



# UKRAINE AND THE ASSOCIATION AGREEMENT

IMPLEMENTATION MONITORING  
2014 – 2019

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### 2014—2019

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# METHODOLOGY

## Structure of the Monitoring Report

The UCEP's Monitoring Report for 2014–2019 provides an overview and quantitative assessment of Ukraine's progress (as of the end of 2019) in the implementation of the set of commitments (as a structural unit of assessment) grouped by individual sectors in accordance with the Titles of the Association Agreement based on the criterion of belonging to a particular sector (Chapter) and with a clear link of the commitment to the articles of the Agreement, Annexes thereto, or provisions of other international agreements specified therein.

Each sectoral part of the Report is based on the following structure:

- Graphic illustration of the progress presented as a scale of 0% to 100% and divided by different stages of progress (i.e. statuses; please see details below)
- Description of the sector (and sub-sectors, if available), description of key objectives to be achieved in accordance with the requirements of the EU sectoral acquis, as well as the expected costs and benefits of its implementation (when possible to estimate)
- Overview of key commitments in the sector (sub-sector, if any) and expert assessment of their fulfilment progress in terms of the following structure:
  - Name and brief description of the essence of the commitment
  - Assessment of the achieved level of transposition of EU acquis into national legislation (regulatory approximation)
  - Assessment of the achieved (practical) implementation of the transposed provisions in practice
- Key conclusions and recommendations concerning the most urgent steps to be taken by Government and Parliament agents in charge to achieve the objectives of transposition and implementation (if possible)

The preparation of the sectoral part of the Report involves obtaining relevant opinions from independent (i.e. independent from the government) experts in the relevant sector and drafting an expert opinion based on the above structure in a concise form.

## Methodology for assessing Ukraine's progress in fulfilling its commitments under the Association Agreement

In addition to the descriptive part, the Report also provides quantitative assessment of the progress presented as a percentage share of its 100 % fulfilment (on a scale from 0% to 100%).

**Unit of assessment.** The unit of progress assessment is commitment, which involves a certain set of actions or tasks to be performed by the Ukrainian authorities, aiming at gradual (planned) approximation of national legislation to the requirements of one or more of European Union *acquis* as specified in the articles and Annexes of the Association Agreement and ensuring implementation of the resulting legislation.

Each of the tasks, in turn, can be divided into a number of purely technical steps or measures, which, however, are not taken into account in the assessment and are purely informative aiming to specify the tasks at the level of technical steps (information). The deadline for fulfilling the commitment is the deadline set for the last task associated with this commitment, in accordance with the time-frame set forth in the Annexes to the Agreement (it is also provided for information purposes only and does not affect the assessment results).

**System of assessment.** Each of the tasks is associated with one of the two stages of commitment fulfilment (and, accordingly, assessment): transposition (regulatory approximation) or implementation (practical introduction of changes at the level of law)<sup>1</sup>. Hence, each task may relate to either legislative work or to practical implementation of legislative changes.

Regulatory approximation of legislation is the process of transposing into national law the standards and provisions of EU *acquis*, as well as the abolition or correction of national law provisions that are contrary to European law. With regard to the transposition of each EU act into the national legislation of Ukraine, we distinguish changes at different levels of legislation:

1. adoption of framework legislation as laws of Ukraine,
2. approval of clarifying bylaws (Resolution of the Cabinet of Ministers of Ukraine, Order of the Cabinet of Ministers of Ukraine, Decree of the President of Ukraine, etc.), as well as
3. implementing regulations, such as action plans, roadmaps, etc., that formalize the further steps to be taken for practical implementation.

In order to track and compare changes in national legislation related to the implementation of the commitments under the Association Agreement, the Monitoring Report distinguishes between: (i) draft implementing regulations and (ii) implementing regulations that have entered into force.

The implementation stage makes it possible to assess the practical enforcement by the government bodies of the transposed legislation, provision of infrastructure (institutional, staffing and financial support), and other necessary conditions for the competent authorities to be able to perform their functions and take decisions in accordance with the legislation aligned with EU law. This stage also includes all measures of the competent authorities to monitor, control, facilitate, authorise, and adjust policies in order to comply with EU law provisions transposed into national law.

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<sup>1</sup>) These two terms are used exclusively for the Ukrainian situation, referring to transposition as the approximation of legislation for a non-EU country, and implementation in a narrow sense as practical implementation of legislative changes (because the term "implementation of a commitment / EU regulation" is often used to mean "fulfillment of a commitment" in the broadest sense of the word).

Progress at the implementation stage is assessed based on the following criteria (if applicable):

1. Designation of the government body(s) responsible for implementation;
2. Availability of an implementation plan;
3. Effective mechanism for monitoring compliance with the legislation;
4. Creation of technical standards and quality assurance systems for data verification;
5. Creation of effective systems of control over compliance with the legislation;
6. Creation of a system for providing public information, etc.

The progress itself at the task level is estimated by assigning a special status to the task based on the assessment stage, as shown in the table below:

Status colour	Approximation of legislation		Implementation	
	Status name	Status description	Status name	Status description
grey	Transposition has not started	None of the provisions of the EU act (or a very small number of them) have been transposed into Ukrainian law	Implementation has not started	Implementation of the provisions of European legislation has not started
blue	Early transposition stage	(A) There are certain provisions in national law that meet the requirements of the EU act, but this does not ensure comprehensive transposition of the provisions of the EU act into national law. (B) In the vast majority of cases, transposition of the requirements and provisions of EU acts into national legislation exists only in the form of proposals / draft regulations at various levels.	Early implementation stage	Necessary by-laws have been created to meet the requirements of European legislation, but there is no proper infrastructure (institutional, personnel and financial support)

yellow	Advanced transposition stage	(A) The provisions of the EU act are enshrined in a framework law(s) of Ukraine, but amendment to by-laws have to be made (B) At the time of assessment, the relevant sectoral acquis was updated in the EU and national legislation needs to take further steps to achieve perfect transposition.	Implemented	Necessary conditions and infrastructure have been created to meet the requirements of European legislation, but there is no effective enforcement
green	Perfect transposition	All (or almost all) provisions of the EU act have been transposed into national law	Perfect implementation (enforcement ensured)	All (or almost all) provisions of the EU act are implemented by the relevant public authority(ies)
red	Critical inconsistency	Certain provisions of Ukrainian law significantly distort or contradict the provisions of a certain EU act(s)	Critical inconsistency	Certain governance institutions / practices do not meet the requirements of European legislation and governance practices

Assessments of the progress made in the implementation of the Association Agreement is carried out at the task level: the number of tasks with any status other than "...has not started" and "critical inconsistency" is summed up and divided by the total number of tasks in that specific commitment, sub-sector, sector or in the entire Association Agreement; the result is multiplied by 100. Accordingly, each task has the same weight in the resulting progress indicator (at each level of aggregation) and the sectors with more tasks have a greater impact on the progress indicator, which reflects the greater role of "complex" or "large" sectors in the Association Agreement such as the environment, services, energy, transport, etc., i.e. where greater effort is needed to implement the respective commitments.



In order to take into account the intermediate results achieved in the implementation of the Association Agreement and to take into consideration the efforts of the relevant agents in charge, we divide the aggregate assessment of progress (for the entire Association Agreement) into two types:

- **Overall progress** in the fulfilment of the commitments under the Association Agreement, which includes task statuses such as "Early", "Advanced" and "Perfect" (with regard to the approximation of legislation and implementation);
- **Final (or "perfect") progress** in fulfilling the commitments under the Association Agreement (or the percentage share of implemented commitments under the Association Agreement), which includes only the tasks with the "Perfect" status (approximation and/or implementation of legislation) or ones that have already been fulfilled, which is confirmed by an independent expert opinion.

**Note:** The sub-sector of "Regionalization/Zoning, Pest-Free Areas and Protected Areas" within the "Sanitary and Phytosanitary Measures" sector of the Association Agreement was not assessed due to lack of relevant expertise.

# SUMMARY

The purpose of the paper is to report on the progress made by Ukraine in fulfilling its commitments set out in Titles II, III, IV, V and VI of the Association Agreement over the five-year period from November 1, 2014, to December 31, 2019.

The Monitoring Report for 2014–2019 covered 22 full-fledged sectors containing 592 commitments aimed at approximating national legislation to the provisions of the EU acquis in such sectors and sub-sectors as:

## **I. Political dialogue, national security and defence**

## **II. Justice, freedom, security and human rights**

### **III. Trade:**

- Technical barriers to trade (TBT)
- Sanitary and phytosanitary measures (SPS)
- Customs and trade facilitation
- Establishment, trade in services and electronic commerce
- Public procurement
- Intellectual property
- Competition

### **IV. Economic and sector cooperation:**

- Energy sector
- Taxation
- Statistics
- Environmental protection
- Transport
- Company law
- Audiovisual policy
- Agriculture and rural development
- Consumer protection
- Social policy
- Public health
- Education, training and youth

## **V. Financial cooperation and the anti-fraud provisions**

From November 1, 2014, to December 31, 2019, the overall progress in the fulfilment of the commitments that had to be implemented within this period amounts to 41.6%. This figure includes not only the sectors where all tasks were fulfilled but also intermediate results. Within this figure, 12.4% were fulfilled perfectly (all legislation adopted and/or implemented and is in line with EU requirements), 10.4% are at the advanced implementation level (legislative work was carried out but not all necessary bylaws were adopted and/or implemented), and 18.9% are at an early implementation stage (normative regulatory acts and/or implementation are at the initial stage of development/implementation).

By analysing the sub-sectors of the Association Agreement based on the "perfect fulfilment" criteria, we have identified 4 groups of sectors: (1) "leaders", (2) "average speed of implementation", and (4) "lagging behind". The leaders include the following sectors: technical barriers to trade (TBT), public procurement, company law, national security and defence, foreign and security policy, energy sector, consumer protection, and taxation.

In the sector of Technical Barriers to Trade, Ukrainian basic (horizontal) legislation and almost all Ukrainian sectoral (vertical) legislation have been fully adapted and implemented in accordance with the requirements of the Association Agreement and Annex III. More than 90% of the obsolete USSR standards have been replaced with modern international standards, the level of harmonisation of national standards over the past 5 years has doubled amounting to 65%. Ukrainian quality infrastructure has been aligned with WTO and EU standards, a National Standardisation Body and a National Accreditation Agency have been established and their operation has been enabled; conformity assessment bodies and state market surveillance bodies have been accredited and designated in accordance with technical regulations; and mandatory product certification has been abolished.

In the public procurement sector, Ukraine has made significant progress in meeting virtually all the commitments to adapt its public procurement system to EU requirements. This is largely due to the fact that most of the measures were initiated earlier, in accordance with the Strategy for Public Procurement (Roadmap), as well as due to the effective reforms in this area that have been carried out since 2014. The most successful step is the reforms introduced by the Law of Ukraine "On Public Procurement" in 2016, which first of all involve the creation of an electronic procurement system and significant approximation of the procurement terminology and procedures to the requirements of the relevant EU public procurement directives.

In the sector of company law, Ukraine has fulfilled the lion's share of the commitments contained in Annexes XXXIV to XXXVI of the Association Agreement. The most successful sub-sector is that of Corporate Governance, where all the recommendatory transposition tasks have been fulfilled at the perfect level. At the same time, more and more companies are implementing these international standards voluntarily with the support of both the NSSMC and international assistance projects, in order to improve their image in foreign markets and expand opportunities to attract investment.

In the sector of foreign and security policy, significant progress in the convergence between Ukraine and the EU and the fulfilment of the commitments under the Association Agreement is observed in the traditionally dynamic political and diplomatic area. At the same time, there was a temporary negative impact on the level of trust between Ukraine and the EU because of the initiatives of the Office of the President of Ukraine to establish the Advisory Council mechanism within

the Minsk process. A certain slowdown in the deepening of the cooperation is also caused by the EU's caution towards a more active policy as regards Eastern Europe.

The energy sector has undergone profound structural reforms in the natural gas and electricity markets in order to bring their regulation closer to the requirements of the EU's Third Energy Package, but their final implementation is hampered by political interventions in the mechanism of operation of these markets in order to maintain artificially low energy prices for the public. In addition, almost complete harmonisation of legislation with the EU standards in the energy efficiency sector has been achieved, except for approval of the framework law "On Energy Efficiency"; Ukraine has introduced a system of energy labelling of household appliances and ecodesign and has begun creating and introducing energy efficiency improvement systems in buildings. Significant progress has also been made in the extractive industry, as evidenced by a number of successful e-tenders for the sale of special oil and gas permits and six new e-services aimed at ensuring transparency in extractive activities, as well as approximation of legislation to the relevant EU acquis and its enforcement in the field of nuclear energy.

In the consumer protection sector, about half of the commitments have been fulfilled. It should be noted that a number of the norms of the Ukrainian legislation on consumer protection partially had taken into account the provisions of the relevant EU legal acts before the signing of the Association Agreement. However, in many cases, such partial compliance was perceived by the state authorities as full and was not taken into account in the AA implementation, in particular, in preparing amendments to the Law "On Consumer Protection" and other acts on consumer protection.

There has been moderate progress in the sector of taxation. In general, the structure of the national excise tax meets the requirements of European legislation, especially in terms of the taxation of tobacco products, alcohol and spirit drinks, energy products and electricity. The structure of the national value added tax generally meets the requirements of European legislation. However, there is a critical inconsistency in establishing the duality of the regulated gold bullion market and investment gold taxation. Despite Ukraine's significant achievements in the field of fiscal reform and its adaptation to the requirements of EU legislation, improvement of the work of tax authorities, as part of the comprehensive reform of regulatory authorities in Ukraine, is the most difficult and long-lasting modernisation endeavour in the country.

There has been some progress in the following sectors: social policy, sanitary and phytosanitary measures, environmental protection, rule of law and respect for human rights and fundamental freedoms, competition, public health, financial cooperation and anti-fraud sector, dialogue and cooperation on domestic reform, establishment, trade in services and e-commerce.

In the social policy sector, by the end of 2019, Ukraine was to implement all thirteen directives in the sub-sectors of "Labour Law" and "Anti-Discrimination and Gender Equality", as well as the five directives in the sub-sector of "Health and Safety at Work" (for the remaining directives within this sub-sector the approximation period is not over yet). The commitments have been partially fulfilled. Positive facts include the early fulfilment of the commitments concerning certain directives on health and safety at work (provision of personal protective equipment, occupational safety on construction sites, safety and health requirements for work with display screen equipment). The government also planned and performed tasks and activities that

do not aim to approximate legislation to the directives specified in Annex XL but contribute to the objectives of Ukraine-EU cooperation under Chapter 21, Title V (including access to social services).

In the sector of sanitary and phytosanitary measures, within the framework of CMU Order No 228-p "On Approval of the Comprehensive Strategy for Implementation of Chapter IV (Sanitary and Phytosanitary Measures) of Title IV 'Trade and Trade-Related Matters' of the Association Agreement between Ukraine, of the one part, and the European Union, the European Union The Atomic Energy Community and its Member States, of the other part", Ukraine has developed almost all the regulations mentioned in the above document. However, it should be taken into account that the developed regulations are pending consideration by the State Regulatory Service (hereinafter – SRS). In the field of phytosanitary measures (plants, plant products and other objects of regulation) about half of the necessary regulations have not been developed. The situation is the same in the area of chemicals and GMOs. This is the responsibility of the Ministry of Economic Development, Trade and Agriculture of Ukraine and the Ministry of Environmental Protection and Natural Resources of Ukraine.

Moderate progress has been made in the environmental protection sector. The efficiency of the practical implementation of the Agreement in the environmental area depends on the success of the relevant sectoral reforms, which essentially means radical transformation of the system of national regulation in such sectors. Currently, the greatest progress in terms of the practical implementation is observed with regard to the matters that did not require changes to the entire sector, such as EIA, SEA, and access to environmental information. Ukraine has adopted an unsystematic approach to the implementation of directives and regulations in various sectors of environmental protection and climate change: some are subject to strict requirements and criteria, the so-called "gilding" of legislation (recently dismissed by EU member states), whereas other legislative initiatives are often devoid of the necessary European approaches. When implementing directives and regulations, the approach based on multiple variants is seldom used, and directives are often simply copied into the national legislation in Ukraine.

In the sector of justice, freedom, security and human rights, a significant number of the relevant provisions have been transposed into Ukrainian legislation. Progress has been made in many areas, with some of the section's commitments having been implemented in the framework of the Visa Liberalization Action Plan, the implementation of which began before the signing of the Association Agreement. In particular, many progressive provisions have been introduced in the field of human rights protection, anti-discrimination and the rule of law. Implementation in the areas of migration and border management is successful too. For example, the system of production of biometric documents has been launched. Nevertheless, further extensive work needs to be done in the field of human rights protection, protection of personal data, and cooperation in the field of combating crime and corruption.

Moderate progress has been made in the competition sector. Framework legislation has been adopted. At this stage, some matters related to practical implementation remain unresolved. As regards the sub-sector of "Antitrust and Mergers" at the level of national legislation: there are still unfulfilled tasks such as the criteria for group exclusion of vertical agreements on the purchase or sale of goods or services have not been established; vertical agreements containing ancillary provisions on the transfer or use of intellectual property rights, etc. have not been included.

At the level of practical implementation: the AMCU does not pay attention to ensuring the observance by the entities with intellectual property rights of the provisions of the legislation on the protection of economic competition, including when granting permission for concentration. As regards the sub-sector of "State Aid", the current legislation in the field of state aid does not fully implement the EU acquis. At the level of practical implementation, a situation has developed when the Law of Ukraine "On State Aid to Business Entities" – and therefore the authority of the AMCU to monitor and control state aid – does not apply to the decisions of the President, the Verkhovna Rada of Ukraine, and the Cabinet of Ministers, even though such monitoring is one with requirements of European legislation.

In the public health sector, after the signing of the Association Agreement, Ukraine began to implement large-scale reforms in the field of healthcare and public health. These areas had been virtually unchanged since the collapse of the Soviet Union and did not meet the modern requirements of Ukrainian society and the standards of functioning of these areas in the EU. However, these reforms are comprehensive, complex and require high institutional capacity. Therefore, despite the implementation of many tasks and measures, in general none of the commitments in the public health sector set out in Chapter 22 of the Association Agreement has been fully implemented and almost all commitments are at an early stage of implementation. The only exception is the reform of healthcare financing, which has become a priority for the Government and is currently at the perfect stage of implementation.

In the sector of financial cooperation with anti-fraud provisions, progress has been made as regards establishing cooperation and coordination with the European Anti-Fraud Office (OLAF). At the same time, the procedures for cooperation between the institutions involved in the system of interdepartmental coordination on combating violations that affect the financial interests of Ukraine and the EU need to be harmonised.

In the sector of dialogue and cooperation on internal reform, moderate progress has been made. During the implementation of the reform of local self-government and decentralisation, progress has been made in creating administrative and territorial conditions for reforming local self-government and decentralisation of powers and finances, and consent between government and society that the reform is right and much needed. According to the current plans, this reform should be completed before the local election due on October 25, 2020.

During the four years of the public administration reform in terms of the institutional reform of the executive branch, only a common understanding with European partners of its goals and implementation methodology has been achieved and pilot versions have been tested, which yielded different results depending on the subjective factor (attitude to the reform of the relevant minister). As of mid-2019 much more progress was made in the area of civil service reform (total competitive selection, developed competition methodology), but this has been largely offset by changes initiated by the Verkhovna Rada of the 9th convocation and Honcharuk's government. Ukraine has implemented part of the Action Plan for the implementation of the Association Agreement (CMU Resolution No. 1106 of October 25, 2017), in particular, the electoral legislation was codified, the provisions of the Constitution of Ukraine on the immunity of judges were amended, and the obligations concerning state funding of political parties were fulfilled.

In the postal and courier services sector, most regulations have not yet been developed. We are cautiously optimistic concerning the slight progress in adapting national legislation to the requirements of EU acts in this area – i.e. a new version of the relevant draft law, which, if revised to take into account all important provisions of the EU Postal Directive and the Association Agreement, will create the preconditions and legal basis for the next steps, as provided by the Consolidated Action Plan (CMU Resolution No 1106) and the Strategy (CMU Order No 104-p).

In the sector of electronic communications and e-commerce, Ukraine is actually ready to make a quantum leap. Ukraine's integration into the European Digital Single Market is recognised as one of the priorities of Ukraine's integration into the EU and activities within the framework of the Eastern Partnership programme. This goal is extremely ambitious but quite realistic. Significant progress in the field of e-commerce allows us to hope for the success of individual pilot projects, which will clearly reveal the strengths and weaknesses of Ukrainian law enforcement practice, as well as practical mechanisms for their implementation. The unprecedented practice of simultaneous development and adoption of the Electronic Communications Code by Ukraine and the EU countries provided the platform for Ukraine's quantum leap into the European Digital Single Market. However, this leap is impossible without an independent and effective regulator, and there is still no legal framework for it.

The financial services sector has seen moderate progress over the period under review. Most regulations have not yet been developed. The exception is the Banking sector, where significant progress is observed only in terms of improving banking regulation and supervision, the procedure for withdrawing banks from the market, namely the introduction of requirements for recovery plans; introduction of a statistical reporting form on risk concentration for banking groups; statistical reporting for banking groups on intragroup transactions; and improving the procedure for submitting financial statements based on the taxonomy of financial statements in a single electronic format.

Also, some minor progress has been made in the sub-sector of "Securities" as regards Markets in Financial Instruments, the publication of prospectuses when securities are offered to the public or admitted to trading, and the harmonisation of transparency requirements regarding information about issuers whose securities are admitted to trading on a regulated market.

In the transport services sector, most acts have not yet been adopted. As part of the adaptation of Ukrainian legislation to EU legislation, a new version of the Law of Ukraine "On Inland Waterway Transport of Ukraine" was developed, which partly addresses the matters of maritime services. Since 2017, the State Maritime and River Transport Service of Ukraine (Maritime Administration) has been in place. With the entry into force of the Law of Ukraine "On Seaports of Ukraine" in 2013, the reform of the industry began. However, the law now needs to be amended. Ukraine has acceded to a number of international conventions such as the 1988 Protocol to the 1966 Convention on Trade Marks (amended in 2003, 2004, 2006, 2008, 2012, 2013 and 2014). Decision has been approved to form a System for Monitoring the Surface Situation Using an Automated Identification System in the Black and Azov Seas in the Area of Responsibility of Ukraine. It is necessary to address issues of accession to a number of international conventions, ensuring maritime safety and taking organisational and legal measures to ensure safety at the institutional level.

The most alarming situation in terms of the AA implementation is observed in the sectors of agriculture and rural development, customs and trade facilitation, intellectual property, education, training and youth, transport, statistics, and audiovisual policy.

This does not mean that no steps have been taken in all of these sectors, but the implementation of the AA in them is mostly at an early stage.

More detailed conclusions and recommendations based on the results of our analysis of the AA implementation are described in the final part of this report.



PART 1

**ASSESSMENT OF  
PROGRESS MADE BY  
UKRAINE IN IMPLEMENTING  
ITS COMMITMENTS  
UNDER THE ASSOCIATION  
AGREEMENT BETWEEN  
UKRAINE AND THE EU  
DURING 2014–2019**

TITLE II.

**POLITICAL DIALOGUE,  
NATIONAL SECURITY  
AND DEFENCE**

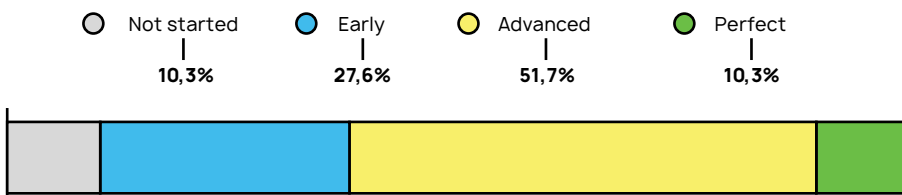
# DIALOGUE AND COOPERATION ON DOMESTIC REFORM



# DIALOGUE AND COOPERATION ON DOMESTIC REFORM

Experts: Ihor Koliushko / Yulia Kyrychenko

## Implementation progress for the sector:



## DECENTRALISATION AND CIVIL SERVICE REFORM

### Overview of key Eurointegration commitments

By the time when Ukraine signed the Association Agreement with the European Union, it had already launched the reform of local self-government and territorial organisation of government aimed at decentralising public powers and finances based on the principles of the European Charter of Local Self-Government and the recommendations of the European Congress of Local and Regional Authorities. The second task in this area was to reform the organisation and activities of the Cabinet of Ministers and the entire system of central executive bodies in accordance with the recommendations of SIGMA, otherwise, according to European experts, Ukraine will not be able to fulfil its commitments under the Association Agreement.

Fulfilment of these tasks is an essential prerequisite for the effective functioning of the entire system of public authorities in Ukraine. However, considerable financial, human and time resources are needed to implement this reform. Without proper investment, the reform runs the risk of being incomplete and failing to bring about the expected positive results.

### Evaluation of progress in fulfilling commitments

#### Commitment 1 / Reform of local self-government and territorial organisation of power (decentralisation)

- Article 6 of the Association Agreement
- European Charter of Local Self-Government
- Documents of the European Congress of Local and Regional Authorities

The Concept of reforming local self-government and territorial organisation of government was approved by the CMU Order No 333-p as of April 1, 2014. According to its provisions, the following tasks are to be performed:

1. Changing the provisions of the Constitution of Ukraine on the administrative and territorial structure, organisation of local self-government and local state administrations;
2. Developing mechanisms of direct democracy and activity of bodies of self-organisation of the public;
3. Creating legal basis for the amalgamation of territorial communities and cooperation between them;
4. Enshrining in legislation the administrative and territorial structure of Ukraine and the procedure for changing it;
5. Consolidating the administrative and territorial units of the basic level of local self-government in order to enable them to perform decentralised powers throughout the territory, not just in large cities;
6. Reforming the subregional level of the administrative and territorial organisation of Ukraine in order to optimise the territorial organisation of the government;
7. Implementing decentralisation of powers and finances, forming a new legal framework for the functioning of local governments and local executive bodies on a new territorial basis.

Even though one of the primary tasks of this reform – i.e. amending the Constitution of Ukraine – has not yet been fulfilled, all in all, the reform is making progress.

At the first stage, it was necessary to create conditions for the voluntary (the only way permitted by the Constitution) amalgamation of small communities into larger amalgamated territorial communities (ATCs), in order for all communities to achieve the capacity to exercise their decentralised powers. In order for this process not to be too chaotic and not to deprive individual territories of the possibility of creating affluent communities, the amalgamation was to take place voluntarily but on the basis of roadmaps approved by the Government. This was achieved due to the successful Law of Ukraine No 157-VIII "On Voluntary Amalgamation of Territorial Communities" as of February 5, 2015 and financial incentives. The most complicated aspect of the reform was the formation of correct roadmaps for amalgamation. Initially, there was a lack of awareness and understanding of the logic of the reform; and in 2017-18 local business elites began to actively intervene in this process, usually in quite destructive ways. Therefore, at the final stage in 2019, there was a problem of ensuring 100% capacity of all ATCs to perform the powers that were to be decentralised. To this end, the criteria for the ATC capacity were clarified, and in the late 2019 and early 2020 roadmaps were improved again.

Along with the process of forming capable communities, draft laws "On the Administrative and Territorial Structure of Ukraine", "On Local Self-Government" (recast), "On Local State Administrations" (recast), and draft laws on amendments to many laws with regard to decentralisation of powers have been prepared. These draft laws are currently undergoing endorsement at the political level and are being prepared for submission by the Government to the Verkhovna Rada.

As of the end of 2019, there are 1,029 ATCs in Ukraine, which together with cities of regional significance (they had been able to function in the conditions of decentralisation even before the reform) cover 72% of the population of Ukraine. Currently, the Government is finalizing the approval of the final revised roadmaps for the amalgamation of territorial communities, which will cover 100% of the country's territory.

Working drafts for reforming the administrative and territorial structure of Ukraine at the subregional level (new districts (raions)) have been prepared and are currently being discussed and pending political endorsement.

A new draft law on amendments to the Constitution of Ukraine with regard to reforming local self-government and territorial organisation of government is being prepared for submission by the President to the Verkhovna Rada.

Without waiting for the reform to be completed, a number of powers in the field of education, land management and administrative services have already been transferred to local governments and ATCs, and their financial resources have been increased (unfortunately, the process is not consistent and depends on the annual Law on the State budget).

The authorities are doing their best to complete this reform before the local elections due on October 25, 2020.

## **Commitment 2 / Carrying out public administration reform, including civil service reform**

- SIGMA recommendations

In fact, this reform was imposed by Ukraine's European partners, whose experts saw the inability of the post-Soviet model of organisation and operation of the executive branch to fulfil the EU integration tasks. Hence, the relevant requirements were formulated by European experts and include the following tasks:

1. Approving an official document that would establish a conceptual way of reforming and developing public administration in Ukraine;
2. Aligning civil service legislation with the European standards described in the SIGMA recommendations and using them as a basis for civil service reform;
3. Ensuring the capacity of ministries with regard to public policy making and analysis;
4. Optimising and reforming the system of central executive bodies, eliminating overlaps of powers within it and lack of accountability;
5. Creating the capacity of the Cabinet of Ministers to make strategic plans of its activities, and boosting the efficiency of the "government centre";
6. Ensuring further development of the system of administrative service provision in order to make it accessible, transparent and convenient, and adopting a law "On the Administrative Procedure";
7. Developing e-government tools in the internal activities of executive bodies and in the provision of administrative services to the public.

Initially, the list of these tasks also included a clause on public finance reform, but later it was singled out into an independent reform and specified in a separate Concept.

After a two-year delay, on June 24, 2016, the Cabinet of Ministers finally adopted an order whereby it approved the Strategy for Public Administration Reform, written in fact from European experts' dictation. Earlier, a new Law of Ukraine No 9889-VIII "On Civil Service" as of December 10, 2015 was adopted. In fact, these two documents made up the basis for the launch of public administration reform in mid-2016.

The main effort was aimed at:

1. Institutional support of the reform itself – the Coordination Council for Public Administration Reform under the Cabinet of Ministers and two directorates in the Cabinet of Ministers Secretariat;
2. Appointment of state secretaries in all ministries and the State Secretary of the CMU and his/her deputies;
3. Discussion of the concept of strategic planning of the CMU activities and a new draft of the CMU Rules of Procedure;
4. Sub-statutory regulation and organisational measures for civil service reform – the Senior Civil Service Commission has been established, competitive and disciplinary procedures have been gradually improving, whereas efforts to reform the system of remuneration of civil servants are insufficiently consistent;
5. Designation of 10 pilot ministries and creation of directorates within them for policy analysis and state policy making, introduction of a new type of civil servants specialising in reform issues;
6. Increasing the network of Administrative Services Offices, primarily in the newly created ATCs;
7. Preparation of another draft law "On Administrative Procedure";
8. Introduction of e-government in the field of internal document management and provision of certain types of administrative services.

Quite a lot has been done in all of these areas, but almost in none of them has the final result been achieved, primarily due to the lack of political will and leadership on the part of the Prime Minister of Ukraine. Even though the President and the parliamentary majority displayed a neutral attitude to this reform – they neither hindered nor supported it.

Another significant problem in the implementation of public administration reform was the failure to make major amendments to the laws "On the Cabinet of Ministers" and "On Central Executive Bodies". This prevented lawmakers from consolidating the results achieved and made it possible for some ministers to disparage the reform itself.

The arrival of the new government in August 2019 resulted in a serious setback in the legal regulation of the civil service. The amendments to this law made in September 2019 undermined the principles of stability and political impartiality of civil servants.

By the end of 2019 all directorates were created only in four ministries, the others confined themselves to pilot projects, which made it impossible to restructure the work of the ministry in a new way. However even the ministries that took the lead in this regard failed to launch systematic work on policy analysis due to the lack of political demand for it.

Because of the failure to complete the reform of the ministries, functional analysis and reform of the system of CEBs have not been launched.

The draft law "On the Cabinet of Ministers and Central Executive Bodies" prepared in 2018 was never submitted to the Verkhovna Rada.

The newly adopted Rules of Procedure of the Cabinet of Ministers (the CMU resolution No 168 as of February 26, 2020) have brought about little change because there is no practice of strategic planning of the CMU activities based on policy analysis conducted by directorates of ministries.

The draft law "On Administrative Procedure" has been prepared twice but still remains unapproved.

Only in the area of administrative service provision through Administrative Services Offices and through electronic communications is gradual but steady progress made.

## **ELECTORAL AND PARLIAMENTARY REFORM**

### **Overview of key Eurointegration commitments**

According to the Action Plan for the implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, approved by the Cabinet of Ministers of Ukraine (No 1106, of October 25, 2017) (as amended), Ukraine undertook the following two tasks:

- Harmonisation of election legislation through its codification;
- Reforming the procedure for revoking parliamentary immunity.

In addition, following political consultations between Ukraine and the EU, as well as numerous recommendations of the European Commission for Democracy through Law, Ukraine also was faced with some tasks which were not mentioned in the Action Plan such as:

- Creation of a legal mechanism for introducing the institution of referendum in Ukraine;
- Creation of a legal mechanism for the state funding of political parties.



## Evaluation of progress in fulfilling commitments

### Commitment 3 / Carrying out electoral reform

- Article 6 of the Association Agreement

Ukraine has undertaken to harmonise its election legislation by codifying it in a single legal regulatory act (the Electoral Code of Ukraine). At the time when Ukraine undertook the commitment, there were 3 laws regulating the election procedure: Law of Ukraine No 474-XIV "On Elections of the President of Ukraine" as of March 5, 1999, Law of Ukraine No 4061-VI "On Elections of People's Deputies of Ukraine" as of November 17, 2011, and Law of Ukraine No 595-VIII "On Local Elections" as of July 14, 2015. The Electoral Code of Ukraine is supposed to replace these three laws and establish a unified approach to the legal regulation of elections in Ukraine.

The level of legal approximation on this obligation is mostly advanced. In 2019, the Verkhovna Rada of Ukraine adopted a new Electoral Code of Ukraine (December 19, 2019, No 396-IX, Vidomosti Verkhovnoi Rady Ukrainy (Bulletin of the Verkhovna Rada of Ukraine – VVR), 2020, No. 7, No. 8, No. 9, Art. 48), which generally meets the European requirements. This Code, in accordance with the Constitution of Ukraine, established guarantees of the right of citizens to participate in elections, regulates the preparation and conduct of elections of the President of Ukraine, People's Deputies of Ukraine (MPs), People's Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, regional (oblast), district (raion), village, settlement, city, town, city district councillors, city and town mayors, village and settlement heads.

The implementation of this obligation is at an early stage. Although the Electoral Code is already in force, it includes numerous contradictory requirements that will hinder the exercise of citizens' voting rights. In particular, the rules concerning election deposits in local elections, a loophole concerning the issue of online campaigning and the transparency of sources of its funding, minor technical and legal conflicts in the text of the code, etc. The necessary amendments to the Electoral Code aimed at optimising its text are to be adopted before the local elections (October 2020).

### Commitment 4 / Carrying out parliamentary reform

- Article 6 of the Association Agreement

Ukraine has undertaken to reform the procedure for bringing people's deputies of Ukraine and judges to justice, in particular, by adopting the Law of Ukraine "On Amendments to the Constitution of Ukraine (concerning the immunity of People's Deputies of Ukraine and judges)" (draft law, No 1776 as of January 16, 2015). In particular, Ukraine was required to limit parliamentary immunity rather than revoke it altogether.

The level of transposition is advanced. In 2019, in violation of the procedure for amending the Constitution of Ukraine, the Verkhovna Rada of Ukraine adopted the Law of Ukraine No 27-IX "On Amendments to Article 80 of the Constitution of Ukraine (concerning the immunity of People's Deputies of Ukraine)" as of September 3, 2019 (VVR, 2019, No. 38, p. 160), whereby parliamentary immunity was completely revoked. The complete revocation of parliamentary immunity runs contrary to European requirements; in addition, the Constitutional Court of Ukraine warned that when adopting the decision to abolish parliamentary immunity, it is necessary to take into account the state of the political and legal system of Ukraine – its ability to ensure

unhindered and effective exercise of parliamentary powers, functioning of Parliament as such, as well as enforcement of the constitutional principle of separation of state powers in the absence of the institution of parliamentary immunity (conclusion No 1-B/2018 of the CCU of June 6, 2018).

As regards bringing judges to justice, this procedure has significantly changed due to the 2016 constitutional reform (see Law of Ukraine No 1401-VIII "On Amendments to the Constitution of Ukraine (Regarding Justice)" as of June 2, 2016, VVR, 2016, No. 28, Art. 532. Today, it is the High Council of Justice that passes judgements concerning violations of incompatibility requirements by judges, considers appeals against decisions of relevant bodies to take disciplinary action against a judge, and issues a warrant to detain or arrest a judge in accordance with European standards.

### **Commitment 5 / Ensuring the operation of direct democracy**

- Article 6 of the Association Agreement

Ukraine has committed itself to ensuring the operation of direct democracy by adopting relevant laws governing national and local referenda. The Constitutional Court of Ukraine declared Law of Ukraine No 5475-VI "On the National Referendum" as of November 6, 2012 (VVR, 2013, No. 44-45, Art. 634) unconstitutional, moreover, it did not meet the EU requirements (see the decision of the CCU in the case concerning the constitutional petition of 57 MPs of Ukraine on the compliance with the Constitution (constitutionality) of Law of Ukraine No 4-p/2018 "On the National Referendum" as of April 26, 2018), hence there has appeared a significant gap in the legal regulation of referendum-related matters in Ukraine, which has to be filled.

Legal approximation on this obligation is at an early stage. The draft law of Ukraine "On Democracy through a National Referendum" has already been developed and has been publicly discussed. The President of Ukraine submitted this draft law (No 3612 as of June 9, 2020) to the Verkhovna Rada of Ukraine and prioritised it as urgent (the draft law meets EU requirements). Therefore, the draft law is to be considered in 2020. However, it does not regulate the issue of holding local referenda, so the development, consideration and adoption of the draft law "On Local Elections" is expected to take place only after the Verkhovna Rada completes legislative action concerning the national referendum.

### **Commitment 6 / Creating a legal mechanism for the state funding of political parties**

- Article 22 of the Association Agreement

Ukraine has committed itself to creating a legal mechanism for the state funding of political parties, in particular by amending the Law of Ukraine "On Political Parties" concerning the state funding of political parties and strengthening control over the financing of political parties.

The level of transposition is mostly advanced. In 2015, the legislation on political parties provided for the possibility of state funding of political parties and enhanced state control by the NAPC over the financing of political parties, which meets EU requirements (see Law of Ukraine No 731-VIII "On Amendments to Certain Legislative Acts of Ukraine Concerning the Prevention and Combating of Political Corruption" as of October 8, 2015, VVR, 2015, No. 49-50, Art. 449). Political parties were entitled to state funding of their statutory activities, if at the latest regular or extraordinary parliamentary elections their electoral list of parliamentary candidates in the

national multi-member constituency received at least 2 percent of the total number of votes cast for all electoral lists of parliamentary candidates in the national multi-member constituency. However, in 2019 the grounds for obtaining public funding were changed: a 5 percent threshold of the votes in a nationwide multi-member constituency was established, which is not consistent with EU requirements (see Law of Ukraine No 140-IX "On Amendments to Certain Legislative Acts of Ukraine with regard to Ensuring the Effectiveness of the Institutional Mechanism for Prevention of Corruption" as of October 2, 2019, VVR, 2019, No. 47, Art. 311).

Today, a new version of the Law of Ukraine "On Political Parties in Ukraine" is being developed.

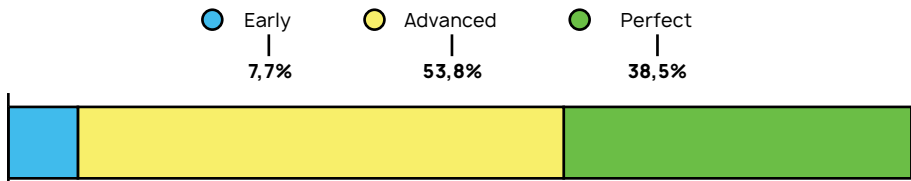


**FOREIGN AND  
SECURITY  
POLICY**

# FOREIGN AND SECURITY POLICY

Expert: **Olena Snihyr**

## Implementation progress for the sector:



## Overview of key Eurointegration commitments

Article 7 of Title II of the Association Agreement between Ukraine and the EU focuses on the foreign policy dimension of Ukraine's convergence with the EU in the areas of foreign and security policy (CFSP), as well as the Common Security and Defence Policy (CSDP).

CFSP and CSDP, compared to other EU policies, are less developed as dimensions of European integration. This fact makes the conditions for rapprochement with the EU for Ukraine somewhat different in these areas than in others covered by the Association Agreement. According to Article 7, Ukraine does not have clear-cut obligations, but has the opportunity to move closer to the EU following conceptual and strategic guidelines, specifically:

- cooperating on matters of conflict prevention, crisis management, regional stability, and disarmament;
- carrying out activities in the field of non-proliferation, arms control and arms export control, based on common security objectives with the EU;
- holding mutually-beneficial dialogue and cooperation in the field of space.

In the areas of CFSP and CSDP, Ukraine and the EU are to achieve the following key goals:

1. Maintaining mutual foreign policy solidarity and support on key issues. Thus, Ukraine can count on the support of the EU in counteracting Russia's aggression, as well as continuing the policy of non-recognition of the illegal annexation of Crimea. At the same time, it is important for Ukraine to pursue a consistent policy and ensure the synchronisation of its actions, including sanctions, with the actions of the EU.
2. In the field of military and military-technological cooperation, moving towards rapprochement with the EU in institutional and practical formats:



- to establish a systematic military-political dialogue between the leadership of the Armed Forces of Ukraine and EU military structures;
  - to achieve interoperability of the Armed Forces with EU military contingents;
  - to create favourable conditions for the development of military-technological cooperation with the EU: import of military goods based on the needs of the Armed Forces and to develop cooperation of Ukrainian enterprises with European partners, in particular to stimulate the inflow of foreign investment.
3. In the field of partnership to create a common space of security and stability with the EU, it is important for Ukraine (as well as the other EaP countries) to turn from a recipient of European aid into a partner with voting powers in the process of conceptual and substantive formation of the common European security space.
  4. Reforming the area of Ukraine's state export control in accordance with the relevant EU norms and standards.
  5. Ukraine should establish a national system of geographic information support and observation of the environment and emergencies as an integral part of the European Copernicus programme. Globally, Ukraine is to engage in the international political process of the legal regulation of space activities and proceed from the common interests with the EU.

Evaluation of progress in fulfilling commitments

### **Commitment 7 / Enhancing dialogue and cooperation and promoting gradual convergence in foreign and security policy**

- Article 6 of the Association Agreement
- Council Regulation (EU) No 269/2014 of 17 March, 2014
- Council Regulation (EU) No 692/2014 of 23 June, 2014
- Council Regulation (EU) No 833/2014 of 31 July, 2014
- Council Decision 2014/145/CFSP of 17 March 2014 and Council Decision 2014/265/CFSP of 12 May 2014
- Council Decision 2014/512/CFSP of 31 July 2014, Council Decision 2014/659/CFSP of 8 September 2014, Council Decision 2014/872/CFSP of 4 December 2014
- Council Decision (CFSP) 2015/1835 of 12 October 2015
- Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004
- Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009
- Council Decision (CFSP) 2017/2315 of 11 December 2017
- Council Decision (CFSP) 2018/340 of 6 March 2018

- Council Decision (CFSP) 2018/1797 of 19 November 2018 and Council Decision (CFSP) 2019/1909 of 12 November 2019
- EU Battlegroup Concept 11624/14 (CSDP/PSDC 416) of 7 July 2014
- Council Decision (CFSP) 2015/528 of 27 March 2015

The commitment involves the deepening of political dialogue and cooperation between Ukraine and the EU, as well as ensuring joint political planning and gradual convergence in the areas of CFSP and CSDP.

The level of transposition is advanced. Ukraine maintains a high level of alignment with the statements and declarations on behalf of the EU, which attests to their common views of and approaches to addressing and responding appropriately to regional and global challenges. In June 2018, the VRU approved the Law of Ukraine No 2469-VIII "On National Security" as of June 21, 2018, developed with the support of European experts – it provides for reforming Ukraine's security sector in accordance with EU and NATO standards and introducing civilian control in the security sector. Another conceptual confirmation of the strategic course of convergence with the EU is the adoption of the Law No 2680-VIII "On Amendments to the Constitution of Ukraine (on the Strategic Course of the State Towards Ukraine's Full Membership in the European Union and in the North Atlantic Treaty Organisation)" as of February 7, 2019.

In the first half of 2020, there were negative trends in the synchronisation of the positions of Ukraine and the EU in the Minsk process due to the inconsistency of Ukraine's position on the establishment of the Advisory Council and the adoption of this decision without consulting European partners. The harsh response of the Ukrainian public and Western partners helped to rectify the Ukrainian proposals to change the format of the Tripartite Contact Group and to remove from the agenda (at least for now) the idea of establishing an Advisory Board as it was originally conceived. This helped offset the negative impact on the political partnership between Ukraine and the EU.

The specific features of Ukraine's convergence with the EU in the defence area show that Ukraine's readiness and willingness to join the CSDP often exceed the EU's readiness and ability to facilitate this. The convergence between Ukraine and the EU in the field of security and defence policy takes place along institutional, operational, educational and military-technological lines. The most successful level so far is the operational one, with Ukraine joining military cooperation with the EU where possible and declaring its intention to join the EU's Permanent Structured Cooperation (PESCO) as soon as the EU establishes the relevant legal framework.

The institutional dimension of convergence between Ukraine and the EU in the field of CSDP in the format of cooperation between the Ministry of Defence of Ukraine and the European Defence Agency is gradually advancing. Ukraine participates in some EDA programmes, which became possible after the signing of the Administrative Agreement between the MoD and the EDA in 2015.

Another important indicator of transposition in the field of military-technological and military cooperation is the development of two draft laws – on defence procurement and on military-technological cooperation. Both laws were developed in accordance with NATO standards and EU legal requirements.

The high level of transposition in the field of CSDP is evidenced by the educational policy in the military area. In 2020, two conceptual documents were adopted that are important from the point of view of reforming Ukraine's military education in accordance with modern needs, trends and standards inherent in the European educational space.

The level of implementation is advanced. The European Union pursues a consistent and systematic policy of supporting Ukraine in countering the aggression by the Russian Federation, which in practice is embodied in the EU's sanctions policy. Ukraine's sanctions policy is not sufficiently synchronised with that of the EU. Ukraine's sanctions lists were drafted as decisions of the National Security and Defence Council and were approved by Presidential Decrees with varying frequency, starting from September 2015. The latest valid decrees include: No 133/2017 of May 15, 2017; No 57/2018 of March 6, 2018; No 126/2018 of May 14, 2018; No 176/2018 of June 21, 2018; No 82/2019 of March 19, 2019; and No 924/2019 of December 7, 2019. Unfortunately, the logic behind the Ukrainian lists is not transparent. Some companies were transferred from the previous list to the next (as they were, without accounting for the changes that occurred to these companies, without correcting existing errors), some remained in the "old" lists (by the way, for a number of legal entities sanctions expire in the spring of 2020). There is no consolidated official list of enterprises under Ukrainian sanctions in open sources<sup>1</sup>.

In the operational area of convergence, Ukraine joins the EU's battlegroups and military joint operations, but there is currently no legal mechanism for third countries to join PESCO.

The signing of the Administrative Agreement between the Ministry of Defence of Ukraine and the European Defence Agency (EDA) became part of the institutional dimension of convergence with the EU in the field of defence. There has been some moderate progress in the involvement of Ukrainian experts in EDA programmes – currently we are participating in two such programmes and are holding consultations to join two more. This might be due to both by the specific features of the defence reform in Ukraine and the EU's restrained approach to the development of this cooperation. It is difficult to assess the level of effectiveness of Ukraine's participation given the short period of cooperation with the EDA and the lack of an open access plan for convergence with the EU in the military sphere.

In order to enshrine the favourable conditions for cooperation with foreign (including European) partners in the military-technological sphere, it is necessary to adopt the Law "On Military-Technological Cooperation" and the Law "On Defence Procurement". The draft law "On Military-Technological Cooperation"<sup>2</sup> was submitted to the Verkhovna Rada twice – in 2009 and 2016. It was withdrawn last year. The draft law "On Defence Procurement" was adopted as a basis in December 2019, but was withdrawn from the Verkhovna Rada in violation of the parliamentary procedure on 16.04.2020.

Cooperation in the field of education is on the upswing. Ivan Chernyakhovsky National University of Defence of Ukraine has been systematically cooperating with the European Security and Defence College (ESDC) since 2013. In October 2018 the NUDU became an associate partner of the ESDC. Partnerships with other educational

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1) Клименко А., Гучакова Т. Санкції України, США та ЄС у зв'язку з російською агресією проти України. Певна база даних юридичних осіб // [https://www.blackseanews.net/read/160783?fbclid=IwAR007PGyt4TzBILc2mDHbbEm6oZcTj7JQH\\_CAEofQ7eMLrc3ZEfPAOep10](https://www.blackseanews.net/read/160783?fbclid=IwAR007PGyt4TzBILc2mDHbbEm6oZcTj7JQH_CAEofQ7eMLrc3ZEfPAOep10)

2) Draft Law "On Military-Technological Cooperation" No. 5479 of 02.12.2016 // [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=5479&skid=9](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=5479&skid=9)



institutions in the framework of cooperation with NATO are rapidly developing, and new educational projects are being implemented in partnership with Western allies.

### **Commitment 8 / Creating a common space of security and stability with the EU**

- Article 6 of the Association Agreement
- Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union's Foreign And Security Policy, 2016
- Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014

The commitment involves cooperation in conflict prevention, crisis management, regional stability, and disarmament in order to create a common space of security and stability with the EU, filling it with institutional and practical substance.

The level of transposition is advanced. Despite the intensive cooperation, this assessment is due to differences in the views of Ukraine and the EU on building a common security space. Ukraine has proposed that the EU deploy its own peacekeeping mission to help resolve the conflict between Russia and Ukraine in eastern Ukraine. Although conflict prevention and resolution is one of the EU's CSDP priorities and the EU has already carried out more than 30 missions under this priority, only four of them have taken place in the Eastern Partnership countries. And even within these missions, including in Ukraine, the EU avoids cooperation within the military sector and chooses to support initiatives in the field of civil security and civil society<sup>3</sup>.

The level of implementation is advanced. EU Advisory Mission to Ukraine (EUAM) (since late 2014) has been providing advisory assistance on civil security sector reform. A significant limitation of the mission is its efforts to cooperate exclusively with law enforcement agencies, keeping as far away from the conflict as possible. The EU Advisory Mission cooperates with the Ministry of Internal Affairs but distances itself from the Ministry of Defence and the SSU.

Implementation of tasks within the existing formats is not an effective solution for building a common space of security and stability in current conditions. This state of affairs is due primarily to the conceptual approaches within the CSDP itself. The integration in the field of common foreign policy, as well as security and defence in the EU is slower than convergence in other areas. Nevertheless, albeit slowly and mainly due to external pressure, the EU is developing the area of CSDP. Therefore, it is important for Ukraine (as well as the other EaP countries) to become a partner with voting powers in the process of conceptual and substantive formation of the common European security space.

### **Commitment 9 / Ensuring non-proliferation, arms control, and arms export control**

- Article 7 of the Association Agreement
- Council Common Position 2008/944/CFSP of 8 December 2008

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3) Коваль Надія. Україна та Європейський Союз: пошук оптимальних шляхів безпекової співпраці. Аналітична записка. 2016. // <https://dif.org.ua/uploads/pdf/2037623652584ff8c824b5a7.51420665.pdf>

- Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012
- Council Common Position 2003/468/CFSP of 23 June 2003

The commitment involves performing activities with regard to non-proliferation, arms control and arms export control based on common security objectives. Ukraine's task is to align the procedures and rules of its state export control with the relevant EU norms and standards.

The level of transposition is advanced. The CMU Resolution No 1 "On Amendments to the Procedure for State Control over International Transfers of Dual-Use Goods" of 11 January 2018 introduced the Unified List of Dual-Use Goods.

In order to amend the Law of Ukraine "On State Control over International Transfers of Military and Dual-Use Goods", two draft laws were submitted to the Verkhovna Rada (No 8469<sup>4</sup> of 11 June 2018 and No 8448<sup>5</sup> of 07 June 2018). Both draft laws were withdrawn on the same day – 29.08.2018. According to the State Export Control Service of Ukraine, work is underway to prepare a new draft law within the Interdepartmental Working Group on Amendments to the Legislation in the Field of State Export Control, formed by the Ministry of Economy involving enterprises that produce and export military and dual-use goods, industry associations, and the relevant government agencies<sup>6</sup>.

The implementation is at an early stage. The progress in this area includes the approval and implementation in national legislation of the Unified List of Dual-Use Goods compiled on the basis of the Common List of Dual-Use Items of the European Union (Annex 1 to Council Regulation 428/2009 of 05 May 2009) and further alignment of Ukraine's procedures and rules of export control with the relevant norms and standards of the EU.

A negative factor affecting the level of the implementation of the commitments under the Association Agreement is the fact that no draft law amending the Law of Ukraine "On State Control over International Transfers of Military and Dual-Use Goods" has been developed and submitted to the Parliament. Thus, the field of MTC still retains the non-transparent and complicated procedure for export-import operations, which creates obstacles primarily for Ukrainian exporters.

### **Commitment 10 / Holding mutually-beneficial dialogue and cooperation in the field of space**

- Article 7 of the Association Agreement
- Space and security European Parliament resolution of 10 July 2008 on Space and security (2008/2030(INI))
- Council Decision 2008/667/JHA of 7 April 2008
- Commission Decision 2009/846/EC of 20 October 2009
- Council Decision 2012/281/CFSP of 29 May 2012

4) Draft Law "On Amendments to Article 21 of the Law of Ukraine "On State Control over International Transfers of Military and Dual-Use Goods" // [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64207](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64207)

5) Draft Law "On Amendments to Certain Laws of Ukraine to Eliminate Artificial Obstacles in the Area of International Transfers of Military and Dual-Use Goods" // [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64168](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64168)

6) Public Report of the Acting Head of the State Export Control Service of Ukraine for 2019 // [http://www.dsecu.gov.ua/control/uk/publish/article;jsessionid=1E1E43D305DBC01C9C99DB718115638C?art\\_id=58785&cat\\_id=46036](http://www.dsecu.gov.ua/control/uk/publish/article;jsessionid=1E1E43D305DBC01C9C99DB718115638C?art_id=58785&cat_id=46036)

- Decision No 541/2014/EU of the European Parliament and of the Council of 16 April 2014
- Council Resolution 2001/C 350/02 of 13 November 2001
- Council Resolution 2011/C 377/01 of 6 December 2011
- Commission Delegated Regulation (EU) No 1159/2013 of 12 July 2013
- Council Resolution 94 /C 379/04 of 22 December 1994
- Council resolution 1999/C 375/01 of 2 December 1999
- Council Resolution 2000 /C 371/02 of 16 November 2000
- Council Resolution 2003 /C 149/05 of 13 May 2003
- Council Resolution 2008 /C 268/01 of 26 September 2008
- Council Decision 98/434/EC of 18 June 1998
- Council Decision 2004/578/EC of 29 April 2004
- Council Decision 2008/667/JHA of 7 April 2008

The commitment involves holding mutually beneficial dialogue and cooperation in the field of space. Ukraine has committed to synchronise its position with the EU as regards the legal regulation of space activities and to create a national system of geographic information support and monitoring of the environment and emergencies as part of the European Copernicus programme.

The level of transposition is perfect. Ukraine's commitments regarding the implementation of the Association Agreement are enshrined as an integral part of the national strategy in the field of space. Thus, the concept of the National Targeted Scientific and Technical Space Programme of Ukraine for 2018-2022 (approved by the CMU Order No 629-p of September 5, 2018) includes, inter alia, the following:

- ensuring the development of Ukraine's cooperation with partner countries involved in space exploration and Ukraine's active participation in the work of international space organisations such as the UN Committee on the Peaceful Uses of Outer Space;
- creating a national system of geoinformation support and monitoring of the environment and emergencies as part of the European Copernicus programme and the Global Earth Observation System of Systems, as well as ensuring the use of its information services by interested users;
- aligning the legislation in the field of space-related activities with the requirements of European legislation;
- ensuring implementation of the Agreement (in the form of exchange of notes) between Ukraine and the EU on the renewal of the Agreement on Science and Technology Cooperation between Ukraine and the EU, ratified by the Law of Ukraine "On Ratification of the Agreement (in the form of exchange of notes) between Ukraine and the EU on the renewal of the Agreement on Science and Technology Cooperation between Ukraine and the EU" (No 602-VIII of July 15, 2015);
- taking measures for Ukraine's accession to the European Space Agency; ensuring further harmonisation of the national certification standards with international and European standards.

The level of implementation is advanced. The Ukrainian delegation is engaged in the negotiation process within the framework of the UN's Disarmament and International Security (First Committee) and the Committee on the Peaceful Uses of Outer Space. Thus, Ukraine is fulfilling its tasks in the framework of rapprochement with the EU, however, the common goal has not yet been achieved and is unlikely to be achieved in the medium term.

With the participation of European experts, a draft law "On State Regulation in the Field of Remote Sensing of the Earth" was developed, which after consideration by the Cabinet of Ministers of Ukraine was finalised and corrected and due to the complete renewal of the CMU, in accordance with the Rules of Procedure, it underwent re-endorsement by all the interested CEBs and was submitted to the Ministry of Economic Development, Trade and Agriculture to be further submitted to the Ministry of Justice of Ukraine for an opinion. In order to perfectly fulfil the task, this draft law had to be submitted to the Verkhovna Rada by the end of 2019, which did not happen.

On May 25, 2018, an agreement was concluded between the European Commission and the State Space Agency of Ukraine (SSA) on cooperation in the field of access to data and use of the Sentinel data of the Copernicus programme. In January 2019, an Agreement (in the form of an exchange of letters) was signed between the Government of Ukraine and the European Space Agency (ESA) to extend the Agreement between the Government of Ukraine and the ESA on Cooperation in the Peaceful Uses of Outer Space of 25.01.2008. On March 28, 2019, the Agreement was signed between the ESA and the SSA on Technical Operating of the Copernicus Space Component. The hub is functioning - "the exchange of data of the remote sensing of the Earth between Ukraine and the EU member states has been organised within the framework of the EU Copernicus satellite system of remote sensing of the Earth"<sup>7</sup>.

However, there is no open source information on the Roadmap for the Implementation of the Cooperation in the Field of Sentinel Data Access and Use. Also, no new agreement has been concluded between the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT) and the SSA (the old agreement dated 06.09.2000 is in force).

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7) Public Report of the Head of the State Space Agency of Ukraine for 2019 // [https://www.kmu.gov.ua/storage/app/sites/1/17-civik-2018/zvit\\_2019/kosmos-zvit-2019.pdf](https://www.kmu.gov.ua/storage/app/sites/1/17-civik-2018/zvit_2019/kosmos-zvit-2019.pdf)

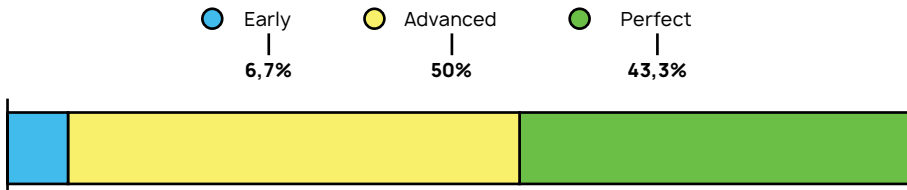
A large grey military ship, likely a Ukrainian patrol or auxiliary vessel, is docked at a pier. The ship's hull is grey with a red stripe at the bottom. A Ukrainian flag (blue and yellow) flies from the mast. The ship is secured to the pier with thick ropes. The pier has yellow and black bollards. The background shows a clear blue sky and calm blue water.

**POLITICAL  
DIALOGUE,  
NATIONAL SECURITY  
AND DEFENCE**

# POLITICAL DIALOGUE, NATIONAL SECURITY AND DEFENCE

Expert: **Vitaliy Martyniuk**

## Implementation progress for the sector:



## REGIONAL STABILITY

### Overview of key Eurointegration commitments

Ukraine's commitments under Article 9 Regional Stability of the Association Agreement are of a general political nature and do not involve implementation of any specific EU regulations.

The commitment was specified in the first paragraph of the article: "joint efforts to promote stability, security and democratic development in their common neighbourhood, and in particular to work together for the peaceful settlement of regional conflicts", and aims, above all, at maintaining ongoing dialogue and cooperation on all issues associated with regional security and stability. This overarching goal is confirmed in the second paragraph of Article 9, which sets out the legal basis for such joint efforts – i.e. UN Charter, the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and other relevant multilateral documents. The other multilateral documents include instruments such as: the Treaty on Conventional Armed Forces in Europe (ratified by VRU Resolution No 2526-XII of July 1, 1992); Treaty on Open Skies (ratified by Law No 1509-III of March 2, 2000); Vienna Document 2011 on Confidence- and Security-Building Measures (Ukraine is a signatory); Document of Confidence, and Security-Building Measures in the Naval Field in the Black Sea of April 25, 2002 (Ukraine is a signatory).

The European Union has consistently emphasized the priority of "creating an area of security, stability and prosperity" east of the EU's borders. The EU Global Strategy emphasizes the importance of good governance in the EU's neighbouring countries, in particular east of the EU's borders, and the fact that countries with ongoing armed conflicts pose a threat to the EU's security. Therefore, it is important for the EU to achieve peace and security in Ukrainian territory, as well as to cooperate with Ukraine to ensure regional security, given the role and capabilities of Ukraine in the Black Sea security and the Transnistrian conflict resolution. Of course, the key goal of cooperation between Ukraine and the EU is to stop the aggression of the Russian Federation and restore Ukraine's sovereignty and territorial integrity.

For its part, the European Union expects from Ukraine a common approach to regional security, which is enshrined in the Ukrainian legal framework. The 2015 National Security Strategy of Ukraine stipulates: "Ukraine shall ensure gradual convergence in the field of foreign and defence policy and develop cooperation within the framework of the EU Common Security and Defence Policy to enhance the capabilities of the security and defence sector, as well as to maintain international security and stability... Ukraine's EU membership will help improve the climate of trust and security in Eastern Europe and the Black Sea region".

### **Evaluation of progress in fulfilling commitments**

#### **Commitment 11 / Joint efforts to promote stability, security and democratic development in the common neighborhood and, in particular, cooperation for the peaceful settlement of regional conflicts**

- Article 9 of the Association Agreement
- The Charter of the United Nations and the Helsinki Final Act of the OSCE of 1975

The Action Plan on Implementation of the AA of 25.10.2017 does not contain any commitments regarding Article 9 of the AA, whereas the previous Action Plan on Implementation of the AA for 2014–2017 dated 17.09.2014 specified four tasks aimed at implementing this article:

1. Providing support on behalf of the EU on matters related to settling the situation in the Eastern regions of Ukraine and on preservation of sovereignty and territorial integrity of the country.
2. Supporting the bilateral political dialogue and holding consultations with the EU in the framework of other international organisations to achieve rapprochement on key aspects of the foreign and security policies.
3. Ensuring the participation of Ukraine and its interaction with the EU within international organisations on matters aimed at enhancing international stability and security, including the Black Sea and Danube regions.
4. Continuing consultations with the EU Party on matters of foreign and security policies as regards sanctions applied by the EU and determination of sanctioning mechanisms to which Ukraine has acceded.

Therefore, assessment of the achieved implementation should focus on these tasks. However, the tasks set forth in this document are long-term, i.e. the term of their implementation is continuing rather than limited.

Given the lack of clearly specified EU regulations in this subsector, assessment of the achieved level of transposition for the above four tasks can be done only based on international instruments – the UN Charter and the Helsinki Final Act of the OSCE of 1975, which are mentioned in the AA and ratified by Ukraine. The 2015 National Security Strategy of Ukraine<sup>1)</sup> mainly complies with the provisions of the EU Global Strategy, in particular: shaping of strategic goals of Ukraine and their compliance with EU goals; identification of challenges and threats; support for international and regional security and stability; importance of exchanging security information; and creation of flexible, mobile armed forces.

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1) <https://zakon.rada.gov.ua/laws/show/287/2015>



The Strategic Bulletin of Ukraine 2016 describes ways to achieve the goals of defence reform, in particular as regards increasing the capabilities of the defence forces to a level that can ensure fulfilment of Ukraine's defence tasks and restoration of its territorial integrity, as well as active participation in the Common Security and Defence Policy of the European Union.

The Law "On National Security of Ukraine" of 2018<sup>2</sup> describes the fundamental national interests of Ukraine including "Ukraine's integration into the European political, economic, security, and legal space, and membership in the European Union."

The 2015 Military Doctrine of Ukraine envisages "Ukraine's participation in the implementation of the common security and defence policy of the European Union".<sup>3</sup>

Apart from this, the matters of regional stability are regularly included in the joint statements of the EU-Ukraine and Association Council summits as formats of bilateral political dialogue, as well as in the European Commission's reports on the AA implementation. The EU expects Ukraine to align with the EU's foreign and security policy statements, which is possible due to the introduction in 2005 of the Mechanism of Ukraine's Alignment with the official EU statements and declarations in the field of CFSP / CSDP, including within the framework of international organisations such as the United Nations and the OSCE. The level of Ukraine's alignment with statements and declarations on behalf of the EU is quite high. Thus, in 2017, Ukraine subscribed to 424 of 504<sup>4</sup> and in 2018 to 492 of 588 EU's statements and declarations<sup>5</sup>. In the period of 2005 to 2018, the alignment rate amounted to 83%. Hence, from the point of view of legislative work, all 4 tasks can be considered completely fulfilled.

In terms of practical implementation, the task of "Providing support on behalf of the EU on matters related to settling the situation in the Eastern regions of Ukraine and on preservation of sovereignty and territorial integrity of the country" is a long-term one but it can be considered fulfilled within the monitoring period, as the Ukrainian party regularly raises this issue within various EU-Ukraine formats and events. In the same vein, the EU regularly declares its full support for Ukraine's sovereignty and territorial integrity, including in official documents such as joint statements following EU-Ukraine summits<sup>6</sup> and meetings of the Association Council, the EU Political and Security Committee (PSC) – Ukraine Troika, as well as the European Commission's Implementation Report, where this matter is key. However, individual leaders of EU member states make regular statements about the need to ease the restrictive measures against Russia without fulfilling its commitments concerning resolution of the conflict, which allows us to assess the progress in implementation of this task only as "advanced".

The tasks of "Supporting the bilateral political dialogue and holding consultations with the EU in the framework of other international organisations to achieve rapprochement on key aspects of the foreign and security policies" and "Ensuring the participation of Ukraine and its interaction with the EU within international organisations on matters aimed at enhancing international stability and security" are successfully performed. Ukraine has subscribed to the EU foreign and security

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2) <https://zakon.rada.gov.ua/laws/show/2469-19>

3) <https://zakon.rada.gov.ua/laws/show/555/2015#n17>

4) <https://www.kmu.gov.ua/storage/app/media/uploaded-files/pro-vikonannya-ugodi-pro-asotsiatsiyu-mizh-ukrainoyu-ta-evropeyskim-soyuzom-za-2017-rik.pdf>

5) [https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/AA\\_report\\_UA.pdf](https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/AA_report_UA.pdf)

6) Advancing mutual commitment: joint statement following the 21st EU-Ukraine Summit, Kyiv, 8 July 2019



policy statements. Ukraine cooperates and coordinates efforts with the EU within the UN and the OSCE. Being represented in these organisations, the European Union provides ongoing support to Ukraine in combating Russian aggression, in particular, in the format of the Troika of the EU Working Group on OSCE – Ukraine.

The EU actively supports the OSCE's efforts to resolve the Russian-Ukrainian conflict. In the framework of Ukraine's cooperation with the EU Satellite Centre, the interaction was established in order to ensure control over the situation in Donbas. In 2015, the EU allocated € 18 million through the OSCE SMM assistance package through the Satellite Centre, and in March 2017, an additional € 3 million was allocated for satellite visual reconnaissance for this OSCE mission.

Taking into account the progress in the implementation of these tasks and the joint efforts of Ukraine and the EU to implement them, we can describe the status of their implementation as "perfect".

The task of "Continuing consultations with the EU Party on matters of foreign and security policies as regards sanctions applied by the EU and determination of sanctioning mechanisms to which Ukraine has acceded" is fulfilled. The joint statements following the Ukraine-EU Summit and the Association Council<sup>7</sup> declare that the sanction policy against Russia remains unchanged until the full implementation of the Minsk agreements and de-occupation of Ukrainian territories in the east and in Crimea. However, Ukraine has to keep the EU from easing restrictive measures against Russia until Ukraine's sovereignty and territorial integrity are fully restored and to step up the pressure of sanctions on Russia for new violations, including human rights violations in occupied Crimea, in order to pacify the Russian Federation by force. For example, despite calls from Ukraine, the EU did not impose sanctions for acts of open aggression against Ukrainian ships in November 2018. Therefore, the fulfilment of this task in terms of implementation can be described as "advanced".

## **CONFLICT PREVENTION, CRISIS MANAGEMENT AND MILITARY-TECHNOLOGICAL COOPERATION**

### **Overview of key Eurointegration commitments**

Long before the signing of the Association Agreement, Ukraine began to work closely with the European Union on conflict prevention and resolution, supporting the EU's anti-crisis efforts in the international arena, joining EU missions and operations, such as the EU Naval Force Operation Atalanta. Therefore, the commitment to enhance practical cooperation in conflict prevention and crisis management, enshrined in Article 10 "Conflict Prevention, Crisis Management and Military-Technological Cooperation" of the AA, continues this cooperation. In addition to deterring Russian aggression, Ukraine is also involved in a variety of conflict prevention formats. The objectives of strengthening cooperation in this subsector are: to expand Ukraine's participation in EU missions and operations under the CSDP; Ukraine's involvement in EU exercises and training; development of cooperation on matters of security and defence and crisis management.

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7) Joint press statement following the 6th Association Council meeting between the EU and Ukraine ([https://www.kmu.gov.ua/storage/app/sites/1/18%20-%20Department/18%20-%20PDF/joint\\_press\\_statement-2801ukr.pdf](https://www.kmu.gov.ua/storage/app/sites/1/18%20-%20Department/18%20-%20PDF/joint_press_statement-2801ukr.pdf))

Given the current trend in the EU to improve and put into practice the Common Security and Defence Policy of the European Union, Ukraine should become increasingly more involved in various European security and defence formats and initiatives, including the Permanent Structured Cooperation (PESCO) Initiative.

Article 10 of the AA sets out the commitment to develop military-technological cooperation between Ukraine and the EU. At the same time, it emphasizes the need to establish close contacts between Ukraine and the European Defence Agency (EDA) to improve military capabilities. In fact, this is a format within which the European Union provides military-technological assistance to Ukraine to increase the sustainability and defence capabilities of the country.

By developing clear mechanisms, Ukraine can receive EU assistance on an ongoing basis, enhance education, training, and efficiency as well as improve the military equipment of the Ukrainian army and other security structures. As stated in the 2015 National Security Strategy of Ukraine, deepening of defence-industry and military-technological cooperation with EU member states will contribute to achieving full independence from Russia as regards production of weapons and military equipment, which is critical in the context of the ongoing Russian aggression.

### **Evaluation of progress in fulfilling commitments**

#### **Commitment 12 / Enhancing practical cooperation in conflict prevention and crisis management**

- Article 10 of the Association Agreement

As regards the commitment to "enhance practical cooperation in conflict prevention and crisis management", the Association Agreement does not provide for adaptation of any EU regulations. The 2017 Action Plan on implementation of the AA does not contain any tasks concerning the commitment. However, the Action Plan on implementation of the AA for 2014-2017 stipulates the implementation of the following tasks:

- holding consultations on security and defence matters and crisis management;
- increasing Ukraine's involvement in EU civilian and military crisis management operations;
- increasing Ukraine's participation in exercises and trainings, in particular those conducted within the framework of the Common Security and Defence Policy (CSDP).

The transposition and implementation of the above tasks are at different progress levels.

Consultations on security and defence and crisis management between Ukraine and the EU are held regularly and at different levels: from the highest – i.e. the Ukraine-EU Summit, the Association Council, the Association Committee, Ukraine-EU Parliamentary Association Committee and the Ukraine-EU Troika, to the working levels of the Ministries of Foreign Affairs, Defence, Internal Affairs etc, as well as individual law enforcement agencies and their units. The Mission of Ukraine to the EU in Brussels, the EU Delegation to Ukraine and EU Advisory Mission (EUAM) Ukraine

are also actively involved in such consultations. Back in 2002, the European Union approved a unilateral document – i.e. EU Mechanism on EU-Ukraine Consultation and Cooperation on Crisis Management. This provided the basis not only for the consulting component of security cooperation but also for development of practical cooperation.

Military-political dialogue with the leadership of the EU Military Committee and the EU Military Staff has been maintained since 2008: regular meetings (consultations) of the leadership of the Ministry of Defence of Ukraine and the command of the General Staff of the Armed Forces of Ukraine with representatives of the above structures within the annual Work Plan for Cooperation of the Armed Forces and the General Secretariat of the Council of the EU (in the field of Common Security and Defence Policy). The work plan for cooperation between the Armed Forces of Ukraine and the General Secretariat of the Council of the EU (in the field of the Common Security and Defence Policy) is shaped jointly with representatives of the EU Military Staff.

The levels of transposition and implementation for this task are assessed as "perfect".

"Increasing Ukraine's participation in EU civilian and military crisis management operations" is more of a long-term task, as Ukraine is using all available forces and means to counter Russian aggression. With the commencement of Russia's aggression against Ukraine and the temporary occupation of the Autonomous Republic of Crimea, the participation units of the Armed Forces of Ukraine in multinational EU-led crisis management operations was temporarily suspended, but by that time Ukraine had already participated in the EU operation and was preparing to join the EU mission.

The legal framework for such participation had been approved long before the signing of the AA. The Agreement between the European Union and Ukraine establishing a framework for the participation of Ukraine in EU crisis management operations was signed on June 13, 2005.

On October 8, 2013, the Parliament of Ukraine approved the deployment of the national contingent to support Ukraine's participation in the EU-led Operation Atalanta to combat piracy off the Somali coast (January 3, 2014 to March 5, 2014).

On January 14, 2014, the President of Ukraine signed Decree No 5 "On Ukraine's Participation in the European Union's Military Training Mission in the Republic of Mali", in response to a request from the EU. It envisaged Ukraine's participation through the provision of logistical support and strategic air transportation in the interests of the mission. However, because of the Russian military aggression against Ukraine and the need to use all available material and technical resources for the needs of the Armed Forces, this process was suspended by the CMU Resolution of April 14, 2014. The EU was understanding of Ukraine's decision.

However, this did not stop the Grand Hetman Kostiantyn Ostrojski Lithuanian-Polish-Ukrainian Brigade from being created, on the contrary, it accelerated the process. Almost immediately after the signing of the Association Agreement, on September 19, 2014, the defence ministers of the three countries signed an agreement officially establishing this tripartite peacekeeping brigade, which expands the participation of Ukrainian units in EU missions and operations.

The Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 21.04.2011 'On the Participation of the Armed Forces of Ukraine in High Readiness Multinational Military Formations'" recognised it expedient for units of the Armed Forces to participate in EU Tactical Battle Groups. The involvement of the forces and means of the Ukrainian Armed Forces in the implementation of the Concept of EU Tactical Battle Groups (TBG), according to the Institute for Euro-Atlantic Cooperation, from a political point of view, serves as a confirmation of Ukraine's intentions for joint action aimed at crisis management within the framework of the EU CSDP<sup>8</sup>. Ukraine has already participated in a number of TBGs, such as: Baltic TBG (2010); Italo-Hungarian-Slovenian TBG (2012); UK TBG (2016); and Visegrad TBG (2016); HELBROC TBG (2011, 2014, 2016, 2018)<sup>9</sup>.

Given the above, the level of transposition of this task is "perfect", and the level of implementation is "advanced" (because of the temporary suspension of Ukraine's participation in EU missions and operations).

Increasing Ukraine's participation in exercises and trainings, in particular those conducted within the framework of the Common Security and Defence Policy (CSDP) even in conditions of war helps Ukraine to better train its units to perform tasks, to adopt European expertise and experience, to strengthen the interaction and interoperability of Ukrainian units with European ones. Since 2005, Ukraine has been actively participating as an observer in the EU's annual military crisis management exercise MILEX, as well as in a number of other EU training activities.

In pursuance of the tasks set by the Action Plan on implementation of the AA for 2014-2017, cooperation with the EU Institute for Security Studies (EU ISS) has been established in particular, joint discussion activities are held<sup>10</sup>, analytical materials are prepared and published, etc. There has been active development of cooperation with the European Security and Defence College at the level of the National Defence University of Ukraine, which in 2018 became an Associate Partner of its network. On the basis of the National University of Defence, the European Security and Defence College conducts CSDP Orientation Course launched in 2014. Representatives of the Ministry of Defence of Ukraine also took part in a number of events: a high-level conference on CSDP under the auspices of the European Security and Defence College (January 18-19, 2017, Yerevan); CSDP training course (January 23-26, 2017, Brussels); and the final seminar on CSDP (April 18-21, 2017, Chisinau).

The EU is implementing a Border Assistance Mission to Moldova and Ukraine (EUBAM), which aims to strengthen border controls, including those on the borders with the Transnistrian region of Moldova. This work is part of the 5 + 2 format aimed at resolving the Transnistrian conflict, in which Ukraine and the EU are participants together with Russia, the United States and the OSCE.

Ukraine effectively cooperates with the EU Advisory Mission (EUAM) on the civil security sector reform to facilitate comprehensive reform as well as education and training of Ukrainian law enforcement bodies in line with European standards. The EUAM is an integral part of the EU CSDP.

The level of implementation of this task is assessed as "advanced".

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8) <http://www.ieac.org.ua/public/item/96-hromadskiy-monitoring-spivpratsi-ukrainy-ta-yes-u-bezpekovii-sferi-policy-paper>

9) І.Козій, Л.Поляков, К.Федоренко "Військова євроінтеграція: як Україна виконує свої безпекові зобов'язання за угодою з ЄС", 13.03.2019р. (<https://www.eurointegration.com.ua/articles/2019/03/13/7093804/>)

10) <http://ipzn.org.ua/shidne-partnerstvo-ta-ukrayina-otsinka-mynulogo-poglyad-u-majbutnye/>

## Commitment 13 / Development of military-technological cooperation between Ukraine and the EU

- Article 10 of the Association Agreement

The commitment involves implementation of only one key task specified by the Action Plan on implementation of the AA for 2014–2017 – i.e. establishment of close contacts between Ukraine and the European Defence Agency to discuss issues related to improving military capabilities, including technological matters.

The level of transposition for this task is assessed as "advanced". The 2015 Military Doctrine of Ukraine stipulates "introduction of a set of organisational, technological, economic, legal and other measures aimed at reducing Ukraine's dependence on critical imports of products (goods, works, services), increasing the effectiveness of international scientific and technological cooperation, primarily with EU and NATO member states"<sup>11</sup>. Ukraine has signed bilateral agreements on military-technological cooperation with a number of EU member states: France, Germany, Poland, Slovakia, Hungary, the Czech Republic, Croatia, Italy, and Bulgaria.

The draft law of Ukraine "On Military-Technological Cooperation" submitted to the Ukrainian Parliament in December 2016<sup>12</sup> included the principles of compliance with Ukraine's international commitments, cooperation with foreign states and international organisations to ensure international security, peace and stability, but was never approved, as it was withdrawn for revision in August 2019.

The level of implementation of this task is assessed as "advanced". In 2015, in pursuance of the implementation of the Association Agreement, negotiations took place, following which a framework document was signed – i.e. the Administrative Agreement between the Ministry of Defence of Ukraine and the EDA. In February 2016, Ukraine submitted to the EU a coordination scheme with the EDA and a list of coordinators for the Agency's activities<sup>13</sup>. The development of this cooperation was made possible, inter alia, due to the signed accompanying agreements with the EU: Agreement on Security Procedures for Exchanging Classified Information (effective from 01.02.2007); Agreement Renewing the Agreement on Cooperation in Science and Technology between the European Community and Ukraine of 24.11.2010<sup>14</sup>.

In order to implement the provisions of the Administrative Agreement between the Ministry of Defence of Ukraine and the EDA, the Ukrainian Party has formed coordination groups by the areas of activity of the EDA. This provided a legal basis for practical cooperation with the EDA member countries, as well as for regular participation of Ukrainian representatives in EDA programmes and projects. Among other things, during 2016–2018, Ukrainian experts were engaged in the work of the EDA expert groups of Material Standardisation (Blast Effects and Camouflage expert groups), Single European Sky and European Air Transport Fleet. And in 2017, in order to deepen cooperation with the EDA in the field of Single European Sky, Ukrainian representatives took part in a number of working meetings of the EDA Military Aviation Board at the political level and in the annual conference on these matters. The EDA has officially confirmed its readiness to involve representatives of the Ministry of Defence of Ukraine in the activities of 2 expert groups within the

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11) <https://zakon.rada.gov.ua/laws/show/555/2015#n17>

12) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=54796&skl=9](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=54796&skl=9)

13) <https://www.kmu.gov.ua/storage/app/media/zviti-pro-vikonannya/zvit-pro-assotsiatsiyu-2016.pdf>

14) Горбулін В.П., Шеховцов В.С., Шевцов А.І. Вхідження ОПК України в Європейський оборонно-промисловий простір. НІСД. Стратегічні пріоритети, 2015, № 1 (34), с.5-10.

Material Standardisation project: No 25 Range Interoperability and No 27 Automatic Identification Technique. However, the European Defence Agency notes that Ukraine does not fully use its opportunities to develop military-technological cooperation with the European Union and its member states.

## **NON-PROLIFERATION OF WEAPONS OF MASS DESTRUCTION**

### **Overview of key Eurointegration commitments**

The proliferation of weapons of mass destruction has been identified as one of the key threats to European security, as set out in the European Security Strategy and the EU Global Strategy<sup>15</sup>. Therefore, the subsector of Non-Proliferation of Weapons of Mass Destruction set out in Article 11 plays an important role in the security block of the Association Agreement between Ukraine and the EU. This article is of greater political and international importance as it is governed by international law, within which the key document is the Treaty on the Non-Proliferation of Nuclear Weapons, of July 1, 1968.

Ukraine voluntarily gave up nuclear weapons by acceding to the Treaty in 1994. However, given the availability of nuclear energy in Ukraine (15 nuclear reactors at 5 nuclear power plants), research reactors and storage facilities for radioactive residual materials, the European Union pays great attention to Ukraine's compliance with its international commitments to prevent "the proliferation of weapons of mass destruction, related materials and their means of delivery, to both state and non-state actors, [which] represents one of the most serious threats to international stability and security", which is the key goal of Article 11 of the AA. That is why Ukraine and the EU have agreed to "cooperate and contribute to countering the proliferation of weapons of mass destruction."

Cooperation between Ukraine and the EU on non-proliferation of weapons of mass destruction is implemented in practice by: taking measures, if necessary, for signing, ratification or accession, as well as full implementation of all relevant international instruments; further improvement of the system of national export controls in order to ensure effective control over the export and transit of goods related to weapons of mass destruction. The parties identified political dialogue as a key mechanism for cooperation.

In addition to joint efforts to counter the important threat to the security of Ukraine and the EU – i.e. the proliferation of weapons of mass destruction – Ukraine receives EU assistance with regard to measures for the safe and secure storage of nuclear materials and their waste. The EU assists Ukraine with the proper maintenance of the closed Chornobyl NPP and the Shelter facility above its unit 4.

Evaluation of progress in fulfilling commitments

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<sup>15</sup>) A Global Strategy for the EU's Foreign and Security Policy ([http://eeas.europa.eu/archives/docs/top\\_stories/pdf/eugs\\_review\\_web.pdf](http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf))

**Commitment 14 / To cooperate and to contribute to countering the proliferation of weapons of mass destruction, related materials and their means of delivery through full compliance with, and national implementation of, their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations**

According to Article 11 of the AA, the implementation of this commitment does not involve adaptation of Ukrainian legislation to specific EU acts, as the framework of cooperation in this area is made up by international regulations. At the same time, the following tasks of this cooperation are set forth:

- taking steps to sign, ratify or accede to, as appropriate, and fully implement all other relevant international instruments;
- regular political dialogue on countering the proliferation of weapons of mass destruction;
- further improving the system of national export controls, in order to control effectively the export as well as transit of goods related to weapons of mass destruction, including an end-use control on dual use technologies and goods;
- application of effective sanctions against violations of export controls.

Ukraine has ratified and complied with the following international non-proliferation agreements and treaties:

- Treaty on the Non-Proliferation of Nuclear Weapons (ratified in 1994);
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons and on Their Destruction (ratified in 1994);
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons (ratified in 1998);
- Comprehensive Nuclear-Test-Ban Treaty of 24 September 1996 (ratified in 2000);
- Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (ratified in 1996);
- Missile Technology Control Regime (acceded in 1998);
- Convention on Nuclear Safety (ratified in 1997);
- Convention on the Physical Protection of Nuclear Material and Nuclear Facilities (effective in Ukraine since 2005)<sup>16</sup>;
- Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (effective in Ukraine since 2001);
- Vienna Convention on Civil Liability for Nuclear Damage (effective in Ukraine since 1996);

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16) <http://www.snrc.gov.ua/nuclear/uk/publish/article/36438>

- Convention on Early Notification of a Nuclear Accident (effective in Ukraine since 1987);
- Convention on Assistance in the Case of a Nuclear Accident or Radiological emergency (ratified in 1986);
- Agreement Between Ukraine and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (effective in Ukraine since 1998);
- Protocol Additional to the Agreement between Ukraine and the IAEA (effective in Ukraine since 2006);
- Memorandum of Understanding between Ukraine and the Commission of the European Communities on the implementation of technical assistance programmes in the field of nuclear safety (effective in Ukraine since 1995).

At the national level, considerable attention is paid to countering financing of the proliferation of weapons of mass destruction. Thus, in March 2015, the Cabinet of Ministers of Ukraine and the National Bank of Ukraine approved the 2015 Action Plan to Prevent and Counter Legalization (Laundering) of the Proceeds of Crime or Terrorist Financing and Financing Proliferation of Weapons of Mass Destruction<sup>17</sup>. CMU Order No 1407-p of December 30, 2015, approved the Strategy of Development of the System for Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction until 2020. The Action Plan for implementation of the Strategy was approved by CMU Order No 601-p of August 30, 2017.

Countering proliferation financing is regulated by the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction". Its previous version was approved in 2014 and did not take into account all the provisions of the Association Agreement. Therefore, in December 2018, the Ministry of Finance of Ukraine initiated a new draft Law "On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction", which provides for a risk-based approach, aimed at counteracting the manipulation of money derived from crime and the accumulation of money or property for illegal purposes. This draft law was developed in order to align Ukraine's legal system in the field of combating money laundering and financing the proliferation of weapons of mass destruction with the criteria set by the European Union. The law was approved on December 6, 2019, and signed by the President of Ukraine on December 27, 2019. It entered into force on 28.04.2020.

After Ukraine gave up its nuclear weapons and acceded to the 1994 Treaty on the Non-Proliferation of Nuclear Weapons, it was given security assurances under the Budapest Memorandum. But this document proved ineffective and did not protect Ukraine from armed aggression and occupation by Russia, a signatory to the Memorandum, of part of Ukrainian territory. Hence, the normative legal acts of Ukraine demonstrate a decrease in the level of attention to the issue of non-proliferation of weapons of mass destruction as a threat to the national security of Ukraine. For instance, the 2007 National Security Strategy of Ukraine described proliferation

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17) Report on the implementation of Association Agenda and Association Agreement in 2015, p.77 ([https://www.kmu.gov.ua/storage/app/media/zviti-pro-vikonannya/AA\\_GOEI\\_REPORT\\_Dec\\_2015\\_final\\_February\\_ukr.pdf](https://www.kmu.gov.ua/storage/app/media/zviti-pro-vikonannya/AA_GOEI_REPORT_Dec_2015_final_February_ukr.pdf))



of weapons of mass destruction as a primary threat to Ukraine, whereas the 2015 National Security Strategy of Ukraine identifies Russian aggression as the main threat. This document specifies that "Ukraine will promote the process of nuclear disarmament, as well as support initiatives to conclude a universal international agreement on security guarantees, especially for non-nuclear states." At the same time, the Strategy also states that "Ukraine seeks to create an effective mechanism for guaranteeing its state sovereignty and territorial integrity on the basis of the Budapest Memorandum." Meanwhile, the 2015 Military Doctrine of Ukraine mentions "proliferation of weapons of mass destruction" as one of the military-political challenges that may turn into a threat of use of military force against Ukraine<sup>18</sup>.

From the point of view of approximation of the legislation, the fulfilment of the above tasks is almost "perfect", except for improvement of system of the state export controls, which is "advanced", because the relevant amendments to the Law of Ukraine "On State Controls over International Transfers of Military and Dual-Use Items" are to be introduced in 2020.

As regards practical implementation, to fulfil the task of "taking measures, if necessary, for signing, ratification or accession, as well as full implementation of all relevant international instruments"; on July 31, 2019, the EU Council adopted a resolution within the Common Foreign and Security Policy (CFSP) in support of biosafety in Ukraine in accordance with the implementation of UN Security Council Resolution 1540 (2004) regarding the non-proliferation of weapons of mass destruction and their means of delivery. The fulfilment of this task is assessed as "advanced".

Regular political dialogue on countering the proliferation of weapons of mass destruction is carried out at all levels of the formats provided for in the Association Agreement. Along with the Summits and meetings of the Council, the Committee and the subcommittees of the association, the Ukraine-EU dialogue on this subsector is also conducted at the level of the EU's Non-Proliferation (CONOP) and Global Disarmament and Arms Control (CODUN) Working Parties. Since 2011, Ukraine has been actively involved in the work of the EU CBRN Centre of Excellence (through the Regional Secretariat), specifically, in the implementation of 14 projects of the Centre. In September 2019, within the framework of an EU grant, an international EU-CHEM-REACT exercise was held in Ukraine to assess the effectiveness of the new civil protection system in accordance with EU standards, as well as interaction with EU countries and institutions. The fulfilment of this task is assessed as "advanced".

In July 2016, for the purpose of improving the system of national export controls, in order to control effectively the export as well as transit of goods related to weapons of mass destruction, including end-use control on dual-use technologies and items, the Ministry of Finance of Ukraine approved the Criteria for the Risk of Legalization (Laundering) of Proceeds of Crime, Terrorist Financing and Financing the Proliferation of Weapons of Mass Destruction<sup>19</sup>. However, improvement of the system of state export controls by making appropriate amendments to the Law of Ukraine "On State Control over International Transfers of Military and Dual-Use Items" is still to be performed in 2020. The fulfilment of this task is assessed as "advanced".

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18) <https://zakon.rada.gov.ua/laws/show/555/2015#n17>

19) <https://zakon.rada.gov.ua/laws/show/z1047-16>

As regards "application of effective sanctions against violations of export controls", Ukraine, as well as the EU, joined the sanctions against Iran, and in 2016 by the relevant presidential decree, decision of the National Security and Defence Council and CMU Resolution Ukraine supported the UN Security Council resolution of July 20, 2015, adopted after signing the nuclear agreement, which provided for phasing out of sanctions in exchange for control of Iran's nuclear programme. Ukraine pursues a similar policy with regard to North Korea's nuclear programme. In 2018, the Verkhovna Rada of Ukraine approved the Resolution "On the Statement of the Verkhovna Rada 'On Condemnation of Tests of Weapons of Mass Destruction by the Democratic People's Republic of Korea'"<sup>20</sup>. The fulfilment of this task is assessed as "perfect".

In general, Ukraine fully complies with international legal acts on the non-proliferation of weapons of mass destruction. Thus, in 2018, the IAEA Secretariat confirmed the full implementation by Ukraine of the Agreement Between Ukraine and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons<sup>21</sup>.

## **DISARMAMENT, ARMS CONTROL, ARMS EXPORT CONTROL AND THE FIGHT AGAINST ILLICIT TRAFFICKING OF ARMS**

### **Evaluation of progress in fulfilling commitments**

Article 12 of the Association Agreement "Disarmament, arms control, arms export control and the fight against illicit trafficking of arms" has a dual purpose:

1. reduction of the stockpiles of redundant small arms and light weapons, as well as dealing with abandoned and unexploded ordnance;
2. improving arms controls to prevent illegal trafficking of arms.

The Parties intend to achieve these goals through the development of cooperation.

For the EU and Ukraine, this subsector became especially relevant after the beginning of the Russian armed aggression, when a large amount of small arms and heavy weapons was imported to Ukraine from Russia, part of which was transferred to illegal armed groups. Concerns are growing in the EU about ORDLO turning into a source of illegal arms trade in Europe (for example, in 2016, the SBU detained a car with illegal weapons and ammunition on the border with Poland). This situation created preconditions for uncontrolled trafficking, trade, storage and use of arms. All this requires that Ukraine should improve its arms control and export control system, in particular, in accordance with the content and principles of the Council Common Position 2008/944/CFSP of 8 December 2008, which lays down general rules for the control of exports of military technology and equipment. Article 1 of this document "Common Position" explains the reason for most refusals our state received concerning the sale of dual-use goods and military technologies for military purposes: "Member States are determined to prevent the export of military technology and equipment which might be used for internal repression or international aggression or contribute to regional instability." Therefore, in accordance with Article 12 of the Association Agreement, Ukraine must step up its attention to this commitment.

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20) <https://zakon.rada.gov.ua/laws/show/2285-19>

21) <https://www.kmu.gov.ua/news/magate-ukrayina-v-povnomu-obsyazi-vikonuye-ugodu-pro-zastosuvannya-garantij-u-zvyazku-z-dogovorom-pro-nerozpovsyudzhennya-yadernoyi-zbroji>

For its part, it is important for Ukraine to coordinate actions to prevent the illicit trafficking of weapons and to receive assistance in establishing a system of arms control in the conflict zone and adjacent regions.

This subsector includes two obligations:

- improvement of the state export control system, which is related to the adaptation of the provisions of the Council Common Position 2008/944/CFSP;
- cooperation between Ukraine and the EU on disarmament, arms control, export controls and the fight against the illicit trafficking of arms.

## **Evaluation of progress in fulfilling commitments**

### **Commitment 15 / Improving the system of state export controls**

- Article 12 of the Association Agreement
- Council Common Position 2008/944/CFSP

This commitment involves fulfilment of the task of "ensuring cooperation in the field of arms exports in accordance with the content and principles of the Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, and supporting the process of discussing the Arms Trade Treaty".

Despite a number of measures taken by Ukraine in this subsector, the measures set forth in the Action Plan for the implementation of the AA of 2017 aiming to develop and submit to the Cabinet of Ministers of Ukraine a draft law to amend the Law of Ukraine "On State Control over International Transfers of Military and Dual-Use Items" and to ensure its support by the Verkhovna Rada of Ukraine have been fulfilled but partially.

Ukraine is guided by the principles and criteria set out in Council Common Position 2008/944/CFSP, but not all amendments to the Law of Ukraine "On State Control over International Transfers of Military and Dual-Use Items" were introduced in the period under monitoring. In 2018, the Law of Ukraine "On Amendments to Article 21 of the Law of Ukraine 'On State Control over International Transfers of Military and Dual-Use Items'" was approved, but the explanatory note fails to specify that it is aimed at adapting the Council Common Position 2008/944/CFSP. Some amendments to this law were made by the following laws:

- "On Amendments to the Customs Code of Ukraine and Some Other Laws of Ukraine to Introduce the 'Single Window' Mechanism and Optimize Control Procedures when Moving Goods across the Customs Border of Ukraine" (2018);
- "On Amendments to Certain Legislative Acts of Ukraine Concerning Procurement of Imported Defence Products, Works and Services" (2019);
- "On Amendments to the Customs Code of Ukraine and Certain Other Legislative Acts of Ukraine in Connection with Administrative Reform" (2020).

This work continues in 2020<sup>22</sup>. Amendments are made in conjunction with other draft laws or individual narrowly focused provisions but not as a whole as a draft law amending this exact law. However, the level of transposition of this task can be described as "advanced".

The level of implementation of this task is assessed as "advanced". In order to combat illegal arms trade in Ukraine, agreements are concluded with civil carriers, the Law "On Accession to the Protocol of Amendments to Paragraph a) of Part 1, Article 1, Part 1 and Paragraph b) of Part 3, Article 14 of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR)" (19.01.2017) and the Instruction on Risk Analysis in the SBGS of Ukraine (11.12.2017), which includes risk indicators, such as transporting firearms across the border, counter-terrorism and border management.

The CMU Resolution No 974 as of October 24, 2018, introduced amendments to the Procedure for state control over international transfers of dual-use items. The CMU Resolution No 1 "On Amendments to the Procedure for State Control over International Transfers of Dual-Use Items" as of January 11, 2018, adopted the Unified List of Dual-Use Items<sup>23</sup>. The decision was approved with a view to introducing into national law of the Unified List of Dual-Use Items made on the basis of the EU's List of Dual-Use Items (Annex 1 to Council Regulation No 428/2009 of 05.05.2009) and further harmonization of Ukraine's procedures and rules of state export control with the relevant norms and standards of the EU. This will improve Ukraine's position on the international market and remove barriers to Ukrainian exports of dual-use items to the EU domestic market due to a single regulatory framework in the field of export control.

### **Commitment 16 / Cooperation between Ukraine and the EU on disarmament, arms control, arms export control and the fight against illicit trafficking of arms**

- Article 12 of the Association Agreement

The commitment actually determines the task of "deepening cooperation with EU member states in the framework of international export controls", as specified in the Action Plan for the implementation of the AA. Cooperation between Ukraine and the EU on this task is developing both at the political and technological levels within the framework of the COARM Troika-Ukraine and the CONOP / CODUN Troika-Ukraine.

On November 6-7, 2017, in Brussels (Belgium), the Federal Office for Economic Affairs and Export Control (BAFA) organised a final evaluation meeting of the Working Party on Conventional Arms Exports (COARM), which involved the Ministry of Foreign Affairs of Ukraine and the State Service of Export Control. The purpose of the event was to evaluate the results of the third two-year COARM project on technical assistance aimed at improving the effectiveness of export controls over international transfers of conventional arms in beneficiary countries in accordance with EU Council Decision (CFSP) 2015/2309 and to discuss ways for further cooperation.

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22) <https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/ar-aa-implementation-2019-4.pdf>

23) [http://www.dsecu.gov.ua/control/uk/publish/article?art\\_id=54263&cat\\_id=34940](http://www.dsecu.gov.ua/control/uk/publish/article?art_id=54263&cat_id=34940)

The recommendations included the following:

- promoting the criteria and principles of the EU Common Position 2008/944/CFSP and the Arms Trade Treaty;
- providing assistance in the development of draft laws and other regulations in order to implement an effective system of export control of conventional weapons, as well as assistance in implementing the relevant requirements of legislation (if necessary);
- providing assistance in training representatives of licensing and law enforcement agencies;
- promoting transparency and accountability in international arms transfers;
- encouraging to sign and ratify the Arms Trade Treaty and accede to international export controls and conventions;
- facilitating the analysis of potential risks of misuse of weapons and reducing such risks as regards exports and imports.

Thus, the fulfilment of the task is assessed as "advanced".

## **COMBATING TERRORISM / COOPERATION IN THE FIGHT AGAINST TERRORISM**

### **Overview of key Eurointegration commitments**

The Association Agreement sets out Ukraine's commitments with regard to cooperation with the EU in the area of preventing and combating terrorism in separate articles in two titles, which are complementary as they focus on the same obligations and tasks. Article 13 of Title II "Political Dialogue and Reform, Political Association, Cooperation and Convergence in the Field of Foreign and Security Policy" mentions only the political commitment to "work together at bilateral, regional and international levels to prevent and combat terrorism", whereas Article 23 of Title III, "Justice, Freedom and Security" sets out specific obligations concerning the development of such cooperation and the international legal norms that make up the basis for its development.

The objectives of the subsector are: establishing ways to exchange experience and information concerning prevention and combating of terrorism; countering the financing of terrorism and other forms of support to terrorism, working together to create barriers to terrorist activity and its cross-border spread.

In fact, the Parties have to establish effective cooperation at all levels to counter terrorism. Ukraine has to bring its national legislation on combatting terrorism in line with UN Security Council Resolution No 1373 of 2001, the UN Global Counter-Terrorism Strategy of 2006 and other UN instruments, as well as relevant international conventions and instruments. UNSCR 1373, in particular, envisages countering the financing of terrorism, which is reflected in Articles 133 and 385 of the AA and requires bringing Ukrainian legislation in line with Directive (EU) No 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and the provisions of Regulation (EU) 2015/847 on information accompanying transfers of funds. In addition, Ukraine ratified the European Convention on the Suppression of Terrorism of 1977 (Law No 2990-III as of January

17, 2002) and the European Convention on the Extradition of 1957 (Law No 43/98-BP as of January 16, 1998), which is stipulated in the Law of Ukraine "On Combating Terrorism" of 2003<sup>24</sup>.

The fulfilment of Ukraine's commitments does not require direct additional costs, as it is implemented within the current activities of the relevant state structures of Ukraine. The Explanatory Note to draft law No 2179 on counteracting the financing of terrorism of 25.09.2019 specifies: "Implementation of the Law does not require additional expenditures from the State Budget of Ukraine".

The implementation of this commitment does not involve direct financial benefits, as it concerns security issues. At the same time, the Explanatory Note implies that the adoption of the law on countering the financing of terrorism ensures "fulfilment of some key conditions required for the European Union to provide Ukraine with the second tranche of macro-financial assistance in the amount of EUR 500 million in October 2019."

### **Evaluation of progress in fulfilling commitments**

#### **Commitment 17 / Cooperation at the bilateral, regional and international levels to prevent and combat terrorism**

- Article 23 of the Association Agreement

Action Plan on implementation of the AA for 2014-2017 of 17.09.2014 contains the following tasks:

1. "Strengthening the physical protection of high-risk objects and improving the system of such protection" (Art.13);
2. "Continuing the dialogue with the EU on matters of counteraction to separatism, extremism and terrorism" (Art.13);
3. "Preparing proposals on improving the legislation of Ukraine in the area of fight against terrorism" (Art.13);
4. "Holding consultations on combatting terrorism with the office of the EU Counter-Terrorism Coordinator" (Art.23).

Most of these tasks do not contain any criteria to go by in assessing their transposition and implementation.

However, in the field of counter-terrorism Ukraine ratified:

- 1999 – Resolution 1269 adopted by the Security Council at its 4053rd meeting;
- 2001 – Resolution 1368 (2001) adopted by the Security Council at its 4370th meeting on 12 September 2001;
- 2001 – Resolution 1373 (2001) adopted by the Security Council at its 4385th meeting on 28 September 2001 and specified in Article 23 of the AA;
- 2002 – International Convention for the Suppression of the Financing of Terrorism.

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24) <https://zakon.rada.gov.ua/laws/show/638-15>

On October 28, 2015, Ukraine signed the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, thereby criminalizing a number of acts, including intentional participation in a terrorist group, training to commit terrorist acts, travelling abroad for the purpose of terrorism, financing or organising such trips, as well as creating a network of national, round-the-clock contact points to rapidly exchange information.

The Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction" was approved in 2014 and was in force until the end of 2019.

Ukraine has ratified the instruments that make up the basis of the Global Counter-Terrorism Strategy of 2006. The CMU Order No 1407-p of December 30, 2015, approved the Strategy of Development of the System for Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction until 2020. The Action Plan for implementation of the Strategy was approved by CMU Order No 601-p of August 30, 2017.

The Law "On Critical Infrastructure and Its Protection" was not approved, on August 29, 2019, the draft law was withdrawn for revision, although the 2015 National Security Strategy of Ukraine<sup>25</sup> envisaged measures to enhance the protection of high-risk facilities through "comprehensive improvement of the legal framework for the protection of critical infrastructure, creation of a system of public management of its security; improvement of the protection of critical infrastructure, including energy and transport infrastructure." Explosions at a number of critical infrastructure facilities demonstrated the inadequacy of measures to protect them. The best results have been attained in the field of cyber security: the Resolution No 518 "On Approval of the General Requirements for Cyber Security of Critical Infrastructure" of June 19, 2019, was approved.

The EU-Ukraine consultations were held at the technical level. For instance, the final statement of the 21st Ukraine-EU Summit 2019 did not mention matters of combating terrorism; neither were they included in the Report of the European Commission on implementation of the AA between the EU and Ukraine dated December 12, 2019. However, during the 2018 Summit, cooperation in combating terrorism was discussed. The joint statement following the 2018 EU-Ukraine Summit specified: "We reiterated our commitment to cooperate in countering terrorism and organised crime, developing integrated border management and exchanging best practices".<sup>26</sup>

Thus, the level of transposition and implementation of the task under Article 13 "Enhancing the physical protection of high-risk facilities and improving the system of such protection" is assessed as "early" due to the withdrawal of the draft law "On Critical Infrastructure and its Protection" and a number of explosions at critical infrastructure facilities. The task of "Preparing proposals for improving the legislation of Ukraine in the field of counter-terrorism" in terms of transposition is generally assessed as "advanced". And the fulfilment of the task of "Continuing the dialogue with the EU on combating separatism, extremism and terrorism" is "advanced".

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25) <https://zakon.rada.gov.ua/laws/show/287/2015>

26) Joint statement following the 20th EU-Ukraine Summit Brussels, 9 July 2018 (<https://www.consilium.europa.eu/media/36086/joint-statement-eu-ua-summit-2018.pdf>)

The Action Plan for the implementation of the AA of 25.10.2017 contains no tasks for the implementation of Articles 13 and 23 of the AA. At the same time, indirectly these articles are related to the implementation of task 586 "Implementation of international standards and EU acts on the prevention of money laundering and terrorist financing", envisaged by Articles 133 and 385 of the AA.

In pursuance of the full implementation of UN Security Council Resolution 1373 of 2001, as stipulated by Article 23 of the AA, the Parties should focus their cooperation concerning this subsector on: stopping terrorist financing; preventing cross-border movement of terrorists or terrorist groups; exchange of intelligence; countering planning and organisation of terrorist acts; countering the connection of terrorism with transnational organised crime, trafficking in drugs and weapons, including weapons of mass destruction; and establishing cooperation between counter-terrorism bodies.

The Law "On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction", which entered into force on April 28, 2020, was developed to achieve compliance of the legal system of Ukraine in the field of combating money laundering and terrorist financing with the criteria set by the European Union.

The law is aimed at implementing Para. 26 of the Action Plan for 2017-2019 for the implementation of the Strategy of Development of the System for Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction until 2020, approved by CMU Order No 601-p of August 30 2017; paragraphs 35 and 586 of the Action Plan for the implementation of the Association Agreement, approved by Government Resolution No 1106 of October 25, 2017, and implementation of the fourth Directive (EU) No 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and Regulations (EU) 2015/847 on information accompanying transfers of funds.

The State Financial Monitoring Service of Ukraine has constantly monitored matters related to countering terrorist financing, which was indicated in the annual reports in a separate section of "Countering Terrorist Financing and Separatism". In 2018, the SFMS blocked funds in 51 cases of financial transactions carried out by persons who, according to the information of law enforcement agencies, could be associated with the financing of terrorism and separatism, in the total amount of UAH 100.9 million<sup>27</sup>.

With the support of the OSCE and the EU, Ukraine updated the Methodology of the National Risk Assessment on Money Laundering and Terrorist Financing. On March 5, 2019, the Concept of Combating Terrorism in Ukraine was approved, replacing the Concept of Combating Terrorism of April 25, 2013.

Ukraine has deepened cooperation with the EU to combat terrorism by concluding agreements on cooperation with Eurojust (June 27, 2016) and on operational and strategic cooperation with Europol (December 14, 2016), the Memorandum on the establishment of a secure communication line that makes it possible to exchange confidential information (2015), appointing a Ukrainian liaison officer to Europol, the activities of the EUAM in Ukraine, developing methodology for assessing the threat of transnational organised crime (SOCTA), and initiating cooperation with Moneyval and OLAF.

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27) Report of the State Financial Monitoring Service of Ukraine for 2018 ([http://finmonitoring.in.ua/wp-content/uploads/2019/04/SDFM\\_AnnualReport\\_2018.pdf](http://finmonitoring.in.ua/wp-content/uploads/2019/04/SDFM_AnnualReport_2018.pdf))

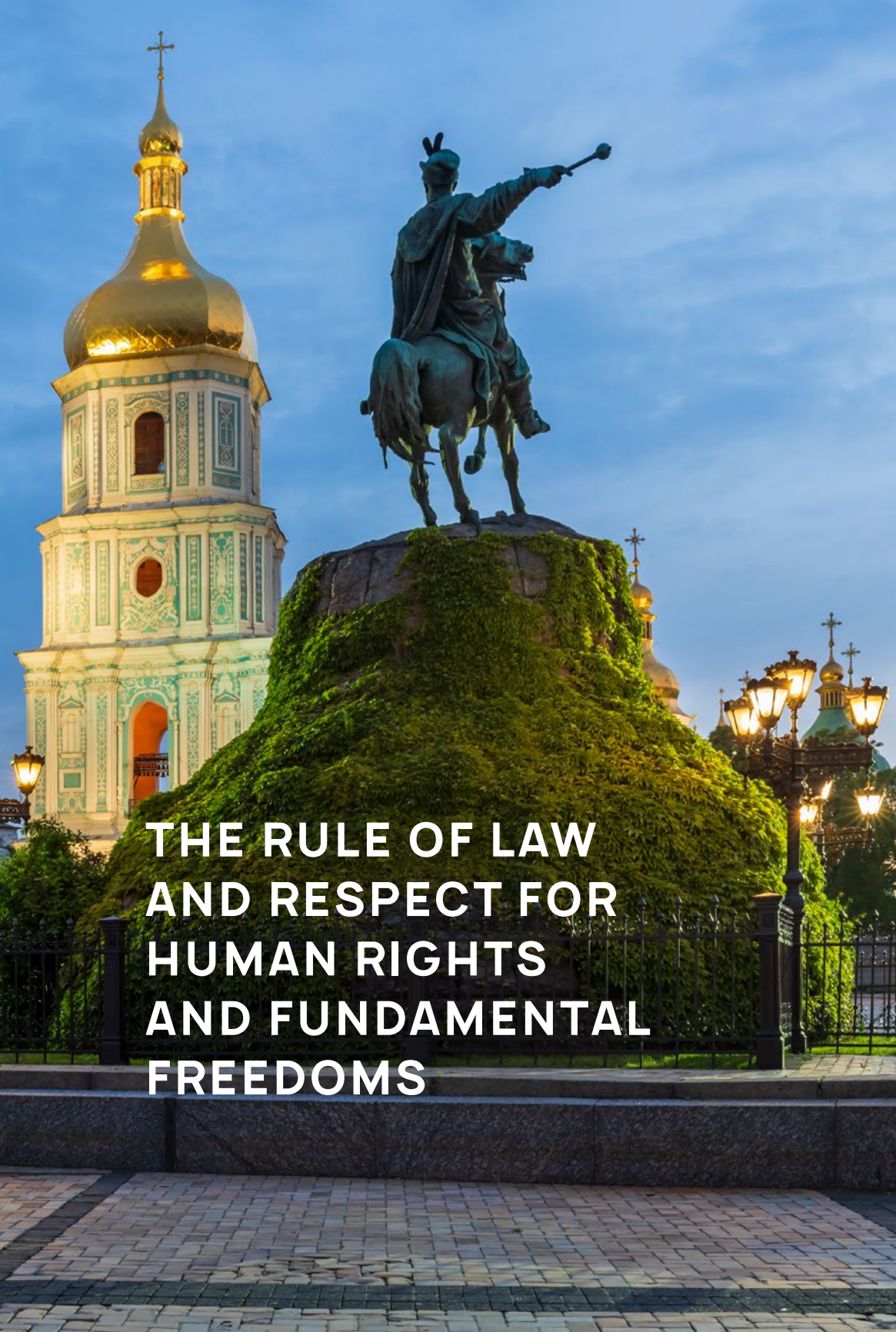


To fulfil the tasks specified in this subsector, Ukraine attracts expert and financial assistance from the EU within the National Risk Assessment on Money Laundering and Terrorist Financing in Ukraine project with funding in the amount of EUR 267.8 thousand over the period from 07.04.2015 to 15.05.2017

Thus, the level of transposition and implementation of the tasks within Article 23 is assessed as "perfect".

TITLE III.

**JUSTICE, FREEDOM,  
SECURITY AND  
HUMAN RIGHTS**

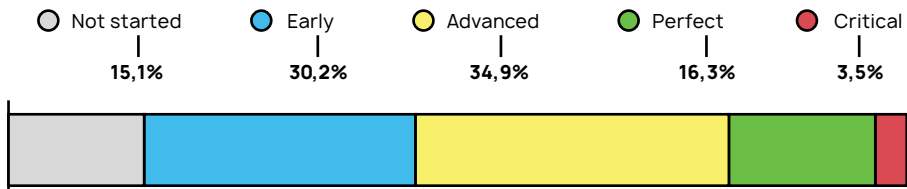


**THE RULE OF LAW  
AND RESPECT FOR  
HUMAN RIGHTS  
AND FUNDAMENTAL  
FREEDOMS**

# THE RULE OF LAW AND RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Experts: Roman Kuibida / Pavlo Kravchuk / Iryna Sushko

## Implementation progress for the sector:



## REFORM OF LAW ENFORCEMENT AND THE JUDICIARY

### Overview of key Eurointegration commitments

In their cooperation, Ukraine and the EU attach particular importance to the consolidation of the rule of law and reinforcement of institutions at all levels in the areas of administration in general as well as law enforcement and administration of justice in particular.

The key goals of efforts in this area include strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption.

According to the IMF (before the COVID-19 pandemic), an optimistic scenario for the development of the Ukrainian economy is impossible without proper reform of the judiciary. This implies annual GDP growth of up to 6%<sup>1</sup>.

### Evaluation of progress in fulfilling commitments

#### Commitment 18 / Strengthening law enforcement and combatting corruption

- Article 14 of the Association Agreement
- Visa Liberalisation Action Plan

Within the framework of this commitment, Ukraine is to establish effective law enforcement agencies, including the police and the State Bureau of Investigation, as well as set independent and capable anti-corruption bodies (NAPC, NABU, SAP, ARMA).

<sup>1</sup>) <https://www.epravda.com.ua/news/2020/02/19/657261/>

In 2015, the Laws "On the National Police" and "On the State Bureau of Investigation" were adopted. Amendments to the Law "On the State Bureau of Investigation" made in 2019 resulted in replacement of the leadership of this body. At the same time, the mechanism for appointing the head of the SBI by the President is questionable from the point of view of compliance with the Constitution.

The Law "On National Security of Ukraine" of 2018 limited the functions of the Security Service to those associated with the special services. Nevertheless, the Security Service continues to conduct pre-trial investigations and maintain special pre-trial detention facilities. There are currently no legislative initiatives to deprive the Security Service of these functions.

In 2014, the Parliament adopted the Law "On the Principles of State Anti-Corruption Policies in Ukraine (Anti-Corruption Strategy) for 2014-2017". A new Anti-Corruption Strategy has not yet been approved.

In 2014, the Law "On Prevention of Corruption" was adopted, whereby electronic declaration for civil servants was introduced and the National Agency for Prevention of Corruption (NAPC) was established; as well as the Law "On the National Anti-Corruption Bureau of Ukraine", introducing a specialized pre-trial investigation body for cases associated with major corruption cases (the appointment of the NABU Director by the President is also questionable from the point of view of the Constitution). In 2015, the Law "On the Prosecutor's Office" was amended establishing a Specialized Anti-Corruption Prosecutor's Office; and the Law "On the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes" was adopted.

Thus, the legislator has created a fairly advanced framework for strengthening law enforcement and reducing corruption, but some errors and lack of political will to properly implement these laws have prevented Ukraine from achieving irreversible positive results.

The Law "On the National Police" contains transformative provisions, in particular those on the competitive selection of its head, depoliticization of the police, and the service-oriented nature of their work. The patrol police force was established and formed on the competitive basis (in large cities), gaining a fairly high level of public confidence. However, the reform left investigative units and the criminal investigation departments intact. Re-certification proved to be ineffective; and because of incorrect legal norms, courts reinstated those who failed the certification.

The SBI began to take shape in 2017, when its head was appointed following a rather non-transparent and protracted competition. In 2018, the SBI began working, taking over the investigative jurisdiction of cases from prosecution agencies. In 2019, as a result of fair criticism, the head of the SBI was removed from office by law and a new competition for this position was launched. The new President authorized an MP from his faction to temporarily act as the Director of the Bureau.

NAPC is the central body that ensures the state anti-corruption policy-making and enforcement. From 2015 to 2019, the NAPC was a collective body whose members were selected on a competitive basis. The competition was politicized. NAPC was plagued by internal conflicts and gained a reputation as a body that covers up corruption. In 2019, the law on the NAPC was amended, resetting the body and making it an agency with a sole responsible administrator, which gave it a chance to gain a reputation as an independent and effective body.

NABU is a body of pre-trial investigation of cases of high-ranking corruption, which operates under the procedural guidance of the prosecutors of the Specialised Anti-Corruption Prosecutor's Office. It has been in place since 2015. It has operational units. NABU must undergo an annual audit of its activities. There have been politically motivated attempts to use this tool to remove the NABU Director, who demonstrates a sufficient level of independence, but they failed.

ARMA ensures the state policy making and enforcement in the field of finding, tracing and management of assets derived from corruption and other crimes. It has been in place since 2016. As a result of mismanagement of one of the facilities, the head of ARMA was removed from the post and later fired. Since 2019, ARMA has had no permanent head.

The greatest commitment to the goals of the relevant bodies is demonstrated by their leaders who have been selected through competitions involving reputable international experts (NABU, renewed NAPC). The agencies where competitions for management positions were held in a politicized manner have proved to have low efficiency.

### **Commitment 19 / Strengthening the judiciary, increasing its efficiency, ensuring its independence**

- Article 14 of the Association Agreement

Within this commitment, Ukraine is to carry out comprehensive judicial reform, including establishment of capable judicial institutions, renewal and introduction of procedural codes, enhancement of the enforcement of judgments, and ensuring independence and efficiency of the prosecutor's office and the bar.

In 2016, the Constitution was amended, which made it possible to adopt the new Laws "On the Judicial System and the Status of Judges" and "On the High Council of Justice", as well as introduce comprehensive amendments to procedural codes. This, *inter alia*, made it possible to simplify the judicial system, introduce competitions for all vacant judicial positions, deprive political bodies of the power to promote and dismiss judges, and raise (at least at the legislative level) the requirements for the professional and ethical standards of judges. In 2016, new laws were adopted to increase the efficiency of enforcement of court decisions "On Bodies and Individuals Responsible for Enforcing Judicial Decisions and Decisions of Other Bodies" and "On Enforcement Proceedings".

The 2016 constitutional amendments deprived the prosecutor's office of excessive functions, including general oversight, pre-trial investigation, and representation of citizens in courts. The function of pre-trial investigation was transferred to the newly created SBI.

There are currently no legislative initiatives aimed at reforming the bar and democratizing the bar self-government bodies.

Since 2016, the selection, evaluation, promotion, and dismissal of judges have been within the exclusive competence of the governing bodies of the High Qualification Commission of Judges (HQCJ) and the High Council of Justice (HCJ), and the majority of judges in these bodies are elected by judges. Unfortunately, these bodies have not become agents of change. First of all, this is due to the low quality of the staff of these bodies and lenience towards corrupt behaviours of judges. In 2019, at the initiative of the new President, a law was passed terminating the powers of the

HQCJ. However, empowering the HCJ to lead further reform resulted in failure. The new HQCJ has not yet been formed, and cooperation with international institutions for this purpose has not been established.

In order to exclude non-professionals and corrupt judges from the judiciary, a one-time evaluation procedure was introduced for all current judges – based on the criteria of competence, integrity and professional ethics. However, according to its results (as of the end of 2019, about half of the judges underwent the evaluation), only 3% of judges who underwent the evaluation were recognized as not meeting the requirement of integrity. At the same time, the HCJ refused to dismiss even these judges, referring to lack of motivation in the decisions of the HQCJ. The involvement of public experts through the Public Integrity Council was a positive aspect in the evaluation procedure. Although its negative conclusions about judges were ignored by the HQCJ, they clearly demonstrated that the HQCJ was dysfunctional.

During the reform period, a large number of vacancies appeared in local and appellate courts (approximately one third of the judicial staff). No competitive selection procedure for local and appellate courts has been completed. The "new" appellate courts were formed by transferring judges of liquidated appellate courts to them rather than on a competitive basis.

In accordance with the constitutional amendments, the Supreme Court replaced the previous Supreme Court and three higher specialized courts. It started working at the end of 2017. Unfortunately, manipulations during the competitive selection prevented a sufficient number of change agents from entering the court. The 2019 law, initiated by the new President, proposes to halve the number of members of the Supreme Court. The motives for this decision were not explained to the public. The Council of Europe and the Venice Commission have criticized the move, referring to the need to significantly reduce the burden on the courts first, as well as to the fact that the lower court reform has not been completed. The Supreme Court appealed against these changes to the Constitutional Court and the latter found them unconstitutional in 2020.

Impunity for high-level corruption and delays in court proceedings against corrupt high-ranking officials have led to the establishment of the High Anti-Corruption Court. In 2018-2019, the necessary laws were adopted. The selection of judges for this court took place with the active involvement of international experts. And in September 2019, the High Anti-Corruption Court began its procedural activities.

In 2018, the President decided to reorganise most local (except administrative) and appellate courts. Local courts were to be amalgamated into larger units, and their number was to be reduced by half or to one third. Currently, the appellate courts have undergone the reorganisation stage (mostly it was just renaming). New local courts remain on paper.

The legislative decision to create a judicial guard service – a new militarized service within the judiciary – was taken in 2016. Its management was appointed in 2019. Since then, the service has been developing, and gradually taking over the functions of guarding courts.

In 2017, new versions of the Civil and Commercial Procedural Codes, as well as the Code of Administrative Procedure were adopted and entered into force, reducing the number of judicial instances from four to three, introducing or improving simplified forms of litigation, introducing judicial mediation, creating legal framework

for e-litigation, etc. Currently, some aspects of new legislation are not properly implemented. There have been pinpoint changes in the criminal proceedings that have mostly negatively affected the effectiveness of pre-trial investigation.

The reform of the system of execution of judgements has started, specifically, the institution of private enforcement agents has been introduced, which has somewhat improved the situation with the execution of judgements. Currently, the number of private enforcement agents is ten times smaller than that of state enforcement agents, which does not contribute to equal competition. There is progress in enforcing court decisions due to the cessation of the corrupt practices of blocking enforcement proceedings.

The new Law "On the Prosecutor's Office", adopted in 2014, introduced prosecutorial self-governing bodies and the Qualification and Disciplinary Commission of Prosecutors. However, these bodies failed to demonstrate persistence in purification of the prosecutor's office. In 2019, the new President initiated amendments to the Law "On the Prosecutor's Office". The work of the Qualification and Disciplinary Commission of Prosecutors was suspended. Many of the matters previously regulated by law have been delegated to be regulated by the Prosecutor General. The functions of selection, certification and disciplinary powers have been transferred to the personnel commissions set up by the Prosecutor General (in practice, they consist of prosecutors and the other half are civil society representatives). Amendments to the Law "On the Prosecutor's Office" in 2019 gave impetus to the process of purification of the prosecutor's office from staff that lack integrity, which, unlike that in courts, manifests positive tendencies (for example, only 45% of the employees of the Prosecutor General's Office passed certification, and a competition for new vacancies has been announced inviting lawyers from outside the Prosecutor's Office). However, courts can put an end to this tendency if they reinstate the fired prosecutors. Certification of prosecutors of regional and local prosecutor's offices is scheduled for 2020. At the same time, there is a lack of institutional capacity of the Prosecutor's Office to be independent, as the methods of appointing and removing the Prosecutor General remain purely political.

The Bar is de facto not a self-governing organisation. The National Bar Association, which is headed by a small group of lawyers, is not well-regarded but remains quite influential due to its control over the qualification and disciplinary bodies of lawyers and the finances generated based on the membership fees of all lawyers.

In 2015-2016, access to justice for vulnerable social groups improved due to expansion of the network of free legal aid centres and delegation of the function of representing the interests of citizens to them from the prosecutor's office.

## **ANTI-DISCRIMINATION AND PROTECTION OF HUMAN RIGHTS**

### **Overview of key Eurointegration commitments**

The subsector "Anti-discrimination and protection of human rights" deals with issues related to human rights, anti-discrimination, domestic violence, anti-torture, the activities of human rights institutions, state policy in the field of protection of minority rights and the right to peaceful assembly, as well as challenges to human rights and public policy in the context of the conflict with the Russian Federation.



The commitments within this subsector include harmonisation of the anti-discrimination law with EU acquis by introducing additional terms, imposing stricter penalties for discrimination and changes in judicial statistics records, alignment with the EU law in the field of human rights institutions, reinforcing the fight against violence against women and domestic violence, changing the conditions of detention of prisoners in military detention facilities, improving mechanisms to combat torture and ill-treatment, creating a new model of state ethnopolitics, consolidating guarantees of the freedom of peaceful assembly, forming human rights policy and proper administration in the context of the conflict with the Russian Federation, implementation of the National Strategy for Human Rights and the Action Plan for its implementation, decriminalisation of deliberate transmission of HIV and other infectious diseases, as well as bringing decommunization of legislation in line with the recommendations of the Venice Commission.

By fulfilling these commitments, Ukraine will harmonise state policies and standards in the field of human rights protection with the relevant EU policies and standards, improve the protection of the rights of Ukrainian citizens, foreigners, and stateless persons on the territory of Ukraine, in particular, as regards protection from various forms of violence, and effectively respond to the challenges in this area that stem from the conflict and occupation of part of the territory of Ukraine.

### **Evaluation of progress in fulfilling commitments**

#### **Commitment 20 / Harmonisation of anti-discrimination legislation with EU law**

- Council Directive 2000/43/EC of 29 June 2000
- Council Directive 2000/78/EC of 27 November 2000
- Council Framework Decision 2008/913/JHA of 28 November 2008

The commitment involves legislative and regulatory changes aimed at reinforcing anti-discrimination; introducing the terms "victimization", "discrimination by association", "reasonable accommodation", and "refusal to provide reasonable accommodation" into law; introducing stricter liability for discrimination and hate crimes; and introducing a system of case law statistics concerning discrimination.

These changes correlate to the provisions of the EU Council Directive No 2000/43/EC and the EU Council Directive No 2000/78/EC, as well as the Framework Decision of the EU Council No 2008/913/JHA.

The provisions concerning the introduction of new terms and strengthening the institutional capacity of the ombudsman were to be introduced by the draft law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine (with regard to harmonisation of the legislation in the field of preventing and combating discrimination with European Union law)" (registration number 3501 of November 20, 2015, re-registered on August 29, 2019, No 0931)<sup>2</sup>, which was adopted at first reading in 2016 and consideration of which resumed in 2019. Some provisions of the proposed law, although approved by EU experts and individual institutions, are not even implemented in EU law, in particular the mandate of the anti-discrimination body to issue binding acts (only on personal data protection) and the concept of multiple discrimination (mentioned in one EU act but without definition). From the

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2) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68556](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68556)

point of view of transposition of the current EU legislation, they are not a mandatory element for the harmonisation of legislation. At the same time, we may deal with proactive implementation, as the implementation of these provisions in the EU is widely discussed and is likely to take place in the coming years.

The concept of "reasonable accommodation" is defined by the UN Convention on the Rights of Persons with Disabilities ratified by Ukraine (and the Law "On Principles of Prevention and Combating Discrimination in Ukraine") as relating to the protection of the rights of persons with disabilities and is interpreted in EU law in the same way. At the same time, experts stress the potential of effective use of this term in other areas of anti-discrimination<sup>3</sup>, which could be reflected in the draft law. The above allows us to describe the transposition as early and the implementation as one that has not started.

The collection of data and statistics on court decisions in the field of discrimination is broadly in line with the EU's approach to high-level expert statistics<sup>4</sup>. Decision No 65 of the Council of Judges of Ukraine of 16 September 2016 recommends that the State Judicial Administration of Ukraine facilitate the collection, analysis and dissemination of sex-disaggregated statistics, as well as the number of cases of violence and discrimination by category of cases. However, this decision was of recommendatory nature and as of 2020 is implemented only with regard to the gender distribution of judges in courts and the State Judicial Administration<sup>5</sup>.

### **Commitment 21 / Harmonisation with EU law of the activities of institutions in the field of human rights protection, preventing and combating discrimination**

The commitment correlates with the provisions of:

- Council Directive 2000/43/EC of 29 June 2000
- Council Directive 2000/78/EC of 27 November 2000
- Recommendations of the European Commission on standards for equality bodies
- International instruments in the field of equality and gender equality ratified by Ukraine, in particular the UN Convention on the Elimination of All Forms of Discrimination against Women, the National Plan for the Implementation of UN Security Council Resolution 1325 on Women, Peace, and Security until 2020
- Recommendations of Twinning Ombudsman experts published in 2017

The commitment envisages strengthening the institutional capacity of the institution of the Verkhovna Rada Commissioner for Human Rights, expanding the mandate of the ombudsman to include the right to "proper administration", and establishing the institution of the Government Commissioner for Gender Policy.

To strengthen the institutional capacity of the Secretariat of the Verkhovna Rada Commissioner for Human Rights in the field of anti-discrimination, it is necessary to extend immunity to the staff of the Secretariat of the Commissioner, strengthen

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3) <https://library.fes.de/pdf-files/bueros/ukraine/13736.pdf>

4) [https://ec.europa.eu/info/sites/info/files/final\\_guidelines\\_4-10-18\\_without\\_date\\_july.pdf](https://ec.europa.eu/info/sites/info/files/final_guidelines_4-10-18_without_date_july.pdf)

5) <https://dsa.court.gov.ua/dsa/inshe/gender/>

social guarantees for the ombudsman, and oblige the government to introduce the ombudsman's proposals concerning the Secretariat budget to the state budget without changes. In order to introduce the right to "proper administration" in the legislation and in the range of responsibility of the ombudsman, it is necessary to amend the Law "On the Commissioner for Human Rights of the Verkhovna Rada of Ukraine", develop and approve a code of Good Administrative Behaviour. None of these recommendations has been drafted as a legislative proposal, which means that the transposition and implementation of the tasks has "not started".

A position of the Government Commissioner for Gender Policy was to be established to coordinate the activities of executive bodies in the field of gender equality. The relevant indicator was included in the Action Plan for the implementation of the AA. The decision to establish the institution of the Commissioner was approved in June 2017. The Government Commissioner started her work in January 2018. At the same time, experts consider the institutional support of the state policy in the field of gender equality to be insufficiently effective, with overlapping of functions and sometimes insufficient level of authority<sup>6</sup>. Experts also point out that there are no analogues of the institution of the Government Commissioner in the structure of the institutional mechanism for implementing the gender policy in such countries as Sweden, Finland, Norway or Iceland. However, given the discreteness of the EU policy on this issue and the overall compliance of this indicator with the principles of EU policy, its transposition and implementation can be considered "perfect".

### **Commitment 22 / Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)**

- This commitment is in line with European Parliament Resolution No 2019/2855 (RSP), which calls on the EU member states and the EU as a whole to ratify the Istanbul Convention and effectively implement their existing legislation to combat gender-based violence.

The commitment involves ratification of the Istanbul Convention and introduction of legislation aimed at combating gender-based violence, which would make it possible to effectively prevent it through preventive measures, administrative and criminal penalties.

On November 12, 2016, the President of Ukraine Petro Poroshenko submitted to the Parliament draft law No. 0119 "On Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" (Istanbul Convention) of 14.11.2016, which provided for ratification of the Convention with a remark concerning the paragraph on compensation to victims of violence. On November 15, 2016, the Verkhovna Rada of Ukraine sent the draft for revision to the Committee on Foreign Affairs. On May 20, 2019, the draft law was withdrawn. The transposition of this task is at an early stage, its implementation has not started.

In December 2017, the VRU adopted the Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine to Implement the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence"<sup>7</sup> and the Law of Ukraine "On Preventing and Countering

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6) [https://parlament.org.ua/wp-content/uploads/2019/09/gender\\_final.pdf](https://parlament.org.ua/wp-content/uploads/2019/09/gender_final.pdf)

7) <https://zakon.rada.gov.ua/laws/show/2227-19>

Domestic Violence”<sup>8</sup>, which introduced the concepts of “domestic violence”, “restrictive measures against perpetrators of domestic violence”, “marital violence”, “forced marriage”, “illegal performing of and forced abortion or sterilization”, etc., which comply with the principles of the Istanbul Convention.

As of April 2020, 34,000 people have been prosecuted for domestic violence since the beginning of the year, investigators have filed more than 470 criminal cases concerning domestic violence and issued more than 11,000 urgent injunctions<sup>9</sup>.

### **Commitment 23 / Bringing the conditions of detention of convicts and detainees in line with international norms and standards for convicts in the military detention facilities at the Central Agency of the Military Law Enforcement Service**

- Article 14 of the Association Agreement

The commitment involves issuing an order of the Ministry of Defence to amend the Instruction on the Procedure and Conditions of Detention of Convicted, Taken into Custody and Detained Servicemen and re-equipping the facilities where convicts and detainees are kept in accordance with international requirements and standards. In the Action Plan for the implementation of the AA, this commitment is associated with Article 14 of the AA “The Rule of Law and Respect for Human Rights and Fundamental Freedoms”, which is very general. The reports of the Ministry of Defence do not specify the requirements and standards in question.

In January 2017, Order No 56 of the Ministry of Defence of Ukraine as of January 27, 2017 (On Amendments to Order No 656 of the Ministry of Defence of Ukraine as of September 26, 2013, registered with the Ministry of Justice on 07.03.2017, No 314/30182), approved the Instruction on the Procedure and Conditions of Detention of Convicted, Taken into Custody and Detained Servicemen<sup>10</sup>.

According to the report for Q4 of 2019, the premises of 7 military detention facilities were renovated in accordance with international standards, and in three more works were underway<sup>11</sup>. Formally, the transposition is “perfect”, whereas the implementation is “early”, but a full-fledged assessment of the commitment requires a list of specific standards in accordance with which the re-equipment of the military detention facilities is carried out.

### **Commitment 24 / Improving mechanisms to combat torture and ill-treatment**

- Article 14 of the Association Agreement

This commitment aims to bring the definition of “torture” into line with international standards and to develop preventive and compensatory measures to combat torture and ill-treatment. In the Action Plan for the implementation of the AA, it is linked to Article 14 “The Rule of Law and Respect for Human Rights and Fundamental Freedoms.” A framework document for this provision is the European Convention on Human Rights.

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8) <https://zakon.rada.gov.ua/laws/show/2229-19>

9) <https://vartal.com.ua/sumna-statystyka-z-pochatku-roku-politsejski-prytyagnuly-do-vidpovidalnosti-34-tys-osib-za-domashnye-nasyistvo/>

10) <https://zakon.rada.gov.ua/laws/show/z0314-17>

11) [http://www.mil.gov.ua/content/dmos/4\\_2019.pdf](http://www.mil.gov.ua/content/dmos/4_2019.pdf)

The definition of "torture" in the Criminal Code of Ukraine has not changed since 2009<sup>12</sup>. According to the Pulse of the Agreement, relevant draft laws and regulatory legal acts have been developed and endorsed by EU experts, but the texts of the draft laws are not available yet<sup>13</sup>.

Creation of practical mechanisms is imbedded in the task of developing preventive and compensatory measures to combat torture and ill-treatment, which involved elaborating appropriate regulations and implementing relevant practices. According to the Pulse of the Agreement, relevant draft laws and regulatory legal acts have been developed and endorsed by EU experts, but the texts of the draft laws are not available yet.

Under Instruction No 2475/01/37-2020 of the National Police dated 26.02.2020 a working group was set up to prepare terms of reference for the development of the "Custody Records" subsystem within the system of the Information Portal of the National Police of Ukraine, which will include information about detainees in all police departments.

There is a draft order of the Ministry of Internal Affairs "On Approval of the Instructions on the Formation of the Information Subsystem 'Temporary Detention Facilities Custody Records'". There is no data on compliance with EU acquis, but relevant experts express a positive opinion of the innovation, which indicates that the innovation is consistent with the principles of the European Convention on Human Rights<sup>14</sup>. Since 2017, a system of recording and monitoring actions concerning detainees (Custody Records) has been introduced in the temporary detention facilities of the National Police<sup>15</sup>.

As of February 2020, the system was in test mode connected in 130 temporary detention facilities in 24 oblasts and the city of Kyiv. At the same time, the functioning of the system requires adoption of a number of regulatory legal acts aimed, inter alia, at protecting personal data and regulating access to them<sup>16</sup>. The implementation can be described as "early".

### **Commitment 25 / Creating a new model of state ethnopolitics**

- EU Council Directive 2000/43 and EU Council Directive No 2000/78/EC
- European Charter for Regional or Minority Languages
- Council of Europe Framework Convention for the Protection of National Minorities
- International Convention on the Elimination of All Forms of Racial Discrimination

The commitment involves harmonisation of the state policies concerning national minorities and indigenous peoples with the EU framework documents – EU Council Directive 2000/43, the European Charter for Regional or Minority Languages, the Council of Europe Framework Convention for the Protection of National Minorities,

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12) <https://zakon.rada.gov.ua/laws/show/2341-14>

13) <https://pulse.eu-ua.org/ua/streams/human-rights-justice-and-anticorruption/2018-substream1-68>

14) <https://ecpl.com.ua/news/custody-records-systema-scho-zapobihatyme-porushennyu-prav-lyudyny-v-izolyatorah-tymchasovoho-trymannya/>

15) <https://dduvs.in.ua/2019/06/13/custody-records/>

16) <http://ecpl.com.ua/wp-content/uploads/2019/02/107-REKOMENDATSIY.pdf>

the International Convention on the Elimination of All Forms of Racial Discrimination. In 2014-2015, a number of tasks under this commitment were performed as part of the Visa Liberalization Action Plan (VLAP).

In terms of drafting legislation that would outline the framework of the state ethnopolitics in accordance with Ukraine's international obligations, progress is almost non-existent. Of the 5 regulatory legal acts listed in the Action Plan for the implementation of the AA, only the draft law "On the Status of the Crimean Tatar People" was developed. A draft law with this name was registered on the VRU website in 2019<sup>17</sup> but later it was withdrawn.

Measures within the framework of the VLAP included the establishment of an Interagency Working Group on the Implementation of the Action Plan for the Implementation of the Strategy for Protection and Integration of the Roma National Minority into Ukrainian Society until 2020, the establishment of the Crimean House State Enterprise and submitting reports to the UN and Council of Europe on the fulfilment of Ukraine's international obligations<sup>18</sup>.

The sixth final report of the European Commission confirmed the fulfilment of the VLAP by Ukraine. Law of Ukraine No 454 "On the Establishment of the State Enterprise 'Crimean House'"<sup>19</sup> was adopted in 2014, CMU Resolution No 993 "On the Establishment of an Interagency Working Group on the Implementation of the Action Plan for the Implementation of the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society until 2020"<sup>20</sup> was approved in November 2015.

The interagency working group was established, as well as 5 sectoral subgroups<sup>21</sup>. Nevertheless, its work did not result in the full implementation of the Strategy. As of 2020, experts pointed to the following problems of the Roma minority<sup>22</sup>:

- the need to pay more attention to combating all forms of ethnicity-based discrimination, racism, violence and attacks;
- the problem of access of minors and youth from the Roma national minority to comprehensive secondary, vocational and especially higher education, and access of adults to the system of overcoming illiteracy;
- in view of decentralisation, it is complicated to tackle issues of housing and living conditions, ensure the proper functioning of the housing infrastructure in areas of compact settlement of persons from the Roma national minority, as well as the issue of documents for housing and land;
- as of May 2020, especially in view of the consequences of the COVID-19 pandemic, the level of employment is low, which entails a decrease in the level of family incomes and an increase of social tensions;

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17) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=66511](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66511)

18) 22-23 the Joint Report of Ukraine on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination,

The third national report on Ukraine's policy on the implementation of the provisions of the European Charter for Regional or Minority Languages,

The fourth report of Ukraine on the implementation of the Council of Europe Framework Convention for the Protection of National Minorities

19) <https://zakon.rada.gov.ua/laws/show/454-2014-%D1%80>

20) <https://www.kmu.gov.ua/npas/248677547>

21) <https://www.coe.int/uk/web/kyiv/-/discussion-of-the-future-roma-strategy-in-ukraine>

22) <https://www.coe.int/uk/web/kyiv/-/discussion-of-the-future-roma-strategy-in-ukraine>

- the level of access of members of the Roma national minority to medical services is insufficient, in particular due to poverty;
- there is a need to resolve issues related to confirmation of citizenship, registration of identity documents, and registration of residence.

The Crimean House SE has existed and operated since 2015, however its website has not been updated since February 2019.

### **Commitment 26 / Decriminalization of deliberate transmission of HIV and other infectious diseases**

- Convention for the Protection of Human Rights and Fundamental Freedoms

The commitment involves amending the articles of the Criminal Code related to HIV infection. Human rights activists point to two discriminatory aspects in the current legislation. First, the separate mention of HIV in the Criminal Code leads to the stigmatization of HIV-positive people; and second, the wording "deliberately putting another person at risk" is not clear enough.

The action plan for the implementation of the AA provides for the development of a draft law that would replace the term "infection with human immunodeficiency virus or other incurable infectious disease" with "infection with a pathogen of a particularly dangerous infectious disease." At the same time, in 2018, the Ministry of Health published a draft law<sup>23</sup> that would replace Art. 130 of the Criminal Code with "deliberate transmission of an incurable infectious disease."

Both versions are not clear enough and need refinement and additional consultation with experts.

Due to the lack of a regulatory framework, the practical implementation of these provisions has not started.

### **Commitment 27 / Consolidation of guarantees of freedom of peaceful assembly**

- Convention for the Protection of Human Rights and Fundamental Freedoms
- Recommendations of the Venice Commission

The commitment involves development and adoption of a draft law aimed at eliminating excessive restrictions, filling gaps and harmonising legislation on peaceful assembly, and complies with EU acquis, in particular, the practice of the European Court of Human Rights (in the case of *Veryentsov v. Ukraine*). As of May 2020, there is no separate legislative act in Ukraine that would regulate peaceful assembly. The area is regulated by Article 39 of the Constitution and certain statutory provisions. In particular, the area was regulated by the Decree of the Presidium of the Supreme Soviet of the USSR of July 28, 1988 "On the Organisation and Conduct of Meetings, Rallies, Street Marches and Demonstrations in the USSR", which, however, was declared unconstitutional in 2016<sup>24</sup>. The uncertainty leads both to potential violations of citizens' rights and to the state's inability to effectively regulate this area.

23) <https://moz.gov.ua/article/public-discussions-archive/proekt-zakonu-ukraini-pro-vnesennja-zmin-do-dejakih-zakonodavchih-aktiv-ukraini-u-sferi-protidii-poshireniju-hvorob-zumovlenih-vij>

24) <https://zakon.rada.gov.ua/laws/show/v9306400-88>

In 2015, two draft laws were registered with the Rada entitled "On Guarantees of Freedom of Peaceful Assembly" (registration number 3587<sup>25</sup> and 3587-1<sup>26</sup>). In 2019, both draft laws were withdrawn.

The experts of the Council of Europe gave their opinion on the regulation of this area<sup>27</sup>. The key recommendations include the following:

- the need for legislative regulation of the area, in particular, in accordance with the judgement of the European Court of Human Rights in the case of *Veryentsov v. Ukraine*;
- the need for a clear definition of the concept of "assembly";
- clear definition of the conditions of the prior notification about the intention to hold an assembly;
- definition of the concept of "spontaneous assembly" and corresponding amendments to the rules on prior notification;
- clear definition of the conditions under which the right to peaceful assembly may be restricted.

In practice, the area remains unregulated. At the same time, certain norms and practices are being introduced that are potentially in line with the EU framework documents. For example, Order No 706 of the Ministry of Internal Affairs of August 23, 2018, approved the Concept of Introduction in the Activities of Bodies and Units of the National Police of Ukraine of the Scandinavian Model for Public Safety and Order during Mass Events. Also, by October 1, 2018, the Ministry of Internal Affairs had to develop an action plan for the implementation of the Concept. However, none of these documents is publicly available. The compliance of these regulatory legal acts with EU standards has to be assessed separately.

## **Commitment 28 / Abiding by the commitments concerning human rights and proper administration in the context of the conflict with the Russian Federation**

This commitment brings together a series of problematic issues arising from the conflict with the Russian Federation and ways to resolve them within the framework of international framework documents and EU legislation. It provides for measures aimed at ensuring the rights of illegally detained persons in the occupied territories and in Russia, the rights of residents of the occupied territories, the rights of internally displaced persons, and participants in the anti-terrorist operation (combatants).

- **Task block 28.1 / Status of illegally detained persons in Russia and the occupied territories**

In Ukrainian law, there have been no systematic attempts to establish a single list of illegally detained persons with clear criteria. Attempts to legislate focused on social protection issues – specifically the draft law "On the Legal Status and Social Guarantees of Persons Illegally Deprived of Liberty, Hostages, or Convicts in the Temporarily Occupied Territories of Ukraine and Abroad" (No 0936 of 29.08.2019,

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25) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=57310](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57310)

26) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=57396](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57396)

27) [http://www.ucipr.org.ua/publicdocs/VC\\_PA\\_R.pdf](http://www.ucipr.org.ua/publicdocs/VC_PA_R.pdf)



withdrawn)<sup>28</sup> and Resolution No 328 of the Cabinet of Ministers of April 18, 2018, "On Approval of the Procedure for the Use of the Means Provided in the State Budget to Implement Measures for Protection and Ensuring of the Rights and Freedoms of Persons who are Deprived (were Deprived) of Personal Freedom by Illegal Armed Formations, Occupation Administration and / or Authorities of the Russian Federation for Political Reasons, and also in Connection with Public, Political or Professional Activity of such Persons, Support of the above Persons and Members of their Families, Measures to Reintegrate the Population of the Temporarily Occupied Territories, Payment of Levko Lukyanenko State Grants"<sup>29</sup>, which regulated payments to the families of political prisoners. In 2019, experts criticised the legal framework for the lack of clear criteria for determining the status of Ukrainian political prisoners in Russia and the occupied territories<sup>30</sup>.

In practice, information on Ukrainian prisoners in Russia is collected both through official channels and through social and media initiatives, but none of these channels is regulated and none provides information that is recognised as official and comprehensive.

- **Task block 28.2 / Unified information database on internally displaced persons and voting rights**

The Resolution of the Cabinet of Ministers "On Approval of the Procedure for Creation, Maintenance and Access to the Information Contained in the Unified Information Database on Internally Displaced Persons" was adopted in 2016 in accordance with Art. 4 of the Law "On Ensuring the Rights and Freedoms of Internally Displaced Persons"<sup>31</sup>. The resolution regulates the conditions for creating, maintaining and accessing information contained in the Unified Information Database on IDPs.

The new Electoral Code adopted in December 2019<sup>32</sup> provides an opportunity for IDPs to vote in local elections in their new place of residence.

In practice, the UID operates mainly to oversee social benefits. When the database was launched in late 2016, it was widely criticised. Subsequently, complaints were less common, but in 2018 the database was incomplete, in particular, no proper data protection system was developed<sup>33</sup>. To assess the current functioning of the UID, independent monitoring and evaluation is required.

The first elections under the new rules are to take place in autumn 2020, until then it is not possible to assess the quality of implementation of the legislation.

- **Task block 28.3 / Access to basic administrative procedures for persons living in the temporarily occupied territories**

The Law of Ukraine No 2268-VIII "On the Specifics of the State Policy to Ensure the National Sovereignty of Ukraine in the Temporarily Occupied Territories in the Donetsk and Luhansk Regions" of January 18, 2018, provides for an administrative procedure for establishing the facts of birth and death in the TOT, which was to be introduced within a month after the adoption of the Law. The Cabinet of Ministers

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28) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=66567](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66567)

29) <https://zakon.rada.gov.ua/laws/show/328-2018-%D0%BF>

30) <https://www.pravda.com.ua/columns/2019/09/6/7225423/>

31) <https://zakon.rada.gov.ua/laws/show/646-2016-%D0%BF>

32) <https://zakon.rada.gov.ua/laws/show/396-20>

33) <http://www.golos.com.ua/article/310237>

of Ukraine was given one month from the date of entry into force of Law No 2268-VIII (February 24, 2018) to develop such a procedure and bring its regulations in line with this law. Also, this law provides for concessions with regard to the payment of court fees when applying to the court to establish the facts of birth or death in the TOT, based on which Art. 5 of the Law of Ukraine "On Court Fees" amended paragraph 21 that provides for exemption from court fees in cases when people apply to establish the facts of birth or death that occurred in the TOT.

In 2019, the Cabinet of Ministers announced a simplified procedure of recognition of such facts (i.e. introduction of the procedure envisaged by law No 2268-VIII)<sup>34</sup>, however, human rights activists believe that in practice the simplification does not radically change the situation, as it is not simpler than the judicial procedure<sup>35</sup>. With regard to the judicial procedure, in practice, courts interpret paragraph 21 of Art. 5 of the Law "On Court Fees" in different ways and demand to pay it, which also restricts access to basic administrative services<sup>36</sup>.

- **Task block 28.4 / Measures concerning adaptation of participants of anti-terrorist operation to civilian life**

"State Target Programme for Physical, Medical, Psychological Rehabilitation, and Social and Professional Re-Adaptation of Participants of the Anti-Terrorist Operation and Persons who Participated in Measures to Ensure National Security and Defence, Repel and Deter Armed Aggression of the Russian Federation in the Donetsk and Luhansk Regions, Ensuring Their Implementation, for the Period up to 2022" was approved by the Cabinet of Ministers in December 2018<sup>37</sup>. The program provides for "introduction of new models of organisation and management of rehabilitation and social services and rehabilitation services, application of new methods for assessing the quality of rehabilitation and rehabilitation results, development and implementation of a unified system of administration of participants' needs."

There is no systematic data on the implementation of the provisions of the Programme. Measures for psychological, medical rehabilitation, and re-adaptation in Ukraine are held at the central and local levels<sup>38</sup>, however, it is difficult to assess the degree of their effectiveness. A separate study is required for such assessment.

## **Commitment 29 / Implementation of the National Human Rights Strategy and Action Plan for the implementation of the National Human Rights Strategy until 2020**

- National Human Rights Strategy and the action plan for its implementation

The commitment involves implementation of several hundred tasks of the National Human Rights Strategy and the action plan for its implementation, which were created jointly by the government, NGOs and international organisations. Their implementation is to contribute to the fulfilment by Ukraine of its international human rights commitments and, thus, to harmonisation with EU law.

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34) <https://www.kmu.gov.ua/news/kabmin-sproshchuye-reyestraciyu-faktiv-narodzheniya-ta-smerti-na-timchasovo-okupovanih-teritoriyah>

35) <https://helsinki.org.ua/articles/uhspl-proanalizuvala-uridove-sproshchennia-reiestratsii-faktiv-narodzheniya-ta-smerti-na-tymchasovo-okupovanykh-terytoriiakh/>

36) [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/donbassos\\_digest\\_on\\_registration\\_of\\_births\\_and\\_deaths\\_in\\_ngca\\_october\\_2018\\_ukr.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/donbassos_digest_on_registration_of_births_and_deaths_in_ngca_october_2018_ukr.pdf)

37) <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-derzhavnoyi-cilovoyi-programi-z-fizichnoyi-medichnoyi-psihologichnoyi-reabilitaciyi-i-socialnoyi-ta-profesijnovy-readapta>

38) <https://www.msp.gov.ua/news/18211.html>

The National Strategy in the field of human rights was adopted by a presidential decree in 2015<sup>39</sup>, obliging the Cabinet of Ministers to develop an appropriate action plan. The action plan was adopted the same year.

According to the Ministry of Justice, as of Q1 2020, 331 of the 604 tasks under the Strategy Action Plan have been completed, 205 are in progress, 24 have lost their relevance, 11 have not been implemented, and with regard to the other 33 no information was provided<sup>40</sup>. At the same time, the Ukrainian Helsinki Human Rights Union assesses the degree of implementation of the Strategy at only 33%<sup>41</sup>.

It should be noted that a significant number of the principles of the Strategy overlaps with the above commitments under the Rule of Law subsector, such as combating torture and ill-treatment, the right to freedom of peaceful assembly, participation in public affairs and elections, preventing and combating discrimination, the rights of men and women, combating gender-based violence, domestic violence and human trafficking, ensuring the rights of indigenous peoples and national minorities, the rights of IDPs and anti-terrorist operation participants, the rights of Kremlin hostages, etc.

### **Commitment 30 / Bringing the “decommunization” legislation in line with the recommendations of the Venice Commission**

- Joint opinion of the Venice Commission and the OSCE of 2015

The commitment involves making a number of amendments to the Law of Ukraine “On the Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols” in order to bring them in line with the EU principles in the aspects that concern the right to freedom of speech and participation in governance, as specified in the joint opinion of the Venice Commission and the OSCE in 2015<sup>42</sup>.

In their conclusion, the experts recognise the right of Ukraine to ban or even criminalise the use of certain symbols and propaganda of totalitarian regimes, however, they recommended changing the law to minimise risks to the right to freedoms of speech, association and election. In particular:

- establishing a less extensive and exhaustive list of prohibited symbols;
- a clear definition of the term “propaganda”, especially when it is used for the purpose of criminalising conduct;
- the notion of “denial of crimes” should relate to specific crimes and not to the mere “criminal nature” of a regime as a whole;
- sanctions should be applied only to the acts that constitute an actual danger to society (a simple demonstration of symbols should not lead to imprisonment);
- banning of associations (such as political parties) should be a measure of last resort.

No amendments have been approved. Practical implementation has not started due to lack of regulatory support.

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39) <https://zakon.rada.gov.ua/laws/show/501/2015#Text>

40) [https://minjust.gov.ua/cat\\_497/section\\_548](https://minjust.gov.ua/cat_497/section_548)

41) <http://hro.org.ua/index.php?id=1575376888%20>

42) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)041-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)041-e)

## PROTECTION OF PERSONAL DATA

### Overview of key Eurointegration commitments

Article 15 of the Agreement provides for cooperation "in order to ensure an adequate level of protection of personal data in accordance with the highest European and international standards." In 2017, the commitment to harmonise legislation with Regulation No 2016/679 (GDPR) was added to the Action Plan for the implementation of the AA.

### Evaluation of progress in fulfilling commitments

#### Commitment 31 / Harmonisation of legislation on personal data protection

- Article 15 of the Association Agreement
- Regulation No 2016/679 (GDPR)

The commitment involves amendments to the Laws of Ukraine "On Personal Data Protection" and "On Citizens' Appeals" aimed at harmonising the legislation of Ukraine with the GDPR. The key recommendations concerning amendments were specified by Twining experts<sup>43</sup> in order to strengthen the capacity of the institution of the Verkhovna Rada Commissioner for Human Rights.

The key recommendations include:

- clear territorial attribution;
- a clearer mechanism of consent to the processing of personal data;
- a mechanism for revoking consent to the processing of personal data, etc.

In December 2019, government draft law No 2671 was registered on the VRU website<sup>44</sup>, which contains a reference to the GDPR proposing to change the form of consent to the processing of personal data, but this is contrary to the complex nature of the necessary changes. The draft law has been withdrawn.

Practical implementation has not started due to lack of regulatory support.

## COOPERATION ON MIGRATION, ASYLUM AND BORDER MANAGEMENT

### Overview of key Eurointegration commitments

The commitments concerning migration, asylum and border management involve a comprehensive dialogue on all migration issues in close cooperation with EU partners. The key framework document is the State Migration Policy Strategy of Ukraine until 2025. It envisages resolving problematic issues related to illegal migration and combating trafficking in human beings. The tasks in this area are also aimed at establishing a dialogue on asylum, in particular ensuring the rights

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43) <http://www.twining-ombudsman.org/wp-content/uploads/2017/06/Annex-6-Recommendations-on-amendment-of-the-law-of-Ukraine-On-Protection-of-Personal-Data-1.pdf>

44) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67766](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67766)

of asylum seekers and refugees, facilitating their integration. Some tasks concern the issue of labour migration, in particular the protection of rights and reintegration policy.

The tasks within the sector also include further development of the area of border management. The basic priorities include the implementation of framework documents, in particular the Strategy for Integrated Border Management until 2025. The implementation of tasks is aimed at developing cooperation between Ukraine and the EU in the field of the protection of borders from unregulated migration, encouraging reconstruction and construction of new checkpoints, introduction of joint control procedures, and improving the comfort of travellers.

### **Evaluation of progress in fulfilling commitments**

#### **Commitment 32 / Development of infrastructure to provide refugees with decent living conditions**

- Convention relating to the Status of Refugees of 1957
- Protocol relating to the Status of Refugees of 1967
- EU and Council of Europe resolutions and recommendations in this area

The commitment involves solving the problems of refugees, asylum seekers and implementation of the tasks of the relevant state policy, which should be based on modern international standards and focus on the observance of fundamental human rights. At this stage of the assessment of the commitment fulfilment, the focus is on ensuring appropriate conditions for the accommodation of refugees and persons in need of subsidiary protection.

The legislative framework in the field of asylum and refugee policy is set by the Law of Ukraine "On Refugees and Persons in Need of Subsidiary or Temporary Protection".

The law is broadly in line with the provisions of the 1957 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, as well as EU and Council of Europe resolutions and recommendations in this area.

The Cabinet of Ministers of Ukraine adopted Order No 987-p "On the Establishment of State Institutions" of December 27, 2017. The State Migration Service issued Order No 98 of June 20, 2018, establishing the state institution Centre for Social Integration of Refugees and Persons in Need of Subsidiary or Temporary Protection, the SMS in Odesa, which has received the status of a legal entity in the manner prescribed by law.

At this stage, the responsible authorities focus on ensuring protection of the rights of refugee children who do not live with their families. They intend to establish a centre for the reception and accommodation of refugee children, children recognised as persons in need of subsidiary protection, and children separated from their families who have applied for refugee status or a person in need of subsidiary protection in the facilities of the temporary refugee accommodation centre in the city of Yahotyn, Kyiv region. However, the tasks have to be further fulfilled and intensified. On the one hand, the decision was made to arrange special facilities in temporary refugee shelters (TRS), and on the other hand, the arrangement of such facilities is stalling due to lack of funding for the needs related to this category of children.

To address the problems of refugees, centres for social integration of refugees and persons in need of subsidiary protection are also created in the cities of Kyiv, Kharkiv, and Odesa. The State Migration Service has developed a draft order of the Cabinet of Ministers in order to obtain permission from the Government of Ukraine to establish such state institutions in Kyiv, Kharkiv and Odesa.

The TRS in Yahotyn works, but no Centre for the Reception and Accommodation of Refugee Children in Need of Subsidiary Protection has been established. No Centres for Social Integration have been established in Kharkiv and Kyiv either.

### **Commitment 33 / Ensuring proper conditions for the detention and accommodation of illegal migrants**

- Convention relating to the Status of Refugees of 1957
- Protocol relating to the Status of Refugees of 1967
- EU and Council of Europe resolutions and recommendations in this area

This commitment includes measures aimed at combating illegal migration, in particular taking the decision to return, voluntarily or forcibly, to forcibly deport, or even to prohibit entry into Ukraine. Illegal migrants are placed in temporary detention centres for foreigners and stateless persons (TDCF). These centres are used to accommodate foreigners detained for identification, forcibly deported, or detained for the period of consideration of their application for recognition of refugee status or that of a person in need of subsidiary protection.

The commitment does not provide for legal approximation.

Implementation is "early". In accordance with the Action Plan for the Implementation of the Association Agreement with the EU, Ukraine overhauled the fire extinguishing system in the TDCF in the village of Zhuravychi, Kivertsy district, Volyn region, and completed the renovation of the first complex in the village of Rozsudiv, Ripky district, Chernihiv region. At the same time, construction and furnishing of a TDCF in the Mykolayiv region has been completed. The SMS has completed the construction of external engineering networks, and starting in May 2018, the TDCF has been accommodating foreigners.

The action plan also provided for the construction of a TDCF in the Donetsk region, but it had to be suspended because it is located in the temporarily occupied territory of the Donetsk region.

In addition, during the monitoring visit of the Verkhovna Rada Commissioner for Human Rights in 2019, other inadequate conditions of detention of foreigners were revealed – lack of access to procedures for seeking protection and lack of translators, in particular, there is only one full-time translator in the Mykolayiv TDCF, who speaks only English<sup>45</sup>.

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45) <http://www.ombudsman.gov.ua/ua/all-news/pr/rezultati-pozaplanovogo-povtorного-mon%D1%96toringovogo-v%D1%96zitu-de-mikola%D1%97vskogo-ptp%D1%25-96-derzhavno%D1%25-97-m%D1%25-96gracz%D1%25-96jno%D1%25-97-sluzhbi-ukra%D1%25-97ni>

### **Commitment 34 / Concluding readmission agreements with the key countries of origin (transit) of illegal migrants**

- Convention relating to the Status of Refugees of 1957
- Protocol relating to the Status of Refugees of 1967
- EU and Council of Europe resolutions and recommendations in this area

Readmission measures are aimed at returning illegal migrants to their countries of origin based on respect for human rights and the migration security of the states implementing readmission policies. Ukraine is interested in signing readmission agreements with the countries of origin of illegal migrants. At the same time, the state must fulfil the relevant readmission obligations in relation to foreign countries if it is an illegal migration origin and / or transit country.

The regulatory approximation is "advanced." Of the non-EU countries, Ukraine has concluded readmission agreements with Moldova, Belarus, Russia, Uzbekistan, Turkmenistan, Georgia, Turkey, and Vietnam. The readmission dialogue continues at various stages with Serbia, Kazakhstan, Armenia, Lebanon, Tajikistan, Azerbaijan, Afghanistan, China, Iran, India, Sri Lanka, Bangladesh, Iraq, Libya, Nigeria and Pakistan.

Practical implementation is, however, "early". At the same time, in fact, readmission from Ukraine does not work. Thus, in 2018, Ukraine sent 11 requests for readmission, 2 people were readmitted; in 2019, Ukraine sent 64 requests for readmission, but 0 people were readmitted; in Q1 2020, 2 readmission requests were sent, 0 people were readmitted<sup>46</sup>. This allows us to assess transposition as "advanced", and the implementation as "early".

### **Commitment 35 / Signing implementation protocols for the Ukraine-EU Agreement on readmission of persons with all EU Member States**

- Convention relating to the Status of Refugees of 1957
- Protocol relating to the Status of Refugees of 1967
- EU and Council of Europe resolutions and recommendations in this area

Ukraine has a system of readmission agreements with both the European Union and other countries. By concluding such agreements Ukraine seeks to create a single readmission space around itself, where the state is responsible for migrants originating from it, while migrants from third countries returned to Ukraine through readmission must be returned further – to the country of origin or to the country from which they got to the territory of Ukraine. The readmission agreement with the EU has been in force since 2008 and the experience of its implementation proves that the claims about the threat of a mass influx of foreign migrants as a result of fulfilling the commitments under this agreement are ungrounded. However, for the full implementation of the Readmission Agreement with the EU, and other agreements of this type, it is necessary to conclude implementation protocols that would specify the algorithm for implementing the provisions of readmission agreements.

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46) Source: SMS statistical reports – [https://dmsu.gov.ua/assets/files/statistic/year/2019\\_12.pdf](https://dmsu.gov.ua/assets/files/statistic/year/2019_12.pdf), [https://dmsu.gov.ua/assets/files/statistic/year/2020\\_3.pdf](https://dmsu.gov.ua/assets/files/statistic/year/2020_3.pdf), [https://dmsu.gov.ua/assets/files/statistic/year/2018\\_12.pdf](https://dmsu.gov.ua/assets/files/statistic/year/2018_12.pdf)

The commitment does not provide for legal approximation.

Implementation is "advanced". Implementation protocols are being concluded with EU member states to implement the Agreement between Ukraine and the EU on the Readmission of Persons. As of January 4, 2019, the Implementation Protocols to the Agreement between Ukraine and the EU on the Readmission of Persons between the Cabinet of Ministers of Ukraine and the Governments of four EU countries: Austria, the Czech Republic, Estonia and Poland have entered into force. A readmission dialogue on the signing of the Implementation Protocols is under way with sixteen EU countries. The draft Implementation Protocols to the Agreement with the EU, proposed by the Ukrainian party, are undergoing examination by the competent authorities of fourteen countries: France, Germany, Portugal, Cyprus, Hungary, Romania, Malta, Latvia, Greece, Slovenia, Croatia, Sweden, Spain, and Italy. The Ukrainian party is examining draft Implementation Protocols received from two countries: Slovakia and Bulgaria. At the same time, no readmission dialogue is conducted with the United Kingdom, as it has initiated the BREXIT procedure; Denmark and Ireland, as, based on the content of Article 1 of the Readmission Agreement between Ukraine and the EU, separate agreements must be concluded with these countries (a readmission agreement has been concluded with Denmark, which entered into force on 01.03.2009); Finland informed that it is not interested in signing the Implementation Protocol given the high efficiency of the implementation of the basic Agreement by the Ukrainian party. The Ukrainian party has completed preparations for the signing of the Implementation Protocols with the Benelux countries (Belgium, Luxembourg, the Netherlands) and Lithuania.

The draft implementation protocols to the Agreement with the EU, proposed by the Ukrainian party, are being examined by the competent authorities of fourteen countries: France, Germany, Portugal, Cyprus, Hungary, Romania, Malta, Latvia, Greece, Slovenia, Croatia, Sweden, Spain and Italy. On September 28, 2018, the regular Eleventh Meeting of the Ukraine-EU Joint Committee on Readmission was held in Brussels in accordance with Article 15 of the Agreement between Ukraine and the EU on the Readmission of Persons. Following the meeting, both parties noted that the level of implementation of the Agreement by the Ukrainian party remains high.

### **Commitment 36 / Organisation of joint operational protection of the state border and exchange of information at contact points with EU Member States**

This commitment concerns international cooperation between Ukraine and the State Border Guard Service in the field of border protection and management. The cooperation can be described as broad, approaching practical aspects and tasks, such as consultation points, joint border monitoring, exchange of information on risks, as well as joint control at checkpoints. Consultation points proved to be an important form of interaction and cooperation between the border services of the neighbouring countries.

The legislative approximation is "advanced". In this regard, an action plan for the organisation of joint operational protection of the state border with the EU Member States such as the Republic of Poland, the Slovak Republic, Romania and Hungary, as well as with the Republic of Moldova has been developed and approved. Measures to organise joint protection are included in the Action Plan for 2020-2022 to implement the Integrated Border Management Strategy until 2025, which provides for improving



joint patrolling with the neighbouring countries and expanding the geography of joint operations.

Agreements were concluded between the Cabinet of Ministers of Ukraine and the Governments of the Slovak Republic, Romania and Hungary on cooperation to control persons, goods and vehicles crossing the common state border of Ukraine with these states. An agreement has been signed between the Cabinet of Ministers of Ukraine and the Government of Romania on joint patrolling of the Ukrainian-Romanian state border. Agreements between the Cabinet of Ministers of Ukraine and the Governments of Romania and the Slovak Republic on joint patrolling of the Ukrainian-Slovak state border and the Ukrainian-Romanian state border are being implemented. A common procedure for inspection of the state border is one of the tasks under the 2020-2022 Action Plan to implement the Integrated Border Management Strategy until 2025.

Implementation is "advanced". Statistical and analytical information is exchanged in accordance with the Protocol between the State Border Guard Service Administration and the Border Police Department of the Ministry of Internal Affairs of Moldova on the Exchange of Statistical and Analytical Information. The exchange of statistical and analytical information between the State Border Guard Service of Ukraine and the Border Police of the Ministry of Internal Affairs of Moldova is carried out on a regular basis and in accordance with the existing common checkpoints.

### **Commitment 37 / Extending the practice of joint control at Ukraine's borders, involving EU Member States**

Currently, Ukraine has agreements on joint control with Poland and Moldova, which provide for cooperation in the area of the control of persons, goods and vehicles crossing the common state border of Ukraine with the neighbouring party. The tool of joint control enhances security, facilitates and speeds up border crossing procedures.

Despite the obvious advantages of "joint control", there are no joint control agreements with Hungary, Slovakia and Romania, but negotiations are ongoing. The draft agreement with Slovakia has been submitted to the European Commission for examination. On examining the Hungarian agreement, the European Commission commented that some points did not comply with the Schengen Borders Code. At the end of 2018, Romania also agreed to consider introducing joint controls, provided that the infrastructure of checkpoints is properly developed. Due to the slowness of the negotiation process and lack of progress, transposition and implementation can be described as "early".

In practice, joint control is performed only at 4 checkpoints on the border with Poland in accordance with the old 2002 Agreement.

### **Commitment 38 / Transition to new standards of identity documents**

The commitment involves adoption of a legal framework and creation of infrastructure to introduce an effective system for issuing biometric identity documents, including internal passports and passports for travel abroad, residence permits, refugee certificates, etc.

The legislative approximation is "perfect". Laws and regulatory legal acts aimed at forming a new system of identification documents have been adopted. There were no significant inconsistencies with EU legislation.

Specifically, these include the Decree of the Cabinet of Ministers "On Approval of the Action Plan for Introduction of Documents Confirming the Citizenship Of Ukraine, Person's Identity or Special Status, Containing Contactless Electronic Media, and for Creation of a National System of Biometric Verification and Identification of Citizens of Ukraine, Foreigners and Stateless Persons for 2014-2017", CMU Decree "On Approval of the Concept of Creation of the National System of Identification of Citizens of Ukraine, Foreigners and Stateless Persons"<sup>47</sup>, Law "On Amendments to Certain Legislative Acts of Ukraine Concerning Documents Proving the Citizenship of Ukraine, Person's Identity or Special Status, Aimed at EU-Ukraine Visa Liberalisation"<sup>48</sup>, Law "On the Unified State Demographic Register and Documents Confirming the Citizenship of Ukraine, Person's Identity or Special Status"<sup>49</sup>, CMU Resolution "On Approval of the Sample Form, Specification and Procedure for Registration, Issuance, Exchange, Sending, Seizure, Return to the State, Invalidation and Destruction of a Passport of a Citizen of Ukraine"<sup>50</sup>.

The system is functioning effectively, as of June 2020, 15 million citizens of Ukraine received biometric passports to travel abroad<sup>51</sup>.

At the same time, there are problems with the functioning of ID cards, including the inability to make changes to the chip after issuing the card, lack of readers in government institutions, the need to carry around a certificate of residence, which restricts access to basic administrative services and is at odds with the European practice.

### **Commitment 39 / Creation of a single information and analytical system for managing migration processes**

This commitment implies establishing a single information and analytical system for managing migration processes. To put into operation the automated information Refugees system as a subsystem of the single information and analytical system for managing migration processes, a network is created, ensuring the exchange of information between the SMS and its territorial bodies and units. The development of a unified information and analytical system for managing migration processes is underway, and this system has already been partially put into operation.

Due to the availability of the relevant regulatory framework, the transposition can be described as "advanced". Laws of Ukraine "On the Unified State Demographic Register and Documents Confirming the Citizenship of Ukraine, Person's Identity or Special Status", "On Personal Data Protection", "On Protection of Information in Information and Telecommunication Systems", "On Electronic Digital Signature".

The implementation of the tasks is at the "advanced" level. In 2019, the UIAS for Managing Migration Processes was put into operation. At the same time, the functioning of the system requires constant improvement of new subsystems. Currently, the UIAS does not cover all migration processes. For example, the development of the module of "Records of Persons who Acquired or Terminated the Citizenship of Ukraine" and the modernisation of the subsystem of lost and stolen documents are underway<sup>52</sup>.

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47) <https://zakon.rada.gov.ua/laws/show/1428-2015-%D1%80>

48) <https://zakon.rada.gov.ua/laws/show/2145-19>

49) <https://zakon.rada.gov.ua/laws/show/4651-17>

50) <https://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF>

51) <https://dmsu.gov.ua/news/dms/7368.html>

52) [https://dmsu.gov.ua/assets/files/doc/zvit\\_planDMS2019.pdf](https://dmsu.gov.ua/assets/files/doc/zvit_planDMS2019.pdf)

## **Commitment 40 / Creation and implementation of the State Migration Policy Strategy of Ukraine for the period till 2025**

The State Migration Policy Strategy of Ukraine for the period till 2025 is based on the principles of the state migration policy implementation such as the rule of law and protection of human rights. An important requirement is the compatibility of migration policies with other areas of state activity and coordination and cooperation at the state, regional and local levels. The State Migration Policy Strategy of Ukraine is the latest progressive document which creates preconditions for solving the current migration problems that Ukraine faces.

The approximation of legislation in this area is "advanced", as the State Migration Policy Strategy of Ukraine for the period till 2025 was approved in 2017.

The level of its implementation is "early", as a significant number of the activities under the Strategy have been postponed to the period after 2022. At the same time, annual action plans are to be developed and approved for the implementation of the Strategy, ensuring proper funding of the activities provided for in the Strategy and action plans, as well as implementation of the measures provided for in the Strategy Implementation Plans.

## **MOVEMENT OF PERSONS**

Overview of key Eurointegration commitments

An essentially important impetus for the implementation of reforms in the field of migration management, public order and security, as well as fundamental human rights was the provision by the European Union of the Visa Liberalisation Action Plan (VLAP, November 2010), which created preconditions for abolishing visa requirements to the Schengen countries. After the introduction of a visa-free travel to the EU in 2017, there is a need to continue to implement the measures provided for in the VLAP. Some of the tasks are currently contained in the Association Agreement with the EU and the New Agenda in the field of Justice, Freedom and Security, which requires the EU's endorsement. This aspect of the commitment also includes compliance with the conditions of EU visa liberalisation, in particular the criteria for the suspension mechanism in the framework of post-liberalisation monitoring.

Evaluation of progress in fulfilling commitments

## **Commitment 41 / Sustainability of visa-free movement of persons**

- Visa Liberalization Action Plan

The commitment involves full implementation of the tasks under the Visa Liberalisation Action Plan, continuation of the fulfilment of the VLAP tasks through formalisation of the processes related to the New Agenda between Ukraine and the EU in the field of justice, freedom and security and compliance with criteria for the suspension mechanism in post-liberalisation monitoring.

The legislative approximation under this commitment is "advanced". The Final Monitoring Report of the European Commission<sup>53</sup> recognised that the transposition

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53) [https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia_en)

of the standards set forth in the VLAP was successful. At the same time, it is necessary to continue the implementation of the VLAP tasks through the formalisation of the processes related to the New Agenda between Ukraine and the EU in the field of justice, freedom and security.

At the 5th meeting of the EU-Ukraine Association Committee (November 5, 2019, Brussels), the Ukrainian party invited the EU to expand cooperation in the field of justice and agree on a New Agenda with a view to further deepening cooperation in the field of justice, freedom and security and implementation of Title III of the Association Agreement.

It is expected that a timeline for the implementation of the New Agenda would be developed and approved at the governmental level. However, the document has not yet been formally approved and no action plan has been drafted for it.

As regards compliance with the conditions of EU visa liberalisation, in particular the criteria of the suspension mechanism in the framework of post-liberalisation monitoring, the implementation is at the "advanced" stage.

## **COOPERATION IN THE FIGHT AGAINST ILLICIT DRUGS, AND ON PRECURSORS AND PSYCHOTROPIC SUBSTANCES**

### **Overview of key Eurointegration commitments**

The subsector focuses on the issues and mechanisms of cooperation in combating drug trafficking between the relevant bodies of Ukraine and the EU.

Its commitments include Ukraine's accession to the Enlarged Partial Agreement of the Council of Europe on the Establishment of Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (the Pompidou Group) and cooperation with the European Monitoring Centre for Drugs and Drug Addiction.

Fulfilment of the subsector tasks will contribute to the establishment of effective cooperation and reduction of drug crime.

Evaluation of progress in fulfilling commitments

### **Commitment 42 / Ukraine's accession to the Enlarged Partial Agreement of the Council of Europe on the Establishment of the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (the Pompidou Group)**

Fulfilment of the commitment will expand the current scope of cooperation; open additional opportunities for attracting international technical assistance, studying and implementing international experience in the field of combating drug trafficking; give Ukraine the right to participate directly in the work of specialised groups and networks for the prevention of drug trafficking; facilitate the launch and implementation in Ukraine of pilot projects on drug abuse prevention, treatment and rehabilitation of drug addicts, etc.

In order to fulfil this commitment, it is necessary to develop and adopt a relevant draft law. This duty is assigned to the Ministry of Health. In 2018, the draft law was published on the website of the Ministry of Health<sup>54</sup>, however, it was never registered with the VRU.

### **Commitment 43 / Cooperation with the European Monitoring Centre for Drugs and Drug Addiction**

This commitment involves ratification of the Memorandum of Understanding between the Ministry of Health of Ukraine and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), and effective cooperation with the Centre.

In addition, it is necessary to develop a draft concept of national drug monitoring in Ukraine and an action plan for its implementation, based on the standards of the European Monitoring Centre for Drugs and Drug Addiction, and introduce indicators used by the Centre in the drug monitoring system in Ukraine.

The implementation of this commitment is "early". As of 2020, the Memorandum (2010) was concluded with the European Monitoring Centre for Drugs and Drug Addiction<sup>55</sup>, however, as of 2015, it was not ratified (according to the Ministry of Health). Cooperation with the Centre was ineffective for a long time and was repeatedly interrupted<sup>56</sup>. As of 2019, the cooperation took place, in particular, within the framework of the EU4 Monitoring Drugs project<sup>57</sup>. In 2019, the Cabinet of Ministers adopted the resolution "Issues of Monitoring the Drug and Alcohol Situation in Ukraine", which regulates monitoring according to the indicators set by the European Monitoring Centre for Drugs and Drug Addiction.

## **FIGHT AGAINST CRIME AND CORRUPTION, LEGAL COOPERATION**

### **Overview of key Eurointegration commitments**

Within the framework of the EU-Ukraine Association Council, the Ukrainian party developed the New Agenda in the field of justice, freedom and security that contained tasks in the areas under the EU Visa Liberalisation Action Plan completed in 2017 and the ongoing Association Agreement. The new agenda was presented during the EU-Ukraine summit in the summer of 2018.

In December, it was further discussed during the meeting of the EU-Ukraine Association Council. The Association Council agreed to intensify cooperation in the field of justice and internal affairs. Areas of mutual interest include the fight against money laundering and terrorist financing, the fight against organised crime and serious international crimes. Both parties stressed the need for further cooperation in combating cyber and hybrid threats to the security of their citizens. On March 15, 2016, Ukraine adopted the Cybersecurity Strategy to improve cybersecurity. At the same time, in July 2018, the Law "On Basic Principles of Ensuring Cybersecurity of Ukraine" was adopted. In particular, it introduces new important terms into

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54) <https://moz.gov.ua/article/public-discussions-archive/proekt-zakonu-ukraini-pro-priednannja-ukraini-do-rozshirenoi-chastkovoi-ugodi-radi-evropi-pro-stvorennja-grupi-zi-spivrobotnictva-v-borotbi-proti-zlovzhivannja-narkotikami-ta-in-nezakonnogo-obigu-grupa-pompidu>

55) [https://zakon.rada.gov.ua/laws/show/984\\_001-10](https://zakon.rada.gov.ua/laws/show/984_001-10)

56) <https://www.kmu.gov.ua/news/248360806>

57) <https://eu-ua.org/novyny/jevropeyski-fahivci-dopomozhut-ukrayini-borotysya-z-narkotykamy>

Ukrainian legislation, the concept of "critical infrastructure", as well as public-private partnerships. Among its international commitments, Ukraine has ratified the Convention on Cybercrime of the Council of Europe (CETS No 185) – the Budapest Convention. Within the framework of European integration, State Special Communications Service, within its competence, ensures the implementation of the Plan for the Implementation of Certain Acts of EU Legislation in the Field of Telecommunications approved by Order No 360-p of the Cabinet of Ministers of Ukraine dated 15.04.2015 and EU-Ukraine Association Agenda.

## **Evaluation of progress in fulfilling commitments**

### **Commitment 44 / Facilitating the development of a national computer emergency response team (CERT)**

- Convention on Cybercrime of the Council of Europe (CETS No 185)
- The EU Cybersecurity Act

To fulfil the commitment to facilitate the development of a cyberspace crisis response system, it was decided to optimise the State Special Communications Service by bringing its structure and main tasks in line with the requirements of paragraph 5 of Article 8 and Article 9 of the Law of Ukraine "On the Basic Principles of Cybersecurity of Ukraine". Based on the results of this work, the Head of the State Special Communications Service prepared and approved Order No 528 of the State Special Communications Service "On Changing the Name of the State Centre for Cyber Protection and Countering Cyber Threats of the State Service for Special Communications and Information Protection of Ukraine" dated 30.08.2018, whereby the regulation "On the Centre of Cyber Protection of the State Special Communications Service" was approved. In accordance with the main tasks, the Centre's activities include a number of measures to develop the government's computer emergency response team CERT-UA (hereinafter – the CERT-UA Team), in particular: introduction of an organisational and technical model of cybersecurity as part of the national cybersecurity of Ukraine; creation, development and ensuring the functioning of the main components of the system of secure access of state bodies to the Internet; creation, development and ensuring the functioning of the system of anti-virus protection of national electronic information resources; and information security audit and assessment of the cyber protection of critical information infrastructure objects.

The legislative approximation is "advanced". Ukraine has ratified the Convention on Cybercrime of the Council of Europe (CETS No 185, the Budapest Convention) and is implementing the Cybersecurity Strategy of Ukraine. The topical issues that need to be addressed include introduction into the Code of Criminal Procedure of the definition of "electronic evidence" and the procedure for its collection.

The implementation of the commitment is at an "early" stage. The cyberspace crisis response system has been established and is operational, but its effectiveness needs to be further assessed. Besides, Ukraine has not yet signed memoranda of cooperation with ENISA, SELEC and the NATO Trust Fund.

In addition, to approve the policy and principles of regulation of the radio frequency spectrum in accordance with EU law, a CMU draft order "On Approval of the Action Plan for Implementation of the Fifth Generation Mobile Communication System in Ukraine in 2020" was prepared and submitted by the State Special Communications Service for consideration to the Cabinet of Ministers of Ukraine (letter No 16/02/02-

105 dated 17.01.2020), but the draft is still pending consideration due to the need for revision after external comments, it was withdrawn for revision by the Ministry of Digital Transformation of Ukraine.

Also, in 2019, the European Union adopted the EU Cybersecurity Act. Among other things, it sets a new certification scheme for ICT products, processes and services. This certification will only need to be done once. Certificates will be recognised throughout the European Union.

TITLE IV.

**TRADE AND  
TRADE-RELATED  
MATTERS**



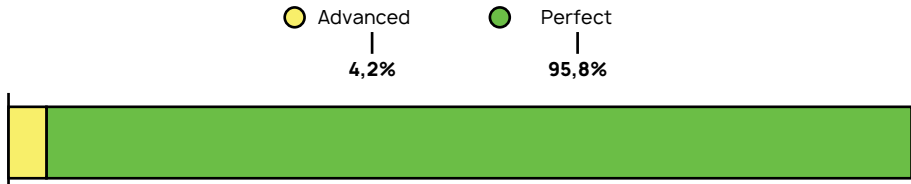
# TECHNICAL BARRIERS TO TRADE-RELATED MATTERS



# TECHNICAL BARRIERS TO TRADE-RELATED MATTERS

Expert: **Leonid Vitkin**

**Implementation progress for the sector:**



## TECHNICAL BARRIERS TO TRADE-RELATED MATTERS

### Overview of key Eurointegration commitments

After signing the Association Agreement with the EU in 2014, in accordance with the Strategy for Development of the Technical Regulation System for the period up to 2020 (approved by CMU Order No. 844 of 19.08.2015), over the past five years, Ukraine has implemented a number of significant legislative and institutional measures to fulfil its commitments in the field of technical regulation contained in the said Agreement (Chapter 3 "Technical Barriers to Trade-Related Matters", Title IV "Trade and Trade-Related Matters").

In accordance with the provisions of the Agreement, Ukraine has committed itself to gradually ensuring compliance with EU technical regulations and systems of standardisation, metrology, accreditation, conformity assessment and market surveillance of the EU and to adhering to the principles and practices set out in existing EU regulations.

Ukraine was to attain the following key objectives:

- ensure alignment of its framework and sectoral legislation (according to Annex III of the Association Agreement with the EU) with European legislation;
- create a modern quality infrastructure with institutions that would carry out activities in the field of standardisation, conformity assessment, accreditation, metrology, and market surveillance in accordance with established European practices;
- significantly increase the level of harmonisation of Ukrainian standards with European ones;
- acquire full membership in European and international organisations of standardisation and related activities;
- enter into the ACAA Agreement and ensure mutual recognition of certificates of conformity between Ukraine and the EU.

Transition to European technical regulations, conformity assessment procedures and standards recognised in the EU member states and in other countries of the world will help reduce non-tariff barriers to trade, improve access of Ukrainian industrial products to markets, and stimulate exports.

In the medium and long term, the benefit-cost ratio resulting from the process of transposition and implementation of EU standards into Ukrainian legislation and practice will be positive for Ukrainian businesses, consumers and the state, despite the need for state and businesses to spend significant funds to adapt legislation, harmonise standards, modernise testing, measuring and production equipment, introduce new technologies, and train human resources.

### **Evaluation of progress in fulfilling commitments**

#### **Commitment 45 / Gradually achieving conformity with EU technical regulations and EU standardisation, metrology, accreditation, conformity assessment procedures and the market surveillance system**

- Article 56.1 of the Association Agreement with the EU

The systems of standardisation, accreditation, conformity assessment and market surveillance of Ukraine have achieved conformity with the relevant EU systems. During the period from 2014 to 2019, Ukraine adopted and implemented 7 basic laws in the field of technical regulation and 3 laws amending them, 25 of the 27 technical regulations specified in the Association Agreement.

Ukraine has abolished mandatory standards and mandatory product certification and switched to conformity assessment and state market surveillance in accordance with technical regulations, replaced more than 90 % of obsolete USSR standards with modern international and European standards, and adopted almost all standards required for presumption of conformity with the requirements of technical regulations.

Ukraine has adopted all the laws and regulations necessary to create a modern quality infrastructure, which includes a national standardisation body, a national accreditation agency, designated conformity assessment bodies, testing and calibration laboratories, market surveillance authorities and authorised central executive bodies.

Fulfilment level – perfect, as almost all provisions of the basic and sectoral legislation of the EU has been transposed into Ukrainian legislation, except for two directives. Almost all bylaws and standards necessary for the implementation of the transposed provisions have been adopted.

#### **Commitment 46 / Harmonisation of basic (horizontal) legislation with that of the EU**

- Article 56.1-1 and Para. 1 of Annex III
- Regulation (EC) No. 765/2008, Directive No. 2001/95/EC, Decision No. 768/2008/EC, Council Directive No. 85/374/EEC

The level of legal approximation is perfect, as almost all EU norms in the field of market surveillance, conformity assessment, accreditation, metrology, and standardisation have been transposed into the Ukrainian basic legislation, and almost all the bylaws necessary for further implementation have been adopted.

In the field of state market surveillance, three horizontal framework laws have been adopted, namely: the Law of Ukraine "On General Safety of Non-Food Products"; the Law of Ukraine "On State Market Surveillance and Control of Non-Food Products"; the Law of Ukraine "On Liability for Damage Caused by Defective Product"; and amendments to them introduced by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine with regard to Reducing Pressure on Businesses by Market Supervisors", transposing into national legislation the relevant norms and principles of the EU Member States, in particular Regulation (EC) No. 765/2008, Directive No. 2001/95/EC, Decision No.768/2008/EC, Council Directive No. 85/374/EEC.

During 2011-2012, the Cabinet of Ministers of Ukraine adopted 12 resolutions aimed at implementing the laws of Ukraine in the field of state market surveillance. Besides, the Government adopted Resolution No. 1069 "On Approval of Types of Products Subject to Market Surveillance by State Market Surveillance Authorities" dated 28.12.2016. According to the Resolution, market surveillance over the conformity of non-food products to the requirements of technical regulations is currently ensured by 7 bodies designated by the Government.

In the field of conformity assessment and accreditation, 2 horizontal framework laws "On Technical Regulations and Conformity Assessment" and "On Accreditation of Conformity Assessment Bodies" and amendments thereto introduced by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Implementation of Acts of European Union Legislation in the Area of Technical Regulation" were adopted with regard to conformity assessment and accreditation.

In order to implement the provisions of the Law "On Technical Regulations and Conformity Assessment", which entered into force on 10.02.2016, 24 regulations were adopted for the legal standardisation of certain issues in the field of technical regulation. All these regulations have been developed taking into account the relevant acts of EU legislation.

According to the Law of Ukraine "On Accreditation of Conformity Assessment Bodies", Ukraine has an independent accreditation body, namely the National Accreditation Agency of Ukraine, which provides accreditation services to certification and inspection bodies, testing, calibration and medical laboratories.

The Ukrainian accreditation system is recognised at the international and European level. The National Accreditation Agency of Ukraine has concluded agreements on the recognition of accreditation results with the European Cooperation for Accreditation (EA), the International Accreditation Forum (IAF), and the International Laboratory Accreditation Cooperation (ILAC).

In June 2019, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Implementation of Acts of European Union Legislation in the Area of Technical Regulation", which amended a number of legislative acts, including laws of Ukraine on technical regulations and accreditation, on metrology and metrological activity, on state market surveillance and control of non-food products etc.

To implement this law by July 2020, it is necessary to adopt 40 regulations. The adoption of these acts is a necessary pre-requisite for the conclusion of the ACAA Agreement. To date, most key acts have been adopted and put into effect. The rest will be adopted and put into effect by 03.07.2020.

In the field of metrology, the horizontal framework Law of Ukraine "On Metrology and Metrological Activity" was adopted and entered into force on 01.01.2016; while amendments thereto introduced by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Implementation of Acts of European Union Legislation in the Area of Technical Regulation" was adopted.

The Law on Metrology was developed on the basis of document D1 "Considerations for a Law on Metrology" of the International Organisation of Legal Metrology (OIML).

In order to implement the Law on Metrology, 41 regulatory legal acts were adopted, 5 of which were developed on the basis of EU Directives.

The Program of Development of the Reference Database for 2018–2022 was adopted (CMU Resolution No. 1041 of 28.12.2016).

In the field of standardisation, the horizontal framework Law of Ukraine "On Standardisation" was adopted, which entered into force on 03.01.2015 and was amended by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine due to the Adoption of the Law of Ukraine 'On Standardisation'".

In order to implement the Law on Standardisation, 9 regulatory legal acts and 7 basic national standards have been developed that regulate activities in the field of standardisation and establish new simplified rules and procedures for work in the field of standardisation.

Provisions of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine due to the Adoption of the Law of Ukraine 'On Standardisation'" are aimed at bringing the national standardisation system in line with international and European practices, in particular amendments were made to 125 sectoral laws of Ukraine to make the use of national standards voluntary.

The law will enter into force in October 2020. Currently, the relevant authorities are working on bringing certain bylaws in line with the requirements of this Law.

The level of implementation – ensured, as almost all provisions of the implemented EU legislation in the field of technical regulation are complied with by the relevant Ukrainian authorities.

### **Commitment 47 / Harmonising vertical (sectoral) legislation in 27 areas with relevant EU legislation**

- Articles 56.2. (l) and 56.3 and paragraphs 2.1 – 2.27 of Annex III
- Directive 2006/42/EC
- Directive 2014/30/EU
- Directive 2014/29/EU
- Directive 2014/68/EU
- Directive 2010/35/EU
- Directive 2014/33/EU
- Directive 2009/48/EC

- Directive 2014/35/EU
- Council Directive 92/42/EEC
- Regulation (EU) 2016/426
- Regulation (EU) 2016/425
- Commission Regulation (EC) No 643/2009
- Directive 2014/31/EU
- Directive 2014/32/EU
- Directive 2014/90/EU
- Directive 93/42/CEE
- Council Directive 90/385/EEC
- Directive 2014/34/EU
- Directive 2014/53/EU
- Regulation (EU) 2016/424
- Directive 2013/53/EU
- Regulation (EU) No 305/2011
- Directive 2014/28/EU
- Regulation (EU) 2017/1369
- Commission Delegated Regulation (EU) No 1060/2010 supplementing Directive 2010/30/EU
- Commission Delegated Regulation (EU) No 1061/2010 supplementing Directive 2010/30/EU
- Commission Delegated Regulation (EU) No 874/2012 supplementing Directive 2010/30/EU
- Commission Delegated Regulation (EU) No 1059/2010 supplementing Directive 2010/30/EU
- Commission Delegated Regulation (EU) No 626/2011 supplementing Directive 2010/30/EU
- Commission Delegated Regulation (EU) No 1062/2010 supplementing Directive 2010/30/EU
- Commission Delegated Regulation (EU) No 392/2012 supplementing Directive 2010/30/EU
- Directive 2014/65/EU
- Commission Delegated Regulation (EU) No 812/2013 supplementing Directive 2010/30/EU
- Directive (EU) 2018/852

The level of legal approximation of the commitment is perfect, as almost all EU directives (except two) have been transposed into Ukrainian sectoral legislation in accordance with Annex III, and almost all necessary standards for conformity assessment have been adopted, the necessary infrastructure has been set up, including accredited and designated conformity assessment bodies, market surveillance authorities and testing laboratories, required for the implementation of the technical regulations.

During 2015–2019, 40 new technical regulations were adopted and 22 formerly adopted technical regulations were revised.

Of the 27 technical regulations specified in Annex III to the EU-Ukraine Association Agreement, 25 Ukrainian technical regulations were adopted.

During 2015–2019, Ukraine adopted 10 more technical regulations in addition to the specified basic regulation for energy labelling of energy-using products for certain types of household electrical equipment, up to 9 of which need to be somewhat amended. Apart from that, in 2020 another five technical regulations for labelling some types of energy-using products are to be adopted.

Also, of the 25 adopted technical regulations included in Annex III, 11 technical regulations need to be revised in 2020 because of changes in the relevant EU legislation.

List of European directives that have not been adopted in the framework of Ukraine's commitments under the Association Agreement between Ukraine and the EU (Annex III):

1. Technical regulation on packaging and waste, Directive No. 2018/852 amending Directive No. 94/62/EU);
2. Technical regulation on high-speed railways (Directive No. 2008/57/EU).

To conduct conformity assessment during 2014–2019, the authorities approved all the necessary regulations including lists of identical European national standards (the national standardisation body adopted about 4,000 standards, except for some standards for construction products and radio equipment), which provide presumption of conformity with the technical regulations included in Annex III.

On January 1, 2018, the transition from the outdated system of mandatory product certification in the UkrSEPRO state certification system to the system of conformity assessment in accordance with technical regulations that are identical to European technical regulations was completed. To date, 83 technical regulations have been adopted in Ukraine, of which 77 have been developed on the basis of EU legislation, and 60 technical regulations are already mandatory.

At present, the infrastructure of the designated bodies for assessing the conformity of products to the requirements of technical regulations includes 108 accredited bodies, of which 63 are state-owned and 45 are privately owned. In particular, 11 bodies have been appointed to assess conformity with the requirements of the 3 technical regulations for measuring instruments and 61 certification laboratories have been authorized.

The National Accreditation Agency has accredited 684 testing and 29 calibration laboratories, 7 medical laboratories, 194 certification bodies, 84 inspection bodies and 2 providers of proficiency testing programmes.



Since 2019, a procedure has been introduced for monitoring designated conformity assessment bodies to verify their compliance with the requirements for such bodies and to check if they fulfil their responsibilities, which are identical to the requirements and obligations in force in the EU for European conformity assessment bodies.

The testing and measuring equipment of the Ukrainian laboratories involved in conformity assessment procedures has been modernised and the level of competence of the staff of the authorities, conformity assessment bodies and laboratories has been improved, in particular due to European technical and financial assistance.

The level of fulfilment of the commitment – ensured, as almost all the norms of the implemented EU legislation in the field of sectoral legislation are fulfilled by the Ukrainian authorities, conformity assessment, accreditation, and market surveillance bodies.

The application of the transposed EU directives is ensured by the Ukrainian authorities, conformity assessment bodies, and market surveillance bodies, which have the appropriate personnel and financial support and equipment to perform the functions of monitoring, control, surveillance, testing, conformity assessment, accreditation, imposition of sanctions on violators and adjustment of policies in the field of conformity assessment and market surveillance in accordance with the requirements of technical regulations as needed.

The level of fulfilment of the commitment – ensured, as almost all the norms of the implemented EU legislation in the field of sectoral legislation are fulfilled by the Ukrainian authorities, conformity assessment, accreditation, and market surveillance bodies.

#### **Commitment 48 / Introduction of the effective and transparent administrative system and once a year informing the EU on the reform process**

- Article 56.2. (ii) and (iii), 56.4

The level of legal approximation of the commitment is perfect, as the necessary administrative and institutional reforms to implement the harmonisation commitments have been made, the necessary infrastructure has been created including the competent authorities, bodies of standardisation, conformity assessment, accreditation, and market surveillance and testing laboratories required for implementation.

The level of implementation of the commitment – ensured, as all Ukrainian institutions comply with the norms of the implemented EU legislation in the field of standardisation, conformity assessment, accreditation, and market surveillance.

It has been ensured that Ukrainian authorities, bodies of conformity assessment and market surveillance, and testing laboratories operate, that they have the appropriate staffing and financial support and equipment to perform the functions of monitoring, control, surveillance, testing, conformity assessment, accreditation, imposing sanctions against violators of the law, as well as adjusting policies in the areas of standardisation, conformity assessment, accreditation and market surveillance as needed.



Ukraine has also regularly reported on progress made with regard to the approximation of legislation in the field of technical regulation, standards and conformity assessment in accordance with the Association Agreement.

#### **Commitment 49 / Moratorium on amendments to legislation that are not in line with the EU acquis**

- Article 56.5 AA

The level of legal approximation of the Commitment is perfect, as the competent authorities refrained from adopting acts of legislation in the field of technical regulation other than those aligning it with the EU acquis and the WTO Agreement on Technical Barriers to Trade.

The level of implementation of the commitment – ensured, as all the Ukrainian institutions complied with the moratorium on adoption and application of norms that would be contrary to EU norms and the WTO Agreement on Technical Barriers.

#### **Commitment 50 / Participating in the work of international and European organisations for formation and enactment of the system of technical regulation, as well as taking measures to meet the conditions for full membership in European organisations**

- Article 56.7 AA

The level of legal approximation of the commitment is perfect, as Ukraine took an active part in the work of international and European organisations of standardisation, metrology, and accreditation, as well as took measures to adopt international and European standards, abolish USSR standards, create a modern structure for technical committees of standardisation, mirroring European ones, increase the competence of the staff of the national standardisation body to meet the conditions for full membership in European standardisation organisations.

Ukraine has been a full member of the ISO and IEC international organisations since 1993, in 2017 it received the status of a partner organisation in the European Committee for Standardisation (CEN-CENELEC), and signed a Memorandum of Understanding between the National Standardisation Body and the European Telecommunications Standards Institute (ETSI).

It has created a modern structure of 182 technical standardisation committees, which employs more than 3,500 specialists, mirroring European standardisation committees.

The Law "On Ukraine's Accession to the Metre Convention" was adopted and in August 2018 Ukraine became a full member of the Metre Convention and the General Conference on Weights and Measures.

Mutual recognition agreements have been signed between the National Accreditation Agency of Ukraine (NAAU) and the European Co-operation for Accreditation (EA) in all areas of accreditation, the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF).

The level of implementation of the commitment is ensured, as Ukrainian institutions, having the necessary personnel and financial support, perform proper activities in international and European organisations for standardisation, metrology, and accreditation.

## **Commitment 51 / Progressively transposing the corpus of European standards as national standards, simultaneously withdrawing conflicting national standards**

- Article 56.8 AA

The level of fulfilment of the commitment is perfect, as Ukraine is gradually updating its regulatory framework, replacing outdated Soviet standards with modern international and European ones.

The corpus of national standards consists of 22036 documents, of which 14358 are harmonised with international and European standards, of these 7438 are harmonised with European and 6920 are harmonised with international standards.

The level of harmonisation of national standards amounts to 65%.

Standards adopted as national include 4161 harmonised European standards for all technical regulations under Annex III (except for part of the standards for construction products and radio equipment). The application of these standards indicates that the products meet the requirements of these technical regulations (provides presumption of conformity).

In 2015, in pursuance of the Government Program approved by the Resolution of the Verkhovna Rada of Ukraine, 14,475 GOSTs developed before 1992 that were still in force in Ukraine (with certain repeal dates, in particular of 2016, 2017, 2018 and 2019) were repealed. Currently, about 1,200 GOSTs developed before 1992 remain in force, including some that are referenced in regulations and which are still needed by manufacturers before the transition to new national standards. These outdated standards will be repealed no later than on 01.01.2022.

The level of implementation of the commitment – ensured, as the national standardisation body, together with the relevant technical committees, having the necessary staffing and financial support, carries out appropriate activities for the harmonisation of national standards.

## **Commitment 52 / Entering into the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA)**

- Article 57.1,2,3,4 AA

The level of legal approximation of the commitment is perfect, as Ukraine has transposed almost all the provisions of the basic and sectoral (for 3 priority sectors) EU legislation into its own legislation, which have entered into force, adopted all standards, established appropriate institutions in accordance with European practice and is ready for a mission of European experts to pre-assess the condition of its quality infrastructure and adaptation of national legislation to EU standards.

Preparation for signing the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) is at the initial stage for 3 priority sectors of industrial products:

- Ukraine has adopted the necessary basic legislation, which has been implemented with the exception of certain norms, the requirements of 3 European directives have been fully transposed by amending technical regulations and standards in three areas (machine safety, electromagnetic compatibility, and low-voltage electrical equipment);

- The appropriate infrastructure has been created by designating appropriate bodies for conformity assessment and accreditation of testing laboratories, in addition a market surveillance authority has been appointed to check compliance with the requirements of these technical regulations;
- The equipment of the relevant testing laboratories has been modernised, and the proper competence of the staff has been ensured.

Following the first meeting of the EU-Ukraine High Level Dialogue in March 2017 in Brussels, the parties established the working group "Technical Barriers to Trade and Standardisation", which prepared a roadmap for the signing of the ACAA Agreement and has annually evaluated the progress made over the past three years regarding the measures provided for in the road map.

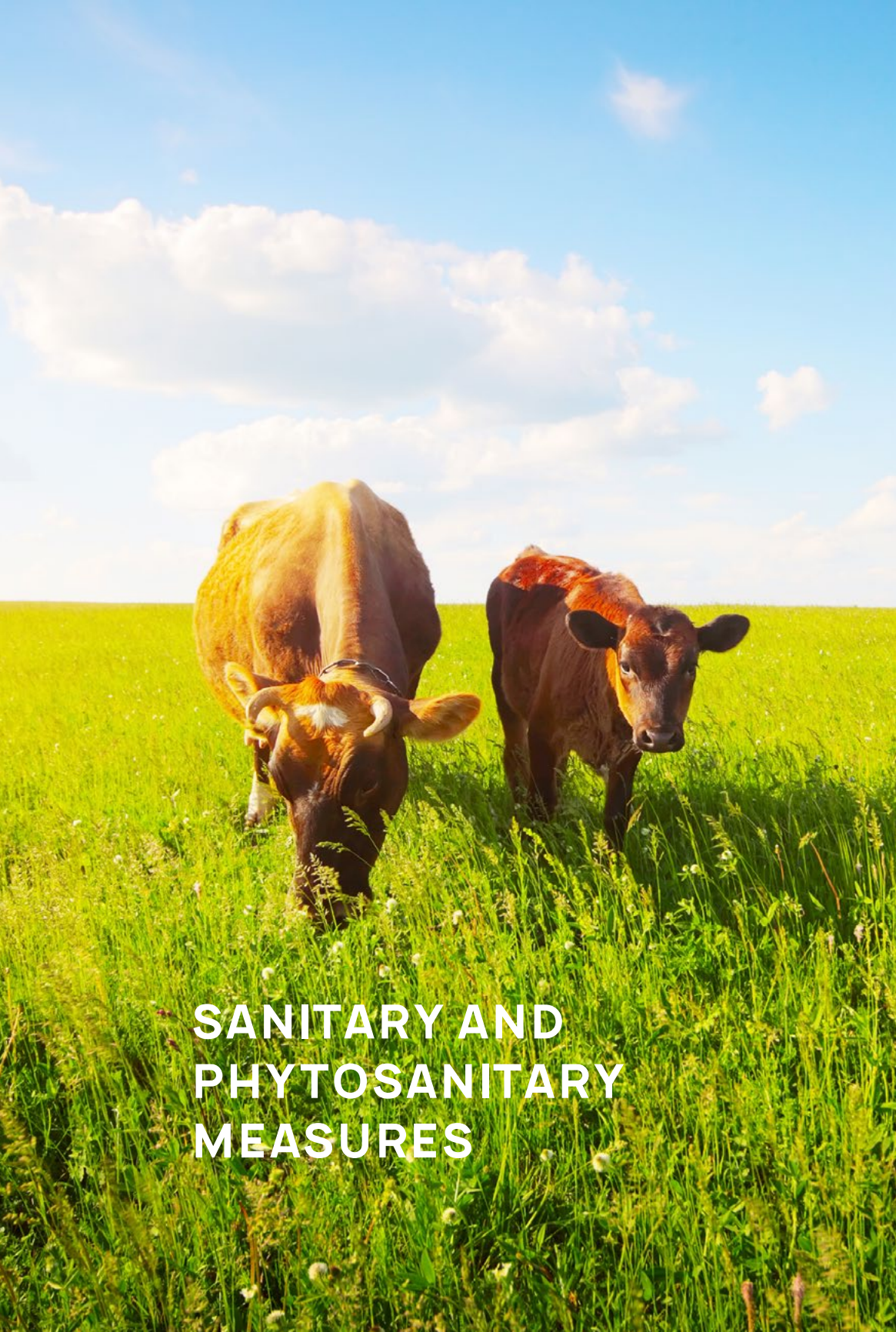
Pursuant to the Operational Conclusions of the Fourth Meeting of the EU-Ukraine Association Committee in Trade Configuration (November 18-19, 2019, Brussels), attended by the Ukrainian delegation, the EU Party was informed about the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine with regard to Reducing Pressure on Businesses by Market Surveillance Authorities", which is necessary to start the process of assessing Ukraine's readiness to conclude the ACAA Agreement and to expect an expert mission from the EU to pre-assess the readiness of Ukrainian quality infrastructure institutions to work by the rules enacted in 2020.

The Ukrainian party informed that it was ready for the next step on the part of the EU to sign the ACAA Agreement and is waiting for a signal from the European party concerning the algorithm and procedure of the preliminary assessment mission regarding the readiness of Ukrainian quality infrastructure institutions to work under the updated legislation in 2020.

The Sixth Council of the Association, held in Kyiv in February 2020, welcomed the progress made by Ukraine in harmonising its legislation in the field of technical regulations, standards and conformity assessment, as provided for in the Association Agreement.

Before starting negotiations on the Agreement on Conformity Assessment and Acceptability of Industrial Products, Ukraine must ensure the adoption of the necessary legislation, its entry into force and its enforcement by the relevant Ukrainian authorities.

The level of implementation of the commitment – advanced, as Ukraine has created the necessary legislative and infrastructural preconditions for assessing the readiness of the Ukrainian technical regulation system to work under the updated legislation and for entering into the ACAA Agreement, but the EU assessment has not been carried out and the ACAA Agreement has not been signed yet.

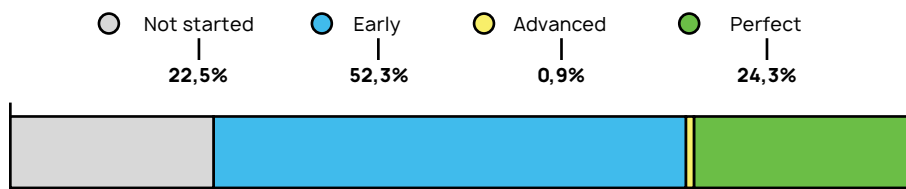


**SANITARY AND  
PHYTOSANITARY  
MEASURES**

# SANITARY AND PHYTOSANITARY MEASURES

Expert: **Lubov Akulenko**

## Implementation progress for the sector:



According to Article 59 of the Association Agreement, the main objective of this sector is to facilitate trade in commodities covered by sanitary and phytosanitary measures between the Parties, whilst safeguarding human, animal and plant life or health, as well as to reach a common understanding between the Parties concerning animal welfare standards.

According to Annex V to the Agreement and the Comprehensive Strategy for SPS Legislation Harmonisation, by the end of 2021, Ukraine must approximate national legislation to more than 250 EU acquis.

## MEASURES APPLICABLE TO MAIN LIVE ANIMAL CATEGORIES

### Commitment group 53 / Measures applicable to main live animal categories

- Council Directive 91/496/EEC
- Council Directive 2000/75/EC, Commission Regulation (EC) 789/2009,
- Commission Decision 2010/471/EU, Council Directive 64/432/EEC, Commission Decision 86/474/EEC, Council Directive 64/432/EEC (repealed by Regulation 2016/429), Council Directive 90/429/EEC, Commission Decision 2008/185/EC, Council Directive 2009/158/EC, Commission Regulation (EC) 798/2008, Council Directive 92/65/EEC, Commission Decision 2004/211/EC, Commission Implementing Decision 2011/630/EU, Council Directive 90/429/EEC, Commission Implementing Decision 2012/137/EU, Commission Decision 2010/472/EU, Council Directive 89/556/EEC, Commission Decision 2006/168/EC, Commission Regulation (EC) 1739/2005, Commission Decision 2010/270/EU, Commission Regulation (EU) 28/2012
- Commission Decision 2008/855/EC, Council Directive 2001/89/EC, Commission Decision 2005/217/EC (repealed), Council Directive 92/119/EEC, Commission Decision 2000/428/EC, Council Directive 82/894/EEC, Council Directive 92/35/EEC, Commission Decision 92/260/EEC, Commission



Decision 93/197/EEC, Commission Decision 2003/634/EC, Commission Decision 2003/466/EC (repealed by Decision 2015/1554), Commission Decision 2009/3/EC

- Regulation (EC) No 1760/2000, Commission Regulation (EC) 911/2004, Commission Decision 2006/28/EC, Commission Regulation (EC) 494/98, Commission Regulation (EC) 1082/2003, Commission Regulation (EC) 1505/2006, Council Regulation (EC) 21/2004, Council Directive 2008/71/EC, Commission Decision 2000/678/EC, Commission Decision 2006/968/EC
- Commission Decision 2006/605/EC
- Directive 2003/99/EC
- Commission Regulation (EC) 1251/2008, Council Directive 2006/88/EC, Commission Decision 2006/767/EC

These measures focus on the government control and veterinary border control, control and elimination of animal diseases, identification and registration of animals.

The regulatory approximation within this subsector was carried out concerning the following sections (areas):

- As regards conditions for the import of aquaculture animals – task assessment: “perfect” – the provisions of Regulation (EC) 1251/2008 were included in Order No. 553 of the Ministry of Agrarian Policy “On Approval of the Requirements for the Import (consignment) into the Customs Territory of Ukraine of Live Animals and Their Reproductive Material, Food of Animal Origin, Feedstuff, Hay, Straw, as well as Byproducts of Animal Origin and Derivative Products, Processing Products” of 16.11.2018<sup>1</sup>.
- As regards the requirements for the health of aquaculture animals – task assessment: “early” – the requirements of Directive 2006/88 were included in the draft order of the Ministry of Economy “On the Establishment of Health Requirements for Aquaculture Animals and Products Thereof, as well as for the Prevention and Control of Certain Diseases in Aquatic Animals.”
- As regards the certification requirements for live molluscs and live fish intended for human consumption – The requirements of Commission Decision 2006/767/EC were taken into account in Order No. 553 of the Ministry of Agrarian Policy “On Approval of the Requirements for the Import (consignment) into the Customs Territory of Ukraine of Live Animals and Their Reproductive Material, Food of Animal Origin, Feedstuff, Hay, Straw, as well as Byproducts of Animal Origin and Derivative Products, Processing Products” of 16.11.2018<sup>2</sup>, in Law of Ukraine No. 2042 “On State Control over Compliance with Legislation on Food, Feedstuff, Byproducts of Animal Origin, Animal Health and Welfare”<sup>3</sup> and in Order No. 262 of the Ministry of Agrarian Policy “On Approval of the Procedure for State Control of the Facilities Located in Exporting Countries from which Products are Imported (consigned) into the customs territory of Ukraine and the Procedure for Keeping the State Register of Countries and Facilities from which Import (consignment) of Products to the Customs Territory of Ukraine is Allowed” of 11.06.2018<sup>4</sup>. The requirements of Regulation (EC) 1251/2008 were taken

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1) <https://zakon.rada.gov.ua/laws/show/z0346-19#Text>

2) <https://zakon.rada.gov.ua/laws/show/z0346-19#Text>

3) <https://zakon.rada.gov.ua/laws/show/2042-19#Text>

4) <https://zakon.rada.gov.ua/laws/show/z0776-18#Text>

into account in Order No. 553 of the Ministry of Agrarian Policy "On Approval of the Requirements for the Import (consignment) into the Customs Territory of Ukraine of Live Animals and Their Reproductive Material, Food of Animal Origin, Feedstuff, Hay, Straw, as well as Byproducts of Animal Origin and Derivative Products, Processing Products" of 16.11.2018<sup>5</sup> – task assessment: "perfect".

- As regards the monitoring of zoonoses and zoonotic pathogens – task assessment: "early" – the provisions of Directive 2003/99/EC are included in draft law No. 3318 "On Veterinary Medicine and Animal Welfare" of 09.04.2020.
- As regards improving the system of identification and registration of animals, the following tasks have been performed:

1) task assessment: "perfect" – Law of Ukraine No. 1445 "On the Identification and Registration of Animals" of 09.12.2015<sup>6</sup> and Order No. 642 of the Ministry of Agrarian Policy "On Approval of the Procedure for Identification and Registration of Cattle and the Procedure for Registration and Issuance of Passports for Cattle" of 04.12.2017<sup>7</sup> has been adopted;

2) task assessment: "early" – the draft order of the Ministry of Agrarian Policy "On Approval of Special Rules of Hygiene for Food of Animal Origin" has been developed;

3) task assessment: "perfect" – Order No. 20 of the Ministry of Agrarian Policy "On Approval of the Procedure for Identification and Registration of Sheep and Goats" of 16.01.2018 has been adopted<sup>8</sup>, as well as Order No. 263 of the Ministry of Agrarian Policy "On Approval of Amendments to the Procedure for Identification and Registration of Sheep and Goats" of 22.05.2019<sup>9</sup>;

4) task assessment: "perfect" – Order No. 639 of the Ministry of Agrarian Policy "On Approval of the Procedure for Identification and Registration of Pigs" of 01.12.2017<sup>10</sup> has been adopted.

- As regards control and elimination of animal diseases:

1) task assessment: "early" – a draft order of the Ministry of Agrarian Policy "On Measures to Prevent and Eliminate Classical Swine Fever" has been developed;

2) task assessment: "perfect" – Order No. 148 of the Ministry of Agrarian Policy "On Approval of the Instruction on Prevention and Control of Swine Vesicular Disease" of 21.03.2019<sup>11</sup> has been adopted;

3) task assessment: "early" – draft law No. 3318 "On Veterinary Medicine and Animal Welfare" of 09.04.2020 has been developed;

4) task assessment: "early" – a draft order of the Ministry of Agrarian Policy "On Approval of Guidelines for the Prevention and Elimination of African Horse Sickness" has been developed;

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5) <https://zakon.rada.gov.ua/laws/show/z0346-19#Text>

6) <https://zakon.rada.gov.ua/laws/show/l445-17#Text>

7) <https://zakon.rada.gov.ua/laws/show/z0166-18#Text>

8) <https://zakon.rada.gov.ua/laws/show/z0155-18#Text>

9) <https://zakon.rada.gov.ua/laws/show/z0601-19#Text>

10) <https://zakon.rada.gov.ua/laws/show/z0154-18#Text>

11) <https://zakon.rada.gov.ua/laws/show/z0452-19#Text>

5) task assessment: "perfect" – Order No. 553 of the Ministry of Agrarian Policy "On Approval of the Requirements for the Import (consignment) into the Customs Territory of Ukraine of Live Animals and Their Reproductive Material, Food of Animal Origin, Feedstuff, Hay, Straw, as well as Byproducts of Animal Origin and Derivative Products, Processing Products" of 16.11.2018<sup>12</sup> has been adopted;

6) work has not started on viral hemorrhagic septicemia and infectious haematopoietic necrosis in fish; 7) task assessment: "early" – a draft order of the Ministry of Economy "On Requirements for Methods of Observation and Diagnosis of Fish Diseases" has been developed;

8) No work has started to establish African horse sickness vaccine reserves.

- As regards state control at the border:

1) task assessment: "early" – the relevant provisions of draft law No. 3318 "On Veterinary Medicine and Animal Welfare" of 09.04.2020 have been developed, as well as a draft order of the Ministry of Agrarian Policy "On Approval of Requirements for Centres for Collection / Storage of Reproductive Material";

2) task assessment: "perfect" – Order No. 639 of the Ministry of Agrarian Policy "On Approval of the Procedure for Identification and Registration of Pigs" of 01.12.2017<sup>13</sup> has been adopted;

3) task assessment: "perfect" – Order No. 553 of the Ministry of Agrarian Policy "On Approval of the Requirements for the Import (consignment) into the Customs Territory of Ukraine of Live Animals and Their Reproductive Material, Food of Animal Origin, Feedstuff, Hay, Straw, as well as Byproducts of Animal Origin and Derivative Products, Processing Products" of 16.11.2018<sup>14</sup> has been adopted;

4) task assessment: "early" – the relevant provisions of draft law No. 3318 of 09.04.2020 "On Veterinary Medicine and Animal Welfare" have been developed;

5) task assessment: "perfect" – Order No. 553 of the Ministry of Agrarian Policy "On Approval of the Requirements for the Import (consignment) into the Customs Territory of Ukraine of Live Animals and Their Reproductive Material, Food of Animal Origin, Feedstuff, Hay, Straw, as well as Byproducts of Animal Origin and Derivative Products, Processing Products" of 16.11.2018<sup>15</sup> has been adopted; in addition certain provisions are included in Law of Ukraine No. 2042 "On State Control over Compliance with Legislation on Food, Feedstuff, Byproducts of Animal Origin, Animal Health and Welfare"<sup>16</sup>.

- As regards preventing and combating some other diseases:

1) task assessment: "early" – a draft order of the Ministry of Agrarian Policy "On the Adoption of the Instruction on Preventing and Combating Bluetongue" has been developed.

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12) <https://zakon.rada.gov.ua/laws/show/z0346-19#Text>

13) <https://zakon.rada.gov.ua/laws/show/z0154-18#Text>

14) <https://zakon.rada.gov.ua/laws/show/z0346-19#Text>

15) <https://zakon.rada.gov.ua/laws/show/z0346-19#Text>

16) <https://zakon.rada.gov.ua/laws/show/2042-19#Text>



## MEASURES APPLICABLE TO PRODUCTS OF ANIMAL ORIGIN

### Commitment group 54 / Measures applicable to products of animal origin

- Council Directive 2002/99/EC
- Commission Regulation (EU) 142/2011
- Commission Regulation (EU) 749/2011
- Commission Regulation (EU) 37/2010, Regulation (EC) 470/2009

These measures focus on the introduction of traceability, ensuring hygiene and safety, establishing requirements for market operators, handling of animal byproducts and work with pharmacologically active substances.

The regulatory approximation within this subsector was carried out concerning the following sections (areas):

- As regards hygiene for food of animal origin:

1) task assessment: "early" – a draft order of the Ministry of Agrarian Policy "On Approval of Special Rules of Hygiene for Food of Animal Origin" has been developed;

2) task assessment: "perfect" – the following acts have been adopted:

– Law of Ukraine No. 771 "On the Basic Principles of and Requirements for Food Safety and Quality"<sup>17</sup>;

– Order No. 39 of the Ministry of Agrarian Policy "On Approval of the Procedure for State Registration of Facilities, Keeping the State Register of the Facilities of Market Operators, and Providing Information from it to Interested Parties"<sup>18</sup> of 10.02.2016;

– Order No. 40 of the Ministry of Agrarian Policy "On Approval of the Procedure for Keeping the Register of Market Operators and Facilities for which an Operating Permit was Issued" of 10.02.2016<sup>19</sup>;

– Order No. 694 of the Ministry of Health "On Approval of Hygienic Requirements for Poultry Meat and Certain Indicators of its Quality" of 06.08.2013<sup>20</sup>;

– Order No. 197 of the Ministry of Health "On Approval of the State Sanitary Rules and Regulations for Enterprises and Vessels Producing Products from Fish and other Aquatic Living Resources" of 06.05.2003<sup>21</sup>;

– Order No. 4 of the Ministry of Agrarian Policy "On Approval of the Veterinary and Sanitary Rules for Slaughterhouses, Farm Culling Facilities, and Yard Slaughter of Animals" of 14.01.2004<sup>22</sup>;

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17) <https://zakon.rada.gov.ua/laws/show/771/97%E2%80%93%D0%B2%D1%80#Text>

18) <https://zakon.rada.gov.ua/laws/show/z0382%E2%80%939316#Text>

19) <https://zakon.rada.gov.ua/laws/show/z0383%E2%80%939316#Text>

20) <https://zakon.rada.gov.ua/laws/show/z1379%E2%80%939313#Text>

21) <https://zakon.rada.gov.ua/laws/show/z0435%E2%80%939303#Text>

22) <https://zakon.rada.gov.ua/laws/show/z0121%E2%80%939304#Text>

- Law of Ukraine No. 2042 "On State Control over Compliance with Legislation on Food, Feedstuff, Byproducts of Animal Origin, Animal Health and Welfare"<sup>23</sup>;

3) task assessment: "early" – the following regulations have been developed:

- draft order of the Ministry of Agrarian Policy "On Approval of Special Rules of Hygiene for Foods of Animal Origin";

4) task assessment: "perfect" – the requirements of Regulation No. 854/2003 have been included in Laws of Ukraine No. 771 and No. 2042.

- To introduce the traceability mechanism:

1) task assessment: "early" – appropriate changes have been developed and included in the draft law "On Amendments to the Customs Code of Ukraine and Certain Legislative Acts of Ukraine on Food and other Products Subject to Sanitary Measures";

2) task assessment: "perfect" – the relevant provisions have been developed and included in Law of Ukraine No. 2639 "On Provision of Food Information to Consumers" of 06.12.2018<sup>24</sup>.

- Regarding the improvement of the procedures for the production, processing, distribution and import of products of animal origin intended for human consumption (Council Directive 2002/99/EC) a draft order of the Ministry of Agrarian Policy "On Approval of the Procedure for Handling Foodstuffs of Animal Origin Intended For Human Consumption" has been developed. Task assessment: "early".
- Regarding the introduction of the procedure for keeping the register of facilities for processing, treatment, and disposal of animal byproducts (Commission Regulation (EU) 142/2011) the following regulatory documents have been developed:

1) task assessment: "perfect" – Law of Ukraine No. 287-VIII "On Animal Byproducts not Intended for Human Consumption" of 19.10.2016<sup>25</sup>;

2) task assessment: "perfect" – Order No. 553 of the Ministry of Agrarian Policy "On Approval of the Requirements for the Import (consignment) into the Customs Territory of Ukraine of Live Animals and Their Reproductive Material, Food of Animal Origin, Feedstuff, Hay, Straw, as well as Byproducts of Animal Origin and Derivative Products, Processing Products" of 16.11.2018<sup>26</sup>;

3) task assessment: "early" – the draft order of the Ministry of Agrarian Policy "On the Procedure for Handling Animal Byproducts of Category 1-3";

4) task assessment: "early" – the draft order of the Ministry of Agrarian Policy "On Veterinary and Sanitary Requirements for Facilities for Treatment and Processing of Animal Byproducts."

- As regards the handling of animal byproducts (Commission Regulation (EU) 749/2011), the draft order of the Ministry of Agrarian Policy "On the

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23) <https://zakon.rada.gov.ua/laws/show/2042%E2%80%939319#Text>

24) <https://zakon.rada.gov.ua/laws/show/2639%E2%80%939319#Text>

25) <https://zakon.rada.gov.ua/laws/show/287%E2%80%939319#Text>

26) <https://zakon.rada.gov.ua/laws/show/z0346%E2%80%939319#Text>

Approval of the Procedure for Handling Animal Byproducts of Category 1-3" has been developed. Task assessment – "early".

- As regards the maximum limits of residues of pharmacologically active substances in foodstuffs of animal origin (Regulation (EU) 37/2010), the Ministry of Health has developed Order No. 2646 "On Approval of the State Sanitary Rules and Regulations on 'Maximum Limits of Residues of Pharmacologically Active Substances and Their Classification in Foodstuffs of Animal Origin'" of 23.12.2019. Task assessment – "perfect"<sup>27</sup>.

## FOOD SAFETY

### Commitment group 55 / Measures applicable to food

- Regulation (EU) 1169/2011.
- Commission Decision 2007/275 / EC
- Commission Implementing Regulation (EU) 931/2011, Commission Implementing Regulation (EU) 208/2013, Directive 2011/91/EU
- Council Directive 2001/110/EC
- Regulation (EC) 1924/2006, Commission Implementing Decision 2013/63 / EU, Commission Regulation (EU) 1047/2012, Commission Regulation (EU) 432/2012
- Regulation (EU) 1925/2006, Commission Regulation (EU) 1170/2009
- Regulation (EC) 396/2005
- Commission Regulation (EC) 401/2006, Commission Regulation (EC) 333/2007, Commission Regulation (EU) 589/2014 (repealed by Regulation 2017/644), Commission Regulation (EC) 1882/2006, Commission Directive 2002/63/EC , Commission Regulation (EU) 37/2010
- Regulation (EC) 1935/2004, Commission Regulation (EC) 2023/2006, Council Directive 82/711/EEC, Council Directive 85/572/EEC, Council Directive 78/142/EEC, Commission Decision 2010/169/EU, Directive Council Directive 84/500/EEC, Commission Directive 2007/42/EC, Commission Regulation (EC) 1895/2005, Commission Regulation (EC) 450/2009, Commission Regulation (EU) 10/2011, Commission Regulation (EC) 282/2008
- Commission Regulation (EU) 16/2011
- Regulation (EC) 258/97,
- Directive 1999/2/EC, Directive 1999/3/EC

These measures focus on the provision of food information to consumers, nutrition claims, rules for the addition of vitamins and minerals, maximum residue levels of pesticides, control of contaminants in food, control of materials and articles intended to come into contact with food, rapid alert systems, hygiene requirements for novel foods, and requirements for ionising radiation.

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<sup>27)</sup> <https://zakon.rada.gov.ua/laws/show/z0042%E2%80%939320#Text>

The regulatory approximation within this subsector was carried out concerning the following sections (areas)

- As regards the introduction of a procedure for providing food information to consumers (Regulation (EU) 1169/2011), the following documents have been developed:

1) Law of Ukraine No. 2639 "On Provision of Food Information to Consumers" of 06.12.2018 (task assessment: "perfect"<sup>28</sup>;

2) Draft order of the Ministry of Agrarian Policy "On Establishing the Procedure, Specific Requirements for the Labeling and the List of Foodstuffs regarding which the Country or Place of Origin Must be Indicated" (task assessment: "early");

3) Draft order of the Ministry of Health "On the Setting of Permitted Tolerances for Energy and Nutrient Values Declared in Food Information and the Actual Values Determined during State Control" (task assessment: "early").

- As regards the introduction of the list of products subject to state control at designated inspection posts (Commission Decision No. 2007/275 / EC), the following documents have been developed:

1) Law of Ukraine No. 2042 "On State Control over Compliance with Legislation on Food, Feedstuff, Byproducts of Animal Origin, Animal Health and Welfare" of 18.05.2017 (task assessment: "perfect")<sup>29</sup>;

2) Order of the Ministry of Agrarian Policy No. 159 "On Approval of the List of Products Subject to State Control at Designated Border Inspection Posts" of March 26, 2018 (task assessment – "perfect")<sup>30</sup>;

3) Resolution No. 1031 of the Cabinet of Ministers of Ukraine on "Certain Matters of the State Control of Goods Moving across the Customs Border of Ukraine" of October 5, 2011 (task assessment: "perfect")<sup>31</sup>.

- Regarding the safety requirements for honey, Order No. 330 of the Ministry of Agrarian Policy was adopted "On Approval of the Requirements for Honey" of June 19, 2019 in pursuance of Council Directive 2001/110/EC (task assessment: "perfect")<sup>32</sup>.
- Regarding the nutrition content claims (task assessment: "early"), appropriate amendments have been developed and included in the draft law "On Amendments to the Customs Code of Ukraine and Certain Legislative Acts of Ukraine on Food and other Products Subject to Sanitary Measures", as well as a draft order of the Ministry of Health "On Health Claims".
- Requirements regarding the addition of vitamins and minerals (task assessment: "early") have been introduced in the draft order of the Ministry of Health "On Approval of the Rules for the Addition of Vitamins, Minerals and Certain Other Substances to Foodstuffs."

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28) <https://zakon.rada.gov.ua/laws/show/2639%E2%80%939319#Text>

29) <https://zakon.rada.gov.ua/laws/show/2042%E2%80%939319#Text>

30) <https://zakon.rada.gov.ua/laws/show/z0463%E2%80%939318#Text>

31) <https://zakon.rada.gov.ua/laws/show/1031%E2%80%932011%E2%80%9393%00%BF#Text>

32) <https://zakon.rada.gov.ua/laws/show/z0725%E2%80%939319#Text>

- Regarding residue levels of pesticides (Regulation (EC) 396/2005) a draft order of the Ministry of Agrarian Policy / Ministry of Health "On Approval of the State Sanitary Rules and Standards regarding the 'Maximum Permissible Levels of Pesticide Residues in Food and Feed of Plant and Animal Origin" has been prepared (task assessment – "early").
- As regards control over contaminants in food, the following documents have been developed:

Task assessment – "perfect":

- 1) Order No. 264 of the Ministry of Agrarian Policy "On Approval of the Methods of Sampling to Determine the Maximum Permissible Levels of Mycotoxins in Food for the Purposes of State Control" of 22.05.2019<sup>33</sup>;
- 2) Order No. 288 of the Ministry of Agrarian Policy "On Approval of the Methods of Sampling to Determine the Maximum Permissible Levels of Certain Contaminants in Food for the Purposes of State Control" of 25.06.2018<sup>34</sup>;
- 3) Order of the Ministry of Agrarian Policy dated 05.02.2019 No. 34 "On Approval of the Methods of Sampling to Determine the Maximum Permissible Levels of Nitrates in Certain Foods for the Purposes of State Control"<sup>35</sup>;
- 4) Order No. 289 of the Ministry of Agrarian Policy "On Approval of the Methods of Sampling to Determine the Maximum Permissible Levels of Pesticide Residues in Foodstuffs of Plant and Animal Origin for the Purposes of State Control" of 25.06.2018<sup>36</sup>;
- 5) Order No. 2646 "On Approval of the State Sanitary Rules and Regulations on 'Maximum Limits of Residues of Pharmacologically Active Substances and Their Classification in Foodstuffs of Animal Origin" of 23.12.2019<sup>37</sup>;

Task assessment – "early":

6) A draft order of the Ministry of Agrarian Policy "On the Adoption of Methods of Sampling and Analysis to Control the Level of Dioxins, Dioxinlike PCBs, and Nondioxinlike PCBs in Certain Foods" has been developed.

- As regards control over materials and articles intended to come into contact with food (task assessment – "early"):

- 1) a draft law "On Requirements for Food Contact Articles and Materials has been developed. General provisions are also included in Law of Ukraine No. 771;
- 2) a draft order of the Ministry of Health "On Approval of the List of Simulants and the Procedure for Testing the Transfer of Components from Plastic Materials and Articles Intended to Come into Contact with Food" was developed;
- 3) a draft order of the Ministry of Health "On Approval of Hygienic Requirements for Feedstuffs Intended to Come into Contact with Food and the Procedure for their Registration" has been developed;

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33) <https://zakon.rada.gov.ua/laws/show/z0608%E2%80%939319#Text>

34) <https://zakon.rada.gov.ua/laws/show/z1039%E2%80%939318#Text>

35) <https://zakon.rada.gov.ua/laws/show/z0207%E2%80%939319#Text>

36) <https://zakon.rada.gov.ua/laws/show/z0857%E2%80%939318#Text>

37) <https://zakon.rada.gov.ua/laws/show/z0042%E2%80%939320#Text>

4) a draft order of the Ministry of Health "On Approval of Requirements for the Use of Ceramic Products Intended to Come into Contact with Food" has been developed;

5) a draft order of the Ministry of Health "On Approval of Requirements for the Use of Materials and Articles from Recycled Cellulose Film Intended to Come into Contact with Food" has been developed;

6) a draft order of the Ministry of Health "On Approval of the Requirements for Restricting the Use of Certain Epoxy Derivatives in Materials and Articles Intended to Come into Contact with Food" has been developed.

- In pursuance of the requirements of Commission Regulation (EU) 16/2011 laying down implementing measures for the rapid alert system for food and feed, a draft order of the Ministry of Agrarian Policy "On Approval of the Rules for Taking Measures to Introduce the Rapid Alert System for Food and Feed (RASFF)" has been developed. This draft order fully complies with the requirements of the Regulation. Task assessment – "early".
- Requirements for novel foods set by Regulation (EC) 258/97 (task assessment – "early") have been included in the draft law "On Amendments to the Customs Code of Ukraine and Certain Legislative Acts of Ukraine on Food and other Products Subject to Sanitary Measures".
- Regarding the requirements for foods and food ingredients treated with ionising radiation (Directives 1999/2 / EC and No. 1999/3/EC), a draft order of the Ministry of Economy "On Approval of Requirements for Foods and Food Ingredients Treated with Ionising Radiation" has been developed. Task assessment – "early".

## PLANTS, PLANT PRODUCTS AND OTHER OBJECTS

### Commitment group 56 / Plants, plant products and other objects

- Commission Implementing Regulation (EU) 485/2013, Directive 2009/128/EC, Council Directive 2000/29/EC, Commission Executive Directive 2014/83/EU, Commission Directive 98/22/EC, Commission Directive 2004/102/EC, Commission Directive 94/3/EC, Council Directive 69/464/EEC, Council Directive 93/85/EEC (repealed by Regulation 2016/2031), Council Directive 98/57/EC (repealed by Regulation 2016/2031), Council Directive 2007/33/EC (repealed by Regulation 2016/2031), Commission Implementing Decision 2012/535/EU, Commission Implementing Decision 2012/138/EU, Commission Regulation (EC) 1756/2004, Commission Directive 2008/61/EC (repealed by Regulation 2016/2031), Commission Directive 97/46/EC
- Council Directive 98/56/EC, Directive 2008/72/EC, Directive 2008/90/EC, Commission Directive 92/90/EEC
- Commission Executive Directive 2014/20/EU, Commission Executive Directive 2014/21/EU
- Commission Implementing Directive 2014/96/EU
- Commission Implementing Directive 2014/97/EU
- Commission Implementing Directive 2014/98/EU
- Commission Directive 2004/105/EC, Regulation 2016/2031

- Commission Directive 93/51/EEC, Commission Directive 92/105/EEC
- Commission Directive 2004/103/EC
- Council Regulation (EC) 2100/94, Council Regulation (EC) 2506/95, Council Regulation (EC) 2470/96, Commission Regulation (EC) 1238/95, Commission Regulation (EC) 1768/95, Commission Regulation (EC) 874/2009, Commission Regulation (EC) 2605/98,
- Commission Regulation (EU) 188/2011, Commission Implementing Regulation (EU) 540/2011, Commission Implementing Regulation (EU) 541/2011, Commission Regulation (EU) 544/2011, Commission Regulation (EU) 545/2011, Commission Regulation (EU) 546/2011, Commission Regulation (EU) 547/2011, Commission Implementing Regulation (EU) 702/2011, Commission Implementing Regulation (EU) 703/2011, Commission Implementing Regulation (EU) 704/2011, Commission Implementing Regulation (EU) 705/2011, Commission Implementing Regulation (EU) 706/2011, Commission Implementing Regulation (EU) 736/2011, Commission Implementing Regulation (EU) 740/2011, Commission Implementing Regulation (EU) 786/2011, Commission Implementing Regulation (EU) 787/2011, Commission Implementing Regulation (EU) 788/2011, Commission Implementing Regulation (EU) 797/2011, Commission Implementing Regulation (EU) 798/2011, Commission Implementing Regulation (EU) 800/2011,
- Commission Implementing Regulation (EU) 807/2011, Commission Implementing Regulation (EU) 810/2011, Commission Implementing Regulation (EU) 974/2011, Commission Implementing Regulation (EU) 993/2011, Commission Implementing Regulation (EU) 1143/2011, Commission Implementing Regulation (EU) 359/2012, Regulation (EC) 1107/2009, Commission Implementing Regulation (EU) 582/2012, Commission Implementing Regulation (EU) 589/2012, Commission Implementing Regulation (EU) 595/2012, Commission Implementing Regulation (EU) 746/2012, Commission Implementing Regulation (EU) 571/2014, Commission Implementing Regulation (EU) 632/2014, Regulation (EC) 396/2005,
- Regulation (EC) 2003/2003

These measures concern phytosanitary certificates for re-export accompanying plants, requirements for identification and sanitary inspections of plants, improvement of plant health and trade in plants and seeds, requirements for labeling, hermetic sealing and packaging of fruit plants and propagating material of fruit plants intended for fruit production, requirements for registration of suppliers and varieties and a general list of varieties, introduction of phytosanitary certificates for re-export accompanying plants, plant products or other objects from third countries, rules for movement of certain plants, plant products or other objects through the territory of the protected zone, procedures for the protection of plant variety rights and registration of plant protection products, as well as improvement of legislation on fertilizers.

The regulatory approximation within this subsector was carried out concerning the following sections (areas):

- As regards determining the grades of basic and certified seed potatoes, conditions and designations, as well as the minimum conditions and grades for the preparation of basic seed potatoes in the EU (Directives 2014/20/EU and No. 2014/21/EU), the following documents have been developed:

Task assessment "perfect":

1) Order No. 384 of the Ministry of Agrarian Policy "On Approval of the Methodological Requirements concerning Seed Production with regard to the Preservation of the Grade and Sowing Qualities of Seed Potatoes" of 12.07.2019<sup>38</sup>;

Evaluation of the task "early":

2) draft order of the Ministry of Economy "On Approval of the Instruction for Field Assessment of Seed Potatoes";

3) draft order of the Ministry of Economy "On approval of the Methodology for Determining the Qualities of Seed Potatoes and Characteristics after Harvesting".

- As regards introduction of phytosanitary measures concerning identity and health checks of plants, plant products or other objects (Directive 2004/103/EC) a draft amendment to the Law of Ukraine "On Plant Protection" and the Law of Ukraine "On Plant Quarantine" has been developed. Task assessment: "early".
- As regards improving the mechanism of ensuring plant health:

1) no work has been initiated to approve the conditions of use of the active substances clothianidin, thiamethoxam and imidacloprid and the ban on the use and sale of seeds treated with plant protection products containing these active substances;

2) as regards the rules for the use of pesticides; the conditions for conducting plant health checks at inspection posts; the procedure for notification of interception of a consignment or a harmful organism from third countries, presenting an imminent phytosanitary danger; the conditions of necessary evidence and criteria for reducing the health check of certain plants, plant products and other objects; the conditions for the movement of certain pests, plants, and plant products for testing or scientific purposes and for work on varietal selection – the appropriate amendments have been prepared and included in the draft law "On Amendments to the Law of Ukraine 'On Plant Protection and Quarantine'". The developed changes meet the requirements of the relevant EU acquis. Task assessment: "early";

(3) No work has been initiated concerning the requirements for emergency measures to prevent the spread of *Bursaphelenchus xylophilus* and the requirements for emergency measures to prevent the spread of *Anoplophora chinensis*.

- As regards improving the mechanism of trade in plants and seeds:

1) the relevant amendments to the requirements for the sale of fodder plant seeds have been prepared and included in the draft law "On Amendments to the Law of Ukraine 'On Plant Protection and Quarantine'". Task assessment: "early";

2) concerning the requirements for the sale of propagating and planting material of vegetables other than seeds, a draft order of the Ministry of Agrarian Policy "On the Sale of Seedlings and Planting Material Other than Seeds" has been developed. Task assessment: "early";

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38) <https://zakon.rada.gov.ua/laws/show/z0829%E2%80%939319#Text>



3) no work has started on the requirements for labeling, sealing and packaging of propagating material of fruit plants;

4) to enact requirements concerning the obligations of producers and importers of plants, plant products and other objects and to introduce the procedure for their registration, appropriate amendments have been prepared and included in the draft law "On Amendments to the Law of Ukraine 'On Plant Protection and Quarantine'". Task assessment: "early".

- As regards updating the requirements for labeling, sealing and packaging of fruit plants and propagating material of fruit plants intended for fruit production, updating the requirements for families and species of fruit plants, specific requirements proposed to suppliers and detailed rules for official inspections and updating the requirements for the registration of suppliers and varieties and the general list of varieties, no work has been launched.
- As regards introduction of phytosanitary certificates for re-export accompanying plants, products of plant origin or other objects from third countries, relevant amendments have been prepared and included in the draft law "On Amendments to the Law of Ukraine 'On Plant Protection and Quarantine'". Task assessment: "early".
- As regards establishing rules for the movement of certain plants, plant products or other objects through the territory of the protected zone, relevant amendments have been prepared and included in the draft law "On Amendments to the Law of Ukraine 'On Plant Protection and Quarantine'". Task assessment: "early".
- As regards introduction of procedures for the protection of plant variety rights, no work has been launched.
- As regards introduction of plant protection registration procedures, no work has been launched.
- As regards improving the legislation on fertilizers, no work has been launched.

## MEASURES APPLICABLE TO FOOD AND FEED ADDITIVES

### Commitment group 57 / Measures applicable to food and feed additives

- Regulation (EC) 178/2002, Regulation (EC) 183/2005, Commission Recommendation 2004/704/EC, Regulation (EC) 1831/2003, Commission Regulation (EU) 16/2011, Commission Regulation (EC) 429/2008, Commission Regulation (EC) 1876/2006, Commission Regulation (EC) 378/2005, Commission Regulation (EU) 1270/2009, Commission Regulation (EU) 892/2010, Regulation (EC) 767/2009, Commission Directive 2008/38/EC, Commission Recommendation 2011/25/EU, Directive 2001/82/EC, Directive 2004/28/EC, Council Directive 90/167/EEC
- Regulation (EC) 1331/2008
- Regulation (EC) 1333/2008,
- Commission Regulation (EU) 231/2012, Commission Regulation (EU) 234/2011

- Regulation (EC) 1334/2008, Regulation (EC) 2065/2003, Commission Implementing Regulation (EU) 872/2012, Commission Regulation (EU) 873/2012
- Regulation (EC) 1332/2008

These measures focus on ensuring the safety and hygiene of feed, registration of novel foods, food additives, flavourings and enzymes, procedures for the use of food additives, flavourings, and enzymes in food.

The regulatory approximation within this subsector was carried out concerning the following sections (areas):

- As regards introduction of the mechanism of ensuring the safety and hygiene of feed:

Task assessment – “perfect”:

1) the following laws of Ukraine have been adopted:

- No. 771 “On the Basic Principles and Requirements for Food Safety and Quality”<sup>39</sup>;
- No. 2264 “On Safety and Hygiene of Feed”<sup>40</sup>;
- No. 2042 “On State Control over Compliance with Legislation on Food, Feedstuff, Byproducts of Animal Origin, Animal Health and Welfare”<sup>41</sup>;

Task evaluation – “perfect” –

2) Order No. 241 of the Ministry of Agrarian Policy “On Approval of Certain Regulations on Food Safety and Hygiene” of 06.05.2019 has been adopted<sup>42</sup>;

Task assessment – “early”:

3) a draft resolution of the Cabinet of Ministers “On the Adoption of Certain Legislative Acts on Feed Safety and Hygiene” has been developed;

4) a draft order of the Ministry of Agrarian Policy “On Approval of Rules Applying a Simplified Approach to the Development, Implementation and Use of HACCP” has been developed, and

5) a draft order of the Ministry of Agrarian Policy “On the Adoption of Maximum Levels for Feed of Primary Production, Directly Supplied to Local Agricultural Producers or the Public for Their Direct Use”;

6) the relevant provisions have been developed and included in draft law No. 3318 “On Veterinary Medicine and Animal Welfare” of 09.04.2020, and the relevant proposals to the draft law “On Amendments to the Customs Code of Ukraine and Certain Legislative Acts of Ukraine on Food and other Products Subject to Sanitary Measures”.

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39) <https://zakon.rada.gov.ua/laws/show/771%2F97%E2%80%93%D0%B2%D1%80#Text>

40) <https://zakon.rada.gov.ua/laws/show/2264%E2%80%93#Text>

41) <https://zakon.rada.gov.ua/laws/show/2042%E2%80%93#Text>

42) <https://zakon.rada.gov.ua/laws/show/z0800%E2%80%93#Text>

- As regards state registration of novel foods, food additives, flavorings, and enzymes (Regulation (EU) 1331/2008), amendments have been made to the current Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality", as well as proposals have been prepared for the draft law "On Amendments to the Customs Code of Ukraine and Certain Legislative Acts of Ukraine on Food and other Products Subject to Sanitary Measures". Task assessment – "advanced".
- As regards improving the use of food additives, flavourings and enzymes in food:

Task assessment – "early":

1) a draft order of the Ministry of Health "On Approval of Requirements for Food Flavorings, Enzymes and Additives" has been developed;

2) requirements for state registration have been included in the draft law "On Amendments to the Customs Code of Ukraine and Certain Legislative Acts of Ukraine Concerning Foodstuffs and Other Sanitary Facilities".

Regarding the monitoring of background levels of dioxins and dioxinlike PCBs in feed, no work has been launched.

## ANIMAL WELFARE STANDARDS

### Commitment group 58 / Animal welfare standards

- Council Directive 2009/156/EC, Commission Decision 2004/211/EC, Commission Decision 93/197/EEC, Council Directive 88/407/EEC, Commission Decision 2010/57/EU, Council Regulation (EC) 1/2005
- Council Directive 2008/119/EC, Council Directive 2008/120/EC, Council Directive 1999/74/EC, Commission Implementing Decision 2013/188/EU, Commission Directive 2002/4/EC, Council Directive 2007/43/EC
- Council Regulation (EC) 1099/2009
- Commission Decision 2002/226/EC

These measures concern ensuring animal health, farming animals, stunning and slaughter of animals, the rules of checks of certain bivalve molluscs.

The regulatory approximation within this subsector was carried out concerning the following sections (areas):

- As regards improving the mechanism of ensuring animal health:

Task assessment: "early":

1) relevant provisions have been developed and included in draft law No. 3318 "On Veterinary Medicine and Animal Welfare" of 09.04.2020;

2) a draft order of the Ministry of Agrarian Policy "On Requirements for Centres for Collection/Storage of Reproductive Material" has been developed;

3) a draft order of the Ministry of Agrarian Policy "On Approval of Rules for the Protection of Animals during Transport and Related Operations" has been developed.

- As regards introduction of the animal farming system:

Task assessment: "early":

1) the order of the Ministry of Economy "On Requirements to Welfare of Farm Animals" has been developed;

2) in pursuance of the requirements of Directive 1999/74/EC on the protection of laying hens, the relevant provisions of Law of Ukraine No. 771 "On Basic Principles and Requirements for Food Safety and Quality" have been introduced; and a draft order of the Ministry of Agrarian Policy "On Amendments to Order No. 40 of the Ministry of Agrarian Policy 'On Approval of the Procedure for Keeping the Register of Market Operators and Facilities for which an Operating Permit was Issued' of 10.02.2016" has been developed;

3) relevant provisions for the protection of animals during transport have been developed and included in draft law No. 3318 "On Veterinary Medicine and Animal Welfare" of 09.04.2020 and the draft order of the Ministry of Agrarian Policy "On Rules for Protection of Animals during Transport and Related Operations";

4) as regards the requirements for the collection of information during inspections of production facilities, the relevant provisions have been developed and included in draft law No. 3318 "On Veterinary Medicine and Animal Welfare" of 09.04.2020 and current Law of Ukraine No. 2042 "On State Control over Compliance with Legislation on Food, Feedstuff, Byproducts of Animal Origin, Animal Health and Welfare".

- As regards updating the mechanism of stunning and slaughter of animals (Council Regulation (EC) No. 1099/2009) a draft order of the Ministry of Agrarian Policy "On Rules for the Protection of Animals at the Time of Killing" has been developed. Task assessment: "early".
- As regards Commission Decision No. 2002/226/EC concerning rules for checks of certain bivalve molluscs – the requirements of the Decision were included in the draft order of the Ministry of Economy "On Approval of Special Requirements for the Production and Circulation of Food of Animal Origin" – assessment of the task: "early".

## CHEMICALS, COMPOSITE PRODUCTS, AND GMOS

### Commitment group 59 / Chemicals, composite products, and GMOs

- Commission Recommendation 2010/C 200/01, Directive 2009/41/EC
- Commission Decision 2009/770/EC
- Commission Directive 93/11/EEC
- Commission Regulation (EU) 284/2011
- Commission Regulation (EC) 641/2004,
- Regulation (EC) 1829/2003, Regulation (EC) 1830/2003

These measures include control of GMOs, reporting on the results of the release of GMOs into the environment, control of the release of the N-nitrosamines and N-nitrosatable substances from elastomer or rubber teats and soothers, procedures

for handling GMOs and their registration, introduction of standard reporting formats for presenting the monitoring results of the GMO release into the environment or in products intended for placing on the market, as well as updating the rules for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China.

The regulatory approximation within this subsector was carried out concerning the following sections (areas):

- Regarding the contained use of GMOs (Directive 2009/41/EC) a draft law of Ukraine "On Amendments to Certain Laws of Ukraine on the Contained Use of Genetically Modified Organisms" has been developed. Task assessment – "advanced".
- Regarding the approval of guidelines for the development of measures to avoid unintended presence of GMOs in conventional and organic crops, no work has been launched.
- As regards introduction of standard reporting formats for presenting the monitoring results of the GMO release into the environment or into products intended for placing on the market, no work has been launched.
- As regards updating of the rules for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China, no work has been launched as Commission Regulation (EU) 284/2011 is not relevant for Ukraine.
- As regards implementation of criteria for the release of the N-nitrosamines and N-nitrosatable substances from elastomer or rubber teats and soothers (Directive 93/11/EEC) a draft order of the Ministry of Health "On the Establishment of Requirements for the Release of the N-nitrosamines and N-nitrosatable Substances from Elastomer or Rubber Teats and Soothers" has been developed. This draft order was designed to enact the Law of Ukraine "On Requirements for Materials and Articles that Come into Contact with Food", which is also being developed. Task assessment – "early".
- Regarding the implementation of procedures for the handling of genetically modified organisms and their registration, currently plans are in place to develop a resolution of the Cabinet of Ministers "On the Rules of State Registration (re-registration) of GMOs." No work has been launched.
- No work has been done concerning Commission Decision No. 2009/770/EC with regard to approval of reporting formats for presenting the monitoring results of the GMO release into the environment.

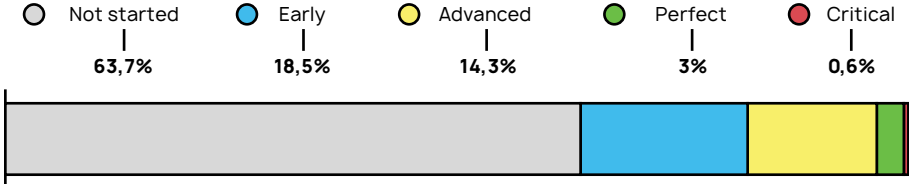
# CUSTOMS AND TRADE FACILITATION



# CUSTOMS AND TRADE FACILITATION

Expert: **Oleksandra Bulana**

## Implementation progress for the sector:



## Overview of key Eurointegration commitments

The processes of harmonisation of certain norms of the Ukrainian customs legislation with the provisions of EU legislative acts actually had begun before the Association Agreement was signed (specifically within the framework of the WTO and the Agreement on Partnership and Cooperation of 1994). At the same time, the Association Agreement provides for a comprehensive plan for customs reform based on EU norms and practices (both in the legislative and institutional areas) and sets specific deadlines for the implementation of the EU acts.

Under the Agreement, Ukraine undertook the commitment to implement the Union Customs Code and accede to the NCTS Convention, as well as to introduce the existing EU exemptions and rules of protection of intellectual property rights in cross-border trade. In addition to the implementation of customs legislation, Ukraine has to make institutional changes, including reforming customs on the basis of Customs Blueprints and arranging effective cooperation between businesses and customs authorities.

To fulfil some of Ukraine's commitments in the field of customs (including development of a new Customs Code, improvement of IPR protection and accession to the NCTS Convention) will require certain public funding (for example, introduction of new IT solutions at customs, training of customs staff and economic operators, etc.). Similarly, adaptation of domestic businesses to certain provisions of European law (such as sealing and providing guarantees for transit cargo) may also incur additional costs. At the same time, the long-term benefits to society (such as synchronisation of legal requirements with the EU, improvement of the investment climate for business and enhancement of the supply chain security) should outweigh the costs.

It is more complicated to assess the consequences of the implementation of Council Regulation (EC) No. 1186/2009 (setting up a Community system of reliefs from customs duty). On the one hand, the provisions of this Regulation expand the list of reliefs from the payment of import duties (for example, admitting free of import duties multiple vehicles of natural persons transferring their normal place of residence, relieving



means of production and equipment in case of change of economic activity, etc.). On the other hand, the above Regulation reduces the quantitative / cost thresholds of tax-free import of goods by individuals in some cases.

## **Evaluation of progress in fulfilling commitments**

### **Commitment 60 / Establishment of an open and effective mechanism for cooperation and exchange of information between customs authorities and economic operators**

- Article 77 AA

Fulfilment of this commitment is specified in Article 77 of the Agreement. It provides for ensuring the transparency of legislation and procedures for economic operators, as well as conclusion of memoranda between operators and administrative bodies based on those promulgated by the WCO.

According to the Ministry of Finance, during 2016-2019 a number of Memoranda of Understanding were concluded between the State Fiscal Service (SFSU) and associations of business operators.

However, the domestic practice of concluding such memoranda does not fully meet the requirements of the Agreement, which specify that the memoranda should be based on those promulgated by the WCO (World Customs Organisation). The memoranda concluded by the SFSU mostly focus on matters of customs value of goods moved by members of the relevant business associations.

At the same time, the instrument of WCO Memoranda of Understanding is primarily aimed at speeding up and facilitating trade by fighting corruption, IPR protection, and improving data quality, rather than only at exchanging information on the customs value of goods. Therefore, although the commitment has been formally fulfilled, further work in this area could make cooperation between customs authorities and economic operators more effective.

### **Commitment 61 / Reforming customs based on the Customs Blueprints**

- Article 80 AA

Article 80 of the Agreement stipulates that the Customs Blueprints shall be used, where appropriate, to strengthen cooperation between customs authorities.

In 2017, the Ministry of Finance developed a comprehensive customs reform plan based on the Customs Blueprints. However, this document was never officially approved. In 2018, the Government approved the Conceptual Areas for Reforming the System of Bodies Implementing the State Tax and Customs Policy (CMU Order No. 1101-p of December 27, 2018) taking into account certain provisions of the Customs Blueprints.

However, despite the adopted document, the process of reforming customs authorities taking into account the Customs Blueprints has not started. Moreover, there is no clear plan for such reform at this moment. Therefore, further actions are required to start execution of this commitment.



## **Commitment 62 / Approximation of Ukrainian customs legislation to the Union Customs Code**

- Regulation (EU) No. 450/2008 (Repealed by Regulation (EU) No. 952/2013)

Fulfilment of this commitment involves developing a new Customs Code of Ukraine, which will be harmonised with the European one. At the same time, to fully implement the Union Customs Code pinpoint changes in legislation are not enough, as it requires introduction of new terminology and procedures, as well as changes to existing ones.

Only certain provisions of the Union Customs Code have been implemented in national legislation. The main achievement is the adoption of the Law of Ukraine No.141-IX of 02.10.2019 "On Amendments to the Customs Code of Ukraine with regard to Certain Matters of Functioning of Authorized Economic Operators". This law allowed not only to regulate the activities of the AEOs themselves but also to start the implementation of some other institutions of the Union Customs Code (such as the application of comprehensive guarantees, an entry summary declaration, registration of economic operators, etc.).

No by-laws on AEO activities have been adopted so far, and the relevant drafts are currently undergoing public discussion. There are no achievements with regard to any other matters that Ukraine has to implement from this Regulation.

In addition, CMU Resolution No. 144 "On Amendments to Resolution No. 1765 of the Cabinet of Ministers of Ukraine of December 20, 2006" dated February 27, 2019 brought the norms of the customs legislation of Ukraine into line with the customs legislation of the EU with regard to determining non-preferential origin when importing goods into Ukraine in accordance with the commitments undertaken under the Association Agreement between Ukraine and the EU.

Currently, the State Customs Service has established an Office for Support of Authorized Economic Operators (i.e. human resources have been allocated to fulfil this obligation). But the lack of bylaws prevents the full-fledged launch of the process of AEO functioning. According to the Road Map of the State Customs Service for 2020, the Customs Service expects to start accepting applications for AEO status from the late April 2020<sup>1</sup>. In December 2020, the State Customs Service expects the first certified AEOs to appear. However, as of the end of May, the bylaws for the start of AEO operation were not approved, and, therefore, no applications for AEO status have been accepted.

Progress has been made in aligning legislation with the Union Customs Code to establish rules for determining the non-preferential origin of goods. In 2019, the Cabinet of Ministers adopted Resolution No. 144 "On Amendments to Resolution No. 1765 of the Cabinet of Ministers of Ukraine of December 20, 2006" dated February 27, 2019, which aligns the customs legislation of Ukraine with EU customs legislation as regards determination of the non-preferential origin of goods when importing goods into Ukraine in accordance with the commitments made under the Association Agreement between Ukraine and the EU.

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1) Нова митниця: на старт (New Customs: On Your Mark) [www.visnuk.com.ua/uploads/assets/files/2019/Pdf/new\\_%20c\\_ustoms.pdf](http://www.visnuk.com.ua/uploads/assets/files/2019/Pdf/new_%20c_ustoms.pdf)

### **Commitment 63 / Accession to the Convention on the Simplification of Formalities in Trade in Goods and the Convention on a Common Transit Procedure (NCTS)**

- Convention on the simplification of formalities in trade in goods
- Convention on a Common Transit Procedure (NCTS)

Accession to these two conventions will allow optimizing the procedure for transit of goods through the EU, the EFTA, the United Kingdom, Turkey, Northern Macedonia, and Serbia. The NCTS Convention can be acceded to only by invitation. The invitation can be obtained only after the implementation of all legislative changes, preparation of the necessary IT system and completion of all processes required to work in the common transit system for 1 year.

Law 78-IX "On Common Transit Procedure and Introduction of the National Electronic Transit System" of 13.02.2020 was adopted, which made it possible to implement the NCTS Convention as well as the Convention on the Simplification of Formalities in Trade in Goods. This law introduced the use of customs declarations of certain types (specified by the NCTS Convention), laid down the procedure for using the electronic transit system and introduced a mechanism for transit guarantees, and so on.

That is, the obligations required to accede to the conventions have been fulfilled at the level of amendments to the laws of Ukraine. A number of by-laws required to launch the common transit regime are undergoing public discussion.

The main practical task to accede to the NCTS Convention was to create and put into operation the software necessary for the functioning of common transit. In March, the State Customs Service launched a test use of software (donated by the Lithuanian Customs Administration) required for common transit. According to the head of the State Customs Service, the software was tested at Kyiv and Boryspil customs. The next stage is training of system users. Further, the system will be tested throughout Ukraine. According to the State Customs Service, control over the movement of certain goods using NCTS is to start in July 2020<sup>2</sup>. If the system testing is successful, Ukraine will be able to receive an invitation to accede to the NCTS Convention as a full participant.

### **Commitment 64 / Implementation of customs duty reliefs in force in the EU**

- Council Regulation No. (EC) 1186/2009

The commitment involves aligning the list of transactions exempt from duties with the one in force in the EU. Some reliefs are already in place in Ukraine, but the mechanism for granting them does not fully comply with the Regulation.

Over the five years since the Association Agreement was signed, no amendments have been made to legislation to fulfil this commitment. In 2016, a draft law was submitted to the Verkhovna Rada, aiming at aligning the customs legislation with the above Regulation, but work on this draft law stopped at the level of committees. Thus, there is no progress in fulfilling this commitment.

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2) <https://drive.google.com/file/d/1ccL3LQholKDaWelYwIjcc7UWyH40HyLn/view>

Due to the lack of progress in the regulatory approximation, implementation in practice is not possible either.

### **Commitment 65 / Protection of intellectual property during movement of goods across the customs border of Ukraine**

- Council Regulation (EC) No. 1383/2003 (Repealed by Regulation (EU) No. 608/2013)
- Commission Regulation (EC) No. 1891/2004 (Repealed by Commission Implementing Regulation (EU) No. 1352/2013)

The commitment involves ensuring the approximation of national customs legislation in the field of intellectual property protection and combating the movement of counterfeit goods to that of the EU.

Law of Ukraine 202-IX "On Amendments to the Customs Code of Ukraine as regards Protection of Intellectual Property Rights during Movement of Goods Across the Customs Border of Ukraine" of October 17, 2019 was adopted. The law approximates the customs legislation to EU standards and expands the powers of customs authorities in the field of countering movement of counterfeit products.

Draft bylaws have been prepared but have not been approved and are currently undergoing public discussion.

To begin practical implementation of the legislative changes introduced by Law No.202-IX of 17.10.2019, it is first necessary to approve the bylaws.

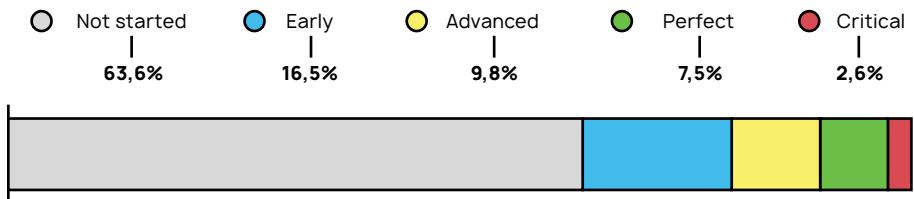
**ESTABLISHMENT,  
TRADE IN SERVICES  
AND ELECTRONIC  
COMMERCE**



# ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE

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## Implementation progress for the sector:



## POSTAL AND COURIER SERVICES

### Overview of key Eurointegration commitments

Postal services play a significant role in creating and maintaining an efficient and dynamic market and are extremely important for the economy as a whole.

The provision of postal services in Ukraine is carried out in accordance with national legislation, taking into account the acts of the Universal Postal Union and the provisions of international treaties ratified by the Verkhovna Rada of Ukraine.

Relations in the field of postal services are regulated by the Law of Ukraine "On Postal Service"<sup>1</sup> and the Rules for the Provision of Postal Services, approved by Resolution No. 270 of the Cabinet of Ministers of Ukraine of March 5, 2009<sup>2</sup>.

The universal postal service is provided by the national operator, whose functions in accordance with Order No. 10 of the Cabinet of Ministers of Ukraine "On the National Postal Operator" of January 10, 2002<sup>3</sup> were assigned to Ukrposhta, the Ukrainian state postal service enterprise.

JSC Ukrposhta was designated as the postal operator authorised to perform the functions of delivering EMS items (international registered postal service for documents and / or merchandise received, transported and delivered by the fastest way) by Order No. 824 of the Ministry of Infrastructure of 22.11.2019<sup>4</sup>. Earlier, this service used to be assigned to the State Special Communications Service of Ukraine. Based on the above Order, the enterprises completed the transfer of functions, and,

1) <https://zakon.rada.gov.ua/laws/show/2759-14>

2) <https://zakon.rada.gov.ua/laws/show/270-2009-%D0%BF>

3) <https://zakon.rada.gov.ua/laws/show/10-2002-%D1%80>

4) <https://zakon.rada.gov.ua/laws/show/z1241-19>

according to the head of Ukrposhta<sup>5</sup>, from April 1, 2020, the EMS service has become available in Ukrposhta branches, and after a while it will be available in more than 4,000 branches across the country.

In addition to the national postal operator JSC Ukrposhta, the postal network of Ukraine includes non-state-owned operators and other business entities that provide delivery services in the segment of commercial postal services. As of 19.05.2020, the Unified State Register of Postal Operators<sup>6</sup> included 65 such entities.

Special-purpose postal services (courier and special communication services) for certain categories of users are provided by the Main Department of the Government Courier Communications of the State Special Communications Service and the State Enterprise of Special Communications.

The role of postal services in Ukraine, as well as in the world, has been growing rapidly over the past ten years. On the one hand, the scope of paper communication is decreasing, whereas the scope of electronic communication is increasing. On the other hand, new technologies make online shopping convenient, thereby increasing the number of packages and parcels delivered by postal operators.

The market of postal services is important for Ukraine, which, given its favourable geographical location, can develop a promising market for transit postal logistics for the European Union.

Ukraine's commitments in the field of postal and courier services, in particular regarding the harmonisation of legislation with the requirements of EU acquis, are specified in paragraph 2 of Appendix XVII-6 "Provisions on Monitoring" to Annex XVII "Regulatory Approximation", Title IV "Trade and Trade-Related Matters" of the Association Agreements and those pertaining to the implementation of the provisions of the Agreement, namely: subsection 4 "Postal and Courier Services", Part 5 "Regulatory Framework", Chapter 6 "Establishment, Trade in Services and Electronic Commerce, Title IV "Trade and Trade-Related Matters"<sup>7</sup>.

In accordance with Appendix XVII-4 "Rules Applicable to Postal and Courier Services" to the Association Agreement, the provisions of the following EU acquis are to be adopted within two years from the date of entry into force of the Agreement (for DCFTA under Title IV "Trade and Trade-Related Matters" it is January 1, 2016):

1. Directive 97/67/EC<sup>8</sup> on common rules for the development of the internal market of Community postal services and the improvement of quality of service. The Directive's provisions shall be implemented within 2 years of the entry into force of the AA;
2. Directive 2002/39/EC<sup>9</sup> amending Directive 97/67/EC with regard to the further opening to competition of Community postal services. The Directive's provisions shall be implemented within 2 years of the entry into force of the AA;

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5) <https://ua.interfax.com.ua/news/economic/651153.html>

6) <https://nkrzi.gov.ua/index.php?r=site/index&pg=60&language=uk%20>

7) <https://www.kmu.gov.ua/diyalnist/yevropejska-integraciya/ugoda-pro-asociacyu>

8) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31997L0067%20>

9) <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32002L0039%20>

3. Directive No. 2008/6/EC<sup>10</sup> amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services. The Directive's provisions shall be implemented within 2 years of the entry into force of the AA.

It is worth noting that the ultimate and comprehensive goal of the European postal policy is to ensure the availability of reliable and high-quality postal services at least five working days a week throughout the EU for all citizens of the EU Member States and businesses at affordable prices. In accordance with the principle of subsidiarity and taking into account the differences in the postal markets of the Member States, the Postal Directives give Member States considerable flexibility by allowing to adapt elements of domestic postal services, i.e. services provided in a particular country based on their specific needs.

The key goals and objectives of the Postal Directives include the following.

- First Postal Directive No. 97/67/EC (gradual controlled liberalisation of the postal market):
  - introduction of a minimum range of postal services;
  - setting requirements for the frequency and quality of services;
  - development of the tariff principles;
  - creation of independent national regulatory authorities (NRAs).
- Second Postal Directive No. 2002/39 / EC (narrowing of the monopoly of national postal operators):
  - reduction of the range of reserved services provided by national postal operators;
  - supplementing the tariff principles for the universal service;
  - approval of the principles of financing the universal service;
  - streamlining of the work with consumer complaints.
- Third Postal Directive No. 2008/6/EC (full accomplishment of the internal market of Community postal services and gradual opening of the market):
  - reconciling the terms of the full market opening;
  - specification of the tasks and competencies of NRAs;
  - change of the ways of providing and ways of financing the universal service;
  - development of methods for calculating the net cost of the universal service;
  - setting requirements concerning the accessibility to other

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10) <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008L0006>

operators of certain elements of the postal infrastructure of national operators (in particular, the address database and mailboxes);

- expansion of the provisions on consumer protection.

With the adoption of the Third Postal Directive, all mentions of the Postal Directive (PD) in all European Commission working documents refer to the consolidated Postal Directive (unless stated otherwise), in particular in the Commission Staff Working Document (Brussels, 17.11.2015 SWD (2015) 207 final) Accompanying the document Report from the Commission to the European Parliament and the Council on the application of the Postal Services Directive (Directive 97/67/EC as amended by Directive 2002/39/EC and Directive 2008/6/EC) {COM(2015) 568 final}<sup>11</sup>. The translation of the EU Postal Directive on the website of the Ministry of Justice of Ukraine is also consolidated<sup>12</sup>.

Estimates of the expected balance of costs and benefits have not been found. The analysis of the regulatory impact with regard to the draft law "On Amendments to the Law of Ukraine 'On Postal Service'", posted on the website of the Ministry of Infrastructure for public discussion on March 29, 2019, provides some figures but contains no references to any calculations made. Also, with regard to some items, in our opinion, it failed to take into account some possible state-budget costs and the costs of economic entities, as well as benefits. We suggest carrying out a full-fledged sectoral analysis with regulatory impact assessment in accordance with the European practice of Regulatory Impact Assessment.

#### Evaluation of progress in fulfilling commitments

#### **Commitment 66 / Harmonisation of the national legal framework in the sector of postal and courier services in line with the principles of the European Union acquis set out in the Association Agreement, in order to ensure the gradual alignment of the existing and future legislation with the EU acquis**

- Directive No. 97/67/EC, supplemented by Directive No. 2002/39/EC and Directive No. 2008/6/EC

The commitment involves introduction of framework rules in the sector of postal and courier services in accordance with Article 1 (Chapter 1) of Directive 97/67/EC of 15 December 1997 on:

- conditions governing the provision of postal services;
- provision of the universal postal service;
- financing of the universal postal service on the terms that guarantee the provision of services on a permanent basis;
- tariff principles and transparency of accounts for universal postal service provision;
- the setting of quality standards for universal service provision

11) <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2015:0207:FIN:EN:PDF%20>

12) [https://minjust.gov.ua/m/str\\_45879](https://minjust.gov.ua/m/str_45879)



and the setting-up of a system to ensure compliance with those standards,

- the harmonisation of technical standards,
- the creation of independent national regulatory authorities.

The legal approximation is at an early stage. It should be noted that since the signing of the Association Agreement, measures to implement its provisions in the field of postal and courier services have been included in the relevant plans approved by the Cabinet of Ministers of Ukraine, in particular in 2014 (CMU Order No. 847-p of September 17, 2014<sup>13</sup>), in 2015 (CMU Order No. 222 of March 18, 2015<sup>14</sup>), and in 2016 (CMU Order No. 217-p of February 18, 2016<sup>15</sup>).

However, none of the measures set forth in these regulations, except for the Plan for the Implementation of Directive No. 97/67/EC, approved by Order No. 222 of the Cabinet of Ministers of March 18, 2015 (to implement the relevant measures of the Plan approved by Order No.847-p of the Cabinet of Ministers of September 17, 2014), have been performed, instead they were cancelled due to the adoption of:

- the Action Plan on Implementation of the Association Agreement, approved by CMU Resolution No. 1106 of October 25, 2017<sup>16</sup>, and
- the Strategy for Implementation of the Provisions of the EU Directives in the Field of Postal and Courier Services (Roadmap), approved by CMU Order No. 104-p of February 14, 2018<sup>17</sup> (repealing CMU Order No. 222 of March 18, 2015), the state of implementation of the above is analysed herein.

Thus, the Action Plan on Implementation of the Association Agreement between Ukraine and the EU involves:

- Developing a draft strategy for implementing the provisions of the EU directives in the field of postal and courier services (Roadmap).

Agency in charge – Ministry of Infrastructure. The deadline is March 20, 2018. Fulfilment status – fulfilled: the Strategy and the Action Plan for its implementation were approved and adopted by Order No. 104-p of the Cabinet of Ministers of February 14, 2018;

- harmonisation of national legislation with the EU acquis in the field of postal services (para. 1793 of the Action Plan), in particular development and submission to the Cabinet of Ministers of a draft law on amendments to the Law of Ukraine "On Postal Service".

Agency in charge – Ministry of Infrastructure. The deadline is March 20, 2018, further postponed until December 31, 2020<sup>18</sup>. Fulfilment status – launched: on October 26, 2018 the relevant draft law was posted on the website of the Ministry of Infrastructure

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13) <https://zakon.rada.gov.ua/laws/show/847-2014-%D1%80>

14) <https://zakon.rada.gov.ua/laws/show/222-2015-%D1%80>

15) <https://zakon.rada.gov.ua/laws/show/217-2016-%D1%80>

16) <https://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF#Text>

17) <https://zakon.rada.gov.ua/laws/show/104-2018-%D1%80>

18) Amendments made by Resolution No. 1005 of the Cabinet of Ministers of Ukraine of November 20, 2019 "On Amendments to the Action Plan on Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part" (<https://zakon.rada.gov.ua/laws/show/1005-2019-%D0%BF#n8>)

for public discussion until November 26, 2018, the next version – March 29, 2019, discussion until April 29, 2019.

- a number of other measures (paragraphs 1821-1832 of the Action Plan), aimed at developing and adopting bylaws for the practical implementation of the provisions of the Postal Directive. Agency in charge – Ministry of Infrastructure, National Commission for the State Regulation of Communications and Informatization (subject to consent). However, it should be noted that although the Action Plan (CMU Resolution No. 1106) sets the deadline for the implementation of these measures (1821-1832) as December 31, 2018 (extended until October 1, 2020 by CMU Resolution No. 1005 of November 20, 2019), most of them focus on the development and approval of bylaws to be adopted in case of and based on the adoption of the Law of Ukraine "On Amendments to the Law of Ukraine 'On Postal Service'".

This prerequisite is mentioned, inter alia, in paragraph 1822 of the Action Plan, as well as in paragraphs of the Action Plan on Implementation of the Strategy (CMU Order No. 104-p). Currently, there are indeed no grounds and powers for the adoption of such regulations (because, according to Article 19 of the Constitution of Ukraine: "State authorities and bodies of local self-government and their officials shall act only on the grounds, within the authority, and in the manner envisaged by the Constitution and the laws of Ukraine.") and, hence, for the implementation of the provisions of the EU Postal Directives.

In its turn, the Action plan on the Strategy for Implementation of the Provisions of the EU Directives in the Field of Postal and Courier Services (Roadmap), approved by CMU Order No. 104-p of February 14, 2018, (hereinafter – the Roadmap) virtually duplicates the measures set forth in the Action Plan approved by CMU Resolution No. 1106 of October 25, 2017, except for the measures to develop and approve the Strategy itself.

In March 2019, another version of the draft law of Ukraine "On Amendments to the Law of Ukraine 'On Postal Service'" (hereinafter – the draft law of 2019) was posted for public discussion on the website of the Ministry of Infrastructure<sup>19</sup>. We have analysed the text of this draft law and have come up with the following conclusions.

It is worth noting that the quality of the current version the draft law of 2019 in terms of taking into account the provisions of the EU Postal Directives to be implemented is an order of magnitude higher than the quality of the previous versions of the draft law of Ukraine "On Amendments to the Law of Ukraine 'On Postal Service'", which were submitted for public discussion in October and February 2018 (hereinafter – the draft laws of 2018<sup>20</sup>), in October 2016 (hereinafter – the draft law of 2016)<sup>21</sup>, and in October 2015 (hereinafter – the draft law of 2015)<sup>22</sup>.

Thus, the draft law of 2019 (unlike the draft law of 2016 and partly the draft laws of 2018) to some extent takes into account the provisions of the EU Postal Directive with regard to the introduction of a number of rules on:

- the conditions governing the provision of postal services;
- the universal postal service provision;

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19) <https://mtu.gov.ua/projects/215/>

20) <https://mtu.gov.ua/projects/192/>; <https://mtu.gov.ua/projects/162/>

21) <https://mtu.gov.ua/projects/88/>

22) <https://mtu.gov.ua/projects/20/>

- financing of the universal postal service on the conditions that guarantee the provision of services on a permanent basis;
- tariff principles and transparency of accounts for universal postal service provision;
- the setting of quality standards for universal service provision and the setting-up of a system to ensure compliance with those standards;
- the harmonisation of technical standards;
- the establishment of independent national regulatory authorities.

However, a number of inconsistencies remain that need to be addressed in order to bring the provisions of the draft law of 2019 closer to the requirements of the Postal Directive, some of which, in our opinion, are critical, in particular regarding:

- list of postal services classified as universal. Shipment of parcels (as they are postal items in accordance with both the Directive and the draft law of 2019) of up to 10 kg with the declared value should also be a universal service. We suggest returning to the universal postal service list of the draft law of 2018 since it is in line with the list of the EU Postal Directive;
- the possibility of designating more than one designated operator for the provision of the universal service (all or some services) nationally or regionally. It is necessary to eliminate the inconsistencies in individual articles of the draft law of 2019 (primarily in Art. 16 and Art. 17). There are also some inconsistencies between the provisions of Art. 17 and Art. 18 regarding the exclusive rights of the designated operator(s);
- state supervision of postal operators with regard to the universal service provision by them. Article 9 of the draft law of 2019 should be revised so that the regulatory regime in the field of postal services would apply only to services classified as universal rather than all services provided by designated operator(s);
- ensuring the independence of the national regulator. As regards the potential conflict between the draft law of 2019 and versions of the draft law of "On Electronic Communications", it is discussed separately within the analysis of Commitment 2;
- financing of the universal postal service. This important provision of the EU Postal Directive has generally gone unnoticed by the authors of the draft law of 2019, even in the truncated version proposed by the draft law of 2018.

Equally important and requiring special attention is the need to change the approach to terms and the definition of the field of public relations as a subject of regulation: transition to the terms established both within the EU and in the world (as set by the EU Postal Directive and Universal Postal Union regulations, where the postal sector has long been considered and regulated not as a field of communications but as a field of services). First of all, it concerns the need to replace the term "postal communications" (Ukr. "поштовий зв'язок") with "postal services" (Ukr. "поштові послуги"), which requires not only harmonisation of terms but also shifting the focus in the outcomes of the activity within the postal sector to service provision to users. Thus, the EU Postal Directive uses only the term "postal services" rather than "postal communications"; and we have not encountered the latter term in any European or other international official and informal documents, materials and

information related to this area. This change of approach is further confirmed by the fact that the Association Agreement includes the provisions concerning the field of postal and courier services in the sections within Chapter 6 "Establishment, Trade in Services and Electronic Commerce" of Title IV "Trade and Trade-Related Matters" and is separated from the area of communications, as well as by the wording of the terms in the paragraphs of the Action Plan on Implementation of the Strategy (CMU order No. 104-p) and the consolidated Action Plan (CMU Resolution No. 1106).

Therefore, we consider it necessary to support and continue the logic of using the term "postal services" in the 2019 draft law, i.e. to change the term "postal communications" to "postal services" both in its name and in the text. Should the law be adopted, it is necessary to adhere to the same principle during the preparation and approval of the relevant bylaws.

It should be noted that as of today none of these draft laws has been submitted to the Verkhovna Rada of Ukraine.

Due to the lack of legal approximation, practical implementation of the provisions of the EU acquis has not started.

### **Commitment 67 / Ensuring legal separation of the regulatory body in the field of postal services and its functional independence from postal and courier service providers**

- Directive No. 97/67/EC, supplemented by Directive No. 2002/39/EC and Directive No. 2008/6/EC

The commitment involves improvement of the functions and specification of the powers of the national regulatory authority for the state regulation in the field of postal services, ensuring the independence of the national regulatory authority in accordance with Chapter 9 of Directive 97/67/EC of 15 December 1997 (Association Agreement – Article 113, Annex XVII, Postal Directive – Chapter 9, Article 22). To implement this provision, in accordance with the Roadmap approved by CMU Order No. 104-p of February 14, 2018, it is necessary to amend the Regulation on the National Commission for the State Regulation of Communications and Informatization, approved by Decree No. 1067 of the President of Ukraine of November 23, 2011<sup>23</sup>.

The legal approximation has not started. As of today, the principles of work of this body are set forth in the Law of Ukraine "On Postal Service" and the Regulation on the National Commission for the State Regulation of Communications and Informatization, approved by Decree No. 1067 of the President of Ukraine of November 23, 2011 (hereinafter – the Regulation on the NCCIR). However, they do not provide any clear legal definition of the status of the NCCIR, as the Law "On Postal Service" stipulates that "the competence of the National Commission performing the state regulation in the field of communications and informatization and its powers are determined by this and other laws of Ukraine." The same law assigns the function of supervision of the market of postal services to the State Inspection of Communications (hereinafter – the SIC). The latter was liquidated by CMU Resolution No. 151 of February 29, 2012<sup>24</sup>, however, no changes were made to the relevant law.

The draft law of Ukraine "On Amendments to the Law of Ukraine 'On Postal Service'", which was submitted for public discussion in October 2016, as well as the draft

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23) <https://zakon.rada.gov.ua/laws/show/1067/2011>

24) <https://zakon.rada.gov.ua/laws/show/151-2012-%25D0%25BF>

law of Ukraine "On Electronic Communications" (Reg. No. 3549-1 dated 11.12.2015 – currently the draft law has been withdrawn and removed from the Verkhovna Rada website) made attempts to introduce, among other things, a source of funding for the activities of the national regulator consisting in contributions for the regulation in the amount of a certain percentage of revenues, including the revenues of postal operators received for the provision of postal services.

So far, this innovation has not been supported, as the draft law of Ukraine "On Amendments to the Law of Ukraine 'On Postal Service'", which was submitted for public discussion in March 2019, the draft laws of 2018, and the draft law of Ukraine "On Electronic Communications" (Reg. No. 3014 dated 05.02.2020 – its status on the website of the Verkhovna Rada as of 20.05.2020 is "Included in the agenda"), no longer contain such a rule. However, it should be noted that this idea, should it reappear on the agenda, is fraught with certain risks: on the one hand, it calls into question the principle of independence of the regulator from market participants (operators with higher revenues will pay higher fees and are likely to have some influence of the regulator); on the other hand, market participants, without gaining such influence, may not be interested in paying fees to the regulator, but instead will have an "incentive" to hide or understate their income. According to Article 113 of the Association Agreement: "The regulatory body shall be legally separate from and not accountable to any supplier of postal and courier services. The decisions of and the procedures used by the regulatory body shall be impartial with respect to all market participants."

An important step towards not only legal separation (the requirement included in the draft law of 2019, which, should this draft law be adopted, is to be included in the Regulation on NCCIR, approved by Presidential Decree No. 1067 of 23 November 2011, or in case of adoption of a special law on the regulatory body) but also towards the functional independence of the national regulatory body in the postal service sector could be privatisation, at least partial, of JSC Ukrposhta as a logical next step in the process of corporatisation of the former state enterprise and now joint stock company – but with the 100 % state share in the authorised capital of the company. It would also contribute to the demonopolisation of the postal service market (in particular with regard to the services for which the national operator currently has the exclusive right), and boost competition and the free market. This initiative was supported by the previous government of O. Honcharuk<sup>25</sup>, which prepared and on 03.02.2020 submitted to the Verkhovna Rada of Ukraine the relevant draft law on the list of objects of state property that are not subject to privatisation<sup>26</sup>, which, inter alia, provided for the possibility of privatisation of 49% of the shares of JSC Ukrposhta. However, on March 4, 2020, this draft law was withdrawn.

Special attention should be given to the latest news of 02.06.2020 that IT & Telecom sector experts from the Better Regulation Delivery Office (BRDO) prepared a draft law designed to determine the organisational and legal status and principles of work of the regulator in the field of communications – NCCR (National Commission for the State Regulation of Communications). This is stated in the report<sup>27</sup>. Draft Law "On the National Commission for State Regulation of Communications"<sup>28</sup> does contain provisions on both legal and financial independence of the sector regulator. However,

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25) <https://ua-news.liga.net/economics/news/chastinu-aktsiy-ukrposhti-mojut-prodati-na-mijnarodnih-birjah>); (<https://mtu.gov.ua/news/31516.html>); <https://www.althoughda.com.ua/news/2020/02/4/656628/>

26) [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68029%20](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68029%20)

27) [https://brdo.com.ua/top/eksperty-brdo-rozroblyv-proekt-zakonu-pro-regulyatora-u-sferi-zv-yazku-nkrz/?fbclid=IwAR1IGJokLSKQOjGA5wY\\_12De4TgQdRVguXLftMe%20](https://brdo.com.ua/top/eksperty-brdo-rozroblyv-proekt-zakonu-pro-regulyatora-u-sferi-zv-yazku-nkrz/?fbclid=IwAR1IGJokLSKQOjGA5wY_12De4TgQdRVguXLftMe%20)

28) <https://brdo.com.ua/bills/proekt-zakonu-ukrayiny-pro-natsionalnu-komisiyu-shho-zdijsnyuye-derzhavne-regulyuvannya-v-galuzi-zv-yazku/?fbclid=IwAR3YbodvM9hG9C2NezI%20>

the authors of this draft law emphasise that it is designed primarily to launch full-fledged reform in the field of telecommunications and recommend legislators (the draft law was sent to the Verkhovna Rada Committee on Digital Transformation and the Ministry of Digital Transformation) to consider it together with draft law No. 3014. According to the draft law on the NCCR, the body retains the regulatory and supervisory (control) functions in the postal sector, however, obviously as a legacy from its predecessor (the NCCIR), because the Ministry of Infrastructure was not sent the draft law for approval. There is also no mention of alignment with EU legislation in the field of postal services. In our opinion, this is yet another argument in favour of the requirement to withdraw the postal sector from the regulation of the telecommunications sector and transfer it to the sector of services, which was mentioned in the analysis of the implementation of Commitment 66. To this end, as an alternative variant of the implementation of Commitment 67, we think it might be expedient to create a separate regulatory body in the field of postal services (possibly based on the resources of the current NCCIR units responsible for this area), as is the practice in EU member states, complying with the requirements for the regulator set forth in the EU Postal Directive.

We also emphasize that the draft law of Ukraine "On the National Commission for State Regulation in the Field of Communications", developed by experts of the Better Regulation Delivery Office and submitted for consideration by the relevant Committee of the Verkhovna Rada and the Ministry of Digital Transformation, envisages that the created regulatory body will carry out state regulation and supervision (control) in the field of postal services in accordance with the Law of Ukraine "On Postal Service". Therefore, it is extremely important to adopt this draft law on the new regulatory body (if it is to be introduced), which should be synchronised not only with the adoption of the new draft law "On Electronic Communications", as noted by the BRDO experts, but also with the adoption of amendments to the Law of Ukraine "On Postal Service" to avoid discrepancies and inconsistencies regarding the powers of the national regulatory authority in the postal sector.

Due to the lack of the legal basis, practical implementation of the provisions of European legislation has not started.

### **Commitment 68 / Establishment of uniform rules and conditions governing the provision of postal and courier services**

- Directive No. 97/67/EC, supplemented by Directive No. 2002/39/EC and Directive No. 2008/6/EC

The commitment involves establishing uniform rules and conditions governing the provision of postal and courier services in accordance with the requirements of the provisions of the EU Postal Directive. Today, the sector is governed by the Rules for the Provision of Postal Services, approved by Resolution No. 270 of the Cabinet of Ministers of March 5, 2009<sup>29</sup> (hereinafter referred to as the Rules), the provisions of which do not comply with the requirements of the Postal Directive, including, but not limited to, on the following:

- terms in the postal sector;
- classification of postal services;
- the list of services classified as universal, their tariff principles and the quality standards for their provision;

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29) <https://zakon.rada.gov.ua/laws/show/270-2009-%D0%BF>

- the designated operator and the list of services to which it has an exclusive right, etc.

The legal approximation has not started. From the moment of entry into force of the Association Agreement, the above CMU Resolution No. 270 has been amended several times, but the amendments never aimed at aligning the provisions of the Rules with the obligations under the EU Postal Directive. However, it should be noted that such amendments to the bylaw should be made subject to and on the basis of the adoption of a new version of the Law of Ukraine "On Postal Service". Otherwise there will be a discrepancy between the current Law and the Rules.

Due to the lack of legal basis, practical implementation of the provisions of European legislation has not started.

### **Commitment 69 / Approval of the procedure for selection and designation of designated postal service operators**

- Directive No. 97/67/EC, supplemented by Directive No. 2002/39/EC and Directive No. 2008/6/EC

The commitment involves approval of the procedure for selection and designation of designated postal operators in accordance with the requirements of Article 4 of Chapter 2 of the Postal Directive.

Thus, in accordance with the Postal Directive, in order for the universal service to be provided throughout the territory of the state, it is necessary to ensure that one or more enterprises be designated as designated operator – i.e. the universal service provider. Different enterprises may be assigned to perform different components of the universal service and / or to cover different parts of the state territory. The terms of the universal service provision should be based on the principles of transparency, non-discrimination and proportionality in order to guarantee their continuity. The designation of the designated operator(s) should be subject to periodic review in the light of the above conditions and principles; however, the duration of such designation should be sufficient for the return on investment.

The legal approximation has not started. Today, the universal postal service provider is the national operator, whose functions in accordance with CMU Order No. 10 "On the National Postal Operator" of 10.01.2002<sup>30</sup> were assigned to UDPPZ (Ukrainian State Enterprise of Postal Communications) Ukrposhta (whose legal successor is JSC Ukrposhta with 100% of shares belonging to the state). As Article 4 of the Postal Directive provides for the possibility of appointing several operators to perform different components of the universal service and / or to cover different parts of the state territory, after amending the Law of Ukraine "On Postal Service" (currently the draft law of 2019 contains certain inconsistencies concerning the designated operator(s), as described in the analysis of Commitment 1) we consider it necessary to adopt the relevant normative legal act (preferably at the level of the Cabinet of Ministers) setting the procedure for selection and designation of designated postal service operators in line with the requirements of the EU Postal Directive.

Due to the lack of the legal basis, practical implementation of the provisions of European legislation has not started.

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<sup>30)</sup> <https://zakon.rada.gov.ua/laws/show/10-2002-%D1%80>

## **Commitment 70 / Introduction of a mechanism and determining the procedure for financing the universal postal service on the terms that ensures permanent service provision**

- Directive No. 97/67/EC, supplemented by Directive No. 2002/39/EC and Directive No. 2008/6/EC

The commitment involves introducing a mechanism and determining the procedure for financing the universal postal service on the terms that ensure permanent service provision in accordance with the requirements of Chapter 3 of the Postal Directive.

Thus, according to the Directive, there should be no exclusive rights to provide postal services. Instead, the state can use one or more methods to ensure the maintenance of universal service: either through a public procurement procedure, or (if the provision of universal service results in an unfair burden on the designated operator) through the mechanism reimbursement to the designated operator from state budget funds or through the mechanism of distribution of the cost of universal service between service providers and / or users. Alternatively, a compensation fund may be established in compliance with the principles of transparency, non-discrimination and proportionality. The fund may be financed from a fee imposed on service providers and / or users, and managed by an organisation independent of its beneficiaries. The granting of permits to providers may involve an obligation to make financial contributions to the compensation fund or to fulfil the universal service.

The legal approximation has not started. Currently, there is no mechanism for financing the universal postal service, which makes it impossible for the national operator PJSC Ukrposhta to provide all the universal postal services of appropriate quality and at affordable rates. In addition, the lack of such a mechanism leads to private operators' lack of interest in providing such universal service. Therefore, the development and adoption of a legal act introducing such a mechanism and setting a transparent system of financing the universal postal service under conditions that guarantee the provision of services on a permanent basis is urgent if we want to implement the provisions of the Postal Directive. Such an act should be adopted at the level of the Cabinet of Ministers after adopting amendments to the Law of Ukraine "On Postal Service", because it might require expenditures from the state budget as one of the options for financing the universal service provision.

However, as specified above in the analysis of Commitment 66, such an important provision of the EU Postal Directive as the financing of the universal postal service was rejected by the authors of the 2019 draft law altogether, even in the truncated version proposed by the October 2018 draft law. The latter mentioned the relevant provisions in a general phrase in Part 6 of Article 10, namely: "The procedure for the compensation of costs for universal postal service provision, in case of their unprofitability, is determined by the Cabinet of Ministers of Ukraine based on the mechanism of counting the actual losses incurred by universal service providers, taking into account the quality standards of universal postal service provision as defined by the national regulator at the expense of the State Budget of Ukraine." The principle proposed in part 6 of Article 10 of the 2018 draft law referred to a CMU act rather than specified options for financing the universal service, as provided for in Article 7 (Chapter 3) of the Postal Directive, and gave unreasonable grounds to the authors of the draft law of 2018 to specify in paragraph 5 Financial Feasibility of the Explanatory Note to the draft law of 2018 that: "implementation of the Law in case of its adoption will not require funding from state and local budgets." It is likely



that no calculations were made to determine the profitability / unprofitability of the universal service provision that could confirm this statement (or even forecasts from operators / potential operators providing the universal postal service). We consider it urgent and absolutely necessary to revise the principle implementing the relevant provision of the EU Postal Directive and include it in the draft law of 2019, which in case of adoption of the law will open the way to the development and adoption of the procedure itself, i.e. a mechanism to fulfil this obligation.

Due to the lack of the legal basis, practical implementation of the provisions of European legislation has not started.

### **Commitment 71 / Establishing quality standards for the universal postal service provision and introducing a system to ensure compliance with these standards**

- Directive No. 97/67/EC, supplemented by Directive No. 2002/39/EC and Directive No. 2008/6/EC

The commitment involves establishing quality standards for universal postal service provision and implementation of a system to ensure compliance with these standards in accordance with the requirements of Article 1 (Chapter 1), Chapter 2, Articles 16-18 (Chapter 6), and Annex II of the EU Postal Directive. Quality standards focus, in particular, on routing times and on the regularity and reliability of services. The EU Postal Directive stipulates that quality standards for national mail shall be compatible with those laid down for cross-border services. In addition, national authorities shall ensure that independent performance monitoring is carried out at least once a year by external bodies. In fact, routing time standards and coverage targets are set out in Annex II of the EU Postal Directive.

The legal approximation has not started. Currently, the standards and times for sending postal items are regulated and approved by Order No. 958 of the Ministry of Infrastructure dated 28.11.2013<sup>31</sup>. Their separation depending on the type and kind of mail, as well as depending on the point of departure and destination is not in line with the requirements of the Postal Directive. Therefore, the standards should be aligned with those set by the Postal Directive, making appropriate changes to this Order and introducing amendments to the relevant law, because its current version assigns control over the quality of postal services to the State Communications Inspectorate liquidated in 2012.

Due to the lack of the legal basis, practical implementation of the provisions of European legislation has not started.

### **Commitment 72 / Introduction of rules on tariff principles and transparency of accounts for the universal postal service provision**

- Directive No. 97/67/EC, supplemented by Directive No. 2002/39/EC and Directive No. 2008/6/EC

The commitment involves introduction of rules on tariff principles and transparency of accounts for the universal postal service provision in accordance with the requirements of Article 1 (Chapter 1) and Articles 12-14 (Chapter 5) of the Postal Directive.

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<sup>31</sup>) <https://zakon.rada.gov.ua/laws/show/z0173-14>

Thus, the principles of setting tariffs for each of the services forming part of the universal service provision include the following:

- prices must be affordable and must be such that all users have access to the services provided, regardless of geographical location and taking into account specific national conditions;
- prices must be geared to costs and stimulate the effective provision of the universal service; states may decide that a uniform tariff should be applied throughout their national territory,
- tariffs must be transparent and non-discriminatory.

According to the Directive the universal service provider(s) should keep separate accounts in their internal accounting systems in order to clearly distinguish between services which are part of the universal service and services which are not. Such a distinction should be taken into account when calculating the cost of the services classified as universal. Such internal accounting systems shall operate on the basis of consistently applied and objectively justifiable cost accounting principles.

The legal approximation has not started. Currently, tariffs for the universal postal service are developed by the national operator JSC Ukrposhta and approved by the NCCIR based on the Procedure for Regulating Tariffs for Universal Postal Service approved by Decision No. 260 of National Commission for the State Regulation of Communications of 23.05.2017<sup>32</sup>, without any requirements as to compliance with the above principles concerning tariffs and transparency of accounts in the universal postal service provision set by the Postal Directive. The main criterion in the development of tariffs for universal service is the target prime cost determined based on the expected scope and cost-effectiveness of service provision, taking into account the anticipated profit. However, this approach (regarding the calculation of tariffs for the services of the payment and delivery of pensions and cash aid) was criticised by the State Audit Service of Ukraine in its audit report No. 06-22/21 on the results of the state financial audit of JSC Ukrposhta for the period from 01.01.2016 to 31.12.2018 dated 22.07.2019<sup>33</sup>.

Following the adoption of amendments to the Law of Ukraine "On Postal Service", which must take into account the relevant provisions of the EU Postal Directive, it is necessary to adopt a normative legal act determining the rules for tariff principles and transparency of accounts for the universal postal service (on the separation (accounting) of the costs of universal postal service operators by types of postal services) and create a level playing field for all universal service providers with regard to tariffs in the future.

Due to the lack of the legal basis, practical implementation of the provisions of European legislation has not started.

### **Commitment 73 / Introduction of rules for obtaining permits for universal postal service provision**

- Directive No. 97/67/EC, supplemented by Directive No. 2002/39/EC and Directive No. 2008/6/EC

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32) <https://zakon.rada.gov.ua/laws/show/z0759-17>

33) <http://dkrs.kmu.gov.ua/kru/doccatalog/document?id=151699>

The commitment involves introduction of rules governing the provision of postal services (license or authorisation requirements for postal operators) in accordance with the requirements of Article 1 (Chapter 1) and Article 9 (Chapter 4) of the Postal Directive.

According to the EU Postal Directive, namely Art. 9, for services which are outside the scope of the universal service, states may introduce general authorisations to the extent necessary in order to guarantee compliance with the essential requirements. For services within the scope of the universal service, states may introduce authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to safeguard the universal service. In addition, it should be noted that according to Article 112 of the Association Agreement, in 3 years after the entry into force of the Agreement (that is in 2019) the authorisation or permit regime should apply only to the provision of the universal postal service.

The legal approximation has not started. It should be noted that currently, in accordance with the Procedure for Maintaining the Unified State Register of Postal Operators, approved by Decision No. 623 of the National Commission for State Regulation of Communications and Informatization of November 29, 2016<sup>34</sup>, operators providing postal services are included in the Unified Register following a simple notice. However, with regard to the issuance of permits for universal postal service provision, there is no corresponding procedure, as currently the only designated operator is the national operator JSC Ukrposhta with its status granted by Order No. 10 of the Cabinet of Ministers of Ukraine "On the National Postal Service Operator" of January 10, 2002. In order to comply with the requirements of the EU Postal Directive and after adopting amendments to the Law of Ukraine "On Postal Service", it is necessary to adopt a normative legal act introducing rules governing the procedure for issuing permits for universal postal service provision by designated operator(s).

Due to the lack of legal basis, the practical implementation of the provisions of European legislation has not begun.

#### **Commitment 74 / Harmonisation of technical standards**

- Directive No. 97/67/EC, supplemented by Directive No. 2002/39/EC and Directive No. 2008/6/EC

The commitment involves harmonisation of technical standards in accordance with the requirements of Article 1 (Chapter 1) and Article 20 (Chapter 7) of the Postal Directive. According to the Directive, technical standards must be harmonised with the technical standards in the postal sector developed by the European Committee for Standardisation. Such standards should take into account the harmonisation measures adopted at international level and in particular those decided upon within the Universal Postal Union.

The legal approximation has not started. According to the current law "On Postal Service", namely Art. 10, "postal communication means used in public postal networks are subject to standardisation and certification in accordance with the legislation of Ukraine based on the list established by the authorised central executive body in the field of communications."

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<sup>34</sup>) <https://zakon.rada.gov.ua/laws/show/z1679-16>

Article 11 of the draft law of 2019 provides for harmonisation in the field of postal services, which should be carried out in accordance with the Law of Ukraine "On Technical Regulations and Conformity Assessment" taking into account the standards adopted by one of the European standardisation organisations at a request of the European Commission, which had its number and name published in the Official Journal of the European Union. We consider this a positive development in the context of fulfilling the relevant commitment under the Postal Directive if this provision is adopted in the framework law. In order to universalise technical standards for postal service operators within Ukraine, as well as harmonise them with international standards, we consider it necessary, after amending the Law of Ukraine "On Postal Service", to adopt a normative legal act that would establish postal technical standards in line with the EU standards.

Due to the lack of legal basis, the practical implementation of the provisions of European legislation has not begun.

### **Commitment 75 / Introduction of rules for information provision**

- Directive No. 97/67/EC, supplemented by Directive No. 2002/39/EC and Directive No. 2008/6/EC

The commitment involves introduction of rules on the provision of information in accordance with the requirements of Article 1 (Chapter 1) and Article 22a (Chapter 9a) of the Postal Directive.

According to the Directive, requiring that postal service providers must provide, in particular to national regulatory authorities, all information, including financial information, as well as information on the universal service provision, in particular to guarantee to the national regulatory authorities that they comply with the provisions of this Directive or decisions taken in accordance with this Directive, as well as the provision of accurate statistics.

The legal approximation has not started. According to the current law "On Postal Service", namely Article 8, the right to receive from postal operators free of charge information, explanations and other materials necessary for the performance of their functions is granted to the already liquidated body – i.e. the State Communications Inspectorate. In fact, postal operators today provide financial and statistical information to tax and statistical authorities, as well as provide certain data at the request of the NCCIR when filling in the regulator's table posted on the body's website<sup>35</sup>. According to the draft law of 2019 (Art. 8 Competence of state bodies in the field of postal services), the national regulator shall establish the procedure for receiving and shall receive from designated postal operators reporting, information, including that containing financial and economic indicators, documents and materials necessary to perform the powers assigned to the regulator by this law. After and subject to adopting amendments to the Law of Ukraine "On Postal Service", it is necessary to adopt a normative legal act establishing the procedure for obtaining by the national regulatory authority of reporting (provision of information to the NRA) of postal service operators, including financial information, and information on the universal service provision. However, once again we draw attention (as noted in the analysis of Commitment 2) to the fact that it is necessary to align the laws developed by various bodies and experts, in particular with regard to the state regulator in the postal sector, in order to avoid inconsistencies in the future.

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35) <https://nkrzi.gov.ua/index.php?r=site/index&pg=8&language=uk%20>

Due to the lack of legal basis, the practical implementation of the provisions of European legislation has not begun.

### **Commitment 76 / Introduction of rules to ensure consumer rights in the field of postal services**

- Directive No. 97/67/EC, supplemented by Directive No. 2002/39/EC and Directive No. 2008/6/EC

The commitment involves introduction of rules to ensure the consumer rights to receive quality postal services, in particular the procedure for submitting and reviewing consumer complaints in accordance with Article 1 (Chapter 1) and Article 19 (Chapter 6) of the Postal Directive, specifically introduction of transparent, simple and inexpensive procedures for dealing with users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including the procedures for establishing liability in cases where several operators are involved). At the legislative level, it should be ensured that such procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. Where users' complaints to the universal service provider have not been satisfactorily resolved, users should have the right to bring their case before the competent national authority. Operators should also keep and publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with.

The legal approximation has not started. Currently, neither the current Law of Ukraine "On Postal Service" nor the draft law of 2019 (except the provision that the national regulator may conduct unscheduled inspections on the basis of a request of an individual (individuals) concerning a violation that has caused harm to his (their) rights and legitimate interests, life or health) contain any rules that would regulate this issue in accordance with the requirements of the Postal Directive. Consumers of postal services can now seek protection of their rights only by settling claims with the operators themselves, in accordance with the general Law on Consumer Protection (which applies to consumers of goods and products rather than services) or in civil court. No relevant statistics are collected, and no such information is made public. Implementation of these provisions of the Postal Directive is possible through the adoption of the relevant normative legal act, provided that the relevant framework provisions are included in the draft law on amendments to the Law "On Postal Service" and after its adoption.

Due to the lack of legal basis, the practical implementation of the provisions of European legislation has not begun.

## **TELECOMMUNICATIONS SERVICES**

### **Electronic Communications and Electronic Commerce**

#### **Overview of key Eurointegration commitments**

The telecommunications sector includes economic operators that provide communications services through the telephone or the Internet. The most important participants in the telecommunications market are mobile, satellite, cable operators and Internet service providers.

In 2015, the EU adopted the Digital Single Market (DSM) Strategy, and almost abandoned the use of the term "telecommunications services" replacing it with the term "electronic communications services". The development of these services is very important for the implementation of the DSM Strategy and is closely linked to other aspects of the digital economy, such as trust services, e-commerce, cybersecurity, personal data protection, etc.

With the adoption of the European Electronic Communications Code in December 2018, Ukraine faced the issue of implementing a logical, harmonised and simplified regulatory framework for regulating electronic communications networks, electronic communications services and related services in the EU internal market.

From the point of view of Ukraine's successful integration into the DSM, equally important is fulfilment by Ukraine of its commitments in the area of e-commerce. And while Ukraine has made remarkable progress concerning e-trust services, consumer protection in e-commerce still requires significant efforts.

Also, so far there have been no practical results with regard to facilitating broadband access, improvement of network security, and the widespread use of ICT by individuals, businesses and administrations through the development of local Internet resources and introduction of online services, including e-business, e-government, e-health, and e-learning. And the Ukrainian government's disregard for the European standards of personal data protection and cybersecurity threatens prospects for Ukraine's integration into the DSM.

## **Evaluation of progress in fulfilling commitments**

### **Commitment 77 / Legislative regulation of electronic communications**

- Directive (EU) 2018/1972.

Legal approximation is early. Until recently, Ukraine took almost no practical steps to implement the EU acquis in the field of electronic communications (telecommunications) into Ukrainian law. The situation changed in 2018, when the Government Office for European and Euro-Atlantic Integration developed a Roadmap for Ukraine's integration into the European Digital Single Market, and this Roadmap was commended by the EU. However, along with the commendation, European experts also provided advice on the earliest possible implementation of the European Electronic Communications Code (EECC) (Directive (EU) 2018/1972) adopted on December 11, 2018, which is not mentioned in the Ukrainian Roadmap. This Code is mentioned in the updated Action Plan of the Cabinet of Ministers (para. 1939-13).

This Code sets a logical, harmonised and simplified legal framework for the regulation of electronic communications networks and services in the EU internal market, and at the same time repeals almost half of the EU acts specified in Annex XVII-3. However, this Code will enter into force only in December 2020. Nevertheless, the implementation of this Code is considered by both European and Ukrainian experts to be a necessary condition for integrating Ukraine into the EU's internal market of telecommunications services.

In the process of implementation of the project "Integration of Ukraine into European Digital Single Market: Turning Challenges into Opportunities" by the international NGO European Media Platform (EMP) under the auspices of the EU UA CSP and with the financial support of the European Union and the International Renaissance

Foundation within the grant component of the Civic Synergy project, the EECC and the EU Regulation on BEREC were translated into Ukrainian, the Code terms were streamlined in Ukrainian involving both governmental and non-governmental Ukrainian stakeholders, a survey of Ukrainian market representatives was conducted to find out whether Ukraine's integration into the DSM and implementation of the Code in Ukrainian legislation is in line with their interests. Thanks to this project, at the time of the presentation of the conclusions of the DG Connect assessment mission, Ukrainian experts could start work on the development of the Ukrainian version of the EECC. This was done by BRDO experts, who prepared their draft Ukrainian Code of Electronic Communications, based on EECC regulations. However, at that time other draft laws on electronic communications were already registered with the Verkhovna Rada of Ukraine – after long consultations these draft laws were withdrawn, and under the Parliamentary Committee for Digital Transformation a Working Group was created on the implementation of this Code and work on three related draft laws (No. 2264, No. 2316, and No. 2320). This Group (which included representatives of the relevant government agencies and associations, as well as business representatives and independent experts) worked for three months, and on February 5, 2020, the Verkhovna Rada registered Draft Law No. 3014 "On Electronic Communications".

This draft law, although not perfect, is more in line with the rules of the European law in the field of electronic communications than any of the numerous previous draft laws "On Electronic Communications" (No. 3549-1, 2, 3, 4, No. 2264, No. 2316, No. 1083). It is very important that it is developed simultaneously with similar draft laws in the EU member states and might enter into force simultaneously with the EECC and its EU national implementations. That is, for the first time, Ukraine does not lag behind European legislation (usually far behind) but does so simultaneously with EU member states.

On June 16, 2020, this draft law was voted on at first reading. Hence, this commitment is at the early transposition stage.

The implementation stage has not yet begun.

### **Commitment 78 / Strengthening the independence and administrative capacity of the national regulator in the field of electronic communications**

- Articles 391 and 394,
- Annex XVII-3,
- Directive (EU) 2018/1972

Legal approximation has not yet started. Most of the shortcomings (terminological, structural, conceptual, etc.) of draft law No. 3014 can be corrected after first reading. Except for one, the most important drawback: the absence of most EECC rules stipulating the independence and institutional capacity of the Ukrainian national regulator in the field of electronic communications. To this end, it was planned to develop a separate draft law on the national regulator, and the first such draft has already been developed. Consideration of the two draft laws ("On Electronic Communications" and "On the National Regulator in the Field of Electronic Communications") and their adoption after appropriate revision can be a breakthrough into the Single Digital Market of Europe and consolidate Ukraine's achievements in the field of electronic trust services. The working group set up

under the Verkhovna Rada Committee on Digital Transformation has drafted a bill on the national regulator in the field of electronic communications, but as of June 26, 2020, it was not yet registered. Therefore, the transposition has not officially started yet.

The implementation of this commitment has not yet begun.

### **Commitment 79 / Ensuring a high overall level of the security of network and information systems**

- Articles 391 and 394,
- Directive (EU) 2016/1148;
- Commission Implementing Regulation (EU) 2018/151;
- Commission Implementing Decision (EU) 2017/179

Legal approximation is critically inconsistent with EU aquis. The situation with cybersecurity and personal data protection is of the greatest concern. The AA mentions these issues very passingly (for example, in paragraph 2 of Art. 139 "The Parties agree that the development of electronic commerce must be fully compatible with the highest international standards of data protection, in order to ensure the confidence of users of electronic commerce"), but since the signing of the AA, the EU has experienced tectonic shifts in these areas. The General Data Protection Regulation, adopted in 2016, came into force in 2018 and has already led to billions in fines for violating the rules of personal data processing. Unfortunately, in this area, Ukraine is hopelessly behind European law, and it does not seem to be going to catch up at all.

At the beginning of 2016, the Cyber Security Strategy of Ukraine was approved (at that time it was very progressive and focused on European integration), but now it is time to adopt an updated Cyber Security Strategy, taking into account the new National Security Strategy of Ukraine as well as the Directive on security of network and information systems (NIS Directive) and the new EU Cybersecurity Act. In May 2018, the Law of Ukraine "On the Basic Principles of Ensuring Cybersecurity of Ukraine" came into force, which only formalised the progress made in the process of developing the Cyber Security Strategy and failed to address such important issues as coordination and subordination of all cybersecurity actors in Ukraine, international cooperation, and protection of critical information infrastructure. Ukraine has not fully ratified the Council of Europe Convention on Cybercrime, in particular, it has not agreed to apply the electronic evidence section of the Convention. Because of this, law enforcement agencies often resort to seizure of equipment as physical evidence (particularly in piracy cases), referring to the fact that Ukrainian law does not provide for the possibility to use copies. This worsens the conditions for the development of IT business.

Critical inconsistency of implementation. The critical inconsistency of the transposition of European legislation in the field of cybersecurity and personal data protection (radically updated after the signing of the AA) into Ukrainian law is significantly exacerbated by the lack of practical implementation of even those standards that already exist in Ukraine's legal field. Despite the fact that the Law on the Principles of Cyber Security contains a definition of the critical information infrastructure (which, unfortunately, differs significantly from the European one), there is still no officially approved list of such objects. There is no system of coordination and subordination between the various actors of the cybersecurity



system, no effective system of standardisation of cybersecurity measures and systems, or mechanisms for their public and independent audit.

In the field of personal data protection, the situation is even worse. Even the Law of Ukraine "On Personal Data Protection" (2010) and the Constitution of Ukraine, which are far from perfect, are not being enforced (primarily by the state authorities of Ukraine).

### **Commitment 80 / Ensuring compliance with European and international standards for the requirements for working with electronic trust services**

- Article 394, Annex XVII-3,
- Regulation (EU) No. 910/2014

The legal approximation is advanced – Ukraine has made the most progress in this area. In November 2018, the Law of Ukraine "On Electronic Trust Services" came into force, which updated the legislation in the field of electronic identification (electronic digital signature) in accordance with eIDAS Regulation No. 910/2014. In January 2019, the CMU took a resolution to approve the Procedure for Mutual Recognition of Ukrainian and foreign public key certificates and electronic signatures, as well as the use of information and telecommunications system of the central certification body to ensure recognition in Ukraine of electronic trust services and foreign public key certificates used when providing legally significant electronic services in the process of interaction between subjects of different states.

The implementation is advanced – on 10 April 2020, the Ministry of Digital Transformation received confirmation from the EU4Digital programme that Ukraine was selected from among the EU Eastern Partnership countries to participate in pilot projects for cross-border electronic signatures.

## **FINANCIAL SERVICES**

Subsector goals:

- improving prudential measures to protect investors, depositors, policy-holders and financial service providers;
- introduction of international standards to combat tax evasion;
- development of the administrative capacity of financial sector regulators;
- creation of the market for the banking sector, insurance services, securities;
- development of payment systems and mechanisms for the use of financial collateral.

### **Banking**

Overview of key Eurointegration commitments

The commitments within this subsector focus on creating the banking sector market by ensuring Ukraine's economic sovereignty in conditions of strengthening integration with EU countries, harmonising the interests of Ukraine and its banking sector with

the interests of EU Member States against the background of intensification of integration processes in the economy and banking sector, ensuring transparency of the mechanisms of foreign capital penetration in the banking sector of Ukraine and its impact on the development of the domestic economy and the banking system, establishing conditions for improving the effectiveness of the banking system's influence on the pace and scale of domestic commodity production.

Evaluation of progress in fulfilling commitments

### **Commitment 81 / Improving the system of banking regulation and supervision and the procedure for withdrawing banks from the market**

- Directive No. 2013/36/EC (repealing Directive No. 2006/48/EC);
- Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions;
- Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

The commitment provides for the improvement of banking regulation and supervision, procedures for withdrawal of banks from the market, namely:

- introduction of requirements for recovery plans;
- introduction of requirements for the internal capital adequacy assessment process (ICAAP);
- introducing the procedure for checking the financial/property status of the founders owning significant holdings in obtaining a banking authorisation;
- optimisation of requirements for improving the efficiency of the assessment of criteria for significant holdings of credit institutions;
- improvement of capital buffer requirements;
- regulation of matters related to administrative sanctions and management measures of the National Bank applied for non-compliance with licencing requirements related to the acquisition of significant holdings;
- setting requirements for the risk management system in banks;
- establishing requirements for the professional competence and good repute of bank managers;
- aligning the requirements for publishing information on issued banking authorisations on the website of the National Bank with EU law.

The legal approximation is early. The Board of the National Bank of Ukraine adopted Resolution No. 95 "On Approval of the Regulation on Recovery Plans of Banks of Ukraine and Banking Groups" of July 18, 2019, amendments were made to NBU acts as regards the development and approval of amendments to regulations of the National Bank on capital buffers, development and adoption of a regulatory legal act of the National Bank on the requirements for the risk management system in banks. However, the Verkhovna Rada has not yet developed and considered draft laws on the introduction of internal capital adequacy assessment (ICAAP); enacting the procedure for checking the financial/property status of the founders owning significant holdings in obtaining a banking authorisation; optimisation of requirements for improving the

efficiency of assessment of the criteria for significant holdings in credit institutions; regulation of matters related to administrative sanctions and management measures of the National Bank for non-compliance with authorisation requirements related to the acquisition of significant holdings; establishing requirements for professional competence and good repute of bank managers; and aligning the requirements for publishing information on issued banking authorisations on the website of the National Bank with those of EU law.

Practical implementation of the provisions of European legislation has not started.

### **Commitment 82 / Establishing requirements for supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate**

- Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

The commitment implies the following:

- introduction of a statistical reporting form on risk concentration for banking groups;
- statistical reporting on intragroup transactions for banking groups;
- improvement of mechanisms of information sharing between regulators of financial services markets.

The legal approximation is mostly advanced. Amendments were made to the NBU acts concerning the introduction of a statistical reporting form for risk concentrations for banking groups<sup>36</sup> and statistical reporting for banking groups<sup>37</sup> regarding intragroup operations. In terms of improving the mechanisms of information sharing between regulators of financial services markets, appropriate amendments were made to the agreements on information sharing concluded between the National Bank, the National Securities and Stock Market Commission of Ukraine and the National Commission for Regulation of Financial Services Markets.

The practical implementation of the provisions of European legislation is early.

### **Commitment 83 / Improving the regulation of electronic money**

- Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

The commitment involves updating the payment legislation so that in the future the system of regulatory approaches and models could be effective and facilitate the development of the electronic money market.

Legal approximation has not begun. No relevant amendments to the legislation on the regulation of funds transfer or to the Law "On the Deposit Guarantee System for Individuals" have been developed and introduced.

Practical implementation of the provisions of European legislation has not begun.

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36) <https://zakon.rada.gov.ua/laws/show/v0155500-19#Text>

37) [https://bank.gov.ua/ua/legislation/Resolution\\_10032020\\_26](https://bank.gov.ua/ua/legislation/Resolution_10032020_26)

## **Commitment 84 / Updating the current legislation on the deposit guarantee system in Ukraine**

- Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes.

The commitment involves amendments to the current legislation on the deposit guarantee system in Ukraine, designed to strengthen its role in ensuring the financial stability of the state.

Legal approximation has not begun. No relevant amendments to the Law of Ukraine "On Credit Institutions", the Law "On the Deposit Guarantee System for Individuals" and the Law "On Financial Services and State Regulation of Financial Services Markets" have been developed or introduced.

Practical implementation of the provisions of European legislation has not begun.

## **Commitment 85 / Improving the procedure for submitting financial accounts**

- Council Directive No. 86/635/EEC;
- Council Directive No. 91/674/EEC (recast);
- Directive No. 2001/65/EC.

The commitment involves improvement of the procedure for submitting financial accounts based on the taxonomy of financial accounts in a single electronic format.

Legal approximation is mostly advanced. The Verkhovna Rada adopted Law of Ukraine No. 465-IX of 16.01.2020<sup>38</sup> "On Amendments to Certain Legislative Acts of Ukraine to Improve Tax Administration and Eliminate Technical and Logical Inconsistencies in Tax Legislation", wherein 2020 is set as the first reporting period when companies are required to apply international standards and submit financial accounts on the basis of taxonomy according to international standards in electronic form.

The practical implementation of the provisions of European legislation is early.

## **Securities**

Overview of key Eurointegration commitments

Cooperation in this subsector focuses on the creation of a securities market to form a single market for financial services and financial instruments in the EU Member States for further sustainable and constructive development of relations between Ukraine and the EU.

Evaluation of progress in fulfilling commitments

## **Commitment 86 / Introduction of EU stock market standards**

- Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC;

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38) <https://zakon.rada.gov.ua/laws/show/465-20#Text>

- Directive No. 2000/12/EC of the European Parliament and of the Council repealing Council Directive No. 93/22/EEC;
- Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

The commitment involves formation of a single market of financial instruments and creation of generally accepted principles of the organised segment of the stock market of Ukraine by aligning the national securities legislation with the relevant EU law, in particular, by implementing the provisions of the above Directives.

Legal approximation is early. Draft law No. 2284 "On Amendments to Certain Legislative Acts of Ukraine to Facilitate Investment Attraction and Introduce New Financial Instruments" of 17.10.2019 has been developed. Law of Ukraine No. 2210-VIII "On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Doing Business and Investment Attraction by Issuers of Securities" of November 16, 2017<sup>39</sup> was adopted. On December 3, 2018 Decision of the National Commission on Securities and Stock Market No. 670 "On Approval of the Regulation on the Authorisation of Persons who Intend to Engage in Activities Involving Provision of Information Services in the Stock Market and the Conditions for Engaging in Such Activities" of 27.09.2018<sup>40</sup> was registered with the Ministry of Justice under No. 1371/32823.

Practical implementation of the provisions of European legislation in general has not yet begun.

### **Commitment 87 / Approval of requirements for securities prospectus**

- Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC;
- Directive No. 2001/34/EC;
- Directive No. 2008/11/EC;
- Commission Regulation (EC) No. 809/2004;
- Commission Regulation (EC) No. 1787/2006;
- Commission Regulation (EC) No. 211/2007;
- Commission Regulation (EC) No. 1289/2008.

The commitment involves bringing the requirements to the securities prospectus, its approval, validity and publication in accordance with EU law; introduction of a mechanism for making changes to the securities prospectus and establishing requirements for the language of the securities prospectus; introduction of the concept of public offering of securities; establishing requirements for the information to be contained in the securities prospectus, exceptions for the issuance of the securities prospectus, the procedure and deadline for publishing changes and appendices to the prospectus.

39) <https://zakon.rada.gov.ua/laws/show/2210-19#Text>

40) <https://zakon.rada.gov.ua/laws/show/z1371-18#Text>

Legal approximation is early or advanced. Law of Ukraine No. 2210-VIII "On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Doing Business and Investment Attraction by Issuers of Securities" of November 16, 2017<sup>41</sup> was adopted. Regarding establishment of requirements for the language of the securities prospectus, they were envisaged in the draft law "On Amendments to Certain Legislative Acts of Ukraine to Facilitate Investment Attraction and Introduce New Financial Instruments" (reg. with the Verkhovna Rada of the VIII convocation under No. 9035 of 03.09.2018), however the draft law is considered withdrawn due to the expiration of the term of office of the Verkhovna Rada of the 8th convocation. Currently, the Securities and Stock Market Commission is working to finalise the draft law on regulated markets and derivatives to submit it for consideration by the Verkhovna Rada of Ukraine.

The practical implementation of the provisions of European legislation is early.

### **Commitment 88 / Establishing requirements in relation to information about issuers whose securities are admitted to trading on a regulated market**

- Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC;
- Commission Regulation (EC) 1569/2007.

The commitment involves comprehensive regulation of the functioning of regulated markets and development of their infrastructure, streamlining the provision of information services in the capital markets in accordance with international practices and European legislation.

Legal approximation is early. Law of Ukraine No. 2210-VIII "On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Doing Business and Investment Attraction by Issuers of Securities" of November 16, 2017<sup>42</sup> was adopted. Decision No. 854 of the NSSMC of 04.12.2018<sup>43</sup> "On Approval of Amendments to the Regulation on Disclosure of Information by Issuers of Securities" was adopted and registered with the Ministry of Justice of Ukraine on February 15, 2019 under No. 165/33136. Decision No. 243 of the NSSMC of April 19, 2018<sup>44</sup> "On Approval of Amendments to the Regulation on Disclosure of Information by Issuers of Securities" was registered with the Ministry of Justice of Ukraine on May 17, 2018 under No. 604/32056. At the same time, no work has been done to bring the scope and forms of sanctions for violation of stock market disclosure requirements in line with EU law.

The practical implementation of the provisions of European legislation is early.

### **Commitment 89 / Introduction of a mechanism of compensation to investors in securities**

- Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes.

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41) <https://zakon.rada.gov.ua/laws/show/2210-19#Text>

42) <https://zakon.rada.gov.ua/laws/show/2210-19#Text>

43) <https://zakon.rada.gov.ua/laws/show/z0165-19#Text>

44) <https://zakon.rada.gov.ua/laws/show/z0604-18#Text>

The commitment involves introduction of a mechanism to compensate investors in securities, determining the minimum amount of compensation to investors in securities, introduction of the obligations for persons providing investment services to participate in the mechanism of compensation to investors in securities, aligning the registration of investment funds with EU law.

The legal approximation is early or has not started. In response to Letter No. 4322-06/51820-03 of the Ministry of Economic Development and Trade of Ukraine of 26.11.2018 on updating the list of EU acts in Appendix XVII – 2 of Annex XVII of the Association Agreement, the Commission submitted a proposal (by Letter No. 19/02/37018 of 13.12.2018) to postpone the implementation of Directive No. 97/9/EC.

The practical implementation of the provisions of European legislation is early or has not started.

### **Commitment 90 / Reducing securities market abuse**

- Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse);
- Commission Directive No. 2004/72/EC;
- Commission Directive No. 2003/124/EC;
- Commission Directive No. 2003/125/EC;
- Directive No. 2008/26/EC;
- Commission Regulation (EC) 2273/2003 (repealing Regulation (EU) No. 596/2014).

The commitment involves reducing securities market abuse that harms the integrity of financial markets and public confidence in securities and derivatives, namely with regard to insider information and market manipulation, which are the main types of securities market abuse. In addition, the purpose of the commitment is to clarify the concept of insider information and the concept of market manipulation, clarify disclosure requirements and provide legal regulation of insider transactions, which will ensure the integrity of financial markets and increase investor confidence in these markets.

The legal approximation is at an early stage or has not started. Decision No. 243 of the NSSMC of April 19, 2018<sup>45</sup> "On Approval of Amendments to the Regulation on Disclosure of Information by Issuers of Securities" was registered with the Ministry of Justice of Ukraine on May 17, 2018 under No. 604/32056. The Commission is preparing the draft laws "On Amendments to Certain Legislative Acts of Ukraine (with regard to Combatting Stock Market Abuse)", "On Amendments to Certain Legislative Acts of Ukraine to Facilitate Investment Attraction and Introduce New Financial Instruments".

The practical implementation of the provisions of European legislation is at an early stage or has not started.

### **Commitment 91 / Improving the protection of the rights of investors' in undertakings for collective investment**

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45) <https://zakon.rada.gov.ua/laws/show/z0604-18#Text>

- Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);
- Commission Directive No. 2010/42/EC.

The commitment involves improving the protection of the rights of investors in undertakings for collective investment, increasing investor confidence in undertakings for collective investment and intensifying investment activities, bringing the form and essence of operation of undertakings for collective investment in line with EU requirements, creating conditions for improving the efficiency and functionality of undertakings for collective investment and aligning their activities and internal organization with the requirements of European Union law; and ensuring the fulfilment of Ukraine's obligations under the Association Agreement.

No legal approximation has started.

The practical implementation of the provisions of European legislation has not begun.

## Insurance

Overview of key Eurointegration commitments

Cooperation within this subsector focuses on creating a market for insurance services by introducing insurance regulation rules aimed at improving competitiveness and reducing the risk of insolvency. The Association Agreement between Ukraine and the EU envisages introduction of a European system of financial market regulation, including the insurance market. The "approximation of Ukraine's existing legislation to that of the European Union" as regards liberalisation of insurance and insurance-related services (Article 133) covers a significant number of EU acquis listed in Annex XVII to the Association Agreement.

Evaluation of progress in fulfilling commitments

### **Commitment 92 / Regulation of insurance (reinsurance) and insurance mediation activities**

- Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast).

The commitment involves introduction of a new procedure for legislative regulation of insurance (reinsurance) and mediation in insurance, creating a competitive environment and reducing insolvency risks in the insurance market of Ukraine, facilitating the taking-up and pursuit of the business of insurance and reinsurance, and ensuring a sufficient level of solvency of insurance companies.

The legal approximation is at an early stage or has not started. The Commission is developing the relevant amendments, which are being examined by experts in the framework of technical assistance provided by the EU Project Strengthening the Regulation and Supervision of the Nonbank Financial Market (EU-FINREG).

The practical implementation of the provisions of European legislation has not begun.



### **Commitment 93 / Improving the regulation of insurance against civil liability in respect of the use of motor vehicles**

- Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability.

The commitment involves improving the procedure, setting the procedure, and ensuring the receipt of compensation for personal injury or damage to property of third parties caused by accidents involving vehicles by adopting appropriate regulations.

The legal approximation is at an early stage or has not started. The draft law "On Compulsory Insurance against Civil Liability of Owners of Motor Vehicles to Improve the Legislative Support of Compulsory Insurance against Civil Liability of Owners of Motor Vehicles" is undergoing examination by experts of the EU Project Strengthening the Regulation and Supervision of the Nonbank Financial Market (EU-FINREG).

The practical implementation of the provisions of European legislation has not begun.

### **Commitment 94 / Elimination of differences in the structure and content of accounts of insurance undertakings**

- Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings.

The commitment involves the elimination of differences in the structure and content of balance sheets and the establishment of a single structure of the profit and loss account of insurance/reinsurance undertakings through legal regulation of accounting of insurance/reinsurance undertakings.

The legal approximation is at an early stage. The Verkhovna Rada adopted Law of Ukraine No. 465-IX of 16.01.2020<sup>46</sup> "On Amendments to Certain Legislative Acts of Ukraine to Improve Tax Administration and Eliminate Technical and Logical Inconsistencies in Tax Legislation", wherein 2020 is set as the first reporting period when companies are required to apply international standards and submit financial accounts on the basis of taxonomy according to international standards in electronic form; Law of Ukraine No. 79-IX of September 12, 2019<sup>47</sup> "On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of the Functions on State Regulation of Financial Services Markets" stipulates that from July 1, 2020 the National Bank of Ukraine and the National Commission on Securities and Stock Market shall become successors of the National Commission for State Regulation of Financial Services Markets with regard to exercising the powers and functions of state regulation and supervision in the field of financial services markets within the powers established by the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets". There are no achievements in the field of establishing uniform requirements for the professional competence of insurance intermediaries.

The practical implementation of the provisions of European legislation is at an early stage.

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46) <https://zakon.rada.gov.ua/laws/show/465-20#Text>

47) <https://zakon.rada.gov.ua/laws/show/79-20#Text>

## **Commitment 95 / Regulation of insurance intermediaries**

- Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation;
- 92/48/EEC: Commission Recommendation of 18 December 1991 on insurance intermediaries.

The commitment involves:

- Bringing terminology in the field of insurance mediation in line with EU requirements;
- Improving the mechanism of liability of insurance or reinsurance intermediaries;
- Determining the responsibilities of the insurance intermediary regarding the requirements and procedure for providing information about oneself to the authorised body.

The legal approximation is at an early stage or has not started. The draft law "On the Performance of Insurance Services" of the National Commission for Regulation of Financial Services Markets is undergoing examination by experts of the EU Project Strengthening the Regulation and Supervision of the Nonbank Financial Market (EU-FINREG) and insurers' associations. Joint work with the EU Project Strengthening the Regulation and Supervision of the Nonbank Financial Market (EU-FINREG) is underway to develop a draft law that will implement Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast).

The practical implementation of the provisions of European legislation has not begun.

## **Commitment 96 / Implementation of European Union standards in the Ukrainian funded pension system**

- Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision.

The commitment involves introduction of European Union standards in the Ukrainian system of funded pension provision, namely:

- ensuring compliance with the objectives of the Directive, which provide for the monitoring the financial condition of the institution and assessing the ability of the institution to fulfil all contractual obligations, compliance with minimum prudential standards with respect to their activities and conditions of operation;
- guaranteeing a high degree of security for future pensioners due to imposition of stringent supervisory standards and efficient management of occupational pension schemes;
- harmonisation of the provisions of the current legislation of Ukraine with the provisions of the Directive on the activities of institutions of occupational pension provision and supervision over them.

The legal approximation is at an early stage or has not started. Amendments to the Law of Ukraine "On Non-State Pension Provision" and other legislative acts have not been developed by the NSSMC.

The practical implementation of the provisions of European legislation has not begun.

## Market Infrastructure

### Overview of key Eurointegration commitments

Cooperation within this subsector focuses on the formation of market infrastructure, its potential and development.

Evaluation of progress in fulfilling commitments

#### **Commitment 97 / Introduction of various elements of market infrastructure in the financial services market**

- Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;
- Directive No. 98/26/EC;
- Directive No. 2009/44/EC.

The commitment involves introduction of mechanisms for settlement finality in payment with regard to derivatives and close-out netting; introduction of a mechanism to guarantee the execution of derivatives; introduction of mechanisms for settlement finality in payment with regard to securities; and introduction of a mechanism to guarantee the fulfilment of securities agreements.

The legal approximation is at an early stage. Draft law No. 2284 "On Amendments to Certain Legislative Acts of Ukraine to Facilitate Investment Attraction and Introduce New Financial Instruments" of 17.10.2019 was adopted after consultations with experts of the EU-FINREG project.

The practical implementation of the provisions of European legislation is at an early stage.

## Payment Services

### Overview of key Eurointegration commitments

Cooperation within this subsector focuses on updating the system of legislative regulation of the Ukrainian market for payments and transfer of funds by harmonising it with the EU market and implementing the relevant EU law into national legislation.

Evaluation of progress in fulfilling commitments

#### **Commitment 98 / Regulation of payment services**

- Directive (EU) No. 2015/2366 (repealing Directive No. 2007/64/EC of 12 January 2018).

The commitment involves improvement of the procedure for conducting transactions using electronic payment instruments, regulates the procedure for providing payment services, the principles of interaction between market participants, and licencing matters.

The legal approximation is at an early stage or has not started. Implementation of Directive (EU) No. 2015/2366 is to take place through the adoption of the draft Law "On Payment Services" developed by the National Bank to regulate the Ukrainian market of payments and funds transfer (posted on the official website of the National Bank on 31 January 2020 for discussion with representatives of the payment services market). The draft law is based on modern requirements and takes into account the provisions of Directive (EU) No. 2015/2366 of 25 November 2015 on payment services in the internal market and Directive No. 2009/110/EU of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions. Currently, the National Bank accepts and reviews proposals and comments on the draft law from payment market participants. The External Project Office to Support the Financial Sector Reforms in Ukraine and the legal partner Asters Law Firm have been involved in its preparation.

The practical implementation of the provisions of European legislation is at an early stage or has not started.

## **TRANSPORT SERVICES**

Within the framework of the Association Agreement, matters of inland water transport make up part of subsection 7 "Transport Services", which stipulates the principles of liberalisation of such services between the Parties. Article 136 focuses on road, rail and inland waterway transport in a comprehensive manner and refers to future conclusion of bilateral agreements between the Parties with a view to further mutual liberalisation of the transport services market. Article 137 focuses on conclusion of the Common Aviation Area Agreement in order to achieve mutual market access, which is considered in more detail in the "Transport" sector.

Regulatory approximation in the field of transport services according to Title IV of the Agreement is primarily aimed at gaining access to the EU internal market.

The overall goal of regulation of transport services is to define the principles of liberalisation and requirements for access to the market of services within the EU internal market (integration into the EU market), which can be provided on condition of regulatory approximation by introducing common EU rules and standards and eliminating administrative, technical, border and other obstacles, as well as modernisation of infrastructure, technical equipment, and vehicle fleets.

## **Maritime Services**

### **Overview of key Eurointegration commitments**

The commitments within the Maritime Services subsector include a set of measures to regulate the international maritime transport between Ukrainian ports and EU Member States, including trade between ports. In general, the commitments within this subsector are correlatable with the commitments within the "Maritime Transport" subsector of the "Transport" sector, the only difference being that the former aim to ensure non-discriminatory and safe navigation in international maritime transport and trade-related services.

The implementation of these provisions will ensure safety of Ukraine's shipping and help achieve access to the market of international maritime transport, contributing to liberalisation and application of the principle of unrestricted access to international maritime markets.

## Evaluation of progress in fulfilling commitments

### Commitment 99 / Safety at Sea – Flag State / classification societies

- Council Directive No. 94/57/EC,
- Directive No. 2009/15/EC,
- Regulation (EC) (336/2006

The commitment involves a set of legislative and regulatory measures for the inspection and certification of vessels for compliance with international conventions on safety and pollution prevention at sea; introduction of safety requirements for hull, machinery and electrical and control installations of ships subject to international conventions; transposition of the organisational and legal mechanism of compliance with the requirements; amending the legislation on general rules and standards for ship inspection and survey organisations and conducting an audit of the national classification society with regard to such activities; amending the legislation of Ukraine on the obligations of the shipowner to maintain the safety management system of the shipping company and vessels, as well as liability for administrative offences in this area and training of personnel for the control of shipping companies by the flag State.

Legal approximation has not yet begun. Its fulfilment is ensured by a set of legislative and organisational measures, in particular, by developing and adopting amendments to the Merchant Shipping Code of Ukraine, the Law of Ukraine "On Transport" concerning technical (conventional) supervision of seagoing vessels, regulation of recognised organisations, implementation of the International Maritime Organisation Code for Recognised Organisations; development and adoption of regulations of the Cabinet of Ministers and the Ministry of Infrastructure in order to implement the procedures laid down in the International Maritime Organisation Code for Recognised Organisations, as well as liability associated with shipowners' obligations to maintain the safety management system of shipping companies and vessels as well as the liability for administrative offences in the above area; training; advanced training of the staff of the Maritime Administration, as well as training and advanced training of inspectors for the control of shipping companies by the flag State (as part of the State Service for Sea and River Transport and the services of seaport captains), including in educational institutions of EU Member States; implementation of a set of measures to accede to international conventions; development and adoption of relevant regulations of the Ministry of Infrastructure, in particular amendments to the Regulation on the Safety Management System of Maritime and River Transport.

Practical implementation has not started. Only individual aspects have been implemented in Ukraine. Since 2017, the State Maritime and River Transport Service of Ukraine (Maritime Administration) has been in place<sup>48</sup>, however, issues related to reconciling the functions on state supervision of maritime safety have not been resolved; the services of seaport captains were not reorganised by way of delimiting (separating) the functions of ensuring maritime safety and supervising (controlling)

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48) <https://zakon.rada.gov.ua/laws/show/1095-2017-%D0%BF#n15>

the safety of navigation in accordance with the requirements of national and international legislation.

### **Commitment 100 / Application of decisions according to the register of recognised EU organisations**

- Council Directive No. 94/57/EC, repealed by Directive No. 2009/15

The commitment involves enforcement of compliance with safety requirements in accordance with European conditions for control over compliance with international obligations in the field of ship and navigation safety. In addition, this commitment includes access of recognised organisations (under Directive No. 2009/15) to safety inspections.

Legal approximation has not yet begun. Its fulfilment requires development and adoption of amendments to the Merchant Shipping Code of Ukraine and the Law of Ukraine "On Transport" regarding technical (conventional) supervision of seagoing vessels, regulation of recognised organisations, implementation of the International Maritime Organisation Code for Recognised Organisations; development and adoption of normative legal acts of the Cabinet of Ministers and the Ministry of Infrastructure in order to implement the procedures laid down by the Code of the International Maritime Organisation for Recognised Organisations. Some provisions are contained in the draft law "On Inland Waterway Transport of Ukraine", registered with the Verkhovna Rada of Ukraine (1182-1-д, dated 17.01.2020). On April 24, 2020, the draft law was adopted by the Verkhovna Rada at first reading. In 2018, the audit of the national classification society i.e. SE Classification Society 'The Shipping Register of Ukraine' was conducted by auditors of the Ministry of Infrastructure (Maritime Administration) in accordance with the IMO Code for Recognised Organisations.

Practical implementation has not started.

### **Commitment 101 / Port State**

- Council Directive No. 95/21/EC, repealed by Directive No. 2009/16

The commitment involves laying down general criteria for the control of vessels by the port State and coordination of procedures for inspection and detention, introduction by the port State of a control system based on inspections, in accordance with certain signed international treaties, as well as taking organisational measures to reorganise the services of seaport captains.

Legal approximation is early. Its fulfilment requires a set of legislative and organisational measures: development and adoption of a draft law on Ukraine's accession to the 1988 Protocol to the 1966 Convention on Trade Marks; development and adoption of draft laws on accession to the International Labour Organisation's Maritime Labour Convention, 2006, and on amendments to certain legislative acts of Ukraine in connection with accession to the International Labour Organisation's Maritime Labour Convention, 2006; development and adoption of a draft law on accession to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004; development and adoption of a draft law on amendments to the Merchant Shipping Code of Ukraine and the laws of Ukraine "On Transport", "On Seaports of Ukraine" and "On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" with regard to streamlining of the functions of state supervision over safety of navigation or support; reorganisation of the services of seaport captains by way of delimiting (separating) the functions

of ensuring maritime safety and supervising (controlling) the safety of navigation in accordance with the requirements of national and international legislation; development and adoption of regulations of the Ministry of Infrastructure, including those on the reorganisation of seaport captains' services. With the entry into force of the Law of Ukraine "On Seaports of Ukraine" in 2013, the reform of the industry began. However, the law now needs to be amended. The changes are due to new requirements. Ukraine has acceded to a number of international conventions: in 2018, the Cabinet of Ministers adopted Resolution No. 991 "On Accession to the 1988 Protocol to the 1966 Convention on Trade Marks (amended in 2003, 2004, 2006, 2008, 2012, 2013 and 2014)" dated 21.11.2018. In 2019, amendments were made to the Regulation on the Captain of the Seaport and the Service of the Seaport Captain<sup>49</sup>, aimed at fulfilling the requirements of the Directive, however, the relevant reorganisation of the seaport captain's service did not take place.

Practical implementation is at an early stage.

### **Commitment 102 / Traffic monitoring**

- Directive No. 2002/59/EC

The commitment involves creation of an information system for monitoring the surface situation and seagoing vessel traffic, including making appropriate amendments to the legislation of Ukraine.

Legal approximation is advanced. Its fulfilment requires development and adoption of a normative legal act of the Ministry of Infrastructure on the establishment of an information system for monitoring the surface situation and movement of seagoing vessels using consolidated sources of information; and creation of a software and hardware complex of the information system for monitoring the surface situation and traffic of sea vessels. Back in 2012, the relevant order of the Ministry was adopted to initiate development of a system for monitoring the surface situation using an automated identification system in the Black and Azov Seas in the area of responsibility of Ukraine<sup>50</sup>. In 2016, the unified system of search and rescue at sea was restored, which also relies on the information system for monitoring the surface situation. In 2019, considerable effort was made with regard to the Unified System for Monitoring the Surface Situation Using an Automated Identification System in the Black and Azov Seas in the Area of Responsibility of Ukraine (Monitoring System).

Practical implementation is advanced.

### **Commitment 103 / Technical and operational rules (Passenger vessels)**

- Directive No. 98/18/EC,
- Directive No. 1999/35/EC,
- Directive No. 2003/25/E

The commitment involves increased safety requirements for ro-ro ferries and high-speed passenger craft and a system of mandatory surveys for the safe operation of regular services.

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49) <https://zakon.rada.gov.ua/laws/show/z0448-19>

50) Order No. 221 of the Ministry of Infrastructure of Ukraine "On Establishment of a Unified System for Monitoring the Surface Situation Using an Automated Identification System in the Black and Azov Seas in the Area of Responsibility of Ukraine" dated 25.04.2012.

Legal approximation has not yet begun. Its fulfilment requires development and adoption of a normative legal act of the Ministry of Infrastructure on approval of rules relating to the safe construction, stability and operation of passenger seagoing vessels, ro-ro ferries and high-speed passenger craft providing regular services; development and adoption of a normative legal act of the Ministry of Infrastructure on amendments to the Regulation on Navigation and Hydrographic Support within Inland Waters, Territorial Sea and Exclusive (Marine) Economic Zone of Ukraine, approved by Order No. 514 of the Ministry of Transport of May 29, 2006, laying down the procedure for calculating wave heights on sea routes and their appropriate classification; development and adoption of a normative legal act of the Ministry of Infrastructure on amendments to the Rules for Control of Ships to Ensure Maritime Safety, approved by Order No. 545 of the Ministry of Transport of July 17, 2003, with regard to control of ro-ro passenger ferries and high-speed passenger craft. To implement the commitment, legislative action is needed in this regard and adoption of relevant laws. The developed draft by-laws need to be improved and harmonised with the draft laws.

Practical implementation has not started.

#### **Commitment 104 / Technical and operational rules (Oil tankers)**

- Regulation (EC) No. 417/2002

The commitment involves introduction of mandatory double hull or equivalent design requirements for oil tankers used in the sea waters of Ukraine, decommissioning of single-hull oil tankers and phasing-in of requirements for oil tankers with increased security.

Legal approximation has not yet begun. Its fulfilment requires development and adoption of a normative legal act of the Ministry of Infrastructure on double-hull or equivalent design requirements for oil tankers.

The current rules for the prevention of pollution from ships do not contain clear regulations prohibiting the use of single-hull oil tankers. Practical implementation has not started.

#### **Commitment 105 / Technical and operational rules (Bulk carriers)**

- Directive No.2001/96/EC

The commitment involves introduction of technical and safety requirements for bulk carriers.

Legal approximation has not yet begun. Its fulfilment requires development and adoption of regulations of the Ministry of Infrastructure on the rules of safe loading and unloading of bulk cargo in seaports of Ukraine. In 2019, SE Research and Design Institute of the Ukrainian Maritime Fleet (SE UkrNDIMF) developed Rules for Safe Loading and Unloading of Bulk Cargo in Seaports of Ukraine, which, as of April 2020, were not adopted.

Practical implementation has not started.

#### **Commitment 106 / Technical and operational rules (Crew)**

- Directive No. 2001/25/EC repealed by Directive No. 2008/106



The commitment involves introduction of the minimum requirements for the level of training of seafarers in the training programmes for seafarers in educational institutions and for the advanced training of seafarers in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers of 1978.

Legal approximation is early. Fulfilment of the commitment requires development and adoption of the relevant draft law on the level of training of seafarers, standards of higher and vocational education, as well as state educational standards, responsibilities of state bodies and shipowners to ensure the minimum level of training of seafarers; development, elaboration with EU experts and adoption of normative legal acts of the Ministry of Infrastructure and the Ministry of Education and Science of standards of higher and vocational education, state educational standards and responsibilities of public bodies and shipowners to ensure a minimum level of training of seafarers in accordance with Directive No. 2008/106/EC; development, elaboration with EU experts and adoption of a normative legal act of the Ministry of Infrastructure on amendments to the Regulation on Maintaining the Unified State Register of Seafarers' Documents, approved by the Ministry of Transport's Order No. 3 of January 8, 2003, as regards introduction of electronic registration and creating opportunities for checking the validity of seafarers' documents in real time mode by submitting a request based on no more than two characteristics; developing, elaborating with EU experts and adopting regulatory acts of the Ministry of Infrastructure and the Ministry of Education and Science on procedures for approving seafarers training programmes in educational institutions and on advanced training of seafarers in accordance with the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers. The Ministry of Education and Science of Ukraine has developed a draft resolution of the Cabinet of Ministers of Ukraine "On Professional Training of Seafarers in Educational Institutions", which has not yet been adopted.

It is necessary to hold an interdepartmental meeting with representatives of the Ministry of Infrastructure and the Ministry of Education and Science. There are 63 educational institutions registered in Ukraine, 41 of which offer STCW courses. Currently, Ukrainian STCW certificates are issued by the Port Captain Service in various ports. Practical implementation is at an early stage.

### **Commitment 107 / Environment**

- Directive No. 2000/59/EC, Regulation No. 782/2003

The commitment involves introduction of rules concerning port reception facilities for ship-generated waste and cargo residues in seaports and sea terminals and provides for prohibition of organotin compounds on ships.

Legal approximation is early. Its fulfilment is ensured through a set of legislative and organisational actions: development and adoption of a normative legal act of the Ministry of Infrastructure on mandatory equipment of seaports and sea terminals that are open to international traffic with floating and fixed reception facilities for ship-generated waste, minimum list and technical specifications of such facilities, as well as on development and implementation of plans for management of ship-generated waste and cargo residues in seaports in accordance with the requirements of Ukraine's international agreements; development and adoption of a normative legal act of the Ministry of Infrastructure on payment for the services of reception of ship-generated waste and cargo residues in seaports and sea terminals; development and adoption of amendments to the Law of Ukraine "On Seaports of Ukraine" concerning the obligations of seaports and sea terminals to

ensure reception of ship-generated waste and cargo residues in accordance with the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol; development and adoption of a normative legal act of the Ministry of Infrastructure on amendments to Order No. 205 of the Ministry of Transport "On Approval of the Rules for Registration of Operations Involving Harmful Substances on Ships, Sea Installations and in Ports of Ukraine" dated April 10, 2001.

Practical implementation is at an early stage. SE AMPU and experts of the TRACECA Maritime Safety & Security II Project developed a Model Plan for Management of Ship-Generated Waste and Cargo Residues in Seaports of Ukraine. Since 2017, Port Plans have been in place in all seaports of Ukraine. In March-May 2018, SE AMPU developed amendments to the Model Plan for Management of Ship-Generated Waste and Cargo Residues in Seaports of Ukraine, taking into account the requirements of circular letters MERC.83 (44) and MERC.1/Circ.834/Rev.1 of the International Maritime Organisation, which came into force on March 1, 2018. In addition, amendments have been developed to the Procedure for Providing Services to Prevent and Elimination of Waste Spills in Seaports of Ukraine<sup>51</sup>. The draft Methodology for Calculating Port Charges is undergoing harmonisation with business representatives and the State Regulatory Service of Ukraine. SE AMPU has developed a draft order of the Ministry of Infrastructure to amend the Rules for Registration of Operations Involving Harmful Substances on Ships, Sea Installations and in Ports of Ukraine, which generally meets the requirements of the acquis, currently it is undergoing the process of endorsement.

### **Commitment 108 / Technical conditions**

- Directive No. 2002/6/EC repealed by Directive No. 2010/65

The commitment involves introduction of an information network for the exchange of information and storage of statistics on maritime transport within EU territory.

Legal approximation is early. Its fulfilment requires development and adoption of amendments to the Law of Ukraine "On Seaports of Ukraine" and the Code of Ukraine on Administrative Offences as regards the functioning of the national system for the exchange of information on maritime transport in the European Union (SafeSeaNet); development and adoption of a normative legal act of the Ministry of Infrastructure, in particular regarding the national segment of the SafeSeaNet, functioning of the "single window" for reporting formalities for ships arriving in and/or departing from seaports, relevant responsibilities of the SE Ukrainian Seaports Administration; development of a software and hardware complex for the functioning of the national segment of SafeSeaNet and the "single window" and conducting training for administrators and users of the national segment of the SafeSeaNet and the Single Window. Amendments to the Procedure for Registration of Arrival of Ships in a Seaport, Issuing a Permit for Departure of Ships and Registration of the Departure of Ships from a Seaport have been approved (reduction of the load on the crews of ships arriving in the seaports of Ukraine by significantly reducing the number of copies of ship documents and certificates to be provided to the captain of the seaport after the ship arrives in the seaport). Work has begun to create a European-type vessel traffic monitoring system for Ukrainian ships and its further integration into the SafeSeaNet. There is a draft law "On Amendments to the Law of Ukraine 'On Seaports of Ukraine' concerning the Functioning of the Port Community Information System" (Reg. No. 3761 dated January 13, 2016). However, no normative legal acts necessary to fulfil the commitment have been adopted.

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<sup>51</sup>) Order No. 631 of the Ministry of Infrastructure dated 21.08.2013.

Practical implementation is at an early stage.

### **Commitment 109 / Social conditions**

- Council Directive 92/29/EEC
- Council Directive 1999/63/EC,
- Directive 1999/95/EC

The commitment involves introducing minimum European requirements for working time and other social conditions of seafarers, and the organisation of working time of seafarers.

Legal approximation has not yet begun. Its fulfilment involves accession to the International Labour Organisation's Maritime Labour Convention, 2006; development and adoption of normative legal acts of the Ministry of Infrastructure regarding hours of work and rest periods of seafarers. Draft laws of Ukraine "On Ratification of the International Labour Organisation's Maritime Labour Convention, 2006, recast" and "On Amendments to Certain Legislative Acts in Connection with the Ratification of the International Labour Organisation's Maritime Labour Convention, 2006" were developed back in 2017 but they have never been adopted. No changes have been made to the Regulation on Hours of Work and Rest Periods of the Shipboard Personnel of Maritime and River Transport of Ukraine.

Practical implementation has not started.

### **Commitment 110 / Maritime safety**

- Directive No. 2005/65/EC,
- Regulation (EC) No. 725/2004

The commitment involves establishment of requirements for the equipment of ships and port facilities and the procedure for compliance with these requirements.

Legal approximation is early. Fulfilment of the commitment requires development, elaboration with EU experts and submission to the Cabinet of Ministers of Ukraine of draft laws on: requirements for the protection of ships and port facilities; procedure for inspecting the conformity of the security of ships and port facilities to the requirements of the legislation in the field of security; establishment of responsibility for violation of the requirements of the legislation on protection of ships and port facilities; sea fishing ports; standardization of the operation of the coordination centre in the field of maritime safety; training and advanced training of personnel on maritime safety, including in educational institutions of the EU Member States. The Ministry of Infrastructure has developed a draft order on amendments to Order No. 198 of the Ministry of Infrastructure dated 27.03.2013 "On Approval of the Procedure for the Organisation of Protection of Sea and River Ports". According to Letter No. 1069/0/20-19 of the State Regulatory Service dated 20.02.2019, the draft order contains regulatory norms and due to the unresolved issue of delimitation (separation) of areas of responsibility between the Maritime Administration, SE AMPU and the Ministry of Infrastructure in the field of navigation protection and safety, further support of the draft order has been suspended.

Practical implementation has not started.



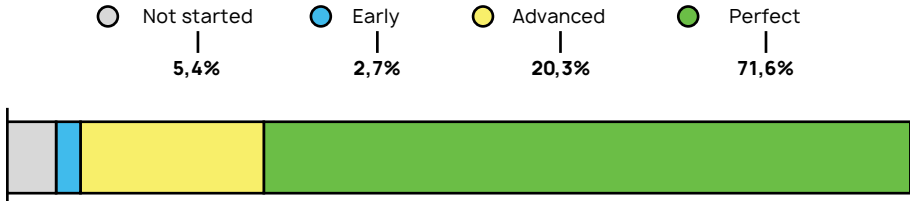
**GOVERNMENT  
PROCUREMENT**



# GOVERNMENT PROCUREMENT

Expert: **Serhii Yaremenko**

## Implementation progress for the sector:



## Overview of key Eurointegration commitments

In accordance with the commitments undertaken by Ukraine within the framework of the Association Agreement (hereinafter – the AA), in the previous period (1 November 2014 to 31 December 2022) national legislation in the field of public procurement is to be harmonised with the provisions set forth directly in the Association Agreement and the relevant legislation.

Development of the system of public procurement in accordance with internationally recognised principles will affect the core interests of such stakeholders as: public authorities, local governments and social insurance agencies that provide for the needs of the state or local community (communities) and act as contracting authorities within the meaning of the law; individuals, individual entrepreneurs, legal entities (residents or non-residents) which are parties to public procurement within the meaning of the Law.

According to the Report the MEDT on the state of the area of public procurement<sup>1</sup>, due to improved legislation, in particular due to the introduction of e-procurement, in 2019 contracting authorities successfully held 3.5 million procedures worth about UAH 2 trillion. The procurement procedures involved almost 270 thousand participants, which attests to an increase in businesses' confidence in the government.

Fulfilment of the commitments will boost the efficiency of public procurement, ensure the transparency of its implementation, development of a competitive environment and fair business practices in the field of procurement in Ukraine.

Potential benefits to Ukraine include inter alia access of Ukrainian companies to the EU public procurement market, amounting to about 14% of GDP or more than EUR 1.9 trillion<sup>2</sup>. At the same time, due to the participation of EU companies in procurement, competition in the public procurement market in Ukraine helps improve the efficiency of budget spending and will encourage domestic companies to become competitive<sup>3</sup>.

1) <https://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=5cc39077-e96a-40fd-815b-b03f9e0187fa&title=ZvitSferiPublichnikhZakupovelZa2019-Rik>

2) This estimate does not include procurements made by utility companies. Estimates including utility procurement amount to 19% of GDP, i.e. EUR 2.3 trillion (for details see: European Semester Thematic Factsheet: Public Procurement <https://goo.gl/DFQsvP>).

3) For more details, see: [https://www.civic-synergy.org.ua/wp-content/uploads/2018/04/Vzajemne-vinkiv-rynkiv-rynkv-derzhavnyh-zakupovel-UA-EU-ua\\_2019.pdf](https://www.civic-synergy.org.ua/wp-content/uploads/2018/04/Vzajemne-vinkiv-rynkiv-rynkv-derzhavnyh-zakupovel-UA-EU-ua_2019.pdf)

## Evaluation of progress in fulfilling commitments

### **Commitment 111 / Planning of legislative approximation in the area of procurement**

- Article 152, AA

In order to fulfil the commitments, the Government of Ukraine was to develop a strategy for public procurement reform (Roadmap) (Article 152, AA). On February 24, 2016, the Cabinet of Ministers by its Directive No. 175-p approved a Strategy for Public Procurement (Roadmap). The strategy was approved by Decision No. 1/2018 of the Ukraine-EU Association Committee in Trade Configuration of 14 May 2018.

The Action Plan to implement the above Strategy specifies time schedules and milestones of the reform. It should be noted that the deadlines set in the Roadmap are more demanding than those indicated in the Association Agreement. Therefore, should Ukraine comply with the Roadmap, the approximation of Ukrainian legislation with EU public procurement regulations will take place faster than required by the Association Agreement.

Practical implementation of the provisions of the Roadmap started from the date of its approval and involves fulfilment of all the commitments listed below based on the relevant time schedules.

### **Commitment 112 / Establishment of an appropriate institutional framework for public procurement as well as improvement and optimisation of the functions of monitoring bodies**

- Directive 2014/24/EU
- Article 150 AA
- Article 153 AA, Annexes XXI-F, XXI-G, XXI-H

In the framework of this commitment, Ukraine shall:

- 1) designate two public authorities responsible for policy in the area of public procurement and review of decisions taken by contracting authorities (Article 150.2 AA);
- 2) establish a central procurement organisation taking into account international experience as regards its structure, funding principles, functions and tasks;
- 3) implement policy-making as well as organisational and technical measures to ensure the effective functioning of these bodies and improve the competence of their staff;
- 4) introduce comprehensive monitoring of the efficiency of the public procurement system, publication of annual reports on the functioning of public procurement (Article 83 of Directive 2014/24/EU).

Legal approximation is almost perfect. Specifically:

- 1) Law of Ukraine "On Public Procurement" designates the central executive body in charge of the implementation of the state public procurement policy as the Authorised Agency. In accordance with the Regulation on the Ministry of Economic

Development and Trade of Ukraine, approved by CMU Resolution No. 459 of August 20, 2014, the relevant Authorised Agency is the Ministry of Economic Development and Trade (MEDT). The Law also makes it possible to challenge the decisions of the Contracting Authority in the Complaint Review Authority, i.e. the Antimonopoly Committee (AMC), which has the right to oblige the Contracting Authority to fully or partially cancel its decision. This distribution of functions between the MEDT and the AMC has been in place since 2010.

2) Para. 38, Article 1 of the Law "On Public Procurement" established the concept and mechanism of operation of central procurement organisations. CMU Regulation No. 928 of November 23, 2016 On Implementation of the Pilot Project for Organisation of Work of a Central Procurement Organisation" and MEDT Order No. 2015 of November 30, 2016 established the State Institution Profesiini Zakupivli (Professional Procurement). On September 25, 2019, CMU Order No. 846-P tasked the above central procurement organisation with holding tenders and engaging in procurement under framework agreements for goods and services (except for current repairs) on behalf of customers. In addition, in the fall of 2018, the Ministry of Healthcare of Ukraine established the state enterprise Medical Procurement of Ukraine, which is in charge of central procurement of drugs and medicines.

3) The Law of Ukraine "On Public Procurement" stipulates that the MEDT should publish annual reports on the operation of the public procurement system. The MEDT publishes reports on its website and sends them to the Cabinet of Ministers, the Verkhovna Rada and the Accounting Chamber. At the same time, the function of monitoring of the efficiency of the public procurement system was delegated to the State Audit Service.

Implementation is also perfect. All the tasks envisaged by the commitment have been implemented. Implementation of some of them began as far back as in 2010.

In particular, the Department of Public Procurement Regulation (prior to 2016, the Department of Public Procurement) has been established and operates under the MEDT. Participants' complaints are considered by a board specially established under the AMCU.

The process of developing a mechanism for centralised procurement is at an advanced stage – the required legal and organisational conditions have been created. In particular, relevant statutory provisions have been adopted, the central procurement organisation has been designated, and the list of goods and services that must be procured via the centralised system has been approved.

As regards procurement monitoring, the MEDT publishes annual reports on its website, as well as sends them to the Cabinet of Ministers, the Verkhovna Rada and the Accounting Chamber.

The monitoring of the efficiency of the public procurement system using an e-procurement system and a KRI system has been carried out by the State Audit Service since 2017.

### **Commitment 113 / Bringing the current and future legislation in the field of government (public) procurement in line with the EU acquis in the field of government procurement**

- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014

- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014
- Council Directive 89/665/EEC of 21 December 1989
- Council Directive 92/13/EEC of 25 February 1992
- Article 153 AA, Annexes XXI-F, XXI-G, XXI-H

To fulfil this commitment, Ukraine needs to harmonise its procurement legislation with the requirements of the relevant EU procurement directives (Directive 2014/24/EU, Directive 2014/25/EU, Council Directive 89/665/EEC and Council Directive 92/13/EEC).

The harmonisation should be implemented both by bringing the terms of the existing Law in line with the requirements of the Directives and by introducing new procedures and improving existing ones. Changes should be also made regarding issues of concessions, defence and security procurement, complex and specialised procurement, etc.

To fulfil the commitment, it is necessary to carry out 25 tasks aimed at the regulatory approximation of Ukrainian legislation with EU standards in this area.

To ensure fulfilment of most of the tasks in 2019, the MEDT, involving experts of the relevant EU project, developed the draft law "On Amendments to the Law of Ukraine 'On Public Procurement' and Certain Other Legislative Acts of Ukraine with regard to Improving Public Procurement", which was adopted by the Verkhovna Rada on September 19, 2019 (No. 114-IX). The law is to enter into force on April 19, 2020.

In addition, on October 3, 2019, the Verkhovna Rada adopted the Law "On Concession" (No. 157-X), aimed to improve the legal regulation of concession activities and harmonise the legislation on concession with the legislation on public-private partnership.

Work on two tasks has not started yet (introduction of the innovation partnership process; introduction of special rules for the use of electronic auctions, reserved contracts and innovation partnerships by entities in the field of public utilities and the potential for the use of the Dynamic Purchasing System). However, the deadlines for their implementation are set for 31.12.2020 and 31.12.2022 respectively (according to the Action Plan on Implementation of the Association Agreement, approved by CMU Resolution No. 1106 of 17.10.2017).

Since the amendments to the Law on Public Procurement came into force as recently as on April 19, 2020, the fulfilment of certain tasks (for example, introduction of selective tendering, competitive dialogue, simplified procedures) is at an advanced stage due to the need to finalise some technical aspects of the electronic procurement system for their effective application.

### **Commitment 114 / Harmonisation of remedies**

- Council Directive 89/665/EEC of 21 December 1989
- Article 153 AA, Annexes XXI-F, XXI-G, XXI-H
- Council Directive 92/13/EEC of 25 February 1992



The harmonisation should be implemented by introducing the basic standards set forth in the relevant EU directives governing the legal redress and award of public contracts (first of all, Council Directives 89/665/EEC and 92/13/EEC).

The fulfilment status can be considered as perfect. The commitment fulfilment consists of 6 tasks, of which one (introduction of non-mandatory rules concerning the period of non-award of the procurement contract) has not started yet (Action Plan on Implementation of the Association Agreement, approved by CMU Resolution No. 1106 of 17.10.2017, the deadline is scheduled for 31.12.2022).

To ensure fulfilment of most of the tasks in 2019, the MEDT, involving experts of the relevant EU project, developed the draft law "On Amendments to the Law of Ukraine 'On Public Procurement' and Certain Other Legislative Acts of Ukraine with regard to Improving Public Procurement", which was adopted by the Verkhovna Rada on September 19, 2019 (No. 114-IX). The law enters into force on April 19, 2020.

To fulfil the task concerning grounds for awarding damages as a result of violation of the procedure for awarding procurement contracts and conducting public procurement, as well as the introduction of "dissuasive penalties", relevant amendments have been made to the Code of Ukraine on Administrative Offenses.

The process of fulfilment of certain tasks began on April 1, 2016, according to the Law "On Public Procurement" (as amended on 25.12.2015, No. 922). The fulfilment of others begins on April 19, 2020, except for Entry 38 of the Evaluation Table – its implementation is scheduled for December 31, 2022.

### **Commitment 115 / Ensuring training and professionalisation in the field of public procurement**

- Article 153 AA

The commitment was supposed to be fulfilled by introducing maximum professionalisation of the area of procurement, namely by gradual transition from organisation of procurement by tender committees to performance of this work by specialists with an appropriate level of education and experience, creation of a support service for participants in the procurement process, use of centralised procurement mechanisms, etc.

The implementation of the commitment involves 8 tasks; the fulfilment of most of these began in 2016, according to the Law as amended on December 12, 2015 No. 922.

A perfect level of transposition has been achieved regarding the following measures: establishment of a support service for participants in the procurement process; development and dissemination of public procurement recommendations among customers and participants; adoption of methods and a programme for training and retraining of specialists; setting of requirements for training and educational institutions.

According to the amendments to the Law that entered into force on 19.04.2020, the delegation of responsibilities related to organisation of procurement from tender committees to authorised persons is supposed to be completed by the end of 2022. Therefore, the implementation process is underway and advanced.

Another advanced procedure is that of implementation of the function of customer technical support by way of providing marketing research services, preparation of

joint procurement strategies, as well as legal and technical support of procurement procedures carried out both under framework agreements and under individual procedures of individual customers, which is associated with the introduction of the mechanisms of centralised and framework procurement.

Customer technical support services are currently provided by the Profesiyni Zakupivli SE (Professional Procurement) to contracting authorities who are customers of the enterprise, primarily as regards the organisation of centralised and framework procurement (this company acquired the official CPO status as late as in September 2019 based on CMU Order No. 846-P of 25.09.2019. Prior to that, this company worked as part of the pilot project). However, these tools do not yet work to their full capacity, they are still developing.

### **Commitment 116 / Ensuring the development of e-procurement**

- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014
- Article 153 AA, Annexes XXI-B, XXI-C, XXI-D, XXI-E
- Article 153 AA, Annexes XXI-F, XXI-G, XXI-H
- Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014

This commitment was to be fulfilled by adopting the legal framework for the use of electronic means in public procurement procedures, as well as by creating software and taking organisational measures to introduce e-procurement.

It should be noted that according to the requirements of Directive 2014/24/EU (para. 52 of the Preamble) "Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures, as they greatly enhance the possibilities of economic operators to participate in procurement procedures across the internal market."

At the same time, this Directive does not require customers to ensure full electronization of all stages of the procurement procedure (including evaluation of proposals), which has been practically implemented in Ukraine.

The status of the regulatory framework is at the advanced to perfect stage. Fulfilment of the commitment includes 9 tasks, implementation of most of them began in 2016, according to the Law as amended on 25.12.2015, No. 922.

The perfect level of transposition has been achieved regarding the following tasks: development of the necessary regulatory framework for introduction of the e-procurement system; enabling operation of a single portal, electronic review system, and an e-catalogue tool.

No work has been done so far to perform one task – i.e. creation of a mechanism for award of contracts and paying for them in electronic form (Action Plan on Implementation of the Association Agreement, approved by CMU Resolution No. 1106 of 17.10.2017, the deadline for implementation is scheduled for 31.12.2022).

In addition, it is important to timely approve the regulation of the Cabinet of Ministers on streamlining the appeal procedure in accordance with the new version of the Law on Public Procurement, which entered into force on 19.04.2020.

Fully implemented tasks include those related to the creation of a module for awarding framework agreements in the Prozorro e-procurement system, enabling the work of the integrated web portal of the authorised body, integration of the Prozorro e-procurement system with the EU e-procurement information system (TED) and enabling the operation of the electronic review system.

It should be noted that due to the creation of the Prozorro procurement system and its integration with TED, the electronic public procurement information system of the EU, foreign economic operators can freely participate in public procurement in Ukraine. According to the MEDT, in 2018, foreign economic operators were awarded 850 contracts based on the results of e-procurement procedures in the Prozorro system worth a total of UAH 59.1 billion.

Ukrainian companies now participate in public procurement in the EU. In particular, the company SpetsTechnoExport, part of the Ukroboronprom SC, became the first Ukrainian company to win a tender for public procurement in the EU<sup>4</sup>.

The stage of implementation of the following measures can be considered advanced: creation of the mechanism of use of electronic catalogues; enabling the functioning of the information exchange system and availability of the analysis module in the general system of e-procurement. It is worth noting that the mechanism of using electronic catalogues has been introduced so far as a pilot project of Prozorro SE together with Profesiini Zakupivli SI (Professional Procurement) and Medychni Zakupivli Ukrayiny SE (Medical Procurement of Ukraine) for purchase of goods worth or exceeding UAH 50 thousand and cost less than the amount specified in paragraphs 1 and 2 of the first part of Article 3 of the Law of Ukraine "On Public Procurement". Since the cost of such purchases is not high, foreign companies are not interested in them.

The advanced status of implementation has been achieved for integration of state registers (entry 54 of the Table), but the work on introducing data exchange between the electronic procurement system Prozorro and the information system of the State Treasury in automatic mode (information on contract payments) has not been completed yet.

### **Commitment 117 / Establishing procurement rules in the field of defence**

- Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009

In the EU, public procurement procedures for defence purposes and procurement rules for other sensitive goods, works and services to ensure security are regulated by Directive 2009/81/EC.

To ensure the implementation of this Directive, a separate piece of legislation is to be developed to regulate procurement for defence and security purposes.

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4) <https://www.eurointegration.com.ua/news/2017/11/24/7074164/>

Currently, the above procurement is regulated by several laws:

- "On Public Procurement" (regulates procurement for defence purposes, except for secret procurement and that for the needs of the ATO);
- "On Specific Features of Procurement of Goods, Works and Services to Ensure Meeting Defence Needs" (regulates procurement for the ATO);
- "On State Defence Order" (stipulates the procedure for planning and formation of the state defence order, including the classified part).

In 2019, a draft Law on Defence Procurement was developed (No. 2398-д of November 27, 2019). The draft law was adopted by the Verkhovna Rada in the first reading (05.12.2019), it sets forth a single integrated approach to the regulation of defence procurement. This Law might be adopted in the near future, after the Verkhovna Rada of Ukraine returns to normal.

Given the fact that there is currently some regulatory framework for defence procurement, the implementation of this task can be considered to be at an early to advanced stage.

The implementation is at an early stage. That is, currently, defence procurement is legally and organisationally regulated but is undergoing reform. The implementation will begin after the new Law is adopted.

**Commitment 118 / Preparation and submission of information on the results of enactment of the Action Plan for Implementation of the Strategy for Development of the Public Procurement System (Roadmap) to the joint body for monitoring the implementation of the Association Agreement**

- Article 150 AA

In order to fulfil its commitments under the Association Agreement, Ukraine must ensure that the relevant joint EU monitoring body is informed in a timely manner of the status of implementation of the Roadmap activities.

The activity does not require adoption of regulatory acts.

Annually by the end of the year, the MEDT provides relevant information to the Government Office for Coordination on European and Euro-Atlantic.

The Government Office for Coordination on European and Euro-Atlantic reports to the relevant EU body.

**Commitment 119 / Ratification by Ukraine of the WTO Agreement on Government Procurement and ensuring the participation of representatives of Ukraine in meetings of the WTO Committee on Public Procurement**

- Roadmap (CMU Order No. 175-p of 24.02.2016)

This activity is not a part of Ukraine's commitments under the Association Agreement but it is included in the Action Plan approved by CMU Resolution No. 1106 and the Roadmap (CMU Order No. 175-p of 24.02.2016).

To fulfil this task, on March 16, 2016, the Verkhovna Rada adopted the Law of Ukraine "On Ukraine's Accession to the Agreement on Government Procurement". On May 18, 2016, the official procedure for Ukraine's accession to the World Trade Organisation's Government Procurement Agreement was completed.

Representatives of Ukraine regularly participate in the meetings of the WTO Committee on Government Procurement in accordance with the work plans of the WTO Committee. In particular, according to the MEDT, in 2019, representatives of the Ministry participated in 3 regular meetings of the WTO Committee on Government Procurement and other events (Geneva, Swiss Confederation).

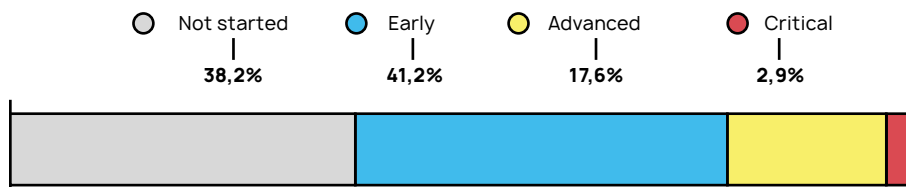


**INTELLECTUAL  
PROPERTY**

# INTELLECTUAL PROPERTY

Expert: **Olena Sviatun**

## Implementation progress for the sector:



Ukraine's intellectual property commitments are specified in Chapter 9 of the Association Agreement between Ukraine and the EU (AA) and aim at achieving an adequate and effective level of protection and enforcement of intellectual property rights, as well as facilitating the production and commercialisation of innovative and creative products in the Parties.

A distinctive feature of this Chapter of the Association Agreement is that there is no separate annex to the Agreement that would list the EU regulations in the field of intellectual property with which our national legislation would have to be aligned. Therefore, virtually all the relevant commitments are specified in the text of the Agreement itself.

It is also noteworthy that for most of the measures envisaged by the Government's 2017 Action Plan the deadline is 31.12.2023, which is generally a decisive factor behind the current state of affairs as regards the fulfilment of Ukraine's commitments in this sector.

## STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

### Overview of key Eurointegration commitments

The commitments within the section of "Standards concerning intellectual property rights" involve the parties' commitment with regard to the effective implementation of obligations under international agreements in the field of intellectual property to which they have acceded. In particular, this applies to standards concerning the following intellectual property rights: copyright, in particular the right to computer programmes and databases, as well as related rights, rights related to patents, including patents for biotechnological inventions, trademarks, trade names in so far as these are protected as exclusive rights in the national law concerned, utility product rights, rights of the creator of the topographies of semiconductor products, geographical indications, including indications of origin, plant varieties, protection of confidential information and protection against unfair competition. The introduction of the harmonised standards aims to create a common legal framework to ensure

the protection of the legitimate interests of holders of intellectual property rights in Ukraine and the European Union.

### **Evaluation of progress in fulfilling commitments**

#### **Commitment 120 / Improving legislation on the protection of copyright and related rights**

- Directive No. 96/9/EC
- Directive No. 93/83/EEC
- Directive No. 2001/29/EC)

The commitment involves bringing the current Law of Ukraine "On Copyright and Related Rights" in line with Directive 2001/29/EC, as the current Law "On Copyright and Related Rights" does not provide protection of copyright and related rights with regard to the use of modern technologies, in particular such as distribution of copies of works, phonograms, and videograms in electronic form, Internet piracy, etc.

The legal approximation is at an early stage. During the past 5 years, several draft laws "On Amendments to the Law 'On Copyright and Related Rights'" have been submitted to the Verkhovna Rada of Ukraine. They were all withdrawn<sup>1</sup>.

Due to the fact that the current legislation has not been amended yet, and the Government Action Plan provides for the implementation period until December 31, 2023, no implementation measures have been taken yet.

#### **Commitment 121 / Improving the legislation on collective management organisations**

- Directive No. 2014/26/EU

The commitment involves adoption of special legislation in line with Directive No. 2014/26/EU to introduce a special mechanism for collective management of copyright and related rights.

The regulatory approximation is at an advanced stage. In 2018, the Law of Ukraine "On Effective Management of the Property Rights of Holders of Copyright and (or) Related Rights" was adopted<sup>2</sup>, which provides for reforming the system of collective management of the rights of holders of copyright and related rights, preventing illegal activities of collective management organisations, preservation and development of intellectual activity of authors, performers and other creators. It should be noted that the adopted law in some of its provisions does not comply with the provisions of Directive No. 2014/26/EU. In particular, Art. 12 stipulates that only one accredited organisation can exist for each area of collective management, but the Directive does not lay down any restrictions on the number of organisations that have the right to operate in this area. In addition, Para. 6 of Art. 12 stipulates that

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1) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=66519](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66519), [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=65661](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65661), [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=65771](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65771).

2) <https://zakon.rada.gov.ua/laws/show/2145-19>



"Compulsory collective management does not involve removal by the right holder, in whole or in part, of his/her property rights from the management of the accredited organisation", which is also contrary to the provisions of the EU Directive.

The practical implementation of the provisions of European legislation is assessed as early. The law adopted in 2019 established the Commission on Accreditation of Collective Management Organisations<sup>3</sup>; in December of the same year its personnel was approved. Apart from this, a register of collective management organisations was created and forms of documents for registration were approved<sup>4</sup>. The practical activity of the Commission on Accreditation is at the initial stage.

### **Commitment 122 / Improving legislation on the protection of computer programmes**

- Directive No. 2001/29/EC

In accordance with this commitment, the current Law of Ukraine "On Copyright and Related Rights" should be aligned with Directive No. 2001/29/EC, as the current Law "On Copyright and Related Rights" does not provide protection of copyright and related rights with regard to the use of modern technologies. In particular, it is necessary to improve matters related to the definition of the term "computer programme", attribution of computer programmes, distribution of computer programmes in electronic form, Internet piracy, etc.

The regulatory approximation is at an early stage. During the past 5 years, several draft laws "On Amendments to the Law 'On Copyright and Related Rights'" have been submitted to the Verkhovna Rada of Ukraine. They were all withdrawn<sup>5</sup>.

Given the fact that the current legislation has not been amended yet, and the Government Action Plan provides for the implementation period until December 31, 2023, no implementation measures have been taken yet.

### **Commitment 123 / Improving the protection of intellectual (industrial) property**

- Council Regulation (EC) No. 6/2002
- Directive No. 98/71/EC
- Directive No. 2008/95/EC
- Council Regulation (EC) No. 207/2009

The commitment aims at aligning the Ukrainian legislation on improving the legal protection of intellectual (industrial) property with the AA itself, as well as Council Regulation (EC) No. 6/2002, Directive No. 98/71/EC, Directive No. 2008/95/EC, and Council Regulation (EC) No. 207/2009 by amending the Law of Ukraine "On Protection

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3) <https://zakon.rada.gov.ua/laws/show/2145-19>

4) <https://zakon.rada.gov.ua/laws/show/z1433-18>

5) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=66519](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66519), [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=65661](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65661), [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=65771](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65771).

of Rights to Marks for Goods and Services” and the relevant bylaws in accordance with the above EU acts, in particular to establish a single term for trademark (i.e. “товарний знак” or “торгова марка”) as provided by the Civil Code Ukraine instead of “знак для товарів та послуг” (mark for goods and services), setting a longer period during which the owner of the trademark retains the rights to it if the trademark is not used (5 years instead of 3 as provided by the Law of Ukraine), etc. In addition, amendments should be made to the Law “On Protection of Designs”: enshrining the possibility of protection of unregistered designs, increasing the term of protection of design rights from 15 to 25 years, establishing additional criteria for patentability of designs (individual character in addition to novelty) and extending the possibility of patenting to parts of the product not only the entire product.

However, it should be noted that in June 2017, Regulation (EU) No. 2017/1001 was adopted repealing Regulation No. 207/2009 from 1.10.2017. The same applies to Directive No. 2008/95/EC, which was repealed on 15.01.2019 due to the adoption of Directive (EU) No. 2015/2436.

The transposition is at an early stage. On February 4, 2020, the draft law “On Amendments to Certain Legislative Acts of Ukraine to Improve the Protection and Enforcement of Rights to Trade Marks and Designs and Combating Patent Trolls” was adopted at first reading<sup>6</sup>.

As for the protection of the right to designs, in general, the draft law complies with the AA. However, it should be noted that the proposed amendments to Art. 1 (1) of the Law “On Protection of Rights to Designs” include a definition of the term “design” that contradicts that specified in Art. 212 of the AA.

Considering the provisions on trade marks, we can also conclude that the draft law as a whole complies with the AA in this area (Art. 193-202), as well as the EU regulations that were effective at the time.

As for the new EU acts, namely Regulation (EU) No. 2017/1001 and Directive (EU) No. 2015/2436, the draft law contains certain provisions that do not correspond to them. Specifically, Regulation (EU) No. 2017/1001 abolishes the requirement for a graphic image (representation), whereas the proposed amendments to Art. 5 (2) “On Protection of Rights to Marks for Goods and Services” provide for supplementing the current law with the provision that the trade mark can be represented only by graphic means (such as form or packaging), which is not fully in line with the provisions of the above Regulation and Directive. In addition, the draft law also provides for amendments to Art. 6 (2) “On Protection of Rights to Marks for Goods and Services”: the third paragraph contains the words “are commonly used to designate goods and services of a certain type” shall be replaced with the words “have come to be commonly used in modern language or in fair and established commercial practice”, while Regulations No. 2017/1001 Art. 7 (1 (m)) stipulates that “trademarks which consist of, or reproduce in their essential elements, an earlier plant variety denomination registered in accordance with Union legislation or national law, or international agreements to which the Union or the Member State concerned is a party, providing for protection of plant variety rights, and which are in respect of plant varieties of

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6) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68556](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68556)

the same or closely related species” shall not be registered. Similar provisions are laid down in Art. 4 (1 (i)) of Directive (EU) No. 2015/2436.

Thus, the draft law needs to be aligned with the latest EU legislation.

The practical implementation of this task can be described as critical inconsistency. Thus, the Supreme Court of Ukraine consisting of the panel of judges of the Commercial Cassation Court in its decision in case No. 910/14972/17 of July 17, 2018 (the case brought by Zentiva)<sup>7</sup> for the first time applied the priority and direct effect (the right of national courts to refer to the AA provisions in their decisions, even if the provision has not been implemented in national law) of Art. 198 of the Association Agreement in contrast to the national legislation of Ukraine, in particular, regarding the possibility of revoking the right to trade marks, goods and services after they have not been used for 5 years (rather than 3 years, as provided by the Law of Ukraine) and took a decision based on the AA. Subsequently, a number of similar court decisions were taken in similar cases. Thus, at the level of judicial practice, the inconsistency of the Ukrainian legislation with the specified provision of the Association Agreement has been repeatedly established.

### **Commitment 124 / Improving the protection of recognised geographical indications**

- Regulation (EU) No 1151/2012
- Regulation (EU) No 251/2014

The commitment involves adoption of regulatory legal acts determining the principles of legal protection of geographical indications in Ukraine and regulating the relations arising in connection with their registration, use, and protection.

The regulatory approximation is mostly advanced. Amendments to the Law “On Protection of Indication of the Origin of Goods” were adopted on September 20, 2019, which led to changing of the name of the Law – “On Legal Protection of Geographical Indications”<sup>8</sup>. On January 1, 2020, the new version of the Law came into force.

As for the compliance of this Law, in general it meets EU standards, namely those of Regulation (EU) No. 1151/2012 and Regulation (EU) No. 251/2014.

However, certain provisions of Regulation (EU) No. 1151/2012 have not been fully taken into account. In particular, it fails to include certain terms contained in Art. 3 of Regulation No. 1151/2012 and are important for the designation of goods from the EU (for example, the definition of the term “generic term”, which refers to the names of products which, although relating to the place, region or country where

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7) <https://ips.ligazakon.net/document/view/V108489>.

Zentiva, k. s. (plaintiff) filed a lawsuit to the Commercial Court of Kyiv against the Ministry of Economic Development and Trade of Ukraine (defendant-1) and to the company Beauty Alliance (defendant-2) concerning cancellation of certificate No. 168112 for the “bio CRYSTAL” trade mark for all goods in Classes 3 and 5 of the Nice Classification for which it was registered and the obligation of the Ministry of Economic Development and Trade of Ukraine to make appropriate changes to the State Register of Certificates of Marks for Goods and Services and publish the relevant notice thereof in the official “Industrial Property” bulletin. The reasoning behind the claim of Zentiva k. s. was based on the fact that the trademark had not been used in Ukraine for a period exceeding three years for all goods for which it was registered, which gives grounds for cancelling certificate of Ukraine No. 168112 of 25.03.2013.

8) <https://zakon.rada.gov.ua/laws/show/752-14>

the product was originally produced or marketed, have become the common name of a product in the Union, such as "Dijon mustard"). In addition, there is no procedure for establishing a scheme for traditional specialities guaranteed (Art.17-26 of the EU Regulation), no provisions concerning the possibility to submitting a joint application when the geographical indication concerns several states (Art. 49 (1) of the Regulation), no possibility of holding consultations between the stakeholders in case of a dispute, etc.

With regard to the implementation of this Law, firstly, there is a need to adopt special laws in this area, and secondly, the effective implementation of its provisions requires development of implementation mechanisms in accordance with EU standards.

### **Commitment 125 / Improving the protection of geographical indications and designations of origin for agricultural products and foodstuffs**

- Regulation (EU) No. 1151/2012
- Regulation (EU) No. 251/2014

The commitment involves compliance with the rules for the protection of geographical indications and designations of origin for agricultural products and foodstuffs and alignment of Ukrainian legislation with Regulation (EU) No. 1151/2012 and Regulation (EU) No. 251/2014.

The regulatory approximation has not yet begun with regard to this commitment. Despite the fact that the new version of the Law "On Legal Protection of Geographical Indications" entered into force on 01.01.2020, its preamble indicates that "The specific features of preparation for registration, use, and protection of geographical indications for agricultural products (agricultural goods), foodstuffs,... as well as control over such geographical indications are determined by other laws." However, no special laws in these areas have been adopted so far.

Due to the lack of regulatory framework, the practical implementation of the provisions of EU legislation has not started.

### **Commitment 126 / Ensuring the protection of biotechnological inventions**

- Directive No. 98/44 / EC

The commitment requires that Ukraine should adopt a consistent legal framework in the field of biotechnology, including improvement of patent legislation, taking into account the specifics of the biotechnology industry.

The transposition is at an early stage. Currently, there are several draft laws registered with the Verkhovna Rada: "On Amendments to Certain Legislative Acts of Ukraine Concerning the Implementation of Certain Provisions of the European Union Legislation in the Field of Intellectual Property" No. 1199<sup>9</sup>, and "On Amendments to Certain Legislative Acts of Ukraine (Regarding the Reform of Patent Legislation)"

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9) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?id=6pf3511=55378](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=6pf3511=55378)

No. 2259, approved by the Verkhovna Rada of Ukraine at first reading on February 5, 2020<sup>10</sup>.

Draft law No. 1199 is generally in line with the provisions of Directive No. 98/44/EC. As for draft law No. 2259, it is noteworthy that the proposed amendment to Art.1 (1) of the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" fails to include the term "microbiological process" specified in Art. 2 (1 (b)) of Directive No. 98/44/EC.

No implementation measures have started yet due to the lack of a legal framework.

### **Commitment 127 / Introduction of a mechanism for protection of data provided for the purpose of obtaining a marketing authorisation for a medicinal product**

In accordance with this commitment, a comprehensive system should be put in place to ensure the confidentiality, non-disclosure and independence of data provided for the purpose of obtaining a marketing authorisation for a medicinal product.

From the point of view of transposition, the relevant measures can be described as advanced. The Law of Ukraine "On Medicines" stipulates that persons guilty of disclosure or illegal use of registration information shall be subject to disciplinary, administrative, civil and / or criminal liability in accordance with the laws of Ukraine<sup>11</sup>.

The implementation is at an advanced level too. Order No. 426 of the Ministry of Health dated August 26, 2005 (as amended on August 2, 2019), assigns the task of protecting confidential registration information from disclosure and unfair commercial use to the State Expert Centre of the Ministry of Health of Ukraine<sup>12</sup>.

### **Commitment 128 / Introduction of a data protection mechanism for plant protection products**

- Directive No. 2009/128/EC
- Regulation No. 1107/2009
- Regulation No. 2017/625)

This commitment is aimed at ensuring compliance with safety and efficacy requirements before authorising the placing of plant protection products on the market.

Transposition activities have not started, as the current legislation fails to provide a mechanism for data protection concerning plant protection products.

Due to the lack of regulatory framework for data protection concerning plant protection products, implementation activities have not started.

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10) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68556](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68556)

11) <https://zakon.rada.gov.ua/laws/show/123/96-%D0%B2%D1%80#n97>

12) <https://zakon.rada.gov.ua/laws/show/z1069-13>

## **Commitment 129 / Improving the protection of topographies of semiconductor products**

- Directive 87/54/EEC

The commitment involves aligning legislation with Directive 87/54/EEC.

The transposition is advanced. On September 19, 2009, a new version of the relevant law was adopted in line with the above Directive under the new title "On Protection of the Rights to Topographies of Semiconductor Products"<sup>13</sup>. On September 23, 2019, the law was signed by the President of Ukraine. The law complies with the requirements of Directive 87/64/EEC.

The implementation is at an early stage. The MEDT is currently developing the relevant normative legal acts to implement the provisions of the above-mentioned Law.

## **Commitment 130 / Harmonisation of the classification of spirit drinks in accordance with EU standards**

- Regulation (EC) No. 110/2008

According to this commitment, Ukraine has to introduce a classification of spirit drinks that would comply with the provisions of Regulation (EC) No. 110/2008.

The transposition, which involves amendments to the Law "On State Regulation of Production and Circulation of Ethyl Alcohol, Cognac and Fruit Alcohol, Alcoholic Beverages, Tobacco Products and Fuel", the Tax Code of Ukraine, the Law "On Grapes and Grape Wine", etc., has not started.

Due to the lack of a legal basis for amending the current regulations, the implementation has not started.

## **Commitment 131 / Improving the mechanism for protecting the designations of origin for spirit drinks**

- Regulation (EC) No. 110/2008

The commitment involves the need to align the current regulatory framework of Ukraine with Regulation (EC) No. 110/2008.

The regulatory approximation has not yet begun for this commitment. Despite the fact that the new version of the Law "On Legal Protection of Geographical Indications" entered into force on 01.01.2020, its preamble indicates that "The specific features of preparation for registration, use, and protection of geographical indications for wines, aromatised wines, and spirit drinks, as well as control over such geographical indications are determined by other laws."<sup>14</sup> However, no special laws in these areas have been adopted so far.

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<sup>13</sup>) <https://zakon.rada.gov.ua/laws/show/621/97-%D0%B2%D1%80>

<sup>14</sup>) <https://zakon.rada.gov.ua/laws/show/752-14>

Due to the lack of regulatory framework, the practical implementation of the provisions of EU legislation has not started.

### **Commitment 132 / Improving the mechanism of protection of rights to inventions and utility models**

- Directive 98/44/EC
- Regulation (EC) No 469/2009
- Regulation (EC) No 1901/2006

The purpose of the commitment is to harmonise the current legislation of Ukraine with EU standards for the protection of rights to inventions and utility models.

The transposition is at an early stage. On February 5, 2020, the Verkhovna Rada of Ukraine adopted as a basis draft law No. 2259 (at first reading) "On Amendments to Certain Legislative Acts (Regarding the Reform of Patent Legislation)". The draft law envisages: expanding the list of technological objects that are not subject to legal protection (for example, computer programmes, product appearance, etc.); introduction of the possibility of submitting applications in electronic form; granting the right to any person to file a reasoned objection to the application within six months from the date of publication of information about the application for an invention; clarification of the procedure for granting additional protection of rights to inventions; expanding the list of rights and obligations of the holders of rights to inventions (utility models); providing the possibility of recognising the rights to an invention and utility model invalid ("post-grant opposition") by administrative means<sup>15</sup>. That is, most of the requirements of EU *acquis* have been taken into account.

At the same time, the legislator has failed to take into account certain provisions. In particular, there is a need to set a deadline for submitting an application to extend the permit for the placing on the market of health and plant protection products protected by patents, as well as establishment of supplementary protection for a medicinal product, plant protection product and medicinal products for which pharmaceutical research has been carried out. According to Regulation (EC) No. 469/2009, the relevant application should be lodged no later than two years before the expiry of the certificate. In addition, the draft law contains certain provisions that do not take into account certain provisions of the TRIPS Agreement, although Art. 230 of the AA confirms the commitments of the EU and Ukraine under the TRIPS. This concerns the lack of compliance of the specified draft law with Art. 31 of the TRIPS Agreement, according to which the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent. According to the draft amendments to the Law "On Protection of Rights to Inventions and Utility Models" (Art. 30 (2)), "the invention (utility model) in the latter is intended to achieve another goal or involves significant technical and economic advances": that is, there is a discrepancy between the provisions of the draft law with Art. 31 of the TRIPS Agreement on additional conditions for obtaining permission to use a second patent.

No implementation activities have started due to the lack of legal framework.

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15) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68556](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68556)

# PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

## Overview of key Eurointegration commitments

Commitments within the subsector of "Protection of intellectual property rights" involve enforcing measures, procedures, and remedies to ensure the protection of intellectual property. At the same time, these measures and remedies must also be effective, proportionate and dissuasive and must be applied in a way as to avoid obstructing legitimate trade and to provide protection against abuse.

Evaluation of progress in fulfilling commitments

### **Commitment 133 / Improving the mechanism of protection of intellectual property rights**

The commitment involves aligning the Ukrainian legislation on the protection of intellectual property rights, creation of institutional capacity to monitor compliance with these laws and bring to justice those guilty of committing offences in the field of intellectual property rights.

The transposition with regard to this commitment is at an early or advanced stage.

- Thus, there is a draft law registered with the Verkhovna Rada on improving the state system of intellectual property protection. On February 4, 2020, the Verkhovna Rada of Ukraine adopted (at first reading) draft law No. 2255 "On Amendments to Certain Legislative Acts of Ukraine on the Establishment of a National Intellectual Property Authority" of 10.10.2019, which provides for the introduction of a two-tier system of the state management of the field of intellectual property: establishment of the National Intellectual Property Office of Ukraine (NIPO) as a legal entity under public law subject to the Ministry of Economic Development, Trade and Agriculture (MEDT); at the same time, the MEDT will ensure the policy making and implementation of state policies in the field of intellectual property, and the NIPO will perform certain public functions (powers) to implement the state policies (issue IP protection documents such as patents and certificates). The draft law is currently being prepared for second reading.
- The Verkhovna Rada adopted the Law of Ukraine "On Amendments to the Customs Code of Ukraine with regard to the Protection of Intellectual Property Rights during the Movement of Goods Across the Customs Border of Ukraine" of October 17, 2019<sup>16</sup>, which entered into force on 11.11.2019 and aims to prevent the movement of counterfeit and pirated goods across the state border of Ukraine.
- The law generally complies with the provisions of EU acquis, except one remark concerning the definition of counterfeit goods. According to Regulation (EC) No. 608/2013 concerning customs enforcement of

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16) <https://zakon.rada.gov.ua/laws/show/202-20>



intellectual property rights, "counterfeit goods" means goods which are the subject of an act infringing a trade mark in the Member State where they are found and bear without authorisation a sign which is identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark. At the same time the current Customs Code (in accordance with the amendments made on 17.10.2019) defines counterfeit goods as "any packaging, label, sticker, brochure, operating instructions, warranty or other document of this type, even if presented separately, which are the subject of an act infringing intellectual property rights to a trade mark or geographical indication, which contain a designation, name or term identical to a trade mark or geographical indication protected in Ukraine, or which cannot be distinguished from such a trade mark or geographical indications and which may be used in relation to the same type of goods for which the trade mark or geographical indication is protected in Ukraine". Thus, the definition in the current legislation of Ukraine is narrower than the definition of this term in EU legislation.

- The committees of the Verkhovna Rada of Ukraine are currently reviewing the draft law "On Amendments to Certain Legislative Acts of Ukraine Concerning the Acquisition, Exercise, and Protection of Intellectual Property Rights" (No. 2659)<sup>17</sup>, which aims to provide an effective legal mechanism for the acquisition, exercise, and protection of intellectual property rights in Ukraine that would ensure a reasonable balance of rights and legitimate interests of creators of objects of intellectual property rights, other right holders, and persons using these objects, which will boost the development of creative activities in the literary, scientific, technical and other fields and the commercialization of the results of such activities in accordance with EU standards.
- Of the transposition measures concerning this commitment, special attention should be given to the establishment of the High Intellectual Property Court (Decree of the President of Ukraine dated 29.09.2017)<sup>18</sup>, which will act as a court of first instance and will consider a wide range of disputes related to the protection of intellectual property rights in accordance with the rules of commercial litigation.

The implementation is at an early stage or absent. The draft laws that have not yet been adopted or have entered into force recently require high-quality and effective enforcement.

With regard to the establishment of the High Intellectual Property Court, on September 30, 2017, a competition for the positions of judges of the High Court was announced, which is still ongoing<sup>19</sup>. On February 13, 2020, the state registration of the newly formed legal entity – i.e. the High Intellectual Property Court – was carried out, of which an entry was made in the Unified State Register of Legal Entities, Individual

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17) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68556](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68556)

18) <https://www.president.gov.ua/documents/2992017-22722>

19) <https://vkksu.gov.ua/ua/konkurs-do-wierchowynogo-sudu/konkurs-do-wishtchogo-sudu-z-pitan-intieliektualnoi-wlasnosti/>

Entrepreneurs and Public Organisations<sup>20</sup>. In addition, other measures are being taken to ensure that the necessary steps are for the Court to properly start its work and for the representation of this Court as a public authority in relations with other public authorities, local governments, individuals and legal entities.

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20) <https://court.gov.ua/press/news/889183/>

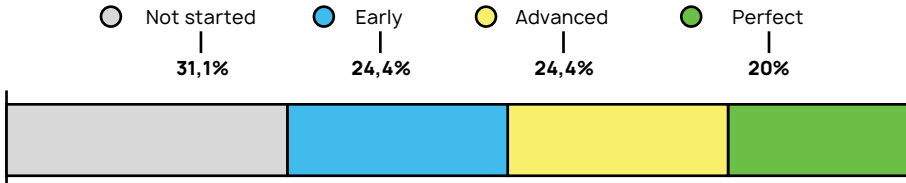
# COMPETITION



# COMPETITION

Expert: **Olha Kulyk**

## Implementation progress for the sector:



## ANTITRUST AND MERGERS

### Overview of key EU integration commitments

EU competition law establishes uniform competition rules for each EU Member State and each economic operator. At the same time, it encourages competition in the single European market by regulating the anti-competitive behavior of economic operators, thus preventing abuse of monopoly power and concerted practices, as well as public interest harm.

The basis for the development and application of competition law is laid in Articles 101-109 of the Treaty on the Functioning of the EU (TFEU), whereas its key provisions are clarified in a number of directives, regulations, communications, guidelines and other acts adopted by the European Commission, as well as the judicial practice of the European Court.

It should be noted that the EU competition policies fall into 4 main categories, namely:

- prohibition of concerted practices by undertakings, i.e. combatting cartels (Article 101 of the TFEU);
- prohibition of abuse by one or more undertakings of a dominant position within the internal market (Article 102 of the TFEU);
- control over mergers and acquisitions of business entities;
- control over state aid provided to economic operators (Article 107 of the TFEU).

Similar areas of competition policies are enshrined in Articles 253-267 of the Association Agreement. At the same time, these articles of the Association Agreement oblige Ukraine to implement a number of provisions of directives and

regulations regarding antitrust and mergers and to create an effective system of monitoring and control of state aid provided to economic operators.

The main objectives to be achieved in the field of antitrust and mergers in accordance with the requirements of the EU sectoral acquis include preventing:

1. agreements, concerted practices and decisions by associations of undertakings, which have the object or effect of impeding, restricting, distorting or substantially lessening competition in the territory of either Party;
2. the abuse by one or more undertakings of a dominant position in the territory of either Party; and
3. concentrations between undertakings, which result in monopolization or a substantial restriction of competition in the market in the territory of either Party.

The additional costs to implement the provisions of the Association Agreement concerning antitrust and mergers are minimal. Because at the time of signing the Association Agreement Ukraine had and still has a system of protection of economic competition, which includes relevant national legislation and a supervisory body responsible for monitoring compliance therewith. At the same time, amendments to the legislation that was in effect at the time of signing the Association Agreement should bring it closer to the common EU rules of competition protection.

Evaluation of progress in fulfilling commitments

### **Commitment 134 / Improving the system of protection of economic competition**

- Article 255 of the Association Agreement
- Council Regulation (EC) 1/2003 of 16 December 2002
- Council Regulation (EC) 139/2004 of 20 January 2004
- Article 106 of the Treaty on the Functioning of the EU
- Article 256 of the Association Agreement
- Article 256 of the Association Agreement
- Commission Regulation (EU) 330/2010 of 20 April 2010
- Commission Regulation (EC) 772/2004 of 27 April 2004
- Article 257 of the Association Agreement
- Article 258 of the Association Agreement

Prior to the signing of the Association Agreement, the Organisation for Economic Cooperation and Development (2008) and the United Nations (2013) conducted assessments of the national system for the protection of economic competition. Experts from these organisations assessed Ukraine's competition law and policies in general. They concluded that reforms and changes should focus on the law enforcement activities of the Antimonopoly Committee of Ukraine (hereinafter – the AMCU) rather than the legislation on the protection of economic competition per se, because these activities should be more clearly aligned with best international practices.

These conclusions are also confirmed, inter alia, by the requirements of Article 253 of the Association Agreement, which stipulates that: "Competition laws" for Ukraine is Law No. 2210-III of 11 January 2001 (with amendments) and its implementing regulations and amendments. At the same time, the above Article specifies that: "In the event of conflict between a provision of Law No. 2210-III and another substantive provision on competition Ukraine shall ensure that the former shall prevail to the extent of the conflict.

The approximation of legislation in this regard is mostly "advanced".

1) The following acts should be implemented in the national legislation on the protection of economic competition:

- Article 30 of Commission Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, which requires publishing the decisions taken based on revealing an infringement of competition law; on ordering interim measures where there is a substantial risk and irreparable damage to competition; on termination of the infringement; decision recognising that Article 81 of the TFEU does not apply to the Agreement; decision on mergers or concerted practices; decision that the conditions of Article 81 (1) of the Agreement have not been fulfilled, or that the conditions of Article 81 (3) of the Agreement have been fulfilled; on imposition of a fine; on imposition of periodic penalty payments.

According to the amendments introduced to the Law of Ukraine "On Protection of Economic Competition" in 2015, AMCU must publish the following information on its official web page:

- Information from AMCU's orders on opening proceedings in cases on concerted practices, concentration (name and organisational and legal form of the parties involved in concerted practices / concentrations, type of concerted practices / concentrations);
- AMCU's decisions adopted following consideration of applications, as well as in the cases on concerted practices / concentration;
- AMCU's decisions following consideration of cases of violation of economic competition law.

Full text of the above decisions (excluding classified information) shall be made public within 10 working days from the date of their adoption.

- Articles 1 and 5 (1) – (2) of Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EU Merger Regulation) laying down thresholds for the turnover of the undertakings involved in concentrations covered by the Regulation, as well as the mechanism for calculating such aggregate turnover of concentrations. The national legislation of Ukraine sets lower thresholds than those set by the EU Merger Regulation and contains a description of the mechanism for calculating the total turnover of the undertakings involved in concentrations that is in line with European legislation.
- Articles 1, 2, 3, 4, 6, 7 and 8 of Commission Regulation (EU) 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, defining categories of vertical agreements and concerted practices that meet the criteria set out in Article 101 (3) of the TFEU. It lays down the criteria for group exclusion of vertical agreements on the purchase or sale of goods or services, if these agreements are concluded between non-competing undertakings, between certain competitors or by certain associations of retailers of goods. These articles of the Regulation also include vertical agreements containing ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should include the corresponding concerted practices. At the same time, there is a distinction between vertical agreements and concerted practices of undertakings that meet the criteria of Article 101 (3) of the TFEU and are subject to exclusion, and the criteria of Article 101 (1) of the TFEU and distort competition.

The above provisions have been transposed into national legislation on the protection of economic competition. On October 12, 2017, the AMCU adopted Order No. 10-pn on "Approval of Standard Requirements (and Amendments) relating to Vertical Concerted Practices of Business Entities for their General Exemption from Obtaining Prior AMC Approval", which is in line with the provisions of Commission Regulation (EU) 330/2010 of April 20, 2010.

- Articles 1, 2, 3, 4, 5, 6, 7 and 8 of Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements deal with block exemption from Article 81 (1) of the TFEU applied when undertakings conclude technology transfer agreements.

It should be noted that on April 30, 2014 Commission Regulation (EC) 772/2004 was repealed by Commission Regulation (EU) 316/2014 of 21 March 2014 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements. The updated version of the Regulation has changed, inter alia, certain cases of exemptions from the scope of the Regulation and the rules for the application of market share thresholds.

On November 9, 2018, the AMCU adopted Order No. 21-pn on "Approval of Standard Requirements relating to Vertical Concerted Practices of Business Entities in the Field of Technology Transfer which, when Complied with, Make it Possible to Conduct Concerted Practices without the Permission of the Antimonopoly Committee of Ukraine." This Order implements the provisions of Regulation 316/2014 of 21 March 2014 on the application of Article 101 (3) of the Treaty to categories of technology transfer agreements.

2) Adoption of a document explaining the principles of determining penalties imposed for violation of the Law of Ukraine "On Protection of Economic Competition".

The AMCU adopted Guidelines No. 39-p "On the Application of the Provisions of Parts 2, 5 and 6 of Article 52 of the Law of Ukraine 'On Protection of Economic Competition' and Parts 1 and 2 of Article 21 of the Law of Ukraine 'On Protection against Anticompetitive Concentration'" of 09.08.2016. This document explains the approaches and mechanisms for calculating by the AMCU of the amount of the fine for violation of the legislation on protection of economic competition and is in line with the provisions of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

However, it should be noted that the AMCU Guidelines are not binding. Such guidelines aim at legal regulation of a particular area and contain recommendations that should be followed in certain situations, in particular when setting the amount of the fine for violation of legislation on protection of economic competition. The AMCU uses these guidelines to determine the amount of the fine for violation of the legislation on protection of economic competition.

3) Adoption of a document explaining the principles used in the assessment of horizontal mergers.

The AMCU adopted Guidelines No. 49-pp on the Procedure for Applying Part 1 of Article 25 of the Law of Ukraine 'On Protection of Economic Competition' (regarding assessment of horizontal concentrations) of 27.12.2016, which describe the approach used by the AMCU in assessing horizontal concentrations but do not provide details for all possible applications of this approach. These Guidelines take into account the European Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings.

The AMCU uses the approach described in the Guidelines, taking into account the facts and circumstances of each case separately.

The practical implementation of this commitment is for the most part "advanced."

1) The Law of Ukraine "On Protection of Economic Competition" should apply to state-owned enterprises and enterprises with special and exclusive rights.

To protect competition, the AMCU has the power to take all actions specified by the legislation on protection of economic competition, in particular to provide recommendations concerning termination of violations, recognition of violations by state and municipal enterprises and enterprises with special or exclusive rights.

The information contained, in particular, in the AMCU Annual Report for 2019 indicates that the AMCU does exercise these powers.

2) Ensuring the application of the Law of Ukraine "On Protection of Economic Competition", which effectively counters the actions and transactions referred to in Article 254 (a), (b) and © of the Association Agreement.

The current legislation on protection of economic competition prohibits economic entities from resorting to anti-competitive concerted practices and abusing their



monopoly (dominant) position, and obliges the AMCU to exercise state control over concentrations of economic entities.

In the AMCU Annual Report for 2019, the Committee indicates that in 2019, 2,071 violations of the legislation on protection of economic competition were terminated. At the same time, the AMCU points out that: "Almost 40% of violations are anti-competitive concerted practices, as in recent years the Committee has revealed a significant number of violations relating to conspiracy during public procurement."

The work of the AMCU regarding protection of competition and prevention of concerted practices and abuse of monopoly position covers the markets of goods, in particular: utilities, passenger and freight transport, telecommunications and communications, funeral services, and pharmaceutical industry.

At the same time, there are a number of areas disregarded by the AMCU such as ensuring control over the observance by owners of intellectual property rights of the provisions of the legislation on protection of economic competition, including when granting permission for concentration. For a long time, the AMCU has been working to ensure the effective operation of the Leniency programme, which offers immunity to undertakings involved in cartels if they are the first to voluntarily inform the AMC regarding the anticompetitive concerted actions and provide the necessary information relevant to the case. The Immunity Procedure is laid down in Order No. 399-p of the AMCU of 25.06.2012, but its practical implementation is very insignificant. This might be due to, inter alia, the need for the AMCU to ensure complete confidentiality of the entity that reports the violation and to provide it with real security guarantees.

### 3) Ensuring the functioning of the Antimonopoly Committee of Ukraine.

According to the AMCU, the maximum number of employees within the AMCU system was 761 people. At the same time, the actual number of employees is 640 people. As stated by the AMCU, in 2019 the staff turnover within the AMCU bodies was 19%. At the same time, according to the State Statistics Service of Ukraine, the average number of full-time employees by all types of economic activities in December 2019 (7,296.7 thousand people) decreased by 3.42% compared to January 2019 (7,554.5 thousand people). That is, the turnover of staff within the AMCU system in 2019 was high. It should be noted that the AMCU takes measures to improve the skills of its employees.

Regarding the logistic support, the AMCU reports that: "The AMCU budget in 2019 amounted to UAH 212 million, i.e. only 9% more than in 2018, given the rapid increase in the burden on the appellate body and increase in the effectiveness of the AMCU as a whole, including both direct budget revenues from the payment of fines and penalties and a positive impact on public welfare resulting from the achieved economic effect."

Hence, we can argue that this commitment has been fulfilled.

4) Before imposing sanctions or liability on any individual or legal entity for violation of the Law of Ukraine "On Protection of Economic Competition", the Antimonopoly Committee of Ukraine shall give this person the right to be heard and provide evidence within a reasonable period specified by law after notifying the relevant individual or legal entity about its preliminary conclusions concerning the existence of an infringement.

This provision is fulfilled in the following way: the AMCU draws up and sends a statement with preliminary conclusions concerning cases of violation of the legislation on protection of economic competition to all the involved parties, giving them time to respond to the conclusions set forth in the statement, holds hearings, provides access to the minutes of such hearings and the right to inspect the case materials to all parties involved and gives them the chance to provide their opinions and objections and the right to appeal against the decision in the manner prescribed by law. At the same time, the meetings of the AMCU bodies are open, so the defendants, applicants and other stakeholders can take part in them and express their opinions.

5) A court or other independent judicial institution specified by the Law of Ukraine "On Protection of Economic Competition" shall establish or, at the request of the relevant person, review any sanctions or liabilities imposed.

According to the Law of Ukraine "On Protection of Economic Competition", the applicant, defendant, and/or third party have the right to appeal against the decision of the Antimonopoly Committee of Ukraine in whole or in part in the commercial court within two months from the date of receipt of the decision. The deadline cannot be renewed.

At the same time, some undertakings challenge the decisions and orders of the AMCU, including in cases of violation of economic competition legislation in administrative courts, which renders the application by the AMCU of the legislation on protection of economic competition and protection of their legitimate interests more complicated.

6) Ensuring that there are no discriminatory measures between state monopolies and individuals and legal entities of the parties to the Agreement with regard to the conditions under which goods are purchased and sold.

The Law of Ukraine "On Protection of Economic Competition" applies to all undertakings regardless of their form of ownership and the fact whether they have a monopoly (dominant) position. At the same time, should state monopolies violate the legislation on protection of economic competition, they, on an equal footing with others, shall be held liable for the violation.

## **STATE AID**

### Overview of key EU integration commitments

Ukraine has to establish an authority for monitoring and control of state aid to minimize the influence of states on competition between economic entities and trade between the parties to the Association Agreement. As a result, approaches to the provision of state aid and assistance provided by the state to economic entities need to be changed.

In the EU, state aid to businesses is considered incompatible with the proper functioning of the TFEU. But this does not mean that EU member states cannot give any aid to their businesses. State aid is granted, but only in exceptional cases where the purpose of the state aid (the purpose of state expenditure / loss of revenue)

coincides with the objectives set out in Article 107 (2) and (3) of the TFEU, and only after approval by the European Commission of state aid measures such as required by Article 108 of the TFEU.

At the same time, state aid is limited in time, forms of provision, amount, etc.

Similar principles should be implemented in national legislation and used by all state aid providers at various levels and the AMCU as the supervisory authority.

To introduce the state aid monitoring and control system, additional costs are required, in particular, for:

- salaries of civil servants, which work in AMCU, as appropriate structural units will have to be created within the AMCU to monitor and control state aid provision;
- administrative costs of the AMCU (inventory, equipment etc);
- compliance costs for state authorities, who provide state aid to business.

The expected effect of the implementation and effective functioning of the state aid monitoring and control system involves:

- a change in Ukraine's current approaches to providing state aid to economic entities;
- decreasing of expenditures for these purposes;
- more efficient use of state resources;
- improving the investment climate in the country.

Evaluation of progress in fulfilling commitments

### **Commitment 135 / Establishment and functioning of the system of monitoring and control of state aid**

- Article 263 of the Association Agreement
- Article 267 of the Association Agreement
- Council Regulation (EU) 2015/1589 of 13 July 2015
- Commission Regulation (EU) No 651/2014 of 17 June 2014
- Commission Regulation (EU) 1407/2013 of 18 December 2013
- Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016

To achieve the above purposes, Ukraine must fulfill tasks that fall into two categories:

1) Adoption of national legislation on state aid, consisting of the Law of Ukraine "On State Aid to Undertakings" and bylaws, implementing about 30 EU acquis and drawing up a regional map of state aid in accordance with the relevant EU guidelines;

2) Enforcement of state aid legislation.

The approximation of legislation within this Commitment is multidirectional, depending on the task and activities.

The current national legislation in the field of state aid fails to fully implement the EU acquis.

In 2014 Ukraine adopted the Law "On State Aid to Undertakings", which entered into force on August 2, 2017. It is a framework law. It lays the basis for the development of secondary legislation in this area. That is, it is on the provisions of the Law "On State Aid to Undertakings" that the essence and quality of the provisions of the relevant bylaws depend. It should be noted that the current version of the Law contains somewhat distorted provisions of the EU acquis, which, therefore, results in distorting the provisions laid down in the bylaws.

The law defines the authorised body – the AMCU, its powers, the list of regulations to be developed and adopted by the AMCU and the Cabinet of Ministers of Ukraine (hereinafter – the CMU), the main procedural rules (procedure for submitting and considering applications for new state aid, procedure for considering cases, checking unlawful state aid and improper use of state aid, recovery of unlawful state aid that is inadmissible for competition, revising the current state aid, registering state aid and reporting on state aid, appeals concerning state aid, etc.). At the same time, the definition of key concepts for the field of state aid has been provided, such as: state aid to economic entities, providers and recipients of state aid, state resources and local resources, etc.

The law provides for certain exemptions, which are not fully in line with the requirements of the EU acquis.

Thus far, the Cabinet of Ministers has partially adopted bylaws, in particular:

- Regulation No. 420 of the Cabinet of Ministers of 23.05.2018 which approved the list of services of general economic interest (hereinafter – SGEI). In the current version, this list includes the services provided in the field of energy and housing and utilities. However, if we talk about the idea that makes up the basis for Decision C-280/00 on the application of Article 106 (2) of the TFEU of 24.07.2003 as regards provision of state aid to reimburse for public services provided by certain undertakings designated to provide SGEI, the EU does not have such a list of SGEI at all. Instead, there is a list of criteria that the activity must meet in order to be recognised as SGEI.
- The relevant regulations of the Cabinet of Ministers approved the criteria for assessing the compatibility of the following categories of state aid:

- 1) regional state aid;
- 2) state aid for medium and small businesses;
- 3) for professional training of employees;
- 4) for the employment of certain categories of workers and creation of new jobs;
- 5) State aid for rescuing and restructuring non-financial undertakings in difficulty;
- 6) for research, technical development and innovation.

These regulations implement the provisions of such EU documents as: Guidelines on regional State aid for 2014-2020 (2013/C 209/01); Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01); Framework for State aid for research and development and innovation (2014/C 198/01).

Currently, the following documents have not been implemented:

- Guidelines on State aid for environmental protection and energy 2014-2020 (2014/C 200/01);
- Communication from the Commission on State aid for films and other audiovisual works (2013/C 332/01);
- Communication from the Commission – EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01);
- Communication from the Commission on the application of State aid rules to public service broadcasting (2009/C 257/01);
- Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services (98/C 39/02);
- Updating the Annex to Commission Communication C(2004) 43 – Community guidelines on State aid to maritime transport”, 2017/C 120/03;
- Community guidelines on State aid to maritime transport;
- Communication from the Commission providing guidance on State aid to ship management companies (2009/C 132/06);
- Communication from the Commission providing guidance on State aid complementary to Community funding for the launching of the motorways of the sea (2008/C 317/08);
- Community guidelines on State aid for railway undertakings (2008/C 184/07);

- Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail;
- Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (2010/787/EU);
- Guidelines on State aid to airports and airlines (2014/C 99/03).

It should be noted that draft criteria for assessing the admissibility of state aid for environmental protection were published by the AMCU in 2017 for public discussion. Following the discussion, the criteria were submitted to the Cabinet of Ministers for approval but have never been approved. Of the so-called sectoral criteria for assessing the admissibility of state aid, the adoption of which is also regulated by Part 2 of Article 6 of the Law, the AMCU has developed, published and conducted public discussions only on the criteria in the coal and banking sectors.

Article 7 of the Law provides for the possibility that the AMCU might adopt a regulatory legal act to establish exemption from the obligation to notify certain groups of state aid providers of new state aid. In fact, these provisions of the Law should be in line with the essentially similar Regulation No. 651 on block exemption. At the same time, the issue of the possibility of assessing the categories of state aid that are not covered / will not be covered by horizontal and sectoral criteria remains unresolved.

To address this issue, the AMCU has developed a draft resolution of the Cabinet of Ministers "On Approval of the General Criteria for Assessing the Admissibility of State Aid to Economic Operators and Amendments to the Regulation of the Cabinet of Ministers of Ukraine", but it has not yet been adopted.

Within its powers, the AMCU approved the following procedures: submission and drawing up of notifications on new state aid and on changes in the conditions of the existing state aid; consideration of cases on state aid and revocation of decisions specified in part six of Article 10 or part seven of Article 11 of this Law; monitoring state aid, maintaining and accessing the state aid register and determining the forms and requirements for submitting information on existing state aid.

Article 14 of the Law provides for the adoption of a procedure for the recovery of unlawful state aid that is inadmissible for competition. This Procedure was approved by Regulation No. 468 of the Cabinet of Ministers of 04.07.2017, but it does not fully meet the requirements of the EU acquis. The purpose of recovering unlawful state aid that is incompatible for competition is to restore the balance and conditions of competition in the commodity market. In this regard, the recovery of unlawful state aid that is not admissible for competition implies the recovery of state aid and any interest made on such aid payable from the moment when the aid was delivered at the disposal of the recipient of state aid.

Thus, at present, the relevant EU acquis have not been fully transposed into the national legislation of Ukraine.

The practical implementation of this Commitment has a varying status depending on the specific tasks and activities.

1. Establishment of an independent authority with the powers necessary to enforce Article 262 of the Agreement.

The AMCU is the authorised body responsible for monitoring and controlling state aid.

At the same time, in accordance with the Law of Ukraine "On State Aid to Undertakings", the providers of state aid include public authorities, local governments, administrative and economic management and control bodies, as well as legal entities acting on their behalf that are authorised to dispose of state resources or local resources initiating and/or providing state aid.

The term "public authorities" in this Law is used in the sense of the Law of Ukraine "On Protection of Economic Competition". That is, the public authorities include ministries and other central executive bodies, the Verkhovna Rada of the Autonomous Republic of Crimea and executive bodies of the Autonomous Republic of Crimea, state bodies regulating the activities of natural monopolies, the securities market, state privatization bodies, the National Council of Television and Radio Broadcasting, and local executive bodies.

The Law of Ukraine "On State Aid to Undertakings" and, consequently, the powers of the AMCU to monitor and control state aid do not apply to decisions of the President, the Verkhovna Rada of Ukraine and the Cabinet of Ministers.

At the same time, Article 35 of the Budget Code of Ukraine stipulates that if a budget request involves provision of any state aid to undertakings from the state budget, the main spending agencies shall attach a copy of the decision of the State Aid Authority to the budget request.

Unfortunately, the analysis of the AMCU's decisions on state aid revealed that this provision of the Budget Code is mostly complied with by local governments and largely ignored by central public authorities.

2. Bringing state aid schemes in line with the provisions of Articles 262 and 264 of the Association Agreement.

Currently, it is impossible to talk about full alignment of all state aid programmes and individual state aid measures. Although work in this direction is being carried out both by the AMCU and by state aid providers.

3. Creating a complete register of state aid schemes.

The AMCU has created a register of state aid schemes for undertakings, which is filled in after it makes a decision based on the results of consideration of notices and cases related to state aid.

However, given the above, it is too early to talk about full agreement.

4. Reporting on the results of state aid monitoring and control.

So far, since the entry into force of the Law of Ukraine "On State Aid to Undertakings" the AMCU has twice prepared and published annual reports on the provision of state aid to undertakings in Ukraine for 2017 and 2018. These reports were translated into English and published on the AMCU website.

5. Carrying out assessment of any State aid granted by Ukraine, taking into account the fact that Ukraine is to be considered as a territory identical to those of the EU as described in Article 107 (3) (a) of the TFEU during the first five years after the entry into force of the Association Agreement.

This task was performed at the level of the provisions concerning the criteria for assessing the admissibility of state aid, which have already been approved by the Cabinet of Ministers.

However, it should be noted that the 5 years – a transition period to facilitate Ukraine's transition to new state aid rules – are over. The next step that Ukraine needs to take is to create a map of the regional distribution of state aid, based on which the level of intensity of state aid is determined depending on the territory of its provision.

6. Drawing up a regional state aid map in accordance with the relevant EU guidelines.

For the EU, regional state aid distribution maps are an important tool for the geographical delimitation of the EU territory on the basis of the socio-economic indicators that determine the level of well-being of certain regions. This makes it possible to set different maximum allowable amounts of state aid separately for affluent and backward regions on the basis of the exceptions provided for in Article 107 of the TFEU. In this system, the main indicator that attests to the low level of well-being of a small country or region of a larger country is GDP per capita below 75% of the European average. According to the information published in the AMCU Annual Report for 2019<sup>1)</sup>, the AMCU by its order No. 20-pn of 24.10.2019 approved the Guidelines for Forming the Map of the Regional Distribution of State Aid.

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1) <https://data.gov.ua/dataset/9a5e535b-3cf1-4d38-8c01-dab68de767ed/resource/c02d2314-411e-46d7-b237-3def10a31fdb>



TITLE V.

**ECONOMIC  
AND SECTOR  
COOPERATION**

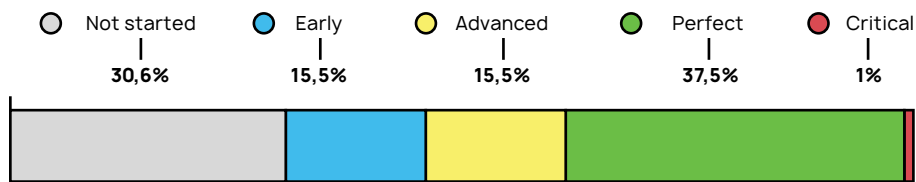


**ENERGY**

# ENERGY

Expert: **Hennadiy Riabtsev / Dmytro Naumenko / Olha Kosharna**

## Implementation progress for the sector:



The energy sector is a complex sector of economy that includes the following key segments:

(a) primary energy sources (fossil fuels – such as natural gas, oil, and coal, – nuclear fuel, and renewable energy – such as solar and wind energy and biofuels);

(b) energy generation (nuclear, thermal (coal and gas combustion), heat, hydropower, renewable energy); and

(in) energy transmission and sale to end users (main electricity and gas transmission lines and local distribution grids, traders and energy supply companies);

(d) final energy consumption (electricity, heat, natural gas, etc.)

Reform of the energy sector is one of the key European integration reforms aimed to facilitate full-fledged integration of the energy markets of Ukraine and the EU and improve the energy security of both. The mechanism of the EU-Ukraine Association Agreement stipulates that market integration should take place first of all through the gradual approximation of national energy legislation to the relevant legislation of the European Union (Art. 474 of the AA). A detailed list of the EU sectoral acquis with a set approximation time-frames is contained in recently updated Annex XXVII to the Agreement. It is noteworthy that updated Annex XXVII also includes the provisions of the EU acquis which Ukraine has undertaken to implement in the framework of the Treaty Establishing the Energy Community, of which Ukraine has been a member since February 1, 2011. Thus, the Annex now contains a full set of Ukraine's commitments in the field of energy cooperation in the following subsectors:

1. Electricity;
2. Gas;
3. Renewable energy;
4. Oil;
5. Energy infrastructure;

6. Energy efficiency;
7. Prospection and exploration of hydrocarbons;
8. Nuclear.

Separate cross-sectoral commitments in the energy sector that are not part of any of the subsectors include the following:

(1) Reform of the energy markets regulatory agency – the National Energy and Utilities Regulatory Commission of Ukraine (NEURC) – because safeguarding its independence from interference from other branches of government and influence groups in the energy markets and ensuring its professional activities is of crucial importance for practical implementation of the EU sectoral energy acquis in Ukraine and regulation of natural monopolies in the energy market;

(2) The commitment to restructure the coal sector, which is not mentioned in Annex XXVII but is contained in Article 339 of the Association Agreement, and

(3) The commitment to establish rules concerning integrity and transparency in the wholesale segment of the electricity and gas markets (REMIT Directive).

This sector is special for its close connection with Ukraine's climate commitments set out in the Association Agreement and the Paris Climate Agreement, as thermal energy is one of the largest greenhouse gas pollutants, while renewable energy and energy efficiency measures are among the key tools for achieving a carbon-neutral economy in the long run. In the EU, this relationship is reflected in the implementation of an integrated planning system to achieve climate change goals, namely the preparation of 10-year integrated national energy and climate plans (NECP)<sup>1</sup>, which involve developing a comprehensive vision for the decarbonisation of EU national economies, where a key role is played by energy efficiency and renewable energy sources<sup>2</sup>.

## ELECTRICITY

### Overview of key European integration commitments

Electricity is one of the key sectors of Ukraine's economy, providing access to energy supply for industrial and household consumers. The key problem of this market is the obsolete infrastructure, which requires significant investment, and recently the situation has exacerbated due to the shortage of anthracite coal as a result of the loss of most mines in the occupied territories of Donbass and lack of balancing and power transmission capacity, which hinders the development of renewable energy generation.

From the point of view of the ultimate goal, the commitments in the Electricity subsector involve achieving the following key objectives:

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1) As set in Regulation (EU) 2018/1999 of 11 December 2018.

2) As of the beginning of 2020, Ukraine also started developing a draft of its own National Plan for Energy and Climate of Ukraine.

- 1) Transition to a new model of electricity market organisation (from the "pool" model to a competitive market model) and ensuring its proper implementation;
- 2) Market and technical integration of the united energy system of Ukraine into the energy system of continental Europe ENTSO-E
- 3) Ensuring an appropriate level of transparency of operations and reliability of electricity supply.

One of the key prerequisites for the formation and intensification of competition in the wholesale and retail electricity markets is separation of monopoly activities (transmission, distribution) from competitive activities (production, supply and trading). Two key operators will play a leading role in the new market model:

- Transmission system operator<sup>3</sup> (SE NPC Ukrenergo);
- Market operator<sup>4</sup> (SE Energorynok).

The benefits of the introduction of European rules for the organisation of the electricity market include removal of market distortions, elimination of artificial monopolies of electricity producers and suppliers, ensuring the free flow of electricity between Ukraine and EU Member States<sup>5</sup>, and, as a result, achieving fair prices for electricity for end users, as well as attracting the necessary investment in the sector as a result of better transparency and predictability of "the playbook" for investors in the long run, which will ensure better reliability and quality of energy supply.

Assessment of progress in fulfilling commitments:

### **Commitment 136 / Ensuring introduction of a new model of the electricity market operation**

- Directive 2009/72/EC of 13 July 2009
- Regulation (EC) 714/2009 of 13 July 2009

The commitment involves reform of the electricity market, in particular adoption of relevant framework legislation and by-laws to create a regulatory framework for a new model of the electricity market, as well as a number of steps for their practical implementation, namely:

- Creating and ensuring reliable and transparent operation of the infrastructure of the new market, in particular its most important elements:
  - 1) The market of bilateral agreements;
  - 2) The "day-ahead" market;

3) The legal entity responsible for operation, dispatching, maintenance, and development of the transmission system and interstate transmission lines, as well as for ensuring the long-term capacity of the transmission system to meet reasonable demand for electricity transmission.

4) The legal entity that ensures the functioning of the day-ahead market and the intraday market and the organisation of the purchase and sale of electricity in these markets.

5) Currently, Ukraine has only one DC link with the ENTSO-E system through Burshtyn Energy Island in Western Ukraine

3) Intraday market; and

4) Balancing market.

- Separation of monopoly activities (transmission, distribution) from competitive activities (production, supply, and trading);
- Ensuring transparent pricing and tariff policy in the field of electricity.

Approximation of legislation is "perfect". In April 2017, the Framework Law of Ukraine "On the Electricity Market" was approved, which initiated the process of transition to a new model of the electricity market in Ukraine. In 2018, the energy market regulator – i.e. the National Energy and Utilities Regulatory Commission of Ukraine (NEURC) – approved the key subsidiary legislation, namely:

- Transmission System Code<sup>6</sup>
- Code of Commercial Accounting of Electrical Energy<sup>7</sup>
- Market Rules (general ones and market rules for the "day-ahead" and intraday market)<sup>8</sup>
- Distribution Systems Code<sup>9</sup>
- Retail Electricity Market Rules<sup>10</sup>

Practical implementation is mostly "advanced", while also including a critical non-consistence with EU requirements as regards the distorted mechanism of electricity pricing<sup>11</sup> and the unfinished process of separation of energy supply companies. Despite the creation of a fully functioning infrastructure of the new electricity market, which was put into operation in July 2019, the state continues to support the mechanism of price distortion for household consumers, which allows to keep the prices at an artificially low level for political reasons. Instead of the former pool model, where there was a single centralised electricity buyer (SE Energorynok), the main elements of the new market have been technically put in place, but at the same time the state created a new market structure – SE Guaranteed Buyer – to buy out most of the electricity on the market and resell it to households based on the mechanism of special obligations<sup>12</sup> as well as to make payments to RES producers at the "green tariff". As a result, a new monopolist was created in the market, which buys most of the electricity in the market in a compulsory way at regulated prices and actually sets prices in the "day-ahead" market, which is crucial for competition. In 2019, the Guaranteed Buyer purchased 95% of nuclear power generation and 35%

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6) NEURC Resolution No. 1070 "On Approval of Amendments to the Transmission System Code"

7) NEURC Resolution No. 716 of 20.03.2020

8) NEURC Resolution No. 307 of March 14, 2018 (Market Rules) and NEURC Resolution No. 308 of March 14, 2018 (Rules of the day-ahead market and intraday market)

9) NEURC Resolution No. 310 of March 14, 2018

10) NEURC Resolution No. 312 of March 14, 2018

11) Which, after the introduction of the new market, involves compulsory setting of electricity selling prices for state-owned energy companies at a low level and subsequent resale of fixed volumes of electricity to the public.

12) Or PSO (Public Service Obligation).

of hydropower generation at a fixed rate<sup>13</sup> and resold it on the "day-ahead" market to ensure low tariffs for households and pay high "green" tariffs.

The creation of the transmission system operator is also not complete. To this end, in February 2019, the process of corporatisation of NPC Ukrenergo began (transformation of this state-owned enterprise into a joint-stock company) after a conflict within the CMU that resulted in Ukrenergo being transferred from the Ministry of Energy and Coal Industry to the Ministry of Finance. The corporatisation and implementation of modern corporate governance standards in Ukrenergo is an important intermediate step for the certification of a new operator in accordance with the standards of the pan-European ENTSO-E energy system for future accession thereto<sup>14</sup>. As of early 2020, to begin the certification process, revaluation of the company's assets was held.

Separation of the functions of power supply (competitive activity) and distribution (monopoly activity) in the segment of energy supply companies (so-called "oblenergo" or distribution system operators) took place only de jure, pro forma, no functional separation has yet been performed<sup>15</sup>.

### **Commitment 137 / Synchronisation and integration of the power system of Ukraine with the European ENTSO-E network**

- Articles 270-271 of the Association Agreement
- Regulation (EC) 714/2009 of 13 July 2009

Approximation of legislation is "advanced". For the purpose of regulatory synchronisation with ENTSO-E, the NEURC adopted Resolution No 426 "On Approval of the Procedure for Conducting Electronic Auctions for the Capacity Allocation of Cross-Border Electricity Transmission Networks" dated March 28, 2017<sup>16</sup>. This Procedure establishes the rules for organising and conducting electronic auctions for access to the capacity of cross-border electricity transmission networks of Ukraine for export and/or import operations involving electricity, taking into account the specifics of work of the UES of Ukraine and its individual components.

In January 2019, the government approved an action plan to synchronise the UES of Ukraine with ENTSO-E<sup>17</sup>, which, subject to its implementation, is supposed to ensure adequate simultaneous operation of the UES of Ukraine with the European energy system.

On April 3, 2020, the NEURC adopted a resolution approving the Transmission System Development Plan for 2020-2029.

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13) Respectively, the state-owned companies NNEGC Energoatom and PJSC Ukrhydroenergo were assigned the so-called "special obligations" (PSO) to sell a legislatively set percentage of electricity produced at fixed prices exclusively to the Guaranteed Buyer. In 2020, Energoatom's PSO will be reduced to 90%, but the Guaranteed Buyer is expected to remain a state monopoly with a market share of 55%.

14) For this purpose, the NEURC approved the Procedure for Certification of the Electricity Transmission System Operator (Resolution No. 1016 of 10.08.2017).

15) Although, according to the law on the electricity market, this separation should have taken place by June 11, 2020.

16) [https://ukurier.gov.ua/media/documents/2017/05/10/2017\\_05\\_11\\_nkre426.pdf](https://ukurier.gov.ua/media/documents/2017/05/10/2017_05_11_nkre426.pdf)

17) <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-planu-zahodiv-shchodo-sinhronizaciyi-obyednanoyi-energetichnoyi-sistemi-ukrayini-z-obyednannyam-energetichnih-sistem-derzhav-chle>



Practical implementation is "early". Despite the advanced regulatory approximation, today the United Energy System (UES) of Ukraine is connected to the ENTSO-E power system only through the isolated Burshtyn Energy Island. The full integration of the UES of Ukraine with ENTSO-E will require implementation of a number of projects for the restoration and reconstruction of cross-border transmission lines, some of which have been launched by the transmission system operator NEC Ukrenergo but are far from complete. One of such projects, for example, is disconnection of Unit 2 of Khmelnytsky NPP from the Ukrainian grid to transmit (export) electricity to the European Union, which requires resumption of operation of the cross-border 750 kV transmission line of Khmelnytsky NPP-Rzeszow. Along with this, Ukrenergo has established cooperation with the Belgian-German transmission system operator Elia Grid International, which will advise the Ukrainian operator on adapting the current rules, codes and instructions of the UES of Ukraine to the relevant ENTSO-E documents and regulations, as well as reorganisation (reengineering) of the dispatch control function, and will conduct a number of applied studies that are important for the correct future operation of the two power systems in synchronised mode<sup>18</sup>.

The mechanism for capacity allocation of cross-border power grids through auctions was de jure launched on the platform of SE NEC Ukrenergo, but is not properly synchronised with the EU. In particular, the mechanism has a number of shortcomings that prevent foreign bidders from participating in auctions.

### **Commitment 138 / Ensuring security of electricity supply**

- Directive 2005/89/EC of 18 January 2006

The commitment involves developing and approving requirements for the minimum generation reserve capacity dispatched by electricity transmission operators, developing and approving security rules for electricity supply, as well as regular reporting on supply security to the Energy Community Secretariat.

Approximation of legislation is "perfect". On March 14, 2018, the NEURC (Resolution No. 309) approved a framework bylaw that regulates electricity transmission in general, namely the Transmission System Code<sup>19</sup>. The Code, among other things, contains a number of requirements for the creation of reserve capacity, including in case of system emergencies.

Later, on August 27, 2018, the Ministry of Energy approved detailed Rules concerning Security of Electricity Supply<sup>20</sup>, which clearly establish the areas in which security of supply should be safeguarded, including:

- 1) minimum security criteria for electricity supply;
- 2) requirements for the organisation and monitoring of the security of electricity supply;
- 3) criteria/types of breaches of security of electricity supply;

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18) <https://ua.energy/osnovni-podiyi/ukrenergo-spilno-z-elia-grid-international-vprovadzhuvatymut-yevropejski-pryntsyipy-dyspetcheryzatsiyi/>

19) <https://zakon.rada.gov.ua/laws/show/v0309874-18#Text>

20) Order No. 448 of the Ministry of Energy and Coal Industry of 27.08.2018.



- 4) measures to ensure security of electricity supply;
- 5) measures to be taken in case of risks of breach of the security of electricity supply (hereinafter – preventive measures);
- 6) measures to be taken in case of breach of the security of electricity supply;
- 7) procedure for initiating and informing about the necessary measures;
- 8) procedure for applying the necessary measures and their duration;
- 9) responsibility of authorities and electricity market participants (hereinafter – market participants) with regard to safeguarding the security of electricity supply.

Practical implementation is "early". Every two years, Ukraine must submit a Report on the Security of Supply to the Energy Community Secretariat. The last report was submitted in the summer of 2017, and as of March 2020 the next report (2019) was under development<sup>21</sup>.

In April 2019, a separate pilot project "Energy Bridge Ukraine–European Union" was launched as public-private partnership and technically realised as building a DC link to ENTSO-E and ensuring the export of electricity from Unit 2 of Khmelnytska NPP to the countries of the European Union and ensuing creation of a mechanism for financial support for the development of nuclear energy generating capacity<sup>22</sup>. However, this project was criticised by NPC Ukrenergo and the Verkhovna Rada FEC Committee, as it has a number of technical and economic limitations and generally contradicts Ukraine's policy of full synchronisation of the UES of Ukraine with ENTSO-E<sup>23</sup>.

### **Commitment 139 / Introduction of a mechanism for the inter-transmission system operator compensation and a common regulatory approach to transmission charges**

- Commission Regulation (EU) 838/2010 of 23 September 2010

The commitment involves accession to the European common mechanism for the compensation of transmission system operators for the costs of hosting cross-border flows of electricity (or so-called ITC mechanism – Inter-Transmission System Operator Compensation), in accordance with the requirements of EU Regulation 838/2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.

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21) <https://www.nerc.gov.ua/?news=10017>

22) [http://mpe.kmu.gov.ua/minugol/control/publish/article?art\\_id=245335441](http://mpe.kmu.gov.ua/minugol/control/publish/article?art_id=245335441)

23) <https://expro.com.ua/novini/proekt-energomstukrana-s-ne-udpovda-nteresam-ukrani-v-chastin-sinhronzac-z-entso-e--ukrenergo>

The ITC mechanism aims to overcome the lack of inter-transmission system capacity and the incompatibility of the applied guidelines on congestion management, which requires creation of new infrastructure. To compensate for the costs borne and to be borne by inter-transmission system operators, an annual ITC Fund has been established and its funds are distributed among those responsible for the national transport system of inter-transmission system operators in proportion to capacity of 75 to 25%. System operators that are members of the Compensation Mechanism (ITC Parties) have the opportunity to receive reimbursement according to the amount of electricity transit they provide. ITC parties also make certain contributions to the ITC Fund, which are calculated on the basis of the difference between the scope of the net import and export flows of electricity. Countries not participating in the Compensation Mechanism pay a fee for the use of cross-border transmission lines to the states whose networks they use<sup>24</sup>.

Approximation of legislation is "early". The first attempt to resolve the issue of Ukraine's accession to the ITC mechanism was made only in April 2020 with the registration of a number of draft laws (registration numbers 3364, 3364-1, 3364-2, and 3364-3), which are pending consideration by the Verkhovna Rada.

Practical implementation has not begun.

### **Commitment 140 / Establishment of a system of centralised collection and publication of data related to the generation, transportation and consumption of electricity**

- Article 278 of the Association Agreement
- Commission Regulation (EU) 543/2013 of 14 June 2013

The commitment involves establishing in Ukraine of a centralised platform for collection and publication of data related to the generation, transportation and consumption of electricity, in accordance with the methodology and system of indicators set in Commission Regulation (EU) 543/2013, as well as regular publication of collected information in European ENTSO-E Transparency Platform<sup>25</sup>.

Approximation of legislation is "perfect". On June 19, 2018, the NEURC approved the Procedure for collecting and transmitting data on the functioning of the electricity market to be published on the ENTSO-E transparency platform<sup>26</sup>, thereby specifying mandatory data sets for electricity market participants, access to which is necessary for the efficient functioning of the electricity market, the procedure for organising the collection, publication and transmission of such data to the ENTSO-E transparency platform.

In June 2019, NPC Ukrenergo signed an agreement with the ENTSO-E Transparency Platform on the regular transmission of the Ukrainian transmission system operator's data set on the load, capacity and balancing of the UES of Ukraine<sup>27</sup>.

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24) <https://ua.energy/wp-content/uploads/2018/12/Transkordonna-peredachi-elektroenergiyi.pdf>

25) <https://transparency.entsoe.eu/>

26) NEURC Resolution No. 459 of June 19, 2018.

27) <https://en.interfax.com.ua/news/economic/596314.html>

Practical implementation is "early". Today, the ENTSO-E Transparency Platform contains only data about the daily scope of export-import between Ukraine and neighbouring EU countries.

### **Commitment group 141 / Adoption and introduction of a network code containing requirements for the connection of electrical installations to power transmission networks, generating units to the grid, high-voltage DC systems and DC-connected power park modules**

- Commission Regulation (EU) 2016/1388 of 17 August 2016
- Commission Regulation (EU) 2016/631 dated April 14, 2016
- Commission Regulation (EU) 2016/1447 dated August 26, 2016

This group of Commitments involves approving a network code(s) regulating the connection of various types of power plants to power transmission networks.

Approximation of legislation is "perfect". The Code of Distribution Systems was approved by NEURC Resolution No 310 of March 14, 2018<sup>28</sup>, which specified, inter alia, the matter of providing access and connection of electrical installations.

Practical implementation with regard to compliance of the existing procedures for the connection of electrical installations laid down by the Code of Distribution Systems with the requirements of the above regulations was not assessed. In general, the requirements of the Code of Distribution Systems for the connection of electrical installations are met, the NEURC has developed calculators for determining the cost of standard connection<sup>29</sup> and non-standard connection<sup>30</sup>, and the charge rates for standard and non-standard connection are determined on an annual basis<sup>31</sup>.

## **PROSPECTING, EXPLORING FOR AND PRODUCING HYDROCARBONS**

### **Overview of key Eurointegration commitments**

The commitments within the subsector of "Prospecting, Exploring for and Producing Hydrocarbons" are associated with the promotion of prospecting, exploring for and producing hydrocarbons in the States that implement them, on terms conducive to the development of competition in this field and in the most efficient manner.

They involve introduction of uniform rules for obtaining and using permits for prospecting, exploration for and production of hydrocarbons; changes in the performance of state geological control; improvement of the institutional structure, which corresponds to the new procedure for granting subsoil use authorisations.

By fulfilling these commitments, it will be made possible to integrate the hydrocarbon markets of Ukraine and the EU, ensuring equal and non-discriminatory conditions for prospecting, exploring for and producing hydrocarbons.

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28) <https://zakon.rada.gov.ua/laws/show/v0310874-18#n6>

29) <https://www.nerc.gov.ua/?calc>

30) [http://www.nerc.gov.ua/calculator\\_nc/page.html](http://www.nerc.gov.ua/calculator_nc/page.html)

31) 2020 rates: for standard connection (<http://www.nerc.gov.ua/data/filearch/postanovy/2019/p2460-d1-5-2019.pdf>) and non-standard connection (<http://www.nerc.gov.ua/data/filearch/postanovy/2019/p2460-d1-5-2019.pdf>)

## **Commitment 142 / Ensuring proper conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons**

- Directive 94/22/EC

The commitment involves

- creation of a transparent and non-discriminatory procedure for granting authorisations for the prospection, exploration and production of hydrocarbons;
- development of a new version of the Subsoil Code of Ukraine and amendments to some laws of Ukraine;
- establishment of a new procedure for granting subsoil use authorisations (a detailed procedure for concluding subsoil use contracts, conditions for their conclusion and termination, creation of conditions for the government to ensure that subsoil users can exercise their rights);
- improvement of state geological control during subsoil use activities (grounds, types and bodies tasked with exercising state control during supervision measures to ensure compliance with subsoil use legislation, provided that it is carried out on the basis of subsoil use contracts);
- improvement of the institutional structure to bring it in line with the new procedure for granting subsoil use authorisations, taking into account the requirements of Directive 94/22/EC;
- development and introduction of a mechanism for compiling and sending to the European Commission of an annual report containing information on the geographical areas open for prospecting, exploration and production, authorisations granted, a list of licenced organisations and their composition, as well as estimated hydrocarbon reserves in the territory of Ukraine.

The regulatory approximation is mostly at an advanced level. The requirement to obtain 14 permits and undergo six mandatory procedures has been abolished by law<sup>32</sup>; coordination of work on the development and operation of oil and gas fields has been accelerated; the need to obtain an act on the provision of a mining allotment for the oil and gas industry was abolished<sup>33</sup>. For perfect transposition, it is necessary to limit the authorisation system of the oil and gas industry to state environmental appraisal, state valuation of mineral reserves, concluding a contract for exploration works, obtaining approvals for changing the designated use and obtaining land for use, authorisation to connect to the network, and notifications of approval of projects for well drilling and construction of ancillary facilities, experimental and industrial development. Criteria for assessing the degree of risk from economic operations in the field of geological exploration and rational use of subsoil have been

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32) <http://zakon0.rada.gov.ua/laws/show/2314-viii>

33) <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-polozhenn-a120619>

approved and the frequency of planned state supervision (control) measures by the State Service for Geology and Subsoil<sup>34</sup> has been specified. New Rules of Oil and Gas Fields Development<sup>35</sup> and a new Procedure for Granting Special Authorisations for Subsoil Use<sup>36</sup> have been approved. In this regard, for perfect transposition it is necessary to reorganise the Interdepartmental Commission for the Organisation of Award and Performance of Production Sharing Contracts in order to increase the transparency and impartiality of its decisions. No special regulatory framework has been created to introduce a mechanism for compiling and sending the annual report to the European Commission, but the State Service for Geology and Subsoil regularly publishes information on geographical areas open for prospecting, exploration and production, authorisations granted, a list of licenced organisations and their composition, as well as estimated hydrocarbon reserves in Ukraine. Even though the draft of the new version of the Subsoil Code of Ukraine is being finalised<sup>37</sup>, a number of amendments have been made to the current Code, taking into account the requirements of Directive 94/22/EC.

Problems with the practical fulfilment of the commitment persist. The created regulatory framework makes it possible to implement certain requirements of Directive 94/22/EC, in particular those related to ensuring equal and non-discriminatory conditions for obtaining subsoil use authorisations. A pilot project for conducting online auctions for special subsoil use licences is successfully underway<sup>38</sup>. Open online services have been developed that can be used to obtain information on hydrocarbon production in a particular area<sup>39</sup>. However, in most cases, institutional, financial, personnel and other resources are insufficient for proper enforcement of the adopted regulations.

## GAS

### Overview of key European integration commitments

The commitments undertaken by Ukraine upon accession to the Energy Community Treaty and set out in updated Annex XVII of the Association Agreement provide for the implementation in Ukraine of an entire package of relevant EU *acquis* governing the organisation of the internal market for natural gas in the European Union. The key legal act that lays down the model of organisation of the gas market in the Community is the so-called Gas Directive (Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas), supplemented by an entire set of implementing directives and regulations specifying various technical aspects of EU gas market regulation and organisation.

The key objectives of the implementation of the EU gas directives are the following:

- Separation of monopoly entities in the gas market (or so-called "unbundling"), or separation of gas transporting activities from other activities (production, supply, etc.);

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34) <http://zakon.rada.gov.ua/laws/show/913-2018-%D0%BF>

35) <http://zakon2.rada.gov.ua/laws/show/z0692-17>

36) <https://zakon.rada.gov.ua/laws/show/124-2020-%D0%BF#n2>

37) <https://www.facebook.com/roman.opimakh/posts/1326527447523037>

38) <https://www.kmu.gov.ua/ua/npas/pro-realizaciyu-eksperimentalnogo-proektu-iz-789>

39) <http://www.geo.gov.ua/prozori-nadra-5-korisnix-servisiv/>

- Ensuring competitive and transparent access of third parties to gas transmission networks;
- Organisation of the wholesale segment of the gas market based on EU requirements;
- Organisation of the retail segment of the gas market based on EU requirements;
- Achieving interoperability (compatibility) of the gas transmission system of Ukraine with similar systems in the EU, ensuring transparency of operations and data exchange.

The ultimate goal of implementing the above objectives is the full integration of Ukraine's gas sector into the EU internal gas market and ensuring mutual access to the gas markets of the EU Member States and Ukraine for the companies operating on them.

Ukraine's gas sector has become one of the few examples of European integration commitments under the Association Agreement playing a key role in initiating and successfully implementing comprehensive national reform. During 2014-2019, a large-scale regulatory approximation to the requirements of the EU acquis was carried out, its practical implementation was launched and almost completed, and the Ukrainian gas market achieved a fairly high level of integration with the European one, especially when it comes to trade and cross-border gas transportation and storage.

Assessment of progress in fulfilling the commitments:

**Commitment group 143 / Development and implementation of bylaws to ensure enforcement of the Law of Ukraine "On the Natural Gas Market" (except for security of natural gas supply)**

- Directive 2009/73/EC of 13 July 2009
- Regulation (EC) 715/2009 of 13 July 2009
- Commission Regulation (EU) 2017/459 of 16 March 2017
- Commission Regulation (EU) 2017/460 of 16 March 2017

The commitment provides for the completion (development, adoption and practical implementation) of a fairly large array of bylaws aimed at implementing the requirements for the construction and regulation of the national gas market in Ukraine as laid down in the Law of Ukraine that entered into force on October 1, 2015.

Approximation of legislation is "advanced". Most of the above-mentioned bylaws were developed and adopted by the regulator in the energy markets - NEURC - as well as by NJSC Naftogaz of Ukraine. The Commission, in particular, has done a fairly large amount of regulatory work at the subsidiary level concerning the following areas of regulation:

- Adoption of the Gas Transmission System Code of Ukraine<sup>40</sup> and a number of amendments thereto;
- Adoption of the Code of Gas Distribution Systems of Ukraine<sup>41</sup> and a number of amendments thereto;
- Development of regulatory requirements for the contractual base of gas transportation, including guidelines for determining tariffs for transportation, storage and distribution of natural gas, ordering capacity by customers of transport services at entry/exit points, establishing licensing requirements for natural gas distribution, etc.;
- Creation of regulations for the transition to daily balancing of the GTS of Ukraine (amendments to the GTS Code, approved by NEURC Resolution No 558 of 12.04.2019), in particular establishing such important mechanisms as "the allocation algorithm", creation of "balancing groups" and calculation of charges for imbalance, setting the marginal price, etc.

At the same time, a number of regulatory issues still remain unresolved, in particular it is necessary to adopt or update relevant legislation, such as the regulation of GDS operators, cross-border cooperation rules, etc.

Practical implementation is "advanced". The implementation of the requirements of the framework law "On the Natural Gas Market" and the relevant by-laws has made it possible to open the wholesale segment of the natural gas market to competition and ensure free import and supply of gas to industrial consumers, including through the exchange trading mechanism<sup>42</sup>. At the same time, the rules of operation of the GTS of Ukraine were gradually brought closer to the requirements of the relevant European network codes, which allowed Ukrtransgaz LLC (and later the new GTS operator – GTS Operator of Ukraine LLC) to move to European rules of cooperation in cross-border gas transportation and storage, as well as sign a new gas transportation contract with Russia on the basis of European regulation.

At the same time, the competition mechanism in the retail segment of the natural gas market still remains distorted due to the political intervention of the state, which is trying to keep natural gas prices at an artificially low level.

### **Commitment 144 / Restructuring of NJSC Naftogaz of Ukraine in accordance with EU legislation on separation of transport systems from transport system operators**

- Directive 2009/73/EC of 13 July 2009
- Regulation (EC) 715/2009 of 13 July 2009

This commitment follows from the provisions of Chapter III of Directive 2009/73/EC and involves unbundling of vertically integrated companies in the gas market, namely separation of natural gas transportation and distribution business from other activities (in particular gas production and supply) in order to ensure free and non-

40) <https://zakon.rada.gov.ua/laws/show/z1378-15#Text>

41) <https://zakon.rada.gov.ua/laws/show/z1379-15#Text>

42) The share of which, however, still remains insignificant.

discriminatory access of all gas market participants to the relevant gas transmission infrastructure. Ensuring the independence of separate gas transmission operators must be performed in regard to ownership, functions performed, as well as in regard to management (decision-making and accounting).

For Ukraine, fulfilment of this commitment means disengagement from the structure of the largest vertically integrated company on the gas market (i.e. NJSC Naftogaz of Ukraine) of the activities related to the transportation of natural gas by main gas pipelines<sup>43</sup> and creation of a separate transmission system operator (TSO) to operate Ukraine's GTS.

Approximation of legislation is "perfect". The first attempt at such separation was initiated in 2016 after the approval of the Naftogaz restructuring plan<sup>44</sup>, however, due to the political conflict over the choice of a separation model<sup>45</sup> and oversight of the new operator, this process was blocked for the following three years.

After a number of unsuccessful attempts to restart this process, NJSC Naftogaz de facto launched unbundling unilaterally: from July 1, 2019, the subsidiary of Naftogaz that managed the GTS of Ukraine (Ukrtransgaz LLC) transferred the authority to manage and maintain the GTS, contracts with customers, as well as employees and processes to the newly established subsidiary of NJSC Naftogaz – i.e. GTS Operator of Ukraine LLC.

However, due to the fact that new political forces came to power in autumn 2019 and because of the urgent need to sign a new contract for the transit of Russian natural gas from 2020 in accordance with the rules of Directive 2009/73/EC, a streamlined government decision on unbundling of NJSC Naftogaz based on the ISO model (independent system operator)<sup>46</sup> appeared, which was supported by the EU. From a legal point of view, this decision implies that the GTS will be managed by a separate company – Gas Transmission System Operator of Ukraine LLC – which will be 100% owned by the joint-stock company Mahistralni Gazoprovody Ukrainy subordinate to the Ministry of Finance<sup>47</sup>.

Practical implementation is "advanced". As of January 1, 2020, all stages of the unbundling process were legally completed. GTS Operator of Ukraine LLC (OGTSU) became the new GTS of Ukraine operator and passed both internal certification (by NEURC) and certification by the Energy Community, having received all technical and operational tools for management of the GTS of Ukraine. The shareholder of OGTSU, as planned, is the joint-stock company Mahistralni Gazoprovody Ukrainy, which is 100% owned by the Ministry of Finance of Ukraine.

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43) They are also called high-pressure gas pipelines or pipelines designed to transport natural gas over long distances – from the place of production to the country (region) of consumption. At the end point of the main gas pipeline and the end points of the branches from the main gas pipeline, gas enters gas distribution stations. The main pipeline is made of steel pipes (usually with a diameter of 1020-1420 mm), designed for a working pressure of 7.5 MPa.

44) Resolution No. 496 of the Cabinet of Ministers of July 1, 2016.

45) Directive 2009/73/EC provides for 3 possible options for such separation – from full ownership unbundling (OU) to two options whereby a new operator can remain owned by a vertically integrated company but with significant limitations on the parent company's influence on its activities (i.e. Independent System Operator – ISO and Independent Transmission Operator – ITO).

46) Approved by Resolution No. 840 of the Cabinet of Ministers of September 18, 2019.

47) At the same time, the GTS will be 100% owned by the state, and OGTSU will manage it on the basis of the right of economic control, which is a Ukrainian legal phenomenon. Underground gas storage facilities (UGSF) remain part of NJSC Naftogaz, and OGTSU and Ukrtransgaz LLC concluded commercial and technical agreements at the connection points of UGSF and GTS.



The creation of a new GTS operator made it possible to finally shift to the European rules of GTS operation both within the country and with the neighbouring GTS operators at all cross-border connection points on the western border of Ukraine, and fully launch a virtual gas reverse mechanism with the EU and hold the first auctions in Ukrainian history for the allocation of available annual firm capacity for 2020-2021 gas year in accordance with the common European ENTSO-G auction calendar<sup>48</sup>. However, there is a number of unresolved regulatory issues in the domestic gas market that affect the stable operation of the new GTS operator (in particular, the issue of unauthorised gas withdrawal from the GTS by gas supply companies, which results in significant financial losses for OGTSU and incomplete implementation of EU network codes in Ukraine), which makes it impossible to describe the implementation of this commitment as perfect<sup>49</sup>.

### **Commitment 145 / Safeguarding security of natural gas supply**

- Council Directive 2004/67/EC of 26 April 2004

The commitment involves establishing minimum security standards for gas supply for all participants in the gas market, requires the competent authorities to draw up a national-level contingency plan to respond to emergencies in the gas market and to define the category of "vulnerable consumers", ensuring an adequate level of protection for them.

Approximation of legislation is "perfect". All necessary changes to the national legislation were made at the end of 2015, after the adoption of the framework law on the organisation of the natural gas market, in particular, the National Action Plan and the Rules concerning Security of Natural Gas Supply were approved. These acts introduced a mechanism for responding to crises in Ukraine's natural gas supply, a system for coordinating actions with the EU, as well as a legal definition of the categories of "protected consumers" (households and municipal heat supply companies that supply heat to households) and mechanisms for their protection in case of crisis.

Practical implementation is "advanced". In accordance with legal requirements, since 2016 Ukraine has been regularly monitoring the security of natural gas supply. The latest report on the results of monitoring the security of natural gas supply for 2018 was published in the summer of 2019. However, despite a number of positive changes, the formation and enforcement of state policies in the field of energy security still lacks a comprehensive approach, which should be based on appropriate strategic documents in the field of energy and involve development of response plans for potential crises. It is also still necessary to invest in a number of GTS facilities with the support of international donors, which will increase the level of security of gas supply in the event of a crisis.

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48) [http://ua-energy.org/uk/posts/ohtsu-proviv-pershyyi-auktsion-z-rozpodilu-potuzhnostei?fbclid=IwAR2HPSDduV70HJdWrTsuY6D-QhL\\_B3UDmJjuQbGRoS\\_ocuaNVdcG3t](http://ua-energy.org/uk/posts/ohtsu-proviv-pershyyi-auktsion-z-rozpodilu-potuzhnostei?fbclid=IwAR2HPSDduV70HJdWrTsuY6D-QhL_B3UDmJjuQbGRoS_ocuaNVdcG3t)

49) This, *inter alia*, was one of the reasons why the new contract for the transit of Russian gas via Ukraine's GTS for 2020-2024 was concluded not with the new GTS operator directly but with Naftogaz, which will act as an intermediary in the new contract, namely it will book GTS capacity for transit from OGTSU, dispatching services and other services related to transit organisation.

## Commitment group 146 / Approval and implementation of the provisions of the EU network codes in the gas sector of Ukraine

- Commission Regulation (EU) 2015/703 of 30 April 2015
- Commission Regulation (EU) 2017/459 of 16 March 2017
- Commission Regulation (EU) 2017/460 of 16 March 2017
- Commission Regulation (EU) 312/2014 of 26 March 2014
- Commission Regulation (EU) 2012/490 of 24 August 2012

The commitment involves implementation in national legislation of the requirements of the so-called "network" codes of the EU that establish the rules of operation of gas transmission systems, in particular on the following:

- Rules for interoperability, data exchange and operation of gas transmission systems with EU law, including establishment of conditions for access to gas transmission systems,
- Requirements and provisions for interconnection agreements, in particular setting the principles of measuring the volume and quality of natural gas and the rules for regulating gas flows;
- Rules and mechanisms of capacity allocation in gas transmission systems in accordance with EU law;
- Rules of the process of coordination of gas volume allocation, procedures in case of emergencies, settlement of disputes on the basis of interconnection agreements for each of the connection points in accordance with EU law;
- Establishment of harmonised tariff structures for gas transportation;
- Establishing rules for balancing gas in gas transmission systems, etc.

Approximation of legislation is mostly "advanced". Despite the fact that Ukraine signed 5 interconnection agreements with the GTS operators of neighbouring European countries, which generally meet the requirements of Chapter II of Regulations 2015/703, not all provisions of the EU network codes have been properly transposed into national law yet. This process began only at the end of 2019 after the relevant decision of the NEURC<sup>50</sup>. Transposition is implemented by translating the provisions of the EU Regulations and transposing them into national law without making changes to the structure and text. Some such changes have been made, in particular, the establishment of rules for daily balancing of the GTS, standardisation of the allocation mechanism, uniting customers of transport services in balancing groups, introduction of balancing neutrality charges, provision of capacity with restrictions, setting methods for calculating gas transport and distribution tariffs in line with EU requirements, etc.

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50) NEURC Resolution No. 2586 of November 29, 2019.

Practical implementation is also "advanced". Some of the interoperability rules were partially implemented by the new GTS of Ukraine operator (GTS Operator of Ukraine LLC) after signing a new contract for the transit of Russian gas with PJSC Gazprom in the technical interconnection agreement of operators, as regards guaranteed and maximum infrastructure capacity, qualitative and quantitative characteristics of gas, rules of gas flow control, information exchange between operators, and matters of coordination of transport volumes by different shipping companies<sup>51</sup>.

In addition, during 2019, the NEURC approved changes to tariff methodologies for natural gas transport and distribution services<sup>52</sup>, which finally made it possible to calculate and approve tariffs for natural gas transport at entry and exit points on the basis of long-term incentive regulation and to bring the tariffs for natural gas transit via the GTS of Ukraine in line with European standards.

Ukraine also standardised the procedure for obtaining access to the GTS facilities by shippers from the point of view of the contractual basis<sup>53</sup> and for setting a mechanism for booking the capacity of GTS entry/exit points and paying its cost in line with EU rules. This has created flexible mechanisms for long-term capacity utilization of the GTS and made it possible to provide shippers with flexible conditions for access to the capacity of domestic entry/exit points for different periods (annual, quarterly, monthly and day ahead), which allows them to effectively plan booking and capacity utilization. It also allowed the GTS Operator to develop and offer a new service to customers of transportation services – i.e. "short-haul services". The availability of such a service will further facilitate the integration of the Ukrainian GTS into the EU gas market, as European suppliers now can transport gas at competitive prices in transit through Ukraine and inject natural gas for storage into Ukrainian underground storage facilities for resale during periods of high demand<sup>54</sup>.

On March 1, 2019, an event took place that is of crucial importance for the launch of a competitive mechanism for the functioning of the GTS of Ukraine – transition was made to the daily balancing of the GTS, namely the shippers were obliged to settle their imbalances within one gas day<sup>55</sup>, which synchronised the mechanism of operation of the gas markets of Ukraine and the EU, as well as contributed to the emergence of a liquid short-term wholesale gas market in Ukraine (purchase and sale of natural gas within one day).

During 2019, the information platform of JSC Ukrtransgaz<sup>56</sup>, where orders for gas transport services are made and processed, has shown stable operation and ensured a transition of all gas market participants to the new rules of operation of the GTS. At the same time, the final implementation of the European rules for balancing the operation of the GTS is constrained by insufficient development of gas exchange trade and the existence of negative imbalances that began to form due to unauthorised withdrawals of natural gas from the GTS by gas distribution network operators and municipal heat supply companies. Such withdrawals take place either

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51) <https://ua-energy.org/uk/posts/hazovyi-tranzyt-perekhid-na-ievropeiski-pryntsyipy>

52) NEURC Resolutions No. 2107 of October 11, 2019 and No.2899 of December 20, 2019.

53) NEURC Resolution No. 580 of April 12, 2019.

54) For more details, see the annual report of NJSC Naftogaz of Ukraine for 2019, p. 49-52.

55) Prior to that, the GTS balancing was held within a calendar month.

56) The daily balancing information platform was developed on the basis of the SAP NetWeaver software product and is controlled by the GTS Operator of Ukraine. It is an online web application and is used to provide natural gas transport services in accordance with the GTS Code of Ukraine. The platform makes it possible to automate the processes of electronic interaction and document flow between the natural gas market participants – the GTS Operator, gas distribution network operators (GDN) and shippers.

above the approved nominations or without nominations as a result of legal gaps in the current GTS Code and inadequate (economically unreasonable) size of tariffs for gas distribution and transportation, which are artificially restrained for political reasons (making up part of the retail gas prices for households).

## ENERGY EFFICIENCY

### Overview of key European integration commitments

Energy efficiency is a rather complex concept and covers almost all areas of life where energy is used, such as manufacturing, transport, housing, etc. Today, the matters of achieving better energy efficiency are regulated in the EU by a number of framework acquis and specific implementing acts that regulate the issues of achieving better energy efficiency in various areas of public life. Following the entry into force of the Association Agreement and accession to the Energy Community, Ukraine has committed itself to implementing the EU requirements for the development of energy efficiency targets and national energy efficiency policies, energy efficiency standards for buildings, as well as two packages of legislation (framework directives and additional implementing regulations) in the areas of energy labelling of energy products and requirements for their ecodesign.

The key objectives of the implementation of the above-mentioned EU acquis in the field of energy efficiency in Ukraine are the following:

(1) Ensuring achievement of more efficient use of energy and, accordingly, reduction of energy consumption at all stages of the energy life cycle, from its production to final consumption.

An important general condition for better energy efficiency is that the benefits and energy savings should outweigh the costs of implementing energy efficiency measures, and national energy efficiency policies should focus primarily on the sectors where the potential benefit-cost balance is the best.

The target indicator of energy efficiency for the entire country (economy) is energy intensity per unit of GDP, which, according to the Energy Strategy of Ukraine until 2035<sup>57</sup>, should decrease in Ukraine by 50% by 2030<sup>58</sup>.

(2) Creation and support of a multi-level intersectoral system of planning and implementation of energy efficiency measures, which will allow for streamlined (involving different sectors) and appropriate<sup>59</sup> measures to achieve energy efficiency targets.

(3) Implementation of national and international resource efficiency standards, sometimes referred to as "energy efficiency portfolio standards", such as energy consumption standards for household appliances, building codes, sectoral standards for vehicles and industry, etc.

(4) Introduction of various government schemes to support energy efficiency and energy saving in areas that have the greatest potential for reducing energy

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57) <https://zakon.rada.gov.ua/laws/show/605-2017-%D1%80#Text>

58) In the EU, this indicator was set in 2012 at 20% by 2020 (Directive 2012/27/EU) and revised upwards in 2018 to 32.5% by 2030 (Directive 2018/2022/EU).

59) From an economic, environmental and safety point of view.

consumption (e.g., energy-intensive industries, residential and public buildings, transport, utilities, etc.).

(5) Creation of a market for energy efficiency services, such as national energy audit systems, energy management, energy services and other elements of ancillary infrastructure, which will reduce the energy consumption of customers of such services. The availability of such infrastructure is also important for the introduction of state incentives for energy efficiency or even penalties (in some countries) for exceeding the established energy consumption targets, such as tax benefits, investment grants, "green" certification of buildings, etc.

The benefits of implementing energy efficiency policies are based on a purely economic rationale, which implies that reducing energy consumption at the final stage helps avoid significant investments and costs for its potential production and delivery to the consumer. Therefore, investments in energy efficiency have the best economic return among all other measures to build a low-carbon economy, as it is estimated that saving a unit of energy is about 2 times cheaper than generating it by building new generating facilities.

Reducing final energy consumption also reduces final greenhouse gas emissions into the environment and is therefore important for achieving the goals of climate change policies, as well as stimulates the development and introduction of innovative technologies in industry, construction, and transport, etc. thereby increasing labour productivity, economic growth and employment, as well as creating conditions for safer and more comfortable living conditions in the country (air quality, living space, etc.). At the same time, energy efficiency should not be achieved through unjustified reductions in energy consumption and rising energy poverty in the country.

On the other hand, energy efficiency measures require significant investment given the scale and cross-sectoral nature of energy consumption. According to various estimates, Ukraine needs to invest 25 to 60 billion dollars to achieve the average European level of energy efficiency, and the largest return on 1-hryvnia investment can be obtained in the sectors of housing, production and supply of thermal energy, and public sector institutions, where energy consumption can be cut by 50–60% of the existing level<sup>60</sup>.

Assessment of progress in fulfilling Commitments:

### **Commitment group 147 / Enshrining in legislation of a new model of the state policy in the field of energy efficiency and creation of a system of planning in the field of energy efficiency and ensuring the achievement of its key indicators**

- Directive 2012/27/EU of 25 October 2012

Directive 2012/27/EU is an EU framework act that sets out a comprehensive Community vision for energy efficiency policies, establishes binding energy efficiency targets (for EU Member States) to reduce energy consumption at all stages of the energy life cycle: from energy production to final consumption. Comprehensive implementation of the provisions of this Directive in Ukraine is critical for building

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60) <https://dtek.com/media-center/press/potentsial-dlya-investitsiy-v-energoeffektivnost-ogromen/>

an operative national energy efficiency system in Ukraine and as a result it should provide the legal basis for the following areas of regulation in the field of energy efficiency:

- Basic principles of state policies in the field of energy efficiency;
- Approaches to the formation of a strategy and principles of thermal modernisation of residential and non-residential buildings;
- Specifics of taking into account energy efficiency criteria when purchasing goods and services, purchasing and renting buildings in the process of public procurement;
- Measures to reduce final energy consumption by consumers;
- Construction of energy audit and energy management systems;
- Establishing requirements for ecodesign of energy-related products;
- Introduction of smart accounting systems;
- Promotion and stimulation of energy efficiency among consumers;
- Specifics of formation and implementation of national energy efficiency action plans;
- Stimulation of energy efficiency in the field of transmission and distribution of electric energy, transport and distribution of natural gas;
- Basic principles of energy service provision;
- Liability for violation of legislation in the field of energy efficiency.

Approximation of legislation is at an "early" stage serving as quite an indicative case of lack of strategic vision in Ukraine with regard to implementation of such comprehensive policies as those aimed at increasing energy efficiency. Despite a number of very positive steps to approximate legislation and successful practical implementation of a number of "sectoral" energy efficiency measures, framework legislation in this area has not yet been adopted and implemented, the only valid framework document in the industry is the Law of Ukraine "On Energy Conservation" adopted back in 1994 and non-aligned with the requirements of Directive 2012/27/EU.

Work on a new framework law "On Energy Efficiency" began in July 2015 with the support of the Energy Community and consultants for international technical assistance projects and has not yet been completed. As of the end of 2019, a draft of this law was developed and was pending consideration by the Cabinet of Ministers of Ukraine.

Practical implementation, however, is "advanced". Despite the absence of a framework law, a number of provisions of Directive 2012/27/EU were transposed into national law and later implemented by other laws ("On Housing and Utility Services", "On the Energy Efficiency Fund", "On Energy Efficiency of Buildings", etc).

The energy efficiency planning system is in place and functioning, even though it has some shortcomings due to the fact that it is divided among three public authorities: (1) the Ministry of Energy, responsible for developing public energy efficiency policies, with the exception of energy efficiency in the building sector which is within the competence of (2) the Ministry of Development of Communities and Territories of Ukraine. At the same time, yet another agency is charged with the practical implementation of these policies – (3) the State Agency on Energy Efficiency and Energy Saving of Ukraine. According to the Energy Community Secretariat, the division of responsibilities for energy efficiency policy-making between the two ministries in Ukraine often leads to delays in the development of relevant regulations and the institutional capacity of both is insufficient and needs to be strengthened<sup>61</sup>.

As regards setting national energy efficiency targets, Ukraine in August 2019 calculated its energy efficiency target by 2020, in accordance with the requirements of Article 3 of Directive 2012/27/EU, which is to achieve a 20% reduction in final energy consumption in 2020 compared to the baseline<sup>62</sup>. Earlier, in November 2015, the National Energy Efficiency Action Plan for the period up to 2020 was approved<sup>63</sup>, which aims to set specific measures for the practical implementation of the provisions of Directive 2012/27/EU. In 2019, with the support of the EU technical assistance project EU4Energy Governance, the process of developing the draft of the next National Energy Efficiency Action Plan for the period up to 2030 started and a corresponding working group was established<sup>64</sup>.

### **Commitment group 148 / Creating a system of energy labelling of household energy-related products and setting requirements for energy labelling of certain categories of energy-related products**

Framework acquis:

- Directive 2010/30/EU (expires on 1 January 2020)
- Regulation (EU) 2017/1369 of 4 July 2017 (to replace Directive 2010/30/EC)
- Commission Delegated Regulation (EU) 2017/254 of 30 November 2016
- Commission Delegated Regulation (EU) 518/2014 of 5 March 2014

Implementing acquis:

- Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products
- Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers

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61) <https://www.energy-community.org/implementation/Ukraine/EE.html>

62) <https://www.kmu.gov.ua/news/uryad-shivaliv-nacionalnu-cil-z-energoefektivnosti-na-period-do-2020-r-vidpovidno-do-yevropejskih-direktiv>

63) <https://zakon.rada.gov.ua/laws/show/1228-2015-%D1%80#Text>

64) <https://sae.gov.ua/uk/activity/mizhnarodne-spivrobotnytstvo/eu-integration>

- Commission Delegated Regulation (EU) No 65/2014 of 1 October 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of domestic ovens and range hoods
- Commission Delegated Regulation (EU) No 811/2013 of 18 February 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of space heaters, combination heaters, packages of space heater, temperature control and solar device and packages of combination heater, temperature control and solar device
- Commission Delegated Regulation (EU) No 812/2013 of 18 February 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of water heaters, hot water storage tanks and packages of water heater and solar device
- Commission Delegated Regulation (EU) 2015/1094 of 5 May 2015 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of professional refrigerated storage cabinets
- Commission Delegated Regulation (EU) 2015/1187 of 27 April 2015 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of solid fuel boilers and packages of a solid fuel boiler, supplementary heaters, temperature controls and solar devices
- Commission Delegated Regulation (EU) 2015/1186 of 24 April 2015 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of local space heaters
- Commission Delegated Regulation (EU) No 1254/2014 of 11 July 2014 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of residential ventilation units
- Commission Delegated Regulation (EU) No 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances
- Commission Delegated Regulation (EU) No 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of air conditioners
- Commission Delegated Regulation (EU) No 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires
- Commission Delegated Regulation (EU) No 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers



- Commission Delegated Regulation (EU) No 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household tumble driers
- Commission Delegated Regulation (EU) No 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines
- Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of vacuum cleaners
- Commission Delegated Regulation (EU) No 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions

The relevant EU acquis establish framework conditions for placing on the market or putting into operation of the so-called "energy-related products", i. e. certain categories of consumer products that consume energy when used or have an indirect effect on energy consumption. The purpose of constructing an energy labelling system for energy-related products is to provide consumers with information on the level of energy consumption or other resources used by such products during their utilisation, as well as other additional information that allows consumers to choose the most energy efficient products and reduce their energy consumption. The energy labelling system provides for the mandatory assignment of energy efficiency classes to certain types of energy-related products (on a descending scale, from the most energy-efficient class A to the least energy-efficient class G), as well as a system for their verification.

Approximation of legislation is "perfect". At the level of legislation, the system of energy labelling of energy-related household products in Ukraine was established in 2010-2013; over the past few years, technical regulations for the labelling of certain types of energy products have been approved. In 2018, Ukraine transposed almost all of the necessary EU delegated regulations on energy labelling, which have not yet been implemented as relevant technical regulations, for example, for household dishwashers, household refrigerating appliances, household washing machines, TVs, air conditioners, household tumble driers, domestic ovens and range hoods, vacuum cleaners, water heaters and hot water storage tanks, electrical lamps and luminaires, etc. In 2019, Ukraine approved the last technical regulation from the required list<sup>65</sup> and also developed 6 new technical regulations, such as energy labelling of residential ventilation units, professional refrigerated storage cabinets, etc.

Practical implementation is also "perfect", as all the energy-related products that are allowed for sale in Ukraine are labelled with the appropriate energy consumption classes making up an integral part of the technical regulation system. Such labelling is mandatory for suppliers and dealers who sell energy products and must provide energy label for each such product (energy efficiency level of A+++ to D or A to G) as well as a microfiche with the technical characteristics of the product. The supplier

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65) In accordance with the Plan for Development of Technical Regulations for 2018-2019, approved by Order No. 196 of the Ministry of Economy of February 15, 2018, its development was planned for Q4, 2018.

must keep and provide technical documentation at the request of the state market surveillance authorities. In addition, the supplier, if he is an advertiser, must include an energy efficiency class in any new advertising and promotional materials for the energy-related product. They must also make energy labels available to dealers in electronic format.

Dealers, in turn, must display the energy label in a visible place at the point of sale; in the case of distance selling the information about the energy efficiency level contained on the energy label should be provided in text format; in the case of distance selling via the Internet energy labels and microfiches with the technical characteristics of products provided by suppliers should be displayed in electronic format. If the dealer acts as advertiser, he is also obliged to include the energy efficiency class in any advertising of the energy-related product.

### **Commitment 149 / Creating an ecodesign system for energy-related products and setting ecodesign requirements for certain categories of energy-related products**

Framework acquis:

- Directive 2009/125/EC of 21 October 2009
- Commission Regulation (EU) No 2016/2282 of 30 November 2016

Implementing acquis:

- Commission Regulation (EC) No 278/2009 of 6 April 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for no-load condition electric power consumption and average active efficiency of external power supplies
- Commission Regulation (EC) 244/2009, Commission Regulation (EU) 2015/1428, Commission Regulation (EC) 859/2009: as regards the ecodesign requirements on ultraviolet radiation of non-directional household lamps
- Commission Regulation (EC) 245/2009, Commission Regulation (EU) 2015/1428, Commission Regulation (EU) No 347/2010 of 21 April 2010 amending Commission Regulation (EC) No 245/2009 as regards the ecodesign requirements for fluorescent lamps without integrated ballast, for high intensity discharge lamps, and for ballasts and luminaires able to operate such lamps
- Commission Regulation (EC) No 107/2009 of 4 February 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for simple set-top boxes
- Commission Regulation (EC) No 1275/2008 of 17 December 2008 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for standby and off mode electric power consumption of electrical and electronic household and office equipment

- Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels
- Commission Regulation (EC) No 643/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for household refrigerating appliances
- Commission Regulation (EC) No 642/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for televisions
- Commission Regulation (EU) No 1015/2010 of 10 November 2010 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for household washing machines
- Commission Regulation (EU) No 547/2012 of 25 June 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps
- Commission Regulation (EU) No 206/2012 of 6 March 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for air conditioners and comfort fans
- Commission Regulation (EU) No 932/2012 of 3 October 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for household tumble driers
- Commission Regulation (EU) No 666/2013 of 8 July 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for vacuum cleaners
- Commission Regulation (EU) No 617/2013 of 26 June 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for computers and computer servers
- Commission Regulation (EU) No 813/2013 of 2 August 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for space heaters and combination heaters
- Commission Regulation (EU) No 814/2013 of 2 August 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water heaters and hot water storage tanks
- Commission Regulation (EU) No 66/2014 of 14 January 2014 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for domestic ovens, hobs and range hoods
- Commission Regulation (EC) 640/2009, Commission Regulation (EU) 4/2014: with regard to ecodesign requirements for electric motors

- Commission Regulation (EU) 641/2009, Commission Regulation (EU) 622/2012: Commission Regulation (EU) No 622/2012 of 11 July 2012 amending Regulation (EC) No 641/2009 with regard to ecodesign requirements for glandless standalone circulators and glandless circulators integrated in products
- Commission Regulation (EU) No 327/2011 of 30 March 2011 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for fans driven by motors with an electric input power between 125 W and 500 kW
- Commission Regulation (EU) 1194/2012, Commission Regulation (EU) 2015/1428: establishing ecodesign requirements for directional lamps, LED lamps and associated equipment
- Commission Regulation (EU) No 548/2014 of 21 May 2014 on implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to small, medium and large power transformers
- Commission Regulation (EU) 2016/2281 of 30 November 2016 implementing Directive 2009/125/EC of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy-related products, with regard to ecodesign requirements for air heating products, cooling products, high temperature process chillers and fan coil units
- Commission Regulation (EU) 2015/1189 of 28 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for solid fuel boilers
- Commission Regulation (EU) 2015/1188 of 28 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for local space heaters
- Commission Regulation (EU) 2015/1185 of 24 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for solid fuel local space heaters
- Commission Regulation (EU) 2015/1095 of 5 May 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for professional refrigerated storage cabinets, blast cabinets, condensing units and process chillers
- Commission Regulation (EU) No 1253/2014 of 7 July 2014 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for ventilation units

In general, ecodesign implies integration of environmental aspects into product design in order to improve the environmental performance of the product throughout its life cycle. Ecodesign requirements are any requirements related to a product or product design aimed at improving environmental performance, or any requirements regarding information about the environmental aspects of a product.

From an applied point of view, the EU's energy product ecodesign system aims to achieve better energy efficiency indicators for products such as household appliances and other consumer products, and requires its producers and sellers to comply with mandatory minimum energy efficiency standards<sup>66</sup>, thus creating a barrier to the placing of the least energy efficient products on the EU market and contributing to the EU's climate goals.

The ecodesign system includes a set of product-specific regulations, a set of harmonised (for all EU Member States) technical standards, a relevant segment of the market surveillance system, and a number of supporting elements such as SME support and others.

Approximation of legislation is "advanced". Ukraine has adopted all necessary framework amendments to national legislation<sup>67</sup> and is currently transposing implementing regulations on ecodesign requirements for certain product types.

Practical implementation is "early" due to the relatively recent approval of relevant legislation. In general, the introduction of an ecodesign system in Ukraine will make it possible:

- to reduce the use of energy resources in the design, manufacture, use and disposal of energy-related products;
- to increase the number of energy efficient products on the market;
- to prevent the placing on the market of goods that consume energy inefficiently and have a negative impact on the environment.

### **Commitment 150 / Introduction of commercial accounting for consumed energy resources**

- Directive 2012/27/EU of 25 October 2012

The commitment is based on the requirements of Articles 9, 10 and 11 of Directive 2012/27/EU and involves introducing an objective and commercially viable system of accounting for energy resources consumed by final consumers. Reliable and timely accounting is one of the cornerstones of an energy efficiency system in the country, as it allows to determine the current level of energy consumption and measure the potential and achieved effect of energy savings, without which no energy efficiency measures have any practical sense for the state and final energy consumers.

Approximation of legislation is "advanced". In June 2017, in the field of commercial accounting, the framework Law of Ukraine "On Commercial Accounting for Heat Energy and Water Supply" was adopted, which settles the matters of construction of a system of commercial, including distribution-related, accounting for heat supply, hot water supply, centralised water supply and provision of relevant accounting information to consumers of such services. However, the implementation of this law was suspended for the following two years as a result of delays in the development

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66) While the system of energy efficient labelling concerns only the indication of energy consumption classes and does not require compliance with the minimum permissible level of energy consumption for consumer products.

67) The framework document in the field of ecodesign is Resolution No. 804 of the Cabinet of Ministers of October 3, 2018 "On Approval of the Technical Regulation on Establishment of a System for Determining the Requirements for Ecodesign of Energy-Related Products", which entered into force on April 6, 2019.

and adoption of a related package of methodological bylaws. Most of the relevant bylaws were finally approved as late as in 2019.

Practical implementation is mostly "early". The requirements of the approved legislation have not been properly implemented, and the main goal of the above law – i.e. to achieve 100% coverage of energy consumers by commercial accounting – has not yet been achieved, in addition some consumers still do not pay for the actual energy consumed (heat, water, gas).

For example, according to the latest data from the State Agency on Energy Efficiency and Energy Saving of Ukraine<sup>68</sup>, the level of equipment with commercial metering units for the following types of energy was as follows:

- Thermal energy: 81% for residential buildings and 79% for non-residential buildings;
- Hot water supply: 16% for residential buildings and 51% for non-residential buildings.

The introduction of the commercial accounting system is constrained by the low readiness of energy supply companies to switch to a new commercial accounting model and improper implementation of the law, which provides for a number of financial sanctions against external utility operators and providers of utility services for failure to install commercial metering units.

### **Commitment group 151 / Creation of a system of minimum requirements for the energy performance of buildings and their elements and introduction of a system of energy certification of buildings**

- Directive 2012/27/EU of 25 October 2012
- Directive 2010/31/EU of 19 May 2010
- Commission Delegated Regulation (EU) No 244/2012 of 16 January 2012

The Commitment is largely based on the requirements of Directive 2010/31/EU on the energy performance of buildings and in general involves development of a cost-effective mechanism for calculating energy efficiency of buildings, creation of software for calculating energy efficiency certificates, preparation of a database of the available stock of buildings, as well as training specialists in energy audit and energy management and conducting outreach campaigns to promote thermal modernisation of buildings among the general public.

The commitment is methodological in nature and involves development and implementation of an entire set of regulations in the field of energy efficiency of buildings, which will provide a regulatory way to stimulate reduction of energy consumption in buildings, including the following:

- Determining methods for calculating the energy efficiency of buildings;
- Establishing minimum requirements for energy efficiency of buildings;

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68) Results of monitoring held by the State Agency on Energy Efficiency as of January 20, 2020 ([http://saee.gov.ua/sites/default/files/SAEE\\_19.pdf](http://saee.gov.ua/sites/default/files/SAEE_19.pdf))

- Determining methods for calculating the economically feasible level of energy efficiency of buildings;
- Establishing requirements for energy efficiency of engineering systems in buildings;
- Setting requirements for nearly zero-energy buildings;
- Creating a system of certification of energy efficiency of buildings;
- Introduction of a mechanism of periodic inspection of engineering systems in buildings;
- Approval of a national plan to increase the number of nearly zero-energy buildings.

The commitment also involves introduction in Ukraine of a comprehensive system of energy certification of buildings, which includes energy audits of buildings and assigning them the appropriate energy efficiency classes.

Approximation of legislation is "early". The framework legislative act in this area is the Law of Ukraine "On Energy Efficiency of Buildings", which requires approval of a package of necessary bylaws detailing its requirements. As of the end of 2019, this process was not completed<sup>69</sup>, which hinders the full-fledged functioning of the system of energy certification of buildings in Ukraine, for example:

- Introduction of a mandatory inspection mechanism for large heating systems and inspection;
- Introduction of mandatory energy certification of apartments and houses for sale or long-term lease.

Currently, in order to establish the minimum requirements for energy efficiency of buildings, it is necessary to adopt the following bylaws drafted by the Ministry of Regional Development:

- draft order "On Approval of Minimum Requirements for Energy Efficiency of Buildings", which sets minimum requirements for energy efficiency of buildings on the basis of data calculated for reference buildings, taking into account the requirements for thermal performance of enclosing structures, and energy efficiency of engineering systems (including equipment), in accordance with the economically feasible level and depending on the functional purpose and height of buildings, type of construction (new construction, reconstruction, overhaul);
- draft order "On Approval of Amendments to the Methodology for Determining the Energy Efficiency of Buildings" to resolve inconsistencies in determining the energy efficiency class of the building;

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69] However, some important bylaws were adopted, in particular the new version of DBN B.2.2-X: 201X Residential buildings. Basic provisions, which obliges to design residential buildings with energy efficiency of Class C not below.

- draft order "On Approval of the Procedure for Acquiring the Status of a Self-Regulatory Organisation in the Field of Energy Efficiency and the Model Statute of a Self-Regulatory Organisation in the Field of Energy Efficiency".

Practical implementation is "early". The application of minimum energy performance requirements for buildings is constrained by the lack of appropriate regulation.

Institutional support for energy certification of buildings has only recently begun to be established, starting with the organisation of a system for training relevant specialists and a system for issuing energy efficiency certificates<sup>70</sup>. More than 1,400 certificates have been issued for energy auditors and engineers, and more than 1,360 buildings (881 of which are public buildings) have already received energy efficiency certificates. The availability of a sufficient number of trained specialists will play a critical role in the deployment of projects for thermal modernisation of the housing stock within the programmes of the Energy Efficiency Fund and public buildings within the ESCO mechanism.

### **Commitment 152 / Establishment of energy efficiency criteria during public procurement**

- Directive 2012/27/EU of 25 October 2012

The commitment involves application by public authorities of energy efficiency criteria in public procurement, as laid down in Article 6 and Annex III of Directive 2012/27/EC, namely: "central governments... purchase products, services or buildings, insofar as this is consistent with cost-effectiveness, economical feasibility, wider sustainability, technical suitability, as well as sufficient competition."

Approximation of legislation is "early". The relevant requirement is still lacking in the Ukrainian legislation and is currently contained only in the draft of the new framework law "On Energy Efficiency".

Practical implementation has not started due to lack of appropriate regulation.

### **Commitment 153 / Creating a mechanism for financing energy efficiency projects**

- Directive 2012/27/EU of 25 October 2012

The commitment involves introduction in Ukraine of the requirements of Article 20 of Directive 2012/27/EU on the establishment of a national Energy Efficiency Funds and other schemes of financial and technical support for energy efficiency measures. Such support schemes are mainly introduced in the residential sector, as it is the most large-scale field in terms of coverage, potential energy savings and economic impact (investment, jobs in the area of thermal modernisation and construction, etc.).

Approximation of legislation is "advanced". During 2016–2020, an entire package of framework legislation was approved, including laws on energy efficiency of buildings, commercial accounting of heat and water supply, reform of the sector of apartment

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70) In particular, the State Agency on Energy Efficiency has created and administers databases of energy certificates and energy auditors, as well as has developed software for energy certification.



building co-owners associations, and housing and utility services, as well as, in fact, Law of Ukraine No 2095-VIII "On the Energy Efficiency Fund"<sup>71</sup> as of June 8, 2017. Almost all bylaws necessary for the functioning of the Fund have been adopted. However, the lack of a framework law in the field of energy efficiency with a section determining the location and regulation of schemes to support energy efficiency projects prevents us from describing the approximation of legislation in this regard as "perfect".

Practical implementation is, however, "early." Currently, Ukraine has two programmes to support energy efficiency in the housing sector, which cover a minor fraction of the need for grant support from the state for the implementation of energy efficiency measures<sup>72</sup>:

(1) The "Warm Loans" programme of the State Agency on Energy Efficiency, aimed mainly at supporting energy efficiency measures for owners of private houses<sup>73</sup>;

(2) The National Energy Efficiency Fund, established with the financial and technical support of the Government of Germany and the European Union, which focuses on providing grant and technical support to co-owners of apartment buildings (as represented by apartment building co-owners associations).

The widespread introduction of these support schemes in Ukraine is hampered by a lack of importance ascribed to them (as well as to energy efficiency policies in general) compared to other areas of energy policy. Thus, "warm loans" are regularly underfunded by the state, even despite their popularity among homeowners<sup>74</sup>.

Along with the constant underfunding of the state programme of "Warm Loans", the Energy Efficiency Fund began its work only at the end of 2019 after a difficult stage of formation of the institutional structure and will take some time to gain popularity among apartment building co-owners associations<sup>75</sup>. As of the end of 2019, more than 70% of the population of Ukraine were unaware of the existence of state programmes to support energy efficiency. This indicates a lack of communication by the state concerning the available opportunities for energy saving and the importance of implementing energy saving measures.

### **Commitment group 154 / Introduction of energy management systems in public sector buildings, creation of the National Energy Audit System and energy service mechanism.**

- Directive 2012/27/EU of 25 October 2012

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71) <https://zakon.rada.gov.ua/laws/show/2095-19#Text>

72) According to some estimates, the total need for investment in energy modernisation of the obsolete housing stock in Ukraine may amount to up to EUR 100 billion (for more detail see <https://www.epravda.com.ua/publications/2019/09/24/651903/>). Assuming that the state finances about 25% of this need through grants over 10 years with an average EUR/UAH exchange rate of 30, the state will need to allocate about 75 billion annually. While the total amount of state support spent on "warm loans" (UAH 2.6 billion) and funds of the government and international donors invested in the authorised capital of the Energy Efficiency Fund (UAH 7.3 billion) amounted to only 13% of this annual need.

73) Although the owners of multi-apartment buildings also use "warm loans" to finance certain energy efficiency measures.

74) During the past 3 years, the annual amount of funds under the programme was usually spent within the first 3-4 months of the year, the annual funding amounted to UAH 500 million, although the State Energy Efficiency estimates that the current demand for the programme is about UAH 2 billion. At the same time, the financing of housing and utility subsidies averaged about UAH 70 billion, which clearly attests to the fact that the government prioritises subsidies over energy efficiency programmes.

75) The Fund's first programmes to support the energy modernisation of apartment buildings, such as the pilot (motivational) First Swallows project and the basic Energodim project were launched in late 2018 and mid-2019, respectively.

The commitment involves creating an energy management system in public buildings and performing primary and regular energy audits, which are important elements of the market for energy efficiency services. Energy audit helps to determine the energy consumption profile of a particular energy consumer and its current level of energy consumption, as well as to come up with (based on appropriate calculations) cost-effective options for energy efficiency measures. The energy management system solves the issue of introducing specific energy efficiency measures and achieving the set goals of attaining better energy efficiency.

The commitment also involves formation of an energy service mechanism (and the relevant contractual base) and a database of buildings of public authorities, indicating the energy properties (efficiency) of such buildings. The essence of the concept of energy service is that energy efficiency measures in the buildings of state-financed institutions (schools, kindergartens, hospitals, universities, etc.) are performed by private investors – energy service companies (ESCOs), and payment is made solely from the savings (reduction of utility and energy costs) achieved as a result of energy efficiency measures<sup>76</sup>.

Approximation of legislation is generally "early". The framework legislative regulation in the field of energy audit is outdated and requires, first of all, an updated definition in the framework law "On Energy Efficiency". On the other hand, the requirements for energy auditors, their qualification level, the process of energy certification of buildings, inspection of engineering systems and other technical aspects were laid down by Law of Ukraine No 2118-VIII "On Energy Efficiency of Buildings" of June 22, 2017.

The implementation of energy management in state-financed institutions is regulated by Order No 723 of the Cabinet of Ministers "On Approval of the Action Plan for Introduction of Energy Management Systems in State-Financed Institutions" of April 26, 2017. Its implementation is rather fragmentary due to constraints stemming from the lack of a framework law in the field of energy efficiency and the need to approve a number of technical bylaws.

On the other hand, in 2016, technical standards were approved that are harmonised with European ones and aim to regulate the procedures for conducting energy audits and the operation of energy management systems that allow energy auditors and energy managers to carry out practical activities, including the following:

- DSTU ISO 50002:2016 (ISO 50002:2014, IDT) Energy audits. Requirements with guidance for use;
- DSTU ISO 50003: 2016 (ISO 50003:2014, IDT) Energy management systems. Requirements for bodies providing audit and certification of energy management systems;
- DSTU ISO 50004:2016 (ISO 50004:2014, IDT) Energy management systems. Guidance for the implementation, maintenance and improvement of an energy management system;

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<sup>76</sup>) For more information, visit the website of the State Agency on Energy Efficiency ([https://sae.gov.ua/uk/content/energoserwis\\_1](https://sae.gov.ua/uk/content/energoserwis_1)).

- DSTU ISO 50006:2016 (ISO 50006:2014, IDT) Energy management systems. Measuring energy performance using energy baselines and energy performance indicators. General principles and guidance;
- DSTU ISO 50015:2016 (ISO 50015:2014, IDT) Energy management systems. Measurement and verification of energy performance of organisations. General principles and guidance.

Unlike energy audit and energy management, the regulation of the energy service mechanism in state-financed institutions was approved at the level of Law of Ukraine No 327-VIII "On Introducing New Investment Opportunities, Safeguarding the Rights and Legitimate Interests of Business Entities for Performing Large-Scale Energy Modernisation" of April 9, 2015. However, no amendments were made to this law and the Budget Code of Ukraine in order to create additional incentives for the development of an energy service mechanism and removal of barriers to the performance of ESCO contracts in state-funded institutions.

Practical implementation is generally "advanced" because, even despite the limited regulatory framework, the main agencies in charge of this commitment – the Ministry of Regional Development and the State Agency on Energy Efficiency – have been able to create the necessary basis for the functioning of energy audit, energy management and energy service systems. In particular, they created lists of enterprises providing services of energy audit and energy service and implementing energy management, a database of potential energy service objects in the state-funded sphere; perform certification of energy auditors and specialists in deployment of the energy management system, etc.

Over the last two years, the mechanism of energy service contracts in the state-funded sphere started working. As of the end of 2019, according to the State Agency on Energy Efficiency, 430 ESCO contracts worth over UAH 870 million were performed in 22 regions (oblasts), and the average energy consumption savings per project amounted to about 35%. As of the end of 2019, energy management/energy monitoring systems covered 15% (223) of local government bodies. Also, 44 agreements were concluded on cooperation and creation of certification commissions that carry out activities of certification of the energy performance of buildings and inspection of engineering systems in higher education institutions<sup>77</sup>.

### **Commitment 155 / Creating favourable conditions for the use of technologies for high-efficiency combined heat and power generation (cogeneration)**

- Directive 2012/27/EU of 25 October 2012

The commitment involves fulfilment of the requirements of Article 14 and Annexes I and II of Directive 2012/27/EU, aimed at ensuring the maximum use of cogeneration potential, i.e. combined heat and power generation, which has a higher efficiency compared to their separate generation<sup>78</sup>.

Approximation of legislation is "early" due to the delay in approving the framework law "On Energy Efficiency" and the need to update relevant Law of Ukraine No 2509-

77) [http://sae.gov.ua/sites/default/files/SAEE\\_19.pdf](http://sae.gov.ua/sites/default/files/SAEE_19.pdf)

78) Cogeneration can provide primary energy savings of about 40% compared to the separate purchase of electricity from the grid and production of thermal energy by a gas boiler by increasing the efficiency of the generation unit from 40-50% to 85%-95%.

IV "On Combined Heat and Power Generation (Cogeneration) and the Use of Waste Heat" as of April 5, 2005. The draft amendments to the latest law (No 7465), developed by the State Agency on Energy Efficiency, were submitted to the Verkhovna Rada at the end of 2017, but in August 2019 the draft was withdrawn. Should it (or other bills developed on its basis) be approved, the Ukrainian legislation in the field of cogeneration will approach the European one as regards:

- Harmonisation of terms in the field of cogeneration;
- Carrying out a comprehensive assessment of the use of cogeneration every 5 years;
- Conducting cost-benefit analysis of the cogeneration potential for heat generating facilities with a capacity of more than 20 MW;
- Introduction of evaluation criteria and qualification of cogeneration units;
- Providing a guarantee of origin of the electricity produced from cogeneration.

Practical implementation is "early". According to various sources, as of mid-2019, only about 80 cogeneration units were operating in Ukraine, hence this market is at an early stage of development.

## **OIL AND PETROLEUM PRODUCTS SUBSECTOR**

### Overview of key Eurointegration commitments

The commitments within the subsector of Oil and Petroleum Products are associated with ensuring the operation of hydrocarbon markets in ways that are reliable and safe for humans and the environment.

They include maintaining minimum stocks of crude oil and petroleum products; prevention of interruptions in their supply and transit through the territory of Ukraine; promotion of the use of energy from renewable sources; ensuring the proper quality and safety of gasoline and diesel fuel; reduction of harmful emissions during the storage and transport of hydrocarbons.

By fulfilling these commitments Ukraine will reduce the negative impact of petrol on the environment, increase the share of renewable energy in transport, be able to promptly cope with emergencies or local crises caused by sudden interruptions in the supply of oil, petroleum products and natural gas used for energy production.

### Evaluation of progress in fulfilling commitments

#### **Commitment 156 / Establishing and maintaining minimum stocks of crude oil and/or petroleum products**

- Directive 2009/119/EC

The commitment involves development of a model for maintaining minimum stocks of crude oil and petroleum products; carrying out preparatory engineering measures, formation of such stocks and introduction of regular reporting on them to the European Commission and the Secretariat of the Energy Community.

The regulatory approximation is at an early stage or has not started. In 2019, the State Reserve Agency has developed a draft resolution on approval of a model of minimum stocks of oil and petroleum products and the draft law "On Minimum Stocks of Oil and Petroleum Products"<sup>79,80</sup>, which inter alia includes some elements of the plan for introduction of a minimum stocks model. In September 2018, at the behest of the Head of Derzhgeonadra (The State Service of Geology and Mineral Resources of Ukraine), a preliminary assessment of the need for additional tank capacity for oil and petroleum products<sup>81</sup> was made. However, no action plans have yet been developed or approved for introduction of emergency and special stocks in the event of major oil supply disruptions; no necessary changes have been made to the national legislation on the maintenance of minimum stocks of oil and petroleum products; no stocks management agency has been established neither has its operation been enabled; no cost estimate of engineering and technical measures has been made; no additional tanks have been designed.

Due to the lack of regulatory grounds, practical implementation of the provisions of European legislation has not started yet.

### **Commitment 157 / Prevention of interruption of transit and transport of oil and petroleum products**

- Articles 275, 276 of the Association Agreement
- Annex XXVI of the Association Agreement

The commitment involves taking all necessary measures to prohibit and address the unauthorised taking of energy goods transited or transported through the area of Ukraine; minimise the risk of accidental interruption, reduction or stoppage of transit and transport; expeditiously restore its normal operation; conduct an early evaluation of potential risks and problems related to the supply and demand of oil.

The regulatory approximation is at an early or advanced stage. Article 292 of the Criminal Code of Ukraine criminalises damaging facilities related to main or industrial oil, gas, and/or condensate pipelines and petroleum product pipelines, as well as unauthorised interference with the work of the relevant equipment. However, no systematic work is carried out in this area as evidenced by the increase in the number of cases of unauthorised taking of energy products transited or transported through the territory of Ukraine<sup>82</sup>. Draft regulations aimed at increasing penalties for damaging main oil pipelines and a draft concept for ensuring their safety have been developed<sup>83</sup>. However, during 2014-2019, the Government did not cooperate with EU institutions with regard to ensuring early evaluation of potential risks and problems related to the supply and demand of oil.

Problems with the implementation of the provisions of European legislation persist. On the one hand, there are no cases of interruption, reduction or stoppage of transit and transport of oil through the territory of Ukraine, but the risks of such events are constantly growing due to long-term underfunding of operations aimed to ensure the

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79) <https://rezerv.gov.ua/news/golova-derzhzheozervu-vzyav-uchast-u-ekspertnij-diskusiji-po-s>

80) <https://rezerv.gov.ua/novini-mznn/zakonoproekt-pro-stvorenniya-ta-zberigannya-minimalnih-zapasiv>

81) <https://rezerv.gov.ua/novini-mznn/samit-nova-era-strategichnih-rezerviv-mizhnarodne-partnerstv>

82) <https://www.ukrtransnafta.com/norativno-pravove-zabezpechennya-omn-2/>

83) <https://www.ukrtransnafta.com/ru/borba-s-vrezkami-v-neftetransportnoj-sisteme-ukrainy-trebuetsya-kompleksnogo-i-sistemnogo-podhoda/>

reliability of main oil pipelines. On the other hand, in 2014-2019, special units of JSC Ukrtransnafta, responsible for preventing unauthorised taking of oil and petroleum products transported through Ukraine, found more than one hundred fifty "tie-ins" into the main pipelines, but the government has not eliminated the reasons for these illegal activities.

### **Commitment 158 / Ensuring the proper quality and safety of petrol and diesel fuel**

- Directive 2016/802/EU
- Directive 98/70/EC

The commitment involves adoption of regulations imposing restrictions on the sulphur content in motor fuel and designating a market supervision and control agency; organisation of an effective system for checking the quality of fuel by sampling, application of modern methods for determining sulphur content, introduction of sanctions for violations; establishment of a common legal, organisational, financial and economic framework for quality control of petroleum products in accordance with EU standards and rules; establishment of a fuel quality monitoring system related to the protection of public health and the environment; providing annual reports on sales volume and fuel quality, in particular on the geographical availability of unleaded petrol and diesel with a sulphur content of less than 10 mg / kg.

The regulatory approximation is at an early stage or has not started. In 2016, the State Environmental Inspectorate was designated market supervision (monitoring) agency regarding automobile gasoline, diesel, ship and furnace boiler fuel<sup>84</sup>, which, however, was a formal measure since its liquidation was imminent and instead the State Environmental Protection Service was to be established. The draft technical regulations that are in line with the commitment have not been endorsed and approved. No regulatory framework has been created for the organisation of an effective system of fuel quality control, ensuring the proper operation of the system of interlaboratory comparison of test results; arranging the development of drafts of national standards; creation of a system for responding to sudden changes in the supply of raw materials; development and introduction of a national fuel quality monitoring system that could provide reliable data on the compliance of petroleum products with the requirements of EN 228 and EN 590. It is unclear why the Government set the task to ensure the possibility of using unleaded gasoline by SUVs, agricultural and forestry tractors, as the import and sale of such fuel has been banned in Ukraine since January 1, 2003<sup>85</sup>.

Practical implementation of the provisions of European legislation is at an early stage or has not started. Checks on fuel quality and safety are carried out sporadically and only following consumers' complaints. Only 19 of the 51 national standards required to harmonise Ukraine's fuel quality and safety requirements with those of the EU have been adopted. At the same time, there is no interdepartmental cooperation, and the agency in charge of most of the tasks – i.e. the State Enterprise Research Institute of Oil-Processing and Petrochemical Industry MASMA – is undergoing liquidation. The implementation of Directive 98/70/EC has become significantly more complicated as

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84) <https://zakon.rada.gov.ua/laws/show/1069-2016-%D0%BF#n59>

85) <https://zakon.rada.gov.ua/laws/show/2786-14>

a result of adoption of the law<sup>86</sup> that allowed the import of used vehicles to Ukraine. The use of fuel that meets Euro-5 emissions standards for them makes no sense, as it does not reduce the harmful effects of exhaust gases on human health and the environment.

### **Commitment 159 / Control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations**

- Directive 94/63/EC

The commitment involves control over volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations; as well as taking an inventory of terminals and vehicles used for transport of petroleum products in accordance with EU standards.

Problems with the fulfilment of the commitment persist. A draft technical regulation laying down requirements for storage, transport and loading of fuel, relevant equipment and service stations, which generally meets the requirements of Directive 94/63/EC, has been developed but has not been endorsed by the relevant executive authorities and approved by the Government. The task of taking an inventory of terminals and vehicles used for transport of petroleum products was carried out pursuant to another document, namely due to the introduction from July 1, 2019 of the licensing of petroleum production, storage, and trade<sup>87</sup>. One of the conditions for granting the licence is the availability of certified equipment. Direct fulfilment of the tasks set by the Government to create the regulatory prerequisites necessary for the implementation of Directive 94/63/EC is impossible due to its incorrect translation into Ukrainian. In particular, petroleum products (namely petrol, diesel fuel, kerosene, liquefied petroleum gas) are referred to as "бензин" (petrol) in the implementation plan, terminals as "термінали" (oil depot), mobile containers as "мобільні контейнери" (transportable containers), service stations as "сервісні станції" (maintenance station) and loading installations as "вантажні крани" (loading cranes).

The practical implementation of the provisions of European legislation is insufficient. To enforce the decisions made, four national standards have been put into effect<sup>88</sup> and the Unified State Register of Business Entities Licenced to Engage in Production, Storage, Wholesale and Retail Trade in Fuel, and Places of Production, Storage, Wholesale and Retail Trade in Fuel<sup>89</sup> has been created. However, institutional, financial, human and other resources are insufficient to check compliance with the statutory requirements.

## **RENEWABLE ENERGY SOURCES (RES)**

### **Overview of key European integration commitments**

Ukraine first undertook formal commitments to the EU to develop renewable energy sources in 2011, when it became a member of the Energy Community, whereas in the

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86) <http://zakon.rada.gov.ua/laws/show/2611-19>

87) <http://zakon.rada.gov.ua/laws/show/2628-viii>

88) <http://uas.org.ua/ua/news/povidomlennya-pro-rozroblennya-pershih-redaktsiy-proektiv-natsionalnih-standartiv-15/>

89) <http://sfs.gov.ua/dovidniki--reestri--perelik/reestri/383525.html>

Association Agreement the commitments to implement the provisions of the basic RES Directive No 2009/28/EC appeared only in late 2018 after Annex XXVII of the Association Agreement was updated.

Directive 2009/28/EC is an EU framework document that sets out the objectives for the development of RES and the incentives for their production. The key requirement of this Directive is the mutual commitment of the EU Member States to achieve certain national targets of (1) the share of RES in final energy consumption and the share of RES in electricity generation, heating/cooling and (2) the share of RES in transport<sup>90</sup>. Overall, the EU intends to achieve a share of RES of at least 32% in final consumption by 2030<sup>91</sup>, and under the recently announced Green Deal policy, in the long run (by 2050) the share of energy from RES must increase even more to achieve the declared goal of climate neutrality.

In addition to setting RES objectives and rules of their statistical calculation, Directive 2009/28/EC also specifies general conditions for joint RES projects between EU Member States and third countries, guarantees of RES origin, the various administrative procedures involved, dissemination of information and training, and access conditions for energy produced from RES to power transmission networks.

### **Commitment 160 / Stimulation of energy production from renewable sources**

- Directive 2009/28/EC of 23 April 2009

The commitment involves the implementation by Ukraine of a range of measures aimed at:

- Establishment of a national system for planning and stimulating the development of RES, including setting appropriate goals;
- Introduction of target-specific schemes to support energy production from RES;
- Ensuring transparent and non-discriminatory access of renewable energy producers to transmission networks;
- Introduction of a number of administrative procedures necessary for the development of RES markets;
- Stimulating the use of fuels from RES in transport by legislatively enshrining technical requirements for the production and use of biofuels and bioliquids while reducing greenhouse gas emissions; labelling of fuel consisting of its name, brand of oil product, ecological class and content of biocomponents as well as inclusion of such data in accounting documents; developing a stable and predictable policy to stimulate the use of renewable energy sources; and attracting investment.

Approximation of legislation and its practical implementation is "advanced". Since

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90) For instance, the Directive sets a mandatory target for all Member States that by 2020 the share of RES in biofuels, electricity and hydrogen should be at least 10% of total fuel consumption in the transport sector by all types of vehicles.

91) [https://www.energy-community.org/dam/jcr:a70ca2dc-6043-4dbd-8cca-84b755efc71d/PG\\_2030\\_Targets\\_112018.pdf](https://www.energy-community.org/dam/jcr:a70ca2dc-6043-4dbd-8cca-84b755efc71d/PG_2030_Targets_112018.pdf)



2014, Ukraine has been planning RES development at the national level in the form of renewable energy action plans<sup>92</sup>. A concept of an action plan until 2030 is currently being developed<sup>93</sup>. Key indicators of the effectiveness of the Energy Strategy of Ukraine until 2035<sup>94</sup> include, inter alia, the share of RES in the total primary energy supply: 17% by 2030 and 25% by 2035; in electricity generation (energy balance): more than 13% by 2030 and more than 25% by 2035.

The actual share of RES in the energy balance of Ukraine as of 2018 was 7%<sup>95</sup>.

Should Ukraine approve the draft Concept of transition to "green" until 2050<sup>96</sup> published in early 2020, its long-term RES targets may become more ambitious.

The first scheme to support renewable energy production in Ukraine was introduced in 2009 through "green tariffs"<sup>97</sup>, i.e. the statutory fixed prices for the purchase of electricity<sup>98</sup> produced from RES by the state enterprise Energorynok, which, after overcoming a number of administrative barriers, allowed to increase the production of "green" electricity.

In April 2019, a new scheme of organisation of the RES market was approved, which will replace the mechanism of the "green" tariff<sup>99</sup>. Producers will compete for the preferential price for the sale of "green" electricity at auction, and the amount of the preferential price will be reduced for solar generation by 25% and for wind generation by 10%, followed by an annual reduction of 2.5% and 1.5 % respectively for 3 years, which takes into account the reduction in the cost of alternative generation technologies over the past decade.

However, the rapid commissioning of RES facilities in 2018-2019<sup>100</sup> (especially large solar generators) coupled with the launch on July 1, 2019 of a new electricity market model resulted in the inability of the state (through SE Guaranteed Buyer) to pay RES producers according to the fixed "green tariff"<sup>101</sup>. After negotiations between the state and the owners of "green" power plants, on July 16, 2020, a compromise bill No 3658<sup>102</sup> was adopted, whereby the "green" tariff was reduced for solar power plants put into operation before 2020 from 10 to 15%, for wind power plants by 7.5%, and for both of the above types of power plants put into operation after 2020 the reduction will be by another 2.5%. Also, all new solar power plants with a capacity of more than 1 MW, put into operation after August 1, 2020, will be able to do so exclusively through the auction mechanism, and from 2022 all RES producers will

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92) <https://zakon.rada.gov.ua/laws/show/902-2014-%D1%80#Text>

93) <https://www.kmu.gov.ua/news/u-ramkah-proektu-yes-twinning-derzhenergoefektivnosti-iz-avstrijskimi-ta-italijskimi-ekspertami-prodovzhuyut-udoskonalyuvati-zakonodavstvo-u-chistij-energetici>

94) <https://zakon.rada.gov.ua/laws/show/605-2017-%D1%80#Text>

95) [http://sae.gov.ua/sites/default/files/SAEE\\_19.pdf](http://sae.gov.ua/sites/default/files/SAEE_19.pdf)

96) <https://menr.gov.ua/news/34424.html>

97) Approved by Law of Ukraine No. 601-VI "On Amendments to Certain Laws of Ukraine Concerning the Establishment of a 'Green' Tariff" of September 25, 2008.

98) In addition to fixing the price (tariff), its amount was determined in euros in order to protect RES investment projects from exchange rate fluctuations.

99) Law of Ukraine No. 2712-VIII of April 25, 2019 applies to wind power plants with a capacity of more than 5 MW and solar power plants with a capacity of more than 1 MW.

100) Thus, in just one year, from 2018 to 2019, the total installed capacity of renewable energy facilities has increased threefold, from 2.2 GW to 6.9 GW. The main motivation for accelerating their construction was the desire of investors to get higher "green" tariffs before the start of auctions.

101) One of the reasons for this imbalance (apart from the built-in defects of the new electricity market that led to a shortage of funds of the Guaranteed Buyer) was also the relatively high cost of "green" electricity in the market: energy production from RES in the electricity market is about 2% while payments on "green tariffs" require the accumulation of funds in the amount of about 8% of the market.

102) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=69138](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69138)

be financially responsible for the imbalance of their actual and accepted (forecast) electricity production schedules. The allowable forecasting error will be 10% for wind generation and 5% for solar generation.

In the field of RES application in transport in Ukraine:

- the requirements for maintaining the state register of business entities engaged in economic activities in the field of production, storage and introduction of liquid biological fuels and biogas have been abolished;
- the operations of importing into Ukraine of vehicles equipped exclusively with electric motors are exempted from value added tax until January 1, 2023;
- a law on creating access to the infrastructure of charging stations for electric vehicles was adopted<sup>103</sup>, which should regulate the development of electric charging infrastructure and incentives for the use of electric vehicles in Ukraine.

However, the draft law "On Amendments to Certain Legislative Acts of Ukraine Concerning the Development of Liquid Fuel Production from Biomass and Introduction of Sustainability Criteria for Liquid Fuel from Biomass and Biogas Intended for Transport" (No 7348<sup>104</sup>), developed to fulfil the commitment, was submitted in circumvention of the established procedure. According to the Central Scientific Experts Office of the Verkhovna Rada, the document "needs a comprehensive feasibility evaluation with appropriate calculations", as "low demand for fuel with a biocomponent may reduce the supply of traditional fuels, leading to a shortage."

By the method of "confirmation" three national standards were adopted: "Sustainability criteria for the production of biofuels and bioliquids for energy applications. Principles, criteria, indicators and verifiers" (parts 2-4 of DSTU EN 16214:2017). The Technical Regulation on the requirements for motor gasoline, diesel, marine and boiler fuels sets forth the designation of fuel consisting of its name, brand of petroleum product, environmental class and content of biocomponents.

At the same time, there is no proper infrastructure (institutional, personnel and financial support) in Ukraine to meet most of the requirements of European legislation.

## ENERGY INFRASTRUCTURE

Overview of key European integration commitments

In the context of the ongoing process of building the EU's internal energy market, there is a great need in the EU to develop energy infrastructure that could overcome the fragmentation and isolation of the energy markets of individual EU Member States. A long-term vision for this process was set out in the Guidelines for the Trans-European Energy Infrastructure (or TEN-E Guidelines) published in 2011<sup>105</sup> aiming to ensure better connectivity of national and regional energy markets in the EU with

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<sup>103</sup>) Law of Ukraine No. 2754-VIII of July 11, 2019.

<sup>104</sup>) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62987](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62987)

<sup>105</sup>) [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_06\\_304](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_06_304)

each other and with third countries by creating incentives for the construction of appropriate network connections within the so-called Projects of Mutual Interest (PMI). They identify nine priority strategic corridors with infrastructure in the areas of electricity, gas and oil and three priority infrastructure areas for European electricity transmission lines, smart grids and carbon dioxide transmission networks.

The key EU act in this area is Regulation (EU) 347/2013, which regulates the permitting procedures for such projects and the regime for promoting investment in the above types of energy infrastructure. The Energy Community Mechanism also provides for cooperation with non-EU third countries in the framework of cross-border PECE (Projects of Energy Community Interest), the implementation of which should be facilitated through harmonisation of permitting procedures and access to the cross-border cost-sharing and financing mechanism (if there are institutional preconditions in place).

The Energy Infrastructure subsector includes a key commitment for Ukraine to establish and deploy a mechanism for approving priority PECE in the field of electricity, natural gas and oil within the Energy Community, as well as to become part of the EU PMI environment.

Assessment of progress in fulfilling Commitments:

### **Commitment 161 / Creating conditions for the implementation of Projects of Energy Community Interest (PECE) and Projects of Mutual Interest of the EU (PMI)**

- Regulation (EU) 347/2013 of 17 April 2013

Approximation of legislation to the requirements of the Regulation (EU) 347/2013 has not started yet. Initial work in this direction began as late as in early 2019, when in the framework of the EU technical assistance project EU4Energy experts from the Energy Community Secretariat presented the results of their analysis of the current legal framework of Ukraine that is relevant to compliance with Regulation (EU) 347/2013.

Practical implementation has not started due to lack of appropriate regulation.

## **STATISTICS ON NATURAL GAS AND ELECTRICITY PRICES**

Overview of key European integration commitments

Ukraine has committed itself to aligning national legislation in the field of energy statistics by acceding to the Treaty establishing the Energy Community with an updated list of acquis requiring that the contracting parties implement the provisions of two EU Regulations – No 1099/2008 and No 2016/1952 – which set a number of requirements for the unification of the system of collection, analysis and dissemination of statistics both for the energy sector as a whole and separately for statistics on natural gas and electricity prices.

Assessment of progress in fulfilling the commitments:

## **Commitment 162 / Establishing a common framework for the production, transmission, evaluation and dissemination of comparable energy statistics, and bringing natural gas and electricity price statistics in line with EU requirements**

- Regulation (EC) 1099/2008 of 22 October 2008
- Regulation (EU) 2016/1952

The commitment involves organisation of a statistics system in the energy sector in accordance with the requirements of Regulation (EC) 1099/2008, in particular energy data collection system, and establishes rules for collecting such data in the area of production, transmission, evaluation and dissemination of comparative energy statistics in the EU.

The commitment involves establishment of uniform rules for the collection of statistical information on the various components of retail gas and electricity prices paid in the household sector, in accordance with the requirements of Regulation (EU) 2016/1952, which will ensure an appropriate level of transparency and make the rules methodologically comparable to those in force in the EU.

Approximation of legislation and practical implementation are generally "advanced". Following the approval and implementation of the new framework laws on the gas and electricity markets – the laws of Ukraine "On the Natural Gas Market" and "On the Electricity Market" – significant progress has been made in approximating the rules for collecting, analysing and disseminating statistical information in the energy sector.

In particular, most of the annual and monthly data sets required by Regulation (EC) 1099/2008, including price statistics on gas and electricity markets, are collected and published in Ukraine. The State Statistics Service of Ukraine (Derzhstat) collects annual energy statistics and submits them to Eurostat – the relevant data are available from 2017, and no later than December of the reporting year it publishes product balances, sends the completed questionnaires for the previous year to Eurostat, and submits annual reports on statistical quality.

However, not all data sets and statistical methodologies in energy statistics are yet in line with European requirements. For example, data on the production and consumption of solid biofuels do not meet the requirements of the Regulation, there is a number of gaps in the collection and transmission to Eurostat of certain monthly data sets, in particular in the oil and natural gas sectors.

The State Statistics Service is at the stage of building a system for collecting, analysing and disseminating statistics on retail prices for natural gas and electricity. Despite the fact that since 2017 the State Statistics Service has published average prices for gas and electricity that are valid for industrial consumers and households, they are still not divided into components and further analysis is still not carried out.

## NUCLEAR

### Overview of key European integration commitments

The use of nuclear energy for peaceful purposes is actively taking place in Ukraine in various sectors of the economy, medicine, agriculture, and most of all – in the energy sector.

Ukraine operates 15 nuclear power reactors at 4 NPP sites with a total installed capacity of 13.8 GW. This accounts for 24% of all installed capacity of various types of power plants in the country. In recent years, nuclear power plants have produced an average of 54-55% of electricity in the overall balance. That is, the Ukrainian NPP is the foundation of the state's electrical power industry.

Since independence, Ukraine has made efforts to create national legislation on the use of nuclear energy and radiation safety. The best world practices in the field of nuclear legislation were taken into account. Within the framework of joint projects, assistance was provided by foreign partners from the EU, the USA and Canada. In 1995, the Verkhovna Rada adopted the fundamental Law of Ukraine in this area "On the Use of Nuclear Energy and Radiation Safety."

On the basis of this law, special laws were adopted in the framework of development of national nuclear legislation: "On the Management of Radioactive Waste" (1995), "On Uranium Mining and Extraction from Ore" (1997), "On Protection of Humans from Ionizing Radiation" (1998), "On Licensing Activities in the Field of Nuclear Energy" (2000), "On Physical Protection of Nuclear Installations, Nuclear Materials, Radioactive Waste, and Other Sources of Ionizing Radiation" (2000), etc. that establish a legal framework to ensure nuclear and radiation safety with regard to specific issues. At the same time, by-laws were developed in certain areas, due to which Ukraine currently has a developed system of state regulation of nuclear and radiation safety, independence of the national nuclear and radiation safety regulator from the NPP operator, licensees and the ministry responsible for the management of the operator and licensees, and Ukrainian legislation in this area is in line with the best world standards. The system of state regulation of nuclear and radiation safety is based on the implementation of the principles of safe use of nuclear energy and radiation protection and the requirements of legislation, and its procedures and methodology meet international standards. This was also confirmed in the final reports of the IRRS (INTEGRATED REGULATORY REVIEW SERVICE) missions in Ukraine, conducted by the IAEA at the invitation of the state.

The fundamental principles of nuclear safety and radiation protection, which were also stipulated in Ukrainian legislation back in the 1990s, were later reflected in the Convention on Nuclear Safety, Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, the Convention on the Physical Protection of Nuclear Material and other conventions constituting the legal framework of the international nuclear and radiation safety regime that were adopted by the international nuclear community following the Chernobyl accident. The depository of these documents is the International Atomic Energy Agency (IAEA) within the UN. Ukraine is a Party to all Conventions in this area. But only two of them oblige it to prepare National Reports on the implementation of commitments under the Convention on Nuclear Safety and the Joint Convention every three years. National reports shall be submitted to the Parties to the Conventions and presented at the Meeting of the Parties.

EU directives<sup>106</sup> that partially regulate the field of nuclear energy were developed on the basis of the Convention on Nuclear Safety, the Joint Convention and IAEA standards and recommendations.

The objectives of all these EU directives can be presented as follows:

- Each State should set and maintain national legislative, regulatory and organisational frameworks ("national frameworks") for the establishment of safety standards for nuclear installations, RAW and standards of radiation protection of personnel and the population from ionizing radiation;
- Establish a division of responsibilities between the relevant competent state bodies in the field of nuclear energy use. Ensure the existence of an independent national nuclear and radiation safety regulatory authority (NRS) with the functions of establishing NRS criteria, principles, rules and standards. The principle of licencing by the NRS regulator of all activities in this area should be implemented. The regulator should supervise and control compliance with NRS requirements, and apply measures of influence to violators;
- Establish the responsibility of NPP operators and licensees for safety. Provide enough financial and human resources to comply with safety standards during the operation of nuclear facilities, sources of ionizing radiation and in the management of spent fuel and radioactive waste;
- Ensure transparency of activities in the field of nuclear energy use and establish national requirements for information and public participation. The state must have national strategies and programmes for the management of spent fuel and radioactive waste.

In Ukraine, all these fundamental goals are set forth in national special legislation, regulations and established organisational frameworks. There is a state system of nuclear and radiation safety regulation. Fulfilment of the obligations under EU directives in this area will improve some procedures and unify approaches to the development of national strategies and programmes.

Assessment of progress in fulfilling commitments:

### **Commitment 163 / Establishment of the basic principles of radiation protection of the population and persons exposed to occupational or medical irradiation**

- Council Directive 2013/59/Euratom

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<sup>106</sup>) These EU directives include:

1. Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations.

2. Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation.

3. Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste.

4. Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel.

Member States shall establish legal requirements and an appropriate regime of regulatory control which, for all exposure situations, reflect a system of radiation protection based on the principles of justification, optimisation and dose limitation.

Approximation of legislation is "perfect". Legislation of Ukraine in the field of nuclear energy generally meets the requirements of the Directive, but there are differences in the application of certain terms and in some areas of state regulation in the field of nuclear energy, which requires alignment with the provisions of the Directive.

In order to advance the regulatory approximation of national legislation to the EU acquis, on September 18, 2019, the Verkhovna Rada adopted Law of Ukraine No 107-IX "On Amendments to Certain Laws of Ukraine in the Field of Nuclear Energy Use". This law amended the laws: "On the Use of Nuclear Energy and Radiation Safety"; "On Licensing Activities in the Field of Nuclear Energy"; "On the Protection of Humans from Exposure to Ionizing Radiation"; and "On Uranium Mining and Extraction from Ore".

The law regulates nuclear and radiation safety issues in terms of reducing the risks of long-term exposure to radon products; as well as issues of radiation protection during medical irradiation; the state regulation of uranium ore mining and processing activities was improved and licensing of uranium ore processing was introduced, taking into account the specifics of the technological cycle of uranium concentrate production.

Practical implementation is "early". In pursuance of the requirements of Law of Ukraine No 107-IX, the Cabinet of Ministers by its Order No 1417-p of 27.11.2019 approved the Action Plan to reduce the level of exposure to radon and its decay products, minimise long-term risks of radon spread in residential and non-residential buildings and workplaces for 2020–2024.

The plan envisages establishment of an interdepartmental coordination group involving the Ministry of Health, the State Nuclear Regulatory Inspectorate of Ukraine (SNRIU), other interested central executive bodies, the National Academy of Medical Sciences (upon consent), regional state administrations, Kyiv City State Administration, and local governments. The Plan also includes development and approval of the Procedure and Methodology for radon monitoring in Ukraine and notification of radiation risks, monitoring of radon levels, creation of a database on radon levels in indoor air, formation of a register of certified experts on radon measures, approval of reporting requirements and criteria regarding anti-radon measures at workplaces, except for enterprises where radon irradiation is a consequence of the technological process (mines, uranium extraction, etc.) and the activity is subject to regulatory control, public awareness-raising work, etc.

As the Plan was approved at the end of 2019, it is not yet possible to assess the progress of its implementation.

### **Commitment 164 / Streamlining the procedure for cross-border shipments of spent nuclear fuel with EU Member States**

- Council Directive 2006/117/Euratom

In accordance with the requirements of EU Council Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel, it was necessary to improve the procedure for coordination of such shipments with EU countries, including development and approval of a standard application form for international shipments.

Approximation of legislation is "perfect". Resolution No 759 of the Cabinet of Ministers "On Amendments to the Procedure for Issuing Permits for International Shipment of Radioactive Material" of 21.08.2019 improves the terms and lays down a procedure of coordination with the competent authorities of the EU Member States. The draft resolution of the Cabinet of Ministers was endorsed by EU experts in the framework of the relevant EU technical assistance project.

Practical implementation is at an "early" stage. Pursuant to Resolution No 759 of the Cabinet of Ministers of Ukraine, the SNRIU developed a draft order "On Approval of the Standard Document Form for Supervision and Control of Shipments of Radioactive Waste and Spent Fuel." The draft is undergoing endorsement by CEBs. The content of the document was developed involving EU experts and endorsed by them in the framework of the relevant EC technical assistance project.

### **Commitment 165 / Approximation of regulation in the field of nuclear and radiation safety to EU requirements (in terms of radiation protection)**

- Council Directive 2013/59/Euratom

The regulation of nuclear and radiation safety in Ukraine meets the fundamental requirements of the EU. Therefore, Ukraine's tasks are to clarify the terminology, to create a state system for accounting and control of individual exposure of workers, including aircraft crews and some clarifications in procedures, establishing common basic safety standards for the handling of materials containing radionuclides of natural origin.

Approximation of legislation is "advanced". The main task is to establish the principles of radiation protection of the population and professionals involved in occupational or medical exposure. Such principles were introduced by amending Ukrainian legislation by Law No 107-IX "On Amendments to Certain Laws of Ukraine in the Field of Nuclear Energy Use" of September 18, 2019.

The draft resolution of the Cabinet of Ministers of Ukraine "On Certain Matters of Creating a Single State System of Control and Accounting of Individual Radiation Doses" is being prepared for re-endorsement by CEBs in connection with the change of government.

Practical implementation is also predominantly "advanced". In particular, in order to fulfil the task of introducing the practice of consultations for entities using nuclear energy with radiation protection experts on compliance with the legislation on nuclear and radiation safety, the SNRIU has developed a draft law amending the Law on Nuclear Energy Use and Radiation Safety. However, due to the change of government, the decision of the Cabinet of Ministers of Ukraine to approve the draft law was cancelled and Letter No 7734/0/2-20 of the Secretariat of the Cabinet of Ministers of Ukraine dated 05.03.2020 was returned to the SNRIU for re-endorsement by CEBs in accordance with p. 2 of article 40 of the Rules of Procedure of the Cabinet of Ministers. Due to this, the draft law of Ukraine was sent by the SNRIU for re-endorsement to CEBs. The functions of creating a state system of accounting and



control of individual radiation doses of professionals (including aircraft crews) are enshrined in subparagraph 26 of paragraph 4 of the Regulation on the State Nuclear Regulatory Inspectorate of Ukraine, approved by Resolution No 363 of the Cabinet of Ministers of Ukraine dated August 20, 2014.

The fulfilment of the commitment-associated tasks that the Ministry of Health is charged with – namely, the regulation of radiation protection of humans from exposure to natural radionuclides – is at the stage of critical inconsistency. Since after the reorganisation of the Ministry of Health and abolition of the sanitary service with some of its functions having been transferred to the State Service of Ukraine on Food Safety and Consumer Protection there is no unit within the Ministry of Health (Centre for Public Health) responsible for radiation protection, including from exposure to natural radionuclides. Thus, there is an organisational vacuum and institutional failure to ensure fulfilment of these tasks.

### **Commitment 166 / Establishing cooperation with the EU for joint research and development in the field of nuclear energy**

Cooperation with the EU takes place in the framework of the following initiatives:

- Implementation of projects of the INSC Programme (Instrument for Nuclear Safety Cooperation) in accordance with the annual action programmes in three areas: "operator support", "radwaste management", "regulator support", and initiation of new projects.
- Cooperation of Ukraine under the EU Horizon 2020 programme.

Approximation of legislation is "perfect". The Agreement between the Government of Ukraine and the European Atomic Energy Community on Scientific and Technological Cooperation and Associated Participation of Ukraine in the Euratom Research and Training Program (2014-2018) was signed in Brussels on 27 June 2016.

Practical implementation is "advanced". INSC projects had been successfully implemented in three areas before the entry into force of the Association Agreement. To date, projects have been completed in the area of "Operator Support", and preparation of new proposals is underway. The Regulator Support and RAW Management projects are being implemented.

Under the Horizon 2020 programme, the National Coordination Point (NCP) was established on the basis of NSC KIPT, Ukrainian scientists entered the Programme committees and received financial support for the establishment of the NCP and research.

### **Commitment 167 / Approximation of regulation in the field of nuclear and radiation safety to EU requirements (with regard to the safety of nuclear installations)**

- Council Directive 2014/87/Euratom
- Council Directive 2009/71/Euratom

Approximation of regulation in the field of nuclear and radiation safety to EU requirements (with regard to the safety of nuclear installations) requires the following steps:

- establishing national legislative, regulatory and organisational frameworks for the safety of nuclear installations;
- designation of a competent regulatory authority in the field of the safety of nuclear installations and allocation of licensees' responsibilities;
- introduction of the procedure for regulating the education and training of employees who have responsibilities related to the safety of nuclear installations;
- ensuring availability of information on nuclear safety regulation for employees and the public and establishing a procedure for reporting on the nuclear safety of the state.

Approximation of legislation is "perfect". All the fundamental principles of the Directive with regard to ensuring regulation of the nuclear and radiation safety in relation to nuclear installations are already enshrined in national legislation, namely:

- division of responsibilities between the relevant competent state bodies in the field of nuclear energy use;
- existence of an independent national NRS regulatory body with the functions of establishing NRS criteria, principles, rules and standards is stipulated in the Law of Ukraine "On the Use of Nuclear Energy and Radiation Safety";
- the Law of Ukraine "On Authorising Activities in the Field of Nuclear Energy Use" introduced the principle of licensing by the NRS regulator of all types of activities in this area;
- the regulator supervises and controls compliance with the NRS requirements and imposes sanctions against violators. The responsibility of NPP operators and licensees for safety has been established;
- transparency of activities in the field of nuclear energy use is ensured and national requirements for public information and participation have been established.

The measures that are being implemented but the deadline for which has not come yet include drafting a law to amend certain laws of Ukraine as regards definition of concepts and terms in the field of the safety of nuclear installations.

Practical implementation is "perfect". All the principles are implemented in practice through the creation of appropriate procedures and tools.

The SNRIU sets criteria for NRS in its regulatory legal acts in accordance with "The Procedure for Development and Approval of Principles, Rules and Standards for Nuclear and Radiation Safety"<sup>107</sup>, approved by Resolution No 163 of the Cabinet of Ministers of 08.02.1997.

The SNRIU implements licensing activities in the field of nuclear energy, guided by the priority of ensuring nuclear and radiation safety and based on the need for a comprehensive safety assessment in case of a decision to issue or refuse to issue permits.

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107) <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=163-97-%D0%BF>

Authorising activities make up an integral part of the state regulation in the field of nuclear energy use and involve:

- licensing of certain activities in the field of nuclear energy use;
- licensing the activities of the operating organisation at a particular stage of the life cycle of a nuclear installation or radioactive waste storage facility and issuing certain permits to such organisation to perform certain types of work or operations at certain stages of the life cycle of a nuclear installation or radioactive waste storage facility;
- licensing of activities related to the direct management of the reactor and the activities of officials of the operating organisation whose official duties include performing organisational and administrative functions related to nuclear and radiation safety;
- issuance of certificates of approval in the case of shipment of radioactive materials;
- state registration of ionising radiation sources;
- issuance of permits for shipment of radioactive materials.

To obtain a license to conduct activities in the field of nuclear energy, the business entity (applicant) must submit an application to the state regulatory body for nuclear and radiation safety.

The application must be submitted with copies of constituent documents certified in accordance with the procedure established by law, documents certifying the level of safety of a nuclear installation or radioactive waste storage facility, sources of ionising radiation and uranium facilities, as well as documents confirming the applicant's ability to comply with the conditions of the declared activity established by the principles and rules of nuclear and radiation safety.

The list of documents<sup>108</sup> to be submitted to obtain a license, as well as requirements for their filing and content are set by the SNRIU in its relevant acts for every particular stage of the life cycle of a nuclear installation or radioactive waste storage facility and certain activities in the field of nuclear energy use.

The SNRIU carries out state supervision over the observance by the operator and licensees of the NRS principles, rules, standards and license conditions and has the right to intervene in the case of violations (within the framework of administrative or criminal proceedings) in accordance with "The Procedure for State Supervision over Compliance with Nuclear and Radiation Safety Requirements" approved by Resolution No 824 of the Cabinet of Ministers of Ukraine of November 13, 2013<sup>109</sup>.

Transparency of SNRIU activities is ensured by annual reports on the nuclear and radiation safety in Ukraine, and due to the work of collegial advisory bodies within it: the Board and the Public Council. Important information about events is posted on the SNRIU website, and information is provided at the request of citizens. Public hearings are held in accordance with the Procedure for Holding Public Hearings on the Use of Nuclear Energy and Radiation Safety<sup>110</sup> approved by Resolution No 1122

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108) <https://zakon.rada.gov.ua/laws/show/z0152-15#n30>

109) <http://zakon2.rada.gov.ua/laws/show/824-2013-%D0%BF>

110) <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1122-98-%D0%BF>

of the Cabinet of Ministers of 18.07.1998, in cases of extension of the service life of a nuclear installation or before taking the decision to issue a license for the construction of a nuclear-hazardous facility.

### **Commitment 168 / Approximation of the safe management of spent fuel and radioactive waste to EU requirements**

- Council Directive 2011/70/Euratom

The commitment follows from the requirements of Council Directive 2011/70/Euratom and concerns the fundamental principles of the safe management of spent fuel and radwaste, as well as financial support for the management of radwaste and spent fuel, and the availability of a national strategy and programme for their management.

Approximation of legislation is mostly "perfect". All fundamental requirements are reflected in the current laws of Ukraine "On the Use of Nuclear Energy and Radiation Safety", "On Radwaste Management", and "On Licensing Activities in the Field of Nuclear Energy".

Practical implementation is "advanced". All tasks that fall within the competence of the national regulator (SNRIU) have either already been fulfilled or are at an advanced stage, at the same time almost nothing has been done in matters within the competence of the Ministry of Energy and the State Agency of Ukraine on Exclusion Zone Management (subordinated to the Ministry).

The tasks for which the Ministry of Energy and State Agency of Ukraine on Exclusion Zone Management are responsible have not been fulfilled. The deadline is 2020. However, there are concerns, in particular, regarding the National Programme for SNF and RW Management, that they will fail to prepare it. This is evidenced by previous experience, as the previous RW Management Programme expired in 2017, and no document has been prepared to extend or replace it.

## **CROSS-SECTORAL COMMITMENTS**

### **Energy regulatory authority**

#### **Commitment 169 / Ensuring the independence of the regulatory agency in the energy markets**

- Directive 2009/72/EC of 13 July 2009
- Directive 2009/73/EC of 13 July 2009

The agency that regulates the activities of natural monopolies in the markets of gas, electricity, heat and housing and utility services in Ukraine is the National Energy and Utilities Regulatory Commission of Ukraine (NEURC). The requirements for the national regulator in energy markets contained in Chapters VIII of Directive 2009/73/EC and IX of Directive 2009/72/EC are aimed at ensuring real independence of national regulatory agencies from political interference and influence of key players in energy markets and ensuring adequate regulation of natural monopolies that exist due to the special structure of energy markets.

Approximation of legislation is "advanced". In 2016, the framework law "On the National Energy and Utilities Regulatory Commission of Ukraine" was adopted, which generally meets the requirements of the EU Directives. However, at the end of 2019,

the Verkhovna Rada of Ukraine adopted amendments to this law<sup>111</sup> which threaten the independence of the NEURC. The status of the regulator was changed from an independent state collegial body to a central executive body with a special status subordinate to the Government. Despite attempts to enshrine some elements of the new body's independence, the NEURC's real ability to act as an equidistant arbiter between the Government and market participants, while remaining part of the executive branch, is currently in question.

Practical implementation is also "advanced". Ukraine managed to update the NEURC (according to the competitive procedure in the 2016 law) as late as in May 2018, and during the past two years the NEURC as a whole managed to perform its functions properly. However, the Commission failed to get rid of political interference in its activities, which resulted in a number of ambiguous regulatory decisions, demonstrating that the NERC follows in the wake of the government's economic policy, which was (and is) aimed at distorting market mechanisms in exchange for solutions that are popular among the public (for example, maintaining low prices for electricity, gas and heat for households, etc.). Following amendments to the law on the NEURC, this dependence might intensify even more.

## Rules of integrity and transparency in the wholesale electricity and gas market

### Commitment 170 / Introduction of rules of integrity and transparency in the wholesale electricity and gas market

- Regulation (EU) 1227/2011 of 25 October 2011 (REMIT)

The commitment involves introduction of a number of regulatory requirements concerning insider trading and countering covert manipulation in the wholesale segments of the gas and electricity markets, aimed at achieving better transparency and competition in these markets. The REMIT Directive has been in force in the EU since November 2018, its key principles are registration, data collection, monitoring and cooperation of regulatory agencies.

To be more specific, the commitment aims at the following:

- Banning insider trading and any participation or attempt to participate in market manipulation;
- Implementation of effective monitoring aimed at detecting and deterring abuse of market rules;
- Cooperation of national regulators and national antitrust authorities to ensure a streamlined approach to combating market abuse.

Approximation of legislation has not begun. There are no relevant regulatory requirements.

Practical implementation is "early". To date, the gas and electricity markets in Ukraine have not been effectively monitored with regard to the activities of market participants, and there is no direct ban on market manipulation and insider trading. Some elements of REMIT have been introduced on exchange platforms for gas trading at the initiative of exchange operators themselves<sup>112</sup>.

111) Law of Ukraine No. 394-IX of 19.12.2019 (<https://zakon.rada.gov.ua/laws/show/394-IX#Text>).

112) <https://www.ueex.com.ua/presscenter/news/rozkrittya-informatsii-shlyah-do-prozorosti-energetichnogo-rink/>

## Restructuring of the coal sector

### **Commitment 171 / Restructuring the coal sector in order to increase its competitiveness, enhance mine safety and occupational safety and reduce its environmental impact**

- Article 339 of the Association Agreement

The commitment involves a deep reform of the coal sector based on other commitments undertaken by Ukraine with regard to reforming the electricity market and fulfilling a number of climate commitments that directly affect the future of the coal sector in Ukraine, as well as on the relevant experience of EU Member States that have solved or are solving similar problems. A separate set of tasks related to this commitment focuses on addressing the issue of socio-economic transformation of mining regions as a result of closure of most existing state-owned mines, as well as on solving numerous local environmental problems.

Approximation of legislation is "early". As of the end of 2019, Ukraine did not have any relevant strategic document in the coal sector that would provide clear guidelines for the future of this complex (in terms of energy security, coal mining conditions and social impact). The latest of these documents was the Concept of Reforming and Developing the Coal Industry for the Period up to 2020<sup>113</sup>, which also needs a radical update given the fact that strategic documents in the energy sector have been updated.

Practical implementation is also "early". In recent years, the occupation of part of Donbass and loss of coal production, as well as the launch of a new electricity market have aggravated the situation in the public segment of the coal sector, exacerbating the already serious internal problems of the sector. As a result of the above factors coupled with the fact that the state coal mining has always tended to operate at a loss, the sector began to systematically accumulate significant wage arrears to miners and debts for electricity consumed, leading to regular interruptions in coal production. Currently, all the government and parliament do is "extinguish fires", regularly allocating or redirecting funds from other items of the State Budget to repay the debts of state mines, while structural reforms in the industry are frozen. The first steps in planning structural changes began to be mentioned only in the summer of 2020, after the division of the Ministry of Energy and appointment of a new leadership of the Ministry of Energy. Recent ideas for reforming state-owned mines include introduction of vertical integration in the "coal mining - electricity generation" chain, as well as development of a plan for transformation of coal regions to overcome the impacts of mine closures with the help of the German government.

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113) Order No. 733-p of the Cabinet of Ministers of May 24, 2017.



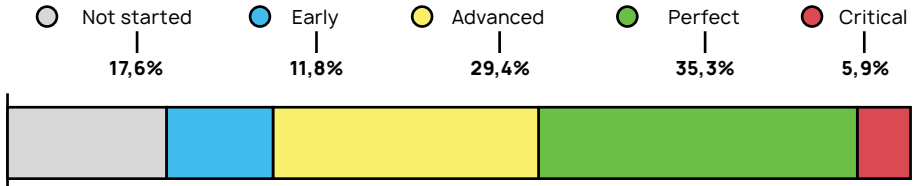
# TAXATION

Item	Price
Waffle Tostitos 200g	5.15
Tostitos 200g	1.99
Facilito Platos 400g	0.99
Mayadinos 1.50g	2.99
Potatoes	1.29
Cucumbers	2.09
Champions Brown	2.79
Garlic 200g	1.69
Mini Steaks 400g	3.28
Mince Meat 500g	2.99
Turkey Mini Steaks 400g	3.28
Peperita Hot 500g	3.28
Grapes Seedless	3.28
Yaki	3.28
Soft Cream 200g	3.28
Whole Grain Bread 250g	3.28
<b>Total [24]</b>	<b>53.28</b>
Cash Paid USD	53.28
Cash Change USD	0.00
Card Payment	53.28
Collate	53.28

# TAXATION

Expert: **Viacheslav Cherkashyn**

## Implementation progress for the sector:



## INDIRECT TAXATION: EXCISE DUTY / TAX

### Overview of key Eurointegration commitments

The subsector envisages approximation to the structure of excise duties set forth in EU acquis, development of cooperation in combating and countering fraud and smuggling of excisable goods, in particular through gradual approximation of the excise rates on tobacco products.

Over the past few years, there has been a trend towards a significant increase in the collection of excise duties in absolute terms, but since 2016 their share in tax revenues to the state budget has been decreasing (NBU data, in billion UAH):

	2014	2015	2016	2017	2018	2019
Excise tax	45	63,1	90,1	108,3	118,8	123,4
Tax revenues	280,2	409,4	503,9	627,2	753,8	799,8
Share of excise duties	16,1%	15,4%	17,9%	17,3%	15,8%	15,4%

This is primarily due to the policy of the "lively" growth of excise tax stimulated by both Ukraine's commitments under the agreement with the EU and the search by the Ukrainian government and parliament for quick ways to cover cash gaps in the state budget, which results in the transfer of formal operations to the shadow sector and has made the country a leader in cigarette production and smuggling to the EU. For example, Euromonitor and KPMG studies show that Ukraine has been a leader in cigarette smuggling in recent years<sup>1</sup>.

### Evaluation of progress in fulfilling commitments

<sup>1</sup> [https://assets.kpmg/content/dam/kpmg/uk/pdf/2018/07/project\\_sun\\_executive\\_summary\\_2018.pdf](https://assets.kpmg/content/dam/kpmg/uk/pdf/2018/07/project_sun_executive_summary_2018.pdf)



## **Commitment 172 / Compliance with the general requirements concerning excise duties**

- Council Directive 2008/118/EC of 16.12.2008

The commitment involves alignment with the requirements of Article 1 of Council Directive 2008/118/EC of 16.12.2008 concerning the general arrangements for excise duty with regard to the list of goods, the consumption or use of which is directly or indirectly subject to excise duty.

Given the amendments made to the Tax Code of Ukraine in 2014-2019 (by laws of Ukraine No. 71-VIII "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine with regard to Tax Reform" of 28.12.2014, No. 909-VIII "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine to Ensure the Balance of Budget Revenues in 2016" of 24.12.2015, and No. 391-IX "On Amendments to the Tax Code of Ukraine and Certain Other Legislative Acts of Ukraine to Improve the Administration of Excise Tax" of 18.12.2019), the national list of excisable goods, even though wider than that of the EU (due to the fact that it includes cars, vehicle bodies, trailers and semi-trailers, motorcycles, vehicles intended for the carriage of 10 people or more, and vehicles for the carriage of goods), was formally aligned with the EU acquis, except for the need to clarify the term "energy products" governed by Article 2 of Council Directive 2003/96/EC (see Status of Implementation of Council Directive No. 2003/96/EC).

It should be noted that there is draft law No. 2342 registered with the Parliament ("On Amendments to the Tax Code of Ukraine to Simplify the Conditions of Import of Vehicles into the Customs Territory of Ukraine and Bring Taxation Requirements in Line with the General Arrangements for Excise Duties of the European Union" of 29.10.2019), whereby "cars, vehicle bodies, trailers and semi-trailers, motorcycles, vehicles intended for the carriage of 10 people or more, and vehicles for the carriage of goods" are to be excluded from the list of excisable goods from 2021.

## **Commitment 173 / Harmonisation of the structure of excise duties on alcohol and alcoholic beverages**

- Council Directive 92/83/EEC of 19 October 1992
- Council Directive 92/84/EEC of 19 October 1992

The commitment involves alignment with Council Directives No. 92/83/EEC of 19.10.1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages and No. 92/84/EEC of 19.10.1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages:

- of the concepts such as "beer," "still and sparkling wine," "ethyl alcohol," "fermented beverages," and "intermediate products", establishing their tax base, tax rates, taking into account the requirements for minimum rates;
- the possibility of setting reduced excise tax rates on: (a) alcoholic beverages for small distilleries and/or breweries; (b) for beer (with an actual alcoholic strength by volume not exceeding 2.8%) and / or wine (with an actual alcoholic strength by volume not exceeding 8.5%);

- the need to apply excise duty exemptions: (a) for beer, wine, other still and sparkling fermented beverages produced and consumed by a private individual, provided that no sale is involved; (b) alcohol which is completely denatured in accordance with EU standards.

Legal approximation on this obligation is "advanced". Over 2014-2019, the national legislation was approximated to certain provisions of Council Directive No. 92/83/EEC, including:

- Law of Ukraine No. 71-VIII "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine with regard to Tax Reform" of 28.12.2014 partially aligns the concept of "beer" (para. 14.1.144 of the TCU and Art. 1 of the Law of Ukraine "On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages, Tobacco Products, and Fuel") with Article 2 of Council Directive No. 92/83/EEC;
- Laws of Ukraine No. 1791-VIII "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine to Ensure the Balance of Budget Revenues in 2017" of 20.12.2016 and No. 2628-VIII of 23.11.2018 partially updated the domestic classification of alcoholic beverages, namely wines, in accordance with the requirements of Articles 8, 12 and 17 of Council Directive No. 92/83/EEC (under the EU structure, the term includes "still and sparkling wine"; partially "fermented beverages", and "intermediate products").

Implementation is early. The issue of setting reduced excise tax rates for alcoholic beverages for small distilleries and/or breweries or for low-strength beer and wine (Articles 4, 5, 9 of Council Directive No. 92/83/EEC) and the application of tax exemptions for beer and alcoholic beverages produced by a private individual, provided that no sale is involved, or alcohol which is completely denatured (Articles 6, 10, 14 and 27 of Council Directive No. 92/83/EEC) are at the initial level – the state bodies in charge failed to make any relevant decisions within the period specified by CMU Resolution No. 1106 of 25.10.2017 (paragraphs 1481-1484 of the Action Plan by 31.10.2019), only Law of Ukraine No. 2360-VIII "On Amendments to Certain Laws of Ukraine on the Development of Production of Terroir Wines and Natural Honey Drinks" of 20.03.2018 defines the concept of "small producers of wines." At the same time, the position of the Ministry of Finance of Ukraine on the matter of reduced rates is vague (information on the state of implementation in Q4 2019 of the Action Plan for the Implementation of the Association Agreement between Ukraine and the EU, p. 45 on the implementation of paragraphs 1481-1484 of the Action Plan set by CMU Resolution No. 1106<sup>2</sup>[1]). At the same time, the Government of Ukraine continues to implement this part of the Association Agreement, thus the tasks for 2020 include: "enshrinement in legislation of EU requirements for excise tax rates on still and sparkling wine; other fermented beverages; ethyl alcohol; beer; and alcohol that has been completely denatured" (Report on the Implementation of the Agreement between Ukraine and the EU for 2019, p. 44-45<sup>3</sup>).

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2) <https://mof.gov.ua/uk/vikonannja-ugodi-pro-asociaciju>

3) <https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/ar-aa-implementation-2019-4.pdf>

## **Commitment 174 / Adherence to the structure of excise duties on tobacco products, gradual approximation of excise rates on tobacco products**

- Council Directive No. 2011/64/EU of 21 June 2011
- Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014
- Article 352 of the AA

The commitment involves aligning national legislation with Council Directive No. 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, as set forth in Article 352 of the AA, in particular with regard to: the definition of the terms "tobacco products", "cigarettes"; "products consisting in whole or in part of substances other than tobacco" and "smoking tobacco"; establishment of a complete list of exemptions from tax, and specifics of levying duties on cigarettes; consolidation of the structure and minimum excise tax on cigars, cigarillos and fine-cut tobacco.

Legal approximation on this obligation is "advanced". A significant number of the European standards for the taxation of tobacco products had been taken into account in national legislation before 2014, in particular in earlier versions (preceding the signing of the AA) of the Tax Code of Ukraine and Law of Ukraine No. 481/95-BP of 19.12.1995 "On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages, Tobacco Products and Fuel". For example, the definition of "tobacco products" (para. 14.1.252 of the TCU and Art. 1 of Law No. 481) or the list of transactions that are exempt from taxation (para. 213.3 of the TCU, except for denatured tobacco products and subject to clarifications made by laws of Ukraine No. 909-VIII of 24.12.2015 "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine to Ensure the Balance of Budget Revenues in 2016" and No. 1797-VIII of 21.12.2016 "On Amendments to the Tax Code of Ukraine to Improve the Investment Climate in Ukraine").

Also, Law of Ukraine No. 2245-VIII "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine to Ensure Balanced Budget Revenues in 2018" of 07.12.2017 was adopted, which: introduced the concept of "weighted average retail selling price of cigarettes"; "live fermentation kvass", which is excluded from excisable goods (para. 14.1.227, 14.1.272, para. 215.1.2 of the TCU); set the schedule of increasing specific rates till 2025 and the minimum excise tax liability to the level equivalent to EUR 90 for 1000 pieces; from 01.01.2025 the requirement concerning the share of excise duty in the weighted average retail selling price of cigarettes of at least 60% (para. 221.6 of the TCU) comes into force. At the same time, Ukraine is taking additional steps towards a deeper transposition of EU regulations governing the tobacco market. Thus, the Verkhovna Rada of Ukraine registered Draft Law No. 2719 of 11.01.2020 and two alternative draft laws (2719-1 and 2719-2), which provide for the adaptation of Ukrainian legislation to the requirements of Council Directive No. 2014/40/EU, in particular by changing the national typology of tobacco products, rules for labelling and warning statements for tobacco products, standards for nicotine, tar and carbon monoxide, etc.

It is noteworthy that on February 10, 2020, the European Commission published a comprehensive Evaluation of Council Directive 2011/64/EU of 21 June 2011 on the

structure and rates of excise duty applied to manufactured tobacco<sup>4</sup>, which, inter alia, proposes to carry out a radical revision of tobacco legislation in the near future, in particular towards further growth of taxes on cigarettes and their "innovative" counterparts, as well as new stricter market control rules. Consequently, Ukraine is in for another adaptation step within the framework of European integration commitments.

Implementation is also "advanced". Order No. 401 of the State Fiscal Service of Ukraine dated 09.06.2015 "On Approval of Explanations to the Ukrainian Classification of Goods of Foreign Economic Activity<sup>5</sup>"; take into account the requirements of Directive No. 2011/64/EU (additional clarifications concerning the product categories of Group 24 "Tobacco and Industrial Tobacco Substitutes") regarding the taxation of products consisting in whole or in part of substances other than tobacco; exclusion from the list of tobacco products of the products that do not contain tobacco and are used exclusively for medical purposes; compliance with the criteria defining products as cigarettes, cigars or cigarillos, smoking tobacco. The only methodological issue that needs to be harmonised is the provision set forth in paragraph 2 of Article 3 of Council Directive No. 2011/64/EU on the measurements of cigarettes of non-standard sizes for excise duty purposes.

Among the key tasks for 2020, the Government's Report on the Implementation of the EU-Ukraine Association Agreement for 2019 identifies the following: first, "drafting a bill on the implementation of the provisions of Article 8.2 of Council Directive 2011/64/EU of 21 June 2011 on the structure of and rates of excise duty applied to manufactured tobacco" (concerning the mechanism for calculating the weighted average retail selling price), and secondly, the approval by the EU-Ukraine Association Council of the draft decision implementing Council Directive No. 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco in Ukraine. That is, the current national structure of excise duties on tobacco products largely meets the requirements of the EU *acquis* but needs further refinement. Thus, according to the Ministry of Finance of Ukraine, on February 5, 2019, the EU provided comments concerning Law No. 2245-VIII, in particular with regard to its inconsistency with Articles 8 (para. 2) and 11 of Council Directive No. 2011/64/EU.

### **Commitment 175 / Approximation to the structure of excise duties on energy products and electricity as set forth in the EU *acquis***

- Council Directive 2003/96/EC of 27 October 2003

The commitment involves determining elements of the tax on energy products and electricity, in particular the taxable objects and base, minimum levels of taxation and exclusion from them (full or partial exemption).

Legal approximation on this obligation is "advanced". Electricity was included in excisable goods by Law of Ukraine No. 71 "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine with regard to Tax Reform" of 28.12.2014, the Tax Code of Ukraine establishes the necessary elements of the tax: the payer – para. 212.1.13, the taxable object – para. 213.1.10, exemption – 213.2.8, tax base – 214.1.3, and tax rate (*ad valorem*) – para. 215.3.9 of the TCU in line with the requirements of EU *acquis*.

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4) [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/10-02-2020-tobacco-taxation-report.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/10-02-2020-tobacco-taxation-report.pdf)

5) <http://sfs.gov.ua/baneryi/mitne-oformlennya/subektam-zed/klasifikatsiya-tovariiv/73142.html>

In addition, the norms concerning the minimum level of taxation and the provision of concessions (exemptions/partial exemptions) for energy and electricity products need to be updated and synchronised (since 01.01.2017, 9 amendments have been made to the EU act<sup>6</sup>, in particular to Articles 16, 18, 20, and 30, as well as the Annexes governing minimum levels of taxation).

It should be kept in mind that the timetable for implementation of the provisions of Council Directive 2003/96/EC (according to Annex XXVIII (28)) is described as "progressively, taking into account future needs of Ukraine". In accordance with paragraph 1533 of the Government Action Plan for the Implementation of the Association Agreement (Cabinet of Ministers Resolution No. 1106 of October 25, 2017), a relevant draft law aimed at bringing national legislation on excise taxation of energy products and electricity in line with Council Directive No. 2003/96/EC is to be developed by December 31, 2021.

Implementation is also "advanced". Laws of Ukraine No. 909-VIII "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine to Ensure Balanced Budget Revenues in 2016" of 24.12.2015, No. 2628-VIII of the Verkhovna Rada "On Amendments to the Tax Code of Ukraine and Certain Other Legislative Acts of Ukraine to Improve the Administration and Revise the Rates of Certain Taxes and Duties" of 23.11.2018, and No. 391-IX "On Amendments to the Tax Code of Ukraine and Certain Other Legislative Acts of Ukraine to Improve the Administration of Excise Duties" of 18.12.2019 introduced a system for electronic administration of the sales of fuel and ethyl alcohol (SEARPSE), defined the term "fuel", and included "goods (products) used as fuel" in the list of excisable goods (para. 14.1.141-1, para. 215.1.4 and para. 215.3.4). However, it should be borne in mind that to fully comply with the EU acquis, the term "energy products", although comparable to the Ukrainian analogue of "fuel, including goods (products) used as fuel", needs clarification clearly specifying the goods (products) used as fuel with the indication of codes under the UCG FEA, as required by Article 2 of Council Directive No. 2003/96 EC (goods under UCG FEA codes such as 1507-1518, 2107-2706, 2708-2709, 2712- 2715, which include in particular coal; coal, water or generator gas; resins, mineral and vegetable oils (soybean, peanut, olive, palm and other oils); animal or vegetable fats; petroleum jelly, paraffin, coke and bitumen).

### **Commitment 176 / Compliance with quantitative restrictions concerning VAT and excise duty exemptions of goods imported by persons travelling from third countries**

- Council Directive 2007/74/EC of 20.12.2007

The commitment involves: implementation into national law of the requirements of Section 3 (concerning quantitative restrictions) of Council Directive 2007/74/EC of 20.12.2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries.

Legal approximation on this obligation is "early". The Customs Code of Ukraine, adopted in 2012 (Law of Ukraine No. 4495-VI of 13.03.2012), includes a number of provisions (paragraphs 1 and 10 of Article 374 "Conditions for import (shipment) of goods by citizens to the customs territory of Ukraine" and paragraph 2 of Article 376 "Import by citizens into the customs territory of Ukraine of alcoholic beverages and tobacco products"), which partially take into account the requirements of

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6) <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32003L0096>

Section 3 of Council Directive No. 2007/74/EC (hereinafter – the Directive). Thus, in accordance with EU norms on quantitative restrictions, there are provisions on exemption from customs duties (customs duties, excise duties and VAT) of cigarettes, smoking tobacco and, in part, cigars, wine and beer. However, for the full implementation of Section 3 of the Directive, the following changes should be made to the national legislation, which were originally scheduled by the Government of Ukraine for "July 2015" (as set forth by the Directive Implementation Plan approved by CMU Order No. 391-p of 22.04.2015) and later "by December 2018" (CMU Order No. 216-p of February 18, 2016), currently (CMU Report on the Implementation of the Association Agreement between Ukraine and the EU for 2019) the control deadline for implementation is specified as "within 2020":

- add cigarillos to the list of exempt goods in accordance with the requirements of Article 8 of the Directive, while setting special appropriate restrictions (on the weight of cigarillos and cigars);
- eliminate the inconsistency in the quantitative restrictions on wine (2 litres instead of 4) and beer (5 litres instead of 16) in accordance with the requirements of Article 9 of the Directive (Ukraine has stricter national rules than the EU), as well as establish a rule concerning a combination of alcoholic beverages subject to exemption from taxation, and add "ethyl alcohol with an alcohol content of 80% or more" to the list of goods to which concessions apply;
- introduce, in accordance with the requirements of Article 11 of the Directive, a rule on tax exemption for a certain amount of fuel imported separately (in a tank / portable container, but not exceeding 10 litres) for each vehicle.

At the same time, it should be noted that since 2012 the Tax Code of Ukraine contains a rule on exemption of excisable goods (products) imported by individuals into the customs territory of Ukraine in amounts not exceeding the limits for duty-free import established by the Customs Code of Ukraine (para. 213.3.7 of the TCU).

Therefore, in 2014–2019, even though several implementation attempts have been made (such as draft law No. 3444 "On Amendments to the Customs Code of Ukraine to Implement the Association Agreement between Ukraine and the EU" of 10.11.2015, which was withdrawn on 14.04.2016 due to the change of government, or draft law No. 4615 "On Amendments to the Customs Code of Ukraine (with regard to the implementation of the Association Agreement between Ukraine and the EU)" of 06.05.2016, which the Committee on Tax and Customs Policy of the Verkhovna Rada of Ukraine sent to be revised on 05.07.2016), no comprehensive transposition of the provisions of the EU act into national law has been attained.

## **INDIRECT TAXATION: VALUE ADDED TAX**

### **Overview of key Eurointegration commitments**

The subsector involves approximation of the structure of value added tax to the general system of value added tax applied to the production and sale of goods (services) within the EU. It should be borne in mind that the development of the EU VAT legislation is very important and closely linked to the process of European economic integration and development, VAT is one of the sources of revenue to the EU budget (the concept of "own resources").

At the same time, the requirements of Ukrainian tax legislation and the current administrative procedures are the most burdensome for taxpayers. Thus, according to the Doing Business 2020 ranking, of the total time spent on paying taxes, 60% is spent on compliance with the requirements of the legislation on VAT payment. This is due to the existence of a rather complex system of electronic tax administration (VAT SEA), non-transparent rules for registration of tax invoices in the Unified Register of Tax Invoices and imperfect mechanism for blocking tax invoices (so-called SMKOR – Risk Assessment Criteria Monitoring System), which require additional time and money from taxpayers to keep records for tax purposes and pay taxes. In fact, the burden of administration, including the fight against tax fraud and tax evasion has been shifted by the state to the taxpayer. At the same time, it should be noted that the introduction of the VAT SEA and SMKOR resulted in a decrease in the scope of abuses (so-called "tax pits" and VAT bundling) was reduced, but this does not eliminate the need to modernise the tax administration system increasing its friendliness and comfort for taxpayers, subject to further approximation of VAT legislation to the EU acquis.

### **Evaluation of progress in fulfilling commitments**

#### **Commitment 177 / Approximation to the structure of value added tax set forth in the EU acquis**

- Council Directive 2006/112/EC of 27 November 2006
- Thirteenth Council Directive No. 86/560/EEC of 17 November 1986
- Article 353 of the AA

The commitment involves alignment of national legislation with Council Directive 2006/112/EC of 27 November 2006 on the common system of value added tax, Thirteenth Council Directive No. 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory, and Article 353 of the AA, in particular with regard to:

- the definition of key concepts and procedures and bringing the existing ones in line with EU requirements;
- establishing the features of the regulated market of gold bars, in particular the rights and obligations of investment gold traders, and the taxation of investment gold;
- bringing measures for tax refunds to taxable persons not established (registered) in Ukraine in line with EU requirements;
- in accordance with the quantitative limits set in Section 3 of Council Directive 2007/74/EC, establishing provisions for travellers to be exempt from value added tax on imports of: (a) tobacco products; (b) alcohol and alcoholic beverages other than still wine and beer; © for fuel contained in the standard tank of the vehicle.

Legal approximation on this obligation is "advanced". A significant majority of key concepts and procedures of tax administration were present in the first version of the Tax Code of Ukraine – Law No. 2755-VI of 02.12.2010, which was a kind of a summary of Ukraine's efforts to approximate national legislation to the legislation of the European Community within the provisions of the Partnership and Cooperation

Agreement. Therefore, the regulatory activity of the Ukrainian authorities in 2014-2019 had little direct effect on the implementation of the basic Directive No. 2006/112/EC, instead it focused on the preparation of a comparative table of obligations (thereunder) to be taken into account in national tax legislation. However, there is one significant obstacle – under the current Tax Code, transactions associated with the circulation of precious metals (not only gold, but also silver, platinum, platinum group metals) are not subject to VAT (para. 196.1.4 of the TCU). That is, the provisions of Ukrainian legislation contradict the relevant provisions of Council Directive No. 2006/112/EC on the market for gold bars and investment gold (it requires a 0% rate). According to the information on the state of implementation in Q4 of 2019 of the Action Plan for the implementation of the Association Agreement between Ukraine and the EU<sup>7</sup>, attempts to resolve the issue come down to consultations between the Ministry of Finance of Ukraine and the NBU.

Besides, in 2014–2019, no provisions of Thirteenth Council Directive No. 86/560/EEC on measures to refund VAT to taxable persons not established (registered) in Ukraine were transposed into Ukrainian legislation. However, it should be borne in mind that the timetable for the implementation of the provisions of Thirteenth Council Directive No. 86/560/EEC has not been set by the Association Council as laid down in Annex XXVII to the AA – the tasks for 2020 under the Report of the Government of Ukraine on the Implementation of the Association Agreement between Ukraine and the EU for 2019 include approval by the EU-Ukraine Association Council of draft decision "on implementation of Thirteenth EU Council Directive 86/560/EEC of 17.11.1986 on the harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory" (the draft decision provides for the establishment of a timetable "from January 1 of the year following two years after the year when Ukraine was granted EU membership candidate status").

In addition, attention should be drawn to the fact that Council Directive 2006/112/EC is one of the EU acts that have undergone significant changes and additions in recent years. For example, since January 1, 2017, more than a hundred changes have been made to the document, including 38 since the beginning of 2020, and another 44 innovations will be introduced from January 1, 2021<sup>8</sup>.

### **Commitment 178 / Compliance with quantitative restrictions concerning VAT and excise duty exemptions of goods imported by persons travelling from third countries**

- Council Directive No. 2007/74/EC

The commitment involves: establishment, in accordance with the quantitative limits set forth in Section 3 of Council Directive No. 2007/74/EC, of provisions concerning travellers to be exempt from value added tax on imports of: (a) tobacco products; (b) alcohol and alcoholic beverages other than still wine and beer; © fuel contained in the standard tank of the vehicle.

The requirements concerning exemption from VAT of certain excisable goods as established in Section 3 of Council Directive No. 2007/74/EC, were not comprehensively transposed into national legislation in 2014-2019 (see para. 1.5 of the expert opinion).

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7) <https://mof.gov.ua/uk/vikonannja-ugodi-pro-asociaciju>

8) <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006L0112&qid=1586344664204%20>



## COOPERATION WITH A VIEW TO THE FURTHER IMPROVEMENT OF ECONOMIC RELATIONS, TRADE, INVESTMENT AND FAIR COMPETITION

### Overview of key Eurointegration commitments

The subsector involves achievement of the following goals:

- enhancing good governance in the field of taxation;
- application of the principles of good governance in the field of taxation, in particular the principles of transparency, exchange of information, and fair tax competition;
- cooperation aimed at improving and developing the tax system and tax agencies of Ukraine, in particular strengthening the collection and control capacity, focusing on VAT refund procedures, ensuring effective tax collection, and strengthening the fight against tax fraud and tax evasion.

### Evaluation of progress in fulfilling commitments

The key commitments in the subsector are:

#### **Commitment 179 / Application of the principles of good governance in the field of taxation, in particular the principles of transparency, exchange of information and fair tax competition**

- Council Directive No. 2011/16/EU of 15.02.2011
- Articles 349 and 350 of the AA

The commitment involves: introduction (according to Articles 349 and 350 of the AA) of the principles of good governance in the national tax legislation, in particular taking into account the requirements of Council Directive No. 2011/16/EU of 15.02.2011 on administrative cooperation in the field of taxation.

Legal approximation on this obligation is "perfect". Almost all the requirements of Articles 349 and 350 of the AA have been transposed into national law and are complied with. Thus, Article 4 "Basic Principles of the Tax Legislation of Ukraine" of the Tax Code of Ukraine stipulates that the tax legislation of Ukraine is based on principles such as: generality of taxation (para. 4.1.1); equality of all taxpayers before the law, prevention of any form of tax discrimination (para. 4.1.2); neutrality of taxation (para. 4.1.8). Part 1 of Article 8 "Principles of State Customs Affairs" of the Customs Code of Ukraine stipulates that underlying principles of the state customs affairs include publicity and transparency.

Implementation is also perfect. Ukraine is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which provides a framework for the exchange of information with other states; there are 76 bilateral international agreements on avoidance of double taxation between Ukraine and other states, based on which tax information can be exchanged.

## **Commitment 180 / Improvement and development of the tax system and tax agencies of Ukraine**

- Council Directive 2006/112/EC of 28 November 2006
- Council Directive (EU) 2016/1164 of 12 July 2016 (ATAD 1-2 )
- Directive (EU) 2015/849 (AMLD 4, 5, 6)
- Articles 351 and 352 of the AA

The commitment involves: comprehensive reform of regulatory authorities, improvement of tax administration procedures in accordance with Articles 351 and 352 of the AA and introduction of tools to counteract the practices of tax base erosion and profit shifting, in particular taking into account the requirements of Council Directive No. 2016/1164/EU of 12.07.2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market and Council Directive 2015/849/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (so-called ATAD 1, 2 and AMLD 4, 5, 6).

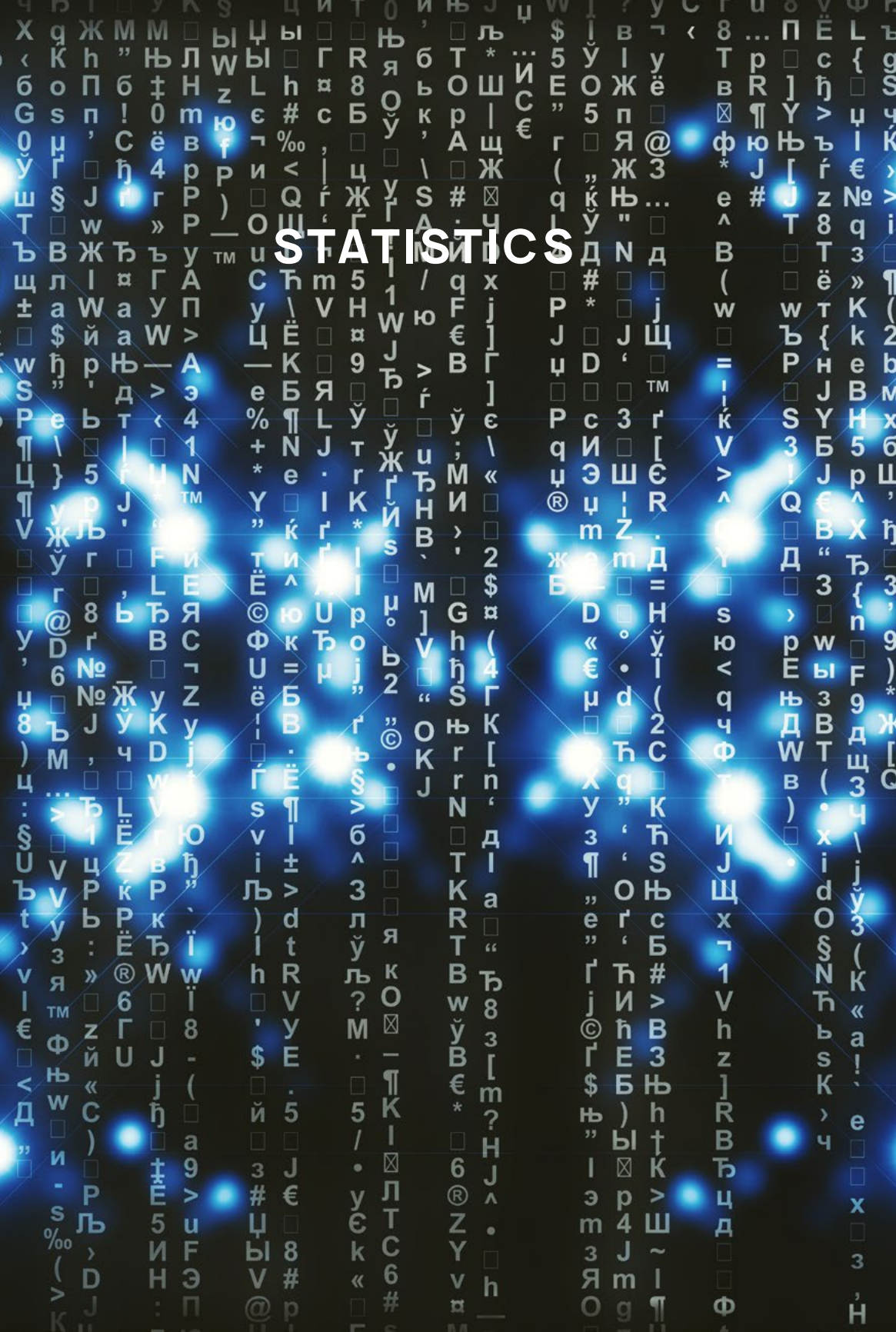
Legal approximation on this obligation is "perfect". Laws of Ukraine No. 71 "On Amendments to the Tax Code of Ukraine and Certain Laws of Ukraine (with regard to Tax Reform)" of December 28, 2014, No. 643-VIII "On Amendments to the Tax Code of Ukraine to Improve the Administration of Value Added Tax" of July 16, 2015, and No. 1797-VIII "On Amendments to the Tax Code of Ukraine to Improve the Investment Climate in Ukraine" of 21.12.2016 were adopted and introduced a system of electronic VAT administration and a single Register of Applications for Refund from the State Budget (in chronological order, on first-come-first-served basis), which made the refund process more transparent and efficient and helped reduce budget tax arrears.

Implementation is "early". In addition, in 2017, in accordance with its obligations, in particular under Article 352 of the Association Agreement, the government approved CMU Order No. 570-p "On the Strategy to Combat Illicit Production and Trafficking of Tobacco Products until 2021", which aims to eliminate illegal trade in cigarettes and other tobacco products, their illegal production and counterfeiting.

Tax and customs systems continue to undergo reform. In 2019, the State Fiscal Service of Ukraine was divided into two independent bodies: the State Tax Service and the State Customs Service. The CMU adopted Resolution No. 227 "On Approval of the Regulations on the State Tax Service of Ukraine and the State Customs Service of Ukraine" of March 6, 2019. Action Plans concerning areas for reforming the system of bodies implementing state tax and customs policies (CMU Order No. 542-p of 05.07.2019) were adopted. Law of Ukraine No. 440-IX of 14.01.2020 "On Amendments to the Customs Code of Ukraine and Certain Other Legislative Acts of Ukraine in Connection with Administrative Reform" was adopted, amending a number of legislative acts in order to improve the governance structure in the field of state customs and tax policy. On December 18, 2019, the Parliament adopted at first reading the government draft law (No. 2419 of November 11, 2019) on amendments to the Tax Code of Ukraine to improve the governance structure in the field of state tax and customs policies.

Ukraine is working to join the international initiative to combat tax evasion – it adopted Law of Ukraine No. 2692-VIII "On Ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting" of 28.02.2019. Certain instruments provided for in the Plan for Combating Base Erosion and Profit Shifting, the so-called BEPS Action Plan (in the EU acquis base erosion and profit shifting are regulated, inter alia, by Council Directive No. 2016/1164/EU)), to which Ukraine acceded on 01.01.2017, were implemented in the national tax legislation by Law No. 466-IX "On Amendments to the Tax Code of Ukraine to Improve Tax Administration, Eliminate Technical and Logical Inconsistencies in Tax Legislation" of 16.01.2020; the document came into force on 23.05.2020, but some of its important elements are to come into force on 01.01.2021. That is, as of today processes of enhancement and development of the tax system and tax authorities of Ukraine continue and generally meet the requirements of EU acquis and the AA.

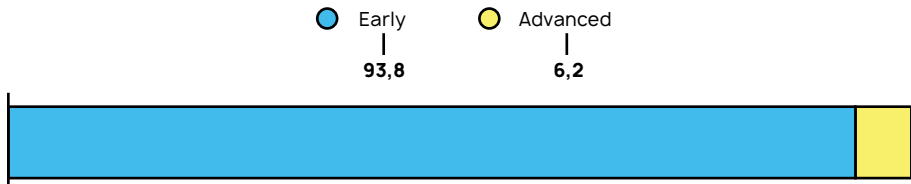
# STATISTICS



# STATISTICS

Expert: **Valeriy Kolomiets**

## Implementation progress for the sector:



## Overview of key Eurointegration commitments

A modern and internationally comparable statistical system is indispensable for informed policy-making, for the work of the business sector and civil society. All post-Soviet states faced an equal challenge to radically reform their statistical systems, in particular by moving away from systems that essentially serve the needs of the state to systems that serve the private sector and society at large.

The commitments set forth in the Association Agreement, including Art. 355 of the Agreement, provide for the implementation of the European Statistics Code of Practice<sup>1</sup> and the Statistical Requirements Compendium<sup>2</sup>, which are updated annually and aim to bring the national statistical system of Ukraine in line with the EU statistical system.

Implementation of the EU acquis in the field of statistics in Ukrainian legislation would make it possible to improve the quality of governance and functioning of the area, the quality of statistical products, and the compliance of such products with European standards.

Evaluation of progress in fulfilling commitments

### **Commitment 181 / Implementation of the principles of the European Statistics Code of Practice and the EU acquis in the field of statistics, as specified in the Statistical Requirements Compendium.**

- Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009
- European statistics Code of Practice

1) The European Statistics Code of Practice is described as an integral part of European Statistics (Articles 1, 2, 11 of the Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009): <https://ec.europa.eu/eurostat/documents/4031688/8971242/KS-02-18-142-EN-N.pdf/e7f85f07-91db-4312-8118-f729c75878c7>

2) Which serves as Annex XXIX to the Association Agreement, <https://ec.europa.eu/eurostat/documents/3859598/10276257/KS-GQ-19-012-EN-N.pdf/f7c1b8dd-7246-01a3-dcec-328d2f38acd9>.

- Quality Assurance Framework of the European Statistical System (ESS QAF)
- Commission Regulation (EU) No 557/2013 of 17 June 2013
- 2012/504/EU: Commission Decision of 17 September 2012 on Eurostat

Legal approximation and implementation of this commitment is early.

The commitment involves implementation of the principles and provisions of the European Statistics Code of Practice, as well as the EU acquis in the field of statistics, as specified in the Statistical Requirements Compendium (2019 edition), including the following clusters:

## Cluster 1

### 2.1. Principle 1 “Professional Independence” of the European Statistics Code of Practice.

**Para. 1.1. The independence of the National Statistical Institutes and Eurostat from political and other external interference in developing, producing and disseminating statistics is specified in law and assured for other statistical authorities.**

Art. 7 (1) Commission Decision (2012/504/EU) of 17 September 2012 clearly states that the Director-General of Eurostat shall act in an independent manner; he or she shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State, or from any other institution, body, office or entity. Whereas, paragraph 1 of the “Regulation on the State Statistics Service of Ukraine” (approved by CMU Resolution No. 481 of September 23, 2014, hereinafter – the Regulation) stipulates that the activities of the State Statistics Service shall be directed and coordinated by the Cabinet of Ministers of Ukraine.

It should be noted that Art. 7 (1-4) of Chapter II “Statistical Governance” of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009 regulates the establishment and functioning of the European Statistical System Committee. The relevant Ukrainian legislation contains provisions concerning a similar Statistical System Committee and its functioning.

## Cluster 2

### 2.2. Principle 1 “Professional Independence” of the European Statistics Code of Practice.

**Para. 1.5. “The statistical work programmes are published and periodic reports describe progress made.”**

According to Para. 5 of Art.13 of Regulation (EC) No. 223/2009, for each European statistical programme, the Commission shall present an intermediate progress report and a final evaluation report and shall submit them to the European Parliament and to the Council. According to Para. 1 of Art.13 of Regulation (EC) No. 223/2009, its

impact and cost effectiveness shall be assessed, involving independent experts.

The Law of Ukraine "On State Statistics" does not contain any provisions on:

- the need to prepare and submit an intermediate progress report and a final evaluation report on the implementation of a long-term programme for the development of state statistics,
- the need to submit such reports to parliament,
- the contribution of independent experts to the assessment of the impact and cost efficiency of the long-term programme for the development of state statistics.

Purpose of the European Statistical Programme.

According to Art.13 of Regulation (EC) No. 223/2009, the European Statistical Programme shall provide the framework for the development, production and dissemination of European statistics, and define

- the main fields and the objectives of the actions envisaged for a period corresponding to the multiannual financial plan,
- priorities for information needs for Community activities.

Purpose of the Long-Term Programme for Development of State Statistics

According to Art. 15 of the Law of Ukraine "On State Statistics", the long-term programme for development of state statistics is developed in order to:

- establish high-potential tasks and strategic areas of development of the state statistics,
- ensure constant improvement of the quality of statistical information.

There is a clear discrepancy between the content of Art. 15 of the Law of Ukraine "On State Statistics" and Art. 13 of Regulation (EC) No. 223/2009, in particular concerning priorities associated with information needs for statistical activities.

### **Cluster 3**

#### **2.3. Principle 4 "Commitment to Quality" of the European Statistics Code of Practice.**

**Para. 4.1. Quality policy is defined and made available to the public. An organisational structure and tools are in place to deal with quality management.**

The Law of Ukraine "On State Statistics" does not contain any specific sections and / or individual articles on statistics quality.

According to the "Regulation on the State Statistics Service of Ukraine", the State



Statistics Service in accordance with its tasks (including para. 7), shall ensure that statistical information should meet quality criteria and prepares reports for users on the quality of statistical data.

However, as regards the term "quality criteria", para. 4.7 of the above Regulation can be considered (due to the ambiguity of the term used) as one that creates grounds for ambiguity of its (sub-paragraph) interpretation and implementation.

Regarding the promulgation of the relevant orders of the State Statistics Committee (context of para. 4.1. of the European Statistics Code regarding "Quality policy is... made available to the public"): the website of the State Statistics Committee has published neither Order No. 27 of the State Statistics Service of Ukraine of February 5, 2014 "On Approval of Recommendations for Preparation and Approval of the Standard Report on Quality of State Statistical Monitoring" (hereinafter – the Order) nor Order No. 353 of the State Statistics Service of Ukraine of December 11, 2015 (hereinafter – Order 1) "On Amendments to the Recommendations for Preparation and Approval of the Standard Report on Quality of State Statistical Monitoring" (hereinafter – the Recommendations).

Regarding the content of the Recommendations, it should be noted that a number of the norms set forth by the Recommendations do not comply with, for example, such an EU document as the European Statistical System (ESS) Handbook for Quality and Metadata Reports, 2014 edition.

For example, Order No. 242 of the State Statistics Committee of 30.08.2017 "On Approval of State Statistical Monitoring Form No. 9 cr (annual) 'Report on the use of Fertilizers and Pesticides'" (Order 2) in terms of content only partially complies with Regulation (EC) No. 1185/2009 of the European Parliament and of the Council of 25 November 2009 concerning statistics on pesticides in terms of ensuring compliance with Principle 4 "Commitment to Quality" of the European Statistical Code.

Order 2 does not comply with Para. 1 of the Quality Policy in the State Statistics Bodies (approved by Order No. 228 of the State Statistics Service of Ukraine of 30.11.2016) in terms of compliance with such quality criteria as comparability, since the statistics obtained in accordance with Order 2 are not comparable, for example, with the statistics obtained in the EU under the above-mentioned Regulation (EC) No. 1185/2009 in terms of the amounts of pesticides placed on the market.

The draft Law of Ukraine "On Amendments to Certain Laws of Ukraine Regulating State Statistical Activities" under registration number 4584 dated 04.05.2016 (withdrawn on 29.08.2019) did not contain any relevant provisions on statistical quality.

## **Cluster 4**

### **2.4. Principle 5 "Statistical Confidentiality" of the European Statistics Code of Practice.**

#### **Para. 5.1. Statistical confidentiality is guaranteed in law.**



Art. 2 ("Statistical Principles") of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009 defines the principle of statistical confidentiality as the protection of data related to single statistical units (including a data provider).

Para. 7 of Art. 3 of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009 defines the term "confidential data", which helps to fully understand the meaning of principle 5 "Statistical confidentiality" established by the European Statistics Code in the context of non-disclosure and protection of information about statistical units.

The relevant Ukrainian legislation fails to implement Art. 2, 3 of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009.

Art.16 of the Law of Ukraine "On State Statistics" refers to the principle of confidentiality of statistical information as one of the underlying principles in the relations of state statistics with respondents, users, including with state bodies, local governments, other legal entities, carrying out activities related to the collection and use of administrative data. However, the Law of Ukraine "On State Statistics" fails to provide a definition of the principle of confidentiality of statistical information. Besides, the relevant Law of Ukraine does not define the term "confidential data".

There is also no definition of the principle of confidentiality of statistical information in the text of the draft Law of Ukraine "On Amendments to Certain Laws of Ukraine Regulating State Statistical Activities" under registration number 4584 dated 04.05.2016 (withdrawn on 29.08.2019).

## Cluster 5

### 2.5. Principle 5 "Statistical Confidentiality" of the European Statistics Code of Practice.

#### P. 5.2. Staff sign legal confidentiality commitments on appointment to ensure statistical confidentiality.

According to Para. 5 of Art.20 of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009, officials and other staff of national statistical authorities shall be subject to compliance with all confidentiality requirements, even after cessation of their functions.

The Quality Assurance Framework of the European Statistical System (ESS QAF) adopted by the European Statistical System Committee contains Indicator 5.2. "Staff sign legal confidentiality commitments on appointment to ensure the confidentiality of statistical information."

Institutional methods: Mandatory confidentiality commitments. Commitments on the compliance with the provisions of statistical confidentiality are in place within the statistical authorities and are signed by all staff in place or on appointment, as well

as by external parties who undertake work on behalf of the statistical authorities. In case of modification, such agreements are updated and signed again by all staff or parties concerned.

According to Part 1 of Art. 23 of the Law of Ukraine "On State Statistics", rules for the protection of statistical information, as well as primary data are determined in accordance with the Law by the central executive body that ensures state policy-making in the field of statistics.

Section II "Basic Concepts and Terms" of the Methodological Guidelines for Ensuring Statistical Confidentiality in State Statistics Bodies (hereinafter – the Methodological Guidelines), approved by Order No. 41 of the State Statistics Service of Ukraine dated 15.02.2017 "On Approval of Methodological Guidelines for Ensuring Statistical Confidentiality in State Statistics Bodies statistics" (hereinafter – the Order) provides the following definition of the term "statistical confidentiality": statistical confidentiality – a set of measures aimed at protecting confidential statistical data.

Para. 4, Part 3, Section V of the Methodological Guidelines stipulates that organizational (procedural) measures for accounting and storage of paper and electronic media containing confidential statistical data are performed in accordance with the current rules of record keeping in state statistics bodies.

Part 1 of Section VI "Rules for handling confidential statistical data in state statistics bodies" reference is made to Art.14, 16, 17, 21, and 22 of the Law; whereas Part 2 of this Section specifies that taking into account the provisions of Art. 23 of the Law, the relevant Rules are defined in a separate document.

## **Cluster 6**

### **2.6. Principle 5 "Statistical Confidentiality" of the European Statistics Code of Practice.**

#### **Para. 5.3. Penalties are prescribed for any wilful breaches of statistical confidentiality.**

According to the Quality Assurance Framework of the European Statistical System (ESS QAF) adopted by the European Statistical System Committee: 5.3. Penalties are prescribed for any wilful breaches of statistical confidentiality.

Institutional methods:

1. Legal provisions. Provisions are in place at the national level on administrative, penal and disciplinary sanctions for violation of statistical confidentiality and data protection.
2. Provisions on sanctions are publicly available. Users of official statistical information are aware of the existing provisions on sanctions for breaches of statistical confidentiality, as such information is public and publicly available.

Art. 4 (2) of Regulation (EU) 557/2013 stipulates that a confidentiality undertaking

covering all researchers of the entity who will have access to the confidential data for scientific purposes and specifying the conditions for access, the obligations of the researchers, the measures for respecting the confidentiality of statistical data and the sanctions in the event of a breach of these obligations shall be signed.

Art.5 (2) of Regulation (EU) 557/2013 requires that any research proposal shall be accompanied by individual confidentiality declarations.

However, the State Statistics Service has not developed or adopted any regulations (such as orders of the State Statistics Service of Ukraine) that, in pursuance of Art. 244-3, 254, and 255 (with regard to violations of the procedure of use of confidential information) of the Code of Ukraine on Administrative Offences, would approve integral components of administrative process such as:

- the form of report on an administrative offence,
- the form of decision on administrative offence cases,
- officials authorised to compile reports on offenses, consider cases and impose administrative penalties.

## Cluster 7

### 2.7. Principle 5 "Statistical Confidentiality" of the European Statistics Code of Practice.

**Para. 5.4. Guidelines and instructions are provided to staff on the protection of statistical confidentiality throughout the statistical processes. The confidentiality policy is made known to the public.**

According to Principle 5 "Statistical Confidentiality" of the European Statistics Code of Practice:

"The privacy of data providers, the confidentiality of the information they provide, its use only for statistical purposes and the security of the data are absolutely guaranteed."

For example, Para. 12.2, section II of the Sample Job Description (approved by the Head of the State Statistics Service of Ukraine) mentions the obligation of the officials of the State Statistics Service of Ukraine to keep personal data of persons revealed in connection with official duties. It should be noted, however, that according to the definition provided in Art. 2 of the Law of Ukraine "On Personal Data Protection": personal data are defined information or a set of data relating to an identified or identifiable individual.

At the same time, according to Art. 4 of the Law of Ukraine "On State Statistics" respondents may include both individuals and legal entities.

## Cluster 8

### 2.8. Principle 5 “Statistical Confidentiality” of the European Statistics Code of Practice.

#### Para. 5.6. Strict protocols apply to external users accessing statistical microdata for research purposes.

According to the Quality Assurance Framework of the European Statistical System (ESS QAF) adopted by the European Statistical System Committee, Indicator 5.6: “Strict protocols apply to external users accessing statistical microdata for research purposes.”

Institutional methods:

##### 1. Conditions of access to microdata for scientific purposes.

Clear conditions for granting researchers access to microdata for scientific purposes are stated in the statistical law and/or other relevant legislation. These conditions are publicly available on the website of the statistical authority.

##### 2. Safeguards for researcher access to microdata for scientific purposes.

The statistical authorities guarantee that all legal, technical and logical safeguards are in place to protect confidential information and to ensure data protection. Users are obliged to sign an agreement on the access and use of microdata.

##### 3. Control over data copying.

The statistical authorities shall take appropriate measures to prevent data from being copied (data illegally copied or not destroyed after use).

Process/output methods:

Monitoring use of microdata. The external use of microdata is regularly monitored in order to identify any circumstance in which data confidentiality might be breached or in which data protection might be compromised. Procedures are in place to ensure immediate corrective action.

In pursuance of Art. 23, Regulation (EC) No. 223/2009 of the European Parliament and of the Council on European Statistics on access to confidential data for scientific purposes, Commission Regulation (EU) No. 557/2013 of 17 June 2013 was adopted repealing Commission Regulation (EC) No. 831/2002.

In particular, Art. 9 of Commission Regulation (EU) No. 557/2013 sets forth organizational matters concerning the physical and logical protection of confidential data and the tasks of the Commission (Eurostat) with regard to work with research organizations and accredited entities.

Meanwhile, the Law of Ukraine "On State Statistics" (hereinafter – the Law) does not contain norms that would correspond to:

- Para. 5.6 of the European Statistics Code,
- Method of the Quality Assurance Framework of the European Statistical System as in Para. 5.6.,
- Art. 23 of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009,
- Para. 1, 3, and 9 of Commission Regulation (EU) No. 557/2013 of 17 June 2013.

The draft Law of Ukraine "On Amendments to Certain Laws of Ukraine Regulating State Statistical Activities" under registration number No. 4584 dated 04.05.2016 (withdrawn on 29.08.2019) also does not contain any regulations that would correspond to the above-mentioned provisions of European legislation in the field of statistics.

Section VII "Provision of access to microdata for research purposes" of Methodological Guidelines for Ensuring Statistical Confidentiality in State Statistics Bodies (hereinafter – the Methodological Guidelines), approved by Order No. 41 of the State Statistics Service of Ukraine dated 15.02.2017 "On Approval of Methodological Guidelines for Ensuring Statistical Confidentiality in State Statistics Bodies statistics" (hereinafter – the Order) specifies that access to microdata shall be organised and provided taking into account the current legislation of Ukraine, Regulation (EC) No. 223/2009 of 11.03.2009 and Commission Regulation (EU) No. 557/2013 of 17 June 2013. The Methodological Regulation only stipulates that the general rules and conditions under which access to microdata may be granted for research purposes are defined shall be set forth in a separate document.

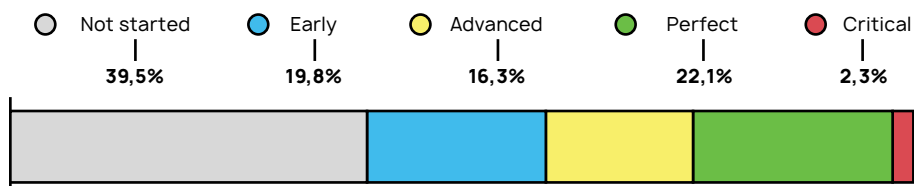
# ENVIRONMENTAL PROTECTION



# ENVIRONMENTAL PROTECTION

Expert: **Andriy Andrusevych**

**Implementation progress for the sector:**



## ENVIRONMENTAL MANAGEMENT AND INTEGRATION OF ENVIRONMENT INTO OTHER POLICY AREAS

### Overview of key Eurointegration commitments

This sub-sector involves implementation of four "horizontal" directives: on environmental impact assessment, on strategic environmental assessment, on public participation and on access to environmental information.

This sub-sector aims to introduce European environmental assessment mechanisms (EIA and SEA) in Ukraine, access to environmental information and public participation in decision-making.

No full cost-benefit assessment was performed. According to some estimates, the one-time administrative costs associated with the approximation amount to about UAH 1.7 million, whereas technical costs are UAH 5 million. It is obvious that in addition to such costs, the EIA procedure has significant financial consequences for businesses, and the SEA - for state and local budgets. The benefits should mainly be assessed in terms of improving the environment, which is the aim of all the directives in this sub-sector.

Evaluation of progress in fulfilling commitments

### Commitment 182 / Introduction of the European Environmental Impact Assessment Mechanism

- Directive 2011/92/EU
- Directive 2003/4/EC

The commitment involves introduction in Ukraine of the European Environmental Impact Assessment Mechanism, which means establishing the legal framework for environmental impact assessment and settling all special issues at the level of by-laws.

The legal approximation is "perfect"<sup>1</sup>. For the purposes of implementation of Directive No 2011/92/EU, Law No 2059-VIII "On Environmental Impact Assessment" of 23.05.2017 was adopted. To ensure the implementation of the Law "On Environmental Impact Assessment", a number of bylaws were adopted:

- The procedure for the transfer of documentation to provide an opinion on the environmental impact assessment and the financing of the environmental impact assessment,
- The procedure for maintaining the Unified Register for Environmental Impact Assessment (CMU Resolution No 1026 of 13.12.2017),
- Resolution of the Cabinet of Ministers No 1010 of 13.12.2017 "On Approval of Criteria for Determining Planned Activities that are not Subject to Environmental Impact Assessment and Criteria for Determining Extensions and Changes in Activities and Objects that are not Subject to Environmental Impact Assessment",
- Resolution of the Cabinet of Ministers of Ukraine No 989 of 13.12.2017 "On Approval of the Procedure for Holding Public Hearings in the Process of Environmental Impact Assessment",
- Guidelines for forestry have been adopted, and a Unified EIA register has been introduced.

The implementation has not been evaluated.

### **Commitment 183 / Introduction of the European Strategic Environmental Assessment Mechanism (SEA)**

- Directive 2001/42/EC
- Directive 2003/35/EC

The commitment involves implementation in Ukraine of the European Strategic Environmental Assessment Mechanism (SEA), which implies establishment of a legal framework for strategic environmental assessment and ensuring compliance with the SEA requirements when developing and adopting national plans and programmes in individual sectors.

There is a critical inconsistency in legal approximation. For the purposes of implementation of the Directive, Law No 2354-VIII "On Strategic Environmental Assessment" of March 20, 2018 was adopted. The notion of "public" grossly violates the requirements of the Directives, as it imposes restrictions concerning the place of registration of individuals and legal entities. The Procedure for Monitoring the Consequences of Implementation of the State Planning Document for the Environment (Including Public Health) has not been adopted (monitoring is a

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<sup>1</sup>) In some respects, the adopted legislation does not meet the requirements of the Directive, is imperfect in terms of legislative technique and shows signs of "gilding" of the Directive.



mandatory stage of the SEA).

The implementation is "advanced". Unfortunately, there is no consistent information on the status of compliance with the Law "On Strategic Environmental Assessment" in Ukraine. The SEA is carried out by a huge number of entities in practice, and no information is collected about it. There are obvious examples of adopting state planning documents without conducting the SEA.

### **Commitment 184 / Ensuring proper access to environmental information**

- Directive 2003/4/EC

The commitment involves ensuring proper access to environmental information, which implies establishment of legal requirements for the provision and dissemination of environmental information.

The legal approximation is "perfect". In our opinion, the legislation of Ukraine fully meets the requirements of the Directive. Access to environmental information is mainly provided in accordance with the Law of Ukraine "On Access to Public Information" of 13.01.2011.

The implementation is "perfect". In practice, environmental information is collected and periodically disseminated, there is a tendency towards an increase in the amount of information available in electronic form. This is due to the requirements of environmental legislation (including the preparation and dissemination of reports on the state of the environment and introduction of environmental passports for the oblasts (regions)), as well as dissemination of other special types of information (including legislation, monitoring data, etc.).

## **AIR QUALITY**

Overview of key Eurointegration commitments

Ukraine's commitments within this sub-sector aim to introduce an air quality management mechanism in national legislation, including monitoring, setting special requirements for fuel quality, requirements for the content of volatile organic compounds in varnishes and paints and during the storage of petroleum products.

No comprehensive cost-benefit assessment was performed. The benefits involve lessening of the negative anthropogenic pressure on the environment, including benefits related to public health. According to the SES, modernisation of the air monitoring system alone requires about UAH 10 billion.

Evaluation of progress in fulfilling commitments

### **Commitment 185 / Ensuring control over emissions of volatile organic compounds (VOCs) in storage facilities and during transportation of petroleum products**

- Directive 94/63/EC

The commitment involves ensuring control over emissions of volatile organic compounds (VOCs) in storage facilities and during transportation. This refers to the entire system of storage of fuel petroleum products (except for liquefied petroleum gas), including storage terminals, refuelling trucks, filling stations, etc.

The legal approximation is "early". The transposition requires adoption of a number of national standards and regulations regarding the requirements for all technological stages of fuel storage and transport to avoid air pollution as a result of its evaporation. The process is at an early stage.

The implementation has not started. Its practical implementation involves identification of all stations for storage / loading of petroleum products and introduction of technical measures at such stations to reduce leakage (evaporation) of petroleum.

### **Commitment 186 / Limiting emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products**

- Directive 2004/42/CE

The commitment involves limiting emissions of volatile organic compounds from the use of organic solvents in certain paints and varnishes and vehicle refinishing products by setting requirements for their content in such paints and varnishes and for the labelling of such products.

The legal approximation is "perfect". It was implemented by the adoption of Order No 1394 of the Ministry of Economic Development "On Approval of the Technical Regulation on the Limitation of Emissions of Volatile Organic Compounds from the Use of Organic Solvents in Paints and Varnishes for Buildings and in Repair of Wheeled Vehicles" of 2.10.2018.

The implementation has not been evaluated.

### **Commitment 187 / Reducing the sulphur content of certain liquid fuels**

- Directive 1999/32/EC

The commitment involves reducing the sulphur content of certain liquid fuels.

The legal approximation is "perfect". Sulphur content requirements were established by adopting the Technical Regulation on Requirements for Motor Gasoline, Gas Oil, Marine and Boiler Fuels (CMU Resolution No 927 of August 1, 2013), and from 2018 a ban has been in place on all types of heavy fuel oil, boiler and marine fuels with the sulphur content exceeding 1%.

The implementation is "early". Its practical implementation involves ensuring control over the quality of fuel on the market. Some of the standards required for fuel quality control have been adopted (a total of about 36 standards are required). At the same time, no quality control system (sampling, analysis) has been established yet.

### **Commitment 188 / Establishing requirements for the quality of petrol and diesel fuels**

- Directive 98/70/EC

The commitment involves setting requirements for the quality of petrol and diesel fuels.

The legal approximation is "perfect". Relevant requirements for the quality of diesel fuels were established by the Technical Regulation adopted by CMU Resolution No

927 of August 1, 2013<sup>2</sup>. A ban on the circulation of leaded gasoline was introduced back in 2003 by the relevant Law of Ukraine<sup>3</sup>.

The implementation is "early". The introduction of the fuel quality control system on the market is slow, it is necessary to adopt a number of technical documents to regulate this activity, to appoint institutions in charge of the relevant tasks, etc<sup>4</sup>.

### **Commitment 189 / Establishing air quality standards**

- Directive 2008/50/EC
- Directive 2004/107/EC

The commitment involves establishment of air quality standards, including establishment of thresholds for air pollution levels by certain substances and quality target values.

The legal approximation is "perfect". The thresholds and target values of air quality are set by CMU Resolution No 827 of August 14, 2019.

The implementation has not been evaluated.

### **Commitment 190 / Monitoring ambient air quality**

- Directive 2008/50/EC
- Directive 2004/107/EC

The commitment involves introduction of European air quality monitoring, which includes the nationwide identification of zones and agglomerations by the degree of pollution, operation of air quality monitoring stations, establishment of rules for air quality assessment, and informing the public.

The legal approximation as for the monitoring procedure is "perfect". The procedure for monitoring ambient air quality was established by CMU Resolution No 827 of August 14, 2019. As for the rules of air quality assessment, the legal approximation is "advanced". Some matters were resolved by CMU Resolution No 827 of August 14, 2019. However, air quality assessment requires further development and approval of a number of technical standards and regulations.

Not all tasks have begun to be implemented. The monitoring system is outdated and needs radical modernisation and funding. Public information is not provided due to lack of monitoring.

### **Commitment 191 / Improving ambient air quality**

- Directive 2008/50/EC
- Directive 2004/107/EC
- Directive 2004/42/CE

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2) <https://zakon.rada.gov.ua/laws/show/927-2013-%D0%BF>

3) <https://zakon.rada.gov.ua/laws/show/2786-14>

4) [http://enref.org/wp-content/uploads/2019/08/Monthly\\_June\\_final\\_with\\_benchmarks\\_ua.pdf](http://enref.org/wp-content/uploads/2019/08/Monthly_June_final_with_benchmarks_ua.pdf)

The commitment involves improving ambient air quality, which, in turn, requires development and approval of air quality management plans for zones and agglomerations.

The legal approximation has not been evaluated. Some by-laws may be needed to develop management plans.

The implementation has not started. Plans cannot be developed in the absence of a modern ambient air quality assessment system in agglomerations and zones. The current monitoring system is outdated and needs radical modernisation and funding.

## **WASTE AND RESOURCE MANAGEMENT**

### Overview of key Eurointegration commitments

This sub-sector provides for the implementation in Ukraine of three directives, one of which is a framework directive with a wide scope. Some matters are also regulated by the Industrial Emissions Directive (Directive No 2010/75/EU), which is part of the Industrial Pollution sub-sector.

By fulfilling its commitments within this sub-sector, Ukraine aims at ensuring the functioning of the European model of waste management, including the basis and principles of such management, as well as the management of certain types of waste and operations with handling it.

No comprehensive cost-benefit assessment has been performed. The implementation of this sub-sector requires significant financial investment in the waste management infrastructure. The main benefits include improvement of the environment and public health, reduction of waste generation and increase in the share of recyclable waste.

### Evaluation of progress in fulfilling commitments

#### **Commitment 192 / Implementation of the European principles of waste management**

- Directive 2008/98/EC
- Directive 1999/31/EC
- Directive 2006/21/EC

The commitment involves introduction of the European waste management principles, including adaptation of national legislation to European requirements and introduction of a system of planning in the field of waste management.

The legal approximation is "early". Three draft laws on waste management have been registered with the Verkhovna Rada (No 2207, No 2207-1 and No 2207-2). The line committee recommends sending draft law No 2207-1 for revision to prepare it for first reading again and rejecting the others<sup>5</sup>. Currently, no draft law can ensure compliance with the requirements of the EU Framework Directive, and in some respects, they run contrary to such requirements.

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5) For conclusions of the EU-Ukraine Association Committee and the Main Scientific and Expert Office following the link: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67094](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67094).

The implementation is "advanced". The national waste management strategy and plan have been adopted (CMU orders No 820-p of November 8, 2017 and No 117-p of February 20, 2019, respectively). Work is underway to develop and approve regional plans.

### **Commitment 193 / Ensuring proper household waste management**

- Directive 2008/98/EC
- Directive 1999/31/EC
- Directive 2010/75/EU

The commitment involves ensuring proper household waste management, including creation of a legal framework for household waste management, an effective system of household waste collection and disposal, infrastructure for the recovery of household waste, infrastructure for the disposal of household waste.

The legal approximation is "early". Draft laws were prepared with the support of the EU but were not submitted to the Verkhovna Rada before the adoption of the framework law on waste. No (draft) by-laws were prepared.

The implementation has not started.

### **Commitment 194 / Ensuring proper hazardous waste management**

- Directive 2008/98/EC
- Directive 2010/75/EU

The commitment involves ensuring proper hazardous waste management, including the establishment of a legal framework for hazardous waste management and infrastructure for hazardous waste treatment.

The legal approximation has not started.

The implementation has not started. In practice, the current hazardous waste management system cannot ensure safe handling.

### **Commitment 195 / Ensuring proper industrial waste management**

- Directive 2008/98/EC
- Directive 2010/75/EU

The commitment involves ensuring proper industrial waste management, including the establishment of a legal framework for industrial waste management and infrastructure for industrial waste treatment.

The legal approximation has not started.

The implementation has not started.

### **Commitment 196 / Ensuring proper management of waste from extractive industries**

- Directive 2008/98/EC

- Directive 2010/75/EU
- Directive 2006/21/EC

The commitment involves ensuring proper management of waste from extractive industries, including the establishment of a legal framework for the management of such waste and the infrastructure for its treatment.

The legal approximation has not started.

The implementation has not started.

### **Commitment 197 / Ensuring proper construction waste management**

- Directive 2008/98/EC

The commitment involves ensuring proper construction waste management, including the establishment of a legal framework for the management of such waste and the infrastructure for its treatment.

The legal approximation has not started.

The implementation has not started.

## **WATER QUALITY AND WATER RESOURCE MANAGEMENT, INCLUDING MARINE ENVIRONMENT**

Overview of key Eurointegration commitments

This sub-sector provides for the implementation of the provisions of six EU directives, including the Water Framework Directive, and covers the management of surface water resources, drinking water quality, and the protection of marine waters.

This sub-sector has a number of objectives, including:

- introduction of the basin principle of the management of water resources,
- introduction of a mechanism for assessing and managing flood risks from flooding,
- ensuring protection of the natural environment of the Azov and Black Seas,
- reduction and prevention of groundwater and surface water pollution by nitrates from agricultural sources,
- introduction of a mechanism for municipal wastewater discharge and treatment,
- ensuring the safety and purity of drinking water.

No comprehensive assessment of the expected cost balance has been performed. Implementation of the commitments within this sub-sector requires significant financial investment in the water management infrastructure, including the development of a system of water quality laboratories (first laboratories have already been built), construction and modernisation of urban sewage treatment

plants, etc. The main benefits include improvement of the environment and public health, as well as ensuring the safety of water resources.

Evaluation of progress in fulfilling commitments

### **Commitment 198 / Introduction of the basin principle of water resources management**

- Directive 2000/60/EC

The commitment involves introduction of the basin principle of water resources management, in particular enshrinement in legislation of the basin water resources management system, creation of basin councils, adoption of basin management plans, and introduction of a system for monitoring the condition of water resources.

The legal implementation is "perfect". For the purposes of its implementation, Law No 1641-VIII "On Amendments to Certain Legislative Acts of Ukraine with regard to the Implementation of Integrated Approaches in Water Resources Management Based on the Basin Principle" was adopted on October 4, 2016. A number of important by-laws have been adopted to shift to the basin principle of water resources management and a new way of monitoring of water resources.

The implementation is quite "advanced". As regards creating basin councils, it is perfect. Some plans have been approved, some are being developed. Monitoring has started in some basins, in particular diagnostic one in the Don and Dniester basins. The State Water Resources Agency is carrying out a large-scale modernisation of the laboratory network for proper monitoring of water bodies.

### **Commitment 199 / Introduction of a mechanism for assessment and management of flood risks from flooding**

- Directive 2007/60/EC

The commitment involves introduction of a mechanism for assessing and managing flood risks from flooding. This primarily involves adoption of a legal framework for the assessment and management of flood risks, preparation of maps of flood threats and risks, and introduction of flood risk management plans.

The legal implementation is "perfect" (even though there are some inconsistencies in terms). For the purposes of implementing the Directive, Law No 1641-VIII "On Amendments to Certain Legislative Acts of Ukraine with regard to the Implementation of Integrated Approaches in Water Resources Management Based on the Basin Principle" was adopted on October 4, 2016 (Article 107-1). For the purposes of implementing the Directive, the following regulations have been adopted:

- Order No 30 of the Ministry of Internal Affairs "On Approval of the Methodology of Preliminary Flood Risk Assessment" of 17.01.2018,
- Order No 153 of the Ministry of Internal Affairs "On Approval of the Methodology for Developing Maps of Flood Threats and Risks" of 28.02.2018,
- Resolution No 247 of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Developing Flood Risk Management Plan" of April 4, 2018.

The implementation is mostly "early". According to the government, a preliminary assessment and mapping has been carried out<sup>6</sup>, but there is no information on the development of flood risk management plans.

### **Commitment 200 / Ensuring protection of the natural environment of the Azov and Black Seas**

- Directive 2008/56/EC

The commitment involves ensuring protection of the natural environment of the Azov and Black Seas, which requires adoption of a marine strategy for the Black and Azov Seas to achieve a good ecological status of the seas, implementation of an environmental monitoring programme for the Black and Azov Seas, implementation of action plan(s) to achieve the set environmental objectives for the quality of the environment of these seas.

The legal approximation is "early". So far, only the annotated structure of Ukraine's Marine Strategy has been published<sup>7</sup>.

The implementation has not started. Except some measures taken in the framework of the EMBLAS project to assess the state of the Black Sea waters.

### **Commitment 201 / Reduction and prevention of groundwater and surface water pollution by nitrates from agricultural sources**

- Directive 91/676/EEC

The commitment involves reduction and prevention of groundwater and surface water pollution by nitrates from agricultural sources, which includes a set of tasks:

- adaptation of water legislation to the requirements of the Directive,
- adoption of the necessary legislation to identify sensitive areas, development of action plans for sensitive areas, as well as the Code of Best Agricultural Practices,
- identification of areas vulnerable to the accumulation and leakage of nitrates,
- development and implementation of action plans for areas vulnerable to the accumulation and leakage of nitrates as well as monitoring programmes.

The legal approximation has practically not started. Certain provisions of Directive No 91/676/EEC have been transposed due to the adoption of amendments to the Water Code of Ukraine (in particular amendments to Art. 81) and the new Procedure for State Water Monitoring. Thus, amendments to the Water Code of Ukraine introduced the concept of eutrophication, and prevention of eutrophication and pollution of water bodies with nitrates is included in the set of measures to preserve the water content of rivers and protect them from pollution. As regards other subject matters, some work was carried out with the support of the EU, but no draft acts have been made public.

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6) <http://reforms.in.ua/ua/streams/environment/2018-substream2-55>

7) <https://menr.gov.ua/news/31381.html>



The implementation has not started.

### **Commitment 202 / Introduction of a mechanism for municipal waste-water discharge and treatment**

- Directive 91/271/EEC

The commitment involves introduction of a mechanism for municipal waste-water discharge and treatment, which includes aligning legislation with the requirements of the Directive, assessment of water discharge and urban wastewater treatment, identification of sensitive areas and agglomerations, and carrying out a technical and investment programme to implement urban wastewater treatment requirements.

The legal approximation is "advanced". To implement the Directive, Law No 2047-VIII "On Amendments to the Law of Ukraine 'On Drinking Water and Drinking Water Supply'" of May 18, 2017 was adopted. Ukraine has also adopted:

- Order No 316 of the Ministry of Regional Development "On Approval of the Rules for Accepting Wastewater into Centralised Collecting Systems and the Procedure for Determining the Amount of Payment for Excessive Discharge of Wastewater into Centralised Collecting Systems" of 01.12.2017;
- Order No 6 of the Ministry of Environmental Protection "On Approval of the Procedure for Determining the Population Equivalent of the Residential Settlement and the Criteria for Determining Sensitive and Less Sensitive Areas" of 14.01.2019;
- Order No 341 of the Ministry of Regional Development "On Approval of the Procedure for Reuse of Treated Wastewater and Sludge Subject to Compliance with the Standards of Maximum Permissible Concentrations of Pollutants" of 12.12.2018.

There is no information on practical measures.

### **Commitment 203 / Ensuring the safety and purity of drinking water**

- Directive 98/83/EC

The commitment involves ensuring the safety and purity of drinking water, which includes adaptation of legislation, laying down technical requirements for drinking water, monitoring water quality, and informing consumers.

There is a critical inconsistency in legal approximation. The Directive was implemented through the adoption of Law No 2047-VIII "On Amendments to the Law of Ukraine 'On Drinking Water and Drinking Water Supply'" of May 18, 2017. However, Order No 2675 of the Ministry of Health dated 24.12.2019 postponed the entry into force of certain requirements for drinking water quality until 2022. The current version of the State Sanitary Norms and Rules "Hygienic Requirements for Drinking Water Intended for Human Consumption" with regard to a number of substances (cyanide, antimony, etc.) does not meet the requirements of Annex I to the Directive (parts A and B)<sup>8</sup>. Specifically, there are no requirements for the content of cyanide, and the requirements for the content of antimony are postponed until 2022.

8) As regards cyanide, there are no requirements at all, the requirements for antimony content are postponed until 2022. For details, see the following link to the text of the latest version of the State Sanitary Norms and Rules: <https://zakon.rada.gov.ua/laws/show/z0452-10#Text>.

The implementation is "advanced". The drinking water quality control system in Ukraine already had a high level of compliance with the requirements of the Directive. There is no information about any changes in its practical implementation.

## INDUSTRIAL POLLUTION AND INDUSTRIAL HAZARDS

### Overview of key Eurointegration commitments

This sub-sector includes only two directives, but their implementation is a complex task, which involves establishment of a comprehensive system for prevention and control of pollution from industrial enterprises and control of major-accident hazards involving dangerous substances.

The key tasks within this sub-sector include:

- (a) introducing a new integrated permit system for industrial facilities based on best available techniques (BAT),
- (b) establishing strict control of emissions from large combustion plants (mainly TPPs and CHPs); and
- c) establishing a modern system for monitoring the safety of high-risk enterprises, in particular as regards emergency response.

No expected balance of costs and benefits assessment has been conducted. The costliest task is limiting emissions from large combustion plants (the total amount of investment required is about EUR 6.5 billion<sup>9</sup>, not counting operating costs). The introduction of a new integrated permit system will obviously require modern equipment at enterprises of other industries, which will also require huge amounts of investment. The benefits include improvement of the environment and, consequently, reduction of costs associated with overcoming the effects of pollution, in particular those on health care, increasing the duration of the active period of economic activity, etc.

### Evaluation of progress in fulfilling commitments

#### **Commitment 204 / Introduction of a comprehensive system for prevention and control of pollution from industrial enterprises**

- Directive 2010/75/EU

The commitment involves introduction of a comprehensive system for prevention and control of pollution from industrial enterprises. This commitment includes two complex sets of tasks: (a) to introduce a new integrated pollution permit system and (b) to limit emissions from large combustion plants. Therefore, they should be evaluated separately.

Regarding the integrated permit, the legal implementation is at an early stage. CMU Order No 402-p of May 22, 2019 adopted the Concept of Implementation of the State Policy in the Field of Industrial Pollution. The draft law, developed with the support of GIZ, was submitted by the government under No 3117 but was withdrawn due to the resignation of the government on 04.03.2020. As for the requirements concerning

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<sup>9</sup> <http://irazumkov.org.ua/statti/natsplan-skorochennia-vykydiv-potochnyi-stan-ta-problemy-realizatsii-u-rozrizi-mizhnarodnogo-dosvidu>

emissions from large combustion plants, formally the transposition is "perfect": Order No 62 of the Ministry of Environmental Protection of 16.02.2018 introduced amendments to the Technological Standards of Permissible Emissions of Pollutants from Thermal Power Plants with a Rated Thermal Input Exceeding 50 MW, approved by Order No 541 of the Ministry of Environmental Protection of Ukraine of October 22, 2008.

Practical implementation in the field of integrated permit has not started. The suggested approaches to its implementation do not meet the requirements of the Directive and will not help achieve the main goal: to reduce the negative impact of industrial enterprises on the environment. Thus, it can be concluded from the draft law that the government does not intend to introduce the European BAT, instead it intends to set its own techniques (likely to pose less rigorous environmental requirements for technological processes).

Regarding large combustion plants, the implementation is at an early stage. The National Plan for Reducing Emissions from Large Combustion Plants was approved by CMU Order No 796-p dated November 8, 2017. On July 24, 2019, the Cabinet of Ministers approved amendments to the NPRE, which essentially delayed the implementation of the NPRE measures. CMU Order No 428-p of June 13, 2018 adopted the Action Plan on NPRE Implementation for 2018, but it was not carried out (except for the creation of a working group). There is no government vision concerning NPRE implementation financing.

### **Commitment 205 / Ensuring control of major-accident hazards involving dangerous substances**

- Directive 2012/18/EU

The commitment involves ensuring control of major-accident hazards involving dangerous substances. This commitment is to ensure the implementation of the so-called Seveso-III Directive No 2012/18 / EU.

The legal approximation is "advanced". All in all, the initial level of alignment of national legislation was already quite high. To achieve full compliance, the relevant draft laws were drafted and submitted to the Verkhovna Rada, however they were withdrawn twice due to the election of a new Verkhovna Rada and the resignation of the Government (2020) (the latest of them being draft law of Ukraine No 2562). The draft laws were developed with the support of the OSCE. By-laws are also being drafted with the support of the OSCE (including the draft resolution of the Cabinet of Ministers "On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine on High-Risk Facilities").

The implementation is "advanced". In Ukraine, there is a system of control over high-risk facilities, created taking into account the previous version of the Directive. In practice, such facilities are identified by category and are regularly inspected, while operators have emergency response plans. Its improvement first and foremost requires that a legislative framework be introduced.

## NATURE PROTECTION

### Overview of key Eurointegration commitments

This sub-sector provides for the implementation of two basic EU environmental directives: i.e. the birds and habitats directives. These two directives make up the basis of the entire wildlife protection system in the EU.

Key goals can be described as:

- (a) creation of a system of protected areas based on the principles of NATURA 2000,
- (b) ensuring the protection of flora and fauna species, in particular with regard to restrictions on hunting and trade.

The expected cost-benefit balance in Ukraine has not been assessed. The creation and operation of a system of protected areas will require significant funds. In the EU, the average cost of creating and maintaining a Natura 2000 site was EUR 63.4 / hectare / year, the total cost of complying with the directives on the creation, protection and management of Natura 2000 sites amounts to at least EUR 5.8 billion annually. The total benefits of implementing the Directives far exceed the total costs. The protection of species and habitats contributes to the preservation of nature's ability to provide key ecosystem services (carbon storage, pollination, flood prevention, water quality maintenance), estimated at EUR 200-300 billion per year. Moreover, the implementation of the Directives promotes economic growth at the local level through job creation and tourism (especially in rural areas). The Natura 2000 network generates revenues of around EUR 50-85 billion annually from tourism and recreation. Currently, the network has created about 52 thousand jobs, and its full development will increase this figure to 122 thousand<sup>10</sup>.

### Evaluation of progress in fulfilling commitments

#### **Commitment 206 / Creation of special protected areas for the protection of birds, including migratory species**

- Directive 2009/147/EC

Creation of special protected areas (SPA) for the protection of birds and their habitats.

The legal approximation is "early". The Ministry of Ecology and Natural Resources (with the support of EU projects) has already developed several draft laws for this purpose (the latest of them being the draft law on Emerald Network Objects), none of which has been submitted to the Verkhovna Rada by the Cabinet of Ministers. The development of the Emerald Network envisaged by these draft laws is a flawed way to implement the Directive.

The implementation is very "early". Significant work is currently underway to assess suitable habitats for the purposes of the Emerald Network. This work is scientific and has much in common with the relevant work on the Birds Directive, so its results can be used for the purposes of the Birds Directive.

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<sup>10</sup> Nature Directives Fitness Check: Lessons for Ukraine. – Policy paper. – Resource & Analysis Centre 'Society and Environment'; (2018). Available at: <https://www.rac.org.ua/vydannya/analitichni-dokumenty/nature-directives-fitness-check-lessons-for-ukraine-2018>

### **Commitment 207 / Creation of special protected areas for the protection of species and their habitats**

- Directive 2009/147/EC

The commitment involves creation of special protected areas for the protection of species and their habitats (according to the Habitats Directive).

The legal approximation is "early" and is developing concurrently with the Birds Directive. The Ministry of Ecology and Natural Resources (with the support of EU projects) has already developed several draft laws for this purpose (the latest of them being the draft law on Emerald Network Objects), none of which has been submitted to the Verkhovna Rada by the Cabinet of Ministers. The development of the Emerald Network envisaged by these draft laws is a flawed way to implement the Directive, because it does not lead to the inclusion of such areas in the European network.

The implementation is "early". Significant work is currently underway to assess suitable habitats for the purposes of the Emerald Network. This work is scientific and has much in common with the relevant work on the Birds Directive, so its results can be used for the purposes of the Birds Directive. The assessment of the status of implementation is somewhat higher (compared to the Birds Directive) due to the special provision in Annex XXX to the AA regarding the Emerald Network.

### **Commitment 208 / Introduction of a mechanism for the protection of birds and other species of flora and fauna (hunting, trade, transportation, etc.)**

- Directive 92/43/EEC
- Directive 2009/147/EC

The commitment involves introduction of a mechanism for the protection of birds and other species of flora and fauna (hunting, trade, transportation, etc.), which applies to both directives.

The legal approximation is "advanced", as national legislation requires minimal changes in this area. Some amendments have to be introduced to the Laws "On the Hunting Sector and Hunting", "On Fauna", "On Flora", "On Protection of Animals from Cruelty", "On the Red Book of Ukraine" and the relevant bylaws.

The implementation has not been evaluated.

### **Commitment 209 / Establishment of a system for monitoring the conservation status of habitats and species of flora and fauna**

- Directive 92/43/EEC

The commitment involves creation of a system for monitoring the conservation status of habitats and species of flora and fauna, which applies to both directives.

The legal approximation has not been evaluated.

Currently, no comprehensive monitoring of species of flora and fauna is conducted, which is confirmed by Ukraine's reports on the implementation of the Convention on

Biological Diversity. In practice, monitoring is carried out only for hunting species; as for other species, it is held in the framework of the operation of conservation institutions.

## CLIMATE CHANGE AND PROTECTION OF THE OZONE LAYER

Overview of key Eurointegration commitments

This sub-sector provides for the implementation of one directive and two regulations in the field of reducing emissions of greenhouse gas and ozone-depleting gases.

The key objectives are to establish a system of greenhouse gas emissions trading similar to the corresponding EU system and to improve the regulation of the circulation of ozone-depleting substances and fluorinated greenhouse gases.

The expected cost-benefit balance has not been assessed.

Evaluation of progress in fulfilling commitments

### **Commitment 210 / Establishment of a greenhouse gas emissions trading system**

- Directive 2003/87/EC

The commitment involves creation of a system of greenhouse gas emissions trading, which includes adoption of legislation for the functioning of the greenhouse gas emissions trading system, adoption of a plan for distribution of quotas among plants, introduction of a permit system for greenhouse gas emissions and quotas to be sold nationally between plants in Ukraine, as well as introduction of monitoring, reporting and verification system for greenhouse gas emissions.

In general, the legal approximation is early. On December 12, 2019, Law No 377-IX "On Principles of Monitoring, Reporting and Verification of Greenhouse Gas Emissions" was adopted. At the same time, no drafts to create the emissions system itself were prepared.

The implementation has not been evaluated.

### **Commitment 211 / Improving the regulation of the circulation of ozone-depleting substances and fluorinated greenhouse gases**

- Regulation (EC) No 2037/2000
- Regulation (EC) No 842/2006, repealed by Regulation (EU) No 517/2014

The commitment involves improving the regulation of the circulation of ozone-depleting substances and fluorinated greenhouse gases, which includes adoption of national legislation to regulate the circulation of ozone-depleting substances and fluorinated greenhouse gases, and creation of a system to monitor compliance with the requirements concerning the circulation of ozone-depleting substances and fluorinated greenhouse gases.

The legal approximation is "early". On December 12, 2019, Law No 376-IX "On Regulation of Economic Activity Involving Ozone-Depleting Substances and Fluorinated Greenhouse Gases" was adopted (it entered into force on June 27, 2020). Before it was adopted, at the draft law stage, the Main Legal Department of

the Verkhovna Rada expressed a number of remarks regarding the quality of the draft law, which have not been eliminated. In particular, the adoption of the law was to be preceded by the ratification of the Kigali Amendment to the Montreal Protocol, as the law directly regulates matters subject to international obligations under this amendment (reduction of fluorinated gas consumption, sale of the national quota, etc.). In addition, the law does not ensure consistency in the usage of terms, their meaning, and legal expressions are insufficiently clear and well-specified, in particular, some terms and legal expressions are not defined, some contain concepts that are not used in the draft law.

The implementation is "early". The law came into force in June 2020 and requires adoption of a number of bylaws. There is currently no certification and reporting system for regulated substance operators. There is almost no infrastructure for the disposal of equipment containing regulated substances.

## GENETICALLY MODIFIED ORGANISMS

Overview of key Eurointegration commitments

This sub-sector provides for the implementation of two directives and one regulation in the field of GMO control. In some respects, this sub-sector has been part of Ukraine's commitments under international agreements in this area for many years.

The key task is to improve the biosafety system with regard to the release of genetically modified organisms.

The expected cost-benefit balance has not been assessed.

Evaluation of progress in fulfilling commitments

### **Commitment 212 / Improving the biosafety system with regard to the release of genetically modified organisms**

- Directive 2001/18/EC
- Regulation (EC) 1946/2003
- Directive 2009/41/EC

The commitment involves improving the biosafety system with regard to the release of genetically modified organisms, including improving the system of control over transboundary movements of GMOs.

In general, the legal approximation is at an "advanced" level, as the current legislation was developed when the relevant international obligations were in effect. Although the level of alignment of Ukraine's legislation is quite high, the government has discussed a draft of a new law in this area. It should be noted that in 2019 there were intentions to amend the law, which would result in a gross violation of the requirements of the Regulation and the Cartagena Protocol (on the transboundary movements of GMOs). In Ukraine, there is a State Registry of GMO Sources of Food Products and Feed, Feed Additives and Veterinary Drugs Containing such Organisms or Obtained with Their Use.

The implementation has not been evaluated.



# TRANSPORT

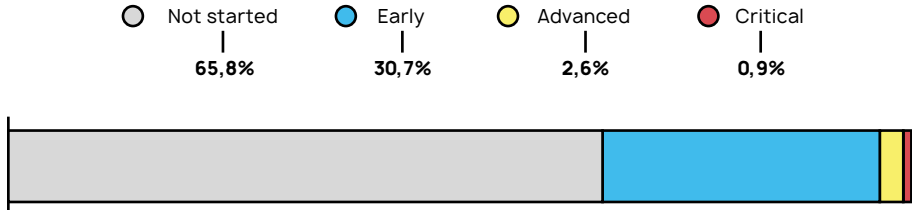




# TRANSPORT

Expert: **Ksenia Smirnova**

## Implementation progress for the sector:



## GENERAL PROVISIONS FOR ALL MODES OF TRANSPORT

### Overview of key Eurointegration commitments

The relevant commitments concern the horizontal provisions of the EU acquis applicable to all modes of transport. The legal approximation in this area focuses on achieving the goal of expanding and strengthening the transport cooperation in order to contribute to the development of sustainable transport systems.

Positive consequences of the implementation of these provisions include development of Ukraine's multimodal transport network connected to the Trans European Transport Network (TEN-T) and improvement of its infrastructure policies in order to better categorise and evaluate infrastructure projects for various modes of transport. These provisions also focus on the safety of the transport of dangerous goods by land. Implementation of the general provisions in the field of transport will also improve the cooperation opportunities aimed at enhancing the movement of passengers and goods, increasing fluidity of transport flows between Ukraine, the EU and third countries in the region, by removing administrative, technical, cross-border and other obstacles, improving transport networks and upgrading the infrastructure of Ukraine.

Evaluation of progress in fulfilling commitments

### **Commitment 213 / Ensuring a European level of safety in the transport of dangerous goods by road, rail and waterways**

- Directive No. 2008/68/EC

The commitment is comprehensive and involves development of a legislative framework and regulatory framework to regulate the transport of dangerous goods by road, rail and waterways.

Legal approximation is early. Its fulfilment involves development, approval and registration with the Ministry of Justice of the following normative legal acts:

- rules for transport of dangerous goods by inland waterways of Ukraine;
- normative legal act on introducing changes to the Safety Rules and the Procedure for Emergency and Remedial Response to Rail Transport Incidents Involving Dangerous Goods;
- procedure for testing and inspection of tanks for the transport of dangerous goods;
- normative legal act on making changes to the Rules of Transport of Bulk Cargoes;
- normative legal act on making changes to the Rules of Transport of Dangerous Goods;
- amending normative-legal acts in the field of special training of employees of entities involved in the transport of dangerous goods by rail and waterways with regard to establishing requirements for persons in charge of safety and other participants in the transport process.

In order to approximate the legislation, relevant norms have been adopted to improve the safety requirements<sup>1</sup> for transport by rail<sup>2</sup> and by inland waterways<sup>3</sup>, as well as for bulk cargo<sup>4</sup>. However, at the legislative level, the commitments can be fulfilled after the adoption of the Law of Ukraine "On Amendments to Certain Laws of Ukraine to Align Them with the European Union Legislation in the Field of Transport of Dangerous Goods" (Reg. No. 1193-1 dated 20.09.2019). These provisions were partially transposed into the legislation of Ukraine by the draft law of Ukraine "On Inland Waterway Transport"<sup>5</sup>, which was adopted as a basis on April 24, 2020. The discussion of this law is currently underway. Specifically, the AMCU provided comments as to the liberalisation of inland waterway transport<sup>6</sup>. In 2017 (that is, even before this draft law), the draft law "On Amendments to Certain Legislative Acts of Ukraine to Align Them with the Legislation of the European Union in the Field of Transport of Dangerous Goods" was developed<sup>7</sup>, however it was defeated. In the framework of Ukraine's accession to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) in 2017, the Order of the Ministry of Infrastructure of Ukraine "On Approval of the Rules for the Carriage of Dangerous Goods by Inland Waterways of Ukraine" was approved<sup>8</sup>.

Practical implementation is underway. It is essential that an appropriate legal framework be adopted.

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1) Amendments to the Rules for the Carriage of Dangerous Goods approved by Order No. 156 of the Ministry of Infrastructure "On Approval of Amendments to Certain Normative Legal Acts of the Ministry of Transport of Ukraine and Ministry of Transport and Communications of Ukraine" dated 25.04.2017, registered with the Ministry of Justice on 17.07.2017 under No. 865/30733.

2) Amendments to the Rules of Safety and Procedure for Emergency and Remedial Response to Rail Transport Incidents Involving Dangerous Goods approved by Order No. 156 of the Ministry of Infrastructure "On Approval of Amendments to Certain Normative Legal Acts of the Ministry of Transport of Ukraine and Ministry of Transport and Communications of Ukraine" dated 25.04.2017, registered with the Ministry of Justice on 17.07.2017 under No. 865/30733.

3) The Rules of Carriage of Dangerous Goods by Inland Waterways of Ukraine were approved by Order No. 126 of the Ministry of Infrastructure dated 04.04.2017, registered with the Ministry of Justice on 28.04.2017 under No. 536/36424; the Procedure for Testing and Inspection of Tanks for the Transport of Dangerous Goods was approved by Order No. 166/550 of the Ministry of Infrastructure and the Ministry of Internal Affairs of Ukraine dated 12.05.2015, registered with the Ministry of Justice on 05.06.2015 under No. 663/27108.

4) Amendments to the Rules for Transport of Bulk Cargo approved by Order No. 156 of the Ministry of Infrastructure "On Approval of Amendments to Certain Normative Legal Acts of the Ministry of Transport of Ukraine and Ministry of Transport and Communications of Ukraine" dated 25.04.2017, registered with the Ministry of Justice on 17.07.2017 under No. 865/30733.

5) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=1182-1-%D0%B4&skl=10](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=1182-1-%D0%B4&skl=10)

6) <https://amcu.gov.ua/news/amku-za-rivni-konkurentni-umovi-na-rinkah-vnutrishnogo-vodnogo-transportu>

7) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59041](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59041)

8) <https://zakon.rada.gov.ua/laws/show/z0556-17>

### **Commitment 214 / Development and approval of a national transport strategy and creation of a national transport model and master plan**

The commitment involves developing a comprehensive approach to strategic national planning.

Legal approximation is early. Its fulfilment requires developing and adopting a transport strategy and action plan to implement the strategy.

In 2018, the Cabinet of Ministers approved the National Transport Strategy of Ukraine 2030, which was developed jointly with the EU<sup>9</sup>. The Strategy was developed jointly with the European Party and conforms to the key provisions of the acquis. Together with the experts of the EU technical assistance project Support to the Implementation of the Association Agreement and of the National Transport Strategy of Ukraine (AASISTS) a draft action plan for 2020-2022 to implement the National Transport Strategy of Ukraine 2030 was developed. Practical implementation is underway.

### **Commitment 215 / Establishment of a mechanism to control the organisation of provision of passenger transport services of general economic interest**

- Regulation (EC) No. 1370/2007

The commitment involves enhancing the powers of the competent authorities in the field of passenger rail and road transport to ensure provision of services of general economic interest; establishing the conditions under which the competent authorities, by applying or concluding obligations to provide services, reimburse public operators for the costs of the services provided.

The approximation envisages improvement of legislative regulation and adoption of bylaws concerning the conditions for provision of services of general economic interest. The list of services of general economic interest (SGEI) adopted in 2018<sup>10</sup> (pursuant to the Law of Ukraine "On the State Aid to Business Entities") is not perfect, and such explicit legislative regulation results in multiple inaccuracies. Instead, to fulfil this commitment, it is necessary to set the criteria for reimbursement for the provision of services of general economic interest in the field of passenger transport. So far, only Interpretations concerning the Application of the Criteria for Reimbursement of SGEI-Related Costs have been adopted<sup>11</sup>, but they concern the field of public assistance in general and are of recommendatory nature.

The practical implementation of this commitment is at an early stage.

### **Commitment 216 / Cooperation in the framework of the Eastern Partnership (EaP) Transport Panel in order to develop the EaP regional transport network connecting with the TEN-T network**

The commitment involves organisational support for the cooperation within the special panel of the Eastern Partnership in order to develop a multimodal transport network connecting with the Trans-European Transport Network.

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9) Order No. 430 of the Cabinet of Ministers of Ukraine dated 30.05.2018.

10) <https://zakon.rada.gov.ua/laws/show/420-2018-%D0%BF>

11) <http://www.amc.gov.ua/amku/doccatalog/document?id=140886&schema=main>

Its fulfilment can be achieved by way of defining, coordinating and implementing joint activities and projects with the EU. In order to ensure the implementation, on July 29, 2019, the OCR Committee and the ERA Agency signed a Memorandum of Understanding for a period of five years until January 1, 2025, with a five-year renewable term. In 2019, the draft law of Ukraine "On Accession to the Agreement on Development of Multimodal Transport (TRACECA)" (Reg. No. 0010 of 21.11.2019) and the draft Law of Ukraine "On Multimodal Transport" (Reg. No. 2685 of 27.12.2019) were developed and submitted to the Verkhovna Rada of Ukraine.

According to government information, the parties cooperate within the framework of the EaP Transport Panel. The Ministry of Infrastructure together with experts of the World Bank and the European Commission prepared proposals for the draft Investment Plan for EaP Transport Infrastructure, which was approved in 2018. The Investment Plan consists of a) projects that are already underway; b) Quick Win projects which can be completed in the medium term (by 2020) and will have a significant effect on the transport sector of Ukraine and help alleviate infrastructure bottlenecks. Within the framework of the Ukraine Indicative TEN-T Investment Action Plan Projects Financing Programme, 39 projects totalling EUR 4,378.9 million have been implemented. Most of these projects are long-term (14 projects, 56% of the cost) with a term until 2030; three more road and two rail and aviation projects totalling € 1.3 (30%) are currently being implemented. 18 short-term projects (14% of the cost of the TEN-T Investment Programme) are to be performed in the near future. The practical implementation is at an early stage.

## ROAD TRANSPORT

### Overview of key Eurointegration commitments

The commitments within the subsector of Road Transport focus on enhancing the safety of freight and passenger transport by road, facilitating modernization and restructuring of road transport and the relevant infrastructure.

In the field of road transport, the key areas of gradual approximation of Ukraine's legislation include:

1. technical conditions, including installation and use of speed limitation devices, setting the maximum permissible weight for national and international transport, and roadworthiness tests;
2. safety conditions, including the issuing of driving licences and transport of dangerous goods;
3. social conditions, including social legislation governing relations in the field of transport, organisation of working hours, and qualification of drivers;
4. tax conditions, including infrastructure user charges for heavy goods vehicles.

The positive consequences of improving Ukraine's legislation under the requirements of the Association Agreement in the field of road transport include: more efficient road accident investigation; enhancing road safety by improving legislation based on EU good practices; reduced risk of corruption due to the use of electronic resources; and improvement of state supervision and control.

### **Commitment 217 / Ensuring installation and use of speed limitation devices for vehicles involved in international freight and passenger transport**

- Directive No. 92/6/EEC

The commitment involves developing legislative and regulatory framework for installation and use of speed limitation devices for motor vehicles involved in international passenger transport.

The provisions related to the commitment are contained in the developed draft laws in the field of road transport. In particular, in February 2020 a relevant draft law was developed, which is currently undergoing discussion, but as of May 14, 2020 it has not been registered with the Verkhovna Rada<sup>12</sup>. Thus, no draft laws have been adopted by the Verkhovna Rada of Ukraine, and no bylaws have been drafted.

Due to the lack of a regulatory framework, no practical implementation of the provisions of European legislation has begun.

### **Commitment 218 / Ensuring regulation of the gradation of the maximum weights and dimensions of motor vehicles**

- Directive No. 96/53/EC

The commitment involves developing a regulatory framework to establish the maximum weights and dimensions of motor vehicles; recording violations involving lack of documents (permits) regarding authorization of the conditions and modes of transport in case of exceeding the weight or dimension restrictions or a document confirming payment for the passage of heavy goods vehicles in an automatic mode.

The legal approximation is advanced. The commitment is fulfilled via the adopted Law of Ukraine (No. 54-IX) "On Amendments to Certain Legislative Acts of Ukraine concerning Certain Matters of Dimension and Weight Control" of September 11, 2019<sup>13</sup>, which partially implements the provisions concerning the liability for infringements in the field of road safety, but this law failed to include a number of provisions of the Directive on the system of standards of weights and dimensions contained in the Annex thereto.

The implementation is partial.

### **Commitment 219 / Improving the vehicle registration mechanism**

- Directive 1999/37/EC, repealed by Directive No. 2014/46/EC

The commitment involves introducing harmonised requirements for the registration of vehicles, which makes it possible to introduce a mutual recognition system.

Legal approximation has not yet begun. The fulfilment can be achieved by way of developing and adopting a normative legal act. Relevant provisions are included in

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12) <https://mtu.gov.ua/projects/262/>

13) <https://zakon.rada.gov.ua/laws/show/54-IX>

the draft Action Plan for 2019-2021 to implement the National Transport Strategy of Ukraine 2030, but no draft normative legal acts have been developed.

Practical implementation has not started.

### **Commitment 220 / Roadworthiness tests for motor vehicles and their trailers**

- Directive No. 2014/45/EU (repealing Directive No. 2009/40/EC)

The commitment involves enshrinement in legislation and development of a regulatory framework to ensure periodic roadworthiness tests for motor vehicles, improvement of roadside inspections of the roadworthiness of commercial vehicles and creation of a database based on the results of tests.

Legal approximation is early. The approximation can be ensured by way of developing and adoption of a draft law on amendments to legislation in the field of road transport in order to align them with the EU acquis. The 2017 draft law on amendments to certain legislative acts of Ukraine with regard to ensuring roadworthiness of motor vehicles was withdrawn and never adopted.

No practical implementation is ensured due to lack of legislative regulation.

### **Commitment 221 / Improving roadside inspection of the roadworthiness of commercial vehicles**

- Directive No. 2014/47/EU

The commitment involves laying down minimum requirements concerning technical roadside inspections of the roadworthiness of commercial vehicles.

Legal approximation has not yet begun. Its fulfilment involves developing and adoption of a legal act laying down the requirements for periodic and roadside inspections to ensure the roadworthiness of motor vehicles. This matter is insufficiently regulated by the legislation of Ukraine<sup>14</sup>, however, it does not take into account all the necessary requirements. In 2016, the Parliamentary Hearings "Current Situation and Prospects of Ensuring Road Safety in Ukraine" were held<sup>15</sup>, but no amendments to normative legal acts have been adopted.

Practical implementation has not started.

### **Commitment 222 / Updating the mechanism for the approval of vehicles, their components and technical units**

- Directive No. 2007/46/EC,
- Regulation (EU) No. 2018/858

The commitment involves introducing an organisational and legal mechanism to ensure harmonised requirements for the approval of vehicles to allow their circulation on the road and mutual recognition of this approval.

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<sup>14</sup>) Procedure for Monitoring the Technical Condition of Wheeled Vehicles during Their Operation (Order No. 534 of the Ministry of Internal Affairs dated October 13, 2008, registered with the Ministry of Justice of Ukraine on November 17, 2008 under No. 1107/15798).

<sup>15</sup>) <https://zakon.rada.gov.ua/laws/show/1091-19>

Legal approximation has not yet begun. The approximation is to be accomplished by developing and adopting a normative legal act. Back in 2015, a draft law was developed to align the legislation of Ukraine in the field of road transport with the acts of the European Union<sup>16</sup>, but it was defeated. No other draft acts have been developed.

Practical implementation has not started.

### **Commitment 223 / Improving legislation with regard to reducing noise pollution by motor vehicles**

- Regulation (EU) No. 540/2014

The commitment involves introducing administrative and technical requirements for reducing the sound level of vehicles and for replacement of silencing systems and their components with a view to facilitating their registration, sale, and entry into service.

Legal approximation has not yet begun. The fulfilment is to be ensured by developing and adopting a normative legal act. No draft normative legal acts have been developed yet.

Practical implementation has not started.

### **Commitment 224 / Introduction of uniform formats of driving licences, conditions for issuing licences and recognising fit for driving**

- Directive No. 2006/126/EC (consolidated version of Directive No. 91/439 / EEC)

The commitment involves developing legislative regulation of the categories of driving licences, increasing the level of protection against falsification, and development of bylaws concerning the conditions of issuing such licences and recognition of persons fit to drive.

Legal approximation is early. No legislative framework for such regulation has been developed. Only some resolutions of the Cabinet of Ministers were adopted regarding changes to the forms of national and international driving licences and documents required for vehicle registration<sup>17</sup> and introduction of electronic driving licences and electronic vehicle registration certificates<sup>18</sup>. The lion's share of the provisions of the Directive has not been transposed into Ukrainian law. A draft of amendments to the regulatory framework to introduce European requirements for physical and mental fitness to drive vehicles was developed, but the act has never been adopted.

The practical implementation of the provisions of the Directive is at an early stage or has not started. Partial implementation has been attained only in areas such as forms of a uniform standard driving licence that meets European requirements and increased counter-falsification protection. However, there are still gaps in implementation regarding: aligning the minimum age requirements for issuing a

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16) <https://mtu.gov.ua/news/448.html>

17) <https://zakon.rada.gov.ua/laws/show/47-92-%D0%BF>

18) <https://zakon.rada.gov.ua/laws/show/956-2019-%D0%BF#n2>

driving licence for certain categories of vehicles, aligning the regulatory framework in place in the field of traffic organisation, training drivers and taking exams, issuing driving licences, and recognising fit to drive vehicles in accordance with the provisions of EU law, where transposition has not even begun.

### **Commitment 225 / Improving the regulatory framework for public control in road transport and harmonising social legislation in the field of road transport**

- Regulation No. 561/2006;
- Directive No. 2002/15/EC

The commitment involves developing normative legal acts and/or amending the existing ones with regard to the regulation of state control over road transport. This commitment is comprehensive and includes:

- enshrinement in legislation of state control over road transport with regard to information exchange, control, and imposition of sanctions;
- enshrinement in legislation of the introduction of recording equipment (tachographs) in road transport;
- introduction of rules of compliance with working time requirements for persons performing mobile road transport activities;

Legal approximation is early. Draft laws to amend the legislation in the field of road transport with regard to the registration of drivers' working hours, use of tachographs, determining the extent and degree of liability for violations, imposition of sanctions on drivers, and reporting have been developed but have not been adopted. Back in 2013, the Procedure for Maintaining the List of Economic Operators Involved in Installation and Maintenance of Recording Devices (Tachographs) was adopted<sup>19</sup>, however, there is no legislative regulation of this matter. A positive aspect of the practical implementation is the adopted resolution of the Cabinet of Ministers of 15.01.2020 that introduces criteria for assessing the degree of risk associated with the economic activity in the field of road transport and determines the frequency of planned measures of state supervision (control) by the State Service for Transport Safety<sup>20</sup>.

It is safe to say that the developed draft legislation needs to be improved and refined, hence we can conclude that the practical implementation of the provisions of EU law is at an early stage or has not started. The implementation deadlines for international transport expire in 2020, whereas for national transport the deadlines for implementation expire in 2022. The only area where progress is observed is the assessment of the safety of economic activity in the field of road transport.

### **Commitment 226 / Ensuring the installation and operation of tachographs in road transport**

- Regulation No. 3821/85;
- Directive No. 2006/22 / EC

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19) <https://zakon.rada.gov.ua/laws/show/z0759-13>

20) <https://zakon.rada.gov.ua/laws/show/7-2020-%D0%BF>



The commitment involves implementation of a set of practical as well as organisational and methodological measures regarding compliance with the rules of use of tachographs in road transport. Inter alia, it requires developing legal regulation of actual service stations for the authorised installation of tachographs and other organisational measures.

Legal approximation has not yet begun. As of April 2020, no normative legal act concerning tachographs in road transport has been developed.

No practical implementation is carried out.

### **Commitment 227 / Introduction of licencing requirements in the field of international and national road transport**

- Regulation No. 1071/2009

The commitment involves introduction of European requirements to be complied with to pursue the occupation of road transport operator while ensuring fair conditions of competition due to the uniform application of common rules on admission to the occupation of road haulage operator or road passenger transport operator, creation of new measures to influence transport operators and regulations governing all aspects of their activities with regard to administrative offences associated with national and international transport haulage or passenger operations. By fulfilling this commitment, it is possible to liberalise road transport and ensure admission of transport operators to the EU market.

Legal approximation is early. The fulfilment of the commitment involves a set of actions to amend the legislation and by-laws that regulate the licencing nature of the economic activity. A number of draft acts have been prepared: a draft law on access to the road transport market in order to align it with the acts of the European Union; draft law on ensuring provision of socially significant services; draft licencing conditions; and the procedure for issuing ECMT multilateral quota permits. In addition, the draft law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine concerning Regulation of the Market of Road Transport Services in Ukraine in order to Align Them with the Acts of the European Union" was developed, which provides for a comprehensive approximation concerning a number of obligations. This draft law has not been adopted. No draft laws on amendments to other laws or bylaws have been developed. In April 2020, a draft law on amendments to the Law of Ukraine "On Road Transport" as regards organisation of passenger transport by road was submitted for public discussion<sup>21</sup>; it is partially aimed at fulfilling this commitment, but it has not been registered with the Verkhovna Rada.

Practical implementation is at an early stage or has not started.

### **Commitment 228 / Creation of a national unified electronic register of road transport operators**

- Regulations No. 1071/2009

The commitment involves creation of a regulatory environment to ensure the maintenance of a national unified electronic register of road transport operators.

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21) <https://mtu.gov.ua/projects/265/>

Legal approximation is early. Fulfilment of this commitment implies establishment of the legal requirements for maintaining such a register, which will lead to symmetrical regulatory approximation to gain access to transport operations in the EU Member States. In order to fulfil this commitment, at the end of 2019, an Internet portal was launched, which brought together the electronic services in all areas of the transport industry<sup>22</sup>.

The development of the regulatory framework continues. Therefore, practical implementation is at an early stage.

### **Commitment 229 / Introducing a system to ensure the required level of professional competence of international road transport managers**

- Regulation No. 1071/2009

The commitment involves introduction of legal regulation of matters associated with the transport manager as a person responsible for managing the transport activities of road transport undertakings, ensuring the work of organisational and legal mechanisms for issuing certificates of professional competence to transport managers, and creating a mechanism to prove their requisite good repute and professional competence, as well as legal responsibility mechanisms.

Legal approximation is early. Fulfilment of this commitment involves developing and approving a legal framework to introduce the institution of transport managers, develop a training programme, and ensure organisational and methodological support of this process.

There is no practical implementation of this commitment. The draft law on amendments to certain legislative acts of Ukraine in the field of road transport has not been adopted, no bylaws are being developed.

### **Commitment 230 / Amendments to the legislation of Ukraine regarding organisation of the working time of persons performing mobile international road transport activities (drivers)**

- Directive No. 2002/15/EC

The commitment involves introduction of social working conditions for drivers. At the same time, this commitment is closely related to the requirement to use recording equipment (tachographs) in road transport in order to check the duration of driving and rest periods for drivers. Such provisions are aimed at countering fatigue in the workplace; improving road safety; setting equal driving periods; ensuring fair competition; regulation of drivers' activity; and ensuring social protection for drivers.

Legal approximation has not yet begun. This commitment is to be transposed into Ukrainian legislation by developing and adopting amendments to the legislative framework of Ukraine, including development and adoption of a normative legal act on amendments to the Regulation on Working Hours and Rest Periods of Drivers of Motor Vehicles. The draft law of Ukraine developed in 2016 was aimed at implementing the main provisions of EU acts (in particular, 14 acts) as well as to improve the social protection of drivers. However, this draft law has not been adopted. In addition,

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22) <https://e-transport.gov.ua/>

no amendments whatsoever to the above Regulation on Working Hours have been developed.

The practical implementation of this commitment is at an early stage.

### **Commitment 231 / Introduction of a system for training and certification of professional competence of drivers of road vehicles**

- Directive No. 2003/59/EC

The commitment involves implementation of European requirements for the periodic certification of the professional competence of drivers involved in the carriage of goods or passengers. This commitment is comprehensive and includes conditions for driver qualification for both international and national road transport.

Legal approximation is early. Its fulfilment requires developing relevant draft laws to introduce requirements for the initial qualification and periodic training of drivers, as well as development of an organisational and legal set of measures to ensure such qualification and training. The developed draft laws on amendments to the Law of Ukraine "On Road Transport" have not been adopted, the process of their discussion and improvement is underway. No bylaws are being developed. The Ministry of Infrastructure of Ukraine has prepared only explanatory materials<sup>23</sup>.

Practical implementation is at an early stage.

### **Commitment 232 / Introduction of tolls for heavy goods vehicles on public roads**

- Directive No. 99/62/EC

The commitment involves introduction of tolls for the use of public roads for heavy goods vehicles and development of a control mechanism for heavy goods vehicles. However, this commitment will take effect after Ukraine adopts a decision to introduce charges for the use of infrastructure.

Legal approximation has not yet begun. Fulfilment of this commitment implies taking a legislative set of actions: enshrinement in legislation, amending the State Budget of Ukraine, development and adoption of a methodology for calculating tolls for heavy goods vehicles and a mechanism for monitoring and imposing liability for violations of the established rules. The developed draft laws in the field of road transport do not contain provisions to implement this commitment.

As of April 2020, the decision to impose charges for the use of infrastructure, including introduction of tolls for the use of public roads, was not adopted. Practical implementation has not started.

### **Commitment 233 / Development of a Strategy and Programme to Improve Road Safety**

- Directive No. 99/62/EC

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23) <http://mtu.gov.ua/reforms/wp-content/uploads/Pidtverdzhennya-prof.-kompetencij---vodii-v.pdf>

The commitment involves implementation of planned preventive measures to improve road safety.

Legal approximation is advanced. Its fulfilment requires development and approval of a strategy to improve road safety; development and approval of a programme to increase road safety. The strategy to improve road safety in Ukraine for the period up to 2020 was approved by Order No. 481 of the Cabinet of Ministers of Ukraine dated 14.06.2017. The state programme to improve the road safety in Ukraine for the period up to 2020 was approved by Resolution No. 435 of the Cabinet of Ministers of Ukraine dated April 25, 2018.

The practical implementation continues. The development and adoption of documents for the period after 2020 continues, but so far no acts have not been developed or adopted.

## RAIL TRANSPORT

### Overview of key Eurointegration commitments

The commitments within the Rail Transport subsector focus on a set of measures concerning the conditions of liberalisation of the rail transport market and development of a relevant regulatory framework, elimination of artificial dumping in state regulation of rail transport, introduction of tariff regulation transparency, establishment of new technical standards for the functioning of railway. The Association Agreement specifies a general period for implementation of the provisions relating to rail transport – i.e. within 8 years from the date of entry into force of the Agreement.

By fulfilling these commitments, it will be possible to form a free market of rail transport and reduce the unprofitability of passenger rail transport, which is currently regulated by the government; as well as to create conditions of competition on the rail transport market by reforming the institutional structure and separating the performance of rail transport from the management of railway infrastructure, which tends to lead to improved conditions of rail transport.

### Evaluation of progress in fulfilling commitments

#### **Commitment 234 / Cooperation with the European Union Agency for Railways (ERA) on railway interoperability**

The commitment involves working with the European Union Agency for Railways (ERA) to set up a 1520/1524 mm track gauge to facilitate the deployment of the European Railway Traffic Management System (ERTMS). This will provide an opportunity to open the railway market with the countries of the European Neighbourhood Policy (ENP).

Legal approximation is early. Fulfilment of the commitment involves close cooperation between Ukraine and the European Union Agency for Railways (ERA).

According to the Ministry of Infrastructure of Ukraine, there is ongoing cooperation with the European Union Agency for Railways (ERA); a mechanism for providing information and exchanging best practices on railway interoperability has been introduced; and a Contact Group has been set up to include 1520 track gauges in the EU Technical Specifications for Interoperability. Practical implementation is underway.

## **Commitment 235 / Formation of a new model of the rail transport market**

- Council Directive No. 91/440/EEC

The commitment involves implementation by Ukraine of the guiding principles of the organisation and functioning of European railway systems. As of today, Directive No. 91/440 has been repealed by Directive 2012/34 of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area.

"Critical inconsistency" is in the regulatory approximation. The commitment involves introduction by Ukraine of an updated legal framework for the principles of rail transport operation. A new version of the Law of Ukraine "On Rail Transport of Ukraine" has been developed. The draft of the new version of the Law of Ukraine "On Rail Transport of Ukraine" was registered with the Verkhovna Rada of Ukraine on September 6, 2019 under No. 1196-1. Its purpose is to improve the market mechanisms of economic operations involving rail transport and build a new structure of relations between those involved in rail transport. The draft law lays down clear and equal rules for all economic activities in the rail transport market. The draft law also establishes the principle of equal access to infrastructure services, which applies to all persons interested in receiving such services. The draft law introduces a new model of the rail transport market, similar to the European railway systems. In connection with the construction of a new structure of relations in rail transport, the draft law sets out the basic requirements, responsibilities and rights of the infrastructure operator, transport operator, owner of access tracks, rules for infrastructure management, basic requirements for railway rolling stock and principles of activity of railway rolling stock operators. According to the expert opinion of the Committee on European Integration, the draft law's purpose "does not contradict the international legal commitments of Ukraine, however, it fails to fully take into account the provisions of Directives No. 2004/49, 91/440, 2008/57, 2007/59, 95/18." It is recommended that these comments should be taken into account when finalizing the draft law.

For practical implementation it is necessary to adopt the appropriate legal framework and a new regulatory framework for the operation of the industry, in particular, it is necessary to adopt rules for access to infrastructure and new market access procedures – i.e. licencing, safety certification, admission of locomotive drivers, etc. The practical implementation is at an early stage, and the existing norms of law are assessed as critically inconsistent.

## **Commitment 236 / Introduction of a mechanism to ensure equal access to railway infrastructure**

- Directive No. 2001/14/EC

The commitment involves establishment of a regulatory body in the field of rail transport tasked with ensuring fair and non-discriminatory conditions for access to the railway network and services.

Legal approximation has not yet begun. Fulfilment of the commitment requires a set of actions to reform the organisational mechanism of railway sector management. It is envisaged that an independent regulatory body should be established to ensure competitive conditions for access to the rail market and to guarantee non-discriminatory market access. Fulfilment of this commitment requires legislative

changes, introduction of these provisions into the Law "On Rail Transport", and establishment of the relevant regulatory body by the decision of the Cabinet of Ministers.

Practical implementation is characterized by inconsistency and lack of developed draft laws.

### **Commitment 237 / Restructuring of PJSC Ukrzaliznytsia**

- Council Directive No. 91/440/EEC

The commitment involves changing the organisational and legal mechanism of rail transport management in accordance with European standards.

Legal approximation is early. From the regulatory point of view, it requires full separation of the operator and management of all structures by separate subgroups. Transposition has not yet been completed. However, branches have been established. However, the Strategy of Development of JSC Ukrzaliznytsia does provide for this.

Carrying out the structural reform of JSC Ukrzaliznytsia (in terms of implementation of EU legislation) involves organisational and financial separation between the infrastructure management operator and the transport operator. This is the key condition for fair access to infrastructure. Besides, the transformation of the state railway company by type of activity will ensure transparency of financial flows within the company and improve the quality of management of each activity. This will allow the Company to prepare for the emergence of private competitors in the railway market. Practical implementation is at an early stage.

### **Commitment 238 / Establishment of an effective system for the levying of charges for the use of rail transport infrastructure**

- Directive No. 2001/14/EC

The commitment implies that the infrastructure management should ensure the application of a charging scheme that facilitates the establishment of equivalent and non-discriminatory charges for different railway undertakings providing services of a similar nature in a similar market area and that the actually levied charges are in line with the rules. It should be noted that the Directive has been repealed by Directive of the European Parliament and of the Council No. 2012/34 of 21.11.2012 establishing a single European railway area.

Legal approximation has not yet begun. Fulfilment of this commitment requires introduction of new legislative regulation by the infrastructure management body. Due to the fact that the infrastructure management body has not been established, there is no legislative regulation.

Practical implementation in Ukraine has not started.

### **Commitment 239 / Establishment of a system for the admission of railway undertakings to the transport market**

- Directive No. 2004/49/EC,
- Council Directive No. 95/18/EC

The commitment involves introduction of a regulatory system for the admission of transport operators to the market, introduction of the responsibility of railway undertakings, and establishment of common principles of railway safety management.

Legal approximation is early. Its fulfilment requires establishing appropriate legal requirements for the admission of economic operators to the transport market, building a new structure of relations between the parties involved in the transport process, and ensuring the level of regulation that contributes to competitive conditions in the rail transport market. To fulfil this commitment, it is necessary to effect de-monopolization of the railway market. In 2019, the Action Plan for Rail Transport Reform was adopted<sup>24</sup>, laying down the stages of reform. This Plan involves carrying out a pilot project for the admission of private locomotives to work on certain routes of public railways.

Practical implementation in Ukraine has not started.

### **Commitment 240 / Introduction of a licencing system for railway undertakings to provide access to infrastructure**

- Directive No. 2004/49/EC,
- Council Directive No. 95/18/EC

The commitment involves transposing the system of licencing conditions for operators to be granted access to the railway infrastructure, setting requirements for railway undertakings in terms of safety, and technical requirements for obtaining licences (requirements such as creditworthiness, financial reliability, professional potential, civil liability insurance). It also involves establishment of a body responsible for licencing.

Legal approximation has not yet begun. Fulfilment of the commitment involves adoption of relevant legislation, in particular the Law of Ukraine "On Rail Transport" and introduction of an organisational and legal mechanism represented by a relevant body, specifically the body responsible for licencing to grant access to infrastructure. The draft law of Ukraine "On Rail Transport of Ukraine" (Reg. No. 1196-1 of September 6, 2019) has been developed and registered, it establishes the principle of equal access to infrastructure services, which applies to all persons interested in receiving such services. Its purpose is to improve the market mechanisms of rail transport management. The draft law lays down clear and equal rules for all economic activities in the rail transport market. The draft law has not been adopted, and the organisational structure of the rail transport and infrastructure has not changed.

Practical implementation has not started.

### **Commitment 241 / Introduction of the railway safety management system**

- Directive No. 2004/49/EC,
- Council Directive No. 95/18/EC

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24) <https://zakon.rada.gov.ua/laws/show/1411-2019-%D1%80>

The commitment involves establishment of common safety methods in the Member States in order to deepen the harmonisation of national rules and implies introduction of a common safety certificate, determining the key safety targets, establishing a common safety management system, etc.

Legal approximation has not yet begun. Its fulfilment requires legislative regulation of the introduction of a safety mechanism for the transport operator, bearing full responsibility, by using a safety management system that includes all the procedures of the transport operator in writing to ensure safe operation. The draft of the new version of the draft law "On the Rail Transport of Ukraine", registered with the Verkhovna Rada of Ukraine on September 6, 2019 under No. 1196-1, provides for the establishment of a system of public administration in the field of railway safety in accordance with the EU act to be implemented under the Association Agreement, which will contribute to improving transport safety in conditions of developed competition in the rail transport market. There are no drafts of the relevant regulatory acts on the railway safety management system or on methodological recommendations for its introduction.

Practical implementation has not yet begun.

### **Commitment 242 / Introduction of independent investigation of railway accidents and incidents**

- Directive No. 2004/49/EC

The commitment involves establishment of an independent body to investigate accidents and incidents and a procedure for reporting on the compliance with railway safety requirements, etc.

Legal approximation is advanced. Its fulfilment involves legislative and regulatory approximation and carrying out organisational measures. In 2018, the Procedure for Technical Investigation of Catastrophes, Accidents, Traffic Accidents, and Incidents Involving Rail Transport<sup>25</sup>, which partially implements the mechanisms of technical investigation of traffic accidents but does not provide for the establishment of a separate independent investigation body.

Practical implementation is advanced but needs improvement.

### **Commitment 243 / Establishment of effective certification for train drivers**

- Directive No. 2007/59/EC

The commitment involves introduction of a certificate for train drivers that would take into account the availability of special expertise required for the maintenance of equipment used by the railway company. Certificates apply to three categories of trains: shunting locomotives, maintenance railway vehicles or trains for the carriage of passengers or goods by rail. The primary valid document provides for a special category for local or regional transport.

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25) <https://zakon.rada.gov.ua/laws/show/z1185-18>



Legal approximation has not yet begun. Its fulfilment involves development and adoption of legislation to regulate certification of train drivers. In 2019, the Action Plan for Rail Transport Reform was adopted<sup>26</sup>, which inter alia includes the stage of development and adoption of legislation to regulate certification of train drivers.

Practical implementation has not started.

### **Commitment 244 / Establishment of a system of quality control of rail passenger services**

- Regulation (EC) No. 1371/2007

The commitment involves establishment of rail passengers' rights and obligations, including the possibility of compensation in the event of delay or cancellation of a service.

Legal approximation has not yet begun. Fulfilment of the commitment requires development and adoption of a legislative act to amend the legislation of Ukraine to ensure the quality of passenger services. A draft law "On the Rail Transport of Ukraine" (Reg. No. 1196-1 of September 6, 2019) has been developed and registered, it is generally in line with this commitment but has not yet been adopted.

Practical implementation has not started.

### **Commitment 245 / Establishment of international rail corridors for freight transport**

- Regulation (EU) No. 913/2010

The commitment involves setting out rules for the establishment and organisation of international railway corridors for competitive rail freight and rules for the selection, organisation, management and indicative investment planning of freight corridors.

Legal approximation has not yet begun. Its fulfilment involves international consultations on the establishment of international rail freight corridors, establishment of and granting powers to the executive and management boards for freight corridors together with the interested EU Member States, introduction of a mechanism for coordinating the use of interoperable IT applications, etc.

There is no information from the Ministry of Infrastructure of Ukraine on implementation. Practical implementation has not started.

### **Commitment 246 / Establishment of a mechanism for compensation of financial burdens to railway undertakings**

- Regulation (EEC) No. 1192/69

The commitment involves introduction of a system of compensation for costs incurred by railway undertakings.

Legal approximation has not yet begun. Its fulfilment involves development and adoption of a draft law to amend the legislation of Ukraine as regards the categories of financial burden of railway undertakings, development of methods for calculating

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26) <https://zakon.rada.gov.ua/laws/show/1411-2019-%D1%80>

financial burden compensation, development of information exchange and reporting mechanism concerning financial burden, method of calculation and amounts of compensation. It is planned to adopt a draft law to amend the legislation of Ukraine concerning the categories of financial burden of railway undertakings. The relevant draft law must be endorsed, specifically by the AMCU. However, no such document has been developed.

Practical implementation has not started.

### **Commitment 247 / Establishment of an effective mechanism for checking and verifying the conformity of railway systems and subsystems with the technical specifications for interoperability (TSIs)**

- Directive No. 2008/57/EC

The commitment involves harmonisation of national standards with European ones in order to create opportunities for integration with European railway networks.

Legal approximation has not yet begun. Its fulfilment involves development and adoption of regulations to ensure harmonisation of national standards with European ones; development of mandatory requirements for interoperability systems and subsystems in accordance with EU legislation; development and adoption of a draft procedure for assessing the conformity of rail transport subsystems and their elements; appointment of body responsible for assessing the compatibility and suitability for use of railway systems; analysis of the railway certification system for compliance with the provisions of EU legislation; development and implementation of a mechanism for obtaining a certificate of conformity for each component of interoperability in accordance with the provisions of EU legislation. These documents have not been developed.

Practical implementation has not started.

### **Commitment 248 / Establishment of national registers of networks and trains authorised on the territory of Ukraine**

- Directive No. 2008/57/EC

The commitment involves introduction of legislative regulation of the conditions of rail transport certification and establishment of an organisational mechanism for the national register of networks and trains.

Legal approximation has not yet begun. Its fulfilment requires legal groundwork for appointing the body responsible for assigning an identification number; development, approval and registration with the Ministry of Justice of the procedure for assigning an identification number to each vehicle put into operation; development of a national register of trains authorised on the territory of Ukraine; and development of a national network register. These instruments have not been developed.

Practical implementation has not started.

## AIR (AVIATION) TRANSPORT

### Overview of key Eurointegration commitments

The commitments within the subsector of Air (Aviation) Transport under Art. 137 of the Association Agreement concern the approximation of Ukrainian legislation with the *acquis* provisions concerning the conditions for the progressive liberalisation of air services between the EU (Member States) and Ukraine adapted to their reciprocal commercial needs by signing the EU-Ukraine Common Aviation Area Agreement. The creation of a common aviation area is based on mutual access to the air transport market, a level playing field and common rules, in particular in the areas of flight safety, aviation safety, air traffic management, environmental protection and common sectoral social norms, as well as development of cooperation between the aviation industries of the EU and Ukraine.

Based on the results of the analysis of the impact of the Common Aviation Area Agreement on the air transport market of Ukraine, it has been established that the liberalisation of the market between Ukraine and the EU countries under the CAA Agreement will have a positive effect:

- access of Ukrainian airlines to the EU market – increase of passenger and cargo flows;
- unlocking Ukraine's transfer potential (development of an international hub at Boryspil airport);
- development of regional airports of Ukraine, improving the employment level;
- attracting low-cost transport operators to the Ukrainian market;
- increase in the number of flights served by UKSATSE.

### Evaluation of progress in fulfilling commitments

#### **Commitment 249 / Conclusion of the Common Aviation Area Agreement**

- Article 368 AA
- Article 137 AA

The commitment involves complying with the requirements necessary for the signing of the Common Aviation Area Agreement in order to comply with the conditions of mutual access to the air transport market.

Legal approximation has not yet begun. Its fulfilment requires adoption of the relevant national legislation necessary for the signing of the Common Aviation Area Agreement; initialling and signing of the text of the Common Aviation Area Agreement. The Ukrainian Party performed the relevant internal procedures and was authorised to conclude the Agreement in May 2014. The Agreement on the Common Aviation Area between Ukraine and the EU (CAA Agreement) was initialled on November 28, 2013 in Vilnius, Republic of Lithuania. The signing of the CAA Agreement was twice postponed at the initiative of the EU. The matter of signing the CAA Agreement is currently hampered by the lack of consensus between Spain and the UK on the

wording of paragraph 31 Territory (Article 2 Definitions) concerning the territorial application of the Agreement with regard to Gibraltar. For the above-mentioned countries, the issue is challenging given the problems in bilateral relations regarding Gibraltar. The UK's decision to exit the EU on 31 January 2020 could have a positive impact on the process of signing the Agreement.

There is no practical implementation.

## MARITIME TRANSPORT

### Overview of key Eurointegration commitments

The commitments within the subsector of Maritime Transport involve a set of measures to ensure the safety of navigation, safety of seaports, classification of vessels, and regulation of the liability of transport operators. The commitments also cover a set of measures to increase the level of social protection of seafarers. In addition, the commitments involve settling a range of technical and operational issues, including safety standards for passenger ships, operation of regular ro-ro ferry services, and procedures for safe loading and unloading of bulk carriers.

The fulfilment of these commitments will help align the organisational structure of state supervision over ship safety with EU law and international conventions. The introduction of a transparent system of registration of Ukrainian merchant vessels, available for use by participants in the international merchant shipping market, will contribute to the goals of liberalisation, mutual access to the EU and Ukraine markets, as well as the transport of passengers and cargo.

### Evaluation of progress in fulfilling commitments

#### **Commitment 250 / Introduction of mandatory double hull or equivalent design requirements for oil tankers operating in the sea waters of Ukraine**

- Regulation (EC) No. 417/2002;
- Regulation (EU) No. 530/2012

The commitment involves decommissioning of single hull oil tankers and phasing-in of requirements for oil tankers with increased security.

Legal approximation has not yet begun. Its fulfilment requires development and adoption of a normative legal act of the Ministry of Infrastructure on double-hull or equivalent design requirements for oil tankers. The current rules for the prevention of pollution from ships do not contain clear regulations prohibiting the use of single-hull oil tankers.

Practical implementation has not started.

#### **Commitment 251 / Introduction of the harmonised liability and insurance of carriers of passengers by sea**

- Regulation (EC) (392/2009

The commitment involves introduction of increased maritime safety requirements. This Regulation is one of the acts of the EU's third maritime package and implements the provisions of the Athens Convention.

Legal approximation has not yet begun. Its fulfilment requires conducting an analysis of the need for Ukraine's accession to the Protocol of 2002 to the Athens Convention (1974); development and adoption of a normative legal act on the approval of rules for safe operation of passenger ships, including determination of the category (class) of passenger seagoing vessels in accordance with EU legislation and provision of proper information to passengers; development and submission to the Cabinet of Ministers of Ukraine of a draft law on amendments to the Merchant Shipping Code of Ukraine to establish the amount of compensation for loss of life or personal injury, loss of or damage to luggage caused by a passenger ship accident; development and submission to the Cabinet of Ministers of Ukraine of a draft law on amendments to the Code of Administrative Offences to determine fines in case of violation of the requirements of liability and insurance for the carriage of passengers by sea. The main provisions of Regulation No. 392/2009 have already been implemented into national law, as Ukraine is a party to the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea<sup>27</sup>. However, Ukraine did not accede to the Protocol of 2002. The Ministry of Infrastructure has developed drafts of the Law of Ukraine "On Amendments to Certain Laws of Ukraine concerning Compulsory Liability Insurance of Transport Operators for Loss of Life or Personal Injury of Passengers and Third Parties" (Reg. No. 4642-д of 07.06.2017). On August 29, 2019, the draft law was revoked.

Practical implementation has not started.

### **Commitment 252 / Ensuring the issuing, control over availability and revocation of ship insurance certificates**

- Regulation (EC) No. 392/2009

The commitment involves a set of actions to introduce an institutional mechanism (establish an appropriate body) as well as the procedure and conditions for the issuance and control over the availability of ship insurance certificates.

Legal approximation has not yet begun. Transposition of these provisions into the national legislation of Ukraine involves appointing the responsible authority to issue, exert control over the availability, and terminate insurance certificates; development, publication and registration with the Ministry of Justice of a normative legal act on amendments to the Regulation on the Structural Unit of the Ministry of Infrastructure as regards Exercising Powers and Performing Procedures for the Issuing, Control over the Availability, and Termination of Insurance Certificates; development, approval and registration with the Ministry of Justice of insurance certificates and scenarios based on the existing templates of EU member states. The current Instruction on the Procedure for Monitoring the Implementation by Ukrainian shipping companies of Regulations on Shipping Safety<sup>28</sup> includes some provisions on insurance but it does not contain provisions of the Regulation. There are no draft acts to transpose the requirements of the Regulation.

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27) [https://zakon.rada.gov.ua/laws/show/995\\_094](https://zakon.rada.gov.ua/laws/show/995_094)

28) <https://zakon.rada.gov.ua/laws/show/z1584-04?find=1&text=%D1%81%D1%82%D1%80%D0%B0%D1%85#w11>

Practical implementation has not started.

### **Commitment 253 / Establishment of a minimum level of training of seafarers**

- Directive No. 2008/106/EC

The commitment involves introduction of the minimum requirements for the level of training of seafarers in the training programmes for seafarers in educational institutions and for the advanced training of seafarers in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers of 1978.

Legal approximation is early. Fulfilment of the commitment requires development and adoption of the relevant draft law on the level of training of seafarers, standards of higher and vocational education, as well as state educational standards, responsibilities of state bodies and shipowners to ensure the minimum level of training of seafarers; development, elaboration with EU experts and adoption of normative legal acts of the Ministry of Infrastructure and the Ministry of Education and Science on the level of training of seafarers, standards of higher and vocational education, state educational standards and responsibilities of public bodies and shipowners to ensure a minimum level of training of seafarers in accordance with Directive No. 2008/106/EC; development, elaboration with EU experts and adoption of a normative legal act of the Ministry of Infrastructure on amendments to the Regulation on Maintaining the Unified State Register of Seafarers' Documents, approved by the Ministry of Transport's Order No. 3 of January 8, 2003, as regards introduction of electronic registration and creating opportunities for checking the validity of seafarers' documents in real time mode by submitting a request based on no more than two characteristics; developing, elaborating with EU experts and adopting regulatory acts of the Ministry of Infrastructure and the Ministry of Education and Science on procedures for approving seafarer training programmes in educational institutions and on advanced training of seafarers in accordance with the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers. The Ministry of Education and Science of Ukraine has developed a draft resolution of the Cabinet of Ministers of Ukraine "On Professional Training of Seafarers in Educational Institutions." It is necessary to hold an interdepartmental meeting with representatives of the Ministry of Infrastructure and the Ministry of Education and Science. There are 63 educational institutions registered in Ukraine, 41 of which offer STCW courses. Currently, Ukrainian STCW certificates are issued by the Port Captain Service in various ports.

Practical implementation is at an early stage.

### **Commitment 254 / Introduction of electronic registration making it possible to verify the validity of seafarers' documents in real time mode**

- Directive No. 2008/106/EC

The commitment involves introduction of electronic registration and provision of opportunities to verify the validity of seafarers' documents in real time mode.

Legal approximation is early. Its fulfilment requires development and adoption of a

normative legal act of the Ministry of Infrastructure on amendments to the Regulation on Maintaining the Unified State Register of Seafarers' Documents, approved by Order No. 3 of the Ministry of Transport of January 8, 2003 as regards introduction of electronic registration and providing opportunities to verify the validity of seafarers' documents in real time mode by submitting a request based on no more than two characteristics. The draft order of the Ministry of Infrastructure "On Approval of the Regulation on Maintaining the Unified State Register of Seafarers' Documents" has been developed. Currently the draft order is being finalized by the Ministry of Infrastructure.

Practical implementation has not started.

### **Commitment 255 / Enhancing ship and port facility security, as well as the relevant training of personnel**

- Directive No. 2005/65/EC,
- Regulation (EC) (725/2004

The commitment involves establishment of requirements for the equipment of ships and port facilities and the procedure for compliance with these requirements.

Legal approximation is early. Fulfilment of the commitment requires development, elaboration with EU experts and submission to the Cabinet of Ministers of Ukraine of draft laws on: requirements for the protection of ships and port facilities; procedure for inspecting the conformity of the security of ships and port facilities to the requirements of the legislation in the field of security; establishment of responsibility for violation of the requirements of the legislation on protection of ships and port facilities; sea fishing ports; standardization of the operation of the coordination centre in the field of maritime safety; as well as training and advanced training of personnel on maritime safety, including in educational institutions of the EU Member States. The Ministry of Infrastructure has developed a draft order on amendments to Order No. 198 of the Ministry of Infrastructure "On Approval of the Procedure for the Organisation of Protection of Sea and River Ports" dated 27.03.2013. According to Letter No. 1069/0/20-19 of the State Regulatory Service dated 20.02.2019, the draft order contains regulatory norms and due to the unresolved issue of delimitation (separation) of areas of responsibility between the Maritime Administration, SE AMPU and the Ministry of Infrastructure in the field of shipping protection and safety, further support of the draft order has been suspended.

Practical implementation has not started.

### **Commitment 256 / Imposing on the shipowner of the duty to maintain the company and shipboard safety management system, introducing liability for administrative offences in this area, and training of personnel for the control of shipping companies by the flag State**

- Regulation (EC) No. 336/2006

The commitment involves implementation of international legal obligations arising from the Code of the International Maritime Organisation on Recognised Organisations (ISM Code, Chapter IX 'Management for the Safe Operation of Ships' of the International Convention for the Safety of Life at Sea (SOLAS), 1974).

Legal approximation is early. Fulfilment of the commitment requires development and adoption of a draft law amending the Merchant Shipping Code of Ukraine and the Code of Administrative Offences of Ukraine regarding the obligation of the shipowner to maintain the company and shipboard safety management system, as well as liability for administrative offences; development and adoption of relevant normative legal acts by the Ministry of Infrastructure, specifically amendments to the Regulation on the Safety Management System of Maritime and River Transport, approved by Order No. 904 of the Ministry of Transport of November 20, 2003; as well as training and advanced training of inspectors for the control of shipping companies by the flag State (as represented by the State Service for Maritime and River Transport and the Services of Seaport Captains), including in educational institutions of the EU Member States. Since 2017, the State Maritime and River Transport Service of Ukraine (Maritime Administration) has been in place<sup>29</sup>. According to public information, the International Maritime Organisation has successfully conducted a mandatory audit of Ukraine's compliance with its commitments under the Convention. The Maritime Administration together with the Directorate for Transport Safety of the Ministry of Infrastructure is preparing a draft order amending the Regulation on the Safety Management System of Maritime and River Transport, approved by Order No. 904 of the Ministry of Transport of November 20, 2003, regarding investigation of maritime incidents. Also, these provisions are contained in the draft law of Ukraine "On Inland Waterway Transport of Ukraine", registered with the Verkhovna Rada of Ukraine (1182-1-д of 17.01.2020). On April 24, 2020, the draft law was adopted by the Verkhovna Rada at first reading. There are no other draft laws aimed at transposing the requirements of the Regulation into the national legislation of Ukraine.

Practical implementation is at an early stage.

### **Commitment 257 / Establishment of stability requirements for ro-ro passenger ships and a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services**

- Directive No. 2009/45/EC,
- Directive No. 2003/25/EC,
- Council Directive No. 1999/35/EC

The commitment involves increased safety requirements for ro-ro and high-speed passenger craft and a system of mandatory surveys for the safe operation of regular services.

Legal approximation has not yet begun. Its fulfilment requires development and adoption of a normative legal act of the Ministry of Infrastructure to approve the rules relating to the safe construction, stability and operation of seagoing passenger vessels, ro-ro passenger ferries and high-speed passenger craft providing regular services; development and adoption of a normative legal act of the Ministry of Infrastructure on amendments to the Regulation on Navigation and Hydrographic Support within Inland Waters, Territorial Sea and Exclusive (Marine) Economic Zone of Ukraine, approved by Order No. 514 of the Ministry of Transport of May 29, 2006, to lay down the procedure for calculating wave heights on sea routes and their

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29) <https://zakon.rada.gov.ua/laws/show/1095-2017-%D0%BF#n15>



appropriate classification; development and adoption of a normative legal act of the Ministry of Infrastructure on amendments to the Rules for Control of Ships to Ensure Maritime Safety, approved by Order No. 545 of the Ministry of Transport of July 17, 2003, on control of ro-ro passenger ferries and high-speed passenger craft. To implement the commitment, legislative action is needed in this regard and adoption of relevant laws. The developed draft by-laws need to be improved and harmonised with the draft laws.

Practical implementation has not started.

### **Commitment 258 / Updating common rules and standards for ship inspection and survey organisations and audit of the national classification society regarding the conduct of such activities**

- Directive No. 2009/15/EC,
- Regulation (EC) (391/2009)

The commitment involves implementation of requirements for technical supervision of seagoing vessels in accordance with the International Maritime Organisation Code for Recognised Organisations (ISM Code).

Legal approximation is early. Its implementation involves development and adoption of a draft law on amendments to the Merchant Shipping Code of Ukraine, the Law of Ukraine "On Transport" regarding technical (conventional) supervision of seagoing vessels; development and adoption of normative legal acts of the Cabinet of Ministers of Ukraine, as well as development and approval of normative legal acts of the Ministry of Infrastructure in order to implement the procedures specified by the IMO Code for Recognised Organisations; training and advanced training of the personnel of the Maritime Administration with regard to the implementation of the IMO Code for Recognised Organisations, including in educational institutions of the EU Member States; conducting an audit of the national classification society i.e. SE Classification Society 'The Shipping Register of Ukraine' in accordance with the IMO Code for Recognised Organisations. These provisions were partially included in the new draft version of the Law of Ukraine "On Inland Waterway Transport of Ukraine", registered with the Verkhovna Rada of Ukraine (1182-1-д of January 17, 2020). On April 24, 2020, the draft law was adopted by the Verkhovna Rada at first reading. In 2018, auditors of the Ministry of Infrastructure (Maritime Administration) conducted an audit of SE Classification Society 'The Shipping Register of Ukraine' in accordance with the requirements of the IMO Code for Recognised Organisations.

Practical legislative implementation has not started.

### **Commitment 259 / Improving the control mechanism for quality medical treatment on board vessels**

- Council Directive No. 92/29/EEC

The commitment involves establishment of medical safety conditions on ships and introduction of minimum requirements for medical equipment.

Legal approximation is early. Its fulfilment requires development and adoption of a normative legal act of the Ministry of Infrastructure on amendments to the Rules for Control of Ships to Ensure Maritime Safety, approved by Order No. 545 of the

Ministry of Transport of July 17, 2003, with regard to the scope and frequency of flag State's control of Ukrainian ships; development and adoption of a normative legal act of the Ministry of Infrastructure on amendments to the Procedure for Determining the Minimum Crewing on Board Vessels, approved by order No. 575 of the Ministry of Infrastructure of November 10, 2014, regarding the requirement to have a ship doctor on board the relevant Ukrainian vessels; development and adoption of a normative legal act of the Cabinet of Ministers of Ukraine in order to determine the procedure for providing medical consultations from the shore (by radio) by emergency (ambulance) stations and emergency medical centres and disaster medicine centres, as well as delivery of drugs, medical equipment and antidotes to the ship in the event of disasters at sea; development and adoption of a joint legal act of the Ministry of Infrastructure and the Ministry of Health concerning the provision of Ukrainian seagoing vessels and their life-saving appliances with medical supplies (medicines, medical devices and equipment, as well as antidotes). Draft legislation includes: amendments to the Rules for Control of Ships to Ensure Maritime Safety, approved by Order No. 545 of the Ministry of Transport of July 17, 2003; Resolution of the Cabinet of Ministers of Ukraine "On the National System of Search and Rescue at Sea in the Marine Search and Rescue Area of Ukraine". These acts are undergoing endorsement. In 2016, changes were made to Procedure for Determining the Minimum Crewing on Board Vessels<sup>30</sup>, including: Annex 2. Determination of the minimum crewing of self-propelled vessels that allows the vessel to enter the sea outside the territorial waters of Ukraine: "For passenger vessels with a passenger capacity of more than 100 passengers, there must be at least one qualified doctor."

Practical implementation is at an early stage.

### **Commitment 260 / Establishment of an effective mechanism for Ukraine to fulfil its obligations under international agreements as a flag State**

- Directive No. 2009/21/EC

The commitment involves a mechanism for compliance with the provisions of the conventions of the International Maritime Organisation on responsibility and compliance with the flag State requirements in shipping.

Legal approximation is early. Its fulfilment requires development, approval and introduction of Maritime Administration's quality management system; creation of a comprehensive integrated database of Ukrainian merchant vessels, including fishing vessels, open for use by participants in the world market of merchant shipping; preparation and ensuring that the International Maritime Organisation conducts a mandatory audit of Ukraine's compliance with its commitments under international agreements as a flag State, port State and coastal State; development and adoption of relevant draft normative legal acts of the Cabinet of Ministers, as well as development and approval of normative legal acts of the Ministry of Infrastructure, establishment of the State Service for Maritime and River Transport, ensuring submission of a report on the results of the mandatory audit by the International Maritime Organisation; as well as training and advanced training of inspectors for the flag State control on ships (constituted by the Maritime Administration and the Services of Seaport Captains), including in educational

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<sup>30)</sup> Order No. 158 of the Ministry of Infrastructure dated 24.04.2016

institutions of the EU Member States. The State Maritime and River Transport Service of Ukraine (Maritime Administration) has been in place since 2017<sup>31</sup>. In 2018, a Memorandum of Cooperation was signed between Ukraine and the International Maritime Organisation on accession to the audit system of member states of the International Maritime Organisation. This memorandum makes it possible to conduct audit and further cooperation between Ukraine and the International Maritime Organisation to improve the national legal framework of Ukraine. The Maritime Administration is developing Terms of Reference and tender documents to create a Unified Information System of the Maritime Administration.

Practical implementation is at an early stage.

### **Commitment 261 / Updating the requirements and procedures for the safe loading and unloading of bulk carriers**

- Directive No. 2001/96/EC

The commitment involves introduction of technical and safety requirements for bulk carriers.

Legal approximation has not yet begun. Its fulfilment requires development and adoption of normative legal acts of the Ministry of Infrastructure concerning the rules of safe loading and unloading of bulk cargo in seaports of Ukraine. In 2019, SE Research and Design Institute of the Ukrainian Maritime Fleet (SE UkrNDIMF) developed Rules for Safe Loading and Unloading of Bulk Cargo in Seaports of Ukraine, which as of April 2020 were not adopted.

Practical implementation has not started.

### **Commitment 262 / Functioning of the national system for the exchange of information on maritime transport within the European Union (SafeSeaNet)**

- Directive No. 2010/65/EU

The commitment involves introduction of an information network for the exchange of information and storage of statistics on maritime transport within EU territory.

Legal approximation is early. Its fulfilment requires development and adoption of amendments to the Law of Ukraine "On Seaports of Ukraine" and the Code of Ukraine on Administrative Offences as regards the functioning of the national system for the exchange of information on maritime transport in the European Union (SafeSeaNet); development and adoption of a normative legal act of the Ministry of Infrastructure, in particular regarding the national segment of the SafeSeaNet, functioning of the "single window" for reporting formalities for ships arriving in and/or departing from seaports, relevant responsibilities of the SE Ukrainian Seaports Administration; development of a software and hardware complex for the functioning of the national segment of SafeSeaNet and the "single window" and conducting training for administrators and users of the national segment of the SafeSeaNet and the Single Window. Amendments to the Procedure for Registration of Arrival of Ships in a Seaport, Issuing a Permit for Departure of Ships and Registration of the

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31) <https://zakon.rada.gov.ua/laws/show/1095-2017-%D0%BF#n15>

Departure of Ships from a Seaport have been approved<sup>32</sup> (reduction of the load on the crews of ships arriving in the seaports of Ukraine by significantly reducing the number of copies of ship documents and certificates to be provided to the captain of the seaport after the ship arrives in the seaport). Work has begun on creating a European-type vessel traffic monitoring system for Ukrainian ships and its further integration into the SafeSeaNet. There is a draft law "On Amendments to the Law of Ukraine 'On Seaports of Ukraine' concerning the Functioning of the Port Community Information System" (Reg. No. 3761 dated January 13, 2016). However, no normative legal acts necessary to fulfil the commitment have been adopted.

Practical implementation is at an early stage.

### **Commitment 263 / Updating requirements concerning seafarers' hours of work and rest periods**

- Directive No. 1999/95/EC,
- Council Directive No. 1999/63/EC

The commitment involves introduction of minimum European requirements for working time and other social conditions of seafarers, as well as the organisation of the working time of seafarers.

Legal approximation has not yet begun. Its fulfilment involves accession to the International Labour Organisation's Maritime Labour Convention, 2006; development and adoption of normative legal acts of the Ministry of Infrastructure regarding hours of work and rest periods of seafarers<sup>33</sup>. Draft laws of Ukraine "On Ratification of the International Labour Organisation's Maritime Labour Convention, 2006, recast" and "On Amendments to Certain Legislative Acts in Connection with the Ratification of the International Labour Organisation's Maritime Labour Convention, 2006" were developed back in 2017 but they have never been adopted. No changes were made to the Regulation on Hours of Work and Rest Periods of the Shipboard Personnel of Maritime and River Transport of Ukraine.

Practical implementation has not started.

### **Commitment 264 / Establishment of a mechanism for mutual recognition by Ukraine and the EU of qualification documents of captains and crew members of inland waterway vessels**

- Directive (EU) No. 2017/2397

The commitment involves development of requirements to achieve harmonisation of conditions for obtaining certificates of captains for the carriage of passengers and cargo by inland waterways and establishment of a mechanism for mutual recognition by Ukraine and the EU of qualification documents of captains and crew members of inland vessels.

Legal approximation has not yet begun. Its fulfilment requires development and adoption of a draft law on the harmonisation of conditions for obtaining certificates of captains for the carriage of passengers and goods by inland waterways;

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32) By Order No. 387 of the Ministry of Infrastructure dated 25.09.2015.

33) Approved by Order No. 135 of the Ministry of Infrastructure "On Amendments to the Regulation on Hours of Work and Rest Periods of the Shipboard Personnel of Maritime and River Transport of Ukraine" of February 29, 2012.

determining a mechanism of mutual recognition by Ukraine and the EU of the qualification documents of captains and crew members of inland waterway vessels; and development of software for printing and maintaining a register of certificates of captains and crew members of inland waterway vessels. Legislative basis for fulfilling this commitment involves adoption of the Law of Ukraine "On Inland Waterway Transport" (Reg. No. 1182-1-д, dated 17.01.2020). UNECE added Ukraine to the list of countries whose relevant certificates comply with Resolution No. 40 "International Certificate for Operators of Pleasure Craft"<sup>34</sup>. The Unified Information System of the Maritime Administration has not been created yet, but its preliminary structure has been developed.

Practical implementation has not started.

## INLAND WATERWAY TRANSPORT

### Overview of key Eurointegration commitments

The commitments within the subsector of Inland Waterway Transport include a set of actions focusing on the harmonisation of Ukrainian legislation concerning the functioning of the river transport market, regulation of qualification requirements for admission to the processes within this market, and implementation of European technical requirements for inland waterway safety.

A new version of the Law of Ukraine "On Inland Waterway Transport of Ukraine" has been developed. The draft of the new version of the Law of Ukraine "On Inland Waterway Transport of Ukraine" was registered with the Verkhovna Rada of Ukraine (1182-1-д, dated January 17, 2020). On April 24, 2020, the draft law was adopted by the Verkhovna Rada at first reading.

By fulfilling these commitments, Ukraine will contribute to the attractiveness and competitiveness of river transport and encourage freight transport operators to partially shift focus to inland water transport. These measures will contribute to gradual liberalisation of freight transport by inland waterways and opening of inland waterways for foreign vessels; as well as development of competitive river rates and charges in order to stimulate the development of inland water transport, improve shipping characteristics, and effect a 5-fold increase in the use of inland water transport.

### Evaluation of progress in fulfilling commitments

#### **Commitment 265 / Improving the mechanism of pricing in national and international inland waterway transport**

- Council Directive No. 96/75/EC

The commitment involves developing tariff policies and pricing methods for waterway transport in order to improve the attractiveness of this transport.

Legal approximation has not yet begun. Fulfilment of the commitment requires development and adoption of a draft law on pricing in inland waterway transport. Provisions on tariff policies in inland waterways are contained in the draft law "On Inland Waterway Transport of Ukraine", registered with the Verkhovna Rada of

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<sup>34</sup>) <http://www.unece.org/fileadmin/DAM/trans/doc/2017/sc3wp3/ECE-TRANS3C3-147r4-Amend1r.pdf>

Ukraine (1182-1-д, dated 17.01.2020). On April 24, 2020, the draft law was adopted by the Verkhovna Rada at first reading. Its discussion still continues. In particular, the AMCU provided its comments concerning the liberalisation of inland waterway transport<sup>35</sup>.

Practical implementation has not started.

### **Commitment 266 / Establishment of technical requirements for inland waterway vessels**

- Directive (EU) No. 2016/1629,
- Regulation (EU) No. 2016/1628

The commitment involves introduction of minimum technical requirements to ensure the safety of navigation and safety of the navigation system, as well as providing an organisational mechanism for monitoring compliance with technical safety requirements.

Legal approximation has not yet begun. Its fulfilment requires development and adoption of a draft law and bylaws on technical requirements for inland waterway vessels and classification of inland waterways. In part, the provisions on technical requirements are included in the draft law "On Inland Waterway Transport of Ukraine", registered with the Verkhovna Rada of Ukraine (1182-1-д, dated 17.01.2020). No by-laws have been developed.

There has been no practical implementation.

### **Commitment 267 / Reorganisation of the river information service**

- Directive No. 2005/44/EC

The commitment involves introduction and use of harmonised river information services (RIS) to support inland waterway transport in order to enhance safety, efficiency and environmental friendliness, as well as to facilitate interaction with other modes of transport.

Legal approximation has not yet begun. Its fulfilment requires enshrinement in legislation of the functioning of the river information service on inland waterways; reorganisation of the existing river information service by expanding its structure to include the enterprise responsible for ensuring the safety of navigation on inland waterways, training of personnel responsible for ensuring the safety of navigation on inland waterways, and providing harmonised information services, including in training institutions of the EU Member States. In 2017, amendments were made to the Regulation on Navigation Support of Vessel Traffic in Inland Waterways of Ukraine<sup>36</sup>. The provisions are partially included in the draft law "On Inland Waterway Transport of Ukraine", registered with the Verkhovna Rada of Ukraine (1182-1-д, dated 17.01.2020). However, it has not yet been adopted. A draft order on amendments to Order No. 7 of the Ministry of Infrastructure of Ukraine "RIS" has been developed, but it is still undergoing endorsement procedures. No other bylaws have been developed.

There has been no practical implementation.

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35) <https://amcu.gov.ua/news/amku-za-rivni-konkurentni-umovi-na-rinkah-vnutrishnogo-vodnogo-transportu>

36) <https://zakon.rada.gov.ua/laws/show/z0078-17>

## **Commitment 268 / Establishment of an information system for monitoring the surface situation and seagoing vessel traffic**

- Directive No. 2002/59/EC,
- Directive No. 2009/17/EC,
- Directive No. 2009/18/EC,
- Commission Directive No. 2011/15/EU,
- Directive No. 2014/100/EU,
- Regulation (EU) No. 1286/2011

The commitment involves laying down requirements for the safety of navigation by introducing a monitoring system and a technical supervision mechanism.

Legal approximation is early. The transposition of this commitment into national legislation is ensured by way of developing and adopting a normative legal act of the Ministry of Infrastructure on the establishment of an information system for monitoring the surface situation and movement of seagoing vessels using consolidated sources of information; and creation of a software and hardware complex of the information system for monitoring the surface situation and traffic of sea vessels for the system for monitoring vessel traffic and surface conditions. Some provisions are included in the draft law "On Inland Waterway Transport of Ukraine", registered with the Verkhovna Rada of Ukraine (1182-1-д, dated 17.01.2020), but it has not yet been adopted. A new version of the Regulation on the Functioning of a Unified System for Monitoring the Surface Situation Using an Automated Identification System in the Black and Azov Seas in the Area of Responsibility of Ukraine has been approved<sup>37</sup>.

Practical implementation is at an early stage.

## **Commitment 269 / Ensuring safety during carriage of dangerous goods by national inland waterways**

- Directive No. 2008/68/EC

The commitment involves development of a legislative framework and regulatory framework to regulate the carriage of dangerous goods by inland waterways.

Legal approximation is early. Its fulfilment requires development, approval and registration with the Ministry of Justice of rules for the carriage of dangerous goods by inland waterways of Ukraine; development and adoption of draft normative legal acts to lay down rules for the carriage of dangerous goods by inland waterways of Ukraine and establish a procedure for inspecting tanks for the carriage of dangerous goods by inland waterways. In order to approximate the legislation, appropriate norms have been adopted to enhance safety requirements<sup>38</sup> for inland waterway

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37) Order No. 284 of the Ministry of Infrastructure "On Amendments to Order No. 221 of the Ministry of Infrastructure of Ukraine of 25.04.2012" dated 18.08.2017.

38) Amendments to the Rules for the Carriage of Dangerous Goods approved by Order No. 156 of the Ministry of Infrastructure "On Approval of Amendments to Certain Normative Legal Acts of the Ministry of Transport of Ukraine and Ministry of Transport and Communications of Ukraine" dated 25.04.2017, registered with the Ministry of Justice on 17.07.2017 under No. 865/30733.

transport<sup>39</sup>. These provisions were partially transposed into the legislation of Ukraine by the draft law "On Inland Waterway Transport"<sup>40</sup>, which was adopted as a basis on April 24, 2020. Discussion of this law is currently underway. In the framework of Ukraine's accession to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) in 2017, the Order of the Ministry of Infrastructure of Ukraine "On Approval of the Rules for the Carriage of Dangerous Goods by Inland Waterways of Ukraine" was approved<sup>41</sup>. Ukraine adopted the Rules for the Carriage<sup>42</sup> and the Procedure for Inspecting Tanks<sup>43</sup>. However, at the legislative level, the commitment can be fulfilled after adopting the Law of Ukraine "On Amendments to Certain Laws of Ukraine to Align Them with European Union Legislation in the Field of the Carriage of Dangerous Goods" (Reg. No. 1193-1, dated 20.09.2019).

Practical implementation is underway, however it requires legislative regulation.

### **Commitment 270 / Updating the requirements for the professional competence of the transport operator and the mechanism for mutual recognition of relevant qualification documents**

- Council Directive 87/540/EEC

The commitment involves introduction of higher requirements for the professional competence of the transport operator to operate inland water transport and mutual recognition of diplomas, certificates and other official qualifications for such activities, as well as taking organisational measures to issue certificates of the relevant type.

Legal approximation is early. Transposition of these provisions into the national legislation of Ukraine requires development and submission to the Cabinet of Ministers of Ukraine of a draft law on the requirements for the professional competence of the transport operator and the mechanism of mutual recognition of relevant qualification documents, providing support for the consideration of the relevant draft law by the Verkhovna Rada of Ukraine; development and approval of the standard of higher education in the field of inland waterway transport. These provisions are transposed into the legislation of Ukraine by the developed draft law "On Inland Waterway Transport"<sup>44</sup>, which was adopted as a basis on April 24, 2020. Discussion of this law is currently underway. For the specialty 271 "River and sea transport", the standard of higher education for the first (bachelor's) level of higher education was approved by Order No. 1239 of the Ministry of Education and Science dated 13.11.2018. The Standard came into force in the 2018/2019 academic year. Currently, the Academic and Methodical Commission of the Academic and Methodical Council of the Ministry of Education and Science is developing a standard

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39) The Rules for the Carriage of Dangerous Goods by Inland Waterways of Ukraine were approved by Order No. 126 of the Ministry of Infrastructure dated 04.04.2017, registered with the Ministry of Justice on 28.04.2017 under No. 536/36424; the Procedure for Inspecting Tanks for the Carriage of Dangerous Goods was approved by Order No. 166/550 of the Ministry of Infrastructure and the Ministry of Internal Affairs of Ukraine dated 12.05.2015, registered with the Ministry of Justice of Ukraine on 05.06.2015 under No. 663/27108.

40) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=1182-1-%D0%B4&skl=10](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=1182-1-%D0%B4&skl=10)

41) <https://zakon.rada.gov.ua/laws/show/z0556-17>

42) The Rules for the Carriage of Dangerous Goods by Inland Waterways of Ukraine were approved by Order No. 126 of the Ministry of Infrastructure dated 04.04.2017, registered with the Ministry of Justice on 28.04.2017 under No. 536/36424.

43) The Procedure for Inspecting Tanks for the Carriage of Dangerous Goods was approved by Order No. 166/550 of the Ministry of Infrastructure and the Ministry of Internal Affairs of Ukraine dated 12.05.2015, registered with the Ministry of Justice of Ukraine on 05.06.2015 under No. 663/27108.

44) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=1182-1-%D0%B4&skl=10](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=1182-1-%D0%B4&skl=10)



of higher education for the second (master's) level of higher education in specialty 271 "River and sea transport".

Practical implementation is at an early stage.

## COMBINED TRANSPORT

Overview of key Eurointegration commitments

The commitments within the subsector of Combined Transport focus on developing the transport network, including all modes of transport; increasing capacity; and promoting development of incomplete infrastructure. The development of combined transport contributes to balancing out the load on river transport and decreasing the load on road transport.

By fulfilling this commitment, Ukraine will be able to develop a more well-balanced transport network, increase investment growth, come up with an optimal tariff model to stimulate the development of combined transport.

Evaluation of progress in fulfilling commitments

### **Commitment 271 / Encouraging the development of combined transport**

- Directive No. 92/106/EEC

The commitment involves introduction of the normative concept of "combined transport", removal of certain administrative restrictions, and development of tariff incentives to improve the attractiveness of combining different modes of transport on one route.

Legal approximation is early. Its fulfilment requires development and adoption of a draft law to amend the legislation of Ukraine on combined transport. A draft law "On Multimodal Transport" was developed and registered with the Verkhovna Rada (Reg. No. 2685 of December 27, 2019). Implementation of the law will help reduce the use of road transport by redirecting part of the transport to cleaner modes of transport, which will create conditions for improving and maintaining public health, and reducing air pollution.

Practical implementation has not started.

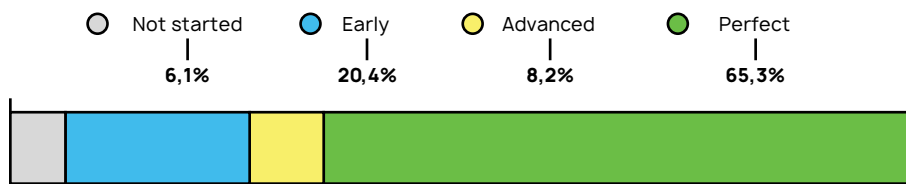
A low-angle, upward-looking photograph of several modern skyscrapers with glass facades. The buildings are arranged in a way that they appear to converge towards the top of the frame, creating a strong sense of height and scale. The sky is a clear, light blue. The overall color palette is dominated by various shades of blue and grey.

# **ACTIVITY OF COMPANIES**

# ACTIVITY OF COMPANIES

Expert: **Bohdan Veselovskyi**

**Implementation progress for the sector:**



## ESTABLISHMENT AND ACTIVITY OF COMPANIES

### Overview of key Eurointegration commitments

Pursuant to Article 387 (1a) of the Association Agreement, the Parties (Ukraine and the EU) have agreed to cooperate in protecting the rights of shareholders, creditors and other stakeholders in line with EU rules in this area, as listed in Annex XXXIV thereto. This subsector can be conveniently divided into two areas, such as the general provisions of EU law on the establishment (registration) of companies, procedures for their liquidation, and disclosure of information about them and provisions on joint stock companies, limited liability companies, and protection of shareholders' rights.

By fulfilling these commitments, we will boost investor confidence in the Ukrainian market and increase foreign direct investment.

Evaluation of progress in fulfilling commitments

### **Commitment 272 / Approximation of legislation on protection of the rights of shareholders, creditors and other stakeholders in line with EU rules**

- Directive No. 2017/1132/EU,
- Directive No. 2004/25/EC,
- Directive No. 2007/36/EC,
- Directive No. 2009/102/EC

The commitment involves aligning legislation with the provisions of Directive No. 2017/1132/EU with regard to certain aspects concerning the right of companies to disclose information on legal entities, mergers, acquisitions, mergers by formation of a new company and divisions, as well as approximation of the legislation on single-member private limited liability companies.

The legal approximation is at an early stage or has not started. On November 25, 2019, the Verkhovna Rada of Ukraine registered Draft Law "On Joint Stock Companies" to replace the current version of the Law of Ukraine "On Joint Stock Companies". As of April 2020, the draft law is pending consideration by VRU committees; the opinion of the Committee on Ukraine's Integration with the EU and that of the Government Office for Coordination on European and Euro-Atlantic Integration have already been received. Based on these opinions, some provisions of the draft law were found to be inconsistent with Directives No. 2017/1132/EU and No. 2007/36/EC, whereas their provisions were partly taken into account in other commitments<sup>1</sup>. Within this assessment, we can highlight the following points: the rules that are supposed to transpose the provisions of Directives No. 2017/1132/EC and No. 2007/36/EC on the introduction of penalties for failure to disclose mandatory information by branches of third-country companies, as well as the introduction of requirements to convene a general meeting of shareholders in case of a serious loss of the company's subscribed capital – are not included in the Draft Law "On Joint Stock Companies".

Due to the adoption of Directive No. 2017/1132/EU and repeal of Directive No. 2009/101/EC, it is advisable to update and check the compliance of Ukrainian legislation with the provisions of Directive No. 2017/1132 as regards disclosure of information on joint-stock companies, as well as the improvement of certain points regarding the functioning of the system of free information retrieval from the Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Associations.

## ACCOUNTING AND AUDITING

### Overview of key Eurointegration commitments

Pursuant to Article 387 (1b) of the Association Agreement, the Parties (Ukraine and the EU) agree to cooperate on the introduction at national level of relevant international standards and gradual approximation to EU law in the field of accounting and auditing in accordance with Annex XXXV thereto.

The commitments concerning approximation in the area of accounting and auditing are covered by Directive No. 2013/34/EC on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, repealing Council Directives 78/660/EEC and 83/349/EEC, and by Directive No. 2006/43 on statutory audits of annual accounts and consolidated accounts, as well as Regulation No. 1606/2002 on the application of international accounting standards.

The fulfilment of these commitments will boost investor confidence in the financial statements of Ukrainian enterprises and the activities of national auditors, prevent the provision of poor-quality audit services and open access to international financial markets.

Evaluation of progress in fulfilling commitments

### **Commitment 273 / National-level gradual approximation to EU auditing law**

- Directive No. 2006/43/EC

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<sup>1</sup> Opinion of the Committee on Integration of Ukraine with the European Union of 05.03.2020 (<https://cutt.ly/xtVIPpC>)

The commitment involves setting the conditions and procedure for certification of auditors, creation of a register of auditors, and establishment of an audit public oversight body.

The legal approximation is perfect. The Verkhovna Rada of Ukraine adopted Law No. 2258-VIII "On Audit of Financial Statements and Auditing" dated 21.12.2017, which entered into force on 07.02.2018 and has been enforced since 01.10.2018. Positive comments, inter alia, were received from the European Commission, the International Forum of Independent Audit Regulators (IFIAR), the UK Financial Reporting Council and the Audit Commission of the Federal Republic of Germany, which was noted in the 2019 Association Implementation Report on Ukraine of the European Commission<sup>2</sup>.

The fulfilment of the implementation tasks remains at an advanced level. In accordance with Part 8 of Article 19 of Law No. 2258-VIII "On the Audit of Financial Statements and Auditing" dated 21.12.2017, certification of auditors is performed by the certification commission. Order No.1081 of the Ministry of Finance of Ukraine dated 21.12.2018 established the Auditor Certification Commission. Order No. 20 of the Ministry of Finance of Ukraine "On Approval of the Regulation on the Certification Commission" dated 22.01.2020 approved the Regulation on the Certification Commission. Order No. 765 of the Ministry of Finance of Ukraine "On the Establishment of the State Institution 'Audit Public Oversight Body'" dated 18.09.2018, approved the Charter of the institution. The European Commission's 2019 Association Implementation Report on Ukraine states that the Audit Public Oversight Body is gradually starting its operations in accordance with EU rules with EU support. Even though the Audit Public Oversight Body has started its operations, there are still steps to be taken to establish it as a full-fledged body according to EU standards.

### **Commitment 274 / National-level gradual approximation to EU law in the field of accounting**

- Directive No. 2013/34/EU

The commitment involves establishing uniform requirements for the preparation of consolidated financial statements in accordance with EU law; requirements for the publication of financial statements by enterprises, as well as the introduction of mandatory compiling, submission and publication of a report on payments made to governments for certain categories of undertakings.

The legal approximation is perfect. On October 5, 2017, Law No. 2164-VIII "On Amendments to the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine' to Improve Certain Provisions"<sup>3</sup> was adopted. This Law introduced the following amendments:

- new criteria for the classification of undertakings into "micro", "small", "medium" and "large" ones were established;
- the concept of "public-interest entities" was introduced;
- undertakings may submit revised financial statements and revised consolidated financial statements based on the auditing results in order to self-correct or for other reasons;

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2) JOINT STAFF WORKING DOCUMENT 12.12.2019 Association Implementation Report on Ukraine ([https://eeas.europa.eu/sites/eeas/files/swd\\_2019\\_433\\_f1\\_joint\\_staff\\_working\\_paper\\_en\\_v4\\_p1\\_1056243.pdf](https://eeas.europa.eu/sites/eeas/files/swd_2019_433_f1_joint_staff_working_paper_en_v4_p1_1056243.pdf))

3) Law of Ukraine No. 2164-VIII "On Amendments to the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine' to Improve Certain Provisions" dated 5.10.2017 (<https://zakon.rada.gov.ua/laws/show/2164-19>)

- "Large" and "medium" undertakings are required to submit a "Management Report" along with the financial statements (including consolidated ones);
- there is a requirement for certain types of undertakings to report on payments made to government;
- companies that control other companies are required to prepare and submit consolidated financial statements.

As regards bylaws, on June 20, 2018, the Ministry of Finance of Ukraine issued Order No. 564 dated 20.06.2018<sup>4</sup>, amending National Accounting Standard 1 "General Requirements for Financial Reporting" and approved a new version of National Accounting Standard 2 "Consolidated Financial Statements".

The only unfulfilled task is the implementation task concerning the development and approval of guidelines for compiling reports on payments made to government: the Ministry of Finance of Ukraine with participation of the State Agency of Forest Resources of Ukraine developed a draft order of the Ministry of Finance of Ukraine "On Approval of Guidelines for Drawing up Reports on Payments Made to Government" which will apply to the public-interest undertakings involved in timber harvesting. Currently the draft order is undergoing finalisation to take into account the comments and recommendations made by the Methodological Accounting Council under the Ministry of Finance<sup>5</sup>.

### **Commitment 275 / Introduction at the national level of international accounting standards**

- Regulation No. 1606/2002/EC

The commitment involves approximation of the legislation on accounting and financial reporting to the provisions of the Regulation on the application of international accounting standards by public-interest entities, including publicly traded undertakings.

The legal approximation is perfect. The Verkhovna Rada of Ukraine adopted Law No. 2164-VIII "On Amendments to the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine' to Improve Certain Provisions" dated 05.10.2017, and it entered into force on 01.01.2018. When drafting this law, EU experts were involved in the framework of the EU's "Technical Assistance in Priority Areas of the Financial Sector" project. This Law expanded the scope of use of international financial reporting standards (amendments to Article 12-1 of the Law of Ukraine "On Accounting and Financial Reporting in Ukraine").

4) Order No. 564 of the Ministry of Finance of Ukraine "On Approving Amendments to Certain Normative Legal Acts on Accounting of the Ministry of Finance of Ukraine" dated 20.06.2018 (<https://zakon.rada.gov.ua/laws/show/z0817-18#n2>)

5) Report of the Ministry of Finance on the implementation of the Association Agreement between Ukraine and the EU for Q4 of 2019 (<https://mof.gov.ua/uk/vikonannja-ugodi-pro-asociaciju>)



## CORPORATE GOVERNANCE

### Overview of key Eurointegration commitments

Pursuant to Article 387 (1c) of the Association Agreement, the Parties (Ukraine and the EU) have agreed to cooperate on further development of corporate governance policy in line with international standards, as well as gradual approximation to the EU rules and recommendations in this area, as listed in Annex XXXVI thereto. This Annex contains three documents, one of which is the OECD (Organization for Economic Co-operation and Development) Principles on Corporate Governance and three Recommendations of the EU Commission – i.e. Commission Recommendation No. 2005/162/EC, Commission Recommendation No. 2004/913/EU, and Commission Recommendation No. 2009/385/EC.

The fulfilment of these commitments will improve the level of corporate governance of Ukrainian legal entities as well as their investment attractiveness, and will facilitate the entry of Ukrainian listed companies into international securities markets.

Evaluation of progress in fulfilling commitments

#### **Commitment 276 / Gradual approximation to EU rules and recommendations in the field of corporate governance**

- Commission Recommendation No. 2005/162 / EC;
- Commission Recommendation No. 2004/913/EC,
- Commission Recommendation No. 2009/385/EC

The commitment involves introduction of the requirement to establish supervisory boards and their committees in public joint-stock companies, settlement of matters associated with the activities of supervisory boards and their committees in accordance with EU law, and improvement of the regime for the remuneration of directors of listed companies.

The legal approximation is perfect. On September 25, 2018, the NSSMC approved the Requirements to the Regulation on Remuneration and Report on Remuneration of Members of the Supervisory Board and the Executive Body of the Joint Stock Company, and on November 30, 2018 the document was registered with the Ministry of Justice of Ukraine. The document took into account Commission Recommendation No. 2004/193/EC. The other recommendation concerns the role of non-executive or supervisory directors of listed companies and committees of the supervisory board – the main provisions of this document were taken into account by the Verkhovna Rada of Ukraine and adopted in Law No. 2210-VIII "On Amendments to Certain Legislative Acts of Ukraine with regard to Simplification of Doing Business and Attracting Investments by Issuers of Securities", which amended the Law of Ukraine "On Joint Stock Companies".

#### **Commitment 277 / Development of corporate governance policy in accordance with international standards**

- OECD Principles on Corporate Governance

The commitment involves adoption of a new version of the Principles on Corporate Governance by the National Securities and Stock Markets Commission (NSSMC), taking into account the updated version of the OECD Principles on Corporate Governance.

The legal approximation is perfect. In 2014, the National Securities and Stock Markets Commission (NSSMC) approved a new version of the Principles on Corporate Governance, which take into account the above-mentioned international standards to the fullest extent<sup>6</sup>. It should be noted that these Principles are of recommendatory nature and their application is completely voluntary. In addition, the Verkhovna Rada of Ukraine incorporated some of the OECD Principles on Corporate Governance into the laws of Ukraine: "On Amendments to Certain Legislative Acts of Ukraine Concerning the Improvement of the Level of Corporate Governance in Joint Stock Companies"<sup>7</sup> and "On Amendments to Certain Legislative Acts of Ukraine Concerning the Simplification of Doing Business and Attracting Investments by Issuers of Securities"<sup>8</sup>, thus making them mandatory.

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6) On Approval of the Principles on Corporate Governance: Decision No. 955 of 22.07.2014 (<https://zakon.rada.gov.ua/rada/show/vr955863-14>)

7) Law of Ukraine No. 1983-VIII "On Amendments to Certain Legislative Acts of Ukraine to Improve the Level of Corporate Governance in Joint Stock Companies" dated 23.03.2017 (<https://zakon.rada.gov.ua/laws/show/1983-19>)

8) Law of Ukraine No. 2210-VIII "On Amendments to Certain Legislative Acts of Ukraine on Simplification of Doing Business and Attracting Investments by Issuers of Securities" dated 16.11.2017 (<https://zakon.rada.gov.ua/laws/show/2210-19>)



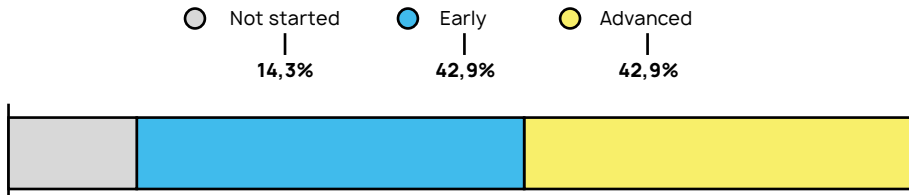
A close-up, artistic photograph of a camera lens. The lens is the central focus, showing its intricate internal elements and the circular aperture. The image is heavily stylized with vibrant, out-of-focus light flares in shades of purple, magenta, and yellow, creating a dreamlike and high-tech atmosphere. The text 'AUDIO-VISUAL POLICY' is overlaid in the lower-left quadrant in a clean, white, sans-serif font.

**AUDIO-VISUAL  
POLICY**

# AUDIO-VISUAL POLICY

Expert: Ihor Razkladai

## Implementation progress for the sector:



## Overview of key Eurointegration commitments

Today, the sector of audiovisual media services is represented by traditional television and radio relayed through terrestrial, satellite and cable broadcasting, as well as through newer delivery channels – using IPTV and OTT technologies. In recent years, there has been growth in video-on-demand (VoD) technologies, provided both as deferred viewing of linear media programmes and programme catalogues delivered by both Ukrainian and international suppliers. As of 2019, 1523 information activity operators were registered in Ukraine, of which 668 are programme service providers (operators that provide packages of TV channels and other related services), which in turn include 229 IPTV service providers and 806 TV and radio broadcasters<sup>1</sup>. At the same time, these operators not only carry out traditional broadcasting but also have online versions or webcasts of their TV channels and programmes or completely separate derivative or independent projects aimed specifically at the online audience and social networks. A separate phenomenon is online blogging, where might have an audience commensurate with that of news and news-and-entertainment channels and even compete for the limited resources of the advertising market. Despite the fact that television still remains one of the main sources of information, in 2019 online sources for the first time outranked<sup>2</sup> television as a source of news and this trend will obviously keep intensifying.

Legislative regulation of the audiovisual sector, despite its dynamic development, remains extremely unsatisfactory. The key regulatory acts in the field of audiovisual media services are the Law of Ukraine "On Television and Radio Broadcasting"<sup>3</sup> of 1993 as amended in 2006 and the Law of Ukraine "On the National Council of Ukraine for Television and Radio Broadcasting"<sup>4</sup> of 1997 as amended in 2005. As the name

1) Report of the National Council of Ukraine for Television and Radio Broadcasting for 2019: (PDF) [https://www.nrada.gov.ua/wp-content/uploads/2020/02/Zvit\\_NR\\_2019.pdf](https://www.nrada.gov.ua/wp-content/uploads/2020/02/Zvit_NR_2019.pdf)

2) USAID-Internews Media Consumption Survey: <https://internews.in.ua/uk/news/onlajn-media-ta-sotsialni-merezhi-perehopily-liderstvo-u-telebachennya-za-populyarnistyu-v-ukrajini-nove-opytuvannya-usaid-internews-schodo-spozhyvannya-zmi/>

3) Law of Ukraine "On Television and Radio Broadcasting": <https://zakon.rada.gov.ua/laws/show/3759-12>

4) Law of Ukraine "On the National Council of Ukraine for Television and Radio Broadcasting": <https://zakon.rada.gov.ua/laws/show/538/97-%D0%B2%D1%80>

implies, the law and, consequently, the regulator focus on traditional television and radio, which is clearly insufficient in the epoch of media convergence, hence the field of online press and broadcasting remains outside the scope of the law. One of the biggest and gravest shortcomings of the law was the complete failure to effect the transition to digital broadcasting in 2006-2015 in accordance with the international commitments under Geneva-2006<sup>5</sup> of the International Telecommunication Union. The lack of a proper algorithm and principles behind the regulator's powers have led to the emergence of a dominant player in the terrestrial digital broadcasting market, the transparency of which is still very questionable. Another shortcoming of the law is the inadequate set of tools granted to the National Council to respond to violations by licensees. Thus, despite the fact that the law declared a mechanism of imposing fines, the mechanism itself was introduced only in 2015. De facto, there is no mechanism for sanction application during election campaigns, and the existing sanctions in the Code of Administrative Offences cannot be applied in practice due to too short procedural deadlines.

Another long-standing problem of the media environment is the sufficient monopolisation and oligarchisation of national broadcasters. The requirements for transparency of media ownership introduced in 2015 have given a de-jure idea of who controls a particular media, but there is currently no mechanism to prevent concentration nor a mechanism of de-oligarchisation.

With regard to the audiovisual sector, the Association Agreement provides for harmonisation of Ukrainian legislation with EU *acquis*, i. e. updating media legislation in accordance with the requirements of the EU Audiovisual Media Services Directive, which includes broadcasting events of significant public interest, quotas for content production by independent studios, requirements for video sharing platforms, etc. The audiovisual sector contains 2 subsectors: cross-border broadcasting and audiovisual media services.

## CROSS-BORDER BROADCASTING

Evaluation of progress in fulfilling commitments

### **Commitment 278 / Compliance with the commitments under the Council of Europe Convention on Transfrontier Broadcasting**

- Council of Europe Convention on Transfrontier Broadcasting

As regards cross-border broadcasting, Annex XXXVII of the AA mentions the Council of Europe Convention on Transfrontier Broadcasting<sup>6</sup> (ETS No.132). The mention of the Convention in the Agreement is not accidental, as the Convention became the first international act adopted to ensure free cross-border broadcasting, and it is on its basis that the European Economic Community Directive No. 89/552/EEC was developed<sup>7</sup> which became the forerunner of the Audiovisual Media Services Directive.

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5) Regional agreement concerning the planning of the digital terrestrial broadcasting service in Region 1: [https://zakon.rada.gov.ua/laws/show/979\\_001](https://zakon.rada.gov.ua/laws/show/979_001)

6) European Convention on Transfrontier Television: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/132>

7) Council Directive No. 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31989L0552>

Legal approximation is advanced, since the Convention was signed by Ukraine in 1996, however it was ratified<sup>8</sup> only in 2008 and came into force on July 1, 2009.

The provisions of the Convention have been largely transposed into the Law of Ukraine "On Television and Radio Broadcasting" and the Law of Ukraine "On Advertising". The Agreement does not provide for any actions concerning the Convention, which seems to imply its logical link to the Audiovisual Media Services Directive.

Practical implementation is advanced. Most of the provisions of the Convention are implemented in the current laws "On Television and Radio Broadcasting" and "On Advertising". At the same time, some of the provisions remain rather declarative due to the lack of proper powers and special market characteristics. Also, the mechanism of international cooperation has proved ineffective in the context of the Russian aggression.

## AUDIOVISUAL MEDIA SERVICES

### Evaluation of progress in fulfilling commitments

#### **Commitment 279 / Establishment a modern market for audiovisual services in line with EU requirements**

- Directive No. 1808/2018/EU

The main document governing the EU in the field of audiovisual services, including both traditional television and radio, is the Audiovisual Media Services Directive (AVMSD)<sup>9</sup>. According to Article 397 of the Association Agreement: "Gradual approximation to the EU law and regulatory framework and international instruments in the area of audio-visual policy shall be carried out in particular as set out in Annex XXXVII to this Agreement", i. e. in accordance with Directive No. 2010/13/EU within 2 years from the date of entry into force of the Agreement, that is the deadline is 1 September 2019.

It should be noted that during the implementation period, the above Directive was replaced with Directive No. 1808/2018/EU<sup>10</sup>, according to which the EU Member States must implement it into national law within 21 months from the date of its entry into force.

One of the key benefits of implementing the directive is the ensuing full access to the possibilities of the Creative Europe programme<sup>11</sup>, which is a powerful stimulus for the development of audiovisual products, both in cooperation with EU partners and independently. In addition, in case of full membership in the EU, the prepared national base provides the opportunity to gain membership in the European Regulators Group for Audiovisual Media Services (ERGA<sup>12</sup>) and use of the Commission's support in the situations specified in the Directive.

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8) Law of Ukraine "On Ratification of the European Convention on Transfrontier Television": <https://zakon.rada.gov.ua/laws/show/687-17>

9) <https://ec.europa.eu/digital-single-market/en/audiovisual-media-services-directive-avmsd>

10) Directive (EU) No. 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive N° 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities: <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

11) The Creative Europe programme: [https://eacea.ec.europa.eu/creative-europe\\_en](https://eacea.ec.europa.eu/creative-europe_en)

12) <http://erga-online.eu/>

Legal approximation is at an early stage. The main implementing act in the national legislation should be the Law of Ukraine "On Media". Thus, on June 6, 2012, the Committee of the Verkhovna Rada of Ukraine on Freedom of Speech and Information approved the concept of a new version of the Law "On Television and Radio Broadcasting"<sup>13</sup>, and in November of the same year the first version of the draft law was presented<sup>14</sup>.

Clause 1444 of the Government Action Plan<sup>15</sup> envisaged that the State Committee for Television and Radio Broadcasting, the National Council for Television and Radio Broadcasting (upon consent), the Ministry of Finance, the Ministry of Economic Development, and the Ministry of Justice should ensure the drafting and submission of a draft law on advertising and a draft law on amendments to the legislation on advertising, work on the draft laws with EU experts, and provide support during consideration of the draft laws by the Verkhovna Rada of Ukraine.

On December 14, 2017, the head of the parliamentary Committee on Freedom of Speech and Information Policy Victoria Sumar registered a draft law<sup>16</sup> on amendments to the Law on Television and Radio Broadcasting, which represented a continuation of the work started in 2012. The draft law was developed taking into account the requirements of Directive No. 2010/13/EU and future provisions of the Directive of 2018. On December 27, 2019, the MPs involved in the Committee on Humanitarian Policy registered the draft law "On Media" with the Parliament<sup>17</sup>, and an alternative draft law from the opposition was registered. Not only do these draft laws aim at implementing the provisions of the Directive, in particular those specified in Article 28a on video-sharing platforms (VSP), but also at replacing a number of laws: on the press, on broadcasting, on the National Council, etc.

The draft law changes licensing approaches, keeping this procedure exclusively for terrestrial broadcasting, and in other cases replacing the existing licensing procedures with registration procedures; expanding and harmonising the regulator's powers with regard to enforcing the requirements of Article 30 of the Directive concerning efficiency, independence and accountability; introducing a mechanism for co-regulation and developing codes of conduct; and establishing rules for the counteraction to various manifestations of hatred and military aggression.

Due to two election campaigns in 2019 and strong lobbying of the part large media groups, Ukraine failed to adopt or even accept as a basis the draft law registered in parliament in 2017. Thus, the time-frame for the commitments specified in the Annex XXXVII to the Agreement was not complied with. However, the draft law of 2017 made up the basis of the draft of 2019, which has been registered with the parliament of new convocation. From autumn 2019, a working group of media lawyers representing the civil sector, the regulator, and representatives of media groups and associations, at the request of the Committee on Humanitarian and Information Policy, has been working to finalise the draft law, taking into account the expansion of its scope. At the time of writing, consultations have been held with EU experts concerning the

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13) [https://detector.media/doc/images/news/72581/Concept New Broadcasting Law\\_UKR Final 12.06.2012.pdf](https://detector.media/doc/images/news/72581/Concept%20New%20Broadcasting%20Law_UKR%20Final%2012.06.2012.pdf)

14) Draft law on Amendments to the Law of Ukraine "On Television and Radio Broadcasting": <https://detector.media/infospace/article/77171/2012-12-03-pershil-tekst-novoi-redaktsii-zakonu-pro-telebachennya/>

15) Resolution No. 1106 of the Cabinet of Ministers of October 25, 2017 "On Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part": <https://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF>

16) Draft Law of Ukraine No. 7397 "On Amendments to the Law of Ukraine On Television and Radio Broadcasting": [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=63139](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63139)

17) Draft Law of Ukraine "On Media" No. 2693: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67812](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67812) and the draft law of Ukraine "On Media in Ukraine" No. 2693-1: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67886](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67886)

draft law and the red lines have been identified to be taken into account in its text. According to available information, the law on media is to be adopted in 2020.

Practical implementation is mostly at an early stage. Adoption of bylaws, namely acts of the National Council for Television and Radio Broadcasting, is impossible without the adoption of a relevant law. For the past two years, along with the development of the draft law, the National Council has been introducing a prototype of a co-regulation mechanism, namely development of codes of conduct for broadcasters with regard to child protection. The experience gained should form the basis of the future co-regulation mechanism.



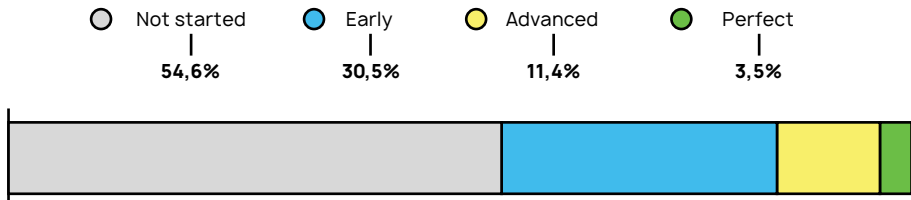


# AGRICULTURE AND RURAL DEVELOPMENT

# AGRICULTURE AND RURAL DEVELOPMENT

Expert: **Valeriy Bondarchuk**

## Implementation progress for the sector:



The commitments within this sector are specified in Title V "Economic and Sector Cooperation", Chapter 17 "Agriculture and Rural Development", Art. 403–406, Annex XXXVIII to the Agreement.

The process of legislative approximation and fulfilment of the requirements associated with the sector of agriculture and rural development involves a number of problems – both at the stage of approximation of legislation and in the process of its implementation.

The current state of affairs in this sector is due to the rather vague wording of the commitments and direct goals of legislative approximation used in the text of the Agreement, limited human resources of the Ministry of Agrarian Policy / Ministry of Economic Development, unclear approximation priorities, excessive number of approximation tasks, the fact that the Government and the Verkhovna Rada treat the measures in the sector as somewhat marginal, as well as significant differences between the legal systems and principles of regulation of the EU and Ukraine, which creates significant obstacles to approximation and makes it difficult to find professionals to work on legislative approximation. The most important EU integration laws adopted in 2018–2019 include the laws "On the Basic Principles of and Requirements for Organic Production, Circulation and Labelling of Organic Products" (No. 2496-VIII of 10.07.2018) and "Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of the Legal Protection of Geographical Indications" (No. 123-IX of 20.09.2019). A lot of work has been done to prepare bylaws to implement the Organic Law.

In 2017–2019, members of parliament, national and European experts made a number of attempts to legislatively enshrine the priority areas of agricultural and rural development, as has been done in most European countries. Although no such bill is directly specified in the commitments under the Association Agreement in the sector, it logically follows from the context of Chapter 17 "Agriculture and Rural Development". Such a law would greatly simplify further work on the approximation of legislation and would create the necessary basis for the expected implementation of the European standards in practice. The latest attempt to adopt such a law was made by registering draft law No. 9162 "On the Basic Principles of the State Agrarian



Policy and State Policy for Rural Development” of 04.10.2018<sup>1</sup>, it was recommended for consideration by the Verkhovna Rada Committee on Agrarian and Land Policy, but the previous parliamentary convocation failed to consider it and the draft law was withdrawn from consideration in accordance with the Rules of Procedure of the Verkhovna Rada.

In recent years, the work on the approximation of legislation has mostly focused on bylaws – i.e. resolutions of the Cabinet of Ministers and orders of the Ministry of Agrarian Policy / Ministry of Economic Development. It is indicative that due to bureaucratic procedures (inclusion of the Ministry of Agrarian Policy in the Ministry of Economic Development) Order No. 83 of the Ministry of Economic Development of September 26, 2019 repealed a number of EU integration orders that had already been adopted by the Ministry of Agrarian Policy (Organic Legislation).

At the same time, due to the close cooperation of the Ministry of Agrarian Policy / Ministry of Economic Development with international technical assistance projects over the past two years, work on legislative approximation has significantly intensified in fields such as the organic market, GMOs, crop production, trade standards, and geographical indications.

In matters of implementation in this sector, Ukraine faces the problem of the protracted drafting of the bylaws necessary to enact the adopted laws, lack of / insufficient equipment of laboratories engaged in assessing the quality of seeds and agricultural products, lack of specialists in the field, limited access to new expertise and technologies (this especially applies to small producers), low levels of digitalisation in rural areas, non-compliance and lack of proper monitoring of compliance with the updated requirements.

## QUALITY POLICY

### Overview of key Eurointegration commitments

By analysing the commitments in this subsector, we have found out that the Association Agreement and some previous agreements between Ukraine and the EU have somewhat different approaches to the matters of legislative approximation. Unlike previous agreements, the Agreement focuses on mutual recognition of geographical indications and cooperation between the Parties in this area. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has been in force since 1994, and the trade-related part of the Association Agreement with the EU has been in force since the beginning of 2016. The parties undertook to mutually protect geographical indications.

Art. 404 of the Agreement focuses on promoting the policy of quality of agricultural products in the areas of product standards, production requirements and quality schemes. However, Annex 38 to Title V Chapter 17 of the Agreement contains a number of Council and Commission Regulations to which national law should be approximated and which generally concern the protection of geographical indications and designations of origin for agricultural products and foodstuffs, definition, description, presentation, labelling and protection of geographical indications of alcoholic beverages, guaranteed traditional composition and mode of production of agricultural products and foods, support programmes, trade with third countries, production capacity and control of the wine sector.

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1) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64742](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64742)

In general, the commitments associated with approximation and implementation of legislation in this subsector largely focus on the protection of the rights of the European producers of products with geographical indications – mainly in the wine and cheese production sector. For example, in order to comply with the terms of the Agreement, by 2026 Ukraine must stop using the protected geographical indication "cognac"; and Ukrainian producers of feta cheese will also have to drop the name from 2023.

At the same time, in 2019 the first Ukrainian geographical indications were identified to be registered. In December 2019, the Ministry of Economic Development issued a Registration Certificate for the designation of origin of Hutsul Bryndza sheep cheese.

All in all, the costs in this sector related to the harmonisation and implementation of European standards can be considered reasonable, given the possibility of entering local and foreign markets for small and medium-sized producers with higher added value. Besides, the consumer will receive guaranteed high-quality products.

On the other hand, national producers will lose the right to use some names that are well-known and familiar to the consumer, might lose a certain share of consumers, as well as incur additional costs for compliance with these rules, which might be a problem. However, the transition period allows both producers and consumers to adapt to new realities.

### **Evaluation of progress in fulfilling commitments**

#### **Commitment 280 / Improving the system of geographical indications for foodstuffs and agricultural products**

- Council Regulation (EC) No 510/2006 of 20 March 2006

The commitment focuses on ensuring compliance with the rules of protection of geographical indications and designations of origin for agricultural products and foodstuffs.

Regulatory approximation is mostly advanced. In this area, the Verkhovna Rada adopted the Law of Ukraine No. 123-IX "Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of the Legal Protection of Geographical Indications" of 20.09.2019, which harmonised national legislation with EU law by providing a new definition of "geographical indication" and "designation of origin for goods", specifying the conditions for granting legal protection of geographical indications and the grounds for refusing such protection, setting the conditions for granting legal protection of homonymous geographical indications, specifying the range of persons entitled to state registration of a geographical indication, reviewing conditions for registration application, improving the procedure for examination of applications for geographical indications, determining the requirements for the specifications to be met by the goods to which the indication is applied, and specifying the list of rights and obligations arising from the state registration of geographical indications.

The law provides for the improvement of legal regulation of intellectual property relations with regard to the legal protection of geographical indications by amending the Commercial and Civil Codes of Ukraine, the Law of Ukraine "On Protection of Rights to Indication of Origin of Goods", and the Decree of the Cabinet of Ministers of Ukraine "On State Duty". The law fully came into force on January 1, 2020.

In addition, the Ministry of Economic Development has developed the draft Law of Ukraine "On the Specific Features of the Legal Protection of Geographical Indications, Rights to Guaranteed Traditional Features and the Use of Optional Quality Schemes for Agricultural Products and Foodstuffs", which is to detail aspects of the protection of rights to geographical indications and designations of origin of agricultural products and foodstuffs.

Practical implementation is at the initial stage. So far, the right to use a designation of origin has been registered for Hutsul Bryndza sheep cheese in Ukraine. The following foodstuffs have been identified as eligible for registration and currently are preparing for registration: watermelon – "Kherson watermelon", sweet cherries – "Melitopol cherries", honey – "Carpathian honey", wine – "Shabskyi", wine – "Yalpuh", wine – "Zakarattia", and wine – "Bilhorod-Dnistrovskyi".

Apart from the products to which the transition period applies, the protection of all others was to start from early 2016. However, due to the lack of control, products that violate the current requirements can still be found on the market, this is especially true for sparkling wines (Prosecco, Asti)<sup>2</sup>.

A transition period has been set for the transition to new product names in Ukraine. For some alcoholic beverages – i.e. cognac and champagne – it is set until the end of 2025, for cheese – i.e. Roquefort, Parmesan and Feta – it is the end of 2022.

### **Commitment 281 / Improving the legal protection of geographical indications and designations of origin for agricultural products and foodstuffs in accordance with the requirements of EU law**

- Commission Regulation (EC) No 1898/2006 and Commission Regulation (EC) No 1216/2007 (repealed by Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013)

In general, the commitments focus on ensuring compliance with EU rules of appropriate protected designation of origin for feed and raw materials to inform consumers about the characteristics, conditions and specifics of the agricultural production of goods.

Regulatory approximation is at an early stage. On the one hand, the laws of Ukraine "On Feed Safety and Hygiene" of 21.12.2017 (No.2264-VIII)<sup>3</sup> and "On Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of the Legal Protection of Geographical Indications" (No. 123-IX of September 20, 2019)<sup>4</sup> were adopted and entered into force – they regulate general matters related to feed production and protection of geographical indications, but the detailed procedure and rules of feed production and consumer information in compliance with the EU law on protected designations of origin for feed and raw materials are not properly regulated by these legislative acts.

So far, the Ministry of Economic Development has developed the draft law of Ukraine "On the Specific Features of the Legal Protection of Geographical Indications, Rights to Guaranteed Traditional Features and the Use of Optional Quality Schemes for Agricultural Products and Foodstuffs", which is undergoing examination by the EU project 'Support to the Development of a Geographical Indications System in

2) <https://dailyviv.com/news/ekonomika/konyak-shampanske-ta-fetu-mistsevoho-vyrobnytstva-zaboronyat-ekspert-u-ivovi-80920>

3) <https://zakon.rada.gov.ua/laws/show/2145-19>

4) <https://zakon.rada.gov.ua/laws/show/123-20>

Ukraine'. The Ministry of Economic Development proposes to include this draft law in the plan of the law-making work of the Verkhovna Rada of Ukraine for 2020. The timeframe for its submission and consideration is Q4 of 2020. Following the adoption of this draft law, a number of bylaws will be developed with a view to its proper implementation.

Practical implementation has not started due to the lack of a proper regulatory framework.

### **Commitment 282 / Improving the legislation on grapes and grape wine in accordance with the requirements of EU law**

- Council Regulation (EC) No 479/2008 of 29 April 2008 (repealed by Council Regulation (EC) No 491/2009 of 25 May 2009 )
- Commission Regulation (EC) No 555/2008 (repealed by Commission Delegated Regulation (EU) 2016/1149 of 15 April 2016)

The commitment focuses on establishing the European rules for the production of wine and other grape products and requirements for them, as well as approaches to supporting wine producers.

The current Law of Ukraine "On Grapes and Grape Wine" of 16.06.2005 (No. 2662-IV)<sup>5</sup> contains certain provisions relating to the determination of wines of controlled origin (Art. 1, para. 21), a prototype of wine (Art. 1, para. 41), and wines with controlled designation of origin (Art. 8).

Legal approximation is early. In order to approximate legislation in this area, the draft law of Ukraine "On Grapes and Wine Products" was developed (registration number 5667 of 19.01.2017). However, on October 3, 2017, it was withdrawn from consideration. Currently, the Ministry of Economic Development and experts have prepared a new draft law of Ukraine "On Amendments to the Law of Ukraine 'On Grapes and Grape Wine'", which is undergoing discussion with the wine industry representatives due to inconsistencies in terms, including the alternative name of Ukrainian cognac. The Ministry of Economic Development proposed to include this draft law in the plan of law-making work of the Verkhovna Rada of Ukraine for 2020. The timeframe for submission and consideration is Q4 of 2020.

So far, no real steps have been taken to develop and implement support schemes for wine producers, CMU Regulation No. 109 "On Amendments to Resolution No. 77 of the Cabinet of Ministers of Ukraine of February 8, 2017" of February 19, 2020 identified areas of state support for 2020, including financial support for the development of horticulture, viticulture and hop growing. The mechanism and areas of the support provided for the development of horticulture, viticulture and hop growing are defined by the CMU Regulation "On Approval of the Procedure for Using Funds Allocated from the State Budget for the Development of Viticulture, Horticulture and Hop Growing" (as amended on 18.03.2020). However, this support only applies to the purchase of planting material and the storage of table grapes.

According to the government's action plan, measures under this commitment must be implemented by the end of 2020.

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5) <https://zakon.rada.gov.ua/laws/show/2866-15>

Practical implementation has not started due to the lack of a proper regulatory framework.

### **Commitment 283 / Improving the legal protection of geographical indications and designations of origin for agricultural products and foodstuffs in accordance with the requirements of the EU law on spirit drinks**

- Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008

The commitments focus on the development and compliance with European requirements for the production and labelling of products, compliance with the rules concerning geographical indications of spirit drinks.

Measures to approximate legislation in this area are to be taken in 2021

Law of Ukraine No. 123-IX "Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of the Legal Protection of Geographical Indications" of 20.09.2019, amended the preamble to the Law of Ukraine "On the Protection of Rights to Indications of Origin of Goods", which states that the specifics of preparation for registration, use and protection of geographical indications for agricultural products (agricultural goods), foodstuffs, wine, aromatised wine products, and spirit drinks, as well as control over such geographical indications are set forth by other laws.

At the time of writing, the experts of the EU project 'Support to the Development of a Geographical Indications System in Ukraine' have developed a draft law of Ukraine "On Geographical Indications of Spirit Drinks", which is to align the national requirements for production, labelling, and compliance with the rules concerning geographical indications of spirit drinks with those of EU acquis.

Practical implementation has not started due to lack of proper legal framework.

## **GENETICALLY MODIFIED CROPS**

### **Overview of key Eurointegration commitments**

This subsector aims at creating the necessary rules and conditions for safe coexistence of genetically modified crops with conventional and organic farming in the process of growing crops, which means developing national strategies to ensure the coexistence of GM and non-GM crops. Commission Recommendation on guidelines for the development of national strategies and best practices to ensure the co-existence of genetically modified crops with conventional and organic farming of 23 July 2003 was repealed by Commission Recommendation of 13 July 2010 on guidelines for the development of national co-existence measures to avoid the unintended presence of GMOs in conventional and organic crops (2010/C 200/01).

Subject to the development of legislation on genetically modified crops and organisms, the development of these recommendations should have a positive impact primarily on Ukraine's export opportunities concerning crops.

In general, the implementation of these standards will make it possible to establish a clear division and monitor the process of growing GM and non-GM crops, for each crop separately. This, inter alia, will allow traders to be confident in the quality of the crops that are exported.

## Evaluation of progress in fulfilling commitments

### Commitment 284 / Implementation of the rules and principles of growing genetically modified crops to ensure the safe co-existence of genetically modified crops with conventional and organic farming

- Commission Regulation (EC) No 556/2003 of 27 March 2003 (repealed by Commission Recommendation of 13 July 2010 2010/C 200/01)

The commitments within this subsector aim at developing and putting into practice recommendations concerning the rules and principles of growing genetically modified crops to ensure the safe coexistence of genetically modified crops with conventional and traditional and organic farming. Such recommendations must be developed separately for each crop.

So far, Ukraine has not started work on the development of such recommendations. By the end of 2020, this issue should be discussed by experts and the interested central executive bodies in the process of development of proposals to improve the national legislation on GMOs.

In the European Union, such recommendations have been developed and used by only 17 Member States out of 27.

Implementation has not started due to the lack of a legal framework.

## ORGANIC FARMING

### Overview of key Eurointegration commitments

Ukraine's organic farming has been gradually evolving and growing since the early 2000s. This is facilitated by both the gradual increase in demand for such products in the domestic market and the proximity of financially reliable EU countries, where such products are in stable demand on the part of consumers. However, due to the insufficient awareness of producers about the benefits of organic farming, insufficient information about the benefits of organic products for the consumer and the high cost of such products, the domestic market of organic products is still quite limited and the potential for export has not been fully unlocked.

Currently, there are more than 600 operators in the field of organic production in Ukraine<sup>6</sup>. In recent years, Ukraine has been a leader in the export of organic products to EU countries.

In accordance with Article 405 and Annex XXXVIII of the Association Agreement, Ukraine has undertaken to gradually approximate its national legislation to the European requirements for organic products, in particular:

- Introducing European approaches to regulation of the organic market, including rules and principles of production and circulation of organic products and raw materials;
- Introducing European rules for the production of organic food through processing;

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6) <https://agropolit.com/news/11721-v-ukrayini-pratsyuye-ponad-600-operatoriv-organichnogo-virobnitstva>

- Establishing a single list of terms and logos related to the labelling of organic products in accordance with EU rules;
- Introducing European control mechanisms in the field of organic production;
- Introducing European approaches to regulating the import of organic products from third countries.

The functioning of a full-fledged organic market in Ukraine in accordance with European requirements allows Ukrainian producers to gain full access to the European market, taking into account the European Green Deal announced at the end of 2019, which aims to turn all sectors of economy green and restrict access to the EU market to goods that do not meet environmental standards. By adopting the new legislation Ukraine will also get an opportunity to increase its production and range of organic products and boost the profitability of farming, whereas Ukrainian consumers will also have access to organic products produced and certified according to European rules.

The costs of the public and private sector for the development and implementation of the European approaches to the production, circulation and labelling of organic products, and the corresponding certification are certainly worth it.

#### **Evaluation of progress in fulfilling commitments**

#### **Commitment Group 285 / Alignment of the rules and principles of production and circulation of organic products and raw materials of animal origin/aquaculture with the EU requirements**

- Council Regulation (EC) No 834/2007 of 28 June 2007
- Commission Regulation (EC) No 889/2008 of 5 September 2008
- Commission Regulation (EC) No 1235/2008 of 8 December 2008

These commitments aim to create preconditions for the full-fledged functioning of the organic market in Ukraine in accordance with the European requirements for the production and circulation of organic products.

Legal approximation is advanced. The current Law of Ukraine "On the Basic Principles of and Requirements for Organic Production, Circulation and Labelling of Organic Products" (No. 2496-VIII) establishes clear and transparent rules, principles, and requirements for organic production, circulation, and labelling of organic products that comply with EU law and will facilitate the development of the organic market. Currently, the Law requires development of certain additional more detailed standards concerning the rights and duties of foreign certification bodies. In general, this Law establishes an appropriate level of regulation of the organic market in accordance with European requirements.

Work on drafting and adoption of the necessary bylaws in order to fully launch the organic market is underway.

5 regulatory acts out of 12 specified in the Law of Ukraine "On the Basic Principles of and Requirements for Organic Production, Circulation and Labelling of Organic Products" 2496-VIII of July 10, 2018 have already been adopted. Another 5 regulations have been prepared and are being approved by the central executive bodies and the state regulatory service. Another 2 regulations are under development.

Practical implementation is early. On August 2, 2019, Law of Ukraine No. 2496-VIII "On the Basic Principles of and Requirements for Organic Production, Circulation and Labelling of Organic Products" entered into force. The law was developed jointly by professionals of the Ministry of Agrarian Policy, experts of international technical assistance projects (including the EU international technical assistance project 'Support to the Development of a Geographical Indications System in Ukraine', the Swiss-Ukrainian international technical assistance project 'Organic Market Development in Ukraine', and the 'German-Ukrainian Agropolitical Dialogue'). A number of regulatory legal acts have been adopted for its implementation, in particular Resolution No. 970 of the Cabinet of Ministers of Ukraine "On Approval of the Procedure (detailed rules) of Organic Production and Circulation of Organic Products" of 23.10.2019, Resolution No. 87 of the Cabinet of Ministers "On Approval of the Procedure for Maintaining the State Register of Operators Producing Products in accordance with the Requirements of the Legislation in the Field of Organic Production, Circulation and Labelling of Organic Products, the State Register of Certification Bodies in the Field of Organic Production and Circulation of Organic Products, and the State Register of Organic Seeds and Planting Material" of 12 February 2020, Order No. 143 of the Ministry of Agrarian Policy "On Approval of the Procedure for Confirmation of the Expertise of the Inspector for Organic Production and/or Circulation of Organic Products in the Field of Organic Production" of 19.03.2019, Order No. 67 of the Ministry of Agrarian Policy "On Approval of the State Logo for Organic Products" of 22.02.2019, Order No. 109 of the Ministry of Economic Development "On Approval of the Application Form for State Registration of Certification Bodies in the Field of Organic Production and Circulation of Organic Products" of 30.01.2020.

Currently, 5 acts in this area are undergoing endorsement / re-endorsement by the relevant central executive bodies (concerning foreign and national certification bodies, ingredients, substances and components that can be used in the process of organic production, and the logo of organic products).

In addition, the Ministry of Economic Development in cooperation with organic market experts and specialists of international technical assistance projects have drafted and made publicly available Guidelines<sup>7</sup> concerning the Application of Legislation in the Field of Organic Production, Circulation and Labelling of Organic Products. These Guidelines will help the participants of the organic market develop a better understanding of the new provisions of organic legislation and faster adapt to the new European requirements.

It is necessary to adopt 5 additional legal acts that will give an impetus to a full start for the organic market.

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7) [https://agro.me.gov.ua/storage/app/sites/1/organic/Organic\\_law\\_guide\\_f inal.pdf](https://agro.me.gov.ua/storage/app/sites/1/organic/Organic_law_guide_f inal.pdf)



## BIODIVERSITY

### Overview of key Eurointegration commitments

In this subsector, in accordance with Annex XXXVIII to Chapter 17 "Agriculture and Rural Development", Ukraine has undertaken to approximate national legislation to the requirements of Council Regulation (EC) No 870/2004 of 24 April 2004 establishing a Community programme on the conservation, characterisation, collection and utilisation of genetic resources in agriculture and repealing Regulation (EC) No 1467/94. The Regulation applies to the genetic resources of plants, microorganisms and animals that are used or can be used in agriculture. Its provisions contain requirements for measures supported under the European Community Framework Programme for Research, Technological Development and Demonstration Activities.

The introduction of these requirements will give Ukrainian breeders the opportunity to work more closely with their European counterparts to exchange breeding materials and to improve the quality of such materials.

#### **Commitment 286 / Creating preconditions for the functioning of the European rules regulating the handling of genetic resources of plants, microorganisms and animals that are used or can be used in agriculture**

- Council Regulation (EC) No 870/2004 of 24 April 2004

This commitment aims to create regulatory prerequisites for Ukraine's participation in the programme of conservation, characterisation, collection and utilisation of genetic resources in agriculture, the system of informing NGOs and other stakeholders about the programme of conservation, characterisation, collection and utilisation of genetic resources in agriculture, creation of an effective mechanism for information exchange and coordination between Ukraine and EU Member States on conservation, characterisation, collection and utilisation of genetic resources in agriculture.

Work to implement Ukraine's commitments in this subsector has not yet begun, although these commitments were to be fulfilled by 2019 according to the plan of the Cabinet of Ministers.

No information on prospects of the measures to be taken in the subsector by the Ministry of Economic Development is available. Progress in the fulfilment of the commitments in this area may be considered in May 2020 at a meeting of the EU-Ukraine Subcommittee on Title V of the Association Agreement.

## MARKETING STANDARDS FOR PLANTS, SEEDS OF PLANTS, PRODUCTS DERIVED FROM PLANTS, FRUITS AND VEGETABLES

### Overview of key Eurointegration commitments

In this subsector, Ukraine has undertaken a number of commitments tentatively falling into the following categories:

1. Matters related to the harmonisation of national legislation with the requirements of European rules concerning labelling, packaging, marketing and consumer protection with regard to sugar, fruit juices, coffee and chicory extracts, cocoa and chocolate, fruit jams, jellies and marmalades, and olive oil.
2. Matters related to the approximation of legislation in the field of seed production, propagating material of fruit plants, vine and ornamental plants, forest reproductive material, and cereal seed.
3. Matters related to establishing European rules of regulation in the market of agricultural products.
4. Improving feed legislation in line with EU requirements.

All in all, the subsector involves work on the approximation of legislation to 33 European Regulations and Directives, which entails a huge number of measures that are very complex and burdensome to work on, given the limited capabilities and resources of the Ministry of Economic Development and the scope of future activities.

Approximation of legislation and implementation of European requirements in this subsector are well-justified, given the opportunities for domestic producers to enter European markets with high added value of plant products and seeds. Currently, in the field of seed production, Ukraine needs to find resources to create, equip and train the staff of accredited diagnostic laboratories to assess the quality of vegetable seeds.

#### **Evaluation of progress in fulfilling commitments**

### **Requirements for labelling, packaging, marketing and consumer protection concerning sugar, fruit juices, coffee and chicory extracts, cocoa and chocolate, fruit jams, jellies and marmalades, and olive oil**

#### **Commitment Group 287 / Establishing European requirements on the packaging, storage conditions, labelling, quality characteristics, terminology and approval of the order of processing the following types of products:**

- certain types of sugars;
- coffee and chicory extracts;
- fruit raw materials for production of juices and foods intended for human consumption;
- fruit raw materials for the production of fruit jams, jellies, marmalades and sweetened chestnut purée intended for human consumption.
- Council Directive 2001/111/EC of 20 December 2001

- Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999
- Council Directive 2001/112/EC of 20 December 2001
- Council Directive 2001/113/EC of 20 December 2001

These commitments aim to establish clear-cut requirements for the production of the specified products intended for human consumption, their characteristics and chemical properties, which will ensure the appropriate level of consumer information.

EU legislation contains clear definitions and requirements for sugars, juices and nectars, jellies and marmalades, coffee, cocoa and other similar products in order to use common terms and eliminate unfair competition that may mislead the consumer; it also sets forth general requirements for their manufacture and labelling.

The legal approximation is perfect for certain sugars, as well as for cocoa and chocolate.

For coffee and chicory extracts, juices, jellies and marmalades, it is at an early stage. Order No. 592 of the Ministry of Agrarian Policy "On Approval of the Requirements for Sugars Intended for Human Consumption" of November 2, 2017 was adopted<sup>8</sup> laying down requirements on the production of sugars intended for human consumption, their characteristics and chemical properties, in particular, extra white, white, semi-white sugars, sugar solutions, invert sugar solutions, invert sugar syrups, glucose-fructose syrups, dried glucose syrups, dextrose or dextrose monohydrate, anhydride dextrose, and fructose.

Order No. 157 "On Approval of the Requirements for Cocoa and Chocolate Products" of 13.04.2016 was adopted<sup>9</sup> and came into force on January 1, 2018; it meets the European standards.

Regarding the approximation of legislation on coffee and chicory extracts, juices, jellies and marmalades, as well as olive oil, the Ministry of Economic Development together with ITA project experts developed and discussed in the expert community some relevant draft orders, but currently they are at different stages pending endorsement / re-endorsement in central executive bodies and the State Regulatory Service.

The practical implementation of the updated provisions has started only in relation to the requirements for cocoa and chocolate products; the updated requirements under the Order on Sugar come into force on September 1, 2022, for other products no regulatory acts have been adopted, implementation has not started.

## **Requirements in the field of seed production, propagating material of fruit plants, vine and ornamental plants, forest reproductive material, and cereal seed**

### **Commitment 288 / Improving marketing of cereal seed in accordance with the requirements of EU law**

8) <https://zakon.rada.gov.ua/laws/show/4651-17>

9) <https://zakon.rada.gov.ua/laws/show/z0688-16>

- Council Directive 66/402/EEC of 14 June 1966

**Commitment 289 / Establishing rules for the production and marketing of material for the vegetative propagation of vine in accordance with the requirements of EU law**

- Council Directive 68/193/EEC of 9 April 1968

**Commitment 290 / Bringing the Ukrainian legislation on the distribution of material for propagation and planting of vegetable crops other than seeds in line with the requirements of EU law**

- Council Directive 92/33/EEC of 28 April 1992 (repealed by Council Directive 2008/72/EC of 15 July 2008)

**Commitment 291 / Bringing the Ukrainian legislation on the marketing of material for fruit plant propagating material and fruit plants intended for fruit production in accordance with the requirements of EU law**

- Council Directive 92/34/EEC of 28 April 1992 (Council Directive 2008/90/EC of 29 September 2008)

**Commitment 292 / Improving the Ukrainian legislation on planting material of ornamental plants in accordance with the requirements of EU law**

- Council Directive 98/56/EC of 20 July 1998

**Commitment 293 / Aligning the rules concerning registration of seeds and crops, conducting the necessary testing, classification, registration of varieties and revocation of such registration with EU rules**

- Council Directive 2002/53/EC of 13 June 2002

**Commitment 294 / Establishing European requirements on the production of vegetable seed for trade**

- Council Directive 2002/54/EC of 13 June 2002
- Council Directive 2002/55/EC of 13 June 2002
- Council Directive 2002/56/EC of 13 June 2002

**Commitment 295 / Establishing European requirements on the production and marketing of oilseeds and fibre plants intended for agricultural production**

- Council Directive 2002/57/EC of 13 June 2002

**Commitment 296 / Alignment of the rules of production, labelling and marketing of forest reproductive material with the EU requirements**

- Council Directive 1999/105/EC of 22 December 1999

In this area, the process of legislative approximation is at different stages – from perfect to early. Order No. 476 of the Ministry of Agrarian Policy "On Approval of the Methodological Requirements in the Field of Seed Production for the Preservation of Varietal and Sowing Qualities of Corn Seeds" of 04.10.2018 was adopted and entered into force<sup>10</sup>; it settles a number of commitments relating to the harmonisation and implementation of the European standards in the field of seed production.

Regarding the requirements for the production of vegetable seeds for marketing – a number of regulatory acts were adopted to harmonise legislation, in particular Resolution No. 97 of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Certification, Issuance and Revocation of Certificates for Seeds and/or Planting Material and Certificate Forms for Seeds and/or Planting Material" of 21.02.17, Order No. 348 of the Ministry of Agrarian Policy "On Approval of the Procedure for Labelling and Packaging of Seed Batches and Label Forms" of 10.07.2017, Resolution No. 1031 of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Issuance, Revocation, Temporary Suspension, and Form of the Certification Auditor's Certificate (agricultural inspector)" of 28.12.2016, a draft order of the Ministry of Economic Development "On Approval of Methodological Requirements concerning Sugar Beet and Fodder Beet Seed" was developed whereby methodological requirements in the field of seed production are envisaged to preserve varietal and sowing qualities of sugar and fodder beet seeds as well as methodological requirements concerning evaluation of seed crops of sugar and fodder beets. Order No. 384 of the Ministry of Agrarian Policy and Food of Ukraine "Methodological Requirements in the Field of Seed Production to Preserve Varietal and Sowing Qualities of Seed Potatoes" of July 12, 2019 was adopted; a draft order of the Ministry for Development of Economy, Trade and Agriculture of Ukraine on "Methods for Determining Varietal and Sowing Qualities of Seed Potatoes" has been submitted for endorsement to the structural units of the Ministry of Economic Development. The draft of this order is currently undergoing registration.

Regarding the rules of production and marketing of materials for vegetative propagation of vine, the relevant work is scheduled for 2020. So far, a draft law on amendments to the Law of Ukraine "On Seeds and Planting Material" has been developed, which to some extent should settle the matters of harmonisation of approaches to materials for vegetative propagation of vine. This draft law is included in the plan of law-making work of the Verkhovna Rada of Ukraine for 2020. The time-frame for submission and consideration is Q4, 2020.

With regard to the harmonisation of approaches to the distribution of materials for propagation and planting of vegetable crops other than seeds, approximation work is at an early stage. Due to international technical assistance projects and at the request of the Ministry of Economic Development, an expert was involved to make a comparative analysis of the legislation and develop the first version of a relevant order taking into account European requirements. The order is undergoing expert discussion.

Work on approximation of legislation on fruits, fruit plants, and ornamental plants has not started, the deadline is the end of 2020.

As regards ensuring compliance with the EU standards concerning the rules for registration of seeds and crops, conducting the necessary tests, classification, registration of varieties and revocation of such registration, the Ministry of Economic

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10) <https://zakon.rada.gov.ua/laws/show/z1219-18>

Development has prepared a draft regulation of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Maintaining the State Register of Plant Varieties". This draft resolution should be discussed by the expert community and, according to the action plan, it is to be approved by the end of 2020.

Regarding the requirements for the production and marketing of oilseeds and fibre plants intended for agricultural production, on the one hand, Resolution No. 97 of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Certification, Issuance and Revocation of Certificates for Seeds and/or Planting Material and Certificate Forms for Seeds and/or Planting Material" of 21.02.17, Order No. 348 of the Ministry of Agrarian Policy "On Approval of the Procedure for Labelling and Packaging of Seed Batches and Label Forms" of 10.07.2017, and Order No. 558 of the Ministry of Agrarian Policy "On Approval of the Method of Field Assessment of Sunflower and Rapeseed" of 21.11.2018 have been adopted. On the other hand, some matters remain unresolved such as elimination of any obstacles in the general supply of basic or certified seeds, as well as in the organisation of temporary tests and conditions of marketing of chemically treated seeds; marketing of seeds with regard to in situ conservation and sustainable use of plant genetic resources, as well as seeds suitable for organic production (regarding the possibility of temporary non-application of these requirements).

Regarding the rules of production, labelling and marketing of forest reproductive material, approximation of legislation is planned starting in 2021.

With regard to beet seeds and seed potatoes, the implementation process can be considered advanced, given the existence of special rules and detailed regulations established in the current legislation, but, according to experts, for full implementation of the EU regulations on seeds Ukraine must conduct a number of systemic reforms – i.e. align its seed certification with European quality control procedures at the level of relevant laboratories and trained specialists.

## **Requirements in the field of the rules of regulation in the market of agricultural products**

### **Commitment 297 / Introduction of a system of standards for the marketing of agricultural products**

- Council Regulation (EC) No 1234/2007 of 22 October 2007 (repealed by Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013)

### **Commitment 298 / Ensuring control over compliance with marketing standards for agricultural products**

- Commission Regulation (EC) No 1345/2005 of 16 August 2005 and Commission Regulation (EC) No 507/2008 of 6 June 2008 (repealed by Commission Delegated Regulation (EU) 2016/1237 of 18 May 2016)

### **Commitment 299 / Improving legislation on hop production in line with EU acquis**

- Commission Regulation (EC) No 1850/2006 of 14 December 2006

### **Commitment 300 / Improving national legislation on production cooperation**

- Commission Regulation (EC) No 223/2008 of 12 March 2008 (repealed by Commission Delegated Regulation (EU) 2016/232 of 15 December 2015)

### **Commitment 301 / Bringing national legislation on the regulation of the market of fruits and vegetables, processed fruits and vegetables in line with European requirements**

- Commission Regulation (EC) No 1580/2007 of 21 December 2007 (repealed by Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011)

Legislative approximation in this area is at different stages.

Regarding the control over the content of contaminants in food, Order No. 288 of the Ministry of Agrarian Policy "On Approval of Methods of Sampling to Determine the Maximum Permissible Levels of Certain Contaminants in Food for State Control" of 25.06.2018 was adopted to enforce Art. 21 of the Law of Ukraine "On State Control over Compliance with Legislation on Food, Feed, Animal By-Products, Animal Health and Welfare". The approximation can be described as perfect.

Regarding the systems of standards for the marketing of agricultural products, in relation to wine and wine products (early stage), draft laws "On Amendments to the Law of Ukraine 'On Grapes and Grape Wine' and "On Geographical Indications of Wines and Aromatized Wine Products" have been developed. Both of these draft laws will be included in the law-making plan for 2020. The time-frame for submission and consideration is Q4, 2020.

With regard to hops (early stage), a draft law on hops and hop products has been developed and is under discussion. It is planned to involve international technical assistance project experts in the fulfilment of measures to approximate the legislation on hops.

Improvement of the legislation on production cooperation for the purposes of approximation of the legislation has not started yet. The existing draft law "On Agricultural Cooperation" (No. 0856 of 29.08.2019), which is pending consideration in the Verkhovna Rada at second reading, does not cover these matters (it regulates production and service cooperation).

Measures to approximate legislation in order to align national legislation regulating the market of fruits and vegetables as well as processed fruits and vegetables with European requirements are planned for 2020-2021. Approximation either has not started or is at an early stage.

Given the fact that only a minor share of work has been done to approximate legislation in this area, the implementation of the updated legislation, except for issues of control over contaminants in food, has not yet begun.

## Requirements concerning feed in accordance with EU rules

### Commitment 302 / Improving feed legislation in line with EU requirements

- Commission Regulation (EC) No 382/2005 of 7 March 2005

Work on approximation of feed legislation to EU requirements under Chapter 17 "Agriculture and Rural Development" is scheduled for 2021 and beyond. The Law of Ukraine "On Food Safety and Hygiene" adopted in 2017 is aimed primarily at meeting the requirements of Chapter 4 "Sanitary and Phytosanitary Measures". The planned measures concern control over the circulation and use of feed in the process of production/processing of products. Both laws and a number of by-laws are to be adopted to implement these measures.

Implementation has not started.

## MARKETING STANDARDS FOR LIVE ANIMALS AND ANIMAL PRODUCTS

### Overview of key Eurointegration commitments

The commitments within this subsector cover a number of important matters related to the harmonisation of national legislation with EU requirements in order to introduce European approaches to the marketing of live animals and animal products, which includes several complex tasks:

1. Bringing national honey legislation in line with EU law.
2. Establishing detailed rules for the marketing of the meat of bovine animals aged 12 months or less, conducting testing and control of meat from third countries and cooperation with EU bodies in control matters.
3. Development and introduction of detailed standards of the marketing of eggs in accordance with European requirements, introduction of detailed marketing standards for eggs for hatching and farmyard poultry chicks, development and implementation of detailed standards of the marketing of poultry meat in accordance with EU law.
4. Introduction of the European system of identification and registration of cattle, marketing of animals, labelling of meat, introduction of a classification of beef, pork, and mutton carcasses and the reporting of prices thereof.
5. Introduction of a system of standards for the marketing of agricultural products.
6. Aligning the requirements for the percentage of fat in certain types of dairy products, as well as the conditions of the use of the sales description "butter" with EU law requirements.



Approximation of legislation and implementation of the European requirements in this subsector will allow Ukrainian producers to significantly improve the quality and safety of products, expand markets, increase consumer awareness of product quality and characteristics. As is the case with plant marketing standards, in order to implement the updated rules, it is necessary to create, and equip appropriate laboratories, as well as train staff for them. However, given the huge potential of the sector, the costs are undoubtedly worth it.

## **Evaluation of progress in fulfilling commitments**

### **Commitment 303 / Bringing national honey legislation in line with EU law**

- Council Directive 2001/110/EC of 20 December 2001

Ukraine is one of the world's largest players in the honey market, one of the largest suppliers of honey in the world and ranks second in honey exports to the EU after China. However, given the need to maintain the appropriate level of safety and quality of honey, the lack of mandatory appropriate state regulation and the lack of uniform requirements for these products creates additional obstacles to the marketing of honey in other foreign markets and poses a risk of closing the existing ones.

Mandatory requirements for honey in the EU are established by Council Directive 2001/110/EC of 20 December 2001 relating to honey.

The commitment aims at adapting national legislation to EU law in the field of labelling, production and sale of honey and ensuring proper consumer awareness by setting mandatory requirements for the quality and labelling of honey, and preventing business practices likely to mislead the consumer.

Legal approximation is approximation. Order No. 330 of the Ministry of Agrarian Policy "On Approval of the Requirements for Honey" of June 19, 2019 was adopted. However, in February 2020, the European Party raised the issue concerning the introduction by Ukraine (in Order 330) of additional requirements (beyond the requirements of Council Directive No. 2001/110/EC) concerning amino acids (proline) to avoid honey fraud (adulteration): all types of honey should contain at least 180 mg per 1 kg; and acacia honey should contain at least 100 mg per 1 kg. This issue has already been raised by the relevant WTO committee, and the Ukrainian party has explained that it is an integral part of the national standard. The problem is being discussed, the Ministry of Economic Development is ready to make appropriate changes to the requirements after discussions with European experts, scientists and beekeepers' associations. A draft order of the Ministry of Economic Development "On Approval of Hygienic Requirements for Facilities for the Production of Beekeeping Products" is being developed.

Implementation has not started; the order comes into force on 1.01.2023.

### **Commitment 304 / Establishing detailed rules for the marketing of the meat of bovine animals aged 12 months or less, conducting testing and control of meat from third countries and cooperation with EU bodies in control matters**

- Commission Regulation (EC) No 566/2008 of 18 June 2008

The EU has detailed rules for the implementation of Community scales for the classification of beef, pig and sheep carcasses derived from animals younger than 12 months, as well as rules for the reporting of prices thereof, rules for categorizing cattle younger than 12 months and additional labelling requirements for such meat, which also includes control over the classification of cattle in slaughterhouses.

The current Instruction on Commodity Assessment and Labelling of Meat, approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine of 04.04.2012 does not contain requirements for special branding of cattle younger than 12 months.

Legal approximation is at the early stage. Work on legislative approximation has begun with the support of ITA experts. So far, a comparative analysis of European and Ukrainian legislation has been made and proposals for approximation have been prepared, which will be discussed by the relevant WG of the Ministry of Economic Development after the end of quarantine measures. The relevant draft regulations are expected to be prepared in the first half of 2020.

Successful implementation of the relevant work will make it possible to introduce in Ukraine the classification of beef used in the European Union, expanding the current classification to include the category of "young beef" (derived from animals from 8 to 12 months), which will open new marketing opportunities for meat producers in the domestic market. Also, the introduction of the current EU nomenclature of meat, its branding, and official control will facilitate the potential for trade relations between Ukrainian farmers and EU market operators.

Work is currently underway to develop the first draft of the relevant order of the Ministry of Economic Development.

Implementation has not started since updated legislation is still under development.

**Commitment 305 / Development and introduction of detailed standards of the marketing of eggs in accordance with European requirements, introduction of detailed marketing standards for eggs for hatching and farmyard poultry chicks, development and implementation of detailed standards of the marketing of poultry meat in accordance with EU law**

- Commission Regulation (EC) No 598/2008 of 24 June 2008
- Commission Regulation (EC) No 617/2008 of 27 June 2008

Legal approximation is at the early stage. In order to approximate national law to EU rules – i.e. Commission Regulation (EC) No 598/2008 of 24 June 2008 amending Regulation (EC) No 589/2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards the marketing standards of eggs and Commission Regulation (EC) No 617/2008 of 27 June 2008 laying down detailed rules for implementing Regulation (EC) No 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks, ITA project experts on request of the Ministry of Economic Development have prepared a draft order of the Ministry of Economic Development under the provisional title "On Marketing Requirements for Hatching Eggs and Farmyard Poultry Egg Products", which was submitted to the Ministry of Economic Development in late January 2020 and as of 14.05.2020 is undergoing review by the Ministry of Economic Development. In April 2020, the

Ministry of Economic Development decided to combine all other sectoral draft acts regulating the circulation of all food products into a single act. This single act, the draft order of the Ministry of Economic Development "On Special Hygienic Requirements for the Production and Circulation of Foods of Animal Origin" has already been developed and it includes provisions on the marketing of chicks. Work has begun on the discussion/adoption of orders in accordance with established procedures. It is important to point out that most of the measures to approximate legislation in this area are planned for 2021.

Implementation has not started since updated legislation is still under development.

### **Commitment 306 / Introduction of the European system of identification and registration of cattle, marketing of animals, labelling of meat, introduction of classification of beef, pork, and mutton carcasses and the reporting of prices thereof**

- Commission Regulation (EC) No 1249/2008 of 10 December 2008

Legal approximation is at the early stage. The EU has introduced compulsory registration of cattle, a system of identification and registration, which consists of the following elements: ear tags for individual identification of animals, computerised databases, animal passports, and individual registers kept in each farm. There are also requirements for the compulsory beef labelling, and requirements for the content of labels in order to be able to trace where the animal grew up.

Ukraine does not have the right to export livestock and beef and pork products to the EU. Permission to sell animal products on EU markets will be granted after receiving a positive report from EC inspectors and including Ukraine in the list of countries that are allowed to import it into the EU. To achieve this, first of all, it is necessary to implement in practice the EU requirements for identification. They are partially implemented in Law of Ukraine No. 1445-VI "On Identification and Registration of Animals" of 04.06.2009<sup>11</sup> (recast) and the Regulation "On the Unified State Register of Animals" approved by Order No. 578 of the Ministry of Agrarian Policy of 25.09.2012<sup>12</sup>.

Measures to approximate legislation to the EU law in this area are planned for 2021.

Implementation has not started since updated legislation is under development.

### **Commitment 307 / Introduction of a system of standards for the marketing of agricultural products**

- Council Regulation (EC) No 2991/94 of 5 December 1994 (repealed by Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013)

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11) <https://zakon.rada.gov.ua/laws/show/4651-17>

12) <https://zakon.rada.gov.ua/laws/show/z1713-12>

Early stage of legal approximation with regard to the standards of the marketing of hops and wine grapes – the relevant draft laws and regulations have been or are being developed with the participation of experts. In particular, a classification of wine products is provided in the draft laws of Ukraine "On Amendments to the Law of Ukraine 'On Grapes and Grape Wine'" and "On Geographical Indications of Wines and Aromatized Wine Products". With regard to hops, in order to approximate legislation, including standards for the marketing of hops, the relevant working group of the Ministry of Economic Development with the participation of experts and relevant associations has developed a draft law of Ukraine "On Hops and Hop Products", in addition there are plans to involve an ITA expert to work in this area.

In other areas of work on this commitment, measures to approximate legislation are planned for 2020-2021.

Implementation has not started since updated legislation is under development.

**Commitment 308 / Aligning the requirements for the percentage of fat in certain types of dairy products, as well as the conditions of the use of the sales description "butter" with EU law requirements**

- Commission Regulation (EC) No 445/2007 of 23 April 2007

Legal approximation in this area has not started and is planned for 2021.

Implementation is also not started.

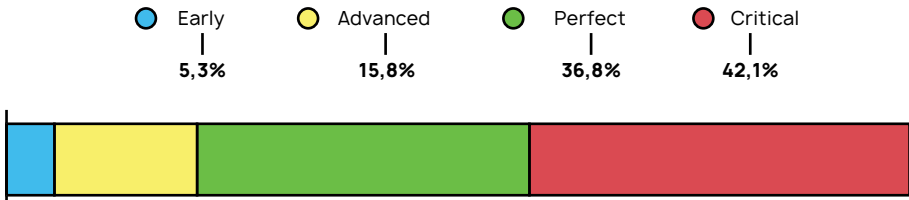
# CONSUMER PROTECTION



# CONSUMER PROTECTION

Expert: **Anna Vasylenko**

## Implementation progress for the sector:



## PRODUCT SAFETY

### Overview of key Eurointegration commitments

The commitments under the "Product Safety" subsector focus on the systematic improvement of mechanisms for ensuring the safety of non-food products, in particular on regulatory approximation of Ukrainian legislation to EU aquis, and aim at putting into action the practical aspects of the aquis implementation as regards:

1. regulation of general matters of product safety; and
2. certain legislation requirements concerning market surveillance, exchange of information with the EU, prevention of endangerment of the health or safety of consumers through certain goods, and safety of certain categories of consumer goods for children, including lighters and magnetic toys.

By fulfilling the commitments within this subsector, Ukraine will ensure a high level of confidence in the safety of consumer goods placed on the market, timely learn about potentially dangerous consumer goods and timely remove them from the market, and protect children from a number of products that may pose a threat to health.

Evaluation of progress in fulfilling commitments

### Commitment 309 / Improving mechanisms for ensuring product safety

- Directive No. 2001/95/EC

The commitment involves systematic improvement of mechanisms for ensuring product safety by aligning the general requirements for product safety with EU acquis, adopting guidelines for product safety assessment, creating and operating information systems of state market surveillance, and gaining access to RAPEX by Ukraine.

All in all, legal approximation is perfect. The approximation is implemented by two legislative acts – Law of Ukraine No. 2736-VI "On General Safety of Non-Food Products" of 2.12.2010 and Law of Ukraine No. 2735-VI "On State Market Supervision and Control of Non-Food Products" of 2.12.2010. They sufficiently transpose the requirements of Directive 2001/95/EC. Until recently, the matter of sanctions for violation of the requirements of legislation on general product safety remained a separate issue (Art. 7 of Directive No. 2001/95/EC), but in 2019 the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine with regard to Reducing Pressure on Business by Market Supervisors" strengthened sanctions for violations of the Law "On General Safety of Non-Food Products".

Practical implementation varies depending on the task within the commitment. Thus, based on the positive conclusions of experts of the European Commission, made by them based on the results of expert assessment of the Ukrainian legislation in the field of state market surveillance (2016), and taking into account the fact that guidelines for quality assessment of non-food products fall within the recommendatory part of Directive No. 2001/95/EC for cases where there are no other similar elements of the mechanism of state regulation, the Ministry of Economy has rightly determined that it is unpractical to develop a draft legal act of the Cabinet of Ministers of Ukraine on guidelines for product safety assessment. Therefore, this task can be considered fulfilled, albeit by other means. The National Market Surveillance Information System has been developed, comprehensive information protection systems have been created and introduced, their state examination has been conducted (certificates of conformity No. 11801 and No. 11802 of 29.12.2014). The National Surveillance System also includes departmental systems of individual bodies of state supervision, therefore administrators and users of the State Service of Ukraine on Food Safety and Consumer Protection, State Service of Ukraine on Medicines and Drugs Control, State Labour Service, State Emergency Service and their territorial bodies are connected to the single information system. Measures are being taken to ensure the technical compatibility of the information systems of state market supervision and the information system of the bodies of revenues and duties. In general, the information system is now being put into operation, therefore the status of implementation of the task is assessed as advanced.

At the same time, Ukraine has not yet been granted access to the RAPEX system, and the conditions and procedures for accessing RAPEX by Ukraine have not been finalized, so actual implementation has not been ensured. Technical consultations on access conditions and procedures are currently underway. Given the fact that the deadline for fulfilment of this commitment is October 1, 2020, we can argue that the status of implementation of this part of the commitment is critically inconsistent.

### **Commitment 310 / Preventing risks to the health or safety of consumers posed by products which resemble foodstuffs while not being such**

- Council Directive No. 87/357/EEC

The commitment involves establishing a ban on the production, sale, export and import of products which resemble foodstuffs while not being such and hence can jeopardise the health and safety of consumers.

The legal approximation is perfect: it was fulfilled in full through the adoption of CMU Regulation No. 136 "On Amendments to the Procedure for the Conduct of Trade Activities and Rules of Trade Services in the Consumer Goods Market" of March 10, 2017<sup>1</sup>.

The practical implementation of this commitment can also be considered perfect as market surveillance mechanisms involve market surveillance measures such as checks of product characteristics, including product sampling and examination (testing), restrictive and corrective measures, including restrictions on the supply of products on the market, withdrawal of products from circulation, recall of products, etc.

### **Commitment 311 / Protecting children from potential harm resulting from swallowing magnetic elements of children's toys**

- Commission Decision No. 2008/329/EC.

This commitment is aimed at solving the problem of harm to children resulting from the swallowing of magnetic elements of toys and introduction of mandatory warnings on the label, as stated in the preamble of the Decision (paragraph 15). Commission Decision No. 2008/329/EC was a temporary measure applied until the European Committee for Standardization (CEN) adopts a revised version of the European standard EN 71-1 "Safety of toys – Part 1. Mechanical and physical properties" in order to supplement its provisions concerning the special risks posed by small magnets in toys. An updated version of EN 71-1 was adopted in April 2009. With its adoption, Decision No. 2008/329 expired as the matters of special warnings are fully covered by the standard. A re-updated version of standard EN 71-1: 2014 is currently in force in the EU.

The legal approximation for this commitment is perfect, both in terms of the scope of the implemented requirements and the method of their implementation. A new version of the Technical Regulation on Toy Safety was adopted (approved by CMU Resolution No. 151 of February 28, 2018)<sup>2</sup>; and from October 1, 2018 state standard DSTU EN 71-1: 2016 (EN 71-1: 2014, IDT) "Safety of toys. Part 1. Mechanical and physical properties" has been in force.

Implementation is effected by means of technical regulation at a perfect level. The adopted technical requirements for toys include requirements for proper labelling; toys that have not undergone the appropriate conformity assessment procedures may not be placed on the market. The responsibility for compliance with the requirements rests with the manufacturer, and the authorities check the status of compliance with the established requirements by checking technical compliance and using means of state market surveillance.

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1) <https://zakon.rada.gov.ua/laws/show/136-2017-%D0%BF#Text>

2) <https://zakon.rada.gov.ua/laws/show/151-2018-n#Text>



## **Commitment 312 / Establishing requirements to prevent the use of lighters by children, including a) for child-resistance of lighters; b) to lighter manufacturers regarding the conditions for placing lighters on the market**

- Commission Decision No. 2006/502/EC

This commitment involves settling the problem of children's use of lighters, as well as establishing rules for the placement of lighters on the market, including child-resistant, disposable and reusable ones. The relevant Commission Decision No. 2006/502/EC was based on the findings of experts from different EU countries that one of the most common causes of fires is children playing with lighters, including those without safety locks or designed to look like toys. Therefore, according to Commission Decision No. 2006/502/EC the prohibition on the marketing of such goods must be ensured by:

1. establishing a number of requirements for the characteristics and properties of lighters in general (the presence of a child safety lock, the absence of external signs that can make the product resemble a toy, the possibility of refuelling or replacing parts in reusable lighters, etc.), and
2. introduction of requirements to manufacturers and distributors of lighters, conditions and control of lighter production, in particular:

To manufacturers:

- providing, at the request of the authorised body, a report on child-resistance tests and samples of lighters;
- confirmation that all lighters from each batch placed on the market are of the same model for which the safety test was performed;
- constant monitoring of the compliance of manufactured lighters with the technical solutions that ensure child-resistance.

To distributors - to keep and provide without delay to the competent authorities on request the documentation necessary to identify any person from whom they have been supplied with the lighters they place on the market, in order to ensure traceability of the producer of lighters throughout the supply chain. Lighters for which producers and distributors do not provide the above documentation shall be withdrawn from the market.

The regulatory basis for transposition of the requirements of Commission Decision No. 2006/502/EC has been created in part, therefore the status of implementation of the commitment can be considered advanced but not perfect. The government Action Plan for the Implementation of the Association Agreement specifies only measures concerning establishment of general requirements for child-resistant lighters and fails to take into account the other provisions of Commission Decision No. 2006/502/EC concerning their production and conditions of placing on the market. Thus, two

documents were adopted: Order No. 80<sup>3</sup> of the Ministry of Economic Development "On Amendments to the Rules of Retail Trade in Non-Food Products" of January 23, 2018 and DSTU (State Standard) EN 13869: 2018 "Lighters – Child-resistance for lighters – Safety requirements and test methods"<sup>4</sup>. These two documents provide for the transposition of Art. 1 and 2 of Commission Decision No. 2006/502/EC as regards the establishment of requirements for the characteristics and properties of child-resistant lighters. The provisions set out in Art. 3 and 4 of Commission Decision No. 2006/502/EC laying down requirements for lighter manufacturers and the conditions and control of lighter production are not taken into account. Therefore, all in all the status of fulfilment of the commitment can be considered advanced but not perfect.

Practical implementation is critically inconsistent. Taking into account the specifics of the commitment, its practical implementation should be assessed based on the main goal – i. e. to ensure that only child-resistant lighters are placed on the market. By briefly monitoring of the online sales offers of lighters, we have discovered that there are a lot of offers of lighters resembling toys, imitating other objects etc.

## MARKETING

### Overview of key Eurointegration commitments

The Marketing subsector aims to ensure a high level of general requirements for the protection of consumer rights when purchasing consumer goods and services.

This subsector sets a number of detailed requirements for providing consumers with appropriate information and improving legislation on fair commercial practices to protect the economic interests of consumers.

Fulfilment of this commitment will make it possible to better meet the information needs of consumers allowing for more informed choices, as well as to avoid misleading consumers by unscrupulous sellers and suppliers. It is important to note that a significant part of the requirements set by the relevant EU legal acts already existed in Ukrainian legislation at the time of signing the AA, and regulatory approximation actually meant improving the existing regulations rather than developing a new legal framework.

### Evaluation of progress in fulfilling commitments

#### **Commitment 313 / Improving the provision of information to the consumer and consumers' ability to evaluate and compare the price of products**

- Directive No. 98/6/EC

This commitment involves establishing requirements for the indication of precise, transparent and unambiguous information for consumers on the prices of products offered to them. It implies indication of the selling price and the price per unit of measurement of products without discrepancies, in a way that makes it easy to identify and clearly legible.

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3) Registered with the Ministry of Justice on February 15, 2018 under No. 181/31633

4) Approved by Order No. 241 of the Ministry of Economic Development of January 22, 2018.

Legal approximation is advanced: the Law of Ukraine "On Consumer Protection" (Art. 15. Consumer right to product information) had almost fully complied with the requirements of Directive 98/6 even before the signing of the AA. The only difference is that Directive No. 98/6/EC (Art. 3) requires that the unit price of goods shall be indicated in "any advertisement which mentions the selling price of products". The Law of Ukraine "On Consumer Protection" in Para. 3 of Article 15 establishes a similar requirement as part of product information, but the Article states that the product information is not advertising information. Law of Ukraine No. 270/96-BP "On Advertising" of July 1996 contains no such requirement to indicate the unit price in advertising.

Practical implementation is generally advanced, however, since the requirement to indicate the unit price of the product in advertising is not established by law, the provision of relevant information to the consumer depends solely on the seller's scrupulousness.

### **Commitment 314 / Improving consumer protection by improving legislation on unfair business practices that harm the economic interests of consumers**

- Directive 2005/29/EC

The commitment involves prevention of unfair (misleading, aggressive) business practices to consumers before, during, and after the conclusion of an agreement on goods and imposition of sanctions for unfair commercial practices. By establishing an exhaustive list, description and clear criteria of misleading (including misleading omission) and aggressive unfair business practices, the consumer is provided with complete information that enables them to recognise such practices and provides protection against them.

Legal approximation is critically inconsistent. The provisions of Directive No. 2005/29/EC are partially taken into account in the current Law of Ukraine "On Consumer Protection": thus, Art. 19 of the Law establishes a general prohibition of unfair business practices and specifies a number of requirements. However, some requirements of the Directive still require transposition (certain terms and their definitions, provisions on misleading and aggressive business practices, using undue influence, approach to establishing a list of unfair business practices to improve the protection of the most vulnerable groups of consumers). Also, no specific sanctions have been imposed for the use of unfair business practices. Draft Law No. 5548 "On Amendments to Certain Legislative Acts of Ukraine Concerning Consumer Protection"<sup>5</sup> suggests amendments to Para. 2 of Article 19 of the Law of Ukraine "On Consumer Protection", however these do not take into account the relevant provisions of Directive 2005/29/EC. At the same time, the Action Plan for the Implementation of the Concept of the State Policy in the Field of Consumer Protection for the period up to 2020 envisages development and submission to the Cabinet of Ministers of Ukraine of a draft law on amendments to the Law of Ukraine "On Consumer Protection", in particular with regard to:

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5) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=60742](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60742)

- establishment a ban on unfair commercial practices and definition of such practices;
- imposing sanctions for unfair commercial practices;
- creation of a Working Group to develop a relevant draft law.

The practical implementation is also critically inconsistent, as the discrepancies of the Ukrainian legislation with the relevant European regulations have not been eliminated, and no proposals or drafts aimed at their elimination have been developed.

## CONTRACT LAW

### Overview of key Eurointegration commitments

The "Contract Law" subsector focuses on ensuring legal and commercial interests of consumers when concluding contracts for the purchase of goods<sup>6</sup>.

The requirements within the subsector are aimed at eliminating difficulties for consumers and one of the main sources of conflict with sellers regarding the insufficient conformity of goods with contract terms in conditions when the supply of various goods to the consumer has increased significantly due to the advent of new communication technologies. This is ensured by setting requirements for the seller's liability to the consumer for the lack of any conformity of the goods to its characteristics specified in the contract.

Introduction of these requirements will eliminate certain discrepancies between the national market and the EU market in the sale of consumer goods and will strengthen safeguards against the establishment of artificial competition between sellers.

Evaluation of progress in fulfilling commitments

### **Commitment 315 / Increasing the level of ensuring the rights of consumers regarding the conformity of consumer goods with the contract and guarantees in case of non-conformity of goods with the contract**

- Directive No. 1999/44/EC

This commitment involves an increase in the level of consumer protection when purchasing consumer goods and in the provision of appropriate guarantees by the seller regarding the conformity of consumer goods with the contract. Liability to the consumer for any lack of conformity existing at the time of transfer of the goods rests with the seller, and in case of non-conformity the consumer has the right to have the goods brought to proper condition by repairing or replacing the goods free of charge, providing a corresponding discount, or termination of the contract regarding the specified goods. Legislation should establish specific terms

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<sup>6</sup> The government Action Plan for the implementation of the AA offers a different wording of this commitment: "Determining the minimum level of guarantees for consumer protection within the internal market". In our opinion, such wording does not fully reflect the essence of the commitment and fails to specify it.

of liability of the seller (two years) and the presumption of liability of the seller for non-conformity within the first 6 months from the date of transfer of the goods.

The legal approximation can be described as critically inconsistent. On the one hand, the Ukrainian legislation concerning the provision of product warranty to consumers and meeting consumers demands in case of defects in purchased products in many respects had been close to the requirements of European legislation before 2014 (the current Law of Ukraine "On Consumer Protection", the Civil Code of Ukraine, etc.). On the other hand, there are a number of significant differences that need to be reconciled:

- concepts and terms;
- provisions on the consequences and possible demands of the consumer in the case of purchase of goods with defects (significant defects);
- the moment when the seller becomes liable for lack of conformity;
- provisions on lack of conformity resulting from incorrect installation and specific features of the distribution of rights and responsibilities between the seller and the consumer in cases when the use of goods requires installation;
- provisions on the minimum warranty period during which the seller is responsible for non-conformity, as well as on the obligation of the consumer to notify the seller of the lack of conformity within two months from the date of discovery of the lack of conformity.

However, no draft document for full regulatory approximation to the provisions of Directive No. 1999/44/EC has been developed. The Draft Law "On Amendments to Certain Legislative Acts of Ukraine (Regarding Consumer Protection)" (Reg. No. 5548)<sup>7</sup> does not take into account these provisions.

Practical implementation corresponds to the level of regulatory approximation. Although the Ukrainian consumer partially has the right to receive goods of proper quality in accordance with the contract terms, the Law of Ukraine "On Consumer Protection" lacks provisions similar to European ones, hence the scope of these rights is limited and the consumer's interests are not fully protected.

## UNFAIR CONTRACT TERMS

### Overview of key Eurointegration commitments

The requirements included in this subsector, aim at ensuring consumer protection from unfair terms of various consumer contracts.

Within the subsector, requirements are set for both regular contracts on consumer goods and services concluded in the ordinary way and distance contracts, as well as agreements in the field of travel. These requirements are primarily aimed at

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7) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=60742](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60742)

informing the consumer in detail about the scope and terms of the contract, as well as at clearly specifying the rights and duties of the parties to the contract.

The introduction of these requirements will ensure the rights of consumers both when concluding contracts for the purchase of goods and services within their country and in a cross-border format, even in cases where the contract is concluded remotely and the consumer does not know the national law of the country. It will expand the opportunities for domestic entrepreneurs to do business in the EU internal market and will solve the problem of improper provision of travel services.

Evaluation of progress in fulfilling commitments

### **Commitment 316 / Ensuring proper protection of consumers from unfair terms in contracts**

- Directive No. 93/13/EC

The commitment involves regulation of relations between the consumer (buyer) and seller (supplier) regarding:

- the terms of contracts that have not been individually negotiated where the consumer has not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract;
- the burden of proof that a standard term has been individually negotiated shall be incumbent on the seller/supplier.

Legal approximation is perfect: in Ukrainian legislation is endured by Article 18 of the Law of Ukraine "On Consumer Protection". The provisions of the article as a whole (in the wording adopted before the signing of the AA) are almost completely harmonised with Directive No. 93/13/EC. The main difference concerns the provision of Directive 93/13/EC that obliges Member States to lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms. This provision balances the responsibilities of the consumer and the seller/supplier and makes them (above all, the consumer) be honest. There is no similar provision regarding unfair contract terms in the Ukrainian legislation on consumer protection. However, since this provision establishes an additional duty rather than a right for the consumer, the absence of such a provision in Ukrainian law does not narrow the rights of the Ukrainian consumer (it is a duty not a right that is lacking). Therefore, in general, the level of consumer protection against unfair contract terms in Ukraine is not lower and even slightly higher than in the EU.

Practical implementation is perfect; the Ukrainian consumer has even more rights than the European one.

### **Commitment 317 / Increasing the level of protection and guarantees of consumer protection during the conclusion of distance contracts and improving the requirements for and guarantees of consumer protection during direct sales (directly to the consumer)**

- Directive 2011/83/EU
- Directive No. 97/7/EC
- Council Directive No. 85/577/EEC

When considering the nature of the commitment, we should take into account the fact that the AA includes two separate commitments regarding the terms of consumer contracts negotiated away from business premises:

1. one such commitment is included in the subsector of "Unfair Contract Terms" – on the protection of consumers in respect of distance contracts (Directive No. 97/7/EC),
2. and the second one is part of the "Doorstep Selling" subsector – in respect of improving the requirements and guarantees of consumer protection during doorstep selling (Council Directive 85/577/EEC).

However, since 13 June 2014 both Directives No. 97/7/EC and No. 85/577/EEC have expired and have been replaced by Directive No. 2011/83/EC on consumer rights. Requirements for consumer protection with regard to distance contracts and doorstep selling have been updated, expanded and combined with the requirements for any other contracts. Based on the updated EU acquis, the commitment involves establishing information obligations of the seller: prior to concluding a contract, the sellers must provide consumers with clear and comprehensible information about their identity and contact details, main characteristics of the goods and services, arrangements for payment, delivery and performance, duration of the contract, and the conditions for terminating the contract. The commitment sets out detailed requirements for such information, taking into account a variety of modern means and tools of trade, including online ones.

Legal approximation is critically inconsistent. Consolidation of EU acquis has a direct impact on the structure of the subsectors and the nature of the commitments set out in the AA. The relevant changes to replace Directives No. 97/7/EC and No. 85/577/EC with the new comprehensive Directive No. 2011/83/EC have been made to the Action Plan for the implementation of Title V "Economic and Sector Cooperation" of the Association Agreement.

In general, Ukrainian legislation has partially implemented the requirements of EU legislation on consumer protection in distance selling in the current Law of Ukraine "On Consumer Protection", the Law of Ukraine "On Electronic Commerce"<sup>8</sup> and Order No. 103 of the Ministry of Economy of Ukraine "On Approval of the Rules of Selling Goods to Order and Away from Business Premises"<sup>9</sup> of 19.04.2007. However, these

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8) <https://zakon.rada.gov.ua/laws/show/675-19#Text>

9) Registered with the Ministry of Justice on October 16, 2007 under No. 1181/14448.

regulations also implement the requirements of the old and no longer valid Directives No. 97/7/EC and No. 85/577/EEC rather than the new Directive No. 2011/83/EC.

The Draft Law "On Amendments to Certain Legislative Acts of Ukraine (Regarding Consumer Protection)" (Reg. No. 5548 of 16.12.2016) that has been developed and adopted at first reading as a basis fails to take into account all of the new requirements established by Directive No. 2011/83/EC, therefore, the fulfilment of the commitment under the AA can be described as critically inconsistent. Also, as new Directive No. 2011/83/EC regulates matters related to any contracts concluded between the seller and the consumer (not only distance contracts), it would be appropriate to change the relevant commitment (in particular with regard to increasing consumer protection requirements and guarantees when concluding contracts, including distance contracts and contracts concluded away from business premises).

The level of practical implementation is also critically inconsistent. Although, on the one hand, part of the European requirements have been taken into account in Ukrainian legislation, no steps have been taken to eliminate the existing divergencies.

### **Commitment 318<sup>10</sup> / Ensuring the rights of consumers concerning information provision and responsibility of tour operators**

- Council Directive No. 90/314/EEC (repealed by Directive No. 2015/2302/EU)

At the time of signing the AA, this commitment was based on Directive No. 90/314/EEC; this Directive was in force until 30 June 2018. Then, it was completely repealed and replaced by the new Directive No. 2015/2302/EU on package travel and linked travel arrangements. The renewed commitment sets out requirements for the information and any materials describing the tour package provided by the organiser or retailer to the buyer, package prices, and any other conditions applicable to the contract, as well as establishes the rights and commitments of the parties.

Legal approximation is critically inconsistent. The current Law "On Tourism" was adopted in 1995 and does not take into account the current state of development of the tourism industry. The Action Plan for the Implementation of the Concept of State Policy in the Field of Consumer Protection for the period up to 2020 involves development and adoption of a draft law on amendments to the Law of Ukraine "On Tourism". Over the past few years, several attempts have been made to amend the Law "On Tourism" (e.g., draft laws No. 7300 of 16.11.2017<sup>11</sup>, No. 8317 of April 20, 2018<sup>12</sup>, and No. 10216 of April 10, 2019)<sup>13</sup>, none of the draft laws fully took into account the provisions of Directive No. 2015/2302/EU, all of them have been rejected. Currently,

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10) Also, within the subsector of "Unfair Contract Terms" the government Action Plan for the implementation of the AA specifies 4 commitments concerning conclusion of consumer contracts in the field of travel. In our opinion, it would be a good idea to reduce the number of commitments to two by combining the first three of them into one as they relate to the same issue, in addition, in the EU they are regulated by a single legal act; likewise, in Ukraine they will be regulated within the framework of one law. Therefore, in this paper, we consider two rather than four commitments.

11) Draft Law 7300 "On Amendments to the Law of Ukraine 'On Tourism' with regard to Defining the Concept of 'Alternative Arrangements for Providing a Tourist Product' and Specify the List of Essential Conditions and Forms of Contracts for Tourist Services" of November 16, 2017.

12) Draft Law No. 8317 "On Amendments to the Law of Ukraine 'On Tourism' with regard to Improving the State Policy in the Field of Tourism" of April 20, 2018.

13) Draft Law No. 10216 "On Amendments to the Law of Ukraine 'On Tourism' with regard to Improving the Terms and Definitions in the Tourism Sector and Liberalization of Tourist Activities" of April 10, 2019.



a new draft law on amendments to the Law "On Tourism"<sup>14</sup> has been registered with the Verkhovna Rada, but it also only partially takes into account the commitments under the AA. Given the fact that the deadline for the commitment expires in 2020, this inconsistency can be described as critical.

Practical implementation is critically inconsistent. Most of the issues that arise between the consumer (tourist) and the provider of tourist services in Ukraine are not resolved in accordance with the requirements of European legislation, which negatively affects the state of consumer protection in tourist travel.

### **Commitment 319 / Introduction of guarantees and mechanisms to protect the rights of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts**

- Directive No. 2008/122/EC

The commitment involves establishment of requirements for a special type of ownership and use of movable and immovable objects of tourist accommodation (yachts, hotels, etc.). In the tourism industry, timeshare involves the right to use movable and immovable tourist accommodation in the joint ownership of a certain number of persons for a specified period of time.

Legal approximation has not yet begun. The legislation of Ukraine contains no relevant provisions, no draft law or draft bylaw has been developed. The timeshare mechanism allows the consumer to use a certain property (tourist accommodation facility) on a permanent, regular (e.g. annual) basis for a period of time that depends on the amount of the periodic fee paid by the participant. Timeshare participants jointly draw up an annual schedule for the use of the accommodation, thus determining in advance the time and duration of stay at the accommodation facility. On the one hand, timeshare significantly reduces the cost of living and using the tourist accommodation, stabilizes the load on the tourist facility and helps to develop the tourism industry, on the other hand, it can be used by unscrupulous participants for deceptive purposes, therefore legal regulation of such a mechanism is extremely important.

Practical implementation has not started due to the lack of legal approximation, as a result there are no practical procedures for the use of the timeshare mechanism by consumers in Ukraine. This makes it virtually impossible for consumers to use timeshare and reduce travel costs without risks of fraud.

## **FINANCIAL SERVICES**

### **Overview of key Eurointegration commitments**

This subsector includes one commitment with regard to "Financial Services", which implies introducing guarantees of a high level of consumer protection to ensure free provision of financial services.

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14) Draft Law No. 2673 "On Amendments to the Law of Ukraine 'On Tourism' with regard to Expansion of the Range of Entities Providing Hotel Services" of December 26, 2019.

The commitment within the subsector involves establishing requirements for financial services contracts negotiated at a distance involving the use of means of distance communication which are used as part of a distance sales or service-provision scheme not involving the simultaneous presence of the supplier and the consumer. The constant development of such means of communication requires that uniform principles be applied to contracts for financial services even for those means of communication which are not yet in widespread use.

The requirements under the subsector ensure that consumers are able to freely and informedly compare and choose the financial services that best meet the needs of the consumer.

Evaluation of progress in fulfilling commitments

### **Commitment 320 / Improving guarantees and mechanisms for consumer protection in distance marketing of financial services**

- Directive No. 2002/65/EC

The commitment involves the establishment of requirements for information to be provided to the consumer before the conclusion of a distance agreement for financial services, the right of withdrawal, information on the cost and procedure of payment for services, specifics of payment for services by card, the possibility and procedure of out-of-court settlement of claims and redress.

Legal approximation is perfect. The commitment was fully fulfilled through the adoption of Law of Ukraine No. 122-IX "On Amendments to Certain Legislative Acts of Ukraine with regard to Protection of the Rights of Consumers of Financial Services" of September 20, 2019.

The practical implementation of the commitment has also been performed in full. According to the amendments to the Law, financial service providers (e.g. banks and credit institutions) are obliged to make appropriate changes to their standard contracts for the provision of financial services and adjust their work with clients accordingly.

## **CONSUMER CREDIT**

### **Overview of key Eurointegration commitments**

Within this subsector, Ukraine has undertaken to ensure the protection of consumer rights in concluding credit agreements for consumers.

The requirements under the subsector are aimed at facilitating the formation of an effectively functioning domestic market in consumer credit.

By fulfilling the subsector requirements, Ukraine will create a market in consumer credit that can offer a sufficient level of consumer protection to ensure their confidence and the possibility of free movement of credit funds, as well as provide the best conditions for lenders and borrowers.

## **Commitment 321 / Ensuring consumer protection in concluding credit agreements for consumers**

- Directive No. 2008/48/EC

The commitment involves establishing requirements for credit agreements for consumers to finance the purchase of goods and services within a certain price range, except for mortgage-backed credit agreements, credit agreements aimed at acquiring or retaining ownership for land or existing/designed buildings. Directive No. 2008/48/EC establishes requirements for information materials about credits and mandatory information to be contained in them, the procedure for providing such information to the consumer, as well as information that must be contained in a credit agreement and the procedure for terminating the agreement. By fulfilling the commitment, Ukraine will enable consumers to make informed comparison and choice of credit agreements that best meet their needs and financial situation.

Legal approximation is perfect. In Ukraine, consumer lending is currently regulated by Law of Ukraine No. 1734-VIII "On Consumer Lending" of November 15, 2016, the provisions of which significantly improves the regulation of legal relations for the provision, servicing and repayment of consumer credit, and grant greater consumer protection. The law almost completely transposes the requirements of Directive No. 2008/48/EC on credit agreements for consumers, but one of the key remaining differences was the lack of a requirement in the Law to inform the consumer in advance of the full cost of credit. With the entry into force on January 19, 2020 of the new legal requirements concerning the protection of the rights of consumers of financial services<sup>15</sup>, the NBU changed the approach based on which banks calculate the cost of consumer credits<sup>16</sup>: now the cost of consumer credits will include the cost of insurance and tax payments, fees for mandatory state pension insurance, the cost of notary services, payments for the services of state registrars, appraisers, etc. Thereby, perfect fulfilment of the commitment to ensure the rights of consumers in concluding credit agreements.

The legal implementation is perfect both at the level of legislation and at the level of bylaws and regulations developed by the regulator – i.e. the National Bank of Ukraine.

## **REDRESS (RECOMMENDATORY)**

### **Overview of key Eurointegration commitments**

This subsector is based on two EU Recommendations:

1. Recommendation on principles applicable to out-of-court settlement (98/257/EC) Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes; and

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15) Law of Ukraine No. 122-IX "On Amendments to Certain Legislative Acts of Ukraine Concerning the Protection of the Rights of Consumers of Financial Services".

16) Resolution No. 8 of the Board of the National Bank "On Approval of Amendments to the Rules of Calculation by banks of Ukraine of the Total Cost of the Credit for the Consumer and the Real Annual Interest Rate under the Agreement on Consumer Credit".

2. Recommendation on consensual resolution out-of-court (2001/310/EC)  
Commission Recommendation of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes.

The provisions within the subsector recommend that the bodies responsible for out-of-court settlement of consumer disputes adhere to the following principles: independence, transparency, adversarial approach, efficiency, freedom and representation. In addition, it is recommended that third-party bodies involved in out-of-court consumer dispute resolution procedures be guided by the principles of impartiality, transparency, efficiency and fairness.

Because the documents are of recommendatory nature, Annex XXXIX to the AA specifies that there is no need for legislative initiative, and no legal commitments are established.

## **ENFORCEMENT**

### **Overview of key Eurointegration commitments**

The requirements within the subsector of "Enforcement" focus on regulating matters related to injunctions for the protection of consumers' interests.

They provide for the application of common approaches to addressing matters related to domestic and cross-border violations of the collective interests of consumers.

Compliance with the requirements of the subsector makes it possible to ensure cessation of illegal practices of violating the collective interests of consumers, to prevent obstacles to the protection of collective interests when such practices have consequences in a country other than the country in which they originate, to prevent the avoidance of liability by moving the source of an unlawful practice to another country in order to place it out of reach of all forms of enforcement, as well as to guarantee competent consideration of proceedings commenced with regard to violations of the collective interests of consumers.

Evaluation of progress in fulfilling commitments

### **Commitment 322 / Establishing mechanisms of judicial protection of the collective interests of consumers**

- Directive No. 98/27/EC (repealed by Directive No. 2009/22/EC)

At the time of signing the AA, the commitment was based on Directive No. 98/27/EC on injunctions for the protection of consumers' interests. However, Directive No. 98/27/EC was repealed and replaced by Directive No. 2009/22/EC on injunctions for the protection of consumers' interests; relevant changes were made to the Government Action Plan for the implementation of the AA. Directive No. 2009/22/EC focuses on injunctions aiming to protect the collective interests of consumers from violations in the areas of consumer credit, distance contracts, organised travel, etc. Collective interests means interests which do not include the cumulation of interests of individuals who have been harmed by an infringement. This is without

prejudice to individual actions brought by individuals who have been harmed by an infringement. Accordingly, in order to fulfil the commitment, it is necessary to designate courts or administrative authorities competent to rule on proceedings commenced by qualified entities – i.e. either state bodies for the protection of the collective interests of consumers or relevant consumer organisations. Such courts, bodies and consumer organisations must meet a number of criteria and should have the right to study the consequences of previous decisions. The Directive also establishes obligations of states in cases of cross-border infringement of consumer rights, and the obligation to try to achieve the cessation of the infringement in consultation as pre-trial settlement.

Legal approximation to the relevant provisions is critically inconsistent. In Ukraine, collective consumer rights are generally regulated by the Law of Ukraine “On Consumer Protection” and the Law of Ukraine “On Public Associations” of March 22, 2012 (No. 4572-VI). Neither of the laws fully takes into account the provisions of Directive No. 2009/22/EC. Draft Law No. 5548 “On Amendments to Certain Legislative Acts of Ukraine (Regarding Consumer Protection)” of December 16, 2016 brings Ukrainian legislation closer to the relevant requirements of Directive No. 2009/22/EC, but still retains divergencies in provisions such as the qualification criteria for authorised consumer protection entities (including both state bodies and consumer associations), taking into account cases of cross-border infringement of consumer rights, and mandatory attempts at pre-trial settlement. These divergencies are quite significant as regards the ability of Ukrainian consumers to protect their collective rights, as well as the ability of foreign and Ukrainian consumers to defend themselves in case of an infringement committed in several countries simultaneously, so the lack of full transposition of Directive No. 2009/22/EC significantly narrows consumer rights in Ukraine.

Due to the lack of legislative regulation at the level required by the EU, practical implementation can also be described as critically inconsistent, which makes it complicated for consumers to protect their interests in cases where improper actions or inaction of the supplier of goods and services, as well as provision of improper information violates the interests and rights of a group of consumers.

## **CONSUMER PROTECTION COOPERATION**

### **Overview of key Eurointegration commitments**

The commitment under the Consumer Protection Cooperation aims at strengthening the administrative cooperation between public enforcement authorities to detect, investigate and bring about the cessation or prohibition of infringements of the laws that protect consumers’ interests.

The commitments are aimed at protecting consumers from intra-Community infringements by establishing a network of public authorities to ensure compliance with consumer protection legislation, enhancing the capacity of such authorities to cooperate freely on a reciprocal basis in exchanging information, with a minimum of common investigation and enforcement powers to conduct joint investigation and enforce consumer protection legislation.

Fulfilment of the commitment will ensure compliance with the law in the cases of cross-border infringements of consumer rights, prevent the seller/supplier from taking measures to avoid sanctions by changing the country of registration, as well as prevent distortion of competition for law-abiding sellers and suppliers operating either domestically or cross-border.

Evaluation of progress in fulfilling commitments

**Commitment 323 / Establishing cooperation with the EU and its Member States with regard to consumer protection on the conditions set by the relevant EU acquis**

- Regulation (EC) No. 2006/2004

The commitment involves laying down the conditions under which the competent authorities of the Member States that are designated to enforce consumer protection legislation cooperate with each other and with the Commission in order to ensure compliance with such legislation. The authorised public authorities undertake to provide mutual assistance by exchanging information upon request and without one, including access of representatives of another authorised consumer protection body to information collected during inspections and investigations of consumer complaints, to coordinate market surveillance activities, and to enforce the law.

Legal approximation is early. The Law "On Consumer Protection" does not contain any provisions on the principles and conditions of international cooperation in the field of consumer protection; the provisions of Regulation (EC) No. 2006/2004 have not been transposed. Draft Law No. 1648 "On Amendments to Certain Legislative Acts of Ukraine (Regarding Consumer Protection)" of December 16, 2016 does not contain any provisions on international cooperation in this area either. The authorised state body of Ukraine for consumer protection is the State Service of Ukraine on Food Safety and Consumer Protection, which and in accordance with the Regulation on its activities has certain rights to carry out independent activities in the field of international cooperation. Currently, Ukraine's international cooperation with the authorised bodies of the EU Member States is carried out on the basis of bilateral agreements (e.g., with the relevant authorised bodies of Lithuania, Latvia, Hungary, Austria, etc.); the process of concluding such agreements is progressive. The time-frame for fulfilment of this commitment is 5 years from the date of entry into force of the Agreement, however, as cooperation has only been established with some EU Member States, and there is currently no progress in transposition of the provisions of Regulation (EC) No. 2006/2004 (not even at the stage of draft laws), the stage of fulfilment of this commitment can be described as early.

Practical implementation is also at an early stage, as it is carried out on a bilateral basis with individual countries rather than systematically in cooperation with all EU Member States and the European Commission.

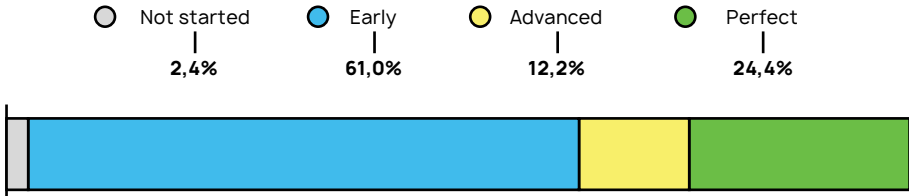


**SOCIAL  
POLICY**

# SOCIAL POLICY

Expert: **Zoriana Kozak**

## Implementation progress for the sector:



Ukraine's cooperation in the field of social policy is largely laid down in Chapter 21 "Cooperation on Employment, Social Policy and Equal Opportunities" of Title V of the Association Agreement. The list of the EU acquis to which Ukraine has undertaken to approximate its national legislation is provided in Annex XL to Chapter 21 of the Association Agreement. The list covers the EU acquis grouped into three areas: "Labour Law", "Anti-Discrimination and Gender Equality", and "Health and Safety at Work".

During 2014-2019, the implementation of the social component of the Association Agreement focused on the adaptation of Ukrainian legislation to EU directives. The Government of Ukraine has adopted several plans setting the tasks and measures for the implementation of the social component of the Agreement. The status of implementation of these measures depends on the areas which they are aimed to regulate, as well as the timeframe specified in Annex XL.

## LABOUR LAW

### Overview of key Eurointegration commitments

Within the "Labour Law" subsector of Annex XL, Ukraine has committed itself to approximate legislation to seven EU directives. Legislation was to be transposed within 3-4 years after the entry into force of the Association Agreement.

The EU acquis in this subsector focus on achieving key objectives regarding:

- ensuring transparent and predictable employment conditions;
- protection of fixed-term and part-time workers, additional protection of the safety and health of part-time and temporary workers at work;
- introduction of mechanisms for information and consultations between the employer with representatives of workers in the field of labour and, in particular, concerning collective redundancies, transfers, as well as protection of workers.



Cost-benefit evaluations of transposing the EU acquis in the field of labour were carried out by the European Commission within the deregulation policy (smart regulation). In particular, the REFIT evaluation of Directive 91/533/EEC (2017) found that the cost incurred by the employer to inform the worker in writing about working conditions does not represent a disproportionate burden compared to the benefits the Directive brings with regard to the legal certainty for the parties to the employment contract and reduction of litigation. The transposition of the requirements of the Directive has not led to an excessive or disproportionate increase in employers' costs.

Results of the Fitness check (checking compliance with the EU legislation in the field of information and consultation of workers (2013)) indicate that the benefits received by states, employers and workers as a result of the implementation of the requirements of Directives No 98/59/EC, No 2001/23/EC, No 2002/14/EC, is greater than the costs incurred. Positive operational and organisational results have been achieved (including improved communication with employers, fostering trust and partnership, reducing conflict, strengthening change management, increasing the positive impact on staff performance, and the company's performance, reputation and competitiveness). Due to the fact that limited data are available, the European Commission was unable to quantify the costs and benefits of implementing the directives.

Evaluation of progress in fulfilling commitments

### **Commitment 324 / Introduction of the employer's obligation to inform the employee in writing about the terms of the employment contract or employment relationship**

- Directive 91/533/EEC

Introduction of the employer's obligation to issue its employees with a written statement of terms and conditions relating to their employment, which involves provision of information on the conditions specified by the directive (as a minimum) in writing and in compliance within the timeframe specified therein.

Regulatory approximation is at an early stage. During 2014-2018, transposition draft laws were registered with the parliament, but their consideration did not result in the adoption of the necessary laws. In 2019, the Verkhovna Rada registered draft laws that in full (i.e. No 0955 of 29.08.2019) or partially (i.e. No 10069 of 20.02.2019) took into account the requirements of the Directive, but their consideration did not result in the adoption of laws due to the withdrawal from consideration or revocation of the latter. At the end of 2019, new draft codes were registered (No 2410 of 08.11.2019 and No 2410-1 of 08.11.2019), but they are only included in the agenda of the parliament. The necessary laws have not been adopted. On 20.06.2019, Directive No 2019/1152 was adopted repealing Directive No 91/533/EEC (the last day of its validity is 31.07.2022). The new Directive establishes a wider range of obligations that are not taken into account in the current labour legislation of Ukraine or in the registered draft laws.

### **Commitment 325 / Introduction of a mechanism for concluding fixed-term employment contracts and protection of employees working under such contracts**

- Directive 1999/70/EC

Introduction of a mechanism for concluding fixed-term employment contracts and protection of employees working under such contracts. The Directive requires prevention/elimination of discrimination against these employees and prevention of the abuse of successive fixed-term employment contracts.

Regulatory approximation is at an early stage. The Labour Code of Ukraine (No 322-VIII of 10.12.1971) contains provisions that set forth the general conditions for concluding fixed-term employment contracts and cases of transformation of a fixed-term employment contract into a permanent one. It requires approximation to other requirements of the Directive (in particular, specification of cases when repeat conclusion of employment contracts is an objective need and clarification of the prohibition on the conclusion of successive fixed-term employment contracts). In addition, it does not contain clear provisions on the prohibition/inadmissibility of discrimination in connection with work under a fixed-term employment contract or informing employees about the availability of vacancies with employment for an indefinite period. To this end, draft laws were registered providing for adoption of a new code (i.e. No 0955 of 29.08.2019), a separate law (i.e. No 2708 of 28.12.2019), or amendments to the current code (i.e. No 10069 of 20.02.2019). The draft laws have been withdrawn or revoked, and no laws have been passed.

### **Commitment 326 / Setting the conditions of part-time employment and ensuring the protection of part-time workers**

- Directive 97/81/EC

Setting the conditions of part-time employment and ensuring the protection of part-time workers means eliminating discrimination against part-time workers, encouraging the use of part-time employment on a voluntary basis, improving its quality, and promoting flexible working hours.

Regulatory approximation is at an early stage. The Labour Code of Ukraine (No 322-VIII of December 10, 1971) contains provisions on the establishment of part-time work. However, there is a need for approximation regarding prohibition of discrimination, determining the conditions/cases that will not be considered discrimination, transition from/to full employment or vice versa, voluntary part-time employment, promotion, etc. To approximate legislation to the requirements of the Directive, a draft Labour Code of Ukraine was registered (No 0955 of 29.08.2019), which, however, was withdrawn. As a result, transposition laws have not been adopted.

### **Commitment 327 / Ensuring occupational safety and health of workers with fixed-term or temporary employment**

- Directive 91/383/EEC

Ensuring occupational safety and health of fixed-term or temporary workers involves informing about the existing risks in the workplace, conducting prior training, banning the use of their work in particularly dangerous jobs or conducting special medical examinations, division of responsibilities for safe and healthy working conditions between temporary employment agencies and the persons who actually use the work of temporary workers.

Regulatory approximation is at an early stage. The Labour Code of Ukraine (No 322-VIII of 10.12.1971), the Law of Ukraine "On Labour Protection" (No 2694-XII of October 14, 1992), the Procedure of Organisation of Public and Other Temporary Work (Resolution No 175 of the Cabinet of Ministers of March 20, 2013) partially meet the requirements of the Directive (in terms of risk information, training, and public works in the interests of local communities). Draft laws on the prohibition of the use of labour in particularly dangerous work have been registered repeatedly (i.e. No 3566 of 01.12.2015; No 4279 of 18.03.2016; and No 4577 of 04.05.2016), but the laws have not been passed. Regarding the other matters, no draft laws have been registered with or approved by the Verkhovna Rada.

### **Commitment 328 / Introduction of the collective redundancy mechanism**

- Directive 98/59/EC

Establishing requirements for holding consultations and informing employees' representatives in case of collective redundancies (collective dismissal of employees) involves determining the range of matters to be consulted on and the information to be provided by the employer, as well as the requirements for the procedure for collective redundancies.

Regulatory approximation is at an early stage. The Labour Code of Ukraine, the Law of Ukraine "On Employment" partially take into account the requirements of the Directive and require approximation with regard to the concept of "collective dismissal", the time of consultations, determining the types of information to be provided, and certain matters of notification of the competent authority. The Verkhovna Rada registered draft laws (i.e. No 0955 of 29.08.2019 and No 4279 of 18.03.2016) that fully or partially took into account the requirements of the Directive, but their consideration did not result in the adoption of laws due to the fact that they were withdrawn from consideration or revoked. The necessary laws have not been adopted.

### **Commitment 329 / Introduction of a mechanism for the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses**

- Directive 2001/23/EC

Improving the mechanism for the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. According to the Directive, it is necessary to safeguard against dismissal, preserve the conditions and rights set in the previous employment contract and collective agreement, and preserve the right to representation, information and consultation.

Regulatory approximation is at an early stage. The current legislation (including the Labour Code of Ukraine (No 322-VIII of 10.12.1971), the Code of Ukraine on Bankruptcy Procedures (No 2597-VIII of 18.10.2018), the Law of Ukraine "On Trade Unions, their Rights and Guarantees concerning their Activities" (No 1045-XIV of 15.09.1999)) contains certain provisions. Draft laws have been registered to bring it closer to the requirements of the Directive (i.e. No 0955 of 29.08.2019) but they were revoked or withdrawn from consideration. The Verkhovna Rada has registered draft laws aimed

to regulate certain matters of legal succession in labour relations (for example, No 2584-1 of 20.12.2019), however they have not been included in the parliamentary agenda. The necessary laws have not been adopted.

### **Commitment 330 / Establishing general requirements for informing and consulting representatives of employees by the employer in the field of labour**

- Directive 2002/14/EC

Establishing requirements for the provision of information and consultations between the employer and all representatives of employees in the field of labour, providing a mechanism for exercising and protection of rights in the process of such information and consultation.

Regulatory approximation is at an early stage. The current legislation (Labour Code of Ukraine (No 322-VIII of 10.12.1971), laws of Ukraine "On Social Dialogue" (No 2862-VI of 23.12.2010), "On Collective Bargaining Agreements and Collective Contractual Agreements" (No 3356-XII of 01.07.1993 ), "On Trade Unions, Their Rights and Guarantees of Activity" (No 1045-XIV of 15.09.1999)) contains provisions on information and consultation between the employer and trade unions. However, such guarantees are not provided with regard to other employees' representatives in the absence of trade unions at the undertaking. There is no administrative liability for failure to provide information or violations in the conduct of consultations as an independent form of social dialogue. No draft laws on this matter have been considered. The necessary transposition laws have not been adopted.

## **ANTI-DISCRIMINATION AND GENDER EQUALITY**

### Overview of key Eurointegration commitments

Within the Anti-Discrimination and Gender Equality subsector of Annex XL, Ukraine has committed itself to approximating its legislation to six EU directives. Legislation was to be transposed within 3-4 years of the entry into force of the Association Agreement.

The EU acquis in this sub-sector focus the implementation of the principle of equal treatment in access to the labour market, employment, goods and services, social security, as well as prevention and elimination of discrimination on the grounds of race and ethnicity, religion and belief, age, disability, sex and gender identity. It involves establishing special rules for working parents, pregnant workers and workers who have recently given birth or are breastfeeding.

The transposition of the anti-discrimination directives aims to achieve both long-term and short-term benefits for people, society, businesses and the state. There is an increase in long-term tangible and intangible assets, which contributes to the competitiveness of companies, generating stable cash flows, improving the quality of human capital, etc. The evaluation of the EU acquis on equal treatment, including in the labour market, is carried out by the European Commission in the framework of the deregulation policy. In particular, in 2019 Evaluation on the application of Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security application evaluation

was held. Preliminary evaluation results suggest that the benefits of transposing Directive 79/7/ECC outweigh the costs of implementing it. In general, these costs were insignificant, especially compared to the social well-being achieved as a result of the favourable implementation of the Directive. Public authorities bear three types of direct costs: implementation costs (costs relating to the introduction of new laws, regulations, procedures, etc.); monitoring costs (costs relating to the personnel employed for monitoring and reporting purposes); and enforcement costs (costs associated with the introduction of new mechanisms for claims).

Evaluation of progress in fulfilling commitments

### **Commitment 331 / Introduction of the principle of equal treatment in access to the labour market, goods and services, regardless of racial or ethnic origin**

- Directive 2000/43/EC

Improving the system of measures to combat discrimination on the grounds of race and ethnicity, legislative support for the safeguarding of equal rights and opportunities in employment, working conditions, social protection and health care, social benefits, education, access to goods and services.

Regulatory approximation is at an early stage. In 2015, Art. 2-1 of the Labour Code of Ukraine "On Equality of the Labour Rights of Citizens of Ukraine" was restated in a new version. However, the current legislation generally requires approximation with regard to terms, forms/types of discrimination, positive action, legal liability, etc. The necessary draft laws have been registered with the parliament to align legislation with the general requirements concerning ensuring equal treatment and combatting discrimination (i.e. No 0931 of 29.08.2019), but the laws have not been passed.

### **Commitment 332 / Ensuring equal treatment at work, regardless of religion or belief, disability, age or sexual orientation**

- Directive 2000/78/EC

Improving the legal mechanism aimed at ensuring equal rights and opportunities and creating a system of measures to combat discrimination on the grounds of religion and belief, disability, age or sexual orientation in employment, vocational training, working conditions, and membership in organisations of employees and employers.

Regulatory approximation is mostly at an early stage, both in general in terms of equal treatment in the field of labour and in particular in relation to certain categories of workers (specifically the employment of persons with disabilities). The current legislation prohibits discrimination in employment (Art. 2-1 of the Labour Code of Ukraine). It requires approximation with regard to its conceptual framework, forms/types of discrimination, protection against harassment for filing a complaint (including the prohibition of mobbing), legal liability, etc. Draft laws were registered with the Verkhovna Rada (No 0931 of 29.08.2019 and No 10118 of 01.03.2019, as well as alternative draft laws No 10118-1 of 18.03.2019 and No 10118-2 of 19.03.2019), but the laws have not been adopted. Transposition-related changes are also required in the legislation on ensuring equal access of persons with disabilities

to the labour market, in particular the mechanism for the employer to comply with the employment standards for this category of persons. The relevant draft law "On Amendments to Certain Legislative Acts of Ukraine Concerning the Employment of Persons with Disabilities" was registered with the Verkhovna Rada (registration No 4578 of 04.05.2016) but was withdrawn on 29.08.2019 due to the termination of the powers of the VIII convocation Parliament. The regulatory approximation of the legislation aimed at the development of social dialogue on the prevention/elimination of discrimination on the basis of sex is perfect, as the Law of Ukraine "On Collective Bargaining Agreements and Collective Contractual Agreements" is amended with regard to the content of collective agreements (Art. 7) and contracts (Art. 8) by including provisions on ensuring equal rights and opportunities for women and men (Law of Ukraine No 274-VI of 15.04.2008), and prohibition of discrimination (Law of Ukraine No 5207-VI of 06.09.2012). The draft law was developed, and in 2020 the Guidelines concerning Inclusion in Collective Bargaining Agreements and Collective Contractual Agreements of Provisions Aimed at Ensuring Equal Rights and Opportunities for Women and Men in Labour Relations were approved (Order No 56 of the Ministry of Social Policy of 29.01.2020).

### **Commitment 333 / Ensuring equal opportunities for women and men in access to goods and services**

- Directive 2004/113/EC

The commitment is aimed at improving the system of prevention/elimination of sex-based discrimination in access to goods and services through a legislative ban of direct/indirect discrimination, harassment, victimisation, ensuring the availability of a mechanism to protect those who have been discriminated against, empowering/appointing bodies to promote and control equal treatment of women and men at the national level, etc.

The regulatory approximation in terms of the adoption of state policy documents is "perfect". A number of policy documents have been adopted, specifying measures aimed at equal access, including to goods and services, such as the State Social Programme to Ensure Equal Rights and Opportunities for Women and Men until 2021 (CMU Resolution No 273 of April 11, 2018). The programme sets forth the state policy on equal access to goods and services, taking into account the requirements of the Directive, and specifies measures with regard to: improving the legal framework, gender mainstreaming in economic and social development programmes, gender mainstreaming in the reform programme etc. At the level of project development, activities were carried out to ensure equal access to goods and services in: education (Strategy for the Promotion of Gender Equality and Non-Discrimination in Education "Education: Gender Dimension – 2021" (Ministry of Education and Science)) and regional dimension (Strategy for the Promotion of Gender Equality on the Road to Decentralization (Ministry of Regional Development)).

Implementation of the principle of equal treatment and prevention/elimination of discrimination in the functioning of special bodies/institutions responsible for the implementation is "advanced". The activity of the Expert Council for Consideration of Appeals concerning Facts of Sex-Based Discrimination (under the Ministry of Social Policy) has been resumed; legal work was carried out to improve the activities of gender equality advisers; the office of the Government Commissioner for Gender

Equality Policy has been introduced (CMU Resolution No 390 of 07.06.2017).

### **Commitment 334 / Promoting equal opportunities for parents/guardians in the labour market and reconciling working and family life**

- Directive 2010/18/EU

Ensuring equal opportunities for parents/guardians in the labour market and reconciling working and family life, which is implemented by establishing parental leave and introducing a non-transferable part of leave for each parent/guardian, flexible working conditions after returning from leave, and time off work on grounds of force majeure for urgent family reasons.

Regulatory approximation is at an early stage. The current legislation of Ukraine (Labour Code of Ukraine (No 322-VIII of 10.12.1971), the Law of Ukraine "On Leave" (No 504/96-BP of 15.11.1996)) contains a set of provisions establishing the right of the mother to childcare leave, the possibility of using such leave instead of the mother and the right to unpaid leave due to family reasons. However, there is a need for approximation regarding the father's right to such leave, the procedure for using the non-transferable part of the leave, as well as flexible working conditions that allow both parents to reconcile working and family life. Transposition draft laws were registered with the Verkhovna Rada (i.e. No 0955 of 29.08.2019 and No 9045 of 05.09.2018) but were withdrawn or revoked. No necessary laws have been adopted. On 20.06.2019, Directive No 2019/1158 was adopted to repeal Directive No 2010/18/EU (the last day of its validity is 31.07.2022). The new Directive establishes a wider range of obligations that are not taken into account either in the current labour legislation of Ukraine or in the registered draft laws.

### **Commitment 335 / Ensuring the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding**

- Directive 92/85/EEC

Ensuring the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding involves banning the use of their work in tasks that involve risks to their health and safety, introduction of measures to reduce/eliminate the negative impact of occupational risks, regulations regarding employment, dismissal, and working conditions that ensure equal access of these categories of women to the labour market.

Regulatory approximation is at an early stage. The Labour Code of Ukraine contains a set of provisions aimed at regulating the specifics of the work of this category of workers. However, it does not fully meet the requirements of the Directive. The provisions on establishing a list of the occupational risks under which these workers cannot work, and the provision of time off, without loss of pay, in order to attend ante-natal examinations need to be approximated to the Directive. To ensure equal access to the labour market of these workers, it is necessary to review the legislation prohibiting their involvement in night work, business trips, etc. as well as the specifics of their dismissal. The draft code was registered with the Verkhovna Rada (No 0955 of 29.08.2019) but withdrawn from consideration. At the end of 2019, new draft codes were registered (No 2410 of 08.11.2019 and No 2410-1 of 08.11.2019),

which have been only included in the parliamentary agenda. The drafts duplicate the current provisions of the Labour Code of Ukraine on the prohibition of the use of women's work in difficult and harmful conditions, which have been abolished as discriminatory. The provisions that have been transposed without change present obstacles to the exercise of the right to work by such women in practice (for example, the ban on involving such women in work at night and going on business trips regardless of their health condition). No necessary laws have been adopted. No by-laws defining occupational risks in the presence of which the use of labour of this category of women is not allowed have been adopted.

### **Commitment 336 / Introduction of the principle of equal treatment for men and women in matters of social security**

- Directive 79/7/EEC

Improving the mechanism of compliance with the principle of equal treatment for men and women in matters of social security in case of illness, disability, old age, unemployment, accidents at work and occupational diseases, and appropriate social assistance.

The regulatory approximation in matters of legislative enshrinement of the principle of equal treatment for men and women in matters of social security and the adoption of state policy documents is perfect. The current legislation (i.e. the laws of Ukraine "On Compulsory State Social Insurance" (No 1105-XIV of 23.09.1999), "On Compulsory State Social Insurance in Case of Unemployment" (No 1533-III of 02.03.2000), and "On Compulsory State Pension Insurance" (No 1058-IV of 09.07.2003)) takes into account the principle of equal treatment for men and women in matters of social security. A number of policy documents have been adopted to set forth measures aimed at equal access, including to goods and services, in particular the State Social Programme to Ensure Equal Rights and Opportunities for Women and Men until 2021 (Resolution No 273 of the Cabinet of Ministers of April 11, 2018). This document outlines the general areas of state policies to ensure equal treatment for women and men, including in matters of social security. One of the areas is the introduction and improvement of the mechanism of gender and legal expert examination of regulatory legal acts, which meets the requirements of the Directive concerning detection and abolishing of laws, regulations and administrative provisions contrary to the principle of equal treatment. However, the regulatory approximation for such examination is currently at an early stage. It is necessary to conduct an audit of direct/indirect discrimination with regard to the establishment of different age/term of employment criteria for the exercise of social security rights.

## **HEALTH AND SAFETY AT WORK**

Overview of key Eurointegration commitments

Within the subsector of Health and Safety at Work (Annex XL), Ukraine has committed itself to approximating its legislation to 27 EU directives. Some of these directives have expired due to the adoption of new ones, so the actual number of the directives to be complied with is 24. Legislation was to be transposed within 2-10 years of the entry into force of the Association Agreement.



The EU acquis within this subsector focus on ensuring safe and healthy working conditions by introducing a system of: framework requirements (setting the basic principles of labour protection, including prevention of industrial risks), cross-cutting requirements (introduced by all employers regardless of their economic activity), and requirements for individual sectors of the economy and requirements for the impact of specific occupational risks.

A study of the effectiveness of the EU acquis on ensuring safe and healthy working conditions in view of the costs incurred and the benefits received by Member States in connection with the implementation of the entire system of the relevant directives was conducted by the European Commission in the framework of REFIT assessment (2017). So far, the Commission has not managed to develop a single mechanism/model for comparing the costs and benefits of implementing the acquis in this area at the EU level due to a number of factors, including the difficulty of differentiating between government costs incurred in connection with implementing the EU directive requirements from national legislation which sets higher requirements in many countries; distinguishing "compliance costs" from "administrative costs" incurred by states in connection with implementing the requirements of directives in this area; insufficient data for such an analysis (it is possible to rely on data from individual countries, but it should be borne in mind that they could be attributed to the national differences rather than the common EU minimum rules). Additional attention should be given to the cost of documenting the risk assessment of the enterprise, as well as the effectiveness of the implementation of requirements by medium, small and micro enterprises.

Evaluation of progress in fulfilling commitments

### **Commitment 337 / Improving the mechanism of the safety and health of workers at work in Ukraine**

- Directive 89/391/EEC

Improving the mechanism of the safety and health of workers at work in Ukraine by legislating the risk-oriented approach to creating safe and healthy working conditions.

Regulatory approximation is at an early stage. Ukraine adopted the Concept of Reforming the Labour Protection Management System in Ukraine and the Action Plan for its Implementation (Order No 989-p of the Cabinet of Ministers of 12.12.2018), which sets the areas of state policies and measures to be taken to introduce a risk-oriented approach in the functioning of the labour protection management system. Much of the measures are devoted to reforming legislation, including adoption of a new Labour Code and a special law. These acts have not been adopted. Within the framework of the ILO-EU project, a relevant draft law was developed, but it has not been registered with the Verkhovna Rada. No act has been adopted.

### **Commitment 338 / Updating safety and health requirements for the workplace**

- Directive 89/654/EEC

Updating the requirements for the workplace by bringing them into line with EU standards for safety and health at work, in particular taking into account the requirements set out in Directive No 89/654/EEC.

Regulatory approximation is at an early stage. The State Labour Service of Ukraine has developed a Draft Order of the Ministry of Social Policy "On Approval of the Minimum Workers' Safety and Health Requirements for the Workplace." However, the draft order was not endorsed by the joint representative body (JRB) of employers, the JRB of trade unions, and the relevant CEBs. In particular, the State Regulatory Service of Ukraine refused to endorse the draft order, pointing out, inter alia, to the fact that the author failed to substantiate the need to implement the requirements of Directive No. 89/654/EEC in full, which would lead to significant material costs for undertakings. No regulatory legal act has been adopted.

### **Commitment 339 / Updating the requirements concerning the minimum safety and health requirements for the use of work equipment by workers at work**

- Directive 2009/104/EC

Aligning national legislation with the minimum safety and health requirements for the use of work equipment by workers at work set out in Directive No 2009/104/EEC.

The regulatory approximation is perfect. Safety and Health Requirements for the Use of Work Equipment by Workers have been adopted (Order No 2072 of the Ministry of Social Policy of 28.12.2017, registered with the Ministry of Justice on 23.01.2018 under No 97/31549). The Order comprehensively takes into account the requirements of Directive No 2009/104/EEC with regard to the scope and terms, responsibilities of employers (in particular, the requirements for the employer to maintain equipment in working order, meet the established requirements, and check equipment (primary, regular, and extraordinary checks), check of equipment by experts, keeping and providing access to equipment check results, professional and special training of employees in operations envisaged, providing employees with the necessary information and written instructions in language that is easily perceived and understood by workers). The requirements of Annexes I and II of the Directive have been taken into account.

### **Commitment 340 / Updating the requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling**

- Directive 92/91/EEC

Establishing health and safety requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling, taking into account the specificities of the workplace, activities, circumstances and specific production risks set forth in Directive No 92/91/EEC.

Regulatory approximation is at an early stage. The State Labour Service has developed a draft order of the Ministry of Social Policy "On Approval of the Minimum Requirements for the Safety and Health of Workers in the Mineral-Extracting Industries through Drilling", but it was not approved by the Ministry of Social Policy.

The Ministry returned the draft order with a proposal to include it in Order No 943 of the Ministry of Social Policy "On Approval of the Requirements for the Safety and Health Protection of Workers of Mineral-Extracting Enterprises with Underground and Surface Mining Methods" of 02.07.2018. The relevant changes have not been introduced to the above order, nor have any other regulatory legal acts been adopted.

### **Commitment 341 / Updating the requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries**

- Directive 92/104/EEC

Establishing the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries, including mineral exploration for further extraction, and preparation of extracted minerals for sale, taking into account the provisions of Directive No 92/104/EEC.

The regulatory approximation is perfect. Requirements for Improving the Safety and Health Protection of Workers in Surface and Underground Mineral-Extracting Industries (Order No 943 of the Ministry of Social Policy of July 2, 2018, registered with the Ministry of Justice on July 27, 2018, under No 872/32324) have been adopted. The Order comprehensively takes into account the requirements of Directive No 92/104/EEC with regard to the scope and terms, the responsibilities of employers (requirements concerning the duty of the employer to take the necessary measures, in particular, in designing, equipping and operation of work areas, working under the supervision of a person in charge, giving safety instructions, etc., assessing the risks to life and health of workers, taking appropriate preventive measures and establishing proper supervision over the employer's compliance with the requirements to create safe and healthy working conditions, providing communication and warning systems, means of evacuation and rescue, conducting training and medical examinations of employees). The provisions of parts A, B, and C of the Annex to the Directive have been taken into account.

### **Commitment 342 / Improving the minimum health and safety requirements and rules for the use by workers of personal protective equipment at the workplace**

- Directive 89/656/EEC

Improving national legislation concerning the provision of personal protective equipment to workers, taking into account the requirements of Directive 89/656/EEC with regard to the assessment, quality, selection and use of personal protective equipment in the workplace.

The regulatory approximation is perfect. Minimum Health and Safety Requirements for the Use by Workers of Personal Protective Equipment at the Workplace were adopted (Order No 1804 of the Ministry of Social Policy of November 29, 2018, registered with the Ministry of Justice on December 27, 2018 under No 1494/32946). The Order comprehensively takes into account the requirements of Directive No 89/656/EEC concerning the scope and terms, responsibilities of employers (providing personal protective equipment that meets the technical requirements, taking into

account safety requirements when choosing the appropriate means of protection, assessing protective equipment before choosing it, providing equipment at the employer's expense, informing employees about personal protective equipment in advance and in a way that is understandable, regular training of employees to use protective equipment, informing employee representatives about all measures taken, etc.), as well as the provisions of Annexes I, II, III to the Directive.

### **Commitment 343 / Updating the minimum safety and health requirements at temporary or mobile construction sites**

- Directive No 92/57/EEC

Alignment of the minimum safety and health requirements at temporary or mobile construction sites with those of Directive No 92/57/EEC.

The regulatory approximation is perfect. Minimum Labour Protection Requirements at Temporary or Mobile Construction Sites were adopted (Order No 1050 of the Ministry of Social Policy of 23.06.2017, registered with the Ministry of Justice on 08.09.2017 under No 1111/30979). The Order comprehensively takes into account the requirements of Directive No 92/57/EEC with regard to the scope and terms, responsibilities of the customer, manager, construction contractor, and coordinator for safety and health matters at the project preparations and execution stages, employers, and self-employed persons with regard to ensuring safe and healthy working conditions, ensuring safety and health at the project preparations and execution stages, drawing up a prior notice to the competent state authorities, development and adoption of plans for health and safety protection at the construction site, informing employees and consulting with them and their representatives, etc. It took into account the requirements of the annexes to the Directive and specified the types of construction works that are subject to the minimum health and safety requirements at temporary or mobile construction sites; areas of construction activity that expose workers to particularly high levels of risk; minimum requirements for work areas and workplaces at construction sites, indoor and outdoor workplaces.

### **Commitment 344 / Improving the mechanism of protection of workers from the risks related to exposure to asbestos at work**

- Directive 2009/148/EC

Aligning national legislation on the protection of workers from the risks related to exposure to asbestos and asbestos-containing materials and articles with Directive No 2009/148/EC.

Regulatory approximation is at an early stage. Work on its fulfilment is underway (deadline - 2021). Ukraine retains the validity of the State Sanitary Rules and Regulations (DSanPiN) "On the Safety and Protection of Workers from the Harmful Effects of Asbestos and Asbestos-Containing Materials" (Order No 762 of the Ministry of Health of 01.10.2012), as the state registration of the updated DSanPiN (No 339 of 29.03.2017) was cancelled. In 2020, the Ministry of Health of Ukraine plans to develop new DSanPiN and a Concept for Elimination of Diseases Associated with Exposure to Asbestos Dust for 2021-2028.

### **Commitment 345 / Improving the mechanism of protection of workers from the risks related to exposure to carcinogens or mutagens at work**

- Directive 2004/37/EC

Aligning requirements for the protection of workers from risks to their health and safety, including prevention of risks arising or likely to arise from exposure to carcinogens or mutagens in the workplace, taking into account the requirements of Directive 2004/37/EC.

Regulatory approximation is at an early stage. Work on its fulfilment is underway (deadline – 2021). Current legislation (in particular Requirements for Employers to Protect Employees from the Harmful Effects of Chemicals (Order No 627 of the Ministry of Emergencies of Ukraine of 22.03.2012, registered with the Ministry of Justice on 10.04.2012 under No 521/20834) and the hygienic standard "List of Substances, Products, Production Processes, Household and Natural Factors that are Carcinogenic to Humans" (Order No 7 of the Ministry of Health of Ukraine of 13.01.2006, registered with the Ministry of Justice on 06.02.2006 under No 100/11974)) partially take into account the requirements of the Directive, in particular, regarding the classification of certain substances as carcinogenic, taking measures by the employer to conduct risk assessment and organisational measures. However, it is necessary to harmonise measures concerning medical examinations and monitoring of the health of workers, informing workers, keeping records, etc. with the list of carcinogenic and mutagenic substances identified by the EU acquis. In addition, these acts need to be brought into line with the national legislation adopted to implement the EU acquis on other matters. The planned bylaws on its approximation to the EU standards in the field of protection of workers from the harmful effects of carcinogens and mutagens have not been adopted.

### **Commitment 346 / Improving the mechanism of protection of workers from risks related to exposure to biological agents**

- Directive 2000/54/EC

Taking into account the requirements of Directive 2000/54/EC in national law, in particular the provisions on risk assessment and limitation where the exposure to biological agents of workers cannot be avoided.

Regulatory approximation is at an early stage. Work on its fulfilment is underway (deadline – 2021). The current legislation partially takes into account the requirements of the Directive concerning preventive measures, risk assessment, information and training of employees (the general requirements are set forth by the Law of Ukraine "On Labour Protection" (2694-XII of October 14, 1992, as amended by No 229-IV of November 21, 2002) and specified in bylaws (for example, the DSanPiN "Hygienic Classification of Labour by Indicators of Harmfulness and Risks Related to Factors of the Working Environment, the Hardness and Intensity of the Work Process" (Order No 248 of the Ministry of Health of Ukraine of 08.04.2014, registered with the Ministry of Justice on 06.05.2014 under No 472/25249)). The planned by-laws on its approximation to the EU standards in the field of protection of workers from risks related to exposure to biological agents have not been adopted.

### **Commitment 347 / Updating the safety and health requirements for work with display screen equipment**

- Directive 90/270/EEC

Aligning national legislation with the requirements of Directive No 90/270/EEC on the minimum safety and health requirements for work with display screen equipment.

The regulatory approximation is perfect. The Safety and Health Requirements for Work with Display Screen Equipment have been adopted (Order No 207 of the Ministry of Social Policy of February 14, 2018, registered with the Ministry of Justice on April 25, 2018 under No 508/31960). The Order comprehensively takes into account the requirements of Directive No 90/270/EEC with regard to the scope and terms, responsibilities of the employer (fulfilment of requirements for ensuring the safety to display screen equipment, workplaces with display screen equipment, ensuring safety when working with display screen equipment. Other requirements of the Directive and its Annexes were taken into account in previously adopted legislation (in particular, the State Sanitary Rules and Regulations concerning Work with Visual Display Terminals of Computers (DSanPIN 3.3.2.007-98)).

### **Commitment 348 / Updating the requirements for the provision of safety and/or health signs at work**

- Directive 92/58/EEC

Aligning national legislation with Directive No 92/58/EEC with regard to the requirements for the provision of safety and/or health signs at work.

The regulatory approximation is perfect. The Technical Regulations concerning Safety and Health Signs at Work are in effect (Resolution No 1262 of the Cabinet of Ministers of 25.11.2009), which meets the minimum requirements established by the Directive. At the same time, the Action Plan of the Cabinet of Ministers of Ukraine on the implementation of the Association Agreement (para. 1361) provides for the adoption and registration of an order of the Ministry of Social Policy on this matter. The draft act has not been made public for public discussion, the act has not been adopted, nor have the relevant amendments been made to the Technical Regulation.

### **Commitment 349 / Improving the mechanism of protection of the health and safety of workers from the risks related to chemical agents at work**

- Directive 98/24/EC

Aligning national legislation with the requirements of Directive 98/24/EC concerning protection of the health and safety of workers from the risks related to chemical agents at work, exposure limit values, risk assessment and introduction of precautions.

Regulatory approximation is advanced. Work on its fulfilment is underway (deadline – 2024). The current requirements for the protection of the health and safety of workers from the risks related to chemical agents at work (in particular Requirements for Employers to Protect Workers from the Risks Related to Chemical Agents (Order

No 627 of the Ministry of Emergencies of Ukraine of 22.03.2012, registered with the Ministry of Justice on 10.04.2012 under No 521/20834) do not fully take into account the provisions of the Directive or the legislation of Ukraine that has already been aligned with other EU regulations. No new regulations have been adopted.

### **Commitment 350 / Improving the mechanism of protection of workers potentially at risk from explosive atmospheres**

- Directive 1999/92/EC

Aligning national legislation with Directive 1999/92/EC with regard to the requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres.

Regulatory approximation is advanced. Work on its fulfilment is underway (deadline – 2024). Requirements for Employers to Ensure the Safety of Workers Potentially at Risk from Explosive Atmospheres (Order No 317 of the Ministry of Energy of 05.06.2013, registered with the Ministry of Justice on 26.06.2013 under No 1071/23603) mostly take into account the requirements of the Directive but they need to be harmonised with the updated legislation of Ukraine. No changes have been made to the relevant codes regarding criminal and administrative sanctions.

### **Commitment 351 / Improving the mechanism of protection of workers from the risks arising from exposure to vibration**

- Directive 2002/44/EC

Aligning national legislation with Directive 2002/44/EC on the health and safety requirements regarding the exposure of workers to the risk arising from physical agents (vibration).

Regulatory approximation is at an early stage. Work on its fulfilment is underway (deadline – 2024). The current legislation (in particular the State Sanitary Regulations concerning Industrial General and Local Vibration DSN 3.3.6.039-99 (Resolution No 39 of the Chief State Sanitary Officer of Ukraine of 01.12.1999)) partially takes into account the provisions of the Directive. The planned transposition acts on the approximation of vibration levels, the procedure for assessing the level of risks from exposure of the worker to vibration, the actions to be undertaken by the employer where such risks arise, as well as making changes to the procedure for medical examinations of workers have not been adopted.

### **Commitment 352 / Improving the mechanism of protection of workers from exposure to noise**

- Directive 2003/10/EC

Alignment of national legislation on the protection of workers from exposure to noise at work with Directive No 2003/10/EC.

Regulatory approximation is at an early stage. Work on its fulfilment is underway (deadline – 2024). Current legislation (including Sanitary Regulations concerning Noise, Ultrasound and Infrasound at Work DSN 3.3.6.037-99 (Resolution No 37 of the Chief State Sanitary Officer of Ukraine 01.12.1999)) partially takes into account the

provisions of the Directive. The planned transposition acts on the approximation of noise pollution levels, the procedure the employer should follow to assess risks, as well as amendments to the procedure for conducting medical examinations of employees have not been adopted.

### **Commitment 353 / Improving the mechanism of protection of workers from the risks of exposure to electromagnetic fields**

- Directive 2013/35/EC

Aligning the requirements of national legislation on the protection of workers from the risks associated with exposure to electromagnetic fields with Directive No 2013/35/EC.

Regulatory approximation is at an early stage. Work on its fulfilment is underway (deadline – 2024). The current legislation (in particular Requirements for Employers concerning Protection of Employees from Risks of Exposure to Electromagnetic Fields (Order No 99 of the Ministry of Energy and Coal Industry of Ukraine of 05.02.2014, registered with the Ministry of Justice on 25.02.2014, under No. 335/25112)) partially takes into account the requirements of the Directive. The CMU Action Plan for the Implementation of the Association Agreement (2017) provides for the adoption of transposition regulations, but the latter have not been approved by the CEB in charge for the implementation of the relevant tasks and measures.

### **Commitment 354 / Updating the health and safety requirements regarding the exposure of workers to risks arising from artificial optical radiation**

- Directive 2006/25/EC

Aligning national legislation with the requirements of Directive 2006/25/EC concerning the health and safety requirements regarding the exposure of workers to risks arising from artificial optical radiation.

Regulatory approximation has not started. Work on its fulfilment is underway (deadline – 2024). The CMU Action Plan for the Implementation of the Association Agreement (2017) specifies no commitments and measures to approximate national legislation to the requirements of the Directive. No activities have been planned by the relevant ministries and CEBs. For regulatory approximation, it is necessary to adopt regulations that will establish a system of health and safety requirements regarding the exposure of workers to risks arising from artificial optical radiation, a procedure for assessing the risks arising from exposure to artificial optical radiation at work, and changes to the procedure of medical examinations.

### **Commitment 355 / Updating safety and health requirements for work on board fishing vessels**

- Directive 93/103/EC

Aligning with the provisions of Directive 93/103/EC concerning the minimum safety and health requirements for work on board fishing vessels.



Regulatory approximation is advanced. Work on its fulfilment is underway (deadline – 2024). Rules of Labour Protection when Performing Work on Board Fishing Vessels have been approved (Order No 26 of the State Service for Mining Supervision and Industrial Safety of Ukraine of 27.12.2006, registered with the Ministry of Justice on 29.01.2007 under No. 74/13341), they take into account the requirements of the Directive. Certain provisions should be reviewed to bring them into line with the updated legislation that implements other EU standards.

### **Commitment 356 / Updating requirements for medical treatment on board vessels**

- Directive 92/29/EEC

Aligning the mechanism of medical treatment on board vessels with the requirements of Directive No 92/29/EEC.

Regulatory approximation is at an early stage. Work on its fulfilment is underway (deadline – 2024). Some changes have been made to the current legislation, taking into account the requirements of the Directive. For example, in 2016 changes were made to the Procedure for Determining the Minimum Crew of Vessels (Order No 575 of the Ministry of Infrastructure of 10.11.2014, registered with the Ministry of Justice on November 26, 2014, under No 1507/26284) regarding the inclusion of doctors in the crew. Ukraine approved the Strategy and Action Plan for the Implementation of the Provisions of the Directives and Regulations of the European Union in the field of International Maritime and Inland Waterway Transport (CMU Order No 747-p of 11.10.2017), which also provides for the adoption of acts on medical examinations on board ships and the provision of medical equipment and medicines. No necessary transposition regulations have been adopted.

### **Commitment 357 / Updating health and safety requirements for the manual handling of loads**

- Directive 90/269/EEC

Approximation of national legislation to the minimum health and safety requirements for the manual handling of loads laid down in Directive No 90/269/EEC.

Regulatory approximation is advanced. Work on its fulfilment is underway (deadline – 2024). The current legislation establishes safety requirements for manual loading and unloading operations, in particular Rules of Labour Protection during Loading and Unloading Operations (Order No 21 of the Ministry of Energy and Coal of 19.01.2015, registered with the Ministry of Justice on 03.02.2015, under No 124/26569). Amendments are necessary to take into account all the requirements of the Directive, involving the relevant CEBs in the development and adoption of relevant acts.

### **Commitment 358 / Aligning indicative occupational exposure limit values with EU standards**

- Directive 91/322/EEC, Directive 2000/39/EC, Directive 2006/15/EC

Establishment of indicative occupational exposure limit values, maximum permissible concentrations of chemicals in the air of the work area.

Regulatory approximation is at an early stage. Work on its fulfilment is underway (deadline – 2024). Measures have been planned to harmonise the legislation with the first and second lists of maximum permissible concentrations of chemicals (Directives No 91/322/EEC, No 2000/39/EC, and No 2006/15/EC). The planned regulations have not yet been adopted.

## **COOPERATION ON SOCIAL PROTECTION AND SOCIAL INCLUSION**

### Overview of key Eurointegration commitments

The commitment is not covered by Annex XL. The Government of Ukraine identified it as its commitment in the Action Plan to implement the Association Agreement based on Art. 420 of the Association Agreement.

The commitment is aimed at reforming the system of social services to persons/families in difficult life circumstances, in order to prevent, overcome and minimise the negative consequences.

The Cabinet of Ministers has independently established this commitment, so it is irrelevant to consider its implementation based on the system of costs-benefits associated with the implementation of the Association Agreement. The enforcement of the updated national legislation in the field of social services will require additional costs, expenses and labour, which should be specified inter alia in the explanatory notes to the draft laws. However, there are no financial feasibility studies concerning either of the draft laws.

### Evaluation of progress in fulfilling commitments

#### **Commitment 359 / Reforming the system of social services**

- Art. 420 of the Association Agreement

Reforming the system of social services, which involves adoption of a separate law and bylaws, including on state standards of social services.

The regulatory approximation is perfect. At the same time, the commitment differs from the other ones in that it is not covered by Annex XL but rather testifies to the desire of the Cabinet of Ministers to reform its own legislation in the sphere of social services. The law establishing the legal basis for the provision of social services in Ukraine was adopted in 2003. In May 2016, draft law No 4607 was registered, which was considered and as a result on January 17, 2019 the new Law of Ukraine "On Social Services" (No 2671-VIII) was adopted. During 2014-2019, state standards for the provision of social services were approved concerning:

- care (palliative care (Order No 58 of the Ministry of Social Policy of January 29, 2016) and in-patient care (Order No 198 of the Ministry of Social Policy of February 29, 2016),
- social integration (graduates of state boarding schools (Order No 1067 of the Ministry of Social Policy of 19.10.2016),

- social rehabilitation (people with intellectual and mental disorders (Order No 1901 of the Ministry of Social Policy of 17.12.2018),
- social support (families/people in difficult life circumstances (Order No 318 of the Ministry of Social Policy of March 31, 2016), families with orphans and children deprived of parental care (Order No 1307 of the Ministry of Social Policy of 11.08.2017); during employment and at the workplace (Order No 1044 of the Ministry of Social Policy of September 21, 2016)),
- supported accommodation (for the elderly and people with disabilities (Order No 956 of the Ministry of Social Policy of 07.06.2017), homeless people (Order No 372 of the Ministry of Social Policy of 03.04.2015),
- consultancy (Order No 678 of the Ministry of Social Policy of July 2, 2015), mediation (Order No 892 of the Ministry of Social Policy of August 17, 2016), representation of interests (Order No 1261 of the Ministry of Social Policy of 30.12.2015), crisis and emergency intervention (Order No 716 of the Ministry of Social Policy of July 1, 2016), social adaptation (Order No 514 of the Ministry of Social Policy of May 18, 2015), prevention services (Order No 912 of the Ministry of Social Policy of September 10, 2015).

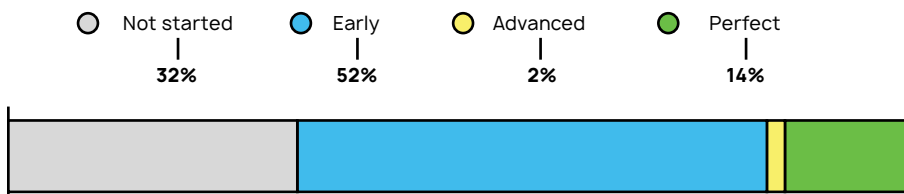


**PUBLIC  
HEALTH**

# PUBLIC HEALTH

Expert: **Lesia Tsykaliuk / Maria Bakhmakha / Natalia Kyrychenko**

## Implementation progress for the sector:



Chapter 22 of the Association Agreement deals with the public health sector and key aspects of cooperation between Ukraine and the European Union in this area. This cooperation is aimed at raising the level of public health safety and protection of human health as a precondition for sustainable development and economic growth.

By signing the Association Agreement, Ukraine made commitments in the field of public health, which can be divided into the following:

1. carrying out reforms in the field of health care, including public health;
2. reform of the system of epidemiological surveillance of infectious diseases;
3. reform of the "blood safety" sector, as well as that of "tissues, cells and organs";
4. reducing the burden of non-communicable diseases caused by addiction to drugs, alcohol and tobacco, as well as early detection of cancer and injury prevention.

Within the EU, the health care systems vary greatly, there is no single model, hence the EU legislation in this area is quite limited. Most binding EU acts have been adopted in the field of infectious diseases, in particular the compatibility of epidemiological surveillance and information exchange systems, as well as in the field of "blood safety". The rest of the EU acts in the field of health care are mostly of recommendatory nature. Therefore, Ukraine's public health commitments under the Association Agreement are outlined quite flexibly. At the same time, there are a number of clear-cut commitments that Ukraine must fulfil.

In addition, attention to non-communicable diseases indicates their significant impact on the health of the population both in the EU and in Ukraine. In the EU in 2017, 91% of deaths and 87% of healthy life years lost due to ill-health (DALYs) were due to non-communicable diseases<sup>1</sup>. In Ukraine in 2018, non-communicable diseases

1) EU Burden from Non-communicable Diseases and Key Risk Factors (2018). EU Science Hub, European Commission <https://ec.europa.eu/jrc/en/health-knowledge-gateway/societal-impacts/burden>

caused 30% of deaths of men of working age<sup>2</sup>. In addition to the significant direct costs of the health and social protection systems, non-communicable diseases also have wider economic consequences due to disability and, consequently, economic productivity. Most deaths in Ukraine are caused by cardiovascular, oncological and chronic respiratory diseases. These diseases are associated with risk factors such as diet, physical mobility, smoking, alcohol abuse, etc. and can be prevented by timely intervention through effective public health and health care systems<sup>3</sup>.

## STRENGTHENING THE HEALTH CARE SYSTEM OF UKRAINE AND ITS POTENTIAL

### Overview of key Eurointegration commitments

Although the EU lacks an *acquis* on the general health care system (there are only some regulations on infectious and non-communicable diseases) and there are significant differences in the organisation of health care in different countries, the issue of strengthening Ukraine's health care system as a whole is included in the Association Agreement and the EU is constantly monitoring Ukraine's progress in this area.

Evaluation of progress in fulfilling commitments

### Commitment 360 / Implementation of reforms, development of primary health care and staff training

- Article 427 of the Association Agreement

The Agreement does not contain any specific commitments on how to strengthen the health care system. However, Article 427 of the Agreement specifies the following areas: implementation of reforms, development of primary health care and staff training.

The most large-scale reform within the health care system is the change in the system of health care financing. In this area, Ukraine has made significant progress over the past 5 years, in particular, the Law of Ukraine "On State Financial Guarantees of Medical Services" was developed and adopted. From April 1, 2020, funding for all types of medical care is provided based on a new system – i.e. the programme of medical guarantees.

For primary health care, the financing reform began in mid-2018 and was commended (WHO–World Bank Joint Report 2019). The reform of primary health care is gradually beginning to take an effect on the quality of health care.

The introduction of an eHealth system, which is an integral part of other reforms, is somewhat less effective. Although eHealth has been partially launched, the system is running in limited functionality mode.

The Ministry of Health has also launched a reform of medical education – the Strategy for Medical Education Development in Ukraine was approved in early 2019. The most significant elements of the Strategy that have already been implemented include

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2) Martinez, Ramon et al. Trends in premature avertable mortality from non-communicable diseases for 195 countries and territories, 1990–2017: a population-based study. *The Lancet Global Health*, Volume 8, Issue 4, e511 - e523

3) WHO (2013). Integrated Management of NCDs. <http://origin.who.int/ncds/management/integrated-management/en/>

the setting of the minimum passing score at the External Independent Testing for admission to the specialty in the field of health care, introduction of the international exam in medicine in 2019, and introduction of continuous professional development.

In general, the implementation of the commitment is at the perfect stage.

### **Commitment 361 / Development of the public health system**

- Article 427 of the Association Agreement

There are several key regulations in the EU that regulate this sector. As it is necessary to implement regulatory documents in this area taking into account the existing models of functioning of the systems of health care, public health and their elements, the Agreement does not specify any direct transposition commitments for Ukraine. At the same time, Ukraine should gradually approximate its legislation and practice to the principles of EU *acquis* (Chapter 22, Article 427 ©).

Ukraine is at an early stage of the transposition of the statutory provisions that regulate the public health system. CMU Order No 1002-p "On Approval of the Concept of Public Health System Development" of 30.11.2016 marked the beginning of the system development; and CMU Order No 560-p of 18.08.2017 approved the Action Plan for the Implementation of the Concept for 2017-2020<sup>4</sup>. However, most of the plan's measures remain unimplemented, and the Law on the Public Health System has not been submitted to the Verkhovna Rada. Therefore, the legislative regulation of the development of the public health system is fragmentary.

Despite its imperfect legislation, Ukraine has taken significant implementation steps to develop the public health system. In particular, on May 31, 2016, the Ministry of Health established the State Institution "Public Health Centre of the Ministry of Health of Ukraine"<sup>5</sup>; the network of oblast (regional) public health centres is rapidly developing – they already operate in 13 oblasts and some of them have started work on assessing public health challenges and priorities for the population of their regions. However, the incomplete regulatory framework for the development of the field and the uncertain financial basis for its operation keep Ukraine at an early stage of implementation of the public health system.

## **COMMUNICABLE DISEASES**

### **Overview of key Eurointegration commitments**

At the EU level, the issue of communicable disease prevention and control is considered in terms of threats to public health. Although communicable diseases are not the leading cause of morbidity and mortality in EU countries, in a globalised world, infectious diseases (including new ones) can spread rapidly from country to country. In this context, the EU has created a framework for cooperation between EU Member States to exchange information on public health emergencies, implement elements of a single epidemiological surveillance system, and provide a system for early detection and timely response.

The system of epidemiological surveillance and early response to infectious diseases is closely linked to a similar WHO system – International Health Regulations, which apply in Ukraine.

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4) <https://www.kmu.gov.ua/npas/249618799>

5) <https://www.kmu.gov.ua/news/249080727>

In some cases, not only EU member states but also "third parties" may be involved in the EU system at the discretion of the relevant body. For example, the Health Security Committee (HSC), includes Turkey and Serbia as observers. In early May 2020, Ukraine was invited to join the Council as an observer.

For Ukraine, the requirements concerning transposition and implementation of the relevant decisions of the European Union are one of the additional motivators for the development of the public health system at the national level.

Evaluation of progress in fulfilling commitments

### **Commitment 362 / Ukraine's accession to the European network for combating cross-border health threats**

- Decision 2119/98/EC (repealed)
- Decision 1082/2013 / EU

These EC decisions initiated cooperation between EU countries to exchange information on cases of communicable diseases and prompt response to outbreaks that may pose a threat to the EU population.

Legal approximation is at an "early" stage. In Ukraine, no regulatory document has been approved to approximate national legislation to these EU decisions. The exchange of information is unsystematic: Ukraine transfers information on but a few nosologies, the definition of cases does not always coincide in the legislation and practices of Ukraine and the EU, and the registration of cases of communicable diseases in Ukraine is also unsystematic.

At the same time, Ukraine is regularly mentioned in the reports of the European Centre for Disease Prevention and Control in connection with potential threats of spread of communicable diseases from the territory of Ukraine (for example, the report of March 23, 2018 "Risks of Measles Transmission in the EU / EEA", report "Rapid Risk Assessment: Outbreak of Vaccine-Derived Poliovirus Type 1 in Ukraine" of September 4, 2015).

This situation is largely due to the inconsistency of sectoral legislation and in many cases its obsolescence, uncertainty of the institutional framework at the national and regional levels, and weak communication links between different sectors as well as between public health institutions and health care institutions.

The key recommendations of the European Commission in this context, based on the evaluation of the epidemiological surveillance system in Ukraine in 2015, are to create a strategic framework for the development of communicable disease control, update legislation and align it with EU legislation, create a single national-level institution for public health issues. These recommendations have been partially implemented.

In particular, the Public Health Centre of the Ministry of Health has been established, which is gradually taking over functions in the field of public health. At the same time, a number of problems remain unaddressed:

- the existence of other institutions at the national level that continue to be in charge of certain public health matters;



- disorderly situation regarding the regional system of epidemiological surveillance of communicable diseases;
- lack of clear procedures for epidemiological surveillance.

Certain steps have been taken to form a strategic framework for combating communicable diseases, in particular the following strategic documents have been approved:

- the Concept of Public Health System Development;
- the Strategy for Development of Preventive Immunization and Protection of Population against Vaccine Preventable Infections for the period up to 2022;
- Biosafety and Biosecurity Strategy based on the "Single Health" Principle for the period up to 2025;
- the concept of the National Targeted Social Programme to Fight Tuberculosis for 2018-2021;
- National Action Plan to Combat Antimicrobial Resistance.

However, no single vision / strategy for a communicable disease control system has been formulated.

Ukraine is at an "early" stage of implementation of the commitment.

### **Commitment 363 / Determining the list of communicable diseases that should be covered by the epidemiological surveillance system and identifying cases of communicable diseases**

- Decision 2000/96/EC of 22 December 1999 on the communicable diseases to be progressively covered by the Community network under Decision No 2119/98/EC;
- Decision 2002/253/EC of 19 March 2002 laying down case definitions for reporting communicable diseases to the Community network under Decision No 2119/98/EC;
- Decision 2018/945 of 22 June 2018 on the communicable diseases and related special health issues to be covered by epidemiological surveillance as well as relevant case definitions.

The documents lay down the list of communicable diseases and related health conditions to be covered by the EU epidemiological surveillance and reporting systems, as well as the definition of the criteria (clinical, epidemiological, and laboratory ones) based on which a case should be classified as a certain communicable disease.

In order to implement the relevant acts in 2015-2016, the Ministry of Health developed and approved 2 regulations (MoH Order No 362 "On Approval of the List of Communicable Diseases" of April 13, 2016, and No 905 "On Approval of Criteria Based on which Cases of Infectious and Parasitic Diseases that are Subject to Registration are Identified" of December 28, 2015). At the same time, there are a number of issues that prevent us from assessing these decisions as full transposition of the provisions of the EU acquis into national legislation.

Thus, even though MoH Order No 362 accurately transposes the list of communicable diseases as laid down by Decision No 2119/98/EC, it does not provide for any legal consequences. Specifically, it does not establish any terms and procedure for conducting epidemiological surveillance of these communicable diseases. In addition, this order of the Ministry of Health does not comply with Resolution No 157 of the Cabinet of Ministers on "Certain Matters of Registration, Recording and Reporting of Communicable Diseases" of 21.02.2001, as certain communicable diseases identified in the EU Decision and the relevant Order of the Ministry of Health are not included in this Resolution and hence are not subject to recording and registration, which is an integral part of epidemiological surveillance. Clause 2.4 of the Action Plan for the Implementation of the Concept of Public Health System Development approved by Decree No. 560 the Cabinet of Ministers of 18.08.2017 provides for amendments to Resolution No 157, but no changes have been made, so far only a draft order of the Ministry of Health has been developed.

Commission Decision No 2002/253/EU, which approved clinical, laboratory and epidemiological criteria for determining cases of communicable diseases, was fully transposed into national law by Order No 905 of the Ministry of Health of 28.12.2015. In addition, in 2019, the definition of cases of measles and rubella was updated. However, no changes have been made to other orders of the Ministry, which also approve the criteria for determining cases of communicable diseases. Often the definitions of cases in different documents of the Ministry of Health are not the same (for example, the definition of syphilis in the Guidelines for Diagnosis, Treatment and Prevention of STIs, approved by Order No 286 of the Ministry of Health of 07.06.2004, does not match that in Order No 905 of the Ministry of Health of 28.12.2015). In this regard, it is necessary to revise the regulatory framework in the field of communicable diseases to bring it in line with the said Decision of the Commission.

It should also be noted that these Commission Decisions have been repealed several times and combined into a single act (Commission Decision No 945/2018 of 22.06.2018), the list of diseases subject to epidemiological surveillance has been updated and expanded in accordance with the current epidemic situation (e.g., Zika virus disease has been included), some criteria have been revised, and definitions of new cases have been added. Given this, it is necessary to review the relevant legislation of Ukraine.

Ukraine is at an early stage of implementation of the commitment.

## CANCER

### Overview of key Eurointegration commitments

Cancer is a major cause of early death, especially in low- and middle-income countries. Statistics show that in developed countries, the five-year survival rate is more than 85%. At the same time, in Ukraine the realities are completely different – we rank second in Europe in terms of the rate of cancer spread; and almost 1 million patients with malignant neoplasms have been registered. Worldwide, one of the most effective methods to combat cancer is early diagnosis and prevention.

The EU legislation in this area is of recommendatory nature. At the same time, the implementation of these recommendations will have a positive effect on both public health and economy<sup>6</sup>.

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6) The global economic loss from cancer exceeds USD 1 trillion. Ukraine also suffers from the damage caused by this disease, especially considering that, according to statistics, people of working age account for 35% of cancer deaths.

### **Commitment 364 / Introduction of a comprehensive approach to diagnosing cancer based on EU Member States' best practices**

- Council Recommendation No 2003/878/EC on cancer screening of 2 December 2003

Council Recommendation No 2003/878/EC aims to improve the integrated approach to the early detection of cancer, which will help reduce the associated mortality as well as cut the cost of cancer treatment. The key recommendations include: introduction of screening programmes, establishing centralised databases, ensuring that target groups have access to the screening programmes, regular monitoring of programme effectiveness, staff training, introduction of the latest tests based on international research, etc.

This commitment does not directly involve drafting legislation.

The implementation measures are at an "early" stage. Ukraine has taken several important steps to introduce an integrated approach to cancer diagnosis. The National Action Plan concerning Non-communicable Diseases to Achieve Global Sustainable Development Goals<sup>7</sup> describes early detection of cancer as one of the priority areas to prevent the development of non-communicable diseases. Early detection of breast cancer, colorectal cancer and prostate cancer in high-risk individuals and screening for other cancers in symptomatic individuals are included in the list of primary level services<sup>8</sup>; and the Medical Guarantees Programme for Specialised and Highly Specialised Care provides for diagnosis, chemotherapy and radiation therapy in specialised and highly specialised health care facilities<sup>9</sup>. Despite the importance of the above steps, these measures focus on early diagnosis of cancer, and the Commission's recommendation aims at introducing screening programmes aimed at detecting cancer at the asymptomatic stage by conducting systematic screening among people at risk. There are no such programmes in Ukraine yet; while the incomplete reform of the public health system and the imperfect organisational support for the reform of the primary health care system hinder the development of systematic and effective screening programmes.

## **TOBACCO**

### **Overview of key Eurointegration commitments**

Tobacco smoking is one of the most significant risk factors common to non-communicable diseases and remains a public health challenge in middle- and low-income countries, such as Ukraine. Therefore, the fulfilment of this commitment aims to minimise the harmful effects of tobacco smoking on the health of the population of Ukraine.

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7) CMU Order No.530-p of August 26, 2018 <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-nacionalnogo-planu-zahodiv-shchodoneinfekcijnih-zahvoryuvan-diya-dosyagnennya-globalnih-cilej-stalogo-rozvitku>

8) MoH Order No.504 "On Approval of the Procedure for Providing Primary Care Services" of 19.03.2018 [https://moz.gov.ua/uploads/0/4207-dn\\_20180319\\_504.pdf#page=3](https://moz.gov.ua/uploads/0/4207-dn_20180319_504.pdf#page=3)

9) National Health Service of Ukraine. Medical service packages. [https://nnsz.gov.ua/storage/editor/files/paketi-medichnikh-poslug-07022020\\_1581100466.pdf](https://nnsz.gov.ua/storage/editor/files/paketi-medichnikh-poslug-07022020_1581100466.pdf)

### **Commitment 365 / Transposition of policies for the manufacture, presentation, and sale of tobacco products and related products**

- Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products;
- Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products;
- Council Recommendation of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control.

Article 428 of the Agreement obliges Ukraine to approximate its legislation and practice to the principles of the EU acquis, in particular in the field of tobacco regulation. The list of the relevant EU acquis is specified in Annex XLI to the Agreement. Although this Annex stipulates that the provisions of Directive No 2001/37/EC of the European Parliament and of the Council of 5 June 2001 must be implemented in Ukrainian legislation, in April 2014 the European Parliament and the Council decided to adopt a new Directive No 2014/40 and repeal Directive 2001/37/EC. Thus, the commitments under Annex XLI to the Agreement should be interpreted as Ukraine's obligation to transpose into national law the provisions of Directive No 2014/40/EU, as specified in the Action Plan for the Implementation of the EU-Ukraine Association Agreement<sup>10</sup>.

Ukraine remains at an early stage of transposition of EU legislation. Its national legislation fully complies with Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products, but the 2014 update requires Ukraine to make appropriate amendments to national legislation. To fulfil these requirements, three draft laws have been registered with the Verkhovna Rada, although not all of them fully meet the commitments. Draft law No 2719 "On Amendments to Certain Legislative Acts of Ukraine Concerning the Adaptation of Ukrainian Legislation to the Requirements of Directive No 2014/40/EU of the European Parliament and of the Council of 3 April 2014" of 11.01.2020 fully complies with the transposition commitment. However, the lack of political will means that the Verkhovna Rada might fail to adopt the draft law.

The action plan for the implementation of the Association Agreement contains nine implementation tasks to fulfil this commitment. However, without the adoption of the relevant law or laws, their implementation will not be ensured.

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<sup>10</sup>) Resolution No. 1106 of the Cabinet of Ministers of Ukraine of October 25, 2017 <https://www.kmu.gov.ua/npas/pro-vikonannya-ugodi-pro-asociaciyu-mizh-ukrayinoyu-z-odniyeyi-storoni-ta-yevropejskim-soyuzom-yevropejskim-spivtovaristvom-z-atomnoyi-energiyi-i-yihnimi-derzhavami-chlenami-z-inshoyi-storoni>

# ALCOHOL

## Overview of key Eurointegration commitments

Alcohol is a readily available substance with the potential to be addictive and adversely affect the physical, mental and social health of those who abuse it. Alcohol is one of the four leading risk factors for premature death and causes approximately 5% of the global burden of disease<sup>11</sup>. A special risk group includes children and adolescents who may use alcohol to improve relationships with peers and meet social needs as they grow older. However, alcohol consumption is especially dangerous for adolescents and children, as it is associated with a significant increase in the likelihood of mental and neurocognitive diseases in later life<sup>12</sup>. While in the EU the trend of alcohol consumption by adolescents is declining, in Ukraine it remains high. 85.7% of Ukrainian adolescents have experience of alcohol consumption and almost half have consumed alcohol ten times or more<sup>13</sup>.

Evaluation of progress in fulfilling commitments

### **Commitment 366 / Gradual approximation of legislation to the principles of the EU acquis on addressing major determinants of health, such as alcohol addiction and reduction of alcohol consumption by young people**

- Council Recommendation No 2001/458/EC of 5 June 2001 on the drinking of alcohol by young people, in particular children and adolescents

The implementation of strategies to prevent alcohol consumption among children, adolescents and the general population is appropriate in view of the Association Agreement, under which Ukraine has committed to approximate its legislation to the principles of the EU acquis, in particular with regard to "promoting healthy lifestyles, addressing major health determinants and problems, such as mother and child health, mental health, and addiction to alcohol, drugs and tobacco" (Chapter 22, Article 427 ©, Association Agreement).

As there are no direct transposition commitments in this area, but there is an agreement on general approximation of legislation, we can argue that Ukraine is at the preparatory stage of its transposition commitments.

The ongoing public health reform and the government's adoption of sustainable development goals have given impetus to the start of work to prevent harm from alcohol consumption to public health, which is reflected in the measures under the national plan concerning non-communicable diseases. It envisages work of national authorities on improving the regulation of alcohol advertising and improving control over the sale of alcohol to minors. However, these changes are not yet enshrined in law.

The implementation of the existing regulatory framework banning the advertising of alcoholic beverages on television and radio between 6:00 am and 11:00 pm is not fully implemented, as there are regulatory gaps, such as the permission of

11) WHO. Adolescent alcohol-related behaviours: trends and inequalities in the WHO European region, 2002-2014. Collaborative, cross-national study, 2018. [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0007/382840/WH15-alcohol-report-eng.pdf?ua=1](http://www.euro.who.int/__data/assets/pdf_file/0007/382840/WH15-alcohol-report-eng.pdf?ua=1)

12) WHO. Adolescent alcohol-related behaviours: trends and inequalities in the WHO European region, 2002-2014. Collaborative, cross-national study, 2018. [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0007/382840/WH15-alcohol-report-eng.pdf?ua=1](http://www.euro.who.int/__data/assets/pdf_file/0007/382840/WH15-alcohol-report-eng.pdf?ua=1)

13) Ukrainian Institute for Social Research. Smoking, alcohol and substance abuse among adolescent students: trends in Ukraine. ESPAD-2019. [http://www.uisr.org.ua/img/upload/files/B\\_Report\\_ESPAD\\_2019\\_Internet.pdf](http://www.uisr.org.ua/img/upload/files/B_Report_ESPAD_2019_Internet.pdf)

sponsorship messages by alcoholic beverage producers to ensure their presence in the information space. Monitoring of the ban on the sale of alcohol to minors is carried out sporadically by law enforcement agencies; and no systemic intersectoral measures are taken. Therefore, we can conclude that the implementation of measures aimed at reducing alcohol consumption among young people is at an early stage.

## MENTAL HEALTH – DRUG ADDICTION

### Overview of key Eurointegration commitments

Addiction to drugs or other substances is a disease that manifests itself in compulsive consumption of substances, despite the harmful consequences. People with drug addiction may manifest higher levels of risky behaviours associated with HIV / AIDS, tuberculosis, viral hepatitis, and other adverse health effects. The level of risky behaviour among drug users correlates with the level of drug criminalization – the higher the level of criminalization, the greater the negative impact on health<sup>14</sup>. However, there are effective ways to treat and prevent drug addiction, as well as mechanisms to reduce harm to health among drug users. It is in order to minimise the harm to health from drug addiction that this area is included in Chapter 22 of the Agreement. Monitoring and systematic study of drug use in the EU has been key to successfully addressing the public health challenges associated with drug addiction in some of its Member States. In Ukraine, on the other hand, drug addiction was considered and addressed mostly in the law enforcement area<sup>15</sup>. This commitment involves closer cooperation with the European Union and its relevant structures, monitoring and study of issues related to drug addiction and drug trafficking in order to reduce the harm to health from drug addiction.

Evaluation of progress in fulfilling commitments

#### **Commitment 367 / Gradual approximation of legislation to the principles of the EU acquis on addressing major health determinants, such as drug addiction, in order to combat the health and social consequences of drug addiction**

- Council Recommendation No 2003/488/EC of 18 June 2003 on the prevention and reduction of health-related harm associated with drug dependence

The document recommends implementing government strategies to prevent drug addiction and drug use, as well as introducing a number of services, including (but not limited to) providing information and advice to drug users on reducing health threats, developing and implementing outreach guidelines, use of peer-to-peer methods in working with drug users, informing communities and families, providing vaccination against hepatitis B, providing treatment for drug addiction to drug users resorting to various methods according to their needs, access to distribution of condoms and injection materials, etc.

The regulatory approximation in Ukraine is at an early stage. Ukraine's accession to the Enlarged Partial Agreement of the Council of Europe on the Establishment of the Cooperation Group to Combat Drug Abuse and Illicit Trafficking in Drugs

14) DeBeck, Kora et al. "HIV and the criminalisation of drug use among people who inject drugs: a systematic review." *The lancet. HIV* vol. 4, 8 (2017): e357-e374. doi:10.1016/S2352-3018(17)30073-5

15) Odesa human rights group Veritas. *Matters of contemporary drug policy in Ukraine: human rights and access to treatment*. Kharkiv: Human Rights 2011

(Pompidou). This group is an intergovernmental body whose main tasks are to carry out a comprehensive study of drug abuse and illicit trafficking in drugs, as well as to develop and implement comprehensive measures to combat drug addiction at the national, regional, and local levels. The draft law on joining the Pompidou Group was developed by the Ministry of Health, passed the stage of public discussion, but was not submitted to the Verkhovna Rada. Therefore, Ukraine is not yet a member of this group.

According to the EMCDDA, Ukraine has resumed cooperation with the European Monitoring Centre for Drugs and Drug Addiction, developed and submitted to the Cabinet of Ministers a draft resolution on monitoring problems related to drugs and their use in Ukraine. Ukraine is a member of the international working group of the European Monitoring Centre under the Eastern Partnership programme. In July 2019, the Ministry of Health submitted a draft act on monitoring drug and alcohol policy, which was adopted by CMU Resolution No 689 of July 10, 2019<sup>16</sup>. This document also established the Centre for Mental Health and Drug and Alcohol Monitoring of the Ministry of Health of Ukraine as the executive body responsible for the monitoring.

The Strategy of the State Drug Policy for the period up to 2020 was adopted by CMU Order No 735-p back in 2013<sup>17</sup>, but it does not meet EU standards in this area. The Action Plan for the Strategy for 2019-2020, adopted by CMU Order No 56-p of February 6, 2019, partially approximates legislation of the EU acquis, but not in full.

The implementation of the tasks associated with the commitments in this area is also at an early stage, as no financial and organisational conditions were ensured for their systematic implementation. The Centre for Mental Health and Monitoring of Drugs and Alcohol of the Ministry of Health received funding for human resources, but no funding for actual monitoring work was allocated in 2019. Apart from this, the methodology of the European Centre's collection and monitoring of information includes, in addition to the collection of statistics from health care facilities, a thorough representative survey of drug use among different age groups. However, this activity also remains unfunded. The collection of statistical information for monitoring is not integrated into the broader strategy of health statistics reform and effective information exchange. There is no cross-sectoral cooperation for comprehensive implementation. Without these key aspects, which will allow the Centre to effectively gather information and prepare analytical data to inform policies and practices, and the Ministry of Health to coordinate cross-sectoral counteraction to drug addiction, no effective measures to prevent harm to health from drug addiction can be implemented.

## TRANSPLANTATION OF TISSUES AND CELLS

### Overview of key Eurointegration commitments

The introduction of tissue and cell transplantation in Ukraine has been discussed for years, and no one doubts the expediency of such a policy. However, it was only recently that the first practical steps to implement transplantation have been taken. We will see very soon how progressive they are and whether they can launch a fully functioning transplantation system in Ukraine. In Ukraine, a small number of family kidney and liver transplants are performed annually, so in order to provide

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16) <https://www.kmu.gov.ua/npas/pitannya-provedennya-monitoring-689>

17) <https://zakon.rada.gov.ua/laws/show/735-2013-%D1%80>

medical care by means of transplantation based on vital signs, it is necessary to look for clinics abroad. To perform such treatment, the state implements a special "Treatment Abroad" Programme, for which the Ministry of Health is responsible and which keeps generating numerous scandals and investigations. Thus, UAH 922 million was spent from the state budget on the implementation of the Programme in 2019. With the development and implementation of effective legislation based on European practices, transplants will soon become possible in Ukraine, and the government will save money on the treatment of Ukrainians abroad and invest them in the development of its own medical industry.

Changing the mental attitude of the public to the issue of transplantation is extremely important, and therefore it is worth paying special attention to the development of the information component of the reform. It is also necessary to take into account the strong influence of prejudices and fears that exist in society, this is why the development of an effective information campaign should be launched along with the legislative process.

Evaluation of progress in fulfilling commitments

### **Commitment 368 / Reforming the field of human tissue and cell transplantation**

- Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells;
- Commission Directive 2006/17/EC of 8 February 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells;
- Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells.

The tasks set for Ukraine to bring the field of transplantation closer to European standards, first of all, focus on developing the institutional structure (appointing of the CEB in charge and other responsible state bodies), establishment of quality and safety standards for donation, introduction of tissue and cell movement monitoring mechanism, as well as a mechanism for monitoring and exchanging information on adverse events and reactions associated with transplantation.

The regulatory approximation is at an early stage. The legislation has been partially updated, in particular, the Law of Ukraine "On the Use of Transplantation of Anatomical Human Materials" was adopted, and important amendments were approved in 2019. Thus, the law addresses the following issues:

- excessive over-regulation of processes has been eliminated and some of them have been transferred to the level of by-laws;
- the state body responsible for the quality and safety of human tissue and cell transplantation has been assigned (relevant changes have been prepared to the Regulation on the MoH);



- there are plans to create two national information systems in the field of transplantation (the launch is planned for 2021);
- the term 'transplant coordinator' has been introduced (this is important both for the training of relevant specialists in educational institutions and for the provision of an appropriate range of services during and after transplantation);
- the basic concepts of the import / export of tissues and cells have been defined, which is important for coordination of work with international partners;
- interaction and financial support of health care institutions engaged in transplantation, regardless of their form of ownership, have been allowed (the main criterion is the compliance of the medical institutions with the licensing conditions);
- criteria for decision-making on obtaining a transplant permit for health care institutions have been established, eliminating the subjectivity of the decisions of certain bodies and commissions;
- conditions have been created for the use of information in non-governmental registries on potential hematopoietic stem cell donors and the search for hematopoietic stem cell donors in the WMDA (World Bone Marrow Donor Association) registry, thus providing access to the necessary transplant materials for Ukrainian patients.

The Law introduces stricter liability for intentional violations in the field of transplantation by adopting amendments to certain legislative acts of Ukraine governing the transplantation of anatomical materials to humans. Thus, amendments were made to the Criminal Code, specifically:

- article 143 establishes responsibility for violating the statutory procedure of transplantation of anatomic materials to humans;
- for using coercion or deception to remove a person's anatomical materials for the purpose of transplantation;
- for actions committed against a person in a helpless state or materially or otherwise dependent on the perpetrator;
- for illegal trade in human anatomical materials.

Resolution<sup>18</sup> of the Cabinet of Ministers of Ukraine abolished the List of State and Municipal Health Care Institutions and State Scientific Institutions that had the right to carry out activities related to transplantation of organs and other anatomical materials to humans. By abolishing the limited list of institutions, transplantation has been in fact recognized as a mere method of treatment that can be used by any medical institution, regardless of the form of ownership, subject to a licence from the Ministry of Health.

Also, in 2019, 12 pilot health care facilities started work with regard to conducting transplants in accordance with the adopted resolution of the Cabinet of Ministers of

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18) Resolution No. 707 of the Cabinet of Ministers of Ukraine on "Certain Matters of the Implementation of the Pilot Project as regards Changing the Mechanism of Financing Surgical Treatment Involving Transplantation of Organs and other Anatomical Materials" of September 5, 2018 <https://zakon.rada.gov.ua/laws/show/707-2018-%D0%BF#Text>

Ukraine<sup>19</sup> and rates were set for organ and haematopoietic stem cell transplantation services provided by the health care facilities of the pilot project<sup>20</sup>.

Hence, the implementation can be described as early or one that has not started.

### **Commitment 369 / Development and implementation of measures to stimulate voluntary and unpaid tissue and cell donation**

- Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells

Directive 2004/23 / EC focuses on the need to promote national and European-level information and awareness-raising campaigns concerning the donation of tissues, cells and organs. According to the European Directive, such campaigns can take place under the same slogan "we are all potential donors". Given the established worldview and traditions in society, the topic of transplantation is still quite new and requires governmental support. According to European experts, such information campaigns will help citizens make a decision concerning donation.

The regulatory approximation is advanced. The Law of Ukraine "On the Use of Transplantation of Anatomical Materials to Humans" provides for introducing a system of information support for transplantation and activities related to transplantation, in particular through informational and educational work to form a positive public attitude to the donation of anatomical materials.

However, to date no outreach campaigns have been conducted, and a dialogue between state institutions and citizens on this topic has not yet taken place. Implementation has not yet begun.

## **BLOOD SAFETY**

### **Overview of key Eurointegration commitments**

Blood safety is an important element of the overall alignment of the public health system with European standards. Adaptation of the blood system includes both the institutional component (reform of institutions responsible for the procurement of blood and its components) and the legislation component (laws and regulations). In 2015, European experts assessed the Ukrainian blood system and pointed out the following shortcomings: strategic management of the system; blood safety; and unstable supply of plasma components and drugs derived from plasma for patients. It should be added that the centres themselves and their infrastructure are rather dilapidated and require capital investment. However, so far, the legislation has not changed significantly.

The concept of "safe blood" is important in European legislation, as the recipient's life depends on it, but it cannot be achieved until the blood system infrastructure and legislation are updated.

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19) Resolution No. 707 of the Cabinet of Ministers of Ukraine "Certain Matters of the Implementation of the Pilot Project as regards Changing the Mechanism of Financing Surgical Treatment Involving Transplantation of Organs and other Anatomical Materials" of September 5, 2018 <https://zakon.rada.gov.ua/laws/show/707-2018-%D0%BF#Text>

20) Resolution No. 1083 of the Cabinet of Ministers of Ukraine "On Approval of the List of Services and Rates for Tertiary (Highly Specialized) Medical Care Involving Transplantation of Organs and Other Anatomical Materials Provided by Participants of the Pilot Project as regards Changing the Mechanism of Financing Surgical Treatment Involving Transplantation of Organs and other Anatomical Materials" of December 18, 2019 <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-pereliku-poslug-t-a1083>

### **Commitment 370 / Reforming the area relating to the safety of blood and its components**

- Directive 2002/98/EC
- Commission Directive 2004/33/EC implementing Directive 2002/98/EC
- Commission Directive 2005/62/EC
- Commission Directive 2005/61/EC implementing Directive 2002/98/EC

The European standards are aimed at introducing blood quality and safety standards both by updating technical procedures and by building an institutional structure that would ensure their control, monitoring and evaluation. That is why Ukraine is supposed to build a hierarchy of bodies that will interact within the blood system and implement in national legislation a number of EU directives setting standards for the quality and safety of collection, testing, processing, storage and distribution of donor blood and its components, as well as a system of quality for blood establishments. European regulation is based on the principles of voluntary donor services, anonymity of the donor and recipient, as well as the absence of profit on the part of the establishments involved in blood transfusion services.

Regulatory approximation is "early". Thus, in order to create a national blood system, the Cabinet of Ministers of Ukraine in 2019 adopted a Strategy for the Development of the National Blood System until 2022 (hereinafter – the Strategy). It is important that the Strategy assigns a blood system coordinator – i.e. the Ministry of Health, which was one of the European requirements. The Strategy contains numerous positive solutions concerning the functioning of the blood system in Ukraine (creation of a single donor base, capacity building of the blood system establishments and institutions, transition of the funding of health care institutions to a system based on reimbursement by the National Health Service of Ukraine for every unit of the blood component used, promotion and development of free donation, etc.), but no by-laws to implement it have been developed.

The Strategy is innovative in that it provides for state support for the development of public-private partnership for the organisation and promotion of blood donation, procurement of donor blood and its components. Thereby, it allows private-sector establishments to carry out activities in the field of blood together with state institutions, such as the partnership of Sumy Regional Blood Centre LLC with FZ Biopharma LLC.

In 2019, legislators submitted the draft law "On Amendments to Certain Laws of Ukraine on the Elimination of Artificial Bureaucratic Barriers and Corruption-Generating Factors in the Field of Health Care", which, inter alia, specifies that the activities of collection, processing, and storage of donor blood and its components are allowed only subject to obtaining the appropriate licence of the Ministry of Health. At the same time, the Law of Ukraine "On the Licensing of Economic Activities" (Art. 7) does not provide for issuing licences for "the processing of donor blood and its components or production of drugs derived from them, except for the activity of banks of umbilical cord blood and of other human tissues and cells", although the licencing of this activity is one of the EU requirements. Therefore, so far, the obligation to introduce such licencing has not been fulfilled.

The same draft law allows business entities to process and store donor blood and its components, and sell drugs derived from them. However, in the absence of licencing requirements for the collection, processing and storage of donor blood and its components, and the sale of blood and its components, the provision seems risky.

One of the requirements associated with the adaptation of the Ukrainian blood system to European requirements is accreditation of Ukrainian blood establishments. To this end, in 2019 self-assessment of 15 blood establishments from different regions was launched to determine their readiness for accreditation in accordance with Directive 2002/98/EC and Directive 2005/62/EC, and EU-GMP, PIC/S GMP standards for blood transfusion facilities, CoE guidelines for the preparation, use and quality assurance of blood components and ISO 9000, using the adapted assessment tool of the European Blood Inspection System (EuBIS). This self-assessment was completed and based on its results recommendations were prepared to improve the work of blood Centres.

Given the above, it can be said that implementation is "early" or "has not started".

### **Commitment 371 / Introduction of a policy to stimulate voluntary and unpaid blood donation**

- Directive 2002/98/EC

Voluntary and unpaid blood donation is the gold standard in the world, and therefore its introduction and promotion are extremely important for Ukraine. Thus, according to Directive No 2002/98/EC, voluntary and unpaid blood donation is a factor that contributes to the safety of blood and its components for patients, and therefore all measures should be taken to develop it.

Today in Ukraine the ratio of voluntary and unpaid donors is low (11 donors per 1 thousand population, while the world standard is around 33 donors per 1 thousand population). That is why the government should pay due attention to this area and invest in its development.

The regulatory approximation is at an "early" stage. According to the Strategy adopted in 2019, it is planned to take important steps to improve the situation with regard to informing the general public about voluntary and unpaid donation (develop a draft action plan for holding information campaigns and a national awareness-raising campaign, review approaches to determining the status of donor of blood and its components and introduce new mechanisms to stimulate donation), but the relevant by-laws have not been developed yet.

## **PREVENTION OF INJURY AND PROMOTION OF SAFETY**

### **Overview of key Eurointegration commitments**

Speaking of European recommendations for the prevention of injury and the promotion of safety, we focus primarily on road accidents, as they are the leading cause of death in Ukraine among young people aged 15 to 24 and second most common cause of death among children aged 5 to 14. The situation on the roads of Ukraine, according to international experts, is unsatisfactory, and the rates of mortality and injury due to road accidents in Ukraine are some of the highest ones in Europe. For instance, in 2018 more than 150 thousand accidents happened, in which

about 3,400 people died and almost 31,000 were injured<sup>21</sup>. In 2017-2018, the Strategy and a State Programme to Improve Road Safety were adopted<sup>22</sup>, but the 2019 figures did not change significantly: 3,454 people died in road accidents, 32,736 people were injured, and a total of 160,675 accidents occurred on Ukrainian roads<sup>23</sup>. Ukraine also suffers from this situation in socio-economic terms. Thus, the damage from road traffic injuries is estimated at USD 4.5 billion a year<sup>24</sup>, and tens of thousands of Ukrainians get injured or disabled every year, which changes their lifestyle forever due to injuries.

Evaluation of progress in fulfilling commitments

### **Commitment 372 / Improve road safety, promote the implementation of measures to prevent injuries**

- Council Recommendations 2007/C 164/01 of 31 May 2007 on the prevention of injury and the promotion of safety

The EU recommendations, which are not binding on Ukraine, focus on taking measures to prevent injuries, which is always a better option than dealing with the consequences of events that have already taken place. The recommendations also emphasize a coordinated approach to the use of data on injury, their monitoring and reporting to improve the national injury prevention policies.

The regulatory implementation of the recommendations is at an "early" stage. In the late 2019, draft law No 2695 "On Amendments to Certain Legislative Acts of Ukraine to Increase Responsibility for Certain Offences in the Field of Road Safety" was submitted to the Verkhovna Rada<sup>25</sup>. According to the draft law, it focuses on preventing offences, promoting more restrained and composed behaviour of drivers on the roads, which, in turn, should help reduce the number of accidents.

It is important that the proposed draft law aims to increase fines and sanctions for offences such as:

- violation of the rules requiring to use seat belts or motorcycle helmets (currently the fine is UAH 51, the draft law suggests increasing it to UAH 510);
- speeding by more than 50 km/h (from UAH 510 to 3,400);
- driving vehicles under the influence (fine for the driver at UAH 10,200 minimum).

It significantly increases sanctions for:

- revocation of the driver's licence is set as an additional sanction and its violation entails a term of up to 10 years;

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21) <https://phc.org.ua/news/kilkist-dtp-u-sviti-zrostae-vooz>

22) Order No. 481-p of the Cabinet of Ministers of Ukraine "On Approval of the Strategy for Improving the Level of Road Safety in Ukraine until 2020" of June 14, 2017;

Order No. 231-p of the Cabinet of Ministers of Ukraine "On Approval of the Action Plan for the Implementation of the Strategy for Improving the Level of Road Safety in Ukraine until 2020" of March 28, 2018;

Resolution No. 435 of the Cabinet of Ministers of Ukraine "State Programme to Increase the Level of Road Safety in Ukraine until 2020" of April 25, 2018;

23) Explanatory Statement from the Patrol Police <https://www.facebook.com/Biloshi/posts/10219504369992438>

24) Order No. 481-h of the Cabinet of Ministers of Ukraine "On Approval of the Strategy for Improving the Level of Road Safety in Ukraine until 2020" of June 14, 2017;

25) [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67814](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67814)

- should the violation result in a moderate bodily injury, it is proposed to impose a fine of UAH 51,000 to 85,000 or arrest the perpetrator for up to 6 months, or custody for up to 3 years, involving revocation of the driver's licence for 3 to 5 years, etc.

The draft law is to be considered by the Verkhovna Rada in 2020. Hence, it can be argued that the implementation of the recommendations has not started.

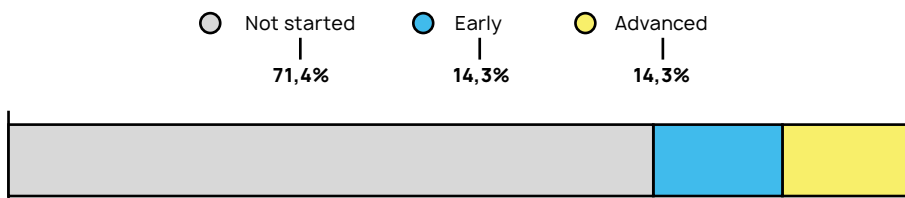


**EDUCATION,  
TRAINING AND  
YOUTH**

# EDUCATION, TRAINING AND YOUTH

Expert: **Halyna Usatenko**

## Implementation progress for the sector:



## Overview of key Eurointegration commitments

The commitments within the sector of Education are aimed at harmonising the educational systems of Ukraine with the European Education Area. This is an important condition for open borders, as well as academic mobility and distribution of labour resources.

The commitments within the Education sector fall into three tentative categories:

- development of the regulatory and implementation framework for international recognition of the National Qualifications Framework, which includes the National Register of Qualifications;
- practical introduction of the principles of academic integrity at different levels of the education system, which contributes to the internationalisation of Ukrainian education;
- establishment of the values and principles of lifelong learning as a priority of the Millennium Development Goals.

By fulfilling these commitments, we will manage to:

- streamline the education system and learning outcomes (especially those of vocational and higher education) with the labour market requirements;
- harmonise higher education in Ukraine with the level of EU countries through the standards of higher education and practical implementation of the principles of academic integrity;
- make lifelong learning a reality in response to the socio-economic challenges that Ukraine and the European Union face;
- internationalise the education system of Ukraine in general.



### **Commitment 373 / Ensuring international recognition of the National Qualifications Framework**

- Recommendation 2008/C 111/01

The commitment involves achieving the following goals:

- harmonisation of the European standards and principles of quality assurance in education with practices in Ukraine, taking into account the requirements of the labour market for the competencies of specialists;
- regulation of legislation in the field of education, social and labour relations;
- promoting national and international recognition of the qualifications obtained in Ukraine;
- establishing effective interaction between educational services and the labour market.

The legal approximation has not started. The National Qualifications Framework (NQF) was approved by Resolution No 1341 of the Cabinet of Ministers of Ukraine of November 23, 2011<sup>1</sup>. However, for international recognition it is necessary to implement a set of regulatory procedures in the field of education and to establish effective interaction with the labour market. On the one hand, discussions on the number of NQF levels are still ongoing, on the other hand, there is no clear mechanism for recognising the results of non-formal education. Apart from that, for a long time there has been no strategy for the development of vocational education in Ukraine. The current Law "On Vocational Education" was adopted in 1998. It has been amended dozens of times but it is outdated in both conceptual and institutional terms and does not correlate with the Law "On Education" of 2017 or with the realities of the labour market. However, some steps have been taken to address the issue. Specifically, on June 6, 2019 the Law "On Professional Pre-Tertiary Education" was adopted<sup>2</sup>, which regulates the activities of vocational training institutions. And on June 12, 2019, the Cabinet of Ministers of Ukraine approved the concept of "Modern Vocational Education"<sup>3</sup>, which identifies the key areas for reform until 2027. However, no significant changes have taken place over the past year.

Due to internal debates in Ukraine and the inconsistency of the implementation of the policy of vocational training and awarding professional qualifications, it is extremely difficult to attain international recognition of the NQF.

### **Commitment 374 / Establishment of the National Register of Qualifications**

- Recommendation 2008/C 111/01

The commitment involves implementation of the recommendations of the European Parliament and of the Council No 2008/C 111/01 on the establishment of the European Qualifications Framework for lifelong learning. This commitment was included in the Action Plan for the Implementation of the National Qualifications Framework for

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1) <https://zakon.rada.gov.ua/laws/show/1341-2011-%D0%BF#n12>

2) <https://zakon.rada.gov.ua/laws/show/2745-19>

3) <https://zakon.rada.gov.ua/laws/show/419-2019-%D1%80>

2016-2020 (CMU Order No 1077 of December 14, 2016)<sup>4</sup>. In particular, this implies the establishment and maintenance of the National Register of Qualifications that are officially included in the National Qualifications Framework (Register of the National Qualifications Framework) (2017).

The legal approximation is at an early stage. Despite the fact that the creation of a state register of qualifications for 2017 is envisaged by the Action Plan, the National Qualifications Agency (NQA) was established by Resolution No 1029 of the Cabinet of Ministers of Ukraine of 5.12.2018 (as amended by CMU Resolution No 693 of 10.07.2019)<sup>5</sup>. The Agency facilitates the introduction of the National Qualifications Framework in compliance with the requirements of the Law of Ukraine "On Education", which, in turn, includes the NQF. The NQA website<sup>6</sup> includes a section entitled Register of Qualifications. However, the page is not active. Instead, a register of qualifications is currently being formed on the Professional Qualifications Repository website<sup>7</sup> created by the NGO Institute of Vocational Education.

Practical implementation of the recommendations of the European Parliament and the Council can be described as early. On the one hand, until recently, there was no single institution at the state level that would collect information and form sub-registers to create the National Register of Qualifications. On the other hand, there are the results of many years of work of the Confederation of Employers of Ukraine and the non-governmental organization Institute of Vocational Education aimed at forming a system of professional qualifications in Ukraine, which was embodied in the Professional Qualifications Repository.

### **Commitment 375 / Implementation of the Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG)**

- Recommendation No 2008/C 111/01
- Recommendation No 2006/143

The commitment involves achieving the following goals:

- enshrinement in legislation and sustainable practice of quality assurance in higher education based on transparency of the accreditation procedures for educational programmes;
- streamlining, in the process of accreditation, of educational standards and professional qualifications with the labour market demand;
- consistent implementation of the policy of academic integrity;
- introduction of mechanisms for external quality assurance of education.

Institutionally, it is the National Agency for Quality Assurance in Education (NAQAE) that is tasked with this mission.

The legal approximation is mostly advanced. This commitment is virtually the only one on the list of commitments under the Education sector of the EU-Ukraine Association Agreement that can be described as advanced. The National Agency for

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4) <https://zakon.rada.gov.ua/laws/show/1077-2016-%D1%80>

5) <https://zakon.rada.gov.ua/laws/show/693-2019-%D0%BF>

6) <https://nqa.gov.ua/qualifications-register/>

7) <http://profstandart.org.ua/>

Quality Assurance in Education (NAQAE)<sup>8</sup> was established in 2015. The first members of the National Agency were elected in 2015, but for a number of reasons it never started to work. In 2018, the National Agency was "rebooted". At the end of February 2019, the National Agency officially began its activities, elected the Head of the Secretariat, started selecting and appointing its employees.

Implementation is "advanced". In the process of implementing the provisions of the European legislation on ensuring the quality of higher education it is important that the approaches to the accreditation of educational programmes include harmonisation of educational standards (by specialties) and professional qualifications (by competencies and learning outcomes).

In a year, the NAQAE has managed to:

1. develop a regulatory framework for introduction of an external quality assurance system in education – accreditation of educational programmes;
2. launch digital accreditation culture;
3. contribute to the functioning of internal systems for ensuring the quality of education in higher education institutions;
4. promote the internationalisation of higher education in Ukraine;
5. organise systematic work on academic integrity in higher education institutions as well as the academic and scientific environment.

### **Commitment 376 / Improving the mechanisms for awarding professional qualifications based on external competence assessment**

- Directive No 2005/36/EC
- Recommendation No 2008/C 111/01

The commitment involves developing a procedure for awarding professional qualifications, primarily based on the results of non-formal education and self-education. After all, the award of professional qualifications based on the results of formal education is regulated by the accreditation of educational programmes (Commitment 375).

The regulatory approximation has not begun. The matter of procedures and methods for recognising non-formal education has been discussed in Ukraine for more than a decade. However, no effective results have been achieved, especially in the area of regulatory support and with regard to the initiative of state-owned institutions. Some progress was made after the adoption of the Law "On Education" (2017)<sup>9</sup>, which introduced concepts of non-formal education and self-education. The problems around recognition of non-formal education are due to several factors, in particular:

- a) long-lasting uncertainty of the strategy of vocational education;
- b) inconsistency of the state's activity related to the development of professional standards;

8) <https://zakon.rada.gov.ua/laws/show/244-2015-%D0%BF>

9) <https://zakon.rada.gov.ua/laws/show/2145-19>

- c) situational initiative of certain branch councils that developed professional standards for the needs of their industries (Confederation of Employers of Ukraine, JSC System Capital Management, etc.) and ensured the award of new professional qualifications.

One of the main problems is the inefficient interaction between the branch councils and the state in the development and award of professional qualifications. Another key concern is the lack of a single state body (National Qualifications Agency) that would coordinate the development of professional standards and procedures for the award of professional qualifications.

The practical implementation of the provisions of European legislation is at an early stage or has not started. Professional standards are situationally developed. Qualification centres (which, inter alia, will be authorised to award professional qualifications based on the results of non-formal education and self-education) are being established today.

### **Commitment 377 / Introduction of rules applicable to professional activities**

- Directive No 2005/36/EC
- Recommendation No 2008/C 111/01

The commitment involves introduction of mechanisms and procedures for self-regulation of the industry within which professional activities are carried out, in order to form a healthy business culture and increase consumer confidence.

The regulatory approximation has not started.

There is no practical implementation of the provisions of European legislation.

### **Commitments 378 / Ensuring access to lifelong learning**

- Recommendation No 2006/962/EC
- Recommendation No 2008/C 111/01

The commitment involves the implementation of the Millennium Development Goals<sup>10</sup> adopted by Ukraine in 2000 in accordance with the global Millennium Development Goals proclaimed by the United Nations, where the provision of quality lifelong learning is recognised as one of the primary goals.

The regulatory approximation has not started. The Law "On Adult Education" has been undergoing discussion for almost 10 years in Ukraine. There are no results yet. Therefore, the implementation of the EU experience is still impossible. There is also no political will to set this issue as a priority. Contemporary adult education in Ukraine is represented mainly by the system of post-qualifying education, mainly within the Master's degree. On-the-job training is regulated by the Law of Ukraine "On Corporate Income Tax", which stipulates that the cost of this training may be included in gross spending amounting to 3% of the salary fund. Instead, obtaining new professional qualifications based on new professional standards in a very dynamic and unstable economy is becoming increasingly more relevant. In

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10) <https://www.president.gov.ua/documents/7222019-29825>

Ukraine, there are numerous initiatives from non-governmental organisations for lifelong learning. At the same time, the failure to fulfil Commitment 376 makes the external assessment of competencies more complicated. The greatest problem is the education of socially vulnerable groups and "third age" people.

### **Commitment 379 / Updating education standards at the appropriate levels, taking into account the basic competences of lifelong learning**

- Recommendation No 2006/962/EC
- Recommendation No 2008/C 111/01

The commitment involves implementation of the basic principles of lifelong learning. In practice, this implies the development / revision of educational standards taking into account the basic competencies of lifelong learning.

The regulatory approximation is at an early stage or has not started. At the legislative level, lifelong learning is not regulated because Commitment 378 has not been fulfilled. Therefore, there is no legal basis for changing educational standards. At the same time, the Law "On Education" includes Article 18 "Adult Education", which covers the following components:

- post-qualifying education;
- professional training of employees;
- retraining and / or advanced training courses;
- continuous professional development;
- any other components provided for by law that are offered by an educational entity or independently determined by the person.

Such principles can make up the basis for the introduction of lifelong learning competencies. It is worth noting that Ukraine has experience of institutions that practice adult learning. First of all, it is Ivan Zyazyun Institute of Pedagogical and Adult Education of the National Academy of Pedagogical Sciences of Ukraine. As well as a number of other institutions of higher education: the Institute of Continuing Education of the National Pedagogical Dragomanov University, the Educational and Scientific Institute of Management and Adult Education of the KROK University, etc.

### **Commitment 380 / Implementation of the dual learning system**

- Communication from the Commission COM (2001) 678

The commitment involves streamlining interaction of educational and industrial spheres with regard to the training of qualified personnel of a certain specialisation within the framework of organisationally different forms of education.

The regulatory approximation has not started. It is too early to speak of any full-fledged training system. However, some work has been done to introduce elements of dual learning. At the legislative level, a step towards the introduction of dual education was taken in 2018. CMU Order 660-p of September 19, 2018 approved the Concept of Training specialists under Dual Learning System<sup>11</sup>. "The concept is based

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11) <https://zakon.rada.gov.ua/laws/show/660-2018-%D1%80>

on the German experience of dual learning presented, in particular, thanks to the Friedrich Ebert Foundation, the German-Ukrainian Agrarian Policy Dialogue, and the Eastern Partnership Project 'Dual Education in Dialogue' with the participation of educational institutions of various levels." The concept sets the period until 2023 as a timetable for the introduction of dual education clusters on the basis of competitive educational institutions. In the 2017-2018 academic year, elements of dual learning began to be introduced in 52 institutions of vocational education in 25 regions within 54 professions. Further activities of the Ministry of Education and Science of Ukraine in this area have been suspended.

### **Commitment 381 / Ensuring constant exchange of information with EU institutions on joint programmes in the field of education**

- Regulation (EU) No 1288/2013

The commitment involves systematic communication between the institutions of Ukraine and the EU in order to harmonise the initiatives and decisions of each party and align the legislation.

The regulatory approximation has not started. The task of constant exchange of information is set by CMU Resolution No 1106 "On the Implementation of the Association Agreement" of October 25, 2017 under number 1437. This commitment in practice involved developing a procedure for the exchange of information with EU institutions on joint programmes in the field of education. No procedure as a separate document was created. However, in the framework of working meetings at various levels – ministers of education, heads of sectoral and thematic areas, etc. – the practice of information exchange is implemented. Besides, significant work in this context is carried out by non-governmental organisations working in the field of education. Therefore, from a formal point of view, regulatory approximation has not begun; whereas at the level of direct communication and joint projects, especially in the non-governmental sector, it is underway.

TITLE VI.

**FINANCIAL  
COOPERATION,  
WITH ANTI-FRAUD  
PROVISIONS**

A hand in a dark suit jacket and white shirt cuff is holding a wooden balance scale. The scale consists of a horizontal wooden beam with two vertical wooden posts. Three strings hang from the beam, each with a gold-colored currency symbol: a dollar sign (\$) on the left, a pound sign (£) in the middle, and a yen sign (¥) on the right. A fourth string hangs from the right end of the beam, ending in a gold coin. The background is a plain, light gray.

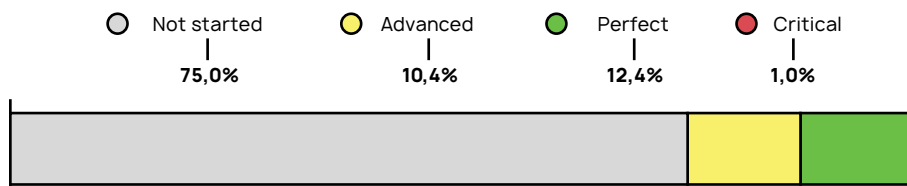
**FINANCIAL  
COOPERATION,  
WITH ANTI-FRAUD  
PROVISIONS**



# FINANCIAL COOPERATION, WITH ANTI-FRAUD PROVISIONS

Expert: **Dmytro Nikulesku**

## Implementation progress for the sector:



## Overview of key Eurointegration commitments

The main objectives of the sector include:

- establishing a mechanism for auditing and verifying the use of EU assistance and interaction with the European Anti-Fraud Office (OLAF);
- implementing into national law of provisions on the prevention, combating and punishment of fraud affecting the financial interests of the EU, in accordance with the EU Convention on the Protection of the European Communities' Financial Interests and Protocols thereto.

Evaluation of progress in fulfilling commitments

### Commitment 382 / Establishing cooperation and coordination with the European Anti-Fraud Office (OLAF)

The commitment involves designating the range of Ukrainian institutions involved in anti-fraud activities in the framework of projects/programmes of technical cooperation and development of a draft resolution of the Cabinet of Ministers of Ukraine on coordination and cooperation with the European Anti-Fraud Office (OLAF).

The regulatory approximation is mostly advanced. The Cabinet of Ministers of Ukraine adopted Resolution No. 1110 "On Introduction of a National Mechanism for Coordinating Interaction of Public Authorities in Order to Protect the Financial Interests of Ukraine and the European Union" of October 25, 2017.

Implementation is also advanced. All (or almost all) provisions of the EU act are implemented by the relevant public authority. Resolution No. 1110 of the Cabinet of Ministers of 25.10.2017 established the Interdepartmental Coordination Council for Combating Violations Affecting the Financial Interests of Ukraine and the EU, approved its staff and Regulations, and authorised the Ministry of Internal Affairs to perform the functions of the NCP in interacting with the European Court of Auditors (ECA) in pursuance of Title VI of the Association Agreement and its Annexes. The National Contact Point (NCP) launched interaction with the EU with regard to

concluding a separate agreement (memorandum) on cooperation between the Ministry of Internal Affairs and OLAF to determine the legal basis and procedure for operational cooperation.

### **Commitment 383 / Providing mutual administrative assistance and legal support in the implementation of measures to prevent and combat fraud, corruption and other illegal activities**

The commitment involves:

- Ensuring the provision of mutual administrative assistance and legal support in the implementation of measures to prevent and combat fraud, corruption and other illegal activities
- Aligning national legislation with the provisions set out in Annex XLIV to the Association Agreement;
- Practical implementation of cooperation and exchange of information with the EU at the operational level in accordance with current procedures.

The regulatory approximation is at an early stage or has not started. The work of public authorities to fulfil the task has not begun.

Due to the lack of a regulatory basis, the practical implementation of the provisions of European legislation has not started.

PART 2

**KEY CONCLUSIONS AND  
RECOMMENDATIONS**

TITLE II.  
POLITICAL  
DIALOGUE,  
NATIONAL SECURITY  
AND DEFENCE

# DIALOGUE AND COOPERATION ON DOMESTIC REFORM

## DECENTRALISATION AND CIVIL SERVICE REFORM

### Key conclusions:

In the implementation of local government and decentralisation reforms significant progress has been made in creating administrative and territorial conditions for the reform of local self-government and decentralisation of powers and finances, consensus has been achieved between the government and society concerning the appropriateness and necessity of this reform. According to the current plans, this reform should be completed before the local elections due on October 25, 2020.

As regards institutional reform of the system of executive bodies, in the four years of the implementation of public administration reform, Ukraine has managed to achieve only a consensus with European partners concerning its goals and implementation methodology, pilot projects have been tested with varying degrees of success depending on the subjective factor (attitude to the reform of the relevant minister). As of mid-2019, much more progress has been made in the field of civil service reform (exclusively competitive selection and tested methodology of holding competitions), but this was largely offset by the changes initiated by the Verkhovna Rada of the 9th convocation and Honcharuk's government. In order to make the Government of Ukraine capable of developing and implementing the policy of sustainable development and policies for European integration of our country, it is necessary to dramatically accelerate the reform of the public administration system.

### Recommendations:

#### **Commitment 1 / Reform of local self-government and territorial organisation of government (decentralisation)**

- Complete governmental approval of a number of final roadmaps for the formation of capable communities throughout Ukraine;
- Pass the Law "On the Administrative and Territorial Structure of Ukraine" whereby a network of no more than 1,500 urban, settlement and rural communities that meet the eligibility criteria should be approved, as well as new districts (raions) - approximately 120 throughout the country;
- Pass the Law "On Amendments to the Constitution of Ukraine Regarding Reform of Local Self-Government and Territorial Organisation of Government";
- Legislatively expand opportunities for public participation in local self-government through local referendums, citizens' assemblies, bodies of public self-organisation, etc.;
- Adopt new laws "On Local Self-Government" and "On Local State Administrations" (or on prefectures - should amendments to the Constitution be made);
- Complete the transfer of powers and appropriate financial resources to local governments in the framework of decentralisation.

## **Commitment 2 / Carrying out public administration reform, including civil service reform**

- Adopt a new law "On the Cabinet of Ministers and Central Executive Bodies";
- Adopt a CMU resolution to approve the structure of the state policy and to create a system of directorates in all ministries based on this structure (4-7 directorates in each) so that they cover the entire area of the state policy with their competence;
- Approve a concept of strategic planning of state policies to ensure sustainable development of Ukraine;
- Reform the CMU Rules of Procedure and the CMU Secretariat based on the results of the three preceding paragraphs;
- Conduct a functional analysis of all ministries and other central executive bodies and consequently reform the CEB system so that ministries are engaged exclusively in public policy making and analysis, whereas all administrative powers should be exercised by government bodies without overlaps, gaps, and conflicts of interest;
- Re-align the Law "On Civil Service" with European standards, insistently develop and improve competitive procedures for employment, training and education of civil servants, and increase the remuneration of civil servants;
- Pass the Law "On Administrative Procedure";
- Complete the establishment of Administrative Services Offices (in each community with a population of more than 20 thousand inhabitants), accelerate the decentralisation and electrification of administrative services, adopt the Law "On Administrative Charges".

## **ELECTORAL AND PARLIAMENTARY REFORM**

### **Key conclusions:**

Ukraine has partly performed the Action Plan for the Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, approved by the Cabinet of Ministers of Ukraine (No 1106, as of October 25, 2017), in particular, the election legislation has been codified, the provisions of the Constitution of Ukraine on the immunity of judges have been amended, and the commitments concerning the state funding of political parties have been fulfilled.

On the other hand, the Parliament has completely revoked parliamentary immunity rather than limited it. The VRU has yet to pass laws on national and local referenda (the draft law on the national referendum is currently pending consideration by the Verkhovna Rada of Ukraine) and the new version of the Law of Ukraine on Political Parties in Ukraine.

Overall, some progress on the implementation of the EU-Ukraine Association Agreement has been made, albeit rather slow.

- Election legislation has been codified: in 2019, the Verkhovna Rada of Ukraine adopted a new Electoral Code of Ukraine (No. 396-IX, December 19, 2019). In 2020, amendments are to be made to the Electoral Code.

- In 2019, the Parliament revoked parliamentary immunity instead of limiting it (amendments were made to the Constitution of Ukraine, albeit in violation of the established procedure). The Constitutional Court of Ukraine warned that when passing the decision to revoke parliamentary immunity, it was necessary to take into account the state of the political and legal system of Ukraine, which was never done. In 2016, as a result of the constitutional reform, the procedure for bringing judges to justice was changed.
- The Law of Ukraine "On the National Referendum" has not yet been adopted. On June 3, 2020, the President of Ukraine submitted a draft law of Ukraine "On Direct Democracy through the National Referendum" to the Verkhovna Rada of Ukraine, it is to be adopted in 2020. No draft law "On Local Referenda" has been developed yet, it is expected to be developed only after the draft law of the President of Ukraine "On Direct Democracy through the National Referendum" is adopted.
- Ukraine has fulfilled its commitments regarding the state funding of political parties, although the relevant legislation has been amended more than once. To receive state funding, political parties must garner at least 5 percent of votes in the nationwide multi-member constituency. In addition, a new version of the Law of Ukraine "On Political Parties in Ukraine" is currently being developed.

Recommendations:

### **Commitment 3 / Carrying out electoral reform**

- It is necessary to optimize the current text of the Electoral Code of Ukraine in order to ensure the completeness and legal certainty of the election procedure, convenience of application of election legislation for those involved in the election process.

### **Commitment 4 / Carrying out parliamentary reform**

- It is necessary to establish limited parliamentary immunity, as the complete lack of immunity poses threats of political pressure and interference in the work of MPs.

### **Commitment 5 / Ensuring the operation of direct democracy**

- It is necessary to adopt the laws of Ukraine "On the National Referendum" and "On Local Referenda" to ensure the exercise of Ukrainian citizens' constitutional right to a referendum.

### **Commitment 6 / Creating a legal mechanism for the state funding of political parties**

- It is necessary to adopt a new Law of Ukraine "On Political Parties in Ukraine", which will create a comprehensive mechanism for regulating the activities of political parties and reduce corruption risks in the financing of political parties.

## **FOREIGN AND SECURITY POLICY**

### **Key conclusions**

Steady progress in the convergence between Ukraine and the EU and the fulfilment of the commitments under the Association Agreement is observed in the traditionally dynamic political and diplomatic area. At the same time, there was a temporary negative impact on the level of trust between Ukraine and the EU because of the

initiatives of the Office of the President of Ukraine to establish the Advisory Council mechanism within the Minsk process. A certain slowdown in the deepening of the cooperation is also caused by the EU's caution towards a more active policy as regards Eastern Europe.

Successful steps have also been taken in the field of scientific and technological cooperation (space industry) and in the field of defence (convergence in the operational, educational and institutional segments), as well as in producing the necessary internal changes in these sectors. Shortcomings and lack of progress in meeting the commitments concern decisions to reform the area of state export control in accordance with EU requirements and standards and in the implementation of a consistent and systematic sanctions policy.

#### **Recommendations:**

#### **Commitment 7 / Enhancing dialogue and cooperation and promoting gradual convergence in foreign and security policy**

- Pursue a consistent policy concerning the role of the Russian Federation as the aggressor in the conflict with Ukraine and avoid to recognise in any political or legal way the legal standing of the illegal military formations in eastern Ukraine;
- Fully implement the sanctions lists introduced by the EU as part of its policy of non-recognition of the annexation of Crimea and counteraction to Russian aggression against Ukraine into the Ukrainian legal field;
- Develop and introduce a new, more convenient and simpler legal mechanism for the implementation of EU sanctions into the Ukrainian legal field;
- Adopt the Law "On Military-Technological Cooperation" and the Law "On Defence Procurement".

#### **Commitment 8 / Creating a common space of security and stability with the EU**

- Cooperation between Ukraine and the EU in this area is developing dynamically and is limited today by the EU's decision to adhere exclusively to the strategy of soft power and stabilising influence. Ukraine should persist in its active position in the field of creating a common space of stability and security with the EU and use the available tools and opportunities for rapprochement with the EU, waiting for the EU's political decision to change its policy in Eastern Europe.

#### **Commitment 9 / Ensuring non-proliferation, arms control, and arms export control**

- Complete the interdepartmental endorsement procedure and adopt the draft law "On Amendments to the Law of Ukraine "On State Control over International Transfers of Military and Dual-Use Goods".

#### **Commitment 10 / Holding mutually-beneficial dialogue and cooperation in the field of space**

- Adopt the Law of Ukraine "On State Regulation in the Field of Remote Sensing of the Earth";
- Conclude a new agreement between the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT) and the State Space Agency of Ukraine.



# POLITICAL DIALOGUE, NATIONAL SECURITY AND DEFENCE

## Recommendations

### REGIONAL STABILITY

#### **Commitment 11 / Joint efforts to promote stability, security and democratic development in the common neighborhood and, in particular, cooperation for the peaceful settlement of regional conflicts**

- In the future, Ukraine should seek from the EU more active involvement in the processes of conflict resolution in eastern Ukraine and the de-occupation of Ukrainian territories in the Luhansk and Donetsk regions and the Autonomous Republic of Crimea. In addition to providing financial assistance, the European Union as an organisation (not only its individual member states, i.e. Germany and France) could become involved in the negotiation process as a mediator.
- In addition, the EU could assist Ukraine in arranging and organising the protection of Ukraine's border with Russia - its controlled area at the present stage, as well as the presently uncontrolled part after control is restored.
- Given the EU's active participation in the development of the Danube region, in particular through the implementation of the EU Strategy for the Danube Region, cooperation between Ukraine and the EU should be deepened to ensure its security and promote conditions for safe entry and exit from the Danube into the Black Sea.
- Cooperation between Ukraine and the EU on security issues in the Black Sea region should be intensified and put on the agenda of the Association Agreement.

### CONFLICT PREVENTION, CRISIS MANAGEMENT AND MILITARY-TECHNOLOGICAL COOPERATION

#### **Commitment 12-13 / Enhancing practical cooperation in conflict prevention and crisis management and development of military-technological cooperation between Ukraine and the EU**

- Ukraine currently does not participate in any of the EU's 15 civilian and military missions. It is possible to remedy the situation by participating in one of the current EU missions, for example: EU NAVFOR ATALANTA (warship of the Naval Forces of Ukraine); EU NAVFOR MED (warship of the Naval Forces of Ukraine); EUFOR ALTHEA BiH (observers, a unit in a multinational battalion); EUTM Mali/EUTM Somalia (instructors), which will require a framework agreement and a mission-specific agreement.
- Ukraine can and should make more use of the capabilities of the European Defence Agency. To do this, it has to clearly articulate its needs, send them to the EDA, which, in turn, will announce a proposal to member countries for the preparation and implementation of the project, the results of which will be aimed at meeting the needs.

## **NON-PROLIFERATION OF WEAPONS OF MASS DESTRUCTION**

**Commitment 14 / To cooperate and to contribute to countering the proliferation of weapons of mass destruction, related materials and their means of delivery through full compliance with, and national implementation of, their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations**

- In the next period of the AA implementation, Ukraine should complete the process of improving the system of state export controls by amending the Law of Ukraine "On State Control over International Transfers of Military and Dual-Use Items".
- In addition, Ukraine needs to initiate areas of cooperation aimed at neutralizing the negative consequences of Russia's aggression against Ukraine, namely:
  - as regards ensuring the safety of radioactive residual materials in the territories of the Donetsk region and the Autonomous Republic of Crimea that are temporarily occupied by Russia;
  - counteracting the build-up of armed groups near the borders of Ukraine and in the temporarily occupied territory of Ukraine, including deployment of tactical nuclear weapons by Russia on the occupied Crimean Peninsula.

## **DISARMAMENT, ARMS CONTROL, ARMS EXPORT CONTROL AND THE FIGHT AGAINST ILLICIT TRAFFICKING OF ARMS**

**Commitment 15-16 / Improving the system of state export controls and cooperation between Ukraine and the EU on disarmament, arms control, arms export control and the fight against illicit trafficking of arms**

- Ukraine should intensify cooperation within this subsector, focusing on improvement of the system of state export controls, and in 2020 it should finally make all necessary amendments to the Law of Ukraine "On State Control over International Transfers of Military and Dual-Use Items".

## **COMBATING TERRORISM / COOPERATION IN THE FIGHT AGAINST TERRORISM**

**Commitment 17 / Cooperation at the bilateral, regional and international levels to prevent and combat terrorism**

- It is extremely important for Ukraine to finalize the draft law "On Critical Infrastructure and its Protection", which should be in line with the conventions and practices of the European Union, as well as contain a list of measures aimed at protecting such facilities from terrorist threats.

TITLE III.

JUSTICE, FREEDOM,  
SECURITY AND  
HUMAN RIGHTS

## Key conclusions:

Title III of the Association Agreement is notable for its lack of annexes and direct linking of its provisions to the relevant acts and regulations of the European Union. The relevant provisions are very broad and often relate not so much to EU *acquis* as to international framework instruments of the Council of Europe, the UN, etc. In terms of correlation with EU law, it focuses on transposing general principles and practices rather than specific norms. It should also be noted that this is the first attempt at a systematic independent evaluation of the implementation of Title III of the Association Agreement.

The chapter covers a number of subsectors in the Rule of Law, Respect for Human Rights and Fundamental Freedoms sector, namely: "Reform of law enforcement and the judiciary"; "Protection of personal data"; "Anti-discrimination and protection of human rights"; "Cooperation on migration, asylum and border management"; "Movement of persons"; "Cooperation in the fight against illicit drugs, and on precursors and psychotropic substances"; "Fight against crime and corruption, legal cooperation".

As of spring 2020, a significant part of the commitments under the section has been transposed into Ukrainian legislation. Progress has been made in many areas, with some of the section's commitments implemented under the Visa Liberalization Action Plan, which began before the Association Agreement was signed. In particular, many progressive norms have been introduced in the field of human rights protection, anti-discrimination, and the rule of law. Implementation in the areas of migration and border management is successful. For example, the system of production of biometric documents has been put into operation. Nevertheless, further serious work is needed in the field of human rights protection, personal data protection, cooperation in the field of combating crime and corruption.

Over the past five years, significant progress has been made at the legislative level in adopting new legislation to strengthen the judiciary and law enforcement and establish a system of bodies to prevent and combat corruption. However, the level of implementation of this legislation makes it impossible to speak of the achievement of the goals of cooperation between Ukraine and the EU and fulfilment of the relevant commitments. Such cooperation should be continued in the following areas:

- eradication of negative informal practices that hinder the strengthening of the rule of law;
- implementation of an appropriate personnel policy, which will make it impossible to hold responsible positions for persons who do not meet the requirements of competence and integrity;
- overcoming the negative consequences of inconsistent reform.

## Recommendations

# JUSTICE, FREEDOM, SECURITY AND HUMAN RIGHTS

## REFORM OF LAW ENFORCEMENT AND THE JUDICIARY

### **Commitment 18 / Strengthening law enforcement and combatting corruption**

Strengthening law enforcement should continue in the following areas:

- improvement of their institutional capacity to work outside the system of political interference and influence,
- introduction of personnel policies – more demanding and independent of political powers, while increasing the prestige of service in these bodies,
- improvement of resource efficiency;
- ensuring digitalization and de-bureaucratization of the work of investigative units and their proper interaction with the Prosecutor's Office.

The system of anti-corruption bodies must have sufficient resources to improve its performance and efficiency in preventing corruption and responding appropriately to discovered corruption.

### **Commitment 19 / Strengthening the judiciary, increasing its efficiency, ensuring its independence**

Justice reform policies need to be streamlined. It is advisable to develop a new judicial reform strategy that would be supported by civil society, the business community and Ukraine's international partners (the previous strategy lost its effect and further steps were not predictable or consistent). Areas for further reform should include:

- continuing the launched projects that have the potential to be successful, involving analysis and correction of mistakes (such as dismissal of the HCJ members who do not meet the integrity requirement);
- independent preliminary evaluation of candidates for HCJ, qualification and disciplinary bodies;
- competitive selection for judicial positions in courts of all levels, involving not only judges but also lawyers and academics;
- completion of the evaluation of judges and prosecutors and improvement of the relevant processes;
- introduction of electronic litigation and development of the institute of private enforcement agents;

- institutional improvement of the quality of legal education, abolishing the training of lawyers in militarized agency-specific educational institutions);
- involvement of the professional community and international experts in the reform process to ensure confidence in the reform process and its results;
- service orientation of courts;
- introduction of a transparent and fair mechanism for forming a system of bar and prosecutorial self-government bodies.

## **ANTI-DISCRIMINATION AND PROTECTION OF HUMAN RIGHTS**

### **Commitment 20 / Harmonisation of anti-discrimination legislation with EU law**

- Approve draft law "On Amendments to Certain Legislative Acts of Ukraine (with regard to harmonisation of the legislation in the field of preventing and combating discrimination with European Union law)" (registration number 3501 of November 20, 2015, re-registered on August 29, 2019, No. 0931);
- Develop an implementation mechanism and implement Decision No. 65 of the Council of Judges of Ukraine on data and statistics on court decisions in the field of discrimination.

### **Commitment 21 / Harmonisation with EU law of the activities of institutions in the field of human rights protection, preventing and combating discrimination**

- Strengthen the institution of the Verkhovna Rada Commissioner for Human Rights, taking into account the recommendations of the Twinning project;
- Develop and approve a code of good administrative conduct;
- Improve the institutional support of the state policy in the field of gender equality.

### **Commitment 22 / Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)**

- Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

### **Commitment 23 / Bringing the conditions of detention of convicts and detainees in line with international norms and standards for convicts in the military detention facilities at the Central Agency of the Military Law Enforcement Service**

- Carry out an independent assessment of the fulfilment of the commitment to bring the conditions of detention of convicts and detainees in line with international norms and standards for convicts in the military detention facilities at the Central Agency of the Military Law Enforcement Service.

### **Commitment 24 / Improving mechanisms to combat torture and ill-treatment**

- Continue to develop preventive and compensatory measures to combat torture and ill-treatment, in particular, continue to develop the custody records system for temporary detention facilities.

### **Commitment 25 / Creating a new model of state ethnopolitics**

- Develop, approve and implement legislation aimed at forming a concept of state ethnopolitics and protection of the rights of indigenous peoples and national minorities, in particular, regarding the status of the Crimean Tatar people.

### **Commitment 26 / Decriminalization of deliberate transmission of HIV and other infectious diseases**

- Amend the articles of the Criminal Code concerning HIV transmission after developing acceptable wording.

### **Commitment 27 / Consolidation of guarantees of freedom of peaceful assembly**

- Develop and approve a draft law on guarantees of freedom of peaceful assembly, taking into account the recommendations of Council of Europe experts.

### **Commitment 28 / Abiding by the commitments concerning human rights and proper administration in the context of the conflict with the Russian Federation**

- Settle the legal status of captives and illegally detained citizens in the territory of the Russian Federation and in the occupied territories;
- Develop and implement an effective mechanism for recognising births and deaths in the occupied territories;
- Monitor the implementation of the Programme for Physical, Medical, Psychological Rehabilitation, and Social and Professional Re-Adaptation of Participants of the Anti-Terrorist Operation and Persons who Participated in Measures to Ensure National Security and Defence, Repel and Deter Armed Aggression of the Russian Federation in the Donetsk and Luhansk Regions.

## **Commitment 29 / Implementation of the National Strategy in the field of human rights and action plan for its implementation**

- Continue to implement the National Human Rights Strategy and the action plan for its implementation. Transfer the uncompleted tasks to the action plan until 2023;
- Of the uncompleted (according to government monitoring) tasks, the following should be mentioned:
  1. abolition of the permit-based and introduction of the notification-based approach to establishment of print media;
  2. development and submission to the Cabinet of Ministers of Ukraine of a draft law on legalization of registered civil partnership in Ukraine for heterosexual and same-sex couples, taking into account property and non-property rights, including possession and inheritance of property, and spousal maintenance in case of disability;
  3. development and submission to the Cabinet of Ministers of Ukraine of a draft law on amendments to the Law of Ukraine "On Free Legal Aid" in order to include stateless persons in the list of persons entitled to free secondary legal aid – until the decision on their recognition and in case when a person appeals against the decision on the stateless person status.

## **Commitment 30 / Bringing the "decommunization" legislation in line with the recommendations of the Venice Commission**

- Bring the decommunization legislation in line with recommendations of the Venice Commission, approving amendments to the Law "On the Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols".

## **PROTECTION OF PERSONAL DATA**

### **Commitment 31 / Harmonisation of legislation on personal data protection**

- Develop and adopt a draft law regarding changes to the legislation on personal data protection taking into account the recommendations of the Twinning project.

## **COOPERATION ON MIGRATION, ASYLUM AND BORDER MANAGEMENT**

### **Commitment 32 / Development of infrastructure to provide refugees with decent living conditions**

- Create Centres for Social Integration in Kharkiv and Kyiv (currently such a Centre operates only in Odesa);



- Introduce the statutory requirement that the decision to grant refugee status is made using only accurate and up-to-date information on the situation in the country of origin; identify and provide the relevant public body with sufficient authority to collect relevant information and conduct regular assessments.

### **Commitment 33 / Ensuring proper conditions for the detention and accommodation of illegal migrants**

- Continue arrangement of TDCFs in Kivertsi, Rozsudiv and Martynivske, Mykolaiv region. Provide access to the procedure for applying for refugee status or a person in need of subsidiary protection in the TDCF. Provide access to translators for detained foreigners.

### **Commitment 34 / Concluding readmission agreements with the key countries of origin (transit) of illegal migrants**

- Continue work on readmission agreements with countries identified as sources of migration risks. Carry out a comprehensive assessment of the implementation of the existing readmission agreements. As a result of the evaluation, initiate changes and additions to such agreements where the provisions and mechanisms contained in them do not fully ensure the achievement of the objectives of the agreements.

### **Commitment 35 / Signing implementation protocols for the Ukraine-EU Agreement on readmission of persons with all EU Member States**

- Continue work on concluding the implementation protocols with EU countries. Carry out a comprehensive assessment of the implementation of the existing protocols.

### **Commitment 36 / Organisation of joint operational protection of the state border and exchange of information at contact points with EU Member States**

- Continue the implementation of measures on joint border protection in accordance with the tasks of the Action Plan for the implementation of the Integrated Border Management Strategy;
- Introduce coordinated patrolling on the Ukrainian-Belarusian border. Increase the intensity and involvement of staff in international operations, risk assessments, joint analytical work under the coordination of FRONTEX.

### **Commitment 37 / Extending the practice of joint control at Ukraine's borders, involving EU Member States**

- Resolve the conflict with EU law that prevents the renewal and signing of Joint Control Agreements either by aligning it with the EU or by locating joint checkpoints outside the territory of Ukraine. Sign an updated Agreement with Poland, sign Agreements with Hungary and Slovakia. Start negotiations on an agreement with Romania.

## **Commitment 38 / Transition to new standards of identity documents**

- Develop technical and regulatory solutions to solve ID card issues.

## **Commitment 39 / Creation of a single information and analytical system for managing migration processes**

- Continue to develop the UIAS for Managing Migration Processes and integrate it with other databases and registers.

## **Commitment 40 / Creation and implementation of the State Migration Policy Strategy of Ukraine for the period till 2025**

- Continue to implement the Strategy. See paragraph 46 of the Action Plan "Introduce a mechanism for conducting a preliminary check of the grounds for entry into Ukraine of foreigners, primarily citizens of the Russian Federation, and stateless persons originating from countries with risks of migration, using electronic notification of the intent to visit Ukraine," which contradicts the logic behind the European Travel Information and Authorization System (ETIAS), which focuses on the citizens of countries with the right of visa-free entry, while citizens of the countries with migration risks proposed by Ukraine not only have to have a visa but also undergo an expanded check when applying for the visa;
- Develop, approve and implement an Action Plan until 2025.

## **MOVEMENT OF PERSONS**

### **Commitment 41 / Sustainability of visa-free movement of persons**

- Facilitating public access to the SMS' administrative services, in particular by introducing online electronic services. Systematic and streamlined issuance of foreign biometric passports. Issuance of the passport of a citizen of Ukraine in the form of a card and systematic informing on the proper use of the visa-free travel;
- Systematic preparation of reports on Ukraine's compliance with EU visa-free travel conditions. Implementation of the 2018-2021 Action Plan for the implementation of the State Migration Policy Strategy of Ukraine for the period up to 2025. Fulfilment of the 2020-2022 Action Plan on the implementation of the Strategy for Integrated Border Management until 2025;
- Finally approve the New Agenda in the field of Justice, Freedom and Security, develop and approve an action plan for its implementation.

## **COOPERATION IN THE FIGHT AGAINST ILLICIT DRUGS, AND ON PRECURSORS AND PSYCHOTROPIC SUBSTANCES**

### **Commitment 42 / Ukraine's accession to the Enlarged Partial Agreement of the Council of Europe on the Establishment of the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (the Pompidou Group)**

- Approve the draft law of the Ministry of Health on Ukraine's Accession to the Enlarged Partial Agreement of the Council of Europe on the Establishment of the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (the Pompidou Group), after preliminary assessment of its compliance with EU requirements and making amendments to it as necessary.

### **Commitment 43 / Cooperation with the European Monitoring Centre for Drugs and Drug Addiction**

- Continue and deepen cooperation with the European Monitoring Centre for Drugs and Drug Addiction, in particular in terms of monitoring the drug situation in Ukraine.

## **FIGHT AGAINST CRIME AND CORRUPTION, LEGAL COOPERATION**

### **Commitment 44 / Facilitating the development of a national computer emergency response team (CERT)**

- Intensify efforts to sign memoranda of cooperation with ENISA, SELEC and the NATO Trust Fund;
- Following the EU best practices, Ukraine can implement a system similar to certification under the EU Cybersecurity Act.

TITLE IV.  
TRADE AND  
TRADE-RELATED  
MATTERS

# TECHNICAL BARRIERS TO TRADE-RELATED MATTERS

## Key conclusions

Based on the results of the expert assessment of the progress made during the period from 2014 to 2019, in the implementation of the commitments regarding transposition into the national legislation and implementation of the *acquis communautaire* in the field of technical regulation, the following conclusions can be made:

- Ukrainian basic (horizontal) legislation has been fully adapted to European legislation and implemented, and no norms that would run contrary to European ones have been adopted;
- 92 % of Ukrainian sectoral (vertical) legislation has been adapted to European legislation and implemented in accordance with the requirements of the Association Agreement and Annex III thereto;
- more than 90% of obsolete standards of the former USSR have been replaced with modern international and European standards, the level of harmonisation of national standards over the past 5 years has increased more than 2-fold and amounts to 65%;
- the Ukrainian quality infrastructure has been aligned with WTO and EU norms, Ukraine has established and ensured the operation of the national standardisation body and national accreditation body; conformity assessment bodies and state market surveillance bodies have been accredited and designated in accordance with technical regulations; mandatory product certification has been abolished;
- the newly established Ukrainian national standardisation body has acquired the appropriate status in international and European standardisation organisations, and the national accreditation body has acquired full membership and recognition in international and European accreditation organisations, Ukraine has become a full member of the Metre Convention and the General Conference on Weights and Measures (CGP);
- thanks to EU technical and financial assistance, the testing and measuring equipment of Ukrainian testing and metrological institutions has been significantly upgraded, and they are now able to perform testing and measurements according to the requirements harmonised with European regulations and standards; the level of competence of the personnel of government bodies, standardisation, conformity assessment, metrology, and market surveillance bodies has been improved;
- a large-scale informational educational campaign has been launched for Ukrainian business representatives on the nature and benefits of the application of modern regulations and standards, a constant dialogue with businesses has been established through the new communication platform for technical regulation ([www.techreg.in.ua](http://www.techreg.in.ua));
- measures have been taken to create preconditions for a preliminary assessment by EU experts of the readiness of Ukrainian standardisation, conformity assessment, accreditation, metrology, and market surveillance bodies to work in accordance with the requirements of European legislation, followed by the signing of the ACAA Agreement.

Thus, it can be concluded that during 2014-2019 Ukraine as a whole fulfilled all its commitments under the Association Agreement with the EU and Annex III thereto.

At the same time, Ukraine needs to continue improving its legislation and implementing new European norms and practices in the field of technical regulation.

## **Recommendations**

### **Commitment 45 / Gradually achieving conformity with EU technical regulations and EU standardisation, metrology, accreditation, conformity assessment procedures and the market surveillance system**

In the short term (by the end of 2020), it is necessary:

- ensure the implementation of the action plan under the Strategy for Development of the Technical Regulation System for the period up to 2020, developed by the Ministry of Economic Development and Trade and approved by CMU order No. 844, dated 19.08.2015;
- develop and adopt a new Strategy for Development of Technical Regulation for 2021-2025.

In the medium term (by the end of 2025), it is necessary:

- ensure the implementation of the new Strategy for the Development of the Technical Regulation System for 2021-2025;
- ensure the implementation of measures envisaged by the Program of Development of the Reference Database for 2018-2022 regarding creation of 14, improvement of 17 and verification of 20 state primary reference standards;
- ensure the use of modern information technologies (digitization of processes) in the field of standardisation, conformity assessment, accreditation, metrology, and market surveillance;
- continue the information and educational campaign in the field of technical regulation, standardisation, metrology, and market surveillance.

### **Commitment 46 / Harmonisation of basic (horizontal) legislation with that of the EU**

In the short term (by the end of 2020), it is necessary:

- develop and adopt a draft Law of Ukraine on amendments to the laws of Ukraine on state market surveillance (as needed) due to the adoption and entry into force in July 2021 of a new European regulation on market surveillance No. 1020/2019;
- develop and adopt the draft Law of Ukraine "On Amendments to the Customs Code of Ukraine due to the adoption of the Law of Ukraine 'On Standardisation'";
- develop and adopt the draft Law of Ukraine "On Amendments to the Tax Code of Ukraine due to the adoption of the Law of Ukraine 'On Standardisation'";

- develop and adopt a draft Law of Ukraine on amendments to the Law of Ukraine "On Standardisation" with regard to the introduction of intellectual property rights for standards, which will allow Ukraine to protect copyright for standards in accordance with international agreements;
- develop and adopt the draft Law of Ukraine on amendments to some legislative acts due to the adoption of the Law of Ukraine "On Standardisation", which are not covered by the formerly adopted laws;
- ensure the adoption by 03.07.2020 and implementation of all regulations associated with the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Implementation of Acts of European Union Legislation in the Area of Technical Regulation".

### **Commitment 47 / Harmonising vertical (sectoral) legislation in 27 areas with relevant EU legislation**

In the short term (by the end of 2020), it is necessary:

- adopt the two technical regulations that have not been adopted yet (packaging and waste (2.24), high-speed railways (2.27));
- review 11 basic technical regulations (simple pressure vessels (2.3), pressure equipment (2.4), lifts (2.6), efficiency requirements of new hot-water boilers fired with liquid or gaseous fuel (2.9), marine equipment (2.15), medical devices (2.16), active implantable medical devices (2.17), in vitro diagnostic medical devices (2.18), cableway installations designed to carry persons (2.21), recreational craft (2.22), construction products, including the relevant implementing measures (2.23)) due to the fact that the relevant EU directives and regulations have been updated, which will contribute to the full alignment of Ukrainian sectoral legislation with EU legislation in accordance with the provisions of the Association Agreement and Annex III thereto;
- adopt 5 new and revise 9 already adopted technical regulations on energy efficiency of electrical equipment, in addition to the adopted basic technical regulations on ecodesign.

### **Commitment 49 / Moratorium on amendments to legislation that are not in line with the EU acquis**

In the short term (by the end of 2020), it is necessary:

- during 2020-2025 refrain from making changes to the legislation that contradict European norms.

### **Commitment 50 / Participating in the work of international and European organisations for formation and enactment of the system of technical regulation, as well as taking measures to meet the conditions for full membership in European organisations**

In the short term (by the end of 2020), it is necessary:

- adopt the draft Law of Ukraine on Ukraine's accession to the International Organisation of Legal Metrology and acquire full membership in the International Organisation of Legal Metrology.

In the medium term (by the end of 2025), it is necessary:

- ensure the effectiveness of the concluded agreements on recognition of the national accreditation system at the international and European levels with the European Co-operation for Accreditation (EA), the International Co-operation for Laboratory Accreditation (ILAC) and the International Accreditation Forum (IAF).

### **Commitment 51 / Progressively transposing the corpus of European standards as national standards, simultaneously withdrawing conflicting national standards**

In the medium term (by the end of 2025), it is necessary:

- during 2020-2025 increase the pace of harmonisation of national standards with international and European ones by adopting at least 3,000 standards every year, and achieve an 80% level of acceptance of EU standards as national standards for full membership in European standardisation organisations.

### **Commitment 52 / Entering into the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA)**

In the short term (by the end of 2020), it is necessary:

- ensure a preliminary assessment by European experts of the readiness of the Ukrainian quality infrastructure to work in accordance with the EU norms implemented in the legislation of Ukraine and to prepare for the signing of the ACAA Agreement.

In the medium term (by the end of 2025), it is necessary:

- ensure accession to of the ACAA Agreement with the EU (2021) in the priority sectors of industrial products (low-voltage equipment, electromagnetic compatibility, machinery) and extend the scope of the ACAA Agreement (2021-2025) to industrial products with a high degree of added value (personal protective equipment, construction products, radio equipment, medical devices, measuring equipment, toys etc.).

## **SANITARY AND PHYTOSANITARY MEASURES**

### **Key conclusions:**

It should be noted that significant progress has been made in the area of sanitary and phytosanitary measures. Within the framework of CMU Order No. 228-p "On Approval of the Comprehensive Strategy for Implementation of Chapter IV (Sanitary and Phytosanitary Measures) of Title IV 'Trade and Trade-Related Matters' of the Association Agreement between Ukraine, of the one part, and the European Union, the European Union The Atomic Energy Community and its Member States, of the other part", Ukraine has developed almost all the regulations mentioned in the above document. However, it should be taken into account that the developed regulations are pending consideration by the State Regulatory Service (hereinafter – the SRS). In the field of phytosanitary measures (plants, plant products and other objects of regulation) about half of the necessary regulations have not been developed. The



situation is the same in the area of chemicals and GMOs. This is the responsibility of the Ministry of Economic Development, Trade and Agriculture of Ukraine and the Ministry of Environmental Protection and Natural Resources of Ukraine.

The adoption of regulations will be significantly accelerated if the problem with the SRS is resolved. Most of the drafted bylaws are pending consideration by the SRS and the process is at a standstill or is moving very slowly. However, this problem is much deeper than it seems. According to Article 3 of the Law of Ukraine "On Principles of the State Regulatory Policy in the Field of Economic Activity", regulatory policies do not apply to the procedure for concluding, implementing, publishing, registering and denouncing Ukraine's international agreements. The development and adoption of regulations in the area of SPS is, first of all, aimed at fulfilling the Association Agreement, i.e. it involves the implementation of Ukraine's international commitments. However, until the autumn of 2019, Annex V was not officially part of the Agreement, and therefore CMU Order No. 228-p was applied and hence the SRS extended its jurisdiction onto this area. As of now, Annex V has become an official part of the Agreement, and the SRS should no longer have jurisdiction over SPS regulations. However, the SRS still claims that each draft regulation implementing Annex V of the Agreement must obtain their approval anyway. This significantly slows down the process of adopting these acts.

As regards the scope of phytosanitary measures, the state body in charge is the Ministry of Environmental Protection and Natural Resources of Ukraine. That is why it is necessary to insist that the Ministry should begin to fulfill its direct duties related to the implementation of the Association Agreement.

Concerning chemicals and GMOs, documents need to be adopted and developed in accordance with Annex V to the Agreement.

Recommendations:

## **MEASURES APPLICABLE TO MAIN LIVE ANIMAL CATEGORIES**

### **Commitment group 53 / Measures applicable to main live animal categories**

- Adopt all developed regulations aimed at fulfilling this commitment, except for acts related to the identification and registration of animals and the introduction of a mechanism for importing live animals into the customs territory of Ukraine, as these regulations have already been developed and adopted.
- Develop and adopt regulations on fish necrosis and African horse sickness.

## MEASURES APPLICABLE TO PRODUCTS OF ANIMAL ORIGIN

### Commitment group 54 / Measures applicable to products of animal origin

- Adopt all the developed regulations aimed at fulfilling this commitment, except for acts aimed to introduce the procedure for keeping a register of facilities for processing, treatment and disposal of animal byproducts and the introduction of a mechanism for working with pharmacologically active substances in foods of animal origin, as these regulations have already been developed and adopted.

## FOOD SAFETY

### Commitment group 55 / Measures applicable to food

- Adopt all the developed regulations aimed at fulfilling this commitment, except for the acts related to the introduction of monitoring of contaminants in food, ensuring the safety and hygiene of honey, introduction of a list of products subject to state control at designated border inspection posts, introduction of a procedure for providing food information to consumers, as these regulations have already been developed and adopted.

## PLANTS, PLANT PRODUCTS AND OTHER OBJECTS

### Commitment group 56 / Plants, plant products and other objects of regulation

- Develop and adopt regulations to improve the mechanism of ensuring plant health, namely: requirements for emergency measures to prevent the spread of *Anoplophora chinensis*, requirements for emergency measures to prevent the spread of *Bursaphelenchus xylophilus*, conditions for the use of active substances such as clothianidin, thiamethoxam and imidacloprid, and prohibition on the use and sale of seeds treated with plant protection products containing these active substances.
- Develop and adopt regulations aimed at improving the mechanism of trade in plants and seeds, namely approve the requirements for labeling, sealing and packaging of the propagating material of fruit plants.
- Develop and adopt regulations aimed to update the requirements for the labeling, sealing and packaging of fruit plants and the propagating material of fruit plants intended for fruit production; updating the requirements for registration of suppliers and varieties and the general list of varieties; updating the requirements for families and species of fruit plants, the specific requirements offered to suppliers, and the detailed rules concerning official inspections; introduction of procedures for protection of plant variety rights.
- All the other regulations developed within the framework of this commitment have been adopted.

## MEASURES APPLICABLE TO FOOD AND FEED ADDITIVES

### Commitment group 57 / Measures applicable to food and feed additives

- Develop and adopt a regulation on requirements for monitoring background levels of dioxins and dioxin-like PCBs in feed.
- Adopt all the other regulations developed within the framework of this commitment, except for the list of intended uses of feed, as these regulations have already been developed and adopted.

## ANIMAL WELFARE STANDARDS

### Commitment group 58 / Animal welfare standards

- Approve all the developed regulations within the framework of this commitment.

## CHEMICALS, COMPOSITE PRODUCTS, AND GMOS

### Commitment group 59 / Chemicals, composite products, and GMOs

- Develop and adopt the regulations aimed to introduce control of genetically modified organisms, the introduction of standard reporting formats for presenting the GMO release results into the environment or products intended for placing on the market, genetically modified organisms, updating the rules for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China, and implementation of procedures for the handling of genetically modified organisms and the rules for their registration.

Adopt all the other regulations that have been developed within this commitment.

## CUSTOMS AND TRADE FACILITATION

### Key conclusions

In the four and a half years of the application of the "economic" part of the Agreement, progress in fulfilling the obligations in the field of customs intensified only in the late 2019. Therefore, as regards customs matters, the implementation of the Agreement provisions falls far behind the initially agreed schedule.

Fulfilment of the commitments under the Association Agreement is not an end in itself. Even the most progressive European norm (formally transposed into Ukrainian legislation) will have no positive effect if it is not applied/misapplied in practice. The Agreement demands that Ukraine ensure transparency and predictability of customs procedures, as well as uniform and effective law enforcement. Therefore, the change of legislation should transform the customs institutionally and make it possible to modify the practices of customs authorities.

## Recommendations

### **Commitment 62 / Approximation of Ukrainian customs legislation to the Union Customs Code**

To fulfil this commitment, it is necessary to develop and adopt a new Customs Code, which should be as close as possible to the EU Code. This is a difficult, painstaking and time-consuming job that still needs to be done. Ukraine needs a new Customs Code for many reasons:

- The signing of the Association Agreement with the EU changed the geographical structure of trade, making the EU Ukraine's largest trading partner. Hence, the approximation of the customs legislation to the European one will help unify the passage of customs procedures for businesses engaged in trade with the EU.
- The current Customs Code of Ukraine might be overdetailed in many respects, at the same time several dozen bylaws (resolutions of the Cabinet of Ministers and orders of the Ministry of Finance) have been added thereto. The introduction of the European model would make it possible to optimise the complex and confusing hierarchy of customs legislation based on the following principle: a compact Customs Code regulates fundamental matters, while all procedural norms are laid down in a single codified bylaw (similar to the EU Delegated Act).
- By restarting the new Customs Code, we would not only modernise customs legislation, but also reconsider some of its areas and thus change not only the legislation but also its enforcement. After all, law enforcement in many cases is the main problem of customs in Ukraine (for example, businesses continue complaining about the situation in the field of customs value, even though the legislation in this area generally corresponds to the provisions of EU law and the WTO Convention).

### **Commitment 63 / Accession to the Convention on the Simplification of Formalities in Trade in Goods and the Convention on a Common Transit Procedure (NCTS)**

As of today, a lot of work has already been done to fulfill this commitment.

If the plan of the State Customs Service is adhered to and the electronic transit system is introduced in a test mode in the second half of 2020, Ukraine might be expected to receive an invitation to accede to the Convention in 2021-2022 and this commitment will be fully fulfilled. However, at the moment, the bylaws for launching the electronic transit system in test mode have not been approved by the Cabinet, which may delay the implementation of the reform and the system may not start working in the second half of 2020. Therefore, the Cabinet of Ministers, obviously, needs to intensify work in this area.

### **Commitment 64 / Implementation of customs duty reliefs in force in the EU**

This commitment should be fulfilled by preparing and adopting the relevant law. Exemption from customs duties in the EU is more consistent and covers a wider range of cases where such reliefs are necessary.

## **Commitment 65 / IPR protection during movement of goods across the customs border of Ukraine**

The necessary law to fulfill this commitment has already been adopted.

After the relevant bylaws are adopted, the key task will be to correctly enforce the adopted legislation, which the customs authorities should ensure.

# **ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE**

## **POSTAL AND COURIER SERVICES**

### **Key conclusions:**

As of June 2020, Ukraine's commitments under the Association Agreement in the field of postal services have not been fulfilled. The transposition is at an early stage for only one commitment, whereas for the other ten commitments regulatory approximation has not started. Due to the lack of regulatory basis, the practical implementation of the provisions of European legislation has not started for any of the eleven commitments under discussion.

However, we are cautiously positive about the minor progress in adapting national legislation to the requirements of EU acts in the field of postal and courier services, which includes the development of a new version of the draft law in the field, which, if revised to take into account all important provisions of the EU Postal Directive and the Association Agreement, will create the preconditions and legal basis for taking the next steps, as provided by the Consolidated Action Plan (CMU Resolution No. 1106) and the Strategy (CMU Order No. 104-p) and adoption of relevant bylaws comprehensively covering all the measures necessary to transpose the provisions of the EU acquis specified in Annex XVII-4 to the Association Agreement to the legislation of Ukraine, as well as contribute to the development of the field of postal services and Ukraine's entry into the global market of postal services, even though this draft law will not ensure immediate and full implementation of Ukraine's commitments under the Association Agreement and the requirements of the EU Postal Directive.

In general, speed up the implementation of European integration commitments in the field of postal services and courier services are possible to:

- find out the reasons for non-fulfilment of Ukraine's international commitments within the timeframe specified both directly in the Association Agreement and in implementation plans;
- put an end to the practice of postponing the implementation of commitments and unfulfilled tasks and their duplication in government action plans in the public authorities responsible for fulfilling them;
- introduce personal responsibility of the heads of central executive bodies for the implementation of the tasks aimed at fulfilling Ukraine's international commitments.

## **Recommendations on transposition (legal approximation)**

### **Commitment 66 / Harmonisation of the national legal framework in the sector of postal and courier services in line with the principles of the European Union acquis set out in the Association Agreement, in order to ensure the gradual alignment of the existing and future legislation with the EU acquis**

To harmonise the national legal framework in the postal and courier services sector in accordance with the principles of the European Union legislation set out in the Association Agreement and to adapt the provisions of Directive 97/67/EC as amended by Directive 2002/39/EC, and Directive 2008/6/EC, it is primarily necessary to adopt a draft law amending the Law of Ukraine "On Postal Service", however the draft law should be amended to take into account all the key provisions of the EU Postal Directive and the Association Agreement, in particular with regard to:

- ensuring the independence of the national regulatory authority;
- uniform rules and conditions governing the provision of postal services;
- provision of the universal postal service – selection and designation of designated operators to ensure the provision;
- financing of the universal postal service on the terms that guarantee the provision of services on a permanent basis;
- the setting of quality standards for universal service provision and the setting-up of a system to ensure compliance with those standards,
- tariff principles and transparency of accounts for universal postal service provision;
- permit procedures for universal postal service provision;
- the harmonisation of technical standards,
- provision of information (financial and statistical) by postal service operators;
- protection of consumer rights in the field of postal services,
- as well as finalising the analysis of the regulatory impact by making financial and economic calculations.

The law, if adopted, will create the preconditions and legal basis for ensuring the gradual alignment of the existing laws and future legislation with the EU acquis, as well as taking the next steps with regard to their implementation.

### **Commitments 67-76**

- Based on and following the introduction of framework rules in the postal and courier services sector to fulfil Commitment 1 by amending the law, the relevant changes should be transposed at the level of bylaws, as specified in the analysis separately for each commitment, which will make it possible to implement in practice the rules aligned with the EU legislation on the field of postal services.

## **Recommendations for implementation**

### **Commitments 66-76**

For the effective implementation of the provisions of Directive 97/67/EC, as amended by Directive 2002/39/EC, and Directive 2008/6/EC, it is necessary to adopt the law and a number of bylaws, as specified in the analysis, both at the CMU level and at the level of the line Ministry of Infrastructure and the NCCIR, which, subject to practical implementation will allow to come closer to the European standards in the field of postal services, to ensure, in accordance with the ultimate goal of the European postal policies, reliable and high quality postal services at least five working days a week throughout the territory of the country, for all citizens and businesses at affordable prices, as well as to set off on the road to future integration into the European Economic Area based on common rules, free competition and an open market.

## **ELECTRONIC COMMUNICATIONS AND ELECTRONIC COMMERCE**

### **Key conclusions**

Ukraine's integration into the European Digital Single Market is recognized as one of the priorities of Ukraine's integration into the EU and activities within the framework of the Eastern Partnership programme. This goal is extremely ambitious but quite realistic. The significant progress made in the field of e-commerce allows us to hope for the success of individual pilot projects, which will clearly identify the strengths and weaknesses of the Ukrainian law enforcement practices, as well as practical mechanisms for their implementation. The unprecedented practice of simultaneous development and adoption of the Electronic Communications Code by Ukraine and the EU countries creates the basis for Ukraine's quantum leap into the European Digital Single Market. However, this leap is impossible without an independent and effective regulator, and its legal framework is still lacking. However, the most critical threat is posed by gaps in the area of cybersecurity and personal data protection, which could completely block Ukraine's progress on its path to digital European integration.

### **Recommendations**

#### **Commitment 77 / Legislative regulation of electronic communications**

- Before second reading, correct all the shortcomings of draft law No. 3014 "On Electronic Communications" and develop a roadmap for its implementation;
- Organize a broad advocacy campaign among small and medium-sized Ukrainian ISPs in support of the European Electronic Communications Code.

#### **Commitment 78 / Strengthening the independence and administrative capacity of the national regulator in the field of electronic communications**

- Finalise and register with the Verkhovna Rada the draft law "On the National Regulator in the Field of Electronic Communications", ensure its (preferably simultaneously with draft law No. 3014) passage in the parliament. Eliminate duplication of individual sections in these draft laws.

## **Commitment 79 / Ensuring a high overall level of the security of network and information systems**

- Develop and adopt an updated Cybersecurity Strategy of Ukraine (taking into account the Cybersecurity Act and the NIS Directive);
- Develop and adopt a full-fledged law of Ukraine on cybersecurity;
- Ratify the Council of Europe Convention on Cybercrime in full;
- Resolve issues concerning the protection of critical information infrastructure;
- Develop a roadmap for reforming Ukrainian legislation in the field of personal data protection. Take measures to implement the current Ukrainian legislation in this area.

## **Commitment 80 / Ensuring compliance with European and international standards for the requirements for working with electronic trust services**

- Develop and implement a comprehensive programme to protect consumer rights in the field of e-commerce and use of electronic communications services;
- Complete work on cross-border recognition of electronic trust services.

## **FINANCIAL SERVICES**

### **Key conclusions:**

Within the "Banking" subsector, significant progress has been achieved only with regard to improving banking regulation and supervision, the procedure for withdrawing banks from the market, namely introduction of requirements for recovery plans; introduction of a statistical reporting form on risk concentration for banking groups; statistical reporting for banking groups on intragroup transactions; improving the procedure for submitting financial accounts based on the taxonomy of financial accounts in a single electronic format.

At the same time, almost no work is being done to implement the provisions of Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions and Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes.

In addition, it is necessary to accelerate/start work to introduce the requirements for internal capital adequacy assessment process (ICAAP); enacting the procedure for checking the financial/property status of the founders owning significant holdings in obtaining a banking authorisation; optimisation of requirements for improving the efficiency of assessment of the criteria for significant holdings in credit institutions; regulation of matters related to administrative sanctions and management measures of the National Bank for non-compliance with authorisation requirements related to the acquisition of significant holdings; establishing requirements for professional competence and good repute of bank managers; aligning the requirements for publishing information on issued banking authorisations on the website of the National Bank with those of EU law; and improving the mechanisms for information cooperation between regulators of financial services.



In the "Securities" subsector, some progress has been made in implementing the provisions of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

At the same time, no work has been done to bring the scope and forms of sanctions for violation of stock market disclosure requirements in line with EU law. The draft law on regulated markets and derivatives has been under development for a long time and has not been adopted.

In addition, it is necessary to accelerate the preparation of draft laws "On Amendments to Certain Legislative Acts of Ukraine (with regard to Combatting Stock Market Abuse)" and "On Amendments to Certain Legislative Acts of Ukraine to Simplify Investment Attraction and Introduce New Financial Instruments".

There has been no progress in implementing the provisions of Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes. The agency in charge proposes to postpone the implementation of the said Directive.

Work on the implementation of the provisions of Directive No. 2009/65/EC of the European Parliament and of the Council of 13 July 2009 the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Commission Directive No. 2010/42/EC not started.

In the "Insurance" subsector, the work on approximation of legislation is mainly at the stage of development and review of relevant draft laws involving the EU Project Strengthening the Regulation and Supervision of the Nonbank Financial Market (EU-FINREG) (implementation of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance, Directive No. 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation).

Due to the adoption of Law No. 465-IX "On Amendments to Certain Legislative Acts of Ukraine to Improve Tax Administration and Eliminate Technical and Logical Inconsistencies in Tax Legislation" of 16.01.2020 and No. 79-IX "On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of the Functions on State Regulation of Financial Services Markets" of 12.09.2019, notable progress has been made in implementing the provisions of EU Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings with regard to the structure and content of balance sheets and the establishment of a single structure of the profit and loss statement of insurance/reinsurance companies through the legal regulation of accounting of insurance/reinsurance undertakings.

At the same time, there are no achievements in establishing uniform requirements for the professional competence of insurance intermediaries.

Special attention should be given to the implementation of the provisions of Directive No. 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, which involves introduction of European Union standards into the Ukrainian funded pension system. The agency in charge has not yet developed relevant amendments to the current legislation of Ukraine, in particular to the Law of Ukraine "On Non-State Pension Provision".

In the "Market Infrastructure" subsector, some progress has been made due to the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Facilitate Investment Attraction and Introduce New Financial Instruments" (reg. with the Verkhovna Rada under No. 2284 on 17.10.2019), which was developed together with experts of the EU Project Strengthening the Regulation and Supervision of the Nonbank Financial Market (EU-FINREG).

In the "Payment Services" subsector, work on the implementation of the provisions of Directive (EU) No. 2015/2366 is at the stage of examination and development of the relevant acts such as the draft Law "On Payment Services", which will regulate the activities of the Ukrainian market of payments and money transfers.

In general, accelerate the implementation of European integration commitments in financial services is possible as a result of the implementation of the following measures:

1. Establish the reasons for Ukraine's failure to timely fulfil its international commitments set out in the implementation plans;
2. Abandon the practice of constantly extending the deadlines for fulfilling the uncompleted tasks and duplicating them in the action plans of the government and central executive bodies;
3. Based on the policy analysis procedures, update the deadlines for the tasks set by CMU Resolution No. 1106 "On the Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part" of October 25 2017;
4. Establish personal responsibility of the heads of central executive bodies for performing the tasks of the implementation plan.

## **Recommendations**

### **Banking**

#### **Commitments 81-85**

- Ensure the development and adoption of legislation and/or amendments to existing legislation that would introduce requirements for internal capital adequacy assessment (ICAAP); enacting the procedure for checking the financial/property status of the founders owning significant holdings in obtaining a banking authorisation; optimisation of requirements for improving the efficiency of assessment of the criteria

for significant holdings in credit institutions; regulation of matters related to administrative sanctions and management measures of the National Bank for non-compliance with authorisation requirements related to the acquisition of significant holdings; establishing requirements for professional competence and good repute of bank managers; and aligning the requirements for publishing information on issued banking authorisations on the website of the National Bank with those of EU law;

- Develop and approve amendments to the current legislation to update of the payment legislation and the legislation on the deposit guarantee system in Ukraine, namely the Law "On the Deposit Guarantee System for Individuals", the Law "On Credit Institutions" and the Law "On Financial Services and State Regulation of Financial Services Markets";
- Continue to improve the procedure for submitting financial accounts based on taxonomy of financial accounts in a single electronic format by further implementing the provisions of Council Directive No. 86/635/EEC, Council Directive No. 91/674/EEC (recast), and Directive No. 2001/65/EC.

## Securities

### Commitments 86-91

- Ensure examination and adoption by the Verkhovna Rada of Draft Law No. 2284 "On Amendments to Certain Legislative Acts of Ukraine to Facilitate Investment Attraction and Introduce New Financial Instruments" of 17.10.2019;
- Accelerate the examination by the interested CEBs and ensure support in the Verkhovna Rada of the draft law on regulated markets and derivatives and draft laws "On Amendments to Certain Legislative Acts of Ukraine to Facilitate Investment Attraction and Introduce New Financial Instruments", "On Amendments to Certain Legislative Acts of Ukraine (with regard to Combatting Stock Market Abuse)";
- Finalize the draft laws on protection of investors from abuse in the capital markets withdrawn from the Verkhovna Rada of Ukraine of the IX convocation in 2019 (implementation of Directive No. 2004/39/EC);
- Start work to implement the provisions of Directive 97/9/EC, to bring the scope and forms of sanctions for violation of stock market disclosure requirements in line with EU law, and to implement the provisions of Directive No. 2009/65/EC of the European Parliament and of the Council of 13 July 2009 the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Commission Directive No. 2010/42/EC.

## Insurance

1. Ensure development and adoption of legislative changes in this subsector, namely introduction of a new procedure for legislative regulation of insurance (reinsurance) and mediation activities in insurance, creating a competitive environment and reducing insolvency risks in the insurance market of Ukraine, facilitating the taking-up and pursuit of the business of insurance and reinsurance, and ensuring a sufficient level of solvency of insurance companies, and establishment of uniform requirements for the professional competence of insurance intermediaries;

2. Accelerate the work on the draft laws "On Compulsory Insurance against Civil Liability of Owners of Motor Vehicles", "On the Performance of Insurance Services", and a draft law to implement Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast);
3. Finalize the draft laws on insurance against civil liability of owners of motor vehicles, which was withdrawn from the Verkhovna Rada of Ukraine of the IX convocation in 2019 (implementation of Directive No. 2009/103/EC, Directive (EU) No. 2016/97);
4. Start work on the implementation of the provisions of Directive 2003/41/EC with regard to preparation of a draft law and relevant amendments to the current legislation of Ukraine to introduce funded pension provision and, accordingly, introduce the monitoring of the financial condition of the relevant undertakings and assess their ability to fulfil all contractual obligations.

## Market Infrastructure

### **Commitment 97 / Introduction of various elements of market infrastructure in the financial services market**

Develop and/or amend the existing legislation regarding the implementation of the provisions of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, Directive No. 98/26/EC, and Directive No. 2009/44/EC.

## Payment Services

### **Commitment 98 / Regulation of payment services**

- Accelerate work on the draft law "On Payment Services";
- Continue to develop and amend the current legislation to implement the provisions of Directive (EU) No. 2015/2366 (repealing Directive No. 2007/64/EC of 12 January 2018).

## TRANSPORT SERVICES

### **Key conclusions:**

As part of the adaptation of Ukrainian legislation to EU legislation, a new version of the Law of Ukraine "On Inland Waterway Transport of Ukraine" was developed, which partly addresses the matters of maritime services. The draft of the new version of the Law of Ukraine "On Inland Waterway Transport of Ukraine" was registered with the Verkhovna Rada of Ukraine (1182-1-д of January 17, 2020). On April 24, 2020, the draft law was adopted by the Verkhovna Rada at first reading. Since 2017, the State Maritime and River Transport Service of Ukraine (Maritime Administration) has been in place. With the entry into force of the Law of Ukraine "On Seaports of Ukraine" in 2013, the reform of the industry began. However, the law now needs to be amended. Ukraine has acceded to a number of international conventions such as the 1988 Protocol to the 1966 Convention on Trade Marks (amended in 2003, 2004, 2006, 2008, 2012, 2013 and 2014). Decision has been approved to form a System for Monitoring

the Surface Situation Using an Automated Identification System in the Black and Azov Seas in the Area of Responsibility of Ukraine. In general, the progress in the implementation of this sector is at an early stage. It is necessary to address issues of accession to a number of international conventions, ensuring maritime safety and taking organisational and legal measures to ensure safety at the institutional level. In particular, Ukrainian maritime administration system is overly complex and lacks a clearly identifiable competent authority to manage Ukraine's international commitments and obligations in the field of maritime transport in accordance with the various IMO conventions to which Ukraine is a party.

## **Recommendations**

### **In the field of safety at sea (Commitments 99, 110):**

- Accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974;
- Accede to the International Convention on the Control of Harmful Anti-fouling Systems in Ships, 2001;
- Reorganise the services of seaport captains by delimiting (separating) the functions of ensuring maritime safety and supervising (controlling) maritime safety in accordance with the requirements of national and international legislation;
- Modernize the Regulation on Navigation and Hydrographic Support within Inland Waters, Territorial Sea and Exclusive (Marine) Economic Zone of Ukraine;
- Develop and adopt normative legal acts of the Ministry of Infrastructure on the approval of rules relating to the safe construction, stability and operation of seagoing passenger vessels, ro-ro passenger ferries and high-speed passenger craft providing regular services;
- Develop and adopt regulations of the Ministry of Infrastructure regarding the rules of safe loading and unloading of bulk cargo in seaports of Ukraine.

### **In the field of compliance with social conditions (Commitment 109):**

- Accede to the International Labour Organisation's Maritime Labour Convention, 2006, recast;
- Adopt amendments to certain legislative acts in connection with the ratification of the International Labour Organisation's Maritime Labour Convention, 2006;
- Pay attention to the fact that the current national legislation of Ukraine in the field of maritime transport is not fully modernized and fails to take into account amendments to international conventions that are made from time to time.

### **In the field of environmental protection in maritime transport (Commitment 107):**

- Develop and adopt regulations on mandatory equipment of seaports and sea terminals that are open to international traffic with floating and fixed reception facilities for ship-generated waste, a minimum list and

technical specifications of such facilities, as well as on development and implementation of plans for management of ship-generated waste and cargo residues in seaports in accordance with the requirements of Ukraine's international agreements;

- Develop amendments to the Law of Ukraine "On Seaports of Ukraine" concerning the obligations of seaports and sea terminals to ensure reception of ship-generated waste and cargo residues in accordance with the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol.

## **PUBLIC PROCUREMENT**

### **Key conclusions:**

Ukraine has made significant progress in meeting virtually all its commitments to harmonise its public procurement system under the Association Agreement and the relevant Action Plan on Implementation of the Association Agreement, approved by CMU Resolution No. 1106 of 17.10.2017. This is largely due to the fact that the implementation of most measures was started earlier under the Strategy for Development of Public Procurement System (the Roadmap), as well as due to effective reforms in this area, which have been carried out since 2014.

The most successful of these are the reforms introduced by the Law of Ukraine "On Public Procurement" in 2016, which primarily involve creation of an electronic procurement system and significant approximation of procurement terms and procedures to the requirements with the relevant EU Public Procurement Directives. The latest changes, which came into force on April 19 this year, will bring Ukrainian legislation even closer to these requirements.

At the same time, several measures, most notably those related to the fulfilment of commitments as regards adaptation of legislation and harmonisation of remedies, require further implementation, including by making appropriate amendments to the framework Law.

Effective implementation of the tasks formalised in legislation also depends on the timeliness of drafting by the MEDT of the relevant bylaws required by the new Law (e.g. regulation on review of procurement complaints; approximate methodology for evaluating life cycle costs) and bringing existing regulations in line with its requirements. Apart from that, it is important to timely adapt the technical aspects of the existing e-procurement system to the adopted amendments (primarily regarding the new limited participation tender procedure).

### **Recommendations**

#### **As regards adaptation of legislation and harmonisation of legal remedies (Commitments 111-114)**

- amend the Law "On Public Procurement" with regard to: "introduction of special rules for the use of electronic auctions, reserved contracts and innovation partnerships by entities operating in the field of public utilities and the possibility of applying a dynamic procurement system; definition of the concept of 'mixed contracts', optional rules concerning the period of non-award of the procurement contract, etc.";

- ensure the development and approval of a CMU resolution regarding review of complaints concerning purchases and other regulations necessary to enforce the Law;

### **To fulfil the commitments concerning professionalization and electronezation of procurement (Commitments 115-116)**

- it is necessary to continue extensive introduction of technical customer support mechanisms by providing marketing research services; development of joint procurement strategies, legal and technical support of procurement procedures, as well as centralised procurement tools, framework agreements, and electronic catalogues;

### **As regards the establishment of procurement rules in the field of defence (Commitment 117)**

- it is necessary to ensure that the Verkhovna Rada adopts the Law on Defence Procurement.

## **INTELLECTUAL PROPERTY**

### **Key conclusions:**

Despite certain developments, the government has not fully fulfilled any of the tasks related to the commitments under Chapter 9, which can be due to the deadlines set by the Government implementation plan – i.e. 31.12.2023. However, the decisions of Ukrainian courts in the Zentiva lawsuit and similar cases indicate that the current state of fulfilment of the commitments is not satisfactory and does not correspond to the state of affairs with regard to the legal relations in the field of intellectual property protection.

This is also confirmed by the EC “Report on the Protection and Enforcement of Intellectual Property Rights in Third Countries”, published in January 2020. According to the provisions of this report, Ukraine is classified as a priority 2 country (along with India, Indonesia, Russia and Turkey), where a number of systematic violations in the field of IPR protection and enforcement have been identified. The key problems identified by the Commission as systemic in our country include online piracy and transit of counterfeit goods to the EU (food, watches, jewellery, toys, clothing, etc.), including inefficient work of Ukrainian customs and insufficient protection of personal data<sup>1</sup>. In fact, all of these issues are specified as Ukraine’s commitments in the field of intellectual property in the Association Agreement.

### **General recommendations:**

- intensify activities on the development and adoption of laws and regulations to fulfil the commitments and bring the regulatory framework in line with EU standards;
- improve the institutional capacity of executive authorities to ensure the enforcement and protection of intellectual property rights;
- introduce effective mechanisms for enforcing and protecting intellectual property rights, including administrative and judicial procedures for prosecuting persons guilty of infringements of legal intellectual property rights.

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1) [https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158561.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158561.pdf)

## Recommendations

### STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

#### **Commitment 120 / Improving legislation on the protection of copyright and related rights**

- accelerate the development of draft laws in order to bring Ukrainian legislation in line with the EU Directives on the protection of copyright and related rights;
- when developing such draft laws, take into account current trends in the development of copyright and related rights, in particular those related to the use of modern technologies, such as the distribution of copies of works, phonograms, and videograms in electronic form, Internet piracy, etc.

#### **Commitment 121 / Improving the legislation on collective management organisations**

- consider amending the current Law of Ukraine "On Effective Management of the Property Rights of Holders of Copyright and (or) Related Rights" in order to remove the restriction concerning the existence of only one accredited organisation for each area of collective management, as it contradicts the relevant EU Directive, as well as abolish the provision on the impossibility for the right holder to withdraw his/her rights from the management of the accredited organisation;
- accelerate the launch of work of the Commission for the Accreditation of Collective Management Organisations so that such organisation could begin their work.

#### **Commitment 122 / Improving legislation on the protection of computer programmes**

- accelerate the development of draft laws in order to bring Ukrainian legislation in line with the EU Directives on the protection of copyright and related rights, taking into account the current state of development of copyright and related rights; it is necessary to improve the definition of the term "computer programme", establishment of the authorship of computer programmes, distribution of computer programmes in electronic form, Internet piracy, etc.;
- develop and approve a new procedure for registration of rights to computer programmes.

#### **Commitment 123 / Improving the protection of intellectual (industrial) property**

- ensure that the provisions of the new EU acts, namely Regulation (EU) No. 2017/1001 and Directive (EU) No. 2015/2436, as well as the definitions set in the Association Agreement are taken into account when preparing draft laws on amending the legal acts on industrial property rights.



### **Commitment 124 / Improving the protection of recognised geographical indications**

- identify existing levers for introducing amendments to the current Law of Ukraine "On Legal Protection of Geographical Indications" in order to take into account the current contradictions: it is necessary to include provisions on "generic terms", establish a scheme for traditional specialties guaranteed, provide for a possibility of joint application when the geographical indication concerns several states;
- accelerate the development of draft special laws concerning certain types of goods with protected geographical indications;
- develop mechanisms for practical implementation of the current Law.

### **Commitment 125 / Improving the protection of geographical indications and designations of origin for agricultural products and foodstuffs**

- intensify activities on the development of draft special laws on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

### **Commitment 126 / Ensuring the protection of biotechnological inventions**

- accelerate activities related to the development and adoption of the relevant legal framework in the field of biotechnology, taking into account the need to include the term "microbiological process" (established in Art. 2 (1 (b)) of Directive No. 98/44/EC) in Art.1 (1) of the Law of Ukraine "On Protection of Rights to Inventions and Utility Models".

### **Commitment 127 / Introduction of a mechanism for protection of data provided for the purpose of obtaining a marketing authorisation for a medicinal product**

- provide for and ensure the prosecution of officials for disclosure of confidential information.

### **Commitment 128 / Introduction of a data protection mechanism for plant protection products**

- ensure the development and submission to the Verkhovna Rada of Ukraine of a draft law on compliance with safety and efficacy requirements before authorising the placing of plant protection products on the market.

### **Commitment 129 / Improving the protection of topographies of semiconductor products**

- develop and approve normative legal acts on the practical implementation of the Law of Ukraine "On Protection of the Rights to Topographies of Semiconductor Products".

### **Commitment 130 / Harmonisation of the classification of spirit drinks in accordance with EU standards**

- produce and submit to the Verkhovna Rada of Ukraine draft laws amending the Law "On State Regulation of Production and Circulation of Ethyl Alcohol, Cognac and Fruit Alcohol, Alcoholic Beverages, Tobacco Products and Fuel", the Tax Code of Ukraine, the Law "On Grapes and Grape Wine", etc. in order to introduce the classification of alcoholic beverages in accordance with EU standards.

### **Commitment 131 / Improving the mechanism for protecting the designations of origin for spirit drinks**

- intensify activities on the development of draft special laws on the protection of designations of origin for spirit drinks.

### **Commitment 132 / Improving the mechanism of protection of rights to inventions and utility models**

- when preparing draft laws on amendments to the legislation on industrial property rights for second reading, it is necessary to ensure compliance with the provisions of the AA and the TRIPS Agreement concerning the conditions for issuing a second patent.

## **PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

### **Commitment 133 / Improving the mechanism of protection of intellectual property rights**

- intensify activities to prepare for second reading and for adoption as a whole of draft law No. 2255 "On Amendments to Certain Legislative Acts of Ukraine on the Establishment of a National Intellectual Property Authority" of 10.10.2019, which provides for the introduction of a two-tier system of the state management of the field of intellectual property;
- consider the possibility of amending the provisions of the Customs Code regarding the definition of counterfeit goods in accordance with Regulation (EC) No. 608/2013;
- accelerate the competitive selection for the positions of judges of the High Intellectual Property Court, as due to the lack of staff the High Court cannot start its practical activity.

# COMPETITION

## Key conclusions

According to the analysis, the commitments to improve the system of protection of economic competition and to introduce an effective system of monitoring and control of state aid to undertakings have not been fully fulfilled.

Matters that have not been (fully) resolved include:

As regards the "Antitrust and mergers" subsector:

- at the level of practical implementation: the AMCU's attention to ensuring control over the observance by owners of intellectual property rights of the provisions of the legislation on protection of economic competition, including when granting permission for concentration; the practical implementation of the Immunity Procedure is very insignificant.

As regards the "State Aid" subsector:

- at the level of national legislation: the current legislation in the field of state aid does not fully implement the EU acquis, some of the EU acquis have not been implemented;
- at the level of practical implementation: the Law of Ukraine "On State Aid to Undertakings" and, consequently, the powers of the AMCU to monitor and control state aid do not apply to decisions of the President, the Verkhovna Rada of Ukraine and the Cabinet of Ministers; it is impossible to talk about full harmonisation of all state aid programmes and individual state aid measures with the requirements of the legislation.

In general, the implementation of the EU integration commitments with regard to competition can be accelerated by implementing the following measures:

- more advocacy measures need to be held to clarify the provisions of the legislation on the protection of economic competition and on state aid to undertakings. This work should be carried out at all levels: both at the level of public authorities and local governments, and at the level of undertakings – i.e. market participants and recipients of state aid;
- increase the number of trainings and seminars on the application of the legislation on state aid to undertakings, which is a new institution in Ukraine;
- improve the personnel policy to reduce staff turnover and logistical support of the AMCU, which is responsible for protecting economic competition in virtually all areas: prevention, detection and termination of violations of legislation on protection of economic competition, concentration control, monitoring and control of state aid.

## Recomendations

### ANTITRUST AND MERGERS

#### **Commitment 134 / Improving the system of protection of economic competition**

- revise the provisions of the current legislation to increase the thresholds of turnover of the parties to concentration and raise them to the level set by the Merger Regulation, which will allow for more free business development and implementation of new projects;
- intensify the work with the practice of applying the "leniency" programme, in particular through the implementation of advocacy activities for the programme.

### STATE AID

#### **Commitment 135 / Establishment and functioning of the state aid monitoring and control system**

- amend the Law of Ukraine "On State Aid to Undertakings" in order to eliminate the distortions of the basic principles of control over state aid introduced during the implementation of the provisions of the EU acquis;
- develop and adopt the regulations that have not yet been developed, starting from the criteria for assessing the admissibility of state aid and ending with regulations governing the provision of state aid in certain forms;
- pay attention to the training of judges, who, in accordance with the Law of Ukraine "On State Aid to Undertakings", shall deal with appeals against decisions made by the AMCU.

TITLE V.  
ECONOMIC  
AND SECTOR  
COOPERATION

# ENERGY

## Key conclusions:

As part of the implementation of the commitments under updated Annex XVII of the Association Agreement, profound structural reforms have been carried out in the natural gas and electricity markets in terms of aligning their regulation with the requirements of the EU's Third Energy Package, but their final implementation is hampered by political interventions in the mechanism of operation of these markets in order to maintain artificially low energy prices for households. In addition, almost complete harmonisation of legislation with the EU standards in the energy efficiency sector has been achieved, except for approval of the framework law "On Energy Efficiency"; Ukraine has introduced a system of energy labelling of household appliances and ecodesign and has begun creating and introducing energy efficiency improvement systems in buildings.

Despite some developments, the Government has not fulfilled any of the tasks set out in Directive 2009/119/EC implementation plans. The situation regarding prevention of interruptions in transit and transport of oil and oil products (Articles 275 and 276 of the Association Agreement) can be improved only with a comprehensive and streamlined approach by the competent state authorities, which is currently lacking. Encouragement of the use of energy produced from renewable sources, in particular in transport (Directive 2009/28/EC) highlighted the need to improve the monitoring of energy sector reform by civil society, including in view of the attempts of certain business groups to take advantage of Ukraine's need to meet its commitments for their own purposes.

The excessive number of commitments undertaken, lack of resources and lack of continuity in the actions of Ukrainian governments have led to the failure of most of the tasks set out in Directives 98/70/EC and 2016/802/EU, while errors due to the inaccurate translation of Directive 94/63/EC into Ukrainian made it impossible even to set tasks correctly.

Significant progress has been made only in the implementation of the requirements of Directive 94/22/EC, as evidenced by a number of successful electronic tenders for the sale of special permits for oil and gas subsoil use and six new electronic services aimed at ensuring the transparency of extractive activities.

The key requirements set out in the EU directives on the safe operation of nuclear energy had been enshrined in Ukrainian special legislation and regulations before the signing of the Association Agreement and had been implemented in practice. The state system of regulation of nuclear and radiation safety functions effectively, there is a division of safety-related responsibilities of the entities in the field of use of nuclear energy. By fulfilling the commitments under EU directives in this area, Ukraine will improve some procedures and unify approaches to the development of national strategies and programmes. Commitments for which the State Nuclear Regulatory Inspectorate of Ukraine is responsible have been fulfilled or are being fulfilled successfully and are at an advanced stage.

In general, the implementation of European integration commitments in the energy sector can be accelerated by implementing the following measures:

- finding out the reasons for the failure to meet the deadlines for the implementation of Ukraine's international Commitments set out in the implementation plans;
- abandoning the practice of constantly extending the deadlines for carrying out unfulfilled tasks and their duplication in the action plans of the Government and central executive bodies;
- based on policy analysis procedures, update the deadlines for fulfilment of the tasks stipulated in CMU Resolution No. 1106 "On Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part" dated October 2017;
- introducing personal responsibility of the heads of central executive bodies for the performance of the tasks under the implementation plan.

**Recommendations:**

## **ELECTRICITY**

**Commitments 136–141:**

- Eliminate the distortion of the market mechanism in the electricity market, allowing free purchase and sale of electricity between market participants. At the same time, it is necessary to abandon the practice of compulsory purchase of electricity by a state-owned company, as well as a gradually abandon the practice of subsidising final electricity prices for households while completing the reform of the system of providing subsidies to the public;
- Complete the process of corporatisation and certification (with regard to compliance with EU requirements) of the transmission system operator – i.e. the state enterprise NEC UKRENERGO;
- Complete the actual separation of energy supply companies ("oblenergos"), namely ensuring the separation of the functions of supply (competitive activity) and distribution of electricity (monopoly activity);
- Correct the shortcomings of the mechanism for capacity distribution of interstate power grids through auctions, implement projects on restoration and reconstruction of interstate power lines, as well as adapt the current rules, codes and instructions of the UES of Ukraine to those of ENTSO-E, ensuring their practical implementation in the medium term;
- Amend the legislation to regulate the issue of Ukraine's accession to the ITC mechanism or a mechanism of compensation for costs arising from cross-border transmission of electricity, ensuring its further implementation;
- Ensure the collection and publication of a complete set of data related to generation, transport and consumption of electricity within a centralised platform, as well as their publication on the European ENTSO-E Transparency Platform.

## PROSPECTING, EXPLORING FOR AND PRODUCING HYDROCARBONS

### **Commitment 142 / Ensuring proper conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons**

- ensure the development and approval of a regulation on further simplification of the oil and gas industry authorisation system, which should be limited to state environmental appraisal, state valuation of mineral reserves, concluding a contract for exploration works, obtaining approvals for changing the designated use and obtaining land for use, authorisation to connect to the network, and notifications of approval of projects for well drilling and construction of ancillary facilities, experimental and industrial development;
- accelerate the work of the stakeholder CEBs on the new version of the Subsoil Code and ensure support for it in the Verkhovna Rada, this version, inter alia, should define the concepts of "operator functions", "contractual joint venture", "mechanism for transferring special permits", "concept of minimum work programme and minimum work obligation"; "mandatory regulation of the special aspects of production of unconventional hydrocarbons"; settle the issue of disclosure of geological information on strategic resources, in particular oil and gas, within the statutory limits; improve the procedures for sale of subsoil use rights on a competitive basis; determine the main criteria for selecting the winner; codify the provisions of the Laws of Ukraine "On Oil and Gas", "On Coalbed Gas (Methane)", "On the State Service of Geology", and the Mining Law of Ukraine;
- ensure the development and submission to the Verkhovna Rada of Ukraine of a draft law on amendments to the Tax Code of Ukraine aimed at promotion of production in depleted and small fields, new and marginal wells, fields with difficult exploration conditions;
- ensure the development and submission to the Verkhovna Rada of Ukraine of draft amendments to the Law of Ukraine "On Approval of the National Programme for the Development of Mineral Resources of Ukraine until 2030" in order to take into account the current energy needs of the national economy; to bring the domestic classification of reserves and predicted resources of oil, gas condensate and natural gas in line with the European one; introduction of methods for estimating the reserves-to-production ratio (R/P Ratio);
- ensure the development and approval of amendments to existing regulations with regard to: elimination of risks of value added tax deduction during the write-off / liquidation of failed wells; addition of the value of assets lost in the area of the Anti-Terrorist Operation / Joint Forces Operation to reducing the income tax basis; exclusion of costs associated with the performance of licensing agreements and experimental and industrial development projects from the list of engineering services that are subject to income tax deduction in the amount of 15%.



## GAS

### Commitments 143–146:

- adopt a number of amendments to by-laws on the gas market in order to achieve full regulatory compliance with EU requirements in the gas market, in particular, regulation of GDN operators, cross-border cooperation rules, etc.;
- complete the practical reform of the gas market: ensuring full liberalisation of the market of gas supply to household consumers, completion of the harmonisation with EU principles and introduction of the new gas market rules, in particular, further development of exchange trading in natural gas;
- Ensure sustainable and loss-free operation of the newly created GTS operator – GTS Operator of Ukraine (OGTSU) – by resolving the issue of unauthorised gas withdrawals from the GTS by gas supply companies and full implementation of EU network codes in Ukraine, especially as regards implementation of the European balancing rules.

## ENERGY EFFICIENCY

### Commitments 147–155:

- adopt the Law on Energy Efficiency, which will ensure significant progress in addressing gaps in the implementation of Directive 2012/27/EU, as well as the establishment of a national system for planning and implementing energy efficiency policies;
- implement the Law “On Commercial Accounting” as the main step towards the implementation of energy efficiency measures in the residential sector, ensuring 100% coverage of energy consumers by commercial accounting;
- adopt a number of bylaws necessary for the practical implementation of the Law of Ukraine “On Energy Efficiency of Buildings”, aimed at addressing the following issues:
  - introduction of a mandatory inspection mechanism for large heating systems and their inspection;
  - introduction of mandatory energy certification of apartments and houses for sale or long-term lease;
  - establishment of minimum requirements for energy efficiency of buildings on the basis of data calculated for reference buildings, taking into account the requirements for thermal performance of enclosing structures, and energy efficiency of engineering systems (including equipment), in accordance with the economically feasible level and depending on the functional purpose and height of buildings, type of construction (new construction, reconstruction, overhaul);
  - elimination of inconsistencies in determining the energy efficiency class of a building;
  - settlement of the issues related to the status of self-regulatory organisations in the field of energy efficiency.

- update the legislative regulation in the fields of energy audit and energy service mechanism in the public sector;
- ensure proper state support for energy efficiency measures for the public (warm loans programme, Energy Efficiency Fund, etc.);
- proper communication about reforms and available programmes aimed at supporting the public in the field of energy efficiency;
- ensuring introduction of an ecodesign system for certain categories of energy-related products;
- approval of framework legislation in the field of combined heat and power generation (cogeneration).

## **OIL AND PETROLEUM PRODUCTS**

### **Commitment 156 / Establishing and maintaining minimum stocks of crude oil and/or petroleum products**

- ensure development and adoption of a regulation that will stipulate the need to maintain stocks of petroleum products by economic operators in the amount equal to 30-day average domestic consumption to be able to perform commodity interventions in case of crisis (addressing the issue of the right to repurchase certain amounts at market prices);
- create a regulatory framework for limiting the scope of supply of each type of petroleum products from one supplier to 30% of the total scope of imports;
- take an inventory of the storage capacities for of crude oil, petrol, diesel and aviation fuel, available within the structure of the State Reserve Agency of Ukraine and JSC Ukrtransnafta;
- perform a feasibility study for the storage of crude oil in underground storage facilities located, in particular, in Solotvyno, Ivano-Frankivsk region, Hoholeve and Lubny, Poltava region, as well as in the salt caverns of the Dnieper-Donets Rift, Zakarpattia, Prykarpattia and the Southern Bug delta.

### **Commitment 157 / Prevention of interruption of transit and transport of oil and petroleum products**

- resume work on the development of draft regulations aimed at tightening liability for damage to main oil pipelines, and the draft concept of ensuring their safety.

### **Commitment 158 - 159 / Ensuring the proper quality and safety of petrol and diesel fuel and control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations**

- harmonise with European standards and approve the new Rules of Retail Trade in Petroleum Products, specifically, extending them to operations with liquefied petroleum and compressed natural gas, blended fuels and biofuels;

- simplify the authorisation system in the petrol market by abolishing payment ledgers, mandatory second level environmental appraisal, regular renewal of permits for operation of hazardous substance storage equipment, the requirement to install emergency early warning systems, as well as by removing service station pylons from the list of outdoor advertising objects;
- correct errors in the official translation of Directive 94/63/EC and the plan for its implementation;
- designate a new state market supervision agency responsible for compliance with the requirements of the Technical Regulation<sup>2</sup>, specifying its powers, frequency of control measures, mechanism of financing of its inspections;
- ensure development and submission to the Verkhovna Rada of Ukraine of a draft law that will stipulate allocation of at least 0.4% of the total budget revenues from the payment of the excise tax on petroleum products to finance checks of their quality and safety;
- develop and approve a new quality control instruction, granting, inter alia, the legal status to checks using express laboratories;
- develop and approve technical requirements to quality and safety of blended petroleum products with the content of biocomponents over 5%;
- ensure the development and submission to the Verkhovna Rada of Ukraine of draft amendments to the Criminal Code of Ukraine with regard to tightening the liability of legal entities, officials and citizens for the production and sale of petroleum products that do not meet the requirements of the Technical Regulation and/or their illegal production.

## RENEWABLE ENERGY SOURCES (RES)

### Commitment 160 / Stimulation of energy production from renewable sources

- ensure the development and submission to the Verkhovna Rada of Ukraine of draft amendments to the Law of Ukraine "On Alternative Fuels" in order to fulfil the commitment to increase the share of energy from renewable sources to 11% of gross final energy consumption in transport in 2020, primarily by formation of the E85 fuel market (85% second generation bioethanol and 15% light hydrocarbon fractions);
- ensure adequate support and sustainable development of RES in energy, eliminate the imbalances in the electricity market that lead to debts to producers of electricity from RES, as well as introduce a new mechanism for selling "green" electricity through auctions in the medium term;

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2) <http://zakon.rada.gov.ua/go/927-2013-%D0%BF>

## ENERGY INFRASTRUCTURE

### **Commitment 161 / Creating conditions for the implementation of Projects of Energy Community Interest (PECI) and Projects of Mutual Interest of the EU (PMI)**

- establish and implement a mechanism for approval of priority projects of common interest (PECI) in the field of electricity, natural gas and oil within the Energy Community, as well as become part of the EU PMI environment.

## STATISTICS ON NATURAL GAS AND ELECTRICITY PRICES

### **Commitment 162 / Establishing a common framework for the production, transmission, evaluation and dissemination of comparable energy statistics, and bringing natural gas and electricity price statistics in line with EU requirements**

- completion of the system for collection, analysis and dissemination of statistics on retail prices for natural gas and electricity;
- publication of complete data sets in the field of natural gas and electricity price statistics

## NUCLEAR ENERGY

### **Commitments 163 and 165:**

The fulfilment of the tasks under the commitment that the Ministry of Health is charged with, namely, the regulation of radiation protection of humans from exposure to natural radionuclides, is at the stage of critical inconsistency. Since after the reorganisation of the Ministry of Health and abolition of the sanitary service with some of its functions having been transferred to the State Service of Ukraine on Food Safety and Consumer Protection, there is no unit within the Ministry of Health (Centre for Public Health) responsible for radiation protection, including from exposure to natural radionuclides. Thus, there is an organisational vacuum and institutional failure to ensure fulfilment of these tasks.

- It is recommended that the Cabinet of Ministers of Ukraine and the Ministry of Health make organisational changes to the Centre for Public Health and urgently create a unit for radiation protection of humans with appropriate powers.

### **Commitment 167 / Approximation of regulation in the field of nuclear and radiation safety to EU requirements (with regard to the safety of nuclear installations)**

The problem of public administration in the field of nuclear energy has become more acute in recent years. The Ministry of Energy and Coal, and especially the joint Ministry of Ecology and Energy, failed to perform their functions laid down in the laws of Ukraine in this area. Moreover, after the recent reorganisation and subordination of the State Agency of Ukraine on Exclusion Zone Management to the Minister of Eco-Energy there emerged a conflict of interest.

The reorganisation of central executive bodies by merging the Ministry of Ecology and Natural Resources with the Ministry of Energy and Coal Industry led to the automatic subordination of the State Agency of Ukraine on Exclusion Zone Management to the Minister of Ecology and Energy, while Resolution No 879 failed to take into account that this decision violates principles of law, namely, Section 25, Article 5 of the Law of Ukraine "On the Use of Nuclear Energy and Radiation Safety" (separation of public administration in the field of nuclear energy and radioactive waste disposal) and Art. 10 of the Law of Ukraine "On Radioactive Waste Management" (public administration in the field of nuclear energy and public administration in the field of radioactive waste management shall be carried out based on the principle of separation of these areas of activity). That is, public administration in the field of nuclear energy use and public administration in the field of radioactive waste management cannot be carried out by the same ministry.

The Minister's jurisdiction covers the operator of all NPPs of Ukraine – i.e. NNEGC Energoatom, serving as the main contributor to the RW Management Fund. At the same time, the State Agency of Ukraine on Exclusion Zone Management, which is responsible for the management of radwaste, manages the radwaste fund, and is responsible for state policy making in this area.

In addition, for three years the state has not drafted any National Environmental Programme for RAW Management (the previous one expired in 2017) to implement the RAW Management Strategy.

- It is recommended that the Cabinet of Ministers of Ukraine take the following steps:
  - The activities of the State Agency of Ukraine on Exclusion Zone Management should be directed and coordinated directly by the Cabinet of Ministers. We propose to amend Resolution No 879 of the Cabinet of Ministers of Ukraine of October 20, 2019, namely: to add the name "State Agency of Ukraine on Exclusion Zone Management" to para. 1, Part III, and to eliminate it from para. 6, Part III.
  - Improve control over the activities of the State Agency of Ukraine on Exclusion Zone Management and the expenditure by the administration of the Fund for RAW Management and make the State Agency of Ukraine on Exclusion Zone Management perform its direct functions of implementation of the state policy in the field of RAW management.

## CROSS-SECTORAL COMMITMENTS

### Energy regulator

#### **Commitment 169 / Ensuring the independence of the regulatory agency in the energy markets**

- ensure NEURC's real equidistance and independence in the adoption of regulatory decisions, and prevent amendments to legislation that violate this principle.

### Rules of integrity and transparency in the wholesale electricity and gas market

#### **Commitment 170 / Introduction of rules of integrity and transparency in the wholesale electricity and gas market**

- development and approval of amendments to national legislation aimed at implementing the provisions of the REMIT Directive in Ukraine;
- introduction of effective monitoring of the activities of market participants and direct ban on market manipulation and insider trading in wholesale electricity and gas markets

### Restructuring of the coal sector

#### **Commitment 171 / Restructuring the coal sector in order to increase its competitiveness, enhance mine safety and occupational safety and reduce its environmental impact**

- development and approval of an updated strategic document(s) for reforming the coal industry;
- development of a plan for transformation of coal regions to overcome the socio-economic impacts of mine closure.

## TAXATION

### Key conclusions

In general, the structure of the national excise tax meets the requirements of European legislation, especially in terms of the taxation of tobacco products, alcohol and spirit drinks, energy products and electricity. Further steps will be taken to eliminate some individual inconsistencies and to hold ultimate update and synchronisation of legislation.

The structure of the national value added tax generally meets the requirements of European legislation. However, there is a critical inconsistency in establishing the duality of the regulated gold bar market and investment gold taxation (as required by Council Directive No. 2006/112/EC). Thus, the Government of Ukraine together with the National Bank of Ukraine have to (taking into account the implementation period – i.e. within 5 years from the date of entry into force of the AA) prepare a draft of comprehensive amendments to sectoral (regulating the market of precious metals, including investment gold market regulation) and tax legislation (instead of

making transactions involving gold exempt from VAT, which makes it impossible to refund it from the state budget or include in the tax credit, a zero tax rate should be introduced).

Despite Ukraine's significant achievements in the field of fiscal reform and its adaptation to the requirements of EU legislation, improvement of the work of tax authorities, as part of the comprehensive reform of regulatory authorities in Ukraine, is the most difficult and long-lasting modernisation endeavour in the country. Since 2014, almost ten attempts have been made in one form or another to change the appearance of fiscal bodies and reduce corruption in their activities. At the same time, no results have been attained in trying to resolve the issue of liquidation of the tax police and creation of a single law enforcement body to combat economic crime – namely elimination of overlaps in functions concerning the fight against economic crimes of the SSU, the National Police and the Fiscal Service. The latest draft law in this regard (No. 1208-2) on the Bureau of Financial Investigations, adopted by the Verkhovna Rada of Ukraine at first reading, was defeated on January 17, 2020.

## **Recommendations**

### **INDIRECT TAXATION: EXCISE DUTY / TAX**

Commitments 172-176

Some issues related to the approximation of national legislation to the requirements of Council Directives No. 92/83/EEC and No. 2007/74/EC remain unresolved, specifically:

- responsible state bodies (MFU, MEDT, MFA) within the framework of Commitment 173 must immediately develop a clear position of Ukraine on the establishment of reduced excise tax rates on alcoholic beverages for small distilleries and / or breweries or on low-strength beer and wine and exemption from tax of beer and alcoholic beverages produced and consumed by a private individual, provided that no sale is involved, or alcohol which is completely denatured (para. 1481-1484 of the Action Plan, approved by CMU Resolution No. 1106 of 25.10.2017 until 31.10.2019);
- The Government of Ukraine within the framework of Commitment 176 should re-submit to the Verkhovna Rada of Ukraine a revised draft law on amendments to the Customs Code of Ukraine with regard to implementation of the requirements of Section 3 (on quantitative restrictions) of Council Directive 2007/74/EC of 20.12.2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries. The draft must take into account the requirements concerning the inclusion in the list of exempt goods of ethyl alcohol with an alcohol content of 80% or more and cigarillos with restrictions on their weight (and in addition to cigars); bringing wine and beer restrictions in line with the requirements of the EU acquis, as well as establishing rules for the combination of types of alcoholic beverages subject to exemption from taxation; and tax exemption for a certain amount of fuel (in a tank / portable container, but not exceeding 10 litres) imported separately for each vehicle.

In addition, given the radical revision of the EU's tobacco legislation, in particular the basic Council Directive No. 2011/64/EU of 21.06.2011, it is necessary to get ready for the next step of adaptation under Commitments 172 and 174.

## INDIRECT TAXATION: VALUE ADDED TAX

### Commitments 177-178

Despite the fact that the EU-Ukraine Association Council did not set a timetable for the implementation of Thirteenth EU Council Directive No. 86/560/EEC, it is necessary to start drafting a government bill on VAT refund to taxable persons not established (registered) in Ukraine under Commitment 177.

## COOPERATION WITH A VIEW TO THE FURTHER IMPROVEMENT OF ECONOMIC RELATIONS, TRADE, INVESTMENT AND FAIR COMPETITION

### Commitments 179-180

In the framework of the implementation of Commitment 180, it is advisable for the government and parliament to undertake more constructive efforts towards effective implementation and successful completion of a comprehensive reform of tax and customs agencies, in particular:

- in connection with the liquidation of the tax police, develop and submit to the Verkhovna Rada of Ukraine a draft law establishing the legal basis for the organisation and operation of a new central executive body responsible for preventing, detecting, eliminating, investigating and solving criminal offences against the financial interests of the state and/or local self-government, providing an increase in the salaries of its officials and eliminating the overlapping of the relevant functions with other law enforcement agencies;
- consult with the relevant international partners on Ukraine's accession to the procedures for the automatic exchange of financial and tax information according to the International Common Reporting Standard (CRS).

## STATISTICS

### Key conclusions:

The undertaken analysis of the way the Ukrainian party implements the "Statistics" section of the Association Agreement, revealed that the achieved level of transposition of the EU acquis into national legislation (regulatory approximation) is at an early stage or, in some cases, has not started.

### Recommendations

Commitment 181 / Implementation of the principles of the European Statistics Code of Practice and the EU acquis in the field of statistics, as specified in the Statistical Requirements Compendium.

The situation can be improved by intensifying the implementation of the Statistics section of the Association Agreement, as well as a systematic and coordinated approach to the fulfilment of this commitment, primarily by government bodies and the legislative branch.



## **Recommendations for implementation**

### **Cluster 1:**

- Making appropriate amendments (in accordance with Art.7 (1) of Commission Decision (2012/504/EU) of 17 September 2012; Art. 7 (1-4) of Chapter II "Statistical Governance" of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009) to the Law of Ukraine "On State Statistics" and Para. 1 of the Regulation on the State Statistics Service of Ukraine (approved by CMU Resolution No. 481 of 23 September 2014).

### **Cluster 2:**

- Implementation of Art. 13 of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009, introducing the relevant amendments to the Law of Ukraine "On State Statistics", in particular to Art. 15 of this Law.

### **Cluster 3:**

- Amendments to the Law of Ukraine "On State Statistics", in accordance with Art.12 of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009; Quality Assurance Framework of the European Statistical System, ESS QAF, adopted by the European Statistical System Committee; and European Statistical System (ESS) Handbook for Quality and Metadata Reports.

### **Cluster 4**

- Amendments to the Law of Ukraine "On State Statistics", in accordance with Art. 2.3 of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009.

### **Cluster 5:**

- Amendments to the Law of Ukraine "On State Statistics", in accordance with paragraph 5.2 of European Statistics Code of Practice, Para. 5 of Art. 20 of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009.

### **Cluster 6**

- Amendments to the Law of Ukraine "On State Statistics", in accordance with the content of:
  - Part 3, Art.22 of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009,
  - Art. 4 (2), 5 (2) of Commission Regulation (EU) No. 557/2013 of 17 June 2013.
- In the context of Art. 4 (2), 5 (2) of the Commission Regulation (EU) No. 557/2013 of 17 June 2013, develop and adopt regulations (orders of the State Statistics Service of Ukraine) to approve:
  - a standard text of the confidentiality undertaking,
  - a standard text of the individual declaration of confidentiality.

- Develop and approve regulations (orders of the State Statistics Service of Ukraine), which, in pursuance of Art. 244-3, 254, and 255 (as regards violations of the procedure of use of confidential statistical information) of the Code of Ukraine on Administrative Offences, would approve the following integral components of the administrative process:
  - the form of the report on an administrative offence,
  - the form of the decision on the case of an administrative offence,
  - officials authorised to draw up reports on such offences, consider cases and impose administrative penalties.
- In the context of the Method of the Quality Assurance Framework of the European Statistical System, Para. 5.3. (provisions on liability shall be made available to the public), the State Statistics Service should publish information on the existing provisions on liability for breach of statistical confidentiality.

### **Cluster 7:**

- The content of the regulation of the State Statistics Service of Ukraine "Policy of the State Statistics Service of Ukraine in the Field of Interaction with Respondents and Providers of Administrative Data" (approved by Order No. 504 of the State Statistics Committee of Ukraine of 04.12.2012) should be specified to the same extent as the European Statistics Code of Practice and in line with Para. 1-7 of Indicator 5.4. of the Quality Assurance Framework of the European Statistical System.
- Identify and appoint, by adopting an appropriate order, the persons or department(s) that will be in charge of activities related to protection of the confidentiality of statistical information, or establish a new line department in the State Statistics Service of Ukraine.
- In accordance with the content of principle 5 "Statistical confidentiality" of the European Statistics Code of Practice (adopted by the European Statistical System Committee), an order of the Head of the State Statistics Service of Ukraine should be adopted to amend the job description of the State Statistics Service employees with regard to the duty of officials of the State Statistics Service of Ukraine to keep confidentiality concerning data providers (households, enterprises, administrations and other respondents) and concerning the information they provide (instead of the regulation concerning preservation of the personal data of these persons).

### **Cluster 8:**

- Amendments to the Law of Ukraine "On State Statistics", in accordance with Art. 23 of Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009; Commission Regulation (EU) No. 557/2013 of 17 June 2013; and the Quality Assurance Framework of the European Statistical System adopted by the European Statistical System Committee.

# ENVIRONMENTAL PROTECTION

## Key conclusions

In general, the results of the study confirm the conclusion that the efficiency of the practical implementation of the Agreement in the environmental area depends on the success of the relevant sectoral reforms, which essentially means radical transformation of the system of national regulation in such sectors. Currently, the greatest progress in terms of the practical implementation is observed with regard to the matters that did not require changes to the entire sector, such as EIA, SEA, and access to environmental information<sup>3</sup>.

It can also be argued that the areas that require radical change in the management structure, full reboot, financial and investment support have failed to gain traction. This applies to air, waste, industrial pollution and, in part, to water resource management.

Ukraine has adopted an unsystematic approach to the implementation of directives and regulations in various sectors of environmental protection and climate change: some are subject to strict requirements and criteria, the so-called "gilding" of legislation (recently dismissed by EU member states), whereas other legislative initiatives are often devoid of the necessary European approaches. When implementing directives and regulations, the approach based on multiple variants is seldom used, and directives are often simply copied into the national legislation in Ukraine<sup>4</sup>.

Key conclusions and recommendations concerning the most urgent steps to be taken by those in charge in the government and Parliament that will contribute to the goals of transposition and implementation (if any).

## Recommendations

### ENVIRONMENTAL MANAGEMENT AND INTEGRATION OF ENVIRONMENT INTO OTHER POLICY AREAS

#### **Commitment 182 / Introduction of the European Environmental Impact Assessment Mechanism**

- It is necessary to eliminate all inconsistencies with the EU directive in the relevant legislation. In addition, it is necessary to conduct a comprehensive analysis of the effectiveness of the practical implementation of the EIA in Ukraine, as some relevant experience of application has already been accumulated (post ante regulatory impact assessment).

#### **Commitment 183 / Introduction of the European Strategic Environmental Assessment Mechanism (SEA)**

- It is necessary to eliminate all critical inconsistencies with the EU directive in the relevant legislation. In addition, it is necessary to conduct a comprehensive analysis of the effectiveness of the practical implementation of the SEA in Ukraine, as some relevant experience of application has already been accumulated.

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3) The Future of the EU-Ukraine Association Agreement: Environment and Climate. Policy Paper. – Resource & Analysis Centre 'Society and Environment'. – 2020.

4) Ibid.

## **Commitment 184 / Ensuring proper access to environmental information**

- Increase the amount of environmental information available online and in the open data format.

## **AIR QUALITY**

### **Commitment 185 / Ensuring control over emissions of volatile organic compounds (VOCs) in storage facilities and during transportation of petroleum products**

- Accelerate the transposition process.

### **Commitment 187 / Reducing the sulphur content of certain liquid fuels**

- Accelerate the process of adoption of the relevant technical standards and establish an effective quality control system for liquid fuels.

### **Commitment 188 / Establishing requirements for the quality of petrol and diesel fuels**

- Establish an effective quality control system for petrol and diesel fuels and provide practical laboratory control over the quality of fuel placed on the market.

### **Commitment 190 / Monitoring ambient air quality**

- Ensure the functioning of a modern system for monitoring air quality and assessing its quality, in particular as regards complete renewal and expansion of the resource base.

### **Commitment 191 / Improving ambient air quality**

- Ensure the development and implementation of air quality management plans in residential settlements based on the assessment of its quality.

## **WASTE AND RESOURCE MANAGEMENT**

### **Commitment 192 / Implementation of the European principles of waste management**

- Accelerate the process of modernising national legislation in line with the requirements of the Waste Framework Directive, ensuring the adoption of all necessary legislation. Complete the development and adoption of regional waste management plans.

### **Commitment 193 / Ensuring proper household waste management**

- Accelerate the process of modernising national legislation in line with the requirements of the Waste Framework Directive. Develop a national household waste management programme.

### **Commitment 194 / Ensuring proper hazardous waste management**

- Accelerate the process of modernising national legislation in line with the requirements of the Waste Framework Directive.

### **Commitment 195 / Ensuring proper industrial waste management**

- Accelerate the process of modernising national legislation in line with the requirements of the Waste Framework Directive.

### **Commitment 196 / Ensuring proper management of waste from extractive industries**

- Accelerate the process of modernising national legislation in line with the requirements of the relevant directive.

### **Commitment 197 / Ensuring proper construction waste management**

- Accelerate the process of modernising national legislation in line with the requirements of the Waste Framework Directive.

## **WATER QUALITY AND WATER RESOURCE MANAGEMENT, INCLUDING MARINE ENVIRONMENT**

### **Commitment 198 / Introduction of the basin principle of water resources management**

- Continue the practical implementation of basin water resources management, in particular, approve river basin management plans. Consider the issue of abandoning the administrative territorial division of the functions of regional bodies of the State Water Resources Agency.

### **Commitment 199 / Introduction of a mechanism for assessment and management of flood risks from flooding**

- Ensure immediate drafting of flood risk management plans.

### **Commitment 200 / Ensuring protection of the natural environment of the Azov and Black Seas**

- Immediately develop a maritime strategy for the Black and Azov Seas to achieve good environmental status.

### **Commitment 201 / Reduction and prevention of groundwater and surface water pollution by nitrates from agricultural sources**

- Start transposing the Nitrates Directive immediately.

### **Commitment 202 / Introduction of a mechanism for municipal wastewater discharge and treatment**

- Assess the assessment of the condition of urban wastewater discharge and treatment, identify sensitive areas and agglomerations, and develop a national investment programme to implement the requirements for urban wastewater treatment.

### **Commitment 203 / Ensuring the safety and purity of drinking water**

- Eliminate the critical inconsistencies with the requirements for the drinking water quality and ensure control over compliance with them by water supply organizations.

## **INDUSTRIAL POLLUTION AND INDUSTRIAL HAZARDS**

### **Commitment 204 / Introduction of a comprehensive system for prevention and control of pollution from industrial enterprises**

- Introduce a European system of integrated pollution permits based on the EU's best available technologies and methods.
- Develop a realistic financial plan for the implementation of the National Plan for Reduction of Emissions from Large Combustion Plants and ensure adherence to the plan.

### **Commitment 205 / Ensuring control of major-accident hazards involving dangerous substances**

- Complete the adaptation of national legislation to the requirements of the Seveso-III Directive (both at the level of laws and by-laws), in particular, ensure re-submission of the relevant draft law of the Cabinet of Ministers to the Verkhovna Rada.

## **NATURE PROTECTION**

### **Commitment 206 / Creation of special protected areas for the protection of birds, including migratory species**

- Abandon the approach that involves creation of the Emerald Network. Negotiate with the EU on a mechanism for the creation and financing of NATURA 2000 objects in Ukraine.

### **Commitment 207 / Creation of special protected areas for the protection of species and their habitats**

- Abandon the approach that involves creation of the Emerald Network. Negotiate with the EU on a mechanism for the creation and financing of NATURA 2000 objects in Ukraine.

### **Commitment 208 / Introduction of a mechanism for the protection of birds and other species of flora and fauna (hunting, trade, transportation, etc.)**

- Accelerate the process of adapting national legislation, especially in the field of hunting.

### **Commitment 209 / Establishment of a system for monitoring the conservation status of habitats and species of flora and fauna**

- Create a system for monitoring the environmental condition of habitats and species of flora and fauna with the support of the EU.

## CLIMATE CHANGE AND PROTECTION OF THE OZONE LAYER

### **Commitment 210 / Establishment of a greenhouse gas emissions trading system**

- Make a political decision to establish a system of greenhouse gas emissions trading.

### **Commitment 211 / Improving the regulation of the circulation of ozone-depleting substances and fluorinated greenhouse gases**

- Immediately begin preparations for the practical implementation of the requirements of the new law, in particular establishment of a system for monitoring compliance with the requirements for the circulation of ozone-depleting substances and fluorinated greenhouse gases. Ratify the Kigali Amendment to the Montreal Protocol.

## GENETICALLY MODIFIED ORGANISMS

### **Commitment 212 / Improving the biosafety system with regard to the release of genetically modified organisms**

- Accelerate the adaptation of the national legislation in the field of biosafety, in particular with regard to establishing the procedure for the release of GMOs into the environment both for testing and for placing on the market (cultivation), setting the procedure of restriction / prohibition in certain administrative units of GMO release into the environment to place them on the market for the intended purpose of "cultivation", etc. This can be achieved by adopting a new framework law to replace the Law of Ukraine "On the State System of Biosafety in the Creation, Testing, Transportation and Use of Genetically Modified Organisms" or by amending it.

## TRANSPORT

### **Key conclusions**

As part of the adaptation of Ukrainian legislation to EU legislation, draft laws of Ukraine in the field of road, rail and inland waterway transport were developed in order to align Ukrainian legislation in these areas with European Union acquis. However, the Verkhovna Rada of Ukraine failed to adopt basic European integration draft laws due to the low level of governmental cooperation with Parliament and lack of inclusive dialogue with business.

Draft acts on licencing conditions, establishing charges for access to railway infrastructure, recommendations for the development of safety management systems by railway undertakings, and rules of equal access to railway infrastructure are being developed.

## Recommendations

# GENERAL PROVISIONS CONCERNING ALL MODES OF TRANSPORT

### Commitments 213-216

- Adopt an action plan for 2020-2022 to implement the National Transport Strategy of Ukraine 2030;
- Transpose the basic European integration law on the carriage of dangerous goods;
- Review national legislation on the carriage of dangerous goods in accordance with international instruments associated with these matters and Ukraine's commitments;
- Create a national commission for state regulation in the field of transport;
- Adopt a draft law on concessions to stimulate private investment in infrastructure projects.

## ROAD TRANSPORT

### Commitments 218-233

- Adopt the basic European integration law "On Road Transport" in order to align legislation with the *acquis*;
- Submit to the Verkhovna Rada of Ukraine of the IX convocation and adopt draft laws on: access to the road transport market (implementation of Regulation (EU) No. 1071/2009); ensuring the provision of socially important services as regards the carriage of passengers by road (implementation of Regulation (EU) No. 1370/2007); safety of operation of motor vehicles (implementation of Regulation (EC) No. 165/2014, Directives No. 2014/45/EC, 92/6/EEC, 2002/15/EC, 2003/59/EC, and 2006/22/EC);
- Develop and adopt normative legal acts to introduce European requirements for the mandatory testing and inspection of the roadworthiness of vehicles (including private ones), as well as roadside inspections of the roadworthiness of commercial vehicles;
- Enshrine in legislation European requirements for access to the road transport market;
- Improve approaches to road safety management taking into account European experience and legal regulation.

## RAIL TRANSPORT

### Commitments 234-248

- Adopt the basic European integration law "On Rail Transport";
- Introduce a new model of the rail transport market, similar to European railway systems;
- Continue and complete the restructuring of PJSC Ukrzaliznytsia in order to ensure fair access to the transport market and infrastructure;



- Reach an agreement between the Ministry of Infrastructure and Ukrzaliznytsia on the conditions for allowing private locomotives to operate on the railway and launch pilot projects with private locomotives.

## AIR (AVIATION) TRANSPORT

### Commitment 249

- Sign and ratify the Common Aviation Area Agreement between Ukraine and the EU;
- Adopt the Aviation Transport Strategy of Ukraine for the period until 2030.

## MARITIME TRANSPORT

### Commitments 250-263

- Replace mandatory personal transport accident cover with mandatory liability insurance of the transport operator;
- Ensure the implementation of maritime safety standards, in particular develop and adopt a normative legal act of the Ministry of Infrastructure concerning double hull or equivalent design requirements for oil tankers; develop and adopt a draft law amending the Merchant Shipping Code of Ukraine and the Code of Administrative Offences of Ukraine regarding the obligations of the shipowner to maintain the safety management system of the shipping company and vessels;
- Submit to the Cabinet of Ministers of Ukraine draft laws on: requirements for the protection of ships and port facilities; procedure for inspecting the compliance of the protection of ships and port facilities with the requirements of the legislation in the field of security; establishment of liability for violation of the requirements of the legislation on protection of ships and port facilities; sea fishing ports; and settling matters related to the functioning of the coordination centre in the field of maritime safety;
- Introduce a model for the organisation of issuing, control over the availability, and revocation of ship insurance certificates.

## INLAND WATERWAY TRANSPORT

### Commitments 265-270

- Adopt the basic European integration law "On Inland Waterway Transport", which was accepted as a basis on 24.04.2020;
- Work with the EU to include inland waterways in the TEN-T;
- Ensure development of inland water transport, which should be supported by the adoption of laws and regulations in this area.

## COMBINED TRANSPORT

### Commitment 271

- Adopt a basic European integration law on multimodal transport.

# ACTIVITY OF COMPANIES

## Key conclusions:

Over the period of 2014–2019, Ukraine has fulfilled the lion's share of the commitments contained in Annexes XXXIV to XXXVI of the Association Agreement. The most successful subsector is that of Corporate Governance, where all the transposition tasks (which are of recommendatory nature) have been fulfilled at the perfect level. At the same time, more and more companies are implementing these international standards voluntarily with the support of both the NSSMC and international assistance projects, in order to improve their image in foreign markets and expand opportunities to attract investment.

The sub-sector of Accounting and Auditing needs some refinement in terms of implementation, in particular, regarding standards and guidelines concerning the preparation of reports on payments made to government by certain categories of public-interest entities, as well as improving the performance of the established audit oversight bodies.

Within the subsector of Establishment and Activity of Companies the main legal framework has changed – i.e. Directive No. 2017/1132/EU has been adopted, bringing together most directives in this subsector, which in turn led to review by responsible authorities of the plans to implement the updated Directive No. 2017/1132/EU. The developed comprehensive draft law "On Joint Stock Companies" (No. 2493) contains both positive aspects in terms of the transposition of Directive No. 2017/1132/EU and significant shortcomings, and therefore needs to be improved before adoption.

In general, from the point of view of the sector, in order to achieve better progress in implementation of commitments are required:

- update Annexes XXXIV and XXXV to Chapter 13 "Company law, corporate governance, accounting and auditing" in line with the new EU standards in the area;
- update, on the basis of policy analysis procedures, the status and relevance of the tasks set by Resolution No. 1106 of the Cabinet of Ministers of Ukraine "On Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part" dated October 25, 2017.

## Recommendations

### ESTABLISHMENT AND ACTIVITY OF COMPANIES

#### **Commitment 272 / Approximation of legislation on protection of the rights of shareholders, creditors and other stakeholders in line with EU rules**

- finalise and adopt Draft Law "On Joint Stock Companies" taking into account the provisions of Directive No. 2017/1132 on certain aspects relating to company law;
- develop a mechanism for disclosing information by branches of third country companies.

## ACCOUNTING AND AUDITING

### Commitments 273-275

- accelerate the adoption of the order of the Ministry of Finance of Ukraine "On Approval of Guidelines for Drawing up Reports on Payments Made to Government."

## CORPORATE GOVERNANCE

### Commitments 276-277

- continue the NSSMC's activities to monitor and timely update the Principles on Corporate Governance according to international standards and inform participants of the securities market and stock markets about these principles.

## AUDIO-VISUAL POLICY

### Key conclusions:

The current legislation is outdated and, although it contains certain provisions of the Convention and the Directive, but in terms of its structure and logic, and especially efficiency, it resembles a patchwork quilt rather than an integral and effective mechanism. That is why the adoption of a new law is key for the entire media sphere, and the fact that the commitment is set forth in the Agreement is a very timely and necessary incentive for the legislator to find a compromise between the various players and interests, update the legislation based on the logic of the early 1990s, and step up regulation in this area, which is still lacking. Moreover, the adoption of the law has an important advantage – i.e. full participation in the Creative Europe programme, which should serve as an incentive for the production of audiovisual products by Ukrainian companies. At the same time, by delaying the process Ukraine helps preserve the problems that have accumulated over the past decades, as well as deepen unfair competition between similar market participants who use different content delivery technologies.

### Recommendations:

## CROSS-BORDER BROADCASTING

## AUDIOVISUAL MEDIA SERVICES

### Commitments 278-279

- The Verkhovna Rada of Ukraine, given the difficult economic situation and in order to stimulate the development of national producers of audiovisual content, should adopt a sensible approach to the consideration of Draft Law No. 2693-д and ensure its adoption in 2020, avoiding excessive politicisation of the draft law in parliament.

- When preparing the draft law on the state budget for 2021, the Government should continue to provide the National Council of Ukraine for Television and Radio Broadcasting with a sufficient level of funding to exercise the powers set forth in the future law on media, including both appropriate support for software and hardware solutions and increasing the number of staff responsible for monitoring and working with the media.
- The National Council should promote, including in partnership with the Council of Europe office and other media projects, widespread awareness of Ukraine's commitments in the audiovisual sector and their implementation at the national level, as well as ensure compliance with the Convention on Transfrontier Broadcasting.

## AGRICULTURE AND RURAL DEVELOPMENT

### Recommendations

#### QUALITY POLICY

##### Commitments 280-283

- Adopt the Law of Ukraine "On the Specific Features of the Legal Protection of Geographical Indications, Rights to Guaranteed Traditional Features and the Use of Optional Quality Schemes for Agricultural Products and Foodstuffs".
- Adopt the Law of Ukraine "On Amendments to the Law of Ukraine 'On Grapes and Grape Wine'" in order to establish European rules for the production of wine and other grape products and requirements for them.
- Ensure adoption of the necessary legal and regulatory acts aimed at enforcing the above-mentioned draft laws and fulfilling the commitments in this subsector.
- Ensure an adequate level of control over the protection of rights and geographical indications and designations of origin for agricultural products and foodstuffs.

#### GENETICALLY MODIFIED CROPS

##### **Commitment 284 / Implementation of the rules and principles of growing genetically modified crops to ensure the safe co-existence of genetically modified crops with conventional and organic farming**

- Discuss with experts the need for adoption, develop and approve recommendations for the growing of genetically modified crops in order to ensure the safe coexistence of genetically modified crops with conventional and organic farming.

## ORGANIC FARMING

### **Commitment Group 285 / Alignment of the rules and principles of production and circulation of organic products and raw materials of animal origin/aquaculture with the EU requirements**

- For the full-fledged functioning of the organic market and the completion of the process of legislative approximation, it is necessary to develop and adopt a number of regulatory and legal acts aimed at enforcing the law, in particular on:
  - the procedure for certification of organic products and / or circulation of organic products;
  - the procedure and frequency of reporting on certification activities;
  - granting permission to use the state logo for organic products as an object of intellectual property rights;
  - approval of the Procedure for Maintaining the List of Foreign Certification Bodies;
  - forms of the agreement for use of the logo for organic products;
  - the procedure for reporting on certification activities;
  - a list of substances (ingredients, components) that are allowed for use in organic production and which can be used in maximum permissible quantities;
  - approval of the Procedure for Reviewing Appeals against Decisions of Certification Bodies;
  - approval of the Procedure for Reporting concerning Certificates Issued by Certification Bodies;
  - approval of requirements for material and technical resources and other infrastructure facilities;
  - approval of the Procedure for Submission of Consolidated Materials on the Amounts of Organic Products Put into Circulation by Operators and the Frequency of their Declaration.
- Dissemination through the web resources of the Ministry of Economic Development and through other governmental and specialized sources of guidelines for the application of legislation in the field of organic production, circulation and labelling of organic products and other information to inform the target audience about the rules and benefits of organic production and consumers about the benefits of organic products.

## BIODIVERSITY

### **Commitment 286 / Creating preconditions for the functioning of the European rules regulating the handling of genetic resources of plants, microorganisms and animals that are used or can be used in agriculture.**

- Start discussing with European colleagues and the national expert community Ukraine's participation in the programme on the conservation, characterisation, collection and utilisation of genetic resources in agriculture, the system of informing NGOs and other stakeholders about the programme on the conservation, characterisation, collection and utilisation of genetic resources in agriculture, establishing an effective mechanism for the exchange of information and coordination between Ukraine and the EU Member States on the conservation, characterisation, collection and utilisation of genetic resources in agriculture.

## MARKETING STANDARDS FOR PLANTS, SEEDS OF PLANTS, PRODUCTS DERIVED FROM PLANTS, FRUITS AND VEGETABLES

### **Commitment Group 287-302**

- Regarding the approximation of legislation in this subsector, measures should be taken to complete the enactment of the relevant orders concerning the European approaches to market regulation of coffee and chicory extracts, juices, jellies and marmalades, since the relevant draft orders, including the draft order "On Approval of the Requirements for Coffee and Chicory Extracts", have not been put into effect for almost a year now for various reasons.
- The practical implementation of Ukraine's new regulations harmonised with the EU directives in the field of seed production is complicated due to the insufficient readiness of the competent authorities for the control of production and certification of seeds to conduct the necessary tests, including first of all the lab-based determining of the level of viral infection.
- In order to fully implement the EU regulations on seed potatoes in Ukraine, it is necessary to carry out a number of systemic reforms to unify the seed certification scheme with the European quality control procedure, namely:
  - Establishment of accredited diagnostic laboratories to test the direct progeny of different classes of seed potatoes/other seeds for latent viral infection.
  - Expansion of the seed certification procedure to be introduced by Ukraine in the framework of harmonisation of domestic legislation with EU quality directives.
  - Organisation of training and education of specialised personnel – i.e. certification auditors and laboratory staff.
- Due to the excessive number of measures in the subsector, it is necessary to raise the issue of reviewing and merging/updating measures in order to make the approximation of legislation more effective.

- The Ministry of Economic Development should intensify the process of involving national and international experts of ITA projects in the work on legislative approximation, creating an effective platform for cooperation of all stakeholders.

## MARKETING STANDARDS FOR LIVE ANIMALS AND ANIMAL PRODUCTS

### Commitments 303-308

- Settle the issues raised by the European Party regarding the introduction by Ukraine of extra requirements concerning amino acids in honey in addition to those established by Council Directive 2001/110/EC (concerning prolines) with a view to final harmonisation and enactment of the harmonised standards.
- Complete the process of approximation of the legislation on detailed standards of the marketing of eggs, introduction of detailed marketing standards for eggs for hatching and farmyard poultry chicks, as well as development and implementation of detailed standards of the marketing of poultry meat in accordance with EU law.
- In view of the fact that the number of activities in the subsector is excessive, raise the issue of reviewing and merging / updating the measures in order to make the work on legislative approximation effective.
- Intensify the process of involving national and international experts of ITA projects in the work on legislative approximation.

## CONSUMER PROTECTION

### Key conclusions

All in all, the Consumer Protection Sector of the AA includes 10 subsectors with 19 commitments (taking into account the proposed combining of several commitments regarding contracts for travel services into one compared to the Government Action Plan for the implementation of the AA). It should be noted that a number of provisions of Ukrainian legislation on consumer protection partially had contained the provisions equivalent to those of the relevant EU acquis before the signing of the AA, hence legislation had to be refined rather than developed from scratch. However, in many cases such partial compliance was perceived by the relevant state bodies as full and was not taken into account in the implementation of the AA, in particular, for example, when preparing amendments to the Law "On Consumer Protection" and other acts on consumer protection.

In some areas of consumer protection (in particular tourism), the adaptation of legislation has not yet begun, although the Law "On Tourism" is outdated and needs immediate updating.

The vast majority of commitments set out in the Government Action Plan for the implementation of the AA are worded in a way that implies that they must be created rather than improved, which shifts the focus in assessing their implementation. Also, some of the commitments are formulated as tasks, which narrows their content.

Summing up the overall assessment of the implementation of the commitments within the sector, it should be noted that the progress of their fulfilment is partial: of the 19 commitments undertaken by Ukraine, 7 commitments have been fulfilled in full, 4 are at various stages of implementation, and 8 are critically inconsistent. The commitments within the category of critical inconsistency fall into 3 groups:

- 1) provisions are available but need improvement;
- 2) some work has been done but it does not ensure full transposition of EU provisions;
- 3) there are no relevant provisions in Ukrainian legislation, no comprehensive draft laws have been developed (e.g. provisions on timeshare).

Given the fact that the deadlines for most commitments expire in 2020, work on regulatory approximation and actual implementation within the sector should be accelerated. Progress can be expected due to the adoption of the Concept of State Policy in the Field of Consumer Protection and approval by the Cabinet of Ministers of the Action Plan for the implementation of the Concept of State Policy in the Field of Consumer Protection until 2020<sup>5</sup>, provided that the Action Plan is extended for subsequent years.

In general, from the point of view of the sector, in order to achieve better progress in implementation commitments in the consumer protection sector need to:

- It is necessary to update the Government Action Plan for the implementation of the AA with regard to a clear definition of the obligations and tasks. This will help to focus implementation efforts on the matters that need to be refined and will allow for an effective assessment of the progress made;
- Carry out regular monitoring of the European legislation on consumer protection in order to timely detect amendments and updates to European law that affect Ukraine's commitments and change the requirements for various aspects of consumer protection;
- In cases where the risks of violation of the deadlines for the implementation of the AA are obvious, develop detailed plans of so-called corrective actions to accelerate implementation.

## Recommendations

### PRODUCT SAFETY

- Develop and launch the state information system of market surveillance, ensure involvement of all interested government agencies;
- Gain access to the RAPEX system by analysing the causes of the delay and eliminating them;
- Ensure full legal and practical implementation of the EU requirements for the safety of lighters and placement on the market only of child-resistant lighters, as well as requirements for manufacturers (distributors) in relation to the state control over compliance and market surveillance.

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5) <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-planu-zahodiv-z-realizaciyi-koncepciyi-derzhavnoyi-politiki-u-sferi-zahistu-prav-spozivachiv-na-period-do-2020-roku>



## MARKETING

- Amend the relevant legislative acts of Ukraine (Law "On Consumer Protection", Law "On Advertising") to introduce requirements concerning the indication of unit prices in advertising;
- Ensure transposition into national law of a number of additional rules to protect consumers from unfair business practices, in particular, with regard to some important terms and their definitions, provisions on misleading and aggressive business practices, using undue influence, and approach to establishing a list of unfair business practices in order to better protect the most vulnerable groups of consumers;
- Establish specific sanctions for the use of unfair business practices.

## CONTRACT LAW

- Align the relevant terms and definitions;
- Develop and include in the Law "On Consumer Protection" provisions that correspond to the EU provisions on the consequences and possible claims of the consumer in the case of purchase of goods with defects (significant defects); the moment when the seller becomes liable for lack of conformity; provisions on lack of conformity resulting from incorrect installation and specific features of the distribution of rights and responsibilities between the seller and the consumer in cases when the use of goods requires installation; provisions on the minimum warranty period during which the seller is responsible for non-conformity, as well as on the obligation of the consumer to notify the seller of the lack of conformity.

## UNFAIR CONTRACT TERMS

- Ensure proper protection of consumer interests when concluding contracts based on the provisions of the new Directive No. 2011/83/EC on consumer rights rather than earlier EU acquis that are no longer effective;
- Develop and introduce amendments to the Law on Tourism (or develop a new law) and enforce the rights of consumers with regard to information provision and responsibility of tour operators based on the new Directive No. 2015/2302/EU on package travel and linked travel arrangements and services rather than earlier EU acquis that are no longer effective;
- Create a legal framework and introduce a mechanism for timeshare (divided use of movable and immovable property as accommodation).

## ENFORCEMENT SUBSECTOR

- Ensure the protection of collective interests of consumers by setting requirements concerning the qualification criteria for authorised consumer protection entities (including both state bodies and consumer associations), taking into account cases of cross-border infringement of consumer rights, and mandatory attempts at pre-trial settlement. This will ensure the full implementation of Directive No. 2009/22/EC on injunctions for the protection of consumers' interests on injunctions rather than outdated EU acquis.

## CONSUMER PROTECTION COOPERATION

- Fast-track the work on establishing cooperation between the State Service of Ukraine on Food Safety and Consumer Protection as the Ukrainian authorised body for consumer protection and the relevant EU authorised bodies, including in matters relating to the exchange of information and coordination of actions, especially in cases of cross-border infringements of consumer law.

## SOCIAL POLICY

### Key conclusions:

Annex XL of the Association Agreement diversified the time frame of the approximation of legislation to EU acquis. By the end of 2019, Ukraine was to implement all thirteen directives of the subsectors "Labour Legislation" and "Anti-Discrimination and Gender Equality", as well as five directives of the subsector "Health and Safety at Work" (concerning the other directives within the subsector, the approximation period is still ongoing). The commitments have partially been fulfilled. Positive facts include the early fulfilment of commitments under certain directives on safety and health at work (provision of personal protective equipment, occupational safety on construction sites, and when working with display screen equipment). The government has also planned and implemented tasks and activities that do not aim at approximating legislation to the directives under Annex XL but contribute to achieving the objectives of Ukraine-EU cooperation under Chapter 21 of Title V (such as access to social services).

The reasons that have affected the fulfilment of the commitments within the Social Policy sector include some mistakes made at the initial stages of planning the state policy on European integration – i.e. in the formation of tasks and measures in the Government Action Plan for the implementation of the Association Agreement and their consistency with Ukraine's efforts to approximate legislation to EU acquis. Therefore, it is advisable to pay more attention to this stage.

### Recommendations:

## SOCIAL POLICY

1. Proposals for reviewing and updating Annex XL to Chapter 21 of Title V of the Association Agreement:

- set a time frame for the implementation of Directive No 2003/88/EC of 04.11.2003 concerning certain aspects of the organisation of working time and Directive No. 2006/54/EC of 05.07.2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), as specified in Annex XL;
- remove invalid directives from Annex XL (specifically Directives No 96/34/EC, No 89/655/EEC, 2001/45/EC, No 83/477/EEC, No 91/382/EEC, No 2003/18/EC, No 2004/40/EC) and replace them with existing ones (in particular Directives No 2010/18/EU, No 2009/104/EC, No 2009/148/EC, No 2013/35/EU), consider the possibility of including the directives that replace the current directives and come into force in the near future (including directives No 2019/1152 and No 2019/1158);

- consider expanding the scope of Annex XL to include the EU acquis on social security and social protection.

2. Proposals for revision and updating of the part on "Social Policy and Labour Relations" of the Government Action Plan for the Implementation of the Association Agreement (25.10.2017):

- use a single approach to setting tasks/measures for the implementation of the directives that, although specified in Annex XL, have expired (as in some cases tasks/measures are planned in relation to current directives (see para. 1331-1335), and in others in respect of invalid ones (see para. 1349, 1350)). The proposal is to include tasks/measures for the implementation of current directives;
- consider the possibility of including tasks/measures aimed at taking into account the updated EU standards, which have been adopted and will come into force in the near future, as further it will be necessary to approximate national legislation all over again;
- develop tasks/measures to cover all directives of Annex XL, in particular to specify tasks and measures for implementation of Directive No 2006/25/EC of 05.04.2006;
- avoid overlapping of tasks/activities (see paragraphs 1384 and 1846 on medical treatment on board ships), which will help prevent inconsistencies both in the designation of CEBs responsible for their implementation and non-compliance with deadlines;
- when setting tasks/measures, strengthen communication between the CMU and the ministries/CEBs responsible for their further implementation, and avoid including the tasks that are already regulated by current legislation. In particular, the Ministry of Social Policy reports about the implementation of some tasks of the Government Plan (paragraphs 1320, 1321, 1324, 1327, 1328, 1329, 1333, 1334, 1335, 1340, 1343) due to the fact that the matter is already regulated by national law (see reports of the Ministry of Social Policy on the implementation of the Action Plan);
- review tasks/measures in connection with the redistribution of functionalities in the field of labour between various ministries, in particular the Ministry of Social Policy of Ukraine and the Ministry of Economic Development, Trade and Agriculture;
- for setting tasks and measures, continue to use mechanisms that establish and manifest the compliance of the current legislation with the EU acquis. In-depth studies within EU and ILO technical assistance project play an important role;
- setting tasks/measures that cover the entire cycle of state policies, including social and labour policy. Currently, the measures mainly focus on the stages of planning, modelling and decision-making (of laws and regulations), there are individual measures to implement the latter and there are no measures to monitor and evaluate decisions and their implementation.

## LABOUR LAW

### Commitments 324 - 330

1. Proposals concerning the type of legal act that should be adopted to approximate labour law:

- there are two possible approximation scenarios: by adopting a new Labour Code of Ukraine or by making numerous amendments to the current Labour Code of Ukraine. Both involve some pros and cons associated with implementation – from inconsistency and collision of numerous amendments to the long-term inability of stakeholders in Ukraine to adopt a new codified act in the field of labour;
- adoption of a new Labour Code of Ukraine should become a priority in reforming labour legislation in general and bringing it closer to EU acquis. By adopting a new codified act, Ukraine will be immediately able to comprehensively and coherently cover the directives not only in the Labour Law subsector but also in those of Anti-Discrimination and Gender Equality and Safety and Health at Work.

2. Proposals regarding the fulfilment of certain commitments in relation to:

- obliging employers to inform employees in writing about the terms of their employment contract or employment relationship – make it mandatory to conclude an employment contract in writing as a separate document, specify its content and provide all information required by the directive; provide for the requirements to amend employment contracts in writing only;
- introduction of a mechanism for concluding fixed-term employment contracts and protection of employees working under such contracts – identify cases when concluding fixed-term employment contracts is admissible, establish clear provisions on prohibition/inadmissibility of discrimination in connection with fixed-term employment contracts, and requirements for informing employees about the availability of indefinite-period vacancies;
- specifying the conditions of part-time employment and ensuring the protection of part-time workers – establish a prohibition of discrimination against part-time workers, transition from/to full-time employment or vice versa, identify conditions/cases that will not be considered discrimination, voluntary part-time employment, and promotion;
- ensuring the safety and health of fixed-term or temporary workers – establish a ban on temporary and fixed-term work involving increased danger and risks to human health and life, identify specifics of the medical examination at the end of the employment contract, specify the distribution responsibilities for creating safe and healthy working conditions and other occupational safety matters between temporary employment agencies and employers who actually use the work of temporary workers;
- introduction of a collective redundancy mechanism – bring the concept of "collective dismissal", the time of consultations, the definition of the types of information to be provided, and the procedure for notifying the competent authority in line with the requirements of the Directive;

- introduction of a mechanism for the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses – provide for extension of the employment contract not only in case of change of subordination of the undertaking, institution, or organisation, change of owner, reorganisation of the latter (merger, acquisition, division, separation, transformation) but also in the event of transfers of property into operations management, economic control, lease or another legal regime of property; ensure representation of workers' interests in the transfers of undertakings, businesses or parts of undertakings or businesses; bring the term of extension of the collective agreement in case of change of the owner of the enterprise, and also in the event of its reorganisation (merger, accession, division, separation, transformation) in line with the Directive;
- establishment of general requirements for information and consultation between the employer and representatives of workers in the field of labour – establish requirements for information and consultation between the employer and trade unions, provide for the right to information and consultation for workers' representatives in case of absence at the enterprise of a trade union organisation; and set fines for violations in matters of information and consultation as independent forms of social dialogue.

## ANTI-DISCRIMINATION AND GENDER EQUALITY

### Commitments 331 - 336

1. Proposals concerning legal approximation of legislation on equality and prevention/elimination of discrimination:

- the key role in defining the concepts, principles, general mechanisms of ensuring and protecting human rights to equal treatment and non-discrimination should be within the competence of separate/independent laws adopted in Ukraine to prevent and eliminate discrimination regardless of the area where it occurs. Specific features should be established in the subject-specific legislation, avoiding overlapping of the relevant provisions with those of the general anti-discrimination laws. In the field of labour, this subject-specific law should be set forth by the new Labour Code of Ukraine, whereas in the area of social security it should be included in laws focusing on social insurance, etc.

2. Proposals concerning improving the mechanisms of approximation of legislation to the requirements of anti-discrimination directives:

- the anti-discrimination directives set requirements not only for non-inclusion of discriminatory provisions at the stage of law-making but also for revision of current legislation, auditing of the latter and its abolition in case of non-compliance with the principle of equality and non-discrimination. A similar approach has been introduced in Ukraine, gender and legal expert examination is conducted both for draft laws and for current legislation. With regard to the latter, such audit should be conducted systematically and regularly;

- review/evaluation/examination of the current legislation of Ukraine should be carried out not only with regard to the presence of direct but also of hidden discrimination, finding provisions that hinder or pose barriers to equal opportunities in the fields of labour law and social security. This, *inter alia*, includes establishment of special provisions for women workers that are not associated with the protection of their or the child's life and health but rather with the social fact of the worker's pregnancy, giving birth or breastfeeding. Special attention should be paid to the provisions of legislation that establish different criteria for age, employment term, etc. in the context of exercising the right to social security by women and men;
- concerning the introduction of the principle of equal treatment in access to the labour market, goods and services regardless of racial or ethnic origin, equal treatment in employment regardless of religion or belief, disability, age or sexual orientation – approximate general anti-discrimination legislation with regard to terms, forms/types of discrimination, positive action, legal responsibility, etc.; in special legislation (in particular in the code) it is necessary to establish a prohibition of discrimination, to specify cases of positive action, and to make transposition-related changes to ensure equal access of persons with disabilities to the labour market, in particular a mechanism of employers' compliance with the employment standards for this category of persons;
- concerning the introduction of equal opportunities for parents/guardians in the labour market and the reconciliation of professional and family life – approximate the legislation on equal rights of both parents to parental leave, the use of the non-transferable part of this leave, as well as flexible working conditions for both parents. Consider approximating this matter to new Directive No 2019/1158, which sets forth a wider range of obligations and greater requirements;
- concerning ensuring the safety and health of pregnant workers, workers who have recently given birth or are breastfeeding – establish a list of occupational risks that make it impossible to use the work of this category of workers; provision of time off, without loss of pay, in order to attend ante-natal examinations; review legislation on direct or hidden discrimination, barriers to exercising the right to work by such women in practice (for example, prohibition to involve such women in work at night, going on business trips regardless of their health conditions, specifics of dismissal).

## HEALTH AND SAFETY AT WORK

### Commitments 337 - 358

1. Proposals for the formation of a subsystem of the legislation of Ukraine on safety and health at work taking into account the provisions of the directives of Annex XL:
  - give priority to the development and adoption of a framework law on safety and health at work. This priority can be achieved through either adoption of a new law or amending the Law of Ukraine "On Labour Protection";
  - prioritise the development and adoption of by-laws aimed at approximating legislation in the field of safety and health at work in accordance with the directives of Annex XL;

- systematise the subsystem of the legislation of Ukraine on the safety and health of workers at work in order to update and simplify it.

This subsector is special due to the fact that the system-forming and key role is played by the framework law that serves as the basis for further consideration of its requirements in other laws governing certain matters of labour protection and development of bylaws. Therefore, when adopted, this law will require establishing laws to be amended or repealed and further identifying the bylaws that need to be amended, repealed or approved.

In addition, the vast majority of occupational safety and health directives need to be implemented in Ukraine at the level of bylaws. In order to timely fulfil the commitments undertaken, it is necessary to complete the adoption of the acts for which the transposition period has already expired and to intensify work on the ones for which the transposition period is not over yet.

One of the problems of national legal regulation is the fact that it has accumulated a significant amount of regulations on safety and health at work. This problem remains relevant, as the practice of adopting new/additional bylaws to fulfil the commitments under the Association Agreement additionally increases the amount of legislative material.

2. Proposals concerning the fulfilment of certain commitments that are overdue according to Annex XL to the Association Agreement with regard to:

- improving the mechanism of occupational safety and health of workers in Ukraine – enshrine in legislation a risk-oriented approach to the functioning of the occupational safety management system and creation of safe and healthy working conditions. To do this, it is necessary to update the current Law of Ukraine "On Labour Protection" or adopt a new law instead. In this context, the usual overlapping/rewriting of the provisions of Directive 89/391/EC should be avoided, instead it is necessary to use its requirements as a basis to introduce an updated system taking into account national interests and features, including those of legal regulation;
- updating the safety and health requirements for the workplace – adopt the necessary legislation implementing the provisions of Directive 89/654/EEC, taking into consideration the fact that its requirements may be taken into account when developing a national system, choosing forms and methods of ensuring healthy and safe working conditions in the workplace;
- updating the requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling – adopt the necessary legal act implementing the provisions of Directive No 92/91/EEC, eliminating inconsistencies as to the need to adopt a new legal act or to amend the current one.

# PUBLIC HEALTH

## Key conclusions:

After the signing of the Association Agreement, Ukraine began to implement large-scale reforms in the field of health care and public health. These areas were virtually untouched since the collapse of the Soviet Union and did not meet the modern requirements of Ukrainian society and the standards of functioning of these areas in the EU. However, these reforms are comprehensive, complex and require high institutional capacity. Therefore, despite the implementation of many tasks and activities, in general none of the commitments in the public health sector set out in Chapter 22 of the Association Agreement have been fully implemented and almost all commitments are at an early stage of implementation. The only exception is the reform of health care financing, which came to be a priority for the Government and is currently at the perfect stage of implementation.

There are several obstacles to the fulfilment of the commitments, specifically:

- Frequent change of the teams of the Ministry of Health, i.e. the line ministry for the fulfilment of these commitments. Since 2014, six ministers have been rotated and all of them made adjustments to or interruptions in the implementation of reforms;
- Lack of political will among the leadership of the state to complete the ongoing reforms of the health care and public health systems. Although the course of reforms remains unchanged, political will could significantly accelerate and improve their implementation;
- Financial challenges for the introduction of an effective public health system and the implementation of programmes for early detection of cancer, programmes to reduce the burden of non-communicable diseases, etc.

Overcoming these and other challenges for the implementation of the Association Agreement in the field of public health will allow Ukraine to achieve the goals of sustainable development and achieve its full economic potential.

In terms of individual subsectors, the following key conclusions can be identified:

### **Strengthening the health care system of Ukraine and its potential**

Over the past 5 years, significant progress has been made in reforming the health care system of Ukraine, which primarily concerns the change of the system of financing primary health care, as well as the launch of the reform of specialised health care financing. In addition, significant changes have taken place in the pharmaceutical procurement system, the launch of the reform of medical education, and public health. At the same time, the reform of health care systems is a long process that requires a systemic and lasting approach, these reforms are only the beginning of changes that can yield results only if they are further implemented.

In early 2020, the country's political leadership started speaking of the need to review the health care reform. The issue became especially relevant after the launch of the reform of specialised health care financing and the beginning of the coronavirus pandemic. At the same time, the international community insists on continuing the ongoing reforms, in particular, the IMF included this condition in the new IMF-Ukraine Memorandum of Economic and Financial Policies signed in early June 2020.



## **Communicable diseases**

Over the past 5 years, the subsector of "Communicable diseases" in Ukraine underwent some changes, but the changes are not comprehensive. Although an institutional framework for further development of a national communicable disease control system has been established at the central level, no clear structure has been established at the regional level. There is no single strategic framework for reforming the communicable disease control system, and legislation remains outdated.

Regarding Decision No 2018/945 on the communicable diseases and related special health issues to be covered by epidemiological surveillance as well as relevant case definitions (and previous EU acquis), it has been transposed into Ukrainian legislation, but the latter needs to be refined and some changes have to be made.

## **Cancer**

Over the past 5 years, there has been some progress in the early diagnosis of cancer, but most of the recommendations set out in EU acquis have not been implemented.

## **Tobacco**

Although Ukrainian legislation is currently rather progressive concerning tobacco control, it does not take into account the important recent legislative changes that took place in the EU in 2014.

## **Alcohol**

The EU recommendations to reduce alcohol consumption among young people have not been implemented.

## **Mental health – drug addiction**

Within the subsector, certain institutional preconditions for further development have been created, but no comprehensive implementation of the recommendations set forth in the EU legislation has taken place.

## **Transplantation of Tissues and Cells**

The legislation on transplantation has been partially updated and steps have been taken to launch transplant surgery in Ukraine (currently in test mode). An important aspect was the expansion of transplant service providers – admission of medical institutions to the field has been simplified. Under the commitments undertaken by Ukraine, the following has been done:

- a central body has been assigned to coordinate the sphere and bear responsibility for the quality and safety of tissue and cell transplantation to humans (Ministry of Health of Ukraine);
- amendments have been made to the Criminal Code to increase the responsibility in the field of transplantation.

Such changes are the first steps, and the full-fledged functioning of the area requires adoption of comprehensive decisions and appropriate regulatory framework, including standards for improving the quality and safety of transplantation of tissues and cells to humans in accordance with European standards.

## **Blood Safety**

Another important issue for the development of the blood system is the updating of the regulatory framework in accordance with European requirements: the Law of Ukraine "On Donation of Blood and Its Components" of 1995; and orders of the Ministry of Health that are outdated and need to be completely revised. Modern standards should be included and enshrined in the new legislation, and the blood service should be guided by European standards in its activities. Special attention should be paid to the lack of European standards for the quality and safety of collection, testing, processing, storage and distribution of donor blood and its components. Also, it should be noted that despite the adoption of a new Strategy for the National Blood System Development, which contains progressive provisions, its actual implementation was not ensured, and no by-laws were developed. The same applies to the implementation of the European recommendations for the promotion and advancement of voluntary and unpaid donation – the Strategy mentions the development of this area, but no actual steps have been taken to implement it. At the same time, we are witnessing an increase in the role of business entities in the blood system, which may involve risks for the development of voluntary and unpaid donation in Ukraine. We can argue that the implementation of the measures is at an early stage.

## **Prevention of injury and promotion of safety**

Currently, Ukraine's road safety statistics are rather sad. At the same time, the EU recommendations involve the need to take effective precautionary measures to improve the situation. Such measures may include, but are not limited to, increasing the sanctions for both drivers and pedestrians and fines for traffic violations. Therefore, the need to adopt appropriate legislation in the field of road safety in Ukraine is urgent.

### **General recommendations:**

- Ensure institutional continuity in the field of public health;
- Review and update the tasks based on the analysis of policies in the Action Plan for the implementation of the Association Agreement between Ukraine and the EU, as well as the deadlines for their implementation;
- Develop principles of intersectoral cooperation in the field of public health.

## **STRENGTHENING THE HEALTH CARE SYSTEM OF UKRAINE AND ITS POTENTIAL**

### **Commitment 360 / Implementation of reforms, development of primary health care and staff training**

- Introduce a detailed system for monitoring the implementation of health care financing reform based on specific indicators and a mechanism for policy adjustments based on monitoring results;
- Develop an electronic health care system;
- Develop policies on the quality of health services and the use of regulatory tools (in particular, control functions);

- Continue the implementation of the adopted strategic documents in the areas of medical education and public health.

### **Commitment 361 / Development of the public health system**

- Adopt a new government action plan for the implementation of the Concept of Public Health System Development based on an analysis of the implementation of the previous plan and assigning the responsibility for its implementation to the heads of executive bodies;
- Ensure the adoption of a law on public health that could regulate the principles of operation of the industry and mechanisms for its financing at the national and regional levels;
- Develop by-laws to ensure enforcement of the obligations concerning non-communicable disease control within an integrated public health and health care system.

## **COMMUNICABLE DISEASES**

### **Commitment 362 / Ukraine's accession to the European network for combating cross-border health threats**

- Create a legislative framework for the public health system in Ukraine;
- Organise the institutional framework at the national and regional levels;
- Approve the procedure for epidemiological surveillance of communicable diseases;
- Improve the public health emergency response system.

### **Commitment 363 / Determining the list of communicable diseases that should be covered by the epidemiological surveillance system and identifying cases of communicable diseases**

- Amend Resolution No. 157 of the Cabinet of Ministers on "Certain Matters of Registration, Recording and Reporting of Communicable Diseases" of 21.02.2001, bringing it in line with Commission Decision No. 945/2018 of 22.06.2018;
- Carry out an audit of the regulatory framework in the field of communicable diseases to bring it in line with the said Commission Decision;
- Carry out training of the employees of public health centres, laboratory centres of the Ministry of Health, communicable disease specialists of health care institutions, etc. to inform them of the relevant regulations.

## **CANCER**

### **Commitment 364 / Introduction of a comprehensive approach to diagnosing cancer based on EU Member States' best practices**

- Develop by-laws to ensure enforcement of the obligations concerning non-communicable disease control within an integrated public health and health care system;

- Adopt a by-law of the Ministry of Health to ensure the differentiation of definitions of "early diagnosis" and "screening" of cancer;
- Develop key standards for the economic and ethical feasibility of screening for the most common cancers, taking into account the epidemiological situation and access to treatment under state medical guarantees;
- Ensure adaptation of EU practices related to screening programmes for the cancers that should be screened in Ukraine;
- Revise the National Action Plan concerning Non-communicable Diseases to Achieve Global Sustainable Development Goals to include cancer screening programmes with clear indicators for implementation and a periodic monitoring and evaluation system;
- Provide funding for screening programmes in line with the reform of health care financing and public health system financing.

## TOBACCO

### **Commitment 365 / Transposition of policies for the manufacture, presentation, and sale of tobacco products and related products**

- Ensure adoption of the relevant law by the Verkhovna Rada of Ukraine aimed at transposition of the policies in accordance with Directive 2014/40/ EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products.

## ALCOHOL

### **Commitment 366 / Gradual approximation of legislation to the principles of the EU acquis on addressing major determinants of health, such as alcohol addiction and reduction of alcohol consumption by young people**

- Form an order for a study of the problem of alcohol consumption by young people based on competitive selection of research and development projects;
- Revise the National Action Plan concerning Non-communicable Diseases to Achieve Global Sustainable Development Goals and complement it with measures aimed at reducing alcohol consumption among young people with clear indicators for implementation and a system of periodic monitoring and evaluation.

## MENTAL HEALTH – DRUG ADDICTION

### **Commitment 367 / Gradual approximation of legislation to the principles of the EU acquis on addressing major health determinants, such as drug addiction, in order to combat the health and social consequences of drug addiction**

- Provide funding for drug monitoring by the Centre for Mental Health and Monitoring of Drugs and Alcohol of the Ministry of Health of Ukraine;

- Integrate the drug monitoring strategy into a broader strategy for the development of medical statistics;
- Allocate appropriate funding to fulfil the commitment;
- Ensure a cross-sectoral approach to the fulfilment of the commitment;
- Introduce a system for monitoring and evaluating the implementation of the state drug programme.

## TRANSPLANTATION OF TISSUES AND CELLS

### **Commitment 368 / Reforming the field of human tissue and cell transplantation**

- Adopt the necessary legal and regulatory framework for the full implementation of the Law of Ukraine "On Transplantation of Organs and other Anatomical Materials to Humans";
- Update the orders of the Ministry of Health on transplantation (we have 7 orders of the Ministry of Health that regulate certain aspects of the procurement, testing, processing, preservation, storage and distribution of human tissues and cells and which were adopted in the period from 1999 to 2014)<sup>6</sup>;
- Develop the necessary regulatory and legal framework and carry out the needed preparatory work for the launch of public information systems on transplantation, which will track the movement of tissues and cells from donors to recipients and vice versa, where the coding of cells and tissues should be in place to identify and track them. This will make it possible to launch a mechanism for monitoring and exchanging information in the field of transplantation and will facilitate the introduction in Ukraine of the procedure for registration of adverse events and reactions associated with transplantation of human cells and tissues.

### **Commitment 369 / Development and implementation of measures to stimulate voluntary and unpaid tissue and cell donation**

- Launch a national information campaign on the importance of tissue and cell donation;
- Form a pool of experts and famous people in order to involve them in public events and discussions to draw public attention to the issue of donation.

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6) Order No. 250 of the Ministry of Health "On the Provision by a Living Family Donor of a Homograft for Transplantation" of 10.04.2012

Order No. 226 of the Ministry of Health "On Approval of Regulatory Legal Documents on Transplantation" of September 25, 2000.

Order No. 630 of the Ministry of Health "On Approval of the Procedure for Conducting Clinical Trials of Tissue and Cell Grafts and Examination of Clinical Trial Materials and Amendments to the Procedure for Conducting Clinical Trials of Drugs and Examination of Clinical Trial Materials, approved by Order of the Ministry of Health of 13.02.2006 No. 66" of October 10, 2007.

Order No. 96 of the Ministry of Health "On Approval of Regulations on Transplantation of Organs and Other Human Anatomical Materials" of May 4, 2000.

Order No. 812 of the Ministry of Health "On Approval of the Regulations on the Coordination Centre for Organ, Tissue and Cell Transplantation" of December 11, 2006.

Order No. 481 of the Ministry of Health "On Approval of the Procedure for Collection and Temporary Storage of Umbilical Cord (Placental) Blood and/or Placenta" of 10.07.2014

Order No. 184 of the Ministry of Health of 26.07.1999 "On Approval of Accounting Statistical Documentation Forms Used in In-Patient Facilities of Health Care Institutions"

## **BLOOD SAFETY**

### **Commitment 370 / Reforming the area relating to the safety of blood and its components**

- Develop and adopt by-laws for the implementation of the Strategy to launch the mechanism for its implementation and, accordingly, the implementation of Ukraine's commitments;
- Review the existing regulatory framework and update it, in particular that on the infection safety of donor blood, its quality and safety indicators;
- Based on the European standards, develop and approve licencing requirements for the processing of donor blood and its components and the manufacture of drugs derived from them, along with the operation of banks of umbilical cord blood, and of other human tissues and cells;
- Build public-private partnership in line with the European practices and taking into account the development of voluntary and unpaid donations.

### **Commitment 371 / Introduction of a policy to stimulate voluntary and unpaid blood donation**

- Develop and implement an effective communication campaign with the involvement of a wide range of interested organisations, representatives of the public sector and international partners;
- Together with the Ministry of Education and Science, initiate educational activities to promote unpaid voluntary donation among university students;
- Update the donor incentive system: review the policy of benefits and awards.

## **PREVENTION OF INJURY AND PROMOTION OF SAFETY**

### **Commitment 372 / Improve road safety, promote the implementation of measures to prevent injuries**

- Increase both administrative and criminal sanctions for committing offences on the roads by adopting the necessary regulations;
- Improve the mechanism of keeping official statistics on road accidents and their consequences, taking into account information from medical institutions where victims seek assistance after road accidents;
- Carry out national outreach campaigns on the need to comply with traffic rules, both for drivers and pedestrians, in order to develop a conscious attitude of citizens to their own safety and the safety of others.

# EDUCATION, TRAINING AND YOUTH

## Key conclusions:

Despite some developments, the Government has not fulfilled any of the tasks set out in Recommendation No. 2008/C 111/01; Directive No. 2005/36/EC; Recommendation No. 2006/962/EC; Commission Communication COM (2001) 678; or Regulation (EU) No. 1288/2013.

The main obstacle to the implementation of these recommendations is the lack of institutional memory in Ukraine in succession of government teams, which thwarts continuation of positive developments in the reform of education. The system of education is one of the areas with a long-term perspective of reforms and cyclical completion of specific educational degrees and educational programmes. Therefore, it is particularly important to continue fulfilling the commitments under the Agreement between Ukraine and the EU, which started earlier. In this context, the most illustrative case is that of the National Register of Qualifications.

However, there is another problem – i.e. the lack of a single institution and / or "political will" to make the necessary decisions. In this context, there are two opposite examples: with the start of the work of the National Agency for Quality Assurance in Education, a large amount of work was actually organised and coordinated within a year, and significant progress was made towards the implementation of the Association Agreement. On the other hand, there is the problem of regulatory implementation of lifelong learning and adult education. There is an institute and university of adult education in the system of the Academy of Educational Sciences, a number of other departments, institutes, universities, but the Law "On Adult Education" has not been adopted, there is no network of institutions / centres of adult education, or education for "third age" people.

Ukraine's failure to comply with the EU-Ukraine Association Agreement in the Education sector deprives it of the opportunity to respond adequately to the current socio-economic challenges, academic mobility, and distribution of labour.

## General recommendations:

- abandon the practice of extending the deadlines for implementation of unfulfilled tasks and their duplication in the action plans of the Government and central executive bodies;
- on the basis of policy analysis procedures, update the deadlines for implementation of the tasks set by Resolution No 1106 of the Cabinet of Ministers of Ukraine "On Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part" of 25 October 2017;
- establish personal responsibility of the heads of central executive bodies for the implementation of the tasks under the implementation plan;
- ensure the institutional succession with regard to fulfilment of the commitments and performance of the implementation tasks.

### **Commitment 373 / Ensuring international recognition of the National Qualifications Framework**

- ensure effective implementation of the concept of "Modern Vocational Education";
- ensure harmonisation of educational standards in terms of learning outcomes and the National Register of Professional Qualifications;
- implement all necessary regulatory procedures for the implementation of the principles of academic integrity and lifelong learning;
- develop the principles of cooperation and interaction among the branch councils of educational institutions of different levels and different forms of subordination and the NAQAE of the National Accreditation Agency.

### **Commitment 374 / Establishment of the National Register of Qualifications**

- oblige the National Accreditation Agency to ensure effective work on the establishment of the National Register of Qualifications;
- recommend that the National Accreditation Agency streamline its work with the NGO Institute of Professional Qualifications, which has already begun to develop the Repository of Professional Qualifications.

### **Commitment 375 / Implementation of the Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG)**

- ensure the continuity of the mission and action plan of the NAQAE;
- continue the practice in approaches to accreditation of educational programmes, harmonisation of educational standards (by specialties) and professional qualifications (by competencies and learning outcomes).

### **Commitment 376 / Improving the mechanisms for awarding professional qualifications based on external competence assessment**

- ensure the development and approval of a legal act on the procedure for recognition of non-formal education and self-education;
- ensure the implementation of a transparent and public strategy of vocational education;
- ensure development of professional standards;
- organise systematic work of the branch councils that have institutional and professional capacity to contribute to the development of professional standards and can help ensure the acquisition of new professional qualifications;
- review the Occupational Classification DK 003 based on professional qualifications.



### **Commitment 377 / Introduction of rules applicable to professional activities**

- recommend that the Ministry of Social Policy of Ukraine initiate the introduction of rules for conducting professional activities;
- recommend that the Ministry of Social Policy of Ukraine initiate cooperation with branch councils in order to develop a model of rules of conducting professional activities;
- recommend that the National Qualifications Agency take into account the rules of conducting professional activities when developing professional qualifications.

### **Commitments 378 / Ensuring access to lifelong learning**

- ensure the maximum promotion of the Presidential Decree "On the Sustainable Development Goals of Ukraine for the period up to 2030" (No. 722/2019 of September 30, 2019), in particular in terms of "4) ensuring comprehensive and equitable quality education and encouraging lifelong learning opportunities for all";
- oblige the Ministry of Education and Science of Ukraine and the specialised committee of the Verkhovna Rada to complete work on the draft law "On Adult Education";
- recommend that the Ministry of Education and Science of Ukraine and local authorities consider the possibility of creating a network of state and municipal educational institutions for training / retraining of professional qualifications (professions);
- recommend that the Ministry of Education and Science of Ukraine consider the possibility of expanding the mechanisms and methods of teaching and retraining in the Institutes of Post-Qualifying Education;
- recommend that local authorities, in collaboration with education authorities, consider the possibility of establishing training centres for "third age" people for them to master relevant professions.

### **Commitment 379 / Updating education standards at the appropriate levels, taking into account the basic competences of lifelong learning**

- submit a request to the Ministry of Education and Science of Ukraine to take into account the values and principles of lifelong education when developing / revising educational standards;
- recommend that the National Agency for Quality Assurance in Education take into account the values and principles of lifelong learning in accreditation of educational programmes.

### **Commitment 380 / Implementation of the dual learning system**

- apply to the Ministry of Education and Science of Ukraine with a request to develop / revise educational standards taking into account dual education (where possible and expedient);
- recommend that the National Agency for Quality Assurance of Education take into account the mechanisms of implementation of the dual education in the accreditation of educational programmes (where possible and expedient);

- recommend that the Ministry of Education and Science of Ukraine establish effective cooperation with branch councils to develop mechanisms of implementation of dual education (where possible and expedient).

### **Commitment 381 / Ensuring constant exchange of information with EU institutions on joint programmes in the field of education**

- based on policy analysis procedures, update the deadlines for implementation of the tasks set by Resolution No 1106 of the Cabinet of Ministers of Ukraine "On Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part" of 25 October 2017, and develop an annex to the Resolution that would lay down the procedure for exchanging information with EU institutions on joint programmes in the field of education.

TITLE VI.  
FINANCIAL  
COOPERATION,  
WITH ANTI-FRAUD  
PROVISIONS

**Key conclusion:**

In the subsector of "Financial cooperation, with anti-fraud provisions", appropriate cooperation and coordination with the European Anti-Fraud Office (OLAF) has been established, which is significant progress.

At the same time, the procedures for cooperation between the institutions involved in the system of interdepartmental coordination on combating violations that affect the financial interests of Ukraine and the EU need to be streamlined.

In addition, it is necessary to develop and adopt regulations regarding the implementation of the provisions of the EU legislation in the field of protection of the financial interests of the Parties to the Association Agreement.

**Recommendations:****Commitments 382-383**

- Develop and adopt legislative acts on the implementation of the provisions of EU legislation in the field of protection of the financial interests of the Parties to the Association Agreement;
- Streamline the procedures for interaction between institutions involved in the system of interdepartmental coordination to combat violations affecting the financial interests of Ukraine and the EU and establish procedures for the interaction between OLAF and the relevant public authorities

# ABBREVIATIONS

SIGMA	Support for Improvement in Governance and Management
IPR	Intellectual Property Rights
WTO	World Trade Organisation
SFSU	State Fiscal Service of Ukraine
WCO	World Customs Organisation
AEO	Authorized Economic Operator
NCTS	The New Computerised Transit System
ATC	Amalgamated Territorial Community
CMU	Cabinet of Ministers of Ukraine
CEB	Cabinet of Ministers of Ukraine
ACAA	Agreement on Conformity Assessment and Acceptance of Industrial Products
EA	European Cooperation for Accreditation
IAF	International Accreditation Forum
ILAC	International Laboratory Accreditation Cooperation
OIML	International Organisation of Legal Metrology
CEN-CENELEC	European Committee for Standardisation
ETSI	European Telecommunications Standards Institute
NAAU	National Accreditation Agency of Ukraine
NAPC	National Agency for Prevention of Corruption
CCU	Constitutional Court of Ukraine
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
EaP	Eastern Partnership
PESCO	Permanent Structured Cooperation
EDA	European Defence Agency
ESDC	European Security and Defence College
EUAM	EU Advisory Mission to Ukraine
SSU	Security Service of Ukraine
SSA	State Space Agency of Ukraine

ESA	European Space Agency
EUMETSAT	European Organisation for the Exploitation of Meteorological Satellites
TFEU	Treaty on the Functioning of the EU
AMCU	the Antimonopoly Committee of Ukraine
SGEI	Services of general economic interest
VAT	Value added tax
VAT SEA	system of electronic tax administration
CRS	Common Reporting Standard
SMKOR	Risk Assessment Criteria Monitoring System
OSCE	Organization for Security and Co-operation in Europe
OSCE SMM	OSCE Special Monitoring Mission
PSC	EU Political and Security Committee
TBG	Tactical Battle Groups
EU ISS	EU Institute for Security Studies
EUBAM	EU Border Assistance Mission to Moldova and Ukraine
CONOP	EU Working Party on Non-Proliferation
CODUN	EU Working Party on Global Disarmament and Arms Control
EU CBRN CoE	EU Chemical, Biological, Radiological and Nuclear Risk Mitigation Centres of Excellence
IAEA	International Atomic Energy Agency
SBGS	State Border Guard Service of Ukraine
SFMS	State Financial Monitoring Service of Ukraine
COARM	EU Working Party on Conventional Arms Export
GMO	Genetically Modified Organisms
SRS	State Regulatory Service
PCB	polychlorinated biphenyl
SBI	State Bureau of Investigation
NABU	National Anti-Corruption Bureau of Ukraine
ARMA	Asset Recovery and Management Agency
HQCJ	High Qualification Commission of Judges
HCJ	High Council of Justice
SAP	Specialized Anti-Corruption Prosecutor's Office

MEDT	Ministry of Economic Development and Trade
KRI	Key risk indicators
TED	Tenders electronic daily
VLAP	Visa Liberalization Action Plan
UID	Unified Information Database
IDP	Internally Displaced Persons
TOT	Temporarily Occupied Territories
GDPR	General Data Protection Regulation
SMS	State Migration Service of Ukraine
TRS	Temporary refugee shelters
TDCF	Temporary detention centres for foreigners
UIAS	Unified Information and Analytical System
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
CERT	Computer emergency response team
ENISA	The European Union Agency for Cybersecurity
SELEC	Southeast European Law Enforcement Center
ESS	European Statistical System
ESS QAF	Quality Assurance Framework of the European Statistical System
TRIPS	Trade-Related Aspects of Intellectual Property Rights
NIPO	National Intellectual Property Office of Ukraine
TEN-T	Trans European Transport Network
ERA	European Union Agency for Railways
WMDA	World Bone Marrow Donor Association
NQF	National Qualifications Framework
NQA	National Qualifications Agency
NAQAE	National Agency for Quality Assurance in Education
OTT	over-the-top media service
VOD	Video on demand
ERGA	European Regulators Group for Audiovisual Media Services
AVMSD	Audiovisual Media Services Directive
VSP	video-sharing platforms
OLAF	European Anti-Fraud Office

ECA	European Court of Auditors
NCP	The National Contact Point
RAPEX	Rapid Alert System - non-Food
DSanPiN	State Sanitary Rules and Regulations
JRB	Joint Representative Body
EIA	Environmental Impact Assessments Mechanism
SEA	Strategic Environmental Assessment Mechanism
SES	The State Emergency Service of Ukraine
VOCs	Volatile organic compounds
NSSMC	National Securities and Stock Market Commission of Ukraine
OECD	Organization for Economic Co-operation and Development
BAT	Best available techniques
TPP	Thermal power plant
CHP	Combined heat and power plant
NPRE	National Plan for Reducing Emissions from Large Combustion Plants
SPA	Special protected areas
NRA	National regulatory authorities
NCCIR	National Commission for the State Regulation of Communications and Informatization
SIC	State Inspection of Communications
NCCR	National Commission for the State Regulation of Communications
DSM	Digital Single Market
ICT	Information and communications technology
EMP	European Media Platform
EECC	European Electronic Communications Code
ISP	Internet service provider
ICAAP	Internal capital adequacy assessment process
NBU	National bank of Ukraine
UCITS	Undertakings for collective investment in transferable securities
EU-FINREG	EU Project Strengthening the Regulation and Supervision of the Nonbank Financial Market



ENTSO-E	European Network of Transmission System Operators for Electricity
UES	United Energy System
NEURC	National Energy and Utilities Regulatory Commission of Ukraine
NPP	Nuclear Power Plant
DC	Direct current
GTS	Gas Transmission System
GDN	Gas distribution networks
TSO	Transmission system operator
ISO	Independent system operator
OGTSU	GTS Operator of Ukraine LLC
ESCO	Energy service company
RES	Renewable energy sources
TEN-E Guidelines	Guidelines for the Trans-European Energy Infrastructure
PMI	Projects of Mutual Interest
PECI	Projects of Energy Community Interest
IRRS	INTEGRATED REGULATORY REVIEW SERVICE
IAEA	International Atomic Energy Agency
NRS	Nuclear and radiation safety
SNRIU	State Nuclear Regulatory Inspectorate of Ukraine
INSC	Instrument for Nuclear Safety Cooperation
NCP	National Coordination Point
NSC KIPT	National Science Center Kharkov Institute of Physics and Technology
SNF	Spent nuclear fuel
RAW	Radioactive waste



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