

**ACTION FICHE FOR READMISSION-RELATED ASSISTANCE
AND EUBAM-FLANKING MEASURES**

1. IDENTIFICATION

Title:	Readmission-related assistance (Improving infrastructure and capacity to deal with irregular migrants and to reduce irregular migration flows through Ukraine) and EUBAM-flanking measures (Support to the implementation of EUBAM recommendations) ENPI/2007/18962		
Total cost:	EUR 35 million		
Aid method / Management mode:	Project approach – centralised management		
DAC-code:	15210	Sector:	Security system management and reform

2. RATIONALE

2.1. Sector context

Ukraine’s policy towards irregular migration is determined by the “State Programme to Counter Illegal Migration for 2001-2004”, the “Migration Processes Regulation Programme for the period 2003-2005” and, as regards the setting up of migrant custody centres, the “Standard Regulation for Centres for the Temporary Detention of Foreigners and Stateless Individuals who are in Ukraine illegally”. Due to the country’s (ongoing) political instability since the beginning of 2005, no update of the programmes has been conducted and the policy guidelines and strategic approaches outlined in the documents mentioned above remained valid and are being followed. Nevertheless, they are sufficient to help Ukraine in establishing the necessary infrastructure for keeping irregular migrants temporarily in custody.

Due to its geographic location and its rather transparent border with Russia, Ukraine became a major transit country for irregular migrants from Asia, the Middle East and Africa heading towards the EU. Moreover, the European Community and Ukraine initialled an agreement on the readmission of persons in October 2006 at the EU-Ukraine Summit in Helsinki. Once the agreement will be fully implemented, Ukraine will have to readmit all third country nationals who passed through the country and entered successfully but illegally the EU. Therefore the EC committed herself in a declaration annexed to the agreement to make available financial resources to help Ukraine coping with this challenge. Though the Government of Ukraine undertakes efforts to strengthen border control and border surveillance, which is also outlined in the State Border Guard Service’s development concept for the period up to 2015, the country remains vulnerable for irregular migration.

According to Ukrainian legislation, the State Border Guard Service is responsible for keeping irregular migrants in custody for a period of 10 days; beyond this period, migrants have to be transferred under the responsibility of the Ministry of Internal Affairs. Presently, the State Border Guard Service does not have sufficient and the Ministry of Internal Affairs does not have any premises available for holding irregular migrants in custody. Moreover, conditions in detention centres have been heavily criticized by the Council of Europe’s Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) as well as by a number of human rights organisations. Insufficient financial means attributed under the State budget do not allow covering all running costs of Migrant Custody Centres.

The EC is also involved in the international efforts to peacefully settle the so-called “Transnistria conflict”. Apart from participating in the political dialogue, the EC is also looking to stabilise the situation at the Ukrainian-Moldovan State border, with particular attention to its 472 km long Transnistrian section which is much affected by criminal, especially smuggling activities. Since December 2005, an EU Border Assistance Mission (EUBAM) is monitoring border and customs controls and surveillance at this border and providing to a large extent capacity and confidence building support to the partner services in Ukraine (but also in Moldova). In May 2006 EUBAM came up with 41 recommendations on measures required to improve control standards and to approximate them to those of the EU. Since the recommendations have also considerable financial implications for the partner services, flanking measures will be required in order to achieve sustainable impact within EUBAM’s deployment. The action contemplates flanking measures for the Ukrainian side of the EUBAM operation.

2.2. Lessons learnt

- In order to avoid duplication, donor coordination is an important aspect in particular in the migration area since a number of organisations are acting in Ukraine in this field. This will be done through donor-government thematic working groups.
- Refurbishing buildings need sufficient time for preparation due to over-bureaucratic rules in Ukraine which can easily lead to considerable delays. Moreover, particular attention has to be drawn to the land ownership for suggested construction sites. Therefore, preparations for the readmission-related assistance project started already now such as identification of sites which will be followed by feasibility studies and the development of blueprints. All documents should be ready once the funds of this AP will be available.
- The sustainability of EUBAM’s capacity building activities will to a certain extent depend on flanking measures which will help the border guard and customs service to approximate to EU standards. Apart from advice provided by EUBAM, sophisticated control equipment needs to be supplied in order to achieve long-lasting effects of which also the EU benefits.
- Ukraine is characterised by poor inter-agency cooperation between competent ministries and state agencies. Both aspects of the project will promote inter-agency cooperation since joint working groups will be created in order to ensure timely and successful project implementation.
- As regards infrastructure projects, one of the most important lessons learned in the past is the need to have the land acquisition issue solved and detailed works design prepared before launching the works contract tender. Another lesson is that there is a certain risk of exceeding the works contract budget during the implementation stage; such a risk cannot be covered by the EC but should be taken by the Project Partner. Such a requirement is included in works contracts and is also made clear during tendering stage.

2.3. Complementary actions

The project will to a certain extent build upon the EC funded projects “Capacity Building of Migration Management: Ukraine 1 + 2” which are implemented by the IOM. A Migrant Custody Centre in Volyn oblast as well as a number of Temporary Holding Facilities is in the process of being refurbished, including the establishment of proper health care, legal advice, etc. The assistance amounts to approximately EUR 7 million. No other donors than the EC are investing in readmission-related assistance.

At the Ukrainian-Moldovan State border, the U.S. Defence and Threat Reduction Agency is funding a large-scale programme amounting to USD 28 million targeted at fighting the proliferation of weapons of mass destruction, nuclear material and components of dual use. Under the U.S. Millennium Challenge Account, USD 46 million was made available for anti-corruption measures in Ukraine which could have a certain impact on EUBAM's work.

2.4. Donor coordination

Under the government-led donor co-ordination mechanism set up by the Ministry of Economy in implementation of the Paris Declaration of Aid Effectiveness, two working groups on border management and migration issues have been established. Though a number of donors such as the U.S. State Department, the Swedish International Development Agency, and the Canadian International Development Agency are funding asylum/migration-related projects, none of the donors has or will provide readmission-related assistance. Regarding EUBAM-flanking measures, coordination with the U.S. programmes mentioned above is ongoing, to ensure synergy effects. Coordination is also achieved through quarterly EUBAM Advisory Board and monthly EUBAM Coordination meetings.

3. DESCRIPTION

3.1. Objectives

3.1.1 Overall objectives

- To improve Ukraine's capacity to reduce the influx of irregular migrants at Ukraine's Eastern border, and to deal with and to detain irregular migrants with a particular focus on the establishment of holding facilities and custody centres for migrants, the adequate treatment of irregular migrants in compliance with European best practices and humanitarian standards set by the Council of Europe, the European Court of Human Rights, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as the EU *acquis communautaire*.
- To contribute to approximating Ukraine's border management capacity towards EU/Schengen standards and improving the fight against cross-border and organised crime at the Moldovan-Ukrainian state border following the recommendations of the EU Border Assistance Mission to Moldova and Ukraine (EUBAM) aiming at supporting Ukraine in fulfilling their commitments under the EU-Ukraine ENP AP and the Partnership and Cooperation Agreement.

3.1.2 Specific objectives

- Infrastructure development: To support Ukraine in establishing/refurbishing and equipping temporary holding facilities and custody centres for irregular migrants in line with European standards in order to ensure adequate accommodation and treatment of readmitted or otherwise apprehended irregular migrants according the recommendations set by the Council of Europe and the CPT.
- Maintenance, overhead and living expenses for facilities and migrants: To contribute to the financing of running costs (communal utilities such as electricity, water, heating, garbage collection, etc.) of temporary holding facilities and migrant custody centres as well as of health and living costs for migrants in custody in order to ensure that recommended minimum standards set by the Council of Europe and the CPT are applied.

- Capacity building: To establish (i) effective human resources programmes (recruitment, training) for custody staff working in migrant holding facilities and custody centres, (ii) health care and legal assistance for migrants in custody, (iii) civil society support (through NGOs) with a view to give adequate treatment to migrants in custody in accordance with European human rights standards, and (iv) any form of support contributing to their quicker, safe, voluntary and dignified return to their home country
- Implementation of EUBAM’s recommendations for improving control and surveillance standards at the Ukrainian-Moldovan state border: To assist the State Border Guard Service and the State Customs Service in building up appropriate operational and institutional capacity in order to ensure effective border and customs controls and surveillance at the Ukrainian-Moldovan state border, through the supply of communication infrastructure, border/customs control and border surveillance equipment in line with European standards aiming at creating adequate border security that is commensurate with threats coming from illegal cross-border activities, while facilitating legitimate cross-border travel and commerce, and protecting civil liberties.

3.2. Expected results and main activities

- Migrant Custody Centres and Temporary Holding Facilities created: The project will refurbish a number of adequate sites for keeping irregular migrants in custody which will be compliant with the standards recommended by the Council of Europe. Necessary utility (i.e. electricity, water, heating, etc.) and communication infrastructure as well as equipment may also be supplied.
- Irregular migrants treated in line with European standards and increased capacity developed: Adequate procedures, health care, legal assistance, etc. compliant with Council of Europe standards will be set up; Ukrainian authorities’, personnel’s and NGO’s capacity will be strengthened to ensure migrants’ rights through e.g. comprehensive human resources programmes. Moreover, the project will contribute to the financing of certain maintenance and running costs such as communal utilities (e.g. electricity, water, heating, garbage collection, etc.) of Migrant Custody Centres and Temporary Holding Facilities.
- Border control and surveillance capacity improved following EUBAM recommendations and EU/Schengen standards: Infrastructure and equipment may be supplied to the competent services in order to enable them to better fight irregular migration and cross-border crime.

3.3. Stakeholders

3.3.1. Ministry of Internal Affairs of Ukraine

Since autumn 2005 the Ministry of Internal Affairs is responsible for holding irregular migrants in custody. However, the Ministry of Internal Affairs did neither receive the necessary infrastructure nor the human resources nor adequate financial means to implement this task. There is no capacity available to treat irregular migrants according to recognised international standards. Assistance is therefore required for both, infrastructure and capacity building measures.

3.3.2 State Border Guard Service of Ukraine

The State Border Guard Service is structured into five regional departments, with the Odessa one in charge of nearly the entire border with Moldova. The SBGS has been – to a certain extent – demilitarised but, in addition to classical tasks of control and surveillance of persons and goods, and the fight against cross-border crime and irregular migration, still also has the function of defending the state border, and a somewhat military structure / training system. However, the transformation into a law enforcement entity is already ongoing within the EC-funded project reforming the Service’s human resources management system. The SBGS has the overall responsibility for border management,

including coordinating the work of customs and other law enforcement agencies present at the border, and green and blue border surveillance.

3.3.3. State Customs Service of Ukraine

The State Customs Service is generally adequately staffed, but comparably less well equipped than border guards. The role of customs at the borders is often limited to preliminary documentary review, as most procedures are initiated and completed at the customs office of departure or destination. Administrative capacity appears to need reinforcement in some areas. Knowledge and harmonised application of customs rules and procedures is generally better at the main transit points than at BCPs; training in certain specialised skills (e.g. application of risk assessment techniques) appears as necessary. The Ukrainian State Customs Service lacks criminal investigative powers; such law enforcement empowerment is a critical precondition to make the overall border management system EU/Schengen compliant.

3.4. Risks and assumptions

3.4.1 Assumptions underlying the project intervention

- Ukraine will ratify the EC-Ukraine readmission agreement and will readmit irregular migrants who entered the EU from Ukrainian territory. The realisation of this assumption is likely since the EC-Ukraine visa facilitation agreement will enter into effect only at the time when the readmission agreement will enter into force.
- Allocations in the state budget of Ukraine will be sufficient to fully cover the running costs for the migrant centres.

3.4.2 Risks

- Due to the over-bureaucratic procedures for construction works and some provisions which protect the national construction market from external competition, the establishment of Migrant Custody Centres could face delays.
- Physical risk: there is a certain risk of exceeding the works contract budget during the implementation stage, and such a risk cannot be covered by the EC but should be taken by the corresponding Project Partner. Such a requirement is included in works contracts and is also made clear during tendering stage.

3.5. Crosscutting Issues

The programme has a strong human rights and good governance dimension since migrants rights will be protected and governmental structures will follow Council of Europe standards.

4. IMPLEMENTATION ISSUES

4.1. Implementation method

Centralised management

Part of the project may be implemented through the signature of an agreement with an international organisation.

Some part of the readmission project could be implemented through grants to relevant NGOs managing such centres or some activities being part of the project.

4.2. Procurement and grant award procedures

Contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.

Concerning the parts of the project where a contribution agreement is foreseen to be signed with an International Organisation, contracts must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the International Organisation concerned.

4.3. Budget and calendar

Indicative breakdown of overall amount by main components:

	Works (EUR)	Supplies (EUR)	Services (EUR)
Readmission-related assistance	20,000,000	6,000,000	4,000,000
EUBAM-flanking measures		5,000,000	

This indicative breakdown may be amended following notably the further design of a readmission strategy by the Ukrainian authorities.

The project is planned to be implemented within 4 years after conclusion of the contract.

4.4. Performance monitoring

Performance will be monitored by the EC Delegation and the Tacis/ENPI Monitoring Team. The implementing partner will have to submit regular progress reports and implementing plans.

4.5. Evaluation and audit

An ex-post / impact evaluation is planned to be conducted within a year after project completion.

4.6. Communication and visibility

Proper communication and visibility of the measure will be achieved via widespread dissemination of project achievements and results (to be developed by the implementing partner following the EC visibility guidelines, and annexed to the Description of the Action), as well as international visibility to be achieved through public events (kick-off event, opening ceremonies for the refurbished Migrant Custody Centres and handing over events for equipment) and updates published on the EC Delegation's website. A reasonable communication budget will be set aside for promotion of the action.