



IOM • OIM

International Organization for
Migration



Ministry of Justice of the
Republic of Armenia



EUROPEAN UNION

ANALYSIS OF ARMENIAN MIGRATION LEGISLATION AND PRACTICE AS COMPARED TO EU STANDARDS



International Organization for
Migration



Ministry of Justice of the
Republic of Armenia



European Union

***ANALYSIS OF ARMENIAN MIGRATION LEGISLATION
AND PRACTICE AS COMPARED TO
EU STANDARDS***

UDC 341.215.43

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.

Expert Team: Mária Temesvári, Christina Vasala Kokkinaki

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

While IOM endeavours to ensure the accuracy and completeness of the content of this Review, the views, findings, interpretations and conclusions expressed herein are those of the authors and do not necessarily reflect the official position of IOM and its Member States. IOM does not accept any liability for any loss, which may arise from the reliance on information contained in this paper.

© **Copyright:** All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form by any means of electronic, mechanical, photocopying, recording, or otherwise without the prior written permission of the publisher.

Publisher:



International Organization for Migration (IOM)
Organisation Internationale pour les Migrations (OIM)
Organización Internacional para las Migraciones (OIM)

ISBN 978-9939-50-247-2

Contents

FOREWORD	6
ACKNOWLEDGEMENTS	8
A. BACKGROUND	9
B. SCOPE AND METHODOLOGY	9
IV. OVERVIEW OF THE ARMENIAN INSTITUTIONAL FRAMEWORK.....	35
V.OVERVIEW OF EU-ARMENIA RELATIONS ON MIGRATION ISSUES	37
1.Travel Documents.....	41
1.1 EU Acquis	41
1.2 Legal framework in Armenia	43
1.3 Gap analysis	45
1.4 Recommendations.....	46
2. VISAS.....	47
2.1.EU Acquis	47
2.2 Armenian legal framework	51
2.3 Gap analysis	57
2.4 Recommendations.....	60
3. GENERAL CONDITIONS OF ENTRY AND BORDER CONTROL	63
3.1. EU Acquis	63
3.2 Armenian legal framework.....	66
3.3 Gap analysis	71
3.4 Recommendations.....	72
4.1. EU acquis	74
4.2. Armenian legal framework.....	78
4.3 Gap Analysis.....	80
4.4 Recommendations.....	82
5.1. EU acquis	83
5.2. Armenian legal framework.....	89
5.3 Gap Analysis.....	90
5.4 Recommendations.....	91
6. STUDY AND RESEARCH	93
6.1 EU acquis	93
6.2 Armenian legal framework.....	98
6.3 Gap Analysis.....	99
6.4 Recommendations.....	101
7. FAMILY AND MARRIAGE	103
7.1. EU acquis	103

7.2 Armenian legal framework	108
7.3 Gap Analysis.....	111
7.4 Recommendations.....	113
8. MIGRANTS’ RIGHTS AND NON-DISCRIMINATION	114
8.1 EU acquis	114
8.2 Armenian legal framework.....	118
8.3 Gap analysis	122
8.4 Recommendations.....	123
9. INTEGRATION	126
9.1. EU acquis	126
9.2. Armenian legal framework.....	127
9.3. Gap Analysis.....	127
9.4. Recommendations.....	127
10. ASYLUM	129
10.1. EU acquis	129
10.2. Armenian legal framework.....	137
10.3. Gap Analysis.....	144
10.4. Recommendations.....	148
11.1. EU acquis	151
11.2 Armenian legal framework.....	154
11.3 Gap Analysis.....	155
11.4. Recommendations.....	156
12. IRREGULAR MIGRATION	157
12.1. EU acquis	157
12.2. Armenian legal framework.....	162
12.3. Gap Analysis.....	164
12.4. Recommendations.....	165
13. HUMAN TRAFFICKING	166
13.1. EU acquis	166
13.2. Armenian legal framework.....	171
13.3. Gap Analysis.....	173
13.4. Recommendations.....	175
14.1 EU Acquis.....	176
14.2 Armenian legal framework.....	177
14.3 Gap analysis.....	178
14.4 Recommendations.....	179
15.1 EU Acquis.....	180

15.2 Armenian legal framework	184
15.3 Gap analysis	187
15.4 Recommendations	191
16.1 EU Acquis	195
16.2 Armenian legal framework	199
16.3 Gap analysis	200
16.4 Recommendations	200
17.1 EU Acquis	202
17.2 Armenian legal framework	205
17.3 Gap analysis	210
17.4 Recommendations	212
IV. CONCLUSION	215
Bibliography	216
Annexes	224

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),

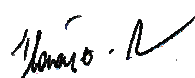
which had an activity to analyze current Armenian law on migration and exchange knowledge and best practices on implementation of EU law.

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 Lughofer, 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, Procurator 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.¹ 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:

➤ *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.² 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 States³; this is possible only for visa extensions.⁴

➤ *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

² Articles 35 and 36 of the Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, 810/2009, Official Journal L 243, 15 September 2009, last amended by Regulation (EU) No. 154/2012 (hereinafter Visa Code), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:EN:PDF> (accessed on 17 February 2013).

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 Party⁵.

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.

⁵Articles 71 para. 1, 71 para. 2, 96 para. 2 and 96 para. 3 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Official Journal L 239 , 22 September 2000 (hereinafter Convention implementing the Schengen Agreement), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:239:0001:0473:EN:PDF> (accessed on 17 February 2013).

⁶Articles 96 para. 2 and 96 para.3, of the Convention implementing the Schengen Agreement.

⁷Articles 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-N⁸ 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 acquis⁹ 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.

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 Party¹¹.
- The ground of threat to the state security or public order of the Republic of Armenia¹² should be further clarified and it could include similar clarifications, as those provided by the EU acquis.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 refusal¹⁴ whereas administrative liability should not be included.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.

¹¹Article 71 para. 1, Article 71 para. 2, 96 para. 2, 96 para.3 of the Convention implementing the Schengen Agreement.

¹²Article 8 para. 1.lit. f of the Law of the Republic of Armenia on Foreigners 2006 (hereinafter Law on Foreigners).

¹³Articles 96 para. 2, 96 para.3 of the Convention implementing the Schengen Agreement.

¹⁴Article 8 para. 1 of the Law on Foreigners.

¹⁵Article 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 is recommended to 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 particular 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

¹⁶ Articles 7, 8, 14 and 15 of the Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin, 2000/43/EC, Official Journal L 180, 19 July 2000, (hereinafter Equal treatment irrespective of racial or ethnic origin Directive), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:180:0022:0026:EN:PDF> (accessed on 17 February 2013), and Articles 9, 10, 16 and 17 of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, 2000/78/EC, Official Journal L 303, 2 December 2000, (hereinafter Equal Treatment in employment and occupation Directive), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:EN:PDF> (accessed on 17 February 2013).

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 Workers¹⁸, to which 11 states are already parties.
- The European Agreement on the Abolition of Visas for Refugees¹⁹, 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 penalty²⁰
- The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.²¹
- The European Convention on Nationality, to which 20 states are already parties.²²
- The European Convention on the Participation of Foreigners in Public Life at Local Level, to which eight states are already parties.²³
- 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.

¹⁸Council of Europe, European Convention on the Legal Status on Migrant Workers, 24 November 1977, ETS 93, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/093.htm> (accessed on 17 February 2013).

¹⁹Council of Europe, European Convention on the Abolition of Visas for Refugees, 20 April 1959, ETS 31, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/031.htm> (accessed on 17 February 2013).

²⁰UN General Assembly, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 15 December 1989, A/RES/44/128, Treaty Series, vol. 1642, A-14668, available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/548/87/IMG/NR054887.pdf?OpenElement> (accessed on 17 February 2013).

²¹Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 25 October 2007, CETS No. 201, available at <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm> (accessed on 17 February 2013).

²²Council of Europe, European Convention on Nationality, 6 November 1997, ETS 166, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm> (accessed on 17 February 2013).

²³Council of Europe, European Convention on the Participation of Foreigners in Public Life at Local Level, 5 February 1992, ETS144, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/144.htm>(accessed on 17 February 2013).

Recommendations:

- *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 consist 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 carriers 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 SACs²⁴ 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 filed, 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

²⁴Decree 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 acts²⁵, 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.

²⁵ Law on Compulsory Enforcement of Judicial Acts, 1999.

➤ *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 acquis²⁶, 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

²⁶ Article 14 of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Official Journal L 348, 24 December 2008, (hereinafter Return Directive), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF> (accessed on 17 February 2013).

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.

²⁷ Following Article 26 of the Convention implementing the Schengen Agreement and Annex V of the Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders, 562/2006, Official Journal L 105, 13 April 2006, last amended in 2013 (hereinafter Schengen Borders Code), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF> (accessed on 17 February 2013).

➤ *Content of readmission agreements*

Armenia could follow the Recommendation on a specimen bilateral readmission agreement²⁸ as well as the Recommendation on Guiding Principles for Protocols on the implementation of readmission agreements.²⁹ 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.

²⁸Council Recommendation of 30 November 1994 concerning a Specimen Bilateral Readmission Agreement between a Member State and a Third-country, Official Journal C 274, 19 September 1996, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1996:274:0020:0024:EN:PDF> (accessed on 17 February 2013).

²⁹Council Recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements, Official Journal C 274, 19 September 1996, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1996:274:0025:0033:EN:PDF> (accessed on 17 February 2013).

- *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 database³⁰ according to Appendix 5 of the governmental decree No 1268-N.³¹
- *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.³² 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.³³
- *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.³⁴
- *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

³⁰ See the Chapter 2.

³¹ Appendix 5 of the Governmental Decree No.1268-N.

³² Article 25 of the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281, 23 November 1995(hereinafter Data Protection Directive), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1995:281:0031:0050:EN:PDF> (accessed on 17 February 2013). However, derogation from this article is possible if the conditions outlined in Article 26, Data Protection Directive are guaranteed.

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.

⁴¹ European Neighbourhood and Partnership Instrument, Country Strategy Paper 2007-2013, Armenia.

⁴² Return Migration to Armenia in 2002-2008, AST/OSCE, Yerevan, 2008 and Labour Migration from Armenia in 2002-2005, AST/OSCE, Yerevan, 2005.

⁴³ Return Migration to Armenia in 2002-2008, AST/OSCE, Yerevan, 2008.

⁴⁴ See ILO, Migration and Development, Armenia, 2009 for more information on emigration from Armenia.

⁴⁵ International Monetary Fund, Remittances in Armenia: Dynamic Patterns 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”⁴⁸ 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.⁴⁹

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 from 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.

⁴⁸ Concept Paper on Development of Armenia and Diaspora Cooperation, 2009.

⁴⁹ ILO & RA Ministry of Diaspora, Handbook for Armenian Abroad, 2010, p.2.

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.⁵⁰ Various ministries and authorities are involved in the migration policy development and implementation and previous assessments observed that often different institutions have overlapping mandates.⁵¹ 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.⁵² At the same time, the SMS is responsible for the processing of asylum application and granting asylum at first instance.⁵³ 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 2007.⁵⁴ The Council is

⁵⁰ Rossi-Longhi, P.; Galstyan, K.; Lindstrom, T.; *Review of Migration Management in the Republic of Armenia*, p. 57, Assessment Mission Report, IOM, March 2008, Yerevan, available at http://publications.iom.int/bookstore/free/Review_MigrationManagementReport2008_English.pdf (accessed on 28 October 2012).

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.

⁵² Annex N 1 to the Decision of the Government of the RA, N 1593-N, 10 November 2011, *Action Plan for the implementation of the concept for the policy of state regulation of migration in the republic of Armenia 2012-2016*, available at http://www.carim-east.eu/media/sociopol_module/The%20action%20Plan%20for%20the%20Implementation%20of%20the%20Policy%20concept%20for%20the%20state%20regulation%20of%20migration_2012-2016.pdf. (accessed on 28 October 2012).

⁵³ State Migration Service of the Ministry of Territorial Administration, available at http://www.smsmta.am/?menu_id=1 (accessed on 20 May 2013).

⁵⁴ Republic of Armenia Prime Minister's Resolution No- 861-A, 6 December 2007.

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)⁵⁵. The objectives of the agreement⁵⁶ 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 Benelux⁵⁷, Bulgaria⁵⁸, Czech Republic⁵⁹, Denmark⁶⁰, Germany⁶¹, Lithuania⁶², Norway⁶³, Sweden⁶⁴ and Switzerland⁶⁵. However, the adoption of the EU-Armenia readmission agreement is expected in 2013.⁶⁶ 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)⁶⁷ and the Armenia ENP Action Plan was adopted in 2006.⁶⁸ The 2005 Armenia Country Report highlights areas in which bilateral

⁵⁵Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, Official Journal L239, 9 September 1999, (hereinafter Partnership and Cooperation Agreement), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:239:0003:0036:EN:PDF> (accessed on 17 February 2013).

⁵⁶Article 1 of the Partnership and Cooperation Agreement.

⁵⁷The agreement between the Benelux countries and the Republic of Armenia on readmission, 2009.

⁵⁸Agreement between the Government of the Republic of Armenia and the Government of the Republic of Bulgaria on the readmission, 2008.

⁵⁹The Agreement between the Republic of Armenia and the Czech Republic on readmission, 2010.

⁶⁰Agreement between the Government of the Republic of Armenia and the Government of the Kingdom of Denmark on readmission, 2003.

⁶¹The Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Armenia on readmission, 2006.

⁶²Agreement between the Government of the Republic of Armenia and the Government of the Republic of Lithuania on readmission, 2003.

⁶³Agreement between the Government of the Republic of Armenia and the Government of the Kingdom of Norway on the readmission, 2010.

⁶⁴Agreement between the Government of the Republic of Armenia and the Government of the Kingdom of Sweden on readmission, 2008.

⁶⁵The Agreement between the Government of the Republic of Armenia and the Federal Council of Switzerland on readmission, 2005.

⁶⁶The 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.

⁶⁷The 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.

⁶⁸European Neighbourhood Policy, EU-Armenia Action Plan, 2006.

cooperation could be feasibly and valuably strengthened.⁶⁹ It points out the large migration flows produced by Armenia that resulted to 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 neighbouring 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 labour 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.⁷⁰ 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".⁷¹ 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.⁷² 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*⁷³: (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 Abuse⁷⁴ and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data⁷⁵.

⁶⁹ European Neighbourhood Policy, Country Report, Armenia, COM (2005) 72 final, 2 March 2005.

⁷⁰ European Neighbourhood and Partnership Instrument, Armenia, Country Strategy Paper 2007-2013.

⁷¹ European Neighbourhood and Partnership Instrument, Armenia, Country Strategy Paper 2007-2013, p.4.

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.

⁷³ Implementation of the European Neighbourhood Policy in Armenia, Progress in 2011 and recommendations for action, SWD (2012) 110 final, 15 May 2012.

⁷⁴ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 25 October 2007, CETS No.201, available at <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm> (accessed on 17 February 2013). Armenia has not yet ratified it.

⁷⁵ Council of Europe, European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 28 January 1981, ETS 108, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm> (accessed on 17 February 2013). Armenia ratified it on 9 May 2012.

In 2009, the EU adopted the Eastern Partnership⁷⁶, as a specific eastern dimension of the ENP Instrument⁷⁷. 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,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).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.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

⁷⁶ Joint Declaration of the Prague Eastern Partnership Summit, Prague, 7 May 2009, 8435/09, available at http://ec.europa.eu/europeaid/where/neighbourhood/eastern_partnership/documents/prague_summit_declaration_en.pdf (accessed on 17 February 2013).

⁷⁷ Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, Official Journal L 310, 9 November 2006, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:310:0001:0014:EN:PDF> (accessed on 17 February 2013).

⁷⁸ Eastern Partnership: A Roadmap to the autumn 2013 Summit, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, JOIN (2012) 13 final, 15 May 2012, available at http://ec.europa.eu/world/enp/docs/2012_enp_pack/e_pship_roadmap_en.pdf (accessed on 17 February 2013).

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.

See Implementation of the ENP in 2011, Regional Report: Eastern Partnership, SWD (2012) 112 final, 15 May 2012, available at http://ec.europa.eu/world/enp/docs/2012_enp_pack/e_pship_regional_report_en.pdf (accessed on 17 February 2013).

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 Sweden⁸¹. 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.⁸² 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.⁸³ 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.⁸⁴

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,⁸⁵ (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.⁸⁶

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).

⁸² Implementation of the ENP in 2011, Regional Report: Eastern Partnership, SWD (2012) 112 final, 15 May 2012, available at http://ec.europa.eu/world/enp/docs/2012_enp_pack/e_pship_regional_report_en.pdf (accessed on 17 February 2013).

⁸³ Article 2, EU-Armenia Visa Facilitation Agreement.

⁸⁴ See the Chapter on Readmission for more information.

⁸⁵ Annex N 1 to the Decision of the Government of the RA, N 1593-N, 10 November 2011, *Action Plan for the implementation of the concept for the policy of state regulation of migration in the republic of Armenia 2012-2016*, available at http://www.carim-east.eu/media/sociopol_module/The%20action%20Plan%20for%20the%20Implementation%20of%20the%20Policy%20concept%20for%20the%20state%20regulation%20of%20migration_2012-2016.pdf. (accessed on 28 October 2012).

⁸⁶ See the official website of the European Union Advisory Group to the Republic of Armenia at <http://www.euadvisorygroup.eu/> (accessed on 10 February 2013).

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.⁸⁷ 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.

⁸⁷ Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, 14 June 1985, Official Journal L 239, 22 September 2000 (hereinafter The Schengen Agreement), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:239:0001:0473:EN:PDF> (accessed on 17 February 2013).

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.

⁹⁰ Common Consular Instructions on Visas for the Diplomatic Missions and Consular Posts, Official Journal C 326, 22 December 2005 (hereinafter Common Consular Visa Instructions), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:326:0001:0149:EN:PDF> (accessed on 17 February 2013).

⁹¹ Annex 11, Criteria for determining whether a travel document may bear a visa, Common Consular Visa Instructions.

- (3) have a validity period that exceeds the period of use of the visa by three months.⁹² 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.
- (4) be complete and not be amended, falsified or counterfeited.
- (5) The length of previous stays in the territory of the Contracting Parties needs to be verified as well.⁹³

The Convention implementing the Schengen Agreement⁹⁴ 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.⁹⁵

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.⁹⁶ 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 passports⁹⁷ 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 permits⁹⁸. 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.

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.

⁹⁸ Council Regulation (EC) No. 2252/2004 of 13 December 2004 on Standards for Security Features and Biometrics in Passports and Travel Documents Issued by Member States, Official Journal L 385, 29 December 2004, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:385:0001:0006:EN:PDF> (accessed on 17 February 2013). Not applicable to identity cards issued by Member States to their nationals or to temporary passports and travel documents having a validity of 12 months or less as provided by the Article 1 para. 3 of the Council Regulation (EC) No. 2252/2004.

Even though there is no “European passport”, EU Member States⁹⁹ 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).¹⁰⁰

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)¹⁰¹ 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)¹⁰² 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)¹⁰³ 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.¹⁰⁴ 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 not any 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.¹⁰⁵

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.¹⁰⁶

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.¹⁰⁷ If it is impossible to return the foreigner, he/she may be detained.¹⁰⁸

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.

¹⁰¹ Joint Action of 3 December 1998 adopted by the Council on the basis of Article K. 3 of the Treaty on European Union concerning the setting up of a European Image Archiving System (FADO), 98/700/JHA, Official Journal L 333, 9 December 1998, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:333:0004:0007:EN:PDF> (accessed on 17 February 2013).

¹⁰² Council of the European Union, *Public Register of Authentic Identity and Travel Documents Online*, available online at <http://prado.consilium.europa.eu> (accessed on 17 February 2013)

¹⁰³ Decision 96/409/CSFP of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996 on the establishment of an emergency travel document, Official Journal L 168, 6 July 1996, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1996:168:0004:0011:EN:PDF> (accessed on 17 February 2013).

¹⁰⁴ Law of the Republic of Armenia on Foreigners, adopted on 25 December 2006. Last amended on 8 December 2011 (hereinafter Law on Foreigners).

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 2012¹⁰⁹, Armenia introduced biometrics in both passports and identity cards for its citizens.¹¹⁰

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.¹¹¹ 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).¹¹² Children's fingerprints are collected from the age of six, while a photograph is taken every time a passport is issued, regardless of age.¹¹³ 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.¹¹⁴ The passports of persons registered for the mandatory military service are taken away temporarily by military commissariats until they complete their military service.¹¹⁵

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.¹¹⁶ 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.¹¹⁷ 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

¹⁰⁹ Law of the Republic of Armenia on Passport of a Citizen of the Republic of Armenia, adopted on 30 November 2011, amended on 20 March 2012 (hereinafter Law on Passport).

¹¹⁰ See Kefauver, Barry and others, *OSCE / IOM Assessment Report: National Action Plan for the Introduction of an e-Passport and ID Card in the Republic of Armenia*, 2009.

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.

¹¹⁶ Article 2 of the Law of the Republic of Armenia on Identification Cards, adopted on 30 November 2011, amended on 20 March 2012 (hereinafter Law on Identification Cards).

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.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

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.

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

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.

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.

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).¹¹⁹ 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.

¹¹⁹ See Raymond Wong, *Confidential Consultancy Report on compliance of international standards of the new ID and ePassport systems of the Government of Armenia*, IOM, May 2012.

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 well¹²⁶:

- i. holders of local border traffic permit¹²⁷
- ii. school pupils residents of a Member States when on a school excursion

¹²⁰In 2011, the present 26 Schengen States issued around 12.6 million Schengen visas. European Commission website at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm.

¹²¹Currently 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).

¹²²Council Regulation (EC) No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, Official Journal L 81, 21 March 2001, (hereinafter Council Regulation on possession of visas). Last amended by Regulation (EC) No. 1211/2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF> (accessed on 17 February 2013).

¹²³Annex IV of the Visa Code.

¹²⁴Agreement between the European Union and the Republic of Armenia on the facilitation of the issuance of visas, 16913/12, Brussels, 4 December 2012, available at <http://register.consilium.europa.eu/pdf/en/12/st16/st16913.en12.pdf> (accessed on 17 February 2013).

¹²⁵Preamble (5) of the Council Regulation on possession of visas.

¹²⁶Article 1 para. 1 of the Council Regulation on possession of visas.

¹²⁷Regulation (EC) No. 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention, Official Journal L 405, 30 December 2006, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:405:0001:0022:EN:PDF> (accessed on 17 February 2013).

- iii. 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 requirement¹²⁸:

- 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.¹²⁹ 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.¹³⁰ 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.¹³¹

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)¹³². 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

¹²⁸ Article 4 of the Council Regulation on possession of visas.

¹²⁹ See the Report from the Commission to the European Parliament and the Council, Sixth report on certain third countries' maintenance of visa requirements in breach of the principle of reciprocity, Brussels, 5 November 2010, COM/2010/620 final, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0620:FIN:EN:PDF> (accessed on 17 February 2013).

¹³⁰ Council Regulation (EC) No. 851/2005 of 2 June 2005 amending Regulation (EC) No. 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement as regards the reciprocity mechanism, Official Journal L 141, 4 June 2005, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:141:0003:0005:EN:PDF> (accessed on 17 February 2013).

¹³¹ Article 1 para. 4 of the Council Regulation on possession of visas.

¹³² The uniform format for visas is defined in Council Regulation (EC) No. 1683/95 of 29 May 1995 laying down a uniform format for visas, Official Journal L 164, 14 July 1995, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1995:164:0001:0004:EN:PDF>, (accessed on 17 February 2013).

document which entitles the holder to cross the border.¹³³ 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.¹³⁴

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.¹³⁵ 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.¹³⁶

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.¹³⁷ 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.¹³⁸ 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:¹³⁹ (1) an application form, (2) a valid travel document, (3) a photograph, (4) collection of fingerprints,¹⁴⁰ (5) payment of visa fee.¹⁴¹ (6) provision of supporting documents (according to Article

¹³³ 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).

¹³⁴ Article 2 para. 1 of the Common consular instructions on visas.

¹³⁵ Not all persons are required to have an airport transit visa when transiting through the territory of the Member States. See Article 3 of the Visa Code.

¹³⁶ Article 25 of the Visa Code includes the conditions when a visa with limited territorial validity may be issued.

¹³⁷ 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.

¹³⁸ Articles 9 and 10 of the Visa Code.

¹³⁹ Articles 10 to 16 of the Visa Code.

¹⁴⁰ According to Article 13 para. 7 of the Visa Code, the following applicants are exempt from the requirement to give fingerprints: (a) children under the age of 12; (b) persons for whom fingerprinting is physically impossible. If the fingerprinting of fewer than 10 fingers is possible, the maximum number of fingerprints shall be taken. (c) heads of State or government and members of a national government with accompanying spouses, and the members of their official

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.¹⁴² Following that, the application is examined to ensure that the conditions of the Schengen Borders Code¹⁴³ 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.¹⁴⁴ 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.¹⁴⁵ When additional documentation is needed in specific cases, the period can be extended up to a maximum of 60 days.¹⁴⁶

Refusal of a visa

The visa application will be refused if the applicant¹⁴⁷:

- i. presents a false, counterfeit or forged travel document;
- ii. gives no justification for the purpose and conditions of the intended stay;

delegation when they are invited by Member States' governments or by international organisations for an official purpose; (d) sovereigns and other senior members of a royal family, when they are invited by Member States' governments or by international organisations for an official purpose.

¹⁴¹ According to Article 16 of the Visa Code, the visa fee is waived for: (a) children under six years; (b) school pupils, students, postgraduate students and accompanying teachers who undertake stays for the purpose of study or educational training; (c) researchers from third countries travelling for the purpose of carrying out scientific research as defined in *Recommendation No. 2005/761/EC of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research*, 2005/761/EC (1), Official Journal L 289, 3 November 2005, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0023:0025:EN:PDF>; (d) representatives of non-profit organisations aged 25 years or less participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations.

¹⁴² Regulation (EC) No. 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas, Official Journal L 218, 13 August 2008 (hereinafter VIS Regulation), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0060:0081:EN:PDF> (accessed on 17 February 2013).

¹⁴³ Article 5. Entry conditions for third-country nationals for stays not exceeding three months per six-month period, Schengen Borders Code. See the Chapter on General Conditions of Entry and Border Control.

¹⁴⁴ Article 23 para. 1 of the Visa Code.

¹⁴⁵ Article 23 para. 2 of the Visa Code.

¹⁴⁶ Article 23 para. 3 of the Visa Code.

¹⁴⁷ Article 32 para. 1 of the Visa Code.

- 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, when¹⁵³: (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 wishes 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,

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.

¹⁵³ Article 2, Annex V, Part A of the Schengen Borders 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.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.¹⁵⁵
- ii. Nationals of countries which are required to have an invitation-based visa¹⁵⁶ issued only by Embassies or Consulates of the Republic of Armenia in foreign countries.¹⁵⁷ The number of countries in this category increased by more than half in 2011.¹⁵⁸ 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.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.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.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.¹⁶² At the port of entry only three-day transit visas and 21/120 days visitor visas can be issued.

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.

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.

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).

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.

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.

¹⁵⁹ Article 11 of the Law on Foreigners.

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).

¹⁶¹ Article 3 of the Decree on invitations.

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.¹⁶³ A fee needs to be paid by the visa applicant, according to the Law on State Duties;¹⁶⁴ however, citizens of particular countries or persons of some categories can be exempt¹⁶⁵.

According to the 2012 Governmental Decree No.1255-N¹⁶⁶, 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.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)

¹⁶³ Article 9 para. 3 of the Law on Foreigners.

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).

¹⁶⁵ Article 9 para. 7 of the Law on Foreigners.

¹⁶⁶ Decree of the Government of the Republic of Armenia No. 1255- N of 4 October 2012.

¹⁶⁷ Decree of the Government of the Republic of Armenia No. 1650-N of 27 December 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.¹⁶⁸ 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.¹⁶⁹

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.¹⁷⁰

The data of the visa application are entered into a database, maintained by the Passport and Visas Department of the Police¹⁷¹ according to the specifications provided in Appendix 5 of the governmental decree No 1268-N.¹⁷² 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.¹⁷³ The Passport and Visa Department of the Police is also responsible for providing information on visas issued to governmental authorities when prescribed by law.¹⁷⁴

When foreign nationals apply for a visa electronically, the data is recorded into a computerized repository.¹⁷⁵ 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 list¹⁷⁶, 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.¹⁷⁷

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

¹⁶⁸ Article 10 para. 4 of the Law on Foreigners.

¹⁶⁹ Article 10 para. 3 of the Law on Foreigners.

¹⁷⁰ Appendix 1 of the Decree of the Government of the Republic of Armenia No. 1268-N, On approving the list of documents to be submitted together with the applications for obtaining entry visa to the Republic of Armenia and extending the term of entry visa to the Republic of Armenia, the procedure of the application review, provision of entry visas and extension of the term of entry visa, the mode of marking the passport of a foreign citizen with regard to the provided entry visa to the Republic of Armenia, extension of the term of entry visa, denial, annulment of entry visa or rejection of entry, the coding of entry visas to the Republic of Armenia according to the type of visit, and operation of the database on persons who received entry visas to the Republic of Armenia and extended the term of entry visas, the procedure of data entry and data provision, 4 October 2007, latest amended by Governmental Decree No. 941-N on 26 July 2012 (hereinafter Governmental Decree No. 1268-N).

¹⁷¹ Article 10 para. 6 and 7 of the Law on Foreigners.

¹⁷² Appendix 5 of the Governmental Decree No. 1268-N.

¹⁷³ Article 1, Appendix 5 of the Governmental Decree No. 1268-N.

¹⁷⁴ Article 2, Appendix 5 of the Governmental Decree No. 1268-N.

¹⁷⁵ Appendix 2 of the Governmental Decree No. 1268-N.

¹⁷⁶ Governmental Decision No. 329-N.

¹⁷⁷ Article 10 of Appendix 1 of the Governmental Decree No. 1268-N.

the consular offices of Armenia shall submit to the diplomatic missions or consular offices of Armenia.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.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

¹⁷⁸Order 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.

¹⁷⁹Decree 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 visas¹⁸⁰

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 disease¹⁸¹ 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, if¹⁸²:

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.¹⁸³ The same fine is imposed to inviters 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.¹⁸⁴

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 cases¹⁸⁵:

- (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.

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 acquis¹⁸⁷, 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 return¹⁹¹. In addition, the EU acquis provides that in certain cases proof of travel medical insurance is 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

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.

¹⁹¹ Article 14 and Annex II of the Visa Code.

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 travelmedical 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 that¹⁹⁷ (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

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 Foreigners²⁰² 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.²⁰⁶ 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 States²⁰⁷; this is possible only for visa extensions.²⁰⁸

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 Party²⁰⁹.

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.²¹⁰ 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.

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-N²¹² 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 acquis²¹³ 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.²¹⁵ 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.²¹⁶

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.²¹⁷ 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.²¹⁸

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.²¹⁹ 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

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.

²¹⁶ Border residents that need to cross frequently the external borders of the EU can benefit from the Local Border Traffic Regime, which enables EU Member States to sign bilateral agreements with neighbouring non-EU countries that facilitate the travel of border residents without a Schengen visa. Regulation (EC) No. 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention, Official Journal L 405, 30 December 2006, last amended in 2012, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:405:0001:0022:EN:PDF> accessed on 17 February 2013).

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 415/2003.²²⁰ 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.²²¹

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.²²² 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.²²³ 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.²²⁴ 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.²²⁵

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.²²⁶

A third-country national may pose a threat to the public policy, national security or international relations of any Member State, in particular where²²⁷: (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.²²⁸

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

²²⁰ Article 5 para. 4 lit. b of the Schengen Borders Code.

²²¹ Article 5 para. 4 lit. c of the Schengen Borders Code.

²²² Article 13 of the Schengen Borders Code.

²²³ Article 13 para. 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 96 para. 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.²²⁹ 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.²³⁰ 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.²³¹

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.²³² 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.²³³ 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.²³⁴

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 Programme²³⁵ 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.²³⁶ 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.²³⁷ 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: nine land borders checking points (six with Georgia, two with Turkey, one with Iran) and three airports. The borders with Turkey and Azerbaijan are closed.²³⁸ 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.²³⁹

The main legal instruments related to border controls and general conditions of entry in Armenia are the Law on State Border²⁴⁰, the Law on Border Guard Troops²⁴¹ 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.²⁴²

²³⁵ Preparatory study to inform on Impact Assessment in relation to the creation of an automated entry/exit system at the external borders of the EU and the introduction of a border crossing scheme for bona fide travelers ("Registered Traveler Programme"), Specific Contract No. JLS/2007/A1/FWC/002, Multiple framework service contract JLS/2006/A1/004, Request No. 6 Directorate-General Justice, Freedom and Security, October 2007.

²³⁶ *Final Report of the cost analysis of the Entry-Exit and Registered Traveler Systems*, (CB-E-SO30-REP-003), European Commission DG Justice, Freedom and Security, April 2010, and *Final Report, Entry/Exit Technical Feasibility Study*, European Commission DG Justice, Freedom and Security 3 Unit B3 – Large-scale IT systems, February 2008.

²³⁷ Currently, a second generation Schengen Information System (SIS II) is being designed. This 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).

²³⁸ Decision of the Government of the Republic of Armenia No. 703-N on the Definition of the State Border Crossing Points of the Republic of Armenia, 2011.

²³⁹ Treaty on Friendship, Cooperation and Mutual Assistance and the Declaration on the Collaboration towards the 21st Century, 29 December 1991.

²⁴⁰ Law of the Republic of Armenia on State Border, Official Journal of Armenia (OJA), No. 41(173), 25 December 2001 (hereinafter Law on State Border).

²⁴¹ Law of the Republic of Armenia on Border Guard Troops, Official Journal of Armenia (OJA) No. 41(173), 25 December 2001.

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.²⁴³ 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 from²⁴⁴ (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.²⁴⁵ 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.²⁴⁶ 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.²⁴⁷ However, not all of these authorities have access to the database currently.²⁴⁸

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.²⁴⁹ For foreigners, the existence of an entry visa is checked as well²⁵⁰, if they do not fall under the visa-free regime.

Generally, a foreigner can enter Armenia²⁵¹ 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

²⁴³ Decision of the Government of the Republic of Armenia No.884-N on establishing the RA border electronic management information system, defining the procedure of its operation and the list of system users, Official Journal of Armenia No. 38 (493), 22 June 2006, entry into force on 22 July 2006, last amended on 8 September 2011 by the Decision of the Government No. 1286-N (hereinafter Decision on BMIS).

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.

²⁴⁸ 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.

²⁴⁹ Government Decree of the Republic of Armenia No. 200 on Approving the Procedure for Implementation of Duties/Responsibilities of Authorized Bodies at Border Crossing Points of the Republic of Armenia, 24 March 1998.

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.²⁵²

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 disease²⁵³ which threatens the health of the population, except if the foreigner enters Armenia for the purpose of treatment²⁵⁴, (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 pursues 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 or 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.²⁵⁵ This provision is not further clarified and as such, it is not used in practice.²⁵⁶

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.²⁵⁷ The data of the persons who are refused entry at the border or who are refused the issuance/extension of a visa are entered

²⁵¹ Article 6 para. 1 of the Law on Foreigners.

²⁵² These grounds are mentioned in detail in the Chapter on Visas.

²⁵³ 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.

²⁵⁴ See for example Decision of the Government of the Republic of Armenia endorsing the Procedure on Entry in to the Republic of Armenia of the Foreign Citizens and Persons without Citizenship for Getting the HIV Treatment, No. 284, 12 April 2001.

²⁵⁵ Article 8 para. 4 of the Law on Foreigners.

²⁵⁶ 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.

²⁵⁷ Article 8 para. 5 of the Law on Foreigners.

in a “database of undesirable foreigners”.²⁵⁸ 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 control²⁵⁹. While border guards perform the clearance of persons entering Armenia, custom authorities are responsible for the clearance of vehicles, luggage and other goods²⁶⁰.

Border guard troops have the duty, *inter alia*, to²⁶¹:

- 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.²⁶²

The rights of the border guard troops include, *inter alia*²⁶³:

- 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

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.²⁶⁴

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.²⁶⁵

Border guards are allowed to keep foreigners in special accommodation facilities at border crossing points and transit areas in order to establish their identity.²⁶⁶ 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.²⁶⁷ 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 decision²⁶⁸, 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.²⁶⁹ 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.²⁷⁰

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

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 Decision on detention facilities.

²⁶⁹ Article 37 of the Law on Foreigners.

²⁷⁰ 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.²⁷¹ 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).²⁷²

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 legislation²⁷³ 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 acquis²⁷⁴ provides for a substantial decision stating the precise reasons for the refusal of entry, whereas the Armenian legislation²⁷⁵ 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 Party²⁷⁶.

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 Armenia²⁷⁷ should be further clarified and it could include similar clarifications, as those provided by the EU acquis.²⁷⁸ 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 refusal²⁷⁹ whereas administrative liability should not be included.²⁸⁰

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.

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,²⁸¹ 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 workers²⁸² and intra-corporate transferees.²⁸³ 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 Directives²⁸⁴ 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)²⁸⁵ 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

²⁸¹ Before 1999 migration and asylum policy belonged to the Justice and Home Affairs pillar was part of the intergovernmental cooperation.

²⁸² European Commission, *Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment*, COM(2010) 379 final, 13 July 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0379:FIN:EN:PDF> (accessed on 24 February 2013).

²⁸³ European Commission, *Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer*, COM(2010) 378 final, 13 July 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0378:FIN:EN:PDF> (accessed on 24 February 2013).

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.

²⁸⁵ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Official Journal L 016, 23 January 2004 (hereinafter Long-term Residence Directive), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:EN:HTML> (accessed on 10 November 2012).

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 Public

²⁸⁶ Article 1 of the Long-term Residence Directive.

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.

²⁸⁹ Article 4 para. 1 of the Long-term Residence Directive.

²⁹⁰ Article 3 para. 2 of the Long-term Residence Directive.

²⁹¹ See EC, Home Affairs, Long-term Residents, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/long-term-residents/index_en.htm (accessed on 10 November 2012).

²⁹² Article 4 para. 2 of the Long-term Residence Directive.

²⁹³ Article 4 para. 3 of the Long-term Residence Directive.

²⁹⁴ Commission Communication of 2 July 2009 on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM (2009) 313 final, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF> (accessed on 10 November 2012).

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 States 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

²⁹⁵ Article 6 para. 1 of the Long-term Residence Directive.

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 pursuit 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

²⁹⁸ Article 9 para. 7 of the Long-term Residence Directive.

²⁹⁹ Article 10 para. 1 of the Long-term Residence Directive.

³⁰⁰ Article 10 para. 2 of the Long-term Residence Directive.

³⁰¹ Article 12 of the Long-term Residence Directive.

³⁰² Article 11 para. 1 of the Long-term Residence Directive.

³⁰³ Article 11 para. 2-4 of the Long-term Residence Directive. Core benefits covers at least minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care. (See Preamble (13) 9 of the Long-term Residence Directive).

³⁰⁴ Article 11 para. 5 of the Long-term Residence Directive.

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.³⁰⁵

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.

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.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.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.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

³⁰⁵ Article 13 of the Long-term Residence Directive.

³⁰⁶ Article 14 of the Law on Foreigners.

³⁰⁷ Article 15 of the Law on Foreigners.

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.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.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.³¹¹

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, medium 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; irregularly 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.³¹²

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 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.³¹³ Person who have obtained their residence permit based on a

³⁰⁹ Article 16 of the Law on Foreigners.

³¹⁰ Article 18 of the Law on Foreigners.

³¹¹ Article 18 para. 5 and 20 para.1 of the Law on Foreigners.

³¹² Article 19 of the Law on Foreigners.

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.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.

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 is recommended to introduce possibilities of appeal in case of the rejection of the renewal and withdrawal of a residence permit in accordance with 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)³¹⁶ 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)³¹⁷ are currently relevant. The European Commission has recently tabled two further legislative proposals: the Directive on seasonal employment³¹⁸ and the Directive for intra-corporate transfer of non-EU skilled workers,³¹⁹ 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"³²⁰, however its scope and impact has been criticized to be rather limited.³²¹

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.³²² At the same time, several groups of third-country nationals are exempted from the Directive: third-

³¹⁶ 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, Official Journal L 343, 23 December 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0001:0009:EN:PDF> (accessed on 15 November 2012).

³¹⁷ 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, Official Journal L 155, 18 June 2009, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:en:PDF> (accessed on 15 November 2012).

³¹⁸ *Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment*, COM(2010) 379 final, 13 July 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0379:FIN:EN:PDF> (accessed on 15 November 2012).

³¹⁹ *Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer*, COM(2010) 378 final, 13 July 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0378:FIN:EN:PDF> (accessed on 15 November 2012).

³²⁰ Véronique Mathieu, European Parliament, available at <http://www.migrationnewssheet.eu/eu-single-permit-directive-granting-third-country-workers-rights-passes-final-hurdle> (accessed on 15 November 2012).

³²¹ Pascouau, Y.; McLoughlin, S., *EU Single Permit Directive: a small step forward in EU migration policy*, 2012, available at http://www.epc.eu/pub_details.php?cat_id=3&pub_id=1398 (accessed on 15 November).

³²² Article 3 para. 1 of the Single Permit Directive.

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.³²³ 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.³²⁴ Additionally, these provisions do not apply to third-country nationals who are allowed to work on the basis of a visa.³²⁵

As most Directives of the EU migration and asylum acquis, also the Single Permit Directive contains a more favourable conditions clause.³²⁶

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.³²⁷

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.³²⁸ 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.³²⁹

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.³³⁰

*Procedural guarantees*³³¹

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

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.

³³⁰ Article 6 of the Single Permit Directive.

³³¹ Article 8 of the Single Permit Directive.

required for the application.³³² The level of the application fees must be proportionate and must be based on the services actually provided.³³³

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.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.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.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

³³² Article 9 of the Single Permit Directive.

³³³ Article 10 of the Single Permit Directive.

³³⁴ Article 11 of the Single Permit Directive.

³³⁵ Article 12 para. 1 of the Single Permit Directive.

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 Directive³³⁷ 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 its 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

³³⁷ 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, Official Journal L 155, 18 June 2009, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:en:PDF> (accessed on 15 November 2012) (hereinafter Blue Card Directive).

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 State. Member States are furthermore entitled determine the number of third-country nationals they admit.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.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.³⁴¹ If the work contract is issued for a shorter period,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.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.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 documents³⁴⁵ 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.³⁴⁶ The application may also be rejected on the grounds of volumes of admission established by the Member State,³⁴⁷ ethical recruitment³⁴⁸ or if the employer has been sanctioned due to undeclared work or illegal employment.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.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.³⁵¹

³³⁹ Article 6 of the Blue Card Directive.

³⁴⁰ Article 10 of the Blue Card Directive.

³⁴¹ Article 7 para. 1-2 of the Blue Card Directive.

³⁴² Article 7 of the Blue Card Directive.

³⁴³ 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 11 of the Blue Card Directive).

³⁴⁴ Article 11 para. 3 of the Blue Card Directive.

³⁴⁵ Article 8 para. 1 of the Blue Card Directive.

³⁴⁶ Article 8 para. 2 of the Blue Card Directive.

³⁴⁷ Article 8 para. 3 of the Blue Card Directive.

³⁴⁸ Article 8 para. 4 of the Blue Card Directive.

³⁴⁹ Article 8 para. 5 of the Blue Card Directive.

³⁵⁰ Article 9 para. 1-2 of the Blue Card Directive.

³⁵¹ Article 9 para. 3 of the Blue Card Directive.

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.³⁵² Member States must, however, respect EU preference.³⁵³ 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.³⁵⁴

In terms of family reunification, the conditions of the Directive 2003/86/EC apply with a few exceptions which shall facilitate the procedures.³⁵⁵ 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.³⁵⁶

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.³⁵⁷ 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.³⁵⁸ In total 24 month of absence from the territory of the EU must be allowed for EC long-term residents.³⁵⁹ 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.³⁶⁰

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

³⁵² Article 12 of the Blue Card Directive.

³⁵³ Article 12 para. 5 of the Blue Card Directive.

³⁵⁴ Article 13 of the Blue Card Directive.

³⁵⁵ Article 15 para. 1 of the Blue Card Directive.

³⁵⁶ Article 15 para. 2-8 of the Blue Card Directive.

³⁵⁷ Article 16 para. 1-2 of the Blue Card Directive.

³⁵⁸ Article 16 para. 3 of the Blue Card Directive.

³⁵⁹ Article 16 para. 4 of the Blue Card Directive.

³⁶⁰ Article 16 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)³⁶¹ 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.³⁶³ Generally, foreigners may be employed in Armenia on the basis of a work permit.³⁶⁴ 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.³⁶⁵

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

³⁶¹ Rossi-Longhi, P.; Galstyan, K.; Lindstrom, T.; *Review of Migration Management in the Republic of Armenia*, Assessment Mission Report, March 2008, Yerevan, available at http://publications.iom.int/bookstore/free/Review_MigrationManagementReport2008_English.pdf (accessed on 28 October 2012) and Kabeleova, Mazmanyan, Yeremyan, *Assessment of the Migration Legislation in the Republic of Armenia*, OSCE, 2007, available at: <http://www.osce.org/yerevan/25959> (accessed on 28 October 2012).

³⁶² Annex N 1 to the Decision of the Government of the RA, N 1593-N, 10 November 2011, *Action Plan for the implementation of the concept for the policy of state regulation of migration in the republic of Armenia 2012-2016*, available at [http://www.carim-](http://www.carim-east.eu/media/sociopol_module/The%20action%20Plan%20for%20the%20Implementation%20of%20the%20Policy%20concept%20for%20the%20state%20regulation%20of%20migration_2012-2016.pdf)

[east.eu/media/sociopol_module/The%20action%20Plan%20for%20the%20Implementation%20of%20the%20Policy%20concept%20for%20the%20state%20regulation%20of%20migration_2012-2016.pdf](http://www.carim-east.eu/media/sociopol_module/The%20action%20Plan%20for%20the%20Implementation%20of%20the%20Policy%20concept%20for%20the%20state%20regulation%20of%20migration_2012-2016.pdf). (28 October 2012).

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.³⁶⁶ 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.³⁶⁷ Appeals against a negative decision can be filed within five days upon the refusal.³⁶⁸

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.³⁶⁹

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.³⁷⁰

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 test 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

³⁶⁶ Article 22 of the Law on Foreigners.

³⁶⁷ Article 25 of the Law on Foreigners.

³⁶⁸ Article 26 Law of the on Foreigners.

³⁶⁹ Article 27 of the Law on Foreigners.

³⁷⁰ Article 29 of the Law on Foreigners.

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 fulfilmost 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.

³⁷¹For example Austria, Germany, the United Kingdom.

³⁷²European Migration Network, *Satisfying Labour Demand through Migration*, June 2011, available at http://ec.europa.eu/home-affairs/policies/immigration/docs/Satisfying_Labour_Demand_Through_Migration_FINAL_20110708.pdf. (accessed on 4 March 2013).

- 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.”³⁷³ 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.³⁷⁴ 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.³⁷⁵

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.

³⁷³ Council Directive 2004/114/EC (6) of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, Official Journal L 375, 13 December 2004, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:En:PDF> (accessed on 30 November 2012).

³⁷⁴ European Commission, DG Home Affairs, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/study-or-training/index_en.htm (accessed on 30 November 2012).

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.³⁷⁶ 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 security³⁷⁷ or public health.³⁷⁸ 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.³⁷⁹ If the information is inadequate, the processing of the application may be suspended, however, the applicant must be informed thereof.³⁸⁰ 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.³⁸¹ 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.³⁸² Finally, Member States are allowed to require application fees for processing of an application.³⁸³

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.³⁸⁴ 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.³⁸⁵ 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.

³⁷⁸ Article 6 of the Students Directive. Public health is also not defined in the Directive, however it is suggested that Member States must carry out a proportionality test and may not regard every contagious illness a threat to public health. (Hailbronner 2010: 326f.)

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.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.³⁸⁷

The Directive facilitates studies in a second Member States 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.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.³⁸⁹ The residence permit must be valid for maximum one year.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.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.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.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 organisations*³⁹⁶

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

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. b of 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.⁴⁰⁵ 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.⁴⁰⁶ 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.⁴⁰⁷ 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.⁴⁰⁸

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.⁴⁰⁹ 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.⁴¹⁰ Third-country nationals must have the right to appeal to the courts of the Member State concerned against any decision.⁴¹¹

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.⁴¹²

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.⁴¹³ The Directive further allows mobility for part of the research project to be conducted on the territory of another Member State.⁴¹⁴

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.⁴¹⁵ 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.⁴¹⁶

The Armenian Constitution establishes the right to education.⁴¹⁷ Due to the equal treatment provision in the Law on Foreigners, this is equally applicable to foreign citizens.⁴¹⁸

Entry conditions

Foreigners wishing to study in Armenia can enter the country with a visitor entry visa,⁴¹⁹ 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.⁴²⁰ For Iranian students the application fee for a residence permit was waived in order to increase the attractiveness of Armenia for Iranian.⁴²¹ 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).⁴²² According to the interviewees, students have to prove that they are enrolled in a university, in Armenia.⁴²³ 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.

⁴¹⁵ Rossi-Longhi, P; Galstyan, K; Lindstrom, *Review of Migration Management in the Republic of Armenia*, p. 57, Assessment Mission Report, IOM, March 2008, Yerevan, available at http://publications.iom.int/bookstore/free/Review_MigrationManagementReport2008_English.pdf (accessed on 28 October 2012).

⁴¹⁶ State Migration Service of the RA Ministry of Territorial Administration, available at <http://www.smsmta.am/?id=1026> (accessed on 26 November 2012).

⁴¹⁷ Article 39 of the Constitution of the Republic of Armenia.

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,⁴²⁸ 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.

⁴²⁸ European Commission, *Report from the Commission to the European Parliament and the Council on the application of Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service*, COM(2011) 587 final, 28 September 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0587:FIN:EN:PDF> (accessed on 24 January 2013).

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 particular 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 ECHR 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.”⁴²⁹ 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.⁴³⁰ 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)

⁴²⁹ 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.

⁴³⁰ EComHR, 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.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 nationality⁴³² 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.⁴³³ The regulation of family reunification with a sponsor who is national of a Member State belongs to national competence.⁴³⁴ (Graßhof in Schwarze 2012: 1032) The Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification⁴³⁵ 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.⁴³⁶

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).

⁴³² Article 1 and 14 of the ECHR.

⁴³³ Article 79 para. 2 lit. a of the Lisbon Treaty

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.

⁴³⁵ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Official Journal L 251, 3 October 2003, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF> (accessed on 13 January 2013) (hereinafter Family Reunification Directive).

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, Member States may examine if the child meets the integration conditions before entry.⁴³⁹

EU Member 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 and 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

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.⁴⁴⁷ Member States may not remove a person on the sole ground of illness or disability suffered after the issue of the residence permit.⁴⁴⁸

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 measures⁴⁴⁹ and may impose a qualifying period of no more than two years.⁴⁵⁰ Family reunification can also be refused for spouses who are under 21 years of age.⁴⁵¹

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.⁴⁵²

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.⁴⁵³ 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.⁴⁵⁴

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).

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 dependent⁴⁶³ 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.⁴⁶⁴ 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 fulfils 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.⁴⁶⁵ 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.⁴⁶⁶

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.⁴⁶⁷

Furthermore, close relatives of Armenian citizens and of foreigners holding permanent residence status in Armenia can obtain a temporary residence permit.⁴⁶⁸ Parents, brothers, sisters, spouses, children, grandmothers, grandfathers, grandchildren are defined as close relatives.⁴⁶⁹ Thus spouses enjoy a preferential treatment compared to other relatives as family reunification is allowed with a

⁴⁶³ According to Hailbronner – referring to the ECtHR 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.⁴⁷⁰ 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.⁴⁷¹

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.⁴⁷² 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.⁴⁷³

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.⁴⁷⁴ 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

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.⁴⁷⁵ The decision on the application has to be taken within 30 days. Appeals against a refusal of a negative decision are permitted.⁴⁷⁶

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.⁴⁷⁷

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.⁴⁷⁸

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.⁴⁷⁹

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.⁴⁸⁰ 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. a 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,⁴⁸¹ 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.⁴⁸² 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.⁴⁸³ 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.⁴⁸⁴

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

⁴⁸¹ ECtHR 22.01.2008, E.B./FRA, Nr. 43546/02.

⁴⁸² ECtHR 16.09.1996, Gaygusuz./AUT, Nr. 173371/90, ECtHR, 30.09.2003, Poirrez./FRA, Nr. 40892/98 or ECtHR, 18.02.2009, Andrejeva./LAT, Nr. 55707/00.

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 of 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.⁴⁸⁵ 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.

⁴⁸⁵The 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 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 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 EU⁴⁸⁶ 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 Europe⁴⁸⁷. 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 2011⁴⁹¹ 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 Convention CETS 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.

⁴⁸⁹ Council of Europe, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty as amended by Protocol No. 11, Strasbourg, 28 April 1983, ETS 114, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/114.htm> (accessed on 17 February 2013). Council of Europe, Protocol No. 1 (on property, education and elections) to the Convention for the Protection of Human Rights and Fundamental Freedoms, Paris, 20 March 1952, ETS 9, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/009.htm> (accessed on 17 February 2013).

⁴⁹⁰ Article 6 of the Schengen Borders Code.

⁴⁹¹ Regulation (EU) No. 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No. 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Official Journal L 304, 22 November 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0001:0017:EN:PDF> (accessed on 17 February 2013).

Board has already designated a Fundamental Rights Officer and adopted working methods for the Consultative Forum on Fundamental Rights.⁴⁹² 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.⁴⁹³ 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 agreements⁴⁹⁴, 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.⁴⁹⁵ 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.⁴⁹⁶ The EU Agency for Fundamental Rights published a report in 2010 on the access to healthcare for irregular migrants in 10 EU Member States⁴⁹⁷ 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.⁴⁹⁸ 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.⁴⁹⁹ The Court held that irregular migrants having minor dependent children nationals of an EU

⁴⁹² Management Board designates Fundamental Rights Officer, 27 September 2012, official Frontex website <http://www.frontex.europa.eu/news/management-board-designates-fundamental-rights-officer-zqofRR> (accessed on 17 February 2013).

⁴⁹³ Article 19 of the EU Charter.

⁴⁹⁴ European Commission, *Communication from the Commission to the European Parliament and the Council, Evaluation of EU Readmission Agreements*, Brussels, 23 February 2011, COM (2011) 76 final, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0076:FIN:EN:PDF> (accessed on 17 February 2013).

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.

⁴⁹⁸ European Commission, *2011 Report on the Application of the EU Charter on fundamental rights*, Directorate General for Justice, 2012, available at http://ec.europa.eu/justice/fundamental-rights/files/charter-brochure-report_en.pdf (accessed on 17 February 2013).

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 Bundesministerium für Inneres.

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 EU⁵⁰⁶ 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).

⁵⁰² UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195 (hereinafter International Convention on the Elimination of All Forms of Racial Discrimination).

⁵⁰³ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

⁵⁰⁴ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁵⁰⁵ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5 (hereinafter European Convention for Human Rights), available at <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm> (accessed on 17 February 2013).

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

⁵⁰⁹European Commission, *Communication from the Commission, European Agenda for the Integration of Third-Country Nationals*, COM/2011/0455 final, Brussels, 20 July 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0455:FIN:EN:PDF> (accessed on 17 February 2013).

⁵¹⁰Directive 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, Official Journal L 343, 23 December 2011 (hereinafter Qualifications Directive), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0001:0009:EN:PDF>(accessed on 17 February 2013).

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*.

⁵¹³Article 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.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 if the means of achieving that aim are appropriate and necessary.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.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.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.⁵²⁰ The 2000 Directives on equal treatment irrespective of racial or ethnic origin⁵²¹ and on equal treatment in employment and occupation⁵²² also contribute to combating racism and xenophobia together with the 2010 Audio-visual Media Services Directive⁵²³, which bans incitement to hatred in audio-visual media services and the promotion of discrimination in audio-visual commercial communications.

8.2 Armenian legal framework

Armenia has signed and ratified almost all international conventions relating to the protection of human rights,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 Punishment⁵²⁵ and the Convention relating to the Status of Refugees.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

⁵¹⁶Article 4 para. 1 of the Equal Treatment in Employment and Occupation Directive.

⁵¹⁷Article 6 of the Equal Treatment in Employment and Occupation Directive.

⁵¹⁸Article 10 of the Equal Treatment Irrespective of Racial or Ethnic Origin Directive and Article 12 of the Equal Treatment in Employment and Occupation Directive.

⁵¹⁹Articles 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.

⁵²⁰Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, Official Journal L 328, 6 December 2008, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:EN:PDF> (accessed on 17 February 2013).

⁵²¹Equal Treatment Irrespective of Racial or Ethnic Origin Directive.

⁵²²Equal Treatment in Employment and Occupation Directive.

⁵²³Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services, Official Journal L 95, 15 April 2010 (hereinafter Audio-visual Media Services Directive), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF> (accessed on 17 February 2013).

⁵²⁴See the full list of international and regional conventions related to migration and ratified by Armenia in Annex 3.

⁵²⁵UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

⁵²⁶UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

Status of Migrant Workers⁵²⁷ and it has recently ratified the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.⁵²⁸ Armenia has also ratified in 2004 Protocol No. 12 to the European Convention on Human Rights on the general prohibition of discrimination.⁵²⁹ As a member of the Commonwealth of Independent States (CIS), Armenia has ratified the Convention on Human Rights and Fundamental Freedoms,⁵³⁰ the Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers,⁵³¹ the Convention on the Legal Status of Migrant Workers and Members of their Families of the CIS Member States⁵³² and others.⁵³³ Armenia has also ratified many ILO Conventions, including the Migration for Employment Convention⁵³⁴ and the Migrant Workers' Convention.⁵³⁵ Armenia has also ratified Protocol No.6 to the European Convention on Human Rights on the Elimination of the Death Penalty in times of peace⁵³⁶ in 2003 and the death penalty has been removed from the new Criminal Code.⁵³⁷

However, Armenia has not ratified Protocol No.13 to the European Convention on Human Rights on the abolition of death penalty at all circumstances.⁵³⁸ Armenia has also not ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.⁵³⁹

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.⁵⁴⁰ 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.⁵⁴¹ 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

⁵²⁷ Council of Europe, European Convention on the Legal Status of Migrant Workers, 24 November 1977, ETS 93, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/093.htm> (accessed on 17 February 2013).

⁵²⁸ Council of Europe, European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 28 January 1981, ETS 108, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm> (accessed on 17 February 2013).

⁵²⁹ Council of Europe, Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 2000, ETS 177, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm> (accessed on 17 February 2013).

⁵³⁰ Commonwealth of Independent States, Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 26 May 1995.

⁵³¹ Commonwealth of Independent States, Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers, 15 April 1994.

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.

⁵³⁶ Armenia ratified Protocol No. 6 to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms on the Elimination of the Death Penalty. It has signed but not ratified Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, 3 May 2002.

⁵³⁷ The new Criminal Code was adopted on 18 April 2003 and entered into force on 1 August 2003.

⁵³⁸ Council of Europe, Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of death penalty at all circumstances, 3 May 2002, ETS 187, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/187.htm> (accessed on 17 February 2013).

⁵³⁹ Council of Europe, Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse, 25 October 2007, CETS No. 201, available at <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm> (accessed on 17 February 2013).

⁵⁴⁰ Article 6 of the Constitution of the Republic of Armenia.

⁵⁴¹ Article 14 para. 1 of the Constitution of the Republic of Armenia. For the implementation in practice see European Commission Against Racism and Intolerance, Report on Armenia, Fourth Monitoring Cycle, 8 February 2011.

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 guarantees⁵⁴³ 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 suffering 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 2012⁵⁴⁷. 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 Defender⁵⁴⁸ (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

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.

⁵⁴⁸ Law of the Republic of Armenia on the Human Rights Defender, 21 October 2003, last amended in December 2010.

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.⁵⁵⁰ In 2011, however, the issue deteriorated as the relevant financial application of the Ministry of Territorial Administration was not approved.⁵⁵¹ The living conditions of refugees from Azerbaijan continue to be difficult especially for those living in remote areas.⁵⁵² Armenia stated in its latest Universal Periodic Review (UPR)⁵⁵³, 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.⁵⁵⁴

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.⁵⁵⁵ 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.⁵⁵⁶ 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 EU⁵⁵⁷ 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.⁵⁵⁸ 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.⁵⁵⁹

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.⁵⁶⁰

⁵⁵⁰ Human Rights Defender of the Republic of Armenia, 2008 Annual Report. See also Galstyan K., *Migration Management and Human Rights*, 2010 p. 84-87.

⁵⁵¹ Human Rights Defender of the Republic of Armenia, 2011 Annual Report.

⁵⁵² Human Rights Defender of the Republic of Armenia, 2011 Annual Report.

⁵⁵³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Armenia*, Fifteenth session, 6 July 2010.

⁵⁵⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Armenia*, Fifteenth session, 6 July 2010.

⁵⁵⁵ Article 5 of the Law on Foreigners.

⁵⁵⁶ See Chapter 6.

⁵⁵⁷ Article 20 para. 2 of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, Official Journal L 239, 9 September 1999, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21999A0909%2801%29:EN:HTML> (accessed on 17 February 2013).

⁵⁵⁸ See Chapter 5.

⁵⁵⁹ Article 22 para. 1 of the Law on Foreigners.

⁵⁶⁰ Article 32 para. 1 of the Law on Foreigners.

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.

⁵⁶² Council of Europe, Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of death penalty at all circumstances, 3 May 2002, ETS 187, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/187.htm> (accessed on 17 February 2013).

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.⁵⁶⁶ 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.⁵⁶⁷

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.⁵⁶⁸ 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 acquis⁵⁶⁹, 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.⁵⁷⁰

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.⁵⁷¹

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

⁵⁶⁶Article 10 of the Equal treatment irrespective of racial or ethnic origin Directive and Article 12 of the Equal treatment in employment and occupation Directive.

⁵⁶⁷Articles 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.

⁵⁶⁸Recital (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.

⁵⁶⁹Article 2 of the Equal treatment irrespective of racial or ethnic origin Directive and Article 2 of the Equal treatment in employment and occupation Directive.

⁵⁷⁰Article 2 of the Equal treatment irrespective of racial or ethnic origin Directive and Article 2 of the Equal treatment in employment and occupation Directive.

⁵⁷¹Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, Official Journal L 328, 6 December 2008, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:EN:PDF> (accessed on 17 February 2013).

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.

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 Workers⁵⁷⁴, to which 11 states are already parties.
- The European Agreement on the Abolition of Visas for Refugees⁵⁷⁵, 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 penalty⁵⁷⁶
- 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.

⁵⁷⁴Council of Europe, European Convention on the Legal Status on Migrant Workers, 24 November 1977, ETS 93, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/093.htm>(accessed on 17 February 2013).

⁵⁷⁵Council of Europe, European Convention on the Abolition of Visas for Refugees, 20 April 1959, ETS 31, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/031.htm>(accessed on 17 February 2013).

⁵⁷⁶UN General Assembly, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 15 December 1989, A/RES/44/128.

⁵⁷⁷Council of Europe, Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse, 25 October 2007, CETS No. 201, available at <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm> (accessed on 28 January 2013).

⁵⁷⁸Council of Europe, European Convention on Nationality, 6 November 1997, ETS 166, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm>(accessed on 17 February 2013).

⁵⁷⁹ Council of Europe, European Convention on the Participation of Foreigners in Public Life at Local Level, 5 February 1992, ETS 144, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/144.htm>(accessed on 28 January 2013).

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.⁵⁸⁰ 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."⁵⁸¹

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 explicitly⁵⁸² 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.⁵⁸³ Moreover, the Europe 2020 Strategy,⁵⁸⁴ 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 Nationals⁵⁸⁵ 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,

⁵⁸⁰ Article 13, which enabled the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and Article 73k, which requests the Council to adopt measures on immigration policy regarding, among others, "conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion". The Council is also requested to adopt "measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States." *Treaty of Amsterdam amending the Treaty on European Union, the treaties establishing the European Communities and Related Acts*, Official Journal C 340, 10 November 1997, available at: <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0001010001> (accessed on 28 January 2013).

⁵⁸¹ Article 79 para. 4 Lisbon Treaty.

⁵⁸² The Common Basic Principles for immigrant integration (2004), available at:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf, Common Agenda for Integration

⁵⁸³ European Council, *The Stockholm Programme – An open and secure Europe serving and protecting citizens*, Official Journal C 115, 4 May 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF> (accessed on 28 January 2013).

⁵⁸⁴ http://ec.europa.eu/europe2020/index_en.htm

⁵⁸⁵ European Commission, *European Agenda for the Integration of Third-country Nationals*, COM/2011/0455 final, 20 July 2011, available at http://ec.europa.eu/dgs/home-affairs/doc_centre/immigration/docs/agenda/1_en_act_part1_v10.pdf#zoom=100 (accessed on 28 January 2013).

public concerns with the lack of integration of migrants.⁵⁸⁶ 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,⁵⁸⁷ 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 of 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:

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 Programme⁵⁸⁸ to reach this goal by the end of 2012.

Currently, the most important legislative measures of the EU comprise

- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (so called Reception Conditions Directive)
- 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)⁵⁸⁹
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (so called Asylum Procedures Directive)
- 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)⁵⁹⁰ is to be mentioned. This Directive was the first legislative

⁵⁸⁸European Council, *The Stockholm Programme – An open and secure Europe serving and protecting citizens*, Official Journal C 115, 4 May 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF> (accessed on 20 February 2013).

⁵⁸⁹Directive 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, Official Journal L 343, 23 December 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0001:0009:EN:PDF> (accessed on 20 February 2013).

⁵⁹⁰Council 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 return⁵⁹³; in accordance with the definition of the Geneva Convention⁵⁹⁴ 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

persons and bearing the consequences thereof, 2001/55/EC, Official Journal L 212, 7 August 2001, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF> (accessed on 20 February 2013).

⁵⁹¹ Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, 2725/2000, Official Journal L 316, 15 December 2000, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:316:0001:0010:EN:PDF> (accessed on 20 February 2013).

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 decision⁵⁹⁹ 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.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 and no punishment without law⁶⁰⁹ 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.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.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.⁶¹²

As stated in Articles 11 and 12, a third-country national 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.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.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 11.⁶¹⁵ Member States have to demonstrate it on an individual basis that the person concerned has ceased to be or has never been a refugee.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;⁶¹⁷ if he/she can – on reasonable grounds - be regarded as a danger to the security or to the community of the Member State.⁶¹⁸

⁶⁰⁸ Article 9 para. 2 of the Qualification Directive.

⁶⁰⁹ Article 9 para. 1 lit. a of the Qualification Directive.

⁶¹⁰ Article 9 para. 3 of the Qualification Directive.

⁶¹¹ Article 10 para. 1 of the Qualification Directive.

⁶¹² Article 10 para. 2 of the Qualification Directive.

⁶¹³ Article 11 of the Qualification Directive.

⁶¹⁴ Article 12 of the Qualification Directive.

⁶¹⁵ Article 14 para. 1 of the Qualification Directive.

⁶¹⁶ Article 14 para. 2 of the Qualification Directive.

⁶¹⁷ Article 14 para. 3 of the Qualification Directive.

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

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;⁶³² the duty of Member States to provide beneficiaries of international protection with access to information in a language they understand;⁶³³ the commitment on behalf of the Member States to maintain a family unit;⁶³⁴ 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)⁶³⁵ and travel documents.⁶³⁶ Furthermore, equal treatment with nationals within a Member State has to be ensured, particularly with regards to access to employment,⁶³⁷ education,⁶³⁸ procedures for recognition of qualifications⁶³⁹ and healthcare.⁶⁴⁰ 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.⁶⁴¹

The Directive also provides for freedom of movement within a Member State,⁶⁴² access to accommodation under equivalent conditions as other third-country nationals legally residing in the Member State⁶⁴³ and for access to integration facilities.⁶⁴⁴ If this is in the interest of beneficiaries of international protection, assistance in repatriation may be provided by the Member State.⁶⁴⁵

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.⁶⁴⁶ Furthermore, it is required that those working with unaccompanied minors must have had and continue to receive appropriate training concerning their needs.⁶⁴⁷ 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.⁶⁴⁸

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

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 30 of the Qualification Directive.

⁶⁴¹ Article 29 of the Qualification Directive.

⁶⁴² Article 33 of the Qualification Directive.

⁶⁴³ Article 32 of the Qualification Directive.

⁶⁴⁴ Article 34 of the Qualification Directive.

⁶⁴⁵ Article 35 of the Qualification Directive.

⁶⁴⁶ Article 31 para. 5 of the Qualification Directive.

⁶⁴⁷ Article 31 para. 6 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 prejudice 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

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. The following persons are considered family members: the spouse of the sponsor or his/her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens; the minor unmarried children of the sponsor or of his/her spouse, other close relatives who lived together as part of the family unit at the time of the events leading to the mass influx, and who were wholly or mainly dependent on the sponsor at the time. (Article 15 para. 1).

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.⁶⁶⁸ 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.⁶⁶⁹ However, Member States are responsible for enabling the voluntary return of persons enjoying temporary protection or whose temporary protection has ended.⁶⁷⁰ 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 dignity⁶⁷¹ and that humanitarian reasons making a return impossible or unreasonable are being considered.⁶⁷² Furthermore, Member States should not expel persons who would suffer serious negative effects with regards to their state of health.⁶⁷³ Children shall be granted the right to complete the current school period.⁶⁷⁴

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

⁶⁶⁸ Article 17 of the Temporary Protection Directive.

⁶⁶⁹ Article 20 of the Temporary Protection Directive.

⁶⁷⁰ Article 21 of the Temporary Protection Directive.

⁶⁷¹ Article 22 para. 1 of the Temporary Protection Directive.

⁶⁷² Article 22 para. 2 of the Temporary Protection Directive.

⁶⁷³ Article 23 para. 1 of the Temporary Protection Directive.

⁶⁷⁴ Article 23 para. 2 of the Temporary Protection Directive.

foreigners who experienced persecution in their countries of origin. Political asylum is granted by the decision of the President of Armenia.⁶⁷⁵ 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-refoulement⁶⁷⁶ 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.⁶⁷⁷ 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 6) 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.⁶⁷⁸

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.⁶⁷⁹

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

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.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.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;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.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.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. Article

⁶⁸⁰ Article 38, 41 and 42 of the Law on Refugees and Asylum.

⁶⁸¹ Article 39 of the Law on Refugees and Asylum.

⁶⁸² Article 6 para. 1 of the Law on Refugees and Asylum.

⁶⁸³ Article 6 para. 2 of the Law on Refugees and Asylum.

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.⁶⁹⁵ 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.⁶⁹⁶ 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.⁶⁹⁷

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 an 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.⁶⁹⁸

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

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 voluntarily 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 voluntarily 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

⁶⁹⁹Article 57 of the Law on Refugees and Asylum.

⁷⁰⁰Article 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.

If 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 examined.

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

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.⁷⁰³

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.⁷⁰⁴ Moreover, it was noted that it was difficult to provide legal advice and representation pro bono, as lawyers were often accused for tax fraud.⁷⁰⁵

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.⁷⁰⁶

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).⁷⁰⁷

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

⁷⁰³ Article 63 para. 3 of the Law on Refugees and Asylum.

⁷⁰⁴ Interview with UNHCR Representation in Armenia, September 2012.

⁷⁰⁵ Interview with the Chamber of Advocates, September 2012.

⁷⁰⁶ Interview with UNHCR Representation in Armenia, September 2012.

⁷⁰⁷ Interview with the Ministry of Health and State Migration Service, September 2012.

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 and 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”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.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 UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, available at <http://www.unhcr.org/43170ff90.html> (accessed on 3 March 2013).

the protection theory developed by UNHCR. According, to which non-state actors may be actors of persecution if state actors are unable or unwilling to provide protection.⁷¹⁰

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.⁷¹¹
- 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.

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.

⁷¹⁰See for example UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REG.1 Reedited Geneva January 1992, 1971, available at <http://www.unhcr.org/3d58e13b4.html> (accessed on 3 March 2013).

⁷¹¹Article 27 of the Reception Conditions Directive.

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:⁷¹²

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.

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.

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"⁷¹³ 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.⁷¹⁴

As a reaction the European Commission developed an Action Plan on Unaccompanied Minors.⁷¹⁵ 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.⁷¹⁶ 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,⁷¹⁷ 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

⁷¹³European Council, *The Stockholm Programme – An open and secure Europe serving and protecting citizens*, Official Journal C 115, 4 May 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF> (accessed on 20 February 2013).

⁷¹⁴European Parliament resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – *An area of freedom, security and justice serving the citizen – Stockholm Programme*, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2009-0090+0+DOC+XML+V0//EN> (accessed on 20 February 2013).

⁷¹⁵Communication from the Commission to the European Parliament and the Council - *Action Plan on Unaccompanied Minors (2010 – 2014)*, COM(2010)213 final, 6 May 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF> (accessed on 20 February 2013).

⁷¹⁶Article 24 of the FRC and Article 3 of the CRC.

⁷¹⁷It 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".⁷¹⁸ 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.⁷¹⁹ 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 representation⁷²⁰ as well as the obligation to regularly assess those representatives.⁷²¹ 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.⁷²² Generally, siblings should be kept together and changes of residence shall be limited to a minimum.⁷²³ 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.⁷²⁴ Additionally, adequate training for those working with unaccompanied minors has to be provided.⁷²⁵ Access to education⁷²⁶ and adequate healthcare⁷²⁷ 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.⁷²⁸

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 other appropriate representations.⁷²⁹ 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.⁷³⁰ Minors enjoying temporary protection shall furthermore be granted access to the education system under the same conditions as nationals.⁷³¹

⁷¹⁸ Article 2 lit. h Asylum Procedures Directive, Article 2 lit. h Reception Conditions Directive, Article 2 lit. l Qualifications Directive, Article 2 lit. f Temporary Reception Directive, Article 2 lit. f Council Directive 2004/81/EC.

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

⁷³² Article 19 para. 2 of the Reception Conditions Directive.

⁷³³ 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, Official Journal L 261, 06 August 2004 (hereinafter Residence Permit Directive), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML> (accessed on 20 February 2013).

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.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.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,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.⁷⁴²

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.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.⁷⁴⁴

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.”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.⁷⁴⁶

⁷³⁹ Article 14 of the Trafficking Directive.

⁷⁴⁰ Article 15 para. 1-3 of the Trafficking Directive.

⁷⁴¹ Article 15 para. 4 of the Trafficking Directive.

⁷⁴² Article 16 of the Trafficking Directive.

⁷⁴³ Article 10 of the Return Directive.

⁷⁴⁴ Article 17 of the Return Directive.

⁷⁴⁵ Article 8 of the Law on Refugees and Asylum.

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.⁷⁵² 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.⁷⁵³ 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.⁷⁵⁴ 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.”⁷⁵⁵

Most elements of the policy, such as border control, combating trafficking in human beings, security of travel documents, return and readmission are analysed in separate chapters, thus in the current chapter only the legally binding documents, the Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals and the Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985⁷⁵⁶ and the Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence⁷⁵⁷ are discussed in detail.

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

⁷⁵² European Commission, *Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals*, COM(2006) 402 final, 19 July 2006, available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0402en01.pdf (accessed on 19 February 2013).

⁷⁵³ European Commission, *Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions – Communication on Migration*, COM(2011) 248 final, 4 May 2011, available at http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v11.pdf (accessed on 19 February 2013).

⁷⁵⁴ Council of the European Union, *Joint Declaration on a Mobility Partnership between the European Union and Armenia*, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dsca/dv/dsca_20121128_15/dsca_20121128_15en.pdf (accessed on 19 February 2013).

⁷⁵⁵ *Idem*, p. 4.

⁷⁵⁶ Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, 2001/51/EC, Official Journal L 187, 10 July 2001, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0051:EN:HTML> (accessed on 19 February 2013).

⁷⁵⁷ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, 2002/90/EC, Official Journal L 328, 5 December 2002, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0090:EN:NOT> (accessed on 19 February 2013).

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.⁷⁵⁸ Instigating, assisting in or attempting to commit these acts shall be also punishable.⁷⁵⁹ The sanctions must be effective, proportionate and dissuasive sanctions for these infringements.⁷⁶⁰

12.1.2 Legislation concerning carries liability

Three legislative pieces: the Convention implementing the Schengen Agreement, the Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data⁷⁶¹ (Carriers Sanction Directive) and the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985⁷⁶² impose obligation on carriers in order to combat irregular migration.

Article 26 of the Schengen Convention implementing the Schengen Agreement obliges carrier 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.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.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 500 000.⁷⁶⁵ These

⁷⁵⁸ Article 1.

⁷⁵⁹ Article 2.

⁷⁶⁰ Article 3.

⁷⁶¹ Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, Official Journal L 261, 06 August 2004, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0082:EN:HTML> (accessed on 19 February 2013).

⁷⁶² Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, Official Journal L 187, 10 July 2001, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0051:EN:HTML> (accessed on 19 February 2013).

⁷⁶³ Article 2 of the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

⁷⁶⁴ Article 3 of the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

⁷⁶⁵ Article 4 para. 1 of the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

financial penalties do not apply to cases where the third-country national is seeking international protection.⁷⁶⁶

EU countries may in addition adopt penalties of a different type, such as seizure of the vehicle or withdrawal of the operating license.⁷⁶⁷ Carriers against whom proceedings have been brought for failure to fulfil their obligations have the right to defence and appeal.⁷⁶⁸

Finally, the Carriers Sanction Directive aims to improve border control by the transmission of passenger data by carriers to national authorities.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 authorised border crossing point, by the end of check-in, at the request of authorities.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.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).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.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).⁷⁷⁴ The Member States not only have to take the necessary steps to enforce carriers to delete these data,⁷⁷⁵ but also to oblige the carriers to inform the passengers about the ongoing procedures.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

⁷⁶⁶ Article 4 para. 2 of the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

⁷⁶⁷ Article 5 of the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

⁷⁶⁸ Article 6 Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

⁷⁶⁹ Article 1 of the Carriers Sanction Directive.

⁷⁷⁰ Article 3 para. 1 of the Carriers Sanction Directive.

⁷⁷¹ Article 3 para. 2 of the Carriers Sanction Directive.

⁷⁷² Article 4 para. 1 of the Carriers Sanction Directive.

⁷⁷³ Article 4 para. 2 of the Carriers Sanction Directive.

⁷⁷⁴ Article 6 para. 1 of the Carriers Sanction Directive.

⁷⁷⁵ Article 6 para. 1 of the Carriers Sanction Directive.

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,⁷⁷⁷ 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.⁷⁷⁸ Generally, the Directive stipulates that Member States must prohibit the employment of irregularly staying third-country nationals including the implementation of sanctions and measures.⁷⁷⁹ 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.⁷⁸⁰

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)⁷⁸¹ 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.⁷⁸² 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.⁷⁸³

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.

⁷⁷⁷ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2009/52/EC, Official Journal L 168, 30 June 2009, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:01:EN:HTML> (accessed on 1 February 2013)

⁷⁷⁸ Article 1 Employers Sanction Directive.

⁷⁷⁹ Article 3 Employers Sanction Directive.

⁷⁸⁰ Article 3 para. 3 Employers Sanction Directive.

⁷⁸¹ Article 4 para. 1 lit. b Employers Sanction Directive.

⁷⁸² Article 4 para. 1 lit. c Employers Sanction Directive.

⁷⁸³ Article 4 para. 3 Employers Sanction Directive.

The employer is also liable to pay any outstanding remuneration⁷⁸⁴ to the irregularly employed third-country national,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 delays⁷⁸⁶ as well as any cost arising from sending back payments to the country to which the third-country national has or has been returned.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.⁷⁸⁸ Member States may choose not to apply those sanctions to employers that are natural persons and the employment was for private purposes.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 employer⁷⁹⁰ unless the contractor has undertaken due diligence obligations.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.⁷⁹² Member States may decide to implement more stringent liability rules under national law.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.⁷⁹⁴ The Member States have to ensure that effective, proportionate and dissuasive criminal penalties are applied.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.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.⁷⁹⁷ Legal persons may also be held liable if the criminal offence has been made possible due to a lack of supervision and control.⁷⁹⁸

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.

⁷⁸⁵ Article 6 para. 1 lit. a Employers Sanction Directive.

⁷⁸⁶ Article 6 para. 1 lit. b Employers Sanction Directive.

⁷⁸⁷ Article 6 para. 1 lit. c Employers Sanction Directive.

⁷⁸⁸ Article 7 para. 1 Employers Sanction Directive.

⁷⁸⁹ Article 7 para. 2 Employers Sanction Directive.

⁷⁹⁰ Article 8 para. 1 Employers Sanction Directive.

⁷⁹¹ Article 8 para. 3 Employers Sanction Directive.

⁷⁹² Art 8 para. 2 Employers Sanction Directive.

⁷⁹³ Article 8 para. 4 Employers Sanction Directive.

⁷⁹⁴ Article 9 para. 1 Employers Sanction Directive.

⁷⁹⁵ Article 10 Employers Sanction Directive.

⁷⁹⁶ Article 10 Employers Sanction Directive.

⁷⁹⁷ Article 11 para. 1 Employers Sanction Directive.

⁷⁹⁸ Article 11 para. 2 Employers 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 of 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 12 Employers Sanction Directive.

⁸⁰⁰ Article 6 para. 2 lit. a Employers Sanction Directive.

⁸⁰¹ Article 6 para. 2 lit. b Employers Sanction Directive.

⁸⁰² Article 6 para. 3 Employers Sanction Directive.

⁸⁰³ Article 5 para. 4 Employers Sanction Directive.

⁸⁰⁴ Article 5 para. 5 Employers Sanction Directive.

⁸⁰⁵ Article 13 Employers Sanction Directive.

⁸⁰⁶ Article 14 Employers Sanction Directive.

⁸⁰⁷ Building Migration Partnerships, *Armenia – Extended Migration Profile*, P. 35, available at <http://www.smsmta.am/upload/Armenia---Extended-Migration-Profile-EN.pdf> (accessed on 30 March 2013).

⁸⁰⁸ *Concept for the Policy of State Regulation of Migration in the Republic of Armenia*, Yerevan 2012, p. 14.

Annex N 1 to the Decision of the Government of the RA, N 1593-N, *Action Plan for the implementation of the concept for the policy of state regulation of migration in the republic of Armenia 2012-2016*, p. 6, 10 November 2011, available at <http://www.carim->

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,⁸¹¹ swindling,⁸¹² theft and damage to documents, stamps, or seals,⁸¹³ forgery,

east.eu/media/sociopol_module/The%20action%20Plan%20for%20the%20Implementation%20of%20the%20Policy%20concept%20for%20the%20state%20regulation%20of%20migration_2012-1016.pdf. (accessed on 30 March 2013).

⁸⁰⁹ Interview with the Division for Combating Irregular for International Cooperation, September 2012.

⁸¹⁰ Interview with the Division for Combating Irregular for International Cooperation, September 2012.

⁸¹¹ Article 329 of the Criminal Code.

sale or use of forged documents, stamps, seals, letter heads, vehicle licence plates,⁸¹⁴ sale purchase of official documents or state decorations, and other articles.⁸¹⁵ 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 over-stayers (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

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.”⁸¹⁶ 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.

⁸¹⁶Rossi-Longhi, P.; Galstyan, K.; Lindstrom, T., *Review of Migration Management in the Republic of Armenia*, Assessment Mission Report, March 2008, Yerevan, available at http://publications.iom.int/bookstore/free/Review_MigrationManagmentReport2008_English.pdf (accessed on 28 October 2012).

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.⁸¹⁷ 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.⁸¹⁸ 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

⁸¹⁷ E.g. European Commission, *Communication on trafficking in women for the purpose of sexual exploitation* (COM(96) 567 final), available at http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/l33095_en.htm (accessed on 16 March 2013), European Commission, *Communication on Fighting trafficking in human beings: an integrated approach and proposals for an action plan*, (COM(2005) 514 final), 18 October 2005, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0514:FIN:EN:PDF> (accessed on 16 March 2013), Council, *EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings* (2005/C 311/01), Official Journal C311, 9 December 2005, available at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/c_311/c_31120051209en00010012.pdf (accessed on 16 March 2013) and European Commission, *Commission Working Document, Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, COM(2008) 657 final, 17 October 2008, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0657:FIN:EN:PDF> (accessed on 16 March 2013).

⁸¹⁸ European Commission, *Communication on The EU Internal Security Strategy in Action: Five steps towards a more secure Europe*, COM(2010) 673 final, 22 November 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0673:FIN:EN:PDF> (accessed on 16 March 2013).

Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims⁸¹⁹ (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.⁸²⁰

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”),⁸²¹ 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 vulnerability⁸²² 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.⁸²³ 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.⁸²⁴ Equally, Member States must punish inciting, aiding and abetting or attempting trafficking in human beings.⁸²⁵

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.⁸²⁶ 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

⁸¹⁹ 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, Official Journal L 101, 15 April 2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:01:EN:HTML> (accessed on 25 January 2012).

⁸²⁰ Article 1 of the Trafficking Directive

⁸²¹ United Nations, Joint UN Commentary on EU Directive on Preventing and Combating Trafficking in human beings is launched at the European Parliament, 2012, p. 32. Available at: http://www.unodc.org/documents/human-trafficking/2011/UN_Commentary_EU_Trafficking_Directive_2011.pdf (accessed on 27 February 2013).

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 regardless 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.⁸³⁹ Any further trauma to the victim should be avoided, for example by sparing him/her any contact with the accused.⁸⁴⁰

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.⁸⁴¹ 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.⁸⁴² 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.⁸⁴³ 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,⁸⁴⁴ 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.⁸⁴⁵

Finally, victims of trafficking in human beings must have access to compensation for victims of violent crimes of intent.⁸⁴⁶

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.⁸⁴⁷

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.⁸⁴⁸

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.⁸⁴⁹ 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.⁸⁵⁰ 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.⁸⁵¹ 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.⁸⁵²

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.⁸⁵³

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.⁸⁵⁴

Article 6 furthermore stipulates that third-country nationals must not be subjected to expulsion orders during the reflection period.⁸⁵⁵ However, an entitlement to residence cannot be derived from this right.⁸⁵⁶ 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.⁸⁵⁷

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.⁸⁵⁸ Also, translation and interpreting services⁸⁵⁹ as well as free legal aid⁸⁶⁰ has to be provided if appropriate.

After the reflection period, Member States must ascertain whether the third-country national concerned is willing to cooperate⁸⁶¹ and whether he/she has broken off all relations with the perpetrators of the offences.⁸⁶² If the conditions are adequately met, a residence permit can be granted for at least six months, with the option of renewal.⁸⁶³

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.⁸⁶⁴ Also, every effort to establish the identity and to locate the families of unaccompanied minors should be undertaken.⁸⁶⁵

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.⁸⁶⁶

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.⁸⁶⁷

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 renewed⁸⁶⁸ and may be withdrawn⁸⁶⁹ 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,⁸⁷⁰ if the authorities believe that the victim's cooperation or his/her complaint is fraudulent,⁸⁷¹ if national security is endangered or for reasons relating to public policy,⁸⁷² if the victim quits the cooperation⁸⁷³ or if the authorities decide to discontinue the proceedings.⁸⁷⁴

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),

⁸⁶⁶ Article 11 of the Residence Permit Directive.

⁸⁶⁷ Article 12 of the Residence Permit Directive.

⁸⁶⁸ Article 13 of the Residence Permit Directive.

⁸⁶⁹ Article 14 of the Residence Permit Directive.

⁸⁷⁰ Article 14 lit. a of the Residence Permit Directive.

⁸⁷¹ Article 14 lit. b of the Residence Permit Directive.

⁸⁷² Article 14 lit. c of the Residence Permit Directive.

⁸⁷³ Article 14 lit. d of the Residence Permit Directive.

⁸⁷⁴ Article 14 lit. e of the Residence Permit Directive.

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 its 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 co-operation 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 focussing 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.⁸⁷⁸ Regarding the quality of assistance measures provided to victims, inconsistent unequal standards have been identified.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.⁸⁸⁰

In terms of preventions 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.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

⁸⁷⁸ Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Armenia, p. 29. Strasbourg, 21 September 2012, available at http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_8_FGR_ARM_en.pdf (accessed on 28 February 2013).

⁸⁷⁹ Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Armenia, p. 30. Strasbourg, 21 September 2012, available at http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_8_FGR_ARM_en.pdf (accessed on 28 February 2013).

⁸⁸⁰ Idem.

⁸⁸¹ Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Armenia, p. 25-26. Strasbourg, 21 September 2012, available at http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_8_FGR_ARM_en.pdf (accessed on 28 February 2013).

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.⁸⁸² Furthermore, during the interviews it was confirmed that there is no witness protection programme available for victims of trafficking as prescribed in the Directive.⁸⁸³

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.

⁸⁸²See Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Armenia, p. 32-26. Strasbourg, 21 September 2012, available at http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_8_FGR_ARM_en.pdf (accessed on 28 February 2013).

⁸⁸³Interview 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 movement⁸⁸⁹, 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. band.c of the Schengen Borders Code.

⁸⁸⁶ Regulation (EC) No. 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas, Official Journal L 218, 13 August 2008, (hereinafter VIS Regulation), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0060:0081:EN:PDF> (accessed on 17 February 2013).

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.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.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: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 right⁸⁹³ to, *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.

⁸⁹⁰ Article 7 para. 2 of the Schengen Borders Code.

⁸⁹¹ Article 7 para. 2 of the Schengen Borders Code.

⁸⁹² Article 12 para. 2 of the Law on Foreigners.

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

⁸⁹⁴ Article 10 of the Law on State Border.

⁸⁹⁵ Annex 1 lit. II of the Decision of the Government of the Republic of Armenia No. 884-N on establishing the Republic of Armenia border electronic management information system, defining the procedure of its operation and the list of system users (hereinafter Decision on BMIS).

⁸⁹⁶ Government Decision of the Republic of Armenia No. 821 of 25 December 1998 on approving the Charter of the Republic of Armenia passport system and the Republic of Armenia citizen's passport description.

⁸⁹⁷ See Chapter 1.

⁸⁹⁸ Information from Caritas International, *Country Sheet: Armenia*, January 2010, p. 8.

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.⁹⁰¹ 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.⁹⁰²

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.⁹⁰³ 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.⁹⁰⁴ 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.

⁹⁰¹Kabeleova H., Mazmanyanyan A. and Yeremyan A., *Assessment of the Migration Legislation of the Republic of Armenia*, OSCE, 2007, p. 28.

⁹⁰²Rossi-Longhi, P.; Galstyan, K.; Lindström, T., *Review of Migration Management in the Republic of Armenia*, Assessment Mission Report, p.19, March 2008, Yerevan, available at http://publications.iom.int/bookstore/free/Review_MigrationManagementReport2008_English.pdf (accessed on 28 October 2012) and Kabeleova, H.; Mazmanyanyan, A.; Yeremyan, A., *Assessment of the Migration Legislation in the Republic of Armenia*, OSCE, 2007, available at: <http://www.osce.org/yerevan/25959> (accessed on 28 October 2012).

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 main⁹⁰⁵ 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.⁹⁰⁶ 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.⁹⁰⁷

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.⁹⁰⁸ It applies to third-country nationals staying illegally on the territory of a Member State⁹⁰⁹. 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.⁹¹⁰ 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.⁹¹¹ 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.⁹¹² 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

⁹⁰⁵ Other EU decisions or directives relating to the issue of return and removal include: Council Decision 2004/573/EC of 29 April 2004 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, Official Journal L 261, 6 August 2006, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0028:0035:EN:PDF> (accessed on 17 February 2013); Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, Official Journal L 321, 6 December 2003, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:321:0026:0031:EN:PDF> (accessed on 17 February 2013); Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, Official Journal L 149, 2 June 2001, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:149:0034:0036:EN:PDF> (accessed on 17 February 2013); Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals, Official Journal L 60, 27 February 2004, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:060:0055:0057:EN:PDF> (accessed on 17 February 2013).

⁹⁰⁶ Article 3 of the Return Directive.

⁹⁰⁷ Article 3 of the Return Directive.

⁹⁰⁸ Article 1 of the Return Directive. All States which are bound by the Return Directive (all EU Member States except Ireland and the UK, as well as the associated Schengen States – Switzerland, Norway, Iceland and Liechtenstein) are obliged to adapt their national legislation in accordance with the provisions of the Directive.

The deadline for transposing the provisions of the Directive into national law was 24 December 2010.

⁹⁰⁹ Article 2 of the Return Directive.

⁹¹⁰ Article 5 of the Return Directive.

⁹¹¹ Article 6 para. 2 of the Return Directive.

⁹¹² Article 6 para. 4 of the Return Directive.

returned is responsible for issuing the return decision.⁹¹³ In any case, a return decision can only be issued after all procedures for renewal of residence permits have finished.⁹¹⁴ 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.⁹¹⁵ 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 than 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.⁹¹⁶

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.⁹¹⁷ In the two following cases, the removal must be postponed:⁹¹⁸ (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.⁹¹⁹

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.⁹²⁰

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.⁹²¹ 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.⁹²² An entry ban is mandatory if: (a) no period for voluntary departure

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.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.⁹²⁴

The return decision, entry ban and removal must be issued in writing and together with information on available remedies.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.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.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.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.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.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.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.⁹³²

If it is not possible to use special detention facilities for third-country nationals, Member States can use separate parts of prison accommodation.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.⁹³⁴ Families detained while pending removal must be

⁹²³ Article 11 of the Return Directive.

⁹²⁴ Article 11 of the Return Directive.

⁹²⁵ Article 12 para. 1 of the Return Directive.

⁹²⁶ Article 12 para. 3 of the Return Directive.

⁹²⁷ Article 13 para. 1 of the Return Directive.

⁹²⁸ Article 13 para. 4 of the Return Directive.

⁹²⁹ Article 15 para. 1 of the Return Directive.

⁹³⁰ Articles 15 para. 2 and 3 of the Return Directive.

⁹³¹ Article 15 para. 4 of the Return Directive.

⁹³² Article 15 para. 6 of the Return Directive.

⁹³³ Article 16 para. 1 of the Return Directive.

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 nationals⁹³⁶, 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 orders⁹³⁷, 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

⁹³⁵ Article 17 of the Return Directive.

⁹³⁶ Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals, Official Journal L 149, 2 June 2001, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:149:0034:0036:EN:PDF> (accessed on 17 February 2013)

⁹³⁷ Council Decision 2004/573/EC of 29 April 2004 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, Official Journal L 261, 6 August 2006, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0028:0035:EN:PDF> (accessed on 17 February 2013).

⁹³⁸ Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, Official Journal L 321, 6 December 2003, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:321:0026:0031:EN:PDF> (accessed on 17 February 2013).

⁹³⁹ Council of Europe: Committee of Ministers, *Twenty Guidelines on Forced Return*, 4 May 2005, available at http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf (accessed on 17 February 2013).

⁹⁴⁰ See the grounds for refusal of entry in the Chapter on General conditions of entry and border control.

⁹⁴¹ Article 26 of the Convention implementing the Schengen Agreement.

⁹⁴² Annex V of the Schengen Border Code and Article 26 of the Convention implementing the Schengen Agreement.

⁹⁴³ Article 2 of the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, Official Journal L 187, 10 July 2001, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:187:0045:0046:EN:PDF> (accessed on 17 February 2013).

assume responsibility for the costs of the stay and return of the third-country national in question.⁹⁴⁴ The Member States should impose penalties to the carriers which transport third-country nationals who do not possess the necessary travel documents.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.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 3⁹⁴⁷ 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.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.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.⁹⁵⁰

⁹⁴⁴ Article 3 of the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, Official Journal L 187, 10 July 2001, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:187:0045:0046:EN:PDF> (accessed on 17 February 2013).

⁹⁴⁵ Article 26 para. 2 of the Convention implementing the Schengen Agreement.

⁹⁴⁶ Article 26 para. 1 lit. b of the Convention implementing the Schengen Agreement.

⁹⁴⁷ Eight specific reasons are mentioned in Article 8 para. 1, 2 and 3 for revoking a visa. See the Chapter on Visas.

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.

⁹⁴⁹ Article 3 of the Law on Foreigners.

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.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.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.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.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).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.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.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.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.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.

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.

⁹⁵² Article 32 para. 1 of the Law on Foreigners.

⁹⁵³ Article 33 of the Law on Foreigners.

⁹⁵⁴ Article 35 of the Law on Foreigners.

⁹⁵⁵ Article 34 of the Law on Foreigners.

⁹⁵⁶ Article 36 para. 1 of the Law on Foreigners.

⁹⁵⁷ Article 36 para. 4 of the Law on Foreigners.

⁹⁵⁸ Article 38 para. 1 of the Law on Foreigners.

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.⁹⁶⁰ 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.⁹⁶¹

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.⁹⁶² 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.⁹⁶³ 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.⁹⁶⁴ Unaccompanied minors will not be detained in SACs.⁹⁶⁵

For the time being, only two SACs have been created: one at Zvartnots 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.⁹⁶⁶ Persons who are

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.⁹⁶⁷

A detained or arrested foreigner has the following rights⁹⁶⁸: (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 decrees⁹⁶⁹ 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.⁹⁷⁰ 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.⁹⁷¹ 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.

⁹⁶⁷ Article 329 on illegal crossing of state border of the Criminal Code of the Republic of Armenia.

⁹⁶⁸ Article 39 of the Law on Foreigners.

⁹⁶⁹ 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.

⁹⁷⁰ UNDP, *Migration and human development: Opportunities and challenges*, Armenia, 2009, p. 87.

⁹⁷¹ Article 39 of the Law on Foreigners.

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 acts⁹⁷² 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.⁹⁷³

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.⁹⁷⁴

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 this⁹⁷⁵.

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.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.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.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.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.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 no 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.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.⁹⁸² The Armenian legislation provides for the suspension of the expulsion only in case of submission of an appeal.⁹⁸³

⁹⁷⁵ Articles 1 and 5 of the Return Directive.

⁹⁷⁶ Article 7 of the Return Directive.

⁹⁷⁷ Article 7 para. 4 of the Return Directive.

⁹⁷⁸ Article 31 of the Law on Foreigners.

⁹⁷⁹ Article 7 para. 3 of the Return Directive.

⁹⁸⁰ Article 34 para. 2 of the Law on Foreigners.

⁹⁸¹ Article 8 of the Return Directive.

⁹⁸² Article 9 of the Return Directive.

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

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 SACs⁹⁹³ 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 filed, what it needs 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.

⁹⁹⁴ Law on compulsory enforcement of judicial acts, 1999.

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 acquis⁹⁹⁵, 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.⁹⁹⁶

⁹⁹⁵ Article 14 of the Return Directive.

⁹⁹⁶ The exceptions could follow Article 15 para. 3-6 of the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Official Journal L 326, 13 December

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.

2005, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF> (accessed on 17 February 2013).

⁹⁹⁷ Following Article 26 of the Convention implementing the Schengen Agreement and Annex V of the Schengen Borders Code.

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.⁹⁹⁸ 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.⁹⁹⁹ 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.¹⁰⁰⁰ 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.¹⁰⁰¹

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.¹⁰⁰² 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." Based

⁹⁹⁸ European Commission, *Communication from the Commission to the Council and the European Parliament on a Community Return Policy on Illegal Residents*, COM (2002)504 final, 14 October 2002, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0564:FIN:EN:PDF> (accessed on 17 February 2013).

⁹⁹⁹ Cassarino, JP, *Readmission Policy in the European Union*, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Civil Liberties, Justice and Home Affairs, Brussels, European Parliament, 2010, p. 13.

¹⁰⁰⁰ See (1) Council of the European Union, *Presidency Conclusions*, Tampere European Council, 15-16 October 1999, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00200-r1.en9.htm (accessed on 17 February 2013), (2) *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union*, 13 December 2004, 2005/C 53/01, available at <http://register.consilium.europa.eu/pdf/en/04/st16/st16054.en04.pdf> (accessed on 17 February 2013), (3) Council of the European Union, *Presidency Conclusions*, European Council Meeting in Laeken, 14-15 December 2001, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/68827.pdf (accessed on 17 February 2013), (4) Commission of the European Communities, *Green Paper on a Community Return Policy on Illegal Residents*, COM/2002/0175, 10 April 2002, available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0175en01.pdf (accessed on 17 February 2013), (5) *Communication from the Commission to the Council and the European Parliament on a Community Return Policy on Illegal Residents*, COM/2002/0564 final, 14 October 2002, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0564:FIN:EN:PDF> (accessed on 17 February 2013).

¹⁰⁰¹ Cassarino, JP, *Readmission Policy in the European Union*, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Civil Liberties, Justice and Home Affairs, Brussels, European Parliament, 2010, p. 17.

¹⁰⁰² Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Related Acts, Official Journal C340, 10 November 1997, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1997:340:0001:0144:EN:PDF> (accessed on 17 February 2013).

on this legal basis the Commission has already concluded 13 Readmission Agreements with third countries¹⁰⁰³ while negotiations with another eight countries are ongoing.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.¹⁰⁰⁵ Since then a special section containing four articles related to readmission has become an integral part of such agreements.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.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 outset of negotiations.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),

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) *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).

¹⁰⁰⁴ With Turkey, Morocco, Cape Verde, Armenia, Belarus, China, Azerbaijan and Algeria. Information from (1) *EU Readmission Agreements, Brief Overview of State of Play* (2011), Commission Staff Working Document accompanying the Communication from the Commission to the European Parliament and the Council, Evaluation of the EU Readmission Agreements, 23 February 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:0209:FIN:EN:PDF> (accessed on 17 February 2013) and (2) UK Parliament, European Scrutiny Committee, Twenty-sixth report, 10 HO (34450) (34451) *EU Readmission Agreement with Armenia*, 9 January 2013, online at <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-xxvi/8614.htm> (last accessed on 17 February 2013).

¹⁰⁰⁵ Council Decision on the inclusion of model readmission clauses in Community agreements and in agreements between the European Community, its Member States and third countries, 13409/99, 25 November 1999.

¹⁰⁰⁶ See Inventory of Agreements containing the Readmission Clause, DG RELEX/B2- Treaties office, 7 July 2011, available at <http://ec.europa.eu/world/agreements/viewCollection.do?fileID=58592> (accessed on 17 February 2013).

¹⁰⁰⁷ European Commission, *Communication from the Commission to the European Parliament and the Council, Evaluation of EU Readmission Agreements*, COM/2011/0076 final, 23 February 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0076:FIN:EN:PDF> (accessed on 17 February 2013).

¹⁰⁰⁸ Conclusions, *Communication from the Commission to the European Parliament and the Council, Evaluation of EU Readmission Agreements*, COM/2011/0076 final, 23 February 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0076:FIN:EN:PDF> (accessed on 17 February 2013).

who has been found illegally entering to, being present in or residing in another state.¹⁰⁰⁹ 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.¹⁰¹⁰

A Recommendation for a specimen bilateral readmission agreement between a Member State and a third country was adopted in 1994¹⁰¹¹ 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.¹⁰¹²

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.¹⁰¹³

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.¹⁰¹⁴ 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.¹⁰¹⁵ 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.¹⁰¹⁶

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 meets the conditions in force for entry or residence on

¹⁰⁰⁹ Annex-Definitions of Communication from the Commission to the Council and the European Parliament on a Community Return Policy on Illegal Residents, COM/2002/0564 final of 14 October 2002, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0564:FIN:EN:PDF> (accessed on 17 February 2013) as well as in Annex 1 Indicative Definitions of Return Action Programme, 28 November 2002.

¹⁰¹⁰ Annex-Definitions of Communication from the Commission to the Council and the European Parliament on a Community Return Policy on Illegal Residents, COM/2002/0564 final of 14 October 2002, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0564:FIN:EN:PDF> (accessed on 17 February 2013); as well as in Annex 1 Indicative Definitions of Return Action Programme, 28 November 2002.

¹⁰¹¹ Council Recommendation of 30 November 1994 concerning a Specimen Bilateral Readmission Agreement between a Member State and a Third Country, Official Journal C 274, 19 September 1996, (hereinafter Recommendation on Specimen Bilateral Readmission Agreement), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1996:274:0020:0024:EN:PDF> (accessed on 17 February 2013).

¹⁰¹² Council Recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements, Official Journal C 274, 19 September 1996, (hereinafter Recommendation on Guiding Principles for Readmission Agreements), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1996:274:0025:0033:EN:PDF> (accessed on 17 February 2013).

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.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.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 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.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.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.¹⁰²¹ The requested Contracting Party must reply to readmission requests within a maximum period of 15 days.¹⁰²² It must also take charge of persons whose readmission has been agreed to without delay within a maximum period of one month.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.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.¹⁰²⁵ The specimen readmission agreement provides also for transit through the territory of the Contracting Party¹⁰²⁶ and protection of the personal data of the transported individuals.¹⁰²⁷

The 1995 **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.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.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

¹⁰¹⁷ Article 2 para. 1 of the Recommendation on Specimen Bilateral Readmission Agreement.

¹⁰¹⁸ Article 2 para. 4 of the Recommendation on Specimen Bilateral Readmission Agreement.

¹⁰¹⁹ Article 3 para. 1 of the Recommendation on Specimen Bilateral Readmission Agreement.

¹⁰²⁰ Article 3 para. 2 and 3 lit. 3 of the Recommendation on Specimen Bilateral Readmission Agreement.

¹⁰²¹ Article 6 of the Recommendation on Specimen Bilateral Readmission Agreement.

¹⁰²² Article 5 para. 1 of the Recommendation on Specimen Bilateral Readmission Agreement.

¹⁰²³ Article 5 para. 2 of the Recommendation on Specimen Bilateral Readmission Agreement.

¹⁰²⁴ Article 9 para. 1 of the Recommendation on Specimen Bilateral Readmission Agreement.

¹⁰²⁵ Article 10 of the Recommendation on Specimen Bilateral Readmission Agreement.

¹⁰²⁶ Article 7 of the Recommendation on Specimen Bilateral Readmission Agreement.

¹⁰²⁷ Article 8 of the Recommendation on Specimen Bilateral Readmission Agreement.

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.

¹⁰²⁹ Part I para. 2 of the Recommendation on Guiding Principles for Readmission Agreements.

Parties.¹⁰³⁰ 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.¹⁰³¹ 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.¹⁰³² 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.¹⁰³³

With the inclusion of the Schengen Acquis in the EU Acquis¹⁰³⁴, 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 States¹⁰³⁵ 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).¹⁰³⁶ 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.¹⁰³⁷

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.¹⁰³⁸ 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.

¹⁰³⁵ *Decision of the Executive Committee of 15 December 1997 on the guiding principles for means of proof and indicative evidence within the framework of readmission agreements between Schengen States* (SCH/Com-ex (97) 39 rev.) Official Journal L 239, 22 September 2000, (hereinafter Guiding Principles for means of proof and indicative evidence), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997D0039:EN:HTML> (accessed on 17 February 2013).

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.

¹⁰³⁸ *Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part*, Official Journal L 239, 9 September 1999, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21999A0909%2801%29:EN:HTML> (accessed on 17 February 2013).

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.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.¹⁰⁴⁰

16.3 Gap analysis

16.3.1 Gap analysis between the Armenian legislation and implementation in practice

Not applicable.¹⁰⁴¹

16.3.2 Gap analysis between the Armenian legislation and the EU acquis

Not applicable.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.

¹⁰³⁹ Press Release, *EU-Armenia agreement on facilitating the issuing of visas*, Brussels, 17 December 2012, 17866/12, PRESSE 538, available online at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/134402.pdf (accessed on 17 February 2013).

¹⁰⁴⁰ Information obtained from CARIM East, Legal Module, Armenia, Bilateral agreements, available at <http://www.carim-east.eu/database/legal-module/?ls=3&ind=biag&country=Armenia&lang=> (accessed on 17 February 2013).

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.

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.

¹⁰⁴³ Council Recommendation of 30 November 1994 concerning a Specimen Bilateral Readmission Agreement between a Member State and a Third Country, Official Journal C 274, 19 September 1996, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1996:274:0020:0024:EN:PDF> (accessed on 17 February 2013).

¹⁰⁴⁴ Council Recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements, Official Journal C 274, 19 September 1996, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1996:274:0025:0033:EN:PDF> (accessed on 17 February 2013).

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.¹⁰⁴⁵ According to the Regulation, EU Member States need to provide Eurostat¹⁰⁴⁶ 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 Regulation¹⁰⁴⁷ and persons who will be resettled.¹⁰⁴⁸ 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.¹⁰⁴⁹ 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

¹⁰⁴⁵ Regulation (EC) No. 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection repealing Council Regulation (EEC) No. 311/76 on the compilation of statistics on foreign workers, Official Journal L 199, 31 July 2007 (hereinafter Regulation on Migration Statistics), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0023:0029:EN:PDF> (accessed on 17 February 2013).

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.

¹⁰⁴⁷ 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, Official Journal L 50, 25 February 2003, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF> (accessed on 17 February 2013).

¹⁰⁴⁸ Article 3 of the Regulation on migration statistics.

¹⁰⁴⁹ European Commission, *Communication from the Commission to the European Parliament and the Council of 20 July 2010, Overview of information management in the area of freedom, security and justice*, COM/2010/0385 final, 20 July 2010, not published in the Official Journal, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0385:FIN:EN:PDF> (accessed on 17 February 2013).

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.¹⁰⁵⁰ The Agency will be responsible for VISA, EURODAC and SIS II, as soon as it starts operating.

In addition, there are instruments¹⁰⁵¹ and institutions¹⁰⁵² 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.¹⁰⁵³

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.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.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".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.¹⁰⁵⁷

¹⁰⁵⁰ Regulation (EU) No. 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, Official Journal L 286, 1 November 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:286:0001:0017:EN:PDF> (accessed on 17 February 2013).

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 Journal L 386, 29 December 2006, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:386:0089:0100:EN:PDF> (accessed on 17 February 2013); Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, Official Journal L 210, 6 August 2008, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:210:0001:0011:EN:PDF> (accessed on 17 February 2013). Directive 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 communications networks and amending Directive 2002/58/EC, Official Journal L 105, 13 April 2006, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0054:0063:EN:PDF> (accessed on 17 February 2013).

¹⁰⁵² Mainly the European Police Office (Europol) and the EU's Judicial Cooperation Unit (Eurojust).

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).

¹⁰⁵⁴ Article 2 lit. a of the Data Protection Directive.

¹⁰⁵⁵ Article 2 lit. b of the Data Protection Directive.

¹⁰⁵⁶ Article 2 lit. d of the Data Protection Directive.

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 question¹⁰⁶¹ 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.

¹⁰⁶⁴ Article 3 of the Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Official Journal L 8, 12 January 2001, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:008:0001:0022:EN:PDF> (accessed on 17 February 2013).

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.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, *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 data¹⁰⁶⁶ (General Data Protection Regulation).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.¹⁰⁶⁸ Expelled foreigners are also registered in the database of undesirable foreigners.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-N¹⁰⁷⁰ 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,

¹⁰⁶⁵ *Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data*, COM/2012/010 final - 2012/0010 (COD), 25 January 2012, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0010:FIN:EN:PDF> (accessed on 17 February 2013).

¹⁰⁶⁶ *Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)*, COM/2012/011 final - 2012/0011 (COD), 25 January 2012, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0011:FIN:EN:PDF> (accessed on 17 February 2013).

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).

¹⁰⁶⁸ Decision of the Government of the Republic of Armenia 115-N on defining the procedure of entering information into the database of foreigners regarded as undesirable in the territory of the Republic of Armenia and making use of the database, 25 January 2008.

¹⁰⁶⁹ Article 36 para. 3 of the Law on Foreigners.

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.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.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.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.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 Service¹⁰⁷⁵ 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.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.¹⁰⁷⁷

Border crossing records are collected by the Border Management Information System (BMIS) established within the National Security Service.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.¹⁰⁷⁹ All data are kept in the BMIS system for 7 years.¹⁰⁸⁰ The National Security Service, as the BMIS coordinating authority, has to

¹⁰⁷¹ Article 1, Appendix 5 of the Governmental Decree No. 1268-N.

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).

¹⁰⁷³ Annex 1 of the Decree on registration of invitations.

¹⁰⁷⁴ Article 17 para. 4 of the Law on Foreigners.

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.

¹⁰⁷⁶ Article 34 of the Law of the Republic of Armenia on Refugees and Asylum, 27 November 2008 (hereinafter Law on Refugees and Asylum).

¹⁰⁷⁷ Article 48 of the Law on Refugees and Asylum.

¹⁰⁷⁸ See more information on the BMIS in the Chapter on General Conditions of Entry and Border Control.

¹⁰⁷⁹ CARIM East – Consortium for Applied Research on International Migration, *Explanatory Note 12/01, Statistical Data Collection on Migration in Armenia*, R. Yeganyan, January 2012.

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.¹⁰⁸¹ 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.¹⁰⁸² However, not all of these authorities have access to the database currently.¹⁰⁸³

Apart from this, the Law on Population Census provides the necessary guidelines on conducting a population census.¹⁰⁸⁴ 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 migration¹⁰⁸⁵ while the data included in the 2011 census are being processed will be available in 2013.¹⁰⁸⁶

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.¹⁰⁸⁷ 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.¹⁰⁸⁸

Armenia also has a system of **civil registration** that was introduced in 2002 with the Law on State Population Register.¹⁰⁸⁹ The system's 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 fine. 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.

¹⁰⁸⁴ Law of the Republic of Armenia on Population Census, 12 October 1999.

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.

¹⁰⁸⁷ Law of the Republic of Armenia on State Statistics, 26 April 2000 (hereinafter Law on State Statistics).

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.

¹⁰⁸⁹ Law of the Republic of Armenia on State Population Register, 24 September 2002, in force since 1 January 2005.

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 abroad), 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

¹⁰⁹⁰ Article 195 par 1 of the Administrative Violations Code as amended by HO-289-N Law of 30 November 2011.

¹⁰⁹¹ See for further information on the data collection for census population the *Governmental Decision 1231-N on*

Introduction of the State Population Registry System in the Republic of Armenia, 14 July 2005.

¹⁰⁹² Information from Overview Table on the State Population Register, IOM, *Enhancing Migration Data Collection, Processing and Sharing in the Republic of Armenia, Needs Assessment and Gap Analysis Report*, 2010.

¹⁰⁹³ CARIM East – Consortium for Applied Research on International Migration, *Explanatory Note 12/01, Statistical Data Collection on Migration in Armenia*, R. Yeganyan, January 2012.

¹⁰⁹⁴ Law of the Republic of Armenia on Personal Data, 8 October 2002 (hereinafter Law on Personal Data).

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.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.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 legal¹⁰⁹⁹: (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.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.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.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.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.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.

¹⁰⁹⁷ Article 3 of the Law on Personal Data.

¹⁰⁹⁸ Article 3 of the Law on Personal Data.

¹⁰⁹⁹ Article 6 of the Law on Personal Data.

¹¹⁰⁰ Article 10 para. 1 of the Law on Personal Data.

¹¹⁰¹ Article 11 of the Law on Personal Data.

¹¹⁰² Law HO-95-N, 23 May 2006 amended Article 13 of the Law on Personal Data.

¹¹⁰³ The new law has not yet been adopted.

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 existence¹¹⁰⁵ even though a government decree has been issued regulating further the entry of information in the database.¹¹⁰⁶

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.¹¹⁰⁷ 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,¹¹⁰⁸ 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.

¹¹⁰⁵ See also the Chapters on Visas and on General conditions of entry and Border Control.

¹¹⁰⁶ Decree of the Government of the Republic of Armenia 115-N on defining the procedure of entering information into the database of foreigners regarded as undesirable in the territory of the Republic of Armenia and making use of the database, 25 January 2008.

¹¹⁰⁷ Annex 2, the Decision on BMIS.

¹¹⁰⁸ According to Article 6 of the Constitution of the Republic of Armenia.

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.¹¹¹⁸ It does not provide for the right to object in cases like when the data are used for purposes of direct marketing.¹¹¹⁹

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.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.¹¹²¹

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.¹¹²² In addition, the new draft Law does not distinct 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”.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.

17.4 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.

¹¹¹⁸ Articles 11-12 of the Law on Personal Data.

¹¹¹⁹ As provided in Article 14 of the Data Protection Directive.

¹¹²⁰ Articles 14 and 15 of the Law on Personal Data.

¹¹²¹ Articles 22 and 23 of the Data Protection Directive.

¹¹²² Article 2 lit. h of the Data Protection Directive.

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 database¹¹²⁴ according to Appendix 5 of the governmental decree No 1268-N.¹¹²⁵

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.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.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.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.

¹¹²⁴ See the Chapter on Visas.

¹¹²⁵ Appendix 5 of the Governmental Decree No. 1268-N.

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.

¹¹²⁷ Articles 12-14 of the Data Protection Directive.

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”.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.¹¹³⁰

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,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.

¹¹²⁹ Article 6 para. 1 of the Data Protection Directive.

¹¹³⁰ See Chapter IV of the Data Protection Directive.

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 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 a 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.

Bibliography

Amendment

- 2003 *Customs Code of the Republic of Armenia*, available at http://www.parliament.am/law_docs/090800HO83eng.pdf (accessed on 13 September 2012)

Annex to RA President Regulation

- 2008 *On Concept Paper for the Republic of Armenia Migration System and Introduction of System of Electronic Passports and Identification Cards Containing Biometric Characteristics in the Republic of Armenia*, NK- 53 – A.

Appendix – RA Government Decree No. 482 of April 21, 2011

Action Plan and Timetable for Implementation of the Border Security and Integrated State Border Management Strategy of the Republic of Armenia (2011 – 2015)

Asatryan, Nune

- 2010 *Human Trafficking, Booklet for Parents*. VARD HRAT LTD, Yerevan.

Chief of Staff of the RA President, A. Gevorkyan

- 2007 *National Security Strategy of the Republic of Armenia*, available at <http://www.mil.am/files/NATIONAL%20%20SECURITY%20STRATEGYeng.pdf>(accessed on 13 September 2012)

Commission of the European Communities

- 2008 *Commission Staff Working Document accompanying the Communication from the Commission to the European Parliament and the Council, Eastern Partnership*, available at http://eeas.europa.eu/eastern/docs/sec08_2974_en.pdf(accessed on 19 September 2012)
- 2008 *Communication from the Commission to the European Parliament and the Council, Eastern Partnership*, available at http://eeas.europa.eu/eastern/docs/com08_823_en.pdf(accessed on 19 September 2012)

Council of the European Union,

- 2009 *Joint Declaration of the Prague Eastern Partnership Summit, Prague, 7 May 2009*, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/107589.pdf (accessed on 19 September 2012)
- 2011 *Joint Declaration on a Mobility Partnership between the European Union and Armenia*, available at <http://register.consilium.europa.eu/pdf/en/11/st14/st14963-ad01.en11.pdf> (accessed on 19 September 2012)

Devillard, Alexandre (IOM)

- 2011 *Labour Migration in Armenia: Existing Trends and Policy Options*. IOM Mission in Yerevan. Director of the National Security Service of the Republic of Armenia, Minister of Defense of the Republic of Armenia, Chairman of the State Revenue Committee of the Republic of Armenia
- 2011 *Joint Order on Approving Standard Operational Procedures for Customs Processing, Double Checking, Inspection and Control of Military and Dual-use Commodities at the Customs Border of the Republic of Armenia*(Yerevan)

EU

Armenia Action Plan, available at
http://ec.europa.eu/world/enp/pdf/action_plans/armenia_enp_ap_final_en.pdf
(accessed on 19 September 2012)
Armenia Mobility Partnership Declaration
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/125698.pdf

EU-Armenian Subcommittee on Freedom, Security and Justice

- 2011 *Second Meeting, Draft Minutes, Brussels*
European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, National Security Council of the Republic of Armenia,
- 2012 *Working Agreement establishing operational cooperation between the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union and the National Security Council of the Republic of Armenia*, available at
http://eeas.europa.eu/delegations/armenia/documents/news/20120222_en.pdf
(accessed on 19 September 2012)

European Commission

- 2012 *Commission implementing Decision of 27.8.2012 on the Annual Action Programme 2012 in favour of Armenia to be financed from the general budget of the European Union*, available at http://ec.europa.eu/europeaid/documents/aap/2012/aap_2012_arm_en.pdf and http://ec.europa.eu/europeaid/documents/aap/2012/af_aap-spe_2012_enpi-e.pdf
(accessed on 19 September 2012)

European Communities and Member States

- 1999 *Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part - Protocol on mutual assistance between authorities in customs matters - Final Act - Joint Declarations - Exchange of Letters in relation to the establishment of companies - Declaration of the French Government*, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21999A0909%2801%29:EN:HTML>
(accessed on 19 September 2012)

European Commission and the High Representative of the Union for Foreign Affairs and Security Policy

- 2012 *ENP Country Progress Reports 2011 – Armenia*, available at
http://ec.europa.eu/world/enp/docs/2012_enp_pack/armenia_memo_2011_en.pdf
(accessed on 19 September 2012)

European Neighbourhood and Partnership Instrument

Armenia, Country Strategy Paper 2007 – 2013, available at
http://ec.europa.eu/world/enp/pdf/country/enpi_csp_armenia_en.pdf
(accessed on 19 September 2012)
Armenia, National Indicative Programme, 2011-2013, available at
http://ec.europa.eu/world/enp/pdf/country/2011_enpi_nip_armenia_en.pdf
(accessed on 19 September 2012)

European Union Advisory Group to the Republic of Armenia

Assessment of the Draft Joint Declaration on a Mobility Partnership between the European Union and Armenia and Proposals for the Way forward.
Letter of Contract ENPI/2010/249-947, Inception Report.

List of Actions needed from Armenian side before signing visa facilitation and readmission agreements.

Proposed Way of Action for the National Security Council of the Republic of Armenia to get stronger support of the Eastern Partnership IBM Pilot Projects for the Implementation of the Armenian Integrated Border Management Action Plan.

European Union, External Action

Summary on EU-Armenia relation, available at http://eeas.europa.eu/armenia/eu_armenia_summary/index_en.htm (accessed on 19 September 2012)

European Union and Georgia

2011 *Agreement between the European Union and Georgia on the readmission of persons residing without authorisation*, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:052:0047:0065:EN:PDF> (accessed on 19 September 2012)

Galstyan, Kristina

2010 *Migration Management and Human Rights*. Antares, Yerevan.

General Department of Civil Aviation of the Republic of Armenia Government

2008 *Mr. T. Sargsyan, Prime Minister of the Republic of Armenia*. No. 1.1-816.

Grigoryan, Armen

2011 *EU-Armenia: Visa Facilitation Possibilities*, EU Frontiers Policy Paper, available at <http://cens.ceu.hu/sites/default/files/publications/policy-brief-no4eufrontiersarmen-grigoryan.pdf> (accessed on 19 September 2012)

Group of Experts on Action against Trafficking in Human Beings – GRETA

2012 *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Armenia. First evaluation round*. GRETA(2012)8, Strasbourg

Government of the Republic of Armenia

2001 *Decision on establishment of “Special Dwelling” state enterprise of the Department on Migration and Refugees under the Government of the Republic of Armenia*, No 1283, 27 December 2001

2003 *Decision on Establishment of “Special Dwelling” state non-trade Organization*, No 407-N, 3 April 2003

2006 *Decision on Creation of the Border Management Information System (BMIS) of the Republic of Armenia and approval of Rules and Regulations for its Exploitation and Establishment of the Users List*, N 884-N 22 June 2006

2007 *Procedure for Approval and Registration of Invitations to Visit the Republic of Armenia*, Annex 1 to Decision...

2008 *Decree 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*, No. 134-N of February 7, 2008

- 2008 *Decree on Approving Procedures for Functions of Special Accommodation Centers on the RA Border Crossing Points and Transit Zones and for Accommodating Foreigners in These Centers*, No. 127-N of February 7, 2008
- 2008 *Order on Approving the National Referral Procedure of Trafficked Persons*, N 1385-A, 28 November 2008
- 2009 *Decision on establishing the procedure for placing asylum seekers in the temporary reception center and providing them with subsistence means*, No 1440-N, 19 November 2009
- 2009 *Decision on establishing the sample of the ID for the refugee who received temporary protection and the procedure of exchanging that document with the Convention Travel Document*, No 1367-N, 26 November 2009
- 2009 *Decision 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 of the Ministry of Territorial Administration of the Republic of Armenia*, No 1515-N, 17 December 2009
- 2009 *Decision on making changes in the procedure/regulations for functioning and maintenance of the temporary reception center for asylum seekers and the decision of the RA Government # 407-N from 3 April 2003*, No 1441-N, 19 November 2009
- 2009 *Decree on the Format of Convention Travel Document Issued to Refugees and the Procedure of Issuance Thereof*, No, 1417-N, 3 December 2009
- 2010 *Decision on establishing the procedure for facilitating the issuance of necessary travel documents and visa to enter the country of citizenship or permanent residence, or possible third, transit countries to the persons who submitted application for voluntary repatriation (asylum seekers and refugees)*, No. 48-N, 21 January 2010
- 2010 *Excerpt from the Minutes of the Meeting of the Government of the Republic of Armenia on Approving the Concept Paper on Organising the Repatriation Process*. Annex to the Protocol Decision No.48 of the RA Government Meeting, 9 December 2010
- 2011 *Concept on Studying and Preventing Irregular Migration Originating from the Republic of Armenia*. Approved by the Minutes of the RA Government Session Nor 51, 29 December 2011
- 2011 *Decree on Establishing the Regime of the State Border of the Republic of Armenia*, Draft
- 2012 *Protocol Decision on the Approval of the Employment Strategy 2013-18 of the Republic of Armenia*, Draft
- 2012 *Protocol Decision on the Approval of the Employment Strategy 2013-18 of the Republic of Armenia*. Annex No. 1 to the Protocol Decision No. 45, 8 November 2012
- 2012-2016 Strategic Programme for Legal and Judicial Reforms in the Republic of Armenia (Annex 1 to the Executive Order of the President of the Republic of Armenia NK of June 2012)
Government of the Republic of Armenia, Government of the Republic of Lithuania
- 2012 *Agreement between the Government of the Republic of Armenia and the Government of the Republic of Lithuania on the Cooperation in the Field of Education and Science*. Vilnius
Government of the Republic of Armenia, Government of the Republic of Poland
- 2011 *Programme of Implementation between the Government of the Republic of Armenia and the Government of the Republic of Poland in the Field of Culture, Science and Education for the Years 2011-2013*. Yerevan

Hovhannisian, Karén

- 2011 *Visa Liberalization Baseline Study: Armenia, Second Draft*. International Center for Human Development, Yerevan, Armenia, available at <http://visa-free-europe.eu/wp-content/uploads/2011/06/Armenia-countryraportPASOS.pdf> (accessed on 19 September 2012)

International Crisis Group

- 2010 *Armenia: An Opportunity for Statesmanship*. Europe Report N°217.

International Labour Organization, Republican Union of Employers, and Private Employment Agencies Sectorial Union

- 2010 *"Code of Conduct" of Private Employment Agencies*

International Labour Organization, RA Ministry of Diaspora

- 2010 *"Handbook for Armenians abroad"*, Yerevan
http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/handbook_armenians_en.pdf

International Organization for Migration (IOM)

Support to the Armenian Government in Introduction of Identity and Travel Documents with Biometrical Parameters. IOM, Geneva.

- 2008 *Expansion of Advanced Border Control and Management Technologies in Armenia*. IOM Mission in Yerevan.

- 2008 *Review of Migration Management in the Republic of Armenia*. Assessment Mission Report, Yerevan, IOM Geneva.

- 2009 *"Support to the Armenian Government in Introduction of Identity and Travel Documents with Biometrical Parameters" Project. Agenda for the Biometrics Needs Assessment Mission*. IOM Mission in Armenia

- 2010 *Enhancing Migration data Collection, Processing and Sharing in the Republic of Armenia, Needs Assessment and Gap Analysis Report*. IOM Mission in Yerevan.

- 2011 *Technical Border Needs Assessment, Armenia, site visits to Bavra BCP and Zvartnots Int. Airport, 21-24th May 2011*. Yerevan

- 2012 *Draft Employment Strategy of Armenia, 2013-18 Action Plan*
International Organisation Mission in Armenia and OSCE Yerevan Office

- 2008 *Donor Coordination Armenia, Migration Management Coordination Meeting for International and Foreign Organizations*. Project Inventory.

Kabeleova, Hana; Mazmanyan, Armen and Yeremyan, Ara

- 2007 *Assessment of the Migration Legislation in the Republic of Armenia*, available at <http://www.osce.org/yerevan/25959> (accessed on 13 September 2012).

Kitchin, Rob; Boyle Mark

- 2011 *Diaspora Strategies in Transition States: Prospects and Opportunities for Armenia*, NIRSA, National University of Ireland, Maynooth, February 2011 available at <http://www.nuim.ie/nirsa/diaspora/PDFs/Armenia%20report%202011.pdf>

Law of the Republic of Armenia, Family Code. 2004.

Law of the Republic of Armenia on Border Guard Troops, 2001. available at <http://www.unhcr.org/refworld/pdfid/3f38bde14.pdf> (accessed on 13 September 2012)

Law of the Republic of Armenia on Citizenship of the Republic of Armenia 1995.

Law of the Republic of Armenia on Compulsory Enforcement of Court Decrees. 1998.

Law of the Republic of Armenia on Electronic Document and Electronic Signature 2004.

Law of the Republic of Armenia on Foreigners 2006.
 Law of the Republic of Armenia on Foundations 2002.
 Law of the Republic of Armenia on Income Tax. 1997.
 Law of the Republic of Armenia on Investment Funds. 2010.
 Law of the Republic of Armenia on Licensing. 2001.
 Law of the Republic of Armenia on Making Amendments to the RA Criminal Procedure Code 2005.
 Law of the Republic of Armenia on Medical Care and Services to the Population 1996.
 Law of the Republic of Armenia on Personal Data. 2002.
 Law of the Republic of Armenia on Police. 2001
 Law of the Republic of Armenia on Political Asylum. 2001.
 Law of the Republic of Armenia on Public Organizations. 2001.
 Law of the Republic of Armenia on Refugees and Asylum. 2008. (Amendments 2011)
 Law of the Republic of Armenia on State Border of the Republic of Armenia. 2001.
 Law of the Republic of Armenia on State Registration of Legal Entities. 2001.
 Law of the Republic of Armenia on State Pensions. 2010.
 Law of the Republic of Armenia on Taxes. 1997.
 Law of the Republic of Armenia on the Human Rights Defender. 2003.
 Law of the Republic of Armenia on the legal and socio-economic guarantees for the persons who had been forcibly displaced from the Republic of Azerbaijan in 1988 -1992 and have acquired the citizenship of the Republic of Armenia. 2000.
 Law of the Republic of Armenia on the Protection of Personal Data, Draft.
 Law of the Republic of Armenia on Treatment of Arrestees and Detainees. 2002.
 Law of the Republic of Armenia on State Border. Available at http://www.carim-east.eu/media/legal%20module/natfr/AM_1.2%20Law%20on%20State%20border.%20eng.pdf
 Ministerium für Bildung und Wissenschaft der Republik Armenien, Botschaft der Bundesrepublik Deutschland in Eriwan

2012 *Gemeinsame Absichtserklärung des Ministerium für Bildung und Wissenschaft der Republik Armenien einerseits und der Botschaft der Bundesrepublik Deutschland in Eriwan andererseits über die Durchführung von verstärktem Deutschunterricht im Rahmen des Programms „Deutsches Sprachdiplom“ an den Grundschulen Nr.6 und Nr.60 und der Oberschule Nr.119 in Eriwan.*Eriwan

Ministry of Labor and Social Issues of the Republic of Armenia, International Center for Human Development, and International Organization for Migration Mission in Armenia

2012 *Memorandum of Cooperation n Support to the Implementation of Actions Envisaged under 2012-2016 Action Plan for Implementation of the Concept for the Policy of State Regulation of Migration in the Republic of Armenia and Concept on Studying and Preventing Irregular Migration Originating from the Republic of Armenia.* ARM/LCOO/SC0187/2012. Yerevan

2012 *Memorandum of Cooperation n Support to the Implementation of Actions Envisaged under 2012-2016 Action Plan for Implementation of the Concept for the Policy of State Regulation of Migration in the Republic of Armenia and Concept on Studying and Preventing Irregular Migration Originating from the Republic of Armenia.* Yerevan

Minoian, Victoria; Freinkman, Lev

2005 *Armenia: What drives first movers and how can their efforts be scaled up?*The World Bank Institute. Available at http://mpr.a.ub.uni-muenchen.de/10010/1/MPRA_paper_10010.pdf

OSCE, Office in Yerevan

- 2006 *Armenian Legislation on Trafficking in Human Beings, Legislative Gap Analysis, Democratization Programme*, available at <http://www.osce.org/yerevan/20417> (accessed on 13 September 2012).

Petrosyan, S. et al.

- 2009 *Human Trafficking, Teacher's Book*. Tigran Mets, Yerevan.

- 2010 *Human Trafficking, Student's Book*. Tigran Mets, Yerevan.

President of the Republic of Armenia

- 2007 *Republic of Armenia National Security Strategy*, Appendix of RA President Decree NH-37-N of February 7, 2007, January 26, 2007

- 2008 *President's Regulation on Concept Paper for the Republic of Armenia Migration System and Introduction of System of Electronic Passports and Identification Cards Containing Biometric Characteristics in the Republic of Armenia*, NK-53-A, 15 March 2008

- 2009 *RA Presidential Decree on Amendments to the RA Presidential decree #53-A as of 15 March 2008*, No. 192-A

- 2009 *RA Presidential Decree No.268-N*

Prime Minister of the Republic of Armenia

- 2006 *On Approval of the Timeline of the Arrangements for Introduction of the System of Electronic Passports and Identity Cards Containing Biometric Parameters*, Decision # 501A.

- 2009 *Prime Minister of the Republic of Armenia Decision on Approval of the Timeline of the Arrangements for Introduction of the System of Electronic Passports and Identity Cards Containing Biometric Parameters*. No 501A, June 18, 2009

- 2012 *Decision of the Prime Minister of Armenia on the Establishment of a commission for implementation and monitoring of the Joint Declaration on "Mobility Partnership between the European Union and the Republic of Armenia" and approval of the individual composition of the commission*. 136-A, 17 February 2012

Probert, David

- 2009 *Roadmap for Real-Time Armenia", E-Government, E-Commerce and E-Security*. Final Report to USAID/CAPS

Prutsch, Galstyan, Rossi Longhi, Progress Review of Migration Management in Armenia 2011

December, http://publications.iom.int/bookstore/free/Progress_Review_English.pdf

RA Ministry of Territorial Administration, Frontier Troops of the National Security Service under the RA Government, RA Police under the RA Government

- 2009 *Joint decree 389 on approving the logbook form for registration of asylum seekers in the Republic of Armenia*, Reg. No. 12109390

Regulation (EC) No 1638/2006 of the European Parliament and of the Council

- 2006 *laying down general provisions establishing a European Neighbourhood and Partnership Instrument*, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:310:0001:0014:EN:PDF> (accessed on 19 September 2012)

Republic of Armenia Criminal Code 2003

Republic of Armenia Customs Code 2001 (amendments 2003)

Republic of Armenia Law on Aliens 2006 (amendments 2010)

Republic of Armenia Law on Currency Regulation and Currency Control, 2004.

Republic of Armenia Law on Identification Cards, Draft.

Republic of Armenia Law on Passport of a Citizen of the Republic of Armenia, Draft.

Republic of Armenia National Security Council

2010 *Border Security and Integrated State Border Management Strategy of the Republic of Armenia*. Draft.Yerevan

Rossi-Longhi, Galstyan, Lindstrom, Review of Migration Management in Armenia Assessment Report 2008

http://publications.iom.int/bookstore/free/Review_MigrationManagmentReport2008_English.pdf

The Police of the Republic of the Republic of Armenia, Federal Migration Service (Russian Federation)
2011 *Agreement on Cooperation for Fighting illegal Migration between the Police of the Republic of the Republic of Armenia, Federal Migration Service (Russian Federation)*.Moscow

UNDP, Armenia

Supporting Integrated Border Management Systems in the South Caucasus Terms of the Reference, For purchasing the software for running the Analytical Processing Device to be linked to the Border Management Information System

2008 *Migration and Human Development: Opportunities and Challenges*, National Human Development Report, available at
<http://hdr.undp.org/en/reports/national/europethecis/armenia/NHDR-2009-Armenia-EN.pdf> (accessed on 13 September 2012)

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

Unaccompanied Minors
 Integration
 Migrants' Rights.Non-discrimination
 Measures to Combat Irregular migration and penal framework of Irregular Migration
 Trafficking
 Asylum and Migrant Accommodation
 Refusal of Entry
 Return
 Expulsion
 Readmission
 Migration Data and Statistics, Data Protection
 Inter-State cooperation on migration and asylum
 Movement of Workers
 Armenia – EU Cooperation in the field of Migration and Asylum: EU – Armenia Mobility partnership;
 EU – Armenia Visa Facilitation; EU – Armenia Readmission.

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 Combating 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:

- ⇒ EU – Armenia Partnership and Cooperation Agreement
- ⇒ ENP Action Plan
- ⇒ Eastern partnership
- ⇒ EU – Armenia Draft Association Agreement
- ⇒ EU – Armenia Mobility partnership Agreement
- ⇒ EU – Armenia Visa Facilitation Draft Agreement
- ⇒ EU – Armenia Readmission Draft Agreement
- ⇒ Draft Deep and Comprehensive Free Trade Agreement

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”*¹¹³² and the *“2012 – 2016 National Plan of Action for Implementing the Strategy.”*¹¹³³
- 🌐 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.
- 🌐 *“Yerevan Zvartnots International Airport Aviation Security Report”*¹¹³⁴.
- 🌐 *“Biometrics Needs Assessment Report”*¹¹³⁵. Provided technical guidance for to introduction of electronic Machine Readable Passport and an electronically enabled identity card.
- 🌐 *“Migration Data Needs Assessment Report”*¹¹³⁶. Recommends coordinated way of collecting, exchanging and analyzing migration statistics as required by international and regional standards.
- 🌐 *“Border Management Needs Assessment Report”*¹¹³⁷. 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”*¹¹³⁸. 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”*¹¹³⁹, the full version of the study on *“Migration Management and Human Rights”*¹¹⁴⁰ was published as well in 2010.

¹¹³² Republic of Armenia, Concept for the Policy of State Regulation of Migration in the Republic of Armenia,” approved by minutes No. 51 of Armenian Government Session of 30 December 2010.

¹¹³³ Adopted by Decision of RA Government of November 10, 2011 N 1593-N “On Approving the Action Plan 2012-2016 for the Implementation of the Policy Concept for State Regulation of Migration in the Republic of Armenia.”

¹¹³⁴ Lockwood, Graham A. for the International Organization for Migration, *“Report on Aviation Security at the Yerevan Zvartnots International Airport,”* 2007.

¹¹³⁵ Kefauver, Barry and others, *“OSCE / IOM Assessment Report: National Action Plan for the Introduction of an e-Passport and ID Card in the Republic of Armenia,”* 2009.

¹¹³⁶ Manke, Marina for the International Organization for Migration, *Enhancing Migration Data Collection, Processing and Sharing in the Republic of Armenia: Needs Assessment and Gap Analysis Report*, International Organization for Migration, 2010.

¹¹³⁷ Prutsch, Franz for the International Organization for Migration, *“Armenia Technical Border Needs Assessment,”* 2011.

¹¹³⁸ Devillard, Alexandre for the International Organization for Migration, *Labour Migration Management in the Republic of Armenia: Needs Assessment and Policy Options*, International Organization for Migration, 2011.

¹¹³⁹ *“Migration and Human Development: Opportunities and Challenges. 2009 Armenia National Human Development Report”* United Nations Development Programme, 2009.

¹¹⁴⁰ Galstyan, Kristina, *“Migration Management and Human Rights.”* International Organization for Migration, 2010.

Background on EU-Armenia Association Process¹¹⁴¹:

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.

¹¹⁴¹ This section is taken from Rossi-Longhi, Pier, Kristina Galstyan and Franz Prutsch for the International Organization for Migration, *"Progress Review of Migration Management in the Republic of Armenia. Follow-Up on the 2008 Migration Management Assessment Report."* International Organization for Migration, 2011 / 2012.

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,¹¹⁴² 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.

¹¹⁴² 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

17:00 – 21:00	IOM Armenia Mission Staff Ms. Kristina Galstyan, Head of Project Development and Implementation Unit
---------------	---

Day 1. Monday, September 24, 2012

09:00 – 10:00	Office of the Human Rights Defender Mr. AshotGevorgyan, 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. Lusiné 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. TigranGalstian, 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. ArmanYeghiazarian, 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. Kariné Khachatryan, Advocate, Member of the Council

Day 2. Tuesday, September 25, 2012

09:15 – 11:00	Confederation of Trade Unions of Armenia Mr. Boris Kharatyan, Deputy Chairman
11:00 – 12:30	National Security Service Colonel Oleg Markosyan, Deputy Head of International Relations Directorate Mr. Gevorg Navoyan, Head, Division of Operation and Development of Border Management Information System, Directorate for Governmental Communications and Information; Lieutenant Gegham Yephrikyan, Engineer, Division of Operation and Development of Border Management Information System, Directorate for Governmental Communications and Information Mr. Tigran Adamyan, Senior Agent, Second Division (dealing with Irregular Migration) of the General Second Directorate of Counter-Investigation Mr. Narek Tumanian, Second Division (dealing with Irregular Migration) of the General Second Directorate of Counter-Investigation Mr. Mkhitar Mkrtchian, Senior Legal Adviser, Legal Department Mr. Tatu IGhukasyan, Junior Inspector, Legal Department Lieutenant Colonel Manvel Mayilyan, Deputy Head, Border Control Detachment, Border Guards Troops
14:00 – 15:45	Ministry of Labour and Social Issues Mr. Arayik Petrosyan, Deputy Minister, Ms. Anahit Martirosyan, Head of International Relations Department Ms. Lilit Dokhikyan, Deputy, Head of International Relations Department Mr. Armen Karoyan, Deputy Head, Legal Department Mr. Tadevos Avetisyan, Head, Department of Labour and Employment Ms. Lala Ghazaryan, Head, Department of Family, Women's and Children's Issues
16:00 – 17:30	State Employment Service of the Ministry of Labour and Social Issues Mrs. Sona Harutyunyan, Head Ms. Gohar Sokhikyan, Chief Specialist, Labour Information and Consultation Division; and Leader of the Training Group, State Employment Service

Day 3. Wednesday, September 26, 2012

09:15 – 10:45	Police of the Republic of Armenia General Directorate for Combating Organized Crime Colonel Rafael Zakarian, Head of General Directorate for Combating Organized Crime Mr. Serob Harutyunyan, First Deputy Head of General Directorate for Combating Organized Crime Major Armen Petrosyan, Head of Division for Combating Irregular Migration and for International Cooperation Major Robert Grigoryan, Head of Division for Combating Trafficking in Humans
11:00 – 12:30	Police of the Republic of Armenia Colonel Hovanes Kocharyan, Head of Directorate for Passports and Visas Mr. Hrachia Yeganyan, Deputy Head of Directorate for Passports and Visas
14:00 – 16:00	State Migration Service at the Ministry of Territorial Administration Mr. Gagik Yeganyan, Head
16:30 – 18:00	International Labour Organization Ms. Nuné Hovhannisyan, ILO National Correspondent

Day 4. Thursday, September 27, 2012

09:30 -11:00	Ministry of Education Dr. Kariné Harutyunyan, Deputy Minister Mr. Robert Abrahamyan, Head of Primary and High Specialized Education Department Ms. Lusiné Madoyan, Evaluation Specialist, National Academic Recognition Information Centre Ms. Lusiné Grigoryan, Deputy Head, Legal Department Ms. Tatevik Arakelyan, Head, Division for Developing Professional Education Policy, Higher and Post-Graduate Education Department Mr. Vahe Grigoryan, Head, International Cooperation Division, Department of External Relations and Relations with the Diaspora
11:00 – 12:30	Ministry of Health Ms. Ruzanna Yuzbashyan, Head, Health Programmes Division Ms. Kariné Saribekan, Head, Division for Maternal and Child Health Care Ms. Isabel Abgarian, Head of Legal Department Ms. Lena Nanushian, Head, International Relations Department Ms. Hasmik Safaryan, Leading Specialist, International Relations Department
14:00 – 15:30	Ministry of Justice Mr. Hamlet Navasardyan, Head of the Civil Status Acts Registration Agency Mr. ArgamStepanyan, Deputy Head, Civil Status Acts Registration Agency
15:45 – 16:45	State Revenues Committee Mr. Karen Beglaryan, Head, department of taxpayer services and tax procedures Mr. Ashot Arakelyan, Deputy Head, Department for combating contraband and for customs double check Mr. Gevorg Saghoyan, Head of Customs Supervision Department
17:00 – 18:00	E-Governance Infrastructure Implementation Unit CJSC (EKENG) Mr. Artur Ghulyan, Director Mr. Artiom Baghdasaryan, Project manager <i>(responsible for introduction of biometrics in Armenia)</i>

Day 5. Friday, September 28, 2012

09:15 – 10:30	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) Mr. Magnus Jansson, Resident Twinning Adviser Mr. Piotr Sadwoski, Migration Policy Department, Ministry of Interior and Administration of Poland
11:00 – 12:30	European Commission Delegation to Armenia Mr. Davit Avakian, Project Manager, Justice, Liberty and Security Sector
13:30 -- 14:45	United Nations High Commissioner for Refugees Mr. DamteWessalegn, Representative
15:00 -- 15:45	Ministry of Justice Mr. Karen Hakobyan, Head, Department for Legislation Analysis and Development
15:00 – 17:00	Ministry of Justice Mr. Armen Harutyunyan Adviser to the Chief Enforcement Officer, Court Executive Service
17:15 -- 19:00	Wrap-up meeting with IOM Mission in Armenia Ms. Kristina Galstyan, Head of Project Development and Implementation Unit

Mission Team

Mária Temesvári

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

Design and Layout: A. Mesropyan



ASOGHIK

Printed by “Asoghik” printing house
24 Sayat-Nova str., Yerevan (office)
45 Davit Malyan str., Avan (printing house)
Tel: (374 10) 54 49 82, 62 38 63
E-mail: info@asoghik.am

