



# UNISCI Discussion Papers

## A TALE OF TWO VISA REGIMES: REPERCUSSIONS OF ROMANIA'S ACCESSION TO THE EU ON THE FREEDOM OF MOVEMENT OF MOLDOVAN CITIZENS

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### Introduction

In many ways Moldova's<sup>3</sup> efforts to obtain a facilitated visa regime with (future) EU/Schengen states is a case of déjà vu across Europe. Moldova finds itself in the same situation as Russia, Ukraine and certain states of the Western Balkans were in before the 2004 enlargement, prior to becoming direct EU neighbours. Moldova has recently been requesting the EU to open talks on a facilitated regime, not only because Romania's accession to the EU in 2007 adds a sense of urgency to this issue, but also because neighbouring Ukraine is in the process of negotiating such a facilitated visa regime with the EU. Moldova and Ukraine both signed an Action Plan with the EU in February 2005 as part of the European Neighbourhood Policy. Finally, the Moldovan government would thereby also be able to present its electorate with tangible benefits resulting from the progress towards EU integration. However, so far Moldova's requests have not yet been granted by the EU. The EU has so far failed to set a date for opening the negotiations on a visa facilitated regime with Moldova.

The road towards a facilitated visa regime with EU/Schengen states or new EU member states which are in the process of implementing the Schengen acquis has already been taken by several states, such as Russia, Ukraine or Serbia and Montenegro<sup>4</sup>. Although Moldova's case presents certain peculiarities intrinsic to its special ties with Romania, it is interesting to look at the experiences of other states that have become EU neighbours after the 2004 EU enlargement, such as Ukraine or Serbia & Montenegro. It is also interesting to look at how the new member states such as Poland or Hungary tried to soften the effects of their gradual adoption of the Schengen acquis which implied the introduction of a very strict visa regime between countries where previously the free movement of people was not impeded by a strict

<sup>1</sup> *Las opiniones expresadas en estos artículos son propias de sus autores. Estos artículos no reflejan necesariamente la opinión de UNISCI.* The views expressed in these articles are those of the authors. These articles do not necessarily reflect the views of UNISCI.

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<sup>3</sup> For basic data on Moldova, see table 1 in Annex I.

<sup>4</sup> Ukraine is still in the process of negotiating a visa facilitation regime with the EU. However, Ukraine already has a facilitated visa regime with for instance Poland. Serbia & Montenegro does not have a facilitated visa regime with the EU, but there exist special visa provisions between for instance Hungary, a new EU member and Serbia & Montenegro. Russia has negotiated such an agreement on a reciprocal basis with the EU.



visa regime. The experiences of these new EU member states will also come to guide Romania in its formulation of a flexible visa regime for Moldova, to be implemented after Romania's accession to the EU in 2007, considering that Romania's accession will have a negative impact on the free movement of Moldovan citizens wishing to travel to Romania, but also to the entire EU.

A dialogue on a facilitated visa regime is usually initiated by the EU with certain states which were promised increased integration with the EU, such as for instance Russia or the states which fall under the European Neighbourhood Policy, such as Ukraine, Moldova, but also the Southern Mediterranean states and the states from the Southern Caucasus. The EU thereby recognises the need to pull down certain walls of fortress Europe which were in part also raised by the Schengen *acquis*. The EU has come to acknowledge the fact that such a rigid border and visa regime is detrimental the development and integration (whether social, economic or cultural) of the wider region encompassing on the one hand the EU and on the other all of the EU's neighbours.

An unintended effect of becoming part of the EU fortress with its rigid rules on border control and its visa regime, is that it undercuts many human, economic and social ties that exist on the European continent, most notably between new EU member states and those that are left out of the EU. Therefore, this brings about a search for bilateral arrangements, outside of the EU framework between a new EU state and its non-EU neighbour. There exists the example by which a new EU member such as Poland has established a flexible visa regime with its non-EU neighbour Ukraine. This visa regime is more flexible (or less rigid) in comparison to the visa regime that is imposed by the Schengen *acquis* through EU accession.

Therefore, one should distinguish between two processes which are ongoing at the same time and which is a direct consequence of the EU's enlargement to the East. New EU member states (e.g. Poland) usually attempt to maintain what is left of their 'open border' policy towards their non-EU neighbours (e.g. Ukraine or Belarus), whilst finding themselves in the process of adhering to the Schengen rules with its tighter border controls. At the same time the EU neighbours (e.g. Ukraine and soon Moldova) are in the process of negotiating a visa facilitation regime with the EU as a whole. Both processes can be seen as measures which seek to offset the negative effects of the EU enlargement process that is taking place throughout Eastern Europe.

Hence, the purpose of this paper is twofold. Firstly, from a Romanian perspective it is essential to look at the different modalities through which a facilitated visa regime was implemented by new EU member states with regard to their non-EU neighbours. This will be useful in drawing the contours of a possible Romanian – Moldovan visa regime. Secondly, from a Moldovan perspective – as a soon to be new EU neighbour – it is necessary to look at the experiences of how new EU neighbours achieved a facilitated visa regime with the EU/Schengen states and what lessons can be learned from these agreements. This should shed light on the steps which Moldova still needs to make in order to obtain a facilitated visa regime with the EU.



## 1. Which type of facilitated visa regime between Romania and the Republic of Moldova?

### 1.1. Setting the context

Romania has been attempting since Moldova's independence in 1991 to construct a privileged relationship with that country. This was also reflected in the liberal 'open border' policy applied by Romania until recently with regard to Moldova and this wish stems from certain historical and cultural factors. The Republic of Moldova had prior to 1812 been part of the Romanian principality of Moldova. The territory roughly comprised by the R. of Moldova had also been part of Romania during the interwar period. At that time, the people living on that territory were also Romanian citizens. The tight cultural relations stem from the fact that at least 65% of the Moldovan population is ethnic Romanian and speaks the Romanian language and is thereby sharing the same cultural traditions (literature, art, religion, etc.). This is for instance reflected in the many thousands of Moldovan students who study in Romanian universities or other cultural exchanges and economic activities. After 1989, there had even been talk of a reunification between Romania and Moldova along the lines of the German reunification. Therefore, although Romania is constrained by its accession to the EU to introduce a visa regime with Moldova, it is looking at ways to make this visa regime as flexible as possible with as little restrictions as possible for the Moldovan citizens.

Despite this, a recent opinion poll shows that there seems to be a discrepancy between the wishes of the Romanian leadership and the Romanian population. In a recent opinion poll on Romania's foreign policy<sup>5</sup>, 42% of respondents stated that the EU decision through which Romania will need to introduce visas for Moldovan citizens should be respected. Only 23% declared to be against this measure even if Romania would run the risk of jeopardising its relations with the EU. A further 16% of respondents consider it necessary for Romania to introduce a visa regime for Moldova even if the EU would not impose such a measure. However, Romanian authorities do not want the new visa regime to become a sour point on the bilateral agenda with Moldova. Bilateral relations have only picked up since a year, after the parliamentary elections in November 2004 in Romania, and the Romanian leadership would like to maintain the present level of trust between both sides, including through concrete measures. From this point of view, therefore, Romania's effort to accommodate the requirements of its EU accession with the wishes of the Moldovan authorities regarding a facilitated visa regime is perfectly understandable.

The fact is that a facilitated visa regime between Romania and Moldova will not replace a more restrictive visa regime. Instead, it will introduce more restrictions than was previously the case. Romania's (planned) accession to the EU has had a negative impact on the Moldovans' freedom of movement. From a full open border policy, Moldovan citizens were required to show a valid passport for crossing into Romania from 2002. The introduction of visas by Romania will definitely represent a serious regression for Moldovans who have become accustomed to travel rather freely into Romania. Romania is currently the only country in Europe to the west of Moldova to where Moldovan citizens can travel freely without a visa. Hence, Romania's task is to ensure that the visa regime it puts in place becomes nothing more than a simple formality. In other words Romania needs to devise a visa regime 'light', but which is also capable of dispelling any EU concerns with regard to border controls and illegal migration.

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<sup>5</sup> Sever Voinescu and Gabriela Dobre (2005), *Perceptia opiniei publice din România asupra politicii externe si a relatiilor internationale*, Institute for Public Policy / Bucharest, p. 51.



Three types of agreements for a facilitated visa regime between Romania and Moldova will be discussed below, i.e. the Polish and the Hungarian types of agreements and a third, mixed type that could be implemented after Romania becomes a fully-fledged Schengen state.

Presently, Moldovans who wish to enter into Romania do not require a visa, but only a valid Moldovan passport. Due to Romania's planned accession to the EU, this will not be the case for much longer. Romania's eastern border with Moldova and Ukraine will become the EU's eastern border from 2007. Romania has agreed to work out a visa regime for Moldova by early 2006 and Bucharest and Chisinau are currently negotiating the introduction of a facilitated visa regime for Moldovan citizens. The new visa regime will only be applied starting from the date of Romania's accession to the EU, presumably on 1 January 2007.

Accepting the Schengen *acquis* is mandatory if a new state wants to join the EU. Therefore, Romania has accepted the Schengen *acquis* even before its accession to the EU. Unlike certain 'old' member states like the United Kingdom and Ireland, all newcomers are confronted with the obligation to accept the Schengen's rigid visa regime regardless of any privileged relations between them and a non-EU state<sup>6</sup>. This is explicitly mentioned in Article 8 of the protocol incorporating the Schengen *acquis* in the framework of the EU *acquis*: "For the purposes of the negotiations for the admission of new member states into the European Union, the Schengen and further measures taken by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all States candidates for admission." Thus, even prior to becoming a member of the EU, a newcomer like Romania is thereby forced to reorient its policy with regard to visa regime and border control, even towards a state like Moldova, with which it would ideally like to maintain an open border.

Full membership to Schengen requires an implementation process which could last several years and is based on the concept of 'two accession dates' or Schengen I and Schengen II.<sup>7</sup> During the first stage, once Romania accedes to the EU it will have to implement the supportive measures of the Schengen *acquis*. The second stage will consist of the Romania's full accession to Schengen and will represent an eastward shift by the Schengen border to Romania's eastern border. This goes to show that the "EU itself has opened the way for certain elements of flexibility by its own insistence on a two-step procedure before the new member states fully accede to Schengen".<sup>8</sup>

It is expected that the Schengen border which is currently still separating the old from the new EU members will gradually reach the Romanian-Moldovan border somewhere between 2010 and 2012.<sup>9</sup> This gradual eastward shift of the Schengen border can be visualised in maps 1, 2 and 3, in Annex II. Romanian Interior Minister Vasile Blaga recently stated that Romania is aiming to become a Schengen state by 2010.<sup>10</sup> Until then, Romania will have put in place a

<sup>6</sup> For a more detailed discussion of the restrictive nature of the Schengen *acquis*, see Joanna Apap; Sergio Carrera and Kemal Kirisci: "Turkey in the European Area of Freedom, Security and Justice", *EU-Turkey Working Papers*, No. 3 (August 2004).

<sup>7</sup> Joanna Apap and Angelina Tchordadjyska: "What about the Neighbours? – The impact of Schengen along the EU's external border", *CEPS Working Document*, No. 210 (October 2004), p. 7.

<sup>8</sup> Apap; Carrera and Kirisci, op. cit., p. 41.

<sup>9</sup> New EU member states such as Hungary and Poland are expected to become Schengen states by the second half of 2007, in other words, three and a half years after their accession to the EU. Therefore, it is safe to assume that Romania will also become a Schengen state at the latest by 2012, in case the safety clause is triggered and Romania's accession to the EU is delayed by a year.

<sup>10</sup> Romanian Ministry of the Interior: "Romania isi propune sa devina stat Schengen pana in 2010", *Press Release*, 11 January 2006, in [http://www.mai.gov.ro/Documente/Prima%20Pagina/BI%20intalnire%20ministru\\_11%20ian.pdf](http://www.mai.gov.ro/Documente/Prima%20Pagina/BI%20intalnire%20ministru_11%20ian.pdf).



flexible visa regime for Moldovan citizens that will be distinct from the future EU-Moldova facilitated visa regime. Of course, the remote possibility exists that by then (2010-12), Moldova will be moved from the EU visa 'black list' to the 'white list'.<sup>11</sup> In the meantime, however, Moldova will seek to negotiate a flexible visa regime with the EU/Schengen states (see section 2 of this paper).

The future visa regime between Moldova and the EU will eventually also come to regulate the Romania-Moldova visa regime once Romania becomes a fully-fledged Schengen state. A facilitated visa regime between the EU and Moldova could be in place by the end of 2008 assuming that negotiations between the EU and Moldova on a facilitated visa regime will start throughout 2006 and will be finalised by the end of 2007. Moldova has not yet negotiated a facilitated visa regime with the EU or Romania, but it is to be expected, however, that the Romanian-Moldovan visa regime will be more flexible than an eventual EU-Moldova visa regime.

Eager to maintain the special relationship between both countries and their respective citizens, the Romanian authorities have declared that the visa regime with Moldova will be as flexible as possible. In July 2005, President Basescu even referred to Moldova as a state which has a population which is part of the Romanian people.<sup>12</sup> Therefore, Romania is looking at possible measures to soften the effects of the introduction of a visa regime with Moldova so as to limit its negative impact on people-to-people contacts, cultural exchanges and cross-border trade as much as possible.

Prior to proceeding with negotiations with Moldova, Romania consulted with the EU regarding the introduction of a facilitated visa regime with Moldova, as opposed to putting in place a strict Schengen visa regime<sup>13</sup>, before proceeding with negotiations with Moldova on this issue. The Romanian authorities have declared on several occasions that the new visa regime with Moldova will probably be modelled after the Polish-Moldovan visa regime. Therefore, it is useful to take a closer look at the Polish-Moldova visa regime.

## **1.2. The Polish flexible visa regime**

Poland introduced a flexible visa regime with regard to its Eastern neighbours (Ukraine, Moldova, Russia and Belarus) in view of its accession to the EU in 2004. Poland is due to introduce Schengen requirements with regard to entry on its territory by late 2007. Poland devised this flexible visa regime in order to disrupt as little as possible the people-to-people contacts with its neighbours and in particular with certain border regions, with which Poland often shares historical, cultural, economic and social ties. Seasonal labour and cross-border trade between Poland and these border regions is also vital for the border regions' economic survival.

Romania finds itself in a very similar situation with regard to Moldova. In addition, due to its small size, Moldova can almost be considered as a border region in itself. The

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<sup>11</sup> Therefore in parallel to negotiating a facilitated visa regime with the EU, the Moldovan authorities should consider looking at which steps countries like Bulgaria or Romania took in order to be removed from the EU's visa 'black list' in 2002. This could possibly imply a clear sign from the EU as regards Moldova's membership perspectives.

<sup>12</sup> Boris Vieru: "Interview with the Romanian President, Traian Basescu", *Gazeta Româneasca*, 3 July 2005.

<sup>13</sup> *Ibid.*



introduction of a local border traffic visa regime is of no particular importance in this case as a flexible visa regime covering the entire Moldovan territory would have virtually the same effect. Therefore, the Polish type of visa regime would appear as the most suitable for the Romania-Moldova duo. Despite certain shortcomings the Polish type is certainly more flexible when compared to the requirements for obtaining a Schengen visa.

Poland issues short-term single entry visas to Moldovan citizens free of charge since May 2004, when Moldova also abolished the visa requirements for Polish citizens. Before that, the Polish authorities had kept the visa fee at a small amount of 10 dollars (8.2 euros). In comparison a Schengen visa costs around 35 euros. The Polish-Moldovan visa regime is modelled after the Polish-Ukrainian visa regime and Polish authorities pride themselves that they have put in place a very flexible and efficient visa regime with both Moldova and Ukraine. There are very few complaints by applicants for a Polish visa and only a minuscule fraction of total applications are rejected. In 2004, for instance, Poland received around 500,000 visa applications from Ukrainian nationals of which only about 0.5% were refused.<sup>14</sup> Roughly the same percentage of rejected visa applications is also true for Moldovan nationals.

The Polish – Moldova visa regime also presents certain restrictive elements. In particular, the Moldovan applicant must obtain an invitation from Poland and be in possession of a passport which must remain valid at least thirty days after the expiration of the visa. In addition, Polish visas are not available at Polish border crossings but can solely be obtained at the Polish Embassy in Chisinau. The visa is only issued after a period of 15 days after the application has been introduced.<sup>15</sup>

Therefore, despite a very flexible Polish visa regime it remains doubtful that its adoption by Romania will fully satisfy the Moldovan partners. Perhaps the Polish model reflects the scale of Polish bilateral relations with Moldova, but it hardly reflects the aspirations and ambitions of the Romanian-Moldovan relationship. In addition, unlike Poland and Moldova, Romania and Moldova are direct neighbours. Especially Moldovan citizens are likely to expect more flexibility and a smooth application process without any bureaucratic hurdles from their Romanian counterparts.

A slightly ‘improved’ version of the Polish model that incorporates the following elements could be taken over by the Romanian authorities so as to:

- scrap the measure by which an invitation from Romania would be necessary
- provide for the possibility of online applications for visas for bona fide persons who need a visa very frequently;
- issue visas in a fast-track procedure, which should not last more than seven days;
- allow bona fide persons to obtain their visa on the spot (i.e. sticker visas);
- make the visas available at border crossings (this would also have the advantage of making a separate local border traffic visa regime unnecessary);

<sup>14</sup> Interview with an EU diplomat, Brussels, 15 December 2005.

<sup>15</sup> “Consiliul Mondial Român considera ca autoritatile române îi umilesc pe românii basarabeni”, *Romanian Global News*, 22 November 2005, in [www.rgnpress.ro](http://www.rgnpress.ro).



- allow the categories of persons that travel frequently to Romania (i.e. students, academic staff, journalists, NGO staff, businessmen, clergy, etc.) to easily obtain long-term multiple entry visas (of at least one year) and facilitate the renewal process as much as possible.

## 1.2. The Hungarian flexible of visa regime

Another interesting type of agreement useful to this analysis is the visa regime applied by Hungary towards citizens from Ukraine and Serbia and Montenegro, two states with large Hungarian minorities. Through these visa agreements, the Hungarian government has been attempting to reconnect culturally and socially the Hungarian minorities living around Hungary with the Hungarian motherland.

Prior to its EU accession in 2004, Hungary concluded separate visa agreements with Ukraine and Serbia & Montenegro in the autumn of 2003. The new visa agreements between on the one hand Hungary and Ukraine and Serbia & Montenegro on the other contain a special Schengen clause which states that the agreement will only last for a certain period of time, until Hungary becomes a fully-fledged Schengen state in 2007.<sup>16</sup> Since Hungary does for the time being not issue Schengen visas to Ukrainian and Serbian & Montenegrin citizens, the visa fee and the procedure for obtaining the Hungarian national visa are left at the discretion of Hungary.

Another important element of the Hungarian type of visa agreement with these two states is that this agreement puts in place an asymmetric visa regime, meaning that Hungarian citizens do not require a visa to enter Ukraine or Serbia & Montenegro. Ukraine has unilaterally abrogated its visa regime for EU citizens. In the case of Serbia & Montenegro, it is specifically stated in the bilateral visa agreement with Hungary that Hungarian citizens shall benefit from visa free travel to Serbia & Montenegro. In addition, Hungarian visas are issued to citizens from these two countries free of charge. Further, certain categories of citizens from these two countries do not require a visa. These categories for instance include holders of diplomatic passports, aviation crews and rescue teams. The visas issued are either single or multiple entry visas and are valid up to a year.

Recently, the Hungarian government introduced a bill on the amendment of Act XXXIX of 2001 on the "Entry and Stay of Foreign Nationals, adopted by the Hungarian parliament on the 6<sup>th</sup> of June 2005.<sup>17</sup> As of January 2006, Hungary makes available national multiple entry visas, valid for up to five years to bona fide persons. These visas are primarily destined to the members of the Hungarian minority, living in compact groups in the regions around Hungary's borders. However, they do not exclude members from other ethnic groups, provided that the applicants can demonstrate that they maintain certain social, cultural or economic ties with Hungary. The visas are not issued for professional, educational or scientific purposes.

The Hungarian visa regime presents two very interesting elements which could be used in a future Romania-Moldova visa regime. Firstly, the visa regime is asymmetric. Romanian citizens should continue to be able to travel on a visa free basis to Moldova, even if Moldova

<sup>16</sup> Interview with an EU diplomat, Brussels, 12 December 2005.

<sup>17</sup> Hungarian Ministry of Foreign Affairs, *Renewed Nation Policy*, in [http://www.mfa.gov.hu/kum/en/bal/foreign\\_policy/nation\\_policy\\_affairs](http://www.mfa.gov.hu/kum/en/bal/foreign_policy/nation_policy_affairs).



maintains a visa obligation for EU citizens in the foreseeable future. This element should be specified in a future Romanian-Moldovan visa regime. Secondly, Hungarian national visas for Ukrainians and Serbians & Montenegrins are also free. Romania should also make its national visa available to Moldovan citizens for free.

Hungary's liberal visa regime with Ukraine and Serbia & Montenegro includes certain elements which seek to maintain close cultural, economic and above all social ties with the ethnic Hungarians living around Hungary's borders. These elements are less interesting for a future Romanian-Moldovan visa regime for two reasons enumerated below.

Firstly, whereas this visa regime contains elements meant to benefit a specific minority population in a third country, Romanians/Moldovans form the majority population in Moldova. Romania does not seek to devise a visa regime along ethnic lines but instead aims to introduce a comprehensive visa policy with regard to Moldova which would encompass all Moldovan citizens irrespective of ethnicity (or proximity to the Romanian border). Secondly, the Hungarian visa regime is too restrictive with regard to the purpose of the visit. Romania's visa policy with regard to Moldova should be truly comprehensive and refrain from introducing restrictions on the type of activities (social, cultural, religious, etc.) that can be performed in the visited country. There are, for instance, already a lot of seasonal workers from Moldova who work in Romania's agriculture. The future Romanian visa policy should not act as a break on such small-scale economic activities.

A final feature from this visa regime, however, which could be retained by the Romanian authorities for incorporation into a visa agreement with Moldova is the maximal longevity of the visa. The visa is valid for up to five years and allows multiple entries. The Hungarian authorities, hereby, recognise the fact that in order to maintain social, cultural and economic ties with the 'motherland' the visa regime, though selectively granted to bona fide persons, should be made as flexible as possible with regard to the duration and the number of entries. Here again, the categories of Moldovan citizens which should benefit from such a measure should be students, academic staff, NGO staff etc.

### **1.3. After Romania's Schengen accession: A mixed type of visa agreement?**

A measure which Romania could consider after it becomes a Schengen state in 2010 and once the Schengen border will be placed on the Romanian-Moldovan border, is to introduce a mixed model between visas of limited territorial validity (VLT) and long-term national visas (LTNV), explained below. This measure could certainly be considered if a future EU-Moldova agreement on a facilitated visa regime (which would also include Romania) does not prove flexible enough. If such a future agreement represents a regression in terms of freedom of travel between Moldova and Romania, Romania should move in this direction and establish a kind of privileged visa agreement with Moldova by possibly introducing a mixed type of visa regime encompassing features from the VLTs and LTNVs.

VLT are allowed under certain conditions by the Schengen agreement.<sup>18</sup> These visas are only valid for the Schengen state whose representative issued the visa. Or it can also be valid for other specifically-named Schengen states. The VLT does not grant rights of access or transit through the territory of any other Schengen states. The problem with such visas lies in

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<sup>18</sup> Apap and Tchorbadjiyska, *op. cit.*, p. 6.





the fact that they have only been used in a very limited fashion and usually for humanitarian reasons. However, according to article 9, section 2 of the Schengen *acquis*<sup>19</sup>, such visas can also be used in the national interest, though be it in exceptional cases. Thus, they have previously been used by Greece between 1992 and 1997, the year of Greece's full accession to Schengen, in order to facilitate access to its territory by citizens from its non-EU/Schengen neighbours to the north. Romania could certainly consider making use of such visas out of national interest in view of its tight social, cultural and economic relations with Moldova.

These VLTV should also receive the characteristics of LTNVs, otherwise there is little point in Romania adopting a different visa regime with regard to Moldova than the one which will be in place between the EU and Moldova. Hence VLTV/LTNVs should be valid for longer than 90 days and should be multi-entry. LTNVs usually also grant the right to transit through the territory of other Schengen states for a period of not more than five days. This characteristic could be scrapped from our hybrid VLTV/LTNV model for two reasons. Firstly, Moldova is bordering on Romania and therefore Moldovans do not need to transit through other Schengen states to access Romania. Hence, scrapping the 5-day transit provision would certainly be considered by the EU as a measure of good faith coming from Romania and Moldova. Secondly, Moldovan citizens can apply for short-term Schengen visas covering the EU/Schengen states which will in the future also include Romania. Therefore, the hybrid VLTV/LTNV model could be considered once Romania becomes a fully-fledged Schengen state and would serve the purpose of granting Moldovan citizens a long-term access to the Romanian territory.

#### 1.4. Problematic Aspects

At this point in the paper it is necessary to highlight two aspects that will become increasingly problematic once Romania puts in place a visa regime, however flexible, with regard to Moldova.

##### **A) Obtaining Schengen Visas**

Once Romania introduces a visa regime for Moldovan nationals it will become more difficult for Moldovans to obtain a Schengen visa. This is due to the fact that currently only two EU member states that are also Schengen states have embassies in the Moldovan capital, Chisinau: France and Germany. Of these two, France's consular office remains rather reluctant to issue Schengen visas. Hence, in practice there is only one Schengen state actually issuing Schengen visas in Moldova and that is Germany. Of course, this situation may change in due time, especially after Romania joins the EU.

However, if Moldovan citizens need to obtain a Schengen visa for entry into another Schengen state, for instance Belgium, they need to travel at least two times (once to apply, twice to retrieve their visa) either to Bucharest, in Romania or Kyiv, in Ukraine, in order to obtain their visa. Thus, except for the application process to obtain a Schengen visa for a state other than France or Germany, a Moldovan citizen will from 2007 once Romania introduces a

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<sup>19</sup> European Commission, "The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985", in [http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922\(02\):EN:HTML](http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922(02):EN:HTML).



visa regime also have to apply for a Romanian visa in order to go to Bucharest and obtain the Schengen visa. In other words, Romania's accession to the EU will become a serious impediment to the freedom of movement of the Moldovan citizens. Of course, Moldovan citizens will still have the possibility to travel to Kyiv in Ukraine to retrieve their Schengen visa.

It may look ridiculous to have to travel to a neighbouring country several times in order to obtain a visa for a third (EU) country, but apparently there exist no solutions to such a situation in the immediate future. It is of course nonsense to review the Schengen acquis so as to allow a Moldovan citizen with a German Schengen visa to enter the Schengen territory through any other Schengen state. In addition, the present situation can only encourage illegal migration from Moldova and this, exactly, is what the EU fears and seeks to address with its tight border controls and rigid visa regime. However, it does not seem fair to put in place a strict visa regime without also providing the necessary means to issue Schengen visas. EU member states should seriously address this issue and offer the possibility to Moldovan citizens to obtain a Schengen visa in more than just one or two EU embassies.

Poland, Hungary, Lithuania and the Czech Republic have an embassy operating in Chisinau. It is expected that as of the end of 2007, these four countries will also start issuing Schengen visas, thus bringing the total number of Embassies issuing Schengen visas to six. However, this is not enough. Unavoidably, once Romania becomes a Schengen state in 2010, Moldovan citizens will tend to apply for a Romanian Schengen visa which will grant them access via Bucharest to the enormous Schengen *hinterland*. But until then, the Moldovan tourist, student or migrant will find it increasingly difficult to enter the EU lawfully. This remains diametrically opposed to the stated aims of the European Neighbourhood Policy that strives to achieve a closer integration between the EU and its neighbours, including Moldova and its citizens.

## **B) Issuing Romanian passports**

Romania also disposes of the possibility to issue Romanian passports to the Moldovan citizens, considering that the latter have the right to hold a dual citizenship. Romania justifies this policy on the grounds that during the interwar period, the Moldovan citizens living presently on the territory of the Republic of Moldova were once Romanian citizens or had (grand-)parents with a Romanian citizenship. These former Romanian citizens were abusively deprived of their Romanian passports by the soviet authorities after the second world war.

Hence, the debate surrounding the type of facilitated visa regime between Romania and Moldova, is further complicated by the fact that quite a large number of Moldovan citizens hold a Romanian passport. A Romanian passport is more interesting than a Romanian visa, because Romanian visas only grant access to the territory of Romania, whereas a Romanian passport grants access to the EU/Schengen states.

From 1999 to 2002 the Romanian state was issuing Romanian passports to Moldovan citizens using a fast-track application procedure. There are no official numbers, but estimates suggest that presently between 200.000 to over half a million Moldovan citizens also hold a Romanian passport. Since, 2002 Romania has virtually halted the process of issuing Romanian passports to Moldovan nationals after receiving clear signals from the EU that this could complicate Romania's accession process. However, President Basescu recently stated



that ensuring a flexible visa regime is complementary to a reconsideration of issuing Romanian passports to Moldovan citizens using the fast-track procedure.<sup>20</sup> Therefore, it should not be excluded that the issuing Romanian passports to Moldovan citizens will pick up again after Romania's accession to the EU. In order to prevent this, the EU might consider introducing an even more flexible visa regime with Moldova or a visa free regime with Moldova altogether. It should be noted that the Bulgarian, Russian and Ukrainian authorities are also very active in issuing their respective passports to the Moldovan citizens.

## **2. Time for an EU – Moldova facilitated visa regime?**

### **2.1. Setting the context**

The EU (including the EU accession states) has been pursuing a differentiated visa policy towards each of four neighbouring states to the east: Russia, Ukraine, Belarus and Moldova. Two of these states, Moldova and Ukraine have signed an Action Plan with the EU in the framework of the EU's Neighbourhood Policy.

Two of the EU's Eastern neighbours have or are in the process of obtaining a facilitated visa regime with the EU. Russia has already negotiated a facilitated visa regime with the European Union and Ukraine is currently negotiating a future agreement on facilitated visa travel into the EU for its citizens.

Belarus, due to its domestic political situation and to the content of the EU-Belarus relationship, is in no position to request a facilitated visa regime from the EU, although it states in its 2006-2010 Program on Social and Economic Progress that it favours a visa-free agreement with the EU in the long term.<sup>21</sup>

Moldova is not an EU neighbouring state yet, but this will be the case as of 1 January 2007 with Romania's accession to the EU. However, geography has certainly not been the overarching element in the EU's unwillingness hitherto to initiate a dialogue with Moldova on a facilitated visa agreement. On the other hand the Romania's planned accession to the EU has already had a negative impact on the Moldovans' freedom of movement in that border controls at the Romanian border have over the past few years been gradually tightened.

The present political climate in the EU does make the access to a facilitated visa regime a thorny issue. The EU is becoming less eager to play host to 'outsiders', following the terrorist attacks in Madrid (2004) and London (2005). The failure to adopt the Constitution in France and the Netherlands has implications, not only for the enlargement debate, but also more generally for the degree of openness of the EU's borders and the consequently perceived threat to its security and economy. In such a European context therefore it should be stated from the onset that it is not easy to negotiate a visa facilitated regime considering that the visa question touches upon several issues which are at the core of the EU's security. These issues include legal and illegal migration, cross-border traffic, seasonal work, readmission agreements, etc.

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<sup>20</sup> Vieru, *op. cit.*

<sup>21</sup> "Belarus advocates visa-free procedures with EU", *Kommersant*, 5 January 2005, in <http://www.kommersant.com/page.asp?id=-7875>.



A neighbouring state can in this context only expect to obtain a visa facilitated regime if it can offer something in return or if it can prove that it is a stable country with secure borders. Moldova has presently not much to offer the EU in economic terms and regarding the security of its borders it was necessary to call in an EU Border Assistance Mission as of 1 December 2005 to secure Moldova eastern border and the Transnistrian segment in particular. In addition, the EU is also in a position to use the granting of a visa facilitated regime as a tool of conditionality for more internal reform in those countries which have signed an EU Action Plan. Moldova should follow Ukraine's example and gear all its efforts into obtaining such a facilitated visa regime with the EU, especially considering that in less than one year it will become a direct EU member.

Following Russia's example is pointless considering Russia's sheer size and political as well as economic influence. Russia and the EU have developed a privileged dialogue on a number of issues, including on visas. The Kaliningrad Oblast which is entirely surrounded by EU member states, was also a major catalyst for this dialogue and negotiations on visa facilitation lasted five years.

## **2.2. Lessons from the Ukraine – EU visa dialogue**

Ukraine and Moldova fall under the EU's Neighbourhood Policy and both have signed an Action Plan with the EU at around the same moment, in February 2005. It seems surprising therefore, that Ukraine is several steps ahead of Moldova as regards its visa regime with the EU. Moldova is a much smaller country than Ukraine, with about 4 million citizens compared to Ukraine's 47 million. One would expect the EU to grant more rapidly a facilitated visa regime to a state with a small rather than a large population. In addition, many Moldovans who wanted to go abroad, including in the EU, whether legally or illegally, have by now already left. Therefore, a facilitated visa regime would not bring along an invasion of the EU with cheap Moldovan labour. Things become clearer, however, when one takes a closer look at why Moldova has been left behind compared to Ukraine on the issue of a facilitated visa regime with the EU.

One could easily argue that the EU has rushed into such visa negotiations with Ukraine because of political reasons. The EU is eager to show a sign of goodwill towards Ukrainian authorities in return for more political and economic reforms. At the same time, easing the visa restrictions for accessing the EU is an extremely visible and tangible measure on the part of the EU towards the Ukrainian citizens. The political element lies in the fact that this comes in advance of the Ukrainian parliamentary elections which will be held in March 2006. The EU intends thereby to encourage the Ukrainian electorate to maintain the momentum of the Orange revolution. However, the new visa regime between the EU and Ukraine is not expected to enter into force before early 2007.<sup>22</sup> Therefore, the EU's readiness to negotiate a new visa regime with Ukraine at this point in time is less political than it looks and other reasons must be sought.

When comparing the Ukrainian and the Moldovan Action Plans, there exist substantial differences with regard to the bilateral dialogue on the visa regime with EU. The Ukrainian Action Plan states the parties' intention to start negotiations on the conclusion of the visa

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<sup>22</sup> Jakub Boratynski; Grzegorz Gromadzki and Olexander Sushko (2005): *How to make a difference? EU-Ukrainian negotiations on facilitation of visa regime*, Stefan Batory Foundation / Warsaw-Kyiv, in [www.batory.org.pl](http://www.batory.org.pl).



facilitation agreement before the EU-Ukraine Summit on the 1<sup>st</sup> of December 2005. The EU-Moldova Action Plan is less explicit on this issue and only states the intention to pursue a dialogue concerning cooperation on visa policy. The first round of EU-Ukrainian negotiations on this issue was held on 21 and 22 November in Brussels. During the first round, both parties agreed on a number of principles on which the negotiations would be held: the simplification of visa procedures; the unification of visa fees by the consular missions of the EU member states as well as the categories of persons exempt from visa fees or visa requirements; the introduction of multiple-entry long-term visas.

A further element has played strongly in the favour of Ukraine and is lacking in Moldova's approach towards the EU. The EU received a strong political signal on the part of the Ukrainian authorities, who decided to unilaterally abrogate visa requirements for EU citizens wishing to enter Ukraine. Thereby, Ukraine gave up the principle of reciprocity which usually governs such agreements. President Yushchenko introduced on 31 March 2005, on a temporary basis, a visa-free regime for EU and Swiss citizens. On 28 July 2005 a presidential decree introduced a permanent visa-free regime of travel to Ukraine from 1 September 2005. If Moldova were to give up on the principle of reciprocity and also introduce such a visa-free regime, perhaps the EU would find the time and the resources to start negotiating a facilitated visa regime with Moldova.<sup>23</sup>

Two more elements play in Ukraine's favour that are totally lacking on the Moldovan side. In December 2001 an EU-Ukraine Action Plan in Justice and Home Affairs (JHA) was adopted, including a scoreboard on progress with implementation deadlines. The EU and Ukraine since then cooperate to amongst others improve migration management, including readmission, to strengthen border management, and to intensify the fight against trafficking in human beings.<sup>24</sup> The EU-Ukraine Action Plan under the European Neighbourhood Policy (ENP) has only come to strengthen an already existing cooperation on matters of JHA. Very importantly in this regard is that Ukraine has since 2001 already started negotiations on a readmission agreement with the EU. This, again, has been crucial in the EU's willingness to start negotiations on a facilitated visa regime with Ukraine, since the EU tends to couple progress in negotiations on visa facilitation and progress in negotiations on readmission. Due to the large scale of migration from Moldova, the EU is particularly interested in a readmission agreement with Moldova and this is reflected in the EU-Moldova Action Plan. Therefore, as long as Moldova does not consider entering into a readmission agreement with the EU and Moldova's neighbouring states, it is unlikely that the EU will initiate negotiations on a facilitated visa regime with Moldova.

### **2.3. Shortcomings of the Moldova – EU dialogue**

Looking at the Ukraine-EU dialogue on visa facilitation is useful in pinpointing the shortcomings of the Moldova-EU dialogue on the same issue. Shortcomings appear to be mainly on the Moldovan side. If Moldova were to follow Ukraine's example in starting negotiations with the EU on a facilitated visa regime, Moldova should:

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<sup>23</sup> According to sources within the European Commission, the EU lacks staff and time to negotiate a facilitated visa regime simultaneously with Ukraine and Moldova. Considering, that negotiations with Ukraine could continue well into 2006, this would leave sufficient time to Moldovan authorities to consider introducing a visa-free regime for EU citizens.

<sup>24</sup> European Commission, "European Union-Ukraine Action Plan on Justice and Home Affairs", in [http://www.europa.eu.int/comm/justice\\_home/fsj/external/ukraine/fsj\\_external\\_ukraine\\_en.htm](http://www.europa.eu.int/comm/justice_home/fsj/external/ukraine/fsj_external_ukraine_en.htm).



- firstly, start negotiations on a readmission agreement with the EU and the EU accession and association states and with its neighbours in general;
- secondly, abolish visas for EU citizens and opt for an asymmetric visa regime with the EU; this will have the beneficial effect for Moldova of increasing its revenues through tourism, trade and investment from and with the EU.

The fact that the EU-Moldova Action Plan does not explicitly state that negotiations on a facilitated visa regime will start at a certain point in time should not deter the Moldovan authorities from taking steps which would eventually lead to such an agreement. As seen above, Ukraine has since 2001 been working on this issue. This does not necessarily mean that Moldova should also sign a JHA Action Plan with the EU. It should be mentioned again, however, that Ukraine is already an EU neighbour since May 2004, whereas Moldova will only become a neighbour in January 2007, three years after Ukraine. It should also be mentioned that the frozen conflict in Transnistria does not play in Moldova's favour: smuggling activities and trafficking in human beings from and via Moldova is exacerbated by this conflict and Moldova's borders are not yet considered fully secure. Therefore, the EU sees it more fit to firstly secure Moldova's borders, by for instance sending a Border Assistance Mission to the Moldova-Ukraine border, and by addressing the problem of illegal or irregular migration, before initiating talks on regular migration.

It is imperative that Moldova takes the right steps first in order to appease EU's concerns, by for instance signing a readmission agreement with the EU. After that, Moldova could, similarly to Ukraine, show that it is ready to initiate talks on a facilitated visa regime with the EU, by abolishing visas for EU citizens. As for the EU, it should also take into consideration that Romania will soon introduce a facilitated visa regime for Moldovan citizens, as part of its accession process to the EU. This new visa regime with Moldova will be introduced by Romania upon its accession to the EU in 2007. Romania should assist the EU and Moldova where possible so as to render any future Moldova-EU negotiations on the issue of a facilitated visa regime more straightforward. Romania could for instance plead Moldova's case in Brussels by stating that it securely controls Moldova's western border, whereas the EU, through its Border Assistance Mission, is engaged in controlling Moldova's eastern border. Romania should, finally, share its experience with Moldova on how to be scrapped from the EU's visa black list. Romania was taken off the EU's black list of countries whose citizens need a visa to get into the EU in 2002, in other words about five years prior to its accession.

### Concluding remarks

The concluding remarks will be structured in the form of certain overarching recommendations in addition to the more detailed recommendations throughout the paper. These recommendations are addressed to the three main actors of this paper, i.e. Romania, the Republic of Moldova and the European Union. However, prior to that, two general observations need to be made or remade in order to resituate the conclusion.

Firstly, it should be mentioned that neither, Romania, Moldova nor the EU are facing processes that are unknown. As seen the EU is accustomed to negotiate facilitated visa regimes with a number of partner states. As regards Romania and Moldova, both can fall back on the experiences of several neighbouring states in order to devise a flexible visa regime. As



seen, certain states such as Poland and Hungary have successfully achieved to put in place such visa regimes with their neighbours, which alleviate to a large extent the conditions on border control imposed by EU membership.

Another observation would be that the type of visa regime which Romania will introduce with regard to Moldova will need to reflect the following scopes: the stated ambition of the bilateral relationship and the fact that it will only be a temporary arrangement until Romania becomes a Schengen state and/or until Moldova is removed from the EU's visa 'black list'. Besides being a temporary arrangement, the Romania – Moldova visa regime should not come to the detriment of the slowly flourishing bilateral ties between both states. The Romania – Moldova relationship has suffered enough setbacks since 1991 and can not afford other serious impediments.

There are a number of final and more general recommendations, some of which were already touched upon earlier, and which are useful to (re)consider for each of the three main actors:

**Romania.** It is necessary that Romania stays aware of the pivotal role it plays in both processes (the EU-Moldova and the Romania-Moldova visa dialogue). Romania has the ability to lobby the EU effectively with regard to the necessity for the EU to start negotiations with Moldova on a facilitated visa regime. Romania should be more persuasive in explaining the importance of its relation to Moldova for the EU, its own and Moldova's development. Romania should share its experience of border control with Moldova and reassure the EU as much as possible that Moldova's western border with Romania is totally secure. Whilst putting in place the new visa regime with Moldova, Romania should constantly be aware that this visa regime is not only detrimental for Moldovans wishing to enter Romania, but also to enter the EU/Schengen space. This new visa regime will represent a new hurdle for the Moldovans wanting to obtain a Schengen visa. Considering Romania's pivotal role in this issue, it would be really useful to consider holding regular trilateral meetings (EU-Romania-Moldova) on matters of Justice and Home Affairs.

**Moldova.** As regard the facilitated visa regime with the EU, it is mainly Moldova who has all the hard work and the convincing to do. As seen, Moldova imperatively needs to consider building up a web of readmission agreements with its neighbours and EU countries. A next step could be the abolition of the visa regime for EU citizens. Moldova should also not lose sight of the long-term goal of being dropped from the EU's visa 'black list' and undertake the necessary steps in that direction. More generally, Moldova needs to convince the EU that it is a stable and secure democracy. So far, Moldova has been trying hard to do just the contrary in order for instance to ensure the EU's involvement in solving the Transnistrian conflict. There is not much Moldova can do to solve the Transnistrian conflict on its own and a coordinated international effort is required. So, it is really not a matter of linking the resolution of the Transnistrian conflict to obtaining a facilitated visa regime with Moldova. However, what lies within the possibilities of the Moldovan authorities is to proceed with the steady implementation of the EU-Moldova Action Plan, in particular on issues such as migration, asylum, border controls, and economic and social reforms in general. Moldova needs to continue sending signals of its seriousness and commitment to closer integration with the EU and the EU will undoubtedly respond in accordance with Moldova's efforts.

**The European Union.** The EU is obviously the most influential of the three actors. It is due to Romania's accession to the EU that Romania in essence is forced to reorient its foreign



policy towards Moldova, by introducing visas for Moldovan citizens. It is also Moldova which requests facilitated visa travel to the EU, whereas the EU is not so much bothered about visa free travel for its citizens to Moldova. The EU is certainly intent on using this additional carrot to induce Moldova to enter readmission agreements and undertake further reforms in the sphere of Justice and Home Affairs. At the same time, the EU's reluctance to enter negotiations with Moldova on this issue also stems from the fact that the EU has currently overstretched its capacity for action in Moldova. In 2005, it already raised Moldova on its foreign policy agenda by appointing an EU Special Representative for Moldova, by opening a European Commission delegation in Chisinau and by sending a Border Assistance Mission to monitor and secure Moldova's eastern border. By EU standards this is a lot in comparison to the relative importance of Moldova on the world scene. In addition, the EU might want to see the concrete results from its actions in Moldova before proceeding to further action, especially as regards the Border Assistance Mission. In the meantime, though, there are a few things that the EU can do. Firstly, it can persuade more of its member states (especially the 'old' ones) to open embassies in Chisinau. Secondly, the EU should be less restrictive towards Romania, especially after Romania becomes a Schengen state, with regard to the degree of flexibility of the visa regime that will exist between Romania and Moldova.

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## Annex I: Moldova Basic Data 2004<sup>25</sup>

Population (million)	4.2
Area (km <sup>2</sup> )	38.200
GDP/capita (euros)	576
Real GDP (% growth)	7.0

## Annex II: Maps

**Map 1: Schengen states in 2006**



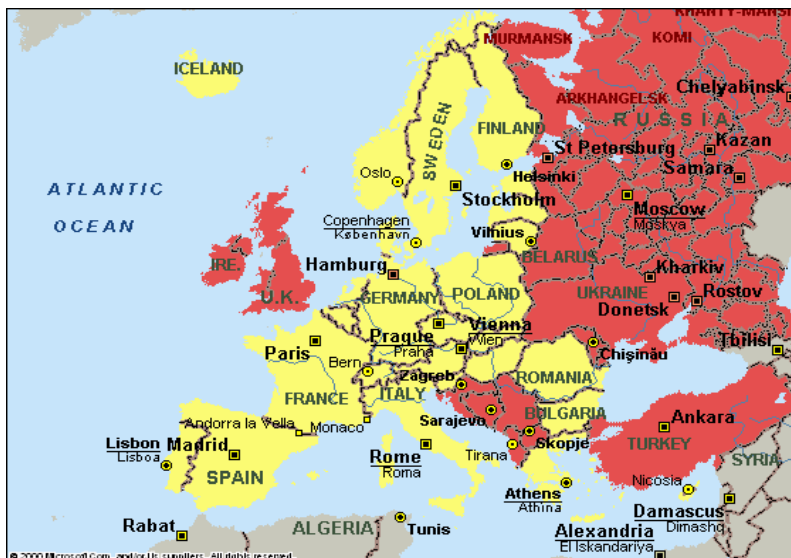
<sup>25</sup> European Commission, DG Trade: “Bilateral Trade Relations”, in <http://europa.eu.int/comm/trade/issues/bilateral/data.htm>




Map 2: Schengen states in 2008 (possible scenario)



Map 3: Schengen states in 2010 (possible scenario)



Legend:

-  Schengen
-  Non-Schengen