likely to come into contact with victims of trafficking as well as to take the necessary measures to establish as a criminal offence the use of services, sexual or other, of a person who is a victim of trafficking.

Institutional structures
In institutional terms Member States are required to establish national rapporteur of similar mechanisms that in particular carry other assessments of trends, measure results, gather of statistics as well as report on the situation.

Residence permit for VoT
The second directive, the Directive 2004/81/EC aims at defining the conditions for granting residence permits of limited duration to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration. The scope of the Directive covers third-country nationals who are or have been victims of trafficking in human beings, even if they have

839 Article 12 para. 3 of the Trafficking Directive.
840 Article 12 para. 4 of the Trafficking Directive.
841 Article 12 para. 2 of the Trafficking Directive.
842 Article 14 of the Trafficking Directive.
843 Article 15 para. 1-3 of the Trafficking Directive.
844 Article 15 para. 4 of the Trafficking Directive.
845 Article 16 of the Trafficking Directive.
846 Article 17 of the Trafficking Directive.
847 Article 18 of the Trafficking Directive.
848 Article 19 of the Trafficking Directive.
849 Article 1 of the Residence Permit Directive.
irregularly entered the territory of the Member State. It is furthermore within the Member States’ discretion to apply the Directive to third-country nationals who have been the subject of an action to facilitate illegal immigration. Generally, the Directive shall apply to third-country nationals of full legal age, but it may also be applied to minors under the conditions laid down in national law, if a Member State decides to do so.

The procedures for issuing the residence permit are regulated in the Articles 5-8 (Chapter II). More exactly, Article 5 mandates the competent authorities of the Member States to inform third-country nationals who may fall into the scope of the Directive about its imminent possibilities. The Member States, however, may also entrust this information transmission process to non-governmental organisations or associations.

The Directive furthermore grants a reflection period to the third-country nationals concerned aiming at taking the decision on whether to cooperate with the competent authorities free from pressure and free from the influence of the perpetrators of the offences. The duration of this period shall be determined according to national law.

Article 6 furthermore stipulates that third-country nationals must not be subjected to expulsion orders during the reflection period. However, an entitlement to residence cannot be derived from this right. Also, the Member States may at any time terminate the reflection period in case the person concerned has voluntarily renewed contact with the perpetrators of the offences or for reasons relating to public policy or for national security reasons.

Article 7 regulates the conditions of treatment before the issue of a residence permit. In detail, it determines that Member States must ensure that the third-country national concerned must be granted standards of living ensuring their subsistence and access to emergency medical treatment. Also, translation and interpreting services as well as free legal aid has to be provided if appropriate.

After the reflection period, Member States must ascertain whether the third-country national concerned is willing to cooperate and whether he/she has broken off all relations with the perpetrators of the offences. If the conditions are adequately met, a residence permit can be granted for at least six months, with the option of renewal.

In Article 10 conditions for the treatment of minors are stipulated, which are guided by the principle of acting in the best interests of the child. This includes access to the educational system under the same conditions as nationals. Also, every effort to establish the identity and to locate the families of unaccompanied minors should be undertaken.

850 Article 3 para. 1 of the Residence Permit Directive.
851 Article 3 para. 2 of the Residence Permit Directive.
852 Article 3 para. 3 of the Residence Permit Directive.
853 Article 5 of the Residence Permit Directive.
854 Article 6 para. 1 of the Residence Permit Directive.
855 Article 6 para. 2 of the Residence Permit Directive.
856 Article 6 para. 3 of the Residence Permit Directive.
857 Article 6 para. 4 of the Residence Permit Directive.
858 Article 7 para. 1 of the Residence Permit Directive.
859 Article 7 para. 3 of the Residence Permit Directive.
860 Article 7 para. 4 of the Residence Permit Directive.
861 Article 8 para. 1 lit. b of the Residence Permit Directive.
862 Article 8 para. 1 lit. c of the Residence Permit Directive.
863 Article 8 para. 3 of the Residence Permit Directive.
864 Article 10 lit. b of the Residence Permit Directive.
865 Article 10 lit. c of the Residence Permit Directive.
The Directive obliges Member States to define rules under which holders of the residence permit have access to the labour market, to vocational training and education, which, however, shall only be granted for the duration of the permit.\footnote{Article 11 of the Residence Permit Directive.}

Third-country nationals concerned shall furthermore have access to special programmes or schemes targeting at the possibility of leading a normal social life, developing professional skills or preparing for assisted return. Such programmes can be provided by the Member States, NGOs or other associations that have agreements with the Member States.\footnote{Article 12 of the Residence Permit Directive.}

Chapter IV, comprising Articles 13 and 14, sets out the conditions for non-renewal or withdrawal of the residence permit that has been issued on the basis of the Directive. Residence permits shall not be renewed\footnote{Article 13 of the Residence Permit Directive.} and may be withdrawn\footnote{Article 14 of the Residence Permit Directive.} if the requirements therefore are no longer met – this is particularly the case if the holder has actively renewed contacts with the persons suspected of committing the offences,\footnote{Article 14 lit. a of the Residence Permit Directive.} if the authorities believe that the victim’s cooperation or his/her complaint is fraudulent,\footnote{Article 14 lit. b of the Residence Permit Directive.} if national security is endangered or for reasons relating to public policy,\footnote{Article 14 lit. c of the Residence Permit Directive.} if the victim quits the cooperation\footnote{Article 14 lit. d of the Residence Permit Directive.} or if the authorities decide to discontinue the proceedings.\footnote{Article 14 lit. e of the Residence Permit Directive.}

\subsection*{13.2. Armenian legal framework}

At the international level Armenia is party to the most relevant international treaties in the field of action against trafficking in human beings: the UN Convention against Transnational Organized Crime and the Palermo Protocol, the UN Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the ILO Conventions No. 29 and 105 on Forced Labour and Convention No. 182 on Eliminating the Worst Forms of Child Labour. At the regional level Armenia has ratified the Council of Europe Convention on Action against Trafficking in Human Beings and several conventions within the Commonwealth of Independent States (CIS).

On the policy level, since 2004 three National Action Plans on Trafficking in Human Beings (NAP) were adopted 2004-2006, 2007-2009 and the current 2010-2012. The current Action Plan is composed of six parts: development of legislation and its implementation, prevention protection and assistance of victims, cooperation among stakeholders, research and evaluation and coordination of anti-trafficking activities. The Council to Combat Trafficking in Human Beings and its Working Group are in charge of the implementation of the NAP. The Council was set up in 2007, is chaired by the Deputy Prime Minister of Armenia and is composed of the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Sports and Youth Affairs, Minister of Economy, Ministry of Finance, Ministry of Education and Science, Ministry of Labour and Social Affairs, Ministry of Health Care, Deputy Prosecutor General, First Deputy Director of the National Security Service, First Deputy Head of the Police, Head of the Department of International Relations Staff of the President of Armenia, Head of the State Migration Service at the Ministry of Territorial Administration, Chair of the Standing Committee on Human Rights and Public Affairs of the National Assembly and Human Rights Defender. The Council coordinates counter trafficking activities in Armenia, it adopts advisory decisions in the field of prosecution (proposals for legislative improvements), prevention (public awareness raising, increasing the role of mass media),
provision of assistance to victims of trafficking. An inter-institutional working group subordinate to the Council, chaired by the Director of the Department of International Organizations of the Ministry of Foreign Affairs, organizes the activities and coordinates the work of the Council. The working group is furthermore responsible for the observance of the implementation of the international commitments of Armenia with regard to anti-trafficking and submits recommendations in this respect; it implements cooperation programs with international organizations and donor countries and evaluates it effectiveness and involves NGOs and the civil society in anti-trafficking activities.

In 2008 a National Referral Mechanism for Trafficked Persons (NRM) was put in place which defines the roles of relevant state bodies and local authorities in identifying and assisting victims of trafficking, the principles of cooperation among them, victim identification and types of assistance to victims.

Definitions
Trafficking in human beings is defined in Article 132 Criminal Code as “recruitment, transportation, transfer, harbouring or receipt of a person with the purpose of exploitation, as well as exploitation of a person or putting or keeping him or her in a condition of exploitation, by means of threat or use of force not dangerous for the life or health or other forms of coercion, of abduction, of deception, of abuse of trust (fraud), abuse of power or a position of vulnerability, or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person.” Moreover, the National Referral Mechanism Regulation provides another definition of trafficking, accordingly, “1. Trafficking – the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, exploitation of power or of a position of vulnerability or giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Furthermore: a. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph 2(1) of this Regulation shall not matter where any of the means set forth in subparagraph 2(1) have been used; b. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons even if this does not involve any of the means set forth in this subparagraph.”

Criminalisation
According to Article 132 para. 1 Criminal Code, trafficking in human beings is punishable by imprisonment from five to eight years. The envisaged penalty of imprisonment is from seven to 12 years in the presence of aggravating circumstances which, pursuant to Article 132 para. 2 Criminal Code, include committing the offence against two or more persons, by a prior agreement between a group of people, through abuse of official position, by a threat or use of violence which endangers a person’s life or health, against a pregnant woman, or by arranging the person’s illegal border crossing. If the offence is committed by an organised group and/or causes a person’s death or leads to other grave consequences by negligence, the penalty is imprisonment from 10 to 14 years. 875 Trafficking in children and adults with mental disorders is punishable by imprisonment for seven to 10 years. 876 If this offence is committed by an organised group and/or causes death or other grave consequences by negligence, it is punishable by imprisonment for 12 to 15 years. For all the offences, including those committed under aggravating circumstances, courts may decide to apply additional sanctions in the form of confiscation of property, revocation of the right to hold certain positions and engaging in certain activities for a maximum of three years.

875 Article 132 para. 3 of the Criminal Code.
876 Article 132 para. 2 of the Criminal Code.
Moreover, Article 324 criminalises the theft or damaging of documents, stamps and seals. In particular, it establishes that the theft of a passport or other important document is punishable by a fine ranging from 200 to 400 times the minimum salary, or imprisonment from two months to one year. In addition, theft, destruction, damaging or concealment of official documents, stamps and seals committed for personal gain or other personal interests, is punishable by a fine of from 300 to 500 times the minimum salary or imprisonment of one month to two years. Under Article 132 para. 5 victims of THB are exempted from punishment for offences of minor or medium gravity, which the person was involved in during trafficking or exploitation and was forced to commit.

Furthermore, the Armenian legislation establishes criminal liability for the use of services of a victim of THB with the knowledge that the person is a victim. According to Article 132 para. 3 Criminal Code the knowing use of services of an exploited person, if the case does not fall under Article 132 or 132 para. 2 of the Criminal Code, is punishable by a fine of from 100 to 400 times the minimum salary or imprisonment for up to two years. The same offence committed against a minor, a person with a mental disorder, a pregnant woman or two or more persons is punishable by imprisonment for up to three years.

Victim protection

The NRM Regulation defines three types of assistance that are linked to the stages of identification of victims: preliminary, intermediate and final assistance. Assistance for victims at the primary identification stage includes medical care, immediate in-kind assistance, legal consultation, short-term housing (up to 30 days) and psychological assistance. Intermediate assistance includes temporary housing for up to 60 days, medical examination and care, legal assistance, psychological assistance, measures for re-integration into society, including professional training and where necessary, emergency financial assistance. Assistance provided upon final identification includes a package of assistance measures, in addition to the previously mentioned measures, which are provided under the Law on Social Assistance.

The Ministry of Labour and Social Affairs (MLSA) is the body responsible for providing assistance to victims of THB through its regional departments, in cooperation with municipalities. It also supervises the budget allocated to NGOs who assist victims of THB. According to the GRETA report, a significant proportion of assistance is provided by specialised NGOs which recently began to receive State funding for this purpose: the NGO Hope and Help offers shelter for short term stays and provides legal, psychological and medical assistance and vocational training. UMCOR grants a shelter for victims of THB providing short, medium, and long-term accommodation, psychological and material assistance, emergency medical care, translation and interpretation services, access to education for children and legal assistance during criminal proceedings.

In terms of prevention the latest National Action Plan envisages various awareness-raising activities among the Armenian population as well as trainings of officials (prosecutors, case workers, teachers, law enforcement). Moreover, the Criminal Code criminalises the use of services of a person with the knowledge that the person is a VoT.\(^{877}\)

13.3. Gap Analysis

13.3.1 Gap analysis between the Armenian legislation and implementation in practice

In the country report on Armenia, GRETA analysed the implementation of the organisation of assistance and protection of victims of THB in practice. As the visit and the assessment of the GRETA were more detailed focusing only on THB, than the visit carried out for the assessment at hand, the most relevant findings that are relevant also for the EU acquis are summarized here:

\(^{877}\) Article 132 para. 3 of the Criminal Code.
In particular, GRETA found that the organisation of assistance of victims was, at times, accompanied by administrative and practical difficulties, which diminish the access of service-providing NGOs to public funds envisaged for this purpose. Limitations on access to assistance and protection measures resulting from the current identification procedure were identified; in particular persons who did not cooperate with the authorities but who satisfied the indicators that would suggest they have been trafficked and were in need of assistance were not entitled to these measures.\(^\text{878}\) Regarding the quality of assistance measures provided to victims, inconsistent unequal standards have been identified.\(^\text{879}\) Finally, GRETA noted that most of the measures for the assistance, protection and rehabilitation of victims of THB (including shelters) have been designed for women. There are no shelters for children and men victims of THB.\(^\text{880}\)

In terms of prevention measures, GRETA noted that there is a need for targeted prevention campaigns for vulnerable groups, in particular children and youngsters leaving child care institutions and that Armenia should address the root causes of THB and support social and economic empowerment.\(^\text{881}\)

13.3.2 Gap analysis between the national legislation and the EU acquis

**Criminalization**

The definition of THB of the Armenian Criminal Code and that of the NRM Regulation is comparable with the definition of the Trafficking Directive. Generally, also the levels of punishments correspond to the requirements of the Directive, with an exceptions: the penalties in case of aggravating circumstances as committing the offence against two or more persons, by a prior agreement between a group of people, through abuse of official position, by a threat or use of violence which endangers a person’s life or health are 7 to twelve years while the Directive requires at least 10 years in such cases. Moreover, contrary to the requirement of Article 5 of the Trafficking Directive criminal liability of legal persons for their involvement in THB offences is currently not envisaged in the Armenian legislation. The Armenian Criminal Code is furthermore silent on the issue of the consent of the victim, which should be irrelevant according to the Trafficking Directive; only the NRM Regulation stipulates it explicitly.

**Victim protection**

In terms of victim protection, it appears that there is no guarantee for access to protection and assistance, if the victim does not cooperate with the authorities. Furthermore, contrary to the EU acquis the Armenian legislation and the NRM does not provide for specific child protection, assistance and support measures. Also GRETA found that there are no adequate assistance measures to male victims of trafficking. Compared to the requirements of the Directive 2004/81/EC on residence permits for victims of trafficking following gaps can be identified. Firstly, the Armenian legislation does not provide for the possibility to apply for a residence permit for victims of trafficking, connected to that


\(^\text{880}\) Idem.

the Armenian legislation does not set out the conditions on the access to the labour market, to vocational training and education and return. There are also no guarantees provided for child victims of THB. Secondly, the Armenian legislation does not contain a specific reference to a recovery and reflection period for victims of THB, only Article 27 of the NRM Regulation lists assistance measures at the stage of preliminary identification, which include accommodation for up to 30 days.

As regards legal aid to victims of THB, according to GRETA, it is not provided under the existing legal aid scheme. Legal assistance, including during court proceedings, is provided through NGOs that contract lawyers and cover the costs from their own budget. Furthermore, during the interviews it was confirmed that there is no witness protection programme available for victims of trafficking as prescribed in the Directive.

13.4. Recommendations

Criminalisation

- It is recommended to increase the level of minimum punishment to ten years imprisonment if trafficking is committed under aggravating circumstances.
- It is recommended to establish criminal liability for legal entities. Penalties against legal persons shall include criminal and non-criminal fines, and other sanctions such as exclusion from public aid and benefits, disqualification from the practice of commercial activities, temporary or permanent closure of establishments of the legal entity as well as placing it under judicial supervision, or judicial winding-up.
- It is recommended to establish clearly in the law that the consent of the victim is irrelevant.

Victim protection

- It is recommended to create a legal basis for a recovery and reflection period of up to 30 days and to ensure that victims of THB are systematically informed of the recovery and reflection period and they are effectively granted such a period.
- It is recommended to establish a residence permit for victims of trafficking and to regularly inform (potential) victims of trafficking of the possibility to obtain a permit.
- It is recommended to define rules under which holders of a residence permit for victims of trafficking have access to the labour market, to vocational training and education.
- It is recommended to introduce programmes that facilitate the return of victims to their countries of origin.
- It is recommended to introduce a witness protection and legal aid scheme for victims of trafficking.
- It is recommended to guarantee that victims of THB have effective access to assistance and protection they need, regardless of whether they co-operate with the law enforcement authorities and to provide adequate assistance measures, including accommodation, to men and child victims of THB as well as that the necessary human and financial resources are made available.

Prevention

It is recommended to develop targeted awareness raising campaign and to address root causes of trafficking through socio economic empowerment of the most vulnerable.

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883 Interview with the Division for Combating Irregular for International Cooperation, September 2012.
14. EXIT

14.1 EU Acquis

Exit of third-country nationals from the EU territory

According to the Schengen Borders Code third-country nationals are subject to thorough checks upon entry and exit.\(^{884}\) The checks performed on exit include the following:\(^{885}\)

i. Verification that the third-country national possesses a valid document for crossing the border.
ii. Verification of the travel document for signs of falsification or counterfeiting.
iii. Whenever possible, verification that the TCN is not considered being a threat to public policy, internal security or the international relations of the Member States.

The exit checks may also include:

i. Verification that the third-country national possesses a valid visa, if required pursuant to Regulation (EC) No 539/2001, except where the third-country national holds a valid residence permit. Such verification may comprise consultation of the VIS in accordance with Article 18 of Regulation (EC) No 767/2008.\(^{886}\)
ii. Verification that the person did not exceed the maximum duration of authorized stay in the territory of the Member States.
iii. Consultation of alerts on persons and objects included in the SIS and reports in national data files.
iv. Upon entry and exit, the travel documents of third-country nationals are systematically stamped. An entry or exit stamp is in particular affixed to the documents: (1) bearing a valid visa, enabling third-country nationals to cross the border, (2) enabling third-country nationals to whom a visa is issued at the border by a Member State to cross the border, (3) enabling third-country nationals not subject to a visa requirement to cross the border.\(^{887}\)

In case of absence of an entry stamp, it can be presumed that the third-country national concerned does not fulfill, or no longer fulfills the conditions of stay.\(^{888}\) However, the third-country national may provide any credible evidence of having respected the conditions relating to the duration of a short stay, such as transport tickets or proof of his/her presence outside the territory of the Member States. If the presumption is not rebutted, the third-country national may be expelled by the competent authorities from the territory of the Member State concerned.

Exit from the EU territory of persons enjoying the Community right of free movement

Cross-border movement at external borders is subject to checks by border guards. All persons, including persons enjoying the Community right of free movement\(^{889}\), undergo a minimum check at the external borders in order to establish their identities on the basis of the production or

\(^{884}\) Article 7 para. 3 of the Schengen Borders Code.

\(^{885}\) Article 7 para. 3 lit. b and c of the Schengen Borders Code.


\(^{887}\) Article 10 of the Schengen Borders Code.

\(^{888}\) Article 11 of the Schengen Borders Code.

\(^{889}\) According to Article 2 para. 5, Schengen Borders Code ‘persons enjoying the Community right of free movement’ are (a) Union citizens within the meaning of Article 17 para. 1 of the Treaty, and third-country nationals who are members of the family of a Union citizen exercising his or her right to free movement to whom Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, 2005/38/EC applies; (b) third-country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens.
presentation of their travel documents.\textsuperscript{890} The minimum check consists of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorizing the legitimate holder to cross the border and of the presence of signs of falsification or counterfeiting. This minimum check is the rule for persons enjoying the Community right of free movement. On a non-systematic basis, when carrying out minimum checks on persons enjoying the Community right of free movement, border guards may consult national and European databases in order to ensure that such persons do not represent a genuine, present and sufficiently serious threat to the internal security, public policy, international relations of the Member States or a threat to the public health.\textsuperscript{891}

14.2 Armenian legal framework

According to Article 25 of the Constitution of the Republic of Armenia “Everyone legally residing in the Republic Armenia shall have the right to freedom of movement and choice of residence in the territory of the Republic Armenia. Everyone shall have a right to leave the Republic of Armenia. Every citizen and everyone legally residing in the Republic of Armenia shall have the right to return to the Republic of Armenia.”

Exit of foreigners from the Armenian territory

According to Article 12 lit. e, Law on Foreigners, foreigners may exit the Republic of Armenia if they hold (1) a valid passport and (2) a valid document attesting lawful stay or residence in the territory of the Republic of Armenia until the moment of exit, unless other procedure is applicable according to Armenian law or international treaties.

Foreigners holding a residence permit in the Republic of Armenia are not required to request for permission to leave the country pursuant to Article 25 of the Constitution and Article 12 of Law on Foreigners. Article 17 para. 5, Law on Foreigners simply states that when a foreigner with a residence permit is absent from the Republic of Armenia for more than six months, he/she shall simply notify the RA Police about his/her absence.

In the following cases, the exit of a foreigner from the Republic of Armenia is prohibited:\textsuperscript{892}

i. When a punishment has been imposed on the foreigner, the serving of which is only possible in the Republic of Armenia, until the end of the term of serving or until the release from serving as prescribed by law.

ii. When a decision on measure of restrain has been made in the framework of an opened criminal case, except for the cases when the investigation authority has authorized the exit of the foreigner in a written form.

iii. It is worth noting that civil liability does not constitute grounds for prohibiting the exit of a foreigner from the Republic of Armenia.

Regarding the border checks performed upon exit, border guard troops have the right\textsuperscript{893} to, \textit{inter alia}, (1) check the exit documents of persons, make relevant notes in them, and, if necessary, temporarily confiscate them, (2) prevent the exit of persons without relevant documentation until they obtain due papers, and, (3) prohibit the exit of crewmembers and passengers from the plane or other flying machines in case the latter have violated flight, airport, customs, sanitary or other rules in the territory of the Republic of Armenia.

\textsuperscript{890} Article 7 para. 2 of the Schengen Borders Code.
\textsuperscript{891} Article 7 para. 2 of the Schengen Borders Code.
\textsuperscript{892} Article 12 para. 2 of the Law on Foreigners.
\textsuperscript{893} Article 7 of the Law on Border Guard Troops and Article 28 of the Law on State Border.
In addition, border guard troops perform the clearance of persons across the state border if passengers have relevant documents stipulated by the legislation of the Republic of Armenia for entry to or exit from the Republic of Armenia.894

Data of all persons exiting Armenia are included in the BMIS database. The data include passenger’s data at the moment of border crossing depending on the border crossing point features and also a scanned copy of the travel document while the passenger’s biometrical data are compared with the biometric data contained in the document.895

Exit of Armenian nationals from the Armenian territory
Regarding the exit of Armenian nationals, it must be mentioned that the old Armenian passports are serving both as national identifications cards and as travel documents. When exiting the country, Armenians need to collect a validation stamp which works as an exit permit and authorizes the person to travel in foreign states.896 This validation stamp is obtained by the Directorate for Passports and Visas of the Armenian police. Consequently, the issuance of the passport as an international travel document is not enough for international travel. Without the validation stamp, the old passports are only valid as internal personal identity documents and they cannot be used for international travel.

With the introduction of the new passports in 2012, no validation stamp is needed in order to travel to foreign states. The new biometric passport provides automatically the right to international travel to its holder. However, since it is not mandatory to change from the old to the new passport, many Armenian nationals holding the old passports are still required to receive the validation stamp prior to travelling.897 In addition, male Armenian citizens of 18 years old need to provide a military book when entering and exiting the Republic of Armenia or and when applying for a passport.898

Armenian nationals are subject to border checks upon when exiting the country. No specific provisions are in place to differentiate the border checks on them and those on foreigners. Border guard troops check the exit documents of Armenian nationals and can prevent the exit of Armenian nationals without relevant documentation until they obtain due papers or until clarification is provided.899 Border guard troops perform the clearance of persons across the state border if passengers have relevant documents stipulated by the legislation of the Republic of Armenia for entry to or exit from the Republic of Armenia.900

14.3 Gap analysis
14.3.1 Gap analysis between the Armenian legislation and implementation in practice

Requirement of validation stamp for international travel
The requirement of a validation stamp on the passport of an Armenian citizen to allow for international travel is clearly a restriction of the right to leave the country, provided in Article 25 of the Constitution of Armenia as well as in international treaties. It is suggested that young men who have not yet served in the army have been denied validation of their passport to travel to foreign

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894 Article 10 of the Law on State Border.
897 See Chapter 1.
899 Article 7 of the Law on Border Guard Troops and Article 28 of the Law on State Border.
900 Article 10 of the Law on State Border.
countries. Authorities are thus allowed to restrict the exit of Armenian nationals due to the validation stamp requirement. In addition, since the validation stamp is not required for Armenian nationals holding the new type of passports, there is clearly discrimination on the right to leave the country between the old and the new passport holders.

**Exit of overstayers**

There is no clear procedure in place as what happens if a foreigner has overstayed in Armenia and has an expired visa upon exit. No permission to exit will be provided according to the Law on Foreigners, however, it is not clear how such a person who wants to voluntarily depart from Armenia can achieve this.

It seems that in certain cases a fine is imposed to foreigners when exiting without holding a document attesting lawful stay. However this poses a problem as sometimes a fine at the exit is preferred by foreigners staying illegally in the territory of Armenian as it is simpler and cheaper than obtaining a residence permit.

14.3.2 Gap analysis between the national legislation and the EU acquis

**Prohibition of exit of foreigners who have overstayed their visas**

Article 12 para. 1, Law on Foreigners states that a foreigner needs to hold, apart from a valid travel document, also a valid document attesting his/her lawful stay in the Armenian territory in order to exit the country. The EU acquis, on the other hand, does not contain as mandatory the verification of possession of a valid visa. Member States can decide whether they include the verification of visa possession and not exceeding the duration of authorized stay, as requirements when exiting. Some EU Member States do not have provisions on refusing entry in these cases while others do. Some impose administrative fees to overstayers.

14.4 Recommendations

**Requirement of validation stamp for international travel**

The requirement of a validation stamp on the passport of an Armenian citizen to allow for international travel needs to be abolished in order to comply with Article 25 of the Constitution of Armenia providing the right of Armenian citizens and foreigners to leave the country.

**Exit of overstayers**

Article 12 needs to include a specific procedure as to what happens if a foreigner has overstayed in Armenia and is presented at the border willing to depart.

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903 The verification that the third-country national possesses a valid visa and that he/she did not exceed the maximum duration of authorized stay. Article 7 para. 3 lit. b of the Schengen Borders Code.
904 See European Migration Network, Ad hoc query on refusal of exit at border crossing points and on duration of stay, 2011.
15. RETURN AND REMOVAL/EXPULSION

15.1 EU Acquis

Return and removal of illegally staying third-country nationals

The main Directive governing the issue of return and removal of third-country nationals is Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, which entered into force in 2010. According to the Directive, ‘return’ is the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced to: (1) his or her country of origin, or (2) a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or (3) another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted. A return decision is an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return. Removal is the enforcement of the obligation to return, namely the physical transportation out of the Member State.

The Directive sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights and general principles of Community law as well as international law, including refugee protection and human rights obligations. It applies to third-country nationals staying illegally on the territory of a Member State. Member States implementing the Return Directive need to take into account the best interests of the child, family life, the state of health and the principle of non-refoulement when applying the Directive. Third-country nationals who are staying illegally on the territory of a Member State and are holding a valid residence permit or another authorisation offering a right to stay issued by another Member State are required to go immediately to the territory of that other Member State. No return decision is issued if the Member State decides, at any moment, to grant an autonomous residence permit or other authorization offering a right to stay for compassionate, humanitarian or other reasons. In cases of bilateral agreements between EU Member States about taking back illegally staying third-country nationals, the EU Member State to which the person is...
returned is responsible for issuing the return decision. In any case, a return decision can only be issued after all procedures for renewal of residence permits have finished. If the third-country national does not fall under the above-mentioned exceptions or if his/her immediate departure is a matter of public policy or national security, the Member State needs to issue a return decision.

A period of voluntary departure must be granted with the return decision. This period must be between seven and thirty days and only extended by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of the stay, the existence of children attending school and the existence of other family and social links. During this period, specific obligations can be imposed by the EU Member State to the third-country national in order to prevent him/her from fleeing, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the staying at a certain place. In specific cases, the Member States can refrain from granting a period for voluntary departure or can grant a period shorter that seven days, when there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security.

If the third-country national does not comply with the obligation to return or if a voluntary return period has not been granted, the Member State needs to take all necessary measures to enforce the return decision. A separate administrative or judicial decision or act ordering the removal can also be adopted. When coercive measures are used, as a last resort, to carry out the removal, they should be proportionate and not exceeding reasonable force. They are implemented according to national legislation respecting fundamental rights and the dignity and physical integrity of the person being removed. In the two following cases, the removal must be postponed: (1) when it would violate the non-refoulement principle, (2) for as long as a suspensive effect is granted after the submission of an appeal. In addition, Member States can postpone the removal while taking into account: (a) the person’s physical and mental state, and (b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification. Special assistance by appropriate bodies is granted in case of return decisions and removals of unaccompanied minors and special provisions apply.

During the period of voluntary departure and during periods for which removal has been postponed, the Member States need to ensure that the following principles are taken into account as far as possible: (a) family unity with family members present in their territories maintained; (b) emergency health care and essential treatment of illness are provided; (c) minors are granted access to the basic education system subject to the length of their stay; (d) special needs of vulnerable persons are taken into account.

A return decision can be accompanied by an entry ban, the duration of which is decided on a case-by-case basis but it cannot exceed five years, unless the third-country national poses a threat to public policy, public and national security. An entry ban is an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying any return decision. An entry ban is mandatory if: (a) no period for voluntary departure

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913 Article 6 para. 3 of the Return Directive.  
914 Article 6 para. 5 of the Return Directive.  
915 Article 7 of the Return Directive.  
916 Article 7 para. 4 of the Return Directive.  
917 Article 8 of the Return Directive.  
918 Article 9 of the Return Directive.  
919 Article 10 of the Return Directive.  
920 Article 14 of the Return Directive.  
921 Article 11 para. 1 of the Return Directive.  
922 Article 3 of the Return Directive.
has been granted, or (b) the third-country national has not complied with the obligation to return.\textsuperscript{923} For particular reasons the EU Member State might decide to withdraw or suspend the entry ban or even not issue it at all due to humanitarian reasons.\textsuperscript{924}

The return decision, entry ban and removal must be issued in writing and together with information on available remedies.\textsuperscript{925} The Member State must issue a translation of the decision by request, unless the third-country national had entered illegally in the territory of the Member State and has not obtained an authorisation or a right to stay in that Member State.\textsuperscript{926}

The third-country national must have the possibility to appeal against or request the review of a return decision before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.\textsuperscript{927} That authority or body may temporarily suspend the enforcement of the return decision. The Member States need to ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid.\textsuperscript{928}

Unless other sufficient but less coercive measures can be applied effectively, Member States can keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when there is a risk of absconding or when the third-country national avoids or hampers the preparation of return or the removal process.\textsuperscript{929} Detention should be ordered for as short period as possible and maintained as long as removal arrangements are in progress. The judicial or administrative authorities issue the detention orders in writing and they must review them regularly.\textsuperscript{930} When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions of detention no longer exist, detention ceases to be justified and the person concerned shall be released immediately.\textsuperscript{931}

Each Member State sets a maximum period of detention, which may not exceed six months and in particular circumstances it can be extended for another twelve months (in accordance with national law) in cases where, regardless of all reasonable efforts, the removal operation is likely to last longer owing to: (a) a lack of cooperation by the third-country national concerned, or (b) delays in obtaining the necessary documentation from third countries.\textsuperscript{932}

If it is not possible to use special detention facilities for third-country nationals, Member States can use separate parts of prison accommodation.\textsuperscript{933} Upon request, third-country nationals in detention can have contacts with their legal representatives, family members and competent consular authorities. Third-country nationals should be systematically provided with information explaining the rules applied in the facility that set out their rights and obligations. Relevant and competent national, international and nongovernmental organisations and bodies can visit detention facilities, to the extent that they are being used for detaining third-country nationals. Emergency health care and essential treatment of illness should be provided to vulnerable persons.

Unaccompanied minors and families with minors must only be detained as a measure of last resort and for the shortest appropriate period of time.\textsuperscript{934} Families detained while pending removal must be

\textsuperscript{923}Article 11 of the Return Directive.
\textsuperscript{924}Article 11 of the Return Directive.
\textsuperscript{925}Article 12 para. 1 of the Return Directive.
\textsuperscript{926}Article 12 para. 3 of the Return Directive.
\textsuperscript{927}Article 13 para. 1 of the Return Directive.
\textsuperscript{928}Article 13 para. 4 of the Return Directive.
\textsuperscript{929}Article 15 para. 1 of the Return Directive.
\textsuperscript{930}Articles 15 para. 2 and 3 of the Return Directive.
\textsuperscript{931}Article 15 para. 4 of the Return Directive.
\textsuperscript{932}Article 15 para. 6 of the Return Directive.
\textsuperscript{933}Article 16 para. 1 of the Return Directive.
\textsuperscript{934}Article 17 of the Return Directive.
provided with separate accommodation guaranteeing adequate privacy. Minors in detention must have access to education and the possibility to engage in leisure activities.935

Further directives and decisions have been adopted in the EU level in order to enhance cooperation and render the EU’s return policy more effective. Such operational cooperation aims to be ensured with the Directive on the mutual recognition of decisions on the expulsion of third-country nationals,936 the Directive on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders,937 the Directive on assistance in cases of transit for the purposes of removal by air938 and the Twenty Guidelines on Forced Return.939 FRONTEX also provides assistance for joint return operations.

Return of third-country nationals after refusal of entry at the border

If third-country nationals are refused entry into the territory of a Member State940, the carrier which brought them to the external border by air, sea or land is obliged immediately to assume responsibility for them again.941 According to the Schengen Borders Code and the Convention implementing the Schengen Agreement942, if a third-country national who has been refused entry is brought to the border by a carrier, the responsible local authority should:

1. Order the carrier to take charge of the third-country national and transport him/her without delay to the third country from which he/she was brought, or to the third country which issued the document authorizing him/her to cross the border, or to any other third country where he/she is guaranteed admittance, or to find means of onward transportation.
2. Pending onward transportation, take appropriate measures, in compliance with national law and having regard to local circumstances, to prevent third-country nationals who have been refused entry from entering illegally.

Member States should take the necessary steps to ensure that the obligation of carriers to return third-country nationals provided is also applicable when entry is refused to a third-country national in transit if:943

(a) the carrier which was to take him to his country of destination refuses to take him on board;
(b) or the authorities of the State of destination have refused him entry and have sent him back to the Member State through which he transited.

Member States should also take the necessary measures to oblige carriers which are unable to effect the return of a third-country national whose entry is refused to find means of onward transportation immediately and to bear the cost thereof, or, if immediate onward transportation is not possible, to

935Article 17 of the Return Directive.
940See the grounds for refusal of entry in the Chapter on General conditions of entry and border control.
941Article 26 of the Convention implementing the Schengen Agreement.
942Annex V of the Schengen Border Code and Article 26 of the Convention implementing the Schengen Agreement.
assume responsibility for the costs of the stay and return of the third-country national in question.\textsuperscript{944}

The Member States should impose penalties to the carriers which transport third-country nationals
who do not possess the necessary travel documents.\textsuperscript{945}

Carriers should also be obliged to take all the necessary measures to ensure that a third-country
national carried by air or sea is in possession of the travel documents required for entry into the
Schengen territory.\textsuperscript{946}

In addition, it is important to mention that all the provisions of the Return Directive can also be
applicable in the case of return of persons who have been refused entry at the border. According to
Article 2 para. 2 lit. a of the Directive, Member States may decide not to apply this Directive to third-
country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen
Borders Code, or who are apprehended or intercepted by the competent authorities in connection with
the irregular crossing by land, sea or air of the external border of a Member State and who have not
subsequently obtained authorization or a right to stay in that Member State. Therefore, it is upon the
discretion of the EU Member States on whether they want to apply the Return Directive in this case or
not. However, even when they decide not to apply it, they need to ensure still need to ensure that the
treatment and level of protection are no less favourable than as set out in Article 8 para. 4 and 5
(limitations on use of coercive measures), Article 9 para. 2 lit. a (postponement of removal), Article 14
para. 1 lit. b and d (emergency healthcare and taking into account needs of vulnerable persons), and
Article 16 and 17 (detention conditions) and respect the principle of non-refoulement. These articles
constitute the minimum level of protection that Member States needs to provide in all cases.

15.2 Armenian legal framework

Expulsion of persons who are found to be irregular in the Armenian territory

Chapter five of the Law on Foreigners provides for the voluntary return and expulsion of foreigners
from the territory of the Republic of Armenia.

Article 30 specifies in particular four cases in which a foreigner is obliged to voluntarily leave Armenia:

1) Upon the expiration of the validity period of the foreigner’s entry visa or residence permit.
2) Upon revocation of the entry visa according to Article 8 para. 1, 2 and 3\textsuperscript{947} of this Law.
3) Upon refusal of the application to obtain or extend a residence permit.
4) Upon deprivation of residence status according to Article 21 of the Law on Foreigners.\textsuperscript{948}

If the foreigner does not leave voluntarily the territory of Armenia, the responsible administrative
body of the police files with the court an action of expulsion for the foreigner. Expulsion is the forcible
removal of a foreigner from the Republic of Armenia in case of absence of legal grounds for his or her
stay or residence in the Republic of Armenia.\textsuperscript{949} Currently, improvements to the BMIS database are
being considered in order to improve the identification of overstayers and illegal migrants that could
be expelled from the Armenian territory.\textsuperscript{950}

\textsuperscript{944} Article 3 of the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the
\textsuperscript{945} Article 26 para. 2 of the Convention implementing the Schengen Agreement.
\textsuperscript{946} Article 26 para. 1 lit. b of the Convention implementing the Schengen Agreement.
\textsuperscript{947} Eight specific reasons are mentioned in Article 8 para. 1, 2 and 3 for revoking a visa. See the Chapter on Visas.
\textsuperscript{948} Article 21 states the Grounds for repealing a decision on granting a residence status, for refusing to extend a residence
status, consequences of depriving of residence status, and appealing against deprivation of residence status. See the Chapter
on Residence.
\textsuperscript{949} Article 3 of the Law on Foreigners.
\textsuperscript{950} Questionnaire on Identity Management, Entry and Visas, Refusal of Entry and Residence answered by the Police of the
Republic of Armenia, Directorate for Passports and Visas, November 2012.
It must be noted that when foreigners violate the procedure and terms of their stay in Armenia, they have administrative liability according to Articles 200 and 201 of the Code of Administrative Offences of the Republic of Armenia.\textsuperscript{951}

It is not allowed to expel a foreigner if there is violation of human rights in the state where the foreigner will be expelled, in particular if the foreigner is threatened with persecution on grounds of racial, religious affiliation, social origin, citizenship or political convictions or if the foreigner may be subject to torture or cruel, inhuman or degrading treatment or punishment or the death penalty.\textsuperscript{952}

The foreigner needs to submit to the court evidence proving the threat of persecution or the danger of torture or cruel, inhuman or degrading treatment or death penalty. It is further not allowed to expel a foreigner from Armenia (1) if he/she is a minor and his/her parents reside legally in Armenia, (2) if he/she has a minor under his/her care or (3) if he/she is over 80 years old. The collective expulsion of foreigners is also prohibited.

During the examination of the expulsion case from the court, the foreigner has all the rights to judicial remedies provided by the Armenian laws.\textsuperscript{953} In particular, the foreigner has the right to appeal against the decision for expulsion and in this case the foreigner’s expulsion is suspended.\textsuperscript{954}

The court decides on the expulsion or refusal of expulsion of the foreigner. The decision includes all the information relating to the procedure of expulsion (day, route, border crossing point, expense coverage, prior place of residence, obligation of appearance before being expelled, ban on leaving the place of residence without permission, arrest or release prior to expulsion).\textsuperscript{955} When the court refuses the expulsion, the responsible administrative body of the police needs to grant the foreigner with temporary residence status.

The expulsion decision is noted on the foreigner’s passport and it is executed by the Police.\textsuperscript{956} The Police register all expelled foreigners and includes their data in the database of undesirable foreigners mentioned in Article 8 para. 6 of the Law on Foreigners. The consular authorities of the state of origin of the expelled foreigner are being informed within three days.\textsuperscript{957} The expulsion expenses are covered by the foreigner or by the state budget of the Republic of Armenia.

If there are sufficient grounds to suspect that the foreigner will abscond until the case of expulsion is examined in the court or until the expulsion decision is executed, the foreigner may be arrested and detained in special facilities.\textsuperscript{958} Within 48 hours after the arrest and placement in a special facility, the responsible administrative body of the police needs to apply to the court to obtain a permission to detain the foreigner for up to 90 days. The same body needs also to inform within 24 hours the consular authorities of the country of origin of the foreigner and/or the foreigner’s close relatives in Armenia. An arrested foreigner may be detained in special facilities until the court has taken a decision on his/her expulsion but for a maximum period of 90 days, without possibility for extension.\textsuperscript{959} One governmental decree was issued in relation to SACs in the Armenian territory, Decree 827-N of 10 July 2008 on approving the procedure for the operation of a special accommodation center in the territory of the Republic of Armenia and on the procedure of holding foreigners in this Center. After the court’s decision on expulsion takes legal effect, the procedure for expulsion is followed.

\textsuperscript{951} Article 200 defines liability for the violation of the rules of entry to and residence in the border zone, while Article 201 concerns the violation of the provisions of the Law on Foreigner by foreigners themselves, inviting persons and employers.

\textsuperscript{952} Article 32 para. 1 of the Law on Foreigners.

\textsuperscript{953} Article 33 of the Law on Foreigners.

\textsuperscript{954} Article 35 of the Law on Foreigners.

\textsuperscript{955} Article 34 of the Law on Foreigners.

\textsuperscript{956} Article 36 para. 1 of the Law on Foreigners.

\textsuperscript{957} Article 36 para. 4 of the Law on Foreigners.

\textsuperscript{958} Article 38 para. 1 of the Law on Foreigners.

\textsuperscript{959} Article 38 para. 2 of the Law on Foreigners.
Return of foreigners after refusal of entry at the border

Article 6 para. 3 of the Law on Foreigners refers to the return of a foreigner who arrives to the Republic of Armenia without authorization. More specifically, the entry to the Republic of Armenia is not allowed for foreigners who (1) have arrived at a border crossing point without a passport, or other travel document or with an invalid passport, (2) have been refused an entry visa at the crossing point and, (3) have not been granted an entry authorization from the body conducting border control. These foreigners shall be returned as soon as possible to their state of origin or to the state where they arrived from with the same carrier, except when they are seeking refugee status or political asylum. The expenses for the return will be covered by the foreigners, or if not possible by the carriers that transferred the foreigners or by the Republic of Armenia.

According to Article 37 para. 1 of the Law on Foreigners, if it is impossible to return a foreigner who has been refused entry due to the reasons described above, the foreigner may be detained in a transit area or in a special facility provided for that purpose. Family members are detained together and unaccompanied minors must be detained in a special facility and taken to a parent or legal representative. The responsible body for border control needs to apply to the court within 24 hours after placing the foreigner in the special accommodation centre (SAC) in order to obtain the permission for detention for up to 90 days. The foreigner needs to be escorted by a representative of the responsible body for border control to the court rendering the decision. One governmental decree was issued in relation to SACs at border crossing points: Decree 127-N of 7 February 2008 on approving procedures for functioning of special accommodation centers on the RA border crossing points and transit zones and for accommodating foreigners in these centers. Foreigners are detained until the surrounding circumstances are clarified, the foreigners’ identities are verified and a decision is taken regarding their return. The release authorization is provided by (1) the director of the National Security Service adjacent to the Government of the Republic of Armenia, his/her deputies, commander of the border troops or (2) a court decision. If the return of the foreigner is not possible within 90 days, the responsible administrative body of the police shall issue a temporary permit to the foreigner until his/her departure of maximum one year. Within 24 hours of the placement of the foreigner in detention, the responsible authorities need to notify about the detention the foreigner’s close relatives and the diplomatic mission or consular office of the foreigner’s country of origin or a diplomatic mission of another country that represents the interests of the country of origin. Throughout their stay at the SACs migrants are entitled to their legally prescribed rights.

Unaccompanied minors will not be detained in SACs. For the time being, only two SACs have been created: one at Zavrtnots International Airport (Yerevan) and one in the Bagratashen border crossing point. In the absence of a central SAC, persons who are illegally crossing the border are held in the Vardashen Penitentiary Institution. Persons who are

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960 See the Chapter 3.
961 Article 6 para. 4 of the Law on Foreigners.
962 Article 2 of the Decree No. 127-N of February 7, 2008 on approving procedures for functioning of special accommodation centers on the Republic of Armenia border crossing points and transit zones and for accommodating foreigners in these centers.
963 Article 11 of the Decree No. 127-N of February 7, 2008 on approving procedures for functioning of special accommodation centers on the Republic of Armenia border crossing points and transit zones and for accommodating foreigners in these centers.
964 Article 6 of the Decree No. 127-N of February 7, 2008 on approving procedures for functioning of special accommodation centers on the Republic of Armenia border crossing points and transit zones and for accommodating foreigners in these centers.
965 Article 37 para. 3 of the Law on Foreigners and Article 10 of the Decree No. 127-N of February 7, 2008 on approving procedures for functioning of special accommodation centers on the RA border crossing points and transit zones and for accommodating foreigners in these centers.
966 Galstyan K., Migration Management and Human Rights, Yerevan, 2010, p.73.
crossing the borders illegally are subject to criminal liability and can be placed in detention facilities, if detention is selected as a measure of restraint by the court decision.\footnote{Article 329 on illegal crossing of state border of the Criminal Code of the Republic of Armenia.} A detained or arrested foreigner has the following rights\footnote{Article 39 of the Law on Foreigners.}: (1) to know the reasons for the arrest and detention in a language that he/she understands, (2) to appeal against any court decision rendered in relation to himself/herself, (3) to have visits by a legal representative (including NGOs), an official of the diplomatic or consular authorities of his/her country of origin, (4) to apply to court requesting his/her release and, (5) to receive necessary medical assistance.

15.3 Gap analysis

15.3.1 Gap analysis between the Armenian legislation and implementation in practice

Creation and operation of Special Accommodation Centres (SACs)

Article 37 of the Law on Foreigners states that foreigners who have been refused entry at the Armenian border and who cannot be returned may be detained in a transit area or in a special facility provided for that purpose. Article 38 also provides for the detention of foreigners for the purpose of expulsion in special facilities inside the Armenian territory. However, even though two governmental decrees\footnote{Decree No. 127-N of February 7, 2008 on approving procedures for functioning of special accommodation centers on the RA border crossing points and transit zones and for accommodating foreigners in these center, and Decree No. 827-N on approving the procedure of the operation of a special accommodation center in the territory of the Republic of Armenia and the procedure of holding arrested foreigners in this Center of 10 July 2008.} have been issued in relation to these SACs, only two SACs have been created in border crossing points and there is no central migrant accommodation centre in the Armenian territory. In the absence of a central special shelter, illegal migrants in Armenia are currently held in the Vardashen Penitentiary Institution.\footnote{UNDP, \textit{Migration and human development: Opportunities and challenges}, Armenia, 2009, p. 87.} Detained foreigners have the rights to a translator, access to court, right to appeal, legal representation, meetings with diplomatic or consular officials and necessary medical assistance.\footnote{Article 39 of the Law on Foreigners.} However, in practice, it is not clear whether these services are provided in the two established SACs.

Initiation of the expulsion procedure

Article 31 of the Law on Foreigners states that when a foreigner does not leave voluntarily the Armenian territory the police will file an action for expulsion with a court. This initiation of the expulsion procedure is not clear enough, as it is not stated for example how this action can be filed, which court is competent and what is the deadline for filing it.

Expulsion decision

Article 34 of the Law on Foreigners refers to the expulsion decision issued by the court. Similarly to Article 31, it is not mentioned which is this competent court. It seems that as the expulsion decision is adopted by an administrative body, the case should come within the jurisdiction of the administrative court according to the Administrative Procedure Code; however it would be better to clearly refer this. In addition, para.2 of Article 34 lists the elements of an expulsion decision in what seems to be an exhaustive list. It is not clear if this is indeed an exhaustive list and if the court must include for example the obligations of reporting to the authorities and requesting permission to leave the place of residence in every expulsion decision.
Appeal procedure

Article 35 of the Law on Foreigners provides for the right of a foreigner to appeal against a decision for his expulsion, as prescribed by Law. This provision is not specific enough and the relevant provisions of the Armenian legislation are not cited. There is not clear reference to the appeal procedure and the competent court. It seems that since it is an appeal against an administrative decision, the administrative court would be responsible; however this is not clearly spelled out.

Execution of the expulsion decision

Article 36 provides for the execution of the expulsion decision. However it does not provide clear instructions on how the expulsion is actually carried out and whether, for example, coercive measures can be used. It is also not clear from this provision whether the Law on compulsory enforcement of judicial acts is to be followed in this case.

Registration of expelled foreigners

Article 36 para. 3 of the Law on Foreigners states that the public administration body authorised in the field of police carries out a separate registration of expelled foreigners, the data of whom will be entered into the database of undesirable foreigners of Article 8 para. 6. However, it is not clear whether the database of undesirable foreigners has been created and there does not seem to be another registration file of expelled foreigners. In fact, there have been very few expulsions of foreigners in Armenia.

15.3.2 Gap analysis between the national legislation and the EU acquis

Definition of return and return decision

The Armenian legislation does not provide a definition of return. The EU acquis states that return is the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced to: (1) his or her country of origin, or (2) a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or (3) another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted. A return decision is an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.

Definition of expulsion/ removal

The EU acquis defines removal as the enforcement of the obligation to return, namely the physical transportation out of the Member State. This definition takes into account both the definitions of return and return decision. The Armenian legislation, on the other hand, uses the word “expulsion” and not “removal”. According to Article 3 of the Law on Foreigners, expulsion is the forcible removal of a foreigner from the Republic of Armenia in case of absence of legal grounds for his/her stay in the Republic of Armenia.

Respect of human rights

The Armenian legislation does not explicitly state that the procedure of return of foreigners who are found illegally in the Armenian territory need to be in accordance with fundamental human rights, as provided by national and international law. In particular the interests of the child, family life, state of

972 Law on compulsory enforcement of judicial acts, 1999.
973 There have been no expulsions at least since March 2009, according to the Interview with the Ministry of Justice, Advisor to the Chief compulsory enforcement office of 28 September 2012.
974 Article 3 of the Return Directive.
health of the foreigner and the principle of non-refoulement need to be taken into account. The EU acquis refers specifically to this\textsuperscript{975}.

**Voluntary return period**

According to the EU acquis, a period of voluntary departure must be granted together with the return decision. The voluntary return period must be between seven and thirty days and can only be extended by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of the stay, the existence of children attending school and the existence of other family and social links.\textsuperscript{976} A voluntary return period is not granted or it is granted for less than seven days, only when there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded, or if the person concerned poses a risk to public policy, public security or national security.\textsuperscript{977} The Armenian legislation, however, does not provide for a specific duration of the voluntary return period. It states the cases when a foreigner needs to return voluntarily without specifying how much time the foreigner is provided to do this. If the foreigner does not return, the police can file an action for expulsion at the court.\textsuperscript{978} It is not clear, however, how quickly the police can file this action.

**Obligations imposed during the voluntary return period**

The EU acquis provides for specific obligations imposed to third-country nationals in order to prevent them from fleeing, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or staying at a certain place.\textsuperscript{979} According to the Armenian legislation, the expulsion decision includes, inter alia, the obligation to appear regularly before the relevant subdivision of the public administration body authorized in the field of police as well as the ban on leaving the place of residence without permission.\textsuperscript{980} However, since the voluntary return period is not defined, it is not clear for how long these obligations are in place.

**Use of coercive measures to carry out the removal**

Article 36 of the Law on Foreigners states that the expulsion decision is executed by the public administration body in the field of police, which registers all expelled foreigners in a database and informs the diplomatic representation or consular office of state of origin about the expulsion. There is not mention in the use of coercive measures by the police when carrying out the expulsion decision. The EU acquis specifically states that coercive measures should be used as a last resort and they should be proportionate and not exceeding reasonable force. They are implemented according to national legislation while respecting fundamental rights and the dignity and physical integrity of the persons being removed.\textsuperscript{981}

**Postponing the removal**

The EU acquis provides for the postponement of the removal when it would violate the non-refoulement principle or when a suspensory effect is granted after submitting an appeal. Member States can also postpone the removal taking into account the person’s physical and mental state and technical reasons such as lack of the foreigner’s identification or lack of transport capacity.\textsuperscript{982} The Armenian legislation provides for the suspension of the expulsion only in case of submission of an appeal.\textsuperscript{983}

\textsuperscript{975} Articles 1 and 5 of the Return Directive.
\textsuperscript{976} Article 7 of the Return Directive.
\textsuperscript{977} Article 7 para. 4 of the Return Directive.
\textsuperscript{978} Article 31 of the Law on Foreigners.
\textsuperscript{979} Article 7 para. 3 of the Return Directive.
\textsuperscript{980} Article 34 para. 2 of the Law on Foreigners.
\textsuperscript{981} Article 8 of the Return Directive.
\textsuperscript{982} Article 9 of the Return Directive.
\textsuperscript{983} Article 35 para. 2 of the Law on Foreigners.
**Provisions during the period of voluntary departure**

According to the EU acquis, during the period of voluntary departure of a third-country national (and during the postponement of the removal) the Member States need to ensure that: (1) the family unity with family members present in their territories is maintained, (2) emergency health care and essential treatment of illness are provided, (3) minors are granted access to the basic education system subject to the length of their stay, and (4) special needs of vulnerable persons are taken into account.\(^{984}\) The Armenian legislation does not contain similar provisions for foreigners who need to return voluntarily, according to Article 30 of the Law on Foreigners

**Entry ban**

The EU Return Directive provides for an entry ban to be issued together with a return decision. The entry ban cannot exceed five years and it is mandatory if there was no period of voluntary departure or if the third-country national has not complied with the obligation to return. The Armenian legislation, however, does not provide for an entry ban accompanying an expulsion decision.\(^{985}\)

**Information provided together with expulsion decision**

According to Article 34 para. 2 of the Law on Foreigners the expulsion decision includes the day, route of expulsion of the foreigners, state border crossing point, coverage of expulsion expenses, his/her place of residence prior to leaving the Armenian territory, obligation to appear before the police, ban on leaving the place of residence without permission, keeping under arrest or releasing prior to expulsion when arrested (according to Chapter 6 of the Law on Foreigners). Article 35 of the Law on Foreigners also provides that a foreigner has the right to appeal against an expulsion decision and that the appeal has a suspensive effect. However, there is no provision stating that the foreigner is provided with the information on all available remedies together with the expulsion decision. The EU acquis specifically mentions that the return decision, entry ban and removal must be issued in writing and together with information on available remedies.\(^{986}\)

**Detention for the purpose of removal**

According to Article 38 of the Law on Foreigners a foreigner can be detained if there are sufficient grounds to suspect that he/she will abscond until the case on expulsion is examined in the court or until the execution of the expulsion decision has taken effect. The EU acquis includes, apart from the risk of absconding, one more case that can lead to detention: when the third-country national avoids or hampers the preparation of the return or the removal process.\(^{987}\)

**Maximum period of detention and possibility of extension**

The Armenian legislation states that the police needs to apply within 48 hours (after arresting and placing the foreigner in a special facility) to the court in order to obtain permission to detain him/her for maximum 90 days.\(^{988}\) No possibility of extension is provided. The EU acquis, on the other hand, provides for a maximum period of detention of six months, which can be further extended for another 12 months in exceptional cases.\(^{989}\)

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984 Article 14 of the Return Directive.
985 Similar to an entry ban is the refusal of issuing a visa if three years have not elapsed since the foreigner was expelled from Armenian or was deprived of residence status. Also if one year has not elapsed since the foreigner was subjected to administrative liability for violating the Law on Foreigners and has not fulfilled the responsibility imposed on him/her (Article 8 of the Law on Foreigners). However, no explicit mention of an entry ban is made in Chapter 5 on expulsion, Law on Foreigners.
986 Article 12 para. 1 of the Return Directive.
987 Article 15 para. 1 of the Return Directive.
988 Article 38 para. 1 of the Law on Foreigners.
989 Article 15 para. 6 of the Return Directive.
Condition of reasonable prospect of removal

The EU acquis specifically states that detention should only be maintained as long as removal arrangements are in progress. The foreigner should be immediately released when it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions of detention no longer exist.\(^{990}\) No such or similar provision exists in the Armenian legislation.

Carriers' responsibility after refusal of entry at the border

The obligation of carriers to assume responsibility of the third-country nationals who have been refused entry at the border is central at the EU acquis and more specifically in the relevant provisions of the Schengen Borders Code and Convention implementing the Schengen Agreement.\(^{991}\) Carriers are, according to the EU acquis, obliged to return the third-country nationals to their country of origin or the country that provided them with the travel document or any other country that will admit them. The Armenian legislation states that when entry at the border is refused foreigners will be returned to their state of origin or to the state where they arrived from by means of transport of the same carrier (except if they have arrived in Armenia to seek refugee status or political asylum).\(^{992}\) The expenses for the return are covered either by the foreigner, or, in case of lack of personal funds, by the carrier or by the Republic of Armenia. It is apparent that the Armenian legislation does not pose a great responsibility on the carriers, compared to the EU acquis.

Minimum guarantees

Even when the EU Member States decide not to apply the Return Directive in cases of refusal of entry at the border, there are certain provisions that still need to be enforced. These are: that the treatment and level of protection are no less favourable than as set out in Article 8 para. 4 and 5 (limitations on use of coercive measures), Article 9 para. 2 lit. a (postponement of removal), Article 14 para. 1 lit. b and d (emergency healthcare and taking into account needs of vulnerable persons), and Article 16 and 17 (detention conditions) and respect the principle of non-refoulement. No such provision on minimum guarantees or minimum protection is provided in the Armenian legislation.

15.4 Recommendations

Creation and operation of Special Accommodation Centres (SACs)

The currently existing legislation on SACs\(^{993}\) needs to be implemented in practice so that SACs are created at all border crossing points and inside the Armenian territory. SACs also need to comply with the standards already provided by the existing legislation. In addition, a more detailed procedure regarding the creation and operation of SACs is necessary, that could be introduced with an additional governmental decree on this issue, following the Article 37 para. 6 and 38 para.4 of the Law on Foreigners. This new decree could further specify the operation of the SACs in order to safeguard the rights of the detained foreigners so that the EU and international standards are met. Apart from this, Articles 37 and 38 of the Law on Foreigners could further specify that in the absence of SACs foreigners could be detained in prison accommodations, however only in separate parts of them and not together with convicts (following Article 17 of the Return Directive).

\(^{990}\) Article 15 para. 4 of the Return Directive.
\(^{991}\) Mainly Annex V of the Schengen Border Code and Article 26 of the Convention implementing the Schengen Agreement.
\(^{992}\) Article 6 para. 3 of the Law on Foreigners.
\(^{993}\) Decree No. 127-N of February 7, 2008 on approving procedures for functioning of special accommodation centers on the Republic of Armenia border crossing points and transit zones and for accommodating foreigners in these center, and Decree No. 827-N on approving the procedure of the operation of a special accommodation center in the territory of the Republic of Armenia and the procedure of holding arrested foreigners in this Center of 10 July 2008.
Expulsion procedure
Article 31 of the Law on Foreigners could be amended in order to provide more information on the initiation of the expulsion procedure and especially how the expulsion action is file, what does it need to contain, which court is competent and what is the deadline for filing it. Article 33 of the Law on Foreigners could also be amended to list specifically the rights that foreigners subject to expulsion enjoy. This could be done also by citing the relevant Armenian legislation provisions. Article 34 para. 1 of the Law on Foreigners needs to clarify which is the competent court and Article 34 para. 2 should specify that it does not include an exhaustive list. It needs to be further clarified in which cases certain obligations are imposed upon a foreigner during the expulsion procedure.

Appeal procedure
Article 35 of the Law on Foreigners could be amended in order to further specify the procedure of the appeal, either by elaborating it in this provision or citing the relevant provisions of the Armenian legislation.

Execution of the expulsion decision
Article 36 of the Law on Foreigners needs to be amended in order to specify how the expulsion is carried out and especially if coercive measures can be used. It also needs to refer to the provisions of the Law on compulsory enforcement of judicial acts994, if this is the legal act that needs to be followed.

Registration of expelled foreigners
It needs to be clarified whether the database of undesirable foreigners is in operation. If it is, the governmental authorities need to be appropriately informed about it. Expelled foreigners are also registered in the database of undesirable foreigners.

Definition of return and return decision
The Armenian legislation does not provide for a definition of return or of a return decision. The following definition could be adopted by adapting the EU acquis definition: “return is the process of a foreigner going back — whether in voluntary compliance with an obligation to return, or enforced to: (1) his or her country of origin, or (2) a country of transit in accordance with bilateral readmission agreements or other arrangements, or (3) another third country, to which the foreigner concerned voluntarily decides to return and in which he or she will be accepted. A return decision is a judicial decision, stating or declaring the stay of a foreigner to be illegal and imposing or stating an obligation to return. The return decision seems to be similar to an expulsion decision, according to the Armenian legislation. Even if the above-mentioned definitions are not followed, it is crucial to create a comprehensive list of definitions to ensure legal clarity.

Definition of expulsion/ removal
If the above-mentioned definitions of return and return decision are adopted, the definition of expulsion (or removal) would need to be aligned accordingly. A suggested definition, following the EU acquis, could be the following: Expulsion is the enforcement of the obligation to return, namely the physical transportation out of the Republic of Armenia. Even if the above-mentioned definitions are not followed, it is crucial to create a comprehensive list of definitions to ensure legal clarity.

Respect of human rights
The Law on Foreigners should explicitly state that the procedure of return of foreigners who are found illegally in the Armenian territory needs to be in accordance with fundamental human rights, as provided by national and international law. In particular the interests of the child, family life, state of health of the foreigner and the principle of non-refoulement need to be taken into account.

Voluntary return period
Article 31 of the Law on Foreigners should include the maximum voluntary return period, after the expiration of which the police can file an expulsion action at the court. It could also be mentioned when the voluntary return period can be extended (the specific circumstances of the individual case need to be taken into account, such as the length of the stay, the existence of children attending school and the existence of other family and social links) and in which cases such a voluntary return period is not granted.

Obligations imposed during the voluntary return period
Article 34 of the Law on Foreigners could explicitly mention that specific obligations are imposed to the foreigner during the voluntary return period. Apart from the ones already mentioned in Article 34 para. 2 (obligation to appear regularly before the relevant subdivision of the public administration body authorized in the field of police as well as the ban on leaving the place of residence without permission) more could be added, such as a deposit of an adequate financial guarantee or submission of certain documents.

Use of coercive measures to carry out the removal
Since in certain cases coercive measures might need to be used in order to carry out the expulsion, it is necessary that Article 36 of the Law on Foreigners includes a provision on the use of coercive measures which should be used as a last resort and they should be proportionate and not exceeding reasonable force. The respect of fundamental rights and the dignity and physical integrity of the persons being removed should also be highlighted.

Postponing the removal
The Law on Foreigners could include a specific Article on when the expulsion of a foreigner can be postponed. This would include the suspensive effect of an appeal, but also the violation of the non-refoulement principle, the consideration of the foreigner’s physical and mental state as well as technical reasons, such as lack of the foreigner’s identification or lack of transport capacity.

Provisions during the period of voluntary departure
After the period of voluntary departure is defined, a provision could be included to further ensure that certain principles will be in place during this period. This could include, following the EU acquis, ensuring that: (1) the family unity with family members present in their territories is maintained, (2) emergency health care and essential treatment of illness are provided, (3) minors are granted access to the basic education system subject to the length of their stay, and (4) special needs of vulnerable persons are taken into account.

Entry ban
Chapter 5 of the Law on Foreigners could include a provision on an entry ban to be issued together with the court’s expulsion decision, if deemed necessary.

Information provided together with expulsion decision
Article 34 of the Law on Foreigners needs to be amended to explicitly state that the expulsion decision is transmitting to the foreigner in a language that he/she understands and that all the necessary information on available remedies is also provided to him/her.

Provision of free legal assistance and representation for the appeal
Article 35 of the Law on Foreigners needs to be amended to explicitly state that free legal assistance and/or representation are provided to the foreigner in order to appeal against an expulsion decision. Exceptions, when such assistance is not provided, can also be established.

995 Article 14 of the Return Directive.
Detention for the purpose of removal

Article 38 of the Law on Foreigners could be amended in order to include the case when a foreigner avoids or hampers the preparation of the return or the expulsion, as a ground for detention.

Condition of reasonable prospect of removal

Chapter 6 of the Law on Foreigners needs to include a provision stating that the foreigner should be immediately released when it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions of detention no longer exist.

Responsibility of carriers

Article 6 of Law on Foreigners could be amended so as to point out the obligation of carriers to assume responsibility of the foreigners who are being refused entry. It could be clearly stated that the border authorities should order the carrier to transport the foreigner without delay to the country from which he/she was brought, or to the country which issued the document authorizing him/her to cross the border, or to any other third country where he/she is guaranteed admittance, or to find means of onward transportation.997

Minimum guarantees

It would be advised to draft an additional Article in Chapter 5 of the Law on Foreigners, that would include the minimum guarantees that need to be respected at all times when a foreigner is to be removed from the Republic of Armenia. These minimum guarantees, could be, in compliance with the EU acquis, the following: adequate treatment and level of protection (no less favourable than as set out in Article 8 para. 4 and 5 of the Return Directive), possibility to postpone the removal (Article 9 para. 2 lit. a of the Return Directive), provision of emergency healthcare and taking into account needs of vulnerable persons (Article 14 para. 1 lit. b and d of the Return Directive), provision of minimum detention conditions (Articles 16 and 17 of the Return Directive) and respect of the non-refoulement principle.

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16. READMISSION

16.1 EU Acquis

Readmission agreements facilitate the return and transit of persons who do not, or no longer fulfil the conditions of entry to, presence in or residence in the requesting state. It is highly argued that a country’s obligation to readmit its own nationals who are unlawfully present in another country derives from customary international law. Readmission agreements facilitate this obligation. Readmission agreements may also contain clauses obliging countries to readmit third-country nationals or stateless persons who can be shown to have passed through their territories before arriving to the EU. Readmission agreements are an integral part of the EU’s return policy. They are put into practice after a return decision has been made, according to the EU Return Directive and the EU asylum acquis. Readmission agreements set out clear obligations and procedures to be followed by the authorities of the EU and non-EU states as to when and how to take back people who are found to be irregular in the EU.

The conclusion of readmission agreements is done either in a bilateral level, between an EU Member State and a third country, or in the European level between the EU and a third country. EU Member States have retained their right to conclude bilateral agreements even after the Community competence in the field of illegal migration and illegal residence, which includes readmission. Thus, the Union has shared competence in the field of readmission.

EU readmission agreements

In 1999, Article 63 para. 3 lit. b of the EC Treaty (TEC) gave express power to the European Community to address the issue of illegal immigration and illegal residence, including repatriation of illegal residents. Since then, as the competence in this area was conferred on the European Community, the Council has issued negotiating directives to the Commission for more than 15 countries. In 2009, with the entry into force of the Lisbon Treaty, the conclusion of readmission agreements by the EU acquired an explicit legal basis. Article 79 para. 3 of the Treaty on the Functioning of the European Union states that “The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.”

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on this legal basis the Commission has already concluded 13 Readmission Agreements with third countries\textsuperscript{1003} while negotiations with another eight countries are ongoing.\textsuperscript{1004} It is also important to note that since the end of 1995 the Council had established a link between the repatriation of persons unlawfully present on the territory of a Member State and the conclusion of European association and cooperation agreements. In 1999, a decision was adopted to include standard readmission clauses in all Community agreements and in agreements between the European Community, its Member States and third countries.\textsuperscript{1005} Since then a special section containing four articles related to readmission has become an integral part of such agreements.\textsuperscript{1006}

An evaluation of the EU readmission agreements was conducted in 2011 and the Commission made accordingly several recommendations for a renewed EU readmission policy.\textsuperscript{1007} The evaluation concludes that when readmission agreements are used properly, they provide added value with regard to readmission of nationals and contribute in tackling irregular migration from third countries. The Commission recommended that Member States apply EU Readmission Agreements for all their returns and they should not only rely on their bilateral arrangements. In addition, it was highlighted that there is a substantial number of readmission applications to third countries covered by EU readmission agreement; however, there is insufficient data on the actual number of returns. Apart from that, the Commission noted that the “third-country national clause” has rarely been used (except in the EU readmission agreement with Ukraine) therefore the need to include such a clause should be subject to a thorough evaluation before opening negotiations. Last, regarding the clauses which provide for the use of accelerated procedures or for transit are also rarely used, therefore they should be excluded from future negotiated mandates. Moreover, the negotiating directives do not offer sufficient incentives and result in delayed conclusion of negotiations and/or additional concessions. The role of the Joint Readmission Committees, which monitor the implementation of the agreements and human rights issues, needs to be enhanced. The Commission further recommended that the incentives at the EU’s disposal be developed into a coherent mobility package which should be offered to the negotiating third country at the onset of negotiations.\textsuperscript{1008}

**Bilateral readmission agreements**

An operation indicative definition of the EU acquis considers readmission as an act by a state accepting the re-entry of an individual (own nationals, third-country nationals or stateless persons),

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\textsuperscript{1003} With Albania, Bosnia and Herzegovina, FYROM, Georgia, Hong Kong, Macao, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, Ukraine. Information from UK Parliament, European Scrutiny Committee, Twenty-sixth report, 10 HO (34450) (34451) \textit{EU Readmission Agreement with Armenia}, 9 January 2013, at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-xxvi/8614.htm (accessed on 17 February 2013).


who has been found illegally entering to, being present in or residing in another state. A readmission agreement is an agreement setting out reciprocal obligations on the contracting parties, as well as detailed administrative and operational procedures, to facilitate the return and transit of persons who do not, or no longer fulfil the conditions of entry to, presence in or residence in the requesting state.

A Recommendation for a specimen bilateral readmission agreement between a Member State and a third country was adopted in 1994 serving as a basis for negotiations with third countries (in force since 1 January 1995). In 1995, a Recommendation was adopted on the Guiding Principles to be followed in Drawing up Protocols on the Implementation of Readmission Agreements.

Member States are using the specimen readmission agreement as a basis for negotiation with third countries on the conclusion of readmission agreements. The readmission agreements should not affect the Contracting Parties’ obligations arising from the Convention on the Status of Refugees, international conventions on extradition and transit, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, international conventions on asylum and international conventions and agreements on the readmission of third-country nationals.

The specimen readmission agreement provides for three different cases of readmission:

With regards to readmission of own nationals, the specimen agreement states that each Contracting Party will readmit at the request of the other Contracting Party and without any formality persons who do not, or who no longer, fulfil the conditions in force for entry or residence on the territory of the requesting Contracting Party provided that it is proven or may be validly assumed that they possess the nationality of the requested Contracting Party. The same applies for stateless persons. Upon application by the requesting Contracting Party, the requested Contracting Party will issue the persons to be readmitted with the travel document required for their repatriation without delay. The requesting Contracting Party shall readmit such persons again under the same conditions if checks reveal that they were not in possession of the nationality of the requesting Contracting Party. This does not apply if the readmission obligation is based on the fact that the requested Contracting Party deprived the person in question of its nationality after that person had entered the territory of the requesting Contracting Party without that person at least having been promised naturalization by the requesting Contracting Party.

With regards to readmission of third-country nationals who entered via the external frontier, the Contracting Party via whose external frontier a person can be proved, or validly assumed, to have entered who does not meet, or who no longer meet the conditions in force for entry or residence on

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1013 Article 11 of the Recommendation on Specimen Bilateral Readmission Agreement.

1014 Article 1 para. 1 of the Recommendation on Specimen Bilateral Readmission Agreement.

1015 Article 1 para. 3 of the Recommendation on Specimen Bilateral Readmission Agreement.

1016 Article 1 para. 3 of the Recommendation on Specimen Bilateral Readmission Agreement.
the territory of the requesting Contracting Party will readmit the person at the request of that Contracting Party and without any formality.\textsuperscript{1017} This obligation is not applicable for persons possessing a valid residence permit issued by the requesting Contracting Party. Priority should be given to deporting national of an adjacent State to their country of origin.\textsuperscript{1018}

With regards to readmission of third-country nationals by the Contracting Party responsible for the entry, it is provided that if a person who has arrived in the territory of the requesting Contracting Party does not fulfil the conditions in force for entry or residence and if that person is possesses a valid visa issued by the other Contracting Party or a valid residence permit issued by the requested party, that Contracting Party will readmit the person without any formality upon application by the requesting Contracting Party.\textsuperscript{1019} This does not apply when a transit visa was issued and when both Contracting Parties issued a visa or residence permit, responsible is the Contracting Party whose visa or residence permit expires last.\textsuperscript{1020}

The application for readmission must be submitted within one year from when the Contracting Party noted the illegal entry and presence of the said third-country national on its territory.\textsuperscript{1021} The requested Contracting Party must reply to readmission requests within a maximum period of 15 days.\textsuperscript{1022} It must also take charge of persons whose readmission has been agreed to without delay within a maximum period of one month.\textsuperscript{1023} This time limit may be extended by the requesting Contracting Party. The costs of transporting persons will be borne by the requesting Contracting Party as far as the border of the requested party.\textsuperscript{1024} According to the agreement, the Contracting Parties need to set up Committees of Experts meeting at least once per year to monitor the application of this agreement, suggest amendments to it and prepare and recommend appropriate measures for combating illegal immigration.\textsuperscript{1025} The specimen readmission agreement provides also for transit through the territory of the Contracting Party\textsuperscript{1026} and protection of the personal data of the transported individuals.\textsuperscript{1027}

The 1995 \textit{Guiding Principles} are to be used by the Member States as a basis for negotiations with third countries when drawing up protocols on implementing readmission agreements. First, the Contracting Parties should use common forms for the return/readmission of persons residing without authorization.\textsuperscript{1028} Return/readmission can take place: (1) under the simplified procedure, or (2) under the normal procedure. The simplified procedure should be followed for persons apprehended in a border area while the normal procedure should be followed when the simplified procedure cannot. The Contracting Parties determine the total time taken by the simplified readmission procedure, which should be very short (in already signed agreements this time does not exceed 48 hours) while notification of the return can be given in any form (by telephone, fax, telex or orally) and the return is carried out directly by the local border authorities.\textsuperscript{1029} Under the normal procedure, a readmission request should be made and the answer must be given in writing in a short time determined by the

\textsuperscript{1017} Article 2 para. 1 of the Recommendation on Specimen Bilateral Readmission Agreement.
\textsuperscript{1018} Article 2 para. 4 of the Recommendation on Specimen Bilateral Readmission Agreement.
\textsuperscript{1019} Article 3 para. 1 of the Recommendation on Specimen Bilateral Readmission Agreement.
\textsuperscript{1020} Article 3 para. 2 and 3 lit. 3 of the Recommendation on Specimen Bilateral Readmission Agreement.
\textsuperscript{1021} Article 6 of the Recommendation on Specimen Bilateral Readmission Agreement.
\textsuperscript{1022} Article 5 para. 1 of the Recommendation on Specimen Bilateral Readmission Agreement.
\textsuperscript{1023} Article 5 para. 2 of the Recommendation on Specimen Bilateral Readmission Agreement.
\textsuperscript{1024} Article 9 para. 1 of the Recommendation on Specimen Bilateral Readmission Agreement.
\textsuperscript{1025} Article 10 of the Recommendation on Specimen Bilateral Readmission Agreement.
\textsuperscript{1026} Article 7 of the Recommendation on Specimen Bilateral Readmission Agreement.
\textsuperscript{1027} Article 8 of the Recommendation on Specimen Bilateral Readmission Agreement.
\textsuperscript{1028} Three such common forms (1. record of the return, 2. readmission of a person under the simplified procedure and 3. request of the readmission/transit of a person and record of the return/readmission of a person) are included in the Annex of the Recommendation on Guiding Principles for Readmission Agreements.
\textsuperscript{1029} Part I para. 2 of the Recommendation on Guiding Principles for Readmission Agreements.
The Guiding Principles provide a detailed list of documents that can serve as means of identifying persons to be readmitted. The protocol implementing a readmission agreement should clearly lay down (1) the means of proving or establishing (1) a presumption of nationality and (2) a presumption of entry via an external frontier. The protocol should also state that Ministers with responsibility for border controls are to designate the border posts which may be used for aliens’ readmission and entry in transit and the central or local authorities competent to deal with readmission and transit requests. The Guiding Principles also stipulate the conditions for transit of third-country nationals under escort, the possibility of inserting a data protection clause in the protocol and the conditions of applicability of the protocol.

With the inclusion of the Schengen Acquis in the EU Acquis, the 1997 Decision of the Executive Committee on the Guiding Principles for Means of Proof and Indicative Evidence within the Framework of Readmission Agreements between Schengen States became also applicable for the EU Member States. The Council substituted the Executive Committee provided by the Schengen acquis. The Guiding Principles noted that problems have arisen in practice when applying readmission agreement, notably with the means of proof establishing the illegal residence in or transit through the territory of the requested State by foreign nationals. The Guiding Principles provide lists of documents that can be deemed to establish (1) proof of residence or transit or (2) presumption of residence or transit. Documents establishing proof of residence or transit include, for example, an entry stamp affixed to the travel document by the requested Contracting Party, an exit stamp of a State adjacent to a Contracting Party, fingerprints or travel tickets issued by name which can formally establish entry. Documents establishing presumption of residence or transit include, for example, statements by officials, third parties or by the person to be transferred. No further investigation is needed when Member States take into account the means that provide conclusive proof of residence or transit. Evidence to the contrary is, however, admissible (e.g. showing a document to be falsified or forged). When Member States take into account the means that establish a presumption of residence or transit, these are by nature rebuttable by evidence to the contrary.

16.2 Armenian legal framework

With the entry into force of the Partnership and Cooperation Agreement (PCA) between the EU and Armenia, the two parties have agreed to readmit their own nationals that are found illegally in the territory of the other. More specifically, Article 72 of the PCA states that the Member States and the Republic of Armenia agree to cooperate in order to prevent and control illegal immigration. To this end the Republic of Armenia agreed to readmit any of its nationals illegally present on the territory of a Member State, upon request by the latter and without further formalities, and each

1030 Part I para. 3 of the Recommendation on Guiding Principles for Readmission Agreements.
1031 See Part II para. 2 of the Recommendation on Guiding Principles for Readmission Agreements for a complete list of accepted documents.
1032 Part III of the Recommendation on Guiding Principles for Readmission Agreements.
1033 Parts IV, V and VI of the Recommendation on Guiding Principles for Readmission Agreements.
1034 With the entry into force of the Amsterdam Treaty on 1 May 1999, the Schengen acquis, including the decisions of the Executive Committee established by the Schengen agreements which have been adopted earlier, immediately applied to the Member States of the European Union (with the exceptions of the United Kingdom and Ireland). See also the Chapter on General conditions of entry and Border Control.
1036 Article 3 of the Guiding Principles for means of proof and indicative evidence.
1037 Article 4 of the Guiding Principles for means of proof and indicative evidence.
Member State agreed to readmit any of its nationals, as defined for community purposes, illegally present on the territory of the Republic of Armenia, upon request by the latter and without further formalities. The Member States and the Republic of Armenia will provide their nationals with appropriate identity documents for such purposes. The Republic of Armenia further agreed to conclude bilateral agreements with Member States which so request, regulating specific obligations for readmission including an obligation for the readmission of nationals of other countries and stateless persons who have arrived on the territory of any such Member State from the Republic of Armenia or who have arrived on the territory of the Republic of Armenia from any such Member State.

The ENP Action Plan for Armenia refers to readmission in the part on cooperation in the field of justice, freedom and security. The EU-Armenia Readmission Agreement was signed on 19 April 2013 while the Visa Facilitation Agreement was adopted in December 2012. The Visa Facilitation and the Readmission Agreement will enter into force the same day.\textsuperscript{1039} The EU-Armenia Readmission Agreement provides for the reciprocal obligation of the two parties to admit their nationals (third-country nationals and stateless persons as well in some cases) which are found to be present in an irregular situation on the territory of the other party.

In addition, Armenia has concluded bilateral readmission agreements with several countries in order to regulate the issue of return and readmission of irregular migrants. Readmission agreements facilitate the procedures of return of irregular migrants. Armenia has signed bilateral readmission agreements with Bulgaria, Czech Republic, Denmark, Germany, Latvia, Lithuania, Norway, Russia, Sweden and Switzerland.\textsuperscript{1040}

16.3 Gap analysis

16.3.1 Gap analysis between the Armenian legislation and implementation in practice
Not applicable.\textsuperscript{1041}

16.3.2 Gap analysis between the Armenian legislation and the EU acquis
Not applicable.\textsuperscript{1042}

16.4 Recommendations

Evaluation
Armenia should ensure that the already concluded bilateral readmission agreements with third countries are properly implemented. For this, an evaluation of the implementation of these agreements which are in force is useful. It could also be useful to evaluate at the same time any ongoing negotiations for the conclusion of readmission agreements as well as the monitoring of the implementation of readmission agreements, including human rights safeguards. In order to implement the evaluation the evaluation conducted for the EU Readmission Agreements in 2011 could be used as a starting point.


\textsuperscript{1041} A gap analysis between all the readmission agreements signed between Armenia and third countries, and implementation in practice would exceed the scope of this report.

\textsuperscript{1042} A gap analysis between the provisions of all the readmission agreements signed between Armenia and third countries, and the provisions of the EU acquis for Member States (or the provisions of EU readmission agreements) would exceed the scope of this report.
Readmission agreements with third countries

Armenia could consider initiating negotiations with additional countries in order to sign bilateral readmission agreements. Such agreements could be concluded with the main countries of origin, transit or destination of migrants in Armenia while priority could be given to neighbouring countries. It is understandable that currently there are no large scale immigration flows towards Armenia; however it is best to prepare for possible future changes towards that direction.

Content of readmission agreements

Armenia could follow the Recommendation on a specimen bilateral readmission agreement1043 as well as the Recommendation on Guiding Principles for Protocols on the implementation of readmission agreements.1044 Armenia can ensure that future readmission agreements include the following minimum content:

- The mutual obligation to readmit both the nationals of the contracting parties but also third-country nationals and stateless persons.
- A clause stating that the readmission of a person of another jurisdiction will not be requested if the person concerned has applied for asylum in the requesting country, for as long as a final decision on the merits of the application has not been reached, unless an agreement on the allocation of responsibility for examining an asylum application is in force between the requesting and the requested countries.
- A clear list of documents required as means of proof of nationality or presumption of nationality.
- Clear procedures and timeframes for the implementation of the readmission, including regulation of transit and covering the costs.
- Clauses on data protection and respect of the non-refoulement principle
- A clause stating that the agreement does not affect any obligations arising from the 1950 Convention on the Status of Refugees, international conventions on extradition and transit, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, international conventions on asylum and international conventions and agreements on the readmission of third-country nationals.

17. DATA COLLECTION AND PROTECTION

17.1 EU Acquis

Collection of statistics and personal data

The Regulation on Community statistics on asylum and migration establishes common rules for the collection of statistics by the EU Member States in the areas of immigration, emigration, international protection, residence, illegal immigration and return. According to the Regulation, EU Member States need to provide Eurostat the numbers of immigrants entering their territory, emigrants moving from their territory, persons residing in their territory, residence permits issued, naturalized natural persons, persons applying for international protection, persons whose applications are under consideration by the national authorities, rejected applications, applications granting refugee, subsidiary protection or temporary protection statuses, unaccompanied minors, applications and transfers according to the Dublin II Regulation and persons who will be resettled. In addition, EU Member States must provide statistics to Eurostat on (1) the numbers of third-country nationals who were refused entry at the external borders and who were found illegally present in their territory, (2) the number of judicial or administrative decisions imposing third-country nationals an obligation to leave, (3) number of third-country nationals who were returned in their countries of origin, transit or other non-EU countries. EU Member States are basing the statistics on censuses, sample surveys, population registers and records of judicial and administrative actions. Generally, statistics are disaggregated by age, sex and nationality but the Commission may adopt other types of disaggregation.

A 2010 Communication from the Commission to the Parliament and the Council provides a useful overview of the EU systems that regulate the collection, storage and exchange of personal data for migration related purposes. Relevant for the purposes of this report are the following instruments:

- Visa Information System (VIS): VIS enables authorized national authorities to enter and consult data for short-stay visas for the Schengen Area, including biometric data. It thus supports the implementation of the common visa policy and facilitated effective border control.
- Eurodac: Eurodac is an information system for comparing the fingerprints of asylum seekers and irregular migrants. It facilitates the application of the Dublin II Regulation, as it determines which Member State is responsible for the examination of an asylum application.
- Schengen Information System (SIS) and the second generation Schengen Information System (SIS II): SIS allows the exchange of information between national authorities of the EU Member States on border control, customs, police, visa and judicial authorities. It contains information on persons who may have been involved in a serious crime or may not have the right to enter or stay in the EU. It also contains alerts on missing persons and information on certain stolen, misappropriated or lost

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1046 Eurostat is the statistical office of the EU. It does not collect data but it consolidates all the data collected by the national statistical authorities of EU Member States.
1048 Article 3 of the Regulation on migration statistics.
property, such as banknotes, cars, vans, firearms and identity documents. SIS II, a second
generation information system, is currently being finalized. It will have enhanced functionalities,
such as the possibility to use biometrics, new types of alerts, the possibility to link different alerts
(such as an alert on a person and a vehicle) and a facility for direct queries on the system. It will
also ensure stronger data protection.

- A new European Agency is currently being developed to work on the operational management of
large-scale IT systems in the home affairs area.\textsuperscript{1050} The Agency will be responsible for VISA,
EURODAC and SIS II, as soon as it starts operating.

In addition, there are instruments\textsuperscript{1051} and institutions\textsuperscript{1052} at EU level to prevent and combat terrorism
and other forms of border crimes amongst EU Member States that concern mainly the exchange of
information and enhancement of cooperation. Some agreements exist as well on the same topic with
non-EU countries.\textsuperscript{1053}

\textbf{Data protection}

The Data Protection Directive is the main legal instrument regulating the processing of personal data
within the European Union. Personal data means any information relating to an identified or
identifiable natural person (‘data subject’), an identifiable person who can be identified, directly or
indirectly, in particular by reference to an identification number or to one or more factors specific to
his physical, physiological, mental, economic, cultural or social identity.\textsuperscript{1054} The processing of personal
data is the operation or set of operations which is performed upon personal data, whether or not by
automatic means, such as collection, recording, organization, storage, adaptation or alteration,
retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available,
alignment or combination, blocking, erasure or destruction.\textsuperscript{1055} The natural or legal person, public
authority, agency or any other body which determines the purposes and means of the processing of
personal data is called a “controller”.\textsuperscript{1056}

The controller needs to ensure that that personal data are: (a) processed fairly and lawfully, (b)
collected for specified, explicit and legitimate purposes, (c) adequate, relevant and not excessive in
relation to the purposes for which they are collected and/or further processed, and (d) accurate and,
where necessary, kept up to date, (e) kept in a form which permits identification of data subject for no
longer than is necessary for the purposes for which the data were collected/further processed.\textsuperscript{1057}

European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice,

\textsuperscript{1051} See for example Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of
information and intelligence between law enforcement authorities of the Member States of the European Union, Official
Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism
2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or
processed in connection with the provision of publicly available electronic communications services or of public

\textsuperscript{1052} Mainly the European Police Office (Europol) and the EU’s Judicial Cooperation Unit (Eurojust).

\textsuperscript{1053} For example the Commission has signed Passenger Name Record (PNR) agreements with the United States, Australia and
Canada. The Commission has also signed an agreement with the United States on the transfer of financial messaging data
(EU-US TFTP Agreement).

\textsuperscript{1054} Article 2 lit. a of the Data Protection Directive.

\textsuperscript{1055} Article 2 lit. b of the Data Protection Directive.

\textsuperscript{1056} Article 2 lit. d of the Data Protection Directive.

\textsuperscript{1057} Article 6 of the Data Protection Directive.
The data subject has the right to:

(1) Access the data, as the Member States guarantee that data subjects have the right to obtain from the controller: (a) without constraint at reasonable intervals and without excessive delay or expense confirmation on the data processing and the purpose of this, communication of the data undergoing processing in an intelligible form and knowledge of the logic involved in any automatic processing of data concerning him/her, (b) the rectification, erasure or blocking of data the processing of which does not comply with the provisions of the Directive, (c) notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out in compliance with (b), unless this proves impossible or involves disproportionate effort.\(^{1058}\)

(2) Object, as the Member State grants the data subject the right: (a) to object at any time on compelling legitimate grounds relating to his particular situation to the processing of data relating to him, save where otherwise provided by national legislation, (b) to object, on request and free of charge, to the processing of personal data relating to him which the controller anticipates being processed for the purposes of direct marketing, or to be informed before personal data are disclosed for the first time to third parties or used on their behalf for the purposes of direct marketing, and to be expressly offered the right to object free of charge to such disclosures or uses.\(^{1059}\)

The Data Protection Directive also guarantees the confidentiality and the security of processing.\(^{1060}\)

Member States also need to provide (1) for the right of every person to a judicial remedy for any breach of the rights guaranteed by the national law applicable to the processing in question\(^{1061}\) and also (2) that any person who has suffered damage as a result of an unlawful processing operation or of any act incompatible with the national provisions adopted pursuant to this Directive is entitled to receive compensation from the controller (provided that he is responsible) for the damage suffered.\(^{1062}\)

In addition, the Data Protection Directive regulates the transfer of personal data to third countries. The Member States need to provide that the transfer of personal data which are undergoing processing or are intended for processing after transfer may take place only if the third country in question ensures an adequate level of protection. This level of protection is assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations and particular consideration should be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third country in question and the professional rules and security measures which are complied with in that country.\(^{1063}\)

In 2001, the Regulation on Data Processing by Community institutions and bodies was adopted in order to further regulate the processing of personal data by all Community institutions and bodies insofar as the automatic processing is carried out in the exercise of activities falling within the scope of Community law.\(^{1064}\)

\(^{1058}\) Article 12 of the Data Protection Directive.

\(^{1059}\) Article 14 of the Data Protection Directive.

\(^{1060}\) Articles 16 and 17 of the Data Protection Directive.

\(^{1061}\) Article 22 of the Data Protection Directive.

\(^{1062}\) Article 23 of the Data Protection Directive.

\(^{1063}\) Article 25 of the Data Protection Directive. However, derogation from this article is possible if the conditions outlined in Article 26, Data Protection Directive, are guaranteed.

In January 2012, a proposal was made by the European Commission for a new Directive on the protection of individuals with regard to the processing of personal data.\textsuperscript{1065} This new Directive takes into account the technological progress and globalisation since 1995 in order to further strengthen online privacy rights. Changes affecting individuals include, \textit{inter alia}, a reinforced “right to be forgotten” in order to better manage data protection risks online, an increased responsibility and accountability for data processors and the possibility for individuals to refer cases where their data has been breached or rules on data protection violated to the data protection authority in their country, even when their data is processed by an organization based outside the EU. A proposal was also made for a new Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data\textsuperscript{1066} (General Data Protection Regulation).\textsuperscript{1067}

17.2 Armenian legal framework

Collection of statistics and personal data

The Armenian legislation does not contain a separate legislative act relating to the collection of statistics and/or personal data in the area of migration. The Law on Foreigners, however, makes reference to the existence of specific databases/registries of certain data with regards to foreigners. These are:

a) The database of undesirable foreigners (Article 8 para. 6 of the Law on Foreigners). This database contains the data of foreigners whose (1) visa application was rejected, (2) visa was declared invalid, or (3) entry to Armenia was forbidden. The database is managed by the National Security Service, which receives the relevant information from the President’s Office, the Police and the Ministry of Foreign Affairs. The database can be used by the authorized bodies in the President’s Office, National Security Service, Police, Ministry of Foreign Affairs, border control authorities and, in the cases stipulated by law, the courts and criminal prosecution bodies. A government decision has been issued to further define the procedure for entering information into this database.\textsuperscript{1068} Expelled foreigners are also registered in the database of undesirable foreigners.\textsuperscript{1069}

b) The database of foreigners having obtained an entry visa. The existence of this database is actually mentioned in Article 42 of the Law on Foreigners, entitled “Personal data protection of Foreigners”, which further refers to Article 9 para. 4. However, Article 9 para. 4 simply states that “the Armenian Government will establish the list of those States whose citizens may, for obtaining an entry visa, apply only to the bodies of diplomatic service and consular offices of the Republic of Armenia in foreign States and only on the basis of an invitation provided for in Article 11 of this Law”. Governmental decree No 1268-N\textsuperscript{1070} provides specifications for the database on visas, which is managed by the Passport and Visa Department of the Police. The following data of foreign citizens are entered in the database: country of citizenship, type/series/number/validity period of identification document, sex,


\textsuperscript{1067} For a complete list of all EU legislation related to Data Protection see the official website of the European Commission at http://ec.europa.eu/justice/data-protection/law/index_en.htm (last accessed on 13 February 2013).


\textsuperscript{1069} Article 36 para. 3 of the Law on Foreigners.

\textsuperscript{1070} Appendix 5 of the Governmental Decree No. 1268-N.
date of birth, first/last/patronymic name, the number of persons registered in the document of identification, type/code/validity period/number of visa.\textsuperscript{1071}

c) The registration of invitations of foreigners (Article 11 para. 6 of the Law on Foreigners). According to this provision, the invitations to visit the Republic of Armenia, that require approval by public administration bodies, need to be registered. The procedure for approval and registration of invitations was established by Governmental Decree 62-N.\textsuperscript{1072} Invitations that are submitted by foreigners applying for a visa according to Article 11 of the Law on Foreigners to the Ministry of Foreign Affairs contain the following data: name of the invitee, nationality, birth date and place, ethnic identity (if available), address of residence, occupation and employer, passport details (type, number, issue and validity dates, issuing authority), purpose of invitation, planned period of stay, number of required entries and information on covering the expenses related to the stay, possible medical care and return from Armenia. The data of the invitee and the inviting party are registered in an invitation electronic registration and log and also in the automated visa system managed by the National Security Service.\textsuperscript{1073}

d) The registration of foreigners holding temporary and permanent residence status. This registration is being conducted by the authorized public administration body in the police of the Republic of Armenia as prescribed by the Government of the Republic of Armenia.\textsuperscript{1074}

e) The registration of foreigners holding special residence status (Article 18 para. 6 of the Law on Foreigners). This registration is being conducted by the authorized public administration body in the police of the Republic of Armenia as prescribed by the Government of the Republic of Armenia.

In addition, according to the Law on Refugees and Asylum, the State Migration Service\textsuperscript{1075} is responsible for conducting the centralized registration of asylum seekers and refugees in the Republic of Armenia maintain an informational database and constantly update all its information.\textsuperscript{1076} The law further specifies that as soon as an asylum application is submitted and registered, the designated body should register the asylum seekers in the database and open an individual file of an asylum seeker. Family members and other dependants, according to the definitions of Article 7 para. 1-3, who stay within the Armenian territory and want to apply for asylum without filing an individual asylum application, will be registered together with the asylum seeker filing an individual application and included in his/her individual file.\textsuperscript{1077}

Border crossing records are collected by the Border Management Information System (BMIS) established within the National Security Service.\textsuperscript{1078} The National Security Service is registering all the persons entering and exiting Armenia at the border crossing points. The data collected concern the person’s name and surname, date of birth, sex, country of citizenship, place of permanent residence, date of passport issues, issuing authority and passport number.\textsuperscript{1079} All data are kept in the BMIS system for 7 years.\textsuperscript{1080} The National Security Service, as the BMIS coordinating authority, has to

\textsuperscript{1071}Article 1, Appendix 5 of the Governmental Decree No. 1268-N.
\textsuperscript{1072}Decree of the Government of the Republic of Armenia 62-N on registration and on the approval of visa-related invitations by the Ministry of Foreign Affairs, 20 January 2011 (hereinafter Decision on registration of invitations).
\textsuperscript{1073}Annex 1 of the Decision on registration of invitations.
\textsuperscript{1074}Article 17 para. 4 of the Law on Foreigners.
\textsuperscript{1075}Decision of the Government of the Republic of Armenia 1515-N on establishing the Staff of the State Migration Service State Managerial Institution under the Ministry of Territorial Administration of the Republic of Armenia, and establishing the Charter and the Structure of staff of the Migration Service, 17 December 2009.
\textsuperscript{1076}Article 34 of the Law of the Republic of Armenia on Refugees and Asylum, 27 November 2008 (hereinafter Law on Refugees and Asylum).
\textsuperscript{1077}Article 48 of the Law on Refugees and Asylum.
\textsuperscript{1078}See more information on the BMIS in the Chapter on General Conditions of Entry and Border Control.
\textsuperscript{1080}Annex 1, para. 10 of the Decision on BMIS.
maintain the efficient exploitation of the BMIS, its expansion and maintenance. Currently, the BMIS covers the following border crossing points: Zvartnots, Bagratashen, Gyumri-Bavra, Gogavan-Privolnoye, Ayrum, and Agarak-Meghri. The BMIS users are the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Transportation and Communication, the Ministry of Defence, the National Security Service, the State Customs Committee, the Police of Armenia, the Department of Civil Aviation, the Office of the Prosecutor General, the National Statistical Service, the Department of Migration and Refugees under the Ministry of Territorial Administration, the State Tax Inspectorate and the first instance, appeal and cassation courts. However, not all of these authorities have access to the database currently.

Apart from this, the Law on Population Census provides the necessary guidelines on conducting a population census. It defines the tasks, requirements and responsibilities of all institutions involved in the preparation and implementation of the census. It also regulates financial means, rights and duties of citizens as well as the confidentiality of individual data gathered during the census. The census includes information on foreigners who are registered as temporary residence. Two censuses have been conducted since the Armenia independence, one in 2001 and one in 2011. In the first census ten questions were related to migration while the data included in the 2011 census are being processed will be available in 2013.

The Law on State Statistics regulates the establishment and maintenance of statistical registers, guarantees the principle of statistical confidentiality and puts emphasis on the involvement of users in the development of the statistical programme. Armenia conducts annually, since 1998, the Integrated Living Conditions Survey (ILCS) with monthly rotation of households and settlements. The data collected include data on family members who have migrated to work abroad and information on remittances but the main purpose of the survey is to measure the standard of living and assess the poverty line.

Armenia also has a system of civil registration that was introduced in 2002 with the Law on State Population Register. The systems aim is to collect and store personal data on Armenia’s resident population (citizens and non-citizens), as well as on Armenian citizens residing abroad. It was formally introduced in 2006 and it has been accumulating since all prime personal data on the population, including information on births and deaths, issued passports and social security cards, registration and deregistration of place of residence. It is important to note that the violation of the rules of registration with the State Population Register entails a warning or imposition of a. In particular, failing to inform, in the legally stated manner, the respective diplomatic representative or the consular office

1081 Questionnaire on Entry, Border Control, Refusal of Entry, Return and Expulsion, Irregular migration and Human trafficking, Migration data collection and data protection, answered by the National Security Service, November 2012.
1082 Annex 2, the Decision on BMIS.
1083 According to Government Decree No. 482-N of 21 April 2011 on the 2011-2015 Action Plan for Ensuring Border Security and Integrated Border Management, access to the BMIS will be extended to all stakeholder agencies.
1085 These questions concerned (1) the classification of the population into permanent residents, temporary residents and temporary absences (2) the duration and reason of temporary presence/absence, (3) country where the temporarily absent persons live, (4) the identification of migrants according to the criteria of country of birth and country of citizenship, (5) the duration of living in the same locality, (6) change of place of residence, (7) the number of household members absent for more than 12 months. See for more information CARIM East – Consortium for Applied Research on International Migration, Explanatory Note 12/01, Statistical Data Collection on Migration in Armenia, R. Yeganyan, January 2012.
1086 Questionnaire on Migration Data Collection and Data Protection, answered by the National Statistical Service, November 2012.
1088 See also Article 15 of the Law on State Statistics according to which one of the rights of the body implementing the state statistics is to receive the required statistical data from the providers of statistical information on a contract basis, including citizens on their social and demographic situation, as well as households.
of Armenia of the address of permanent residence/abode, or providing false information or not informing about permanent residence address change by a citizen of the Republic of Armenia, as well as by the legal representative of person less than 16 year old or a person called incapable by the court or called limited capable who is departing from the territory of the Republic of Armenia for residence for a period exceeding six months or has been living outside the Republic of Armenia for a period exceeding six months, will generate penalty equal to triple the minimum salary established in Armenia.1090

The key information provided into the Register includes the person’s first name, last name, patronymic name, number of social card, status (residence status or refugee status), citizenship, date and place of birth, sex, address of permanent residence in Armenia, requisites of the document confirming the Armenian or foreign citizenship and residence right in the Republic of Armenia, date and location of death.1091 The Register compiles information collected by various state authorities and is comprised of several sub-systems, such as 1) passports and registration (including special residence permits and information from the Ministry of Foreign Affairs on Armenian citizens registered at the consulates aboard), 2) archived data on the citizens of Armenia, 3) issued refugee certificates and related travel documents, 4) other state register data (birth certificates, marriages, death certificates), 5) social cards, 6) data on Soviet passports, 7) data on persons in penitentiary institutions and persons serving in the army, 8) foreigners database (registration and permits).1092

It is also important to note that in certain cases ad hoc sample migration surveys have taken place in Armenia since the mid-1990s.1093 However, even though they provide comprehensive and in-depth information, their results are not comparable as they use different methodological approaches.

Data protection

According to Article 23 of the Armenian Constitution everyone has the right of respect for his private and family life. The collection, maintenance, use or dissemination of any information about the person other than that stipulated by the law without the person’s consent is prohibited. The use and dissemination of information relating to the person for purposes contravening the aims of their collection or not provided for by the law is prohibited. Everyone has the right to become acquainted with the data concerning him/her available in the state and local self-government bodies. Everyone has the right to correction of any non-verified information and elimination of the illegally obtained information about him/her. Everyone has the right to secrecy of correspondence, telephone conversation, mail, telegraph and other communications, which may be restricted only by court decision in cases and in conformity with the procedure prescribed by the law.

The Law on Personal Data defines the legal status of personal data and contains general rules for obtaining, storing and processing personal data.1094 It regulates the relations arising during the processing of personal data by state bodies, local government bodies, public or local institutions, legal entities or natural persons.1095 It does not regulate the relations concerning the processing of personal data considered to be state secret, personal data published in public sources and also personal data by natural persons for their personal, family and other matters.1096

1095 Article 1 para. 1 of the Law on Personal Data.
1096 Article 1 para. 2 of the Law on Personal Data.
The Law defines personal data as any data on facts, cases, circumstances with regard to a natural person contained on a physical carrier and in a form that allows or may allow someone to identify the individual.\textsuperscript{1097} Data processing is any function or group of functions related to the collection, inputting, systematization, modification, transfer, storage, correction, blocking, destroying and use of personal data.\textsuperscript{1098} 

Personal data are collected for strictly defined and announced legal purposes and cannot be used for other purposes except in cases prescribed by the law. It is prohibited to collect and process data that are not required for the purpose for which the data are processed. The processing of personal data is legal\textsuperscript{1099}: (1) when the data subject consents to personal data processing, (2) in cases prescribed by the law or directly following from the provisions of the law or when data processing is required for the law implementation, (3) when it is required for state or public safety. The data subject can withdraw his/her consent at any time in a written form. The cancellation of the consent does not have retroactive effect.

Generally, personal data processed by the processor are considered to be confidential information except for cases provided for by law.\textsuperscript{1100} The data subject can be provided with the following information: purpose of processing, processor’s name and location, information on subjects to whom personal data may be provided, personal data of personal public accessibility. With the request of the data subject the processor is also obliged to provide the following information: the fact of data subject’s personal data processing, contents and the source of processed data, basis for transferring personal data without the consent of the data subject.\textsuperscript{1101} The information provided to the data subject is free of charge unless otherwise provided by law.

After the revision of May 2006, the Law on Personal Data does not allow for the transfer of personal data to foreign countries.\textsuperscript{1102} A new law on Personal Data has been drafted aiming to regulate the collection, protection and monitor of data by central and local government bodies, state or municipal institutions, natural persons and legal entities as well as to ensure the protection of human rights in the processing of personal data.\textsuperscript{1103} The draft Law is more detailed compared to the previous one and includes specific provisions on the consent of the data subject, special categories of personal data, biometric data and the rights and responsibilities of data processors.

Chapter 8 of the Law on Foreigners, entitled “Protection of Personal Data of Foreigners provided by this Law” contains the procedures for the protection of data of foreigner. According to Article 42 of the Law on Foreigners, the data contained in the above-mentioned databases enjoy the protection provided for the Law of the Republic of Armenia on Personal Data. The Law on State Statistics also specifies that the body implementing statistics according to the order established by the Council takes measures for the appropriate protection of information consisting of statistical confidentiality.\textsuperscript{1104} It is also important to note that Armenia ratified in May 2012 the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which prevails over national law.

\textsuperscript{1097}Article 3 of the Law on Personal Data. 
\textsuperscript{1098}Article 3 of the Law on Personal Data. 
\textsuperscript{1099}Article 6 of the Law on Personal Data. 
\textsuperscript{1100}Article 10 para. 1 of the Law on Personal Data. 
\textsuperscript{1101}Article 11 of the Law on Personal Data. 
\textsuperscript{1102}Law HO-95-N, 23 May 2006 amended Article 13 of the Law on Personal Data. 
\textsuperscript{1103}The new law has not yet been adopted. 
\textsuperscript{1104}Article 14 of the Law on State Statistics.
17.3 Gap analysis

17.3.1 Gap analysis between the Armenian legislation and implementation in practice

Collection of migration-related data
The regulation of the collection of migration-related statistics and personal data is dispersed in different legislative acts, such as the Law on Foreigners, Law on State Statistics, Law on Population Census and Law on State Population Register. This hinders a comprehensive and holistic overview of all the data collected in Armenia in relation to migration.

Database of undesirable foreigners
It is not clear whether the database of undesirable foreigners, provided in Article 8 para. 6 of the Law on Foreigners is in existence even though a government decree has been issued regulating further the entry of information in the database.

Database of foreigners having obtained an entry visa
Article 42, Law on Foreigners refers to a database of foreigners having obtained an entry visa that is provided in Article 9 para. 4 of the same Law. However, Article 9 para. 4 does not make reference to such a database and it simply states that “the Armenian Government will establish the list of those States whose citizens may, for obtaining an entry visa, apply only to the bodies of diplomatic service and consular offices of the Republic of Armenia in foreign States and only on the basis of an invitation provided for in Article 11 of this Law”.

BMIS
The BMIS database is not yet accessible to all governmental authorities even after the adoption of the relevant governmental decision. In addition, BMIS only provides information on persons entering and exiting the country, it includes therefore tourists, persons visiting friends and relatives etc. that are not relevant for migration matters.

Ratification of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data
It is important that the Republic of Armenia ratified the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Even though the Convention prevails over national law, there are numerous provisions of the current Data Protection Law that do not comply with the provisions of the Convention.

17.3.2 Gap analysis between the national legislation and the EU acquis

Migration-related statistics
EU Member States need to provide Eurostat with a big number of migration-related statistics, including not only foreigners entering and exiting their territories but also, for example, persons who were refused entry, persons who were found illegally in their territories, naturalized natural persons, persons who will be resettled and persons who were returned to their countries of origin. Armenia does not have legislation in place for the collection of all this statistics or, even though it has, in certain cases, it is not implemented in practice.

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1105 See also the Chapters on Visas and on General conditions of entry and Border Control.
1107 Annex 2, the Decision on BMIS.
**Definition of personal data**

According to the EU acquis personal data means any information relating to an identified or identifiable natural person (‘data subject’), an identifiable person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.\(^{1109}\) The Armenian legislation, on the other hand, provides a very basic definition of personal data which are “any data on facts, cases, circumstances with regard to a natural person contained on a physical carrier and in a form that allows or may allow someone to identify the individual.”\(^{1110}\)

**Definition of data processing**

According to the EU acquis, data processing is the operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.\(^{1111}\) In the Armenian legislation data processing is any function or group of functions related to the collection, inputting, systematization, modification, transfer, storage, correction, blocking destroying and use of personal data.\(^{1112}\) This list seems to be exhaustive; however, it is not comprehensive.

**Supervising authority**

The Armenian Law on Personal Data does not provide for the establishment of a specialized national data protection authority that would supervise issues related to data protection. The EU acquis, however, states that each Member State needs to provide that one or more public authorities are responsible for monitoring the application of the Data Protection Directive.\(^{1113}\)

**Transfer of data to third countries**

Before 23 May 2006 the Armenian Law on Personal Data allowed the transfer of personal data to foreign countries;\(^{1114}\) however, no specific procedure was mentioned in order to guarantee data protection. In addition, no supervising body was named to inspect and grant permission for the transfers. The Law HO-95-N declared the relevant provision invalid.\(^ {1115}\) Therefore, currently there is no possibility for transfer of data to foreign countries. The EU acquis, on the other hand, states that adequate level of protection of data is necessary in order to proceed to transfer of personal data. The level of protection is assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations and particular consideration should be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third country in question and the professional rules and security measures which are complied with in that country.\(^ {1116}\)

**Rights of the data subject**

The EU acquis contains detailed provisions regarding the rights of the data subject to access the data and to object.\(^ {1117}\) The Armenian Law on Personal Data also provides for the right to access and also

\(^{1109}\) Article 2 lit. a of the Data Protection Directive.

\(^{1110}\) Article 3 of the Law on Personal Data.

\(^{1111}\) Article 2 lit. b of the Data Protection Directive.

\(^{1112}\) Article 3 of the Law on Personal Data.

\(^{1113}\) Article 28 of the Data Protection Directive.

\(^{1114}\) Article 13 of the Law on Personal Data.

\(^{1115}\) Law of the Republic of Armenia Amending the Law on Personal Data, 23 May 2006, HO-95-N.

\(^{1116}\) Article 25 of the Data Protection Directive. However, derogation from this article is possible if the conditions outlined in Article 26, Data Protection Directive are guaranteed.

\(^{1117}\) Articles 12-14 of the Data Protection Directive.
correct, block and destroy his personal data, under certain conditions.\textsuperscript{1118} It does not provide for the right to object in cases like when the data are used for purposes of direct marketing.\textsuperscript{1119}

\textbf{Judicial Remedy and Liability}

The Armenian Law on Personal Data contains broad provisions relating to (1) the right of the data subject to appeal against illegal activities performed with his/her personal data and also to (2) liability of persons who infringe the Law on Personal Data.\textsuperscript{1120} However, the provisions are too broad and do not provide further details on the procedure that needs to be followed, responsible judicial authority etc. In addition, the sanctions in the event of a breach are not mentioned. The relevant provisions of the Data Protection Directive are much more detailed.\textsuperscript{1121}

\textbf{Draft Law on Personal Data}

It is important to note a few issues concerning the new draft law on personal data, as it is aiming to improve the existing law and it is crucial to contain provisions that would align the data protection legislation not only to the EU acquis but also to international standards.

First of all, the new draft law does not contain comprehensive definitions which are essential for clarity and the provision of adequate safeguards in the legal text. Consent is defined, for example, as the “unequivocal voluntary permission by the data subject for the processing of his/her personal data, given in any form”. The definition provided in the EU Data Protection directive explicitly mentions that the consent needs to be specific and informed.\textsuperscript{1122} In addition, the new draft Law does not distinguish between a data controller and a data processor; this distinction is made in Article 2 of the EU Data Protection Directive and it is vital for the whole text.

In addition, a basic principle related to data quality is that personal data must be processed fairly and lawfully. The Armenian draft law only mentions the “fair” process of personal data and not the “lawful”.

The new draft law provides for the creation of a data protection supervising authority to oversee the implementation of the data protection legislation, which is an improvement, as it was not included in the current law. However, the supervising authority needs to be an independent body in order to be able to function properly and not to be situated “within the national executive body”.\textsuperscript{1123}

Last, the new draft law does not contain any provision for the transfer of personal data to third countries, which is an important issue that needs to be regulated.

\textbf{17.4 Recommendations}

\textit{One comprehensive legal act on migration-related data}

It would be useful to include in one legal act all the different databases, registries and other data-storing systems provided already by the Armenian legislation. This would ensure a comprehensive and holistic overview of the data collection, analysis and storage systems provided and their function regulations. Armenia needs also to ensure that it collects all useful types of migration-related data (the ones collected by EU Member States and provided to Eurostat could be used as an example).

\textit{Database of undesirable foreigners}

It needs to be clarified whether the database for undesirable foreigners provided in Article 8 para. 6 of the Law on Foreigners is in operation. If yes, it is necessary to inform accordingly all governmental authorities that might need to obtain information from such a database.

\textsuperscript{1118} Articles 11-12 of the Law on Personal Data.

\textsuperscript{1119} As provided in Article 14 of the Data Protection Directive.

\textsuperscript{1120} Articles 14 and 15 of the Law on Personal Data.

\textsuperscript{1121} Articles 22 and 23 of the Data Protection Directive.

\textsuperscript{1122} Article 2 lit. h of the Data Protection Directive.

\textsuperscript{1123} Article 21 of the Draft Law on Data Protection of the Republic of Armenia.
Database of foreigners having obtained an entry visa

Article 9 of the Law on Foreigners needs to include a provision relating to the database of foreigners having obtained an entry visa and Article 42 needs to refer to it accordingly. It seems that the Directorate of Passports and Visas of the Police is already functioning such a database according to Appendix 5 of the governmental decree No 1268-N.\textsuperscript{1124}

Definitions included in the Data Protection Law

It is important to provide comprehensive definitions in the Data Protection Law in order to ensure legal clarity, to avoid arbitrary decisions and ensure maximum protection. The definitions of data and data processing were mentioned as examples but it would also be useful to align with the EU acquis the definitions of data controller, data processor and consent of the data subject.

Supervising authority

The Armenian Law on Personal Data needs to include an additional chapter for the establishment of a specialized national data protection authority that would supervise issues related to data protection. The aim, structure and functions of the authority also need to be specified. Similar authorities of EU Member States could be taken as example.

Transfer of data to third countries

The Armenian Law on Personal Data needs to include a provision on the transfer of personal data to foreign countries. Adequate level of protection of data needs to be guaranteed and this could follow the EU acquis where the level of protection is assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations and particular consideration is given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third country in question and the professional rules and security measures which are complied with in that country.\textsuperscript{1126} The authority supervising the transfer should also be clearly identified.

Rights of the data subject

Articles 11 and 12 of the Armenian Law on Personal Data need to be redrafted to clearly state the rights of the data subject to access the data concerning him and to object. The relevant provisions of the EU acquis could be used as a basis.\textsuperscript{1127}

Judicial Remedy and Liability

Articles 14 and 15 of the Armenian Law on Personal Data need to be amended to provide further details on the procedure that needs to be followed for judicial remedy and liability, the responsible judicial authority etc. In addition, the sanctions in the event of a breach need to be mentioned. The relevant provisions of the Data Protection Directive could be used as an example as they are much more detailed.\textsuperscript{1128}

Draft Law on Personal Data

It would be advised to further amend the draft Law on Personal Data so that, first and foremost, the definitions contained in Article 3 are comprehensive and contribute to legal clarity. The definition of “consent” as well as the distinction between a “data controller” and a “data processor” would need to be revised, for example. The definitions provided in Article 2 of the EU Data Protection Directive could be used as examples.

\textsuperscript{1124} See the Chapter on Visas.
\textsuperscript{1125} Appendix 5 of the Governmental Decree No. 1268-N.
\textsuperscript{1126} Article 25 of the Data Protection Directive. However, derogation from this article is possible if the conditions outlined in Article 26, Data Protection Directive are guaranteed.
\textsuperscript{1127} Articles 12-14 of the Data Protection Directive.
\textsuperscript{1128} Articles 22 and 23 of the Data Protection Directive.
It is important also to clearly state the principle that “personal data must be processed fairly and lawfully”\textsuperscript{1129}

Apart from this, it needs to be guaranteed that the data protection authority supervising the implementation of the data protection legislation of the Republic of Armenia is an independent body so that adequate control over the executive is assured.

Last, the new draft law needs to contain provisions about the transfer of personal data to third countries, which should only be allowed when adequate safeguards of data protection are guaranteed.\textsuperscript{1130}

}\textit{Ratification of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data}

Even though the recently ratified Convention prevails over national law,\textsuperscript{1131} there are numerous provisions of the current Data Protection Law that do not comply with the provisions of the Convention. It is important to revise the current law or the new draft law in the view of the Convention. By aligning the data protection legislation with the EU Data Protection Directive, compliance with the Council of Europe Convention is achieved as well.

\textsuperscript{1129} Article 6 para. 1 of the Data Protection Directive.
\textsuperscript{1130} See Chapter IV of the Data Protection Directive.
\textsuperscript{1131} According to Article 6 of the Constitution of the Republic of Armenia.
IV. CONCLUSION

The Armenian legislation on migration and asylum could benefit from certain amendments in order to be aligned to the relevant EU acquis. In addition, it is advised to clarify certain provisions of the Armenian legislation, in order to increase transparency and legal clarity and facilitate their implementation. Armenia is primarily perceived as a country of origin of migrants and there is little awareness of migration flows to Armenia, both regarding regular and irregular migration. Thus, the legislation on entry to and residence in Armenia has several gaps and lacks sufficient transparency. It appears essential to create clear criteria and define the conditions for entry and residence of foreign nationals in Armenia. Furthermore, the rights of migrants, especially migrant workers, victims of trafficking and unaccompanied minors, need to be strengthened. For instance, it is not sufficient to provide protection only to victims of trafficking who return to Armenia from a third country; victims of trafficking in Armenia coming from third countries also need to be identified and protected.

The recommendations provided in this study could serve as a pathway to implement the necessary changes. Most importantly, it is vital to implement in practice the legal provisions on migration and asylum in order to achieve the needed results. At the same time, it has to be kept in mind that the EU acquis was developed against a different historical, socio-economic and political context and does not cover all areas in the area of migration and asylum that has to be taken into account when improving a national migration management system. The EU acquis especially does not address the issue of emigration, diaspora, citizenship or the institutional framework and provides only a limited labour migration framework. For a successful migration management which protects the human rights of migrants and the takes into account the interests of Armenia it is essential to address also these issues. The EU Directives and Regulations are in many cases results of long negotiation procedures. They constitute only compromise of the interests of the EU Member States, thus they often do not go beyond the minimum standards. Therefore, it is very important that the development and reform of the migration and asylum legislation is not limited to the alignment to the EU acquis, but addresses the challenges in a holistic way and introduces international human rights standards as well. Armenia has signed various international human rights treaties which are relevant for migrants, asylum seekers and refugees, however, these treaties, although they are directly applicable, are not always implemented in practice. Moreover, there are still human rights treaties that are not signed and ratified by Armenia; in particular, it is strongly recommended to ratify and implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
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Hovhannisian, Karén


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2007  
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2009  
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2009  


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Annexes

ANNEXES

Annex 1. Terms of References for the Analysis of Armenian Migration Legislation and Practice as Compared to EU Standards

IOM Mission in Armenia
Project Development and Implementation Unit

Analysis of Armenian Migration Legislation and Practice as Compared to EU Standards

Project: AM1Z035 / LM.0178 “Strengthening Evidence-Based Management of Labour Migration in Armenia” Project (funded by the European Commission Thematic programme of cooperation with third countries in the areas of migration and asylum)

Component: Activity D.2 “Strengthening capacities of national institutions engaged in migration management in aligning national legislation with EU acquis by training and developing a Road Map for approximation of regulations and procedures”

Expected Date of Gap Analysis Consultancy: August 2012 – January 2013
Expected Date of Gap Analysis Mission: September 2012
Project / Task Manager: Kristina Galstyan

Description:
One of the Project’s objectives is raising awareness towards possible approximation of legislation on migration management with EU acquis. To achieve this goal the Project suggests several activities, including an Analysis of Armenian Migration Legislation and Practice as Compared to EU Standards (gap analysis). The gap analysis will study how the national legislation on migration aligns with EU legislation and provide concrete recommendations on the way forward and will serve as a Roadmap for approximation of regulations and procedures. The draft roadmap will be discussed with the Government of Armenia representatives prior to finalization.

The gap analysis will identify legislative and institutional practices concerning migration in Armenia, and to ascertain to what extent the legal and institutional framework in place meet the requirements of the EU-Armenia Association Agreement currently under negotiation, as well as the requirements of the EU-Armenia Mobility Partnership Agreement signed on November 27, 2011 and EU-Armenia Visa Facilitation and EU-Armenia Readmission Agreements, which are currently under negotiation.

The gap analysis should address, at minimum, the following topics and provide recommendations regarding the gaps in these topics:

Identity Management
Entry
Travel Documents
Visa
Admission
Border Checks
Sojourn and Residence
Employment
Research and Study
Marriage and Adoption
Family Reunification
The study will address both immigration and emigration. At the same time not only legislation and policy will be studied but also the related administrative and judicial practices.

The main methodology to be employed by the Consultant, will be a combination of:
(i) submission for approval of a methodology to conduct the analysis
(ii) legal textual analysis, including desk review, information gathering, preparation of questionnaires, data collection procedures, among other aspects,
(iii) meetings and interviews with the relevant Government institutions and stakeholder in Armenia;
(iv) field visits to employment offices, Migrant Resource Centres (MRC-s), social insurance offices, police units, to border crossing check points and actual border crossing review.
(v) Progressive reports on implementation of the activities; mid-term submission of a draft report and final report submission, incorporation of inputs by IOM Yerevan and other stakeholders as suggested by IOM Yerevan.

The Armenian state bodies to meet will include: the Administration of the President of the Republic; Cabinet Administration; the National Assembly; the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Labour and Social Issues (including State Employment Service Agency, State Labour Inspectorate, State Social Security Service), State Migration Service at the Ministry of Territorial Administration; Police (including the Directorate for Passports and Visas; General Directorate for Combatting Organize Crime; Interpol National Central Bureau); National Security Service (Border Guards Troops); National Security Council; Civil Aviation General Department; State Revenues Committee; E-Governance Infrastructure Implementation Unit; Ministry of Diaspora; National Statistics Service; Ministry of Education; Ministry of Health; Confederation of Trade Unions; the Judicial Department; Procuracy General; Office of the Human Rights Defender; Chamber of Advocates. Meetings will be organized with the ILO, UNDP, UNHCR; OSCE; the European Union Delegation to Armenia; EU Advisory Group to Armenia; and Embassies of EU Member States.

In order to facilitate the reference to and the understanding of the EU acquis and the other international standards, the following elements will be elaborated: (i) the basic principles underpinning the different aspects of the EU migration policy; (ii) the EU acquis in force; (iii) the Schengen acquis in force.

The agreements between Armenia and EU will also be used:
The gap analysis will build on the following IOM general and thematic assessments, which reveal the gaps in given migration sub-area and suggest actions for reforms:

- The “Assessment of Migration Management in Armenia” in 2008 (conducted with the Swedish Migration Board) set a basis for the new wave of migration reforms in Armenia and for elaboration of the “Concept for the Policy of State Regulation of Migration in the Republic of Armenia” and the “2012 – 2016 National Plan of Action for Implementing the Strategy.”

- The “Progress Review of Migration Management in Armenia” is currently being developed to follow up with the 2008 Assessment and it focuses on coordination of activities of bodies with mandate in migration management and migration aspects of Armenia-EU Association.


- “Migration Data Needs Assessment Report.” Recommends coordinated way of collecting, exchanging and analyzing migration statistics as required by international and regional standards.

- “Border Management Needs Assessment Report.” Addresses the shortcomings identified at the currently available border infrastructure, in order to foster and enhance effectiveness and efficiency of border controls at some Border Crossing Points in Armenia, taking into account previous and ongoing actions and support by international donors and national investments.

- “Labour Migration Management Needs Assessment Report.” The latter delineates the gaps in management of migration for labour.

- In 2009, IOM Armenia contributed to the “Armenia National Human Development Report on Migration and Development,” the full version of the study on “Migration Management and Human Rights” was published as well in 2010.

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Background on EU-Armenia Association Process\textsuperscript{1141}:

EU relations with Armenia are governed by the EU-Armenia Partnership and Cooperation Agreement signed in 1996 and entered into force in 1999. Armenia became part of the European Neighbourhood Policy (ENP) in 2004. The ENP Action Plan was discussed by the EU and the Armenian Government and adopted on November 14, 2006. It covers five years, however, the Cooperation Council held in November 2011 agreed on its prolongation. Main EU co-operation objectives, policy responses and priority fields are defined in the Country Strategy Paper 2007-2013.

In 2009, within the framework of the ENP, Eastern Partnership was initiated by EU with the aim of tightening the relationship between the EU and the Eastern partners, including Armenia, through deepening their political co-operation and economic integration. The EaP offers deeper integration with the EU structures by encouraging and supporting them in their political, institutional and economic reforms, based on EU standards, as well as facilitating trade and increasing mobility between the EU and the partner states. The fundamental goal of the EU’s bilateral co-operation within the EaP framework is to make its bilateral relations with the individual partner countries closer. To this end, the EaP envisages negotiations and the implementation of Association Agreements, and the creation of deep and comprehensive free trade areas between the EU and the partner states.

Thus at the EaP summit in May 2009 a political commitment was taken regarding the improvement of people-to-people contacts, to which visa facilitation and readmission negotiations with Armenia will follow. In September 2011 the EC proposed to open negotiations on agreements to facilitate the procedures for issuing short-stay visas as well as on the readmission of irregular migrants between the European Union and Armenia. The first round of negotiations took place in February 2012. In July 2010, the EU and Armenia launched negotiations on the future EU-Armenia Association Agreement, which will be the successor agreement to the EU-Armenia Partnership and Cooperation Agreement (signed in 1996 and in force from 1999). The Association Agreement will significantly deepen Armenia’s political association and economic integration with the EU. The EU and Armenia also aim at establishing a Deep and Comprehensive Free Trade Area (DCFTA), when the relevant pre-conditions are met.

The EaP also aims at fostering multilateral co-operation between the EU and the EaP region, and between the partner states themselves. Multilateral cooperation includes flagship initiatives including the Integrated Border Management Programme.

The EU-Armenia Mobility Partnership Declaration was signed in Luxembourg on 27 October 2011. Ten EU Member States (Belgium, Bulgaria, the Czech Republic, France, Germany, Italy, the Netherlands, Poland, Romania and Sweden) are participating. The Mobility Partnership is expected to enhance Armenia’s ability to manage migration and inform, integrate and protect migrants and returnees, as well as boost Armenia’s capacity to curb irregular migration and human trafficking. The Joint Declaration identifies four areas for increased dialogue and cooperation under the headings of: (a) mobility, legal migration and integration; (b) migration and development; (c) fight against irregular immigration and trafficking in human beings, readmission, security of identity and travel documents, border management; and (d) asylum and international protection.

Armenia – EU Policy Dialogue on Migration and Asylum. IOM, within the framework of EU-funded “Strengthening Evidence-Based Management of Labour Migration in Armenia” Project, will facilitate a series of policy dialogue meetings on migration with the participation of EU officials, Government officials from selected EU Member States and Armenia. These meetings will facilitate the negotiations on various migration-related aspects of EU integration, including visa facilitation, readmission agreements, and possible bilateral labour agreements with EU Member States, among other issues. Building on the discussions of the Cluster Process, the policy dialogue will also aim on enhancing cooperation on labour migration management topics between European destination countries and Armenia, with a particular focus on bilateral, regional and multilateral labour migration agreements, circular migration, mobility partnerships, and return and reintegration management.

The proposed policy dialogue meetings will build on the “Cluster” Process, the inter-regional migration and asylum management dialogue between the sending and transit countries of the South Caucasus, and receiving EU Member States, which was assisted since 2001 by IOM. Through the Cluster Process mechanisms and policies seeking to reduce irregular migration are promoted, while simultaneously strengthening the South Caucasus’ institutional capacity and systems to promote legal migration and sustainable return and reintegration practices and policies.
Annex 2. Agenda of the Mission Conducting Analysis of Armenian Migration Legislation and Practice as Compared to EU Standards

IOM Mission in Armenia
Project Development and Implementation Unit

“Strengthening Evidence-Based Management of Labour Migration in Armenia” Project Funded by the European Commission Thematic programme of cooperation with third countries in the areas of migration and asylum

Agenda for Mission to Armenia conducting
Analysis of Armenian Migration Legislation and Practice as Compared to EU Standards

Monday, September 24, 2012 – Friday, September 28, 2012

Day 0, Sunday, September 23, 2012

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
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| 17:00 – 21:00 | IOM Armenia Mission Staff  
Ms. Kristina Galstyan, Head of Project Development and Implementation Unit |

Day 1. Monday, September 24, 2012

<table>
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<tr>
<th>Time</th>
<th>Activity</th>
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| 09:00 – 10:00 | Office of the Human Rights Defender  
Mr. Ashot Gevorgyan, Advisor and Expert on refugees matters, Department for Defence of Vulnerable Groups  
Ms. Manush Mirzoyan, Head, Department for Protection of Civil and Political Rights  
Mr. Ruben Martirosyan, Head, Department for Protection of Criminal Procedural Rights |
| 10:15 – 11:45 | National Statistics Service  
Mr. Gagik Gevorgyan, Member of the State Statistics Council (overseeing demography, sociology and public activity sectors)  
Ms. Armine Avetisyan, Leading specialist, Population and Demography Division  
Ms. Diana Martirosova, Head, Households Surveys Division  
Mrs. Lusine Kalantaryan, Head of the Labour Statistics Division  
Ms. Gohar Shahinyan, Population Census Division  
Ms. Varduhi Saroyan, Head, Legal Division |
| 12:00 – 13:00 | Judicial Department  
Mr. Karen Poladyan, Head, Division for estimation of Judicial Practice |
| 14:15 – 15:45 | Ministry of Foreign Affairs  
Mr. Tigran Galstian, Attaché, Division of National Law And Implementation of International Treaties, Legal Directorate  
Ms. Zoya Stepanyan, Attaché, EU Desk, European Directorate  
Mr. David Manukyan, Attaché, Consular Department |
| 16:00 – 17:00 | Ministry of Diaspora  
Mr. Arman Yeghiazarian, Head of Department of Repatriation and Investigations  
Ms. Knarik Petrosyan, Head of Repatriation Division, Department of Repatriation and Investigations  
Ms. Natalia Danielyan, Head, Division of Relations with Armenian Communities of Western Europe, Department of Armenian Communities of Europe |
| 17:15 – 18:00 | Chamber of Advocates  
Mr. Arman Poghosian, Adviser to the Chairman of Council  
Ms. Karine Khachatrian, Advocate, Member of the Council |
### Day 2. Tuesday, September 25, 2012

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Participants</th>
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<tbody>
<tr>
<td>09:15 – 11:00</td>
<td>Confederation of Trade Unions of Armenia</td>
<td>Mr. Boris Kharatyan, Deputy Chairman</td>
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<tr>
<td>11:00 – 12:30</td>
<td>National Security Service</td>
<td>Colonel Oleg Markosyan, Deputy Head of International Relations Directorate</td>
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<td></td>
<td></td>
<td>Mr. Gevorg Navoyan, Head, Division of Operation and Development of Border Management Information System, Directorate for Governmental Communications and Information</td>
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<td>Lieutenant Gegham Yephrikyan, Engineer, Division of Operation and Development of Border Management Information System, Directorate for Governmental Communications and Information</td>
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<td>Mr. Tigran Adamyan, Senior Agent, Second Division (dealing with Irregular Migration) of the General Second Directorate of Counter-Investigation</td>
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<td>Mr. Narek Tumanian, Second Division (dealing with Irregular Migration) of the General Second Directorate of Counter-Investigation</td>
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<td>Mr. Mkhitar Mkrtchian, Senior Legal Adviser, Legal Department</td>
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<td>Mr. Tatu Igukasyan, Junior Inspector, Legal Department</td>
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<td>Lieutenant Colonel Manvel Mayilyan, Deputy Head, Border Control Detachment, Border Guards Troops</td>
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<tr>
<td>14:00 – 15:45</td>
<td>Ministry of Labour and Social Issues</td>
<td>Mr. Arayik Petrosyan, Deputy Minister,</td>
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<td></td>
<td></td>
<td>Ms. Anahit Martirosyan, Head of International Relations Department</td>
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<td>Ms. Lilit Dokhikyan, Deputy, Head of International Relations Department</td>
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<td>Mr. Armen Karoyan, Deputy Head, Legal Department</td>
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<td>Mr. Tadevos Avetisyan, Head, Department of Labour and Employment</td>
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<td>Ms. Lala Ghazaryan, Head, Department of Family, Women’s and Children’s Issues</td>
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<tr>
<td>16:00 – 17:30</td>
<td>State Employment Service of the Ministry of Labour and Social Issues</td>
<td>Mrs. Sona Harutyunyan, Head</td>
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<td>Ms Gohar Sokhikyan, Chief Specialist, Labour Information and Consultation Division; and Leader of the Training Group, State Employment Service</td>
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### Day 3. Wednesday, September 26, 2012

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<th>Time</th>
<th>Event</th>
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<tr>
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<td></td>
<td>Mr. Serob Harutyunyan, First Deputy Head of General Directorate for Combating Organized Crime</td>
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<td>Major Armen Petrosyan, Head of Division for Combating Irregular Migration and for International Cooperation</td>
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<td>Major Robert Grigoryan, Head of Division for Combating Trafficking in Humans</td>
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<tr>
<td>11:00 – 12:30</td>
<td>Police of the Republic of Armenia</td>
<td>Colonel Hovanes Kocharyan, Head of Directorate for Passports and Visas</td>
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<td>Mr. Hrachia Yeganyan, Deputy Head of Directorate for Passports and Visas</td>
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<tr>
<td>14:00 – 16:00</td>
<td>State Migration Service at the Ministry of Territorial Administration</td>
<td>Mr. Gagik Yeganyan, Head</td>
</tr>
<tr>
<td>16:30 – 18:00</td>
<td>International Labour Organization</td>
<td>Ms. Nune Hovhannisyan, ILO National Correspondent</td>
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### Day 4. Thursday, September 27, 2012

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Participants</th>
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<tr>
<td>09:30 - 11:00</td>
<td>Ministry of Education</td>
<td>Dr. Kariné Harutyunyan, Deputy Minister</td>
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<td>Mr. Robert Abrahamyan, Head of Primary and High Specialized Education Department</td>
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<td>Ms. Lusiné Madoyan, Evaluation Specialist, National Academic Recognition Information Centre</td>
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<td>Ms. Lusiné Grigoryan, Deputy Head, Legal Department</td>
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<td>Ms. Tatevik Arakelyan, Head, Division for Developing Professional Education Policy, Higher and Post-Graduate Education Department</td>
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<td>Mr. Vahe Grigoryan, Head, International Cooperation Division, Department of External Relations and Relations with the Diaspora</td>
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<tr>
<td>11:00 – 12:30</td>
<td>Ministry of Health</td>
<td>Ms. Ruzanna Yuzbashyan, Head, Health Programmes Division</td>
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<td></td>
<td>Ms. Kariné Saribekan, Head, Division for Maternal and Child Health Care</td>
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<td>Ms. Isabel Abgarian, Head of Legal Department</td>
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<td>Ms. Lena Nanushian, Head, International Relations Department</td>
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<td>Ms. Hasmik Safaryan, Leading Specialist, International Relations Department</td>
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<tr>
<td>14:00 – 15:30</td>
<td>Ministry of Justice</td>
<td>Mr. Hamlet Navasardyan, Head of the Civil Status Acts Registration Agency</td>
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<td>Mr. Argam Stepanyan, Deputy Head, Civil Status Acts Registration Agency</td>
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<tr>
<td>15:45 – 16:45</td>
<td>State Revenues Committee</td>
<td>Mr. Karen Beglaryan, Head, department of taxpayer services and tax procedures</td>
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<td>Mr. Ashot Arakelyan, Deputy Head, Department for combating contraband and for customs double check</td>
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<td>Mr. Gevorg Saghoyan, Head of Customs Supervision Department</td>
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<tr>
<td>17:00 – 18:00</td>
<td>E-Governance Infrastructure Implementation Unit CJSC (EKENG)</td>
<td>Mr. Artur Ghulyan, Director</td>
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<td></td>
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<td>Mr. Artiom Baghdasaryan, Project manager</td>
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<tr>
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<td>(responsible for introduction of biometrics in Armenia)</td>
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### Day 5. Friday, September 28, 2012

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<tr>
<th>Time</th>
<th>Event</th>
<th>Participants</th>
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<tbody>
<tr>
<td>09:15 – 10:30</td>
<td>Twinning Project “Support the State Migration Service for strengthening Migration Management in Armenia” (implemented by the Swedish Migration Board and Polish Ministry of Interior and Administration)</td>
<td>Mr. Magnus Jansson, Resident Twinning Adviser</td>
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<tr>
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<td>Mr. Piotr Sadwoski, Migration Policy Department, Ministry of Interior and Administration of Poland</td>
</tr>
<tr>
<td>11:00 – 12:30</td>
<td>European Commission Delegation to Armenia</td>
<td>Mr. Davit Avakian, Project Manager, Justice, Liberty and Security Sector</td>
</tr>
<tr>
<td>13:30 – 14:45</td>
<td>United Nations High Commissioner for Refugees</td>
<td>Mr. Damtew Dessagle, Representative</td>
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<tr>
<td>15:00 – 15:45</td>
<td>Ministry of Justice</td>
<td>Mr. Karen Hakobyan, Head, Department for Legislation Analysis and Development</td>
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<tr>
<td>15:00 – 17:00</td>
<td>Ministry of Justice</td>
<td>Mr. Armen Harutyunyan Adviser to the Chief Enforcement Officer, Court Executive Service</td>
</tr>
<tr>
<td>17:15 – 19:00</td>
<td>Wrap-up meeting with IOM Mission in Armenia</td>
<td>Ms. Kristina Galstyan, Head of Project Development and Implementation Unit</td>
</tr>
</tbody>
</table>

**Mission Team**

Maria Temesvari  
Christina Vasala Kokkinaki  
Kristina Galstyan, IOM Armenia
international organization for migration

expert team: Mária Temesvári, Christina Vasala Kokkinaki

“Analysis of Armenian Migration Legislation and Practice as Compared to EU Standards”

Prepared for publication by IOM Project Development and Implementation Unit in Armenia

Translation by the: “Translation Centre of the Ministry of Justice of the Republic of Armenia” State Non Commercial Organization

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ANALYSIS OF ARMENIAN MIGRATION LEGISLATION AND PRACTICE AS COMPARED TO EU STANDARDS