Report prepared in Activity 1.1 implemented under the aegis of the Twinning project
"Support the State Migration Service for Strengthening of Migration Management in Armenia"
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Executive summary

The twinning project entitled "Support the State Migration Service for Strengthening of Migration Management in Armenia" is carried out by a consortium of two European Union (EU) Member States: Sweden (Senior Leader) and Poland (Junior Leader). This report is the result of the 7 months work of Polish experts in the field of migration who implemented first component of this project. It has been produced by a group of five lawyers – representatives of Polish Ministry of Interior, Office for Foreigners and Border Guards Headquarters. The group’s remit has been to examine where legal regimes concerning migration in the EU and in the Republic of Armenia (RA) comply and accordingly to what extent the analysis reveals a different approach and legal solutions.

Two research methods were used to conduct this evaluation: a review of key documents at EU and RA level and working meetings with representatives of Armenian authorities during expert missions that took place 5 times from September 2012 till February 2013 and lasted 1-2 weeks each. Thus, in the course of every visit a number of consultations were held with ARMSTAT, Ministry of Economy, Ministry of Education and Science, Ministry of Foreign Affairs, Ministry of Labour and Social Affairs, National Labour Inspectorate, Police, National Security Service, National Security Service Border Troops, State Migration Service, and State Employment Service Agency.

Our review of the existing legal frameworks of the EU and RA, outlined in 3 chapters with general recommendations and appendixes, reveals many parallels, but also divergences.

Chapter I contains analysis and recommendations that focus on procedures of issuing visas and resident permits. It is advised to make issuance of visas at the border an exception to the general rule and also to develop the procedures on issuing visas and to specify a list of documents required for issuing a visa. Moreover, according to the experts visas should not be extended automatically, but only in exceptional cases, and a residence permit should be an appropriate form of legalisation of longer stay in the territory of the RA. Permanent residence status should be granted for an undefined term as it is addressed at long-staying foreigners whose integration in the RA should be facilitated.

Chapter II recommends the Armenian authorities to take into consideration an entry requirement for the foreigners justifying the purpose of intended stay and possessing sufficient means of subsistence when entering and staying in the territory of the RA. It is
also highly recommended for the Armenian authorities to establish a transparent procedure on refusal of entry into the territory of the RA, including an obligation to issue a specific decision in writing. The decision should in particular contain precise reasons for the refusal of entry and exhaustive information on appeal proceedings. As far as victims of trafficking in human beings are concerned, they should receive a residence permit, available also in a reflection period, and proper support. Finally, effective, dissuasive and proportionate sanctions on employers hiring illegally staying foreigners should be introduced.

Chapter III suggests establishment of additional to refugee status form of protection. Furthermore, as regards procedural aspect of asylum application, the decision on asylum should be provided in a language that a foreigner understands and subsequent application should take into account vulnerability of asylum applicants. Vulnerable groups’ needs should also be more precisely reflected in Armenian legislation. Referring to situation of children, all foreigners who are unaccompanied minors in the RA should be guaranteed same procedural safeguards and their vulnerability should be adequately reflected in law. This includes, among others, rules on accommodating asylum seeking unaccompanied minors, ensuring the best interest of a child in criminal investigations and proceedings (in case of foreigners who are unaccompanied minors-victims of trafficking in human beings).

In the light of all the above findings, and after considering the current EU regulatory regime as well as options for policy interventions, the following issues could be chosen as priorities to be addressed in the aftermath of the research. Firstly, adequate guarantees in administrative procedure derived from the rule of law concept should be ensured (decisions should be issued in writing in every case and irrespective on the body that issues decision. with final decision issued in a language understandable to a foreigner, effective legal remedy should be ensured). Secondly, rules on cooperation between different institutions responsible for migration issues should be clearly reflected in law. Thirdly, data protection rules should be respected in all procedures. Bearing in mind sensitivity of that data it is recommended to clearly prescribe in the law rules on data storing/deleting/changing and on time-limits for removing that data. Finally, respect for rights and ensuring adequate treatment of vulnerable foreigners (in asylum procedure cases and as regards reception and detention conditions) should be a priority.

Warsaw, March 2013

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List of abbreviations

ARMSTAT – National Statistical Service of the Republic of Armenia
EaP – Eastern Partnership
EC – European Communities
EU – European Union
EU-D – EU Delegation to Armenia
ICHD – International Center for Human Development
ILO – International Labour Organization
IOM – International Organization for Migration
GAMM – Global Approach to Migration and Mobility
GRETA – Group of Experts on Action against Trafficking in Human Beings
MFA – Ministry of Foreign Affairs
RA – Republic of Armenia
RTA – Resident Twinning Advisor
SMB – Swedish Migration Board
SMS – State Migration Service
UN – United Nations Organization
UNHCR – United Nations High Commissioner for Refugees
Introduction

Background information

The Twinning Project Fiche entitled "Support the State Migration Service for Strengthening of Migration Management in Armenia" that was prepared by the State Migration Service and accepted by the Delegation of the European Union to the Republic of Armenia is implemented by a consortium of Sweden (Swedish Migration Board) and Poland (Ministry of the Interior). The project was scheduled to start in April 2012 according to the Project Fiche. However, implementation started in August 2012.

In this respect, the Twinning project "Support the State Migration Service for Strengthening of Migration Management in Armenia" consists of three components.

1. Component 1, concerns an introduction of a mechanism for regular monitoring of the development of the EU acquis in the field of migration and asylum.

2. Component 2 aims at enhancing effectiveness of migration management systems and tighter cooperation among the Armenian authorities dealing with migration.

3. Component 3 addresses an issue of implementation of a comprehensive asylum and migration data processing and communication system.

Poland is responsible for implementation of activities that have been outlined in Component 1. More specifically, actions to take under Component 1 include, among others:

- to analyse current Armenian law on migration;
- to exchange knowledge and best practices on implementation of EU law;
- to adopt new legislation (if needed).

Therefore, under an aegis of Activity 1.1 that has been implemented by Polish experts, a comparison of the current Armenian and EU legislation lays down the fundamentals for the preparation of a list of areas where Armenian law needs amendment in order to ensure coherency with the EU acquis.

An additional advantage of making Poland responsible for implementation of Component 1 is a relatively recent Polish experience in approximation of legal framework to the EU acquis. As the list of the topics to cover is a broad one and includes, inter alia,
general issues related to migration management as well as law on asylum and refugees, citizenship issues and state border and border guard troops issues, Poland has decided to invite to the project experts from: Polish Ministry of Interior, Polish Office for Foreigners and Polish Border Guards Headquarters. All of the experts are experts in their field. These practitioners are all lawyers with a solid background in policy-making and law implementation. At their work in Poland the experts are responsible for negotiating EU laws and thus it will be possible to provide the most up-to-date information about the ongoing development of the EU law.

Findings from the missions carried out by Polish experts can be found in this report with recommendations, also an explanation of necessary amendments is produced. The report outcomes have been presented during a Workshop that was held under the aegis of Activity 1.2 of the Twinning project. This will ensure sustainability of the Twinning as the meeting has been a unique possibility for Armenian and Polish experts to exchange views and opinions on, among others, identified themes and perspectives for policy developments.

General description of Activity 1.1 implementation method

At the time of responding to the Twinning fiche it was believed that a set of questionnaires could be elaborated, where necessary and workshops technique to provide a possibility for experts to exchange views, opinions and experiences could be used. Nevertheless, during an implementation phase it became clear that direct meetings would be more useful. Thus, under the aegis of Activity 1.1 Polish twinning experts have concluded 5 visits to the RA.

The missions have concentrated upon 5 topics: fighting illegal migration; managing state border and border guard issues; managing labour migration to the RA; visa policies of the RA; providing international protection to foreigners staying in the RA. During the last mission Polish experts concentrated on links between outcomes of analysis of different Armenian policies concerning migration and asylum related issues. This provided a possibility to scrutinise issues that fall within more than one thematic field of interest.

While implementing Activity 1.1 Polish experts have analysed Armenian laws (the list of the laws can be found in Appendix I) in order to check if it is in line with the EU laws (the list of the laws can be found in Appendix II).

During the missions practical aspects relating to implementation of Armenian laws and policies regarding migration and asylum as well as proposals of amendments of
Armenian laws were discussed with the representatives of the following Armenian institutions:

- the National Statistical Service of the Republic of Armenia,
- the RA Ministry of Economy,
- the RA Ministry of Education and Science,
- the RA Ministry of Foreign Affairs,
- the RA Ministry of Labour and Social Affairs,
- the National Labour Inspectorate, the RA Police,
- the National Security Service,
- the National Security Service Border Troops,
- the State Migration Service,
- the State Employment Service Agency.

Additional support to the Polish experts was also provided by experts from the Armenian Development Agency and from the RA Administrative Court. Moreover, the Project benefited from experiences of international organisations working in Armenia, namely UNHCR and IOM. In this regard, the Polish experts would like to extend their sincere gratitude to all of the Armenian experts for their time, openness and cooperation. Thanks to their involvement, among others, verification of migration situation in the RA and practicality of proposed recommendations was possible.

Special thanks should also be referred to the Resident Twinning Advisor Mr. Magnus Jansson for his support in mission preparations, agenda setting and overall project coordination and Mr. Lars-Erik Fjellström for his involvement in report drafting and organisation of the workshop. Moreover, the Polish experts would like to underline the support they have received from RTA team: Ms. Inessa Ghazaryan in organising the meetings and Ms. Anush Poghosyan in interpretation that strongly contributed to the Activity 1.1 reports.

While implementing Activity 1.1, bearing in mind the wide range of topics that were covered during the missions, all relevant stakeholders were regularly updated on the progress of running of the above-mentioned Activity. Thanks to this coordination with other initiatives that were implemented in the RA was possible and the scope of analysis that has been carried out by Polish experts will be in line with some of the activities stated in “The Action Plan for Implementation of the Policy Concept for the State Regulation of Migration in the Republic of Armenia in 2012-2016”.

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In this respect it should be also underlined that the profile of Polish experts and their professional experience in public administration makes the recommendations be of a practical use for public administration bodies. Experiences gathered during implementation of the EU legislation to the Polish law were very supportive in this regard, especially when prioritization of actions following from recommendations was prepared.

Report structure

This report contains recommendations addressing the following thematic concepts enlisted in twinning project fiche:

- legal immigration to the RA,
- illegal immigration to RA,
- border guard issues and
- asylum and refugee issues.

Each part of the report consists of a brief presentation of the current Armenian legislation that is followed by introductory remarks on the relevant EU legislation. Most importantly, the above-mentioned parts are followed by legal analysis on identified discrepancies between EU and Armenian legislation.

It should be emphasized that in some aspects current Armenian law is already in line with the EU one. Nevertheless, some thematic fields are not present in the former legislation or they do not reflect the whole aspect of the EU law. Taking all of the above into consideration, the level of details of recommendations varies depending on the extent of the identified discrepancies.

To ensure practicality of this report an in-depth legal analysis is followed by a wrap-up recommendation that in a short form, written in plain English, to present the most important findings. Moreover, at the end of the report recommendations relating to general concepts of Armenian legislation and those that were identified in more than one thematic field can be found. It has to be stressed that both thematic recommendations and final recommendations are equally important ones.

It should also be taken into consideration that due to the complex nature of Armenian and EU legislation only issues relating strictly to immigration issues, including asylum and asylum-related issues, are covered in this report. Thus, when additional changes are recommended to the EU law they are always derived from immigration-related EU
legislation. This is why e.g. access to education and public procurements rules are touched but not deeply analysed.

What is more, bearing in mind the main aim of the Activity 1.1 of the twinning project (providing recommendations on making Armenian legislation more in-line with the EU laws) and taking into account the scope of the EU legislation, only issues relating to foreigners who are present in the RA and those who would like to come to the RA are referred to in this report. As a rule, the EU law does not contain references to emigration of the EU citizens unless that rights are related to internal market – however, as those regulations are available to the EU citizens only they could not have been analysed under the aegis of this project.

Armenian legislation that is mentioned in Appendixes formed the basis for this report. Moreover, during concluding of this analysis Polish experts benefited from the support of Armenian experts. Nevertheless, due to the complex nature of the legislation that was to be verified and bearing in mind a wide range of topics related to immigration issues some aspects of Armenian law were not referred to completely in this report (they are enlisted in Appendix I). Issues that were not connected with aspects regulated by the EU law were also not analysed. In this respect Polish experts would recommend to continue analysis under the aegis of other projects that are currently in the RA.

Finally, it has to be stressed that the findings in this report represent the sole views of authors of this report. They only suggest issues worth further analysis and they present recommended approach to the thematic fields that were covered. As it has been specified in twinning fiche the extent of the changes to the Armenian law and the pace of their implementation depends on the Armenian government approach entirely.

EU developments in a field of cooperation with non-EU countries

Strengthening cooperation with third countries in the Area of Justice and Home Affairs is a key issue for the EU and its Member States. The Stockholm Programme, adopted by the European Council on 2nd December 2009, stressed the importance of this area also in relation to external migration policy.

The Global Approach to Migration and Mobility, that was defined for the first time by the European Council in December 2005 and that was further developed in 2007, 2008 and in 2011, constitutes overreaching framework for external cooperation between the EU and

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1 European Commission, *Communication from the Commission to the European Parliament, the Council,*
third countries in the area of migration and asylum. The Stockholm Programme acknowledged the importance of consolidating, strengthening and implementing the GAMM.

In this respect, e.g. European Neighbourhood Policy and external dimension of migration policy could be treated as a complementary framework, which should be strengthened on a basis of clearly defined goals. To put European Neighbourhood Policy into practice in case of Armenia the Progress Report on Implementation of the European Neighbourhood Policy in Armenia for 2010 was published on 12th May 2011. In section 5 “Cooperation on Justice, Freedom and Security” it states that the State Migration Service commenced work on a National action plan on migration and asylum in cooperation with civil society and, with EU support, on a draft strategy on the regulation of migration.

The GAMM indicates a need for strong policy coherence with other relevant EU policies and a maintaining thematic and geographical balance. The GAMM is based on a number of tools and instruments, in particular Mobility Partnership. The framework is built in an impartial way around all four thematic pillars of the GAMM.

Thus, the thematic scope of the Twinning reflects main goals of GAMM and, together with other initiatives which will be implemented under EU-Armenia Mobility Partnership, it facilitates GAMM’s operational cooperation. In this respect, twinning is a part of the Mobility Partnership that was signed on 27th October 2011.

GAMM is keeping its strong focus on regional dialogue processes which aim at improving dialogue and cooperation between countries of origin, transit and destination, covering all mutually relevant issues and themes in the area of migration and mobility. Thus, synergy between views presented by the Commission in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on cooperation in the area of Justice and Home Affairs within the Eastern Partnership (adopted on 26th September 2011) is ensured. The importance of cooperation under EaP umbrella was underlined during the Warsaw Eastern Partnership Summit (29-30th September 2011) and will be recollected during the next EaP Summit that is planned in the second part of 2013 during Lithuanian Presidency in the EU Council.

As a result of the discussion the Council adopted on 13th December 2011 “Council conclusions on cooperation in the Area of Justice and Home affairs within the Eastern

the European Economic and Social Committee and the Committee of the Regions on the Global Approach to Migration and Mobility, COM/2011/0743 final, Brussels 18.11.2011.
Partnership”. In this document the Council highlights the importance of continuing and intensifying wide-ranging structured cooperation on migration, mobility and international protection beneficial for both the European Union and the EaP countries, including Armenia. Based on orientations of the GAMM Council supports Mobility Partnership as a most relevant and operational framework to develop practical cooperation with EaP countries.

To promote a comprehensive approach and synergy between frameworks and tools of cooperation the Council welcomed an incorporation of the results and experiences of the Söderköping Process into the new Panel on Migration and Asylum. In this respect the Council acknowledged the importance of the Action Plan of the Prague Process that was approved at the second Ministerial Conference held on 4th November 2011 in Poznań. Practical implementation of this Action Plan will be ensured under Prague Process thematic initiative.

All actions implemented under the above-mentioned frameworks contribute as an added value to cooperation between Armenia and the EU and its Member States in an area of migration and migration-related issues.

Correlation with other activities

There are a number of initiatives concerning migration and asylum as well as migration management that are implemented in the RA (according to the schedule under the aegis of the EU-Armenia Mobility Partnership there are 44 projects that are currently implemented). Thus, ensuring synergy and avoiding overlapping has been perceived as a key element of the Twinning project. For that purpose a team of experts has been established in the Polish Ministry of Interior and experts from that team ensure coordination of the Twinning actions with other initiatives. Among the above-mentioned initiatives the most important ones, as regards analysis of Armenian law in order to identify gaps with the EU law, are “Strengthening Armenia’s migration management capacities, with special focus on reintegration activities” and “Strengthening Evidence-Based Management of Labour Migration in Armenia”.

When the Twinning was drafted it was expected that within the frame of the EU-Armenia Mobility Partnership, French Office of Immigration and Integration will be implementing a project called “Strengthening Armenia’s migration management capacities, with special focus on reintegration activities”. This Targeted Initiative is the biggest project implemented under the umbrella of the EU-Armenia Mobility Partnership. The initiative is
funded with the European Commission support. Project goal is, among others to support responsible Armenian authorities in developing a tailor made comprehensive reintegration assistance programme, implemented within an effective and inter-ministerial coordination and monitoring mechanism at central and local level. Nevertheless, actions implemented by a consortium of the EU Member States led by France have been started on 22nd March 2013. At that time implementation of Activity 1.1 of the Twinning project was already finished. In this respect the Twinning outcomes will be shared with the above-mentioned project team.

IOM and ICHD have been awarded financing for the project “Strengthening Evidence-Based Management of Labour Migration in Armenia” (funded by the European Commission Thematic Programme of cooperation with third countries in the areas of migration and asylum). The project focuses on strengthening national capacities in migration data collection, analysis and policy formulation as well as the component on raising awareness towards possible approximation of legislation on migration management with EU acquis.

A series of meetings between the Twinning team and IOM and ICHD project teams were organised in order to discuss steps that could be taken in order to avoid overlaps between those projects. Agreements specifying results that have to be achieved under the aegis of both projects were analysed and different approaches to implementation methodology (intergovernmental organisation approach and governmental approach) were identified. Thanks to the exchange of findings authors of the report published later could benefit from the findings of the other team.

Migration situation in the RA – an overview

According to ARMSTAT² current population of the RA can be estimated at 3.274.300 as of January 1, 2012 and an increasing trend can be observed in this regard³. Armenian diaspora is estimated at 5-8 million people⁴.

The 63% of the RA population is economically active. From that group 82% is already employed⁵. Registered unemployment in the RA is estimated at 18%⁶.

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² More detailed information can be found on ARMSTAT web page and in ARMSTAT reports as well as on SMS web page.
³ ARMSTAT, Social Snapshot and Poverty in Armenia, Yerevan 2012, p. 17.
⁴ Urząd do Spraw Cudzoziemców (Polish Office for Foreigners), Raport z Misji Badawczej do Republiki Armenii, 4-20 maja 2011, Warszaw 2011, p. 13 (Polish Office for Foreigners publication: Report from mission to the RA that was concluded 4-20 May 2011).
⁵ ARMSTAT, Social Snapshot and Poverty in Armenia, Yerevan 2012, p. 17.
⁶ Ibidem, p. 76.
According to official statistics foreigners represent from 3%\(^7\) to 7, 8%\(^8\) of total Armenian population.

As regards asylum, there were 579 asylum applications submitted and 176 foreigners were granted a refugee status in 2012\(^9\). This was the biggest number of people who were granted a refugee status in the RA in one year and the number of asylum applications that was received in 2012 in the RA is close to the top of 2006 when 650 applications were received.

From 2005 to 2012 out of 2,098 asylum applications in 1,088 cases SMS issued decisions on granting a refugee status. Among top nationalities, a total number of 886 applications were submitted by citizens of Iraq (850 of them received a refugee status), 513 asylum applicants came from Syria (161 of them received a refugee status) and 284 applications were submitted by citizens of Lebanon (15 of them received a refugee status)\(^10\).

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\(^7\) Urząd do Spraw Cudzoziemców (Polish Office for Foreigners), Raport z Misji Badawczej do Republiki Armenii, 4-20 maja 2011, Warszaw 2011, p. 13.


\(^9\) An increase in the number of both asylum applications and refugee status granting can be observed (in 2010 there were 68 asylum applicants and 25 persons were granted a refugee status and in 2011 there were 73 applicants and 54 persons were granted refugee status). Information from SMS website available at: http://www.smsmta.am/?menu_id=61 accessed on: 11.03.2013.

Chapter I – legal immigration to the RA

1.1. Visas

This part of the report will present Armenian and European legislation concerning visas and legalisation on stay of foreigners in the RA. It should be pointed out that the Schengen acquis regulates the issue of the short-stay visas (up to 90 days). There are no common requirements and procedures for issuing long-term visas, as the national visas are issued in accordance with national laws of the EU Member States. Therefore, this report focuses only on the analysis of the regulations concerning the Schengen visas and Armenian legislation concerning the visas and it formulates the list of areas in which the Armenian law concerning visas needs to be amended in order to ensure coherency with the Schengen acquis.

Armenian legislation

As regards visa policy in the RA, the main regulation concerning visas is the Law on Foreigners of 25 December 2006. There are also decisions of the Government of the RA which determine the specific issues of the invitations and the visas:

- The Government of the RA Decision No. 1268-N from 4 October 2007 on the approval of the list of documents to be submitted together with the applications for obtaining an entry visa to the RA and for extending the validity period of the entry visa, the procedure on considering applications, issuing an entry visa, extending the validity period of the entry visa, the form of making a note in the passports of foreign citizens on issuing an entry visa to the RA, extending the validity period of the visa, refusing visa, cancelling the entry visa or refusing the entry, the procedure on encoding entry visa as per the type of visit, maintaining the database of persons having obtained entry visa to the RA and having extended the validity period of entry visa, on entering and providing data;

- The Government of the RA Decision No. 1154-N from 8 October 2008 on the approval of the procedure on obtaining an entry visa to the RA under special conditions by the citizens of Armenian origin and other citizens of a certain category of the states with the right to apply to the diplomatic service bodies and consular institutions of the RA in foreign states for obtaining an entry visa only based on the invitation;
The Government of the RA Decision No. 1439-N from 15 November 2007 on the approval of the procedure on the approval and registration of the invitation to visit the RA, list of the required documents while submitting invitations to visit the RA for approval, description and sample form of the invitation to visit the RA

Government of the RA Decision No. 62-N from 20 January 2011 on the approval of the procedure on the approval and registration of the invitation by the ministry of foreign affairs of the RA for the purpose of issuing an entry visa to the RA.

According to the law on foreigners an entry visa is an authorisation, issued by the authorised public administration body, which entitles a foreigner to enter the RA, transit through the territory of the RA, stay in the RA and exit from the RA. The Armenian law determines four types of visas:

- a visitor entry visa;
- an official entry visa;
- a diplomatic entry visa; and
- a transit entry visa.

The entry visa is issued for a period up to 120 days and it can be extended for a maximum 60 days. As a general rule, the entry visa is issued for a single entry, unless there are other provisions in the Armenian law or in internationals agreements. There are three authorities responsible for issuing visas: consular offices, the Police, and the MFA.

The entry visa is issued by the consular office of the RA or by the Police at border crossing points. The official entry visa and the diplomatic entry visa are issued by the MFA. The procedure and conditions for issuing visas are not specified in the law on foreigners, but in the Government Decision No. 1268 and No. 1154. The Law on Foreigners determines only that foreigners may apply for the entry visa maximum four months before the planned visit. As stated in Decision No. 1268, a foreigner who applies for the entry visa should submit a travel document, an application form, a colour photo and an invitation, if it is necessary. An applicant is also required to pay the visa fee. In case of the transit visa, it is also needed to enclose a ticket or the entry visa to the country of destination. The passport data of the foreigner is entered into the electronic archive. Furthermore, the data of the applicant is verified in the database of foreigners regarded as persona non grata in the territory of the RA.

In accordance with the Armenian regulations, there is a possibility to apply for an electronic entry visa which is issued by the MFA. This procedure is restricted only to foreigners who are exempt from an obligation to have an invitation during the visa
Grounds for refusal of issuing the entry visas are the same as grounds for the refusal of entry into the RA, the non-renewal of the entry visa and the revocation of the entry visa as well. The entry visa is refused if:

- the foreigner has been expelled from the territory of the RA 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;

- the 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, except for cases when one year has elapsed upon being subjected to administrative liability;

- there exists reliable data that s/he 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 RA, overthrow the constitutional order, weaken the defensive capacity;
  - carry out terrorist activities;
  - illegally (without an appropriate authorisation) transport across the border arms, ammunition, explosives, radioactive substances, narcotic substances, psychotropic substances
  - carry out human trafficking and/or illegal border crossings;

- s/he suffers from an infectious disease which threatens the health of population, except for cases when s/he enters the RA for the purpose of treating such a disease.

- while seeking an entry authorisation, s/he 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 RA pursues an objective other than the declared one;

- there are other serious and substantial threats posed by him/her to the state security or public order of the RA.

There is also an additional condition for refusing the entry visa, which is specified in the Government of the RA Decision No. 1268. According to this regulation, when the data of a foreigner is in the database of foreigners regarded as persona non grata in the territory of the RA, the competent authority notes the refusal of issuing the entry visa in the foreigner’s passport.
The Law on Foreigners does not provide, that the decision on refusal and the reasons on which it is based, is notified to the applicant in writing. It also lacks regulations which determine that a foreigner has the right to appeal against the negative decision.

In the context of the procedure for granting the entry visas, the issue of invitation is also very important. The Government of the RA creates a list of countries whose citizens may apply for the entry visa only on the basis of the invitation. The procedure on the approval and registration of the invitation, as well as the list of the required documents are determined in Government Decision No.1439.

The foreigners may receive the invitation by a citizen of Armenia residing in this country, by a foreigner holding a residence status in Armenia, by legal persons registered in Armenia, by state bodies, local self-government bodies of the RA, embassies, consular offices, and international organisations or their representations accredited in the RA. The invitation is valid only after the approval by the Police or by the MFA. If the invitation is issued for the purpose of work, it should also be accepted by the state body authorised in the field of foreigners’ employment in Armenia. Despite the fact that the law provides for the procedure for issuing an invitation for the purpose of work, in practice, these provisions do not apply. The National Security Service gives their opinions during the procedure for issuing the invitation. Moreover, these opinions are binding and it is not possible to appeal against them. During the procedure for obtaining the invitation, the inviter is obliged to submit the information that s/he covers living expenses of the foreigner, including possible medical assistance expenses and expenses of departure from the RA. The inviter is also required to pay a fee. An invitation contains the particulars of the invitee and the inviter, the purpose of the invitation and the periods of stay of the invitee in the RA.

The Armenian law does not provide for any restrictions as regards the extension of the visa. The foreigner can extend the entry visa (including electronic entry visa) during his/her stay in the territory of the RA. The Police are responsible for the entry visa prolongation.

The applicant is obligated to submit only an identity document and an application-questionnaire for extending the entry visa at maximum 15 days prior to the expiry of the visa. The Police extend the visa within two working days. The NSS is not involved in the visa extension procedure. The negative decision is not provided in writing and there is no possibility to appeal against it.

As mentioned before, Armenian law specifies also the conditions for the entry visa revocation, but it does not define the procedure of the visa revocations.
European legislation

In the EU the situation concerning the visa policy significantly differs from the RA one. The Schengen provisions abolish checks at the Union's internal borders and harmonise the conditions of entry and the rules on visas for short stays (up to three months). The common visa policy is established in order to provide an efficiently functioning border-free Schengen Area. The foreigner who obtains a short-term visa (so-called Schengen visa) is entitled to travel around 26 European countries (of which 22 are EU states). Therefore, on the one hand the common visa policy is established with the aim to facilitate travel between the Schengen countries but on the other hand it is intended to combat illegal migration. Moreover, the common visa policy respects the different interests of 26 European countries.

The main legal acts concerning the visa issues are:

- Council Regulation (EC) No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;
- Council Regulation (EC) No. 1683/95 of 29 May 1995 laying down a uniform format for visas;

The EU acquis (including Article 18 of the Convention implementing the Schengen Agreement of 14 June 1985 as well as Article 2.2 and Article 2.5 of the Visa Code) determines three types of visas: an airport transit visa, the short-stay visa and the long-stay visa. The long-stays visas (so-called national visas) are issued for stays exceeding 90 days (as of 18 October 2013; previously: three months) by one of the EU Member States in accordance with its national law. The airport transit visas are valid for transit through the international transit areas of one or more airports of the EU Member States. While, the short-stay visas, are issued for transit through or intended stays in the territory of the
Schengen Area not exceeding 90 days in any 180-days (as of 18 October 2013; previously: three months in any six-month period). The short-stay visa may be issued for one, two or multiple entries. However, if the applicant applies for a multiple entry visa, s/he is obligated to demonstrate the need or justify the intention to travel frequently. Procedures and conditions for issuing the airport transit visas and the short-stay visas are established in the Community Code on Visas.

In general, the Schengen visa application is submitted to the consulate of the EU Member State concerned. The Schengen visa application is examined by the EU Member State that is the sole or the main destination of the foreigner’s visit. If the main destination cannot be determined, it is the EU Member State of entry into the EU that is responsible. In case of transit, the EU Member State through which the transit takes place, or in case of multiple transits, the Member State of first transit is responsible. The Schengen visa application should be lodged no more than three months before the start of the intended visit. The applicant is obliged to submit the application form, the travel document which meets the requirements set out by law, the photograph with the biometric standards and the valid travel medical insurance. Besides, it is necessary that a foreigner provides documents in relation to accommodation, the proof of possessing sufficient means of subsistence and the supporting documents related to the intended purpose of stay. A foreigner is also obligated to present information enabling an assessment of the applicant’s intention to leave the territory of the EU Member States before the expiry of the visa applied for. Apart from certain exceptions, an applicant must allow the collection of his/her fingerprints and pay the visa fee, as well. The visa fee may be waived or reduced in individual cases, for example for foreign cultural exchange (e.g. students) and scientific development reasons. After verifying the admissibility of the application, the competent authority enters the foreigner’s data in the Visa Information System (VIS) and further examines the application. It should also be pointed out that the data entered in the VIS is subject to strict data protection rules and it might be stored in the VIS for a maximum of five years. A further examination of the application is carried out to verify that the applicant fulfils the entry conditions as set out in the Schengen Borders Code, does not pose a risk of illegal immigration or a threat to the security of the Schengen state, and intends to leave the Schengen area before the visa expires (Article 21.1 read with Article 5 of the Schengen Borders Code). During the procedure of issuing the short-stay visa, the internal consultations are carried out. During the examination of an application, consulates might in justified cases call the applicant for an interview and request additional documents. Generally the decision on short-stay visa is
taken within 15 calendar days, but it can be extended up to a maximum 60 calendar days.

The short-stay visa is refused if the applicant:

- presents a false travel document;
- gives no justification for the purpose and conditions of the intended stay;
- provides no proof of sufficient means of subsistence for the duration of stay nor for the return to his/her country of origin/residence;
- has already exhausted the three months of the current six-month period;
- has been issued an alert in the Schengen Information System (SIS) for the purpose of refusing entry;
- is considered to be a threat to the public policy, internal security or public health of one of the Schengen states;
- provides no proof of travel medical insurance;
- presents supporting documents or statements whose authenticity or reliability is doubtful.

A decision on the short-stay visa refusal and the reasons on which it is based is notified by means of the standard form set out in the Visa Code. The applicant has the possibility to appeal against this decision, in accordance with the national law of the Member State.

Exceptionally, as outlined in Article 35 of the Visa Code, the short-stay visa application may be submitted to the authority responsible for checks on persons at the external border of the Member State of destination. The short-stay visa issued at a border crossing point may allow for a stay of maximum 15 days or cover the time needed for the transit. The applicant should fulfil all conditions for issuing the Schengen visas, as well.

Also, the extension of the Schengen visa is only possible in exceptional cases defined by law. The short-stay visa is extended, if a visa holder has provided proof of force majeure or humanitarian reasons (Article 33. 1 of the Visa Code). Moreover, the short-stay visa might be extended in view of the serious personal reasons (Article 33. 2 of the Visa Code).

Article 34 of the Visa Code provides also the procedure of an annulment and a revocation of the Schengen visa. The short-stay 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 Schengen visa was fraudulently obtained. While revocation of the short-stay visa takes place where it becomes evident that the conditions for issuing it are no longer met. The Schengen visa may be also revoked at the request of the visa holder. The decision on annulment or revocation of the short-stay visa
and the reasons on which it is based is notified to the foreigner by means of the standard form set out in the Visa Code. A foreigner whose visa was annulled or revoked has the right to appeal against this decision.

One of the elements of the common visa policy is also the uniform format for the visa sticker. The uniform format for visas contains all the necessary information and meets very high technical standards, especially with regard to safeguards against counterfeiting and falsification. Moreover it has an integrated photography produced to high security standards.

Conclusions and recommendations

Although the situation in the EU is significantly different from the situation in the RA in order to ensure coherency with the EU laws Armenian government should consider adjusting existing law to the EU regulations. Moreover, outcomes from the meetings held with authorities dealing with migration in Armenia also show that it could be considered to introduce changes in Armenian law on visas.

The Law on Foreigners of 25 December 2006 is the most important legal act that governs the relations pertaining to entering the RA, staying and residing in the territory of the RA, transit through the territory of the RA, exiting from the RA, as well as other relations on foreigners. Nevertheless, the majority of regulations concerning visas are located in the decisions of Government of the RA. Thus, in order to strengthen legal certainty it is strongly advised that all regulations concerning visas should be regulated in the Law of the RA on Foreigners.

Changing visa policy of the RA should also be considered. Contrary to the EU regulations, in most cases a visa is issued at the border. However, according to the EU law this should be an exception, not a rule.

It is also recommended to specify in the law the procedures of issuing visas and to create a list of documents required for issuing a visa. Although Decision No. 1268 contains some regulations in this aspect other issues like a requirement for having a medical insurance and sufficient means of subsistence are not mentioned. Thus, current Armenian law is not in line with Appendix II of the Visa Code in this regard.

Likewise, visas should not be extended automatically, but only in exceptional cases, and a residence permit should be an appropriate form of legalisation of longer stay in the territory of the RA. In the context of the visa policy in Armenia invitation issues and the equal treatment of the applicants are also very important. According to the Armenian law
the Government of the RA creates a list of countries whose citizens may apply for the entry visa only on the basis of the invitation. Those regulations do not provide the equal treatment of all visa applicants as some categories of applicants cannot receive a visa without an invitation.

First of all, it is important to clarify a distinction between a visa and a residence permit. According to Article 3 of the Law on Foreigners, the definition of a residence permit and of an entry visa is the same. Therefore, it is necessary to separate the short-term stays based on the entry visas from long-term stays based on residence permits by creating two distinct definitions. The definition of the entry visa should emphasize that it is issued for transit through the territory of the RA or intended stays in the territory of the RA for a period of less than 120 days. Thus, the definition of the entry visa should determine that it is an authorisation to the intended stay in the territory of the RA of a duration of no more than 90 days in any 180-days (as of 18 October 2013; previously: three months in any six-month period) from the date of first entry in that territory for one, two or multiple entries.

It is also strongly suggested to consider regulating the procedure of issuing visas. Applications should be examined and decided on by consulates. By way of derogation, applications may be examined and decided on at the external borders of the RA. The Armenian law should determinate that application for a visa needs to be lodged no more than three months before the start of the intended visit. To avoid that the applicant’s situation on the basis of which a visa has been issued changes it is important that visas are not issued too long before the journey takes place.

Current Armenian law that was made available for the twinning experts lacks preclusions of requirements which should be met by the foreigner applying for a visa. Establishing a list of requirements which applicant needs to meet in order to obtain the visa would make it easier for applicants to prepare their application. It could also expedite the examination as the consular post would receive complete files. The applicant should not only present an application form, a travel document, a photograph and pay the visa fee, like it is determined in current Armenian legislation but visa applicant should also provide supporting documents indicating the purpose of the journey, proof of sufficient means of subsistence and accommodation. It is important that an applicant present the proof of possession of adequate and valid travel medical insurance, as well.

The application form should be set by law and it should contain all the necessary information. The Armenian law should also regulate the criteria that ought to be met by the travel document presented by foreigners. The validity of the travel document should extend
at least three months after the intended date of departure from the territory of the RA. However, in a justified case of emergency, this obligation may be waived. The travel document also should contain at least two blank pages and have been issued within the previous 10 years. The technical requirements for the photograph should be in accordance with the international standards as set out in the International Civil Aviation Organization (ICAO) document 9303 Part 1, 6th edition.

It is also recommended to require from foreigners who apply for the visa to present documents indicating the purpose of the journey. Moreover, the foreigners should also present the documents in relation to accommodation, or proof of sufficient means to cover his/her accommodation, and documents indicating that the applicant possesses sufficient means of subsistence both for the duration of the intended stay and for the return to his/her country of origin or residence. It is also essential to determine in Armenian law that the applicant is obligated to present information enabling an assessment of the applicant’s intention to leave the territory of the RA before the expiration of the visa s/he has applied for. In order to simplify the procedure there a non-exhaustive list of required supporting documents could be established. As it is regulated in Visa Code (Annex II), the non-exhaustive list could present examples of documents which might be enclosed to the visa application. The supporting documents could be listed in such a manner as to take into account the purpose of the intended stay or transit.

It is also suggested that the Armenian legislation should foresee that the applicants for the visa present a valid travel medical insurance as specified in Visa Code. The travel medical insurance should cover any expenses which might arise in connection with repatriation for medical reasons, urgent medical attention and/or emergency hospital treatment or death during stay of foreigners on the territory of the RA.

Regarding visa fees, the Armenian regulation could waive the visa fees for particular groups of foreigners like children less than six years, school pupils, students and researchers.

Analysis of the Armenian law shows that it does not regulate the procedure of the examination of visa applications. Therefore, it is suggested that this issue would be regulated in the Armenian legislations.

The Visa Code divides the visa procedure in two stages. First, the admissibility of an application is verified. Next, if the application is admissible, the further examination is carried out. It is recommended for Armenian authorities to consider introduction of such a solution in the national legislation. The visa application should be considered as admissible
if the deadline for applications submission is respected. Moreover, the basic elements for an application should also be respected (filled in application form, valid travel document, a photograph). The visa fee should be paid, as well. If the essential requirements are not met, the application is inadmissible. The application form and any documents submitted should be returned to the applicant and the visa fee should be reimbursed. When the application is admissible, the stamp is placed in the foreigner's travel document and further examination is carried out.

The Armenian law should regulate that during the visa examination, it ought to be ascertained whether the applicant fulfils the entry conditions. The Armenian legislation should also determine that the consul verifies whether a foreigner does not present a risk of illegal immigration and that s/he intends to leave the territory of the Republic of Armenia before the expiry of the visa applied for. Assessment whether an applicant presents a risk to public policy, internal security or public health is also very important.

Furthermore, during the visa procedure, the competent authority should also verify if a foreigner has an accommodation during the stay, as well as, adequate and valid travel medical insurance. The conditions for issuing a visa should be verified on the basis of supporting documents presented by foreigners. Similarly to the Article 22 of the Visa Code provisions, Armenian legislation should provide to carry out internal consultation before issuing a visa. It is also highly recommended to specify in the Armenian law the deadline for a decision on a visa.

As the Visa Code does not determine the purposes for which a visa may be issued, the Armenian law may freely regulate this issue. However, it is suggested that the non-exhaustive list of required supporting documents should be correlated with the purposes for which a visa is issued.

It is also recommended for Armenian authorities to establish provisions regulating how a visa sticker should be filled. The visa sticker should contain all the necessary information and meet very high technical standards, notably as regards safeguards against counterfeiting and falsification. There should also be provided photography integrated with the visa sticker. Moreover, the law should lay down that the visa sticker should be printed, and no manual changes should be made to it.

Regarding the visa refusal, it is necessary to establish a transparent procedure for refusal of the visa. The Armenian law should define clear grounds for visa refusal. They should be similar to grounds for refusal of entry, but they cannot be the same. The grounds for visa refusal should be linked with the conditions of issuing the visa. The decision on a
visa refusal and the reasons on which it is based should be provided in a written form which should assume the form of the administrative act. The decision should also contain exhaustive information on appeal proceedings. It is possible to establish a standard form for notifying and motivating refusal of the visa, as it is set out in Annex VI to Visa Code. The applicant who has been refused a visa should have the right to appeal against this decision.

The Armenian regulations on visa extension should also be modified. As it has already been mentioned above, visas should not be extended automatically, but only in exceptional cases, and a residence permit should be an appropriate form of legalization of longer stay in the territory of the Republic of Armenia. It is also required to establish transparent procedure for visa extension. A visa should be extended only when a visa holder is unable to leave the territory of the Republic of Armenia before the expiry of his/her visa for force majeure, humanitarian or serious personal reasons. It should not be possible to extend the expired visa. During the procedure of visa extension, the competent authority should examine if the conditions for issuing the visa are still met. It is important to verify if an applicant possesses sufficient means of subsistence and has got travel medical insurance for the additional period of stay. Extension of visas ought to take the form of a visa sticker, not a stamp in the passport. It is necessary to provide procedural safeguards in the procedure of visa extension as well. The negative decision and the reasons on which it is based should be provided in written. The applicant should have the right to appeal against this decision.

**Recommendations:**

- If coherency with the EU law is an aim of Armenian legislators then regulations concerning visas should be alike to the regulation of Visa Code, especially in a field of requirements and procedures of issuing visas, as well as procedural safeguards.
- It should be considered to make issuance of visas at the border an exception to the rule as it is outlined in the EU law.
- It is also recommended to develop procedures of issuing visas and specifying a list of documents required for issuing a visa.
- Visas should not be extended automatically, but only in exceptional cases, and a residence permit should be an appropriate form of legalization of longer stay in the territory of the RA.
- Ensuring equal treatment of invitations submitted by applicants of different origin.
1.2. Residence permits

This part of the report will present Armenian and European legislation concerning issuance of residence permits, including conditions that have to be met in order to receive particular kind of a permit.

**Armenian legislation**

Presently, main legal acts concerning residence permits are as follows:

- Act on Foreigners adopted on 26 December 2006;
- Government of the RA Decision No 134-N of 7 February 2008 on approving the list of documents to be submitted together with an application for obtaining temporary or permanent residence status (extending the residence status) in the Republic of Armenia, the procedure for consideration of the application, the description and forms of the temporary residence card, permanent residence card and of special passport of the Republic of Armenia.

According to the Article 3 of the Act on Foreigners there are three types of residence permits in the RA:

- temporary residence status – an authorisation, by the authorised public administration body of the Government of the RA which entitles a foreigner to reside in the territory of the RA for a certain term;
- permanent residence status – which is an authorisation, by the authorised public administration body of the RA, which entitles a foreigner to reside permanently in the territory of the RA;
- special residence status – meaning an authorisation by the President of the RA, which entitles a foreigner to reside in the territory of the RA within the validity periods of the document attesting that status.

According to the Article 12 of the Act on Foreigners, documents attesting temporary, permanent and special residence statuses of the RA are, respectively:

- the temporary residence card;
- the permanent residence card; and
- the special passport.

Patterns (outlook) of the said documents are defined in the Annex to the Decision.
Temporary residence status is granted to every foreigner if s/he demonstrates that there are circumstances justifying his or her residence on the territory of the RA for one year and a longer term. Such circumstances may be as follows:

- study;
- existence of a work permit in accordance with Chapter 4 of the Act on Foreigners;
- marriage with a citizen of the RA or with a foreigner lawfully residing in the RA;
- being a close relative (parent, brother, sister, spouse, child, grandmother, grandfather, grandchild) of a citizen of the RA or of a foreigner holding permanent residence status in the RA;
- being engaged in entrepreneurial activities; and
- being of Armenian origin.

This type of residence permit shall be granted for a term up to one year with a possibility of extension for one year each time. It is stressed, that an application for extension of temporary residence status must be submitted at least 30 days prior to the expiry of the term of the status. A shorter term for submission of an application may be established by the Government in case of extension of temporary residence permit for study purposes.

A foreigner who has obtained temporary residence permit on the basis of the marriage with a citizen of the RA or with a foreigner lawfully residing in the RA may, in case of dissolving or invalidation of the marriage with a citizen of the RA or with a foreigner holding a residence status in the RA, file an application for extension of the temporary residence status if s/he has been married and has resided in the territory of the RA for at least one year.

Permanent residence status is granted to a foreigner, if all the following conditions are met:

- an applicant proves the existence of close relatives (parent, spouse, brother, sister, child, grandmother, grandfather, grandchild) in the RA;
- an applicant has an accommodation and means of subsistence in the RA; and
- an applicant has resided in the RA as prescribed by law for at least three years prior to filing an application for obtaining permanent residence status.

Permanent residence status may be also granted to a foreigner of Armenian origin or to a foreigner carrying out entrepreneurial activities in the RA. In case of those applicants
conditions referring to accommodation and means of subsistence are considered as being met if:

- the foreigner has means sufficient to cover his or her subsistence expenses of his or her family members under his or her care, or
- the foreigner has a family member or members who are able and have undertaken to provide means for his or her living.

Permanent residence status shall be granted for a term of five years with a possibility of extension for the same term each time. Also, in case of this type of residence permit an application for extension of a permanent residence card must be filed at least 30 days prior to the expiry of the validity period of the permanent residence card.

Special residence status is granted to foreigners of Armenian origin and may be also granted to other foreigners who carry out economic or cultural activities in the RA. Special residence status is granted for a term of ten years; it may be granted more than one time. In the territory of the RA an application for obtaining special residence status shall be filed with the public administration body authorised in the field of police of the RA, whereas in the foreign state – with the diplomatic representation or the consular office of the RA. The decision on granting or refusing to grant special residence status is taken by the President of the RA and may not be appealed against.

The registration of foreigners holding any type of residence permit is carried out by the public administration body authorised in the field of police of the RA as prescribed by the Government of the RA.

The Act on Foreigners determines also rules of procedure in case of temporary and permanent residence status.

An application for obtaining temporary or permanent residence status shall be filed with the public administration body authorised by the police of the RA (that is to say the Passport and Visa Department of the Police). The decision on granting or refusing to grant temporary and permanent residence status is adopted by the authorised body within a period of 30 days following the day of filing the application.

In case of absence from the RA for more than six months a foreigner holding permanent residence status should notify this fact in writing to the public administration body authorised in the field of police of the RA.

The granting of a residence status may be refused to a foreigner if:

- s/he has been expelled from the territory of the RA or was previously deprived of residence status, and three years have not elapsed upon entry into force of
such a decision;

- s/he has been convicted in the RA of committing a grave or particularly grave crime provided for by the Criminal Code of the RA, and the conviction has not been cancelled or has not been expired in the prescribed manner;

- there exist reliable data that s/he is engaged in such an activity, participates, organises or is a member of such an organisation the objective of which is to:
  
  o harm the state security of the RA, overthrow the constitutional order, weaken the defensive capacity;
  
  o carry out terrorist activities;
  
  o transport illegally (without an appropriate authorisation) across the border arms, ammunition, explosives, radioactive substances, narcotic substances, psychotropic substances;
  
  o carry out human trafficking and/or illegal border crossing;

- s/he suffers from one of the diseases specified in Article 8.1 of this Act;

- there are serious and substantial threats posed by him or her to the state security or public order of the RA;

- while seeking a residence status s/he has submitted false information on himself or herself, or has failed to submit necessary documents, or the exit data that his or her stay in the RA pursues an objective other than the declared one;

- s/he has been subjected to administrative liability for violating Act on Foreigners and has not performed 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.

Rules of appealing against a refusal of an application for obtaining residence status are prescribed by the Article 20 of the said Act.

Except for a special residence status, a foreigner may appeal – through judicial procedure – against a refusal of an application filed for obtaining or extending a residence status.

If the validity period of the entry visa or of the residence status of the foreigner expires prior to the examination of the case by the court or entry into force of the decision rendered by the court, the public administration body authorised in the field of police of the RA issues a temporary stay permit to him or her after the court decision is final. If the court upholds the decision on the refusal to obtain or extend a residence status, a foreigner shall be obliged to voluntarily leave the territory of the RA within a term of 10 days following the
taking of legal effect of the court decision.

Where the granting of a residence status is refused, a foreigner may apply again for obtaining a residence permit after one year. This information should be indicated in the decision on refusal.

A residence status is declared invalid and the foreigner is deprived of the residence status if:

- it has been found out that s/he has submitted false information about himself or herself when obtaining residence permit or there exist data that his or her stay in the RA pursues an objective other than the declared one;
- the marriage with a citizen of the RA or a foreigner holding a residence status in the RA which served as a basis for granting residence status to the foreigner has been dissolved or invalidated except for the case referred to in Article 15(3) of Act on Foreigners;
- in case of holding permanent residence status s/he has been absent from the RA for more than six months or has permanently departed from the RA without informing the public administration body authorised in the field of the police of the RA on his or her intention to depart;
- his or her stay in the RA threatens the state security or public order of the RA.

An application on extension of a residence permit may be refused.

The decision on invalidating the residence permit, as well as refusing an application for extension of the residence permit should include also the time limits for foreigner's voluntary leaving the territory of the RA, as well as the ban to leave that place of residence without permission.

A foreigner deprived of a residence status as well as the foreigner whose application on extension of residence status has been refused is obliged to leave the territory of the RA. The term is specified in the decision on depriving of the residence permit or in a decision on refusing the application of extending of the residence permit accordingly. It becomes final if s/he has not appealed against the decision through judicial procedure within a term of 5 days following the receipt of the decision on depriving of residence status or on refusing the application to extend the residence status.

For obtaining temporary or permanent residence status (extending the residence status), foreigners must submit to the Passport and Visa Department of the Police of the RA:

- an application;
- three coloured photos measuring 35x45mm;
- passport, copy of the passport and notarised Armenian translation of the passport;
- documents substantiating the obtaining of a residence status (extension of the residence status) in the RA;
- health certificate; and
- state duty payment receipt.

Decision on granting temporary or permanent residence permit and extending those residence permits is adopted by the Passport and Visa Department within the period of 30 days after receiving application and required documents. The Passport and Visa Department adopts the decision on granting residence permit if the conditions referred to in Article 15 and 16 of the Act on Foreigners are fulfilled and decision on extending residence permit if the conditions referred to in Article 21 of the said Act are fulfilled.

The Passport and Visa Department co-ordinates the issue of granting temporary and permanent residence permits with the National Security Service, in writing or in an electronic form, by sending to the National Security Service copies of the passport and application questionnaire of the applicant, and in case of the foreigner studying at higher education institutions – only the lists.

NSS should, with regard to the issue of granting temporary or permanent residence permits or extending those types of residence permits submit to the Passport and Visa Department information on its consent or objection, within a period of 7 days.

Where any of the grounds for rejecting the granting of a residence status referred to in Article 19 of the Act on Foreigners occurs applications may be rejected by the Passport and Visa Department.

The Decision of the Passport and Visa Department may be appealed by the foreigner through a judicial procedure.

The Passport and Visa Department sends a copy of the decision issued in the case to the foreigner within the period of three days after adopting the decision.

A foreigner granted temporary or permanent residence permit shall be issued a temporary or permanent residence card, patterns (outlook) of which are described in the annex to said Decision.
In the law of the EU main legal acts concerning residence permits are as follows:

- 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;
- Council Resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed person.

Directive on family reunification – the fort one among the directives related to management of legal migration flows – was adopted in order to make family life possible; it also helps to create socio-cultural stability facilitating the integration of third-country nationals in the EU Member States. Thus, the purpose of Directive on family reunification is to determine the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the EU Member States.

For the purpose of Directive family reunification means – according to the provisions of Article 2.d of the said act – the entry into and residence in a EU Member State by family members of a third-country national residing lawfully in that EU Member State on a basis of a residence permit issued by a EU Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence (sponsor) in order to preserve the family unit, whether the family relationship arose before or after the resident's entry. The application should be submitted and examined when the family
members are residing outside the territory of the EU Member State where the sponsor resides. However EU Member State may, in appropriate circumstances, accept the application submitted when the family members are already in its territory. Moreover, it is for the EU Member State to decide, whether the required application should be submitted to the relevant authorities by the sponsor or by the family members who wish to join the sponsor. When the application for family reunification is submitted the EU Member State in any case may acquire the applicant to provide evidence that the sponsor has proper accommodation and health insurance in respect of all risks normally covered for its own nationals in EU Member State concerned for himself/herself and members of the family.

The EU Member State should authorise an entry and residence of the following family members: the sponsor's spouse and the minor children of the sponsor and of his/her spouse, including adopted children. It is for the EU Members State to authorise an entry and residence also the first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin; the adult unmarried children of the sponsor or his or her spouse where they are objectively unable to provide for their own needs on account of the state of health as well as the unmarried partner being a third-country national with whom the sponsor is in a duly attested stable long-term relationship or to a third-country national who is bound to the sponsor by a registered partnership.

The first residence permit granted to family members is of at least one year's duration and is a renewable one. On principle the duration of the above-mentioned permits should not go beyond the date of expiry of the residence permit held by the sponsor. However, not later than after 5 years of residence the spouse or unmarried partner and a child who has not reached majority should be entitled to an autonomous residence permit independent of that one of the sponsor. The possibility of granting independent residence permit may be limited to the spouse or unmarried partner in case of a breakdown of family relationships.

In order to fight abuses of the rules on family reunification the Directive provides a possibility to reject an application for family reunification. Thus, an application for family reunification may be rejected, and the permit granted may be withdrawn if the conditions laid down in Directive are not satisfied (or they are no longer satisfied, as, for instance, for some reasons the sponsor's residence permit was not renewed); where the sponsor and his/her family members do not or no longer live in a real marital or family relationship; where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person; where false or misleading information, false or
falsified documents were used, fraud was otherwise committed or other unlawful means were used as well as it was shown that the marriage, partnership or adoption was contracted for the sole purpose of enabling the person contracted to enter or to reside in a EU Member State.

The sponsor and his/her family members must be granted the right to appeal if an application for family reunification is rejected or a residence permit is not renewed or when it is withdrawn or when a removal is ordered.

Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents was adopted in order to facilitate the integration of third-country nationals who are long-term resident in the EU Member States as this is the key element in promoting economic and social cohesion which is a fundamental objective of the Community stated in the EC Treaty.

With some exceptions, the Directive applies to third-country nationals residing legally in the territory of EU Member States.

EU Members States grant long-term residence status to third-country nationals who have resided legally and continuously within its territory for 5 years prior to the submission of the relevant application (with the exception that only half of the period of residence for study purposes or vocational training may be taken into account in the calculation of the said period). Periods of absence from the territory of the EU Member State shall not interrupt this period and shall be taken into account where they are shorter than six months and do not exceed in total ten months within the period of said 5 years (EU Member States may also accept in their national law longer periods of absence).

Apart from the condition of five years long legal and continuous residence there are other requirements, that is to say EU Member States require third-country nationals to provide evidence that they have stable and regular sources of income which are sufficient to maintain himself/herself and members of his/her family without applying for the social assistance system of the EU Member State concerned (those resources are evaluated by reference to their nature and regularity); and that they have medical insurance in a respect of all risks normally covered for nationals in the concerned EU Member State. EU Member States may also require third-country nationals to comply with integration conditions in accordance with national law (those integration conditions may be e.g. language skills).

Although the permit itself is a permanent one the document needs to be renewed every 5 years. However, the long-term residence status may be withdrawn or lost. This may happen in the following cases: detection of fraudulent acquisition of long-term residence
status; adoption of an expulsion measure; or absence from the territory of the EU for a period of 12 consecutive months.

Due to particular links of the long-term resident with the admitting Member State, a decision to expel such a person may be taken where he/she constitutes an actual and sufficiently serious threat to public policy or public security. Such a decision may not be founded on economic considerations; Member States are also obliged to consider the duration of residence in their territory; the age of the person concerned; the consequences for the person concerned and family members as well as links with the country of residence or the absence of links with the country of origin. If the expulsion decision has been adopted, a long-term resident must be granted relevant judicial remedy against it.

The portfolio of EU legislation related to management of legal immigration flows is composed of a number of directives.

The first one to be mentioned is 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, adopted in order to consolidate and give structure to European research policy. Within the meaning of the Directive a researcher means a third-country national holding appropriate higher educational qualifications which give access to doctoral programmes who is selected by a research organisation for carrying out a research project for which such qualifications are normally required. Research organisation means any public or private organisation which conducts research and which has been approved for the purpose of this Directive in accordance with national legislation.

According to Article 5.1 of the directive, the first step in admission procedure is that any research organisation wishing to host a researcher under the admission procedure laid down in Directive should be approved by the EU Member State (such an approval must be granted for at least 5 years). A research organisation then signs a hosting agreement with the researcher, specifying – among others- the purpose and duration of the researcher's qualifications in the light of the research objectives, as evidenced by a certified copy of his/her qualifications (Article 6 of the directive).

A foreigner who applies for admission on the basis of this Directive is obliged to present, among others, a valid travel document, a hosting agreement signed with a research organisation, and a statement of financial responsibility issued by that organisation.

A researcher should then be issued a residence permit for a period of at least one year which may be renewed after that time. EU Member State may decide to grant residence permits also to family members of the researcher for the same period of time.
EU Member States may withdraw or refuse to renew the residence permit when it has been fraudulently acquired or wherever it appears that the holder does not meet the conditions for entry and residence on the basis of this Directive. The residence permit granted to the researcher may also be withdrawn or not renewed for reasons of public policy, public security or public health.

The purpose of the Council 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 is to determine the conditions for admission of third-country nationals to the territory of the EU Member States for a period exceeding three months for the purposes of studies, pupil exchange, unremunerated training or voluntary service as well as the rules concerning the procedures for admitting third-country nationals to the territory of the EU Member States for those purposes. In this case student means a third-country national accepted by an establishment of higher education and admitted to the territory of an EU Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the EU Member State. Those qualifications include diplomas, certificates or doctoral degrees in an establishment of higher education which may cover a preparatory course prior to such education according to its national legislation.

Directive shall apply to third-country nationals who apply to be admitted to the territory of an EU Member State for the purpose of studies. EU Member States may also decide to apply this Directive to third-country nationals who apply to be admitted for the purposes of pupil exchange, unremunerated training or voluntary service.

A third-country national who applies to be admitted for the purposes of studies should present a valid travel document, in case of minors – a parental authorisation for the planned stay; sickness insurance in respect of all risks normally covered for its own nationals in the EU Member State, documents confirming the fact of admission to an establishment of higher education to follow a course of study as well as evidence that during his/her stay s/he will have sufficient resources to cover his/her subsistence, study and return travel costs. According to Article 12.1 of the directive residence permit shall be issued to the student for a period of at least one year and renewable if the holder continues to meet the conditions. In case when duration of the course of study is less than one year the permit shall be valid for the duration of the course. The residence permit issued to a student may be withdrawn or be refused to be renewed when it has been fraudulently acquired or wherever it appears that the
holder did not meet or no longer meets the conditions for entry and residence laid down in the Directive. EU Members States may also withdraw or refuse to renew a foreign student’s residence permit on grounds of public policy, public security or public health.

The first purpose of Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment is to determine: conditions of entry and residence for more than three months in the territory of the EU Member States of third-country nationals for the purpose of highly qualified employment as EU Blue Card holders, and of their family members. Within the meaning of the Directive highly qualified employment means the employment of a person who in the EU Member State concerned, is protected as an employee under national employment law and/or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else, is paid, and has the required adequate and specific competence, as proven by higher professional qualifications. It should be explained, that higher professional qualifications are defined in the directive as qualifications attested by evidence of higher education qualifications or, by way of derogation, when provided for by national law, attested by at least five years of professional experience of a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer.

The Directive introduces a special kind of a residence permit, a so-called Blue Card, which entitles its holder to reside and work in the territory of an EU Member State under the terms of this Directive. In order to obtain this permit a third-country national shall present:

- a valid work contract or, as provided for in national law, a binding job offer for highly qualified employment, of at least one year in the EU Member State concerned,
- a document attesting fulfilment of the conditions set out under national law for the exercise by EU citizens of the regulated profession\textsuperscript{11} specified in the work contract or binding job offer as provided for in national law, for unregulated professions,
- the documents attesting the relevant higher professional qualifications

\textsuperscript{11} Regulated profession is defined in Article 3 of the Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. According to that law regulated profession is as a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit.
in the occupation or sector specified in the work contract or in the binding job offer as provided for in national law,

- a valid travel document, a sickness insurance for all the risks normally covered for nationals of the EU Member State concerned.

An applicant may not be considered to pose a threat to public policy, public security or public health.

A third-country national who has applied and fulfils the above-mentioned requirements and for whom the competent authorities have taken a positive decision shall be issued the EU Blue Card. During the period of its validity, the EU Blue Card shall entitle its holder to enter, re-enter and stay in the territory of the EU Member State issuing the EU Blue Card as well as to the rights recognised in this Directive.

The EU Member State shall reject an application for a EU Blue Card whenever the applicant does not meet the conditions set out in Article 5 or whenever the documents presented have been fraudulently acquired, falsified or tampered with. EU Member States may also reject an application for EU Blue Card in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin, or if the employer has been sanctioned in conformity with national law for undeclared work and/or illegal employment. For reasons of similar nature EU Member States may withdraw or refuse to renew the said card.

The purpose of the Directive 2011/98/EU 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 is to establish a single application procedure for issuing a single permit for third-country nationals to reside for the purpose of work in the territory of a EU Member State. Directive aims at simplification of the procedures for their admission and facilitation of the control of their status. Moreover, it introduces a common set of rights to third-country workers legally residing in an EU Member State, irrespective of the purposes for which they were initially admitted to the territory of that EU Member State, based on an equal treatment with nationals of that EU Member State.

Single permit means a residence permit issued by the authorities of an EU Member State allowing a third-country national to reside legally in its territory for the purpose of work, while single application procedure means any procedure leading, on the basis of a single application made by a third-country national, or by his or her employer, for the authorisation of residence and work in the territory of a EU Member State, to a decision
ruling on that application for the single permit.

An application to issue, amend or renew a single permit shall be submitted by way of a single application procedure. EU Member States shall determine whether applications for a single permit are to be made by the third-country national or by the third-country national’s employer. EU Member States may also decide to allow an application from either of the two. If the application is to be submitted by the third-country national, EU Member States shall allow the application to be introduced from a third country or, if provided for by national law, in the territory of the EU Member State in which the third-country national is legally present. A decision to issue, amend or renew the single permit shall constitute a single administrative act combining a residence permit and a work permit.

The single permit entitles its holder at least to enter and reside in the territory of the EU Member State issuing the single permit, provided that the holder meets all admission requirements in accordance with national law; have free access to the entire territory of the EU Member State issuing the single permit within the limits provided for by national law and exercise the specific employment activity authorised under the single permit in accordance with national law.

A decision rejecting an application to issue, amend or renew a single permit, or a decision withdrawing a single permit on the basis of criteria provided for by Union or national law must be given in the written notification. Such a decision must be also opened to appeal in the EU Member State concerned, in accordance with national law.

According to the Council Resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed person may be taken by third-country nationals wishing to pursue activities as self-employed persons. That activity must be carried out in a personal capacity or in the legal form of a company or firm. Moreover, the EU Member State may require that an activity of self-employed foreigners will produce the benefits (investment, innovation, transfer of technology, job creation) to the economy of the host country – Article A. 4 of the resolution.
**Conclusions and recommendations**

As to the procedure for granting temporary and permanent residence permit there are three common modifications to be suggested.

The first one refers to the role of NSS in the said procedures. The Service provides an opinion in residence permit cases, which seems to be binding to the Passport and Visa Department. Thus, it would be recommended to consider strengthening the position of the applicant in the procedure.

A possible solution might be to indicate in the Decision the catalogue of activities and means that may be undertaken by the NSS when checking the application like e.g. interview with the applicant etc. The party should be well-aware of the importance of the opinion issued by NSS to the final solution of the case taken by the Passport and Visa Department.

It would also be useful to modify the relevant principles of the said Government Decision in order to clarify without any doubts whether the opinion of NSS is or is not obligatory for the Passport and Visa Department.

It is worth mentioning, that according to *The European Convention on Human Rights and The Charter of Fundamental Rights of the European Union* an appeal has to be effective. Therefore, in order to preserve the principle of effectiveness of legal remedy and having in mind the validity of this opinion, it is recommended to introduce the possibility to appeal against the NSS’s opinion, which, in order to do that, should be delivered to the party in writing.

Secondly, an obligation to submit the appeal within the time limits of 5 days only requires particular attention, as this is quite a short period. One should take into consideration that the residence permit procedures are of quite special nature. That is to say applicants not always know the legal system and the Armenian language, and that is why they need help in order to understand the context of the decision delivered they have to find legal aid etc. Thus, due to the fact that the abovementioned *European Convention on Human Rights and the Charter of Fundamental Rights of the European Union* preserve the right to an effective appeal it is recommended to extend that term.

With respect to permanent residence permit some inconsistence between the provisions of the Act on Foreigners has been identified. Article 3 of that Act specifies that permanent residence status entitles a foreigner to reside permanently on the territory of the RA, while in Article 16.2 of the said Act it is mentioned that permanent residence status is granted for a term of five years with a possibility of extension for the same term each time.
It must be stressed, that a foreigner that has a particularly firm links with the RA as regards his/her legalisation of stay rights is a key element of integration with the admitting country. Thus, this type of residence permit should be granted for an unlimited period of time (with possible modifications of conditions of obtaining such a permit, like longer required period of legal residence).

It is also recommended to extend the permitted period of absence from the territory of the RA before the permit is cancelled. Final recommendation in this area is to abandon the obligation to notify in writing the Passport and Visa department the fact of leaving the territory of the RA each time as it may be regarded as causing quite serious consequences and redundant as the Border Guard is - for obvious reasons - well-aware when and where the foreigner crosses the border.

There should be the distinction between the permit as such and a document certifying possession of permanent (or temporary) residence status which obviously should be renewed after a certain period of time.

Moreover, it is recommended to consider establishing provisions that would guarantee them special protection from being expelled. This is due to the fact that a permit holder has stable and special links with the RA.

With respect to the special residence permit granted on the basis of the decision of the President of the RA it is recommended to modify the name of the document issued to holders of this type of the permit. Presently it is named as a special passport which may lead to some misunderstandings. It must be taken into account that commonly recognised international practice is that the passport certifies the citizenship of its holder as well as his/her identity. Obtaining special residence permit does not lead to obtaining also citizenship of the RA while issuing a special passport may lead to misunderstanding that this is so. Therefore the recommendation is, that a document issued to the holder of special residence permit should be named “special residence card”.

With respect to the Directive 2003/86/EC on family reunification it should be stressed that there are many similarities between the above-mentioned Directive and solutions adopted in Armenian legislation with respect to protection of family unity. The recommendation in this area is to allow in this type of cases the possibility to submit application for temporary residence permit also from outside of the country which – at least in some cases – may be useful for family members.

According to the representatives of Armenian administration the RA does not observe a problem of abusing of residence permits granted to foreign entrepreneurs making
investments. Nevertheless it is worth to mention that if such a problem occurs, experiences of the EU Member States might have been used.

The system of admission of foreign students is both flexible and friendly to the students and it prevents possible abuses of residence permits granted for the purpose of studies. The recommendation in this field is that also in this type of cases the possibility to submit a relevant application for a residence permit from outside the country should be established as it would, among others, shorten the period of waiting for the permit, and therefore facilitate obtaining the entry visa.

Having in mind that the number of scientists coming to the RA for the purpose of scientific research authorities of the RA may consider establishing a special type of residence permit addressed directly to this type of migrants. That kind of instrument in the future would be profitable for the development of national research policy of the RA. In such a case the provisions of the Directive could provide an aid in drafting new provisions.

Despite the lack of executive provisions with respect to work permits it should be mentioned that in the EU law there is a system of residence permit adopted in order facilitate admission of labour migrants and grant them a common set of rights in all EU Member States and, in particular, to adjunct to the EU labour market some particular types of workers in the area where shortages are observed, like highly qualified workers. Despite the present possibilities as to admission of foreign workers, the authorities of the RA may find it useful in the future to introduce the system of residence permits in practice. It would be reasonable therefore – having in mind practical experiences of EU countries – to establish e.g. one procedure for obtaining work permit and residence permit as well as special residence permits for foreign workers with high professional skills.

A final recommendation in the area of residence permit issues refers to the notion of Armenian origin which is used in the Act on Foreigners without being defined more precisely and without making a reference to other laws. In order to avoid possible misunderstandings, it would be useful to clarify this.

**Recommendations:**

- In order to ensure effective access to appeal procedure it is recommended to extend the term for submitting an appeal in residence permit cases.

- Permanent residence status should be granted for an undefined term as it is addressed at long-staying foreigners whose integration in the RA should be facilitated.
• Due to the nature of the residence permit that is issued for long-staying foreigners whose integration in the RA should be facilitated special protection from being expelled and an extension of the period of absence from the territory of the RA before the permit is cancelled could be considered.

• Submission of an application for temporary residence permit from outside of the RA for family members could be considered.
Chapter II – fighting illegal immigration to the RA

This part of the report will present Armenian and European legislation concerning measures aiming at fighting illegal immigration. Thus, it refers to entry requirements, border control issues, refusal of entry policy and issues as well as entry ban, cancellation of a visa and returns of illegally staying foreigners.

2.1. Introduction

The EU policy on illegal migration is based on activities taken under the Article 79 of the Treaty on European Union and the Treaty on the Functioning of the European Union. According to this Article the Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in EU Member States, and the prevention of, and enhanced measures to combat illegal immigration and trafficking in human beings.

For those purposes the European Parliament and the Council shall adopt measures in the following areas:

- the conditions of entry and residence, and standards on the issue by EU Member States of long-term visas and residence permits, including those for the purpose of family reunification;
- the definition of the rights of third-country nationals residing legally in a EU Member State, including the conditions governing freedom of movement and of residence in other EU Member States;
- illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
- combating trafficking in persons, in particular women and children.

In accordance with Article 79.3 of the Treaty on the Functioning of the European Union the Union may also conclude agreements with third countries on 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.

The main Union legal acts governing the issue of preventing and fighting illegal migration are:
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;


- Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence;


The above-mentioned Union legislation has been the point of reference for the analysis of the legal acts of the RA that are specified below:

- Act on Foreigners as of 25 December 2006 (as amended);

- Act on State Border as of 20 November 2001;

- Act on Border Guard Troops as of 20 November 2001;

- Decision of the Government of the RA No. 200 from 24 March 1998 on the approval of the procedure on the performance of the functions of the state authorised bodies at the state border-crossing points of the Republic of Armenia;
- Decision of the Government of the RA No. 115-N from 25 January 2008 on the establishment of the procedure on entering data into the database of foreigners deemed persona non grata in the territory of the Republic of Armenia and making use thereof;

- Decision of the Government of the RA No. 127-N from 7 February 2008 on the establishment of the procedure on the operation of special facilities at border crossing points and transit areas of the Republic of Armenia and for detention of foreigners therein;

- Decision of Government of the RA No. 1268-N from 4 October 2007 on the approval of the list of documents to be submitted together with the applications for obtaining an entry visa to the Republic of Armenia and for extending the validity period of the entry visa, the procedure on considering applications, issuing an entry visa, extending the validity period of the entry visa, the form of making a note in the passports of foreign citizens on issuing an entry visa to the Republic of Armenia, extending the validity period of the visa, refusing visa, cancelling the entry visa or refusing the entry, the procedure on encoding entry visa as per type of visit, maintaining the database of persons having obtained entry visa to the Republic of Armenia and having extended the validity period of entry visa, on entering and providing data;

- Decision of the RA Government No. 1360 from 22 September 2011 on the procedure of consultation between the state authorities of the Republic of Armenia of applications received from the foreign states in the frames of agreements on readmission of persons with unauthorised stay.
2.2. Conditions of entry and stay, border control and refusal of entry

2.2.1. Entry requirements

**Relevant Armenian legislation**

By virtue of Article 6 of the Law on Foreigners a foreigner may enter into the RA if s/he:

- holds a valid passport (travel document)
- holds a valid entry visa (if needed) or a document attesting the residence status; and
- is authorised by the public administration body authorised by the Government of the RA carrying out border control.

Foreigners under the age of 18 may enter the RA with their parents, one of the parents, another legal representative or an attendant, or alone, if they come to the RA to visit their parents, one of the parents, another legal representative, or a host organization.

Nevertheless, those States’ citizens for whom a regime for arriving in the RA without an entry visa is established may stay in the territory of Armenia for a maximum term of 180 days in a year, as a rule. A special notation (stamp) shall be made in the passport of a foreigner on the date of his/her arrival.

**European legislation**

The requirements for the entry of the third-country nationals into the territory of the Schengen states are set out in 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 (Schengen Borders Code). For stays not exceeding three months per a six-month period, a non-EU country national must:

- possess a valid travel document;
- possess a valid visa, if required;
- justify the purpose of his/her intended stay and have sufficient means of subsistence;
- not have an alert issued for him/her in the Schengen Information System (SIS) for the purpose of refusing entry; and
not be considered a threat to public policy, internal security, public health or the international relations of EU countries.

Conclusions and recommendations

The Armenian law does not provide a definition of the phrase “authorisation by the public administration body authorised by the Government of the RA carrying out border control”. For the transparency and the clarity of the law it should be strictly determined what conditions the third-country national should meet when entering the territory of the RA and what actions taken by the relevant authorities s/he may face. This would also strengthen the human rights approach and the rule of law concept.

Apart from that the Armenian law does not determine the amount of money the third-country national should possess when entering the territory of the RA. It is recommended to specify that means of subsistence should be sufficient for the period of an intended stay (the means of subsistence should ensure covering the possible expenses during the stay of the foreigner in the territory of the RA).

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<th>Recommendation:</th>
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<td>It is recommended for the Armenian authorities to consider introducing in the national legislation – as an entry requirement for the foreigners – an obligation imposed on a foreigner to justify the purpose of an intended stay and possession of sufficient means of subsistence when entering and staying in the territory of the RA.</td>
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2.2.2. Border control

Relevant Armenian legislation

According to the Armenian legislation the border traffic shall also be performed at border points defined by the Government of Armenia, in compliance with the legislation and international agreements of the RA. In case of the entry and exit of foreigners to and from the RA the border service shall check the passports as well as the availability of the entry visa, if required.
European legislation

According to 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 (Schengen Borders Code) external borders of the EU (Schengen states) may be crossed only at border crossing-points and during the fixed opening hours. When crossing an external border – both on entry and exit, EU citizens and other persons enjoying the right of free movement within the EU undergo a minimum check. This minimum check is carried out to establish their identity on the basis of their travel documents by a rapid and straightforward verification of the validity of the documents and a check for signs of falsification or counterfeiting. Non-EU country nationals are subject to thorough checks. These comprise a verification of the conditions governing entry, including verification in the Visa Information System (VIS) and, if applicable, of documents authorising residence and the pursuit of a professional activity.

The travel documents of non-EU country nationals are systematically stamped upon entry and exit. If a travel document does not bear an entry or exit stamp, it may be presumed that the holder does not fulfil, or no longer fulfils, the conditions of stay. However, the non-EU 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 EU countries.

Conclusions and recommendations

Border control should help to combat illegal immigration and trafficking in human beings. Moreover, it supports prevention of a threat to state’s internal security, public policy, public health and international relations. It also has to be noticed that border checks should be carried out in such a way as to fully respect human dignity. Thus, border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued.

The Armenian law is too general as regards the standards of conducting the border checks on entry and exit – in general it only imposes an obligation to check the passports as well as the availability of the entry visa, if required. However, the provisions should explicitly regulate conditions of entry and stay that are subject to border checks.
Neither of the provisions of the Armenian law imposes an obligation of systematic stamping of the travel documents of foreigners. Thus, the law should be amended accordingly.

**Recommendations:**

- It is recommended for the Armenian authorities to establish provisions imposing upon the border service the obligation to carry out more detailed checks on persons (foreigners) crossing the state border.
- The obligation to systematic stamping of travel documents upon entry and exit should be clearly determined in the legislation.

2.2.3. Refusal of entry

**Relevant Armenian legislation**

By virtue of the provisions of the Armenian Law on Foreigners those foreigners:

- who have arrived at a crossing point of the state border without a passport, a document substituting it or with an invalid passport, or
- who have been refused an entry visa at a crossing point, or
- who have not obtained an entry authorization from the body carrying out border control

shall not be allowed an entry into the territory of the RA. Moreover, as soon as possible, they shall be returned to their state of origin or to the state from where they have arrived by the means of transport of the same carrier, except for cases when they have arrived in Armenia for the purpose of seeking refugee status or a right to political asylum.

If the entry of a foreigner to the RA is refused by the border troops on the state border crossing point of the RA a relevant note shall be made in the passport of the foreigner on the page envisaged for a visa with a rectangular stamp measuring 55 x 35 mm. Moreover, the words «NATIONAL SECURITY SERVICE UNDER THE GOVERNMENT OF THE REPUBLIC OF ARMENIA BORDER TROOPS», following with the record «the entry to the Republic of Armenia is rejected» and a date shall be indicated on the stamp in Armenian and in English.
European legislation

If the conditions set out in the Schengen Borders Code are not met (by the third-country national), entry to the territory of the Schengen states is refused. In exceptional situations special provisions (e.g. for humanitarian or asylum reasons as regulated in Article 5.4.c and Article 13.1 of the Schengen Borders Code) apply. Entry may only be refused by a substantiated decision stating the precise reasons for the refusal. The decision shall be taken by an authority empowered by national law. It shall immediately take effect.

The substantiated decision stating the precise reasons for the refusal of an entry shall be given by means of a standard form, filled in by the authority empowered by national law to refuse entry. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the decision to refuse an entry by means of that form.

Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national. Lodging such an appeal shall not have suspensive effect on a decision to refuse entry.

The third-country national concerned shall be entitled to correction of the cancelled entry stamp, and any other cancellations or additions which have been made by the EU Member State which refused entry. This rule should apply where the appeal body concludes that the decision to refuse an entry was an ill-founded one. Moreover, this rule should be applied without prejudice to any compensation granted in accordance with national law.

Conclusions and recommendations

Current Armenian law does not preclude that a specific decision (in writing) should be issued to the foreigner who has not been allowed to enter the territory of the RA. It also does not put an obligation on the body that issued the above-mentioned decision to provide precise reasons for the refusal of an entry.

An existing Armenian legislation is also not clear whether there is a possibility to appeal against the refusal of entry. Moreover, due to the fact that the decision is not provided in writing the burden of proof that is put on an appellant is high and available resources that can support questioning the decision are limited.
**Recommendations:**

- It is recommended for the Armenian authorities to establish a transparent procedure on a refusal of an entry into the territory of the RA.
- When refusing an entry the relevant authorities should be obliged to issue a specific decision in writing. This decision should assume the form of an administrative act. It should in particular contain precise reasons for the refusal of an entry and exhaustive information on appeal proceedings.

2.2.4. Entry ban, entering data of foreigners in information system for the purposes of refusing entry

**Relevant Armenian legislation**

Under the provisions of the Armenian legislation (the Act on Foreigners) the entry of the foreigner into the RA shall be banned, if:

- s/he has been expelled from the territory of the RA 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;
- s/he has been subjected to administrative liability for violating the Law on Foreigners 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;
- there exist reliable data that s/he 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 RA, overthrow the constitutional order, weaken the defensive capacity;
  - carry out terrorist activities;
  - illegally (without an appropriate authorisation) transport across the border arms, ammunition, explosives, radioactive substances, narcotic substances, psychotropic substances; or
  - carry out human trafficking and/or illegal border crossings;
- s/he suffers from an infectious disease which threatens the health of population, except for cases when s/he enters the RA for the purpose of treating such a
disease. The list of those infectious diseases shall be established by the Government of the RA;

- while seeking an entry authorisation, s/he 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 RA pursues an objective other than the declared one; or

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

The data on persons mentioned above shall be entered in the database of foreigners regarded as undesirable in the RA. The database shall be maintained by the public administration body authorised in the field of national security of the RA. This body shall also enter necessary information into the above-mentioned database after receiving a submission from: the Staff to the President of the RA, public administration body authorised in the field of national security of the RA, public administration body authorised in the field of police, and public administration body authorised in the field of foreign affairs.

The right to make use of the database shall be vested in the Staff to the President of the RA, public administration body authorised in the field of national security of the RA, public administration body authorised in the field of police, public administration body authorised in the field of foreign affairs, authorised body carrying out border control, as well as courts of the RA, and criminal prosecution bodies of the RA in cases provided for by law.

The procedure for entering information into the database of foreigners regarded as undesirable in the RA and making use of it shall be established by the Government of the RA. According to the procedure the data of a foreigner shall be entered into the database if:

- s/he has been expelled from the territory of the RA or has been deprived of residence status, and three years have not elapsed upon the entry into force of the decision on the expulsion or deprivation of residence status;

- s/he has been subjected to administrative liability for infringing the Law on Foreigners and a year has not elapsed upon making a decision thereon;

- reliable data are available that s/he is engaged in such an activity, participates in, organises or is a member of such an organisation the objective of which is to:
  - inflict danger to the state security of the RA, overthrow the constitutional order or weaken the defence capacity,
  - carry out terrorist activities,
  - illegally transport across the border arms, ammunition, explosives,
radioactive substances, narcotic substances, psychotropic substances,

- carry out traffic in human beings (trafficking) and (or) illegal border crossings;
- s/he suffers from an infectious disease which threatens the health of population;
- while seeking an entry visa, s/he has provided false information on himself or herself, or has failed to submit necessary documents, or data are available that his or her entry into or stay in the RA pursues an objective other than the declared one or there are serious and substantial threats posed by him or her to the state security or public order of the RA;
- s/he has been convicted of committing a grave or particularly grave crime stipulated by the Criminal Code of the RA, and the conviction has not been cancelled or expunged in the prescribed manner;
- s/he has taken up an employment without a work permit.

For making use of the database the bodies shall submit written requests to the public administration body authorised in the field of national security which shall respond to them not later than within 5 working days.

**European legislation**

According to the 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) the SIS II contains (among others) those categories of data supplied by each of the Member States, which are necessary for alerts for refusing entry or stay. The SIS II stores the following information on persons for whom an alert has been issued: surname(s) and forename(s), name(s) at birth, aliases, specific physical characteristics, place and date of birth, sex, photographs, fingerprints, nationality(ies), whether the person concerned is armed, violent or has escaped, reason for the alert, authority issuing the alert, a reference to the decision giving rise to the alert and link(s) to other alerts issued in the SIS II. It also includes the action to be taken in the event that there is a “hit” (i.e. if a competent national authority finds an alert in SIS II concerning a non-EU national on whom they have carried out a check).

Photographs and fingerprints are used to confirm the identity of a non-EU national who has been located as a result of an alphanumeric search made in the SIS II.
Data on third-country nationals in respect of whom an alert has been issued for the purposes of refusing an entry or stay shall be entered on the basis of a national alert. The later alert should result from a decision taken by the competent administrative authorities or courts in accordance with the rules of procedure laid down by national law taken on the basis of an individual assessment. Appeals against these decisions shall lie in accordance with national legislation.

An alert shall be entered where the decision is based on a threat to public policy or public security or to national security which the presence of the third-country national in question in the territory of a Member State may pose. This situation shall arise in particular in the case of:

- a third-country national who has been convicted in a Member State of an offence carrying a penalty involving deprivation of liberty of at least one year;
- a third-country national in respect of whom there are serious grounds for believing that he has committed a serious criminal offence or in respect of whom there are clear indications of an intention to commit such an offence in the territory of a Member State.

An alert may also be entered when the decision referred to in paragraph 1 is based on the fact that the third-country national has been subject to a measure involving expulsion, refusal of entry or removal which has not been rescinded or suspended, that includes or is 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 third-country nationals.

By the virtue of the latest harmonized EU legislation (Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals) an entry ban may be given together with a return decision. However, an entry ban must be provided when no period of voluntary departure is granted or when the illegally staying third-country national has not complied with the return decision. The duration of the entry ban must be set on a case-by-case basis, taking into consideration the particular circumstances of the person concerned. In principle, the duration may not be longer than five years, unless the third-country national poses a threat to public/national security.

EU Member States may withdraw or suspend an entry ban for particular reasons. In humanitarian cases they may even decide on non issuance of such a ban.
Data on foreigners for whom an alert has been issued for the purposes of refusing entry shall be entered in the specified information system (the Schengen Information System). The Schengen Information System shall enable the authorities designated by the Contracting Parties, by means of an automated search procedure, to have access to alerts on persons and property for the purposes of border checks and other police and customs checks carried out within the country in accordance with national law and, in the case of the specific category of alerts, for the purposes of issuing visas, residence permits and the administration of legislation on aliens in the context of the application of the provisions of the Convention relating to the movement of persons.

**Conclusions and recommendations**

Alerts for the purpose of refusing entry or stay should not be kept longer in a system than the time required to fulfil the purposes for which they were supplied. As a general principle, they should be automatically erased from a system after a certain period of time. Any decision to keep an alert for a longer period should be based on a comprehensive individual assessment. Alerts should also be reviewed in certain period of time. All authorities involved in combating and preventing irregular migration should have direct access to the system (i.e. consuls responsible for issuing visas) – not only the public administration body authorised in the field of national security.

The present language of provisions of the Armenian Law on Foreigners may raise concerns that an entry ban does not differentiate from the refusal of entry. It also does not provide for the duration of an entry ban imposed on foreigners.

**Recommendations:**

- It is recommended for the Armenian authorities to establish transparent provisions defining an entry ban. The reasons for issuing an alert in the national database for the purposes of refusal entry should be clearly set out in the statutory provisions – not on the executive level, in an appropriate manner, clearly distinguishing the reasons of imposing an entry ban from the reasons of refusal of entry (an entry ban entered into the relevant database shall be the reason for refusal of entry).
- The legislation should preclude duration of an entry ban. In individual cases duration of an entry ban should be set on a case-by-case basis, taking into consideration the
particular circumstances of the person concerned.

- The relevant authorities of the RA i.e. competent for matters related to issuing visas, residence permits and the administration of legislation on foreigners should have a direct access to the alerts issued for the purposes of refusing entry.

2.2.5. Cancellation (revocation) of a visa

**Relevant Armenian legislation**

By virtue of the Armenian Law on Foreigners the issued entry visa shall be revoked if:

- a foreigner has been expelled from the territory of the RA or has been deprived of residence status, and three years have not elapsed upon the entry into force of the decision on the expulsion or deprivation of residence status,
- a foreigner has been subjected to administrative liability for violating the Law on Foreigners 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,
- there exist reliable data that a foreigner 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 RA, overthrow the constitutional order or weaken the defence capacity;
  - carry out terrorist activities;
  - illegally transport across the border arms, ammunition, explosives, radioactive substances, narcotic substances, psychotropic substances;
  - carry out traffic in human beings (trafficking) and (or) illegal border crossings.
- a foreigner suffers from an infectious disease which threatens the health of population, except for cases when s/he enters the RA for the purpose of treating such a disease. The list of those infectious diseases shall be established by the Government of the RA;
- while seeking an entry authorisation, a foreigner 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 RA pursues an objective other than the declared one; or
there are other serious and substantial threats posed by a foreigner to the state security or public order of the RA.

The entry visa issued to a foreigner shall be revoked also, if s/he has taken up employment in the RA without a work permit.

In case of revocation of the entry visa to the RA a relevant note shall be made by the body having issued the entry visa in the passport of the foreigner on the page envisaged for a visa with a rectangular stamp measuring 55 x 35mm. The code of the body having cancelled the visa, the record «the entry visa is cancelled», and the name of the body having cancelled the visa in the following words «POLICE OF THE REPUBLIC OF ARMENIA UNDER THE GOVERNMENT OF THE REPUBLIC OF ARMENIA PASSPORT AND VISA DEPARTMENT» or «MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF ARMENIA» shall be indicated on the stamp in English and Armenian, whereas the name of the city where the body issuing entry visa is situated, and the words «EMBASSY OF THE REPUBLIC OF ARMENIA» or «CONSULATE GENERAL OF THE REPUBLIC OF ARMENIA» shall be indicated on the stamps of cancelling the entry visa by diplomatic missions and consular institutions of the Republic of Armenia in foreign States.

**European legislation**

According to the Schengen *acquis* – Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) – under certain circumstances the visa that has been issued may be annulled or revoked.

A (Schengen) visa shall be annulled if it becomes evident that the conditions for issuing it were not met at the time when it was issued. This relates in particular to cases when there are serious grounds for believing that the visa was fraudulently obtained. A visa shall in principle be annulled by the competent authorities of the EU Member State which issued that visa. However, a visa may be annulled by the competent authorities of another EU Member State – if that is the case the authorities of the EU Member State that issued the visa shall be informed of such annulment.

A (Schengen) visa shall be revoked where it becomes evident that the conditions for issuing it are no longer met. A visa shall, in principle, be revoked by the competent authorities of the EU Member State which issued it. However, (similarly to visa annulment) a visa may be revoked by the competent authorities of another EU Member State. If that is
the case the authorities of the EU Member State that issued the visa shall be informed of such revocation.

A (Schengen) visa may also be revoked at the request of the visa holder. The competent authorities of the EU Member States that issued the visa shall be informed about such a revocation.

Failure of the (Schengen) visa holder to produce, at the border, one or more of the supporting documents, shall not automatically lead to a decision to annul or revoke the visa.

If a (Schengen) visa is annulled or revoked, a stamp stating ‘ANNULLED’ or ‘REVOKED’ shall be affixed to it and the optically variable feature of the visa sticker, the security feature ‘latent image effect’ as well as the term ‘visa’ shall be invalidated by being crossed out.

A decision on annulment or on revocation of a (Schengen) visa and on the reasons on which it is based shall be notified in writing to the visa holder by means of the standard form.

A (Schengen) visa holder whose visa has been annulled or revoked shall have the right to appeal, unless the visa was revoked at his request. Appeals shall be conducted against the EU Member State that has taken the decision on the annulment or the decision on the revocation. EU Member States shall provide visa holders with information regarding the procedure to be followed in the event of an appeal. National law of that EU Member State applies in an appeal cases.

Conclusions and recommendations

It is not clear if the Armenian visa can be revoked when a foreigner has been already staying in the territory of the RA.

There is no specific decision (in writing) issued. It is also not clear whether there is a possibility to appeal against the decision on revocation of a visa.

There are also no specific provisions setting out the rules of technical revocation (annulment) of a visa what poses a threat that the visa may be used again in unauthorized manner (i.e. in other passport after the change of personal data of visa holder).
Recommendations:

- It is recommended for the Armenian authorities to establish a transparent procedure on revocation of an entry visa to the territory of the RA.
  
- When revoking a visa relevant authorities should be obliged to issue a specific decision in writing which should assume the form of an administrative act. The decision should in particular contain precise reasons for the revocation of a visa and exhaustive information on appeal proceedings.

- It is recommended to establish explicit provisions authorising the relevant authority to revoke (annul) a visa of a foreigner staying in the territory of the RA.

- The legislation should also provide for the provisions on technical aspects of revocation of a visa that is affixed in the foreigner’s travel document in order to prevent an unauthorised use of the revoked visa in the future (i.e. by changing the entries).

2.3. Returning the illegally staying foreigners

2.3.1. Return decision – voluntary departure and removal (expulsion)

Relevant Armenian legislation

According to law of the RA a foreigner shall be obliged to voluntarily leave the territory of the RA, if:

- the validity period of his or her entry visa or of residence status has expired;
- the entry visa has been revoked;
- his/her application for obtaining a residence status or extending the term has been refused; or
- s/he has been deprived of a residence status.

If a foreigner has failed to voluntarily leave the territory of the RA, the public administration body authorised in the field of police shall institute and file with a court an action on expulsion. As a result of an examination of a case on expulsion the court shall take a decision on expelling or refusing to expel the foreigner.

Expulsion of a foreigner from the territory of the RA is prohibited:

- to a State where human rights are being violated, particularly, if s/he is threatened with persecution on the grounds of racial, religious affiliation, social origin,
citizenship, or political convictions, or if the foreigner concerned might be subjected to torture or cruel, inhuman or degrading treatment or punishment, or to death penalty (evidence on the threat of persecution or on the real danger of torture or cruel, inhuman or degrading treatment or of death penalty shall be furnished to the court by the foreigner concerned);

- if s/he is a minor, and his or her parents legally reside in the RA;
- if s/he has a minor under his or her care; or
- if s/he is above 80 years of age.

A court decision on expulsion shall include the day, route of expulsion of the foreigner, state border crossing point, coverage of expulsion expenses, his or her place of residence prior to leaving the territory of the RA, obligation to regularly appear before the relevant subdivision of the public administration body authorised in the field of police as well as the ban on leaving the place of residence without permission, keeping under arrest or releasing prior to expulsion when arrested.

A court decision on refusal of expulsion shall include the responsibility of the public administration body authorised in the field of police to grant temporary residence status.

A foreigner subject to expulsion from the RA shall enjoy all the rights to judicial remedies provided for by the laws of the RA. A decision on expulsion may be appealed against by a foreigner. In case of appealing against a decision on expulsion, the foreigner’s expulsion from the RA shall be suspended.

The public administration body authorised in the field of police of the RA shall execute the decision on expulsion of a foreigner. It shall also carry out a separate registration of expelled foreigners, the data on whom shall be entered into the database of undesirable persons.

The diplomatic representation or consular office of the state of origin of an expelled foreigner or the diplomatic representation of another state representing the interests of the state concerned shall be informed of the expulsion within a term of three days.

Expulsion expenses shall be borne by the State Budget of the RA, in case they are not covered by the foreigner.
European legislation

Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals provides EU Member States with common standards and procedures for returning third-country nationals staying illegally on their territories, with certain exceptions. In all cases, EU Member States must respect the principle of non-refoulement and take into consideration the best interest of children, family life and the health of the person concerned.

Due to compassionate, humanitarian or other reasons, an EU Member State may provide an illegally staying third-country national with an autonomous residence permit or an equivalent right to stay. EU Member States should not issue return decisions before the pending procedures for renewing such permits have come to an end.

The return decision must provide a period of voluntary departure for the illegally staying third-country national. This period should be between 7 and 30 days. EU Member States may require that this period is applied for by the person in question. In particular circumstances the period for voluntary departure may be prolonged. When the illegally staying third-country national risks fleeing, has submitted a fraudulent application or poses a risk to public/national security, the EU Member State may grant a shorter period of voluntary departure or no period at all.

In a timeframe for voluntary departure EU Member States may also impose certain obligations on the third-country national in order to prevent him/her from fleeing.

If no period for voluntary departure is granted, or if the third-country national has not complied with the return decision, the EU Member State must enforce his/her removal. Coercive measures that are proportionate and do not exceed reasonable force may be used only as a final solution to remove third-country nationals. The removal of a third-country national must be postponed if it breaches the principle of non-refoulement or if the return decision has been temporarily suspended. EU Member States may also postpone removals in particular circumstances.

A third-country national must be given the possibility to appeal against or to seek a review of a return decision as well as to obtain legal assistance/representation free of charge. The decisions are to be reviewed by a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence. The review body will have the power to temporarily suspend the enforcement of the decisions.
Conclusions and recommendations

It should be ensured that the ending of an illegal stay of third-country national is carried out through a fair and transparent procedure. According to general principles of the law decisions should be adopted on a case-by-case basis and they should be based on objective criteria. This implies that consideration should not be based only on a mere fact of an illegal stay.

Where there are no reasons to believe that this would undermine the purpose of a return procedure, voluntary return should be preferred over a forced return. In that case period for voluntary departure should be granted. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

According to current relevant Armenian legislation when the return is conducted voluntarily by the foreigner there is no specific decision issued. There is no period for voluntary return granted. The provisions do not envisage the possibility to extend the period for voluntary departure as well.

Recommendations:

• It is recommended for the Armenian authorities to establish provisions providing for issuing a return decision regardless of whether it is executed voluntarily or enforced.

• The legislation should determine a period for a departure when decision is executed voluntarily.

• It is recommended to provide the foreigner with the legal possibility, where necessary, to extend the period for voluntary departure, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links. The duration of an extended period for voluntary departure should depend on the individual circumstances.

• In expulsion legislation particular attention should be paid to the situation of vulnerable persons (minors, unaccompanied minors, disabled people, elderly people, and pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence).
2.3.2. Readmission of third-country nationals

**Relevant Armenian legislation**

Armenia is a party to the following agreements on readmission: with EU Member States – Denmark, Germany, Bulgaria, Benelux (Belgium, the Netherlands and Luxembourg), Czech Republic, Sweden, Latvia, and Lithuania; as well as with Schengen associated states – Switzerland and Norway. There is also a readmission agreement between Armenia and Russian Federation.

The SMS does not have direct access to the register of Armenia’s citizens. When receiving the request and when there is a necessity to confirm the readmitted person’s identity the SMS needs to contact the Police (responsible for administrating the register).

As a rule the SMS is responsible for receiving the readmission requests unless the agreement itself indicates the other authority (i.e. the Police or the MFA).

**European legislation**

Readmission agreements are considered as a necessary tool for an efficient management of migration flows into the EU Member States. As they should facilitate the swift return of irregular migrants, they are supposed to be a major element in tackling irregular immigration and it should provide a durable solution for return.

Readmission agreements set out clear obligations and procedures for the authorities of the non-EU country and of the EU States as to when and how to take back people who are irregularly residing in the EU. They are, in principle, technical instruments to improve cooperation between administrations and they can only be used after a return decision has been made in accordance with certain procedural guarantees set by the Return Directive.

**Conclusions and recommendations**

There is only one readmission agreement concluded by the RA with a country other than the EU Member State or Schengen associate country. That agreement was signed with the Russian Federation. It has to be noticed that once the agreement on readmission between the RA and the EU will enter into force, it will replace the existing bilateral agreements concluded with EU Member States.
Readmission agreements are considered as a necessary tool for efficient management of migration flows and in facilitating returns of irregular migrants. It is in an interest of every country to conclude as many agreements of this kind as possible. This is also due to the fact that international cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.

**Recommendations:**

- It is recommended for the Armenian authorities to make an attempt to start negotiations on readmission agreements – if it is possible – with non-EU countries, especially countries of origin and/or countries of transit of foreigners who come to the RA illegally.
- It is recommended to provide all the authorities responsible for receiving the readmission requests with a direct access to the register of the citizens of the RA.

2.4. Imposing sanctions on carriers who brought foreigners who do not possess documents allowing them to enter the territory, including cases when they are in transit

This part of the report will present Armenian and European legislation concerning imposing sanctions on carriers who brought foreigners who do not possess documents allowing them to enter the territory, including cases when they are in transit.

**Relevant Armenian legislation**

As regards Armenian legislation on imposing sanctions on carriers who brought to the RA foreigners who do not possess documents allowing them to enter the territory of the RA, including cases when they are in transit, the most important laws are:

- Law on Foreigners of 25 December 2006;

According to current Armenian law a carrier is obliged to take back a foreigner who attempted to enter into the territory of the RA without a passport, a document substituting it or with an invalid passport. The same rule applies if a carrier brought a foreigner who have been refused an entry visa at a crossing point of the state border of the RA, or who have not
obtained an entry authorisation from the body carrying out border control.

The return should be carried out as soon as possible by the means of transport of the same carrier, except for cases when they have arrived in the RA for the purpose of seeking refugee status or a right to political asylum. In case of a lack of personal funds of foreigners the expenses of their return shall, as prescribed by the international treaties, be incurred by carriers that have carried out the carriage of the foreigners to the RA or by the RA as prescribed by the Government of the RA.

Thus, the concept of imposing financial penalties on a carrier who brought to the RA foreigners who do not possess documents allowing them to enter the territory of the RA, including cases when they are in transit is not present in the analysed laws.

**European legislation**

In the EU context a responsibility of a carrier is connected with the establishment of the Schengen zone. In order to combat illegal immigration effectively, all of the EU Member States were asked to introduce provisions laying down obligations that would be imposed on carriers transporting foreign nationals into the territory of the EU Member States. In addition, it was decided to harmonise financial penalties provided for by the EU Member States in cases where carriers fail to meet their control obligations - taking into account the differences in legal systems and practices between the EU Member States.

The main legal acts concerning imposing sanctions on carriers who brought foreigners who do not possess documents allowing them to enter the territory of the EU Member State, including cases when they are in transit, are:

- 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 and

Moreover, the Geneva Convention of 1951 should also be mentioned as it limits the scope of sanctions that can be imposed on carriers when they bring foreigners who do not possess required documents but who are asylum seekers.

Additionally, the above-mentioned laws ensure that procedural safeguards are established and that they are applicable when sanctions are imposed. Thus, in any
proceeding against carriers which may result in the imposition of penalties, the rights of defence and the right of appeal against such decisions have to be exercised effectively.

Finally, it has to be stressed that the harmonised sanctions refer to minimal penalties imposed on carriers. Thus, EU Member States may introduce additional or more severe sanctions in this regard.

**Conclusions and recommendations**

The situation as regards illegal immigration in the RA is currently distinct from the one in the EU Member States. Nevertheless, although Armenian legislation provides foundations for establishing a system for penalisation of carriers who brought to the RA foreigners who do not possess documents allowing them to enter the territory of the RA, including cases when they are in transit, it would be recommended to consider amending current laws. Amendments would be especially useful when changes in the Armenian visa policy that are recommended in this report will be incorporated to Armenian law. This is due to the fact that if the law on visas and on residence permits will be amended in order to ensure its coherency with the EU regulations the number of decisions denying crossing the border of the RA will increase. This in turn can increase a number of removals from the RA territory.

The amendments recommended in this part of the report will also support implementation of the EU-Armenia readmission agreement. When this agreement enters into force it will most likely include a responsibility imposed on both sides of the agreement to take back not only their own citizens but also foreigners who had permits (a residence permit or a visa) that allowed them to stay in the sending country legally. Moreover, it would apply to cases of foreigners who transited via the sending country, also when transit was an illegal one.

According to the EU law (e.g. Article 4 of the Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985) sanctions should be imposed on carriers who brought a foreigner who was refused by the other carrier to take him/her on board in order to take him/her to his/her country of destination and when a foreigner was refused an entry by the authorities of the State of destination, and, as a consequence, s/he was sent back. Thus, the carrier (including international carriers transporting groups overland by coach, with the exception of border traffic) shall be obliged to take all the necessary measures to ensure that a foreigner carried
by air or sea is in possession of the travel documents required for an entry into the destination country, as outlined in Article 26 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).

Bearing in mind that sanctions imposed on a carrier form an important step in fighting illegal immigration and in implementation of the readmission agreements, among others, it is recommended to consider bringing appropriate amendments to current Armenian legislation. Currently Armenian law provides only a liability to cover expenses of a return of foreigners (as a rule, this liability occurs only in case when foreigners cannot cover the cost of return by himself/herself). However, in this respect the EU law (Article 4 of the Council Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985) specifies that sanctions have to be dissuasive, effective and proportionate and that:

- either the maximum amount of the applicable financial penalties is not less than EUR 5000 or equivalent national currency, for each person carried, or
- the minimum amount of these penalties is not less than EUR 3000 or equivalent national currency, or
- the maximum amount of the penalty imposed as a lump sum for each infringement is not less than EUR 500000 or equivalent national currency, irrespective of the number of persons carried.

Moreover, the law could introduce financial responsibility on a carrier who brought a foreigner for covering the cost of accommodation of that foreigner during the time span between detention and return, if immediate return is not possible. Current Armenian legislation uses a concept of a return that should be taken as soon as possible. However, this wording is not clear whether the carrier is obliged to cover the above-mentioned cost.

It is important to underline that carriers against whom penalty proceedings are brought should have an effective right of defence and appeal (Article 6 of the Council Directive 2001/51/EC). An example of implementation of this rule can be found in a recent request for a preliminary ruling from the Administratīvā apgabaltiesa (Latvia) lodged on 7 December 2012 — AS "Air Baltic Corporation" v. Valsrs robežsardze (Case C-575/12) where Latvian courts analysed legality of imposing sanctions on "Air Baltic Corporation".

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12 See comments in footnote 17 of this report (Charter on fighting trafficking in human beings).
Finally, it is strongly recommended that the law on sanctions imposed on carrier should expressly state that a carrier may be refrained from being sanctioned if it could affect the RA obligations following from the Geneva Convention of 1951. Currently Article 6.3 of the Law on Foreigners provides some suggestions in this respect but it refers only to the non-return of asylum seekers leaving carrier's responsibility undefined.

**Recommendations:**

- Dissuasive, effective and proportionate sanctions, including financial sanctions, should be imposed on carriers who brought a foreigner who was refused by the other carrier to take him/her on board in order to take him/her to his/her country of destination and when a foreigner was refused entry by the authorities of the State of destination and, as a consequence, s/he was sent back to the RA.
- It should be clearly stated that these sanctions should not deter liability following from the Geneva Convention of 1951.
- An effective legal remedy for carriers should be available.
- Carriers should cover the cost of accommodating foreigners.

2.5. Detention of foreigners pending removal (expulsion)

**Relevant Armenian legislation**

In the RA the issue of detention of foreigners pending removal is regulated by Article 38 of the Law on Foreigners.

A foreigner may be arrested and detained in special facilities, if there are sufficient grounds to suspect that s/he will abscond till the case on expulsion is examined in the court or till the execution of the decision on expulsion which has taken legal effect.

Within 48 hours after arresting and placing a foreigner in a special facility, the public administration body authorised in the field of police of the RA shall apply to the court for obtaining a decision on the permission to detain the foreigner for up to 90 days.

The public administration body authorised in the field of police of the RA shall, no later than within 24 hours, inform on the arrest the diplomatic representation or consular office of the country of origin of the arrested foreigner or the diplomatic representation of another state representing the interests of the state concerned, and/or the foreigner’s close relatives in the RA.
An arrested foreigner may be detained in a special facility for no longer than 90 days. However, detention is valid only until the court’s decision on expulsion takes legal effect. An arrested foreigner shall enjoy the following rights:

- to know the reasons for his/her arrest in a language s/he understands (or may understand with a help of a translator);
- to appeal against any court’s decision that is rendered in relation to himself/herself;
- to be visited by an advocate or other legal representative (including non-governmental organisations’ representatives), an official of the diplomatic representation or consular office of the state of origin;
- to apply to the courting order to request his/her release; and
- to receive necessary medical assistance.

The procedure for the operation of special facilities and for the detention of arrested foreigners in the territory of the RA shall be established by the Government of the RA. Due to the fact that the executive provisions (the procedure) while preparing the report have not been established they have not been analysed in the report.

**European legislation**

The conditions under which the third-country nationals pending removal may be detained are set out in Articles 15-18 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.

In specific cases, and when less coercive measures are not sufficient, EU Member States may detain a third-country national during the return procedure if s/he risks fleeing or avoids/obstructs the preparation of return or the removal process. Detention is ordered in writing by administrative or judicial authorities and decision on detention must be reviewed regularly.

As a rule, the detention period must be as short as possible. Duration of detention cannot exceed 6 months. Only in particular circumstances, when the removal of a third-country national might exceed the time limit set, EU Member States may prolong detention by a maximum of 12 months.
Detention ceases to be justified and the person concerned shall be released immediately when it appears that a reasonable prospect of removal no longer exists for legal or other reasons. The same rule applies if the conditions for the detention no longer exist.

Specialised detention facilities should be used. However, if this is not feasible, EU Member States may use prison accommodation with separate quarters for that purpose.

Third-country nationals in detention shall be allowed — upon their request — to establish in due time contact with legal representatives, family members and competent consular authorities. Moreover, relevant and competent national, international and non-governmental organisations and their bodies shall have the possibility to visit detention. Such visits may be subject to authorisation.

Third-country nationals that are kept in detention shall be systematically provided with information explaining the rules applied in the facility and setting out their rights and obligations.

Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential medical treatment shall be provided. Unaccompanied minors and families with minors shall only be detained as a measure of a last resort and for the shortest appropriate period of time. Unaccompanied minors shall, as far as possible, be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.

Families that are detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy. Minors in detention shall have the possibility to be engaged in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.

Conclusions and recommendations

The use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Thus, detention is justified only to prepare the return or to carry out the removal process and if the application of less coercive measures would not be sufficient. Without prejudice to the initial apprehension by law-enforcement authorities, regulated by national legislation, detention should, as a rule, take place in specialised detention facilities.
Current Armenian legislation is not specific enough in determining conditions of releasing the foreigners subject to detention. It also does not set out the maximum period of stay in the special detention facilities.

Bearing in mind that the third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law Armenian law should provide the foreigners with the particular rights protecting them from inhuman treatment, and special attention should be paid to the situation of vulnerable persons.

**Recommendations:**
- It is recommended for the Armenian authorities to establish provisions on a cessation or suspension of the detention when a reasonable prospect of removal no longer exists for legal or other considerations or when the conditions for the detention no longer exist. The maximum period of duration of stay in detention should be established as well.
- Particular attention should be paid to the situation of vulnerable persons (minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence).

2.6. Fighting employment of illegally staying foreigners

This part of the report will present Armenian and European legislation concerning imposing sanctions on employers who employ illegally staying foreigners.

**Relevant Armenian legislation**

As regards Armenian legislation on imposing sanctions on employers who employ illegally staying foreigners the most important laws are:

- Law on Foreigners of 25 December 2006;
- Criminal Code of the RA of 18 April 2003;
- Labour Code of 9 November 2004;
- Law on State Labour Inspectorate of 24 March 2005;
- Law on procurements;
Armenian law provides a possibility to employ foreigners in the RA (Article 15 of the Labour Code and Article 22 of the Law on Foreigners). In this respect the later Law specifies that, as a rule, an employee needs a work permit. It is a responsibility of an employee to deliver that permit to an employer. However, certain group of foreigners is exempted from the need to hold a work permit. Nevertheless, during the meetings that were held under the aegis of the twinning project it appeared that an institution that issues work permit has not been approved by the Armenian government. Thus, although current Article 27.1 of the Law on Foreigners provides a time-span limitation on employment contracts with foreigners (an employment contract can be valid only for the period of a validity of the work permit) the above-mentioned law is not followed and foreigners do not need a work permit to undertake employment in the RA. In this respect general regulations concerning employment are applied.

Article 85 of Armenian Labour Code provides that a written labour contract is needed to start work. In order to conclude employment contract in writing Armenian Labour Code stipulates that the employer must request an identification document (e.g. a passport), among others (Article 89 of the Armenian Labour Code). Not having employment contract in writing is one of the reasons why the employment may be considered as an illegal one. The second reason is to take a job which is done on the basis of the employment contract concluded in violation of the Code and other legal acts, as outlined in Article 102 of the law.

All employers in the RA are controlled by National Labour Inspectorate in the same way (Article 34 of the Labour Code). Article 15 (Rights of state labour inspector) of the Law on State Labour Inspectorate provides a possibility to check all documents related to an employment. According to the representatives of National Labour Inspectorate during a control when foreigners are employed the validity of a residence permit or a visa is checked by Inspectorate's representatives. If the foreigner is illegally present in Armenia (e.g. s/he overstayed a visa) Inspector informs the Police in order to allow the later institution to sanction an illegal stay, however this practice is not clearly prescribed in an existing law.

Article 18 of the Armenian Labour Code contains a wide definition of an employer – it includes natural persons as well as legal persons. It provides a possibility to impose sanctions on any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, on the basis of a power of representation of the legal person, an authority to take decisions on behalf of the legal
person or an authority to exercise control within the legal person. Moreover, Armenian law increases the volume of a penalty imposed on an employer in case of employing more than one person with a breach of the Labour Code.

**European legislation**

In the EU context fighting employment of illegally staying immigrants is perceived as one of the most important aspects of fighting illegal immigration. This is due to the fact that a possibility to obtain work in the EU without the required legal status is perceived as a key pull factor for illegal immigration into the EU. Actions against illegal immigration and against illegal stay should therefore include measures to counter that pull factor.

Nevertheless, the EU law regulates only cases of sanctioning employers who employ illegally staying third-country nationals. Thus, under the twinning project only these aspects of the law can be referred to.

An issue of trafficking in human beings is also partially connected with fighting employment of illegally staying foreigners. The main legal acts concerning fighting and preventing of trafficking in human beings which are relevant in this context are:


Moreover, ILO convention on Private Employment Agencies Convention (C181, 1997) should also be mentioned. Notwithstanding that RA is not a party to this Convention and although this is not an EU law it is important to refer to it especially as regards measures to provide adequate engagement in fraudulent practices and abuses of employment, including employment of foreigners.

It has to be underlined that according to the EU law (Article 3 of the Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals) an employer should be prosecuted for employing illegally staying foreigners. However, this rule does not apply if the employer did not have a knowledge that documents presented by foreigners for the purpose of concluding an employment contract were false or falsified (Article 4.3 of the Directive 2009/EC). For that
purpose, in order to, on one hand, facilitate the control of legality of employment of foreigners and, on the other hand, to ensure that an employer has met all requirements concerning employment of foreigners in the EU law imposes a requirement to keep copies of the visa/residence permit of his/her employment (Article 4 of the Directive 2009/52/EC). This duty should correspond with employer’s obligation to inform relevant authorities on employment of a foreigner as this can also support better monitoring of employment of foreigners.

In some economic activities subcontracting is a popular mode of cooperation. Thus, in order to increase efficiency of a sanctioning mechanism the EU law (Article 8 of Directive 2009/52/EC) puts an obligation on the EU Member States to impose sanctions on subcontractors who have employed illegally staying foreigners. This liability may be imposed in addition to liability imposed on the contractor. Thus, both the contractor and the subcontractor may be held liable together as well. Nevertheless, this rule applies only to contractors whose direct subcontractors employed are illegally staying foreigners. The employer may be liable to pay: any financial sanction imposed (including ones connected with a return of a foreigner, payment of taxes and social insurance costs as described below) and any back payments (as presented below). This should be applicable without prejudice to the law concerning the rights of contribution or recourse.

Furthermore, where the employer is a subcontractor, the main contractor and any intermediate subcontractor, where they knew that the employing subcontractor employed illegally staying foreigners, may be liable to make the payments referred to above in addition to or in place of the employing subcontractor or the contractor of which the employer is a direct subcontractor.

Conclusions and recommendations

The situation as regards both illegal immigration and illegal employment of illegally staying foreigners in the RA is distinct from the one in the EU countries. Thus, although Armenian legislation provides foundations for establishing a system for penalisation of illegal employment it does not contain additional requirements and obligations in case of employing foreigners in the RA.

Although Article 89 of the Armenian Labour Code stipulates that the employer must request an identification document e.g. a passport, among others, it does not contain an obligation imposed on an employer to ensure before concluding an employment contract
that a foreigner has a valid residence permit or any other permit (Article 4 of Directive 2009/52/EC)\(^{13}\). It also misses a requirement to keep copies of that permit for an employment period and to inform relevant authorities on the fact that s/he has employed a foreigner. In this regard, current law is not in-line with the EU one.

Current Armenian law does not envisage a liability of the main contractor for subcontractor in case of the later employing illegally staying foreigners. Thus, the law should be amended as to make it in-line with Article 8 of Directive 2009/52/EC including making contractor be liable to pay: any financial sanction imposed (including ones connected with a return of a foreigner, payment of taxes and social insurance costs as described below) and any back payments due to the foreigner. This should be applicable without prejudice to the law concerning the rights of contribution or recourse. Nevertheless, a contractor that has undertaken due diligence obligations as defined by national law shall not be made liable for the subcontractor.

Armenian law provides a possibility to impose sanctions on any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, on the basis of a power of representation of the legal person, an authority to take decisions on behalf of the legal person or an authority to exercise control within the legal person. However, it should be ensured that it reflects Article 6 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA in order to sanction cases of trafficking in human beings as well.

A set of effective, proportionate and dissuasive sanctions should also be reflected in the Law on Individual Entrepreneur to make it coherent with Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. In this respect, when an employer is a legal person the sanctions reflecting those from Article 6 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (see comments in “Conclusions and recommendations” in “Fighting trafficking in human beings” part of this report) should apply when an employer has employed an illegally staying foreigner:

- exclusion from entitlement to some or all public benefits, aid or subsidies,

\(^{13}\) Although during the missions Polish experts were informed by representatives of Armenian Ministry of Labour and Social Issues and by representative of Armenian National Labour Inspectorate that this is a current practice in the RA current legislation in this respect seems not to be specific enough and not reflecting the above-mentioned good practice.
including (but not only) EU funding managed by the state, for up to five years;
- exclusion from participation in a public contract for up to five years;
- recovery of some or all public benefits, aid, or subsidies, including EU funding managed by the state, granted to the employer for up to 12 months preceding the detection of illegal employment;
- temporary or permanent closure of the establishments that have been used to commit the infringement, or temporary or permanent withdrawal of a licence to conduct the business activity in question, if justified by the gravity of the infringement (this is partially reflect in Armenian law).

Moreover, sanctions on employer who employs illegally staying foreigner should also include criminal sanctions imposed when a criminal offence is committed intentionally, in each of the following circumstances:
- the infringement continues or is persistently repeated;
- the infringement is in respect of the simultaneous employment of a significant number of illegally staying foreigners;
- the infringement is accompanied by particularly exploitative working conditions;
- the infringement is committed by an employer who, while not having been charged with or convicted of a trafficking in human beings uses work or services exacted from an illegally staying foreigner with the knowledge that s/he is a victim of trafficking in human beings;
- the infringement relates to the illegal employment of a minor.

RA law is in line with Article 11.3 of the Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals as regards ensuring that a liability of a legal person shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the above-mentioned criminal offence. However, it should be made clear that preparations (including inciting, aiding and abetting the intentional conduct on employing illegally staying foreigners) should be punishable as a criminal offence.

Nevertheless, sanctions (including sanctions imposed on employers who are natural persons and those who are legal persons) may not be imposed if the employer is a natural persons and the employment is for his/her private purposes.
The EU law puts a lot of attention to providing support to immigrants, among others, those who have been employed during illegal stay (e.g. in Article 6.2 of the Directive 2009/52/EC). They should be systematically and objectively informed about their rights (including the right to claim back payments) before the enforcement of any return decision. Moreover, providing support in claiming employment rights of foreigners-employees who stay in the EU illegally should not be considered as facilitating illegal immigration. Armenian legislation should thus be amended accordingly.

According to the Article 6.1 of the Directive 2009/52/EC in case of foreigners-employees who stay in the EU country illegally when claiming back payments it is presumed that the agreed level of remuneration have been at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches. This rule applies unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages. It is a requirement imposed by Directive 2009/52 that the deemed period of employment should be at least 3 months long one. Although current Armenian law says that if the rights of an employee who is a foreigner are breached (e.g. s/he does not receive an agreed remuneration) s/he can seek justice on the same basis as Armenian citizens it would be recommended to make it clear that a right to back payments is also provided for foreigners-employees who stay in the RA illegally.14

An employer who employs illegally staying foreigner should also cover expenses equal to any taxes and social security contributions that the employer would have paid had the foreigner been legally employed, including penalty payments for delays and relevant administrative fines. Where appropriate, an employer should also cover any cost arising from sending back payments to the country to which the foreigner has returned or has been returned.

Finally, current Article 29 of the Law on Foreigners provides an obligation to cover the cost of a return of a foreigner if employer does not provide a foreign worker with the work for which the foreigner had received a work permit. However, this covers only the cases when employment contract was concluded in writing and thus – in accordance with the RA legislation. Cases of illegal employment, including employment of foreigners who do not meet the prerequisites to take employment in the RA, are not covered. That kind of cases is also not covered by Article 36.5 of the Law on Foreigners. Thus, the law should be

14 See also: Article 8 of the ILO convention on Private Employment Agencies Convention, C181, 1997.
amended in order to cover also the cases when employers will be made responsible for payments of the costs of return of illegally employed foreigner in those cases where return procedures are carried out (or – alternatively – fines imposed on employers should reflect at least the average costs of return).

**Recommendations:**

- Current law is not clear if an employer is obliged to verify the legality of stay of a foreigner with whom s/he intends to conclude an employment contract. There is an obligation to check if a foreigner has a valid work permit. However, due to the fact that work permits are not issued in the RA the only possibility to verify legality of stay is to check foreigner's passport but this requirement is not prescribed explicitly as identification document is required but for the purpose of confirming identity of the employee.

- An employer should be required to keep copies of the visa/residence permit of a foreigner for a period of employing a foreigner. S/he should also inform relevant authority on the fact that s/he has employed a foreigner. This would support proper monitoring of employment of foreigners and, in case of controlling an employer s/he will easier prove meeting preconditions of employing the foreigner.

- Effective, dissuasive and proportionate sanctions on employers employing illegally staying foreigners in the RA should be developed. Sanctions should include criminal sanctions and financial sanctions.

- It should be possible to sanction natural persons, natural persons who are in the management of entrepreneurship but also legal persons. As regards the later, EU law provides a wide range of possibilities, including exclusion from tenders and a duty to repay all the support (state and the EU one) if the company is found to employ illegally staying foreigners. Currently, only exclusion from procurement is envisaged in Armenian law.

- Responsibility of a contractor in case when subcontractor employed illegally staying foreigners should be introduced.

- Foreigners-employees who stay in the RA illegally should be systematically and objectively informed about their rights (including the right to claim back payments) before the enforcement of any return decision.

- Employers should be made responsible for payments of the costs of return of illegally employed foreigners in those cases where return procedures are carried out (or – alternatively – fines imposed on employers should reflect at least the average costs of return).
They should also cover expenses equal to any taxes and social security contributions that the employer would have paid had the foreigner been legally employed and, where appropriate, any cost arising from sending back payments to the country to which the foreigner has returned or has been returned.

2.7. Fighting trafficking in human beings

This part of the report will present Armenian and European legislation concerning fighting and preventing of trafficking in human beings.

**Relevant Armenian legislation**

As regards Armenian legislation on fighting and preventing trafficking in human beings the most important laws are:

- Law on Foreigners of 25 December 2006,
- Criminal Code of the RA of 18 April 2003 and
- the Order of 28 November 2008 of the Government of the RA on approving the National Referral Procedure of Trafficked Persons (No. 1385-A).

It is also important to recollect a Decision No. 1140. from 3 September 2010 on the approval of the 2010-2012 national programme for organising combat against exploitation of human beings (trafficking) in the RA and the timetable for the implementation of the programme. This decision provides fundamentals to grant support to victims of trafficking in human beings, including psychological, medical, social and legal assistance at two rehabilitation and assistance centres established within NGOs. This concept is also present in the Order of 28 November 2008 of the Government of the RA on approving the National Referral Procedure of Trafficked Persons (No. 1385-A).

Currently, Armenian law deals only with a refusal to issue (or to extend) an entry visa, to revoke a visa or to ban an entry for the person who has been convicted for trafficking (Article 8 of the Law of Foreigners). Nevertheless, the Law of Foreigners does not contain any definition of a term “trafficking in human beings”. However, the definition may be found in Article 132 of the Armenian criminal code (it also contains sanctions that may be imposed for this crime) but no reference to the later law is made in the Law of Foreigners.

No special rules are available for providing a residence permit for victims of trafficking in human beings and a permit for a reflection period is not precluded in
European legislation

The EU pays a lot of attention to an issue of fighting and preventing trafficking in human beings. This issue is mentioned in a number of EU documents, including the binding and non-binding ones and in the Stockholm Programme. Thus, establishing rigorous prevention and ensuring protection of victims’ rights are major objectives of the EU law in this regard.

Special attention is being paid to efficiency of the victim’s rights. This includes proper identification of a victim and taking all necessary steps in order to address victim’s needs as soon as possible what is especially important in case of vulnerable groups, including children. It also refers to, among others, a right to receive a residence permit in a reflection period and during the court proceeding, if the victims’ presence is needed for the sake of that proceeding.

Moreover, the EU law aims at approximating penalties for trafficking in human beings, especially as regards offences committed to particularly vulnerable victim and in cases when the offence is particularly grave, e.g. when the life of the victim has been endangered or the offence has involved serious violence such as torture, forced drug/medication usage, rape or other serious forms of psychological, physical or sexual violence, or has otherwise caused particularly serious harm to the victim.

The main legal acts concerning fighting and preventing of trafficking in human beings are:

- Council of Europe Convention on Action against Trafficking in Human Beings on 14 April 2008 (it entered into force in respect of the RA on 1st August 2008);
- Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA);
- 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;
victims, and replacing Council Framework Decision 2002/629/JHA.

There are also non-binding instruments that show how the European Commission intends to support the EU Member States in fighting trafficking in human beings in incoming years. Among others, the European Commission in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, COM(2012) 286 final, Brussels 19.6.2012 enlists priority areas and provides information on possible measures that could be taken in order to address that priorities. An important source of suggested interpretation of the EU laws in the field can also be found in: UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Combat, Protect. Human trafficking, 2011.

Conclusions and recommendations

In respect to an issue of trafficking in human beings some recommendations are close to ones identified by the Group of Experts on Action against Trafficking in Human Beings that monitors the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties.15

Nevertheless, it has to be stressed that due to the thematic content of the twinning project issues related to jurisdiction and of criminal proceedings are not covered in this analysis16. Detailed description of the issues relating to the peculiarity of the situation of foreigners who are minors-victims of trafficking in human beings are reflected in a part that deals with foreigners who are unaccompanied minors.

Article 2 of Directive 2011/36/EU creates a list of offences concerning trafficking in human beings. In this respect, a definition of a term “human trafficking” can be found in Article 132 of the Criminal Code of the RA. Nevertheless, this definition is not fully in-line with the one from the above-mentioned directive and it serves a different purpose (crime description).


16 It is sufficient to underline that investigation into or prosecution of cases of trafficking in human beings cannot depend on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement and, where the nature of the act calls for it, it should be prosecuted for a sufficient period of time after the victim has reached the age of majority (Article 9 of Directive 2011/36/EU).
According to the EU law perpetrators who are themselves victims of trafficking in human beings may not be prosecuted or penalties may not be imposed on them. Although Article 132.5 of the Criminal Code of the RA provides a possibility to exclude criminal liability from victims it is not clear if this rule applies to victims who were at the same time perpetrators.

EU law makes it clear that preparations (including e.g. inciting, aiding and abetting or attempting to commit trafficking in human beings) have to be made punishable as well.

Article 132 of the Criminal Code of the RA specifies that a criminal sanction from five to eight years of imprisonment may be sentenced for trafficking in human beings. Nevertheless, this sanction should be increased. According to the EU regulations a maximum penalty should be raised to at least 10 years of imprisonment.

According to the EU law legal persons should also be penalised if trafficking in human beings is committed for their benefit of a legal person. This liability can be imposed also in cases when the lack of supervision or control, by a person who has a leading position within the legal person, has made possible the commission of the trafficking in human beings (see also Article 22 of the Council of Europe Convention on Action against Trafficking in Human Beings on 14 April 2008). However, an execution of a liability of a legal person shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories of trafficking in human beings. Penalties imposed on legal persons should be effective, proportionate and dissuasive, which shall include criminal or non-criminal fines and may include other sanctions, such as: exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; judicial winding-up; temporary or permanent closure of establishments which have been used for committing the offence.

In this regard it has to be stressed that some categories of persons should not be penalised for not providing proper authorities with information on committing or preparing an offence of trafficking in human beings. This relates to victims of trafficking in human beings if they have not communicated this fact to the designated body due to his/her fear of being prosecuted. The same rule should apply to representatives of non-governmental

17 More information on sanctions that should be imposed on entrepreneurship are discussed in a part of this report that relates to sanctions that are imposed on employers who employ illegally staying foreigners. Polish experts have been made aware that the concept of imposing a penalty on legal persons is not present in Armenian law. Nevertheless, some of the EU directives do not provide a possibility to refrain from imposing this kind of liability. Thus, if coherence with the EU law is an aim for the Armenian legislation imposing fines on legal persons should be amended.
organisations if providing above-mentioned information could cause harm to a victim of trafficking in human beings which they have supported. The later concept cannot be derived from the Article 132.5 of the Criminal Code of the RA directly.

Article 6 of Directive 2004/81 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 and Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings on 14 April 2008 specifies that victims of trafficking of human beings should be given a residence permit in a reflection period so that their presence would be a legal one. The purpose of that period is to allow victims to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities. Thus, in that time enforcement of a decision on expulsion should be suspended (Article 6.2 of Directive 2004/81 and Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings). The duration of reflection period is not explicitly specified in the current EU law (reference to national legislation is given). However, Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings specifies that it should be at least 30 days long one. Nevertheless, for the EU Member States it is a common practice to establish a 90 days long valid permit for a reflection period\textsuperscript{18}.

According to Article 6.4 of Directive 2004/81 reflection period may be terminated if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the trafficking in human beings or for reasons relating to public policy and to the protection of national security.

A residence permit for a victim of offences related to the trafficking in human beings who are present at the territory of the RA should be provided. This is not only the EU requirement (specified in the Council Directive 2004/81/EC) but also of Article 14 of the Council of Europe Convention on Action against Trafficking in Human Beings of 14 April 2008. According to the Council Directive 2004/81/EC a residence permit should be given to a victim of trafficking in human beings if all of the following requirements are met: the victim has shown a clear intention to cooperate; has severed all relations with those suspected of acts that might be included among the offences and victim's presence on the territory is needed for the investigations or the judicial proceedings.

\textsuperscript{18} This is also a recommendation that can be found in: UN Commentary on the EU Directive – A Human Rights-Based Approach, Prevent, Combat, Protect. Human trafficking, 2011.
Article 14 (on Residence Permit) of the Council of Europe Convention on Action against Trafficking in Human Beings of 14 April 2008 provides a right of victims of trafficking to a renewable residence permit (it also covers cases when a permit was issued before the court procedure has started and its validity could expire during that procedure). It also renders two possibilities of granting a permit: on a basis of victims' personal situation and/or his/her co-operation with the competent authorities in the investigation or criminal proceedings.

It should be stressed that the permit may be withdrawn if a victim no longer meets requirements that were needed to issue a permit, including cases when the competent authority believes that the victim's cooperation is fraudulent or that his/her complaint is fraudulent or wrongful or for reasons relating to public policy and to the protection of national security (Article 14 of the Council of Europe Convention on Action against Trafficking in Human Beings of 14 April 2008).

Considering the scope of the twinning project and bearing in mind differences between the Article 14 (on Residence Permit) of the Council of Europe Convention on Action against Trafficking in Human Beings on 14 April 2008 and the Council Directive 2004/81/EC it is recommended to amend Armenian legislation according to the later standard as it is more specific one.

Information on the possibility to receive a permit should be provided to a foreigner if the competent authorities of the Member States take the view that a third-country national may be a victim of trafficking of human beings as outlined in Article 5 of the Council Directive 2004/81/EC 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. It should be clearly specified that a residence permit for a victim of offences related to the trafficking in human beings should be provided also in cases when a victim has been staying illegally within the territory of the RA, as outlined in Article 3 of Directive 2004/81.

Treatment granted before the issuance of the residence permit (during reflection period) should be in line with Article 7 of the Council Directive 2004/81/EC. Victims should be provided with an adequate assistance with due account to their safety and protection needs. Thus, they should be provided with translation and interpretation services and they may be provided with free legal aid, if national law specifies so (such regulation can be found in Article 15 of Council of Europe Convention on Action against Trafficking in
Human Beings of 14 April 2008). Moreover, victims who do not have sufficient resources should be granted standards of living capable of ensuring their subsistence and access to emergency medical treatment (they shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance).

It is important to stress that victims with special needs (in particular in relation to pregnancy, health, disability, physical or mental illness or suffering serious physical, sexual or psychological violence) shall have their needs be addressed.

The process of providing support to victims after granting them the residence permit should be continued and it should be at least the same as the one during reflection period (Article 9 of the Council Directive 2004/81/EC\textsuperscript{19}). However, an access to medical treatment should be extended, especially in case of victims who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and it may be extended to minors (extension is not compulsory). Due to the fact that current Armenian law does not provide a residence permit for victims of trafficking in human beings it is difficult to establish if the Article 30 of the Order of 28 November 2008 No. 1385-A that refers to final identification of the victim is in line with the EU requirements.

EU law refers to national legislation as regards conditions of taking employment by persons who were issued a residence permit as victims of trafficking in human beings. Article 11 of the Council Directive 2004/81/EC specifies only that an access to labour market and vocational training and education shall be limited to the duration of the residence permit. Such regulation can be found in Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings on 14 April 2008. Due to the fact that Armenian work permit system is not clear in this regard Armenian legislation should be amended accordingly.

**Recommendations:**

- Due to a wide scope of amendments required in order to address an issue of foreigners who are victims of trafficking in human beings it is suggested to add a separate chapter to the Law on Foreigners that would deal with peculiar situation of victims of trafficking in human beings who are foreigners. As it would be *lex specialis* to existing Armenian laws on fighting trafficking in human beings it should be supplementary to and be correlated with the later regulations. In this respect it could regulate only specific aspects

\textsuperscript{19} Article 11.5 and Article 11.7 of Directive 2011/36/EU
of supporting foreigners who are victims of trafficking in human beings e.g. the residence permit issues and reflection period rules.

- A residence permit for a victim of trafficking in human beings should be provided.
- A renewable residence permit for a victim of offences related to the trafficking in human beings who are present at the territory of the RA should be provided. The permit should be provided also in cases when a victim has been staying illegally within the territory of the RA (as outlined in Article 3 of Directive 2004/81).
- Victims of trafficking of human beings should be given a residence permit in a reflection period. In that time frame execution of a decision on expulsion should be suspended in a reflection period.
- Appropriate assistance before, during and after criminal proceeding should be made available to all victims as it cannot depend on victim’s willingness to cooperate in criminal investigation.
- It could be discussed if Article 341 on interrogation of an under-age witness should be extend to cover also victims of trafficking in human beings as they are especially vulnerable and (in case of victims who are foreigners) it may happen that a victim may wish to leave the RA before the court proceeding is over.
Chapter III – asylum and refugees

3.1. Asylum and refugees

The part of the report will present Armenian and European legislation concerning refugees and asylum. However, some aspects of that legislation (including unaccompanied minors issues) are covered in other parts of this report. Due to the fact that political asylum is not regulated in the EU law it is not covered in this report. Thus, rules specified in the Law on political asylum of 26 September 2001 have not been analysed as the issues are in the competences of the EU Member States.

Armenian legislation

As regards Armenian legislation on refugees and asylum the most important laws are:

- Law on refugees and asylum of 27 November 2008;
- Decision No. 1440-N from 19 November 2009 on the approval of the procedure on placing asylum seekers in the temporary reception centre and providing them with living conditions that states.

The RA is party to the most important conventions regulating international protection issues: Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967 and The European Convention on Human Rights of 4 November 1950. This is especially important in a context of Article 1.3 of the Law on refugees and asylum that states that international agreements that RA is party to, have to be applied if Armenian legislation is not in line with them.

Armenian legislation provides a possibility to submit an asylum application on the border or in the territory of the RA. It should be welcomed that an application may also be submitted orally, in writing, with the help of gestures, or by any other means of communication. Moreover, the law provides also expressly that asylum seekers should not bear criminal or administrative liability for illegal entry or stay in the RA.

Armenian legislation provides also basis for providing temporary protection in case of mass influx. However, the subjective scope of provisions is limited to foreigners coming from the bordering countries of the RA.
Armenian legislation provides a possibility to grant a refugee status for the spouse, the child under 18 and other person under the lawful care of a refugee granted asylum in the RA. Nevertheless, the rules on forfeiting this status are not fully in-line with the EU law as they make family members' status be ceased and it is only after launching asylum application when they may be granted a refugee status. In this respect it should be underlined that Armenian law provides a non-refoulement clause (and the reference to it has to be made in a decision) that makes the above-mentioned statement even truer.

Also, the RA legislation provides some basic rules on grounds on exclusion from the refugee status. Nevertheless, existing law does not make it clear whether exclusion from refugee status makes it possible check an application in a context of granting forms of protections (as an outcome of non-refoulement rule as outlined in the European Convention on Human Rights of 4 November 1950 and judgements of the European Court of Human Rights).

A foreigner may be ceased of a refugee status in the RA and his/her status may be cancelled.

It should be welcomed that the law expressly stipulates that the law provides a possibility to provide asylum seekers and refugees with support. Nevertheless, not all aspects of the support are prescribed. An access to education is provided for asylum seekers and refugees as well as an access to social security and medical care, although the later may be limited in case of asylum seekers and rejected refugees.

Identity document and convention travel document are issued to refugees. Thus, due to an extended definition of the refugee also those foreigners who do not meet prerequisites specified in Geneva Convention are issued Geneva Travel Document in the RA.

Asylum procedure rules are also present in current Armenian legislation. A reference to holding an interview independently for asylum seeker's family members is present in Armenian law. An access to free interpretation service and to the legal representative (paid by an applicant) is also possible. Moreover, the concept of doubts that should be interpreted for the benefit of the asylum seeker is present in current Armenian legislation.

According to the Article 59.4 of the Law on fundamentals of administration and administrative procedure of 18 February 2004 the decision may be – upon the request of the addressee of that decision –translated into a foreign language. However, only the decision in Armenian has legal effect. This rule applies also in case of asylum seekers.
European legislation

EU legislation on international protection is based on a number of legal acts, namely:

- the 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;
- the 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;
- 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;
- Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;
- Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status;
- 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 (recast);
- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast);
It is necessary to underline that some of the above-mentioned legal acts were adopted at a first part of process of establishing the Common European Asylum System (CEAS). An aim of creating this framework, which was mentioned first time in Tampere programme and developed in other political documents (e.g. the Hague Programme and the Stockholm Programme, among others) is to bring more harmonisation to standards of protection by further aligning the Member States' asylum legislation, effective, well-supported practical cooperation (e.g. European Asylum Support Office – EASO) and increased solidarity, and sense of responsibility among EU States, and between the EU and non-EU countries.

The second phase of creating the system is still ongoing. Moreover, The Charter of Fundamental Rights expressly guarantees a right to seek asylum in the EU and that guarantees that some rights, including a right to effective remedy, are applicable in asylum cases. This recollects an importance of ensuring proper treatment of asylum seekers.

It is also important to underline that EU legislation shall not apply in cases of requests for diplomatic or territorial asylum. These issues are still within the competencies of the EU Member States that makes them free to regulate these areas of law. Thus, the Law of the RA on political asylum is not covered by the report.

Some of the above-mentioned acts e.g. Dublin regulation, taking into account their subject, seems to be not relevant to the situation of the RA. Nevertheless it might be important to take into account general rules connected with some acts (Eurodac regulation), especially in a context of e.g. data collection and protection.

In a context of international protection the EU law provides 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. The EU legislation regarding international protection issues is based – in the context of standards for the qualification as a refugee – on Geneva Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967. However, the EU developed significantly as regards provisions connected with asylum issue. The EU in its main acts lay dawn the scope of minimal standards of qualification as a refugee, procedures and reception conditions as well as it establishes broader system of protection.

It should be underlined that the EU legislation provides minimum standards in respect of asylum and refugees. Thus, as a rule, directives are used as a method of harmonization. This approach provides EU Member States with an obligation to implement standards that are at least equal to ones precluded at the EU level. However, EU Member States may retain
higher standards that had introduced and they always may introduce new national legislation that will raise the standards provided by the EU law.

The EU legislation specifies who can be an actor of persecution or serious harm as well as actor of protection. In the same time it describes acts which are regarded as a persecution and their forms. Within the meaning of Article 1A of the Geneva Convention, an act must: (a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights; or (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner. During the procedure EU Member States assess reasons for persecution in the context of presented and proved facts and circumstances to grant refugee status to a third-country national or a stateless person who qualifies as a refugee.

EU legislation lays down also clear rules connected with revocation of, ending of or refusal to renew refugee status as well as cessation and exclusion from being refugee. EU Member States revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if s/he has ceased to be a refugee. Legislation listed applies also when that third-country national or a stateless person ceases to be a refugee e.g. has voluntarily re-availed him or herself of the protection of the country of nationality or having lost his or her nationality, has voluntarily re-acquired it.

According to the law EU Member States ensure a set of rights (without prejudice to the rights laid down in the Geneva Convention), taking into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled persons, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

In this context, EU Member States respect the principle of non-refoulement in accordance with their international obligations, maintain family unity, ensure access to employment, access to education, access to procedures for recognition of qualifications, social welfare and access to healthcare as well as access to accommodation and integration facilities issued to beneficiaries. They ensure also freedom of movement within the EU Member State: an issuance of a residence permit (valid for at least 3 years and renewable, unless compelling reasons of national security or public order otherwise require) and travel documents.
The Procedural Directive establishes minimum standards on procedures in EU Member States for granting and withdrawing refugee status. In this respect the EU system creates very clear scope of rules on asylum procedure. Thus, EU Member States may freely provide more favourable conditions, if they wish so.

According to the EU law an application for asylum might be submitted by applicant in the territory of the country, including at the border or in the transit zone. Asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection defined in the EU law. This is a result of a single procedure application, so the burden of identification of a proper type of protection is imposed on a state.

EU Member State designates a determining authority for all procedures a quasi-judicial or administrative body that is responsible for examining applications for asylum and that is competent to take decisions at first instance in such cases. In the same time other authority may be designated to be responsible for other purposes e.g. taking a decision on the application in the light of national security provisions.

Each adult person having legal capacity has the right to make an application for asylum on his/her own behalf (Article 6.2 of the Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status). An application may be also made by an applicant on behalf of his/her dependants (Article 6.3 of the Directive 2005/85/EC). In such cases EU Member States shall ensure that there is a dependent adult’s consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf (Article 6.3 of the Directive 2005/85/EC and Article 7 of the Directive 2013/32/EU on common procedures for granting and withdrawing international protection). Nevertheless, EU Member States may require that applications for asylum be made in person and/or at a designated place.

Applicants shall be allowed to remain in the EU Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance (Article 7 of the Directive 2005/85 and Article 9 of the Directive 2013/32/EU on common procedures for granting and withdrawing international protection).

EU Member States shall ensure that decisions on applications for asylum are given in writing (Article 9.2 of the Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status). EU Member States shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing, as
outlined in Article 9.2 of the Directive 2005/85/EC.

EU Member States ensure that all applicants for asylum are informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities (Article 10 of the Directive 2005/85/EC and Article 12 of the Directive 2013/32/EU on common procedures for granting and withdrawing international protection). An applicant shall also receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. EU Member States shall consider it necessary to give these services at least when the determining authority calls upon the applicant to be interviewed and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services are paid for out of public funds. An applicant has also the opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR (Article 10 of the Directive 2005/85/EC). S/He shall be given a notice in a reasonable time of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant EU Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum.

An applicant is informed of the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor and when free legal assistance is not available. The information provided shall include information on how to challenge a negative decision.

Before a decision is taken by the determining authority the applicant for asylum has the opportunity of a personal interview on his/her application for asylum with a person competent under national law to conduct such an interview (Article 12.1 of the Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status and Article 14 of the Directive 2013/32/EU on common procedures for granting and withdrawing international protection). In some strictly defined by the law cases an interview is not required. The absence of a personal interview shall not prevent the determining authority from taking a decision on an application for asylum and in some cases it shall not adversely affect the decision of the determining authority. Personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. This includes a duty to ensure that the person
who conducts the interview is sufficiently competent to take account of the personal or
genral circumstances surrounding the application, including the applicant’s cultural origin
or vulnerability/ and to select an interpreter who is able to ensure appropriate
communication between the applicant and the person who conducts the interview. As a rule
personal interview shall take place under conditions which ensure appropriate
confidentiality and without the presence of family members unless the determining authority
considers it necessary for an appropriate examination to have other family members present

A written report is made of every personal interview, containing at least the essential
information regarding the application. An applicant has timely access to the report of the
personal interview. Where access is only granted after the decision of the determining
authority EU Member States shall ensure that access is possible as soon as necessary for
allowing an appeal to be prepared and lodged in due time.

Regarding a right to legal assistance and representation and its scope, according to the
EU legislation EU Member States allow applicants for asylum the opportunity, at their own
cost, to consult in an effective manner a legal adviser or other counsellor, admitted or
permitted as such under national law, on matters relating to their asylum applications
on common procedures for granting and withdrawing international protection specifies that
in first instance procedures on request legal and procedural information should be provided
free of charge on, at least, the applicant’s peculiar circumstances). EU Member States ensure
free legal assistance and/or representation granted on request in case of a negative decision.

It is important to underline that for the purposes of examining individual cases EU
Member States shall not directly disclose information regarding individual applications for
asylum or the fact that an application has been made, to the alleged actor(s) of persecution
of the applicant for asylum and obtain any information from the alleged actor(s) of
persecution in a manner that would result in such actor(s) being directly informed of the fact
that an application has been made by the applicant in question, and would jeopardise the
physical integrity of the applicant and his/her dependents, or the liberty and security of
his/her family members still living in the country of origin.

The provisions also stress the important role of UNHCR in the procedure (e.g. access
to applicants for asylum, access to information on individual applications for asylum, on the
course of the procedure, and on the decisions taken, provided that the applicant for asylum
agrees thereto).
According to the procedures at first instance EU Member States ensure that such a procedure is concluded as soon as possible without prejudice to an adequate and complete examination (preferably up to 6 months). In case of inadmissible applications an application is not examined e.g. another EU Member State has granted refugee status; a country which is not a EU Member State is considered as a first country of asylum for the applicant; a country which is not a EU Member State is considered as a safe third country for the applicant. Regarding unfounded applications EU Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status (Article 25 of the Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status).

In the context of border procedures EU Member States may provide for procedures, in accordance with the basic principles and guarantees, in order to decide at the border or transit zones of the EU Member State on applications made at such locations.

Regarding an issue of withdrawal of a refugee status, EU Member States ensure that an examination to withdraw the refugee status of a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his/her refugee status (Article 37 of the Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status). In this context EU Member States ensure that, where the competent authority is considering a withdrawal the refugee status, the person concerned enjoys adequate procedural guarantees e.g. to be informed in writing, the reasons for such a reconsideration, to be given the opportunity to submit in a personal interview or in a written statement reasons as to why his/her refugee status should not be withdrawn (Article 38 of the Directive 2005/85/EC).

According to the law EU Member States ensure that applicants for asylum have the right to an effective remedy before a court or a tribunal (Article 39 of the Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status and Article 46 of the Directive 2013/32/EU on common procedures for granting and withdrawing international protection). Procedures provide time-limits and other necessary rules for the applicant to exercise his/her right to an effective remedy. EU Member States, where appropriate, provide rules in accordance with their international obligations dealing with the question of whether the remedy shall have the effect of allowing applicants to remain in the EU Member State concerned pending its
outcome the possibility of legal remedy or protective measures where the remedy does not have the effect of allowing applicants to remain in the EU Member State concerned pending its outcome. EU Member States may also provide for an *ex officio* remedy (Article 39.3 of the Directive 2005/85/EC).

Moreover, EU legislation lays down minimum standards for the reception of asylum seekers. It covers all third-country nationals and stateless persons who make an application for asylum at the border or in the territory of a EU Member State as long as they are allowed to remain on the territory as asylum seekers, as well as to family members, if they are covered by such application for asylum according to the national law (Article 3 of the Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers). To fulfil its obligation EU Member States inform asylum seekers within a reasonable time not exceeding fifteen days after they have lodged their application for asylum with the competent authority of at least any established benefits and of the obligations with which they must comply relating to reception conditions.

An applicant (within three days after an application is lodged) is provided with a document issued in his or her own name certifying his or her status as an asylum seeker or testifying that s/he is allowed to stay in the territory of the EU Member State while his or her application is pending or being examined (Article 6 of the Directive 2003/9/EC).

In general, asylum seekers may move freely within the territory of the host EU Member State or within an area assigned to them by that EU Member State (Article 7 of the Directive 2003/9/EC). Their rights and obligations cover also maintenance, as far as possible, of family unity (Article 8 of the Directive 2003/9/EC), issues of medical screening for applicants on public health grounds (Article 9 of the Directive 2003/9/EC), grant an access to the education system to minor children of asylum seekers and to asylum seekers who are minors (under similar conditions as nationals of the host EU Member State and for so long as an expulsion measure against them or their parents is not actually enforced, Article 10 of the Directive 2003/9/EC), access to the labour market if a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant, access to vocational training irrespective of whether they have access to the labour market (Article 11 and Article 12 of the Directive 2003/9/EC).

EU Member States ensure that material reception conditions are available to applicants when they make their application for asylum and that standard of living is adequate for the health of applicants and capable of ensuring their subsistence. EU Member
States also ensure that standard of living is met in the specific situation of persons who have special needs (Chapter IV of the Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers), as well as in relation to the situation of persons who are in detention. EU Member States also ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness (Article 15 of the Directive 2003/9/EC). Nevertheless, in special cases reduction or withdrawal of reception conditions is applicable.

Moreover, EU law specifies provisions for persons with special needs, namely the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, relating to material reception conditions and health care.

Above-mentioned rules are not applied in case of temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between EU Member States in receiving such persons and bearing the consequences thereof. In such cases of exceptional character the EU law establishes other scheme. The purpose of this solution is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between EU Member States in receiving and bearing the consequences of receiving such persons. Temporary protection shall not prejudice recognition of refugee status under the Geneva Convention and it applies with due respect for human rights and fundamental freedoms and their obligations regarding non-refoulement (Article 3 of the Directive 2001/55/EC 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). Duration and implementation of temporary protection is limited (one year and may be extended automatically by six monthly periods for a maximum of one year, as outlined in Article 4 of the above-mentioned Directive). The existence of a mass influx of displaced persons is established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a EU Member State that it submit a proposal to the Council. Temporary protection shall come to an end when the maximum duration has been reached or at any time by the Council Decision adopted by a qualified majority on a proposal from the Commission which shall also examine any request by a EU Member State that it submit a proposal to the Council.
The provisions regulate also obligations of the EU Member States towards persons enjoying temporary protection (Chapter III of the Directive 2001/55/EC 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).

**Conclusions and recommendations**

Article 6 of the Law on refugees and asylum provides a more broad definition of a refugee that that the one that can be found in Geneva Convention. This is due to the fact that also cases that do not fallow directly from Geneva Convention are referred to in this definition are covered. Bearing in mind the fact that Geneva Convention is an international law instrument introduction of an additional to refugee status form of protection would make it possible also to provide protection on other than Geneva Convention basis and it would make it clear if the reason for providing protection follows from prerequisites specified in Geneva Convention or other ones.

In this regard a form of protection additional to refugee status should be considered to be implemented. It could serve for the purpose of persons who cannot be expelled due to possible breach of the Article 3 of the European Convention on Human Rights of 4 November 1950 and to cases when according to Geneva Convention protection cannot be applied. As an institution of national legislation it would provide more flexibility and it would ensure that in other humanitarian cases it may be applied.

Foreigners that would be provided with additional form of protection can have the same rights as foreigners who have been granted a refugee status. Thus, introduction of this scheme will not lower the standard of support and rights of foreigners.

Armenian law refers to the concept of a safe third country (Article 11 of the Law on refugees and asylum) but this idea is not described in more details. The concept as such is not against the EU law. However, if it will be decided to maintain this clause it should be more precisely referred to in the law. As an example the wording from the Article 27 of the Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status or of the Article 38 of the Directive 2013/32/EC on common procedures for granting and withdrawing international protection could be used. Among others, rules allowing individual examination whether the third country concerned is safe for peculiar person should be introduced (Article 27.2 of the Directive 2005/85/EC).
Vulnerable groups' needs should also be more precisely reflected in Armenian legislation. Traumatic experiences, mental disorders, cultural differences and disabilities should be approached as quickly as possible and identified persons should be provided with adequate support. Also, this should be reflected in procedural guarantees e.g. when inconsistent interviews are made.

Subsequent application is also regulated in Armenian law (Article 59 of the Law on refugees and asylum). Nevertheless, it is not fully in line with the European standards, EU law among others, as it puts an obligation on designated body to consider events and facts that occurred during the previous examination of asylum seekers' application after the last interview – thus the concept of facts that were not submitted during first application are not considered and the situation of vulnerable groups that could affect ability to present all relevant facts (e.g. as a result of traumatic experiences) are not taken into consideration.

Thus, it is recommended to modify the concept of subsequent applications so that it will cover only cases when no new elements or findings relating to the examination have been presented by the applicant (Article 33.2 of the Directive 2013/32/EC). If new elements have been identified or when there is a significant likelihood that an applicant should be granted protection it should not be treated as a subsequent application but it should be examined on a regular basis (as outlined in Chapter II of the Directive 2013/32/EC on common procedures for granting and withdrawing international protection).

More precise regulations concerning placement in a reception center should be elaborated. Currently, they are not covering all aspects of placement (this was also discussed in a part of the report that refers to unaccompanied minors) and they do not pay enough attention to vulnerable persons’ needs.

Although competences of the key public administration bodies as regards providing support in asylum-related cases is described in the law in some aspects inconsistencies have been found (c.f. access to education).

Finally, it should be welcomed that according to people who have been approached during the missions some additional support for asylum seekers is provided. Regrettably, it is not mentioned precisely in law.

Article 3 of the Law on refugees and asylum that refers to mass influx cases could also be amended. Although this regulation refers to the decision of the Government of the RA that should be made there are no further rules in the law in this regard. Among others, the duration of application of mass influx rules and extension of the term for which mass influx
rules have been applied is not present in current Armenian law. Moreover, EU legislation
does not contain any limitations regarding the countries of origin of foreigners who are
subject to mass influx provisions. Thus, these rules apply to foreigners who are coming from
neighbouring countries as well as to foreigners from non-neighbouring countries. It would
be recommended to adjust existing Armenian legislation by deleting a phrase “the bordering
countries of the Republic of Armenia” from Article 3.1 of the Law on refugees and asylum.

Recommendations:

• Establishment of an additional to refugee status form of protection should be
  considered.
• Safe third country concept should be either abolished or prescribed more precisely in
  the law. As it has an impact on access to procedures it refers to the basic concept of human
  rights. Thus, a set of rules and legal guarantees in application of safe third country concept
  needs to be regulated at the legislation level (an act).
• Vulnerable groups’ needs should also be more precisely reflected in Armenian
  legislation.
• Subsequent application should provide more guarantees and it should also take into
  account vulnerability of asylum applicants.
• Regulations on mass influx cases could be extended in order to make it possible to
  rely on this legal instrument in cases of foreigners coming from non-neighbouring countries
  as well as in cases of foreigners coming from neighbouring countries.

3.2. Unaccompanied minors

This part of the report will present Armenian and European legislation concerning the
situation of foreigners who are unaccompanied minors. Thus, the situation of both,
unaccompanied minors who are asylum seekers or refugees as well as those who are victims
of trafficking in human beings is analysed.

Relevant Armenian legislation

As regards Armenian legislation on addressing the situation of unaccompanied minors
the most important laws are:

• Law on Foreigners of 25 December 2006;
Law on refugees and asylum of 27 November 2008;
- Family Code of 9 November 2004;
- Law on the child's rights of 29 May, 1996;
- Decision No 1440-N from 19 November 2009 on the approval of the procedure on placing asylum seekers in the temporary reception centre and providing them with living conditions that states.

Article 1 of the Law on the child's rights specifies that the Law applies to all individuals in the RA under the age of 18. This rule is also reflected in other acts e.g. the ones that regulate an access to education which is guaranteed for all children present in the RA.

Armenian legislation does not contain a legal definition of a term “unaccompanied minor”. Nevertheless, Article 8 of the Law on refugees and asylum read with Article 41 of Family Code provides guidelines on the term use.

Generally, the situation of unaccompanied minors who are asylum seekers or refugees is more precisely reflected in Armenian legislation than the situation of other unaccompanied minors. This can be seen in a facilitated procedure of establishment of a legal guardian (Article 41 of the Law on refugees and asylum), in Article 39.2 of the Law on refugees and asylum that provides unaccompanied minors who are asylum seekers and refugees with a facilitated admittance to educational institutions as well as in Article 50 of the Law on Foreigners and asylum that imposes a duty to “initiate tracing of children’s parents or any other relatives” that is limited to asylum seekers and refugees.

In a context of asylum seekers and refugees it is important to recollect Article 38 of the Law on refugees and asylum as it provides regulations regarding ensuring adequate accommodation and care for unaccompanied asylum seekers. More specific regulations in this regard can be found in Decision No. 1440-N from 19 November 2009 on the approval of the procedure on placing asylum seekers in the temporary reception centre and providing them with living conditions.

**European legislation**

The EU puts a lot of attention to ensuring that unaccompanied minors needs are duly met. This refers to unaccompanied minors who are asylum seekers and refugees but also to those who are victims of trafficking in human beings.
The main legal acts concerning unaccompanied minors are:

- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;
- Council Directive 2004/81/EC 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;

Moreover, the United Nations Convention on the Rights of the Child (New York, 20 November 1989) and the Committee of Ministers of the Council of Europe, Guidelines on human rights protection in the context of accelerated asylum procedures adopted by the Committee of Ministers on 1 July 2009 at the 1062nd meeting of the Ministers' Deputies play an important role as regards ensuring protection of unaccompanied minors.

According to the EU law minors, including unaccompanied minors, are vulnerable group (Article 3 of the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals as well as Article 20 of the Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted). Thus, Article 17 of the Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers specifies that specific situation of minors and unaccompanied minors should be taken into account (see later comments in this respect) – these needs have to be identified ad casum. In this respect state shall take the necessary measures to ensure that the specific
actions to assist and support child victims of trafficking in human beings take due account of the personal and special circumstances of the unaccompanied child victim with a view to finding a durable solution based on an individual assessment of the best interests of the child (Article 16 of the Directive 2011/36/EU).

In all cases EU law puts a lot of attention to establishing legal guardian for an unaccompanied minor. In asylum cases legal guardian should be established as soon as possible (Article 19 of the Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and Article 30 of the Council Directive 2004/83/EC) and his/her acts should be regularly monitored by competent bodies. In case of foreigners-unaccompanied minors who are victims of trafficking in human beings establishing a legal guardian is recommended (Article 16.3 of the Directive 2011/36/EU).

**Conclusions and recommendations**

Article 8 of the Law on refugees and asylum contains a very general regulation which could be copied into the Law on Foreigners as the aim of these regulations should be achieved in non-refugee cases as well. In this regard Article 41 of Family Code that specifies that “A person under 18 years old is considered a child” is not fully in line with the above-mentioned definition, although the Article 109 ensures that protection of rights and interests of children in case of the absence of parental care and other cases is put on the departments of custody and guardianship\(^\text{20}\).

Nevertheless, also current Article 8 of the Law on refugees and asylum needs amendments as it defines unaccompanied minor as a child (person below 18 years old) that does not have a legal representative in the territory of the RA. However, Article 2 of the Council Directive 2004/83/EC defines an “unaccompanied minor” as a third-country national or stateless person below the age of 18, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States (see: Article 2 of the Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers). Thus, current definition that relies on a legal representative’s presence in the territory of the RA issue is not sufficient as it does not contain a referral to an issue of the effective care by an adult responsible for unaccompanied minor whether by

\(^{20}\text{It is not clear if a phrase “lack of parental care” applies also to unaccompanied minors.}\)
law or custom. Thus, the law should be amended in this respect to reflect not only formal but also practical possibility to take care of a minor.

Article 41 of the Law on refugees and asylum regarding establishment of legal guardian, only mentions that a legal guardian should be appointed upon the request of the Designated Body on Labour and Social Issues or Child Protection Units. Thus, it could be amended to expressly stipulate that the legal guardian should be appointed as soon as possible.

In all cases, minor’s needs should be duly met by the guardian or representative. This refers especially to asylum procedures and – in case of unaccompanied minors who are victims of trafficking in human beings – in criminal investigations and proceedings. The later obligation should be realised in accordance with the role of victims in the relevant justice system.

Article 10.c of the Council Directive 2004/81/EC 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 imposes a duty on States to take the necessary steps to establish unaccompanied minors’ identity, nationality and the fact that they are unaccompanied. Moreover, States shall make every effort to locate unaccompanied minors’ families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary, in accordance with national law.

This concept is partially reflected in Armenian law. Article 30 (on the rights of a refugee child) of the Law of RA on the child's rights needs amendments. Currently, it applies only to “the refugee child deprived of private property and place of residence in the result of military operations and other conflicts has the right for protecting its interest”. Thus the scope of this regulation is to narrow as it should apply to all children, among others but not solely children that have been granted a refugee status. The duty imposed on corresponding bodies:

- to initiate arrangements for searching the parents or relatives of the child,
- to provide it with material, healthcare and other assistance, in case of necessity place the child in preventive medical boarding school or other institutions

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22 Although situation of unaccompanied minors who are asylum seekers or refugees is reflected in Article 8.4 of the Law on refugees and asylum (best interest of the child)
should be applied not only in case of children that have been granted a refugee status but also to foreigners who are unaccompanied minors as well as unaccompanied minors who are victims of trafficking in human beings. This change will also reflect the foundations of the law of the RA that can be derived from Article 1 of the Law on child’s rights.

In cases of a threat to life or integrity of the minor or minor’s close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, as outlined in Article 30 of the Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Thus, Article 30 of the Law on the child's rights should also reflect the requirement imposed on dedicated bodies to take necessary steps to establish unaccompanied minors’ identity and nationality as they are currently not covered by that law. As regards asylum seekers, although Article 50 of the Law on Foreigners and asylum imposes a duty to “initiate tracing of children’s parents or any other relatives” is to narrow in its scope (in its subject and object) and it cannot be applied to other foreigners who are unaccompanied minors.

In asylum cases the Article 8.3 of the Law on refugees and asylum shall be amended in order to better reflect the peculiarity of a situation of unaccompanied minors. In this respect, Article 30 of the Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted should be addressed as it establishes a hierarchy of the criteria relating to placing unaccompanied minors in a reception centre when their asylum application is proceeded (with adult relatives; or with a foster family; or in centres specialised in accommodation for minors; or in other accommodation suitable for minors). Thus, Article 38 of the Law on refugees and asylum is not sufficiently clear in this regard. The above-mentioned law uses only an undefined and unspecific term “adequate accommodation and care for unaccompanied asylum seekers”. Current decision No 1440-N from 19 November 2009 on the approval of the procedure on placing asylum seekers in the temporary reception centre and providing them with living conditions that states (in an Annex) that “5. Asylum seekers and members of their families shall be placed in the Centre if they have indicated about it in their asylum application or they have submitted a separate application. The asylum seekers may also reside in other places at their own expenses.” is not fully in line with the EU law
and should be amended accordingly. In this regard it has to be underlined that according to the EU law (Article 19.2 of the Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers) as far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Current Armenian law also does not contain a guarantee that in placing unaccompanied minors the views of the child shall be taken into account in accordance with his or her age and degree of maturity and that changes of residence of unaccompanied minors shall be limited to a minimum.

Although an access to education is guaranteed to all minors present in the RA it is only unaccompanied minors who are asylum seekers and refugees whose admittance to educational institution is facilitated, as outlined in Article 39.2 of the Law on refugees and asylum. This rule should be extended to cover all minors who are asylum seekers (Article 10 of the Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers) and refugees (Article 27 of the Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted) as well as to child victims of trafficking in human beings (Article 14 of the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA).

It also has to be stressed that the child’s best interest has to be secured in return procedures (including expulsion cases). This includes a duty to provide (before deciding to issue a return decision) an assistance by appropriate bodies other than the authorities enforcing return and to check before removing an unaccompanied minor that s/he will be returned to a member of her/his family, a nominated guardian or adequate reception facilities in the State of return, in line with the standards envisaged in The United Nations Convention on the Rights of the Child and outlined in Article 10 of the Directive 2008/115/EC.

**Recommendations:**

- Regulation similar to Article 8 of the Law on refugees and asylum that would refer to all foreigners who are unaccompanied minors in the RA should be introduced in the Law on foreigners. Introduction of the passage in the Law on foreigners would ensure protection to other foreigners who are unaccompanied minors present in Armenia. Currently only situation of foreigners who are asylum seeking unaccompanied minors is covered.
• Best interest of a child in asylum procedure and in return procedure should be strengthened as regards the duty to check minor’s identity and nationality.

• Vulnerability of unaccompanied minors should be adequately reflected in law. This includes, among others, rules on accommodating asylum seeking unaccompanied minors as well as ensuring the best interest of a child in criminal investigations and proceedings (in case of foreigners who are unaccompanied minors-victims of trafficking in human beings).

• The duty imposed on corresponding bodies to initiate arrangements for searching the parents or relatives of the child should be extended to all foreigners who are unaccompanied minors, especially to foreigners who are unaccompanied minors-victims of trafficking in human beings.
General recommendations

**Recommendations:**

- Ensuring adequate procedural guarantees in an administrative procedure should be considered. It is not only a requirement of the law but it can also be derived from the rule of law concept.

- Procedural guarantees, rights and general obligation should be prescribed in law and not in decrees as it touches the most important aspects of human rights.

- Current Armenian legislation uses a concept of a “designated body” which is not clarified. Thus, it creates uncertainty in this respect. A referral in the law to competences of that body could be used if providing the name of the body is not possible.

- Decisions should be issued in writing in every case and irrespective on the body that issues decision. This should be ensured in first and second instance decisions e.g. in entry ban cases.

- Final decision should be issued in a language understandable to a foreigner.

- Effective legal remedy should be ensured. Thus, rights of foreigner as regards appeal should be clearly prescribed in law.

- Rules on cooperation between different institutions responsible for migration issues in the RA should be clearly reflected in law.

- Data protection rules should be respected in all procedures. Bearing in mind sensitivity of that data rules on data storing/deleting/changing and on time-limits for removing that data should be clearly prescribed in law.

- Respect for rights and ensuring adequate treatment of vulnerable foreigners (including unaccompanied minors, women, people with disabilities, elderly people) in asylum procedure cases and as regards reception and detention conditions should be a priority.
Appendices

Appendix I: Armenian legislation

- Law on the child's rights of 29 May, 1996;
- Act on State Border as of 20 November 2001;
- Act on Border Guard Troops as of 20 November 2001;
- Family Code of 9 November 2004;
- Law on Foreigners of 25 December 2006;
- Law on refugees and asylum of 27 November 2008;
- Law on procurements (available at: http://www.parliament.am/law_docs/231204HO160eng.pdf, 2013-02-20);
- the Order of 28 November 2008 of the Government of the RA on approving the National Referral Procedure of Trafficked Persons (No. 1385-A);
- Decision of the Government of the RA No. 200 from 24 March 1998 on the approval of the procedure on the performance of the functions of the state authorised bodies at the state border-crossing points of the Republic of Armenia;
Decision of Government of the RA No. 1268-N from 4 October 2007 on the approval of the list of documents to be submitted together with the applications for obtaining an entry visa to the Republic of Armenia and for extending the validity period of the entry visa, the procedure on considering applications, issuing an entry visa, extending the validity period of the entry visa, the form of making a note in the passports of foreign citizens on issuing an entry visa to the Republic of Armenia, extending the validity period of the visa, refusing visa, cancelling the entry visa or refusing the entry, the procedure on encoding entry visa as per type of visit, maintaining the database of persons having obtained entry visa to the Republic of Armenia and having extended the validity period of entry visa, on entering and providing data;

The Government of the RA Decision No. 1439-N from 15 November 2007 on the approval of the procedure on the approval and registration of the invitation to visit the RA, list of the required documents while submitting invitations to visit the RA for approval, description and sample form of the invitation to visit the RA;

Decision of the Government of the Republic of Armenia No. 115 from 25 January 2008 on the establishment of the procedure on entering data into the database of foreigners deemed persona non grata in the territory of the Republic of Armenia and making use thereof;

Decision of the Government of the RA No. 127-N from 7 February 2008 on the establishment of the procedure on the operation of special facilities at border crossing points and transit areas of the Republic of Armenia and for detention of foreigners therein;

Government of the Republic of Armenia Decision No. 134-N of 7 February 2008 on approving the list of documents to be submitted together with an application for obtaining temporary or permanent residence status (extending the residence status) in the Republic of Armenia, the procedure for consideration of the application, the description and forms of the temporary residence card, permanent residence card and of special passport of the Republic of Armenia;

The Government of the RA Decision No. 1154-N from 8 October 2008 on the approval of the procedure on obtaining an entry visa to the RA under special conditions by the citizens of Armenian origin and other citizens of a certain category of the states with the right to apply to the diplomatic service bodies and consular institutions of the RA in foreign states for obtaining an entry visa only based on the invitation;

Decision No. 1440-N from 19 November 2009 on the approval of the
procedure on placing asylum seekers in the temporary reception centre and providing them with living conditions that states;

- Government of the RA Decision No. 62-N from 20 January 2011 on the approval of the procedure on the approval and registration of the invitation by the ministry of foreign affairs of the RA for the purpose of issuing an entry visa to the RA.

- Decision of the RA Government No. 1360 from 22 September 2011 on the procedure of consultation between the state authorities of the Republic of Armenia of applications received from the foreign states in the frames of agreements on readmission of persons with unauthorised stay;
Appendix II: European legislation

- The Charter of Fundamental Rights;
- Council Regulation (EC) No. 1683/95 of 29 May 1995 laying down a uniform format for visas;
- Council Regulation (EC) No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;
- 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;
- 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 (VIS Regulation);
- Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast);

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;


Council Directive 2004/81/EC 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;

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;


June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals;


- 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 (recast);

- 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;

- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast);

- Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA);

- Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence;

- Council Resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons;

- 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.
Appendix III: additional legislation

- Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;
- European Convention on Human Rights of 4 November 1950;
- Council of Europe Convention on Action against Trafficking in Human Beings on 14 April 2008 (it entered into force in respect of the RA on 1st August 2008);
- Committee of Ministers of the Council of Europe, *Guidelines on human rights protection in the context of accelerated asylum procedures adopted by the Committee of Ministers on 1 July 2009 at the 1062nd meeting of the Ministers' Deputies*;
Appendix IV: issues needing further clarification

Issues needing further clarification include, among others:

- rules on cooperation between different institutions responsible for migration issues in the RA, including the role of Compulsory Enforcement Service of Judicial Acts in expulsion procedure;
- organisation of an appeal system as regards issuance of residence permits and in expulsion cases;
- rules on access to free interpretation service and legal aid, including in asylum cases and in cases of foreigners who have received a refusal on issuance of residence permit;
- organisation of Armenian databases in which information on foreigners are stored organised and ensuring coherency of Armenian legal basis regulating these issues (including ones on storing/deleting/changing data stored in that databases) with the EU law in this respect;
- regulations concerning technical requirements that have to be met when documents are issued to foreigners and extend of data that are placed on that documents;
- rights of foreigners whose data are stored in the immigration-related databases including a right to access to that databases to verify and correct some data that are stored there (e.g. error to facts related to the foreigner);
- issues relating to ensuring a right of an effective remedy from decisions issued to foreigners, including from the decision on refusal (banning) of entry;
- issues relating to issuance of decisions in foreigners cases in writing;
- respect for rights and ensuring adequate treatment of vulnerable foreigners (unaccompanied minors, women, people with disabilities, elderly people) including rules on placement in detention/reception facilities as well as rules on providing support to asylum seekers and refugees;
- rules on providing medical check before placing an asylum seeker in reception centre;
- rules on placement in reception centre as regards family members and vulnerable groups;
- rules on operation, including rules on placement, of foreigners in detention center including in cases of pending removal (expulsion) cases;
- sanctions (e.g. exclusion from tenders) that may be imposed on the
companies established in the RA for breaching immigration-related laws, including in cases of trafficking in human beings and cases of employment of foreigners staying in the RA without required residence permit or a visa;

- foreign investments-related issues including overusing investments in order to stay in the RA and when foreigners are employed in the RA by foreign establishment.
Appendix V: information on authors

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