



EU-UKRAINE ASSOCIATION AGREEMENT: GUIDELINE FOR REFORMS

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This Policy Paper has been developed by the expert group representing Ukrainian independent think-tanks, under coordination of the **Institute for Euro-Atlantic Cooperation (IEAC)**. **Oleksandr Sushko, IEAC** Research Director, is a chair of the group.

Previous Policy Brief of this expert group released in January 2012 entitled "*Association Agreement: a pearl of great value which at risk of loss*" was used here as well as the materials presented by the Foreign Ministry of Ukraine.

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FOREWORD

After five years of intense negotiations, the EU and Ukraine finally started initialing their Association Agreement in Brussels, on March, 30 2012. Every single one of the 160 pages of the political document needed to be signed, before the economic chapter on the free trade area DCFTA (Deep and Comprehensive Free Trade Area) – comprising 1100 pages – was initialized on July, 19 2012.

The complete English version of the Association Agreement has not been made publicly available yet. On the initiative of the Konrad-Adenauer-Stiftung, experts of the Kyiv-based Institute for Euro-Atlantic Cooperation and their partners have beforehand drawn up an analysis of the agreement, trying to explain its most important points on almost 50 pages.

The European Union has never before held out the prospect of such a far-reaching contractual relation to a non-candidate state like Ukraine, as it did with the announcement of this Association Agreement.

It covers the following fields of cooperation:

1. The approximation of the European Union and Ukraine on the grounds of common values and an increased participation of Ukraine in EU programs.
2. A cross-border cooperation in the field of external and security policy, inter alia in conflict prevention and military cooperation.
3. Helping Ukraine to achieve European standards in the policy areas of justice and home affairs by promoting the rule of law, democracy and human rights in Ukraine, as well as providing support in the combat of corruption, in the improvement of the judiciary's efficiency and data security.
4. An enhanced economic cooperation by establishing a deepened and strengthened free trade area between the EU and Ukraine. Moreover, specific sectoral cooperation in over 30 areas, for example in the fields of agriculture, industry, energy supply and consumer protection.
5. Launching new ways of cooperation, providing funds and building up a platform for a civil society.

The translation of the document and the final legal examination will still take several months. By the end of the year the agreement could be ready to be signed. All EU-Member-State's governments, the EU commission and the Ukrainian government need to sign the Treaty at an official meeting and thereby give their final approval for the Association Agreement. Following this, the national parliaments of all 27 member states and the European Parliament have to ratify the document.

The EU's assessment of the parliamentary elections coming up in October 2012 will decide under which conditions and how fast the Association Agreement will be agreed upon. As shown by the analysis, this Agreement may become a grand success and exemplar of a new European Neighbourhood Policy. Should the Association Agreement be frozen at some point – due to political framework conditions – it would be still crucial for Ukraine to have a concrete document which helps preparing the society

for the implementation. Its enforcement can be effected quickly and efficiently at any time. The Konrad-Adenauer-Stiftung will also in the future dedicate itself to the task of explaining the Agreement's advantages. It will continue to prepare suitable institutions for the implementation, so as to enable them to act as multipliers.

Hopefully, I could raise your interest in this publication. I wish you an enjoyable reading.

Gabriele Baumann
Head of the Konrad-Adenauer-Stiftung in Ukraine

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EXECUTIVE SUMMARY

- In its scope and thematic coverage, the AA is the most extensive international legal document in the entire history of Ukraine and the most extensive international agreement with a third country ever concluded by the European Union.
- The AA provides for creation of an external (i.e., European) framework for development of the Ukrainian policies and economy, it captures external liabilities related to vitally needed reforms. Such external motivation is needed under the permanent deficit of the domestic political will and of institutional capacity to implement policies for the sake of public good (not that of selected elite groups). The AA as an internationally binding document creates the best preconditions in order that the priorities for the rule of law, democracy, and market economy constantly declared by the Ukrainian government were really implemented in practice.
- Since it was Ukraine that insisted on that the “new enhanced agreement” (this was the working title of the AA before the official name was approved) were an **association agreement**, the EU rightly expects that the Ukrainian party fully understands the meaning of “association relations” and is ready to pursue it.
- The scope of EU legal developments (*acquis*) contained in annexes to the AA (above all, in the section on the Deep and Comprehensive Free Trade Area – the DCFTA) and to be incorporated into the legislation of Ukraine will be unprecedented for association agreements. It will be close to the scope that states that are candidates for EU membership usually undertake to fulfill. Under favorable circumstances, already in 2013 the AA could become a beacon for socially important reforms ensuring irreversibility of Ukraine’s European integration.
- Implementation of the AA will contribute into convergence between the regulatory frameworks of Ukraine and the EU, and thus – into elimination of not only customs duties, but also of non-tariff barriers to trade to facilitate Ukraine’s integration into the European economic and legal space in general, in particular the EU’s internal market and the European Economic Area.
- Consequences of the AA’s implementation are versatile. Attempts to calculate precise benefits or losses for the national GDP as a result of implementing the AA are a simplification, since they mostly fail to take into account medium-term economic dynamics and prospects of markets’ development (primarily that of external markets, on which the key export-oriented industries depend). Moreover, such forecasts are usually based only on analysis of changes in dynamics of earnings / losses for producers and service providers, while the greatest beneficiary of the AA is represented by the extensive groups of the Ukrainian consumers who will, as a result of the AA’s implementation, get access to better products / services at a lower price.

- The immediate benefits that influence the broadest segments of population include: access to a wider product range and improved safety of products offered in the domestic market through harmonization of safety requirements for products and services with international standards.
- Among the most socially significant results of the AA's implementation, following implementation of EU environmental and labor standards, improvement of the ecological environment and labor conditions can be expected. As a result, we could anticipate increased occupational safety, reduced technological risks for public health, and increased average life expectancy.
- Expressing the desire to enter into the Association Agreement with the EU in the form it acquired as a result of the negotiation process, Ukraine thus expresses its determination to transform into a new quality: from a post-soviet state forced to follow the above-mentioned principles under external pressure in a country being an integral part of the civilized world, the objective of which is daily practicing, improving and promoting principles of this world.

INTRODUCTION

After the five years of negotiations, Ukraine and the EU have closely approached conclusion of the most extensive and the most ambitious bilateral document in the entire history of the bilateral relations – the Association Agreement (AA).

Association agreements are the most advanced type of international treaties that the EU may conclude with third countries – the countries with which the EU is ready to develop strong long-term alliances based on mutual trust and respect for common values.

Following official signing of the AA, after its “economic” sections start coming into effect, the AA could become a beacon for socially important reforms ensuring irreversibility of Ukraine’s European integration, confirming the final choice in favor of the European model of social and economic development. However, the political risks arising from erosion of democracy in Ukraine, the politically motivated judiciary raise doubts about results of the negotiation process and further steps. Several EU Member States have already announced their intention to block up the AA unless the problems regarding respect for the foundational principles of the rule of law in Ukraine get eliminated.

Now, it is important to comprehend the content of the Agreement in order to assess the extent of possible losses for Ukraine’s future if the Association Agreement with the EU is blocked up for a long-term perspective.

SECTION 1. FROM COMPLETION OF NEGOTIATIONS TO ENACTMENT

The process of negotiations on Ukraine-EU Association Agreement (hereinafter – the AA) was launched on March 5, 2007 and has lasted for almost five years. Ministers of Foreign Affairs of the European Union previously agreed the title of the agreement on July, 22 2008 in Brussels at a session of the Council of the EU. The parties announced **completion of negotiations** during the Ukraine – EU Summit held in Kyiv on December 19, 2011. This implied completion of work in the format of plenary sessions and working groups of the contracting parties’ negotiating delegations, but the technical work of editing the text of the agreements reached was actively continued and is going on as of May 2012.

Initialing of the text of the agreement in English, which was started by heads of negotiation delegations of the contracting parties in Brussels on March, 30 2012, completed coordination of the AA’s text in all parts except for the sections on free trade and economic cooperation, technical editing of which continues as of May, 2012.

In legal terms, initialing, albeit partial, makes it impossible to introduce changes in content (only terminological, linguistic ones are allowed) into the already agreed text. After completion of the initialing process (tentatively, before September, 2012), the AA shall be translated into all official languages of the EU¹ and the Ukrainian language. Based on the practical experience, this can be completed within 4-6 months.

The next steps are defined, above all, by provisions of the domestic legislation of the contracting parties and the abovementioned political circumstances.

If in terms of the Ukrainian legislation, the AA is considered as an ordinary international treaty, the EU founding treaties clearly distinguish between association agreements and other international treaties concluded by the Union, since they imply execution of an extremely significant political action. First, they establish more stringent procedures for their conclusion, due to involvement of the widest possible range of representatives of European nations at both the level of the Union, and all of its Member States. Ukraine has already had time to see how meticulous and rigid the EU is when it comes to concluding an association agreement.

Signing – a critically important event, since this is the fact that “gives birth” to a specific agreement. The AA will be subject to signing by representatives of Ukraine, the EU and all of its Member States at the highest political level. According to the EU’s point of view, the signing will be possible only after free and fair parliamentary elections in Ukraine in autumn 2012, which would meet international standards, in particular providing for free access to the opposition to participation in the elections. The EU will be able to sign the AA only after adoption of the respective decision by the Council of the EU, i.e. actually a unanimous decision of Governments of all Member States. As stipulated by international law provisions, after signing the Agreement, each of its parties will be obliged to “refrain from acts that would deprive the agreement of its object and purpose”.

¹ As the English-language version already exists, it will be translated into the 22 other official EU languages.

Among other things, this means that Ukraine will have to refrain from participating in any integration formations the format of which would run counter to this legal obligation. These formats that are contrary to the AA include any formation of customs unions, economic unions, or common markets. At the same time, Ukraine’s participation in free trade area level formations with any third parties does not conflict with the AA.

After signing, there comes the **ratification** stage. In Ukraine, this procedure is carried out by adoption by the Verkhovna Rada of the law on ratification of the agreement. In the EU, ratification is carried out at two levels – the federal and national ones. On behalf of the EU, the decision on ratification is unanimously adopted by the Council of the EU (composed of representatives of governments of all EU member states) provided prior consent of the European Parliament. Moreover, the AA must be ratified by each of the EU Member States² in accordance with their constitutional provisions³.

The AA ratification procedure may take several years – similar to the currently valid Partnership and Cooperation Agreement between Ukraine and the EU and its Member States signed in 1994, but which only came into force in 1998. In this regard, the EU traditionally practices **temporary application** of the association agreement either 1) by signing an interim agreement on trade and trade-related issues, or 2) by a special provision on provisional application contained in the text of the Agreement – as a rule, in final provisions.

If an Interim Agreement is concluded, in legal terms it is an independent international treaty. If the parties follow this way, the Interim Agreement will be concluded only between Ukraine and the EU (not Member States), and its content will be constituted by the AA provisions that are covered by exclusive competence of the EU (trade and economic cooperation). An Interim Agreement is **signed** simultaneously with the respective AA, **ratified** by the Verkhovna Rada of Ukraine, and on behalf of the EU – only with the resolution of Council of the EU, which it adopts after obtaining no objection from the European Parliament. Typically, ratification of an interim agreement is done within a period of up to six months from the date of its signing. Immediately after entry into force of the interim agreement, Ukraine and the EU will be able to start developing the free trade area. Correlation of the processes of concluding the AA and the interim agreement is shown in the table below.

Table 1. Correlation of the processes of concluding the AA and the interim agreement

	Parties	Date 1	Date 2			Date 3
Association Agreement	Ukraine/EU, EU Member States	Signing	Ratifying			Commencement
Interim Agreement	Ukraine/EU	Signing	Ratifying	Commencement	Enforcement	Termination

If the parties decide to go another way, through a special provision on provisional application contained in the text of the Agreement, then some parts of the agreement will take effect after ratification of the entire AA by the Verkhovna Rada of Ukraine and the Council of the EU. In this case, no interim agreement is concluded as a separate act.

² In connection with Croatia’s EU accession in 2013, this country will also become an AA contracting party and will have to ratify the Agreement.

³ These requirements include mandatory adoption by the national parliament of the binding decision on the agreement’s ratification.

SECTION 2. ASSOCIATION'S OBJECTIVES AND PRINCIPLES

Based on the general rules of interpreting international treaties, the meaning of the **"association" concept** should be expanded through interpretation of the totality of the Agreement's provisions. However, practice of the recent decades proves that application and interpretation of each Association Agreement is focused on the EU *acquis* regarding association relations with third countries. Thus, the Ukrainian side should be prepared for that the Association Agreement will establish **specific features** of association relations with Ukraine based on rooted principles and traditions. Since it was Ukraine that insisted that the "new enhanced agreement" were an association agreement⁴, the EU rightly expects that the Ukrainian side fully understands the meaning of the "association relations" concept and is ready to follow it⁵. Above all – those association agreements are the most advanced type of international treaties that the EU may conclude with third countries – the countries with which the EU is ready to develop strong long-term alliance relations based on mutual trust and respect for common values.

EU *acquis* on association relations

The set of provisions of EU statutory documents and legal acts, and international agreements adopted / concluded by the EU based on these, as well as the practice of application and interpretation of this regulatory array, above all litigation awards, is generally referred to as EU *acquis*⁶.

EU *acquis* on association relations is based on Art. 217 of the Treaty on the EU, which stipulates: "The Union may conclude an association agreement with one or more third countries or international organizations in order to establish an association involving reciprocal rights and obligations, common actions and special procedures".

In EU practice, association agreements are most frequently concluded for the purpose of preparing associated states for membership in the EU: Greece and Turkey (the 1960s), Malta and Cyprus (the 1970s), Bulgaria, Estonia, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Hungary, Czech Republic (the 1990s), Albania, Bosnia and Herzegovina, Macedonia, Serbia, Croatia (the 2000s). They were also concluded as an alternative to EU membership – the Agreement on the European Economic Area (1992) with Austria, Iceland, Liechtenstein, Norway, Finland,

4 Consent by the EU was issued at Paris Ukraine – EU Summit in September 2008. Among other things, this confirmed leadership positions of Ukraine among Eastern Partnership states, to which it was automatically offered to conclude an association agreement.

5 Thus, Part 1, Art. 1 of the Agreement requests that representatives of Ukraine's political elite at least had an idea about the origins and development of associated relations between the EU and third countries, as well as about the content of EU *acquis* in the field of association relations.

6 The French word «*acquis*» [pronounced: aki] literally translates as result, achievement, legacy, and heritage. After the Lisbon Treaty, which cancelled the European Community, the term «EU *acquis*» has been actively replaced with the term «*acquis communautaire*».

and Sweden. Moreover, sometimes association agreements are concluded with non-European countries to assist in their development: the Partnership Agreements with African, Caribbean and Pacific states (1960-2000), with Mediterranean states – Algeria, Morocco, Tunisia, Egypt, Syria, Lebanon, Israel (1990-2000), with the South African Republic (1999), and Chile (2002).

As the EU Court emphasized, an association agreement “*creates special privileged relations with a non-member state, which must, at least to some extent, participate in the Community [Union] system*” (Case 12/86 “Demirel”). Although concluding the agreement does not mean entry into “associate membership” in the EU (which simply does not exist), the associated country to some extent commits itself to implement the objectives the Union was created for.

The Association Agreement between Ukraine and EU starts with the preamble and two articles that define association objectives and principles on which the Agreement is based. These regulations establish the foundation for association relations and define the “spirit”, to implement which the Contracting Parties undertake to strive for practical application and interpretation of all provisions of the Agreement.

The first article of the Agreement contains two provisions, the first states that the agreement establishes “an association between the European Union and its Member States on the one hand, and Ukraine, on the other”. The second provision sets association objectives, implementation of which aims to strengthen relations between Ukraine and the EU in four dimensions:

1) **value**: gradual rapprochement between the parties based on shared values and close and privileged relations, as well as increased participation of Ukraine in EU policies, programs, and agencies;

2) **political and security**: having an enhanced political dialogue on all issues of mutual interest for the parties and maintenance of peace and stability regionally and internationally based on principles of the UN and the OSCE;

3) **economic**: establishment of enhanced economic and trade relations leading to a deep and comprehensive FTA, as well as completion of Ukraine’s transformation into a functioning market economy, especially through harmonization of Ukrainian legislation with EU legislation; 4) **legal**: strengthening cooperation in the fields of justice, freedom, and security to enhance the rule of law and respect for human rights and fundamental freedoms.

Besides, this list is **open** due to separation of such objective of association as “creating conditions for closer cooperation in other areas of mutual interest”, thus the parties may expand association relations to cover, in fact, any issue. It is important to note here that “enhanced political dialogue” is held “on all matters of mutual interest”: this limits any possible claims about “interference in domestic affairs”. Association relations are based on the logic of integration, which involves commitment of the states to jointly exercise their sovereign powers (as opposed to the logic of absolute state sovereignty traditional for international relations).

Although the Agreement does not establish any hierarchy of objectives, the progress of negotiations and public attention clearly indicate the crucial role of the **economic objective** – creating a free trade area on the basis of harmonization of legislation with EU standards as a platform for further maximum integration of Ukraine into the European domestic market. In the absence of references in the Agreement to prospects of Ukraine’s EU membership, achievement of this goal will serve as the engine of integration.

The second article of the Agreement sets out the **system of general principles**, which seems to be organized by their significance and the degree to which they are legally binding:

1) “*form the basis of internal and external policies of the parties, and are essential elements of the Agreement*”: respect for democratic principles, human rights and fundamental freedoms, and respect for the rule of law;

2) “*also constitute essential elements of the Agreement*”: promoting respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence, and combating proliferation of weapons of mass destruction, related materials, and means of their delivery;

3) “*relations of the parties rely*” on the principles of free market economy;

4) “*central to enhancing relations between the parties*” are: the rule of law, good governance, counteracting corruption, counteracting various forms of transnational organized crime and terrorism, support for sustainable development, effective multilateralism.

Compliance with the first two groups of principles is **provided with a legal mechanism** that is based on the concept of a “*breach of an essential element of the Agreement*”: if this happens, the other party is entitled to take action in a simplified manner in response to the breach, which may include unilateral suspension of the Agreement’s provisions. However, it is fundamentally important for Ukraine (and innovative for association agreements) that the Agreement stipulates obligations of the parties to respect the principles of sovereignty and territorial integrity, inviolability of borders and independence, weakened with the focus only on “promoting respect”, which essentially eliminates the legal nature of the commitment.

Besides, attention is drawn to the fact of the repeated emphasis in the text of the Agreement on the importance of the parties’ ensuring the **rule of law**. There are significant reasons for that. In the value aspect, the rule of law is the key instrument for consolidation of democracy, because, as demonstrated by experience of all post-Soviet countries, among others, establishment of electoral democracy alone does not ensure efficiency and success of the state’s development. In instrumental terms, filling association relations with actual content is done by using organizational and legal mechanisms that can only work in case practical implementation of the rule of law is provided.

Thus, the aims of association are to be achieved through integration mechanisms based on principles of respect for fundamental rights and freedoms, pluralistic democracy, the rule of law, free market economy based on fair competition. Ignoring these principles by a contracting party turns the agreement into an unviable document: that is why each association agreement provides for a termination procedure for such a case.

Therefore, by concluding the Association Agreement, Ukraine declares its determination to move into **a new quality**: from a post-Soviet country, which was forced to follow the principles mentioned under the threat of isolation from the civilized world, to a state that is an integral part of the civilized world, whose purpose is to improve these principles and disseminate them among other nations.

SECTION 3. REVIEW OF THE STRUCTURE AND CONTENT OF THE ASSOCIATION AGREEMENT

- The structure of the Association Agreement includes the following parts:
- Preamble, general objectives and principles;
- Political dialogue;
- Justice, freedom and security;
- Economic and sectoral cooperation;
- Energy;
- Deep and comprehensive free trade area;
- General, institutional and final provisions.

The part “**Preamble, General Objectives and Principles**” defines objectives of the Agreement, including the creation of associations, gradual rapprochement between Ukraine and the EU based on shared values, deepening of economic and trade relations, in particular by establishing the Deep and Comprehensive Free Trade Area (DCFTA) enhancing cooperation in the fields of justice, freedom, and security. The principles to be at the heart of the association are stipulated, above all – respect for human rights and fundamental freedoms, respect for the rule of law principle, respect for the principles of sovereignty and territorial integrity, inviolability of borders, and independence.

It is this part that contains provisions for future Ukraine-EU relations. The discussion of these aspects took the longest period of time and was only summarized during the summit of December, 19 2011. Since at this stage the European Union is not ready to grant Ukraine the membership prospect, it was decided that the parties recognize the “European identity of Ukraine”. For Ukraine, this formula is an indirect way of stipulating its own European perspective, while for the EU it does not contain obligations associated with the recognition of membership prospects. Thus, from a formal standpoint, the Association Agreement neither implies nor excludes Ukraine’s EU membership in the future. At the same time, the actual content of the Agreement clearly demonstrates its integration nature: as a result of implementing the Agreement, Ukraine gets integrated into the EU internal market and comes close to meeting Copenhagen criteria for EU membership. This will create a solid foundation for an effective invoking of the membership issue and getting the necessary support among EU Member States.

The section “**Political Dialogue**” contains provisions on development and strengthening of the political dialogue in various fields, which, *inter alia*, is to contribute to gradual convergence of Ukraine with EU in foreign and security policies. It determines that the core bilateral body to provide for the Agreement’s implementation will be the Association Council.

The section outlines the goals of the political dialogue, the key one being implementation of political association between Ukraine and the EU. Other goals comprise expanding international stability and security, enhancing respect for democratic principles, the rule of law and good governance, human rights and fundamental freedoms, the principles of independence, sovereignty, territorial integrity and inviolability of borders as well as cooperation in the fields of security and defense.

The key areas of cooperation include: cooperation to promote regional stability; strengthening peace and international justice, including through implementation of the Rome Statute of the International Criminal Court; ensuring gradual convergence in the fields of foreign and security policies, including the Common Security and Defense Policy, conflict prevention, non-proliferation of arms, disarmament and arms control, fighting terrorism, etc.

Under the section "**Justice, Freedom and Security**", the Agreement outlines the issues of justice, the law enforcement system, migration management, personal data protection, ensuring the rule of law, especially strengthening the judicial system, improving its efficiency, guaranteeing its independence and impartiality.

In order to manage migration flows, the Agreement will implement a comprehensive dialogue on key issues in the fields of migration, including illegal and legal migration, counteracting human trafficking, etc. Individual articles are focused on creating appropriate conditions for workers legally employed abroad.

The parties also undertake to cooperate to combat money laundering and financing of terrorism, illicit drug trafficking, organized crime, terrorism, as well as to develop cooperation in the field of provision of legal assistance in civil and criminal cases.

Close attention is paid to ensuring mobility of citizens, including through the introduction of visa-free regime after creating the appropriate conditions specified in the Action Plan on the EU's Visa Liberalization for Ukraine (issued in November, 2010). At the same time, the Agreement does not substitute the said Action Plan, and therefore the terms of introducing the visa-free regime do not depend on the timing of the Agreement's entry into force and implementation.

The section of the Agreement "**Economic and Sectoral Cooperation**" includes provisions on conditions, modalities and timing of harmonization of the Ukrainian legislation with that of the EU, Ukraine's commitments related to reforming institutional capacity of the relevant state authorities, and principles of cooperation between Ukraine and the EU and its Member States in a number of economic sectors and areas of the public sector policy's implementation. The 27 chapters of this section of the Agreement provide for the respective measures in areas such as taxation, transportation, environment, industrial policy and entrepreneurship, tourism, audiovisual policy, space exploration, health, culture, education, etc.

Implementation of this section of the Agreement will make it possible, firstly, to provide for deeper implementation of the provisions of the Free Trade Area Agreement, since it will promote harmonization of regulatory frameworks of Ukraine and the EU, and thus – elimination of non-tariff trade barriers, and, secondly, to facilitate integration of Ukraine into the EU domestic market and the European regulatory space in most sectors of the economy and social life of Ukraine.

Provisions of the Association Agreement regarding **energy cooperation** will introduce a harmonized legal regime for operation of the industry's enterprises in the territory of Ukraine and the EU. The provisions stipulate common principles of such regime transposed from the EU energy legislation, namely the principles of separating the functions of energy production, transportation, transit, and sale to end users, the principles of non-discrimination, national treatment of the parties' enterprises, transparent procedures for granting permits and licenses for energy production, transportation, and distribution. Thus, in case of discrepancies between the legal regimes established with the Agreement and provisions of the Energy Community, the latter shall prevail. These provisions are to ensure, *inter alia*, compliance of

any types of gas regulations between Ukraine and the Russian Federation with European standards, in particular related to prevention of transit and distribution grids' monopolization.

The section on the **deep and comprehensive free trade area** will deal with the following core areas: trade in goods, including technical barriers to trade; instruments of trade protection; sanitary and phytosanitary measures; trade facilitation and customs cooperation; administrative cooperation in the customs field; rules of origin for commodities; trade relations in the energy sector; services, establishment of companies and investments; recognition of qualifications; flow of capital and payments; competition policy (anti-monopoly actions and state aid); intellectual property rights, including geographic indications; public procurements; trade and sustainable development; transparency; dispute settlement.

The DCFTA provides for liberalization of trade in both goods and services, liberalization of the flow of capital and to some extent – the labor force flow. A distinctive feature of the DCFTA between Ukraine and the EU will be the implementation of a comprehensive program to harmonize sectoral legislation and regulations of Ukraine (transport, energy, services, agriculture, etc.) with the relevant EU standards. This allows to mostly eliminate non-tariff (technical) barriers to trade between Ukraine and the EU and to provide for enhanced access to the EU internal market for Ukrainian exporters and vice versa – of European exporters to the Ukrainian market.

General, Institutional and Final Provisions. This section introduces new formats and levels of cooperation between Ukraine and the EU after the Agreement's entry into force, including Summits, the Association Council, the Association Committee, the Parliamentary Association Committee. Introduction of a mechanism for monitoring and dispute resolution is intended.

In order to involve the civil society into the Agreement's implementation, it is planned to create a civil society platform. This provision is innovative for association agreements with European countries and creates conditions for deep and systematic involvement of the civil society sector into the entire range of relations between Ukraine and the EU.

Due to the unlimited validity term of the Agreement, the possibility of its comprehensive review is envisaged, including with respect to its goals, within five years from its enactment, as well as any time by the Parties' mutual consent. This provision creates preconditions, among other things, for possible formal stipulation of more ambitious goals (above all, the membership prospect), if Ukraine demonstrates a significant progress in the Agreement's implementation, and the EU develops adequate internal prerequisites for adopting such a decision.

SECTION 4. COOPERATION ON JUSTICE, FREEDOM AND SECURITY

In the European Union, the task of building the **space of justice, freedom and security** was introduced into the EU founding treaties with the Treaty of Amsterdam of 1997 in order to create a comprehensive legal toolkit able to ensure justice, freedom and security for every EU citizen after introduction of free (visa-free and without inspections of the state borders) movement of EU citizens among Member States. In this regard, the EU was charged with the task to “offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime” (Part 2, Art. 3 of the EU Treaty).

However, the content of the space of justice, freedom and security is not limited to the utilitarian purpose of ensuring free movement of EU citizens, since creation of the respective legal toolkit is an integral part of development of the rule of law and respect for human rights and fundamental freedoms. Therefore, these issues are the core of the EU: because freedom, equality, the rule of law and respect for human rights are mentioned among the values on which the Union is founded and which are common to all EU Member States’ societies where non-discrimination and justice, in particular, dominate (Article 2 of the EU Treaty).

When determining the content of cooperation in the fields of justice, freedom, and security, the Association Agreement follows the above-mentioned logic distinguishing both its general and special dimensions.

The first articles of the Agreement establishing its objectives and general principles define the strengthening of cooperation in the fields of justice, freedom and security to enhance the rule of law and respect for human rights and fundamental freedoms as one of the **objectives of association**. The contracting parties declare that respect for human rights, fundamental freedoms and respect for the principle of rule of law would constitute “the foundation of their domestic and external policies”. They are also “essential elements of the Agreement”, which implies the possibility of suspension of the Agreement’s effect by one of its parties if the other party commits violation of at least one of these elements. Moreover, the rule of law, combating corruption, counteracting various forms of transnational organized crime and terrorism appear among the elements considered “central to enhancing cooperation between the parties”.

However, the main body of provisions related to cooperation in the fields of justice, freedom and security is concentrated in the special section of the Agreement and can be grouped into **five sets of issues**:

- 1) the rule of law and respect for human rights and freedoms, as the key area of cooperation on justice, freedom and security;
- 2) protection of personal data;
- 3) citizens’ mobility (the entry and stay regime for citizens of the parties in their territories, as well as migration, asylum, border management);
- 4) preventing and fighting various crimes that affect the parties’ cooperation;
- 5) judicial cooperation in civil and criminal cases.

As noted above, commitments related to **the rule of law** and **respect for human rights and freedoms** are perceived by the parties as fundamental to the entire Agreement. Thus, the parties are obliged to pay special attention to consolidating the rule of law and strengthening public authorities at all levels, especially those that administer justice and law enforcement. The objective of strengthening the judicial system, improving its efficiency, guaranteeing its independence and impartiality and fighting corruption stands out as a special topic. We should note that Ukraine's successful implementation of this set of tasks would allow, among other things, significantly improving the capacity to implement the Agreement as a whole (e.g., through greater efficiency of executive authorities and better protection of the Agreement's provisions by courts).

Cooperation for **personal data protection** is focused on providing an appropriate level of protection to meet the highest European and international standards, including those developed within the Council of Europe. This cooperation is of extreme practical importance: under the current conditions, mechanisms for addressing specific practical state governance needs are often based on the use of personal databases, e.g. automated risk analysis. Therefore, to achieve substantial progress in performing many commitments under the Agreement (e.g., in the fields of customs cooperation, which will simplify access of Ukrainian goods to the EU internal market), it is important for Ukraine to join the existing EU databases or expand the scope of information exchange, a mandatory prerequisite for which is ensuring the highest data protection standards in Ukraine.

In Ukraine, **mobility of citizens** is not only perceived as a major practical issue of cooperation in the fields of justice, freedom and security, but also acts as a key instrument of Ukraine's European integration and an indicator of its success. The Agreement reiterates the commitment to "ensure full implementation" of the existing agreements on visa facilitation and readmission concluded between Ukraine and the EU in 2007. As for introduction of the visa-free regime for Ukrainian citizens' travels, the Agreement is limited to stipulating the rather abstract obligation of the parties to make every possible effort to achieve progress in the dialogue that they are having to determine conditions of the visa-free regime in accordance with EU legislation. It is important that this objective was not only defined as a "long-term perspective", but has actually been implemented as a result of approving the EU's 2010 Action Plan on Visa Liberalization for Ukraine. This document is legally independent of the Agreement, and therefore its implementation does not depend on the latter's entry into force. In the Association Agreement, some of the obligations stipulated in the Action Plan were included, in particular relating to migration, granting asylum, and border management. The parties emphasized, *inter alia*, the importance of joint management of migration flows, maintenance of a comprehensive dialogue on all migration-related issues, and effective implementation of the principle of integrated border management.

Prevention and counteraction of international crime is an important part of the section of the Agreement on cooperation in the fields of justice, freedom, and security. Obligations of the parties are limited to the obligation to criminalize certain types of crimes and to provide mutual assistance to prevent and prosecute offenders in accordance with set standards (which are most often global international conventions). Among other things, they provide for cooperation in the framework of Europol (European Law Enforcement Agency, which has the status of an EU

agency). The section focuses on four groups of crimes: (1) money laundering and financing terrorism, (2) illicit trafficking in drugs, psychotropic substances and precursors, (3) crime and corruption, among other things human trafficking and trade in arms, smuggling, economic crimes, including in the field of taxation, corruption in the private and public sectors, forged documents, cyber crimes, (4) terrorism. Moreover, cooperation to prevent and counteract certain crimes that threaten international peace and security is part of the parties' obligations stipulated in the section on political dialogue (proliferation of weapons of mass destruction, related materials and their delivery means, illicit trafficking in weapons, including small and light ones; terrorism).

The section also contains a number of provisions on **judicial cooperation in civil and criminal cases**. Such cooperation must be based on the principles of legal certainty and the right to a fair trial, as well as be implemented by joint participation of the parties in international conventions. Among priorities of cooperation in criminal cases, there are mutual legal assistance and extradition, participation in the Rome Statute of the International Criminal Court (to achieve progress, it is necessary to amend the text of the Constitution of Ukraine), as well as cooperation within Eurojust (the EU agency status). Mutual assistance by courts and law enforcement agencies has traditionally been a "sensitive" political issue, because it is not only an important instrument of national security, but can also directly impact the course of political struggle in a particular state. Therefore, the depth of cooperation between Ukraine and the EU on these issues is a reliable indicator that shows the degree of mutual trust and, thus, of Ukraine's integration into the European security and legal space.

It is important that provisions of the section are defined as **reciprocal obligations**. However, given the substantial differences in the degree of the parties' development, in most cases they are automatically understood rather as commitments by Ukraine than by the EU or its Member States. However, it is necessary to keep in mind that the EU and its members are also constantly encountering problems with implementation of international obligations or their own *acquis*, which, moreover, are permanently being reformed. In this aspect, provisions of the Agreement provide the basis for validity of Ukraine's requests regarding its involvement into the respective decision-making process in the European Union (to the maximum extent permitted for a state that is not a Member State), as well as that the EU should take Ukraine's position into account when taking joint actions on the international arena (e.g., when developing international conventions or decision-making at international organizations). This means that due to the Agreement, Ukraine gets an additional drive to participate together with the EU in development of international standards in the fields of justice, freedom, and security, as well as to practically implement them.

It should be noted that all provisions of the Agreement concerning cooperation in the fields of justice, freedom and security are stated as obligations only for the contracting parties and establish rather generalized goals, to achieve which the parties will have to take appropriate measures at the national level, including adoption of the relevant legislation. Moreover, these provisions often refer to international legal and political documents as the source of the standards in compliance with which the parties must cooperate or achieve its objectives. Hence, it follows that these provisions do not directly establish subjective rights or obligations of

individuals and legal entities, and therefore they are **devoid of direct action**. This means, in particular, that these provisions of the Agreement cannot be enforced by individuals' or legal entities' appeals to national courts of the contracting parties, and therefore problems relating to defaults on obligations can only be resolved within the framework of the general dispute resolution procedures stipulated in the Agreement.

Regulations of the section of the Agreement on cooperation in the fields of justice, freedom and security **will not be included into the provisional agreement**, and therefore they will take legal effect for Ukraine and the EU only after the Agreement's entry into force. While this could potentially create some limitations for exchange of information, experts and granting of technical assistance, it cannot possibly be an insurmountable obstacle to practical implementation of commitments undertaken. Firstly, nothing prevents the parties from implementing the commitments unilaterally. Secondly, the commitments regarding implementation of the visa-free regime for traveling of citizens of Ukraine to the EU are implemented on the basis of the Action Plan on the EU's Visa Liberalization for Ukraine of 2010, which is a document independent of the Association Agreement. Thirdly, the parties can update content of the Ukraine – EU Action Plan in the fields of justice, freedom and security of 2007 to reflect the agreements reached, and a significant number of commitments can be met by Ukraine's implementation of international treaties or resolutions of the international organizations referred to in the section.

SECTION 5. ECONOMIC AND SECTORAL COOPERATION, ESTABLISHING THE DEEP AND COMPREHENSIVE FREE TRADE AREA

Background

The economic, sectoral and trade parts are the largest in volume and the most sophisticated ones in terms of details provided for in AA components. However, it is this part of the AA that, without derogating the other parts, may bring the most tangible results for Ukraine – for consumers, businesses, etc. – already in the near future. However, these parts also include the greatest risks, will have significant macroeconomic consequences for Ukraine's economy, imply large-scale amendments in the Ukrainian legislation in many areas and sectors of the economy, and are associated with the need for a great numbers of reforms. Only elaborate long-term economic policy and real progress in market transformation will allow Ukraine to fully enjoy all the benefits of creating a deep and comprehensive free trade area and to minimize the major risks.

Hence, the economic, sectoral and trade parts of the AA may not only regulate bilateral trade between the parties, but also, provided the political will and support by the public, to some extent lay the basis for a new model of socio-economic development of Ukraine.

Economic and sectoral cooperation

The "Economic and Sectoral Cooperation" part of the Association Agreement contains provisions stipulating objectives, tasks, directions, and forms of cooperation between Ukraine and the EU in 28 areas, including the following:

- 1) Cooperation in the field of energy, including nuclear energy;
- 2) Macroeconomic cooperation;
- 3) Public finance management: budgeting, internal control and external audit;
- 4) Taxation;
- 5) Statistics;
- 6) Environment;
- 7) Transportation;
- 8) Space;
- 9) Cooperation in research and development;
- 10) Industrial policy and policy for enterprises;
- 11) Cooperation in the mining and metallurgical industries;
- 12) Financial services;
- 13) Company law, corporate governance, accounting and audit;
- 14) Information society;
- 15) Audiovisual policy;
- 16) Tourism;
- 17) Agriculture and rural development;

- 18) Maritime and fishery policies;
- 19) Cooperation for the Danube River;
- 20) Consumer protection;
- 21) Cooperation for employment, social policy, and equal opportunities;
- 22) Healthcare;
- 23) Education, training and youth;
- 24) Culture;
- 25) Cooperation in the field of sport and for development of physical activity;
- 26) Cooperation for development of the civil society;
- 27) Cross-border and regional cooperation;
- 28) Participation in EU programs and agencies.

Almost each of these sections will contain a set list, appropriate phases and timing for implementation of the EU legislative acts that Ukraine committed itself to transpose into the national legislation. Mostly, this relates to the foundational and most important EU acts in the respective areas. Overall, the abovementioned part of the Agreement contains the commitment to transpose and practically implement over 300 EU regulations and directives, as well as other EU *acquis* acts, including notes and explanations of the European Commission, and international treaties. EU legislation implementation terms are 2-3-5-7 years after the Agreement's entry into force, with about two thirds of the acts to be implemented within 2-5 years.

As we can see from the above list of the areas cooperation being subjects of "Economic and Sectoral Cooperation", the latter contains not only provisions on cooperation in specific economic sectors or industries, but also provisions for cooperation in other spheres of social life. This will, in addition to the development of relevant industries and sectors involved as such, make it possible to involve the context of relations with the EU, including its best practices and regulation, for development and reforms in areas such as information society, audiovisual policy, healthcare, education, training and youth, culture, development of sports and physical training, civil society, cross-border and regional cooperation.

A separate part of the Association Agreement will be constituted by provisions on financial cooperation between the parties, including provisions on combating fraud. In compliance with this part, the EU undertakes within the respective financial instruments providing assistance to Ukraine to achieve AA objectives. At the same time, such assistance will be carried out in accordance with the principles of rational and prudent financial management, and will imply effective implementation of set measures to prevent and combat fraud, corruption, etc. To do this, Ukraine will be required to properly implement the relevant provisions of the EU *acquis* related to:

- liability, including criminal, for violating legislation regulating how to obtain and use EU assistance;
- liability for corruption in this area;
- money laundering.

Trade and trade-related issues

The section of the AA on deep and comprehensive free trade area (DCFTA) – "Trade and Trade-Related Issues" – involves liberalization of trade in goods, services, capital flows and current payments, and, in part, labor force migration.

As known, the EU is currently among the major trade partners of Ukraine. Approximately one third of the foreign trade turnover of Ukraine is trade with the EU-27. Moreover, according to the State Statistics Service, the amount of direct investment into the Ukrainian economy from EU Member States as on October, 1 2011 amounted to 38.8 billion USD, accounting for 80% of total investment into Ukraine.

The objective of the provisions on DCFTA establishment as a “new generation” free trade area agreement is not only abolition or substantial reduction of customs tariffs for more than 95% of tariff items and far-reaching liberalization of trade in services, covering all methods of service provision, but also provisions on investment, protection of intellectual property, including geographical indications, governmental procurements, competition rules, transparency of regulation, sustainable and harmonious development. Besides, the DCFTA section of the Agreement will include provisions to eliminate and prevent non-tariff barriers to trade, including technical barriers, standardization, metrology, accreditation and conformity assessment, as well as sanitary and phytosanitary measures.

In addition to the abovementioned 15 parts, the “Trade and Trade-Related Issues” section includes more than two dozens of protocols, annexes, amendments, and declarations that in a more detailed way define parameters for liberalization of bilateral trade, such as customs tariff rates and the schedule for their reduction, specification of provisions on the rules origin and customs cooperation, the issues of harmonization (approximation) of legislation in the fields of non-tariff regulation, sanitary and phytosanitary measures, trade in services, electronic commerce, governmental procurements, competition rules, etc.

An important distinction of the “Trade and Trade-Related Issues” section compared to similar provisions in other EU agreements of this type is that lots of the chapters will contain Ukraine’s commitments to gradual approximation and / or adaptation of the Ukrainian legislation to the EU legislation. They are directly associated with opening full access to the EU internal market, especially in areas such as sanitary and phytosanitary measures, trade in services, electronic commerce, technical barriers to trade, etc.

Overall, provisions of this part of the Agreement contain obligations to transpose and practically implement approximately 150 EU regulations and directives, as well as other acts of the EU *acquis* and international treaties and standards. This is not including the general provisions regarding effective implementation of the international treaties or substantive regulations already ratified by Ukraine, which Ukraine will be obliged to transpose and effectively enforce in the domestic legislation.

The section of “Trade and Trade-Related Issues” includes the following sections:

1. National regime and access to the commodity market

The section defines general provisions on the national regime, abolition of customs duties and charges, non-tariff regulation measures, administrative cooperation.

Provisions of this section on abolition of customs duties and charges apply to commodities originating from one party and exported to the other one. The rules for determining the country of origin of commodities are stipulated in a separate protocol.

Import duty and tariff quotas: Today, average import duty rates applicable in trade between Ukraine and the EU are relatively low (Table 2). Traditionally, higher rates are observed in trade in agriculture goods, where the EU market protection is

stronger than in Ukraine. The low protection level of the EU industrial market is largely conditioned by existence of the EU Generalized System of Preferences (GSP), Ukraine being a beneficiary of it⁷.

Table 2. Import duty rates applied to trade between Ukraine and the EU in 2011

	Import duties applicable in the EU for products originating from Ukraine (average)	Import duties applicable in Ukraine for products originating from the EU (average)
Import duties on agricultural products	7,42	6,41
Import duties on industrial products	1,19	2,45

Source: Market Access Map⁸

Within the DCFTA, mutual liberalization of trade both in industrial and agricultural goods is anticipated, which will contribute to the reduction of actual and administrative costs for businesses. Cancellation or substantial reduction of import duties is provided for more than 95% tariff lines.

In respect of some goods for which no agreement on full liberalization was reached, the parties agreed to reduce or cancel import duties for such goods under this section and in compliance with a set schedule.

Thus, e.g., Ukraine will gradually eliminate import duties on second-hand clothes by reducing them by 1% during 5 years to achieve the zero duty rate in the fifth year. At the same time, Ukraine will be able to introduce a system of input prices. The input price will be calculated based on data on the contact value of finished garments exported to Ukraine during the previous three years, namely 30% of the average customs value for finished products under a set list. Thus, second-hand products from EU Member States will be imported to Ukraine at a price that is lower than the estimated input price.

Moreover, regarding certain agricultural products no complete abolition of the import duty is intended, instead duty-free tariff quotas are set for key products originating from Ukraine. In particular, according to the Ministry of Agriculture and Food, the following quotas for duty-free exports to the EU are stipulated⁹:

- 1.6 million tons of grain in the first year of FTA provisions' coming into effect, with a gradual increase to 2.0 million tons within five years. The quota for wheat export to the EU is 950 thousand tons (one million tons in five years), maize – 250 thousand tons (350 thousand tons), barley – 400 thousand tons (650 thousand tons);
- 20 thousand tons of frozen chicken carcasses and 16 thousand tons of processed products in the first year, with the gradual increase to 20 thousand tons within five years;
- 3 thousand tons of eggs in shell and 3 thousand tons of processed egg products;

⁷ See http://trade.ec.europa.eu/doclib/docs/2010/march/tradoc_145943.pdf

⁸ See <http://www.macmap.org/Applied.Tariffs.aspx>

⁹ See http://news.dt.ua/ECONOMICS/ukrayina_i_es_domovilisy_a_pro_kvoti_na_bezmitniy_eksport_agroproduktsiyi-88464.html

- 12 thousand tons of beef;
- 40 thousand tons of pork (equally processed pork and carcasses);
- 30 thousand tons of sugar, 27 thousand tons of molasses and sugar syrup.
- Besides, tariff quotas will apply to other products as well, such as honey, garlic, tomato paste, juices, etc.

Export duty: Ukraine's canceling of export duties was one of the key requirements of the EU in the framework of negotiations on the FTA. As of May 2012, Ukraine is applying export duties for several commodity groups, including oilseeds, live cattle, animal hides, ferrous and nonferrous scrap metals, natural gas. Overall, approximately 1% of the Ukrainian exports to the EU was charged with export duty in 2011.

Under provisions of the section, the parties will not continue to impose and will not impose any duties or other measures with the equivalent effect in connection with exports from Ukraine to the EU and vice versa. The existing measures applied by Ukraine will expire within a specified transition period – during 10 years after enactment of the AA (except for sunflower seeds – to be cancelled within 15 years).

At the same time, within 15 years, Ukraine will be able to apply a special safeguard mechanism (levying a surcharge within certain specified limits) for specific products, including sunflower seeds, raw hides, certain types of scrap metal. To each of these commodities, a different mode will apply, but the general protection ideology will remain unchanged.

For sunflower seeds, the surcharge rate will be set so that the amount of export duty and the surcharge were 10%. The rate of export duties will be gradually reduced over 10 years in accordance with agreements reached with the EU, and the surcharge rate will gradually increase replacing export duties and compensating for this decrease.

Thus, within fifteen years after FTA agreement's entry into force, Ukrainian producers of some sensitive products will have extra protection, which will allow them to better prepare for increased competition in the future.

Export subsidies: Since the Agreement's entry into force, neither of the parties will apply export subsidies or measures having an equivalent effect for agricultural products in trading with the other party. Besides, with some exceptions, in particular pursuant to Article XI of the 1994 GATT, quantitative restrictions on imports will be cancelled.

2. Trade safeguards

Under the section's provisions, the parties keep in force the regime under Article XIX of the 1994 GATT, the WTO Agreement on Safeguards. The EU also reserved for it the respective rights and obligations arising from Article 5 of the WTO Agreement on Agriculture, except for trade in agricultural commodities, which will be covered by the preferential treatment under provisions of the AA. Besides, the provision under which the parties, when applying safeguards, shall try to minimize damage to bilateral trade was kept in force.

Ukraine's application of safeguards for passenger cars is separately regulated. Thus, after investigation by competent authorities and notifying the EU, Ukraine may apply safeguards in the form of higher duties (up to 10%, but not more than the duty established under the Most Favored Nation mode) for passenger cars originating from the EU, if importation of these vehicles exceeds the limit by two parameters. These parameters are: the total number of passenger cars imported from the EU during the

year and the market share occupied by passenger cars imported from the EU in the total amount of new cars registered in Ukraine compared to the previous year. The respective limit on the number of cars imported from the EU is 45,000 units, on the market share – 20% during the first two years after the DCFTA Agreement’s entry into force, 21% in the third year, 22% in the fourth year, and so on up to 25%. The right to apply the appropriate safeguard will be valid for 15 years and will not apply during the first year of DCFTA provisions’ enactment.

Regarding anti-dumping and countervailing measures, overall the parties reaffirmed their rights and obligations within the WTO framework, in particular under Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of GATT 1994, and the WTO Agreement on Subsidies and Countervailing Measures. Additionally, Ukraine and the EU established requirements for transparency in safeguards’ application, accounting for public interests, applying the smaller anti-dumping or countervailing duty rule, the review and consultations mechanism.

3. Technical barriers to trade, standardization, metrology, accreditation, and conformity assessment

The section regulates issues related to preparation, adoption, and application of standards, technical regulations, and conformity assessment procedures as interpreted in the WTO Agreement on Technical Barriers to Trade, which may affect trade in goods between the parties.

To increase mutual compatibility of the respective systems of Ukraine and the EU in the field of technical regulations and to facilitate access to their markets, the parties agreed to strengthen cooperation on standards, technical regulations, metrology, market oversight, accreditation, and conformity assessment. In particular, dialogues on regulatory issues can be initiated for this purpose both at the horizontal and at the sectoral levels.

Ukraine, in turn, undertakes to take the necessary steps to progressively achieve compliance with EU technical regulations, the European procedures of standardization, metrology, accreditation, and conformity assessment, as well as the market oversight system, and to implement the principles and practices enshrined in the relevant EU regulations and directives.

To achieve this objective, Ukraine will, according to the agreed schedule, incorporate the relevant EU *acquis* into the Ukrainian legislation, will implement administrative and institutional reforms necessary for implementation of the AA and the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA), provide for functioning of the efficient and transparent administrative system required for meeting this section’s requirements.

Besides, Ukraine will fully ensure participation of its relevant authorities in European and international organizations for standardization, legal and fundamental metrology and conformity assessment.

Moreover, Ukraine will gradually transpose the body of European standards into national standards, eliminate the national standards that are contrary to such standards, including international standards (GOST) adopted before 1992. Ukraine must also ensure achievement of all other requirements imposed for full membership in the European Organization for Standardization.

Besides, the parties agreed to include the ACAA Agreement as an additional protocol, which will cover one or more sectors identified in the relevant annex, after full

harmonization of the Ukrainian sectoral and horizontal legislation, institutions and standards with the EU *acquis*. Inclusion of the ACAA Agreement as an annex will imply that trade in goods between the parties in the sectors covered by this Agreement will be held on the terms that are used in trade among EU Member States. After the EU's audit and reaching an agreement on the status of harmonization of Ukrainian legislation with the relevant technical regulations, standards and the infrastructure, the ACAA shall be annexed as a protocol to this Agreement by agreement between the parties in accordance with the procedure of amending the Agreement.

It is assumed that the effect of the ACAA will eventually spread to all sectors specified in the relevant annex, including horizontal and sectoral legislation:

- horizontal legislation (general product safety, establishment of accreditation and market surveillance requirements, the overall structure (system) for product marketing, units of measurement, liability for defective products),
- sectoral legislation (machinery, electromagnetic compatibility, simple high pressure vessels, equipment operating under pressure, mobile equipment operating under pressure, elevators, toys safety, electric equipment designed for specific voltage limits, requirements for efficiency of new water heating boilers fired with liquid or gaseous fuel, equipment operating on gaseous fuels, personal protection means, technical requirements for energy consumption of electrical household refrigerators and freezers, non-automatic weighing instruments, weighing instruments, marine equipment, medical devices, active implanted medical devices, in vitro diagnostic medical devices, equipment and protective systems intended for use in explosive atmospheres, radio and telecommunication terminal equipment and mutual recognition of its conformity, cable installation for transporting people, pleasure boats, construction products, including their implementation measures, packaging and waste, explosives for civil use, labeling and indication of standard information on consumption of energy and other resources related to energy products, high-speed railways).

After coverage of the relevant sectors listed above with the ACAA Agreement, the parties undertook to consider expansion of these spheres to cover other industrial sectors as well. Before goods get covered by the ACAA Agreement, applicable laws of the parties shall apply subject to provisions of the WTO Agreement on Technical Barriers to Trade.

4. Sanitary and phytosanitary measures

The objective of the section is:

- promoting trade in goods covered by sanitary and phytosanitary measures (SPS) between the parties, while ensuring protection of human health, animals and plants, by harmonizing the legislative framework of Ukraine with legislation of the European Union;
- recognizing the healthcare mode of the parties and applying the principle of regionalization, establishing a mechanism for recognition of equivalence of sanitary and phytosanitary measures applied by the parties;
- establishing mechanisms and procedures to facilitate trade;
- improving cooperation between the parties regarding sanitary and phytosanitary measures.

Ukraine has to harmonize its legislation on SPS and well-being (welfare) of animals with the European Union legislation according to the list of EU *acquis* stipulated in the Agreement.

Provisions of the section require cooperation not only for harmonization of legislation, but also for the relevant institutional capacity building.

The section provides for creation of an SPS Management Committee, which would regularly conduct monitoring of implementation of the harmonization process and issue respective recommendations.

Moreover, within three months after the AA's entry into effect, Ukraine must submit to the above-mentioned committee a comprehensive strategy for implementing provisions of the SPS section, which will serve as a reference document for the purposes of implementation.

Equivalence of sanitary and phytosanitary measures may be recognized in accordance with individual activities or a group of activities or a system adopted for a sector, subsector, commodity or a commodity group. Equivalence shall be determined according to the procedure specified in the annex to the section and may include inspection or verification.

Approximation of legislation established as a result of the special monitoring procedure shall also be regarded as Ukraine's request to initiate the procedure of recognition of the respective measures' equivalence.

Equivalence is officially recognized by the SPS Management Committee based on consultation procedure outcomes. The Committee's decision should also provide for fewer physical inspections at the border, simplified certification, and facilitated production capacity approval procedures.

5. Customs matters and trade facilitation

Under provisions of the section, the parties agree to enhance cooperation in customs matters and trade facilitation to ensure effectiveness of the respective legislation and procedures and develop the necessary administrative capacity of the relevant agencies, to achieve the objectives of efficient control and legitimate trade facilitation.

Ukraine and the EU agreed that the relevant trade and customs legislation must be stable and comprehensive, as well as proportionate, transparent and predictable, non-discriminatory, impartial and applied equally and effectively. Ukraine also committed itself to gradual harmonization, according to the defined schedule and the list of EU legislation acts, of its customs legislation with EU *acquis*.

At the same time, the parties developed respective provisions on cooperation for providing technical assistance for capacity building and promotion of reforms in this field.

6. Establishment of businesses, trade in services, e-commerce

Provisions of the section cover all methods of service delivery and lay the necessary foundation for gradual mutual liberalization of establishment of business activities, cross-border services provision, cooperation for e-commerce, as well as will regulate principles of trade in other types of services, including computer, mail and courier, telecommunication, finance, transportation, etc.

Regarding the establishment of businesses and cross-border services, the section's provisions cover liberalization of all types of these activities and services other than mining, manufacturing and processing of nuclear materials, manufacture or trade in weapons, munitions and military material, audiovisual services, national maritime cabo-

tage and regular or irregular international air transportation and transportation within the country, transportation directly related to the implementation of commercial traffic rights, other than aircraft repair and servicing during which the aircraft does not perform the transportation function, sale of air transportation services, computer booking systems services (CBS), on-ground maintenance services, airports operation services.

The national treatment and the most favored nation treatment will be established for these ways of services delivery depending on which is best.

Besides, provisions of the section liberalize measures by the parties related to entry and temporary stay in their territory of the following categories of individuals, services providers: core staff, business visitors, executives, professionals, trainee graduates, sellers of business services, providers of contractual services, independent experts.

Moreover, provisions of the section define the domestic regulatory framework (licensing conditions and procedures) and general application provisions (mutual recognition, transparency, disclosure of confidential information).

7. Current payments and capital flows

Under provisions of the section, the parties undertake to not restrict and authorize, in freely convertible currency and in accordance with provisions of Article VIII of the International Monetary Fund Statute, any payments and transfers to the current account of the balance of payments between the EU and Ukraine.

Since the AA's enactment, the parties must ensure free movement of capital relating to direct investments' inflow in accordance with the receiving country's legislation and investment in accordance with provisions of the company establishment, trade in services and e-commerce section, as well as liquidation or repatriation of these investments and any profit derived from them.

Besides, since the AA's entry into force, the parties must ensure free movement of capital relating to extension of loans for commercial transactions or provision of the services in which a citizen of one of the parties is involved, and free flow of capital related to the investment portfolio and financial loans and credits of the other contracting party's investors.

Provisions of the section also stipulate the opportunity to implement safeguards on flow of capital between the EU and Ukraine for a period not exceeding six months, if such measures are essentially necessary. The party that takes the safeguard measures shall immediately inform the other party about the adoption of such safeguards and, as soon as possible, the timing for their withdrawal.

8. Public procurements

The section provides for reciprocal access to public procurement markets based on the principle of national treatment at the national, regional and local levels to enter into public contracts and concessions in traditional sectors of the economy, as well as in the spheres of public services and infrastructure. Providing for such access implies consistent harmonization of the Ukrainian legislation in the sphere of public procurements with the relevant EU legislation, accompanied by the institutional reform and formation of an effective public procurement system based on the principles governing public procurements in the European Union, as well as concepts and definitions laid down in EU Directives No. 2004/18/EC and No. 2004/17/EC.

The section identifies the scope of application for provisions on public procurements, the range of subjects covered by the section's effect, as well as identifies the

types of contracts subject to liberalization in this sector, in particular, it defines the marginal contract values starting from which these contracts are subject to the public procurement provisions (e.g. the minimum price threshold for public contracts for supply of goods and provision of services concluded with central state authorities, except for public service contracts, will be 130 thousand EUR).

As part of the institutional reform, Ukraine, among other things, must identify the central executive authority in charge of this sphere with the authority to ensure a consistent policy for all aspects relating to public procurements. This authority shall promote the section provisions' implementation, harmonization of legislation and policy coordination in this area, be impartial and independent, control legality of decisions taken by government agencies or economic entities acting as customers in the contracting process.

Besides, the section identifies the key standards governing the process of concluding public contracts, requirements for disseminating information on procurements, definition of contract performers, remedies.

Pursuant to the section, Ukraine must gradually ensure compatibility of its current and future legislation with the EU *acquis* on public procurement. This process will be implemented in stages, implying transition to the next stage after the previous stage's assessment.

Effective and mutual opening of the parties' markets will be carried out gradually and simultaneously, and will depend on successful approximation of legislation.

9. Intellectual property

The objective of this section is enhancing the process of production and commercialization of innovative products and inventions, as well as enhancing the due and efficient level of intellectual property rights' protection and implementation.

Under provisions of the section, the parties must provide for due and efficient implementation of the international treaties on intellectual property to which they are parties, including the WTO Agreement on Trade-Related Aspects of Intellectual Property. Overall, the section supplements and details rights and duties of the parties based on the above-mentioned Agreement and other international treaties in this field.

Regulations of the section define the legal framework for cooperation between Ukraine and the EU, provide for adequate commitments of Ukraine regarding approximation of its legislation to the EU legislation, and cover such intellectual property right objects as copyrights, including copyrights on computer programs and their databases, and rights related to copyrights, rights related to patents on biotechnological inventions, trademarks, trade names, designs, provisions on protection of undisclosed information and protection against unfair competition, as well as provisions on protection of EU geographic indications in Ukraine (approximately 3,000 titles, including such as cognac, champagne, some brands of cheese) and vice versa, including provisions on determination of origin, specifying sources and varieties of plants, transition periods, the mechanism and amounts of compensation.

However, Ukraine has agreed the ten-year transition period and the compensation package for modernization of the enterprises that will be affected by the change of product names as a consequence of protection of geographic indications, and promotion of Ukrainian products under new brands to the EU markets.

10. Competition (anti-competitive actions and mergers; governmental aid)

Provisions of the section are based on the approach implying that anti-competitive business practices may distort duly functioning markets and, generally, undermine the benefits of trade liberalization.

The section's provisions define the practices and economic transactions that are inconsistent with the Agreement to the extent that they affect trade between the parties, including the following:

- agreements and concerted practices among companies the objective or effect of which is preventing or substantially reducing competition;
- abuse by one or more companies of their dominant position;
- concentration of business entities that results in monopolization or significant limitation of competition in the market.

Besides, provisions of the section secure Ukraine's commitment to harmonize its competition law and law enforcement practices with the relevant EU *acquis*, the list of relevant EU legislation acts, and terms for their implementation.

Important provisions of the section are rules on state-owned enterprises and undertakings granted with special or exclusive rights, under which the parties shall ensure that the relevant competition law applies to such enterprises so far as that application of the above competition law and principles did not prevent performance, under the law or in fact, of the specific tasks assigned to these enterprises.

Besides, the section will regulate legal relations related to governmental aid, in particular, it defines governmental aid provided from public resources and distorting or potentially distorting competition by favoring certain undertakings or production of certain goods as incompatible with the AA's provisions, except for those cases where the aid is socially-oriented and available for individual consumers on the non-discrimination basis or where it is aid to compensate for damages caused by natural disasters or emergency occurrences.

Moreover, the following aid cases may also be considered as compatible with proper functioning of the AA:

1) aid to promote economic development in areas where life standards are below the average, or where there is a significant unemployment level;

2) aid to facilitate implementation of an important project for the common European interest or to remedy a serious imbalance in the economy of an EU Member States or Ukraine;

3) aid to promote the development of certain economic activities or certain economic sectors, where such aid does not affect trading conditions between the parties to such an extent that it conflicts with the interests of the parties;

4) aid to promote culture and preserve heritage, if the aid does not adversely affect trading conditions and is not contrary to interests of the parties.

5) aid provided under the rules to achieve goals established in accordance with EU horizontal exemptions block and rules on horizontal and sectoral governmental aid;

6) aid for investment to comply with mandatory standards of the EU directives listed in annexes to the AA, during the implementation period specified in them;

7) aid for investment associated with adaptation of enterprises and equipment to new requirements set out in annexes to the AA (may be allowed in the amount of up to 40% of the total costs).

To fulfill these obligations, Ukraine must adapt its legislation in this field to EU legislation during three years from the AA's coming into effect and create an appropriate and efficient institutional framework, including an operationally independent agency with the necessary authority, a system to control granting and use of governmental aid, including providing for relevant statistical information.

11. Energy-related trade

The section regulates the issue of interim measures and reconciliation procedures in the case of disruptions in supply of energy resources, and primarily anticipates application of the common procedures for disputes settlement, non-use of any financial sanctions in dealing with the said disputes, reduction of the procedures' duration.

Besides, the section contains provisions relating to domestic price regulation, a ban on dual pricing, customs duties and charges, as well as quantitative limitation, transit and transportation, cooperation for infrastructure development, unauthorized extraction of energy products, etc.

A separate annex to the section provides for an early warning mechanism, which is intended to consolidate practical measures aimed at prevention and rapid response to situations of emergencies or a threat of an emergency. It provides for an early assessment of potential risks and problems associated with supply and demand for natural gas, oil or electricity and warning and rapid response in case of an emergency or a threat of an emergency, which means a situation that results in a significant failure and / or physical halt in supply of natural gas, oil or electricity between Ukraine and the European Union.

12. Transparency

The section contains provisions for the so-called general application measures and stakeholders and aims to create and support an effective and predictable legal framework for entities doing business within its territory, in particular small businesses, as well as due accounting for requirements of the legal certainty and proportionality principles.

Provisions of the section, while reaffirming the respective obligations of Ukraine and the EU under WTO Agreements, develop and refine provisions aimed at ensuring transparency, the consulting process and better management of general application measures, since the latter can affect any matter covered by the Agreement.

Under provisions of the section, each party shall ensure that general application measures are available to stakeholders on the non-discrimination basis through officially identified sources of information and, if possible, by electronic means. The relevant information must be placed in such a way that the stakeholder and the other party were able to familiarize with it, get explanation of objectives and justification for the respective measures, also taking into account that appropriate measures should provide for sufficient time between publication and entry into effect, for the exception of the case where it is not possible due to an emergency situation.

Moreover, the section covers the aspect of the quality level of regulatory measures and governance, as well as good administrative behavior, with the view to promoting standards in this area, including by sharing information and best practices on the regulatory reforms' implementation process and regulatory impact assessment.

13. Trade and sustainable and harmonious development

The section contains provisions aimed at strengthening ties in the field of trade, environmental protection and social policies, as well as practices to further promoting the objectives of expanding trade between Ukraine and the EU. The section also aims at taking into consideration and mutual coordination of economic, social and environmental interests in development of the state and society, not only for the present generation, but for future generations as well.

To this end, provisions of the section define the principles to ensure complementarity of economic development, environmental protection and social policy, as well as confirm the need for effective application of existing international instruments in the field of social policy and environmental protection.

14. Dispute settlement and (15) Mediation mechanism.

The section contains provisions for *bona fide* resolution of any dispute between the parties regarding application of the AA's provisions in the aspect of the DCFTA, unless these sections state otherwise, and for arriving, if possible, in the respective mutually-agreed solutions.

Besides, the section defines the rules and procedure of arbitration for dispute settlement, the procedure and enforcement of arbitral awards.

Under provisions of the section, if during dispute arbitration a question relating to interpretation of EU institution's acts arises, the arbitral tribunal shall forward the respective request to the EU Court of Justice, whose awards are binding on the arbitral tribunal.

The section on the mediation mechanism regulates issues related to the procedure to achieve a mutually acceptable solution for disputes through a comprehensive and rapid procedure involving an intermediary.

Key consequences of the AA economic component's implementation

The economic component of the AA, i.e. the sections "Economic and Sectoral Cooperation" and "Trade and Trade-Related Issues", is not only the largest in terms of the text volume, but also has the potential to be the fastest one implemented through the EU simplified ratification procedure for agreements related to trade and trade-related issues.

Implementation of the section of the Agreement "Economic and Sectoral Cooperation" will result in:

1) modernization of the legal regulation framework in Ukraine and cooperation with the EU in the above-mentioned 28 areas

2) improved performance of the Agreement's provisions regarding formation of the DCFTA, as implementation of the sections, including with financial support from the European Union, will contribute to harmonization of the regulatory framework of Ukraine and the EU, and thus – to elimination of non-tariff trade barriers,

3) facilitation of Ukraine's integration into the European economic and legal space in general, including the EU's internal market and the European Economic Area.

Given the EU's active policy towards signing the so-called bilateral free trade agreements of the "new generation", creation of the DCFTA in compliance with the Association Agreement between Ukraine and the EU provided successful implementation of the relevant obligations, will make it possible to create regulatory area that is compatible with the rules agreed on within agreements between the EU and third countries.

Thus, the EU has signed or is in the process of negotiation for signing free trade area agreements (as part of larger agreements or those exclusively on free trade) with almost all economically important states and trade associations. The European Union considers such a strategy as a way of resolving global trade issues with conventional means, forming the global trade agenda and finding ways and approaches that would make it possible to form a global response to the major challenges of the global trading system with the maximum consideration for its fundamental interests.

It has been repeatedly stated that the direct outcome of creating the FTA should be mutually beneficial opening of the markets of Ukraine and the EU. Here, the decisive aspect will be harmonization of the Ukrainian legislation with that of the EU. Only if our legislation is compliant with the EU *acquis*, it will be possible to speak of the possibility of significant market expansion for selling Ukrainian goods and trade in services due to EU Member States. It will also make it possible to bring the doing business conditions in Ukraine in line with EU standards, which in turn will attract foreign investment into the Ukrainian economy not only from EU Member States, but also from around the world. At the same time, a set schedule for harmonization of the Ukrainian legislation with EU *acquis* will allow businesses to clearly plan their strategy to get ready for the new conditions.

As a vast body of research in preconditions and the likely impact of creating a free trade area between the EU and Ukraine on the Ukrainian economy proves, it is the DCFTA format that in the medium and long-term prospect will have the most positive impact, and combined with an elaborated economic policy it will give a significant impetus to internal reforms and structural transformation in the state, and hence – to growing prosperity.

However, there are different estimations of the possible FTA impact, especially for individual sectors of economy. Analysis of the models and scenarios of trade liberalization between the EU and Ukraine offered within this research shows that although the forecast of impacts on the Ukrainian economy in general, especially in the long-term prospect, is positive, for some of its sectors benefits will be different. The most straightforward and optimistic are forecasts of the FTA formation impact on the metallurgy and textile industries. All studies have shown a growth of production in these sectors.

Overall, trade liberalization between the EU and Ukraine is expected to contribute to growth in 5 sectors and industries, sometimes it is the one and a half up to two times growth. The total growth in the Ukrainian economy under the DCFTA scenario is on average forecasted at 11%. However, we also should note that due to the global financial and economic crisis and differences in methodologies of the above-mentioned studies, these estimates require significant adjustments.

Consequences of forming the DCFTA for individual institutional units the state's economy (business, consumers, government) will be different. In particular, **for businesses** implementation of the economic component of the AA, including creation of the DCFTA, will imply¹⁰:

A. New opportunities for exports into the EU by reducing tariff and, most importantly, non-tariff barriers to entering the EU market, which is currently the largest regional market and one of the two largest trade partners of Ukraine.

¹⁰ The analysis is largely based on the research: Movchan V., Giucci R., Kutsenko K. (2010): «Trade Policy of Ukraine: strategic aspects and the next steps to be implemented», the EDI consultation work, April 2010. See: www.ier.com.ua; Movchan V., Giucci R. (2011): "Quantitative Assessment of Regional Integration Options for Ukraine: a deep and comprehensive free trade area with the EU or the Customs Union with Russia, Belarus and Kazakhstan", Consultation work, November 2011. See: http://www.ier.com.ua/ua/publications/consultancy_work/?pid=3107

Potential economic benefits of any regional integration project are positively correlated with the size of the market with which this integration takes place. In other words, the larger the market with the DCFTA creation agreement is concluded, the larger the potential win in absolute terms.

B. Improving access to markets of third countries through harmonization of Ukrainian technical regulations and standards with the relevant EU regulations, which will mean transition to international standards, as well as by entering into the above-mentioned regulatory space compatible with the rules agreed in the framework of agreements between the EU and third countries.

For the companies that are already export-oriented, harmonization of the Ukrainian standards with international ones will mean facilitating doing business. For the businesses that are currently focused on the domestic market due to the different requirements that apply to domestic and foreign markets, it is a unique opportunity to reach new markets.

C. A more favorable domestic business climate, as adaptation of EU standards and rules will imply changes in the national legislation. In turn, these changes will result in transparent rules familiar to foreign investors making conditions in the domestic market more attractive for them and encouraging an inflow of foreign investments into the country, which will reduce the cost of capital.

D. A gradual increase in domestic competition due to gradual liberalization of tariff and non-tariff restrictions on trade. This will lead to redistribution of resources, i.e. of labor and capital, among companies or even among sectors. It will also be beneficial for more competitive companies as well. In the long-term prospect, this will have a sanative effect on the economy of the state increasing its efficiency and stability. At the same time, involvement of the state will be required here aimed at mitigating potential negative consequences of trade liberalization.

E. Increased costs of compliance with "social" standards, including occupational safety requirements, environmental standards, providing for a certain level of social security, etc. Compliance with certain minimum social requirements is covered in the section of DCFTA arrangements focused on trade and sustainable development.

For consumers, formation of the DCFTA with the EU will imply:

A. Increased income due to new job creation and growth of production output. However, this income growth will be unevenly distributed and depend on the enterprise or the industry where the individual is employed. Accordingly, the labor market will undergo some changes that will, however, be extended in time due to existence of long transition periods to implement DCFTA formation arrangements.

B. Enhanced level of social protection due to including into the DCFTA arrangements text issues related to ensuring occupational safety and labor standards, social security, environmental requirements, etc.

C. Access to a wider range of products due to reduced tariff and non-tariff barriers on trade with the EU. Enjoying full advantage of abolishing restrictions will only be possible for consumers in Ukraine fifteen years after the entry into force of the DCFTA, when all transitional periods and interim protective measures expire.

D. Increased safety of products offered in the domestic market through harmonization of product safety requirements with international standards. This is extremely

important for the country that suffers problems related to inadequate safety control, especially food safety.

E. New requirements for qualification, as competitive businesses will demand greater efficiency from their employees, as well as the ability to comply with new standards, e.g. in the food industry. Here it is important to ensure an active governmental policy in the labor market aimed at training and retraining of labor force to meet new market requirements.

For the government, effects of DCFTA creation include:

A. Additional budget revenues due to intensification of economic activity in the country. As noted, the simulation scenario of DCFTA creation forecasts the real GDP growth by 11% in the long run, due to both reduction of tariff barriers to trade, and – to a greater extent – due to reduction of non-tariff limitations.

B. Improved public finance management efficiency through implementing reforms in the fields of budgetary policy, internal control and audit, state aid and public procurements, where significant approximation of the Ukrainian legislation to the relevant EU *acquis* is expected.

C. Incentives and additional opportunities to complete the economic reforms already launched. For example, the reform of technical regulations and sanitary and phytosanitary control and making them compliant with international rules and regulations, including European ones, has long been on the state's agenda. Moreover, the country has made considerable progress in its implementation. Arrangements under the AA will not only re-emphasize these commitments of Ukraine, but will also provide for the opportunity to get assistance – technical and financial – from the EU to complete these costly reforms.

D. Additional costs for rapid reforms' implementation. As noted above, the timing for implementation of EU legislation acts that Ukraine committed to practically implement in the framework of harmonizing its legislation with EU standards envisages periods from 2 to 7 years after the Agreement's enactment. At the same time, the country can get technical and financial assistance from the EU.

E. The costs of mitigating DCFTA formation effects, primarily for implementation of an active labor market policy, which will be needed to mitigate the process of adapting the state's economy to new conditions.

Thus, as a conclusion we can note that provisions of the Association Agreement between Ukraine and the EU in terms of economic and sectoral cooperation, trade and trade-related issues not only meet objectives of the Law of Ukraine "On the Foundations of Domestic and Foreign Policy" regarding the priority objective of Ukraine's foreign policy – integration into the European economic and legal space – but are also a good basis for a broader economic and foreign policy of Ukraine, including improvement of the investment climate. Besides, Ukraine will be able to operate within the rules that are set by one of the largest and most powerful actors of free trade rules' creating and disseminating – the European Union.

Along with Ukraine's WTO membership, creating the DCFTA between Ukraine and the EU offers Ukraine opportunities and prospects to participate in formation and use of global and regional trade rules, to influence the global trade agenda. Such added value cannot be offered by any other integration formation in the region.

SECTION 6. INSTITUTIONAL ASPECTS OF ENFORCING THE ASSOCIATION AGREEMENT BETWEEN UKRAINE AND THE EU

Currently, Ukraine has not yet begun preparations for the AA's implementation. Moreover, the change of government after the last presidential elections stopped the process of construction of a centralized European integration horizontal coordination system. Currently, Ukraine has gone back to the inefficient decentralized model of European integration coordination that existed before 2008.

Institutions responsible for European integration

At a first glance, Ukraine has enough time to prepare for the implementation. However, one should take into account the fact that the DCFTA formation under the optimistic scenario could already start next year, and preparations for this – right now, because it is a relatively expensive and complex process.

What is the essence of international obligations undertaken by Ukraine? The range of the EU *acquis* annexed to the AA (mainly in the DCFTA section) and to be incorporated into the Ukrainian legislation will be unprecedented for it. It does not yet match the range usually undertaken by candidate states for EU membership, but it will be close to it. According to Ukrainian experts, the AA in its content “will have no analogues among existing association agreements concluded by the EU with other countries”¹¹.

Meanwhile, executive authorities demonstrate their total unreadiness to not only implement the AA, but also to draft the National Programme for its implementation – the document that was developed, for example, by all the Balkan countries that are now candidates for EU membership¹².

Collegiate bodies

From 2002 to 2005, the State Council for European and Euro-Atlantic Integration operated in Ukraine headed by the President of Ukraine, which met quarterly to review strategic issues of Ukraine – EU relations and make major policy decisions in the fields of European and Euro-Atlantic integration. Currently, there is no such high level collegial body. Moreover, it is only three times during the period of 2010-11 that the head of the state held the meetings focused on Ukraine – EU relations. The first of them had the grandiose name – “the first session of the Committee for European Integration”¹³ –

¹¹ Petrov R. A. (2011): «Transposition of the European Union's «Acquis» into Third Countries' Legislative Systems», p.305.

¹² See the more detailed research of the International Center for Policy Studies (2010): «Assessing the Capacity of Governmental Authorities to Organize Implementation of the Association Agreement», http://www.icps.com.ua/files/articles/57/50/SIDA_3_2010_UKR.pdf.

¹³ Held on May 28, 2010 and focused on consideration of the status of negotiations with the EU on the Association Agreement, more details online: <http://www.president.gov.ua/news/17256.html>

the institution non-existent at that time and not formalized now. The second session took place as a purely operational event at participation of the head of the state¹⁴. The third one focused on preparations for the December summit of 2011 and was held on the eve of it, no outcomes of it having been announced.

According to the Partnership and Cooperation Agreement between Ukraine and the European Communities and its Member States, such bodies as the Ukrainian section of the Ukraine – EU Cooperation Council and the Ukrainian section of the Ukraine – EU Cooperation Committee must function as well. The first agency shall be chaired by the Prime Minister and execute formal functions meeting once a year, usually before a joint session of the Council. The second one – by the Deputy Prime Minister or the Minister of Economy at various times. In 2008-10, the Ukrainian section of the Ukraine – EU Cooperation Committee truly performed the function of a coordinating body in the field of European integration meeting twice a quarter and considering the most important issues in the Ukraine – EU relations. After the government's change, the body was significantly put down in its authority, because now it is headed by the Deputy Minister of Foreign Affairs – the Chief of Staff. As a result, it has turned into a decorative non-effective body.

Special attention should be paid to the issue of organizing harmonization of legislation with the Community's developments, to which any European country that concludes an association agreement with the EU attaches high priority.

In 2000, the National Council for Adaptation of the Ukrainian Legislation to Legislation of the European Union led by the President of Ukraine was established, activity of which soon got duplicated by the above-mentioned State Council, as well as the Coordination Council for Adaptation of the Ukrainian Legislation to Legislation of the European Union led by Prime Minister formed in October, 2004. Both "presidential" bodies were dissolved in May, 2006 and November, 2005, respectively. Thus, *de jure* the above-mentioned Coordination Council is currently functioning and until recently it held its sessions, although once a year, not twice as defined in the Regulation on it. However, since March, 2010, after its last session, its operation got effectively frozen. Thus, for the first time since its formation the key annual documents that it has to approve – the action plan for implementation of the Adaptation Programme for 2011 and the Report on Implementation of the Programme in 2010 – were approved using the procedure of "interviewing members of the Coordination Council".

Thus, coordination of European integration, including adaptation issues, was actually no longer performed in 2010-11 by a collegiate body headed by the head of the state or the Government.

Central executive authorities performing coordination of European integration at the operational level

Ukraine has actually restored the inefficient decentralized coordination model that existed until 2005 and was preserved with minor changes until 2008. Its essence is that three ministries are authorized to coordinate the key European integration areas. In particular, the Ministry of Foreign Affairs coordinates issues of the foreign and security policy, as well as the vast majority of issues related to negotiations with the EU, including those on the AA; the Ministry of Economic Development – trade, economic and sectoral issues, as well as EU technical assistance management; the Ministry of

¹⁴ Held on February 2, 2011 and focused on consideration of the status of negotiations with the EU on the free trade area, more details online: <http://www.president.gov.ua/news/19295.html>

Justice – cooperation with the EU in the fields of justice, freedom and security, as well as harmonization of the legislation of Ukraine with the EU legislation.

Moreover, the National Agency of Ukraine for Civil Service still, since 2005, coordinates cooperation with the EU when using the TAIEX and Twinning technical assistance instruments, as well as implementation of the State Targeted Program for Training, Retraining and Advanced Training of Specialists in the Field of European and Euro-Atlantic Integration of Ukraine for the period of 2008-2011, validity of which has recently been prolonged through 2015. The State TV and Radio Broadcasting Committee, in turn, coordinates implementation of the State Targeted Program for Informing the Public on European Integration Issues for the period of 2008-11 and drafting of the same document for the next three years.

Obviously, the situation described is not acceptable for the state, as it may lead to a default of Ukraine – EU agreements and a failure to perform the statements made by the President. The first examples that confirm the trend were the insufficient results of implementing Ukraine – EU Association Agenda, significant delays in implementing the Action Plan for Visa Liberalization (granted by the European Union to Ukraine in November 22, 2010) and the obviously slow process of initialing the AA, which was to be completed in late 2011, but actually it only started on March 30, 2012.

The model for horizontal coordination of European integration in Ukraine

Currently, there are no less than two platforms based on which preparation of the draft decision on the model of horizontal coordination of European integration is taking place. The role of the first one of them is played by the National Agency of Ukraine for Civil Service, which is preparing the draft Plan of the Institutional Reform in the field of “facilitating implementation of the Association Agreement between Ukraine and the EU, negotiations on which are on-going”. In parallel, the project “National EU Convention of Ukraine”¹⁵ is being implemented, which was initiated by the National Institute for Strategic Studies in cooperation with the Ukrainian Center for Independent Political Research in partnership with the Research Center of the Slovak Foreign Policy Association (Bratislava). The later project is implemented under patronage of the Presidential Administration, the Ministry of Foreign Affairs and the Ministry of Economic Development and Trade of Ukraine, which offered grounds to expect its efficient performance (currently unrealized).

There are at least four models of institutional support for European integration.

First model. *Decentralized, currently existing*. Under this option, the majority of tasks related to coordination should be delegated to the MFA.

Second model. *Strictly centralized or “presidential”*. The role of the decision-making center is performed by the European Integration Section established directly within the Presidential Administration.

Third model. *Centralized – governmental*. Recent experience of operation of the Coordination Bureau for European and Euro-Atlantic Integration under the Secretariat of the Cabinet showed that the task of horizontal coordination of European integration can be performed by a unit created directly within the apparatus of the Government.

Fourth model. *A central executive authority with a special status*. In 2008, the idea of establishing in Ukraine a centralized system for coordination of European integration following the example of the former and current candidate states for EU membership was first discussed. However, because of certain narrow departmental interests of the three key ministries, the decision was not passed.

¹⁵ For more details about the project, see: <http://www.euconvention.org.ua/>

Now, while analyzing the issue of institutional support for European integration, one should take into account the experience of Ukraine's preparations to host the European Football Cup 2012. During 2010 – 2011, Ukraine caught up with the previous delays in preparation for the championship, which was made possible due to forming a clear vertical and horizontal orders of governmental institutions responsible for handling all matters related to preparation for EURO 2012.

Provided that the Cabinet of Ministers of Ukraine coordinates via the First Deputy Prime Minister activity of the relevant coordination body for European integration (it could be titled the National Agency or the Ministry of European Integration), probability of positive results of its operation seems the highest compared to the first three models.

Collegiate bodies

Before choosing and detailed justification of one of the models mentioned, above all it is necessary to resolve the issue of creating a collegial body chaired by the President of Ukraine, which would consider strategic issues of Ukraine-EU relations and adopt decisions on priority tasks in the field of European integration.

There are two alternative solutions to this issue:

- formation of the State Council for European Integration, as proposed, *inter alia*, by the Parliament of Ukraine¹⁶;
- delegating to the Committee for Economic Reforms the authority to consider European integration matters and making respective amendments in its Regulation.

Both of these options are acceptable, but the second one looks much more efficient, as it resolves the long overdue issue – combination within one center of both reforms management and coordination of European integration's implementation.

After resolving the issue of creation (or reorganization – the second option) of a collegial body led by the head of state, already at its first meeting it is recommended to adopt the policy decision on the institutional model for preparing implementation of the Association Agreement and making up for the time wasted after the aforementioned Coordination Bureau was dissolved. After all, to implement the objective of EU accession declared in the said Law, it is necessary to ensure availability of the appropriate institutions.

¹⁶ Resolution of the Verkhovna Rada of Ukraine of May 19, 2011 No. 3400 «On Recommendations of the Parliamentary Hearing on «The Status and Prospects of Developing Economic Relations Between Ukraine and the EU (FTA) and the Customs Union», <http://www.nau.kiev.ua/druk.php?name=367220-19052011-0.txt>.

SECTION 7. EXTERNAL ASSISTANCE OF THE EU FOR UKRAINE – A CATALYST TO ENSURE IMPLEMENTATION OF THE ASSOCIATION AGREEMENT

Provided Ukraine and the European Union sign the Association Agreement, Ukraine will face qualitatively new tasks, which have not been performed by Ukraine so far. Since the AA will serve as a strategic guideline for the social and economic policy in Ukraine, the process of its implementation will require consolidation of all the country's resources: internal and external, including international resources or foreign assistance resources.

Taking into account the knowledge and experience of the EU in states' reforming – since it is the EU that provided for successful harmonization of public institutions in the states that joined the European family with its standards – it would be difficult to underestimate the role and importance of EU assistance in the transformation process.

No doubt, implementation of international assistance programs and projects helps to solve the problems that Ukraine is currently not in a position to resolve independently, reduces the burden on the state budget, promotes creating jobs and provides knowledge, innovative management models.

The European Union has been one of the largest donors in Ukraine since its gaining independence. The amount of EU assistance, according to various estimates, may reach 4 billion EUR since 1991. National budgets of cooperation programs between Ukraine and the EU only have increased threefold over the past years: from 40 million EUR in 2002 up to 138.6 million EUR in 2008. In view of the global economic crisis and limited resources, external assistance becomes even more important. Therefore, the questions arise: Is Ukraine effectively managing available assistance resources? Is the external assistance management system capable of streamlining those resources for reform, institutional capacity building and infrastructure development?

External assistance of the EU to Ukraine: summary and forecast

Conventionally, the entire period of the EU's providing external assistance to Ukraine can be divided into two major phases, being the phase of the TACIS program¹⁷, which lasted from 1991 till 2006, and the seven-year phase of implementing the European Neighborhood and Partnership Instrument (ENPI), from 2007 till 2013.

During 1991-2006, Ukraine received from the European Commission approximately 2.5 billion EUR of technical assistance. Among the most important programs – the National TACIS Program, TACIS Nuclear Safety and Macro-Finance Assistance. Currently, technical assistance represents a significant portion of funds allocated for Ukraine under the ENPI national program, as well as all assistance coming within regional programs and cross-border cooperation programs (Table 3 contains information on the ENPI programs where Ukraine participates).

¹⁷ The TACIS program – Technical Assistance to the Commonwealth of Independent States – the program of the European Union program to help the newly independent states in Eastern Europe and Central Asia (the former Soviet republics except for the Baltic states) during the transition period. Launched in 1991, until 2003 also included Mongolia.

European Neighborhood and Partnership Instrument (2007-2013)

ENPI is the financial instrument of the European Neighborhood Policy (2004) launched in 2007 and aiming to strengthen relations between the EU and its neighbors. The nature of the ENPI proves enhanced attention that the EU paid to improving governance in the region. This requires adopting a political strategy aimed to support priorities of the partner country's domestic development and enhancing national responsibility in the fields of financial and technical cooperation.

Table 3. ENPI: programs involving Ukraine (million EUR)

Programmes	2007-2010	2011-2013
National ¹	494	470
Regional (Eastern and inter-regional)	777.4	1,106.3
Cross-border cooperation	208	190,8
TOTAL	1,479.4	1,767.1

Despite the fact that the ENPI is not formally an EU pre-accession instrument, it nevertheless allows Ukraine to develop towards integration with the European Union. The ENPI includes a number of instruments designed to support democratization and good governance, which only a short time ago were available only to EU accession candidate countries, and Ukraine sought them for years.

It is important that implementation of the ENPI implies significant changes in the very nature of the EU's provision of external assistance to Ukraine. At the same time, while TACIS programs offered technical assistance only, the ENPI provides partner countries both with technical assistance and budget support, encouraging national ownership of decisions regarding use of the European Commission's (EC) assistance.

Overall, the ENPI includes the following instruments:

● **Budget support programs**

Budget support (BS) is a type of financial assistance provided under the ENPI and defined as:

"...transfer of financial resources by the department that provides external funding into the state budget of the partner country, provided that the latter complies with the agreed terms of payment. The resulting financial resources are part of the general resources of the partner country to be used in accordance with the public financial management system of the partner country"¹⁸.

Budget support can be general or sectoral:

- General budget support involves transfer of funds for implementation of national development programs or strategic reforms.
- Sectoral budget support involves the transfer of funds to implement programs aimed at development of specific sectors of the economy.

● **Technical Assistance**

According to the EC definition, technical assistance (TA) is granting resources to assist partner countries in "developing structures, strategies, involving human resources and

¹⁸ See OECD/DAC (2006): „Donor Practice Harmonization for Efficient Granting of Assistance“, Vol. 2.

improving the management skills needed to enhance their economic, social, regulatory and administrative capacity"¹⁹.

Determining it more specifically, technical assistance to Ukraine aims to support institutional, legal and administrative reforms, promote private sector development and economic development as such, as well as to help resolve social problems²⁰. Lots of these funds were allocated for European companies to provide services in these areas in Ukraine.

The main tools of technical assistance include the following:

- **Individual technical assistance projects.** They are implemented by external contractors engaged to promote capacity building within the state apparatus.
- **TAIEX** (Technical Assistance and Information Exchange). "Provides short-term technical assistance managed at the central level in the fields of approximation, application, and enforcement of the European Union legislation"²¹.
- **Twinning**, which aims to promote "development of modern and efficient administrations"²² by long-term commissioning of civil servants from EU member states to state authorities of beneficiary countries. Ukraine was the first CIS country to benefit from this instrument.
- **SIGMA** (Support for Improvement in Governance and Management), a joint initiative of the EU and the OSCE (mainly funded by the European Union), whose role is "to assess the progress in reform of [i] the beneficiaries' administrations [in implementing] good public-sector practices and procedures"²³.

Undoubtedly, the ENPI has granted access to technical instruments that could previously be used only by candidate states.

Unlike technical assistance, which is primarily monitored by the EC, budget support management is immediate competence of national authorities. Given that budget support is expected to account for more than 70% of total assistance for Ukraine in 2007-2013 under the national component, **we can state a fundamental shift** in distribution of responsibilities for planning, monitoring, and assessing assistance to Ukraine by the European Commission.

European Neighborhood Instrument (2014-2020)

After Ukraine signs the AA, the character of EU assistance to Ukraine will not change. Ukraine will continue receiving resources in the framework of the ENP's implementation.

At the end of 2011, in the context of the updated approach of the European Neighborhood Policy (ENP), **the European Neighborhood Instrument (ENI)** – a new financial instrument to implement the ENP – was launched. The amount of EU assistance to neighboring countries is set as 18,182 billion EUR compared to the previous period, the amount to help partner countries increased by almost 40%. The final decision on allocation of the assistance budget by the EU for partner countries will be made by the European Parliament and the EU Council of Ministers in mid-2012.

¹⁹ See http://ec.europa.eu/enlargement/how-does-it-work/technical-assistance/index_en.htm.

²⁰ The presentation "The European Union and Its Assistance to Ukraine", held at the National Academy of Public Administration of Ukraine on May, 15 2007: twinning.com.ua/index.php?option=com_docman&task=doc_download&gid=259&Itemid

²¹ See http://ec.europa.eu/enlargement/how-does-it-work/technical-assistance/index_en.htm.

²² See http://ec.europa.eu/enlargement/how-does-it-work/technical-assistance/twinning_en.htm.

²³ See http://ec.europa.eu/enlargement/how-does-it-work/technical-assistance/index_en.htm.

Based on achievements of the previous financial instrument (2007-2013), ENI aims to strengthen bilateral relations with partner countries and to achieve concrete results in areas such as democracy and human rights, the rule of law, good governance and sustainable development. The system of assistance through national and regional programs, as well as cross-border cooperation programs will remain unchanged.

“More for more” differentiation principle is the major ENI innovation, which introduces dependence of EU assistance to reforms on the quality of the democratization process in partner countries. I.e., the states, transformations in which are regarded by the EU as the most successful ones, will have a chance to get a larger amount of EU assistance for further transformations.

The simplified process of assistance programs’ development, a clear focus on priorities of partner countries, development of closer links with EU internal instruments and policies, as well as enabling Russia to participate in regional and cross-border cooperation programs – these are the innovations that make ENI different from its predecessor.

It is tentatively estimated that in the further financial perspective of the European Union Ukraine may expect to receive around one billion EUR of assistance. But is Ukraine ready for the assistance currently provided for it by the EU? Is Ukraine’s state machine able to effectively manage assistance resources? Below, we offer our response to these questions.

The system to manage external assistance in Ukraine

In general, a prerequisite for effective integration and use of international assistance implied availability of the three things:

1. support for the process at a high political level;
2. clearly defined medium-term strategic priorities for the country’s development with which priorities for attracting assistance comply;
3. an efficient assistance management system (availability of procedures and mechanisms).

Currently, **the Ministry of Economic Development and Trade of Ukraine** performs the overall coordination of activities related to attracting, using and monitoring international technical assistance in accordance with Presidential Decree of November 1, 2003 No. 1238, Resolutions of the Cabinet of Ministers of Ukraine of February 15, 2002 No. 153 and of May 26, 2007 No. 777. Within the Ministry, responsibility for international technical assistance matters is delegated to the Department for Cooperation with International Financial Institutions and Coordination of International Technical Assistance.

Moreover, the Minister of Economic Development and Trade acts as the **National Focal point (NFP) for EU Technical Assistance** (which is managed by the European Commission)²⁴. Since 2007, the NFP is responsible for EU assistance under the European Neighborhood and Partnership Instrument (ENPI). Thus, the NFP functions as a “one-stop shop” for the European Commission.

On February 22, 2012, the position of the First Deputy Prime Minister of Ukraine, who is also responsible for European integration efforts of Ukraine, was restored. This change may increase the level of political support for attracting and use of EU external assistance. However, no formal decision on the First Vice Prime Minister of Ukraine performing the NFP function has been currently made.

²⁴ In compliance with Presidential Decree of November 1, 2003 No.1238

As strategic priorities of the country are not presented as a single document, the AA could become such a “matrix of reforms”, which would set clear reference points, including for attracting international assistance resources.

The new assistance granting context requires changes

Since 2007, the European Union has been changing its approach of granting assistance to third countries. Two documents were developed – “The European Consensus on Development” and Paris Declaration²⁵ on enhancement of assistance efficiency from the foundation for granting assistance by the EU, its Member States, and other donors.

The foundation of international obligations includes the following external assistance management principles:

- **ownership of the recipient country** – Ukraine must have a national development document with clear strategic priorities;
- **good public finance management** – the need to bring public procurement and public finance management systems in line with the generally accepted international norms;
- **coordination** of assistance priorities with national development priorities in Ukraine;
- **result-oriented management** – the need to develop a system to analyze project implementation outcomes and their consistency with the planned strategic areas.

Therefore, in order to ensure implementation of the AA between Ukraine and the EU, there is a clear need for significant improvement of EU assistance attraction and use at various stages.

Thus, at the assistance projects and programs planning stage the key aspect is to ensure consistency of Ukraine’s development strategy priorities and assistance programs, to attract future beneficiaries into the planning process. Sure, the AA content may become the basis for prioritizing internal development of Ukraine, to implement which all resources will be consolidated, including EC assistance resources.

Moreover, the institute of the National Focal Point for all international assistance must be established, which would cover both EU assistance, and assistance from individual donor states, and that of international financial institutions. Increasing the political level of the National Focal point’s position to the level of the First Vice Prime Minister of Ukraine can increase efficiency of the NFP’s institution at large.

At the implementation stage, it is necessary to increase institutional capacity of the state apparatus to develop strategic programs, coordinate donors, quickly register assistance projects and programs, and ensure transparency and accountability around the entire implementation of external assistance programs and projects.

The monitoring and evaluation phase, which is currently almost absent, must be enhanced with clear mechanisms for joint assessment (current and final ones) and ensure free public access to information on the status of cooperation with individual donor countries, the EU, other international financial institutions.

²⁵ Paris Declaration contains the key obligation of the leading countries of the world to increase external assistance effectiveness. The Declaration was adopted on March, 2 2005 (as of the moment of signing, 91 signatory states joined it, as well as 26 international organizations and 14 non-governmental organizations, now – 125 countries, 27 international organizations, 14 NGOs). Ukraine acceded to Paris Declaration in April, 2007 (Decree of the President of Ukraine of April 19, 2007 No.325)

SECTION 8. CIVIL SOCIETY AND THE ASSOCIATION AGREEMENT

Role of the civil society at the phase of negotiations and decision-making on initialing the Association Agreement

The civil society in Ukraine has already had the opportunity to take part in the processes that happened and are happening regarding the Association Agreement between Ukraine and the EU. Provided the Agreement comes into effect (at least, in part) the civil society will be able to play an even greater role.

The role of civil society in Ukraine at the phase of negotiations was extremely limited for two reasons. First, the process of negotiations was rather reserved. Given the impossibility of obtaining information about negotiating positions and content of the negotiations, the possibility of participation was extremely limited.

Second, the civil society lacked and is still lacking the ability to participate in a professional manner. Since the Agreement is largely a very technical text with deep elaboration of various sectors, it is sector expertise that is required – such that would reflect understanding of EU standards and requirements in a particular sector, as well as such that would reflect understanding of problems and needs for development of a particular sector in Ukraine. Moreover, there should both be understanding of the needs at the regulatory (institutional) support level, and at the level of harmonization of legislation. Ideally, it also requires knowledge of how implementation of the EU requirements in particular sectors in countries of Central and Eastern Europe and the Western Balkans impacted these sectors, processes in these countries in general and how the entire process affected people.

In Ukraine, there are almost no civil society associations that would both know and understand EU standards and requirements (we mean not general understanding, but deep understanding at the level of directives, regulations etc.) in particular sectors, as well as needs and concerns of the relevant sectors in Ukraine. Exceptions rather than rules include such sectors as energy, issues related to Justice, Freedom and Security, as well as environment and sustainable development. There are powerful non-governmental organizations engaged in systemic advocacy. The activity of the public in these two areas is facilitated due to the fact that reforms in these sectors are already regulated by bilateral legal or political documents between Ukraine and the EU. In the case of energy – Ukraine, being a member of the **European Energy Community**, has already undertaken a number of legal obligations, while in the field of justice, freedom and security there is the Action Plan on visa liberalization, which also implies a number of domestic reforms.

The civil society in Ukraine actively joined in the discussion of the Agreement's initialing as such, given the political processes in Ukraine. The decision on initialing, which was announced during the Ukraine-EU Summit on 19.12.2011, was largely the result of systematic and reasoned advocacy during September-December 2011, which was implemented by a number of NGOs and community leaders united around the National Platform of the Eastern Partnership Public Forum. The civil society also expresses its commitment to implement awareness activities to promote the demand for the Agreement in the Ukrainian society.

Moreover, the civil society in Ukraine played an important role in ensuring the provision of the Agreement on the **bilateral civil society platform** as a full-fledged institution within the Agreement. It is important that the respective provision was proposed by civil society experts back in 2008. At the stage of completing negotiations on the institutional component of the Agreement, the MFA of Ukraine consulted with community experts regarding wording of the relevant provisions. Within the Public Expert Council within the Ukrainian section of the Ukraine – EU Cooperation Committee, a working group has currently been formed aiming to develop rules and procedures for formation and operation of the Ukrainian part of the bilateral civil society platform. The European Economic and Social Committee is responsible for its formation for the European part.

Opportunities for the civil society in Ukraine under the Association Agreement

The Association Agreement provides the civil society of Ukraine with the opportunity to transform into a more influential actor both in the development of relations between Ukraine and the EU, and in implementation of reforms / domestic changes that actually bring Ukraine closer to the EU.

First, the Agreement attributes to the civil society the role of a subject of the Agreement's due implementation process by creating the abovementioned institution – the bilateral civil society platform. Under the Agreement, the platform should serve as a forum for meetings and exchange of ideas. More importantly, with the Agreement the proposed platform will not exist autonomously, but will be inscribed into the general institutional architecture of the Agreement. Thus, interaction of the civil society platform with other institutions is ensured. In particular, according to the AA, the Association Council, which is the key institution to conduct political dialogue between the parties at the ministerial level, must notify the civil society platform about its decisions and recommendations. Moreover, it is stipulated that the civil society platform will submit its recommendations to the Association Council. Finally, it is stipulated that the Association Committee and the Parliamentary Association Committee – the other two institutions under the Agreement – will be permanently in touch with the civil society platform in order to obtain the estimates that are important for proper implementation of the Agreement. Thus, **for the first time in relations between Ukraine and the EU the civil society gets an institutionalized mechanism to impact decision-making under the Agreement.** The degree of its influence will depend on the capacity of the civil society to offer professional solutions and convey them to governing institutions within the Agreement, as well as on openness on the part of the governing institutions. In other words – it is a chance for the civil society, but also responsibility to use this chance to its full.

Second, implementation of the agreement will require thorough monitoring and advocacy of implementation of the relevant obligations / reforms in a number of areas. The entire range of transformations that Ukraine will have to implement pursuant to the Association Agreement has yet to be determined. In other words, it is necessary to develop an implementation document, which ideally would present a reform strategy of Ukraine or a strategy for Ukraine's development / modernization, which would define how individual obligations under the Agreement shall be converted into a domestic Ukrainian decision, legislative or institutional, and how and when these decisions are going to be implemented.

The task of the civil society should actually be to provide for independent external control over the respective decision-making, but also to contribute, as experts, to the development of these decisions and to recommend on their optimal implementation.

The civil society in Ukraine has already accumulated years of experience in the field of independent monitoring of governmental actions both in specific areas and in terms of implementing bilateral agreements with the EU. Examples of this include Razumkov Centre's project that involved a number of civil society experts to monitor implementation of the Ukraine-EU Action Plan for the period of 2005-2008. Another example is the consortium of Ukraine's think tanks including the Ukrainian Center for Independent Political Research (UCIPR), the Institute of Economic Reforms and Policy Consulting in Ukraine, and the Center for Political and Legal Reforms – which during the years 2010-2011 monitored the Association Agenda, the document that succeeded the Ukraine-EU Action Plan. Among the sectoral monitoring initiatives, we should mention the initiative of the NGO "Europe Without Barriers", which systematically monitors Ukraine's implementation of its commitments within the framework of the Action Plan for visa liberalization, and the initiative of the NGO "Dixie-Group" to monitor Ukraine's implementation of commitments under the Energy Community Treaty, which Ukraine also joined some time ago (February 2011). All these initiatives are systematically supported by the International "Renaissance" Foundation (IRF). We may also mention a number of other initiatives in the area of transparency of public procurement, implementation of environmental policies, respect for fundamental freedoms and human rights in Ukraine, etc.

Moreover, the civil society actively joined and is joining the decision elaboration process where it appears possible. One example is the activity of the Public Expert Council (PEC) within the Ukrainian section of the Ukraine – EU Cooperation Committee, which is involved into operation of some Subcommittees for Cooperation between Ukraine and the EU and, in general, tries to influence decision-making on issues on the agenda of the EU-Ukraine relations. Another aspect is the lack of adequate demand for such expertise, because specific decisions are based on interests of a limited number of individuals. However, PEC is actually a prototype of the Ukrainian section of the civil society platform under the Agreement. Thus, the civil society has had the opportunity to build up power and gain experience that may be an important foundation for similar work aimed at proper implementation of the Association Agreement.

The challenge presented by the Association Agreement is the need to enter a deeper and more technical level, where the civil society has not yet reached the appropriate level of expertise or is not yet sufficiently familiar with European standards. So, for civil society's engagement in implementation of the Association Agreement, it will be necessary to update and expand the range of civil society actors due to those who have remained on the margin so far, and deepen expertise of those actors already active in this field towards understanding provisions of European Union's *acquis* and their application in Ukraine.

Third, as an international legal document, the Agreement provides for dispute settlement mechanisms. Above all, it is the issue for professional lawyers and to a greater extent this niche should be taken by law firms, which have yet to explore the possibilities offered by the Agreement. However, in some situations civil society advocates should also take up the cases rulings on which may have significance of a precedent or results in reforming, and hence resolution of which will benefit a wide range of citizens. This may be issues relating to mobility, access to the system

of social protection for Ukrainian citizens in the EU, but also cases related to the tax policy and regulatory framework in a broader sense. In such situations, individuals and legal entities can be subjects of reforms by promoting implementation of the Agreement's provisions in the state of Ukraine. It is necessary to explore the case law when the Association Agreements between Turkey and the EU, the Southern Mediterranean countries and the EU, as well as the Stabilization and Association Agreement between the Western Balkan countries and the EU and, in some respects, the Partnership and Cooperation Agreement (PCA) between Russia and the EU have been used for these ends. Regarding the latter, there are examples when rulings were enforced in courts of the Russian Federation with references to the PCA.

Fourth, developing the demand for reforms and implementation of the Agreement is a task for civil society, largely to be implemented using mass media. The primary task for civil society experts today is to develop simple and clear messages on what various interest groups and different segments of the Ukrainian society will obtain due to the Agreement's implementation and, accordingly, what they would lose as a result of a failure to implement it. However, it is not recommended to hide the costs that the state's society and economy will have to pay in the short-term prospect. Though it is necessary to correctly put emphases: it comes to investing into modernization of the country and its development, while a failure to implement reforms will lead to greater costs and backwardness in the future.

Fifth, the Agreement may be a factor contributing to the development of civil society. A number of NGOs in Ukraine may get a "second wind" and a more powerful tool to influence transformations in their spheres due to implementation of EU standards and requirements as prescribed in the Agreement. Thus, non-governmental organizations, which were previously guided purely by the domestic agenda, will have the opportunity to expand the range of their influence on reform in their areas and to establish contacts with organizations having a similar focus in the EU for better understanding of EU standards in their sector and for getting access to EU institutions.

Finally, the Agreement may become a factor of deepening partnership and constructive interaction between the government and civil society. Provided the political will to implement provisions of the Agreement and demand for civil society expertise, the "Civil Society Platform – Institutions of the Agreement" format of interaction can be a model to involve civil society expertise into the development of solutions, even engage non-government experts into operation of the Ukrainian part of Ukraine-EU institutions under the Agreement. Currently, some experience in this direction is available: at least, PEC experts may sometimes join the work of Ukrainian parts of Subcommittees under the Partnership and Cooperation Agreement. More consideration should be paid to Moldova's experience, where community experts can participate in sessions of the Government and express their thoughts.

Over a longer term, it would be possible to talk about increasing prosperity in Ukraine and middle class development, which should be promoted by the reformed regulatory framework, reduced corruption and implementation of the other reforms envisaged by the Agreement. Besides, we can definitely predict development of the independent judiciary in the case of due implementation of the Agreement. All of this will also contribute into the development and strengthening of the civil society and enhancement of its influence on the Europeanization processes in Ukraine.

Implementation of the Association Agreement as a challenge for the civil society: sectoral approach

As noted above, the specificity of the Association Agreement is its very technical and detailed nature. The key content of the Agreement is not that much the text of the Agreement but rather the annexes containing a list of the *acquis* that Ukraine will need to adapt translating them into the domestic legislation and ensuring the appropriate institutional changes. It is to a degree a challenge for the civil society.

First, among those NGOs who have for some time been operating in the niche of European integration there are very few of those able to produce narrow sectoral expertise. There are only a few exceptions, which were already discussed above. However, their efforts are not enough for strong and effective advocacy, therefore, it is evidently necessary to expand the network of partners. Second, those segments of civil society that have deep expertise in sectoral processes and reforms are most often not familiar with the EU agenda and Ukraine's commitments to the EU. Third, we can also mention a fairly large segment of civil society in Ukraine potentially interested in implementation of the reforms envisaged by the Agreement. However, this segment, even if it is aware of problems in "their" sector, has no experience of advocacy and does not realize that the Association Agreement provides instruments for resolving the sector's problems. To assist in uniting the relevant interest groups, the European Program of the International Renaissance Foundation (IRF) is soon going to support several thematic civil society coalitions to become active stakeholders in their niches.

Let us identify the following areas of reforms in which the Association Agreement could have important effects and around which it is possible to mobilize various segments of civil society and society as a whole.

First, the Agreement stipulates that Ukraine will gradually switch to European **sanitary and phytosanitary standards**. It is about quality and, to a large extent, safety of food and industrial products. In Ukraine, there are consumer associations, which have got somewhat activated due to the long-lasting joint EU and UN Development Programme Project "Consumer Society and Citizen Networks". Within the framework of the project, an active consumer portal is also operating (<http://www.consumerinfo.org.ua>), which contains both interesting and useful information for consumers, and contacts of various organizations, including those that at the local level deal with consumer protection. In general, the movement for consumer rights in Ukraine is poorly structured and unconsolidated. To a large extent, it focuses on consumer rights protection, raising awareness, but it is not active in terms of systemic effects on the legislative and regulatory provisions that would bring Ukraine closer to European standards.

Another niche of reforms that will be subject to influence of the Association Agreement is **tax laws and business environment** in general. In Ukraine, there are various small and medium businesses associations and associations in specific industries, but they are generally not familiar with the EU agenda and content of the commitments in these areas that the Association Agreement obliges Ukraine to implement. Moreover, these associations are more focused on providing services for their members and take much less account of support for the reforms that would qualitatively change the doing business environment. Considerable potential in this regard was attributed to the so-called "Tax Maidan" held in November, 2010. The problem of the Maidan was that it was protest-oriented (organized as a protest against the Tax Code adopted by the Parliament of Ukraine), but it did not set constructive requirements aimed at improving the tax legislation of Ukraine. The protest organizers asked the European Union for support.

But they failed to reasonably relate problems regarding the tax legislation of Ukraine with the EU standards that Ukraine would have to implement as a state in the process of negotiations on a Free Trade Area with the EU and generally aspiring to become an EU member. Thus, the Tax Maidan demonstrated that in Ukraine there is demand for Europeanization of the tax legislation and business environment. However, this demand must be consolidated and structured to enhance capacity for independent expertise and lobbying necessary changes.

Public finance management (public procurement and subsidies from the state budget) and the anti-corruption legislation and policy – this is another group of issues relating to a wide range of NGOs. In Ukraine, a powerful civil society association has been operating since last year – Alliance “For the Integrity of Public Procurement” (<http://integrity.pp.ua>), which is an example of a combination of expertise in Ukrainian problems and needs in this area, understanding of EU requirements with professional advocacy activity and appealing to the interests of citizens. Actually, activity of this association, combined with pressure from the EU in the form of targeted criticism and even froze funding for Ukraine, led to positive legislative developments in this area. Anti-corruption legislation and policy were and are the focus of activity of a number of NGOs and international projects in Ukraine. Among them – the creative association “Toro”, which is the Transparency International contact group in Ukraine (<http://www.toro.org.ua>). Within the framework of the Official Commissioner for Anti-Corruption Policy, the Community Board is operating, which includes all major civil society experts dealing with corruption issues. It is worth mentioning the portal “Our Money” (<http://nashigroshi.org>), which is also largely related to public procurement. There are also other civil society actors supported by international donors. The impact of civil society on the anti-corruption policy in the broader sense is rather segmental and associated with specific themes. An active role in this theme is also played by journalists, including the Bureau of Investigative Journalism (www.svidomo.org). Thus, the next step could be the consolidation of various initiatives, their introduction into the obligations under the Association Agreement, and building a systemic advocacy campaign around them.

Protection against discrimination is another theme that EU attributes a significant role to. Several provisions of the Association Agreement directly or indirectly relate to the topic. Moreover, this theme is already present in some provisions of the Action Plan for visa liberalization, covering in particular equal opportunities to access for obtaining documents. The anti-discrimination civil society movement in Ukraine is a relatively new phenomenon. The approach to this issue in Ukraine has been rather selective. We could mention several niches, each of them having its own actors. These are gender equality and protection of women’s rights, the issue of national minority rights, the LGBT community, the association of people with physical and other disabilities, etc). However, a comprehensive approach to discrimination as a phenomenon has recently been developing. Thus, in April 2011, the Coalition for Combating Discrimination in Ukraine was established (<http://antidi.org.ua>), which includes a number of civil society organizations. The Coalition has a bright advocacy profile, as it clearly declares its key objective, which is improved policy (both by amending the Constitution, and by adopting the framework legislation). Moreover, the human rights movement is rather well-developed in Ukraine, among the most powerful actors of which we could mention the Ukrainian Helsinki Human Rights Union (<http://helsinki.org.ua>). It is possible to also mention the Association of Ukrainian Human Rights Monitors on Law Enforcement (<http://umdpl.info>), since many cases of discrimination occur at contacts with law enforcement authorities. In other words,

the situation here is somewhat better than in other areas, not least because the relevant questions are the object of active support of the Council of Europe, and Ukraine, being its member, has already undertaken a number of commitments that will be reflected in the Association Agreement as well. Reference to provisions of the Association Agreement and involvement of pressure from outside will provide the civil society movement in this area with more leverage opportunities.

An important area that the Association Agreement will touch upon is the theme of sustainable development and environment. Within the Agreement, Ukraine will commit to harmonize environmental production standards, and not only with EU requirements. The environmental policy is one of the areas where the EU has a very developed *acquis communautaire* elaborated for years. Adapting to these standards will require significant investment by the government and manufacturers, many of them not being ready for this today. An important role here can be played by environmental protection organizations, which will be able to explain to the society how adaptation to the respective standards will affect their life standards. Ukraine has very powerful actors in this area, which, in particular, are well familiar with standards and requirements of the European Union. These are the association "Mama-86" (<http://www.mama-86.org.ua>) or the NGO "Environment. People. Law" (<http://epl.org.ua>), being among the most active ones.

This is far not an exhaustive list of areas of reforms and niches for civil society, which could intensify its activities using the Association Agreement. At this point, we can only talk about the first steps in exploration of opportunities directly or indirectly incorporated into it.

Agenda for the civil society

Thus, the association agreement opens a wide range of opportunities for actions of the civil society. However, only in a small number of areas of reform there are powerful civil society actors who both know the Ukrainian agenda, and EU requirements and standards. In even fewer areas these social actors perform effective advocacy and use EU cooperation instruments to strengthen pressure from outside. So today it is more about involving broad segments of civil society to issues related to EU relations. In many areas, even if there are interest groups, they often do not recognize themselves as such and do not know that the Agreement is able to give them leverage to protect their interests.

Thus, the agenda for civil society currently looks as follows:

- to form coalitions by the reform areas where the Association Agreement can be used as an additional instrument of influence;
- the NGOs and experts who already work with the subject of relations between Ukraine and the EU, as well as mass media, must already now work to develop messages for different target audiences in Ukraine to improve the demand for the Agreement as such (which implies Ukraine's implementation of policy conditions), and, later on, its due implementation;
- to explore the cases of referring to the Association Agreements between Turkey and the EU, the Southern Mediterranean countries and the EU, and the Stabilization and Association Agreement between the Western Balkan countries and the EU, as well as, to some extent, the Partnership and Cooperation Agreement (PCA) between Ukraine and the EU, and Russia and the EU – to identify opportunities for involvement of dispute resolution mechanisms in failing to implement the Agreement / non-complying with its provisions.