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UKRAINE

AND THE ASSOCIATION AGREEMENT

Implementation Monitoring
2014 – the first half of 2021

UKRAINE AND THE ASSOCIATION AGREEMENT: Implementation Monitoring 2014 – the first half of 2021

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METHODOLOGY

Structure and logic of the layout of the monitoring report

The monitoring report of the UCEP NGO for the period from 2014 to 2020 offers assessments of Ukraine's progress in fulfilling the set of commitments clearly stipulated in the articles of the Agreement, annexes thereto or provisions of other international treaties specified in the Agreement. The commitments serve as a structural unit of assessment (for details, see progress assessment methodology) and are broken down by thematic areas. The thematic areas make up sections, which in turn are grouped according to the Titles of the Association Agreement.

Thus, the Monitoring Report 2014–2020 covers 24 full-fledged sections that constitute the main structural part of the Monitoring Report and are, in turn, broken down into 111 thematic areas.

Each section of the report is based on the following structure:

- Graphic illustration of progress represented as a scale demonstrating different statuses (stages) of progress.
- Description of the sector, description of the key objectives to be achieved in accordance with the requirements of the EU sectoral acquis, as well as the expected balance of costs and benefits of its implementation (if any).
- Overview of key thematic areas in the sector and expert assessment(s) of the progress in their implementation based on the following structure:
 - ◊ Name and brief description (of the commitments) of the thematic area,
 - ◊ Assessment of the achieved level of transposition of the EU acquis into national legislation (regulatory approximation),
 - ◊ Assessment of the achieved (practical) implementation of the transposed provisions in practice.
- Key conclusions and recommendations concerning the most urgent steps to be taken by those in charge in the government and the Parliament in order to contribute to the achievement of the transposition and implementation goals (if any).

Preparation of the sectoral part of the report assumes receiving input from independent (i.e., non-governmental) experts, whereas a high-level expert opinion should be prepared under the same structure as the report itself.

Methodology of progress assessment

Experts quantify progress in numerical indicators, which are accumulated in the database of the associated online monitoring product Association Agreement Navigator available at the European Pravda website. Progress assessment is carried out based on the following methodology:

Assessment unit. The progress measurement unit is a **commitment**, which implies a specific set of actions or **tasks** on the part of the Ukrainian authorities, aimed at progressive (planned) approximation of national legislation and ensuring its enforcement, to the requirements of one or more European Union acquis, as specified in the articles of and Annexes to the Association Agreement with the EU. Each of the tasks, in turn, involves a number of purely technical steps or **measures**, which, however, are not taken into account in the assessment and are mentioned for reference purposes only. The deadline for fulfilling the commitment is the deadline set for the last task associated with this commitment, in accordance with the deadlines specified in the Annexes to the Agreement or in the latest version of the Government Action Plan on Implementation of the Association Agreement.¹

System of assessment. Each of the tasks should be associated with one of the two **commitment fulfilment stages** (and, hence, assessment): **transposition** (regulatory approximation) or **implementation** (practical enactment). Accordingly, each task may be associated with either legislative work or operationalization of legislative changes.

¹ However, the deadlines are also mentioned for reference purposes only and do not affect the numerical estimates of progress.

Legislative approximation or transposition is the process whereby national law incorporates the rules and regulation of European Union acquis, as well as repeals or amends provisions that are contrary to EU law. As regards transposition of each EU act into the national legislation of Ukraine, we distinguish changes at various levels of legislation:

- adoption of framework legislation in the form of Laws of Ukraine,
- approval of clarifying by-laws (Resolution of the Cabinet of Ministers of Ukraine, Order of the Cabinet of Ministers of Ukraine, Decree of the President of Ukraine, etc.), and
- implementing regulations (regulatory legal acts (RLAs)), such as action plans, roadmaps, etc., that formalize the next steps for their practical implementation.



The monitoring distinguishes between: (i) draft RLAs and (ii) RLAs that have entered into force, in order to track and compare changes in national legislation associated with the implementation of the commitments under the Association Agreement.




The **implementation** stage makes it possible to assess the practical application by the authorities of the legislation that has been transposed to national law, provision of infrastructure (institutional, staffing, and financial support), and ensuring other necessary conditions for the competent authorities to perform their functions and make decisions in accordance with the legislation approximated to the requirements of EU law. Also, this stage includes all measures of the competent authorities to monitor, control, encourage, authorize, and amend policies in order to comply with the EU law rules and regulations transposed into the national law.

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

- Identification of the government agency(ies) responsible for implementation;
- Availability of an implementation plan;
- Operative mechanism for monitoring compliance with legislation;
- Creation of technical standards and quality assurance systems for data verification;
- Creation of effective systems of control over compliance with legislative requirements;
- Creation of a system for providing public information, etc.

The **progress** itself at the **task level is assessed** by way of assigning a special **status** to the task, as follows:

Status colour	Transposition		Implementation	
	Status name	Status description	Status name	Status description
	Transposition has not started	None of the provisions of the EU act has been transposed into Ukrainian law (or very few have been transposed)	Implementation has not started	Implementation of the provisions of European legislation has not started
	Early stage of transposition	<p>(A) National law contains certain provisions that meet the requirements of the EU act, but this does not ensure comprehensive transposition of the provisions of the EU act into national law.</p> <p>(B) In the vast majority of cases, the rules and regulations of EU acquis have been transposed into national legislation only as proposals/draft regulations of various levels.</p>	Early stage of implementation	Necessary by-laws have been created to meet the requirements of European legislation, but there is no proper infrastructure (institutional, staffing and financial support)

Status colour	Transposition		Implementation	
	Status name	Status description	Status name	Status description
	Advanced transposition	(A) The provisions of the EU act are enshrined in a Framework Law(s) of Ukraine, but amendments are needed at the level of by-laws (B) As of the time when the assessment is held, the relevant sectoral acquis have been updated in the EU and national legislation requires additional steps to achieve perfect transposition.	Advanced implementation	Necessary conditions and infrastructure have been created to meet the requirements of European legislation, but there is no effective enforcement
	Perfect transposition	All (or almost all) provisions of the EU act have been transposed into national law	Perfect implementation	All (or almost all) provisions of the EU act are implemented by the relevant public authority(ies)
	Critical non-conformity	Certain provisions of Ukrainian law significantly distort or run contrary to the provisions of certain EU act(s)	Critical non-conformity	Certain governance institutions/ practices do not meet the requirements of European legislation and governance practices

The progress with the implementation of the Association Agreement is assessed at the task level, for which purpose the number of tasks with a certain status is divided by the total number of tasks within a particular commitment, subsector, sector or the entire Association Agreement; the result obtained is multiplied by 100.

Therefore, each task has the same weight when the resulting progress indicator is calculated (at each level of aggregation) and the sectors with more tasks have a greater impact on the progress indicator, which reflects the greater role of “complex” or “large” sectors in the Association Agreement, such as the environment, the services sector, energy sector, transport, etc., i.e. areas where greater efforts are needed to implement the respective commitments.

In order to account for the intermediate results achieved in the implementation of the Association Agreement and to take into consideration the efforts of the relevant agencies in charge, the aggregate progress indicator falls into two types and both types are assessed simultaneously, in particular:

- **Overall progress** with the fulfilment of tasks under the Association Agreement, which includes fulfilment of tasks with the assigned statuses “Early”, “Advanced”, or “Perfect” (as regards approximation and implementation of legislation). And the intermediate fulfilment statuses (i.e. “Early” and “Advanced”) are taken into account with weighting coefficients of 0.3 and 0.7, respectively;

$$X_3 = \frac{0,3 X_p + 0,7 X_n + X_d}{\sum_{n=1}^i X_{p,n,d}}$$

X_p stands for the number of tasks with the “Early” fulfilment status;

X_n stands for the number of tasks with the “Advanced” fulfilment status;

X_d stands for the number of tasks with the “Perfect” fulfilment status.

- **Final (or “perfect”) progress** in the fulfilment of tasks under the Association Agreement (or the percentage of fulfilment of the Association Agreement) that includes only tasks that have received the “Perfect” status (of legislation approximation and/or implementation), or those whose implementation has been completed and confirmed by an independent expert assessment.

Final (“perfect”) progress allows us to assess some of the tasks that have already been completed, and therefore is crucial for assessing the progress of implementation or fulfilment of the Agreement.

SUMMARY

The purpose of the report is to report on Ukraine's progress in fulfilling its commitments specified in Titles II, III, IV, V, and VI of the Association Agreement made in 2020 and the first half of 2021. The progress with fulfilling its commitments made during the period from 2014 to 2019 was covered in the previous monitoring report "UKRAINE AND THE ASSOCIATION AGREEMENT: IMPLEMENTATION MONITORING 2014-2019".²

This monitoring report consists of 24 parts, covering 447 commitments that approximate national legislation to the provisions of EU acquis and correspond to the following Titles and Chapters of the Association Agreement, such as:

I. Political dialogue, national security and defence

- ◆ Dialogue and cooperation on domestic reform
- ◆ Foreign, security and defence policy

II. Justice, freedom, security, and human rights

- ◆ The rule of law and respect for human rights and fundamental freedoms

III. Trade

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

IV. Economic and sector cooperation:

- ◆ Energy cooperation
- ◆ Taxation
- ◆ Statistics
- ◆ Environment
- ◆ Transport
- ◆ Company law
- ◆ Telecommunications
- ◆ Audiovisual policy
- ◆ Agriculture and rural development
- ◆ Consumer protection
- ◆ Social policy
- ◆ Public health
- ◆ Education, training and youth

V. Financial cooperation, with anti-fraud provisions

² https://ucep.org.ua/wp-content/uploads/2021/01/zvit_5_2020_web_FINAL_2.pdf

Policy Brief

As of the second half of 2021, the overall progress in the implementation of the commitments under the Association Agreement between Ukraine and the EU amounts to 49.0%. This figure includes both fully fulfilled commitments and intermediate results. “Perfect” fulfilment, i.e. completion of all the tasks required to fulfil the commitment in full, accounts for 25.6%. 22.7% of the commitments are at an “advanced” stage of implementation, which means that legislative work has been carried out, but not all the necessary by-laws have been adopted and/or implemented or certain actions concerning practical implementation have not been completed. 24.9% of the commitments are at an “early” stage of implementation – i.e. regulations or measures for their implementation are still under development. Work on another 24.9% of the commitments have not even begun, while 1.9% manifest critical non-conformity with the relevant EU acquis.

Compared to the previous study, the indicator of overall progress in the Agreement implementation has increased (from 41.6% to 49.0%); the increase is especially significant for the indicator of perfect fulfilment (from 12.4% to 25.6%). Currently, we can argue that more than a quarter of Ukraine’s commitments under the Association Agreement have been fully implemented.

According to the results of the analysis, the **leading sectors** (those with more than 55% of fulfilled commitments) in 2020 and the first half of 2021 remain the same. The best sectors rated “perfect” include: technical barriers to trade (TBT), public procurement, company law, foreign policy, security and defence policy, energy sector, consumer protection and taxation, as well as sectors of telecommunications and cooperation on domestic reform.

In the sector of technical barriers to trade (100% overall progress, 100% perfect progress), Ukraine has fully adapted and implemented its basic (horizontal) legislation and almost all of its sectoral (vertical) legislation in accordance with the requirements of Article 56 of the Association Agreement and Annex III. Since October 2020, an EU assessment mission has been working in Ukraine to assess Ukraine’s readiness to conclude an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA Agreement). Despite the high degree of approximation of Ukrainian legislation to EU legislation, in practice there are issues that require attention. In particular, in March 2021, the European Co-operation for Accreditation (EA) suspended the recognition of Ukrainian accreditation performed by the National Accreditation Agency of Ukraine (NAAU) in areas that are key for the conclusion of the ACAA agreement – i.e. accreditation of inspection bodies and accreditation of product certification bodies. Therefore, in order to complete the fulfilment of the commitments in this sector, it is still necessary to continue work on the practical implementation.

In the sector of public procurement, (85.1% overall progress, 68.6% perfect progress) Ukraine has made significant progress in meeting virtually all its commitments to adapt its public procurement system to EU requirements. However, despite the overall progress in the sector, during the period under study (2020 and the first half of 2021) there has been some backsliding in the implementation of commitments. Amendments to the Law on Public Procurement, adopted in June 2021 (Law No. 1530-IX of 03.06.21), removed from the scope of the law procurement for the construction (including accompanying services) of the Large Ring Road around Kyiv (Kyiv region), as well as the purchase of goods, work and services necessary for the preparation and holding of events to mark the 25th anniversary of the Constitution of Ukraine and the 30th anniversary of Ukraine’s independence.

In the sector of company law (74.6% overall progress, 61.5% perfect progress) Ukraine has fulfilled the lion’s share of the commitments contained in Annexes XXXIV to XXXVI of the AA. During the period under study, further progress was observed in the area of Accounting and Auditing, in particular, Ukraine has completed its last implementation task by adopting Order No. 499 of the Ministry of Finance “On Approval of the Form and Procedure for Reporting Payments Made to the State Budget by Logging Enterprises” of August 13, 2020. However, the Annexes to the Agreement in this area need to be updated.

In the sector of foreign, security and defence policy (79.5% overall progress, 44.2% perfect progress) in 2020 and 2021 there has been some progress in cooperation between Ukraine and the EU in the field of crisis management – Ukraine is gradually resuming its involvement in EU operations; cooperation between the Ministry of Defence and the European Defence Agency continues. However, the Association Agreement does not provide for a common policy to counter hybrid security threats, therefore it is necessary to initiate negotiations with the EU to revise the foreign policy and security articles of the Association Agreement and enhance the dialogue on defence and military matters.

In the energy sector (58.1% overall progress, 33.1% perfect progress), major structural reforms were carried out during previous periods to bring natural gas and electricity market regulation in line with the requirements of the EU's Third Energy Package. However, in 2020 and the first half of 2021 we can see that the practical implementation of the previously introduced reforms does not fully meet the European requirements for an open, competitive and transparent market due to political interference in market operation mechanisms to keep lower gas and electricity prices for the public. In particular, the inadequate application of the PSO (public service obligations) tool to control the operation of state-owned companies, both in the electricity and gas markets, leads to significant price distortions that thwart competition and transparent market functioning as well as spawn technical and financial imbalances. Thus, significant debts to producers of electricity from renewable energy sources and attempts to impose dispatching restrictions on them might undermine the fulfilment of European integration commitments in the area of renewable energy sources (RES); whereas the government's interventions to curb the prices for gas for the public and unauthorized gas offtake by operators of regional gas distribution networks pose significant risks to the normal functioning of the gas transportation system and the financial stability of the largest company in the gas market – i.e. the state-owned Naftogaz of Ukraine NJSC. Particular concern should be expressed concerning determined attempts at political interference in the work of the regulatory agency for energy markets – the National Energy and Utilities Regulatory Commission (NEURC) – using its current unconstitutional status and returning the NEURC under control of the Cabinet of Ministers in November 2019.

In the sector of consumer protection, slightly more than a half (56.5%) of the tasks have been fulfilled but only 29.4% of these have been carried out in full (perfect fulfilment). Besides, the implementation process in the sector is very uneven. During the period under study, significant progress has been made in the areas of consumer lending and financial services, where the NBU adopted Resolution No. 15 “On Approval of the Regulation on Monitoring Compliance with Legislation on Protection of Consumers of Financial Services by the National Bank of Ukraine” of 09.02.2021.

In the sector of taxation (60.6% overall progress, 31.2% perfect progress) no significant achievements in the implementation of tax commitments have been made. Ukraine has not yet completed harmonisation of excise duties on alcohol and alcoholic beverages, energy products and electricity. Harmonisation of tax legislation with the common EU value added tax system has yet to be implemented.

In the sector of telecommunications (56.5% overall progress, 27.1% perfect progress) Ukraine demonstrates dynamic development both in the field of telecommunications services as well as in the field of trust services. Some commitments have already been fulfilled in full. In 2020, one of the framework laws was adopted in this area – i.e. Law No. 1089-IX “On Electronic Communications” of December 16, 2020. In December 2021, the Agreement on Reducing Roaming Tariffs among the Eastern Partnership Countries is to be signed. However, given Ukraine's broader interests in this area, Ukraine needs the Association Agreement to be updated and expanded in regard to all aspects specified in Appendices XVII-2, XVII-3, and XVII-4.

In the sector of dialogue and cooperation on domestic reform (55.4% overall progress, 20.8% perfect progress), progress has been uneven. More successful areas include reform of the electoral and parliamentary systems, as well as civil service reform. As regards decentralization, progress is slower. Despite the civil service reform advancement achieved in previous years, in 2019-2020 reform implementation was backsliding. The COVID-19 pandemic has turned out to be a real challenge for the functioning of the civil service, because it was the reason why competitions were suspended in April 2020. The Law on Civil Service was amended, and competitions were resumed as late as in February 2021 (Law No. 1285-IX). However, the consequences of these inconsistent decisions will continue reverberating in the work of the civil service for a long time.

Partial progress (40-55% commitment fulfilment) has been attained in the following sectors: sanitary and phytosanitary measures (SPS), customs and trade facilitation, social policy, environment, competition, rule of law and respect for human rights and fundamental freedoms, agriculture and rural development, statistics, environment, and intellectual property.

In the sector of sanitary and phytosanitary measures (50.1% overall progress, 27.6% perfect progress), a significant breakthrough was made due to the adoption in February 2021 of the Law of Ukraine “On Veterinary Medicine”, which helped take a lot of issues off the table in this sector. However, in many other areas no progress has been made.

In the sector of customs and trade facilitation (43% overall progress, 25.7% perfect progress), the implementation of the commitments under the AA significantly intensified in 2020 and the first half of 2021. In particular, the key by-laws required to launch common transit (NCTS Convention) have been adopted. After the completion of the pilot project, in March 2021 the nation-wide common transit system was deployed (within Ukraine). As a result, Ukraine expects an invitation from the EU to accede to the Convention on a Common Transit Procedure (NCTS) and the Convention on the Simplification of Formalities in Trade in Goods in the near future. In May 2021, a new customs register of intellectual property titles was launched (created on the basis of new regulations that had been adopted to fulfil commitments under the AA). However, one of the key tasks in the customs sphere – i.e. implementation of the Union Customs Code – has been fulfilled only in some respects, and no work on drafting a comprehensive implementation draft law has yet begun.

The main problem of the sector of social policy (53.8% overall progress, 23.1% perfect progress) is the inability of stakeholders to adopt the new Labour Code of Ukraine. In 2021, some progress has been made in combating discrimination and ensuring gender equality.

In the sector of environmental protection (42.7% overall progress, 19.2% perfect progress) the greatest progress has been made concerning matters such as environmental impact assessment (EIA), strategic environmental assessment (SEA), access to environmental information and, in part, water resource management. However, the areas that require radical change in the governance structure, a full reset, and financial and investment support are currently stalling. This applies to air, waste, industrial pollution and, in part, to water resource management and countering climate change.

In the sector of competition (40% overall progress, 17.5% perfect progress), no significant progress has been made during the period under study. And in the area of state aid, significant inadequacies persist. For instance, the powers of the AMCU to monitor and control state aid do not extend to decisions of the President, the Verkhovna Rada of Ukraine, and the Cabinet of Ministers, due to which the current system of state aid control in Ukraine is in conflict with the relevant EU acquis.

In the sector of rule of law and respect for human rights and fundamental freedoms, progress is steady but slow (49.7% overall progress, 16.1% perfect progress). The main achievements in 2020 and the first half of 2021 included adoption of the Law “On Indigenous Peoples of Ukraine”, approval of a new National Strategy for Human Rights, further progress in issuing biometric documents, opening a new Orlivka-Isaccea checkpoint in 2020, and adoption and signing of a law on joining the Pompidou Group.

The sector of agriculture and rural development involves a large number of commitments, and therefore the range of progress made in this area varies (44% overall progress, 10% perfect progress). Currently, the greatest progress in meeting the relevant commitments has been made with regard to improving the system of geographical indications of foodstuffs and agricultural products; organic farming; marketing of cereal seed; establishing requirements for consumer protection, labelling, packaging, and marketing of sugar, cocoa and chocolate; and requirements for the production and marketing of oilseeds. The least progress has been made in promoting rural development, including through mutual understanding of policies in this area.

In the sector of statistics (53.3% overall progress, 0% perfect progress), a lot of work has been done to implement the commitments under the Association Agreement. However, the sector requires adoption of at least two more comprehensive laws – the Law of Ukraine “On Official Statistics” and the Law of Ukraine “On Amendments to Certain Laws of Ukraine Regulating State Statistical Activities.”

In the sector of intellectual property (52.2% overall progress, 0% perfect progress), significant progress has been made in terms of the implementation of commitments during the period under study, but it is restricted to intermediate steps only. No commitment has been implemented in full. In particular, in autumn 2020, the National Intellectual Property Authority of Ukraine was established. The relevant responsibilities (issuance of title documents (patents, certificates) for intellectual property) have been assigned to the state enterprise Ukrainian Institute of Intellectual Property (Ukrpatent). However, Ukraine still remains on the list of countries where, according to the European Commission, intellectual property rights and their enforcement are repeatedly violated.

Progress is at an early stage (from 26% to 40% of commitment fulfilment) in sectors such as of establishment, trade in services and electronic commerce; transport, and public health.

The scope of the sector of establishment, trade in services and electronic commerce (32% overall progress, 18.9% perfect progress) is very large, so the degree of commitment implementation varies.

The work on commitments in the subsector of postal and courier services is just taking off, and the overall level of progress is only 3.8%. No Association Agreement commitments in the subsector have been fulfilled even to as much as an advanced degree.

In the field of electronic commerce, Law No. 675-VIII “On electronic commerce” of September 3, 2015 resolved most issues related to online commerce, but by now it requires numerous clarifications and updates to bring it in line with recent changes in the relevant EU acquis.

In the subsector of financial services, the Law of Ukraine “On Payment Services” of June 30, 2021 (No. 1591-IX) and the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Facilitate the Attraction of Investments and Introduce New Financial Instruments (On Capital Markets and Organised Commodity Markets)” of 19.06.2020 (No. 738-IX) have been adopted in 2021.

In the sector of transport (39.3% overall progress, 7.1% perfect progress), significant progress has been made in the area of internal water transport. The Law of Ukraine “On Internal Water Transport” of December 3, 2020 (No. 1054-IX) was adopted. In the field of air transport, Ukraine is still waiting for the signing of the Common Aviation Area Agreement. Reforms in the field of railway transport were merely partial. The most significant draft laws in this area – i.e. “On Railway Transport of Ukraine” and “On the National Commission for State Regulation of Transport” have not yet been adopted.

In the sector of public health (39.6% overall progress, 7.8% perfect progress) a breakthrough has been achieved in the area of transplantology. In the fall of 2020, the Ukrainian Transplant Coordination Centre was launched, which provides organisational guidance and coordination to healthcare facilities that provide medical care involving transplantation. The Unified State Information System for Organ and Tissue Transplantation has been created. In the field of blood safety, the Law of Ukraine “On Safety and Quality of Blood” of September 30, 2020 (No. 931-IX) has been adopted. In other areas, progress has been moderate or minor.

The **most challenging situation regarding the implementation of the Agreement** (25% or below) has developed in the sectors of financial cooperation, with anti-fraud provisions (25% overall progress, 25% perfect progress) and education, training, and youth (18.1% overall progress, 0% perfect progress). No significant progress has been made in any of the sectors during the period under study. Moreover, in the education sector, there have been even attempts to backslide on the already implemented reforms, when the MES tried to eliminate the National Agency for Higher Education Quality Assurance (NAQA) as an independent collegial body by turning it into a central executive body.

For more detailed conclusions and recommendations based on the results of our analysis of the implementation of the Association Agreement, see the final chapter of this report.

PART 1

ASSESSMENT OF THE PROGRESS MADE BY UKRAINE WITH THE FULFILMENT OF ITS COMMITMENTS UNDER THE ASSOCIATION AGREEMENT BETWEEN UKRAINE AND THE EU

from 2014 to mid-2021

TITLE II

**POLITICAL DIALOGUE, NATIONAL
SECURITY AND DEFENCE**

DIALOGUE AND COOPERATION ON DOMESTIC REFORM

Experts: Ihor Koliushko
Yulia Kyrychenko



not started early stage advanced perfect critical non-conformity (0.1 %)

At the time when Ukraine signed the Association Agreement with the European Union, the reform of local self-government and territorial structure of power was already under way aiming to decentralize public powers and finances based on the principles of the European Charter of Local Self-Government and recommendations of the European Congress of Local and Regional Authorities. Another task in this area was to reform the set-up and activities of the Cabinet of Ministers and the entire system of central executive bodies in accordance with the SIGMA guidelines, without which, according to European experts, Ukraine will not be able to fulfil its commitments under the Association Agreement.

Reform of local self-government and territorial structure of power (decentralization)

The concept of reforming local self-government and territorial structure of power was approved by Order No. 333-p of the Cabinet of Ministers of Ukraine of April 1, 2014. It involves performing the following tasks:

1. Changing the provisions of the Constitution of Ukraine on the administrative and territorial structure, organisation of local self-government and local state administrations;
2. Developing mechanisms of direct democracy and operation of public self-organisation bodies;
3. Creating legal preconditions for amalgamation of territorial communities and cooperation between them;
4. Legislating Ukraine's administrative and territorial structure and the procedure for changing it;
5. Amalgamating the administrative and territorial units of the basic level of local self-government in order to enable them to perform decentralized powers throughout the territory, not only in large cities;
6. Reforming the subregional level of Ukraine's administrative and territorial organisation in order to optimize the territorial organisation of executive power;
7. Implementing decentralization of powers and finances, creating a new legal framework for the functioning of local governments and local executive bodies on a new territorial basis.

Although one of the key reform tasks – i.e. amending the Constitution of Ukraine – has not yet been fulfilled, all in all, the reform is well on track.

At the first stage, proper conditions were created for voluntary (only as permitted by the Constitution) amalgamation of small communities into larger amalgamated territorial communities (ATCs), in order to ensure that all communities have the capacity to exercise their decentralized powers. This was achieved due to the well-thought-out Law "On Voluntary Amalgamation of Territorial Communities" of 05.02.2015 (No. 157-VIII) and financial incentives.

In 2019-20, at the final stage, some ATCs faced problems with ensuring 100% capacity to perform the powers that are to be decentralized. In order to deal with these issues, at the end of 2019, the ATC capacity criteria were revised, long-term plans were improved, and the Law “On Amendments to Certain Laws of Ukraine with Regard to Determining the Areas and Administrative Centres of Territorial Communities” (No. 562-IX of 16.04.2020) assigned these powers to the Cabinet of Ministers. This made it possible to adopt Order No. 715-p of the Cabinet of Ministers of 12.06.2020, whereby the borders and administrative centres of all territorial communities throughout Ukraine were approved. That is, a new administrative and territorial system was introduced at the basic level. The concept of “ATC” is no longer used in legislation.

Along with this, during 2019-20, a number of administrative meetings and public discussions on reforming the district (raion) division of Ukraine were held; and as a result Resolution No. 807-IX of the Verkhovna Rada “On the Formation and Liquidation of Districts” of 17.07.2020 was adopted. This helped reform the district (raion) level of the administrative and territorial organisation of Ukraine.

Further, the necessary amendments were made to the Budget Code (Law No. 907-IX of 17.09.2020) and the procedure of legal succession of executive bodies and local self-government at the district level were determined (Law No.1009-IX of 17.11.2020). And on October 25, 2020, in accordance with the terms set forth by the Constitution, local elections were held on a new administrative and territorial basis.

Despite the fact that numerous versions of other draft laws necessary for the implementation of the Concept have been drafted, none has been approved. Namely:

1. “On the Administrative and Territorial Structure of Ukraine” – draft law No. 4664 introduced by the government to stipulate the procedure for resolving issues of the administrative and territorial structure of Ukraine has not been developed further;
2. “On Local State Administrations” (new version) No. 4298 – has been prepared for the second reading and may be adopted by the end of 2021;
3. “On Local Self-Government” (new version) – the Verkhovna Rada committee took a decision to suspend the work on it until amendments to the Constitution are adopted;
4. “On Amendments to the Constitution of Ukraine on Reforming Local Self-Government and Territorial Organisation of Power” – numerous discussions and consultations have been held, but the draft law has not yet been submitted to the Verkhovna Rada.

These draft laws are currently undergoing finalization and approval at the political level involving active communication with associations of local self-government bodies – without their approval the Verkhovna Rada does not have enough votes to pass the draft laws.

As of 2021, there are 1,470 communities in Ukraine, including the city of Kyiv, which cover the entire territory of Ukraine. The government has declared that all of them are capable of fulfilling their statutory powers, but according to experts, about 10% of them seem insecure, partly in terms of their capacity and partly in terms of their compliance with other methodological criteria.

Instead of 490 districts (raions), Ukraine is now divided into 136 districts. In most regions (oblasts), the division into districts meets methodological criteria and objectives. Two oblasts (Ternopil and Khmelnytskyi regions) have insufficient number of districts, whereas two other oblasts (Ivano-Frankivsk and Luhansk regions) and the ARC have too many of them.

As a result of the successful local elections in 2020, all local self-governance operates on the basis of the new administrative and territorial system. In 2021, the process of reorganisation of district state administrations and territorial bodies of central executive authorities will be completed in line with the new district division.

In addition to the above four non-approved draft laws, the government keeps working on and politicians keep discussing continuation and deepening of the decentralization of powers and finances, as well as expansion of opportunities for citizen participation in local self-governance. In particular, the draft laws “On Local Referendums”, “On Public Consultations”, and “On Service in Local Self-Government Bodies” are expected to be considered in the Parliament.

Public administration reform, including civil service reform

Approximation of legislation. Requirements for the content of public administration reform were laid down by European experts and included the following tasks:

1. To establish a conceptual way of reforming and developing public administration in Ukraine in an official document;
2. To bring civil service legislation in line with the European standards described in the SIGMA recommendations, to reform the civil service on this basis;
3. To ensure the capacity of ministries to analyse and make public policy;
4. To optimize and reform the system of central executive bodies, eliminate overlaps of powers and lack of accountability within it;
5. To develop the capacity of the Cabinet of Ministers to strategically plan its activities, to increase the efficiency of the “government centre”;
6. To ensure further development of the system for administrative service provision in order to make it accessible, transparent and convenient, adopt the Law “On Administrative Procedure”;
7. To develop e-governance tools in the internal activities of executive bodies and in the provision of administrative services to the public.

On June 24, 2016, the CMU by its order approved the Public Administration Reform Strategy. Earlier, new Law No. 889-VIII “On Civil Service” of 10.12.2015 had been adopted. In fact, these two documents provided a foundation for public administration reform that was launched in mid-2016.

The main efforts were aimed at:

1. Institutional support of the reform itself – the Coordination Council for Public Administration Reform under the Cabinet of Ministers and two directorates in the CMU Secretariat were created;
2. Appointment of state secretaries in all ministries, as well as the State Secretary of the CMU and his deputies;
3. Discussion of the concept of strategic planning of CMU activities and the new version of the CMU Rules of Procedure;
4. By-law-based regulation and organisational measures aimed at civil service reform – the Senior Civil Service Commission has been established, competitive and disciplinary procedures have been gradually improving; however efforts to reform the system of remuneration of civil servants are insufficiently consistent;
5. Allocation of 10 pilot ministries and creation of directorates within them for state policy making and analysis, introduction for this purpose of a new type of civil servants – i.e. specialists in reform issues;
6. Increasing the network of Administrative Service Offices (Administrative Service Offices), primarily in newly created ATCs;
7. Drafting another version of the bill “On Administrative Procedure”;
8. Introduction of e-governance in the field of internal document management and provision of certain types of administrative services.

Significant steps have been taken in all these areas, but almost in none has the end result been achieved.

When the new government took office in August 2019, legal regulation of the civil service suffered a serious setback. Amendments introduced by Law No. 117-IX “On Amendments to Certain Laws of Ukraine Regarding Reloading of Power” of September 19, 2019, undermined the principles of stability and political impartiality of civil servants. As a result, not only were thousands of civil servants unjustifiably fired, but trust in the civil service in general and the relevant competitive admission procedures in particular was shattered.

Less than a year later, the authorities themselves, including President Zelensky, acknowledged the fallacy of the move, but it was impossible to get back on track. Another challenge to the functioning of the civil service was posed by the COVID-19 pandemic, due to which in April 2020 competitions were suspended. The Law on Civil Service was amended, and competitions were resumed as late as in February 2021 (Law No. 1285-IX of February 23, 2021).

In all other matters, the new government declared its willingness to continue implementing the Public Administration Reform Strategy. The decision to create directorates was extended to all ministries, not just the pilot ones, but as of mid-2021 this process has not been completed. In addition, according to the 2020 report, not all the established directorates are engaged in policy making and analysis, that is what they were created for. Many ministries simply renamed their existing subdivisions.

No systemic changes have been introduced to the laws “On the Cabinet of Ministers of Ukraine” and “On Central Executive Bodies”. A relevant laconic draft law was submitted by the government to the Verkhovna Rada as late as in May 2021 (No. 5469), but has not yet been considered by Parliament.

However, draft law No. 3475 “On Administrative Procedure” was prepared and adopted in the first reading on September 2, 2020. Also, thanks to two laws amending the existing laws No. 943-IX of 3.11.2020 and No. 1427-IX of 29.04.2021 the network of Administrative Service Offices received fresh impetus for development and some more administrative services (including services of Civil Registration Offices) became decentralized.

On July 21, 2021, the CMU by its Order No. 831-p approved a new Strategy for Public Administration Reform in Ukraine for 2022-25 and an Action Plan for its implementation, as the previous Strategy of 2016 had expired.

Practical implementation. As of mid-2021, the civil service in Ukraine continues to operate in accordance with the Civil Service Law of 2015, formally meeting the SIGMA standards. However, it faces problems of insufficient funding and lack of public trust, so the government is experiencing a significant shortage of qualified staff.

State secretaries of ministries and directorates have become standard practice in all ministries, but not all of them perform the functions for which the position was created. The draft law “On the Cabinet of Ministers and Central Executive Bodies” drafted in 2018 has not been submitted to the Verkhovna Rada. Hence, there has been no significant increase in the quality of analysis and policy-making, as well as no transition to strategic planning of government work.

Due to the failure to complete the reform of the ministries, no work on reforming all other central executive bodies has started.

The new Regulation of the Cabinet of Ministers (CMU Resolution No. 168 of February 26, 2020) was adopted, but having never entered into force, it was repealed by CMU Resolution No. 1285 of 16.12.2020.

Draft law No. 3475 “On Administrative Procedure” is pending final adoption by the Verkhovna Rada. And draft law No. 5469 on amendments to the law on the Cabinet of Ministers and the law on CEB is pending consideration in the first reading.

Progress is being made only with regard to provision of administrative services through Administrative Service Offices and through electronic communications.

The Strategy for Public Administration Reform in Ukraine for 2022-25 has been improved compared to the previous one as regards administrative services and civil service, but when it comes to reforming the institutional organisation of the executive branch, its content has been significantly simplified, which indicates a lack of political will to develop policy analysis and strategic planning in the government’s activities or to make the executive branch in Ukraine more accountable and efficient.

Electoral and parliamentary reform

According to the government’s Action Plan, Ukraine had to implement two tasks:

- Harmonisation of electoral legislation through its codification;
- Reform of the procedure for abolishing parliamentary immunity.

In addition, in accordance with the political consultations between Ukraine and the EU, as well as the numerous recommendations of the European Commission for Democracy through Law (Venice Commission), Ukraine had the following tasks, which were not mentioned in the Action Plan:

- To create a legal mechanism for implementing the institution of referendum in Ukraine;
- To create a legal mechanism for state funding of political parties.

Carrying out electoral reform

Article 6 of the Association Agreement

Ukraine has undertaken to harmonise its electoral legislation by codifying it as a single regulatory legal act (the Electoral Code of Ukraine). As of the time of undertaking this commitment, Ukraine had 3 laws regulating the election procedure: the Law of Ukraine “On Elections of the President of Ukraine” of March 5, 1999 (No. 474-XIV), the Law of Ukraine “On Elections of People’s Deputies of Ukraine” of November 17 2011 (No. 4061-VI), and the Law of Ukraine “On Local Elections” of July 14, 2015 (No. 595-VIII). The Electoral Code of Ukraine was to replace these laws and establish a unified approach to the legal regulation of elections in Ukraine.

Legislative approximation with regard to this commitment is “advanced”. On December 19, 2019, the Verkhovna Rada of Ukraine adopted a new Electoral Code of Ukraine (No. 396-IX³; hereinafter referred to as the EC of Ukraine or the Code), which generally meets the European requirements. It should also be mentioned that the provisions of the Law of Ukraine “On the Central Election Commission” of June 30, 2004 (No. 1932-IV) and the Law of Ukraine “On the State Electoral Roll” of February 22, 2007 (No. 698-V) have not been incorporated into the EC of Ukraine, remain in force today and continue to be applied in the electoral process along with the relevant provisions of the Code.

Practical implementation is at an “early” stage. Although the Electoral Code of Ukraine is already in force, it contains many contradictory rules that will not help people exercise their voting rights. In 2020, four laws on amendments to the EC of Ukraine were adopted (laws No. 720-IX of June 17, 2020, No. 805-IX of July 16, 2020, No. 884-IX of September 15, 2020, and No. 924-IX of September 29, 2020), but as of July 2021, the Code still abounds in conflicting norms and inconsistencies. In addition, since May 20, 2021, the Grand Chamber of the Constitutional Court of Ukraine (hereinafter referred to as the CCU) has been considering a case concerning compliance of Articles 133-191, Subparagraph 2, Paragraph 2, Section XXXXII “Final and Transitional Provisions” of the EC of Ukraine with the Constitution of Ukraine. 45 opposition MPs of Ukraine filed a petition to the CCU for the review of the constitutionality of, inter alia, the provisions on the proportional representation elections of MPs of Ukraine. The CCU is expected to pass its judgement on the contested provisions of the Code before the next regular parliamentary election in October 2023.

Carrying out parliamentary reform

Article 6 of the Association Agreement

Ukraine has committed itself to reforming the procedure for bringing Ukrainian MPs and judges to justice.

The regulatory approximation with regard to this commitment is “advanced”. On September 3, 2019, in violation of the procedure for amending the Constitution of Ukraine, the Verkhovna Rada of Ukraine abolished parliamentary immunity in its entirety. The complete abolition of parliamentary immunity is contrary to European requirements; moreover, the CCU had warned that when deciding whether to abolish parliamentary immunity, it is necessary to take into account the state of Ukraine’s political and legal system – i.e. its capacity to ensure unimpeded and effective exercise of MPs’ powers in the absence of the institution of parliamentary immunity, the functioning of parliament as such, as well as the implementation of the constitutional principle of separation of state powers (see Opinion No. 1-В/2018 of the CCU of June 6, 2018). Given the constitutional ban on amending the same provisions of the Constitution of Ukraine twice during one parliamentary convocation (Part 2, Article 158 of the Constitution of Ukraine), only the Verkhovna Rada of a new convocation elected in the next regular or extraordinary elections can re-consider this issue and properly fulfil this commitment.

In addition, from April 29, 2020, the Supreme Chamber of the CCU has been considering a case regarding constitutionality of Law No. 27-IX. 50 opposition MPs of Ukraine filed a petition to the CCU for the review of the constitutionality of Law No. 27-IX, in particular with regard to its compliance with the requirements of Section XIII of the Constitution of Ukraine.

With regard to the prosecution of judges, this procedure has been substantially modified as a result of the 2016 constitutional reform (see Law of Ukraine No. 1401-VIII “On Amendments to the Constitution of Ukraine (Regarding Justice)” of June 2, 2016).⁴ Today, the High Council of Justice passes judgements concerning violations by judges of incompatibility requirements, considers complaints concerning decisions of relevant bodies to bring a judge to disciplinary responsibility, as well as gives consent to detain or arrest a judge in accordance with European standards. These rules apply to all judges, except for CCU judges, for whom a different procedure for prosecution was established in 2016. In particular, without the consent of the CCU, a CCU judge may not be detained, or remanded in custody, or remain under arrest pending a conviction by a court, except for detention of a judge when or immediately after they committed a felony or a particularly serious crime. In addition, a violation of incompatibility

³ <https://zakon.rada.gov.ua/laws/show/396-20#Text>

⁴ <https://zakon.rada.gov.ua/laws/show/1401-19#Text>

requirements by a CCU judge, serious misconduct, gross or systematic neglect of their duties that is incompatible with the status of a judge of the Court or revealed that they are not fit for the position serves as a reason for dismissing the CCU judge (the Court can pass such a decision by at least two thirds of its members under the Constitution).

Ensuring direct democracy

Article 6 of the Association Agreement

Ukraine has undertaken the commitment to ensure direct democracy by adopting relevant laws governing national (all-Ukrainian) and local referenda. In 2018, the CCU declared unconstitutional the Law of Ukraine “On the All-Ukrainian Referendum” of November 6, 2012 (No. 5475-VI),⁵ which, in addition, did not meet EU requirements, and consequently a significant gap in the legal regulation of referendums appeared in Ukraine, which needs to be addressed.

Regulatory approximation with regard to this commitment is “advanced”. On January 26, 2021, the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 1135-IX “On the All-Ukrainian Referendum”, which provides the legal basis for the exercise of the expression of the will of the people through the national (all-Ukrainian) referendum, its organisation and procedure. This document meets EU requirements and is a revised version of draft law No. 3612 “On Democracy through All-Ukrainian Referendum”, which was submitted to parliament by the President of Ukraine on June 9, 2020. The Venice Commission praised both the inclusive process of drafting this document and the fact that its content meets the international standards of direct democracy (see Opinion CDL-REF (2020) 029-e⁶).

As Law No. 1135-IX does not regulate the issue of holding local referenda, after this law was adopted the VRU Working Group on the development of draft laws on democracy intensified its work on drafting a law on local referenda. On May 19, 2021, parliament registered draft law No. 5512 on the local referendum, introduced by 112 MPs of Ukraine, – the result of joint efforts of MPs and representatives of civil society. This draft law takes into account the EU’s democratic standards and practices for holding local referenda. The institution of local referendum was designed as an instrument not only of democracy but also of local self-governance in the context of ongoing decentralization reform. That is, a local referendum will serve as a way for the territorial community to independently resolve issues of local importance. It is expected that draft law No. 5512 will be considered and adopted at least in the first reading at the next regular session of parliament (which is to begin in September 2021).

Creating a legal mechanism for state funding of political parties

Article 22 of the Association Agreement

Ukraine has undertaken the commitment to create a legal mechanism for state funding of political parties, in particular by amending the Law of Ukraine on Political Parties with regard to state financing of political parties and improving control over the financing of political parties.

Regulatory approximation is mostly “advanced”. In 2015, the legislation on political parties provided for the possibility of state funding of political parties and enhanced state control by the NACP over the financing of political parties, which is in line with EU requirements.⁷ Currently, only political parties that managed to garner at least 5 percent of the votes in a nationwide multi-member constituency are eligible for public funding for their statutory activities, which is contrary to EU requirements (see Law of Ukraine No. 140-IX “On Amendments to Certain Legislative Acts of Ukraine to Ensure the Effectiveness of the Institutional Mechanism for Prevention of Corruption” of October 2, 2019)⁸

In addition, currently a law “On Political Parties in Ukraine” is being drafted. Experts of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) praise the draft law (see Opinion CDL-AD (2021)003⁹). However, as of July 2021, the draft law has not yet been submitted to parliament.

⁵ Vidomosti Verkhovnoyi Rady Ukrainy (Bulletin of the Verkhovna Rada of Ukraine – VVR), 2013, No. 44-45, p. 634

⁶ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2020\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2020)029-e)

⁷ Vidomosti Verkhovnoyi Rady Ukrainy (Bulletin of the Verkhovna Rada of Ukraine – VVR), 2015, No. 49-50, P. 449.

⁸ Vidomosti Verkhovnoyi Rady Ukrainy (Bulletin of the Verkhovna Rada of Ukraine – VVR), 2019, No. 47, P. 311.

⁹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)003-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)003-e)

FOREIGN, SECURITY AND DEFENCE POLICY

Experts: Snizhana Diachenko
Nadiya Koval

9.3

46.5

44.2

not started early stage advanced perfect critical non-conformity

The framework for cooperation between Ukraine and the EU in the foreign and security policy sector is set forth in Title II of the Association Agreement, entitled “Political Dialogue”. The vast majority of the articles in this Title, with the exception of Article 6, which focuses on domestic reform, refer to dialogue in the areas of foreign and security policy. This chapter also includes analysis of the implementation of the commitments under Articles 22 and 23 of the AA, as the former covers Ukraine’s cooperation in the field of cybersecurity, and the latter complements Article 13 of the AA on combating terrorism. The political articles of the Agreement do not require that Ukrainian legislation be adapted to European rules and regulations or that these rules and regulations be implemented in Ukrainian legislation. Instead, they provide a more general framework for deepening the political dialogue, cooperation and convergence of Ukraine and the EU in the field of foreign and security policy (CFSP) and the EU Common Security and Defence Policy (CSDP) through bilateral consultations and implementation of international law standards.

The objectives of the political dialogue under the Agreement include maintaining international peace, security and stability, and enhancing cooperation in the field of security and defence, as well as on matters of crisis management. The agreement establishes the following areas of cooperation: regional stability; enhanced mutually-beneficial dialogue in the field of space; conflict prevention, crisis management and military-technological cooperation; non-proliferation of weapons of mass destruction; disarmament, arms control, arms export control and the fight against illicit trafficking of arms; combatting terrorism and countering cyber threats.

The fact that there are no clear-cut requirements for the implementation of European norms in Ukrainian legislation is due to the nature of the EU CFSP. The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) do not vest the EU with any specific competence in the field of foreign and security policies. Accordingly, Article 24 of the TEU rules out adoption of legislation in this area, as well as specifies that the implementation of these policies shall be defined and implemented by the European Council and the Council of the EU, subject to the unanimity of all Member States.¹⁰ Despite declaring the need for reform and some institutional initiatives, the EU’s foreign and security policies still remain largely intergovernmental in nature, lack specific legal commitments and are based on cooperation between Member States. According to Article 24 (2) of the TEU, the CFSP must be implemented based on the development of mutual political solidarity among Member States and the achievement of an ever-increasing degree of convergence of Member States’ actions. This accounts for the generalised and limited nature of the foreign policy and security articles of the Association Agreement, which focus primarily on “strengthening cooperation and dialogue between the Parties.” This gives room to a broad interpretation of the Agreement provisions, which, on the one hand, makes it difficult to provide a clear assessment of the effectiveness of cooperation, and, on the other hand, it allows Ukraine to act proactively in certain areas of foreign and security policy, declaring its pro-European choice and using all possible formats of cooperation with the EU. However, a significant share of cooperation or cooperation initiatives in the foreign policy and security go beyond the areas mentioned in Title 2 of the AA.

¹⁰ Consolidated Version of the Treaty on the European Union
https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6_0023_02/DOC_1&format=PDF

The first important variable that shows how ambitious the Ukrainian party is in the field of enhancing foreign policy and security cooperation is its determination to pursue full integration into the EU. In 2019, “the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine” was enshrined in the Constitution of Ukraine (Law of Ukraine No. 2680-VIII of 7.02.2019 “On Amendments to the Constitution of Ukraine (Regarding the Strategic Course of the State for Acquiring Full-Fledged Membership in the European Union and in the North Atlantic Treaty Organisation)”). The Law of Ukraine “On National Security” (June 21, 2018 No. 2469-VIII) defines “Ukraine’s integration into the European political, economic, security, and legal space, and accession to the European Union” as one of the fundamental national interests of the state. At the end of June 2021, the government approved the draft Strategic Defence Bulletin of Ukraine. The document aims to build up defence forces based on “national and Euro-Atlantic values”, increase their capacity and interoperability with NATO member states.¹¹ However, along with the general scepticism about further EU enlargement, even the EU Global Strategy does not envisage any significant deepening of security cooperation with Ukraine for the sake of strengthening security in Europe, although it mentions Ukraine in the context of Russia’s aggression and the wider neighbourhood policy.

Another important variable for strengthening cooperation in this area is the fact that Ukraine considers the European Union one of its main security partners in countering Russian aggression. The “gap” between the political part of the Agreement and Ukraine’s ambitions is due to the fact that the articles of the Agreement written before 2014 do not take into account the change in the security situation after the Russian aggression. Accordingly, the areas of cooperation listed in the articles of the Agreement mostly reflect the priorities of cooperation between Ukraine and the EU prior to 2014. The foreign policy and security dialogue between Ukraine and the EU is dominated by the issue of the Russo-Ukrainian conflict and overcoming its consequences, rather than the areas set out in the articles of the Agreement.¹² In addition, the level of ambition varies: the EU focuses on sanctions and civil security sector reform, whereas Ukraine is after deeper cooperation in the military and defence spheres as well.

A good example of Ukraine’s intentions that are “ahead” of the provisions of the Association Agreement and testify to the desire of the Ukrainian party to use all possible formats of cooperation with the EU is Ukraine’s interest in participating in PESCO projects. After on 5 November 2020 the EU Council took a decision to establish the legal basis and the procedure for the accession of third countries to the projects of the Permanent Structured Cooperation on Security and Defence (PESCO),¹³ Ukraine has declared its intention to cooperate with EU Member States in this format. In particular, the Strategy of Foreign Policy of Ukraine (Presidential Decree No. 448/2021 of 26.08.2021) identifies participation in PESCO projects as one of the main areas of cooperation between Ukraine and the EU aimed to restore and strengthen international security. According to the Ministry of Defence, Ukraine is interested in involvement in up to five PESCO projects.¹⁴ At the same time, the criteria for third countries to join PESCO projects are not clear, so Ukraine’s involvement in such projects will require, among other things, painstaking diplomatic work to convince Member States of the “high added value” that Ukraine’s participation in PESCO projects can provide.¹⁵

Given the above, we would like to point out that, firstly, the assessments focus exclusively on progress in the areas identified by the AA, rather than the overall quality and depth of cooperation between Ukraine and the EU in foreign policy and security. In order to measure the progress in fulfilling the commitments, it is proposed to assess the intensity of the dialogue and practical cooperation between Ukraine and the EU in the above areas of this sector. Secondly, the lack of clear-cut commitments and milestones also affects the accuracy of the relevant assessment. The Government’s Action Plan of 2017 includes almost no tasks under the articles of the Agreement focusing on foreign and security policy. Therefore, as the Agreement does not set any timeframe for fulfilling the commitments in this sector, it seems appropriate to assess the fulfilment of such commitments under the Action Plan of 2014, which contains a more extensive list of tasks.

The assessment in this subchapter is carried out in accordance with the areas set in the AA: deepening dialogue and cooperation, promoting gradual convergence in the field of foreign and security policy, including the Common Security and Defence Policy (CSDP); enhanced mutually-beneficial dialogue in the field of space; regional stability, conflict prevention, crisis management and military-technological cooperation; non-proliferation of weapons of mass destruction; disarmament, arms control, arms export control and the fight against illicit trafficking of arms; combatting terrorism; countering cyber threats.

¹¹ The government approved the draft Strategic Defence Bulletin of Ukraine <https://armyinform.com.ua/2021/06/uryad-shvalyv-proyekt-strategichnogo-oboronnogo-byuletynya-ukrayiny/>

¹² Pashkov M., Stetsiuk P. et al., Ukraine – EU: Path to Political Association, Razumkov Centre, Kyiv, 2021, pp. 16-18.

¹³ Council Decision (CFSP) 2020/1639 of 5 November 2020 establishing the general conditions under which third States could exceptionally be invited to participate in individual PESCO projects <https://eur-lex.europa.eu/eli/dec/2020/1639/oj>

¹⁴ International cooperation <https://bit.ly/3otwnZS>

¹⁵ Melnyk O., Pashkov M. et al., Ukraine-EU Partnership in the Area of Security: Current Status and Prospects, Razumkov Centre, 2021, p. 25. <https://bit.ly/3GCDtBv>

Deepening dialogue and cooperation, promoting gradual convergence in the area of foreign and security policy, including the Common Security and Defence Policy (CSDP)

Article 7 of the Association Agreement

Article 7 of the Association Agreement provides for intensification of cooperation between Ukraine and the EU in the area of foreign and security policy, aiming to increase policy convergence and effectiveness, and promote joint policy planning.

Ukraine and the EU are involved in an intensive dialogue on foreign and security policy matters at an “advanced” level. There are a number of constant and stable platforms for political dialogue between Ukraine and the EU: annual Ukraine-EU summits, the Association Council, the Association Committee and subcommittees, and the Parliamentary Association Committee. At the same time, the main subject of discussion within the association bodies is mostly the matter of Ukraine’s sectoral and economic integration into EU markets, with less focus on foreign and security policy issues.

Officials who represent the Ukrainian party often take part in meetings of ambassadors of the EU Political and Security Committee. For instance, in February 2021, the Deputy Minister of Defence of Ukraine for European Integration took part in a meeting of the Political and Security Committee and discussed with the ambassadors of EU Member States the militarization of Crimea and the build-up of Russian military forces along the Ukrainian border. The military and political dialogue is also taking place at various levels. For example, in order to inform MEPs about the aggravation of the situation in eastern Ukraine because of the build-up of Russian troops on the Ukrainian-Russian border in the spring of 2021, Ukrainian Defence Minister Andrii Taran took part in a meeting of the European Parliament’s Subcommittee on Security and Defence. Dmytro Kuleba, Minister of Foreign Affairs of Ukraine, addressed the same issue at the invitation of the EU High Representative Josep Borrell during an online meeting of the EU Foreign Affairs Council.¹⁶ The Ministry of Defence participates in the EaP Multilateral Platform “Democracy, Good Governance and Stability”, discussing matters of cooperation in the field of CSDP and civil defence.

The issue of the Russo-Ukrainian conflict and overcoming its consequences dominates the foreign policy and security dialogue between Ukraine and the EU. It is certainly important from the point of view of the permanent political consensus of the EU member states on condemning Russian aggression. Without being directly involved in resolving the Russo-Ukrainian conflict, the EU has consistently declared its support for Ukraine’s sovereignty and territorial integrity, and has continued its policy of sanctions. The EU also supported the launch of the Crimean Platform in Ukraine: the inaugural summit on August 23, 2021 in Kyiv was attended by the President of the European Council Charles Michel and the Vice President of the European Commission Valdis Dombrovskis.

Convergence in the field of foreign policy seems to be rather asymmetric, Ukraine continues the practice of actively supporting the EU’s foreign policy statements. Thus, in 2020, Ukraine supported almost 90% of the EU’s foreign policy statements.¹⁷ However, the Association Agreement limits Ukraine’s participation in the development of EU foreign policy decisions, which makes joint political planning rather complicated.

At the same time, Ukrainian experts emphasize the need to intensify cooperation and dialogue between Ukraine and the EU in the defence and military spheres.¹⁸ According to Ukraine’s National Security Strategy, Ukraine’s priorities in counteracting Russia’s aggression include “strengthening defence and security capabilities, strengthening the international support of Ukraine, and effective use of international assistance.”¹⁹ The EU Global Strategy, instead, specifies that in cooperation with neighbouring countries, the EU primarily aims at promoting their resilience – the ability of states and societies to reform, thus withstanding and recovering from internal and external crises.²⁰ Thus, although the security interests of Ukraine and the EU generally coincide, the parties have different views on how to attain these goals.

¹⁶ Informal video conference of foreign affairs ministers, 19 April 2021 <https://www.consilium.europa.eu/en/meetings/fac/2021/04/19/>

¹⁷ Pashkov M., Stetsiuk P. et al., Ukraine – EU: Path to Political Association, Razumkov Centre, Kyiv, 2021, P. 28.

¹⁸ Melnyk O., Pashkov M. et al., Ukraine-EU Security Partnership in the Area of Security: Current Status and Prospects, Razumkov Centre, 2021, P. 14.

¹⁹ National Security Strategy of Ukraine. Human Security – the State’s Security: <https://zakon.rada.gov.ua/laws/show/392/2020#Text>

²⁰ Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union’s Foreign And Security Policy https://eeas.europa.eu/sites/default/files/eugs_review_web_0.pdf

Holding mutually-beneficial dialogue and cooperation in the field of space (security component)

Article 7 of the Association Agreement

The Association Agreement provides for “enhanced mutually-beneficial dialogue in the field of space.” The Action Plan of 2017 in this area sets forth the need for legislating Earth observation (remote sensing); organisation of data exchange with European organisations; ensuring Ukraine’s participation in negotiations on an International Code of Conduct for Outer Space Activities.

At the level of legislation, Ukraine’s fulfilment of commitments is at an “early” stage. The draft law “On State Regulation in the Field of Remote Sensing of the Earth”, developed in 2018, has not yet been submitted to the Verkhovna Rada. According to the State Space Agency, the materials are currently being prepared for submission to the Ministry of Strategic Industries.²¹ Therefore, in 2020-2021, there has been no progress at the legislative level.

Practical cooperation remains at an “advanced” level. In order to organise the exchange of remote sensing data between Ukraine and the EU, the following agreements have been concluded, as specified in the Action Plan 2017:

- In 2018, the Agreement on Cooperation in Data Access and Use of Sentinel Satellite Data of the EU Copernicus Programme was concluded between the State Space Agency of Ukraine (SSAU) and the European Commission (according to the government Pulse of the Agreement monitoring, the SSAU and the Ministry of Finance have developed a roadmap for implementing the Agreement on the Use of Sentinel Satellite Data,²² however, the document is not publicly available);
- In 2019, the SSAU and the European Space Agency (ESA) signed the Copernicus Space Component Technical Operating Agreement.

According to the SSAU, negotiations are also underway with the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT) on a draft Copernicus Space Component Technical Operating Agreement.²³

In 2020, the Regional Mirror Site of the EU Copernicus Programme was launched, which provides free access to the materials of observation of the territory of Ukraine from the satellites Sentinel-1, Sentinel-2 and Sentinel-3. Data collection by Sentinel satellites on the territory of Ukraine began in December 2019.²⁴

The status of fulfilment of Ukraine’s commitment to participate in the negotiation process for the preparation of the International Code of Conduct for Outer Space Activities can be described as “perfect”. The Ukrainian delegation took part in consultations to discuss the draft International Code of Conduct for Outer Space Activities in 2013-2014 (the negotiation process is currently suspended). One such meeting took place in Kyiv in 2013.²⁵

Regional stability, conflict prevention and military-technological cooperation

Article 9 of the Association Agreement

Article 10 of the Association Agreement

In this area, the following commitments are set forth:

1. Joint efforts to promote stability, security and democratic development in the common neighbourhood and, in particular, work together for the peaceful settlement of regional conflicts.
2. Enhancing practical cooperation in conflict prevention and crisis management.
3. Development of military-technological cooperation between Ukraine and the EU.

Article 9 provides for cooperation between Ukraine and the EU in the field of regional stability and conflict resolution. Article 10 of the Agreement focuses on cooperation of both parties in conflict prevention and in the area of crisis management and military-technological cooperation. The detailed list of tasks to be performed by Ukraine in this area is contained in the government’s Action Plan for the Implementation of the Association Agreement 2014. Article 9 lays down cooperation with the EU to resolve the situation in the eastern regions of Ukraine, preserving the sovereignty and territorial integrity of the state; support for regular dialogue and consultations on matters of EU sanctions and identification of sanction enforcement mechanisms to which Ukraine has acceded;

²¹ Annex to the Report on Implementation of the SSA Work Plan 2020: <https://bit.ly/3HC0KF2>

²² Pulse of the Agreement. Monitoring of the fulfilment of the Action Plan on Implementation of the Agreement. Organization of exchange of Earth remote sensing data with European organizations: <https://pulse.kmu.gov.ua/ua/streams/science-technology-and-innovations/2019-substream1-26>

²³ Annex to the Report on Implementation of the SSA Work Plan 2020: <https://bit.ly/3soki9K>

²⁴ Science and technology, cooperation in the field of space:

<https://ukraine-eu.mfa.gov.ua/posolstvo/galuzeve-spirovitnictvo/nauka-i-tehnologiyi-cpirovitnictvo-u-sferi-kosmosu>

²⁵ https://www.nas.gov.ua/siaz/Ways_of_development_of_Ukrainian_science/article/13051.3.064.pdf

Ukraine's participation and cooperation with the EU in international organisations on matters aimed at enhancing international stability and security, in particular in the Black Sea and Danube regions. Article 10 provides for Ukraine's participation in EU crisis management operations, as well as exercises within the EU CSDP; promotion of military-technological cooperation between Ukraine and the EU, as well as development of cooperation with the European Defence Agency (EDA), the EU Institute for Security Studies, and the European Security and Defence College (ESDC).²⁶

Regional stability

It should be noted that when the text of the Agreement was written, Ukraine was referred to as a donor of regional stability (for example, since 1995 Ukraine had been involved in negotiations on the Transnistrian conflict), but since 2014 Ukraine has been a recipient of such initiatives.

Implementation of practical cooperation between Ukraine and the EU in this area is at an “advanced” level. The EU continues to declare its unwavering support for Ukraine's territorial integrity and sovereignty, both in joint statements following the Ukraine-EU or Association Council Summits and in EU statements in the OSCE and the UN. The EU and its member states remain the largest donors to the OSCE Special Monitoring Mission, providing financial and technical assistance. At the same time, the EU is not directly involved in resolving the conflict. EU CSDP missions in Ukraine, EUAM and EUBAM, are successfully addressing civil security and domestic reform issues, but are distancing themselves from the Russo-Ukrainian conflict resolution process. However, the opening of the EUAM regional office in Mariupol in September 2020²⁷ attests to the EU's willingness to take more decisive steps towards cooperation with regions close to the contact line.

Regarding sanctions in connection with Russia's aggression, the dialogue between Ukraine and the EU can be described as “advanced”. Despite internal debates, the EU has consistently pursued a policy of sanctions against Russia. At the end of June 2021, the Council of the EU extended the sanctions banning the import and export of goods originating in Crimea or Sevastopol until June 2022.²⁸ On July 12, the decisions of the EU Council extended the economic sanctions against Russia until January 31, 2022.²⁹ However, during the summit of heads of state and government of the member states in June 2021, statements were made about the need to resume EU summits with Russia. The EU Council cancelled summits with Russia in March 2014 in response to the annexation of Crimea and waging war in Donbas.³⁰ Given lack of any progress in ending Russia's aggressive actions against Ukraine, resumption of EU-Russia summits would be contrary to the EU's sanctions policy. This opinion was also voiced by the Minister of Foreign Affairs Dmytro Kuleba.³¹ Therefore, Ukraine should not cease its diplomatic work to convince EU Member States of the effectiveness of their sanctions against Russia.

On the other hand, the sanctions lists of Ukraine and the EU are not synchronized. As of October 2021, the EU sanctions list includes 185 individuals and 48 legal entities.³² The latest changes to the sanctions list of the National Security and Defence Council were introduced by the Decree of the President of Ukraine of May 21, 2021. The consolidated list of individuals and legal entities subject to sanctions published by the National Security and Defence Council contains 3,919 individuals and 1,776 organisations or enterprises.³³ In addition, the results of public monitoring indicate that Ukraine lacks effective mechanisms to control the implementation of sanctions and responsibility for their violation, as well as the lack of transparency in the compilation of sanctions lists.³⁴

Conflict prevention, crisis management

Ukraine's fulfilment of the task of increasing its participation in EU crisis management operations is at a “perfect” level. After the temporary suspension of Ukraine's participation in EU missions and operations in 2014 due to Russian aggression, Ukraine is gradually resuming its participation in EU operations.³⁵ In 2020, units of the Armed Forces of Ukraine (a company of Marines of the Armed Forces of Ukraine; an IL-76MD transport aircraft with a crew

²⁶ Order No. 847-p of the Cabinet of Ministers of Ukraine of September 17, 2014 “On the Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part”: <https://zakon.rada.gov.ua/laws/show/847-2014-%D1%80#Text>
²⁷ <https://www.euam-ukraine.eu/ua/tag/mariupol/>

²⁸ Council Decision (CFSP) 2021/1010 of 21 June 2021 amending Decision 2014/386/CFSP concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021D1010&qid=1625739025900>

²⁹ Council Decision (CFSP) 2021/1144 of 12 July 2021 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021D1144&qid=1626856065252>

³⁰ Conclusions on Ukraine approved by the European Council, 20 March 2014: <https://www.consilium.europa.eu/media/29224/141707.pdf>

³¹ Kuleba on Putin's potential invitation to EU summit: dangerous deviation from sanctions: <https://www.eurointegration.com.ua/news/2021/06/24/7124779/>

³² Ukraine: EU sanctions eight more people over territorial integrity: <https://www.consilium.europa.eu/en/press/press-releases/2021/10/11/ukraine-eu-sanctions-eight-more-people-over-territorial-integrity/>

³³ List of individuals and legal entities subject to restrictive measures (sanctions): https://sanctions-t.nbco.gov.ua/?fbclid=IwAR2myJIMuI9gNCdS1ZW4sa-V2-tUxGPdBF598ubOUx0hKnz_K-ffRAuN_k

³⁴ New Ukrainian sanctions: what appeared and what has been “lost” on the list. Updated sanctions database: <https://www.blackseanews.net/read/164428>

³⁵ For more information on Ukraine's participation in EU operations, see: Ukraine and the Association Agreement: Monitoring Implementation 2014-2019, Kyiv, 2020, pp. 49-52: https://ucep.org.ua/wp-content/uploads/2021/01/zvit_5_2020_web_FINAL_2.pdf

of the Armed Forces of Ukraine; a group of staff officers of 10 people) were on watch at the EU Helbroc BTG. According to the decision of the top leadership of the Armed Forces of Ukraine, the next periods to go on duty in the EU BTGs are planned for the first half of 2023 and 2026. In addition, the Ministry of Defence has renewed Ukraine's participation in the EU ALTHEA operation in Bosnia and Herzegovina. In July 2020, the EU accepted Ukraine's application to participate in the operation.³⁶ At a meeting on July 30, 2021, the National Security and Defence Council took a decision to send a Ukrainian contingent to participate in the ALTHEA operation.³⁷

In July 2021, the international military exercises Three Swords 2021 started, involving servicemen of the Lithuanian-Polish-Ukrainian Grand Hetman Kostiantyn Ostrogski Lithuanian-Polish-Ukrainian Brigade LITPOLUKRBRIG, as well as the US military. This is the first tactical training of the multinational brigade since its establishment in 2015.³⁸ The military exercises will contribute to the deepening of military cooperation between the countries of the Lublin Triangle, as well as expand the opportunities for Ukraine's participation in EU operations.

Military-technological cooperation

As regards **transposition**, Ukraine's fulfilment of the task of stimulating military-technological cooperation with the EU is at an "advanced" level. On 1 January 2021, the Law "On Defence Procurement" (No. 808-IX of 17.07.2020) entered into force, it was developed taking into account NATO standards and envisages harmonisation of Ukrainian legislation in the field of defence procurement with the provisions of Directive 2009/81/EC. The law stipulates that procurement in the field of defence should be based on the principle of competition, openness and transparency (except in cases that constitute a state secret).³⁹ However, the field-specific draft law "On Military-Technological Cooperation" (r. No. 5479 of December 2, 2016) has not yet been adopted.⁴⁰

The **implementation** of the task is also "advanced". The government has adopted resolutions of the Ministry for Strategic Industries to implement the Law "On Defence Procurement".⁴¹ However, the implementation of the Law was significantly delayed – the Law was supposed to enter into force on January 1, 2021, but as of late March 2021, work on regulations of the Ministry of Defence is still ongoing, and the regulations were made public as late as in April. At the same time, the new regulatory framework is imperfect, which thwarts qualitative transition from the state defence order to a competitive and transparent defence procurement system.⁴² As a result, several state-owned enterprises have not received adequate funding to perform covert military projects under the Defence Ministry's defence order.⁴³

The development of Ukraine's cooperation with the European Defence Agency (EDA), the EU Institute for Security Studies, and the European Security and Defence College is at an "advanced" level. According to the Administrative Agreement between the Ministry of Defence and the EDA, cooperation is carried out in four areas: Material Standardization, Single European Sky, Logistics, and Training. In 2020, Ukrainian representatives took part in political-level meetings of the Military Aviation Board concerning the Single European Sky. In October 2020, at the invitation of the EDA, servicemen of the Armed Forces of Ukraine took part in training events at the Multinational Helicopter Training Centre in Sintra, Portugal. Since the summer of 2020, Ukrainian specialists have been involved in EDA expert groups (EG No. 10 – Ammunition, EG No. 14 – Life Cycle Technical Documentation, EG No. 15 – Quality of electric power supply/Portable electric power generators) and the expert group of the European Defence Standardisation Committee. In November 2020, the EU decided to involve Ukrainian experts in the work of the Project Team Logistic Support.⁴⁴ Cooperation between Ukraine and the EDA is only gaining momentum and in the long run could help improve the country's defence sector.

Ukraine's institutional cooperation with the EU Institute for Security Studies has not yet been arranged. Within the framework of various projects, the Institute cooperates with Ukrainian experts and non-governmental think tanks.

³⁶ Political and Security Committee Decision (CFSP) 2020/1099 of 16 July 2020 on the acceptance of a third State's contribution to the European Union military operation in Bosnia and Herzegovina (EUFOR ALTHEA) (BIH/30/2020): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020D1099>

³⁷ The National Security and Defence Council of Ukraine has adopted the Strategy of Foreign Policy of Ukraine and a number of important decisions in the areas of economic and state security: <https://www.rnbo.gov.ua/ua/Dialnist/4946.html>

³⁸ 1,200 servicemen take part in the Three Swords 2021 military exercises in the Lviv region. What is important about the training?

<https://www.radiosvoboda.org/a/viyskovyi-navchannya-nato-polihon-yavoriv/31368310.html>

³⁹ Law of Ukraine No. 808-IX "On Defence Procurement" <https://zakon.rada.gov.ua/laws/show/808-20#Text>

⁴⁰ Draft Law of Ukraine "On Military-Technological Cooperation": http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60624

⁴¹ The Government has adopted all the resolutions of the Ministry for Strategic Industries for the implementation of the Law of Ukraine "On Defence Procurement":

<https://mspu.gov.ua/news/uryad-prijnyav-usi-postanovi-minstrategpromu-dlya-implementaciyi-zakonu-ukrayini-pro-oboronni-zakupivli>

⁴² OverDose in Defence procurement, or where is the state when it is needed?

https://censor.net/ru/blogs/3270636/peredozuvannya_v_oboronnih_zakupvlyah_abo_de_derjava_koli_vona_potrbna

⁴³ Despite Zelensky's decree, a number of military projects are under threat because defence order has not been reformed:

<https://statewatch.org.ua/publications/popry-ukaz-zelens-koho-riad-viys-kovykh-proektiv-pid-zahrozoiu-cherz-vidsutnist-reformy-oboronnoho-zamovlennia/>

⁴⁴ Cooperation in military-political, military and military-technological spheres.

<https://ukraine-eu.mfa.gov.ua/posolstvo/spivpracya-ukrayina-yes-u-feri-zovnishnoyi-politiki-i-bezpeki/spivpracya-ukrayina-yes-u-ramkah-spilnoyi-politiki-bezpeki-i-oboroni>

Ukraine's cooperation with the European Security and Defence College is part of initiatives for the Eastern Partnership countries. The CSDP Orientation Course is held annually on the basis of Ivan Cherniakhovskiy National University of Defence of Ukraine. With the assistance of the ESDC, servicemen of the Armed Forces of Ukraine annually do courses in CSDP abroad.⁴⁵

Cooperation on disarmament, arms control and non-proliferation of weapons of mass destruction

Article 11 of the Association Agreement

Article 12 of the Association Agreement

Cooperation between Ukraine and the EU on non-proliferation of weapons of mass destruction, disarmament, arms control, arms export control and the fight against illicit trafficking of arms, including small arms and light weapons, is set forth in Articles 11 and 12 of the Association Agreement.

This area involves fulfilment of the following commitments:

1. Development of cooperation and contributing to the prevention of the proliferation of weapons of mass destruction, related materials and their means of delivery in full compliance with commitments under international treaties and disarmament and non-proliferation agreements, as well as other relevant international obligations and by implementing them at the national level.
2. Improvement of the system of state export control.
3. Cooperation between Ukraine and the EU on disarmament, arms control, arms export control and the fight against the illicit trafficking of arms.

The progress of the commitment implementation is assessed in accordance with the objectives set in the Government's Action Plan for the Implementation of the Association Agreement of 2014. It provides for cooperation through a regular dialogue between Ukraine and the EU in the field of countering the proliferation of weapons of mass destruction, disarmament, arms control and combating the illicit trafficking of arms, as well as ratification of relevant international treaties; improving the system of national export control, control over the export and transit of goods related to weapons of mass destruction, control over the end use of dual-use goods and technologies; ensuring cooperation in the field of arms exports in accordance with the content and principles of the Council Common Position 2008/944/CFSP, which sets out general rules for controlling the export of military technology and equipment, as well as supporting the process of discussing the Arms Trade Treaty; and deepening cooperation with EU member states in the framework of international export control regimes.

Ukraine's fulfilment of the task of counteracting the proliferation of weapons of mass destruction and ratification of relevant international treaties at the regulatory level is "perfect". Since 1986, Ukraine has ratified a number of international treaties in this area.⁴⁶ In December 2020, Decree No. 528/2020 of the President of Ukraine "On Ensuring the Implementation by Ukraine of UN Security Council Resolutions on Non-Proliferation of Weapons of Mass Destruction and Preventing their Use for Terrorist Purposes" was adopted.⁴⁷ In December 2019, a new Law of Ukraine "On Preventing and Combating Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction" (No. 361-IX) was adopted, implementing Directive (EU) 2015/849 and Regulation (EU) 2015/847.

At the transposition level, the improvement of the national system for control over the export of goods related to weapons of mass destruction and dual-use goods is at an "advanced" level. Work is underway to develop a new version of the Law of Ukraine "On State Control over International Transfers of Military and Dual-Use Goods". The draft law envisages specification and optimization of the model of state regulation in order to simplify the procedures of state control for economic entities, which will contribute to approximation to Council Common Position 2008/944/CFSP. According to the State Export Control Service of Ukraine, the draft law is being finalized by the Ministry of Economy.⁴⁸

⁴⁵ Id.

⁴⁶ See: Ukraine and the Association Agreement: Implementation Monitoring 2014–2019, Kyiv, 2020, pp. 55–56: https://ucep.org.ua/wp-content/uploads/2021/01/zvit_5_2020_web_FINAL_2.pdf

⁴⁷ Decree of the President of Ukraine "On Ensuring the Implementation by Ukraine of UN Security Council Resolutions on Non-Proliferation of Weapons of Mass Destruction and Preventing their Use for Terrorist Purposes": <https://zakon.rada.gov.ua/laws/show/528/2020#Text>

⁴⁸ Information on the implementation of the Work Plan of the State Export Control Service of Ukraine for 2020: <https://www.dsecu.gov.ua/uploads/2021/01/zvit-pro-vikonanna-planu-za-2020-rik.pdf?language=ua>

It is expected that regulations in the field of state export control (namely the Regulation on the Procedure for Expert Examination in the Field of State Export Control, the Regulation on the Procedure for Providing Guarantees and Exercising State Control over Fulfilment of Obligations to use Goods Subject to State Export Control in accordance with the Stated Purposes) will be brought in line with the new version of the Law “On State Control over International Transfers of Military and Dual-Use Goods”. However, as the draft law has not been adopted, practical implementation of this task has not started.⁴⁹

The implementation of Ukraine’s commitments within this area is advanced. In order to harmonise the procedures of state export control with EU mechanisms, Resolution No. 1 of the Cabinet of Ministers “On Amendments to the Procedure for State Control over International Transfers of Dual-Use Goods” of 11.01.2018 was adopted to introduce into Ukrainian legislation a Unified List of Dual-Use Goods based on the relevant EU List. In 2020, the State Export Control developed a draft resolution on amendments to the Unified List of Dual-Use Goods in order to implement the decisions of the international export control regimes such as the Wassenaar Arrangement, Missile Technology Control Regime, Nuclear Suppliers Group, and Australia Group, which Ukraine is a party to, for 2017–2019. As of early 2021, the project has been submitted for approval to the Ministry of Strategy and Industry, and cross-government harmonisation is underway.⁵⁰

In May 2021, the Cabinet of Ministers approved the Main Areas of Development of the System for Prevention of and Counteraction to Legalization (Laundering) of Proceeds from Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction in Ukraine until 2023 and the Action Plan for their implementation.⁵¹ Among the key tasks of the implementation of the Main Areas of Development is bringing of Ukrainian legislation in the relevant field in line with FATF and EU standards.

Deepening of the cooperation with EU member states in the framework of international export control regimes is at a perfect level. At the bilateral level, an expert dialogue is held between Ukraine and the EU Conventional Arms Exports (COARM), Non-Proliferation (CONOP), and Global Disarmament and Arms Control (CODUN) Working Parties, and the Working Party on OSCE and the Council of Europe (COSCE).⁵² Ukraine is participating in an EU project to support arms export controls. In the framework of the COARM Outreach Project IV on Effective Arms Export Controls, in 2018–2020 Ukraine has participated in three interregional seminars on export controls and two study visits to Germany and Slovakia. During the seminars, experts from the EU and beneficiary countries discussed issues of national export controls, control of intermediary activities, as well as prosecution and sanctions. Study visits were organised to exchange experience on customs procedures and licencing.⁵³

Combating terrorism

[Article 13 of the Association Agreement](#)

[Article 23 of the Association Agreement](#)

[UN Security Council Resolution No. 1373 \(2001\)](#)

[UN Global Counter-Terrorism Strategy 2006](#)

Cooperation between Ukraine and the EU in combating terrorism is set forth in Articles 13 and 23 of the Association Agreement. In particular, it envisages the parties working together to fully implement UN Security Council Resolution 1373 (2001), the UN Global Counter-Terrorism Strategy 2006 and other UN documents, as well as other relevant international conventions and documents.

This area includes the following commitments:

1. Work together at bilateral, regional and international levels to prevent and combat terrorism.
2. Cooperate to prevent and combat terrorism in accordance with international law, international human rights standards, and refugee and humanitarian law.

According to the 2014 Action Plan, under these articles, Ukraine must take measures to step up the physical protection of high-risk facilities and improve the system of protection; to continue the dialogue with the EU on combating separatism, extremism, and terrorism (primarily through experience and information exchange); and to improve the legislation of Ukraine in the field of combating terrorism.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Order No. 435-p of the Cabinet of Ministers of Ukraine “On Approval of the Main Areas of Development of the System for Prevention of and Counteraction to Legalization (Laundering) of Proceeds from Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction in Ukraine until 2023 and the Action Plan for their Implementation” of May 12, 2021

<https://www.kmu.gov.ua/npas/pro-zatverdzhennya-osnovnih-napryamiv-rozvitku-sistemi-zapobigannya-ta-protidiyi-435-120521>

⁵² Pashkov M., Stetsiuk P. et al., Ukraine – EU: Path to Political Association, Razumkov Centre, Kyiv, 2021, P. 36.

⁵³ Implementation Summary: EU Outreach Project IV on Effective Arms Export Controls, Council Decision (CFSP) 2018/101, April 2018 – November 2020.

The **regulatory-level** improvement of the physical protection of high-risk facilities is currently at the early stages. In June 2021, the Verkhovna Rada of Ukraine adopted in the first reading the draft law “On Critical Infrastructure”. The draft law is aimed at creating a national system for critical infrastructure protection and focuses on public-private partnerships in this area. As of September 2021, the draft law is being prepared for the second reading.⁵⁴

The task of improving the legislation of Ukraine in the field of combating terrorism has been fulfilled. In 2020, the new Law of Ukraine “On Preventing and Combating Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction” (No. 361-IX) came into force, implementing the provisions of Directive (EU) 2015/849 and Regulation (EU) 2015/847, as mentioned above. The Government has approved the main areas of development of the system for Preventing and Combating legalization (laundering) of proceeds from crime, terrorist financing and financing of proliferation of weapons of mass destruction in Ukraine until 2023 and the Action Plan for their implementation.

At the legislative level, the task of implementing international acts in the field of combating terrorism has been fulfilled perfectly. In March 2019, the Concept of Combating Terrorism in Ukraine was approved, which is based, inter alia, on international agreements, primarily the UN Global Counter-Terrorism Strategy.

The implementation of this task is also perfect. The Cabinet of Ministers by its Order of January 5, 2021 approved the Action Plan for the implementation of the Concept of Combating Terrorism in Ukraine.⁵⁵ The State Financial Monitoring Service conducts financial investigations to counter the financing of terrorism and separatism. In 2020, the SFMS collected and submitted to law enforcement agencies 75 materials on financial transactions that may be related to the financing of terrorism or separatism, including 13 materials based on which funds were frozen in the amount of UAH 14.68 million.⁵⁶

Practical implementation with regard to the improvement of critical infrastructure protection, as well as cooperation with the EU in combating terrorism is at an advanced stage. The Cabinet of Ministers by its Resolution No. 1109 “Certain Matters of Critical Infrastructure” of October 9, 2020 approved the Procedure for Designating Facilities as Critical Infrastructure, a list of sectors (subsectors), basic critical infrastructure services of the state and the Methodology for Categorization of Critical Infrastructure Facilities (according to the Law “On Basic Principles of Cyber Security of Ukraine”).⁵⁷

Since 2017, Ukraine has been cooperating with the law enforcement agencies of the European Union – the European Police Office (Europol) and the European Union Agency for Criminal Justice Cooperation (Eurojust), in particular in the fight against terrorism. The focus of practical cooperation between Ukraine and Europol is mostly focused on the fight against crime – Ukraine is actively involved in the relevant operations of Europol. Regarding combating terrorism, in 2020 the EUAM organised a webinar on counter-terrorism for representatives of the SBU and Europol, where the possibilities of cooperation between the two agencies were discussed (in particular, the European Counter-Terrorism Centre and the counter-terrorism system in Ukraine were represented).⁵⁸ Currently, the main body that coordinates the counter-terrorism system is the SBU Anti-Terrorist Centre. However, public information on the Centre’s activities is limited to reports about anti-terrorist exercises, making it difficult to rate the Centre’s prospects for cooperation with the relevant Europol unit.

Ukraine’s cooperation with Eurojust is becoming deeper. In 2018, Liaison Prosecutor for Ukraine at Eurojust was appointed. According to Eurojust, in 2020 the Liaison Prosecutor initiated 35 new cases, was involved in 13 joint investigation teams and 19 coordination meetings.⁵⁹

According to the State Financial Monitoring Service, as of July 2021, 22 Memoranda of Understanding have been concluded with the financial intelligence units (FIUs) of the EU member states on cooperation in combating money laundering, terrorist financing and proliferation financing. Negotiations are underway to sign Memoranda of Understanding with the FIU of the Republic of Malta, the FIU of the Kingdom of Sweden and the FIU of the Grand Duchy of Luxembourg.

54 Draft Law of Ukraine “On Critical Infrastructure” (No. 5219): https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71355

55 Order No. 7-p of the Cabinet of Ministers of Ukraine “On Approval of the Action Plan for the Implementation of the Concept of Combating Terrorism in Ukraine” of January 5, 2021: <https://zakon.rada.gov.ua/laws/show/7-2021-%D1%80#Text>

56 Report of the State Financial Monitoring Service of Ukraine for 2020: <https://fiu.gov.ua/assets/userfiles/0350/zvity/PublicZvit2020.pdf>

57 Resolution No. 1109 of the Cabinet of Ministers of Ukraine “Certain Matters of Critical Infrastructure Facilities” of October 9, 2020: <https://zakon.rada.gov.ua/laws/show/1109-2020-%D0%BF#n42>

58 The EUAM brings together experts from the Security Service of Ukraine and Europol in the fight against terrorism: <https://www.euam-ukraine.eu/ua/news/euam-brings-together-ssu-and-europol-in-the-fight-against-terrorism/>

59 European Union Agency for Criminal Justice Cooperation, Ukraine: <https://www.eurojust.europa.eu/states-and-partners/non-EU-states/liaison-prosecutors/ukraine>

Countering cyber threats

Article 22 of the Association Agreement

Article 22 of the Association Agreement focuses on cooperation between Ukraine and the EU in order to combat and prevent criminal and illegal activities, organised or otherwise, including, but not limited to, cybercrime. According to the government's 2017 Action Plan for the Implementation of the Association Agreement, Ukraine must create a regulatory framework and promote the development of a national computer emergency response team (CERT). The 2014 Action Plan provides for implementation of the Council of Europe Convention on Cybercrime.

As far as **transposition** is concerned, the CERT development commitment is fulfilled at an advanced level. The State Service for Special Communications and Information Protection of Ukraine reports that the task has been carried out in full. On August 30, 2018, the State Special Communications Administration issued Order No. 528 "On Changing the Name of the State Centre for Cyber Defence and Countering Cyber Threats of the State Service for Special Communications and Information Protection of Ukraine". The Order approved the Regulation on the State Centre for Cyber Defence, which specifies the measures to develop the government team for responding to computer emergencies in Ukraine CERT-UA.⁶⁰ However, the text of the Order is not publicly available. The objectives of CERT-UA are set forth in the Law "On Basic Principles of Ensuring Cyber Security of Ukraine".⁶¹

The **implementation** status of this task is "advanced." The effectiveness of CERT-UA in accordance with the measures specified in the Order of the State Special Communications Administration requires further evaluation.

Implementation of the Convention on Cybercrime is at an "early" stage. The relevant Committee of the Verkhovna Rada approved two draft laws "On Amendments to the Criminal Procedure Code of Ukraine and the Code of Administrative Offences of Ukraine to Improve the Effectiveness of Countering Cyberattacks" (r. No. 4003 of September 1, 2020) and "On Amendments to the Criminal Procedure Code of Ukraine to Improve the Effectiveness of the Fight against Cybercrime and the Use of Electronic Evidence" (r. No. 4004 of 1.09.2020). Both draft laws are pending consideration by the Verkhovna Rada.

⁶⁰ Report of the State Service for Special Communications and Information Protection of Ukraine on the implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part for the IV quarter of 2018:

<https://cip.gov.ua/services/cm/api/attachment/download?id=33222>

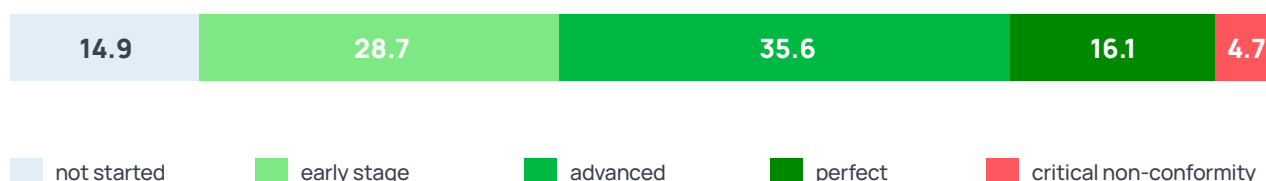
⁶¹ Order No. 7-p of the Cabinet of Ministers of Ukraine "On Approval of the Action Plan for the Implementation of the Concept of Combating Terrorism in Ukraine" of January 5, 2021: <https://zakon.rada.gov.ua/laws/show/2163-19#Text>

TITLE III

JUSTICE, FREEDOM, SECURITY
AND HUMAN RIGHTS

RULE OF LAW AND RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Experts: Roman Smaliuk
Pavlo Kravchuk



The objectives of the Rule of Law, Respect for Human Rights and Fundamental Freedoms sector are set out in Section III of the Association Agreement. This section does not contain any annexes or direct references to the relevant EU acquis in its provisions. These provisions are very broad and often relate not only to EU acts but also to international framework instruments of the Council of Europe, the UN, etc.

The implementation by the Ukrainian party of Title III of the Association Agreement involves achieving the following objectives:

- harmonisation of legislation and practices in the field of human rights and anti-discrimination;
- approximation of legislation and effective cooperation with the EU in the field of migration and border management;
- ensuring the sustainability of the visa-free regime with the EU;
- cooperation and harmonisation of legislation in the field of combating drug abuse and illicit trafficking of drugs;
- cooperation in the field of justice, combating organised crime, money laundering and terrorist financing.

In Art. 14 of the Association Agreements, Ukraine and the EU attach particular importance to the consolidation of the rule of law and reinforcement of institutions at all levels in the areas of administration in general and law enforcement and administration of justice in particular. The key aims of such cooperation include strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption. As G7 ambassadors stated at the meeting with the President of Ukraine in November 2020, implementation of judicial reform is a key factor in Ukraine's transition to a new level of European integration.⁶²

Reform of law enforcement, anti-corruption bodies and the judiciary

Article 14 of the Association Agreement
Action Plan on Visa Liberalization

The key objectives set out in Art. 14 of the Association Agreement with the EU can be achieved by fulfilling the following commitments:

1. strengthening law enforcement agencies and combating corruption, which implies creation of effective law enforcement agencies, in particular, the police and the State Bureau of Investigations (DBR), as well as formation of independent and capable anti-corruption bodies (NACP, NABU, SAPO, ARMA);
2. strengthening the judiciary, increasing its efficiency, safeguarding its independence, which can be achieved through comprehensive judicial reform, in particular through the formation of capable judicial institutions, updating and implementing procedural codes, improving the efficiency of enforcement of judgments, and ensuring independence and efficiency of prosecution and defence.

⁶² <https://www.president.gov.ua/news/prezident-obgovoriv-z-poslami-krayin-g7-shlyahi-vihodu-z-kon-65149>

Approximation of legislation for these commitments is mostly advanced.

In 2015, the Laws “On the National Police” of July 2, 2015 (No. 580-VIII)⁶³ and “On the State Bureau of Investigation” of November 12, 2015 (No.794-VIII)⁶⁴ were adopted. In 2019, amendments were made to the law on the DBR, which prematurely terminated the powers of the management of this body. At the same time, the procedure for appointing the Director of the DBR by the President, which is questionable from the point of view of the Constitution, is still in place.

The fact that the SSU’s functions are restricted by Law No. 2469-VIII “On National Security of Ukraine” of June 21, 2018⁶⁵ did not prevent it from continuing to perform the function of pre-trial investigation, which is alien to a counterintelligence body, in particular with regard to economic and corruption offences. The reform of the Service initiated by the President in 2019 and finalized in the Parliament as late as in January 2021 was adopted in the first reading and in the version recommended by the committee for the second reading it provides for gradually (until 2025) relieving the service from the investigation function. At the same time, the proposed changes do not completely rule out potential abuse of power by the SSU and at times even create additional opportunities for it.

In 2021, Law No. 1150-IX “On the Bureau of Economic Security of Ukraine” of January 28, 2021 was adopted.⁶⁶ The Bureau is supposed to become the central body for combating offences that encroach on the functioning of the state economy.

After the expiration of the Anti-Corruption Strategy for 2014-2017,⁶⁷ no new strategy has been adopted yet. Only in late 2020 did the Parliament adopt the draft Anti-Corruption Strategy for 2020-2024 as a basis. The draft is currently being prepared for the second reading.

A breakthrough in the field of corruption prevention came with the adoption of the Laws “On Prevention of Corruption” of October 14, 2014 (No. 1700-VII) (it introduced electronic declaration and provided for the establishment of NACP) and “On the National Anti-Corruption Bureau of Ukraine” of October 14, 2014 (No. 1698-VII)⁶⁸ (however the NABU status set forth in the law and the mechanism for appointing its Director were questionable from the point of view of the Constitution). The following year (in 2015), legislative changes were made to provide for the establishment of the SAPO, and Law No. 772-VIII “On the National Agency for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes” of November 10, 2015⁶⁹ was adopted.

In 2016, amendments were made to the Constitution with regard to justice, creating the basis for adoption of the new Laws “On the Judiciary and the Status of Judges” of June 2, 2016 (No. 1402-VIII)⁷⁰ and “On the High Council of Justice” of December 21, 2016 (No. 1798-VIII)⁷¹, which simplified the judicial system, introduced competitive selection of judges, deprived political bodies of the power to influence the career of judges, brought the formation of judicial governing bodies in line with European standards, and improved requirements for professional and ethical standards of judges. The following year, a new version laid down the procedural codes that set out the procedure for civil, commercial, and administrative proceedings.

One of the first laws passed by the Parliament of the IX convocation was the law on the introduction of competitive selection of members of the HCCJ and mechanisms for monitoring the integrity of members of the HCCJ and HCJ. In practice, due to the unconstitutionality of the key provisions of this law, as well as its sabotage by the HCJ, its only consequence was the dissolution of the HCCJ. For a long time, the issue of resetting the HCCJ and HCJ went unresolved. Only in July 2021 did the Parliament pass laws to restart the competition for the HCCJ, as well as to introduce mechanisms to safeguard the integrity of HCJ members who met Ukraine’s 2020 commitments to the International Monetary Fund and the EU.

In order to improve the efficiency of enforcement of judgements, the laws “On Bodies and Persons who Exercise Enforcement of Court Decisions and Decisions of Other Bodies” and “On Enforcement Proceedings” were adopted in 2016.

The 2016 constitutional changes regarding justice also significantly changed the legal status of the prosecutor’s office – a number of functions uncharacteristic of the Prosecutor’s Office were removed, such as general supervision, representation of citizens in courts, as well as pre-trial investigation.

Practical implementation is mostly advanced, but in terms of judicial reform it is moving in different directions.

63 <https://zakon.rada.gov.ua/laws/show/580-19#Text>

64 <https://zakon.rada.gov.ua/laws/show/794-19#Text>

65 <https://zakon.rada.gov.ua/laws/show/2469-19#Text>

66 <https://zakon.rada.gov.ua/laws/show/1150-20#Text>

67 <https://zakon.rada.gov.ua/laws/show/1699-18#Text>

68 <https://zakon.rada.gov.ua/laws/show/1698-18#Text>

69 <https://zakon.rada.gov.ua/laws/show/772-19#Text>

70 <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

71 <https://zakon.rada.gov.ua/laws/show/1798-19#Text>

The new police force was created in 2015. The relevant law contains progressive provisions on the competitive selection of the head, depoliticization of the police and the service-oriented nature of their work. The patrol police force, created on a competitive basis, was successful, while other areas of reform were almost failed – the reform did not affect the investigative and operational units, more than 92% of former police officers successfully passed the certification,⁷² and most of those dismissed based on its results were reinstated by the courts, the Minister of Interior Affairs retained influence over the appointment of police chiefs, and old negative practices (such as statistics-based evaluation, use of illegal investigation methods, etc.) were not eradicated.

The DBR is a government law enforcement agency launched in 2018 that took over the investigative jurisdiction from the Prosecutor's Office. After the termination of the powers of the DBR Director in 2019, a new one has never been selected and appointed.

The Bureau of Economic Security, which, according to the law, is to be established in 2021, does not function yet, and the competition for the position of its head is currently underway.

The NACP is the central executive body responsible for the development of anti-corruption policies and prevention of corruption. Until 2019 it used to be a collegial body⁷³ and in 2019 it turned into a body with a sole head, who is selected involving international experts. A serious blow to the NACP's capacity was dealt when the key institutions of anti-corruption law and criminal liability for false declarations were recognised unconstitutional in 2020. The very decision of the Constitutional Court was taken in the context of a conflict of interest of individual judges, it differed from its usual practice, and lacked proper motivation. For some time, Parliament reinstated anti-corruption legislation, but the exemption from criminal liability of those who reported false information in their declarations turned out to be an irreversible process.

The NABU is a pre-trial investigation body that has been dealing with high-level corruption cases since 2015. Attempts are regularly made to politically remove the NABU Director A. Sytnyk, and in August 2020 the Constitutional Court declared unconstitutional the 2015 decree appointing Artem Sytnyk to the position of Director. In February 2019, the article of the Criminal Code on illicit enrichment was declared unconstitutional, which in practice led to termination of dozens of cases investigated by the Bureau.

Procedural management of NABU investigations is performed by SAPO prosecutors. After the voluntary resignation of the Head of the Anti-Corruption Prosecutor's Office in August 2020, a competition for this position was launched, which has not yet finished.

The Asset Recovery and Management Agency (ARMA) is a body that has been responsible for the development and enforcement of the state policies in the field of finding, tracing and management of assets derived from corruption and other crimes. After the Head of this Agency was suspended and dismissed at the end of 2019, no new one has been appointed yet, because Parliament has been obstructing the creation of a competition commission. Moreover, in July 2021, Parliament passed a law that could undermine the ARMA's work.⁷⁴

Following the changes to the Constitution made in 2016, the HQCJ and HCJ were granted exclusive jurisdiction in settling matters related to judges' careers; the majority in these bodies was supposed to be constituted by judges elected by judges. Due to the non-transparent formation method, lack of effective safeguards against persons who are non-independent or lack integrity, these bodies failed to become agents of change and showed a high degree of tolerance for dishonest and corrupt behaviour of judges. Since the HQCJ failed to perform its functions effectively, its members were removed from office by a presidential law in November 2019. Ukraine recognised problems with the integrity of HCJ members in 2020 at the international level, and in May 2021, the Venice Commission stressed that: "A judicial reform which does not tackle the functioning of the HCJ and the integrity of its members is doomed to fail."⁷⁵ Currently, the implementation of laws on resetting these bodies is at an early stage.

In order to "cleanse" the judiciary of unprofessional and corrupt judges who lack integrity, a compliance assessment of judges was introduced, which the HQCJ was tasked with. The pros of this procedure include involvement of the public through a new institution – the Public Integrity Council (PIC). Due to the recommendatory nature of the public's opinions concerning a lack of integrity of judges, the HQCJ has repeatedly ignored them.⁷⁶ According to the assessment of almost half of the judges, only 3% were found to lack integrity. However, HCJ refused to dismiss even these judges, claiming that the HQCJ's decisions were devoid of substance. The compliance assessment ceased at the end of 2019 after the HQCJ was dissolved.

⁷² Human rights in the activities of the Ukrainian police 2016 http://umdpl.info/police-experts.info/wp-content/uploads/2017/03/PL-2016_final_web.pdf

⁷³ E-declarations enable identification of illegal wealth <https://euaci.eu/what-we-do/resources/e-declarations-enable-identification-of-illegal-wealth>
O. Drik "NACP: 5 Problems to be Solved by Restarting the Failed Agency" <https://rpr.org.ua/news/nazk-5-problem-yaki-maje-vyrishyty-perezapusk-provalnoho-orhanu/>

⁷⁴ K. Ryzhenko "Why Ukrainian MPs are against European Standards on Matters of Seized Assets"

<https://ti-ukraine.org/blogs/chomu-ukrayinski-deputaty-proty-yevropejskyh-standartiv-v-pytanni-areshtovanyh-aktyviv/>

⁷⁵ Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law № 1029/2021, May 2021

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2021\)004-e&fbclid=IwAR3rW1yoHAfuQmahNh6WfoAZ1g-nqIKTfZv4H6Sx6wFy_Kig7K-Tv3slbU](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2021)004-e&fbclid=IwAR3rW1yoHAfuQmahNh6WfoAZ1g-nqIKTfZv4H6Sx6wFy_Kig7K-Tv3slbU)

⁷⁶ Even the European Parliament in its resolution of 11 February 2021 on the implementation of the EU Association Agreement with Ukraine (2019/2202(INI)) expressed regret over the failure to take the PIC's opinion into account.

The HCJ's reluctance to intensify its work of selecting new judges resulted in a large number of vacant judicial positions in local and appellate courts during the judicial reform (over 25%). The long period of inactivity of the HCJ further exacerbated the problem, and the HCJ's additional powers provided in 2020 were used by the latter to ignore the PIC's findings and initiate appointment of judges who did not complete the compliance assessment for an indefinite period.

The optimization of the system of local and appellate courts launched by the President in 2018 was completed only for appellate courts, and even these, contrary to the constitutional requirement, were formed by transferring judges of liquidated courts rather than based on competitive procedure. New local courts have not been established. In addition, due to the consolidation of districts (raions) during the administrative and territorial reform, there emerged a need to review the network of courts, but now it has become the responsibility of Parliament.

The 2016 constitutional amendments provided for the creation of a new Supreme Court on a competitive basis to replace the previous one as well as three higher specialized courts. The new Supreme Court started its work in December 2017. The HCJ's disregard for the PIC's findings resulted in almost a quarter of judges showing at least one of the signs of a lack of integrity.⁷⁷ The intention to halve the number of Supreme Court judges was initially criticized by the Council of Europe and the Venice Commission, and in March 2020 it was declared unconstitutional. Shortly before that, the Constitutional Court declared unconstitutional the liquidation of the old Supreme Court of Ukraine in 2016, but the problem of "employment" of the judges of this court has not yet been legally resolved.

The 2016 Law on the Judiciary and the Status of Judges provided for the establishment of two specialized courts within the judiciary: the High Anti-Corruption Court, which was to hear cases of high-ranking corruption, and the High Court on Intellectual Property. The selection of judges for the Supreme Anti-Corruption Court was carried out on a competitive basis with active involvement of international experts, which proved its effectiveness. In early September 2019, the Supreme Anti-Corruption Court began administering justice. As for the High Court on Intellectual Property, it still exists only on paper, as the competition launched by the HCJ in 2017 has not been completed.

The new versions of the Civil and Commercial Procedure Codes, as well as the Code of Administrative Procedure, which entered into force in late 2017, reduced the number of instances within the judiciary to three (from four), harmonised the rules of procedure, expanded the scope of use of simplified forms of litigation, introduced judicial mediation, and also created a legal framework for digitization of justice and introduction of electronic judiciary procedures. In February 2020, amendments to these codes introduced additional procedural filters for admitting cases to the Supreme Court, narrowed the possibilities for securing a claim, and streamlined the procedure for considering the removal of a judge. At the same time, some new legislation in procedural codes remains unrequested.

In 2016, plans were made to establish a militarized body in the justice system, the Judicial Protection Service, to ensure the safety of judges, protection and maintenance of public order in courts. Its management was appointed in 2019, and in 2020 the formation of territorial departments of the service was completed in all regions.⁷⁸

The introduction of the institution of private enforcement agents has contributed to a slight improvement in the area of enforcement of court decision.⁷⁹ However, the number of private enforcement agents remains ten times lower than that of public enforcement agents. Coupled with the relatively limited powers of private enforcement agents, this is not conducive to competition. In July 2021, the draft law "On Enforcement of Decisions" was adopted in the first reading, it is supposed to improve the procedure for enforcement of decisions and expand the powers of private enforcement agents.

The new 2014 Law "On the Prosecutor's Office" introduced prosecutors' self-governing bodies and the Qualification and Disciplinary Commission, but there was no full-fledged staff reset and cleansing of the prosecutor's office from unprofessional persons who lack integrity. This led to a search for a new way to reform the Prosecutor's Office, which gave rise to the presidential law of 2019. The law suspended the Qualification and Disciplinary Commission of Prosecutors and expanded the powers of the Prosecutor General. The functions of selection, certification and disciplinary powers have been transferred to personnel commissions, which in fact consist of prosecutors and representatives of the public. The initiated procedure of attestation of prosecutors initially proved to be relatively effective (almost 17% of those who underwent the attestation were dismissed). However, with each subsequent stage, its effectiveness declined (while 43% of the prosecutors in the General Prosecutor's Office who underwent the attestation failed, for regional and local prosecutors' offices the percentage was 26% and 11%, respectively).

⁷⁷ Report on the results of work of the second Public Integrity Council (17.12.2018-16.12.2020) https://grd.gov.ua/wp-content/uploads/2021/03/GRD_zvit_18-20-1.pdf

⁷⁸ Decision No. 850/0/15-21 // of the High Council of Justice of 15.04.2021 <https://hcj.gov.ua/doc/doc/6618>

⁷⁹ According to 2019 data, the efficiency of one private enforcement agent is more than 5 times higher than the efficiency of one public enforcement agent (source: explanatory note to the draft law "On Enforcement of Judgements"): <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=72223&pf35401=549386>

Subsequently, the courts, which are considering more than two thousand lawsuits related to certification, began to actively reinstate the fired prosecutors.

In addition, there is a purely political way of appointing and removing the Prosecutor General,⁸⁰ which negatively affects the independence of the Prosecutor's Office.

At the same time, no changes aimed at reforming the Bar (except for the introduction of the Bar monopoly in 2016) were adopted. The Bar has never become an independent, self-governing organisation. Led by a narrow circle of lawyers, the Bar Council remains influential due to the control over the qualification and disciplinary bodies of lawyers and membership fees from all lawyers.

The development of a network of free legal aid centres and assigning them with citizen representation functions have significantly improved access to justice for vulnerable social groups.

Non-discrimination and protection of human rights (including protection of personal data)

The thematic area of "Non-Discrimination and Protection of Human Rights" addresses issues related to human rights, personal data protection, non-discrimination, domestic violence, preventing torture, the activities of human rights institutions, public policies in the field of protection of minority rights and the right to peaceful assemblies, as well as challenges to human rights and public policies in the context of the conflict with the Russian Federation.

By implementing these commitments, Ukraine will harmonise its public policies and standards in the field of human rights protection with the relevant EU policies and standards, improve protection of the rights of Ukrainian citizens, foreigners and stateless persons on the territory of Ukraine, including protection from various forms of violence, as well as effectively respond to challenges in this area, related to the conflict and the occupation of part of the territory of Ukraine.

In this subsector, Ukraine has committed to:

- Harmonise its anti-discrimination legislation with EU law.
- Harmonise the activities of institutions in the field of human rights protection, prevention of and counteraction to discrimination with the EU law.
- Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).
- Bring the conditions of detention of convicts and detainees in line with international norms and standards for convicts at the military detention facilities of the Central Office of the Military Police.
- Improve mechanisms to combat torture and ill-treatment.
- Create new models of public ethnopolitics.
- Decriminalize deliberate transmission of HIV and other communicable diseases.
- Legislate guarantees for freedom of peaceful assembly.
- Adhere to human rights and good administration obligations in the context of the conflict with the Russian Federation.
- Implement the National Strategy in the field of human rights and carry out the action plan for the implementation of the National Strategy for Human Rights until 2020. Due to the end of the strategy implementation period and its incomplete implementation, it is expedient to talk about the emergence of an obligation to implement the National Human Rights Strategy and an action plan for the implementation of the National Human Rights Strategy for the period after 2020.
- Bring "decommunization" legislation in line with the recommendations of the Venice Commission.
- Harmonise legislation on personal data protection (Regulation 2016/679 (GDPR)).⁸¹

Approximation of legislation. The most significant changes in the subsector for the period from 2014 to 2019 include the following:

- Introduction of the position of the Government Commissioner for Gender Policy.

⁸⁰ Currently, the Prosecutor General is I. Venediktova, a former presidential faction MP, who was previously appointed head of the DBR by the President.

⁸¹ <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

- Adoption of laws “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in order to implement the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence” (of December 6, 2017 No. 2227-VIII);⁸² “On Preventing and Combating Domestic Violence” (of December 7, 2017 No. 2229-VIII).⁸³
- Amendments to the “Instruction on the Procedure and Conditions of Detention of Convicted, Taken into Custody, and Detained Servicemen”.
- Establishment of the “Inter-Agency Working Group on the Implementation of the Action Plan for the Implementation of the Strategy for Protection and Integration of the Roma National Minority into Ukrainian Society till 2020” (CMU Resolution No. 993 of November 25, 2015).⁸⁴
- Approval of the “Procedure for the Creation, Maintenance of and Access to Information in the Unified Information Database on Internally Displaced Persons” (CMU Resolution No. 646 of September 22, 2016).⁸⁵
- Legislative approval of the administrative procedure for establishing the facts of birth and death in the temporarily occupied territories.
- Approval of the State Special-Purpose Programme for Physical, Medical, and Psychological Rehabilitation and Social and Professional Re-Adaptation of Participants in the Anti-Terrorist Operation and Persons Who Participated in Measures to Ensure National Security and Defence, Repel and Restrain Armed Aggression of the Russian Federation in the Donetsk and Luhansk Oblasts, and Ensured They were Carried out, for the Period till 2022”.
- Approval of the National Strategy in the Field of Human Rights till 2020 and the Action Plan for its implementation.
- Adoption of the new Electoral Code (December 19, 2019, No. 396-IX),⁸⁶ which enabled IDPs to participate in local elections.

Many of the necessary changes were developed as drafts and recommendations but never entered the regulatory framework of Ukraine. In particular, these include:

- Decision No. 65 of the Council of Judges of Ukraine of 16 September 2016, which recommends (but does not make it compulsory) that the State Judicial Administration of Ukraine facilitate the collection, analysis, and dissemination of sex-disaggregated statistics, as well as those on the number of cases of violence and discrimination by category of cases;
- Twinning Ombudsman project recommendations;
- Code of Good Administrative Behaviour;
- Draft Law “On Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence” (Istanbul Convention) (withdrawn);
- Draft order of the Ministry of Internal Affairs “On Approval of the Instruction on Formation of the Information Subsystem ‘ITT Custody Records’”;
- Draft Law “On the Status of the Crimean Tatar People” (withdrawn);
- Draft Law “On the Legal Status and Social Guarantees of Persons Illegally Deprived of Liberty, Hostages or Convicts in the Temporarily Occupied Territories of Ukraine and Abroad” (withdrawn);
- Three draft laws “On Guarantees for Freedom of Peaceful Assembly” (withdrawn);
- Recommendations of the Venice Commission on the Law “On Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols”.

In 2020 and the first half of 2021, regulatory changes have been made in the areas of human rights protection, ethnopolitics, and the penitentiary sector. In addition, a number of draft laws have been registered that are aimed at preventing and combating discrimination and institutional strengthening of the Commissioner for Human Rights.

- A new National Strategy in the field of human rights has been approved (Decree No. 119/2021 of the President of Ukraine of March 24, 2021)⁸⁷ and Action Plan for the implementation of the National Strategy in the field of human rights for 2021-2023 (CMU Order No. 756-p of June 23, 2021);⁸⁸
- Law No. 1616-IX “On Indigenous Peoples of Ukraine” of July 21, 2021 has been adopted⁸⁹ in the framework of creating a new model of state ethnopolitics;

82 <https://zakon.rada.gov.ua/laws/show/2227-19#Text>

83 <https://zakon.rada.gov.ua/laws/show/2229-19#Text>

84 <https://zakon.rada.gov.ua/laws/show/993-2015-%D0%BF#Text>

85 <https://zakon.rada.gov.ua/laws/show/646-2016-%D0%BF#Text>

86 <https://zakon.rada.gov.ua/laws/show/396-20#Text>

87 <https://zakon.rada.gov.ua/laws/show/119/2021#Text>

88 <https://zakon.rada.gov.ua/laws/show/756-2021-%D1%80#Text>

89 <https://zakon.rada.gov.ua/laws/show/1616-20#Text>

- the Ministry of Defence by Order No. 394 of November 3, 2020 approved a new “Procedure for Keeping Convicted, Taken into Custody, Arrested and Detained Servicemen”;
- The VRU has registered Government draft law No. 5336 “On Amendments to the Criminal Code of Ukraine on Criminal Responsibility for Torture”⁹⁰ aimed to improve mechanisms to combat torture and ill-treatment;
- The VRU has registered Government draft law No. 5488 “On Amendments to the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine to Combat Discrimination”,⁹¹ which regulates the matters of preventing and combating discrimination and the crimes motivated by discrimination, as well as amends Article 130 of the Criminal Code (the wording about HIV transmission);
- Draft law No. 5019 “On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of the Legal Framework for the Activities of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights” has been registered.⁹²

The **implementation** of the legislatively approved commitments for which progress has been made is as follows:

- The Government Commissioner for Gender Affairs has started to work, the institution is funded from the state budget and other sources.
- The rules on combating domestic violence incorporated into Ukrainian legislation are complied with. As of April 2020, 34,000 people have been prosecuted for domestic violence since the beginning of the year, investigators have filed more than 470 criminal proceedings concerning domestic violence and issued more than 11,000 urgent prohibition notices.
- Military detention facilities have been reconstructed in accordance with international standards.
- Since 2017, a system of record-keeping and monitoring actions related to detained persons (Custody Records) has been introduced in the temporary detention facilities of the National Police. Since February 2020, the system has operated in test mode, covering 130 TDFs in 24 oblasts and the city of Kyiv.
- Crimean House SE has been in place and operated since 2015.
- Certain EU standards and practices related to freedom of assembly are being introduced. The Ministry of Internal Affairs by Order No. 706 of August 23, 2018 approved the Concept for Introduction of the Scandinavian Model for Ensuring Public Safety and Order during Mass Events in the Activities of Bodies and Units of the National Police of Ukraine.

The legislatively approved commitments that have not been implemented are as follows:

- Case-category-disaggregated collection, analysis and dissemination of statistics on the number of cases of violence and discrimination.
- The administrative procedure for recognizing births and deaths in the temporarily occupied territories is inoperative.
- The National Human Rights Strategy was implemented by only 30% (according to the UHHRU’s estimates).

In 2020-2021, the implementation of the standards that began in the previous period continued, and in addition:

- Despite the lack of regulatory support, more TDFs and district police departments have been connected to the Custody Records system.
- Internally displaced persons participated in the 2020 local elections.
- The National Human Rights Strategy until 2020 was implemented by 63.8% (UHHRU estimate).

Progress in the area of “Non-discrimination and Guarantees for Protection of Human Rights” in the field of legislation is systematic but slow. In 2020-21, the most significant progress has been made with ensuring IDPs’ voting rights of (voting in local elections) and regulating the status of indigenous peoples.

A significant share of commitments in this area have been at the stage of legislative initiatives for several years now, and in some cases even backsliding has been observed (withdrawal of draft laws). There has been zero progress in meeting the commitment to bring the “decommunization” legislation in line with the recommendations of the Venice Commission.

Commitments such as ratification of the Istanbul Convention, implementation of anti-discrimination legislation and implementation of the Human Rights Strategy have met resistance from right-wing conservative political forces and Russia’s agents of influence. This slows down the implementation of the relevant regulations or results in their partial incorporation into legislation.

It is necessary to accelerate the development and adoption of draft laws aimed at fulfilling practically all commitments within the sector.

90 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71589

91 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71891

92 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71010

Migration, border management and movement of persons

The subsector envisages a comprehensive dialogue on migration and border management, subject to close cooperation with EU partners, sustainable progress towards visa liberalization and implementation of framework documents, in particular the Strategy for State Migration Policy of Ukraine for the Period up to 2025 and the Integrated Border Management Strategy up to 2025, together with the relevant Action Plans.

The implementation of these commitments will ensure the effective functioning of Ukraine's borders, seamless functioning of the visa-free regime with the EU, ensure the rights of asylum seekers and refugees, the rights of migrant workers from Ukraine, effective integration of foreigners, joint border control with the EU, and optimisation of border infrastructure.

In particular, in the area of migration, border management and movement of persons, it is necessary to ensure the following:

- Development of infrastructure to provide decent living conditions to refugees;
- Ensuring proper detention and accommodation conditions for illegal migrants;
- Concluding agreements on readmission of persons with the main countries of origin (transit) of irregular migration;
- Signing implementation protocols with all EU member states on the implementation of the Agreement on Readmission of Persons between Ukraine and the EU;
- Organisation of joint operational protection of the state border and exchange of information in contact points with EU member states;
- Dissemination of the practice of joint control on the borders of Ukraine with EU member states
- Transition to new standards of identity documents;
- Creation of a single information and analytical system for managing migration processes;
- Creation and implementation of the Strategy for the State Migration Policy of Ukraine for the Period up to 2025;
- Sustainability of visa-free movement of persons.

In terms of regulatory approximation, the most significant changes in this subsector in the period from 2014 to 2019 include:

- Adoption of Law No. 1474-VIII "On Amendments to Certain Legislative Acts of Ukraine Concerning Documents Proving Ukrainian Citizenship, Identity Card or Special Status, Aimed at Liberalization of the Visa Regime for Ukraine by the European Union" of July 14, 2016,⁹³ which introduced biometric documents.
- Adoption of the "Concept of Creating a National System of Identification of Citizens of Ukraine, Foreigners and Stateless Persons" (CMU Order No. 1428-p of December 23, 2015)⁹⁴ aimed to ensure the sustainability of visa-free travel.
- The Strategy of the State Migration Policy for the Period up to 2025 was approved (CMU Order No. 482-p of July 2, 2017)⁹⁵ and Action Plan for its implementation for 2018-2022 (CMU Order No. 602-p of August 29, 2018)⁹⁶ to meet commitments concerning refugees, illegal migrants and the migration movement.
- The Integrated Border Management Strategy was approved (CMU Order No. 687-p of July 24, 2019)⁹⁷ and the Action Plan for its implementation for 2020-2022 (CMU Order No. 1409-p of December 27, 2019).⁹⁸
- A joint patrol agreement with Romania was approved.
- Readmission agreements were concluded with Moldova and Belarus.
- Implementation protocols to the EU-Ukraine Readmission Agreement were signed with the governments of Austria, the Czech Republic, Estonia, Lithuania, and Poland.
- CMU Order No. 987-p "On Establishment of State Institutions" of December 27, 2017 was adopted⁹⁹ as well as Order No. 98 of the SMS of June 20, 2018, which established the state institution Centre for Social Integration of Refugees and Persons in Need of Additional or Temporary Protection, SMS in Odesa.

93 <http://zakon.rada.gov.ua/laws/show/1474-19#Text>

94 <https://zakon.rada.gov.ua/laws/show/1428-2015-%D1%80#Text>

95 <https://zakon.rada.gov.ua/laws/show/482-2017-%D1%80#Text>

96 <https://zakon.rada.gov.ua/laws/show/602-2018-%D1%80#Text>

97 <https://zakon.rada.gov.ua/laws/show/687-2019-%D1%80#Text>

98 <https://zakon.rada.gov.ua/laws/show/1409-2019-%D1%80#Text>

99 <https://zakon.rada.gov.ua/laws/show/987-2017-%D1%80#Text>

In 2020-2021 the following changes have taken place at the level of legislation:

- The Action Plan for the Construction of Priority Checkpoints for 2021-2023 has been approved (CMU Order No. 246-p of March 24, 2021).¹⁰⁰
- Law No. 1328-IX “On Amendments to the Law of Ukraine ‘On the Legal Status of Foreigners and Stateless Persons’ as Regards Submission of Biometric Data for Visas by Foreigners and Stateless Persons” of March 4, 2021 has been approved.
- There has been some minor progress in negotiations on joint control agreements with Slovakia and Hungary.

In terms of **practical implementation**, in 2014-2019, progress was made in fulfilling the following legislatively approved commitments:

- Ukraine started issuing biometric documents with a high degree of protection, including biometric travel passports, national passports (ID cards), and residence permits for foreigners.
- Readmission of persons to Ukraine from the EU is carried out effectively, which is recognized in the monitoring reports of the European Commission.
- An Inter-Agency Working Group on Coordination of Integrated Border Management was established.
- A new Uhryniv-Dolhobyczow checkpoint was opened on the border with Poland (2015).

Ukraine conducted an overhaul of the fire extinguishing system in the Migrant Accommodation Centre (MAC) in the village of Zhuravychi, Kivertsy district, Volyn region, and completed reconstruction of the first MAC complex in the village of Rozsudiv, Ripky district, Chernihiv region.

The legislatively approved commitments that have not been implemented include:

- During the monitoring visit of the Verkhovna Rada Commissioner for Human Rights in 2019, other inappropriate migrant detention conditions were discovered – i.e. lack of access to protection and lack of translators, in particular, in the Mykolayiv MAC only one full-time translator was available, who spoke only English.
- Readmission from Ukraine is not effective enough. For instance, in 2018, Ukraine sent 11 requests for readmission, 2 people were readmitted. In 2019, Ukraine sent 64 requests for readmission, but 0 people were readmitted.

In 2020-2021, progress has also been made in fulfilling the following commitments:

- Ukraine continues to issue biometric documents. As of 2021, from 100 to 500 thousand domestic and travel passports of the new type are issued monthly. In total, more than 17 million citizens of Ukraine have received biometric passports for travel abroad and more than 6 million have received an ID card. From September 1, 2021, biometric refugee certificates are to be issued.
- The readmission situation has somewhat improved. In 2020, 17 readmission requests were sent from Ukraine, 11 people were readmitted.
- A new Orlivka-Isaccea checkpoint has been opened on the border with Romania (2020).

The legislatively approved commitments that have not been implemented include:

- The Refugee Accommodation Centre in Yahotyn is functioning, however, no Centre for Reception and Stay of Refugee Children in Need of Additional Protection has been established. Also, no Centres for Social Integration have been created in Kharkiv and Kyiv. The Centre in Odesa has been launched mostly pro forma.
- Due to the pandemic, joint patrols on the borders with EU countries have been suspended.

As a result, progress in this area varies. Ukraine has coped relatively well with the tasks in the field of document security and the sustainability of the visa-free regime, as well as combating irregular migration. In 2020-2021, there has been progress with changes in the areas of border management, asylum and legal migration, however, there are still numerous outstanding commitments in all of these areas.

Performing infrastructural changes (reconstruction of border infrastructure, accommodation for refugees (RAC) and detained migrants (MAC)) as well as matters related to international cooperation (joint control, implementation protocols to the EU Readmission Agreement) takes a particularly long time.

100 <https://zakon.rada.gov.ua/laws/show/246-2021-%D1%80#Text>

Cooperation in the fight against illicit drugs, and on precursors and psychotropic substances

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

Commitments within the subsector include Ukraine's accession to the Council of Europe's Extended Partial Agreement on the Establishment of a Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group) and cooperating with the European Monitoring Centre for Drugs and Drug Addiction.

By implementing the tasks within the subsector, Ukraine will contribute to the establishment of effective cooperation and reduce the level of drug-attributable crime. In particular, the subsector involves:

- Ukraine's accession to the Extended Partial Agreement on the Establishment of a Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group).
- Cooperation with the European Monitoring Centre for Drugs and Drug Addiction.

Approximation of legislation in 2014-2019:

- In 2019, the Cabinet of Ministers adopted Resolution No. 689 "Matters of Monitoring the Drug and Alcohol Situation in Ukraine"¹⁰¹ of July 10, 2019.

Legislative changes in 2020-2021:

- The President has approved and signed Law No. 1647-IX "On Ukraine's Accession to the Extended Partial Agreement on the Establishment of a Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group)" of July 14, 2021,¹⁰² which was adopted on the basis of the draft law of the Ministry of Health of 2018. It is to enter into force on January 1, 2022.
- The Ministry of Health has developed a draft of State Drug Policy Strategy until 2030.

Implementation in 2014-2019 was as follows:

- As of 2019, a Memorandum (2010) was concluded with the European Monitoring Centre for Drugs and Drug Addiction, however, it was not ratified, and cooperation with the Centre for a long time was ineffective and intermittent. As of 2019, the cooperation took place, in particular, within the EU4MonitoringDrugs project.

Implementation in 2020-2021:

- EMCDDA (European Monitoring Centre for Drugs and Drug Addiction) publishes reports on the situation in Ukraine.

At the legislative level, progress in this area is satisfactory. Practical implementation requires additional monitoring.

Fight against crime and corruption, judicial cooperation

The subsector focuses on the areas of justice and internal affairs, in particular on the fight against money laundering and terrorist financing, combating organised and serious international crime. The sector involves work in the following areas:

- Promoting development of a national computer emergency response team (CERT).
- Harmonisation of national legislation in the field of combating legalization (laundering) of proceeds from crime, terrorist financing and financing the proliferation of weapons of mass destruction.

Approximation of legislation in 2014-2019:

- Law No. 2163-VIII "On the Basic Principles of Ensuring Cyber Security of Ukraine" of October 5, 2017 was adopted.¹⁰³
- Law No. 361-IX "On Preventing and Combating Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction" of December 6, 2019 was adopted.¹⁰⁴

¹⁰¹ <https://zakon.rada.gov.ua/laws/show/689-2019-%D0%BF#Text>

¹⁰² <https://zakon.rada.gov.ua/laws/show/1647-20#Text>

¹⁰³ <https://zakon.rada.gov.ua/laws/show/2163-19#Text>

¹⁰⁴ <https://zakon.rada.gov.ua/laws/show/361-20#n831>

- Order of the State Special Communications Administration “On Changing the Name of the State Centre for Cyber Defence and Countering Cyber Threats of the State Service for Special Communications and Information Protection of Ukraine.”

Legislative changes in 2020-2021:

- Adoption of CMU Resolution No. 692 “On Approval of the Procedure for the Drawing and Publication of Comprehensive Administrative Reports in the Field of Preventing and Combating Legalization (Laundering) of Proceeds from Crime, Terrorist Financing and Financing of Proliferation” of August 5, 2020.¹⁰⁵
- Adoption of CMU Resolution No. 850 “Certain Matters of Arranging Financial Monitoring”¹⁰⁶ of September 9, 2020.

Implementation in 2014–2019 was as follows:

- In 2018, the Cyber Threat Response Centre was established within the State Centre for Cyber Defence and Counteraction to Cyber Threats of the State Service of Special Communications and Information Protection of Ukraine.

Implementation in 2020-2021:

- The rules of financial monitoring have changed. The list of criteria for financial monitoring has been shortened. Financial transactions for the amount of more than UAH 5,000 without identification have been prohibited.

In 2020-2021, the practical implementation of the new rules of financial monitoring continued. Progress is satisfactory.

¹⁰⁵ <https://zakon.rada.gov.ua/laws/show/692-2020-%D0%BF#Text>

¹⁰⁶ <https://zakon.rada.gov.ua/laws/show/850-2020-%D0%BF#Text>

TITLE IV

TRADE AND TRADE RELATED MATTERS



TECHNICAL BARRIERS TO TRADE

Experts: Leonid Vitkin

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not started early stage advanced perfect critical non-conformity

In 2014-2019, after the signing of the Association Agreement between Ukraine and the EU, Ukraine implemented a number of large-scale reforms in the field of technical regulation in order to build modern quality infrastructure in accordance with international and European standards, promote competitiveness of domestic industrial products and facilitate access to European markets by concluding the Agreement on Conformity Assessment and Acceptance of Industrial Goods with the EU (ACAA).

The reforms brought the recognition by the European party of the significant progress made in adapting and implementing the requirements of the World Trade Organisation's (WTO) Agreement on Technical Barriers to Trade (TBT) and fulfilling the commitments under the Association Agreement with the EU, increasing exports of Ukrainian industrial products, launching preliminary assessment of the Ukrainian infrastructure in order to prepare for conclusion of the ACAA Agreement, which started in 2020.

At the same time, Ukraine cannot stop the launched process of reforming the technical regulation system, as the EU continues to improve its own quality infrastructure, adopting new regulations, directives and harmonised standards, improving the functioning of standardization, conformity assessment, accreditation, metrology and market surveillance institutions to take into account the requirements of sustainable economic development and the 4th industrial revolution.

In order to achieve this goal, Ukraine in the second half of 2020 and the first half of 2021 took certain measures in the field of technical regulation to bring its legislative and regulatory framework in line with the European one. At the same time, there are risks of partial non-implementation by Ukraine of certain measures in terms of standardization, conformity assessment, accreditation, metrology, and market surveillance, which currently do not seem critical.

Cooperation with the EU (NAAU accreditation) and national quality infrastructure

Articles 55, 56.2-7 of the Association Agreement with the EU

This thematic area implies gradually achieving compliance with EU technical regulations and the EU standardization, metrology, accreditation, conformity assessment and market surveillance system (Art. 56 of the Agreement).

Article 55 of the Association Agreement provides for the development of cooperation between Ukraine and the EU in order to overcome technical barriers to trade. During 2014-2021, the parties have been intensifying cooperation on regulatory issues to improve the quality of Ukrainian regulations, standards, conformity assessment procedures, accreditation, market surveillance, cooperation between relevant institutions to promote the development of modern quality infrastructure, to support the participation of Ukrainian authorities in European organisations, and

to search for mutually beneficial ways to overcome technical barriers to trade through the implementation of a number of European technical assistance projects. Thus, in November 2020, a two-year project aimed at strengthening the institutional capacity of the national standardization body of Ukraine was completed. In April 2021, another two-year TWINNING project of European technical assistance was launched to strengthen the institutional capacity of the Ministry of Economy of Ukraine in the field of quality infrastructure. In 2021, two more German technical assistance projects that provide support for the implementation of the EU-Ukraine Association Agreement in the field of trade (GIZ) and support for the implementation of the EU-Ukraine Association Agreement in the field of metrology from the German National Metrology Institute (PTB) continue. Also, at the end of 2020, another European project, TAIEX, was launched to conduct a preliminary EU assessment mission of Ukraine's readiness to conclude the ACAA. In 2020-2021, work mostly focused on improving the adopted laws and regulations in the field of technical regulation in accordance with European norms and practices. The signing of the joint statement following the 22nd Ukraine-EU Summit in Brussels in October 2020 attests to the fact that Ukraine is moving in the right direction; in paragraph 10 of this statement the parties welcomed the launch of the pre-assessment on Ukraine's preparedness on an Agreement on Conformity Assessment and Acceptance of Industrial Products. The next Summit is scheduled for October 12, 2021.

A negative message was sent to Ukraine when from March 24, 2021 the European Co-operation for Accreditation (EA) suspended the EU recognition of accreditation of product certification and inspection bodies by the National Accreditation Agency of Ukraine (NAAU), which may thwart the conclusion of the ACAA. In September 2021, the EA is to conduct another audit of the Ukrainian accreditation system. The Ukrainian party must prove to European accreditation experts that it has eliminated the shortcomings, which involve granting the Ukrainian product certification bodies excessively wide accreditation powers, involvement of the NAAU in accreditation of auditors who did not have the appropriate competence, as well as prove that in general the domestic accreditation system meets all EA requirements.

In the field of metrology, the network of Ukrainian scientific metrological centres remains non-optimized, which prevents Ukrainian metrological institutions from participation in European metrological organisations. In addition, in 2020, the International Organisation of Legal Metrology updated its basic document D1 "National metrology systems – Developing the institutional and legislative framework", which may require that Ukrainian metrological legislation be updated too.

Ukraine fulfils its commitments concerning the provision of an effective and transparent administrative system and providing the EU once a year with reports on the reform process (Article 56.2. (ii) and (iii), 56.4 of the Association Agreement with the EU). Thus, in 2020-2021, Ukraine continued to inform the European party on a regular basis about the progress with reforming the technical regulation system during joint events and meetings at various levels. At the same time, in order to increase the efficiency and transparency of the domestic system, the government should adopt the Strategy for Development of Technical Regulation System for 2021-2025.

According to Article 56.5 of the Association Agreement with the EU, Ukraine shall refrain from amending its legislation except in order to align such legislation progressively with the corresponding EU acquis.

As provided for in Article 56.7 of the Association Agreement, Ukraine shall ensure that its relevant national bodies participate in the European and international organisations for technical regulation, as well as take measures to comply with the conditions for full membership in European organisations. During 2020-2021, the Ukrainian Technical Standardization Committee (TC) participated in the work of units of international and European organisations, including 80 TC was involved in the work of ISO, 27 TC took part in the work of the IEC, and 28 TC contributed to the work of CEN/CENELEC. Since 2021, Ukraine has been a full member of the International Organisation of Legal Metrology (OIML). For this purpose, the Law of Ukraine "On Accession to the International Organisation of Legal Metrology" of November 5, 2020 (No. 998) was adopted.

National standards

Article 56.8 of the Association Agreement with the EU

Within this thematic area, Ukraine has undertaken to progressively transpose the corpus of European standards (EN) as national standards and withdraw conflicting national standards.

The national standardization authority of Ukraine (NSA) continued to work on adoption of modern international and European standards as national. According to the NSA's annual report for 2020, the standards fund includes 27,083 documents, of which 9,358 (36%) are European standards, and 8,382 (32%) are international, i.e. the overall level of harmonisation amounts to 68%.

In 2020, 396 national standards were adopted that are harmonised with international and European standards, whereas the plan is to adopt 1,000 standards (to put this into perspective, in 2019 more than 3,000 standards were adopted). Of these standards, 95 are adopted under technical regulations developed on the basis of 28 European directives. 164 standards of the former USSR (GOST) were abolished. Currently, another 1,200 GOST standards remain in force.

The National Classification for Standards NC 004-2020, harmonised with the International Classification for Standards (version 2015), has been adopted. 3 new TCs were created and 11 non-functioning TCs were liquidated.

In 2020, updated versions of 7 basic standards failed to be adopted, the delay in the publication of the adopted standards amounted to 1,600 standards at the beginning of 2021, the results of financial activities are negative (UAH -1097 thousand).

According to the Programme of Work on National Standardization for 2021, it is planned to adopt 1,260 national standards, harmonised with international and European ones.

As of July 1, 2021, only 95 standards (70 European and 25 international) have been adopted. 12 GOSTs have been abolished and 2 GOSTs have been re-established.

That is, in 2020-2021 there has been a tendency to slow down the rate of harmonisation of the regulatory framework with international and European standards, which may prevent Ukraine from acquiring full membership in the European standardization organisations CEN/CENELEC.

Horizontal (framework) legislation

Article 56.1-1 and paragraph 1 of Annex III of the Association Agreement with the EU

Within this thematic area, Ukraine is expected to harmonise its framework (horizontal) legislation with European *acquis*.

During the second half of 2020 and the first half of 2021, the framework legislation of Ukraine in the field of technical regulation has not changed. Instead, work was carried out to implement certain provisions of the framework legislation through adoption of relevant regulations.

Thus, in order to implement the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Implementation of the European Union *Acquis* in the Field of Technical Regulation”, 5 government resolutions and 9 orders of the Ministry of Economy of Ukraine were adopted in the field of conformity assessment and 4 orders of the Ministry of Economy of Ukraine were adopted in the field of metrology. To implement the Law of Ukraine “On Standardization”, the Ministry of Economy approved “Rules for Compiling Lists for Purposes of Applying Technical Regulations.” In pursuance of the Law of Ukraine “On Technical Regulations and Conformity Assessment”, 3 electronic databases were put into operation. Pursuant to the Law of Ukraine “On State Market Supervision and Control of Non-Food Products”, the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Providing Free Consultation Support to Business Entities on State Market Supervision” was approved. All in all, the framework legislation is in line with international and European standards, but following the preliminary assessment by European experts of Ukrainian quality infrastructure, some non-critical changes to the laws in the field of standardization, conformity assessment, and metrology might be required. Instead, the Ukrainian party should continue its work on updating sectoral legislation in the field of standardization, in particular, it is necessary to adopt laws “On Amendments to the Customs Code of Ukraine” and “On Amendments to Certain Legislative Acts of Ukraine in Connection with the Adoption of Law of Ukraine No. 1315-VII ‘On Standardization’ of June 5, 2014.”¹⁰⁷ Also, it is necessary to adopt new versions of or amendments to 7 framework standards, as well as amendments to the orders of the Ministry of Economy regulating the activities of the Steering Council for Standardization, the Appeal Commission for Standardization, the Rules for Determining the Cost of Standardization. It would be appropriate to update the framework legislation of Ukraine in the field of market surveillance in connection with the entry into force in July 2021 of European Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products.¹⁰⁸

¹⁰⁷ <https://zakon.rada.gov.ua/laws/show/1315-18#Text>.

¹⁰⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R1020>.

Vertical (sectoral) legislation

Articles 56.2 (i) and 56.3 and paragraphs 2.1 to 2.27 of Annex III to the Association Agreement with the EU

Ukraine has to harmonise its vertical (sectoral) legislation with the relevant EU acquis in 27 areas.

Currently, the list of Ukraine's technical regulations includes 94 regulatory legal acts.

Of the 27 EU acquis specified in Annex III to the Association Agreement, 25 have been adopted. Ukraine has not yet fulfilled 2 tasks that require developing regulations based on the high-speed rail directive and the packaging and packaging waste directive. During the second half of 2020 and the first half of 2021, some of the technical regulations have been updated in accordance with changes in European sectoral legislation. Thus, in 2020, Ukraine adopted 14 legislative acts, including 6 orders of the Ministry of Energy and the Ministry of Economy and 8 government resolutions, as well as 1 technical regulation adopted as Law of Ukraine No. 850-IX "On Provision of Services on the Construction Products Market" of September 2, 2020¹⁰⁹ based on European Regulation 305/2011¹¹⁰ from Annex III to the Association Agreement. In 2021, the government adopted 11 resolutions approving new and amending existing technical regulations, in particular Resolution of the Cabinet of Ministers of Ukraine on approval of the technical regulation regarding marine equipment and amendments to the technical regulation on safety of toys from Annex III of the Association Agreement. At the same time, new versions of 11 technical regulations need to be adopted, namely: on the safety of machinery, safety of toys, on the restrictions in the use of certain hazardous substances in electrical and electronic equipment, simple pressure vessels, equipment working under pressure, pleasure vessels, two regulations on medical devices, regulations on eco-design, hot water boilers, and energy labelling.

AGREEMENT ON CONFORMITY ASSESSMENT AND ACCEPTANCE OF INDUSTRIAL GOODS (ACAA)

According to Articles 57.1, 2, 3, 4 of the Association Agreement Ukraine and the EU are to conclude an Agreement on Conformity Assessment and Acceptance of Industrial Goods (ACAA).

During 2014-2021, Ukraine has adopted, improved and implemented horizontal and vertical legislation in the field of technical regulation, conformity assessment, standardization, metrology, and market surveillance to harmonise it with EU legislation. 25 out of the 27 technical regulations listed in Annex III of the Association Agreement have been adopted, in particular in the three priority sectors of industrial products (low-voltage electrical equipment, electromagnetic compatibility of equipment, and machinery), which comply with EU legislation. For these 3 regulations, Ukraine has approved and updated Lists of National Standards that are identical to the harmonised European standards (over 2,100 standards). The infrastructure of 47 designated conformity assessment bodies has been formed in these sectors. The institutional capacity of the national standardization authority, the national accreditation authority (NAAU), conformity assessment bodies, metrological institutions, and state market surveillance bodies has been reformed, optimized and strengthened. At the Ukraine-EU Summit in October 2020, it was decided that the European party would launch a pre-assessment of Ukraine's quality infrastructure. Comparative tables on compliance of the national legislation in the field of technical regulation, standardization, conformity assessment, accreditation, metrology, and market surveillance with the key provisions of EU legislation have been submitted to the European party, including comparative tables of compliance with the technical regulations on machinery, low voltage electrical equipment, electromagnetic compatibility, as well as information materials on the institutional structure in these areas. At the same time, from November to December 2020, a number of joint online discussions were held on the compliance of the Ukrainian quality infrastructure with the European one. After that, European experts conducted a desktop audit of the materials submitted by the Ukrainian party and provided their comments in May 2021. According to the Ministry of Economy of Ukraine, 80 acts of Ukrainian legislation in the field of technical regulation were analysed, of which 67 were recognized as generally meeting European standards, and comments were provided concerning another 13 acts. In 2021, the Ukrainian party plans to eliminate the identified shortcomings with the help of experts of the European Twinning technical assistance project "Strengthening the Capacity of the Ukrainian National Standardisation Body", following which it will be able to move on to the next pre-assessment stage, i.e. assessment by European experts of the practices of the Ukrainian institutions for standardization, conformity assessment, accreditation, metrology, and market surveillance in accordance with the requirements of the legislation adapted to European acquis. Based on the results of the assessment, a decision should be made to start negotiations and preparations for the signing of the ACAA in the three priority sectors.

¹⁰⁹ <https://zakon.rada.gov.ua/laws/show/850-20#Text>

¹¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011R0305>

SANITARY AND PHYTOSANITARY MEASURES (SPS)

Experts: Iryna Ptashnyk



not started early stage advanced perfect critical non-conformity (0.01%)

Article 59 of the Association Agreement specifies that the main objective of this sector is to facilitate trade in commodities covered by sanitary and phytosanitary measures between Ukraine and EU Member States, whilst safeguarding human, animal and plant life and health, as well as reaching a common understanding between the parties concerning animal welfare standards.

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

Measures applicable to main live animal categories

These measures concern state control and veterinary checks at the border, control and elimination of animal diseases, identification and registration of animals.

Regulatory approximation within this sector was carried out focusing on the following areas and tasks:

As regards updating the procedures for veterinary checks on live animals at the border.

Objective: to approve the principles governing veterinary checks on animals entering from third countries – [Directive 91/496/EEC](#).¹¹¹

Progress status: perfect implementation – the requirements of EU legislation have been approximated in Law of Ukraine No. 1206-IX “On Veterinary Medicine” of 04.02.2021.¹¹²

As regards introduction of a system for the prevention and monitoring of bluetongue.

Objective: to establish requirements for the control and eradication of bluetongue – [Council Directive 2000/75/EC](#),¹¹³ [Regulation 789/2009](#).¹¹⁴

Progress status: perfect implementation – the requirements of EU legislation have been approximated in the Law of Ukraine “On Veterinary Medicine” of 04.02.2021 (1206-IX)¹¹⁵ and in Order No. 2533 of the Ministry of Economy “On the Adoption of the Instruction on the Prevention and Control of Bluetongue” of 03.12.2020.¹¹⁶

111 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31991L0496>

112 <https://zakon.rada.gov.ua/laws/show/1206-20#Text>

113 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32000L0075>

114 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R0789>

115 <https://zakon.rada.gov.ua/laws/show/692-2020-%D0%BF#Text>

116 <https://zakon.rada.gov.ua/laws/show/z1266-20#Text>

As regards introduction of the mechanism of import (shipment) to the customs territory of Ukraine of live animals, their reproductive material, food products of animal origin and products not intended for human consumption

Relevant EU acquis: Commission Decision 2010/471/EU, Council Directive 64/432/EEC,¹¹⁷ Commission Decision 86/474/EEC,¹¹⁸ Council Directive 64/432/EEC (repealed by Regulation 2016/429¹¹⁹), Council Directive 90/429/EEC,¹²⁰ Commission Decision 2008/185/EC,¹²¹ Council Directive 2009/158/EC,¹²² Commission Regulation (EC) 798/2008,¹²³ Council Directive 92/65/EEC, Commission Decision 2004/211/EC,¹²⁴ Commission Implementing Decision 2011/630/EU,¹²⁵ Council Directive 90/429/EEC, Commission Implementing Decision 2012/137/EU, Commission Decision 2010/472/EU, Council Directive 89/556/EEC, Commission Decision 2006/168/EC, Commission Regulation (EC) 1739/2005, Commission Decision 2010/270/EU, Commission Regulation (EU) 28/2012.¹²⁶

Objective: to approve the requirements for notification of animal disease.

Progress status: perfect implementation – the requirements of EU legislation have been approximated in the Law of Ukraine “On Veterinary Medicine” of 04.02.2021 (1206-IX).¹²⁷

Objective: to approve the requirements for measures to combat African horse sickness. Progress status: perfect implementation – the requirements of EU legislation have been approximated in Order No. 124 of the Ministry of Economy “On Approval of the Instruction on Prevention and Control of African Horse Sickness” of 22.01.2021.¹²⁸

As regards introduction of the monitoring of zoonoses and zoonotic agents.

Objective: to approve the requirements for monitoring zoonoses and zoonotic agents – Directive 2003/99/EC.

Progress status: perfect implementation – the requirements of EU legislation have been approximated in the Law of Ukraine “On Veterinary Medicine” of 04.02.2021 (1206-IX).¹²⁹

As regards the introduction of a mechanism of certification and handling of aquaculture animals and products thereof.

Objective: to approve the requirements for the health of aquaculture animals – Council Directive 2006/88/EC, Commission Decision 2006/767/EC, Commission Regulation (EC) 1251/2008¹³⁰

Progress status: advanced stage of implementation – the requirements of EU acquis have been partially rendered in the Law of Ukraine “On Veterinary Medicine” of 04.02.2021 (1206-IX)¹³¹ and in Order No.1329 of the Ministry of Economy “On Approval of International Certificate Forms” of 14.07.2020.¹³²

Objective: to approve the certification requirements for live molluscs and live fish intended for human consumption – Commission Regulation (EC) 1251/2008,¹³³ Council Directive 206/88/EC, and Commission Decision 2006/767/EC.

Progress status – advanced stage of implementation – the requirements of EU legislation were partially rendered in Order No.1329 of the Ministry of Economy “On Approval of International Certificate Forms” of 14.07.2020.¹³⁴

Food safety

These measures focus on the provision of food information to consumers, nutrition-related claims, rules for the addition of vitamins and minerals, maximum residual levels of pesticides, control of contaminants in food, control of items and materials in contact with food, rapid alert systems, hygiene requirements for novel foods, and requirements for ionizing radiation.

117 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31964L0432>

118 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31986D0474>

119 <https://eur-lex.europa.eu/eli/reg/2016/429/oj>

120 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31990L0429>

121 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32008D0185>

122 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0158>

123 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008R0798>

124 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004D0211>

125 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011D0630>

126 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32012R0028>

127 <https://zakon.rada.gov.ua/laws/show/1206-20#Text>

128 <https://zakon.rada.gov.ua/laws/show/z0172-21#Text>

129 <https://zakon.rada.gov.ua/laws/show/1206-20#Text>

130 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008R1251>

131 <https://zakon.rada.gov.ua/laws/show/1206-20#Text>

132 http://search.ligazakon.ua/l_doc2.nsf/link1/RE34970.html

133 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008R1251>

134 http://search.ligazakon.ua/l_doc2.nsf/link1/RE34970.html

Regulatory approximation in this area has been carried out focusing on the following areas and tasks:

As regards the introduction of a procedure for the provision of food information to consumers.

Objective: to approve the requirements for the provision of food information to consumers – Regulation (EU) 1169/2011.¹³⁵

Progress status – perfect implementation – the requirements of EU legislation have been approximated in Order No. 679 of the Ministry of Economy “On Approval of the Procedure and Special Requirements for Food Labelling, as well as the List of Foods for which it is Mandatory to Indicate the Country of Origin or Place of Origin” of 01.04.2021.¹³⁶

Measures applicable to food and feed

These measures relate to ensuring the safety and hygiene of feedingstuffs, registration of novel foods, food additives, flavours and enzymes, procedures for the use of food additives, flavours, and enzymes in foodstuffs.

The regulatory approximation in this subsector has focused on the following areas and tasks:

As regards the introduction of a mechanism to ensure the safety and hygiene of feedingstuffs

Relevant EU acquis: Regulation (EC) 178/2002,¹³⁷ Regulation (EC) 183/2005,¹³⁸ Commission Recommendation 2004/704/EC, Regulation (EC) 1831/2003,¹³⁹ Commission Regulation (EU) 16/2011,¹⁴⁰ Commission Regulation (EC) 429/2008,¹⁴¹ Commission Regulation (EC) 1876/2006,¹⁴² Commission Regulation (EC) 378/2005,¹⁴³ Commission Regulation (EU) 1270/2009,¹⁴⁴ Commission Regulation (EU) 892/2010,¹⁴⁵ Regulation (EC) 767/2009,¹⁴⁶ Commission Directive 2008/38/EC, Commission Recommendation 2011/25/EU, Directive 2001/82/EC, Directive 2004/28/EC, Council Directive 90/167/EEC.

Objective: to approve the requirements for the preparation, placing on the market and use of medicated feed.

Progress status – perfect implementation – the requirements of EU legislation have been approximated in the Law of Ukraine “On Veterinary Medicine” of 04.02.2021 (1206-IX).¹⁴⁷

Standards for keeping and handling of animals

These measures concern the protection of animal health, the animals kept for farming purposes, the mechanism of stunning and slaughter of animals, and the rules for testing certain bivalve molluscs.

Regulatory approximation in this subsector has focused on the following areas and tasks:

As regards the improvement of animal health conditions

Relevant EU acquis: Council Directive 2009/156/EC, Commission Decision 2004/211/EC, Commission Decision 93/197/EEC, Council Directive 88/407/EEC, Commission Decision 2010/57/EC, Council Regulation (EC) 1/2005.¹⁴⁸

Objectives: to approve the list of third countries and parts of territory thereof from which imports of live equidae and semen, ova and embryos of the equine species are authorised; to establish requirements for the trade and import of semen of domestic animals of the bovine species.

Progress status – advanced stage of implementation – requirements of EU legislation have been rendered in the Law of Ukraine “On Veterinary Medicine” of 04.02.2021 (1206-IX)¹⁴⁹ and in Order No.1329 of the Ministry of Economy “On Approval of International Certificate Forms” of 14.07.2020.¹⁵⁰

135 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32011R1169>

136 <https://ips.ligazakon.net/document/RE36223?an=1>

137 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002R0178>

138 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32005R0183>

139 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32003R1831>

140 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011R0016>

141 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008R0429>

142 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006R1876>

143 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32005R0378>

144 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R1270>

145 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0892>

146 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009R0767>

147 <https://zakon.rada.gov.ua/laws/show/1206-20#Text>

148 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32005R0001>

149 <https://zakon.rada.gov.ua/laws/show/1206-20#Text>

150 <https://zakon.rada.gov.ua/laws/show/z0687-20#Text>

As regards the introduction of a system for keeping farm animals

Relevant EU acquis: Council Directive 2008/119/EC, Council Directive 2008/120/EC, Council Directive 1999/74/EC, Commission Implementing Decision 2013/188/EU, Commission Directive 2002/4/EC, Council Directive 2007/43/EC.

Objective: to approve the requirements for the protection of calves, pigs and laying hens.

Progress status – perfect implementation – the requirements of EU legislation have been approximated in Order No. 224 of the Ministry of Economy “On Approval of the Requirements for the Welfare of Animals Kept for Farming” from 08.02.2021.¹⁵¹

As regards the introduction of special veterinary checks for the harvesting and processing of certain bivalve molluscs with a level of amnesic shellfish poison (ASP).

Objective: to establish rules for health checks of certain bivalve molluscs – Commission Decision 2002/226/EC.

Progress status – early stage of implementation – a draft of the relevant act has been developed taking into account the requirements of the EU legislation. Currently, this RLA is undergoing internal review by the Ministry of Economy.

Measures applicable to products of animal origin

These measures relate to the introduction of traceability, hygiene, and safety requirements for market operators, handling of animal by-products, and work with pharmacologically active substances.

The relevant group of commitments concerns the following EU acquis: Council Directive 2002/99/EC, Commission Regulation (EU) 142/2011,¹⁵² Commission Regulation (EU) 749/2011,¹⁵³ Commission Regulation (EU) 37/2010,¹⁵⁴ Regulation (EC) 470/2009.¹⁵⁵

In 2020, no regulatory approximation was achieved in this area.

Regulated plants, plant products and other objects

These measures concern phytosanitary certificates and re-export of accompanying plants, requirements for the identification and sanitary inspections of plants, improvement of plant health and marketing in plants and seeds, requirements for labelling, hermetic sealing and packaging of fruit plants and material for reproduction of fruit plants, intended for fruit production, requirements for registration of suppliers and varieties and a general list of varieties, introduction of phytosanitary certificates for re-export of accompanying plants, plant products or other objects from third countries, rules for movement of certain plants, plant products or other objects through the territory of protected zones, procedures for protection of plant variety rights and registration of plant protection products, as well as improvement of legislation on fertilizers.

The group of commitments concerning these measures includes the following EU acquis: Commission Implementing Regulation (EU) 485/2013,¹⁵⁶ Directive 2009/128/EC, Council Directive 2000/29/EC, Commission Implementing Directive 2014/83/EU, Commission Directive 98/22/EC, Commission Directive 2004/102/EC, Commission Directive 94/3/EC, Directive Council 69/464/EEC, Council Directive 93/85/EEC (repealed by Regulation 2016/2031), Council Directive 98/57/EC (repealed by Regulation 2016/2031), Council Directive 2007/33/EC (repealed by Regulation 2016/2031), Commission Implementing Decision 2012/535/EU, Commission Implementing Decision 2012/138/EU, Commission Regulation (EU) 1756/2004,¹⁵⁷ Commission Directive 2008/61/EC (repealed by Regulation 2016/2031), Commission Directive 97/46/EC, Council Directive 98/56/EC, Directive 2008/72/EC, Directive 2008/90/EC, Commission Directive 92/90/EEC, Commission Implementing Directive 2014/20/EU, Commission Implementing Directive 2014/21/EU, Commission Implementing Directive 2014/96/EU, Commission Implementing Directive 2014/97/EU, Commission Implementing Directive 2014/98/EU, Directive Commission 2004/105/EC, Regulation 2016/2031, Commission Directive 93/51/EEC, Commission Directive 92/105/EEC, Commission Directive 2004/103/EC, Council Regulation (EC) 2100/94,¹⁵⁸ Council Regulation (EC) 2506/95,¹⁵⁹ Council Regulation (EC) 2470/96,¹⁶⁰ Commission Regulation (EC) 1238/95,¹⁶¹ Commission Regulation (EC) 1768/95,¹⁶²

151 <https://zakon.rada.gov.ua/laws/show/z0206-21#Text>

152 <https://eur-lex.europa.eu/eli/reg/2011/142/oj>

153 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011R0749>

154 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0037>

155 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009R0470>

156 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0485>

157 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R1756>

158 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31994R2100>

159 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31995R2506>

160 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996R2470>

161 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31995R1238>

162 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31995R1768>

Commission Regulation (EC) 874/2009,¹⁶³ Commission Regulation (EC) 2605/98,¹⁶⁴ Commission Regulation (EU) 188/2011,¹⁶⁵ Commission Implementing Regulation (EU) 540/2011, Commission Implementing Regulation (EU) 541/2011, Commission Regulation (EU) 544/2011, Commission Regulation (EU) 545/2011, Commission Regulation (EU) 546/2011, Commission Regulation (EU) 547/2011, Commission Implementing Regulation (EU) 702/2011, Commission Implementing Regulation (EU) 703/2011, Commission Implementing Regulation (EU) 704/2011, Commission Implementing Regulation (EU) 705/2011, Commission Implementing Regulation (EU) 706/2011, Commission Implementing Regulation (EU) 736/2011, Commission Implementing Regulation (EU) 740/2011, Commission Implementing Regulation (EU) 786/2011, Commission Implementing Regulation (EU) 787/2011, Commission Implementing Regulation (EU) 788/2011, Commission Implementing Regulation (EU) 797/2011, Commission Implementing Regulation (EU) 798/2011, Commission Implementing Regulation (EU) 800/2011, Commission Implementing Regulation (EU) 807/2011, Commission Implementing Regulation (EU) 810/2011, Commission Implementing Regulation (EU) 974/2011, Commission Implementing Regulation (EU) 993/2011, Commission Implementing Regulation (EU) 1143/2011, Commission Implementing Regulation (EU) 359/2012, Regulation (EC) 1107/2009, Commission Implementing Regulation (EU) 582/2012, Commission Implementing Regulation (EU) 589/2012, Commission Implementing Regulation (EU) 595/2012, Commission Implementing Regulation (EU) 746/2012, Commission Implementing Regulation (EU) 571/2014, Commission Implementing Regulation (EU) 632/2014, Regulation (EC) 396/2005, Regulation (EC) 2003/2003.

In 2020, no regulatory approximation was achieved in this area.

Chemicals, mixed products and GMOs

These measures include control over GMOs, reporting on the results of GMO release into the environment, control over the release of the N-nitrosamines and N-nitrosatable substances from elastomer or rubber teats and soothers, procedures for handling GMOs and their registration, introduction of standard reporting forms for placing on the market of genetically modified organisms, and products containing or composed of such organisms, and updating the rules for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China.

This group of commitments includes the following EU acquis: Commission Recommendation 2010/C 200/01, Directive 2009/41/EC, Commission Decision 2009/770/EC, Commission Directive 93/11/EEC, Commission Regulation (EU) 284/2011,¹⁶⁶ Commission Regulation (EC) 641/2004,¹⁶⁷ Regulation (EC) 1829/2003,¹⁶⁸ Regulation (EC) 1830/2003.¹⁶⁹

Regulatory approximation in this subsector focused in the following areas and tasks:

As regards the introduction of measures for the contained use of genetically modified organisms

Relevant EU acquis: Commission Recommendation 2010/C 200/01, Directive 2009/41/EC.

Objectives: to approve guidelines for the development of measures to avoid the unintended presence of GMOs in conventional and organic crops; to establish requirements for the contained use of GMOs.

Progress status – early stage of implementation – requirements of EU legislation have been taken into account in the draft law of Ukraine “On State Regulation of Genetic Engineering and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security.”¹⁷⁰

As regards the introduction of procedures for the handling of genetically modified organisms and their registration

Relevant EU acquis: Commission Regulation (EC) 641/2004, Regulation (EC) 1830/2003, Regulation (EC) 1829/2003.

Objectives: to approve the requirements for the application for the authorisation of a new genetically modified food and feed; to establish requirements for the registration of genetically modified feed.

Progress status – early stage of implementation – the requirements of EU legislation have been taken into account in the draft law of Ukraine “On State Regulation of Genetic Engineering and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security.”¹⁷¹

¹⁶³ <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009R0874>

¹⁶⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31998R2605>

¹⁶⁵ <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A2011R0188>

¹⁶⁶ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32011R0284>

¹⁶⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004R0641>

¹⁶⁸ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32003R1829>

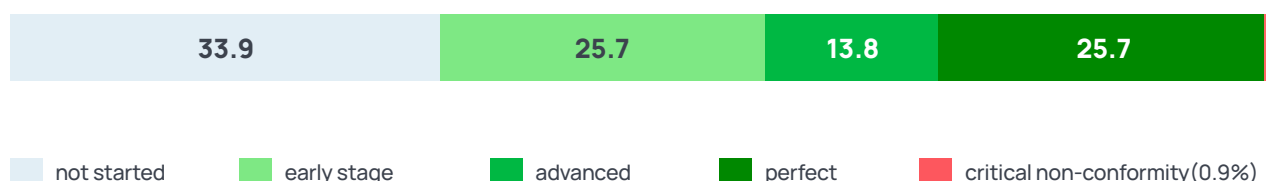
¹⁶⁹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32003R1830>

¹⁷⁰ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72618

¹⁷¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72618

CUSTOMS AND TRADE FACILITATION

Experts: Oleksandra Bulana



Approximation of Ukraine's domestic customs legislation to EU acquis began before the signing of the Association Agreement – e.g. under the EU-UA Partnership and Cooperation Agreement (1994) as well as WTO accession in 2008. At the same time, the customs regulations require further changes, given the dynamics of foreign trade relations and introduction of new technologies.

The Association Agreement between Ukraine and the EU implies a number of further developments in the customs sphere. Inter alia, the Agreement envisages reforming the customs administration in accordance with EU Customs Blueprints, substantial changes in customs law through the implementation of the Union Customs Code, as well as integration into a single European transit system. These changes are designed to modernize the customs sector and prepare it for the challenges of international trade.

The growing share of EU countries in Ukraine's foreign trade structure makes the need for unification of national and European customs legislation even more pressing. This will allow Ukrainian businesses to work in the same legal field – both within Ukraine and in trading with the EU.

Implementation of the EU Customs Code standards

Regulation (EU) 952/2013

Approximation of legislation. Implementation of Regulation (EU) 952/2013¹⁷² (or the Union Customs Code) is the most comprehensive customs reform which Ukraine has undertaken to implement under the Association Agreement.

To fulfil this commitment, Ukraine needs to implement the terms used in the Union Customs Code in its national law, update the system of customs regimes (customs procedures under EU law), reshape administrative and procedural rules related to performance of customs controls, in particular, update the procedures of appeal, post-release controls, determination of the customs value, customs examination, sampling, etc. Full-scale implementation of the Union Customs Code assumes that a new edition of the Customs Code of Ukraine is drafted and adopted (including relevant bylaw regulations).

Currently, within gradual implementation of certain provisions of the Union Customs Code, certain provisions of EU acts are being introduced into Ukrainian customs legislation including:

- authorised economic operators (hereinafter – AEO),¹⁷³ Law of Ukraine No.141-IX “On Amendments to the Customs Code of Ukraine with regard to Certain Issues of Functioning of Authorised Economic Operators” of 02.10.2019;

¹⁷² <https://eur-lex.europa.eu/eli/reg/2013/952/oj>

¹⁷³ <https://zakon.rada.gov.ua/laws/show/141-IX#Text>

- rules for verification of the proof of non-preferential origin (draft law “On Amendments to the Customs Code of Ukraine to Bring the Procedure for Determining the Country of Origin of Goods in Line with the Union Customs Code”¹⁷⁴);
- entry summary declaration¹⁷⁵ (Order No. 502 of the Ministry of Finance “On Approval of the List of Data to be Included in the Entry Summary Declaration” of 13.08.2020”).

However, above provisions already introduced into Ukrainian legislation represent only a small part of the entire mass of changes required to implement the whole Union Customs Code. Most of the articles of the Code are yet to be introduced in national legislation.

At the same time, since these legislative changes were adopted only at the end of 2019-2020, their practical implementation is at the initial level. Thus, from November 7, 2020, the Entry Summary Declaration (ENS) has been introduced. On March 18, 2021, the first Ukrainian company received an AEO status. At the same time, a lot of concepts, e.g. procedures for the application for special customs simplifications for AEOs still need further refinement.

NCTS Convention and the Convention on the Simplification of Formalities in Trade in Goods

Convention on a Common Transit Procedure (NCTS Convention)

Convention on the Simplification of Formalities in Trade in Goods

The NCTS Convention covers 35 countries, including the EU Member States, the EFTA Member States, Turkey, Northern Macedonia, and Serbia. After accession to the NCTS Convention, Ukraine (just like the other member countries to the Convention) will use a single transit document for movements of goods. This will reduce the number of customs formalities and the time required for their passage in transit of goods.

The need for implementation of the NCTS Convention by Ukraine is stipulated in Article 76 of the Association Agreement. In order to accede to the NCTS Convention, it is necessary to adopt and test the relevant legislation and IT systems for at least one year. After that, Ukraine will be able to receive an invitation to join the Convention as a full member.

Approximation of legislation. After the adoption of Law of Ukraine No.78-IX “On the Common Transit Regime and Introduction of the National Electronic Transit System” of 13.02.2020, extensive work was carried out to prepare and adopt the relevant by-laws. In particular, from July 2020 to May 2021, 3 resolutions of the Cabinet of Ministers and a number of orders of the State Customs Service and the Ministry of Finance were adopted to regulate certain matters of application of the common transit regime in Ukraine. However, some issues related to the application of the NCTS Convention still need to be regulated at the level of by-laws (e.g., transit through fixed transport installations, the procedure for filing declarations with reduced data volume, etc.).

As regards **practical implementation**, significant progress has also been made with the common transit regime. In the period from November 2020 to March 2021, a pilot project on the application of the NCTS was held at four customs offices (Volyn, Kyiv, North and Odesa Customs Offices). The National Stage of application of the common transit regime began on March 17, 2021, and the first T1 declaration was lodged on April 8. The simplifications provided by Law of Ukraine No.78-IX “On the Common Transit Regime and Introduction of the National Electronic Transit System” of 13.02.2020 have not started working, in particular due to the requirement to lodge at least 50 T1 declarations in the common transit regime to access these simplifications (economic operators have not had enough time to accumulate the required number of declarations). The IT systems are currently being tested for compatibility with the NCTS.

If the common transit regime is successfully applied, an EU assessment mission should arrive in Ukraine to establish Ukraine’s readiness to accede to the Convention. If things go to plan, the mission may arrive in the late 2021.

174 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71622

175 <https://zakon.rada.gov.ua/laws/show/z1019-20#Text>

Protection of intellectual property during the movement of goods across the customs border of Ukraine

Commission Regulation (EC) 1891/2004 repealed and replaced by Commission Implementing Regulation (EU) 1352/2013¹⁷⁶)

Council Regulation (EC) 1383/2003 repealed and replaced by Regulation (EU) 608/2013¹⁷⁷)

The implementation of these two regulations involves establishment of conditions and procedures for action by the customs authorities where goods suspected of infringing an intellectual property right are, or should have been, subject to customs supervision or customs controls.

Approximation of legislation is at a high level. Law of Ukraine No. 202-IX “On Amendments to the Customs Code of Ukraine with Regard to Protection of Intellectual Property Rights During the Movement of Goods across the Customs Border of Ukraine” of 17.10.2019 was adopted. The law approximates Ukraine’s customs legislation to EU standards and expands the powers of customs authorities to counter the movement of counterfeit products. The bylaws required for the law to be enacted have also been adopted. In particular, Order No. 281 of the Ministry of Finance “On Approval of the Procedure for Application of Measures to Promote the Protection of Intellectual Property Rights and Interaction of Customs Authorities with Right Holders, Applicants and Other Stakeholders and Amendments to Certain Regulations of the Ministry of Finance of Ukraine” of 09.06.2020, as well as amendments to Order No. 648 of the Ministry of Finance “On Approval of the Procedure for Registration in the Customs Register of Intellectual Property Rights Protected in Accordance with Law” of 30.05.2012.

Implementation. After the adoption of new legislation and bylaws, a new customs register of intellectual property rights was launched. A complex IT system “Customs Register of Objects of Intellectual Property Rights” has been developed, which makes it possible to submit an online application to be included in the register and should reduce the time of considering the application. The new register was launched on a trial basis on May 25, 2021. That is, significant progress is also being made in terms of practical implementation.

Implementation of the reliefs from customs duty in force in the EU

Council Regulation (EC) 1186/2009¹⁷⁸

The commitment involves approval of the list of reliefs from customs duty in accordance with the list in force in the EU.

Approximation of legislation. No significant progress has been achieved in the implementation of Council Regulation (EC) 1186/2009. In July 2021, the Government submitted a draft law No. 5810, that is aimed at implementation of Council Regulation 1186/2009. The draft law generally complies with the provisions of the Regulation, so it is necessary to adopt it in order to make progress in this regard. Certain reliefs from customs duty in national legislation already meet European requirements, but the list of reliefs from customs duties envisaged by Ukrainian is shorter.

Due to the lack of progress in the regulatory approximation, practical implementation is also impossible.

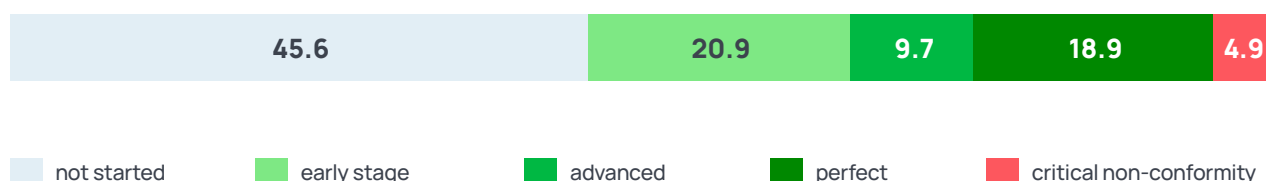
¹⁷⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1352>

¹⁷⁷ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013R0608>

¹⁷⁸ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009R1186>

ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE

Experts: Oksana Hubrenko (Postal and courier services)
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Postal and courier services

In Ukraine, relations in the field of postal services are regulated by Law of Ukraine No. 2759-III “On Postal Services” of October 4, 2001¹⁷⁹ and the Rules for Provision of Postal Services, approved by Resolution No. 270 of the Cabinet of Ministers of Ukraine of March 5, 2009.¹⁸⁰

Along with the national postal operator Ukrposhta JSC, which in accordance with CMU Order No. 10 of January 10, 2002¹⁸¹ provides universal postal services, there are non-state-owned operators and other business entities that provide delivery services in the segment of cost-effective shipping. As of 27.07.2021, the Unified State Register of Postal Operators¹⁸² includes 149 such entities compared with 65 as at 19.05.2020.

Ukraine’s commitments in the field of postal and courier services, in particular regarding the harmonisation of legislation with the requirements of EU acquis, are laid down in paragraph 2 of Appendix XVII-6 “Provisions on Monitoring” of Annex XVII “Regulatory Approximation” of Chapter IV “Trade and Trade-related Matters” of the Association Agreement and are aimed at implementing the provisions of the Agreement, namely: sub-section 4 “Postal and Courier Services” of section 5 “Regulatory Framework” of Chapter 6 “Establishment, Trade in Services and Electronic Commerce” of Title IV “Trade and Trade-Related Matters”.¹⁸³

In the European Union, just like in the rest of the world, postal operators contribute to economic growth and social inclusion, bringing together different regions, consumers and producers, institutions and citizens. The COVID-19 crisis confirms and intensifies the trends of the past decade: a decrease in the volume of paper correspondence and a rapid increase in the volume of parcels/small packages. On the one hand, the pandemic has demonstrated the importance of the universal postal service, which underpins the current European postal regulation, and on the other hand, the delivery sector has demonstrated its ability to adapt to the continuous growth of electronic commerce. Under such conditions, Ukraine, given its favourable geographical location, can bargain for the promising transit country market for postal and courier logistics for the European Union.

Pursuant to Appendix XVII-4 “Rules Applicable to Postal and Courier Services” to the Association Agreement, within 2 (two) years of the entry into force of the Agreement (for DCFTA, Title IV “Trade and Trade-Related Matters”, from January 1, 2016) the provisions of the following acts of the European Union must be implemented:

1. [Directive 97/67/EC](#) on common rules for the development of the internal market of Community postal services and the improvement of quality of service¹⁸⁴ – First Postal Directive 97/67/EC (gradual and controlled liberalization of the postal market).

¹⁷⁹ <https://zakon.rada.gov.ua/laws/show/2759-14>

¹⁸⁰ <https://zakon.rada.gov.ua/laws/show/270-2009-%D0%BF>

¹⁸¹ <https://zakon.rada.gov.ua/laws/show/10-2002-%D1%80> / <https://zakon.rada.gov.ua/laws/show/10-2002-%D1%80>

¹⁸² <https://nkrzi.gov.ua/index.php?r=site/index&pg=60&language=uk>

¹⁸³ <https://www.kmu.gov.ua/diyalnist/yevropejska-integraciya/ugoda-pro-asociacyu>

¹⁸⁴ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31997L0067>

2. [Directive 2002/39/EC](#) amending Directive 97/67/EC with regard to the further opening to competition of Community postal services¹⁸⁵ – Second Postal Directive 2002/39/EC (curbing the monopoly powers of national postal operators).
3. [Directive 2008/6/EC](#) amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services¹⁸⁶ – Third Postal Directive 2008/6/EC (full accomplishment of the internal market for postal services and gradual opening of the market).

After the adoption of the Third Postal Directive, references to the Postal Directive in all European Commission documents refers to the Consolidated Postal Directive.^{187 188} It is the consolidated version of the EU Postal Directive that is translated on the website of the Ministry of Justice of Ukraine.¹⁸⁹

It should be pointed out that the ultimate and comprehensive goal of European postal policy is to ensure the availability of reliable and high-quality postal services at least five working days a week throughout the EU for all citizens of EU Member States and businesses at affordable prices. In accordance with the principle of subsidiarity and taking into account the differences in the postal markets of the Member States, the Postal Directive gives Member States considerable flexibility by allowing them to adapt elements of domestic postal services, i.e. services provided in a particular country, according to their specific needs.

The key goals and objectives of the Postal Directive include the following (summarized):

- introduction of the minimum range of universal services;
- setting requirements for the frequency and quality of services;
- reduction of the range of reserved services provided by national postal operators and their further abolishment;
- development and implementation of tariff principles for universal services;
- approval of the principles and methods of providing as well as ways of financing universal services;
- development of methods for calculating the cost of universal services;
- creation of independent national regulatory authorities (NRAs), specification of their tasks and competencies;
- streamlining the work with consumer complaints, expanding the provisions on consumer protection;
- setting requirements for the availability to other operators of certain elements of the postal infrastructure of national operators (in particular, the address database and mailboxes);
- setting the timeframe for the full opening of the market.

Currently, the Action Plan on the Implementation of the Association Agreement, approved by CMU Resolution No. 1106 of October 25, 2017¹⁹⁰ (hereinafter referred to as the Action Plan), involves:

- development of a draft strategy for the implementation of the provisions of the EU directives in the field of postal and courier services (“road map”);
- harmonisation of national legislation with EU legislation in the field of postal services;
- a number of other measures aimed at the development and adoption of by-laws for the practical implementation of the provisions of the Postal Directive.

Harmonisation of the national legal framework in the postal and courier services sector in line with the principles of European Union legislation set out in the Association Agreement, in order to ensure the gradual compatibility of the existing laws and future legislation with EU acquis.

Ukraine has to introduce framework rules in the postal and courier services sector in accordance with Article 1 of Chapter 1 of the Postal Directive.

The transposition is at an early level.

185 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32002L0039>

186 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32008L0006>

187 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01997L0067-20080227>

188 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2015:0207:FIN:EN:PDF>

189 <https://www.kmu.gov.ua/diyalnist/yevropejska-integraciya/ugoda-pro-asociacyyu>

190 <https://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF#Text>

Since the signing of the Association Agreement, there have been at least five attempts at the legislative level to bring the regulation of postal services closer to the requirements of European rules. The following versions of the draft law of Ukraine “On Amendments to the Law of Ukraine ‘On Postal Services’” were developed and submitted for public discussion: in October 2015¹⁹¹, in October 2016¹⁹², in October and February 2018.¹⁹³

In March 2019, another version of the draft law of Ukraine “On Amendments to the Law of Ukraine ‘On Postal Services’” (hereinafter referred to as the 2019 draft law) was posted for public discussion on the website of the Ministry of Infrastructure¹⁹⁴), which, in the absence of more recent draft laws, currently remains relevant.

The draft law of 2019 (unlike the previous versions) to some extent takes into account the provisions of the EU Postal Directive (Article 1 of Chapter 1) regarding the introduction of rules on:

- conditions governing the provision of postal services;
- provision of universal postal services;
- financing of universal postal services on the terms that guarantee the provision of services on a permanent basis;
- tariff principles and transparency of accounts for universal postal service provision;
- the setting of quality standards for universal service provision and the setting-up of a system to ensure compliance with those standards;
- the harmonisation of technical standards;
- ensuring the independence of the national regulatory authority.

However, there is still a number of inconsistencies that need to be addressed in order to approximate the provisions of the 2019 draft law to the requirements of the Postal Directive, some of which, in our opinion, are critical, in particular regarding:

- the list of postal services classified as universal, which must be in line with the list set forth in the EU Postal Directive. Article 16 of the draft law needs to be revised;
- the possibility of designating more than one designated universal service provider (for all or part of the services) throughout or in part of the country, as well as the exclusive rights of the designated service provider(s). It is necessary to eliminate inconsistencies between Art. 16 and Art. 17 and between the provisions of Art. 17 and Art. 18.
- state supervision of postal operators exclusively as regards their provision of universal services (Article 9);
- ensuring the independence of the national regulator;
- financing of universal postal services, which was overlooked by the authors of the 2019 draft law altogether.

We emphasize the need to support and continue the logic of using the term “postal services” in the 2019 draft law, i.e. both in its title and in the text the term “postal service” (Укр. “поштові послуги”) should be used instead of “postal communications” (Укр. “поштовий зв’язок”), and the same principle should be followed when drafting and adopting by-laws that will be developed to implement the relevant law in the event of its adoption. This change in the approach to terms and defining the area of public relations as a subject of regulation, as it is established within the EU and worldwide, is considered an important condition for harmonisation. The EU Postal Directive and the regulations of the Universal Postal Union have not defined and have not regulated the postal sphere as a sphere of communication for a long time now, instead it is referred to as a sphere of services. Thus, it is not only about unification of terms but also about shifting the focus as regards the results of activities in the postal sector to the provision of services to users. Thus, the EU Postal Directive uses only the term “postal services” rather than “postal communications” – the latter term is not found in European and other international official and informal documents, materials and information related to this sector. This change of approach was initiated by the fact that the Association Agreement does not include the provisions concerning postal and courier services in the area of communications, instead they are referred to the sections of Chapter 6 “Establishment, Trade in Services, and Electronic Commerce” of Title IV “Trade and Trade-Related Matters”, which was also reflected in the wording of the terms of the Action Plan for the Implementation of the Strategy (CMU Order No. 104-p) and the consolidated Action Plan (CMU Resolution No. 1106).

It should be noted that as of today, none of these draft laws has been submitted to the Verkhovna Rada of Ukraine.

191 <https://mtu.gov.ua/projects/20/>

192 <https://mtu.gov.ua/projects/88/>

193 <https://mtu.gov.ua/projects/192/>; <https://mtu.gov.ua/projects/162/>

194 <https://mtu.gov.ua/projects/215/>

During 2020 and the first half of 2021, no progress has been made in harmonising the regulatory framework in the postal and courier services sector with EU legislation. Due to the lack of regulatory grounds, practical implementation of the provisions of European legislation has not started.

Ensuring the legal separation of the regulatory authority in the field of postal services and its functional independence from postal and courier service providers.

It is envisaged that the functions of the national regulatory authority regarding state regulation in the field of postal services will be improved and its powers will be specified, ensuring the independence of the national regulatory authority in accordance with [Chapter 9 of the Postal Directive](#) and [Article 113 of the Association Agreement](#).

The regulatory approximation has not begun.

Currently, there are legal inconsistencies regarding the regulator in the postal sector. The principles of operation of the National Commission for State Regulation of Communications and Informatization are set forth in the Law of Ukraine “On Postal Services” and the Regulation on the National Commission for State Regulation of Communications and Informatization approved by Decree No. 1067 of the President of Ukraine of November 23, 2011.¹⁹⁵ However, the same Law “On Postal Services” (Article 8) assigns the function of supervising the market of postal services to the State Inspectorate of Communications (SIC). The latter was liquidated by CMU Resolution No. 151 of February 29, 2012,¹⁹⁶ however, no changes were made to the relevant law.

In addition to the above inconsistencies, Law of Ukraine No.1089-IX “On Electronic Communications” of 16.12.2020¹⁹⁷ (entering into force on 01.01.2022) introduces the concept of a “regulatory authority – a permanent central executive body with a special status in the fields of electronic communications, radio frequency spectrum, and the provision of postal services of Ukraine (Regulator of Communication Services, RCS)”, even though the scope this law does not cover postal services.

It should be mentioned that the draft law “On the National Commission for State Regulation in the Field of Communications”,¹⁹⁸ developed by experts of the Better Regulation Delivery Office (the BRDO), aims primarily at launching a full-fledged telecommunications reform and leaves oversight (control) in the postal sector to the regulator, apparently as a legacy from the predecessor (i.e. the NCSRCI). After the adoption of the Law of Ukraine “On Electronic Communications”, the BRDO draft law is unlikely to move further. However, it should be noted that certain provisions, both regarding the legal and financial independence of the regulator, could be used in finalizing amendments to the Law of Ukraine “On Postal Services”.

The practical implementation of the provisions of European legislation has not begun.

Establishment of uniform rules and conditions governing the provision of postal and courier services.

It is envisaged to establish uniform rules and conditions governing the provision of postal and courier services in accordance with the requirements of the provisions of the EU Postal Directive.

Today, the Rules for the Provision of Postal Services approved by CMU Resolution No. 270 of March 5, 2009¹⁹⁹ are in force. Their provisions do not comply with the requirements of the Postal Directive, including but not limited to the following:

- terms used in the postal sphere;
- classification of postal services;
- list of services that are included in universal services, their tariffs and quality standards;
- the designated operator and the list of services to which they have exclusive rights, etc.

The regulatory approximation has not begun.

The amendments to CMU Resolution No. 270, which have been made several times since the entry into force of the Association Agreement, did not aim at harmonising the provisions of the Rules with the commitments under the EU Postal Directive. However, such amendments should be introduced to the by-law in the case and on the basis of adoption of a new version of the Law of Ukraine “On Postal Services”.

¹⁹⁵ <https://zakon.rada.gov.ua/laws/show/1067/2011>

¹⁹⁶ <https://zakon.rada.gov.ua/laws/show/151-2012-%25D0%25BF>

¹⁹⁷ <https://zakon.rada.gov.ua/laws/main/1089-20#Text>

¹⁹⁸ <https://bit.ly/37btjfh>

¹⁹⁹ <https://zakon.rada.gov.ua/laws/show/270-2009-%D0%BF>

Due to the lack of regulatory grounds, the practical implementation of the provisions of European legislation has not begun.

Regulatory approximation on:

- Approval of the procedure for selecting and determining designated postal service providers ([Article 4 of Chapter 2 of the Postal Directive](#));
- Introduction of a mechanism and determination of the procedure for financing universal postal services on the conditions under which permanent provision of services is guaranteed ([Chapter 3 of the Postal Directive](#));
- Establishment of quality standards for the provision of universal postal services and introduction of a system to ensure compliance with these standards ([Article 1 of Chapter 1, Chapter 2, Articles 16-18 of Chapter 6, Annex II to the Postal Directive](#));
- Introduction of rules on tariff principles and transparency of accounts for the provision of universal postal services ([Article 1 of Chapter 1, Articles 12 to 14 of Chapter 5 of the Postal Directive](#));
- Introduction of rules for obtaining authorisations for the provision of universal postal services ([Article 1 of Chapter 1, Article 9 of Chapter 4 of the Postal Directive](#));
- Harmonisation of technical standards ([Article 1 of Chapter 1, Article 20 of Chapter 7 of the Postal Directive](#));
- Introduction of rules for providing information ([Article 1 of Chapter 1, Article 22a of Chapter 9a of the Postal Directive](#));
- Introduction of rules to ensure consumer rights in the field of postal services ([Article 1 of Chapter 1, Article 19 of Chapter 6 of the Postal Directive](#)).

Practical implementation has not begun. Due to the lack of regulatory grounds, the practical implementation of the provisions of European legislation in these areas has not begun.

Electronic commerce

The EU's Digital Single Market (DSM) strategy aims to achieve synergy between EU Member States in the areas of cross-border trade, electronic commerce and the provision of services within the DSM. Preconditions for the development of cross-border trade and electronic commerce systems have been in place in the EU since 2005, they have been introduced along with changes in the internal taxation regime between EU Member States, the strengthening of fiscal control over electronic commerce transactions from outside the EU and consumer protection for goods/services purchased online from other countries. Therefore, the e-commerce matters that need to be addressed fall into the following categories:

1. general legislative matters of electronic commerce;
2. legislation of online payments;
3. consumer protection;
4. tax matters related to cross-border trade within the EU and outside the EU;
5. legislation concerning selling services online;
6. legislating matters related to personal data and information arising during transactions and other actions related to conducting electronic commerce;
7. regulation of the monopoly position of some business operators – marketplaces;
8. regulation of the matters of postal delivery ([Art. 109, Art. 110, Appendix XVII-4](#)).

Ukraine also aspires to join the DSM and, hence, faces a similar range of challenges, which means it can also use the approach to solving them that has already been tested in the EU.

The EU applies an evolutionary approach, where each of the above issues is regulated by separate legislation, which, inter alia, makes it possible to take into account national contexts and determines the timeframe for all EU Member States to adapt the minimum approximated national legislation taking into account the principles of development of the DSM. For example, the unified VAT rules in cross-border and retail electronic commerce have been gradually applied between EU countries since 2015, when the MOSS scheme (single VAT window for SMEs) was introduced; and on July 1, 2021 the EU introduced changes in the VAT for all B2C sales of goods and services

from outside the EU (e-commerce VAT package)²⁰⁰ and, accordingly, in Directives 2006/112/EC²⁰¹ and 2009/132/EC²⁰². In addition, from 2021, transnational marketplaces in the EU have turned into tax agents that have to pay VAT and other taxes on goods and services purchased in the EU from outside the EU. Issues of online payments have been resolved by PSD Directive 2007/64 and modified by Directives 2015/751²⁰³ and 2015/2366 (PSD2)²⁰⁴. Also, the EU is holding public discussions and preparing for the adoption of legislation that radically revises the principles of electronic commerce by large market operators (marketplaces) and digital markets for goods and services in the broadest sense, that is – the draft Digital Markets Act (DMA)²⁰⁵ (which will address the monopoly powers of some economic operators – marketplaces) and the draft Digital Services Act (DSA)²⁰⁶, which will regulate the online sale of services.

Within the area of electronic commerce, it is necessary to implement the following commitments:

1. Bringing the procedure for making electronic payments and the percentage of fees and commissions on such payments in line with EU acquis (Directive 2015/2366/EU (PSD2)²⁰⁷, Regulation (EU) 2015/751²⁰⁸)
2. Alignment with EU standards to put an end to unjustified geo-blocking (Regulation (EU) 2018/302²⁰⁹)
3. Alignment with EU rules on cross-border parcel delivery services (Regulation (EU) 2018/644²¹⁰)
4. Alignment with EU consumer protection rules in the field of electronic commerce (Directive 2019/2161/EU).
5. Bringing legislation in line with changes introduced to Directive 98/6/EC, Directive 2005/29/EC, and Directive 2011/83/EU²¹¹
6. Alignment with EU requirements concerning contracts for the supply of digital content and digital services (Directive 2019/770/EU²¹²); and subsequently the DSM.
7. Alignment with EU rules for VAT administration for online sales of goods and services, as well as changes in customs clearance and taxation procedures (e-commerce VAT package)²¹³.
8. Bringing consumer data protection in line with EU standards, including in the case of online electronic commerce transactions and payments/acquiring (Regulation 2016/679 (GDPR)²¹⁴ and Convention 108+)²¹⁵.

Approximation of legislation. In 2015, Ukraine fulfilled part of its commitments to implement the provisions of Directive 2000/31/EC into national legislation by adopting Law No. 675-VIII “On Electronic Commerce” of 3 September 2015. This mainly concerns the general issues of regulating electronic commerce aligning the following matters with the provisions of the Directive:

- definition of electronic information services was provided;
- the basic principles of legal regulation in the field of electronic commerce were established;
- the legal status of the seller (operator, provider) and buyer of goods (work, services) in the field of electronic commerce was established, as well as the legal status of the provider of intermediary services (intermediaries);
- the procedure for performing electronic transactions was established, including provisions on the dissemination of commercial electronic communications or messages was laid down;
- the key provisions of personal data protection were introduced (without updating the field-specific legislation);
- the responsibility of those involved in electronic commerce was established.

Relevant amendments directly related to electronic commerce were also made to the Laws “On Electronic Digital Signature”, “On Electronic Documents and Electronic Document Management”, “On Consumer Protection”, “On Personal Data Protection”, “On Advertising”, etc.

200 Consisting of the following regulations and elimination acts Council Directive (EU) 2017/2455 + Council Regulation (EU) 2017/2454 + Council Implementing Regulation (EU) 2017/2459 + implementing measures Directive (EU) 2019/1995, Council Implementing Regulation (EU) 2019/2026

201 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32006L0112>

202 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009L0132>

203 <https://eur-lex.europa.eu/legal-content/en/LSU/?uri=CELEX:3A32015R0751>

204 <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32015L2366>

205 Proposal for a regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) -

<https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN>

206 Proposal for a regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC -

<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A825%3AFIN>

207 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:3A32015L2366>

208 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:3A32015R0751>

209 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:3A32018R0302>

210 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:3A32018R0644>

211 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:3A32011L0083>

212 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:3A32019L0770>

213 Consisting of the following regulations and elimination acts – Council Directive (EU) 2017/2455 + Council Regulation (EU) 2017/2454 + Council Implementing Regulation (EU) 2017/2459 + implementing measures Directive (EU) 2019/1995, Council Implementing Regulation (EU) 2019/2026

214 <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

215 https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2018/09-10/Convention_108_EN.pdf

However, issues related to consumer protection, conclusion of contracts for the supply of digital content and digital services, payments in the field of e-commerce, postal services, and the monopoly position of some economic operators – marketplaces remain unresolved and inconsistent with EU law.

Since the adoption of Law No. 675-VIII in 2015, no consistent work on introducing changes to legislation as regards electronic commerce has been carried out. However, planned legislative activities in other areas have indirectly entailed changes in the field of electronic commerce. Some changes in legislation related to electronic commerce, include:

- a. Law No. 1591-IX “On Payment Services” of 30 June 2021 (insofar as it complies with Directive 2015/2366/EU (PSD2) and Regulation (EU) 2015/751 is a subject for a separate study);
- b. Law No. 1525-IX (entered into force on 02.07.2021, to be enacted from January 1, 2022) “On Amendments to the Tax Code of Ukraine to Improve the Procedure for Value Added Tax (VAT) Transactions for the Supply of Electronic Services to Individuals by Non-Residents” of June 3, 2021.

There is no progress with **implementation of the commitments**. Although the electronic commerce market is experiencing rapid growth (up to 40% per year), a significant part of the electronic commerce market in Ukraine is in shadow, which undermines the efficiency of state control and supervision, there are also products of unknown origin (smuggled goods²¹⁶) without any proof of safety and quality characteristics. One of the main problems is the lack of a comprehensive public policy in the field of electronic commerce. In addition, there are no state control authorities (except for those that oversee businesses on a general basis).

Financial services

The main purpose of the commitments undertaken by Ukraine with regard to the adaptation of its legislation to EU norms and standards in the field of financial services is to implement Basel II and Basel III requirements and regulations, as well as European directives in the areas of securities, insurance, the market infrastructure of financial services and payment services.

Key goals to be achieved in this area:

- implementation of the principles of effective supervision over the financial sector;
- improving the requirements for corporate governance of financial institutions;
- improving the support for international cooperation with foreign regulators of financial markets in accordance with international standards;
- strengthening the protection of the rights of investors in collective investment undertakings;
- development of the banking market, securities market, insurance market, payment services and financial market infrastructure.

Banking

European integration commitments in the banking sector involve the adaptation of Ukrainian regulatory legislation in the banking sector to EU norms and standards, as well as the principles of effective banking supervision of the Basel Committee, including capital buffers, liquidity ratios, leverage ratios, new capital structure, requirements for internal capital adequacy, increasing the risk weights when calculating capital ratios, capital requirements to cover operational and market risks, etc. Other key commitments include improving corporate governance in banks. EU standards set quite high requirements for the quality of corporate governance in banks, their implementation will reduce the risks associated with internal mechanisms of governance of banking institutions.

Improving the system of banking regulation and supervision and the procedure for the winding up of banks

Directive 2013/36/EU (repealing Directive 2006/48/EC) of 26 June 2013

Directive 2001/24/EC of 4 April 2001

Directive 2014/59/EU of 15 April 2014

Regulation (EU) 575/2013²¹⁷

It is necessary to ensure a procedure for checking the financial and property status of the founders with significant holdings in obtaining a banking licence; to bring in line with EU law the requirements for the publication of

²¹⁶ <https://platforma-msb.org/analiz-obsyagiv-kontrabandy-v-ukrayini-masshtaby-pryami-nepryami-vtraty-byudzhetu-ta-ekonomiky/>

²¹⁷ <https://platforma-msb.org/analiz-obsyagiv-kontrabandy-v-ukrayini-masshtaby-pryami-nepryami-vtraty-byudzhetu-ta-ekonomiky/>

information on issued banking licences on the website of the National Bank of Ukraine; to optimize the requirements for improving the efficiency of assessment of the criteria for significant holdings in credit institutions; to settle the issue of administrative sanctions and administrative measures imposed by the National Bank of Ukraine for non-compliance with licencing requirements related to the acquisition of a significant holding; to establish requirements for the professional suitability and business reputation of bank managers; to improve requirements for capital buffers; to introduce requirements for the internal capital adequacy assessment processes (ICAAP); to set requirements for the risk management system in banks; to bring the requirements for the capital structure of banks in line with EU law; to improve the requirements for the distribution of assets based on the degree of risk and risk weights when calculating capital ratios; to introduce capital requirements to cover operational and market risks; to introduce new liquidity ratios: short-term (LCR) and long-term (NSFR); to introduce new requirements for leverage; to establish requirements for the disclosure of information on capital, capital buffers, unencumbered assets, operational risks, and leverage ratio.

In the late 2020, the NBU updated and published a new plan for the implementation of regulatory requirements. The Net Stable Funding Ratio (NSFR) became mandatory on April 1, 2021. From the second quarter of 2021, the NBU intends to start implementing the internal capital adequacy assessment processes (ICAAP). From January 1, 2022, it is planned to introduce minimum requirements for capital coverage of operational and market risks. The NBU intends to bring the capital structure of banks in line with EU law and the new requirements for leverage ratios by January 1, 2024.

Resolution No. 95 of the NBU of July 18, 2019 specifies plans to restore the activities of Ukraine's banks and banking groups. NBU Resolution No. 37 of March 24, 2020 amends the requirements for capital buffers. NBU Resolution No. 156 of December 24, 2019 regulates the procedure for determining the minimum operational risks by banks. It should be mentioned that under these commitments, the NBU, together with experts of international technical assistance projects, has developed a number of regulations, including changes to the procedure for risk-based supervision of banks (SREP); the procedure for evaluating risk practices that account for expected capital losses of banks; the Concept of Introducing the Leverage Ratio (draft); draft amendments to improve the mechanisms for restoring the solvency and covering the insolvency of banks; draft methodology for estimating the bank's regulatory capital; procedure for the analysis of business models of banks in accordance with the SREP methodology. In addition, regulatory legal acts on the introduction of requirements for internal capital adequacy assessment processes (ICAAP), the introduction of new requirements for leverage, and improving the requirements for significant concentrations of credit risks are being developed.

Establishing requirements for supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate

Directive 2002/87/EC of 16 December 2002

It involves the introduction of supervisory requirements for banking groups that concern the form of statistical reporting on risk concentrations for banking groups, introduction of a statistical reporting form for banking groups on intra-group transactions, improvement of information cooperation mechanisms between financial services market regulators.

The NBU Board adopted Resolution No. 120 of 13.11.2018 (as amended) on the rules of organisation of statistical reporting. As regards improving the mechanisms of information cooperation between regulators of financial services markets, appropriate amendments were made to the agreements on information cooperation concluded between the National Bank and the NSSMC. The NBU has started work on new reporting rules for non-bank financial institutions, the regulation and supervision of which it has been carrying out since July 1, 2020 in accordance with the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Improve State Regulation of Financial Services Markets". In particular, the NBU has developed and proposed for discussion a draft resolution of the Board of the National Bank of Ukraine "On Approval of the Rules for Preparing and Submitting Reports by Non-bank Financial Services Market Participants to the National Bank of Ukraine".²¹⁸

Improving the regulation in the field of electronic money

Directive 2009/110/EC of 16 September 2009

It involves amending the legislation governing the transfer of funds, in particular, it is expected to provide permission to non-bank financial institutions to issue electronic money, as well as to change the amount of capital and own funds of such financial institutions.

²¹⁸ https://bank.gov.ua/admin_uploads/article/proekt_2021-01-29.pdf

Law No. 1591-IX “On Payment Services” of June 30, 2021²¹⁹ was adopted by the Verkhovna Rada and signed on July 29, 2021. The law regulates the Ukrainian market of payments and money transfers and takes into account the requirements of European regulations, including Payment Services Directive 2 (PSD2) and the E-Money Directive (EMD).

Updating the current legislation on the deposit guarantee system in Ukraine

Directive 94/19/EC of 30 May 1994

It involves updating the current legislation on the deposit guarantee system in Ukraine, which would contribute to the development of the banking and financial system of Ukraine by encouraging the accumulation of individuals’ funds in the financial system. In particular, it is expected to increase the deposit guarantee limit, make participation in the deposit guarantee system mandatory for credit unions, and develop a procedure for deposit compensation in accordance with EU requirements.

Implementation of the Directive has not started. Relevant amendments to the Law of Ukraine “On Credit Unions”, the Law “On the Deposit Guarantee System for Individuals”, and the Law “On Financial Services and State Regulation of Financial Services Markets” have not been drafted.

Improving the procedure for submitting accounts

Council Directive 86/635/EEC

Council Directive 91/674/EEC (as amended)

Directive 2001/65/EC

It involves improvement of the procedure for submitting accounts based on the taxonomy of accounts in a single electronic format.

The Verkhovna Rada adopted Law of Ukraine No. 465-IX “On Amendments to Certain Legislative Acts of Ukraine to Improve Tax Administration, Eliminate Technical and Logical Inconsistencies in Tax Legislation” of 16.01.2020; it establishes 2020 as the first reporting period when the undertakings that are required to apply international standards must submit their annual accounts based on taxonomy in line with international standards in electronic form.

Practical implementation of the commitments in the banking sector is at an early stage. Many legislative acts require that the Verkhovna Rada of Ukraine accelerate examination and adoption of the relevant laws of Ukraine.

Securities

One of the main tasks set by the Cabinet of Ministers of Ukraine is to create an effectively functioning domestic stock exchange in order to accelerate economic growth. The creation of stock exchange is not possible without its integration into the European financial system, which requires adaptation to EU financial legislation. The key tasks that aim to accelerate integration processes related to the implementation of EU directives on the domestic stock exchange include adaptation of securities issuance mechanisms to European legislation, establishment of transparent and clear requirements for disclosure of information by issuers, improving protection of investors’ rights and reducing capital market abuse.

Implementation of EU stock exchange rules

Directive 2004/39/EC of 21 April 2004y

Directive 2000/12/EC repealing Council Directive 93/22/EEC

Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC

It involves creation of a single market in financial instruments and introduction of generally accepted organisational requirements and operating conditions for the stock exchange segment of Ukraine by adapting national securities legislation to the relevant EU law, in particular, by implementing the provisions of the above Directives.

On July 1, 2021, the Law of Ukraine “On Capital Markets and Organised Commodity Markets” entered into force.²²⁰ This Law establishes the legal basis for the functioning of capital markets and organised commodity markets in Ukraine as well as for professional activities in these markets, regulates relations arising in connection with the issuance and circulation of securities, and dealing in derivatives. In particular, this Law brings the list of financial instruments in line with EU law, develops a mechanism for stabilizing financial instruments, introduces the concept of “accredited investor” and procedures for assigning this status to investors.

219 <https://zakon.rada.gov.ua/laws/show/1591-20#Text>

220 <https://zakon.rada.gov.ua/laws/show/738-20#Text>

Approving requirements for the securities prospectus

Directive 2003/71/EC of 4 November 2003 amending Directive 2001/34/EC

Directive 2001/34/EC

Directive 2008/11/EC

Commission regulations 809/2004²²¹

Commission regulations 1787/2006²²²

Commission regulations 211/2007²²³

Commission regulations 1289/2008²²⁴

It involves bringing the requirements for the securities prospectus, its approval, validity and publication in line with EU law; introduction of a mechanism for making changes to the securities prospectus and establishing requirements for the language of the securities prospectus; introduction of the concept of public offer of securities; establishing requirements for the information to be contained in the securities prospectus, exceptions for the issuance of the securities prospectus, the procedure and deadlines for publication of changes and annexes to the prospectus.

Regulatory approximation is advanced. Ukraine adopted the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Doing Business and Attracting Investments by Issuers of Securities” of 16.11.2017 (No. 2210-VIII) and the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Attracting Investments and Introducing New Financial Instruments” of 19.06.2020 (No. 738-IX), which regulate the requirements for securities prospectuses. At the same time, the NSSMC continues to work on enacting the provisions of these Laws, in particular, it is drafting regulations on the registration of securities issues and introduction of public offer of securities.

Establishing information requirements for issuers whose securities are admitted to trading on regulated markets

Directive 2004/109/EC of 15 December 2004 amending Directive 2001/34/EC

Commission regulations 1569/2007²²⁵

It involves the introduction of requirements for disclosure of periodic and ongoing information about the issuer, legislative regulation of transactions by issuers’ management, establishment of the procedure for informing about transactions by issuers’ management, establishing requirements for transactions of issuers’ management during a closed period, establishment of issuer disclosure procedures.

Amendments to the Regulations of the NSSMC (version of December 24, 2019), effective from 24.04.2020 and relating to the disclosure of information, supplemented the list of periodic and ongoing information about the issuer, updated the procedure and method of disclosure of information, established requirements for the language of disclosure, and brought the powers of the NSSMC into line with EU supervision requirements. At the same time, no work has been launched to bring the scope and forms of liability for violation of stock exchange disclosure requirements in line with EU law.

Introduction of a mechanism of compensation to investors in securities

Directive 97/9/EC of 3 March 1997

It involves the introduction of a mechanism for compensation to investors in securities, determining the minimum amount of compensation to investors in securities, making participation in the mechanism of compensation to investors in securities mandatory for persons providing investment services, and harmonisation of the registration of investment funds with EU legislation.

The regulatory approximation is early or has not started. According to the “Strategy for Development of the Financial sector of Ukraine till 2025”, the introduction of compensation mechanisms for investor protection in the stock exchange in accordance with Directive 97/9/EC of March 3, 1997 should begin on 01.01.2022. The deadline is December 31, 2024. The NSSMC is in charge of introducing compensation to investors. Currently, the drafting of relevant regulations is at an early stage.

221 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02004R0809-20130828>

222 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006R1787>

223 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32007R0211>

224 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008R1289>

225 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32007R1569>

Reducing market abuses in the securities market

Directive 2003/6/EC of 28 January 2003

Commission Directive 2004/72/EC

Commission Directive 2003/124/EC

Commission Directive 2003/125/EC

Directive 2008/26/EC

Commission Regulation (EC) 2273/2003 (repealed and replaced by Regulation (EU) 596/2014)

It involves reducing market abuse that violates the integrity of securities markets and public confidence in securities and derivative financial instruments, namely with regard to insider dealing and market manipulation, which are the main types of abuse in the securities market. In addition, the purpose of the commitment is to clarify the concept of insider dealing, the concept of market manipulation, to specify disclosure requirements and legal regulation of insider dealing, which will ensure the integrity of financial markets and enhance investor confidence in these markets.

On February 1, 2021, draft law of Ukraine No. 4684²²⁶ “On the National Commission on Securities and Stock Market” was submitted for consideration to the Verkhovna Rada of Ukraine. This draft law aims to amend Section XII of the Law of Ukraine “On Capital Markets and Organised Commodity Markets” in order to address the matter of combating manipulation in capital markets, insider dealing and illegal disclosure of inside information. In addition, this Section is supplemented with provisions aimed at combating financial pyramids.

Enhancing the protection of the rights of investors in collective investment undertakings

Directive 2009/65/EC of 13 July 2009

Commission Directive 2010/42/EU

It involves enhancing the protection of the rights of investors in collective investment undertakings, improving investor confidence in collective investment undertakings and intensifying investment activities, bringing the form and essence of functioning of collective investment undertakings in line with European Union acquis, creating grounds for improving the efficiency and functionality of collective investment undertakings, and bringing their activities and internal organisation in line with the requirements of European Union legislation, thereby ensuring the fulfilment of Ukraine’s commitments under the Association Agreement.

Regulatory approximation has not started. The practical implementation of the commitments related to the functioning of the securities market is at an early stage. On some of the commitments, no work has yet begun.

Insurance

The insurance market, like other segments of the financial services market, needs to be brought into line with EU Directives and other international instruments, in particular the international SOLVENCY II standards and their Pillar components in terms of insurance and reinsurance regulation and regulatory requirements for risk management systems.

Regulation of insurance (reinsurance) and activities of intermediaries in insurance

Directive 2009/138/EC of 25 November 2009

It involves the introduction of a new procedure for legislative regulation of insurance (reinsurance) and activities of intermediaries in insurance, creation of a competitive environment and reducing insolvency risks in the insurance market of Ukraine, facilitation of the taking-up and pursuit of the business of insurance and reinsurance, ensuring a sufficient level of solvency of insurance companies.

The Verkhovna Rada of Ukraine has registered draft law No. 5315 of March 29, 2021, which has passed the first reading.²²⁷ It takes into account the commitments regarding regulation of insurance, reinsurance, intermediaries, etc.

²²⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70965

²²⁷ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71544

Improving the regulation of insurance against civil liability in respect of the use of motor vehicles

Directive 2009/103/EC of 16 September 2009

It involves improving the procedure, determining the sequence of compensation and ensuring that due compensation be paid for personal injuries and damage to property suffered by third parties in an accident involving vehicles, by adopting appropriate regulations.

Regulatory approximation is at an early stage or has not started. Draft law No. 2651 “On Compulsory Insurance against Civil Liability of Owners of Land Vehicles to Improve the Regulatory Framework for the Compulsory Insurance against Civil Liability of Owners of Land Vehicles” of 20.12.2019 was submitted to the Verkhovna Rada.²²⁸ It was drafted with the participation of experts from the EU project “Strengthening the Regulation and Supervision of the Nonbank Financial Market” (EU-FINREG). The project has been pending consideration by the relevant committee since December 2019.

Eliminating inconsistencies in the structure and content of the annual and consolidated accounts of insurance undertakings

Council Directive 91/674/EEC of 19 December 1991

It involves eliminating differences in the structure and content of balance sheets and establishing the same structure for the profit and loss account of insurance/reinsurance companies through legal regulation of the accounting of insurance/reinsurance companies.

Regulatory approximation is advanced. The National Commission for Regulation of Financial Services Markets of Ukraine by Order No. 925 of 19.05.2020 amended the Procedure for the Compiling and Submission of Accounts by Insurance Market Participants in accordance with the requirements of the EU Directive. This Order introduced requirements for the disclosure of the ownership structure of insurance companies, raised the standards for disclosure of information and accounts of insurance companies, and enabled the switch-over to IFRS 9. In turn, the NBU continued to work in this regard and submitted for discussion a draft resolution of the NBU “On Approval of the Rules for the Compiling and Submission of Accounts by Participants in the Nonbank Financial Services Market to the National Bank of Ukraine.”

Regulation of insurance mediation

Directive 2002/92/EC of 9 December 2002

European Commission Recommendation 92/48/EEC of 18 December 1991

The following measures are envisaged: bringing the terms in the field of insurance mediation in line with EU requirements, improving the mechanism of liability of insurance intermediaries or reinsurance intermediaries, establishing the obligations of insurance intermediaries regarding the requirements and procedure for disclosing information about themselves to the authorised body.

On June 21, 2021, the Verkhovna Rada of Ukraine passed draft law of Ukraine No. 5315 “On Insurance” in the first reading.²²⁹ This draft law, inter alia, establishes the legal aspects of the provision of intermediary services. It also takes into account the norms and standards that regulate mediation activities in accordance with EU requirements.

Implementation of European Union standards in the Ukrainian system of occupational retirement provision on a funded basis

Directive 2003/41/EC of 3 June 2003

It involves the introduction of European Union standards into the Ukrainian system of occupational retirement provision on a funded basis, namely: monitoring the financial condition of the relevant institution and assessing the institution’s ability to fulfil all contractual obligations, its compliance with the minimum standards of prudence regarding financial institutions and operational conditions, ensuring a high level of protection for future retirees by establishing strict standards of supervision, effective management of occupational retirement schemes, harmonisation of the provisions of current legislation of Ukraine with the provisions of the Directive on the activities and supervision of institutions for occupational retirement provision.

228 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=67737

229 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71544

Regulatory approximation is early. Draft Law of Ukraine No. 3058 “On Amendments to the Law of Ukraine ‘On Non-State Pension Provision’”²³⁰ and other Legislative Acts on Non-state Pension Provision” of 11.02.2020 has been submitted to the Parliament for consideration, but the draft law is still pending consideration by the committee.

Practical implementation is at an early stage. One of the key aspects that in a way slowed down the drafting and practical implementation of regulations in the field of insurance services and funded retirement provision is the fact that the regulator in the insurance market has changed. In 2019, Law of Ukraine No. 1069-2 “On Amendments to Certain Legislative Acts Concerning Improvement of Functions of State Regulation of Financial Services Markets” was adopted. According to the Law, the National Financial Services Commission of Ukraine was liquidated, and its functions were redistributed between the NBU and the NSSMC. The National Bank of Ukraine became the regulator in the field of insurance, leasing, financial undertakings, credit unions, pawnshops and credit bureaus, whereas the NSSMC became the regulator of private pension funds and construction financing funds. The transition period for the transfer of the relevant functions lasted until July 1, 2021. The development and adoption of laws and regulations in these areas can be expected to accelerate thereafter.

Market infrastructure

The underdeveloped infrastructure of financial markets makes the Ukrainian economy extremely vulnerable. There are risks associated with a sharp outflow or inflow of foreign capital, currency risks, and risks of increased susceptibility to international financial crises. Developed financial markets require developed infrastructure.

Introduction of various elements of market infrastructure in the financial services market

Directive 2002/47/EC of 06 June 2002

Directive 98/26/EC

Directive 2009/44/EC

It involves the introduction of mechanisms for settlement finality concerning derivatives and netting in insolvency proceedings, a mechanism for ensuring that derivative contracts are executed, mechanisms for settlement finality in securities, a mechanism for ensuring that securities contracts are executed, improving the funded occupational retirement system, taking into account EU requirements, and establishing conditions for cross-border activities in the field of pension provision.

Regulatory approximation is early. The Law of Ukraine of June 19, 2020 (No. 738-IX) has been adopted,²³¹ which provides for the introduction of derivative contracts, certificates of deposit of banks, and a new procedure of issuing more secure corporate bonds, mechanisms to ensure that derivative contracts are executed, finality of settlement in securities, introduction of general rules for issuing derivative securities, regulates netting in insolvency proceedings, and other rules and regulations, thereby implementing the mandatory requirements of the EU MiFID II, MiFIR, and EMIR acts. Currently, the NSSMC is developing regulations to ensure the enactment of this Law. In the field of occupational retirement provision, a draft law on amendments to the Law of Ukraine “On Non-State Pension Provision” and other legislative acts has been developed. It is being developed in cooperation with EU experts.

Payment services

The work in this area focuses on updating the system of legislative regulation of the Ukrainian market of payments and money transfers by harmonising it with the European market and implementing the relevant EU law into national legislation.

Regulation of payment services

Directive 2015/2366 (repealing Directive 2007/64/EC of 12 January 2008)

It involves the improvement of the procedure for conducting transactions using electronic payment instruments, addressing the procedure for providing payment services, the principles of interaction between market participants, and licencing matters.

²³⁰ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=68127

²³¹ <https://zakon.rada.gov.ua/laws/show/738-20#Text>

Regulatory approximation is advanced. Law of Ukraine No. 1591-IX “On Payment Services” of June 30, 2021 was adopted by the Verkhovna Rada and signed on July 29, 2021. The Law addresses the regulation of the Ukrainian market of payments and money transfers and takes into account European regulations, including Payment Services Directive 2 (PSD2) and the Electronic Money Directive (EMD).

Practical implementation is early or has not started.

PUBLIC PROCUREMENT

Experts: Serhii Yaremko

7.8

23.5

68.6

not started early stage advanced perfect critical non-conformity (0.1%)

In accordance with the commitments undertaken by Ukraine under the Association Agreement (hereinafter referred to as the AA), in the period from November 2014 to December 2022, it has to adapt its national legislation in the field of public procurement to the provisions set out directly in the Association Agreement and in the relevant EU acquis. This primarily applies to the following commitments:

- To develop a “Roadmap” in the field of public procurement ([Article 152 of the AA](#)).
- To designate two central executive bodies responsible for public procurement policy and review of decisions taken by contracting authorities ([part two of Article 150 of the AA](#)), to create a centralized procurement organisation and ensure its functioning.
- To harmonise procurement legislation with the requirements of the relevant ([EU Procurement Directives \(2014/24/EU, 2014/25/EU, 89/665/EEC, 92/13/EEC\)](#)).
- To implement the basic standards set out in the relevant EU directives governing the process of legal protection and the conclusion of public contracts ([Article 151 of the Association Agreement](#)).
- To ensure professionalization and maximum use of e-solutions and software products in the organisation of the procurement process ([Directive 2014/24/EU, Art. 153 of the AA](#)).
- To ensure the functioning of the procurement process monitoring system ([\(Art. 83 of Directive 2014/24/EU\)](#)).
- To establish procurement rules in the field of defence ([Directive 2009/81/EC](#)).

Implementation of EU rules in the field of public procurement (general reform)

The following work has been carried out in this area in Ukraine.

Two central executive bodies responsible for public procurement policy and review of decisions taken by contracting authorities have been designated ([part two of Article 150 of the AA](#)).

Specifically, according to the Law of Ukraine “On Public Procurement,” the authorized body that implements the state policy in the field of public procurement is the Ministry of Economic Development (MEDT). The law also provides for the possibility of appealing against the contracting authority’s decisions through the appellate body – i.e. the Antimonopoly Committee (AMCU), which has the right to oblige the customer to cancel all or part of its decisions. This division of functions between the MEDT and the AMCU has existed since 2010.

By amendments to the Law made in 2020 and 2021, a commission (commissions) was created in the Antimonopoly Committee to consider complaints about violations of legislation in the field of public procurement. Experts have expressed rather mixed feelings about the requirement for participants to provide “a list of documents confirming

that the appellant had his rights and legally protected interests violated [...] in cases when complaints relate to tender documentation and/or to decisions, actions or omissions of the contracting authority that occurred before the deadline for the submission of tender proposals” (Article 18.5.5 of the Law). According to many experts, it can lead to discriminatory actions by the appellate body.

The centralized procurement mechanism is being actively developed, for which purpose legal and organisational conditions have been created. The Law “On Public Procurement” establishes the concept and mechanism of operation of centralized procurement organisations.

The state-owned Professional Procurement institution is the first centralized procurement organisation (CPO) in Ukraine to have acquired official status in September 2019. On September 25, 2019, the Cabinet of Ministers by its Order No. 846-P established that the said CPO shall conduct tenders and procurement of goods and services (except for current repairs) under framework agreements in the interests of contracting authorities. In addition, in the autumn of 2018, the Ministry of Health of Ukraine established the state enterprise Medical Procurement of Ukraine, which is supposed to centrally procure drugs and medicines. In some regions of Ukraine, CPOs have also been set up to procure in the interests of local spending agencies.

The development of centralized procurement organisations is part of the strategy for the development of public procurement and its professionalization. According to the strategy, by the end of 2021, central executive bodies will be able to delegate more than 50% of their own procurement to central procurement organisations. And instead of the current tender committees, all contracting authorities will introduce authorized professionals who will deal exclusively with procurement.²³²

In terms of the monitoring of procurement, the Ministry of Economy publishes annual reports on its website, as well as submits them to the Cabinet of Ministers, the Verkhovna Rada, and the Accounting Chamber.

The State Audit Service has been monitoring the effectiveness of the public procurement system using the electronic procurement system and the risk indicator system since 2018.

In addition, independent monitoring of procurement is carried out on the portal for public control of public procurement Dozorro (<https://dozorro.org/>).

To bring the current and future legislation in the field of public procurement in line with the EU acquis in the field of public procurement, 25 tasks are to be performed.

To ensure the implementation of most of these tasks in 2019, the Ministry of Economy, with the participation of experts from the relevant EU project, developed a draft law “On Amendments to the Law of Ukraine ‘On Public Procurement’ and Certain Other Legislative Acts of Ukraine to Improve Public Procurement”, which was adopted by the Verkhovna Rada on 19.09.2019 (No. 114-IX). The law came into force on April 19, 2020.

In addition, on October 3, 2019, the Verkhovna Rada adopted the Law “On Concession” (No.157-X), which is aimed at improving the legal regulation of concession activities and harmonising the legislation on concessions with the legislation on public-private partnership. But this law has never entered into force, and according to EU experts, it still largely needs to be harmonised with EU law.

Work on 2 tasks has not started (implementation of the innovation partnership procedure; introduction of special rules for the use of electronic auctions, reserved contracts and innovation partnerships by entities in the field of public utilities and the possibility of applying a dynamic procurement system). However, the deadline for their implementation is 31.12.2022 (according to the Action Plan on Implementation of the AA, approved by the Cabinet of Ministers on 17.10.2017 (No. 1106)).

To ensure harmonisation of legal remedies, 6 tasks have to be carried out, of which one – introduction of non-binding rules for the period of non-conclusion of the procurement contract – has not started (according to the Action Plan on Implementation of the AA, approved by the resolution of the Cabinet of Ministers of 17.10.2017 (No.1106), the deadline for its fulfilment is 31.12.2022).

The fulfilment of other tasks is provided for in the current law and performed by way of implementing the basic standards set out in the relevant EU directives governing the process of legal protection and the conclusion of public contracts (first of all Council Directives 89/665/EEC and 92/13/EEC).

232 <https://bit.ly/3wFMDMs>

In 2020–2021, 2 laws were adopted that significantly affected the functioning of the system of appeals in the field of procurement. In particular, instead of a permanent administrative panel for reviewing complaints about violations of the legislation in the field of public procurement, the AMCU has established a Commission with specially appointed commissioners for reviewing complaints.

These changes cannot be considered exclusively positive and aimed at improving the procurement system. Both the legislative process of amending the framework law with regard to the transfer of powers from the Panel to the Commission and the proposed changes to the appeal mechanism have come under criticism.

In particular, recent amendments to the Law on Public Procurement have limited the rights of complainants, as they require that complainants provide factual evidence of violations committed when filing a complaint about the content of tender documents.

This requirement is not stipulated in the above-mentioned EU Directive and has elicited negative response on the part of both participants in the procedures and national and international procurement experts.

Within the framework of the implementation of European legislation and procurement practices, the work aimed at ensuring proper training and professionalization in the field of public procurement is of utmost importance.

The commitment was supposed to be fulfilled by gradually transferring the organisation of procurement from tender committees to specialists with the appropriate level of education and experience, establishment of a support service for participants in the procurement process, the use of centralized procurement mechanisms, etc.

According to the amendments to the Law that came into force on 19.04.2020, the transition from the organisation of procurement by tender committees to that by authorized persons should be completed by the end of 2022. Therefore, the implementation process is ongoing.

The process of implementation of the function of legal and technical support for procurement procedures carried out both under framework agreements and under specific procedures of individual contracting authorities is quite active, which is due to the introduction of centralized and framework procurement mechanisms.

Services of technical support to contracting authorities are currently provided by SE Professional Procurement to contracting authorities who are customers of the company, primarily in the organisation of centralized and framework procurement.

Online training courses have been created for high-quality training and continuing training of procurement professionals in the ProZorro system (<https://infobox.prozorro.org/courses>). The ProZorro website offers online courses, publishes relevant articles, guidance materials, and samples of technical specifications, as well as serves as a forum on public procurement. Also, ProZorro has a call centre to support procuring entities.

Electronic procurement

In accordance with the requirements of Directive 2014/24/EU (Paragraph 52 of the Preamble) “Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures, as they greatly enhance the possibilities of economic operators to participate in procurement procedures across the internal market.”

The implementation of commitments in this area involves 9 tasks, the vast majority of which have already been implemented.

The perfect level of transposition has been achieved with regard to the development of the necessary regulatory framework for the introduction of the e-procurement system; the functioning of a single portal and electronic appeal system is ensured; electronic catalogues have been introduced.

Work on the task of creating an electronic mechanism for concluding contracts and making relevant payments is underway (according to the Action Plan on Implementation of the AA, approved by Resolution No.1106 of the Cabinet of Ministers of 17.10.2017, the deadline for its implementation is 31.12.2022).

Tasks such as creating a module for concluding framework agreements in the electronic procurement system ProZorro, ensuring the functioning of the integrated web portal of the authorized body and the electronic appeal system have been fully completed.

It should be mentioned that due to the creation of the ProZorro procurement system, foreign economic operators can freely participate in public procurement in Ukraine. Ukrainian companies have also started participating in public procurement in the EU.

The following aspects can be described as advanced: process of creating a mechanism for using electronic catalogues; ensuring the functioning of the information exchange system; and the presence of the analysis module in the general e-procurement system. It should be noted that the mechanism for using electronic catalogues is still carried out as a pilot project of the State Enterprise ProZorro together with the State Institution Professional Procurement and the State Enterprise Medical Procurement of Ukraine for the procurement of goods, provided that the value of the contract tendered is equal to or exceeds 50 thousand hryvnias and is less than the cost set forth in paragraphs 1 and 2 of Article 3 of the Law of Ukraine “On Public Procurement”.

Procurement in the field of defence

At the legislative level, favourable conditions have been created for cooperation in the military-technological sphere. On 1 January 2021, the Law on Defence Procurement (No. 808-IX of 17.07.2020) came into force. It was developed taking into account NATO standards and provides for the harmonisation of Ukrainian legislation in the field of defence procurement with the provisions of Directive 2009/81/EC. The law provides for procurement in the field of defence based on the principle of competition, openness and transparency (except in cases that constitute state secret).

This year, the Cabinet of Ministers of Ukraine has adopted a number of resolutions necessary for the implementation of the provisions of this law. Including resolutions: No. 363 “Defence Procurement Matters” of March 3, 2021; No. 233 “On Approval of the Procedure for Creation, Operation and Maintenance of the Electronic Register of Selection Participants and Contractors under Government Contracts, and Entering Economic Operators in the Register” of March 17, 2021; No. 622 “On the Authorized Body for State Quality Assurance” of June 16, 2021; and No. 625 “On Approval of the Procedure for Conducting Marketing Research of the Market in Goods, Works and Services for Defence Purposes” of June 16, 2021.

INTELLECTUAL PROPERTY

Experts: Olena Sviatun



44.4

55.6

not started early stage advanced perfect critical non-conformity

Ukraine's intellectual property commitments are laid down in Chapter 9 of the EU-Ukraine Association Agreement (AA). The Association Agreement does not include a separate annex listing any EU regulations in the field of intellectual property for Ukraine to transpose into its national legislation. Therefore, virtually all the commitments were included in the text of the Agreement itself.

For most of the measures included in the Government Action Plan for 2017, the deadline is December 31, 2023, which is generally the decisive factor for the current state of implementation of Ukraine's commitments in this sector.

According to Art. 157, the objectives of Chapter 9 are to:

- facilitate the production and commercialisation of innovative and creative products in the Parties; and
- achieve an adequate and effective level of protection and enforcement of intellectual property rights.

Copyright protection and collective management of rights

Section 2, Sub-section 1 of Chapter 9 of the AA (Articles 161 to 192)

Directive 96/9/EC (as amended by Directive (EU) 2019/790)

Directive 93/83/EEC (as amended by Directive (EU) 2019/790)

Directive 2001/29/EC

Directive 2012/28/EU

Directive 2014/26/EU

Directive 2017/1564/EU

Directive (EU) 2019/790

Reforming the entire system of copyright protection in Ukraine is one of the key areas in bringing Ukrainian legislation in line with European standards.

It is noteworthy that during 2014-2019 progress in this area was insignificant. During these 5 years, several draft laws "On Amendments to the Law 'On Copyright and Related Rights'" were submitted to the Verkhovna Rada of Ukraine. They were all withdrawn.²³³

Regarding the improvement of legislation on the activities of collective management organisations (Directive 2014/26/EU), in 2018 the Law of Ukraine "On Effective Management of Property Rights of Copyright Holders in the Field of Copyright and (or) Related Rights" was adopted.²³⁴ It provides for the reform of the system of collective management of copyright and related rights, prevention of illegal activities of collective management organisations, preservation and development of intellectual activity of authors, performers and other creators.

²³³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66519, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65661, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65771.

²³⁴ <https://zakon.rada.gov.ua/laws/show/2415-19>

However, the implementation of this law is very slow. In pursuance of the law adopted in 2019, the Commission for Accreditation of Collective Management Organisations was established.²³⁵ But the Order to create it was revoked within a year. In addition, a register of collective management organisations has been created and forms of documents for registration have been approved.²³⁶

In September 2020, the Ministry of Economic Development by its Order No. 1827 approved a new Regulation on the Commission for Accreditation of Collective Management Organisations.²³⁷ The Order set forth the procedure for formation, term of office, and operating rules and procedures of the Commission for Accreditation of Collective Management Organisations, as well as the rights and responsibilities of its members. The Commission is headed by the Minister of Economy (or his deputy). During 2019-2020, the Commission accredited 9 collective management organisations.²³⁸

In May 2021, a draft law on copyright and related rights was submitted to the Verkhovna Rada of Ukraine.²³⁹ In June 2021, another four alternative draft laws on copyright and related rights were submitted to the Parliament, all of which are currently being familiarised with.²⁴⁰ Thus, Ukraine is currently reforming its legislation in the field of copyright and related rights.

At the same time, there are some contradictory points in this area today. For instance, according to representatives of creative industries, the implementation of the Law “On Effective Management of Copyright Holders’ Property Rights in the Field of Copyright and (or) Related Rights” is very slow. Also, public service broadcasters continue to avoid paying royalties to performers and producers of phonograms for the use of their performances and phonograms, even though it is mandatory under Ukrainian copyright law. The problem stems from the low level of enforcement of current copyright law.

Industry standards relating to intellectual property rights

Part 2 Sub-section 2-7 of Chapter 9 of the AA (Articles 193 to 229)

Council Regulation (EC) 6/2002²⁴¹ (as amended in 2013)

Directive 98/71/EC

Directive (EU) 2015/2436

Regulation (EU) 2017/1001²⁴²

Regulation (EU) 1151/2012²⁴³

Regulation (EU) 251/2014²⁴⁴

Directive 98/44/EC

Directive 2009/128/EC (as amended in 2019)

Regulation (EC) 1107/2009²⁴⁵ (as amended in 2021)

Regulation (EU) 2017/625²⁴⁶ (as amended in 2019)

Directive 87/54/EEC

Regulation (EC) 110/2008²⁴⁷ (as amended in 2021)

Trade marks and designs

During the first 5 years after signing the AA (2014 to 2019), Ukraine failed to undertake any activities aimed at bringing its legislation in line with the provisions of the Agreement. During this period, experts pointed out that the Ukrainian legislation in force back then to some extent contradicted the provisions of the AA and the relevant EU acquis. This was confirmed by the practice of the judicial authorities of Ukraine. In particular, on July 4, 2019, the Supreme Court consisting of a panel of judges of the Commercial Cassation Court passed a judgement in case 910/4947/18 on the claim of KANZHUT LLC concerning the early termination of Ukrainian certificates for marks for goods and services against TVI.UA LLC.²⁴⁸ The arguments in support of the claim referred to the fact that the validity of Ukrainian certificates for marks for goods and services must be terminated early by a court decision due to the

235 <https://zakon.rada.gov.ua/laws/show/z1203-19>

236 <https://zakon.rada.gov.ua/laws/show/z1433-18>

237 <https://zakon.rada.gov.ua/laws/show/z0972-20#Text>

238 <https://bit.ly/3NofHv>

239 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72024

240 http://w1.c1.rada.gov.ua/pls/zweb2/webproc2_5_1_j?ses=10010&num_s=2&num=&date1=&date2=&name_zp=%EF%F0%EE+%E0%E2%F2%EE%F0%F1%FC%EA%E5+%EF%F0%E0%E2%EE+%B3+%F1%F3%EC%B3%E6%ED%B3+%EF%F0%E0%E2%E0&out_type=&id=

241 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002R0006>

242 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1001>

243 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R1151>

244 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0251>

245 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0251>

246 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017R0625>

247 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0251>

248 <https://reyestr.court.gov.ua/Review/82858256>

fact that TVI.UA LLC had not used the mark for goods and services (hereinafter – the trade mark) for three years. The Commercial Cassation Court dismissed the case filed by KANZHUT LLC, referring, inter alia, to the direct effect of the provisions of the AA: “Indeed, the Association Agreement provides for the gradual and progressive approximation of the laws of the Parties thereto in the field of intellectual property, which in no way precludes the possibility of such application. Article 198 of the Association Agreement may be regarded as directly applicable because it sets new standards for the protection of intellectual property rights. In addition, Chapter 9 ‘Intellectual Property’ of Title IV ‘Trade and Trade-Related Matters’ of the Association Agreement does not specify any list of legislation and implementation deadlines. The complainant’s allegations concerning the ‘uncertainty’ of Article 198 of the Association Agreement are unfounded, as this Agreement is part of the national legislation of Ukraine (Art. 9 of the Constitution of Ukraine, Art. 19 of the Law of Ukraine ‘On International Agreements of Ukraine’)”.

In 2019, the Verkhovna Rada received a draft law on amendments to certain legislative acts of Ukraine to improve the protection of rights to trademarks and industrial designs and combat patent trolling,²⁴⁹ which during the second reading was entitled as “Draft Law on Amendments to Certain Legislative Acts of Ukraine to Improve the Protection of Rights to Trademarks and Industrial Designs and Combat Patent Abuse”, and was adopted by the Parliament on July 21, 2020.²⁵⁰

The new law introduced unified terms for all Ukrainian legislation, using the term “trademark” instead of “marks for goods and services” (although the latter term is retained in the title), and increasing the timeframe of protection of unused trademarks (from three to five years).

Analysing the provisions of the Law “On Protection of Rights to Marks for Goods and Services”, we can conclude that the new version of the Law in general complies with the AA in this area (Art. 193–202), as well as with the EU regulations that were valid back then.

As for the new EU acquis, namely Regulation (EU) 2017/1001 and Directive (EU) 2015/2436, the Law “On Protection of Rights to Marks for Goods and Services” contains certain provisions that correspond to them. In particular, Regulation (EU) 2017/1001 abolishes the requirement for graphic representation, and amendments made to Art. 5 (2) of the Law “On Protection of Rights to Marks for Goods and Services” stipulate that the object of a trademark may be a sign suitable for graphic reproduction (such as form or packaging), which does not fully comply with the provisions of the above Regulation and Directive in the third paragraph, which specifies: “legal protection cannot be granted to signs that:... consist exclusively of indications that are commonly used in modern language or in fair and established commercial practice for goods and services”, whereas Regulation 2017/1001 in Art. 7 (1 (m)) stipulates that no registration shall be granted to trademarks which consist of, or reproduce in their essential elements, an earlier plant variety denomination registered in accordance with Union legislation or national law, or international agreements to which the Union or the Member State concerned is a party, providing for protection of plant variety rights, and which are in respect of plant varieties of the same or closely related species. Similar provisions are set forth in Art. 4 (1 (i)) of Directive (EU) 2015/2436.

As for the amendments to the Law “On the Protection of Industrial Designs”, they are generally in line with the AA. However, it should be noted that the definition of the term “industrial design” in these amendments to Article 1 (1) of the Law contradicts the definition specified in Art. 212 of the AA.

Geographical indications

Ukraine’s activities in the field of geographical indications include the adoption of regulatory legislative acts aimed at determining the principles of legal protection of geographical indications in the domestic territory and regulate relations arising in connection with their registration, use, and protection. In 2019, the Verkhovna Rada of Ukraine adopted a new version of the Law of Ukraine “On Protection of Indications of Origin”. Currently, this law is called “On Legal Protection of Geographical Indications.” The latest version came into force on 14.10.2020.²⁵¹

As regards the compliance of this Law, in general it meets EU standards, namely those of Regulation (EU) 1151/2012 and Regulation (EU) 251/2014.

However, certain provisions of Regulation (EU) 1151/2012 are not fully taken into account. In particular, there is no procedure for establishing a scheme for traditional specialities guaranteed (Art. 17–26 of the EU Regulation) and no possibility to submit a joint application when the geographical indication concerns several states (Art. 49 (1) of the Regulation), etc.

249 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=2258&skl=10

250 <https://zakon.rada.gov.ua/laws/show/815-20#Text>.

251 <https://zakon.rada.gov.ua/laws/show/752-14>

In 2021, two implementing acts required for the effective implementation of the provisions of the Law were adopted:

- Order No. 536-21 of the Ministry of Economy of Ukraine “On Approval of the Rules for Compiling, Submitting and Conducting Examination of Applications for Registration of Geographical Indications” of 12.03.2021, setting forth the requirements for documents to go with applications for the registration of geographical indications, and regulating relations arising in connection with the submission of applications, their examination, and making decisions concerning such applications.²⁵²
- Order No. 743 of the Ministry of Economy of Ukraine “On Approval of the Requirements to Specifications of Goods with Geographical Indications and to the Procedure of their Approval” of 12.04.2021.²⁵³ These Requirements apply to agricultural products, foodstuffs, wines, aromatised wine products, alcoholic beverages, and to the procedure for their approval. The Requirements apply to agricultural products and foodstuffs intended for human consumption, and other goods listed in such groups of the Ukrainian Classification of Goods of Foreign Economic Activity.

It should be mentioned that the preamble to the Law “On Legal Protection of Geographical Indications” states that “The specific aspects of preparation for registration, use, and protection of geographical indications concerning agricultural products (agricultural goods), foodstuffs, [...] and the control over such geographical indications shall be determined by other laws.” No such special legislative acts have been adopted yet. Although in 2019 the first Ukrainian products with protected names were designated for registration of a geographical indication. These include “Hutsul sheep bryndza cheese”, “Kherson watermelon”, “Melitopol cherry”, and “Carpathian honey”.²⁵⁴

It was only at the end of 2020 that the Ministry of Economy of Ukraine prepared a draft law “On Aspects of Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs, Protection of Rights and Application of Quality Schemes, Including Traditional Speciality Guaranteed for Agricultural Products and Foodstuffs.” The purpose of the draft law is to ensure the fulfilment by Ukraine of its commitments in the field of European integration in terms of harmonisation of the current legislation of Ukraine on the protection of geographical indications with European Union law as regards compliance with the rules of protection of geographical indications for agricultural products and foodstuffs (Regulation (EU) 1151/2012). The Cabinet of Ministers of Ukraine approved this draft law in April 2021. In June 2021, the draft law was submitted to the Verkhovna Rada of Ukraine for familiarisation²⁵⁵ and in general it does not contradict the current provisions of the relevant EU acquis.

Biotechnological inventions

During 2014 to 2019, no progress was made with ensuring the protection of biotechnological inventions. It was only in 2020 (July) that the Verkhovna Rada of Ukraine adopted the Law “On Amendments to Certain Legislative Acts of Ukraine Concerning the Reform of Patent Legislation”,²⁵⁶ amending the Law “On Protection of Rights to Inventions and Utility Models”,²⁵⁷ which generally complies with the provisions of Directive 98/44/EC, although with some reservations (it does not include the term “microbiological process” enshrined in Art. 2 (1 (b)) of Directive 98/44/EC).

Protection of data provided for the purpose of obtaining marketing authorisation for medicinal products

It aims to introduce a comprehensive system that could guarantee the confidentiality, non-disclosure and independence of data provided for the purpose of obtaining marketing authorisations for medicinal products.

Art. 9 “State registration” of the Law of Ukraine “On Medicinal Products”²⁵⁸ stipulates that, in accordance with the provisions of this Law and other regulatory legal acts of Ukraine, the information contained in the application for state registration of a medicinal product and annexes thereto (hereinafter referred to as registration information), is subject to state protection against disclosure and unfair commercial use. The central executive body implementing the state policy in the field of healthcare is obliged to protect such information from disclosure and to prevent unfair commercial use of such information, as well as to provide free access to all results of preclinical studies and clinical trials of medicinal products on its official website (reports on pre-clinical studies and reports on clinical trials, drawn up in accordance with the form established by the central executive body that ensures public policy-making in the field of healthcare), which constitute open information (para.10). In addition, Para. 16 of Art. 9

252 <https://zakon.rada.gov.ua/laws/show/z0649-21#Text>

253 <https://zakon.rada.gov.ua/laws/show/z0552-21#Text>

254 <https://www.ukrinform.ua/rubric-economy/3257660-urad-zatverdiv-zakonoproekt-pro-ohoronu-geograficnih-brendiv-dla-silgosprodukcii.html>

255 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72136

256 http://search.ligazakon.ua/l_doc2.nsf/link1/T200816.html

257 <https://zakon.rada.gov.ua/laws/show/3687-12#Text>

258 <https://zakon.rada.gov.ua/laws/show/123/96-%D0%B2%D1%80#Text>

stipulates that guilty persons shall be subject to disciplinary, administrative, civil and/or criminal liability for disclosure and/or illegal use of registration information in accordance with the laws of Ukraine. The applicant's reference to the registration information of the reference/original medicinal product and its use in the registration materials submitted by him for the registration of another medicinal product containing the same active substance as the reference/original medicinal product shall not constitute disclosure and unfair commercial use of such information (amendments made in 2020).

Order No. 426 of the Ministry of Health of 26.08.2005 (as amended on 21.08.2020) assigned the State Enterprise State Expert Centre of the Ministry of Health of Ukraine with the duty to ensure the protection of confidential registration information from disclosure and unfair commercial use.²⁵⁹

However, in practice, pharmaceutical companies have repeatedly expressed concern about the growing level of counterfeit and fraudulent medicines, medical devices and medical supplies, as well as the large-scale sales of counterfeit and fraudulent medicines in Ukraine through illegal online pharmacies.

Mechanisms of data protection as related to plant protection products

It aims to ensure that plant protection products meet safety and efficacy requirements before authorising their placing on the market. On January 16, 2021, a group of MPs of Ukraine submitted a draft law on plant protection²⁶⁰ to the Verkhovna Rada of Ukraine. The draft law is currently undergoing review by committees. In general, this draft law complies with the provisions of the relevant EU legislation (Directive 2009/128/EC, Regulation 1107/2009, Regulation 2017/625).

Protection of the rights to topographies of semiconductor products

On September 9, 2019, a new version of the relevant law was adopted in accordance with the provisions of Directive 87/54/EEC with the updated title "On the Protection of Rights to Topographies of Semiconductor Products".²⁶¹ On September 23, 2019, the law was signed by the President of Ukraine. The law meets the requirements of Directive 87/54/EEC. Relevant bylaws are currently being developed to implement the provisions of the above-mentioned Law of the Ministry of Economy.

Protection of designations of origin of alcoholic beverages and their classification in accordance with EU standards

The new version of the Law "On Legal Protection of Geographical Indications" states in the preamble that "Specific aspects of preparation for registration, use and protection of geographical indications concerning... wines, aromatised wine products, and alcoholic beverages, as well as control over such geographical indications are set forth by other laws."²⁶² The Ministry of Economy of Ukraine has drafted the law "On Geographical Indications of Alcoholic Beverages", which was published on January 15, 2021 on the official website of the Ministry for public discussion.²⁶³ In addition, the draft law was sent to a number of public authorities for approval. After obtaining all the necessary approvals and the expert opinion of the State Regulatory Service, the draft law will be submitted to the Cabinet of Ministers of Ukraine for consideration.

Protection of rights to inventions and utility models

In this area, Law of Ukraine No. 816-IX "On Amendments to Certain Legislative Acts of Ukraine Concerning the Reform of Patent Legislation" of 21.07.2020 was adopted.²⁶⁴ The law entered into force on 16.08.2020. With the amendments, the current Law "On Protection of Rights to Inventions and Utility Models"²⁶⁵ generally complies with the relevant provisions of EU law. At the same time, certain articles of the Law are not in line with Regulation (EC) 469/2009: it is necessary to change the terms for submitting an application to extend the duration of certificates of products intended for health and plant protection that are protected by patents, as well as establishment of an extended period of protection of medicinal products and plant protection products for which paediatric research has been carried out. According to Regulation (EU) 469/2009, the relevant application should be submitted no later than two years before the expiration of the certificate. In addition, the law does not take into account certain provisions of the TRIPS Agreement, although Art. 230 of the AA confirms the commitments of the EU and Ukraine in accordance with TRIPS. For instance, Art. 31 of the TRIPS Agreement stipulates that the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the

259 <https://zakon.rada.gov.ua/laws/show/z1069-05>

260 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70832

261 <https://zakon.rada.gov.ua/laws/show/621/97-%D0%B2%D1%80>

262 <https://zakon.rada.gov.ua/laws/show/752-14>

263 <https://bit.ly/3iBTChj>

264 <https://zakon.rada.gov.ua/laws/show/816-20#Text>

265 <https://zakon.rada.gov.ua/laws/show/3687-12#Text>

invention claimed in the first patent. The Law “On Protection of Rights to Inventions and Utility Models” (Art. 30 (2)) states that “the invention (utility model) of the latter is designed to achieve another goal or has significant technical and economic advantages”: that is, there is a discrepancy between the provisions of the draft law and Art. 31 of the TRIPS Agreement on additional conditions for obtaining authorisation for a second patent. In pursuance of the new version of the law, amendments have been made to the relevant by-laws.

Protection of intellectual property rights

Section 3, Sub-section 1-3 of Chapter 9 of the AA (Articles 230 to 252)

Directive 2004/48/EC

Regulation (EU) 608/2013²⁶⁶

Regulation (EU) 1352/2013²⁶⁷

Public system of intellectual property protection

On June 16, 2020, the Verkhovna Rada of Ukraine adopted the Law “On Amendments to Certain Legislative Acts of Ukraine Concerning the Establishment of the National Intellectual Property Authority”, which introduced a two-tier system of state management in the field of intellectual property by creating the National Intellectual Property Office of Ukraine (NIPO), as a legal entity under public law that belongs to the management domain of the Ministry of Economic Development, Trade and Agriculture (Ministry of Economy); with Ministry of Economy ensuring the making and implementation of public policies in the field of intellectual property, while the NIPO performs certain public functions (powers) to implement the relevant state policies (issuance of documents (patents, certificates) protecting intellectual property rights).

On October 13, 2020, the Cabinet of Ministers of Ukraine adopted the Order “On the National Intellectual Property Authority”, which assigned the functions of this Authority to the state enterprise Ukrainian Institute of Intellectual Property (Ukrpatent)²⁶⁸. Also, from October 15, 2020 the collegial bodies of Ukrpatent include: the Appeals Chamber to consider appeals against decisions on granting intellectual property rights, applications for recognition of intellectual property rights fully or partially invalid, applications for recognition of a trademark to be well known in Ukraine; the Commission for coordination of matters relating to inclusion of indications containing the official name of the state “Ukraine” in marks for goods and services; the Certification Commission for attestation of persons intending to acquire the right to engage in the activities of a representative in the field of intellectual property (patent attorney); the Appeals Commission to consider appeals of candidates for the position of intellectual property representatives (patent attorneys) against decisions of the Attestation Commission, as well as to consider complaints about actions of intellectual property representatives (patent attorneys). On February 23, 2021, the Ministry of Economy by its order approved a new version of the Charter of the State Enterprise Ukrainian Institute of Intellectual Property.²⁶⁹

The draft law “On Amendments to Certain Legislative Acts of Ukraine Concerning the Acquisition, Exercise and Protection of Intellectual Property Rights” (No. 2659)²⁷⁰ is pending consideration in the committees of the Verkhovna Rada of Ukraine. It aims to provide an effective legal mechanism for the acquisition, exercise and protection of intellectual property rights in Ukraine, ensuring a reasonable balance of rights and legitimate interests of the creators of intellectual property, other right holders and persons using this property, promoting the development of creative activities in the literary, scientific, technical and other fields and commercialization of the results of such activities in accordance with EU standards.

The Verkhovna Rada adopted the Law of Ukraine “On Amendments to the Customs Code of Ukraine with Regard to Protection of Intellectual Property Rights during Movement of Goods Across the Customs Border of Ukraine” of October 17, 2019,²⁷¹ which entered into force on 11.11.2019 and aims to prevent the movement of counterfeit and pirated goods across the state border of Ukraine. The law generally complies with the provisions of EU acquis, except for one remark concerning the definition of counterfeit goods.

In the system of protection measures, special attention should be given to the creation of the High Court of Intellectual Property (or IP Court) by the Decree of the President of Ukraine of 29.09.2017.²⁷² It is supposed to be the court of first instance to consider a wide range of disputes related to the protection of intellectual property rights in

266 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013R0608>

267 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1352>

268 <https://ukrpatent.org/uk/articles/about>

269 <https://ukrpatent.org/atachs/ukrpatent-statut-2021.pdf>

270 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67749

271 <https://zakon.rada.gov.ua/laws/show/202-20>

272 <https://www.president.gov.ua/documents/2992017-22722>

accordance with the rules of commercial litigation. In addition, Ukraine has adopted a new version of the Commercial Procedure Code, establishing the procedure for resolving disputes in the newly created IP Court, and Order No. 929 of the State Judicial Administration of Ukraine “On Determining the Number of Judges in the High Court of Intellectual Property” of 30.09.2017.²⁷³ On September 30, 2017, a competition for the positions of judges of the High Court was announced, which is still ongoing.²⁷⁴ On February 13, 2020, the state registration of the newly created legal entity – i.e. the High Court of Intellectual Property was carried out, of which entry was made in the United State Register of Legal Entities, Individual Entrepreneurs and Public Organisations of Ukraine.²⁷⁵ In addition, other measures are being taken to ensure that the necessary steps are taken for the proper functioning of the Court and representation of this Court as a public authority in relations with other public authorities, local self-government bodies, individuals and legal entities.

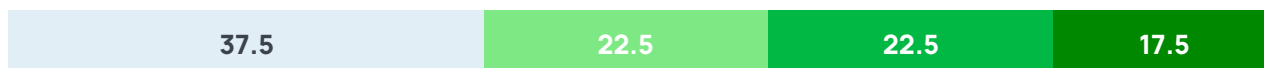
273 https://dsa.court.gov.ua/userfiles/file/DSA/DSA_2017_all_docs/17ordersmarch/N_929.pdf

274 <https://vkksu.gov.ua/ua/konkurs-do-wierchownogo-sudu/konkurs-do-wishtchogo-sudu-z-pitan-intieliektualnoi-wlasnosti/>

275 <https://court.gov.ua/press/news/889183/>

COMPETITION

Experts: Olha Kulyk



not started early stage advanced perfect critical non-conformity

The fulfilment of commitments in the field of anti-competitive practices and mergers is aimed at ensuring free and undistorted competition in trade relations. Anti-competitive business practices and transactions have the potential to distort the proper functioning of markets and generally undermine the benefits of trade liberalisation. Therefore, Ukraine and the EU agree that the practices and transactions specified in Article 254 of the Association Agreement are inconsistent with this Agreement, in so far as they may affect trade between the Parties.

Ukraine has undertaken to implement the following EU acquis into national legislation:

1. Article 30 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.
2. Articles 1 and Article 5(1) and (2) and Article 20 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EU Merger Regulation).
3. Articles 1, 2, 3, 4, 6, 7 and 8 of Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.
4. Articles 1, 2, 3, 4, 5, 6, 7 and 8 of Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81 (3) of the Treaty to categories of technology transfer agreements.

In the area of "State Aid", Ukraine should build an institution for monitoring and control of state aid, minimize the influence of governments on competition between economic operators and trade between the parties to the Association Agreement. As a result, approaches to the provision of state support and aid to economic operators need to be changed.

In the EU, state aid to economic operators is considered inadmissible under the Treaty on the Functioning of the European Union (TFEU). But this does not mean that EU member states cannot help their economic operators. State aid is granted but only in exceptional cases where the purpose of the state aid provision (the purpose of the costs/loss of revenue incurred by the state) coincides with the objectives set out in Article 107 (2) and (3) of the TFEU, and only following the approval of such aid by the European Commission in accordance with Article 108 of the TFEU.

At the same time, state aid is limited in time, forms of its provision, amount, etc.

Similar principles should be implemented in national legislation and used by all state aid providers at various levels with the AMCU as the supervisory authority.

Anti-competitive practices and mergers

Article 255 of the Association Agreement

Council Regulation (EC) 1/2003 of December 16, 2002²⁷⁶

Council Regulation (EC) 139/2004 of January 20, 2004²⁷⁷

Article 106 of the Treaty on the Functioning of the EU

Article 256 of the Association Agreement

Commission Regulation (EU) 330/2010 of April 20, 2010²⁷⁸

Commission Regulation (EC) 772/2004 of April 27, 2004²⁷⁹

Article 257 of the Association Agreement

Article 258 of the Association Agreement

In the period from 2014 to 2019, part of the relevant EU acquis were implemented (partially fulfilled or fully fulfilled commitments). Aspects of implementation were described in more detail in the study “Ukraine and the Association Agreement. Implementation Monitoring 2014–2019” by the Ukrainian Centre for European Policy.²⁸⁰

Approximation of legislation. On January 14, 2020, the Verkhovna Rada of Ukraine registered draft law No. 2730 “On Amendments to Certain Laws of Ukraine with Regard to Competition and Antitrust Reform”. The key areas to be changed include:

- Building of the Institute of Accountability of the Antimonopoly Committee of Ukraine to the Verkhovna Rada of Ukraine;
- Establishing the grounds for inspections of economic operators and organisations by the bodies of the Antimonopoly Committee of Ukraine;
- Introduction of the legal mechanism of dispute settlement between the bodies of the Antimonopoly Committee of Ukraine and economic operators in competition cases;
- Establishing the procedure and grounds for exemption of participants in anti-competitive concerted actions if they voluntarily come forward and cooperate with the Committee (Leniency);
- Judicial reform in the field of competition. Establishment of a specialised court;
- Increasing the amount of the fees related to the consideration of petitions concerning concentration and concerted actions and applications for provision of expert opinions by the bodies of the Antimonopoly Committee of Ukraine;
- Granting equal powers to impose fines for violations of competition law to the collegial bodies of the Antimonopoly Committee of Ukraine.

The provisions of the draft law are mostly in line with the provisions of the relevant EU acquis.

On January 31, 2021, two alternative draft laws No. 2730-1 and No. 2730-2 were registered in the Verkhovna Rada of Ukraine, which, compared to the main one, to a lesser extent implement the provisions of the relevant EU acquis. At the same time, the draft laws contain a number of inaccuracies that in the process of law enforcement will create conditions for ambiguous interpretation of its provisions, enable avoidance of liability for certain actions, or make it complicated for the AMCU to apply the law.

On July 13, 2021, draft law No. 5431 “On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of the Activities of the Antimonopoly Committee of Ukraine” was adopted in the first reading. According to the explanatory note, the draft law: “provides for the reform of legislation on protection of economic competition, and, hence, improving the work of the Antimonopoly Committee of Ukraine, which aims to enhance the development and protection of economic competition, improving public policy protection of economic competition, strengthening the institutional capacity of the Antimonopoly Committee of Ukraine; and has been developed taking into account the requirements of Article 256 of the Association Agreement.”

The proposed changes are in line with the EU acquis. At the same time, the proposed amendments to Article 36 of the Law of Ukraine “On Protection of Economic Competition” give the AMCU the right not to initiate proceedings on applications of economic operators, citizens, associations, institutions, organisations, petitions of public authorities, local governments, bodies of administrative and economic management and control, if the signs of infringement of the legislation on protection of economic competition specified in the application does not correspond to the priorities of work established by the Antimonopoly Committee of Ukraine.

²⁷⁶ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32003R0001>

²⁷⁷ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R0139>

²⁷⁸ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010R0330>

²⁷⁹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004R0772>

²⁸⁰ https://ucep.org.ua/wp-content/uploads/2021/01/zvit_5_2020_web_FINAL_2.pdf

That is, conditions are created for selective consideration of applications and cases of infringement of the legislation on protection of economic competition by the AMCU, which undermines the ability of applicants to protect their rights using the mechanisms of the legislation on protection of economic competition.

At the same time, the draft law provides for the right of the AMCU to inspect economic operators, associations, authorities, local self-governments, administrative and economic management and control bodies if there are signs of violation of the legislation on protection of economic competition in order to collect evidence of violation; in addition, based on decisions of the commercial court, the AMCU can search the places of residence and other property of individuals and legal entities, if there are sufficient grounds to believe that there is information related to the economic operator and violation of the legislation on protection of economic competition in these places. That is, the AMCU is granted the rights of law enforcement agencies. It should be mentioned that should an individual refuse to provide access to the place of residence and other property, it is the economic operator, rather than the specified individual, that will incur penalty in the amount of up to 1% of the income (revenue) of the business entity for the sale of its products (goods, work, services) for the last reporting year preceding the year when the fine is imposed.

The AMCU will also have the right to serve a writ ordering to provide explanations related to the consideration of cases. Should officials, employees and representatives of economic operators fail to appear at the AMCU to provide explanations concerning the consideration of a case of violation of economic competition law, this offence is finable for the economic operator in the amount of up to 1% of its income (revenue) from the sale of products (goods, work, services) for the last reporting year preceding the year when the fine is imposed.

The draft law also contains a number of other no less significant amendments.

As regards practical implementation in the field of anticompetitive actions, no significant progress was made in 2020-2021.

State aid

To achieve the goals in the field of state aid, Ukraine must fulfil the tasks that fall into two categories:

1. Adoption of national legislation on state aid, consisting of the Law of Ukraine “On State Aid to Undertakings” and by-laws that will make it possible to enact Articles 262, 263 (3) or 263 (4) of the Association Agreement, using the criteria arising from the application of Articles 106, 107 and 93 of the Treaty on the Functioning of the European Union as a source for interpreting legislation, in particular the relevant judicial practice of the Court of Justice of the European Union and relevant regulations, framework provisions, guidelines and other applicable administrative acts of the Union, and by drawing up a state aid map in accordance with the relevant EU guidelines;
2. Practical application of state aid legislation.

Approximation of legislation in relation to this commitment varies, depending on the task and measures.

At present, Ukraine has adopted national legislation in the field of state aid, which does not fully implement the EU acquis.

In 2014, the Law of Ukraine “On State Aid to Undertakings” was adopted, which entered into force in full on August 2, 2017.

It is a framework law, which establishes certain exemptions from its scope that are not fully in line with the requirements of the relevant EU acquis. It should be mentioned that in 2020 and the first half of 2021 these exemptions were expanded. Additional exemptions currently apply to:

- projects implemented by the Ukrainian Cultural Foundation in the manner prescribed by the Law of Ukraine “On the Ukrainian Cultural Foundation”;
- projects implemented by the Ukrainian Book Institute in the manner prescribed by the Law of Ukraine “On State Support of Book Publishing in Ukraine”;
- projects implemented by the Ukrainian Youth Fund, in the manner prescribed by the Law of Ukraine “On Main Principles of Youth Policy”.

As of today, the Cabinet of Ministers has partially adopted the relevant by-laws, including:

- Resolution No. 420 of the Cabinet of Ministers of 23.05.2018, approving the list of services of general economic interest (hereinafter referred to as SGEI);
- Resolutions of the Cabinet of Ministers of Ukraine on the criteria for assessing the admissibility of state aid of the following categories of state aid:
 1. regional development;
 2. support for medium and small businesses;
 3. professional training of employees;
 4. employment of certain categories of employees and creation of new jobs;
 5. rescue and restructuring firms in difficulty;
 6. research, technical development and innovation;
 7. overcoming the consequences of the coronavirus disease COVID-19;
 8. to undertakings in the coal sector.

As regards the **practical application** of legislation on state aid during the period from November 2020 to the first half of 2021, the AMCU developed and conducted a public discussion of 3 draft acts:

- the draft law of Ukraine “On State Aid to Undertakings”, which does not fully comply with the commitments under the Association Agreement (in particular, regarding the right to evaluate individual state aid programmes and measures initiated by the President, Parliament and Government); in certain cases, it lays down stricter provisions than required by the Agreement and contains a number of inaccuracies that do not contribute to legal certainty in the application of the law, if adopted. At the same time, the advantages of this draft law include resolving the issue of the possibility of assessing the categories of state aid that are not covered/will be covered by horizontal and sectoral criteria, resolving the issue of designating the relevant measures as services of general public interest, addressing the under-implementation of EU acquis as regards returning wrongfully provided state aid, etc;
- Draft Law of Ukraine “On Amendments to Certain Laws of Ukraine Concerning Their Alignment with the Law of Ukraine ‘On State Aid to Undertakings’”, which amends 33 sectoral/special Laws of Ukraine, supplementing them with pre-emptive norms with regard to the fact that any state aid to undertakings should be provided in accordance with the Law of Ukraine “On State Aid to Undertakings”;
- draft resolution of the Cabinet of Ministers of Ukraine “On Approval of Criteria for Assessing the Admissibility of State Aid to Undertakings to Support Culture and Cultural Heritage”, which actually implements part of Commission Regulation (EU) 651/2014 of 17.06.2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, concerning the promotion of culture and the preservation of cultural heritage. It should be noted that this Regulation determines categories of aid that are exempted from the requirement to notify the European Commission of state aid to undertakings. That is, the Regulation establishes the categories of state aid that may be exempted from the notification requirement and do not require prior assessment.

As of now, the following acts have not been implemented:

- Guidelines 2014/C 200/01 on State aid for environmental protection and energy;
- Communication 2013/C 332/01 from the Commission on State aid for films and other audiovisual works;
- Communication from the Commission 2013/C 25/01 EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks;
- Communication from the Commission 2009/C 257/01 on the application of State aid rules to public service broadcasting;
- Communication from the Commission 98/C 39/02 on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services;
- Commission Communication 2017/C 120/03 updating the Annex to Commission Communication C (2004) 43;
- Community guidelines on State aid to maritime transport;
- Communication from the Commission 2009/C 132/06 providing guidance on State aid to ship management companies;

- Communication from the Commission 2008/C 317/08 providing guidance on State aid complementary to Community funding for the launching of the motorways of the sea;
- Communication from the Commission 2008/C 184/07 Community guidelines on State aid to railway undertakings;
- Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail²⁸¹;
- Communication from the Commission 2014/C 99/03 Guidelines on State aid to airports and airlines.

Thus, so far, the relevant EU acquis have not been fully transposed into the national legislation of Ukraine.

It is important to note that with the change in the political and economic development of the EU, in particular due to the adoption of the Commission Communication on the European Green Deal in December 2019, the European Commission has launched a procedure to amend a number of documents setting forth approaches to assessing state aid. For example, public consultations are currently underway as regards revision of the Guidelines on State Aid for Environmental Protection and Energy. To account for the growing importance of climate protection, the revised guidelines will be entitled “Climate, Energy and Environmental State Aid Guidelines.” The EU has declared that the ambitions set out in the Communication will require significant investments, including in renewable energy sources. According to the Commission, “achieving the newly increased 2030 climate and energy targets will require EUR 350 billion of additional annual investment compared to the amounts in 2011-2020, with further EUR 130 billion a year for the other environmental objectives estimated earlier”. The scale of this investment challenge requires the mobilization of both the private sector and public funds in a cost-effective manner. This will affect all sectors and, consequently, the economy of the Union as a whole.

The leadership of our state has repeatedly supported the idea of joining the European Green Deal. However, the European Green Deal could lead to higher taxes on industrial products due to the introduction of a carbon border adjustment tax on exports of goods to Europe. Therefore, Ukraine already needs to repurpose its state aid provision. And the AMCU will need to review the acts and regulations governing the oversight and control of state aid.

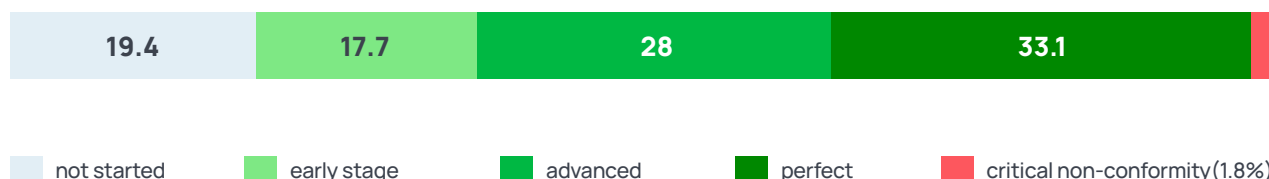
281 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R2338>

TITLE V

ECONOMIC AND SECTOR COOPERATION

ENERGY

Experts: Bohdan Serebrennikov (Electricity, Renewable energy sources)
Dmytro Naumenko (Gas, Energy Efficiency, Energy regulator)
Hennadii Riabtsev (Prospection, exploration for and production of hydrocarbons, Oil and petroleum products, Energy infrastructure and security of supply)
Olha Kosharna (Nuclear power)



Electricity

The electric power industry is an essential sector of Ukraine's economy aiming to provide consumers with reliable, high-quality, environmentally and climate-friendly and economically affordable electricity supply. The key problems of the sector include the suboptimal structure of generating capacities and worn-out infrastructure. There is a lack of high-maneuvring generation capacities and a developed network infrastructure, which, inter alia, hinders the development and integration of renewable energy sources (RES) into the energy system. The sector requires significant investment in modernization and development with a focus on environmentally and climate-friendly technologies and "smart" systems.

The electricity market, although reformed in line with some of Ukraine's international commitments, is still highly concentrated, uncompetitive, vulnerable to actions of large players, fluctuations in supply and demand, fuel supply, and seasonal factors. Currently, the National Energy and Utilities Regulatory Commission (NEURC) performs frequent, even though non-regular, regulatory interventions to normalize the work and conditions in the market, maintain liquidity and competitiveness of its segments, counter the abuse of market power by its participants, etc.

Commitments in the area of "Electricity" involve achieving the following general objectives:

1. functioning of an open, competitive and transparent electricity market;
2. integration of the energy systems and markets of Ukraine and continental Europe (ENTSO-E);
3. ensuring the appropriate level of reliability of electricity supply;
4. promoting the development and integration of RES into the energy system and the market.

Ukraine's commitments to reform the internal electricity market primarily focus on the provisions of four basic EU documents:

- [Directive 2009/72/EC](#) of 13 July 2009 concerning common rules for the internal market in electricity²⁸²;
- [Regulation \(EC\) 714/2009](#) of 13 July 2009 on the conditions of access to the network for cross-border exchanges in electricity²⁸³;
- [Regulation \(EU\) 1227/2011](#) of October 25, 2011 on wholesale energy market integrity and transparency²⁸⁴;
- [Directive 2005/89/EC](#) of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment.²⁸⁵

²⁸² <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0072>

²⁸³ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009R0714>

²⁸⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011R1227>

²⁸⁵ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32005L0089>

In addition, the AA envisages cooperation to integrate Ukraine's energy system into the European ENTSO-E system, ensuring their synchronised operation for the development of competition, cross-border trade in electricity and ancillary services, increasing the reliability of electricity supply. To ensure the transparency of integrated markets, Ukraine must comply with the provisions of Regulation (EU) 543/2013 of 14 June 2013 on submission and publication of data in electricity markets. It is also necessary to comply with the requirements of Regulation (EU) 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.

The **legislation** necessary for the reform of the domestic electricity market in the framework of international commitments (primarily the provisions of Directive 2009/72/EC and Regulation (EC) 714/2009), was adopted in 2017 and 2018. In particular, in April 2017, the framework Law of Ukraine “On the Electricity Market” was adopted,²⁸⁶ laying the foundation for the introduction of a new model of competitive market, creation of new market players, and development of secondary legislation.

In March 2018, the Regulator (NEURC) approved a package of framework secondary legislation:

- Rules of the day-ahead market and the intraday market²⁸⁷;
- Market rules²⁸⁸ (regulating the work of the balancing market and ancillary services market);
- Rules of the retail electricity market²⁸⁹;
- Transmission system code²⁹⁰;
- Distribution system code²⁹¹;
- Code of commercial accounting procedures for electricity²⁹².

Also, in August 2018, the Ministry of Energy approved the Rules on Security of Electricity Supply,²⁹³ in compliance with the provisions of Directive 2005/89/EC.

Pursuant to Regulation (EU) 543/2013, in June 2018 the NEURC approved the Procedure for Collection and Submission of Data on the Functioning of the Electricity Market for Publication on the ENTSO-E Transparency Platform,²⁹⁴ establishing the mandatory data sets required for the efficient functioning of the market as well as the procedure for data collection, publication, and submission to the ENTSO-E transparency platform.

During 2020 and the first half of 2021, numerous changes were made to the adopted relevant legislation aimed at addressing the distortions and “failures” of the new market model that transpired during its operation.

In addition, in pursuance of the provisions of Regulation (EC) 714/2009 in April 2020, the Regulator approved the Rules for the Management of Restrictions and the Procedure for Capacity Allocation at Interconnections,²⁹⁵ which are necessary to regulate the access of market players to the network of cross-border exchanges in electricity.

According to the requirements of Directive 2009/72/EC and Regulation (EC) 714/2009, for NPC Ukrenergopro to pass certification as a transmission system operator according to the ISO Independent System Operator model, in April 2021, a number of amendments were made to the legislation²⁹⁶ in order to resolve disputes over the company's ownership of electrical networks that prevented it from pursuing certification according to the Ownership Unbundling.²⁹⁷ In addition, the above amendments will allow Ukrenergopro PJSC to join the ITC mechanism²⁹⁸ and to introduce joint auctions for cross-border capacity allocation at interconnections between Ukraine and the neighbouring ENTSO-E zones.

There has been also some moderate progress in adopting legislation to implement the provisions of Regulation (EU) 1227/2011 (REMIT)²⁹⁹. At the same time, this area of market reform is lagging behind. As of June 2021, a draft law on amendments to certain laws of Ukraine to prevent abuse in the wholesale energy markets³⁰⁰ is pending consideration by the relevant committee of the Verkhovna Rada of Ukraine.

286 <https://zakon.rada.gov.ua/laws/show/2019-19#Text>

287 <https://zakon.rada.gov.ua/laws/show/v0308874-18#Text>

288 <https://zakon.rada.gov.ua/laws/show/v0307874-18#Text>

289 <https://zakon.rada.gov.ua/laws/show/v0312874-18#Text>

290 <https://zakon.rada.gov.ua/laws/show/v0309874-18#Text>

291 <https://zakon.rada.gov.ua/laws/show/v0310874-18#Text>

292 <https://zakon.rada.gov.ua/laws/show/v0311874-18#Text>

293 <https://zakon.rada.gov.ua/laws/show/z1076-18#Text>

294 <https://zakon.rada.gov.ua/laws/show/v0459874-18#Text>

295 <https://zakon.rada.gov.ua/laws/show/v0763874-20#Text>

296 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70977

297 <https://zakon.rada.gov.ua/rada/show/v0714874-21#Text>

298 Inter-Transmission System Operator Compensation

299 REMIT - Regulation on Wholesale Energy Market Integrity and Transparency (Положення про доброчесність та прозорість оптового ринку енергоресурсів).

300 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71559

The **practical implementation** of the commitments is close to advanced. In 2019, a new model of the competitive electricity market was introduced. Specifically, a new model of the retail market was launched on January 1, 2019, and a wholesale model was launched on July 1, 2019. Before the launch of the new market model, monopolistic activities (transmission, distribution) were separated from competitive ones (production, supply).

The following segments currently operate in the wholesale market:

- bilateral contracts market (BCM);
- day-ahead market (DAM);
- intraday market (IDM);
- balancing market (BM).

The ancillary services market (ASM) has also been launched with some delay.

The DAM and IDM are organised market segments, and for their administration a special entity was created in June 2019 – i.e. SE Market Operator, which is responsible for organising the purchase and sale of electricity in these segments. The functions of the BM and DAM operator are performed by NPC Ukrenergo,³⁰¹ which also performs the functions of the transmission system operator (TSO). Despite the requirement to certify the TSO, NPC Ukrenergo has not yet passed this procedure, which, inter alia, serves as an obstacle to the integration of energy systems and markets of Ukraine and ENTSO-E member countries.

One of the biggest market distortions is the PSO mechanism, which the government uses for political reasons to maintain low non-market electricity prices for households. The PSO commodity model significantly reduces market liquidity and competitiveness, removing most of the nuclear (about 50% of NPP production) and hydro power (about 30% of HPP and PHES production) from the market, as well as distorting charging in wholesale and retail market segments.

At the same time, all market segments are uncompetitive and tightly regulated. On the BCM, electricity is sold by state-owned generating companies at regulated auctions. On the DAM, IDM and BM, the Regulator sets upper and/or lower price caps. Also in 2021, in order to normalize the market and price environment, the Regulator introduced a package of restrictions on the trading activities of certain groups of wholesale market participants (producers, traders, suppliers) in its various segments.

Cross-border capacity allocation is transparent and complies with the Procedure for Allocating Cross-Border Capacity at annual, monthly and daily auctions operated by NPC Ukrenergo. At the same time, during 2020 and the first half of 2021, foreign trade in electricity was tightly regulated. In particular, the NEURC has repeatedly restricted the import of electricity from countries that are not members of the EnC.

According to the legislation on security of electricity supply, the relevant monitoring report of the Ministry of Energy must be approved annually, published once every two years, and submitted to the EnC Secretariat. The Ministry of Energy published its latest report for 2019³⁰² and delays the relevant publication for 2021.

In terms of preparing for the integration of Ukraine's energy system into the ENTSO-E system, the measures (reconstruction and modernization of networks and supervisory systems, testing of power units, etc.) included in the relevant Catalogue of measures are generally carried out as scheduled. Technical integration and launch of synchronised operation of power systems is planned for 2023. At the same time, the implementation of the conditions of Regulation (EU) 543/2013 is still fragmentary, as not all data sets envisaged by this Regulation are submitted by NPC Ukrenergo and published on the transparency platform ENTSO-E. In particular, there are no data on the generation capacity reserve forecast for the year ahead, unavailability of transmission infrastructure and power units, countertrade, balancing, etc.³⁰³ Also, NPC Ukrenergo still has not acceded to the joint ITC mechanism operating in the ENTSO-E countries.

301 https://ua.energy/uchasnikam_rinku/auksiony/

302 http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245509253&cat_id=245131779

303 <https://transparency.entsoe.eu/dashboard/show>

Renewable energy sources

Ukraine undertook the commitment to develop RES in 2011 by becoming a member of the EnC. In the Association Agreement, the commitments to implement the provisions of the basic Directive in the field of RES (2009/28/EC) were included at the end of 2018 after Annex XXVII was updated.

Directive 2009/28/EC is a framework EU document that lays down the goals of RES development and incentives for their production. The key requirement is the commitment for EU Member States to achieve the specified national targets as regards 1) the share of RES in final energy consumption, electricity generation, heating/cooling and 2) the share of RES in transport.³⁰⁴ Overall, the EU plans to achieve a share of RES of at least 32% in final consumption by 2030,³⁰⁵ while by 2050, under the Green Deal policy, the share of RES must increase even more to achieve the goal of climate neutrality. In addition to setting the objectives related to RES and the rules for their statistical accounting, the Directive specifies guarantees of origin of RES, the relevant administrative procedures, conditions for access to networks, etc.

Ukraine's commitments include the implementation of a number of measures:

- creation of a system for planning and stimulating the development of RES, including setting of objectives;
- introduction of target-specific schemes to support energy production from RES;
- ensuring transparent and non-discriminatory access to networks;
- introduction of administrative procedures necessary for the development of RES markets;
- stimulating the use of fuels from RES in transport by legislating technical requirements for the production and use of biofuels and bioliquids reducing greenhouse gas emissions; fuel labelling, consisting of its name, grade, ecological class and content of biocomponents, and entering of such data in calculation documents; developing a stable and predictable policy to stimulate the use of RES, and attracting investment.

Approximation of legislation is “advanced.” Since 2014, Ukraine has been planning RES development at the national level, producing renewable energy action plans.³⁰⁶ Currently, the concept of an action plan until 2030 is being prepared.³⁰⁷ The key indicator of the effectiveness of Ukraine's Energy Strategy until 2035³⁰⁸ is the share of RES in the total primary energy supply: 17% by 2030 and 25% by 2035; in electricity generation: more than 13% by 2030 and more than 25% by 2035.

At the same time, there is a delay in approving the Integrated National Energy and Climate Plan until 2030 (NECP), the draft of which is currently pending consideration by the Ministry of Energy. If approved, it, inter alia, should serve as the basis for revision of Ukraine's Energy Strategy until 2050.

The first scheme to support renewable energy production in Ukraine was introduced in 2009 as “green tariffs”³⁰⁹ – i.e. legislatively fixed prices for the purchase of electricity³¹⁰ produced from RES.

In April 2019, a new scheme of state support for RES was approved, which is to replace the mechanism of “green” tariffs.³¹¹ Producers will compete in auctions to get a preferential price for the sale of “green” electricity. In December 2019, the government approved the resolution “On the Introduction of Competitive Conditions to Stimulate Electricity Production from Alternative Energy Sources,”³¹² which are to be organised and conducted by the Guaranteed Buyer.

In the field of RES in transport:

- the requirements for maintaining the state register of economic operators engaged in economic activity in the field of production, storage and placing on the market of liquid biological fuels and biogas have been abolished;
- operations of importing vehicles equipped exclusively with electric motors into Ukraine are exempted from value added tax until January 1, 2023;
- a law was passed to create access to the infrastructure of charging stations for electric vehicles,³¹³ aiming to address issues of the development of electric charging infrastructure and incentives for the use of electric vehicles in Ukraine.

³⁰⁴ For example, the Directive sets a mandatory target for all Member States that the share of energy from RES in the form of biofuels, electricity and hydrogen should be at least 10% of total fuel consumption in the transport sector by all types of vehicles by 2020.

³⁰⁵ https://www.energy-community.org/dam/jcr:a70ca2dc-6043-4dbd-8cca-84b755efc71d/PG_2030_Targets_112018.pdf

³⁰⁶ <https://zakon.rada.gov.ua/laws/show/902-2014-%D1%80#Text>

³⁰⁷ <https://bit.ly/387svIX>

³⁰⁸ <https://zakon.rada.gov.ua/laws/show/605-2017-%D1%80#Text>

³⁰⁹ Approved by Law of Ukraine No. 601-VI “On Amendments to Certain Laws of Ukraine Concerning the Establishment of a ‘Green Tariff’” of September 25, 2008.

³¹⁰ In addition to fixing the size of the price (tariff), its amount was set in euros in order to protect RES investment projects from exchange rate fluctuations.

³¹¹ Law of Ukraine No. 2712-VIII of April 25, 2019 applies to wind power plants with a capacity of more than 5 MW and solar power plants with a capacity of more than 1 MW.

³¹² <https://zakon.rada.gov.ua/laws/show/1175-2019-%D0%BF#Text>

³¹³ Law of Ukraine of July 11, 2019 No. 2754-VIII.

Three national standards “Sustainability criteria for the production of biofuels and bioliquids for energy use. Principles, criteria, indicators and means of certification” (parts 2-4 of DSTU EN 16214: 2017) have been adopted by the method of endorsement. The Technical Regulations on the requirements for petrol, diesel, marine and boiler fuels provide for the labelling of fuel, consisting of its name, grade, environmental class and content of biocomponents. At the same time, there is no proper infrastructure (institutional, personnel and financial support) in Ukraine to meet most of the requirements of European legislation.

In response to the critical financial and technical problems that arose in the electricity market of Ukraine in connection with the rapid development of RES during 2019-2020, as well as the relatively high rate of the “green” tariff, in July 2020 the Verkhovna Rada adopted Law of Ukraine No. 810-IX “On Amendments to Certain Laws of Ukraine to Improve the Conditions for Supporting the Production of Electricity from Alternative Energy Sources”.³¹⁴ This law involves a retroactive reduction of green tariff rates, acceleration of the introduction of financial liability of RES producers for imbalances, restructuring of debts to RES producers, etc.

In December 2020, the NEURC adopted a resolution on changes to the Market Rules³¹⁵ aimed to address the matter of compensation for curtailed electricity to RES producers in the case of complying with the dispatcher’s command to reduce the load, which came into force on January 1, 2021. The resolution sets forth the mechanism for reimbursement for the electricity non-produced by a producer selling electricity at a “green” tariff or auction price in compliance with the TSO’s commands and the method of calculating its volume (Appendix 8 to the Market Rules).

Given the significant lop-sidedness in the development of various types of RES in Ukraine (with SES prevailing), in June 2021 the State Agency on Energy Efficiency developed and submitted to the CMU a draft law on introducing a single solid biofuel trading system in order to support the development of bioenergy by creating a transparent and competitive market for solid biofuels.

In accordance with the commitments to guarantee the origin of electricity from RES, the Ministry of Energy is currently working on drafting a resolution of the Cabinet of Ministers to establish a procedure for issuing and using renewable energy guarantees of origin. Also, in order to eliminate the existing financial imbalances in the electricity market, work is underway to prepare a regulatory framework for the introduction of a new mechanism for state support for RES via contracts for difference (feed-in premium).

The **practical implementation of the commitments** manifested itself in the record growth of installed RES capacity during 2019-2020.³¹⁶ According to the State Statistics Service, the share of renewable energy sources in the total primary energy supply (TPES) in 2019 was 4.9%.³¹⁷ In 2019, the share of energy produced from RES, including large hydropower plants, amounted to 8.1% of the final energy consumption in the country, including: 10.9% in the electricity sector; 9% in heating systems; and 3.1% in transport.³¹⁸

However, the rapid commissioning of RES capacities in 2019-2020, especially large PV coupled with the launch of a new model of the electricity market has led to the inability of the state (SE Guaranteed Buyer) to pay RES producers at the fixed “green” tariff. In July 2020, after negotiations between the state and the owners of “green” power plants, a compromise law (No. 810-IX) was adopted,³¹⁹ reducing the “green” tariff for the PV put into operation before 2020 from 10 to 15%, for wind farms by 7.5%, and for both types of power plants put into operation after 2020 the reduction will be an additional 2.5%. Also, all new PV with a capacity of more than 1 MW put into operation after August 1, 2020, will be able to do so only through the auction mechanism, and from 2022 all RES producers will bear full financial liability for imbalances between actual electricity production schedules and electricity production forecast. The acceptable forecast error will be 10% for wind farms and 5% for PV.

According to the memorandum with RES electricity producers and Law No. 810-IX of July 21, 2020, the government has undertaken to make provision in the annual budget for financial support to the State Enterprise Guaranteed Buyer for it to make settlements with RES producers. The support should be set at at least 20% of the cost of the projected volume of RES-generated electricity for the relevant year based on the NEURC’s estimates. At the same time, the budget for 2021 fails to include such expenditures. There are still outstanding debts to RES producers for 2020 and 2021. According to the State Enterprise Guaranteed Buyer, in May the debt owed by NPC Ukrenergo to it (as the source of payments under the “green” tariff) amounted to UAH 15.8 billion (including UAH 4.2 billion for 2021, and UAH 11.6 billion for 2020).

Despite the fact that in 2020 the Ministry of Energy introduced annual quotas to support renewable energy with a total capacity of 365 MW, which was to be distributed at auctions, no auction has taken place in 2020 and the first half of 2021.

314 <https://zakon.rada.gov.ua/laws/show/810-20#n112>

315 <https://zakon.rada.gov.ua/laws/show/v2818874-20#Text>

316 <https://ua.energy/vstanovlena-potuzhnist-energosityemy-ukrayiny/>

317 http://ukrstat.gov.ua/operativ/operativ2020/energ/drpeb/EBTS_2020_ua.xls

318 <https://sae.gov.uk/news/3620>

319 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69138

When dispatching the installed generating capacity, the TSO gives preference to RES producers, provided that operational safety is observed. At the same time, due to the lack of manoeuvring generating capacity in the power system to balance the supply and demand, in 2020-2021 the TSO has repeatedly applied control restrictions on electricity production from RES. Compensation for electricity from RES that was not produced due to such restrictions is paid as a load reduction service, but only to the producers who have entered into the public contract for load reduction and are connected to the RES Restriction Management System.³²⁰

Gas

The gas sector plays a key part in the structure of Ukraine's energy sector and the commitments under the Association Agreement, given its traditionally important role for the national industry as a raw material (e.g., in the chemical industry) and energy source (in all other industries). But natural gas plays an even more critical role for households, as it is the key energy source for the private sector and in city heating systems.

Ukraine also plays a special role for the EU as the key transit country for Russian natural gas to European consumers, with a powerful system of main gas pipelines and underground gas storage facilities, which allows not only to transport pre-contracted volumes of gas, but also to serve as an operational tool to cover peak demand seasons (thanks to storage facilities that make it possible to accumulate and quickly supply large volumes of gas back to the network).

The reform of the gas market, involving its reorganisation in accordance with EU standards and practices, has become one of Ukraine's most striking European integration successes in recent years, but its completion and full integration of the domestic gas sector into the EU gas market is blocked by deliberate politically-motivated market distortions in Ukraine (maintaining monopolies in the wholesale and retail segments, artificially curbing fluctuations in gas prices for household) and the EU's vague stance on Ukraine's transit corridor, the future of which is currently largely uncertain due to the progress in constructing alternative Russian pipelines (including Nord Stream 2 and Turkish Stream 2).

Commitments under the Association Agreement involve the implementation by Ukraine of the requirements of the EU's Third Energy Package, which with regard to the gas sector is based on the requirements of the so-called Gas³²¹ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and a number of supplementary regulations and directives governing specific matters of gas market participants' access to gas transmission networks, tariff mechanisms, capacity allocation and balancing, interoperability and data exchange rules in gas transmission networks, etc.

The key objectives of the implementation of the European regulations in the gas sector by Ukraine include separation of vertically integrated monopolies by way of separating gas transportation activities from other activities such as production, supply, etc. (i.e. unbundling);³²² ensuring non-discriminatory and transparent conditions of gas market participants' access to the gas transmission system (hereinafter referred to as the GTS) of Ukraine, harmonisation of GTS operation rules with those of similar EU systems, as well as safeguarding competition in the wholesale and retail segments of the gas market.

Gas market organisation

Implementation of the requirements of Directive 2009/73/EC involves radical restructuring of the national gas market based on a competitive model of interaction among its players and introducing an entire regulatory sector focusing on the rules of GTS operation (gas transmission and distribution systems) and non-discriminatory access for market players.

The changes required at the level of national legislation were introduced mainly in the period from 2016 to 2019, after in April 2015 the framework Law "On the Natural Gas Market"³²³ was approved. As of today, the energy regulator NEURC has created a major block to the drafting of by-laws concerning the rules of operation of the GTS of Ukraine and regional gas distribution networks (i.e. relevant codes), tariff methodologies and contractual framework in the field of natural gas transportation and distribution services, the daily balancing mechanism of the GTS of Ukraine, etc.

³²⁰ https://ua.energy/uchasnikam_rinku/vyrobnym-z-vde/

³²¹ https://ec.europa.eu/energy/topics/markets-and-consumers/market-legislation/third-energy-package_en

³²² The term "unbundling" within the meaning of Directives 2009/73/EC and 2009/72/EC concerning the regulation of network industries means the separation (legal, organisational, financial, etc.) of the activities that may be competitive (e.g., extraction and supply with regard to gas) from activities where competition is impossible as such (e.g., natural monopolies in the field of gas transportation) or restricted by regulation (e.g., gas supply to vulnerable categories of consumers).

³²³ Law of Ukraine No. 329-VIII of April 9, 2015 / <https://zakon.rada.gov.ua/laws/show/329-19#Text>

Currently, the level of regulatory approximation to the relevant EU standards in the field of gas market organisation can be described as “perfect”, the relevant framework legislation and market rules are almost fully in line with the relevant European regulations.

The practical implementation of the commitments is mostly “advanced”, but as regards pricing and competition in the retail segment of the gas market, we can speak of “critical non-conformity.”

In 2016–2019, the wholesale gas supply segment was opened for competition, Ukraine arranged natural gas imports from the EU (and the corresponding replacement of gas imports from Russia), as well as transition to the European contractual framework for gas supply, cross-border transportation and storage in underground gas storage facilities.

However, the retail segment of gas supply in terms of the volume of gas supplied for the needs of households (both for direct use and for the production of heat for households in the Teplokomunenergo system³²⁴³²⁵ still remains the most problematic area in terms of applying European “rules of the game” in practice, even despite the formal removal of the last barrier to competition between suppliers – i.e. the regime of public service obligation (PSO)³²⁶ from August 1, 2020 for the supply of gas directly to households, and from May 1, 2021 for the supply of gas to Teplokomunenergo companies.

However, the sector of retail gas supply was open to competition for a short time, only for six months, until the end of 2020. Instead of fully opening this market segment to competition while replacing the PSO mechanism with targeted support for vulnerable populations (such as subsidies), the government resorted to direct interventions in setting gas prices for households in the period from January to April 2021 (in particular, prices were fixed at the level of UAH 6.99 per cubic meter, while prices on the spot market³²⁷ amounted to UAH 10–12 per cubic meter)³²⁸.

From May 2021, government interventions and price distortions in the retail segment of the gas market continued but in an indirect form. Using its influence on the largest company on the market – Naftogaz NJSC – and, as a result, control over significant volumes of domestic gas (13.5 billion cubic meters in 2020), the government forced (through the relevant decision of the NEURC)³²⁹ all household gas suppliers to switch to an average annual price offer and imposed a ban on raising the price above this level during the validity of the annual contract,³³⁰ at the same time again forcing Naftogaz (this time informally) to sell gas to households through its own trading company Naftogaz Trading and the dominant market group of regional gas supply companies (so-called Oblgas companies (regional gas companies) united under brand of RGC that belongs to oligarch Dmytro Firtash)³³¹ at a price below the market level (for instance, as of the end of September 2021, they sold gas to households at UAH 7.9 per cubic meter, while prices on the spot market averaged about UAH 18 per cubic meter).

In the segment of gas supply to Teplokomunenergo, a similar mechanism was used – Teplokomunenergo companies were offered to enter into three-year contracts with Naftogaz Trading, a subsidiary of Naftogaz, for the gas supply at a fixed price of UAH 7.42 per cubic meter during the first year of such contracts (from June 1, 2021 to May 31, 2022), while prices on the spot market rose sharply from about UAH 10 per cubic meter in June 2021 to almost UAH 20 per cubic meter in late September.

The government apparently aimed at avoiding a price crisis for the public and a potential crisis of non-payment on the brink of the heating season 2021/22 coupled with the surge in prices in the European market and the corresponding rise in the price of imported gas in Ukraine,³³² however such actions de facto resulted in backsliding with regard to the opening of the retail market to competition, as it is obvious that the only company in the market capable of complying with government restrictions is Naftogaz NJSC and regional gas companies of the RGC group, with exclusive access to significant volumes of domestic gas and the ability to accumulate significant volumes of imported gas during the year. Thus, political populism cemented the monopoly position of these companies in the segment of gas supply to households, leading to distortions of competition, ousting other gas supply companies from the market, and generating unplanned losses for Naftogaz due to the need to purchase additional imported gas at higher prices in order to have resources for the needs of households.

³²⁴ Teplokomunenergo – a domestic legal term to denote companies operating in the field of centralised heat supply (mostly in cities).

³²⁵ In total, these supplies accounted for almost 42% of total gas consumption in Ukraine in 2020 (31 billion cubic meters), which is a significant market share.

³²⁶ In this case, the so-called “commodity-based” model of PSO implies “imposition of obligations” by the government on NJSC Naftogaz to sell a set amount of gas for the needs of households below the market price in order to protect the population from a surge in gas prices after switching to the market pricing model.

³²⁷ In simplified terms, a spot market is a “within-a-day market” where natural gas is sold and bought “here and now”, as opposed to futures and long-term contracts, which involve gas supply agreements for a period of 1 month or more. Spot market prices are an important price indicator in a competitive gas market model, which is used to set prices for all other types of transactions.

³²⁸ In particular, this intervention was carried out in the name of protecting people for the period of quarantine restrictions; for more details, please follow the link / <https://www.kmu.gov.ua/news/premyer-ministr-bude-zaproponovano-timchasovo-vstanoviti-cinu-na-gaz-699-grn-za-metr-kubichnij-dlya-vsih-pobutovih-spozhyvachiv>.

³²⁹ NEURC Resolution No.572 of April 7, 2021 / <https://www.nerc.gov.ua/?id=60592>.

³³⁰ In the NEURC resolution, this proposal is referred to a “basic annual proposal”, valid from May 1 of the current year to April 30 of the following year (i.e. it does not coincide with the calendar year).

³³¹ According to media reports, since May 2021 a group of gas supply companies that are part of the RGC group under the YE Energia brand and distribute about 70% of gas to end consumers has received from Naftogaz almost 6 billion cubic meters of gas at a price of UAH 7.42 per cubic meter.

³³² Thus, due to a number of factors that clashed, gas prices in European markets have risen more than five-fold since the beginning of September, exceeding EUR 100 per 1 MWh in October (~ USD 1200 per thousand cubic meters or about UAH 30 per cubic meter).

In addition, the government intervention led to the resumption of the previously eradicated practice of obtaining additional profits by regional gas companies at price arbitration by reselling gas resources for the needs of households, obtained at “fixed” prices, to industrial companies at market prices, as contracts between Naftogaz and regional gas companies, signed on April 28, 2021, did not contain a mandatory requirement to further sell this gas exclusively to households. Currently, the new management of Naftogaz³³³ intends to eliminate this drawback by identifying segment as a separate balancing group and making changes to the contractual framework with regional gas companies, which will allow Naftogaz to provide regional gas companies only with the volume of gas consumed by their household consumers.³³⁴

There is also some (albeit weak) progress in exchange trading of gas due to insufficient volumes of gas traded on the spot market, as most of the gas consumed in the country is bought and sold outside the exchange market (which is about 90% according to expert estimates). This, in particular, refers to the resource of Naftogaz NJSC (domestic production + imports for the needs of households and Teplokomunenergo) and most of the imported gas for the needs of the industrial sector, which is supplied under direct contracts by affiliated suppliers.

Unbundling of Naftogaz NJSC and management of the gas transmission system

In accordance with the above-mentioned European integration goals for the energy sector, the 3rd Energy Package of the EU pays special attention to the issue of unbundling or separation of competitive activities from monopolies (or regulated activities) as part of vertically integrated energy companies. For Ukraine to fulfil this commitment, it would have to separate the activities of natural gas transportation by main gas pipelines³³⁵ into a separate type of business from the structure of Naftogaz NJSC of Ukraine, namely by creating a transmission system operator.³³⁶

The progress in **legislative approximation** is “perfect.” Beginning in 2016, the unbundling process was formalized and legally completed by January 1, 2020, namely before the new contract for the transit of Russian natural gas to the EU (valid until 2025). In September 2019, a government decision was made³³⁷ to separate GTS assets from Naftogaz NJSC by creating of a new GTS operator – i.e. Gas Transmission System Operator of Ukraine LLC (GTSOU), which, in turn, is 100% owned by the joint-stock company Mahistralni Gazoprovody Ukrainy (MGU) under the Ministry of Finance. MGU was established as part of a rather original legal solution involving 100% preservation of the ownership of the GTS in state ownership: according to the current charter of GTSOU, the company carries out only operational management of the GTS, coordinating all major actions and transactions with the MGU supervisory board, while MGU is the owner of GTS assets.

However, in terms of the practical implementation of unbundling, the progress in this area has remained “advanced” due to certain government actions that may have a negative impact on the independence of the GTS operator.

In July 2021, the government transferred the powers of managing the corporate rights of MGU from the Ministry of Finance to the Ministry of Energy,³³⁸ which created a potential threat to the independence of the GTSOU of the relevant ministry’s political goals and entailed a threat of re-certification for the operator by the Energy Community.³³⁹

Another threat that accounts for the lower progress rating was Naftogaz’s request to the government (voiced on September 22, 2021 at a government meeting) for an additional UAH 44.5 billion from GTSOU for the purchase of 3 billion cubic meters of gas because of the commitment to sell gas for the needs of households and Teplokomunenergo at prices below the current market level (see above). If this risk come true (which is quite probable given the price crisis in the European gas market) and the amount demanded by Naftogaz is transferred as part of the compensation from GTSOU for the separation of gas transportation functions from Naftogaz, it will set a dangerous precedent, because it will entail financial liabilities of the GTS operator to Naftogaz NJSC, which directly contradicts the requirement of independence of the GTSOU from other market participants, as specified in the Third Energy Package of the EU.

Another risk to the stable operation of the GTS and gas imports from the EU is posed by the recent completion of the alternative (bypassing Ukraine) Russian Nord Stream 2 gas pipeline and its potential commissioning and certification in 2022. Even despite the “pump-or-pay” clause of the current transit contract with Gazprom, which

333 <https://www.kmu.gov.ua/news/kabinet-ministriv-priznachiv-novogo-golovu-pravlinnya-nak-naftogaz-ukrayini>

334 Resolution No. 1011 of the Cabinet of Ministers of September 27, 2021 (<https://bit.ly/3JNXzLk>) established the framework for such an approach.

335 They are also referred to as high-pressure gas pipelines, or pipelines designed to transport natural gas over long distances – from the place of its origin to the country (region) of consumption. At the end point of the main gas pipeline and the end points of the branches from the trunk pipeline, the gas enters the gas distribution stations and is transported further via gas distribution networks. The main pipeline is made of steel pipes (usually with a diameter of 1020-1420 mm), designed for a working pressure of 7.5 MPa.

336 Or the transmission system operator (TSO) in accordance with the terms used in Directive 2009/73/EC.

337 Approved by CMU Resolution No. 840 of September 18, 2019 / <https://zakon.rada.gov.ua/laws/show/840-2019-%D0%BF#Text>

338 <https://www.kmu.gov.ua/news/ukrenergo-magistralni-gazoprovodi-ukrayini-ta-operator-rinku-peredano-pid-upravlinnya-minenergo>

339 https://lb.ua/economics/2021/01/21/475747_dlya_peredachi_mgu_minenergo_treba.html

will allow the GTSOU to receive a total of about \$ 7 billion for transit by 2025, if sufficient volumes of gas are no longer pumped through the Ukrainian GTS³⁴⁰ and Gazprom's European customers switch to receiving gas from alternative routes (gas transmission and reception points), it will create serious technical problems in terms of balancing the GTS and organising physical reverse gas supply from the EU to Ukraine.³⁴¹

Implementation of the norms of the EU Network Codes

In addition to fulfilling the framework commitments to introduce a competitive model of gas market organisation, the updated Annex XVII of the Association Agreement also envisages that Ukraine should achieve full compatibility of the so-called “network” regulations (bylaws regulating technical issues of the daily operation of gas distribution networks) with the requirements of the relevant EU Network Codes, including the matters of:

- interoperability (compatibility) and data exchange between different gas transportation systems (Commission Regulation (EU) 2015/703);
- capacity allocation mechanisms (between customers) (Commission Regulation (EU) 2017/459);
- harmonised transmission tariff structures for gas (Commission Regulation (EU) 2017/460);
- gas balancing of transmission networks (Commission Regulation (EU) 312/2014);
- updated access conditions to gas transmission systems (Commission Decision (EU) 2012/490 amending Annex I to Regulation (EC) No 715/2009).

Legislative approximation is “perfect”. In November 2019, the NEURC carried out a “package” transposition of the above-mentioned EU regulations into national legislation by approving the translation of the provisions of the EU Regulations (made by the Government Office for Coordination of European and Euro-Atlantic Integration) as official acts of Ukrainian legislation.³⁴²

Practical implementation of the commitments remains at an “advanced level”. The current transit contract with Gazprom was supplemented with a technical agreement on cooperation between the operators, which was based on the requirements of Regulation (EU) 2015/703, transmission and distribution tariff methodologies for natural gas were approved, as well as methodologies for the mechanism for ordering entry/exit points of the GTS and payment of its cost in line with EU rules, and daily balancing of the GTS³⁴³ was introduced on the basis of the specialized software system of JSC Ukrtransgaz. However, the final implementation of the European GTS rules is still constrained due to the imperfection of the GTS Code, which allows the practice of unauthorized withdrawals of natural gas from the GTS by gas distribution network operators (GDN) and municipal heat supply companies (Teplokomunenergo) and causing significant losses for the operator (the debt of Oblgas companies to GTSOU amounted to UAH 1.6 billion in 2020, and in 2021, after the abolition of PSO, the situation with unauthorized withdrawals actually got out of hand for GTSOU: the total debt for Q1 2021 amounted to UAH 9.9 billion, of which UAH 3.5 billion is overdue debt). It is necessary to urgently settle the imbalances for GDN operators by amending the regulations on their gas withdrawal for production and technological needs (PTN) and the adequacy of the tariff revenue, which would make unauthorised withdrawal more complicated (in particular, discussions are underway concerning the issues of introduction of special distribution accounts by draft law No. 3800³⁴⁴ and imposition of sanctions on GDN operators, including revocation of their licences) and encourage them to shift to a more transparent business model.

Energy Efficiency

Ukraine's commitments in the field of energy efficiency cover a wide range of areas, due to the “horizontal” nature of this sector, as energy efficiency is a very complex concept and covers almost all areas of life where energy is used, such as production, transport, housing, etc.

The updated Annex XVII to the Association Agreement specifies the following set of EU acquis that Ukraine has undertaken to implement under the Energy Community Treaty, as well as commitments set forth exclusively by the Agreement itself, in particular:

³⁴⁰ In the worst-case scenario, the transit of Russian gas through the GTS could go down from 56 billion cubic meters in 2020 to only 10-15 billion cubic meters, starting in 2022. From August 2021, Gazprom stopped booking additional capacity of the Ukrainian GTS and instead started to actively pump out gas reserves from its gas storage facilities in the EU, which can be attributed to either a deliberate attempt of the Russian monopoly to restrict gas supply in the EU market to railroad Europe into certifying Nord Stream 2 as soon as possible, or actual lack of additional volumes of gas for the needs of the EU spot market at the moment / <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2021/09/Why-Are-Gas-Prices-So-High.pdf>

³⁴¹ On condition of the availability of sufficient volumes of transit gas in the GTS, most supplies of gas imported from the EU were made through the so-called “virtual” reverse flow, which in simple terms is a mechanism for offsetting the volume of gas passing through the Ukrainian GTS in transit and the volume of gas in the EU owned by European suppliers.

³⁴² NEURC Resolution No.2586 of 29.11.2019 / <https://zakon.rada.gov.ua/rada/show/v2586874-19#Text>.

³⁴³ Obligation for customers of natural gas transmission services to deal with their imbalances within one gas day.

³⁴⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69382

- Creating framework conditions and a system for establishing targets and tools to achieve energy efficiency (framework Directive 2012/27/EU);
- Establishment of minimum requirements for energy performance of buildings and building elements (Directive 2010/31/EC and Commission Delegated Regulation (EU) 244/2012);
- Energy labelling system (updated framework Directive 2017/1369 and the package of implementing regulations for certain types of energy products);
- Eco-design system (updated framework Directive 2009/125/EC and the package of implementing regulations for certain types of energy products).

The key goals to be achieved by Ukraine in the field of energy efficiency include:

1. Creating the necessary conditions and incentives for all economic operators to enhance energy efficiency and, accordingly, reduce energy consumption at all stages of the energy life cycle, from its production to final consumption;
2. Creation and support of a multi-level intersectoral system for the planning and implementation of measures in the field of energy efficiency, which will make it possible to carry out coordinated (in different sectors) and economically feasible measures to achieve energy efficiency targets;
3. Implementation of national and international resource efficiency standards, sometimes referred to as “efficiency portfolio standard”, such as energy consumption standards for household appliances, building codes, sectoral standards for vehicles and industry, etc.;
4. Introduction of various government schemes to support energy efficiency and energy saving in areas that have the greatest potential in terms of reducing energy consumption (e.g., energy-intensive industries, residential and public buildings, transport, utilities, electricity transmission and distribution, transmission and distribution of natural gas, etc.);
5. Creating a market for energy efficiency services, such as national energy audit systems, energy management, energy services and other ancillary infrastructure elements that can reduce energy consumption by customers of such services.

Achieving better energy efficiency has both a purely economic logic (saving a unit of energy is about twice cheaper than generating it) and a significant impact on greenhouse gas emissions, and is therefore important for achieving climate change policy goals. At the same time, energy efficiency should not be achieved through unjustified reductions in energy consumption and by rising energy poverty in the country.

Public policy in the field of energy efficiency

In accordance with the requirements of Directive 2012/27/EU, Ukraine must establish an integrated system for planning and management of measures to reduce energy consumption and monitoring the achievement of energy efficiency targets, which should be based on national energy efficiency action plans, empowered and effective institutions and a system of incentives and sanctions aimed at achieving better energy efficiency indicators in various sectors of the economy along the chain of energy production, transport, transmission, distribution, supply and consumption.

Directive 2012/27/EU also lays down a number of specific sectoral matters where the government can have a significant impact on reducing energy consumption, such as: thermal modernisation of residential and public sector buildings, setting energy efficiency criteria in public procurement, setting requirements for energy consumption and eco-design for the most energy-using products, creation of the necessary infrastructure for the development of the energy efficiency market, such as energy service, energy audit and energy management, introduction of intelligent accounting systems, providing financial support to businesses and households for measures to reduce energy consumption, etc.

The approximation of **national legislation** is still at an “early” stage, despite the fact that work on the drafting of framework legislation began in 2015; and the energy efficiency sector continues to develop in a “whack-a-mole” manner, without any comprehensive legislative and institutional basis.

At the same time, some progress has been made with drafting the framework Law “On Energy Efficiency”. After a number of unsuccessful attempts to submit a relevant draft law to the Verkhovna Rada, in December 2020 it was registered (No. 4507);³⁴⁵ and on March 4, 2021 it was adopted in the first reading. The draft law is currently being prepared for the second reading, and according to the Ministry of Development of Communities and Territories, the Law may be adopted in October 2021.³⁴⁶

³⁴⁵ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70687

³⁴⁶ <https://www.ukrinform.ua/rubric-economy/3326860-zakon-pro-energoefektivnist-moze-buti-uhvalenij-u-zovtni-minregion.html>

The status of **practical implementation of these commitments** is down from “advanced” to “early” due to a fact that the government does not take any practical steps to create a national framework for energy efficiency. In fact, during the second half of 2020 and the first half of 2021, there emerged a certain vacuum of actions necessary for the making and implementation of an integral public policy in this sector. Thus, the most recent national energy efficiency targets expired at the end of 2020 (a national indicative target of reducing energy consumption by 9% by 2020),³⁴⁷ and a new Action Plan is currently under development.³⁴⁸

Also, no measures have been taken to institutionally strengthen the area of energy efficiency, it is still scattered between the Ministry of Energy, the Ministry of Communities and Territorial Development and the State Agency on Energy Efficiency and Energy Saving of Ukraine. As a matter of fact, the latter agency had no duly authorised head for a long time (since July 2020)³⁴⁹ due to the fact that the competitive selection for this position was suspended, and it was only on August 18, 2021 that Valerii Bezus was appointed Chairman of the Agency.³⁵⁰

At the same time, the State Agency on Energy Efficiency intends to create two new support tools to improve energy efficiency and deploy them in the period from 2022 to 2026³⁵¹:

1. To establish the so-called “Decarbonisation Fund” in industry, aimed at accumulating revenues from the environmental tax on CO₂ emissions (paid by the largest industrial pollutants with the revenues amounting to about UAH 1 billion per year) in the special-purpose decarbonisation fund and use the money exclusively to support projects aimed at improving energy efficiency and reducing CO₂ emissions.³⁵²
2. State Special-Purpose Programme on Energy Efficiency for 2022-2026: a cross-sectoral instrument to support best energy efficiency practices with a total funding of about UAH 10 billion. It, inter alia, involves continuing financial support for the existing “warm loans” in the housing sector (see details below), further development of the ESCO mechanism and financing renovation of buildings owned by public bodies, as well as support for industrial, transport, and “green-energy” projects.

Energy labelling and eco-design of energy consumer products

Ukraine’s commitments undertaken within the Energy Community and following the update of Annex XVII to the Association Agreement involve the introduction by Ukraine of an entire layer of regulation setting forth energy consumption and eco-design requirements and appropriate labelling for a specific set of consumer products.

In simple terms, the **energy labelling** system is designed to provide consumers with information on the level of energy consumption or other resources that such products use when applied, as well as other additional information that allows consumers of such products to choose the most energy efficient of them and thus reduce their energy consumption.

The **eco-design** system is aimed at encouraging producers of energy-using products to comply with a number of requirements at the stage of product design (creation) so as to reduce energy consumption (which is the main goal), as well as a number of other environmentally friendly requirements, such as for using raw materials, water, CO₂ emissions, waste and recycling, etc. The relevant regulations contain methods for determining general and special requirements for eco-design, as well as a description of the procedure for internal design control.

The EU energy labelling and eco-design system is established by two framework documents:

- Directive 2017/1369 (energy labelling)
- Directive 2009/125/EC (eco-design)

Since energy labelling and eco-design requirements are specific to each type of energy-using products, the above EU acts lay down only the general conditions of their organisation, while specific requirements are set forth in a number of implementing regulations developed in cooperation with the relevant sectoral committees of the European Commission³⁵³ and are mandatory for all producers of energy-using products in the EU. What is more, products that do not meet these requirements are prohibited for import and sale in the territory of EU Member States.

³⁴⁵ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70687

³⁴⁶ <https://www.ukrinform.ua/rubric-economy/3326860-zakon-pro-energoefektivnist-moze-buti-uhvalenij-u-zovtni-minregion.html>

³⁴⁷ Pursuant to Art. 24 of Directive 2012/27/EU, action plans must be updated every 3 years.

³⁴⁸ Currently, the first version of the Energy Efficiency Plan for the period up to 2030 is pending consideration by the Cabinet of Ministers (submitted in December 2020). <https://sae.gov.ua/uk/news/3597>

³⁴⁹ During this period, the duties of the Chairman were performed by the First Deputy of the State Agency on Energy Efficiency Konstantyn Hura as acting Chairman.

³⁵⁰ <https://sae.gov.ua/uk/news/3951>

³⁵¹ For more details, please follow the link: https://sae.gov.ua/sites/default/files/ZVIT_SAAE_2020_0.pdf

³⁵² Currently, these funds are spent in a non-targeted manner within the general fund of the state budget.

³⁵³ The mechanism used in the EU to develop, discuss and take into account the interests of individual EU Member States in the process of preparing implementing regulations. For more details, please follow the link:

https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/implementing-and-delegated-acts/comitology_en

The progress with the **legislative approximation** in the field of energy labelling and eco-design is “perfect”.

In the field of energy labelling, the necessary framework regulation was created as far back as in 2010-2013. As of mid-2021, almost all of the necessary EU implementing regulations on requirements for certain types of energy-using products have been transposed into national law and are currently being updated in line with the recast relevant EU implementing regulations.³⁵⁴

The framework regulation in the field of eco-design was approved in April 2019,³⁵⁵ the same year 23 “product” technical regulations were approved, most of which entered into force in 2020.³⁵⁶ Currently, the already approved technical regulations on eco-design are being updated to bring them into line with the requirements of the updated EU implementing regulations.³⁵⁷

Practical implementation can be described as “advanced” for energy labelling and “early” for eco-design.

Ukraine has introduced an energy labelling system, which is part of the technical regulation system. Such labelling is mandatory for suppliers and dealers who sell energy-using products. They must provide an energy label for each such product, indicating energy efficiency from A+++ to D or from A to G, as well as provide a microfiche with the technical characteristics of the product. However, in terms of compliance with energy labelling requirements, the system of state market surveillance is still in the process of reform and fails to ensure full-fledged control over compliance with the requirements of the relevant technical regulations.

The implementation of the eco-design system in Ukraine is just taking off, given the relatively recent entry into force of the relevant technical regulations. In general, the eco-design system is supposed to work as follows: before a product covered by implementing measures is placed on the market and/or put into service, a relevant marking shall be affixed and an declaration of conformity issued whereby the manufacturer or its authorised representative ensures and declares that the product complies with all relevant provisions of the applicable implementing measure.³⁵⁸ As a result, the introduction of eco-design will make it impossible to sell equipment that does not meet the requirements of eco-design and will contribute to the gradual displacement of the most energy-intensive goods and goods with the greatest negative impact on the environment, as well as remove barriers to the export of relevant domestic products to EU markets.

Energy efficiency in residential and public buildings

Energy efficiency in buildings covers a fairly large set of commitments related to various aspects of the modernization of buildings in the residential and public sectors in order to achieve cost-effective reduction in energy consumption. These commitments follow both from the provisions of framework Directive 2012/27/EU and from the special regulation: Directive 2010/31/EU on the energy performance of buildings and Commission Delegated Regulation (EU) 244/2012 establishing a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements for buildings and building elements.

The key ones include:

- introduction of an objective and commercially viable system of accounting for energy resources consumed by end users;
- creation of a system of minimum requirements for energy efficiency of buildings and their elements;
- introduction of a system of energy certification of buildings;
- establishment of energy efficiency criteria in public procurement;
- introduction of financial support instruments for energy efficiency improvement projects;
- introduction of energy management systems in public sector buildings, creation of the National Energy Audit System and energy service mechanism.

Legislative approximation and **practical implementation of the commitments** vary depending on the area of regulation.

As regards commercial accounting of energy resources, in the period from 2017 to 2019, the framework Law “On Commercial Accounting for Heat and Water Supply”³⁵⁹ and the necessary package of by-laws were approved, laying down (mainly) the guidelines for accounting for the services of thermal energy, hot water, and centralized water

³⁵⁴ In particular, 4 new technical regulations on energy labelling were approved and 1 was developed in 2020, work is underway to update technical regulations on the online labelling of energy-using products and to update the procedures for monitoring compliance with energy labelling requirements.

³⁵⁵ CMU Resolution No. 804 “On Approval of the Technical Regulation on the Establishment of the System for Setting the Requirements for the Eco-design of Energy-Using Products” / <https://zakon.rada.gov.ua/laws/show/804-2018-%D0%BF#Text>

³⁵⁶ In total, it is planned to approve about 30 relevant technical regulations for certain types of products.

³⁵⁷ In particular, in 2020, 2 technical regulations were updated for this purpose.

³⁵⁸ Requirements for conformity marking are regulated by CMU Resolution No.1184 of December 30, 2015 / <https://zakon.rada.gov.ua/laws/show/1184-2015-%D0%BF#Text>

³⁵⁹ <https://zakon.rada.gov.ua/laws/show/2119-19#Text>

supply. The key requirements of the legislation on commercial accounting in buildings include the obligation to pay for all energy delivered to the house, 100% equipment of buildings and premises with metering units, providing energy consumers with accounting information, determining the procedure for distribution of consumed utility services among their consumers in the building, as well as individualisation of costs for installation, maintenance, and replacement of commercial accounting units.

However, the introduction of commercial accounting is rather slow, given the insufficient capacity of utility companies to comply with the law, as well as the insufficient level of sanctions for failure to install commercial metering units. According to the latest statistics of the State Agency on Energy Efficiency,³⁶⁰ as of September 20, 2021, the level of equipment of buildings with commercial metering units is still insufficient (no 100% coverage)³⁶¹ amounting to the following:

- Thermal energy: 83% for residential buildings and 82% for non-residential buildings;
- Hot water supply: 18% for residential buildings and 51% for non-residential buildings;
- Drinking water: 79% for residential buildings and 96% for non-residential buildings.

As regards minimum requirements for energy efficiency of buildings and energy certification of buildings, in 2017, the framework law “On Energy Efficiency of Buildings” was adopted.³⁶² However, its implementation requires numerous clarifications (mainly methodological) at the level of bylaws in order to eliminate regulatory inconsistencies and gaps that hinder the full implementation of the energy certification system of buildings. During 2020 and the first half of 2021, further progress was made with regulations in this area – in particular, in October 2020, the minimum requirements for energy efficiency of buildings were approved,³⁶³ changes were made³⁶⁴ to the Methods for Assessing the Energy Efficiency of Buildings,³⁶⁵ requirements for buildings with close to zero energy consumption are being developed. Other matters, such as regulating the status of self-regulatory organisations in the field of energy efficiency, still remain at the draft stage.

At the same time, the system of energy certification of buildings continues to develop and cover an increasing number of residential buildings. The functionality for registration of energy certificates of the Unified State Electronic System in the field of construction has been created and is operating, the number of energy certificates and certificates issued to energy auditors and MEP systems inspection professionals continues to grow (6379 certificates issued as of the end of 2020).

As regards energy audit, energy management, and energy service in buildings owned by public bodies and by the central government, some progress has been made in creating the regulatory framework required for the operation of these segments of the energy efficiency market.³⁶⁶ However, their work still needs to be harmonised at the level of the framework Law “On Energy Efficiency.” Steps are also needed to overcome barriers to ESCO³⁶⁷ procurement by the authorities³⁶⁸ and extension of ESCO to cover public and energy facilities (relevant draft laws were developed in 2020 and are currently pending consideration by the Verkhovna Rada).

The development of these markets as a whole is quite dynamic thanks to the joint efforts of the Ministry of Communities and Territories and the State Agency on Energy Efficiency to create the necessary infrastructure, such as lists of enterprises providing energy audit, energy service, and energy management services, databases of potential energy service facilities in the public sphere, certificates of energy auditors and energy management professionals, etc. The number of certificates issued to energy auditors and MEP systems inspection professionals is growing rapidly (from 1,800 in early 2020 to more than 2,400 at the end of the year), coverage of local authorities with energy management/energy monitoring systems continues – in 2021 the Ministry of Communities and Territories launched a pilot project on energy monitoring in central government buildings, which currently covers 13,000 buildings in all regions of the country. Energy service in the public sphere is also developing dynamically: over the past 4 years, 554 ESCO contracts with a total value of over UAH 1 billion have been fulfilled, and average energy savings of 35% have been achieved. However, after four years of the ESCO mechanism operation, the level of energy service coverage for public institutions remains meagre (about 0.5%), and further development of ESCO contracts is currently constrained by a legal conflict that arose after the renewal of tender procedures in the field of

360 <https://sae.gov.ua/sites/default/files/blocks/Prezentatsiya%2020.09.2021.pdf>

361 According to the latest amendments to the legislation, operators of external engineering networks must ensure 100% accounting of energy resources by August 1, 2022 (for all regulated types of energy consumption).

362 Law of Ukraine No. 2118-VIII of June 22, 2017 / <https://zakon.rada.gov.ua/laws/show/2118-19#Text>

363 Order No. 260 of the Ministry of Development of Communities and Territories of Ukraine of October 27, 2020 / <https://zakon.rada.gov.ua/laws/show/z1257-20#Text>

364 Order No. 261 of the Ministry of Development of Communities and Territories of Ukraine of October 27, 2020 / <https://zakon.rada.gov.ua/laws/show/z1254-20#Text>

365 Order No.169 of the Ministry of Regional Development of July 11, 2018 / <https://zakon.rada.gov.ua/laws/show/z0822-18#n14>

366 The latest one was the Procedure for professional certification of persons who intend to carry out activities of energy efficiency certification and MEP systems inspection, which came into force on August 17, 2021 (CMU Resolution No. 600 of June 9, 2021 <https://zakon.rada.gov.ua/laws/show/600-2021-%D0%BF#Text>).

367 The abbreviation stands for “Energy Service Company”.

368 <https://sae.gov.ua/uk/news/3520>

public procurement, which effectively blocked ESCO investments at the local level (established by law No. 327-VIII)³⁶⁹ and cases of destructive behaviour on the part of individual energy services customers – government agencies and local authorities.³⁷⁰

As regards creation of tools for financial support of projects to improve energy efficiency in the housing sector, just like in the previous cases, there is no systematic approach, hence the government measures are fragmentary and do not contribute to the wide-scale coverage of households (in detached and multi-storey buildings) with support programmes. For instance, the popular programme of “Warm Loans”, which targets at detached houses and accounts for about 83% of residential building,³⁷¹ is rapidly losing priority in funding³⁷² because the government switches its focus and donor support to the Energy Efficiency Fund (see details below) and due to the lack of full-fledged verification of the energy savings achieved (currently it is carried out selectively through surveys of participating households). In the period from 2017 to 2019 the relevant regulatory framework was created and technical and financial assistance was attracted from Germany and the EU to create the National Energy Efficiency Fund, which now has priority funding from the state budget (Ukraine's contribution to the Fund's authorised capital should increase from UAH 1.6 billion in 2020 to UAH 2.6 billion in 2022). However, it has fallen victim to its complex organisational model and a focus on a narrow segment of apartment buildings – Apartment Building Co-owner Associations (ABCA)³⁷³. The fund has so far shown relatively slow progress in supporting apartment buildings (only about 2.5% of the total number of ABCAs)³⁷⁴ and the number of grants awarded (as of the beginning of October 2021, more than 700 applications have been submitted to the Energy Efficiency Fund, of which almost 600 are active projects and only 69 have performed thermal modernisation and are waiting for verification of results and compensation from the Fund)³⁷⁵. This situation is due to the fact that the active phase of the Fund's work began only in mid-2020, as well as to the rather sluggish growth rate of the number of ABCAs (only 17% of apartment buildings have created ABCAs as of early 2021) coupled with a rather complex procedure of thermal modernisation projects for apartment buildings, which even the heads of the most advanced ABCAs find difficult (in terms of administration and the necessary technical expertise).

Development of cogeneration (highly efficient concurrent production of electricity and thermal energy)

Cogeneration or combined heat and electricity production is a separate high-efficiency technology³⁷⁶ used in the field of energy supply for the needs of industrial consumers and households, for which the EU provides incentives in accordance with the provisions of Art. 14 and Annexes I and II of Directive 2012/27/EU.

Legislative approximation is at an “early” stage given the need to address the matter of cogeneration in the future framework Law “On Energy Efficiency” and the need to amend the relevant Law of Ukraine No. 2509-IV “On Combined Heat and Power Production (cogeneration) and the Use of Waste Energy Potential”³⁷⁷ of April 5, 2005, concerning which attempts are taken from time to time to get them through the Verkhovna Rada, but to no avail.³⁷⁸

Practical implementation of the commitments remains at an “early stage”, given the lack of any updated legislation on the incentive system. At the same time, Ukraine is implementing individual projects for the construction of cogeneration units – according to the State Agency on Energy Efficiency, as of Q2 2020, there were 39 such units in Ukraine with the appropriate qualification from the agency.³⁷⁹

Energy infrastructure and security of supply

Commitments in the field of Energy Infrastructure and Security of Supply focus on ensuring the reliability and security of energy supply and better interconnection of EU energy markets with each other and with third countries by building network connections in projects for mutual interest (PMI) and cross-border projects (PECI).

369 <https://zakon.rada.gov.ua/laws/show/327-19#Text>

370 <https://www.epravda.com.ua/columns/2021/04/15/673010/>

371 <https://www.epravda.com.ua/columns/2021/03/24/672242/>

372 Although during 2014-2020, the state provided a total of UAH 3.3 billion in compensation to participants in the program, and the amount of investment in energy efficiency measures amounted to about UAH 8.5 billion (for details, please follow the link /

https://sae.gov.ua/sites/default/files/blocks/Otsinka_TK_14.06.2021.pdf), in recent years funding has been declining (the state budget for 2020 provided for UAH 380 million, UAH 150 million is to be spent in 2021, and for 2022 no funding is provided whatsoever).

373 Apartment Building Co-owner Association.

374 <https://www.epravda.com.ua/columns/2021/03/24/672242/>

375 <https://energodim.org/news/dynamika-proektiv-za-prohramoiu-enerhodim-01-10/>

376 Cogeneration can save about 40% of primary energy compared to separate production of electricity and heat due to the use of thermal energy generated in the process of electricity production.

377 <https://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2509-15#Text>

378 After the withdrawal of draft law No.7465 in August 2019, its next version (draft law No.4527 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70722) was submitted to the Rada in December 2020 and is currently pending consideration by Verkhovna Rada committees.

379 https://sae.gov.ua/sites/default/files/04_ARV_20_08_2020.docx

They involve the harmonisation of the standards and rules that guarantee the reliability and security of energy supply, as well as authorisation procedures and access to the mechanism of cross-border cost allocation and financing (if the relevant institutional framework is available).

Implementation of these tasks will allow integrating the energy markets of Ukraine and the EU and increase their reliability and security.

Safeguarding security of electricity supply

Article 338, Annex XXVII of the Association Agreement
Directive 2005/89/EC³⁸⁰

The relevant commitments involve developing and approving requirements for the minimum generation reserve capacity dispatched by the transmission system operator, rules for security of electricity supply, and submission of a report on monitoring security of supply to the Secretariat of the Energy Community.

Regulatory approximation is advanced. The Law of Ukraine “On the Electricity Market” adopted in 2017³⁸¹ provides for the development and approval of rules on security of electricity supply, which establish minimum security of supply criteria and are mandatory for all market participants (Art. 16). The transmission system operator must draft annual reports to assess the sufficiency (adequacy) of generation capacity to meet the expected demand and provide the necessary reserve, taking into account the requirements of supply security (Part 3 of Art. 19). Reports on the results of security of supply monitoring should be published every two years (Part 2 of Art. 20). The Transmission System Code³⁸² provides for the development and approval of the Power System Protection Plan (Art. 7).

In terms of **practical implementation**, the provisions of European legislation have been implemented. The transmission system operator monthly publishes data on the maximum volume and structure of net power, the peak electrical load, and the available generation capacity in the power system.³⁸³ Power supply safety rules have been developed and approved.³⁸⁴ The report for 2019 on the results of monitoring power supply security was published by the Ministry of Energy in January 2021.³⁸⁵

Safeguarding the security of natural gas supply

Article 338, Annex XXVII of the Association Agreement
Regulation (EU) 2017/1938 (formerly Directive 2004/67/EC)

It is planned to develop and approve a National Action Plan (in case a crisis situation with natural gas supply develops), an emergency response plan, rules on security of natural gas supply and submission of reports on the results of security of supply monitoring to the Energy Community Secretariat.

Regulatory approximation is advanced. The Law of Ukraine “On the Natural Gas Market” adopted in 2015³⁸⁶ provides for the development and approval of rules on security of natural gas supply, which establish minimum supply security criteria and are mandatory for all market participants (Art. 5). Reports on the results of supply security monitoring should be published annually (Part 2 of Art. 7). It involves the development and approval of the National Action Plan, which is mandatory for all participants in the natural gas market and specifies measures to eliminate or minimise the overall negative impact of the potential crisis (Art. 6).

The relevant provisions of European legislation have been **implemented**. The Safety Rules for Natural Gas Supply and the National Action Plan³⁸⁷ have been developed and approved³⁸⁸ and are updated from time to time. Reports on the results of monitoring the security of natural gas supply are published annually by the Ministry of Energy.³⁸⁹

380 Directive 2005/89/EC was repealed by Regulation (EU) 2019/941 on risk-preparedness in the electricity sector.

381 <https://www.geo.gov.ua/wp-content/uploads/presentations/ukr/statistika-elektronnix-torgiv.pdf>

382 <https://zakon.rada.gov.ua/laws/show/v0309874-18#Text>

383 <https://ua.energy/vstanovlena-potuzhnist-energosystemy-ukrayiny/>

384 <https://zakon.rada.gov.ua/laws/show/z1076-18#Text>

385 http://mpe.kmu.gov.ua/minugol/control/uk/publish/officialcategory?cat_id=245131779

386 <https://zakon.rada.gov.ua/laws/show/329-19#Text>

387 <https://zakon.rada.gov.ua/laws/show/z1489-15#n16>

388 <https://zakon.rada.gov.ua/laws/show/z1458-15#n16>

389 http://mpe.kmu.gov.ua/minugol/control/uk/publish/officialcategory?cat_id=245131779

Creating conditions for the implementation of Projects of Energy Community Interest (PECIs) and Projects of Mutual Interest (PMIs)

Articles 337, 341, Annex XXVII of the Association Agreement
Regulation (EU) 347/2013

It involves appointing a coordinating body to establish a mechanism for approving priority projects of Energy Community interest (PECI), developing and implementing a mechanism for exchanging information with the Regional Group, developing and approving a methodology for analysing the benefits and costs of such projects; compiling a list of such projects, revising it with stakeholders, and getting approval by the Ministerial Council of the Energy Community; bringing the terms in the field of trans-European energy infrastructure in line with EU requirements; development and approval of a mechanism for providing additional incentives for PECIs, in particular adoption of a legal act to assess the increased risks associated with the implementation of PECIs and PMIs.

Regulatory approximation is early or has not started. Although in 2019 the Ministry of Energy and Coal Industry reported that it had established a working group to develop a mechanism for approving priority PECIs and their updated list,³⁹⁰ no mechanism for exchanging information with the Regional Group has yet been developed, and a methodology for cost-benefit analysis has not been approved. What is more, the NEURC resolution on the methodology and criteria for assessing investments in electricity and gas infrastructure projects, as well as on the increased risks associated with their implementation, can be adopted only “after the adoption of the law transposing Regulation (EU) 347/2013 on guidelines for trans-European energy infrastructure” (para. 4.11³⁹¹). However, the draft law “On Amendments to Certain Legislative Acts of Ukraine Concerning Terms in the Field of Trans-European Energy Infrastructure” developed by the Government has just been included in the Verkhovna Rada’s plan of work with draft laws for 2021.³⁹²

Due to the lack of regulatory grounds, **practical implementation** of the provisions of European legislation has not begun.

Nuclear power

Even before Ukraine signed the Association Agreement with the EU, national legislation in the field of nuclear energy use and radiation safety had been created and developed on the basis of the best global models of nuclear legislation and international conventions, with the IAEA being their depositary.

EU directives that partially regulate the field of nuclear power were developed on the basis of the Convention on Nuclear Safety, the Joint Convention, and the IAEA’s standards and recommendations.

These EU Directives include:

- **Council Directive 2014/87/Euratom** of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations.
- **Council Directive 2013/59/Euratom** of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom.
- **Council Directive 2011/70/Euratom** of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste.
- **Council Directive 2006/117/Euratom** of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel.

All these EU Directives imply that each state must:

- introduce and maintain national legislative, regulatory, and organisational frameworks (“national frameworks”) for the establishment of safety standards for nuclear installations, radwaste management facilities and standards for radiation protection of personnel and the public from ionizing radiation;
- distribute responsibilities between the relevant competent state bodies in the field of nuclear energy use. Ensure the existence of an independent national NRS regulator authorised to establish NRS criteria, norms, rules, and standards. Introduce the principle of authorisation (licencing) by the NRS regulator for all types of activities in this area, as well as supervision and control over compliance with the NRS requirements, and imposition of sanctions against violators by the regulator;

390 <https://mpe.kmu.gov.ua/minugol/doccatalog/document?id=245357389>

391 <https://www.nerc.gov.ua/?id=49538>

392 <https://zakon.rada.gov.ua/laws/show/1165-20#Text>

- establish that NPP operators and licensees shall bear responsibility for safety. Provide sufficient financial and human resources for compliance with safety standards in the operation of nuclear installations, sources of ionizing radiation, and in the management of spent fuel and radioactive waste;
- ensure transparency in the use of nuclear energy and establish national requirements for informing the public and public participation. The state must have national strategies and programmes for the management of spent fuel and radioactive waste.

All these fundamental goals in Ukraine are laid down in national special legislation, regulations, and established organisational frameworks. By fulfilling the obligations under the EU Directives in this area, Ukraine will be able to improve some procedures and unify approaches to the development of national strategies and programmes.

Establishment of the general principles of radiation protection of the general population and persons occupationally exposed to radiation in medicine and other occupations

Legislative approximation. During 2020 and the first half of 2021, the SNRIU developed the draft law “On Amendments to the Law of Ukraine ‘On Human Protection against the Impact of Ionizing Radiation’”. The draft law regulates matters such as radon irradiation, although in accordance with paragraph 1.4 of the “Action Plan to reduce the level of exposure to radon and its decay products, minimize long-term risks of radon spread in residential and non-residential buildings, and workplaces for 2020-2024”, approved by CMU Order No.14-17-p³⁹³ of 27.11.2019, it is the Ministry of Health that is responsible for “improving legislation in the field of human protection against radon exposure”. The draft law is currently undergoing inter-ministerial approvals and public discussion.³⁹⁴

In pursuance of paragraph 740 “Introduction of the practice of holding consultations for entities in the field of nuclear energy with radiation protection experts concerning compliance with the legislation on nuclear and radiation safety” of the Action Plan for the implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, the SNRIU developed a draft law amending the Law of Ukraine “On the Use of Nuclear Energy and Radiation Safety” with regard to the radiation protection expert, submitted by the Cabinet of Ministers of Ukraine to the Verkhovna Rada of Ukraine and registered under No. 3869 on 16.07.2020³⁹⁵. As of June 30, 2021, the draft law is pending finalisation in the committees of the Verkhovna Rada of Ukraine and is included in the agenda of the fifth session of the ninth convocation.

Practical implementation. The SNRIU has developed a draft regulation on the radiation protection expert on the basis of the draft law “On Amendments to the Law of Ukraine ‘On the Use of Nuclear Energy and Radiation Safety’ concerning the Radiation Protection Expert”, the draft of which has been submitted to the Verkhovna Rada (see above).

The draft act of the Cabinet of Ministers of Ukraine on approval of the “Regulation on the Radiation Protection Expert” will be submitted to the Cabinet of Ministers for consideration after the adoption of the above-mentioned draft law.

In pursuance of Law of Ukraine No. 107-IX “On Amendments to Certain Laws of Ukraine in the Field of Nuclear Energy Use”,³⁹⁶ the CMU by its Order No. 1417-p of 27.11.2019 approved the “Action Plan to reduce the level of exposure to radon and its decay products, minimize long-term risks from the spread of radon in residential and non-residential buildings and workplaces for 2020-2024”.

In accordance with Para. 1.3, “The Procedure and Methodology for radon monitoring in Ukraine and notification of radiation risks” were to be developed and approved by the end of 2020. As regards Para. 1.5 “development of sanitary regulations to determine the levels of radon activity in the workplace” and Para. 1.7 of the said plan, by the end of 2020, Ukraine was supposed to “analyse the accumulated information on radon levels in the air of buildings, assess the existing radiation risks to the general population, and identify the priority regions for radon monitoring and anti-radon measures”. However, these measures turned out to be just declarative, since as of July 13, 2021, there is no draft Procedure and/or Guidelines for radon monitoring, no sanitary regulation for determining the levels of radon activity in the workplace, and no analysis was conducted because relevant information is not available.

Also, in 2020 (deadline set by the Plan) Ukraine failed to fulfil:

393 <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-planu-zahodiv-shchodo-znizhennya-rivnya-1417-271119>

394 Проект закону, оприлюднений на веб-сайті Держатомрегулювання, див. за наступним посиланням:

<https://snriu.gov.ua/news/proyekt-zakonu-ukrayini-pro-vnesennya-zmin-do-zakonu-ukrayini-pro-zahist-lyudini-vid-vplivu-ionizuyuchogo-viprominyuvannya>

395 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69510

396 <https://zakon.rada.gov.ua/laws/show/107-20#Text>

Para. 2: Creating an effective radon training system, namely:

1. providing training, advanced training and retraining, in particular using certification programmes, for different-level professionals in the field of anti-radon measures;
2. compiling a register of certified experts on anti-radon measures.

Para. 3: Introduction of a system for safeguarding the quality and effectiveness of anti-radon measures, namely:

1. approval of the requirements and procedure for measuring radon levels after performing anti-radon measures in buildings to reduce radon levels;
2. approval of the requirements and criteria for reporting in the field of anti-radon measures in the workplace, except for enterprises where radon irradiation is a consequence of the technological process (mines, uranium processing, etc.), and the activity is subject to regulatory control.

The Ministry of Health of Ukraine has once again demonstrated its unique expertise in “failing” the implementation of progressive European standards within its competence regarding radiation protection for the public, in particular, from radon exposure.

Hence, Ukraine’s European integration commitments in the field of radiation protection for the general population and individuals in occupational and medical exposure can be described as “advanced” in matters within the competence of the SNRIU, and has the status of “critical non-conformity” in matters within the competence of the Ministry of Health of Ukraine.

Alignment of the procedure for cross-border shipments of spent nuclear fuel with EU Member States

In accordance with the requirements of Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel, it was necessary to improve the procedure for coordination of shipments with EU countries, including the development and approval of a standard application form for international shipments.

Legislative approximation is “perfect.” CMU Resolution No. 759 “On Amendments to the Procedure for Issuing Permits for International Shipments of Radioactive Materials” of 21.08.2019³⁹⁷ improved the relevant body of terms and the procedure for coordination of shipments with the competent authorities of the EU Member States. The draft resolution of the Cabinet of Ministers was endorsed by EU experts in the framework of the EU technical assistance project.

Practical implementation is “perfect.” In pursuance of CMU Resolution No. 759 of August 21, 2019, the Ministry of Justice of Ukraine registered (under No. 968/35251) Order No. 320 of the State Nuclear Regulatory Inspectorate of Ukraine “On Approval of the Standard Document Form for the Supervision and Control of Shipments of Radioactive Waste and Spent Fuel” of August 4, 2020³⁹⁸. The document was revised and endorsed by EU experts in the framework of the EC technical assistance project.

Approximation of regulation in the field of nuclear and radiation safety to EU requirements (as regards radiation protection)

Regulation of nuclear and radiation safety in Ukraine is in line with the fundamental requirements of the EU. Therefore, Ukraine is to clarify the terms, create a state system for accounting and control of individual exposure of workers, including aircraft crews, and introduce some clarifications to the procedures establishing common basic safety standards for handling materials containing radionuclides of natural origin.

Legislative approximation is “perfect.” The CMU by its Resolution No. 1141 “Some issues of creating a single state system of control and accounting of individual radiation doses” of November 18, 2020³⁹⁹ approved the “Procedure for Establishing a Unified State System for Control and Accounting of Individual Doses of Radiation (procedures for establishing and maintaining)” and the Regulation on the State Register of Ionizing Radiation Sources, Individual Radiation Doses and the Procedure for Payment for the Services of their Registration” (Annex 2). Protection of personal data and information on individual radiation doses is ensured in accordance with the Law of Ukraine “On Personal Data Protection”, which is referred to in paragraph 5 of the Regulation on the State Register of Sources of Ionizing Radiation.”

397 <https://zakon.rada.gov.ua/laws/show/759-2019-%D0%BF#Text>

398 <https://zakon.rada.gov.ua/laws/show/z0968-20#Text>

399 <https://zakon.rada.gov.ua/laws/show/1141-2020-%D0%BF#Text>

The SNRIU by CMU Resolution No. 949 “Certain Matters of the State Regulation of Activities Involving the Use of Sources of Ionizing Radiation, Control and Accounting of Individual Radiation Doses” of 01.09.2021⁴⁰⁰ made amendments to CMU Resolution No. 1718 “Certain Matters of State Regulation of the Use of Ionizing Radiation Sources” of November 16, 2000⁴⁰¹. In particular, it established:

- the procedure for monitoring and accounting of individual radiation doses of employees occupationally exposed to ionizing radiation;
- requirements for information on individual radiation doses of employees to be entered in the State Register;
- the procedure for interaction and exchange of information on individual doses of radiation that employees are exposed to between the State Register and business entities.

Practical implementation is “perfect” as regards matters within the competence of the SNRIU. Based on the above-mentioned Procedure and Regulations, the SNRIU maintains the State Register of Ionizing Radiation Sources and the Unified State System of Control and Accounting of Individual Irradiation Doses. As for the matters within the competence of the Ministry of Health, the status is “critical non-conformity”. Unfortunately, during the past year, no improvements have been made by the Ministry of Health regarding human radiation protection. The Public Health Centre does not have any department responsible for human radiation protection from ionizing radiation, including natural radionuclides.

Establishing cooperation with the EU for joint research and development in the field of nuclear energy

Ukraine ranked seventh among the associated countries in terms of the amount of funds attracted (about EUR 40 million as of December 2020) from the general budget of the previous framework programme of the European Union for research and innovation “Horizon 2020.”

At the end of January 2021, the second stage of technical negotiations with the European Commission on the conditions for Ukraine’s accession to the next European Union Framework Programme for Research and Innovation “Horizon Europe” (2021-2027) and the Euratom research and training programmes (2021-2025).

The INSC (Instrument for Nuclear Safety Cooperation) projects are implemented in accordance with the annual action programmes in three areas: Operator Support, RW Management, and Regulator Support, as well as by way of initiating new projects.

Legislative approximation is “perfect.” On June 27, 2016, Ukraine and the European Atomic Energy Community (Euratom) signed an agreement on scientific and technical cooperation (2014-2018).

Practical implementation is “advanced”. On the premises of the National Contact Point UAinEuratom (STC Kharkiv Institute of Physics and Technology), 8 training seminars on planning and participation in projects of the European Framework Programme for Research and Innovation HORIZON 2020 took place.

In 2020, the State Scientific and Technical Centre for Nuclear and Radiation Safety under the SNRIU participated in 4 projects of the Euratom Horizon 2020 research and training programme, which were funded by EC grants.

The ETSO (European Technical Safety Organisations Network) supported the project Benchmarking on Assessment of Radiological Consequences (BARCO) proposed by SSTC NRS. Its implementation began in 2020 under the leadership of SSTC NRS.

Under the EU INSC Programme (Instrument for Nuclear Safety Cooperation): SSTC NRS was a co-contractor (based on subcontracts with international consortia) in 8 projects of technical assistance to the Ukrainian regulator; as part of international consortia, SSTC NRS together with European partners provided support to the regulatory authorities of Belarus and Armenia.

In 2020, initiative was introduced to sign a contract with the European Nuclear Safety Training and Tutoring Institute (ENSTTI) for the provision of training services. During the year, the SSTC NRS together with the ENSTTI participated in the development of training courses for the staff of regulatory bodies and scientific and technical support organisations of non-EU countries. The courses are scheduled for 2021.

400 <https://zakon.rada.gov.ua/laws/show/949-2021-%D0%BF#Text>

401 <https://zakon.rada.gov.ua/laws/show/1718-2000-%D0%BF#Text>

Regulatory approximation to EU requirements in the field of nuclear and radiation safety (as regards the safety of nuclear installations)

All the fundamental principles of the Directive for safeguarding nuclear and radiation safety as regards nuclear installations have already been enshrined in national legislation, namely:

- allocation of responsibilities between the relevant competent state authorities in the field of nuclear energy use has been performed;
- operation of an independent national NRS regulatory body authorised to establish NRS criteria, norms, rules and standards has been ensured;
- the principle of authorisation (licencing) by the NRS regulator of all activities in this area has been introduced; the regulator supervises and controls compliance with the NRS requirements, as well as imposes sanctions against violators;
- responsibility of NPP operators and licensees for safety has been introduced;
- transparency of activities in the field of nuclear energy use has been ensured, and national requirements for information and public participation have been established.

Legislative approximation is “perfect.” National legal, regulatory and organisational frameworks for the safety of nuclear installations have already been established in accordance with the requirements of the Convention on Nuclear Safety and the IAEA requirements (GSR part 1 Governmental, Legal and Regulatory Framework for Safety) and are in line with Article 4 of Directive 2014/87/Euratom, in particular regarding:

1. allocation of responsibilities (duties) and coordination between the relevant state bodies (Article 4 (a) of Directive 2014/87/Euratom), as stipulated in Article 5 of the Law of Ukraine “On the Use of Nuclear Energy and Radiation Safety”;
2. national requirements for nuclear safety, covering all stages of the lifecycle of nuclear installations (Article 4 (b) of Directive 2014/87/Euratom), laid down in the Laws of Ukraine “On the Use of Nuclear Energy and Radiation Safety”, “On Licencing in the Field of Nuclear Energy Use”, “On the Procedure for Making Decisions concerning the Location, Design, and Construction of Nuclear Installations and Facilities Intended for the Management of Radioactive Waste of National Significance” and in the relevant regulations approved in the appropriate manner by the SNRIU and registered with the Ministry of Justice of Ukraine;
3. the system of licencing and prohibition of operation of nuclear installations without a licence (Article 4 (c) of Directive 2014/87/Euratom), established by the Law of Ukraine “On Licencing in the Field of Nuclear Energy Use”;
4. a system for the regulatory control of nuclear safety performed by the competent regulatory authority (Article 4 (d) of Directive 2014/87/Euratom), as laid down in Articles 22, 23, 24 of the Law of Ukraine “On Nuclear Energy Use and Radiation Safety”;
5. effective and proportionate enforcement actions, including, where appropriate, corrective action or suspension of operation and modification or revocation of a licence (Article 4 (e) of Directive 2014/87/Euratom), set forth in:
 - Article 81 of the Law of Ukraine “On the Use of Nuclear Energy and Radiation Safety”;
 - Articles 14, 15, 16, 17 of the Law of Ukraine “On Licencing in the Field of Nuclear Energy Use”;
 - Articles 95 and 188-18 of the Code of Ukraine on Administrative Offences.

Practical implementation is “perfect.” In 2020 and the first half of 2021, the SNRIU has developed and approved:

- General safety requirements for the installation and operation of equipment and pipelines of nuclear power plants (Order No. 319 of the SNRIU of August 4, 2020, registered with the Ministry of Justice on September 30, 2020 under No. 955/35238);⁴⁰²
- General safety provisions for the decommissioning of nuclear installations (Order No. 440 of the SNRIU of October 28, 2020, registered with the Ministry of Justice on December 30, 2020 under No. 1311/35594);⁴⁰³
- Regulation on the procedure for investigation and accounting of operational events in the operation of nuclear power plants, approved by SNRIU Order No. 411 of 12.07.2021, registered with the Ministry of Justice of Ukraine on 08.09.2021 under No. 1182/36804, entering into force on January 1, 2022.⁴⁰⁴

402 <https://zakon.rada.gov.ua/laws/show/z0955-20#Text>

403 <https://zakon.rada.gov.ua/laws/show/z1311-20#Text>

404 <https://sstc.ua/news/1-go-sichnya-nabuvaye-chinnosti-nove-polozhennya-pro-poryadok-rozsliduvannya-ta-obliku-eksploatacijnih-podij-u-roboti-atomnih-stancij>

Approximation of the legislation on the safe management of spent fuel and radioactive waste to EU requirements

Requirements for the safe management of spent fuel and radioactive waste follow from Council Directive 2011/70/Euratom and focus on the fundamental principles of safety in the management of spent fuel and radwaste, as well as financial support for radwaste and spent fuel management, national management strategy and programme.

Legislative approximation is “perfect.” All the fundamental requirements are rendered in the current laws of Ukraine “On the Use of Nuclear Energy and Radiation Safety”, “On Radwaste Management”, and “On Licencing Activities in the Field of Nuclear Energy.”

Practical implementation is “perfect” in matters within the competence of the SNRIU, “advanced” in matters within the competence of the Ministry of Energy of Ukraine, and has the status of “critical non-conformity” in matters within the competence of the State Agency on Exclusion Zone Management under the Ministry of Environmental Protection.

CMU Resolution No. 773 “On Amendments to Clause 6 of the Technical Regulation on Packages for Storage and Disposal of Radioactive Waste”⁴⁰⁵ of July 28, 2021 brings the provisions of the Technical Regulation in line with the requirements of Law of Ukraine No. 208-IX “On Amendments to Certain Laws of Ukraine to Improve Legislation in the Field of Radioactive Waste Management”⁴⁰⁶ of 17.10.2019 and introduces a new radioactive waste classification system that meets the accepted international safety standards and is based on the long-term safety of the final disposal of radioactive waste. The law enters into force on November 7, 2021.

All the tasks that fall within the competence of the national nuclear and radiation safety regulator – i.e. the SNRIU – have already been completed.

The tasks assigned to the State Agency on Exclusion Zone Management (the SAEZM) have not been fulfilled (those with a deadline in 2020).

These are, first of all, the following obligations: “Establishing requirements for the content of the national spent fuel and radioactive waste management programme and ensuring its implementation” (paragraphs 757 to 776 of the Government Plan) and “implementing the notification procedure under the national spent fuel and radioactive waste management programme and introduction of reporting on its implementation” (para. 757 to 777).

The Ministry of Ecology,⁴⁰⁷ under whose jurisdiction the SAEZM falls, in its report on the results of performing the Government Plan in 2020 claims: “The SAEZM is ready to consider the RLA in accordance with the statutory procedure, in case of receipt”.

Instead of requiring that the SAEZM perform its direct responsibilities, namely, develop a national radioactive waste management programme, the Ministry of Environmental Protection expects an unknown source to provide a draft programme, and assures that it is “ready to consider it.” It should be noted that the previous radwaste management programme expired in 2017, and no document has been prepared to extend or replace it.

Thus, a state that operates 15 nuclear power units and where sources of ionizing radiation are extensively used in medicine, agriculture, and industry, has had no national programme for radwaste management for four years now.

The Ministry of Energy of Ukraine is responsible for the state policy on the management of spent nuclear fuel. It was the Ministry of Energy together with NNEGC Energoatom that developed the draft State Economic Programme for SNF Management, which was approved by CMU Resolution No. 847 of August 11, 2021.⁴⁰⁸

Prospection, exploration for and production of hydrocarbons

Commitments in the field of “Prospection, Exploration for and Production of Hydrocarbons” focus on promoting the prospection, exploration for and production of hydrocarbon resources in the states which implement them, on terms conducive to the development of competition in this field and in the most efficient manner.

They involve introducing uniform rules for obtaining and using permits for prospecting, exploration for and production of hydrocarbons; changes in the state geological control; improvement of the institutional structure, which corresponds to the new procedure for providing subsoil for use.

405 <https://zakon.rada.gov.ua/laws/show/773-2021-%D0%BF#Text>

406 <https://zakon.rada.gov.ua/laws/show/208-20#Text>

407 <https://mepr.gov.ua/news/36365.html>

408 <https://zakon.rada.gov.ua/laws/show/847-2021-%D0%BF#Text>

Implementation of these commitments will make it possible to integrate the hydrocarbon markets of Ukraine and the EU, ensuring equal and non-discriminatory conditions for prospection, exploration for and production of hydrocarbons.

Ensuring proper conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons

Directive 94/22/EC

It provides for the creation of a transparent and non-discriminatory procedure for issuing authorisations for the prospection, exploration, and production of hydrocarbons; development of a new version of the Subsoil Code of Ukraine and amendments to certain laws of Ukraine; establishment of a new procedure for providing subsoil for use (detailed procedure for concluding agreements on subsoil use, conditions for their conclusion, termination, creation of conditions to ensure that the state and subsoil users can exercise their rights); improvement of state geological control in subsoil use activities (grounds, types and bodies that should exercise state control via control and supervision measures concerning compliance with the subsoil use legislation, provided that it is carried out on the basis of subsoil use agreements); improvement of the institutional structure that corresponds to the new procedure for the provision of subsoil for use, taking into account the requirements of Directive 94/22/EC; creation and implementation of a mechanism for the compiling and submitting to the European Commission of an annual report containing information on the geographical areas open to prospecting, exploration and production, authorisations granted, a list of licenced organisations and their composition, as well as estimated hydrocarbon reserves in the territory of Ukraine.

Regulatory approximation is mostly advanced. The requirement to obtain 14 authorisations and perform six mandatory procedures has been abolished;⁴⁰⁹ endorsement of works for prospection and operation of oil and gas fields has been accelerated; the need to provide an act on obtaining a mining lease for the oil and gas industry has been abolished.⁴¹⁰ For perfect transposition, it is necessary to restrict the authorisation system for the oil and gas industry to state environmental impact assessment, state examination of mineral reserves, conclusion of a contract for exploration works, obtaining approvals for changing the designated purpose, and obtaining a land plot for use, permission to connect to the network, and notifications about approval of projects for drilling wells and construction of auxiliary facilities, pilot and commercial development. Criteria have been approved for gauging the degree of risk from economic activity in the field of geological exploration and rational use of subsoil; and the frequency of scheduled state supervision measures (control) by the State Service of Geology and Subsoil has been established.⁴¹¹ New Rules for the Development of Oil and Gas Fields have been approved,⁴¹² a new Procedure for Granting Special Permits for Subsoil Use⁴¹³ and the Procedure for Conducting Auctions for the Sale of Special Subsoil Use Permits.⁴¹⁴ In order to increase the transparency and objectivity of decisions, the Interagency Commission to arrange the conclusion and fulfilment of production sharing agreements was reorganised.⁴¹⁵ No special regulatory grounds have been created to establish a mechanism for compiling and submitting the annual report to the European Commission, but the State Service of Geology and Subsoil regularly publishes information on geographical areas open for prospecting, exploration and production, permits granted, list of licenced organisations and their composition, as well as on estimated reserves of hydrocarbon resources in Ukraine. Although the draft of the new version of the Subsoil Code of Ukraine has been undergoing finalisation for four years now,⁴¹⁶ the current Code has been amended to partially take into account the requirements of Directive 94/22/EC.

Problems with **practical implementation** of the commitment have not been resolved. The current regulatory framework allows for implementing certain requirements of Directive 94/22/EC, in particular as regards ensuring equal and non-discriminatory conditions for obtaining authorisations for subsoil use. Special authorisations for subsoil use are effectively sold through electronic auctions.⁴¹⁷ Open electronic services have been developed to provide information on hydrocarbon production in a particular area.⁴¹⁸ However, in most cases, institutional, financial, personnel and other resources are insufficient for the proper enactment of the adopted regulations.

409 <http://zakon0.rada.gov.ua/laws/show/2314-viii>

410 <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-polozhenn-a120619>

411 <http://zakon.rada.gov.ua/laws/show/913-2018-%D0%BF>

412 <http://zakon2.rada.gov.ua/laws/show/z0692-17>

413 <https://zakon.rada.gov.ua/laws/show/124-2020-%D0%BF#n2>

414 <https://zakon.rada.gov.ua/laws/show/993-2020-%D0%BF#Text>

415 <https://zakon.rada.gov.ua/laws/show/644-2013-%D0%BF#Text>

416 <https://mepr.gov.ua/news/35678.html>

417 <https://zakon.rada.gov.ua/laws/show/2019-19#Text>

418 <https://www.geo.gov.ua/geologichna-galuz/geologichni-karty/>

Restructuring of the coal sector

Art. 339 of the Association Agreement

Art. 339 of the Association Agreement clearly specifies that the restructuring of the coal sector is aimed at increasing the competitiveness of the coal industry, improving the safety of coal mining and safety of miners, as well as reducing the negative impact of coal mining on the environment (including reduction of mine methane emissions).

However, recently this commitment has received a much broader perspective in the context new national climate goals established by Ukraine⁴¹⁹ as well as its intentions to join the EU's Green Deal,⁴²⁰ which involves achieving climate neutrality by 2050, resulting from a rapid reduction in coal mining and use. It is obvious that the issue of giving up coal altogether (as well as the issue of the Green Deal in general) is likely to be brought up in the next update of the Association Agreement.

At the level of legislation, coal sector reform is still at a crossroads (respectively its status is “early”), as the updating of strategic documents for energy sector development is just taking off (in particular, Ukraine's Energy Strategy till 2050 and the Integrated National Energy and Climate Plan till 2030), and the existing sectoral documents are hopelessly outdated. However, the government has already announced that Ukraine will phase out the use of coal, and to this end it has begun developing a Concept and State Programme for the Transformation of Coal Regions until 2030.⁴²¹ In February 2021, this Concept⁴²² was developed by the Ministry of Regional Development, and in September 2021, it was approved by the government.⁴²³ The corresponding state programme is still being developed.

In terms of **practical implementation**, the process of transformation of coal regions is also at an “early” level. Currently, the German government is taking quite active steps in this regard, within the framework of the German-Ukrainian Energy Partnership, launched in 2020. Within its framework, in May 2020, the Coordination Centre for the Transformation of Coal Regions of Ukraine was established, which includes representatives of the governments of Germany⁴²⁴ and Ukraine, local communities, coal enterprises and trade unions, representatives of non-governmental organisations and experts. On July 6, 2021, a targeted donor project “Promoting Structural Change in Ukrainian Coal Regions” was launched for a period of 5 years with a total budget of up to 35 million euros, which is implemented by GIZ.⁴²⁵ The project will focus on the implementation of 2 pilot projects for the structural change of coal monocities, namely Chervonohrad (in the Lviv region) and Myrnohrad (in the Donetsk region). In addition, negotiations are under way to establish a multi-donor fund that will allow for accumulation of financial resources to finance other pilot projects for structural change in coal regions.⁴²⁶

Oil and petroleum products

The commitments within the Oil and Petroleum Products subsector focus on ensuring that the hydrocarbon markets operate in a way that is reliable and safe for people and the environment.

They involve the maintenance of minimum stocks of crude oil and petroleum products; prevention of interruptions in their supply and transit through the territory of Ukraine; encouraging the use of energy produced from renewable sources; ensuring the proper quality and safety of gasoline and diesel fuel; reduction of harmful emissions during the storage and transportation of hydrocarbons.

By implementing these commitments, Ukraine will reduce the negative impact of motor fuel on the environment, increase the share of renewable energy in transport, will be able to promptly deal with emergencies or local crises caused by sudden interruptions in the supply of oil, petroleum products and natural gas used for energy production.

⁴¹⁹ In particular, in July 2021, the government approved Ukraine's updated Nationally Determined Contribution to the Paris Agreement (NV2).

⁴²⁰ <https://www.kmu.gov.ua/news/uryad-shvaliv-cili-klimatichnoyi-politiki-ukrayini-do-2030-roku>

⁴²¹ https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

⁴²² <https://www.kmu.gov.ua/news/premyer-ministr-ukrayina-obrala-strategiyu-yevropejskogo-zelenogo-kursu>

⁴²³ <https://bit.ly/3LyjZB1>

⁴²⁴ <https://www.kmu.gov.ua/news/uryad-shvaliv-koncepciyu-derzhavnoyi-cilovoyi-programi-spravedlivoyi-transformaciyi-vugilnih-regioniv-ukrayini>

⁴²⁵ Germany has even created a position of Special Commissioner of the Federal Government of Germany for Structural Change in Ukrainian Coal Regions, chaired by Mr. Stanislaw Tillich, former Prime Minister of Saxony and co-chair of the German Coal Commission.

⁴²⁶ German Society for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit).

⁴²⁷ <https://www.energypartnership-ukraine.org/uk/home/milestones/pidpisannja-zajavi-pro-energetichne-partnerstvo/>

Creation and maintenance of minimum stocks of crude oil and/or petroleum products

Directive 2009/119/EC

It involves developing a model to maintain minimum stocks of crude oil and petroleum products; performing preparatory engineering and technical measures, creation of such stocks and introduction of regular reporting on them to the European Commission and the Secretariat of the Energy Community.

Regulatory approximation is at an early stage or has not started. In 2019-2021, a draft resolution on approval of the model of minimum stocks of oil and petroleum products and the draft law “On Minimum Stocks of Oil and Petroleum Products” were developed.^{427, 428} In 2018, a preliminary assessment of the needs for additional tank capacity for oil and petroleum products was made,⁴²⁹ within which JSC Ukrtatnafta, for instance, intends to construct 580 thousand cubic meters of tanks for the storage of crude oil.⁴³⁰ However, no action plans for the introduction of emergency and special stocks in the event of a significant disruption of oil supplies have yet been developed; no necessary amendments have been made to the national legislation on the maintenance of minimum stocks of oil and petroleum products; no agency for the management of stocks has been established and its operational activities have not been provided for; no estimate of engineering and technical measures has been conducted; additional tank facilities have not been designed.

Due to the lack of regulatory framework, **practical implementation** of the provisions of European legislation has not begun.

Preventing interruption of transit and transporting of oil and petroleum products

Articles 275, 276, Annex XXVI to the Association Agreement

It involves taking all necessary measures to prohibit and address the unauthorised taking of energy goods transited or transported through the territory of Ukraine; minimising the risk of accidental interruption, reduction or stoppage of transit and transport; and its expeditious restoration; ensuring early assessment of potential risks and problems related to oil supply and demand.

Regulatory approximation is early or advanced. In Ukraine, Art. 292 of the Criminal Code of Ukraine establishes the criminal liability for damage of facilities of the main or industrial oil, gas, condensate pipelines and petroleum product pipelines, as well as illegal interference in the work of technological equipment.⁴³¹ Regulations aimed at tightening sanctions for damage to main oil pipelines, and a draft concept for ensuring their safety have been drafted.⁴³² However, in 2014-2021, the Government did not cooperate with EU institutions to ensure an early assessment of potential risks and problems related to oil supply and demand.

The problems with the **implementation** of the relevant provisions of European legislation have not been resolved. On the one hand, there are no cases of interruption, reduction or stoppage of transit and transport of oil through the territory of Ukraine through the fault of the transmission system operator, but the risks of such events increase due to insufficient funding to ensure the reliability of relevant facilities. On the one hand, in 2020, round-the-clock online monitoring of pipelines and administrative buildings of enterprises was introduced, which helped prevent 13 cases of illegal interference.⁴³³ On the other hand, the government has not eliminated the causes of such illegal activities, as evidenced by new cases of unauthorised taking of oil from main pipelines.⁴³⁴

Promotion of the use of energy from renewable sources, in particular in transport

Directive 2009/28/EC

It involves legislating technical requirements for the production and use of biofuels and bioliquids reducing greenhouse gas emissions; labelling of the fuel consisting of its name, grade of oil product, ecological class and content of biocomponents; entering of such data in accounting documents; and developing a stable and predictable policy to promote the use of energy from renewable sources and to attract investment.

Regulatory approximation is early or advanced. Ukraine has adopted a law on promoting development of the field of ecological transport, in particular concerning vehicles equipped exclusively with electric engines, internal

427 <https://rezerv.gov.ua/news/golova-derzhrezervu-vzyav-uchast-u-ekspertnij-diskusiyi-po-s>

428 <https://rezerv.gov.ua/novini-mznn/zakonoproekt-pro-stvorennya-ta-zberigannya-minimalnih-zapasi>

429 <https://rezerv.gov.ua/novini-mznn/samit-nova-era-strategichnih-rezerviv-mizhnarodne-partnerstv>

430 <https://www.ukrtransnafta.com/proekt-stvorennja-mznn/>

431 <https://www.ukrtransnafta.com/norativno-pravove-zabezpechennja-omn-2/>

432 <https://www.ukrtransnafta.com/ru/borba-s-vrezkami-v-neftetransportnoj-sisteme-ukrainy-trebuet-kompleksnogo-i-sistemnogo-podhoda/>

433 <https://www.ukrtransnafta.com/naftogaz-nafta-zabezpechuie-cilodobove-onlajn-sposterezhennja-za-obiektami-divizionu/>

434 <https://www.ukrtransnafta.com/rozkradacham-nafti-z-naftoprovodu-na-lvivshhini-zagrozhue-do-12-rokiv-pozbavlenja-voli/>

combustion engines with spark ignition that operate exclusively on compressed natural gas methane, liquefied natural gas methane or biogas.⁴³⁵ Requirements concerning maintaining the state register of undertakings engaged in economic activity in the field of production, storage and placing on the market of liquid biological fuels and biogas have been abolished.⁴³⁶ However, the draft law “On Amendments to Certain Legislative Acts of Ukraine Concerning the Mandatory Use of Liquid Biofuels (Biocomponents) in the Transport Sector” that was developed to fulfil the commitment and adopted in the first reading (No. 3356-Д),⁴³⁷ requires a comprehensive feasibility analysis with the appropriate calculations, as it sets restrictions “on the use on the market of fuels derived exclusively from oil.”⁴³⁸

Practical implementation of the provisions of European legislation is early. Ukraine has approved the National Transport Strategy for the period up to 2030, which, inter alia, includes “the use of alternative fuels, ‘green’ transport, prioritising environmental protection needs and preservation of valuable protected areas during the development of transport infrastructure.”⁴³⁹ Three national standards “Sustainability Criteria for the Production of Biofuels and Bioliquids for Energy Use. Principles, Criteria, Indicators and Means of Certification” (parts 2 to 4 of DSTU EN 16214 - __:2017)⁴⁴⁰ have been adopted by way of validation. The Technical Regulation on requirements for motor gasoline, diesel, marine and boiler fuels⁴⁴¹ provides for the labelling of fuel consisting of its name, grade, ecological class and content of biocomponents. At the same time, there is no proper infrastructure (institutional, personnel and financial support) in Ukraine to meet most of the requirements of European legislation.

Ensuring the proper quality and safety of petrol and diesel fuel

Directive 2016/802/EU

Directive 98/70/EC

It involves adopting regulatory legal acts establishing restrictions on the sulphur content in motor fuel and designating an authority in the field of market supervision and control; organisation of an effective system for checking the quality of fuel by sampling, application of modern methods for determining the sulphur content, introduction of sanctions for violations; determining common legal, organisational, financial and economic frameworks for quality control of petroleum products in accordance with EU standards and rules; establishment of a fuel quality monitoring system aimed at protecting public health and the environment; provision of annual reports on fuel sales and quality, in particular on the geographical availability of unleaded petrol and diesel with a sulphur content below 10 mg/kg.

Regulatory approximation is early or has not started. In 2016, the State Environmental Inspectorate was assigned the function of a market supervision (control) body regarding motor gasoline, diesel, marine and boiler fuel,⁴⁴² however the designation was formal. No regulatory framework has been created to establish an effective system for checking the quality of fuel, ensuring the proper functioning of the system of interlaboratory comparisons of test results; creation of a system for responding to sudden changes in the supply of raw materials; development and introduction of a national fuel quality monitoring system that provides reliable data on the compliance of petroleum products with the requirements of EN 228 and EN 590.

Practical implementation of the provisions of European legislation is early or has not started. Inspections of fuel quality and safety are carried out sporadically, mainly following consumers’ complaints. Due to the lack of public funding, fuel sampling and testing are not performed.⁴⁴³ Only 23 of the 51 national standards required to harmonise the Ukrainian and EU fuel quality and safety requirements have been adopted. The implementation of Directive 98/70/EC was made significantly more complicated due to the law⁴⁴⁴ that allowed the import of used vehicles to Ukraine. The use of fuel that meets Euro-5 environmental standards makes no sense, as it does not reduce the harmful effects of exhaust fumes on human health and the environment.

435 <https://zakon.rada.gov.ua/laws/show/1660-IX>

436 <http://zakon2.rada.gov.ua/laws/show/1713-viii>

437 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70345

438 <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=70345&pf35401=549324>

439 <https://zakon.rada.gov.ua/laws/show/430-2018-%D1%80#Text>

440 http://uas.org.ua/wp-content/uploads/2017/12/Zvit_vikonan-sichen-01-01-2018_Program-2017.xlsx

441 <http://zakon.rada.gov.ua/go/927-2013-n>

442 <https://zakon.rada.gov.ua/laws/show/1069-2016-%D0%BF#n59>

443 <https://www.dei.gov.ua/files/1619434703680232/%D0%B7%D0%B2%D1%96%D1%82%202020%20%D1%80%D1%96%D0%BA.pdf>

444 <http://zakon.rada.gov.ua/laws/show/2611-19>

Control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations

Directive 94/63/EC

It involves introducing the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations; as well as making an inventory of storage tanks and vehicles for the transport of petroleum products in accordance with EU standards.

Problems with fulfilling the commitments on **levels of legislative regulation** have not been resolved. The draft technical regulation that sets out the requirements for the storage, transport and loading of fuel, relevant equipment and service stations, which generally meets the requirements of Directive 94/63/EC, has been developed but has not been endorsed by the relevant executive authorities and approved by the Government. The task of making an inventory of storage tanks and vehicles for the transport of petroleum products was⁴⁴⁵ implemented in the framework of another document, namely by introducing the production licencing, storage marketing of motor fuel.⁴⁴⁶ One of the conditions for granting a licence is the availability of certified equipment. The loss rates of petroleum products during their reception, storage, release, loading and transport are approved by a separate Government Resolution (No. 686, of August 5, 2020).⁴⁴⁷ However, it is impossible to directly fulfil the tasks necessary to create the regulatory framework required for the implementation of Directive 94/63/EC due to its incorrect translation into Ukrainian. In particular, the Implementation Plan refers to petroleum products (namely motor gasoline, diesel fuel, kerosene, liquefied petroleum gas) as gasoline, to terminals as oil depots, to tanks as mobile containers, to service stations as service centres, and to loading installations as cargo cranes.

Practical implementation of the provisions of European legislation is insufficient. In pursuance of the adopted resolutions, six national standards (in particular, parts 1 to 4 of DSTU EN 13617 - __:2017) have been adopted by way of "validation".⁴⁴⁸ The Unified State Register of Business Entities that Received Licences for Producing, Storing, Wholesale and Retail Trade in Fuel, and Places of Production, Storage, Wholesale and Retail Trade in Fuel.⁴⁴⁹ However, institutional, financial, staffing and other resources are insufficient to monitor compliance with the established requirements.

Energy regulator

The "Gas" Directive 2009/73/EC and the "Electricity" Directive 2009/72/EC of the EU Third Energy Package include an identical chapter (VIII and IX, respectively) with requirements for the functioning of the regulatory authority in the gas and electricity markets.

The issue of the energy regulator is critical for the proper implementation of the provisions of these directives given the existence of natural monopolies in the energy market (e.g. gas transmission systems and power transmission lines) and the need to separate them from other activities of vertically integrated monopolies in the process of unbundling (for details, see sections "Gas" and "Electricity" hereof) and adequate regulation (especially with regard to setting tariff rates for their services).

In addition to adequate organisational and financial support, a key requirement for such regulatory authorities is their independence from both political interference (on the part of political forces and government) and from the direct or indirect influence of companies in the gas and electricity markets that may be affected by the regulator's decisions.

The changes needed at the level of national legislation are generally "advanced," as in 2016-19 Ukraine carried out reform of its energy regulation agency – the National Energy and Utilities Regulatory Commission (NEURC) – by approving the relevant framework law⁴⁵⁰ in line with the requirements of the above EU directives.

However, the NEURC's "Achilles' heel" from the legal point of view was the issue of its constitutionality, as according to the ruling of the Constitutional Court of June 13, 2019,⁴⁵¹ the status of the NEURC as a "permanent independent state collegial body, which by its functional purpose, jurisdiction, and powers has the characteristics of a central executive body but is not subordinated to the Cabinet of Ministers of Ukraine and does not belong to the executive

445 <https://pulse.kmu.gov.ua/ua/streams/environment/2018-substream1-64>

446 <http://zakon.rada.gov.ua/laws/show/2628-viii>

447 <https://zakon.rada.gov.ua/laws/show/686-2020-%D0%BF#Text>

448 <https://bit.ly/3sl4Zys>

449 <https://tax.gov.ua/dovidniki--reestri--perelik/reestri/383525.html>

450 Law of Ukraine "On the National Energy and Utilities Regulatory Commission" No. 1540-VIII, of September 22, 2016 /

<https://zakon.rada.gov.ua/laws/show/1540-19#Text>

451 <https://ccu.gov.ua/novyna/ksu-vyznav-nekonstytucijnomy-okremi-polozhennya-zakonu-ukrayiny-pro-nacionalnu-komisiju-shcho>

branch.” In order to resolve this constitutional conflict, which obviously requires amendments to the national framework Law, a decision was made at the end of 2019 to amend the law on the NEURC⁴⁵² so as to change the status of the energy regulator from an independent state collegial body to a central executive body with a special status subordinate to the government. On the other hand, such a step is a clear violation of the EU’s requirements for the independence of energy regulatory authorities,⁴⁵³ which made the Energy Community warn Ukraine that this step could only serve as a temporary solution and that constitutional amendments need to be adopted as soon as possible and the regulator’s independence restored.⁴⁵⁴

Assessment for the practical implementation of the commitments has been downgraded from “advanced” to “critical non-conformity” due to a number of attempts at political interference in the procedures for appointing the NEURC management at the stage of their scheduled rotation and the pressure exerted by dominant energy companies on commissioners to make regulatory decisions in their favour.

In particular, the following attempts have been documented:

1. groups of MPs filed lawsuits in the Constitutional Court (such as the lawsuit of Oleksii Kucherenko’s group in November 2020 to cancel the results of the rotation of commissioners in 2019)⁴⁵⁵;
2. companies affiliated with the largest players in the energy market filed lawsuits to administrative courts, demanding that certain “inconvenient” commissioners be dismissed based on the legal conflict over the commission rotation procedure due to the NEURC status change (for details, see above sections)⁴⁵⁶;
3. legal conflicts in the procedures of dismissal and appointment to NEURC positions were used to remove “inconvenient” commissioners selected in an open competition before November 2019 and to appoint “loyal” ones through the interim procedure (the so-called case of “Olena Antonova”)⁴⁵⁷ and for the CMU’s discrete interference in the work of the competition commission for the selection of NEURC members⁴⁵⁸;
4. indirect pressure on NEURC commissioners was exerted by key companies in the market, it even came to the establishment of a “fake” ad hoc inquest committee of the Verkhovna Rada⁴⁵⁹ and filing of a counterclaim by the NEURC to the State Bureau of Investigation concerning the “illegal influence of a group of MPs on the activities of the regulator in order to interfere with the performance of official duties and to make it take illegal decisions.”⁴⁶⁰

An additional concern is posed by some regulatory decisions of the NEURC directly aligning its actions with the government’s policy (e.g., the decision to reduce gas tariffs was made immediately after the government put a price cap on gas market in January 2021)⁴⁶¹ and structural changes within the commission itself, in particular the liquidation of an important Strategic Development and Planning Department as a result of the management’s disagreement with the incentive pricing methodology for electricity distribution system operators, approved by the NEURC on August 26, 2020.⁴⁶²

452 Law of Ukraine No. 394-IX, of 19.12.2019 <https://zakon.rada.gov.ua/laws/show/394-IX#Text>

453 For such a status change makes it questionable that the NEURC can serve as an equidistant arbiter between the government and market participants, while remaining part of the executive branch.

454 https://www.energy-community.org/dam/jcr:0af3b17a-3759-4a23-a2ef-3134784e217c/EnC_IR2020.pdf

455 https://ccu.gov.ua/sites/default/files/3_525_2020.pdf

456 For example, the lawsuit of Technoinvest LLC against the Cabinet of Ministers in case No. 640/24854/20 in the Sixth Court of Appeal of Kyiv

457 <https://www.facebook.com/photo/?fbid=3167725163349604&set=a.1294710193984453>

458 <https://www.facebook.com/svetlana.golikova.16/posts/3504689756277049>

459 https://www.ukrrudprom.com/analytics/Ahmetov_pitaetsya_ustanovit_totalniy_kontrol_nad_energetikoy.html

460 <https://www.nerc.gov.ua/?news=10610>

461 <https://ua.interfax.com.ua/news/economic/716805.html>

462 <https://expro.com.ua/novini/nkrekp-lkvduvala-departament-strategchnogo-rozvitku-ta-planuvannya>

TAXATION

Experts: Vyacheslav Cherkashyn



■ not started ■ early stage ■ advanced ■ perfect ■ critical non-conformity (0.1%)

Articles 352 and 353 of the Association Agreement between Ukraine and the EU (hereinafter referred to as the AA) and Annex XXVIII focus on:

- development of cooperation in combating and fighting fraud and smuggling of excisable products;
- approximation of Ukrainian tax legislation to the structure of excise taxation laid down in the EU acquis (harmonisation of excise policies);
- Ukraine's gradual increase in excise rates on tobacco products to the EU minimum, taking into account the constraints of the regional context and in line with the WHO Framework Convention on Tobacco Control.

According to the Government Report⁴⁶³ on the Implementation of the AA for the period from 2014 to 2020, the overall progress in the fulfilment of the AA in the area of "Taxation" is only 60%. That is, Ukraine faces an extremely difficult task – in the near future it has to complete the development of the excise policy based on the optimal balance between achieving the goals of generating revenues to the budget, approximation to the structure of excise taxation in accordance with the AA, and implementing effective health policy.

Articles 351 and 353 of the AA and Annex XXVIII set forth ambitious tasks of approximating the structure of value added tax to the common system of value added tax applicable to the production and sale of goods (services) within the EU, with a specific focus on VAT refund procedures, to avoid accumulation of arrears, as well as on enhancing cooperation and sharing of experiences in combating tax fraud, in particular carousel fraud.

Articles 349 to 351 of the AA lay down the following objectives:

- enhancing good governance in the tax area, in particular the principles of transparency, exchange of information, and fair tax competition, strengthening international cooperation in the tax area;
- cooperation aimed at the improvement and development of Ukraine's tax system and administration, including the enhancement of collection and control capacity.

Subsector: Indirect taxation: excise duty/tax

Compliance with the general arrangements in relation to excise duty, in particular as regards establishing a list of "excisable goods"

Article 1 of Council Directive 2008/118/EC of 16 December 2008

Implementation involves the unification of the list of excisable goods. Given the changes made to the Tax Code of

⁴⁶³ <https://www.kmu.gov.ua/news/uryad-ukrayini-pidbiv-pidsumki-6-rokiv-vikonannya-ugodi-pro-asociaciyu-mizh-ukrayinoyu-ta-yes>

Ukraine in 2014-2019 (by Laws of Ukraine No. 71-VIII of 28.12.2014; No. 909-VIII of 24.12.2015, and No. 391-IX of 18.12.2019), the national list of excisable goods, although wider than that of the EU because it includes cars, their bodies, trailers and semi-trailers, motorcycles, vehicles designed to carry 10 people or more, and vehicles for the carriage of goods, has been formally brought in line with the EU acquis (except for the need to clarify the term “energy products” – see the section on the implementation of Council Directive 2003/96/EC).

It should be mentioned that in accordance with Law of Ukraine No. 446-IX of 16.01.2020, from January 1, 2021 Ukraine introduced an excise tax on “liquids used in electronic cigarettes” (at a rate of UAH 3 thousand per 1 litre) with the appropriate licencing of the activities of their production, wholesale and retail trade, and labelling. Although this step is not regulated by the AA, it is in line with the taxation policies concerning “novel” tobacco products in most EU member states. In general, the implementation of the legislation is at a high level.

Harmonisation of excise duties on alcohol and alcoholic beverages

Council Directive 92/83/EEC of 19 October 1992

The implementation of these Directives involves the unification of terms and concepts, elements of the tax, including requirements for tax rates and possibilities of setting reduced rates for alcoholic beverages produced by small distilleries and/or breweries, as well as for beer strength of not more than 2.8% vol. and/or wine with a strength of not more than 8.5% vol.; exemptions from the tax on beer, wine, other non-carbonated and sparkling fermented beverages that are home-made and are not produced for commercial purposes, as well as completely denaturated alcohol in accordance with EU regulations.

The key amendments made to the legislation in 2014-19 include:

- Law of Ukraine No. 71-VIII of 28.12.2014, which brought the concept of “beer” in line with Article 2 of Council Directive 92/83/EEC;
- Laws of Ukraine No. 1791-VIII of 20.12.2016 and No. 2628-VIII of 23.11.2018, which updated the classification of alcoholic beverages, namely wine products, in accordance with the requirements of Articles 8, 12, and 17 of Council Directive 92/83/EEC.

Further work on implementation has continued this year. Thus, the government submitted to the parliament a draft law of Ukraine “On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine to Ensure Balanced Budget Revenues” (No. 5600 of 02.06.2021, the draft law was adopted by the Verkhovna Rada of Ukraine in the first reading on 01.07.2021). It, inter alia, specifies that excise duty on beer shall be fixed by reference to the number of litre/degrees of actual alcoholic strength by volume of finished product rather than to the number of litres of finished product, which is in line with Article 3 of Council Directive 92/83/EEC.

Some progress is observed with regard to the introduction of reduced excise tax rates for alcoholic beverages produced by small breweries (so-called “small beer producers”) – on 20.05.2021, the Verkhovna Rada of Ukraine adopted the relevant draft laws (No. 5118 and No. 5119 of 19.02.2021) in the first reading.

However, even though most of the provisions of Council Directive 92/83/EEC have been introduced into domestic law, Ukraine still has not achieved its full comprehensive implementation, which was scheduled for the end of October 2019 (paragraphs 1481-1484 of the Action Plan approved by CMU Resolution No. 1106 of 25.10.2017⁴⁶⁴).

Unification of the structure of excise duty applied to tobacco products, gradual convergence of excise rates on tobacco products

Council Directive 2011/64/EU of 21 June 2011

Implementation involves bringing national legislation in line with Council Directive 2011/64/EU, in particular as regards the terms and definitions, unification of the list of excise duty exemptions and refunds and specific features of levying duty on cigarettes, compliance with the structure and minimum excise duty requirements on cigars, cigarillos and fine-cut tobacco.

It should be pointed out that a significant amount of EU legislation had been taken into account in national legislation before the signing of the AA, in particular in earlier versions of the Tax Code and Law of Ukraine No. 481/95-BP of 19.12.1995 “On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages, Tobacco Products and Fuel.” This work was continued in 2014-19, including the adoption of Law of Ukraine No. 2245-VIII “On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine to

464 <https://www.kmu.gov.ua/diyalnist/yevropejska-integraciya/vikonannya-ugodi-pro-asociaciyu/plani-zahodiv>

Ensure Balanced Budget Revenues in 2018” of 07.12.2017, which is key in the context of gradual convergence of excise rates on tobacco products between Ukraine and the EU as it provides a schedule for raising specific rates until 2025 and the minimum excise duty to a level equivalent to EUR 90 per 1,000 pieces, as well as introduces the concept of “weighted average retail selling price of cigarettes.” And from 01.01.2025 the requirement on the share of excise duty in the weighted average retail selling price of cigarettes (at least 60%) comes into force.

As regards practical implementation of the requirements of Directive 2011/64/EU, Order No. 256 of the State Customs Service of Ukraine “On Adopting the Explanations to the Ukrainian Classification of Goods of Foreign Economic Activity”⁴⁶⁵ of 14.07.2020 provides clarification concerning the tax on products that entirely/partially consist of substances other than tobacco; exclusion from the list of tobacco products of products that do not contain tobacco and are used exclusively for medical purposes; compliance with the criteria defining products such as cigarettes, cigars and cigarillos, smoking tobacco.

The practical implementation of the legislation is at a high level. The only methodological issues that need to be resolved are:

- specifying the size of non-standard cigarettes for the purposes of collecting the excise duty, as laid down in paragraph 2 of Article 3 of Council Directive 2011/64/EU;
- inconsistency with the EU practice of the approach established by Law of Ukraine No. 446-IX of 16.01.2020 to measuring the excise duty for heated tobacco products (HTPs) “per thousand pieces”, while in most EU Member States the duty is calculated based on weight;
- incomplete compliance of the mechanism for calculating the weighted average retail selling price of cigarettes (paragraph 14.1.227¹ of the PCU, the norm enters into force on January 1, 2025) with the requirements of Article 8.2 of Council Directive 2011/64/EU.⁴⁶⁶ The government’s attempt to eliminate this shortcoming in draft law No. 4101 of 15.09.2020 was not supported by the Verkhovna Rada of Ukraine. However, it should be pointed out that the deadlines for the implementation of Article 8 of Council Directive 2003/96/EC in accordance with Annex XXVIII to the AA have not yet been specified (the implementation schedule is to be set by the Association Council).

At the same time, the government needs to do some “error analysis” with regard to the implementation of the Strategy in the field of combating illegal manufacturing and trafficking of tobacco products until 2021 (CMU Order No. 570-p of 23.09.2017) and the relevant Action Plan for its implementation (CMU Order No. 128 of January 29, 2020), as well as to approve a new relevant policy document.

Excise taxation of energy products and electricity

Council Directive 2003/96/EC of 27 October 2003 (Energy Taxation Directive or ETD)

The framework of cooperation between Ukraine and the EU in relation to the ETD involves unification of elements of excise tax on energy products and electricity, including the tax object and base, minimum tax levels and exemptions (full or partial). With regard to these tasks, in the period from 2014 to 2019, Ukraine adopted laws No. 71 of 28.12.2014-VIII, No. 909-VIII of 24.12.2015, No. 2628-VIII of 23.11.2018, and No. 391-IX of 18.12.2019, which, inter alia, introduced the System of Electronic Administration of the Sale of Fuel and Ethyl Alcohol and included “goods (products) used as fuel” in the list of excisable products. The latter innovation requires harmonisation with Article 2 of the ETD in terms of indicating the goods used as fuel, taking into account the codes in accordance with the UCG FEA (UKT ZED). They also need further harmonisation of the rules on the minimum tax level and on exemptions (full and partial). But in general, at the legislative level, the convergence of Ukraine and the EU in the field of taxation of energy products and electricity is advanced. In addition, the timetable for the implementation of the provisions of Council Directive 2003/96/EC in accordance with Annex XXVIII (28) to the AA specifies that these shall be implemented “progressively, taking into account the future needs of Ukraine”. In accordance with paragraph 1533 of the Government Action Plan for the Implementation of the Association Agreement (CMU Resolution No. 1106 of October 25, 2017), a draft law to bring national legislation on excise taxation of energy products and electricity in line with Council Directive 2003/96/EC is to be developed by December 31, 2021.

⁴⁶⁵ <https://zakon.rada.gov.ua/rada/show/v0256913-20#Text>

⁴⁶⁶ Ukraine received a remark from the EU that the weighted average retail selling price of cigarettes should be calculated by reference to the total value of cigarettes inclusive of all taxes.

Compliance with quantitative restrictions on exemptions from VAT and excise duty on goods imported by persons travelling from third countries

Section 3 (concerning quantitative restrictions) of Council Directive 2007/74/EC of 20.12.2007
Council Regulation (EC) 1186/2009 of 16 November 2009

The implementation in this area involves drafting, adoption and enforcement of the relevant Law of Ukraine on amendments to the Customs Code of Ukraine and other regulations aimed at exempting from customs duties, value added tax and excise tax of certain amounts of excisable goods imported by persons travelling from third countries in line with the EU acquis. At the same time, the Customs Code of Ukraine adopted in 2012 (Law of Ukraine No. 4495-VI of 13.03.2012) includes a number of provisions (Articles 374, 376 and 380) that partially take into account the requirements of Chapter III of Council Directive 2007/74/EC. However, full-fledged implementation requires additional changes:

- adding cigars to the list of exempt goods in accordance with the requirements of Article 8 of the Directive, while setting appropriate special restrictions (on the weight of cigarillos and cigars);
- eliminating the inconsistency with regard to the quantitative restrictions on wine (2 litres instead of 4) and beer (5 litres instead of 16) in accordance with the requirements of Article 9 of the Directive (Ukraine has stricter national rules than the EU), establishing a rule regarding combinations of alcoholic beverages subject to tax exemption, and adding “ethyl alcohol of 80% vol. or more” to the list of exempted goods;
- in accordance with the requirements of Article 11 of the Directive, exempting a certain amount of fuel imported separately (in a portable container, but not exceeding 10 litres) in the case of any one means of motor transport.

During the period from 2014 to 2019, several failed implementation attempts were made (draft laws No. 3444 of 10.11.2015 and No. 4615 of 06.05.2016). According to the Ministry of Finance,⁴⁶⁷ in April 2021 draft laws on amendments to the Customs Code (No. 5810 of 20.07.2021) and the Tax Code of Ukraine were prepared.⁴⁶⁸ Thus, comprehensive transposition of the EU acquis into national law has not been achieved. Given the lack of progress with the regulatory approximation, the final practical implementation is also impossible.

Indirect taxation: value added tax

Harmonisation of legislation with the common EU system of value added tax

Council Directive 2006/112/EC of 27 November 2006
Thirteenth Council Directive 86/560/EEC of 17 November 1986

To fulfil this commitment, Ukraine should transpose a significant amount of provisions on terms, administration procedures, including tax refunds, rights and duties of taxpayers, and other mandatory elements of the tax. Ukraine continues work on the implementation of Council Directive 2006/112/EC into national tax legislation. In particular, the provisions on the list of exempt transactions and on the elimination of critical inconsistencies in the taxation of gold bars and investment gold need to be harmonised with the Directive. To this end, the Government submitted to the Parliament a draft law of Ukraine on amendments to the Tax Code of Ukraine (No. 5600 of 02.06.2021, the draft was adopted by the Verkhovna Rada of Ukraine in the first reading on 01.07.2021), which, inter alia, provides a definition of investment gold and makes transactions involving investment gold exempted from tax. The practical implementation of Council Directive 2006/112/EC is also at a high level (the list of by-laws is significant).

At the same time, since 2014, no provision of the Thirteenth Council Directive 86/560/EEC on measures to refund VAT to taxable persons not established in Ukraine’s territory has been transposed into Ukrainian law. However, it should be borne in mind that the timetable for the implementation of this Directive is to be determined by the Association Council, as provided for in Annex XXVII to the AA. During the fourth meeting of Cluster 2 of the Subcommittee on Economic and Other Sector Cooperation of the EU-Ukraine Committee on July 3, 2020, Ukraine and the EU agreed on the deadline for preparing a draft Decision of the EU-Ukraine Association Council on the schedule of gradual implementation of the Thirteenth Directive – i.e. December 2021.

⁴⁶⁷ PP. 8-10 of the Report on the Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, for Q2, 2021.

⁴⁶⁸ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72581

From April 1, 2017, a new VAT refund mechanism was introduced in Ukraine and the Register of Applications for the Refund of the Amount of Public Budget Reimbursement of VAT was launched.⁴⁶⁹ This mechanism is designed to facilitate doing business, reduce corruption, improve the transparency of the VAT refund mechanism, and avoid accumulation of debt. The Register operates in accordance with the Procedure for Maintaining the Register of Applications for the Refund of the Amount of Public Budget Reimbursement of VAT, approved by CMU Resolution No. 26 of January 25, 2017.

At the same time, Law No. 1150-IX “On the Bureau of Economic Security of Ukraine” of January 28, 2021 established a law enforcement agency aimed at comprehensive counteraction to economic and financial offences, including tax evasion and tax fraud. However, the work in this field is not over. Another draft law (No. 3959-1 of 25.08.2020, adopted by the Verkhovna Rada of Ukraine in the first reading on 03.02.2021) is pending consideration by the Parliament. It is to introduce criminal liability for fraud concerning value added tax, and the task of investigating this type of criminal offence is assigned to the newly created Bureau of Economic Security of Ukraine, which is to be launched in September 2021.

The issue of compliance with quantitative restrictions with regard to VAT exemptions for goods imported by persons travelling from third countries is discussed in the section “Indirect Taxation: Excise Duties/Tax”.

Cooperation to further improve economic relations, trade, investment and fair competition

Application of the principles of good governance and further improvement of international cooperation in the field of taxation

Articles 349 and 350 of the AA, taking into account the requirements of Council Directive 2011/16/EU of 15.02.2011 on administrative cooperation in the field of taxation

Implementation of the legislation is at a high level. Article 4 “Basic principles of tax legislation of Ukraine” of the Tax Code of Ukraine stipulates that the tax legislation of Ukraine is based on the following principles, in particular: general taxation (para. 4.1.1); equality of all taxpayers before the law, prevention of any discrimination in tax matters (para. 4.1.2); and neutrality of taxation (para. 4.1.8.). On 01.01.2017 the country joined the OECD/G20 BEPS Plan (in the EU it is regulated in particular by Council Directive 2016/1164/EU), which resulted in the adoption of Laws of Ukraine No. 2692-VIII of 28.02.2019 “On Ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting” and No. 466-IX of 16.01.2020 (entered into force on 23.05.2020), but its individual elements shall come into force on 01.01.2022). In June 2021, the Ministry of Finance of Ukraine announced its intention to implement the provisions of the Common Reporting Standard (CRS)⁴⁷⁰ in the national legislation of Ukraine.

Improvement and development of Ukraine’s tax system and administration

Article 351 of the AA

Commitments in this area are aimed at the improvement and development of Ukraine’s tax system and administration, including enhancement of collection and control capacity. The tax and customs systems are undergoing reform. In 2019, the State Fiscal Service of Ukraine was divided into two independent bodies: the State Tax Service and the State Customs Service.⁴⁷¹ Ukraine adopted CMU Resolution No. 227 “On Approval of Regulations on the State Tax Service of Ukraine and the State Customs Service of Ukraine” of March 6, 2019 and Law of Ukraine No. 440-IX “On Amendments to the Customs Code of Ukraine and Certain Other Legislative Acts of Ukraine in Connection with the Implementation of Administrative Reform” of January 14, 2020, which amends a number of legislative acts in order to improve the governance structure in the field of national customs and tax policies. However, this reform came to a standstill when in April 2020 the heads of the newly created departments unexpectedly resigned. Nevertheless, the processes of improvement and development of the tax system and tax administration of Ukraine continue and generally meet the requirements of the EU acquis and the AA.

469 <https://mof.gov.ua/uk/vat-refund>

470 <https://bit.ly/3uRtxk5>

471 <https://mof.gov.ua/uk/reform-of-the-sfs-customs>

STATISTICS

Experts: Svitlana Chervona

11.1

22.2

66.7

not started early stage advanced perfect critical non-conformity

In accordance with Chapter 5 of Title V “Statistics” of the Association Agreement between Ukraine and the EU, Ukraine has undertaken to:

- harmonise the national statistical system with European norms and standards (Art. 355 of the Agreement);
- strengthen the capacity of the national statistical system, focusing on a sound legal basis, adequate data and metadata dissemination policy and user-friendliness (Art. 356 of the Agreement);
- cooperate within the framework of the European Statistical System, in which Eurostat is the EU statistical authority (Art. 357 of the Agreement);
- direct efforts towards further gradual approximation to the EU acquis in statistics on the basis of the national strategy for the development of the Ukrainian statistical system, while taking into account the development of the European Statistical System. In the statistical data production process, emphasis will be placed on further development of sample surveys, while taking into account the need to reduce the response burden (Article 358 of the Agreement).

In order to ensure implementation of the Association Agreements, Ukraine approved an action plan for the implementation of the Association Agreement with the section “Statistics and Information Exchange” focusing on the fulfilment by the State Statistics Service of Ukraine of the following tasks:

- creation of a single legal framework for producers of official (state) statistics;
- introduction of a sample statistical survey on monthly fuel consumption;
- introduction of structural surveys in the field of agriculture;
- introduction of guidelines for surveys on energy end-use by households;
- introduction of guidelines on statistics on vocational training and lifelong learning in order to consolidate organisational and methodological approaches to the implementation in national statistical practice of surveys on vocational education and lifelong learning;
- introduction of guidelines on farm typology in accordance with international standards;
- development and implementation of a system of indicators on social exclusion and poverty based on living conditions in accordance with EU requirements;
- implementation of a coordinated statistical work programme that contains information on all official statistics;
- improvement of statistical reporting on tourism in accordance with European and international standards, including the recommendations of the World Tourism Organisation.

Approximation of Ukrainian legislation in the field of statistics to EU legislation

Creating a single legal framework for producers of official (state) statistics

Regulation (EC) 223/2009⁴⁷²

To fulfil this commitment, it is necessary to develop and submit to the Cabinet of Ministers of Ukraine a draft law on amendments to certain laws of Ukraine governing state statistical activities with regard to providing a single legal framework for producers of official statistics.

In order to further implement the standards, rules and recommendations of the EU and other international organisations in the national statistical practice, the State Statistics Service of Ukraine has:

- developed draft law of Ukraine No. 5886 “On Official Statistics” of 02.09.2021⁴⁷³ in order to improve the legislation in the field of statistics in accordance with the EU legislation (acquis) in the field of statistics, as set out in the Statistical Requirements Compendium. The draft law takes into account EU recommendations, in particular Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics, European Statistics Code of Practice, Generic Law on Official Statistics, developed by the UN for Eastern Europe, Caucasus and Central Asia and approved at the Conference of European Statisticians). The draft was publicly discussed and endorsed by the relevant authorities. In accordance with the Rules of Procedure of the Cabinet of Ministers, the draft was submitted to the Cabinet of Ministers of Ukraine for consideration at a government meeting and submission to the Verkhovna Rada of Ukraine;⁴⁷⁴
- developed draft law No. 5108 “On Amendments to Certain Laws of Ukraine Regulating State Statistical Activities” of 19.02.2021,⁴⁷⁵ amending the laws of Ukraine “On State Statistics” and “On the All-Ukrainian Population Census”. The important provisions of the draft law include the following: setting the timeframe for the All-Ukrainian census – at least once a decade; introduction of a census using information contained in national electronic information resources, in compliance with the requirements of Ukrainian legislation in the field of information protection and personal data; enabling the respondent to fill in the census documentation with the help of special software in the information system of general Internet access; improving the requirements for temporary census staff to guarantee the integrity of the staff involved to respondents; protection of respondents’ rights to respect for their private and family life.⁴⁷⁶

In addition, the State Statistics Service has developed and approved:

- The concept of implementation of the European standard – the Single Integrated Metadata Structure (SIMS) – in the bodies of state statistics (Order No. 290 of the State Statistics Service of 09.10.2020),⁴⁷⁷ which is developed taking into account the requirements set by the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, ratified by Law of Ukraine No. 1678-VII of September 16, 2014, Commission Recommendation 2009/498/EC on reference metadata for the European Statistical System, and European Statistical System (ESS) Handbook for Quality and Metadata Reports (2020). The concept describes the stages of development of European standards for the structure of metadata and quality reports in the European Statistical System (ESS) and specifies the grounds, scope, purpose, and basic principles of SIMS implementation in state statistics bodies of Ukraine, in particular in order to improve quality reporting;
- The concept of the statistical metadata system (Order No. 368 of the State Statistics Service of December 30, 2020),⁴⁷⁸ developed taking into account the requirements set out in the Association Agreement, Chapter 5, Article 335), ratified by Law of Ukraine No. 1678-VII of 16 September 2014, Commission Recommendation 2009/498/EC on reference metadata for the European Statistical System, (hereinafter referred to as the Eurostat Recommendations), and European Statistical System (ESS) Handbook for Quality and Metadata Reports (2020). The concept describes the goals, objectives and functions of the SMS, its composition and structure, the relationship between objects, the list of users, their functions and interaction, as well as lays down the basic principles and management model, stages for the creation and further development of the SMS.⁴⁷⁹

472 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009R0223>

473 https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72677

474 http://www.ukrstat.gov.ua/gromad_syp/gr_obgovor/2021/proekt_zakon.pdf

475 https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71160

476 http://www.ukrstat.gov.ua/gromad_syp/gr_obgovor/2020/dod_2.pdf

477 <https://zakon.rada.gov.ua/rada/show/v0290832-20#Text>

478 http://www.ukrstat.gov.ua/norm_doc/2020/368/368.pdf

479 http://www.ukrstat.gov.ua/norm_doc/2020/215/215.pdf

Approximation of statistical methodology to that of the EU

Introduction of a sample statistical survey on monthly fuel consumption

Regulation (EC) 1099/2008⁴⁸⁰

The fulfilment of this commitment involves development and approval by the State Statistics Service's order of the methodology of sample survey of monthly fuel consumption.

The requirements of Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics were taken into account in the Guidelines on the Organisation of State Statistical Surveillance (SSS) on 'Fuel Use and Stocks' approved by Order No. 215 of the State Statistics Service of July 17, 2020. The Guidelines lay down the methods and rules of the SSS concerning the use and stocks of fuel, and provides the list of indicators of this SSS.

Introduction of structural surveys in the field of agriculture

Regulation (EC) 1166/2008⁴⁸¹

The fulfilment of this commitment involves development and approval by the State Statistics Service's order of the methodology, frequency and procedure for conducting structural surveys in the field of agriculture.

So far, the State Statistics Service of Ukraine has not approved any guidelines for structural surveys in the field of agriculture that would take into account the provisions of Regulation (EC) 1166/2008 due to the fact that the Regulation has been repealed. For 2022, there are plans to develop and approve the methodology as well as reporting and statistical documentation for the state statistical survey on the structure of agricultural holdings in accordance with Regulation (EU) 2018/1091 of 18 July 2018 on integrated farm statistics.

Introduction of a methodology for conducting a survey on energy consumption in households

Commission Regulation (EU) 431/2014⁴⁸²

To fulfil this commitment, Ukraine is to develop guidelines for calculating fuel and energy consumption in households and approve them by an order of the State Statistics Service.

The State Statistics Service of Ukraine by Order No. 295 of 29.12.2018 approved the Guidelines for Calculating Fuel and Energy Consumption in Households for the Purposes of Mathematical Modelling. The Guidelines lay down the applied aspects of modelling energy consumption by households by purpose under conditions when direct statistics or administrative data on energy consumption by households disaggregated by purpose are impossible to obtain. The Guidelines have been prepared taking into account Commission Regulation (EU) No 431/2014 of 24 April 2014 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council on energy statistics, as regards the implementation of annual statistics on energy consumption in households, Regulation (EC) 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics, and OECD/IEA Energy Statistics Manual (2007). Also, it takes into account the provisions set out in the Eurostat's Manual for Statistics on Energy Consumption in Households, laying down the framework for the collection, production, evaluation, analysis and dissemination of information on final energy consumption.

Introduction of Guidelines on Statistics on Vocational and Lifelong Learning in order to consolidate organisational and methodological approaches to surveys on vocational education and lifelong learning in national statistical practice

Regulation (EC) 452/2008⁴⁸⁴

To fulfil this commitment, Ukraine is to develop guidelines on statistics on vocational training and lifelong learning and approve them by an order of the State Statistics Service.

The State Statistics Service by Order No. 111 of June 9, 2021 approved the Guidelines on the State Statistical Survey on the Network and Activities of Educational Institutions.⁴⁸⁵ The Guidelines take into account the recommendations set out in Regulation (EC) No 452/2008 of the European Parliament and of the Council of 23 April 2008 concerning the production and development of statistics on education and lifelong learning, as well as Commission

480 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008R1099>

481 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008R1166>

482 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32014R0431>

483 http://www.ukrstat.gov.ua/metod_polog/metod_doc/2018/295/m_ose_dg.pdf

484 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008R0452>

485 http://www.ukrstat.gov.ua/norm_doc/2021/111/111.pdf

Regulation (EU) 912/2013⁴⁸⁶ of 23 September 2013 implementing Regulation (EC) No 452/2008 of the European Parliament and of the Council as regards statistics on the number of students enrolled, and graduates of primary, secondary, post-secondary (non-tertiary and tertiary), and doctoral-degree education and research institutions.

Introduction of the guidelines for farm typology in accordance with international standards

Commission Regulation (EC) 1242/2008⁴⁸⁷ replaced by Commission Delegated Regulation 1198/2014

To fulfil this commitment, Ukraine is to develop guidelines on statistics on farm typology and approve them by an order of the State Statistics Service.

In order to lay down the general rules and methods for the typology of agricultural producers in accordance with the requirements of the European Commission and Eurostat concerning harmonised farm typology, the State Statistics Service of Ukraine by Order No. 332 of 21.12.2017 approved Guidelines for Typology of Agricultural Producers.⁴⁸⁸ The Guidelines are based on Regulation (EC) 1166/2008⁴⁸⁹ of the European Parliament and of the Council of 19 November 2008 on farm structure surveys and the survey on agricultural production methods, Council Regulation (EC) No 1217/2009⁴⁹⁰ of 30 November 2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Community, Commission Delegated Regulation (EU) No 1198/2014⁴⁹¹ of 1 August 2014, as well as Commission Implementing Regulation (EU) 2015/220 of 3 February 2015 laying down rules for the application of Council Regulation (EC) No 1217/2009⁴⁹². The Guidelines also take into account the basic principles of the approach to the typology of agricultural holdings and the procedure for calculating the standard output contained in the Typology Handbook developed by the EU Committee for the Farm Accountancy Data Network (RI/CC 1500, rev. 4).

Development and introduction of a system of indicators on social exclusion and poverty based on living conditions in accordance with EU requirements

Commission Regulation (EC) 1983/2003⁴⁹³

To fulfil this commitment, Ukraine is to develop guidelines for calculating indicators of social exclusion and poverty based on living conditions and approve them by an order of the State Statistics Service.

The Guidelines for Calculating Indicators of Social Exclusion and Poverty Based on Living Conditions were developed and approved by Order No. 340 of the State Statistics Service of 29.12.2017⁴⁹⁴. The Guidelines lay down the methodology, calculation algorithms and description of the system of indicators of social exclusion and poverty based on EU Regulations 1983/2003 of 7 November 2003 and 2015/2256 of 4 December 2015, as well as on certain provisions of EU-SILC documents.

Introducing a coordinated statistical work Programme that contains information on all official statistics

Regulation (EC) 223/2009⁴⁹⁵

To fulfil this commitment, it is necessary to develop and submit to the Cabinet of Ministers of Ukraine a draft law amending certain laws of Ukraine governing state statistical activities with regard to the application of a coordinated statistical work programme that contains information on all official statistics.

To fulfil this task in 2019, the State Statistics Service developed a Programme for the Development of State Statistics until 2023, which was approved by CMU Resolution No. 222 of 27.02.2019⁴⁹⁶. The Programme specifies the priorities in the areas of further development of state statistics, taking into account the government's medium-term priority action plan until 2020, approved by CMU Order No. 275 of April 3, 2017, provisions of the Association Agreement, and the Recommendations provided by European experts following the overall assessment of the national statistical system of Ukraine conducted in 2016. According to the Programme, the objectives of state statistics development include the implementation of international standards and compliance with the requirements of Chapter 5 of Title V of the EU-Ukraine Association Agreement, which involves further gradual implementation of the standards, rules and recommendations of the EU and other international organisations into national statistical practice.

486 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0912>

487 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008R1242>

488 http://www.ukrstat.gov.ua/metod_polog/metod_doc/2017/332/332_2017.htm

489 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008R1166>

490 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32009R1217>

491 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32014R1198>

492 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32009R1217>

493 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003R1983>

494 http://www.ukrstat.gov.ua/metod_polog/metod_doc/2017/340/m_svsb_uzh.zip

495 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009R0223>

496 <https://zakon.rada.gov.ua/laws/show/222-2019-%D0%BF#Text>

In addition, in order to further harmonise state statistics with the EU statistical system, to create conditions for the operation of the national system of state statistics in accordance with the generally accepted principles of world and European statistical practice, namely the principle of professional independence:

- In 2019, a draft law “On Amendments to Certain Laws of Ukraine Regulating State Statistical Activities” was prepared. This draft law intends to recast the Law of Ukraine “On State Statistics” taking into account the EU recommendations, in particular Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics, the European Statistics Code of Practice, Generic Law on Official Statistics, developed by the UN for Eastern Europe, Caucasus and Central Asia and approved at the Conference of European Statisticians;
- In 2020, the State Statistics Service developed a draft law “On Official Statistics” aimed to improve the legislation in the field of statistics in accordance with the EU legislation (acquis) in the field of statistics, as set out in the Statistical Requirements Compendium. The draft law takes into account EU recommendations, in particular Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics, the European Statistics Code of Practice, Generic Law on Official Statistics, developed by the UN for Eastern Europe, Caucasus and Central Asia and approved at the Conference of European Statisticians.

Improving statistics on tourism in accordance with European and international standards, including the recommendations of the World Tourism Organisation

Regulation (EU) 692/2011⁴⁹⁷

To fulfil this commitment, it is necessary to develop and publish orders of the State Statistics Service as regards updating the methodology and tools for state statistical surveys on tourism.

In 2019, in order to implement Regulation (EU) No 692/2011 of the European Parliament and of the Council of 6 July 2011 concerning European statistics on tourism, the State Statistics Service developed and approved (Order No. 453 of 31.12.2019) Guidelines for the Organisation of State Statistical Surveillance concerning Tourists and Same-day Visitors at State Border Checkpoint⁴⁹⁸ (for inbound tourism), as well as changes to the methodology and reporting statistical documentation of state statistical surveillance on tourism and collective accommodation establishments – the Guidelines for the Organisation of State Statistical Surveillance of Collective Accommodation Establishments approved by Order No. 43 of the State Statistics Service of Ukraine of February 1, 2019⁴⁹⁹ (as amended by Order No. 8 of the State Statistics Service of January 11, 2021). In 2020, Ukraine developed and approved reporting statistical documentation for state statistical surveillance on tourists and same-day visitors at checkpoints across the state border (for inbound tourism) – the State Statistics Service by Order No. 334 of 26.11.2020 approved the form of state statistical surveillance “Questionnaire No.1-PDU (for 12 months) ‘Travel in Ukraine’⁵⁰⁰

497 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32011R0692>

498 http://www.ukrstat.gov.ua/norm_doc/2019/453/453.pdf

499 http://www.ukrstat.gov.ua/norm_doc/2021/08/8.pdf

500 http://www.ukrstat.gov.ua/norm_doc/2020/334/334_2020.htm

ENVIRONMENT

Experts: **Andrii Andrusevych**



not started early stage advanced perfect critical non-conformity

The Environment sector covers eight thematic areas and involves the implementation of a total of 26 EU directives and three regulations with specific commitments as regards their implementation (Annex XXX to the Association Agreement). This sector covers most of the thematic areas of EU environmental law.

According to the thematic areas, the key objectives of this sector are to:

- implement European mechanisms for environmental assessment (Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA)), access to environmental information and public participation in decision-making;
- introduce an air quality management mechanism, including monitoring, setting special requirements for fuel quality, requirements for the content of volatile organic compounds in varnishes and paints and during storage of petroleum products;
- ensure the functioning of the European model of waste management, including the grounds and principles of such management, as well as the management of certain types of waste and approaches to handling them;
- introduce a set of mechanisms in the field of water resources management and protection (basin principle of water resources management, flood risk assessment and management mechanism, environmental protection of the Azov and Black Seas, reduction and prevention of groundwater and surface water pollution by nitrates from agricultural sources, introduction of the mechanism for urban wastewater treatment and disposal, ensuring the safety and purity of drinking water);
- introduce a set of mechanisms in the field of industrial pollution (introduce a new system of integrated authorisations for industrial facilities based on the best available technologies and management methods (BAT), establish strict control over emissions from large combustion plants (mainly TPPs and CHPs) and create a modern safety management system for high-hazard enterprises, in particular with regard to emergency response);
- introduce European mechanisms for nature protection: creation of a system of protected areas according to the principles of NATURA 2000 and ensuring the protection of species of flora and fauna, in particular by restricting hunting and trade in them;
- introduce a greenhouse gas emissions trading scheme similar to the corresponding system in the EU and improve the regulation of the circulation of ozone-depleting substances and fluorinated greenhouse gases; and
- improve the biosafety system as regards the release of genetically modified organisms.

Subsector: Environmental management and integration of environment policies into other policy areas

This area involves the implementation of four “horizontal” directives: on environmental impact assessment (Directive 2011/92/EU), on strategic environmental assessment (Directive 2001/42/EC), on public participation (Directive 2003/35/EC) and on access to environmental information (Directive 2003/4/EC).

In the period from 2014 to 2019, for the purposes of implementation of Directive 2011/92/EU and Directive 2003/4/EC (partially), the Law of Ukraine “On Environmental Impact Assessment” of 23.05.2017 (No.2059-VIII) was adopted. To ensure the implementation of the Law “On Environmental Impact Assessment”, a number of bylaws were adopted:

- The procedure for the transfer of documentation to provide an opinion on the environmental impact assessment and financing of the environmental impact assessment,
- The procedure for maintaining the Unified Register for Environmental Impact Assessment (CMU Resolution No.1026 of 13.12.2017),
- CMU Resolution No. 1010 “On Approval of Criteria for Determining Planned Activities That Are not Subject to Environmental Impact Assessment and Criteria for Determining Extensions and Changes in Activities and Facilities That Are not Subject to Environmental Impact Assessment” of 13.12.2017,
- CMU Resolution No. 989 “On Approval of the Procedure for Holding Public Hearings in the Process of Environmental Impact Assessment” of 12.12.2017,

In the period from 2020 to the first half of 2021, the Law of Ukraine “On Environmental Impact Assessment” was amended to harmonise the work of the national electronic registers and a temporary moratorium on public hearings in EIA was introduced due to the risks associated with the COVID-19 pandemic. During this period, Ukraine also adopted the Guidelines for Drawing up Environmental Impact Assessment Reports in the Field of Forestry (Ministry of Environmental Protection Order No.136 of 12.12.2017), General Guidelines for the Content and Procedure for Drawing up Environmental Impact Assessment Reports (Ministry of Environmental Protection Order No. 193 of 15.03.2021), and approved the Form of the Report on Public Discussion of Planned Activities (Ministry of Environmental Protection Order No.145 of 16.09.2020). On September 23, 2020, the Cabinet of Ministers approved the Procedure for Decision-Making as regards Conducting Transboundary Environmental Impact Assessment (Resolution No.877). The Ministry of Environmental Protection, with the technical assistance of the EU, published other draft by-laws, in particular on the work of expert commissions, guidelines for preparing a report on EIA for TPPs, CHPs, and HPPs up to 10 MW. In March 2021, the Ministry of Environmental Protection published a draft law for discussion,⁵⁰¹ proposing a number of systemic amendments to the Law of Ukraine “On Environmental Impact Assessment”, in particular with regard to eliminating its shortcomings related to issuing a negative opinion on the EIA and refusing to grant it.

Legislative implementation is advanced but not perfect. In addition, the current law needs to be improved in view of the amendments made by Directive 2014/52/EU to Directive 2011/92/EU. In particular, environmental impact assessment as a procedure in Ukraine does not include one of the mandatory stages: consultations with public authorities that are likely to be concerned by the relevant project. In general, the current legislation is imperfect in terms of legislative technique and has all the markings of “gilding”⁵⁰²

The practical implementation of Directive 2011/92/EU was launched in 2017, in particular, training was conducted for local authorities, businesses, and the public and an electronic register of EIA was launched. In 2020 and the first half of 2021, practical implementation was negatively affected by changes in government structure and by the COVID-19 pandemic. In general, as regards practice, there has been a significant improvement in public access to the EIA process (compared to the period before 2017), but the process itself remains rather formal, which negatively affects the quality of the environmental impact assessment of planned activities. The factors conducive to such shortcomings include the excessive scope of application of this mechanism, insufficient staffing of the authorised bodies, and conflicts of interest at the level of regional authorised bodies (Regional State Administrations).

In the period from 2014 to 2019, for the purposes of implementation of Directive 2001/42/EC and Directive 2003/35/EC, Law of Ukraine No. 2354-VIII “On Strategic Environmental Assessment” of March 20, 2018 was adopted.

⁵⁰¹ <https://mepr.gov.ua/news/36985.html>

⁵⁰² According to the Society and Environment Resource and Analysis Centre, in European Union law, the term “gilding” refers to the process whereby a Member State when implementing EU legislation provides stricter norms / rules / procedures than those laid down in the *acquis communautaire*.

In 2020, two by-laws were adopted to implement this law: CMU Resolution No. 1272 “On Approval of the Procedure for Monitoring the Outcomes of the Implementation of the State Planning Document for the Environment, Including for Public Health” of 16.12.2020 and Order No. 213 of the Ministry of Environmental Protection of 28.10.2020 “On Approval of the Criteria for Determining the Consequences for the Environment, Including for Public Health” of 28.10.2020. At the beginning of 2021, the Cabinet of Ministers submitted to the Verkhovna Rada two draft laws (No. 5159 and No. 5160) on establishing liability in this area and on introducing an electronic register of strategic environmental assessment.

In general, legislative implementation is advanced. However, the definition of “public” in the law is problematic. It contains a gross violation of the requirements of Directive 2003/35/EC in that it imposes restrictions on the place of registration of individuals and legal entities. This has a negative effect on ensuring public participation in the SEA process.

From 2018, practical implementation has been advanced. Unfortunately, there is no systematic information on the status of compliance with the Law “On Strategic Environmental Assessment” (SEA) in Ukraine. SEA is carried out by a huge number of entities in practice, but there is no systematic collection of information on the compliance of these entities with the requirements for SEA. There are cases when state planning documents were adopted without any SEA.

From 2020, strategic environmental assessment has been applied to the programmes of economic and social development of the Autonomous Republic of Crimea, regions (oblasts), districts (raions), cities, villages, and settlements for a short term.

In our opinion, the legislation of Ukraine fully complies with the requirements of Directive 2003/4/EC. Access to environmental information is provided mainly in accordance with the Law of Ukraine “On Access to Public Information” of 13.01.2011.

As regards the provision of environmental information, practical implementation is perfect. Regarding the active provision of access to environmental information (without request), in practice such information is collected and periodically disseminated, there is a tendency towards an increase in the amount of information available in electronic form. One of the factors that contribute to this increase is the requirements of environmental legislation (including the drawing up and dissemination of reports on the state of the environment, the spread of environmental passports of regions) and the dissemination of other special types of information (including legislation, monitoring data, etc.). At the same time, there are significant gaps in certain types of environmental information that are not collected or do not meet contemporary requirements (regarding air pollution, the impact of pollution on public health, the state of populations of wild flora and fauna species, etc.).

Air quality

Within this area, it is necessary to fulfil several commitments:

- control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution ([Directive 94/63/EC](#)), which covers the entire system of storage of petrol (except liquefied petroleum gas), including storage terminals, service stations, etc.;
- limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products ([Directive 2004/42/CE](#));
- reduction of sulphur content of certain liquid fuels ([Directive 1999/32/EC](#));
- setting quality requirements for petrol and diesel fuels ([Directive 98/70/EC](#));
- establishment of air quality standards ([Directive 2008/50/EC](#) and [Directive 2004/107/EC](#));
- introduction of the European air monitoring mechanism, which involves the classification of the territory into zones and agglomerations reflecting the degree of pollution, operation of air quality monitoring stations, establishment of rules for air quality assessment, and providing information to the public ([Directive 2008/50/EC](#) and [Directive 2004/107/EC](#));
- improving air quality, which, in turn, requires the development and approval of air quality management plans for zones and agglomerations ([Directive 2008/50/EC](#), [Directive 2004/107/EC](#) and [Directive 2004/42/CE](#)).

In the period from 2014 to 2019, to implement Directive 2004/42/CE, the Ministry of Economic Development adopted Order No. 1394 “On Approval of the Technical Regulation to Limit Volatile Organic Compound Emissions Due to the Use of Organic Solvents in Paints, Varnishes, and Vehicle Refreshing Products” of 2.10.2018. To implement Directive 1999/32/EC, the relevant requirements were established in 2013 (Technical Regulation on Requirements for Petrol, Diesel, Marine and Boiler Fuels (CMU Resolution No. 927 of 1 August 2013), and from 2018 all types of fuel oil and boiler and marine fuels with sulphur content exceeding 1% have been banned. The same regulation implemented the requirements of Directive 98/70/EC, and the ban on the circulation of leaded petrol was introduced in 2003 by the relevant law of Ukraine. In pursuance of Directive 2008/50/EC and Directive 2004/107/EC, the limit and target values of air quality are set by CMU Resolution No. 827 of August 14, 2019. The same Resolution introduced the requirements of the Directives concerning the procedure for air monitoring; but for air quality assessment it is necessary to develop and approve a number of technical standards and regulations. During this period, no legal framework was created for the development, adoption and approval of air quality management plans in agglomerations and zones.

In 2020 and the first half of 2021, several by-laws aimed at implementing the requirements of Directive 2008/50/EC and Directive 2004/107/EC were adopted: Order No. 300 of the Ministry of Internal Affairs of Ukraine “On Approval of the Procedure for Location of Air Pollution Monitoring Stations in Zones and Agglomerations” of 21.04.2021, Order No. 147 of the Ministry of Environmental Protection “On Approval of the Form of the State Air Protection Monitoring” of 25.02.2021, Order No. 72 of the Ministry of Internal Affairs of Ukraine “On Approval of the Procedure for Informing the Public about Concentrations of Arsenic, Cadmium, Mercury, Nickel and Polycyclic Aromatic Hydrocarbons in Ambient Air.”

In general, the legislative transposition in this regard is quite advanced: for some commitments it is perfect, and for some it is non-existent. Thus, air quality assessment requires the development and approval of a number of technical standards and regulations, there are no necessary by-laws for the development and approval of air quality management plans. The implementation of the requirements of Directive 94/63/EC remains at an early stage: it is necessary to adopt a number of national standards and regulations on the requirements for all technological stages of fuel storage and transport to avoid air pollution due to evaporation.

The practical implementation of most commitments is early or has not started. Thus, Directive 94/63/EC requires identification of all stations for storage/loading of petroleum products and establishment of technical measures at such stations to reduce leaks (evaporation) of petrol, there is virtually no quality control system required under Directive 1999/32/EC. Regarding Directive 2008/50/EC, the monitoring system is outdated and needs radical modernization and funding. The public is not informed due to lack of monitoring. Hence, the commitments for air quality management in agglomerations cannot be fulfilled.

Waste and resource management

This area involves the implementation by Ukraine of three directives, one of which is a framework directive with a wide scope ([Directive No. 2008/98/EC](#), [Directive No. 1999/31/EC](#) and [Directive No. 2006/21/EC](#)). Some matters are also regulated by the Industrial Pollution Directive ([Directive No. 2010/75/EU](#)), which is part of the area of “Industrial Pollution”.

The implementation of these directives involves the following key commitments:

- implementation of European principles of waste management in general, including adaptation of national legislation to European requirements, introduction of a planning system in the field of waste management,
- ensuring proper management of household waste, including establishment of a legal framework for municipal waste management, an effective system of collection and disposal of household waste, infrastructure for the recovery of household waste, and infrastructure for the disposal of household waste,
- ensuring proper hazardous waste management, including establishment of a legal framework for hazardous waste management and infrastructure for hazardous waste treatment,
- ensuring proper management of industrial waste, including establishment of a legal framework for industrial waste management and infrastructure for the treatment of industrial waste,
- ensuring proper management of waste from extractive industries, including establishment of a legal framework for the management of such waste and the infrastructure for its treatment,
- ensuring proper construction waste management, including establishment of a legal framework for the management of such waste and the infrastructure for its treatment.

In the period from 2014 to 2021, no legislation has been adopted to implement these commitments. With the support of international technical assistance projects, some draft laws of Ukraine have been developed, in particular the framework law on waste management (its latest version No. 2207-1-д of 04.06.2020 was adopted in the first reading as a basis). Currently, the draft law does not ensure compliance with the requirements of the EU Framework Directive, and in some respects it is contrary to such requirements. Specifically, the draft law fails to include the entire institution (mechanism) of dealers and brokers, narrows down the scope of application of requirements for the termination of waste status, etc.

Practical implementation is almost non-existent, except for strategic waste management planning. In the period from 2014 to 2019, the national strategy and waste management plan were adopted (CMU orders No. 820-p of November 8, 2017 and No. 117-p of February 20, 2019, respectively). Work is underway to develop and approve regional waste management plans.

Water quality and management of water resources, including marine environment

This area involves the implementation of the provisions of six EU directives, including the Water Framework Directive, and covers the management of surface water resources, drinking water quality and marine protection (Directive No. 2000/60/EC, Directive No. 2007/60/EC, Directive No. 2008/56/EC, Directive No. 91/271/EEC, Directive No. 98/83/EC and Directive No. 91/676/EEC).

Relevant commitments include:

- introduction of the basin principle of water resources management, in particular legislating the basin water resources management system, creation of basin councils, adoption of basin management plans, introduction of a water resources monitoring system,
- introduction of a mechanism for assessing and managing flood risks,
- ensuring the protection of the natural environment of the Azov and Black Seas, which requires adoption of a marine strategy for the Black and Azov Seas to achieve good ecological status of the seas, implementation of the environmental monitoring programme of the Black and Azov Seas, implementation of action plans to achieve environmental quality targets for the environment of these seas,
- reduction and prevention of groundwater and surface water pollution by nitrates from agricultural sources, which involves a set of tasks: adaptation of water legislation to the requirements of the Directive, adoption of necessary legislation to identify vulnerable zones, development of action plans for vulnerable zones and a Code of Best Agricultural Practices, identification of areas vulnerable to pollution from nitrogen compounds, development and implementation of action plans for areas vulnerable to pollution from nitrogen compounds, and conducting of monitoring programmes,
- introduction of a mechanism for urban wastewater treatment and disposal, which involves adaptation of legislation to the requirements of the Directive, assessment of the condition of the drainage system and urban wastewater treatment and disposal, identification of vulnerable zones and agglomerations, implementation of a technical and investment programme to fulfil urban wastewater treatment requirements,
- ensuring that the water intended for human consumption is wholesome and clean, which involves adaptation of legislation, establishment of technical requirements for water intended for human consumption, monitoring of water quality and informing consumers.

In the period from 2014 to 2019, a number of laws and bylaws were adopted to implement these commitments. For the purposes of implementing Directives 2000/60/EC and 2007/60/EC, Law of Ukraine No. 1641-VIII “On Amendments to Certain Legislative Acts of Ukraine Concerning the Introduction of Integrated Approaches to Basin-Based Water Management” was adopted on October 4, 2016. A number of important by-laws have been adopted for the transition to the basin principle of water resources management and new monitoring of water resources.

Regarding flood risk management, Order No. 30 of the Ministry of Internal Affairs “On Approval of the Guidelines for Preliminary Flood Risk Assessments” of 17.01.2018, Order No. 153 of the Ministry of Internal Affairs “On Approval of the Guidelines for Developing Flood Hazard and Risk Maps” of 28.02.2018, and CMU Resolution No. 247 “On Approval of the Procedure for Developing a Flood Risk Management Plan” of 4 April 2018 were adopted. Certain provisions of Directive 91/676/EEC have been adapted through the adoption of amendments to the Water Code of Ukraine (specifically amendments to Art. 81) and the new Procedure for State Water Monitoring. An inter-agency working group was established to implement this Directive. In 2020, drafts of the Guidelines for Identifying Areas Vulnerable to Pollution by Nitrate Compounds and the Code of Best Agricultural Practices were published.

To implement Council Directive 91/271/EEC, Law of Ukraine No. 2047-VIII “On Amendments to the Law of Ukraine ‘On Drinking Water and Drinking Water Supply’” of 18 May 2017 was adopted. Order No. 316 of the Ministry of Regional Development “On Approval of the Rules of Acceptance of Effluent Wastewater into Centralized Sewage Systems and the Procedure for Determining the Amount of Payment for Excessive Discharges of Effluent Wastewater into Centralized Sewage Systems” of 01.12.2017, Order No. 6 of the Ministry of Environmental Protection “On Approval of the Procedure for Determining Population Equivalent for an Agglomeration and Criteria for Determining Vulnerable and Less Vulnerable Zones” of 14.01.2019; and Order No. 341 of the Ministry of Regional Development “On Approval of the Procedure for Reuse of Treated Wastewater and Sludge Subject to Compliance with the Standards of Maximum Permissible Concentrations of Pollutants” of 12.12.2018.

Council Directive 98/83/EC has been implemented through the adoption of Law of Ukraine No. 2047-VIII “On Amendments to the Law of Ukraine ‘On Drinking Water and Drinking Water Supply’” of 18 May 2017. However, Order No. 2675 of the Ministry of Health of 24.12.2019 postponed the entry into force of certain requirements for drinking water quality until 2022. The current version of the State Sanitary Norms and Rules “Hygienic Requirements for Drinking Water Intended for Human Consumption” does not meet the requirements of Annex I to the Directive (parts A and B) for a number of substances (cyanide, antimony, etc.). In particular, there are no requirements for the content of cyanide, and the requirements for the content of antimony are postponed until 2022.

In 2021, the Ministry of Environmental Protection published a draft Marine Environmental Strategy of Ukraine⁵⁰³ to implement Directive 2008/56/EC.

Practical implementation varies significantly for individual commitments. As regards creating basin councils, it is perfect. Work is underway on river basin management plans. Monitoring has started in some basins, in particular diagnostic monitoring in the Don and Dniester basins. The State Water Agency is carrying out large-scale modernization of the laboratory facilities for proper monitoring of water bodies. The SES has done a lot of work⁵⁰⁴ to assess, map and develop flood risk management plans, including in the period from 2020 to the first half of 2021.

There is no practical implementation of some directives: Council Directive 91/676/EEC, Council Directive 2008/56/EC, and Council Directive 91/271/EEC. Although the drinking water quality control system in Ukraine already has a high level of compliance with the requirements of the Directive, no practical implementation of measures to meet the requirements of Council Directive 98/83/EC is carried out

Industrial pollution and industrial hazards

This area contains only two directives ([Directive 2010/75/EU](#) and [Directive 96/82/EC](#)), but they are comprehensive.

The main commitments for their implementation include:

- introducing a new integrated system of permits for industrial facilities based on the best available techniques (BATs),
- establishing strict control over emissions from large combustion plants (mainly TPPs and CHPs), and
- creating a modern system of control over the safety of hazardous operators, in particular regarding their response to accidents.

In the period from 2014 to 2019, CMU Order No. 402-p of 22.05.2019 and the Concept of Implementation of the State Policy in the Field of Industrial Pollution was adopted to implement Directive 2010/75/EU. Regarding the requirements for emissions from large combustion plants, the Ministry of Environmental Protection by Order No. 62 of 16.02.2018 made amendments to the Technological Standards of Permissible Emissions of Pollutants from Combustion Installations with a Rated Thermal Input Exceeding 50 MW, approved by Order No. 541 of the Ministry of Environmental Protection of Ukraine of 22 October 2008. Regarding Directive 2012/18/EU (repealing Council Directive 96/82/EC), the initial level of compliance of national legislation was already quite high. To achieve full compliance, the Cabinet of Ministers developed draft laws and submitted them to the Verkhovna Rada, but they were withdrawn twice due to the election of a new parliament and resignation. The draft laws were developed with the support of the OSCE. By-laws were also being drafted with the support of the OSCE (including a draft resolution of the Cabinet of Ministers “On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine on High-Risk Facilities”).

503 <https://bit.ly/3NI9oW3>

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As regards Directive 2012/18/EU, in the period from 2020 to the first half of 2021, a draft law “On Amendments to Certain Legislative Acts of Ukraine Concerning High-Risk Facilities” (No. 4407) was submitted to the Verkhovna Rada and adopted in the second reading on 15.07.2021. As regards Directive 2010/75/EU, the Government with the support of GIZ drafted the relevant law “On Prevention, Reduction and Control of Pollution from Industrial Activities” and last introduced it under No. 4167, however it was not adopted and on 21.05.2021 it was re-submitted for the first reading.

The practical implementation of Directive 2010/75/EU has hardly started due to the lack of legislative approximation. Regarding large combustion plants, the National Plan for Reduction of Emissions from Large Combustion Plants (NPPE) was approved by CMU Order No. 796 of November 8, 2017. On July 24, 2019, the Cabinet of Ministers approved amendments to the NPPE, whereby it, in fact, postponed the fulfilment of measures under the NPPE. The CMU by Order No. 428-p of June 13, 2018 adopted the Action Plan on the Implementation of the NPPE for 2018, but it was not implemented (except for the creation of a working group). There is no government vision concerning the funding for the implementation of the NPPE, and the draft law does not specify any appropriate norms concerning the powers of the Cabinet of Ministers to adopt such a plan.

The practical implementation of Directive 2012/18/EU is advanced. In Ukraine, there is a system of control over high-risk facilities, created taking into account the previous version of the Directive. In practice, such facilities are identified by category, they are regularly inspected, and operators have emergency response plans. At the same time, for further improvement, the relevant legislative principles must be introduced first.

Nature protection

This subsector involves the implementation of two basic EU environmental directives: the Birds Directive ([Directive 2009/147/EC](#)) and the Habitats Directive ([Council Directive 92/43/EEC](#)). These two directives make up the basis of the entire wildlife protection system in the EU.

Their implementation involves the following main commitments:

- creation of special protected areas for the protection of birds, including migratory species,
- creation of special protected areas for the protection of species and their habitats (according to the Habitats Directive),
- introduction of a mechanism for the protection of birds and other species of flora and fauna (hunting, trade, transport, etc.) under both directives,
- creation of a system for monitoring the conservation status of habitats and species of flora and fauna based on both directives.

In 2014–2021, no legislation was adopted to implement these directives. With the support of international technical assistance projects, a draft law of Ukraine “On the Territories of the Emerald Network” (No. 4461) was developed and submitted by MPs at the end of 2020. At the same time, as regards the creation of protected areas, this draft law cannot ensure compliance with the requirements of the directives, as it aims to implement the requirements of the Berne Convention, rather than the directives. Regarding the requirements for hunting, transport and sale, national legislation requires minimal changes in this area. Some amendments to the Laws of Ukraine “On the Hunting Sector and Hunting”, “On Fauna”, “On Flora”, “On Protection of Animals from Cruelty”, “On the Red Book of Ukraine” and relevant by-laws are needed.

The practical implementation of these directives has not begun, but in recent years considerable work has been done to assess the relevant habitats for the purposes of the Emerald Network. This work is scientific and has much in common with the relevant work under the Birds Directive, so its results can be used in the future for the purposes of the Birds and Habitats Directives. It is also important that Ukraine has no comprehensive monitoring of flora and fauna species, which is confirmed by Ukraine’s reports on the implementation of the Convention on Biological Diversity. In practice, monitoring is carried out only for hunting species, whereas other species are only monitored in the framework of individual nature reserves.

Climate change and protection of the ozone layer

This area involves the implementation of one directive (Directive 2003/87/EC) and two regulations (Regulation (EC) 2037/2000⁵⁰⁵ and Regulation (EC) 842/2006⁵⁰⁶) in the field of reducing greenhouse gas and ozone-depleting gases.

Key commitments include:

- creation of a scheme for greenhouse gas emission allowance trading, involving adoption of legislation for the functioning of the scheme for greenhouse gas emission allowance, adoption of a plan for allocation of allowances, introduction of a permit system for greenhouse gas emissions and allowances to be sold nationally between installations in Ukraine, introduction of a system for reporting and verification of greenhouse gas emissions,
- improving the regulation of the circulation of ozone-depleting substances and fluorinated greenhouse gases, involving adoption of national legislation to regulate the circulation of ozone-depleting substances and fluorinated greenhouse gases, and creation of a system for monitoring compliance with requirements concerning ozone-depleting substances and fluorinated greenhouse gases.

In the period from 2014 to 2019, the foundations of the system of monitoring, reporting and verification of greenhouse gas emissions were laid: on December 12, 2019, Law of Ukraine No. 377-IX “On the Principles of Monitoring, Reporting and Verification (MRV) of Greenhouse Gas Emissions” was adopted. At the same time, no draft laws on the establishment of a scheme for greenhouse gas emission allowance trading itself were developed. Regarding ozone-depleting substances, on 12.12.2019 Law of Ukraine No.376-IX “On Regulation of Economic Activities Involving Ozone-Depleting Substances and Fluorinated Greenhouse Gases” was adopted (entered into force on 27.06.2020).

In the period from 2020 to the first half of 2021, to introduce the MRV system for greenhouse gas emissions, Ukraine adopted CMU resolutions No. 959, No. 960 and No. 880 respectively of 23.09.2020 – “On Approval of the Procedure for Verification of the Operator’s Report on Greenhouse Gas Emissions”, “On Approval of the Procedure for Monitoring of and Reporting on Greenhouse Gas Emissions”, “On Approval of the List of Activities Involving Greenhouse Gas Emissions that are Subject to Monitoring, Reporting and Verification”. The Ministry of Environmental Protection adopted Order No. 153 of 15 February 2021, approving the “Model Form of the Standard Monitoring Plan”, “Requirements for Completing the Model Form of the Standard Monitoring Plan”, “Model Form of the Simplified Monitoring Plan”, and “Requirements for Completing the Model Form of the Simplified Monitoring Plan”, “Model Form of the Operator Report”, “Requirements for Completing the Model Form of the Operator Report”, “Model Verification Report Form”, “Requirements for Completing the Model Verification Report Form”, “Model Improvement Report Form”, “Requirements for Completing the Model Improvement Report Form”. The Ministry of Environmental Protection also adopted Order No.75 “On Approval of the Procedure for State Registration of Installations in the Unified Register for Monitoring, Reporting and Verification of Greenhouse Gas Emissions” of 03.02.2021. This was the last needed component to complete the regulatory framework for MRV.

To implement the regulation on substances that deplete the ozone layer, the Cabinet of Ministers adopted Resolutions No. 992 “Certain Matters of Regulation of Activities in the Field of Ozone Layer Protection” of September 23, 2020 and No. 1086 “Certain Matters of Issuing Qualification Documents (Certificates) for Work Specified in Article 10 (1) of the Law of Ukraine ‘On Regulation of Economic Activities Involving Ozone-Depleting Substances and Fluorinated Greenhouse Gases’”. However, to implement the relevant law, a number of other by-laws should be adopted and the Kigali Amendment to the 1987 Montreal Protocol should be ratified. The Law, which entered into force in June 2020, requires the adoption of a number of by-laws.

Practical implementation is at a very early stage. The only significant achievement is the formal launch of the MRV system for greenhouse gases on 01.01.2021. Special training events were conducted for economic operators on the application of the new MRV requirements.

505 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000R2037>

506 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32006R0842>

Genetically modified organisms

This area involves the implementation of two directives and one regulation (Directive 2001/18/EC, Regulation (EC) 1946/2003⁵⁰⁷ and Directive 2009/41/EC) in the field of GMO control.

Some aspects in this regard have been part of Ukraine's commitments under international agreements in this area for many years. It involves improving the biosafety system for the release of genetically modified organisms, including enhancing the control of transboundary movements of GMOs.

Legislative approximation is mostly advanced. The current legislation was developed in the context when relevant international commitments were in effect. Although the compliance with the legislation is quite high, in 2019 the government prepared a draft of a new comprehensive law in this area, and in 2021 it published a new draft law "On State Regulation of Genetic Engineering and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security"⁵⁰⁸ (not yet registered with the Verkhovna Rada).

According to the Ministry of Economy, imperfect legal regulation on the handling of GMOs makes it impossible to exercise effective state control over the circulation of genetically modified products and paves the way to the illegal use of unregistered genetically modified products in Ukraine. Unfortunately, the legislation of Ukraine is not only outdated and lacks any effective regulatory mechanisms in this area, but also is not in line with the commitments undertaken by Ukraine under the Association Agreement (explanatory note to the draft law⁵⁰⁹).

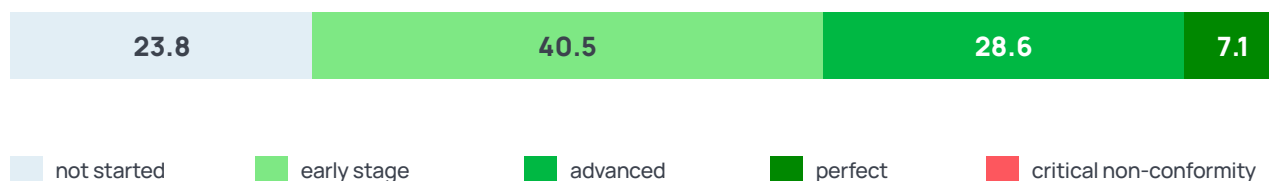
507 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003R1946>

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TRANSPORT

Experts: Yana Benedyk



Cooperation between Ukraine and the EU in the field of transport and transport services is based on the provisions of Sub-section 7 of Section 5 of Chapter 6 of Title IV and Chapter 7 of Title V of the Association Agreement and covers all transport sectors – road, rail, air, sea, inland waterway, and multimodal transport.

Cooperation in this area should primarily contribute to the reform and renewal of the transport sector, liberalization of Ukraine's transport markets, gradual harmonisation of its standards and policies with those of the EU, in particular by implementing measures set out in Appendix XVII-5 to Annex XVII, Annexes XXXII and XXXIII of the Agreement. Intensification of the movement of passengers and goods both within the country and between Ukraine, the EU and third countries in the region by removing administrative, technical, customs and other obstacles, improving the transport network and modernizing infrastructure.

General provisions for all modes of transport

Directive 2008/68/EC

Regulation (EC) 1370/2007⁵¹⁰

The commitments within this thematic area derive from Articles 368, 369, Annexes XXXII and XXXIII of the Association Agreement and are aimed at developing a sustainable national transport policy, expanding and strengthening cooperation between Ukraine and the EU within the Eastern Partnership (EaP) Transport Panel to build the Trans-European Transport Network (TEN-T), approximation of national legislation to the EU acquis in the field of transport safety, in particular for the transport of dangerous goods, and for public passenger transport services by rail and by road.

Without exaggeration, one of the main tasks that are key for the fulfilment of all Ukraine's commitments in the transport sector under the Association Agreement, is the development and approval of a national transport strategy and creation of a national transport model and master plan. In May 2018, the Cabinet of Ministers of Ukraine approved the National Transport Strategy of Ukraine for the period up to 2030 that was developed jointly with the EU.⁵¹¹ It identifies the main priorities of integrated public policy and management in the field of transport, key areas of development of the transport sector for a specified period. In April 2021, the Cabinet of Ministers of Ukraine by its order approved the Action Plan for the implementation of the National Transport Strategy of Ukraine.⁵¹² This Plan can be described as medium-term, as it does not cover the entire period specified by the National Transport Strategy of Ukraine. In view of the above steps taken by the Government, it can be argued that the implementation of this commitment is at an advanced level. At the same time, it is necessary to further develop detailed long-term plans for the implementation of the Transport Strategy for all modes of transport.

⁵¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007R1370>

⁵¹¹ <https://zakon.rada.gov.ua/laws/show/430-2018-%D1%80#Text>

⁵¹² <https://zakon.rada.gov.ua/laws/show/321-2021-%D1%80#Text>

The expansion of the Trans-European Transport Network (TEN-T) to the Eastern Partnership countries and inclusion of Ukraine in the TEN-T indicative maps has contributed to a significant intensification of cooperation between Ukraine and the EU in the field of transport. The Indicative TEN-T Investment Action Plan involves the implementation of 39 infrastructure projects in Ukraine by 2030, attracting investments totalling more than EUR 4.4 billion. The vast majority of the projects are long-term and aimed at building road, rail, aviation and maritime transport infrastructure. The implementation of a number of projects specified in the Action Plan has already begun. Work is currently underway to include Ukraine's inland waterways in the indicative TEN-T maps.

Ukraine's accession to the TRACECA Agreement on the Development of Multimodal Transport (Law of Ukraine No. 1036-IX of December 2, 2020) will also significantly contribute to mutual cooperation in this area.

At the same time, the Law of Ukraine "On State Support of Investment Projects with Significant Investments in Ukraine" (No. 1116-IX of December 17, 2020) will also have a positive impact on the implementation of investment projects, in particular, in the transport sector. In this regard, it is important to adopt the Law of Ukraine "On Multimodal Transport" as soon as possible.

Despite the relatively high level of approximation of the regulatory framework for the transport of dangerous goods by inland waterways, rail and road transport,⁵¹³ it is of paramount importance to adopt a framework Law or amend existing legislation in this area to ensure an adequate level of safety in transport of this type of goods. As of June 2021, two draft laws (main and alternative) are pending consideration by the Verkhovna Rada of Ukraine aiming to amend certain laws of Ukraine to bring them into line with the legal framework of the European Union in the field of transport of dangerous goods.⁵¹⁴ After the relevant law is adopted, the regulatory framework will undergo additional updating.

It is also important to improve the legislation, draft the regulatory framework and develop a control mechanism for the organisation and conditions for provision of public passenger transport services by rail and by road (services of general economic interest). In particular, it is necessary to ensure a level playing field and introduce transparent rules in the selection of operators for the provision of such services, to lay down clear criteria and procedures for reimbursement of costs involved. The Verkhovna Rada of Ukraine is considering draft laws of Ukraine "On Amendments to Certain Laws of Ukraine on Public Passenger Transport Services by Road and by Urban Electric Transport"⁵¹⁵ and "On Railway Transport of Ukraine,"⁵¹⁶ which contain the relevant provisions. The development of the regulatory framework and control mechanism has not been launched.

Road transport

Council Directive 92/6/EEC, Council Directive 96/53/EC, Directive 2014/45/EU, Directive 2014/47/EU, Directive 2006/126/EC, Regulation (EU) 540/2014⁵¹⁷, Regulation (EC) 561/2006⁵¹⁸, Directive 2002/15/EC, Regulation (EU) 165/2014⁵¹⁹, Directive 2006/22/EC, Regulation (EC) 1071/2009⁵²⁰, Directive 2003/59/EC, Directive 1999/62/EC, Directive 2004/52/EC, Directive 2010/40/EU, Directive 1999/37/EC

Pursuant to Art. 368, 369, and Annex XXXII (1) to the Association Agreement, Ukraine's commitments in the field of road transport make up four basic groups:

- a. commitments in the field of technical conditions, which include the installation and use of speed limitation devices on vehicles engaged in international and national transport, the introduction of maximum weight and dimensions of vehicles, periodic inspection of the technical condition of vehicles for roadworthiness, and technical roadside inspection of vehicles used for commercial road transport activities;

512 <https://zakon.rada.gov.ua/laws/show/321-2021-%D1%80#Text>

513 Order No. 126 of the Ministry of Infrastructure of Ukraine "On Approval of the Rules of the Transport of Dangerous Goods by Inland Waterways of Ukraine" dated April 4, 2017, URL: <https://zakon.rada.gov.ua/laws/show/z0556-17#Text>; Order No. 166/550 of the Ministry of Infrastructure of Ukraine and the Ministry of Internal Affairs of Ukraine "On Approval of the Procedure for Inspection of Tanks Intended for the Transport of Dangerous Goods" of May 12, 2015, URL:

<https://zakon.rada.gov.ua/laws/show/z0663-15#Text>; Order No. 156 of the Ministry of Infrastructure of Ukraine "On Approval of Amendments to Certain Regulations of the Ministry of Transport of Ukraine and the Ministry of Transport and Communications of Ukraine" of April 25, 2017, URL:

<https://zakon.rada.gov.ua/laws/show/z0865-17#Text>; Order No. 656 of the Ministry of Internal Affairs of Ukraine "On Approval of Certain Regulations on the Transport of Dangerous Goods by Road" of August 4, 2018, URL <https://zakon.rada.gov.ua/laws/show/z1041-18#Text>.

514 Main draft law, URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=1193&skl=10;

alternative draft law, URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66922

515 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70814

516 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=66498

517 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0540>

518 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006R0561>

519 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32014R0165>

520 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R1071>

- b. commitments in the field of safety conditions, including the adoption and implementation of a national road safety strategy and programme, improvement of driver training and the procedure for issuing driving licences and driving tests, and the transport of dangerous goods;
- c. commitments relating to social conditions, including improvement of the system of state control over road transport, updating social legislation, ensuring the installation and use of tachographs, modification of the carrier licensing mechanism, and ensuring a high level of professional competence of road transport managers and drivers;
- d. commitments regarding fiscal conditions involving, inter alia, the charging of heavy goods vehicles for the use of certain infrastructures.

By fulfilling these commitments, Ukraine will achieve sustainable development of the relevant transport sector, introduce transparent rules to be complied with to pursue the occupation of road transport operator, ensure the competitiveness of national road transport operators, improve road safety, optimise government regulation and enhance state control in the field of road transport, ensure the high level of competence of professional drivers engaged in providing services for the carriage of passengers and goods and the staff of road transport operators in general, etc.

In order to fulfil its commitments under the Association Agreement, Ukraine has performed a number of transitional measures.

Thus, as of June 2021, the Verkhovna Rada of Ukraine has adopted a set of legislative acts in the field of dimensions and weight control of vehicles⁵²¹ setting out the powers of officials of the State Service of Ukraine for Transport Safety in relation to inspections aimed at, in particular, conducting dimensions and weight control of vehicles, increasing the responsibility of road transport operators for exceeding the national standards on weight, establishing responsibility for the refusal of responsible persons to undergo dimensions and weight control and for non-compliance with the requirements of the authorised persons of the State Service of Ukraine for Transport Safety to stop the vehicle, etc.

The CMU by Order No. 1360-p of October 21, 2020 approved the Strategy for Improving Road Safety in Ukraine for the period until 2024, specifying the key objectives, principles, financial grounds, areas and priorities of work to improve road safety in Ukraine. In turn, CMU Resolution No. 1287 of December 21, 2020 approved the State Programme to Improve Road Safety in Ukraine until 2023, specifying tasks and measures aimed at reducing the number of accidents and severity of road accidents, in accordance with the objectives set out by the Strategy.

In order to provide for the issuance of a standard driving licence, as well as to bring the format and content of the vehicle registration document into line with the requirements of Directive 1999/37/EC, the Cabinet of Ministers adopted Resolution No. 844 “On Approval of Forms and Technical Descriptions of Forms for National and International Driving Licences, Certificate of Vehicle Registration, Temporary Vehicle Registration Card and a Sample Identification Mark of Ukraine, and Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine” of September 16, 2020.

In pursuance of the requirements of Regulation (EU) 540/2014, in order to introduce administrative and technical requirements to reduce noise pollution associated with the operation of motor vehicles, the Ministry of Infrastructure of Ukraine issued Order No. 192 “On Approval of Amendments to the Procedure for Approval of the Design of Vehicles, their Parts and Equipment” of 04.03.2020.

The Cabinet of Ministers of Ukraine adopted Resolution No. 7 “On the Approval of Criteria for Assessing the Degree of Risk Associated with Road Transport Activities and Setting out the Frequency of Planned State Oversight (Control) Measures by the State Service for Transport Safety” of January 15, 2020. The Resolution has improved state control over road transport in the context of compliance with Regulation (EC) 561/2006 and Directive 2006/22/EC.

The Ministry of Infrastructure of Ukraine by its Order No. 789 of November 18, 2020 approved the “Procedure for Confirmation of the Professional Competence of Vehicle Drivers Pursuing the Occupation of Road Transport Operator for the Carriage of Passengers and Goods”, which establishes procedures for confirmation of the professional competence of drivers and specifies training centres, requirements for training centres and their duties, the content of training courses, format of the certificate confirming the driver’s professional competence, the form of the driver’s qualification card, etc.

⁵²¹ Law of Ukraine No. 54-IX “On Amendments to Certain Legislative Acts of Ukraine Concerning Certain Matters of Dimensions and Weight Control” of September 11, 2019 URL: <https://zakon.rada.gov.ua/laws/show/54-20#Text>; Law of Ukraine No. 1534-IX “On Amendments Concerning Certain Matters of Dimensions and Weight Control” of June 3, 2021 URL: <https://zakon.rada.gov.ua/laws/show/1534-20#Text>; Law of Ukraine No. 1582-IX “On Amendments to the Code of Ukraine on Administrative Offences Concerning Certain Matters of Dimensions and Weight Control” of June 29, 2021 URL: <https://zakon.rada.gov.ua/laws/show/1582-20#Text>.

Also, in order to transpose the provisions of the EU acquis into national law, a number of draft legislative acts have been developed:

1. draft law “On Amendments to Certain Legislative Acts of Ukraine concerning the Regulation of the Market of Road Transport Services in Ukraine in Order to Bring them in Line with the European Union Acquis,”⁵²² which specifies the aspects of licensing in road transport, introduces a system of obtaining certificates of professional competence of transport managers, introduces a mechanism to confirm the impeccable business reputation of road transport operators, describes sanctions against road transport operators, etc (the draft law is pending consideration by the Verkhovna Rada of Ukraine);
2. draft law⁵²³ “On Amendments to Certain Legislative Acts of Ukraine in the Field of Safety of Motor Vehicles Operation in Accordance with the Requirements of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part” (currently undergoing public discussion);
3. draft law “On Amendments to Certain Legislative Acts of Ukraine (Regarding Implementation of Legislation and Laying down the List of Administrative Services Provided by the Territorial Body of the Ministry of Internal Affairs of Ukraine)” (currently undergoing public discussion).

A number of draft bylaws have been developed, including draft resolutions of the Cabinet of Ministers of Ukraine “On Amendments to the Rules of the Traffic Rules and Resolution No. 879 of the Cabinet of Ministers of Ukraine ‘On Measures to Preserve Public Roads’ of June 27, 2007,” transposing the provisions concerning dimensions and weight laid down by Council Directive 96/53/EC; “On Approval of Licensing Conditions for Business Activities involving the Carriage of Passengers, Dangerous Goods and Hazardous Waste, International Transport of Passengers and Goods by Road”; and the draft order of the Ministry of Infrastructure of Ukraine “On Amendments to Order No. 340 of the Ministry of Transport and Communications of Ukraine of June 7, 2010”, aiming to significantly modify the Regulation on Working Hours and Rest Periods for Drivers of Motor Vehicles,⁵²⁴ taking into account the requirements of the relevant EU acquis.

On February 28, 2020, the Ministry of Infrastructure of Ukraine presented the basic version of the Open Register of Professional Drivers Involved in the Carriage of Passengers and Goods.⁵²⁵ In addition the Unified State Electronic Register of Road Carriers is being developed.

In addition, on August 30, 2018, Ukraine launched the Transportation Carrier eCabinet, which, on the one hand, allows the public to freely receive information about the carrier contained in the Register, and on the other hand, allows carriers to use the services of the State Service for Transport Safety in electronic format.

Based on the results of the assessment of the progress with the implementation of the commitments in the field of road transport, we can argue that the measures taken by the authorities lack consistency, many tasks are still at an early stage, and work on some has not even begun.

Railway transport

Directive (EU) 2016/797, Directive (EU) 2016/798, Directive 2007/59/EC, Directive 2012/34/EU, Regulation (EU) 913/2010,⁵²⁶ Council Regulation (EEC) 1192/69⁵²⁷, Council Regulation (EC) 1371/2007⁵²⁸

In accordance with the provisions of Articles 368, 369, para. 2 of Annex XXXII of the Association Agreement, Ukraine must approximate its legislation and regulatory framework in the field of rail transport to the EU acquis, which involves creating a new model of the competitive rail transport market, providing carriers with free and equal access to the transport and railway infrastructure, introduction of an effective system for setting tariff rates for the use of infrastructure, updating requirements for and ensuring an appropriate level of transport safety, reforming the system of training and licensing of train drivers, ensuring interoperability of the national transport system with the EU multimodal transport network, and improving the quality of rail transport services.

522 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70777

523 https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=6pf3511=68945

524 Approved by Order No. 340 of the Ministry of Transport and Communications of Ukraine of June 7, 2010, URL: <https://zakon.rada.gov.ua/laws/show/z0811-10#Text>.

525 As of the end of June 2021, the Register is being finalised.

526 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0913>

527 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31969R1192>

528 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007R1371>

By fulfilling these commitments, Ukraine will be able to liberalise the national railway market, ensure its sustainable development, ensure a level playing field for market participants, in particular, by reforming the management system and separate the functions of provision of transport services and railway infrastructure management, increase railway safety, form a system of effective protection of the rights of consumers of transport services, and help attract investment for the development of railway transport infrastructure.

To date, Ukraine has taken the following steps to fulfil these commitments:

It has approved the Railway Transport Reform Action Plan,⁵²⁹ which covers the priority areas of reforms in the field of rail transport regulation and is consistent with Ukraine's commitments under the Association Agreement.

The Cabinet of Ministers of Ukraine in its Resolution No. 628 “On Approval of the Basic Principles of State Ownership with regard to the Joint-Stock Company Ukrainian Railways” of June 12, 2019⁵³⁰ provides for structural reform of JSC Ukrainian Railways (Ukrzaliznytsia). The monopolist in the railway transport market will be reformed and divided into separate economic operators, and the company itself will become public (the initial placement of the shares of Ukrainian Railway companies on international Stock Exchanges is imminent).⁵³¹ In addition, the Strategy of the Joint-Stock Company Ukrainian Railways for 2019-2023 was approved,⁵³² identifying key areas, alternatives, and priorities for its development and a vision of the process of their implementation for the specified period.

The Rules for Granting Access to Transport Facility Infrastructure have been approved,⁵³³ establishing the legal framework that regulates the relations between the owner of transport facility infrastructure and the customer – an undertaking (operator, telecommunications provider) with regard to access to transport facility infrastructure elements in order to develop the telecommunication network. In addition, Ukraine adopted the Guidelines for Charging for Access to Transport Facility Infrastructure Elements,⁵³⁴ laying down the mechanism for forming and establishing the price for access to transport facility infrastructure elements in order to equip them with telecommunications hardware.

In order to enhance safety in railway transport, the Cabinet of Ministers of Ukraine and the Ministry of Infrastructure of Ukraine approved the Technical Regulation on the Safety of Railway Rolling Stock,⁵³⁵ the Regulations on the Traffic Safety Management System in Railway Transport,⁵³⁶ Modules of Conformity Assessment in the Field of Railway Transport,⁵³⁷ the Procedure for Technical Investigation of Catastrophes, Accidents, and Incidents in Railway Transport,⁵³⁸ and Regulation on the Classification of Incidents in Rail Transport.⁵³⁹

Also, in order to improve the quality of rail transport services, amendments were made to the Rules for the Carriage of Passengers, Luggage, Cargo Luggage and Mail by Railway Transport of Ukraine⁵⁴⁰ and the Procedure for Service Provision to the Public by Railway Transport,⁵⁴¹ which are generally in line with the provisions of Council Regulation (EEC) 1371/2007.

Currently, the Verkhovna Rada of Ukraine is to consider two draft laws that are most important for the development of the national railway transport system – i.e. the draft law “On Railway Transport of Ukraine”⁵⁴² and the draft law “On the National Commission for State Regulation of Transport.”⁵⁴³

The draft Law of Ukraine “On Railway Transport of Ukraine” lays down the principles of creation and functioning of the system of public administration in the field of railway transport safety in line with the standards of the European Union, providing for the division of powers between authorised public authorities. In particular, the power to approve the rules of equal access to strategic infrastructure is to be assigned to the Cabinet of Ministers of Ukraine, the power to supervise equal access to strategic infrastructure and review complaints is to be assigned to the National Commission for State Regulation of Transport, whereas the infrastructure operator is to develop

529 <https://zakon.rada.gov.ua/laws/show/1411-2019-%D1%80#Text>

530 <https://zakon.rada.gov.ua/laws/show/628-2019-%D0%BF#Text>

531 However, for the full-fledged reform of the railway transport market, it is still extremely important that the Verkhovna Rada of Ukraine adopt the new Law of Ukraine “On Railway Transport,” envisaging that JSC Ukrzaliznytsia will become a public infrastructure operator, i.e. a state-owned company will own the tracks, and transport services will become competitive.

532 <https://zakon.rada.gov.ua/laws/show/591-2019-%D1%80#Text>

533 <https://zakon.rada.gov.ua/laws/show/586-2018-%D0%BF#Text>

534 <https://zakon.rada.gov.ua/laws/show/z0343-19#Text>

535 <https://zakon.rada.gov.ua/laws/show/z0343-19#Text>

536 <https://zakon.rada.gov.ua/laws/show/z0351-21#Text>

537 <https://zakon.rada.gov.ua/laws/show/797-2018-%D0%BF#Text>

538 <https://zakon.rada.gov.ua/laws/show/z1185-18#Text>

539 The Regulation applies to classification and accounting of traffic incidents on railway transport to analyse them and assess the level of danger associated with the activities of operators involved in the transport of passengers and / or goods by railway transport. URL: <https://zakon.rada.gov.ua/laws/show/z0904-17#Text>

540 <https://zakon.rada.gov.ua/laws/show/z0243-19#Text>

541 <https://zakon.rada.gov.ua/laws/show/69-2020-%D0%BF#Text>

542 https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66737

543 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69593

the Procedure for Equal Access to Strategic Infrastructure. The draft law also stipulates that, along with JSC Ukrzaliznytsia, access to the transport market should be open to private companies that own a fleet of locomotives. To be eligible for activities involving rail transport, carriers will need to obtain licences and to be granted access to infrastructure, they will need safety certificates.

In turn, the draft law of Ukraine “On the National Commission for State Regulation of Transport” provides for the establishment of an independent regulatory body responsible for state regulation in the field of transport, whose powers include ensuring equal opportunities in access to railway infrastructure, prevention of monopolization and promotion of competition in related markets, pricing and tariff policy making in the market of transport services with the use of incentive mechanisms, control over pricing, and prevention of cross-subsidization. The NCRT is supposed to issue licences for the right to carry out activities in the field of railway transport, to check compliance with licencing conditions, etc.

The practical implementation of the new model of the railway transport market in Ukraine is at the experimental stage. The Cabinet of Ministers of Ukraine has decided to implement by December 4, 2021 a pilot project to allow private locomotives to operate on separate routes on public railways. However, currently only the undertakings that are residents of Ukraine are eligible.⁵⁴⁴ The results of the pilot project will be taken into account in drafting by-laws for the implementation of the provisions of the new Law of Ukraine “On Railway Transport of Ukraine”.

Also, Ukraine has launched a pilot project to introduce a single electronic travel document for rail transport.⁵⁴⁵

However, despite these measures, it is obvious that comprehensive reform and opening of the railway market in Ukraine will take place only after adoption of a special framework law that will provide the necessary legal, organisational and socio-economic framework for further operation of the rail transport on market terms.

At the same time, the problems that have not been resolved include: creation of national registers of the network and trains authorized on the territory of Ukraine, introduction of the system of admission of railway undertakings to the transport market, mechanism of equal access to railway infrastructure, development of a mechanism of compensation for financial burdens to railway undertakings, creation of international railway corridors for freight transport, introduction of an effective mechanism for checking and confirming compliance of railway systems and subsystems with the technical specifications of interoperability (TSI), ensuring independent investigation of transport accidents on rail transport, functioning of an effective system of training and permits to work for train drivers.

Air transport

In accordance with the provisions of [Articles 137, 368, Annex XXXII \(3\) to the Association Agreement](#), Ukraine’s commitments in the field of air transport include approximation of national legislation to the relevant legal framework of the EU, as well as conclusion and fulfilment of the Common Aviation Area Agreement (hereinafter referred to as the Agreement) in order to liberalise the market of air transport services and establish common standards for air transport.

The introduction of the Common Aviation Area regime involves the creation of a common Aviation Area for Ukraine and the EU, ensuring free mutual access to the transport market and, in particular, creating common rules in the areas of safety, security, air traffic management, environmental protection, consumer protection, reservation systems, and social norms (Article 1 of the Agreement)⁵⁴⁶

The conclusion of the Agreement will have a positive effect on the national air transport market, improve competition, increase the flying rate, stimulate the development of air transport infrastructure, promote additional investment in the economy, create new jobs, and significantly improve the protection of air transport consumers.

Although the Agreement was initialled on 28 November 2013, its signing was repeatedly postponed and thwarted due to the lack of consensus between the United Kingdom and Spain regarding the application of the Agreement to Gibraltar.

⁵⁴⁴ Resolution No. 1043 of the Cabinet of Ministers of Ukraine “On the Implementation of a Pilot Project to Allow Private Locomotives to Operate on Certain Routes of Public Railways” of December 4, 2019, URL: <https://zakon.rada.gov.ua/laws/show/1043-2019-%D0%BF#Text>; Order No. 191 of the Ministry of Infrastructure of Ukraine “On Approval of the Interim Regulations on the Procedure for Admission of Private Locomotives to Work on Certain Routes of Public Railways” of March 4, 2020, URL: <https://zakon.rada.gov.ua/laws/show/z0278-20#Text>; Order No. 29 of the Ministry of Infrastructure of Ukraine “On Changes to the List of Participants Admitted to the Pilot Project and Sections of Public Railways for the Operation of Private Locomotives” of February 1, 2021, URL: <https://mtu.gov.ua/documents/1950.html>.

⁵⁴⁵ Resolution No. 691 of the Cabinet of Ministers of Ukraine “On the Implementation of a Pilot Project to Introduce a Service of Issuing a Single Electronic Ticket” of July 29, 2020, URL: <https://zakon.rada.gov.ua/laws/show/691-2020-%D0%BF#Text>.

⁵⁴⁶ <https://data.consilium.europa.eu/doc/document/ST-7746-2021-INIT/en/pdf>

However, with the UK leaving the EU, the process has accelerated significantly. On June 28, 2021, the EU Council gave the go-ahead for the signing of the Agreement by Ukraine, which makes it likely that by the end of 2021 it will be concluded.

Maritime transport and services

Directive (EU) 2017/2110, Directive (EU) 2019/883, Directive 1999/95/EC, Directive 2001/96/EC, Directive 2002/59/EC, Directive 2003/25/EC, Directive 2005/65/EC, Directive 2008/106/EC, Directive 2009/15/EC, Directive 2009/16/EC, Directive 2009/17/EC, Directive 2009/18/EC, Directive 2009/21/EC, Directive 2009/45/EC, Directive 2010/65/EU, Commission Directive 2011/15/EU, Commission Directive 2014/100/EU, Directive 1999/63/EC, Council Directive 92/29/EEC, Regulation (EC) 336/2006⁵⁴⁷, Regulation (EC) 391/2009⁵⁴⁸, Regulation (EC) 392/2009⁵⁴⁹, Regulation (EU) 530/2012⁵⁵⁰, Regulation (EC) 725/2004⁵⁵¹, Commission Regulation (EU) 1286/2011⁵⁵²

Ukraine's commitments to approximate the legal and regulatory framework in the field of maritime transport and services were specified in Articles 135, 138, 368, 369, Appendix XVII-5 to Annex XVII, and Annex XXXII (4) to the Association Agreement and cover issues of standards, rules of organisation and control by the flag State and the port State, control of the movement of ships, registration formalities for ships arriving and/or departing from ports, technical and operational rules for passenger ships, oil tankers and bulk carriers, port security, port facilities and vessels, conditions and the procedure for handling ship-generated waste and cargo residues, the minimum level of training of crew members, the conditions and hours of work and rest of seafarers, and the legal liability of carriers. Also, the commitments laid down by the Association Agreement are aimed at ensuring a non-discriminatory and safe regime of navigation in international maritime transport and the provision of relevant services related to trade.

By fulfilling all the tasks specified by the Association Agreement in this area, Ukraine will be able to improve maritime safety standards, bring the institutional structure of state supervision of maritime safety into line with the EU acquis and international conventions, introduce a transparent system of registration of Ukrainian merchant vessels and provide market participants with access to this infrastructure, liberalise the maritime transport market of Ukraine, grant free mutual access to the markets of the EU and Ukraine, promote the attraction of investments for the support and development of the maritime transport infrastructure.

As of June 2021, a number of measures have been taken to fulfil these commitments. In particular, Ukraine has acceded to the International Convention for the Control of Harmful Anti-fouling Systems on Ships⁵⁵³ and the Protocol of 1988 relating to the International Convention on Load Lines.⁵⁵⁴

The State Enterprise Administration of Seaports of Ukraine by its Order No. 30 of March 3, 2016 approved the "Standard Plan for Handling Ship Waste and Cargo Residues in Seaports of Ukraine." Since 2017, Port Plans have been introduced in all seaports of Ukraine. The Cabinet of Ministers of Ukraine by its Resolution No. 715 of July 14, 2021 assigned the task of developing a system for monitoring the surface situation using an automated identification system in the Black and Azov Seas in the area of responsibility of Ukraine to the State Enterprise Maritime Search and Rescue Service.

The Ministry of Infrastructure of Ukraine adopted Order No. 152 "On Approval of Amendments to the Regulation on Working Time and Rest Hours of the Personnel of Sea and River Transport of Ukraine" of March 24, 2021, which regulates certain matters regarding the schedule of watch and shifts, accounting for working time and rest hours of each crew member, duration of weekly rest, etc.

Resolution No. 500 of the Cabinet of Ministers of Ukraine of May 19, 2021 prohibits the registration of oil tankers that do not meet the requirements for double hull or equivalent design, established by Rules 19 and 28 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978; as well as oil tankers aged 25 and over after the date of delivery of the vessel, which is laid down in paragraphs 28.1 to 28.9 of Regulation 1 of this Annex. However, this ban does not apply to all single-hull oil tankers, and a mechanism for their decommissioning has not been developed.

⁵⁴⁷ <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32006R0336>

⁵⁴⁸ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R0391>

⁵⁴⁹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R0392>

⁵⁵⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0530>

⁵⁵¹ <https://eur-lex.europa.eu/legal-content/En/TXT/?uri=CELEX%3A32004R0725>

⁵⁵² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011R1286>

⁵⁵³ Decree No. 112/2017 of the President of Ukraine "On Ukraine's Accession to the International Convention on the Control of Harmful Anti-fouling Systems on Ships" of April 21, 2017. URL: <https://zakon.rada.gov.ua/laws/show/112/2017#n2>

⁵⁵⁴ Resolution No. 991 of the Cabinet of Ministers of Ukraine "On Accession to the Protocol of 1988 relating to the International Convention on Load Lines, as amended in 2003, 2004, 2006, 2008, 2012, 2013 and 2014" of November 21, 2018. URL: <https://zakon.rada.gov.ua/laws/show/991-2018-%D0%BF#Text>

Provisions of Directive 2009/15/EC, Directive 2009/16/EC and Regulation (EC) 391/2009 on common rules and standards for ship inspection and survey organisations by the port state were partially transposed into Law of Ukraine No. 1054-IX “On Inland Water Transport of Ukraine” of December 3, 2020.

Also, in order to transpose the provisions of the EU acquis into national law, the Ministry of Infrastructure of Ukraine has developed a number of draft regulations, including:

1. draft laws of Ukraine “On Ratification of the International Labour Organisation’s Maritime Labour Convention (2006), as amended” and “On Amendments to Certain Legislative Acts of Ukraine in Connection with Ratification of the International Labour Organisation’s Maritime Labour Convention (2006), as amended”, “On Amendments to Certain Legislative Acts of Ukraine (Concerning the Division of Functions for the Implementation of State Policies in the Field of Maritime Safety and Tightening Administrative Liability for Offences in the Field of Maritime and River Transport)”, “On Amendments to Certain Laws of Ukraine Concerning Carriers’ Compulsory Liability Insurance for Injuries or Death Suffered by Passengers and Third Parties”,⁵⁵⁵
2. to update the rules of acceptance of ship waste and cargo residues in seaports and sea terminals – draft amendments to the Rules of Control of Ships to Ensure Maritime Safety, approved by Order No. 545 of the Ministry of Transport of Ukraine of July 17, 2003; draft amendments to the Procedure for Ensuring the Prevention and Elimination of Spills of Pollutants in Seaports of Ukraine, approved by Order No. 631 of the Ministry of Infrastructure of Ukraine of August 21, 2013; draft Guidelines for Calculating Port Charges; draft order of the Ministry of Infrastructure on amendments to the Rules for Registration of Operations with Harmful Substances on Ships, Sea Establishments and Ports of Ukraine, approved by Order No. 205 of the Ministry of Transport of Ukraine of April 10, 2001;
3. in order to improve the safety of ships and port facilities – a draft order of the Ministry of Infrastructure of Ukraine was adopted to amend Order No. 198 of the Ministry of Infrastructure of Ukraine “On Approval of the Procedure for the Protection of Sea and River Ports” of March 27, 2013. These draft acts are mostly at the stage of public discussion or finalisation.

The State Service of Maritime and River Transport of Ukraine together with the Directorate for Transport Safety of the Ministry of Infrastructure of Ukraine is drafting an order to amend the Regulation on the Maritime and River Transport Safety Management System approved by Order No. 904 of the Ministry of Transport of Ukraine of November 20, 2003, with regard to the investigation of maritime accidents.

Meanwhile, work continues on the Unified Information System of the Maritime Administration, the system for control over the movement of Ukrainian ships aligned with the European standards, for its further integration into the SafeSeaNet.⁵⁵⁶

Also, since no relevant amendments were made to the Regulation on Maintaining the Unified State Register of Seafarers’ Documents, approved by Order No. 3 of the Ministry of Transport of Ukraine of January 8, 2003, the introduction of electronic registration and real-time verification of seafarers’ documents is significantly delayed.

Unfortunately, the assessment of the fulfilment of Ukraine’s transposition and implementation commitments in the field of maritime transport and services shows that the approximation of national legislation to the EU acquis and its organisational support are mostly at an early stage or has not even begun. But in other respects, in particular with regard to amendments to the legislation of Ukraine on port state control and reorganisation of seaport captain services, introduction of the common liability and insurance regime for the carriage of passengers by sea, creation and maintenance of an information system for monitoring the surface situation and movement of ships, and updating the requirements concerning working time and rest hours of seafarers, the fulfilment status is less than perfect.

⁵⁵⁵ The draft law was submitted to the Verkhovna Rada of Ukraine, but in 2019 it was withdrawn. URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=6pf3511=61962

⁵⁵⁶ The draft law “On Amendments to the Law of Ukraine ‘On Seaports of Ukraine’ as regards the Functioning of the Port Community System” (registered under No. 3761 on January 13, 2016) was developed and submitted to the Verkhovna Rada of Ukraine, however it has been withdrawn.

Inland waterway transport

Council Directive 96/75/EC, Council Directive 87/540/EEC, Directive (EU) 2017/2397, Directive (EU) 2016/1629, Regulation (EU) 2016/1628, Directive 2008/68/EC, Directive 2005/44/EC

Ukraine's commitments in the field of inland waterway transport are laid down in Articles 368, 369 and Annex XXXII (5) to the Association Agreement. They are aimed at harmonising national legislation with regard to liberalisation and functioning of the inland waterway transport market, qualification requirements for those who pursue the occupation in this market, technical requirements for vessels, safety of the transport of dangerous goods, organisation of operation of river information services.

Legislative approximation to the EU *acquis* in this area will help create a level playing field in the inland waterway market, ensure free access of foreign vessels to Ukraine's inland waterways, upgrade and develop river transport infrastructure, enhance the attractiveness of river transport and reduce the burden on road and rail transport, curb environmental pollution, and ensure the safety of river navigation.

In order to fulfil the relevant commitments with a view to creating favourable conditions for the development of inland water transport, meeting the public demand for accessible, high quality and safe transportation, Ukraine adopted framework Law of Ukraine No.1054-IX "On Inland Water Transport" of December 3, 2020 (hereinafter referred to as Law No. 1054-IX), laying down the legal, economic and organisational principles of functioning of inland water transport. However, the Law will enter into force only on January 1, 2022.

The Law, *inter alia*, contains general provisions on:

1. tariff policy and pricing on inland waterways;
2. requirements for the professional competence of inland waterway carriers;
3. requirements for the qualification of persons involved in the operation of a craft navigating inland waterways;
4. requirements for qualification documents (diplomas, certificates, etc.) certifying the relevant qualification and their mutual recognition;
5. minimum requirements for institutions that train professionals and assess professional competence;
6. technical requirements for inland waterway vessels;
7. classification of inland waterways;
8. rules for the transport of dangerous goods; and
9. procedure for creation, organisation and functioning of the river information service.

These provisions generally comply with the rules set out in the regulations and directives to be transposed under the Association Agreement.

As of June 2021, the Ministry of Infrastructure of Ukraine by its orders approved the Rules for the Transport of Dangerous Goods by Inland Waterways of Ukraine⁵⁵⁷ and made amendments to the Regulation on the River Information Service on the Inland Waterways of Ukraine.⁵⁵⁸ The Ministry of Infrastructure of Ukraine and the Ministry of Internal Affairs of Ukraine by a joint order approved the Procedure for Inspection of Tanks for the Transport of Dangerous Goods.⁵⁵⁹ The Ministry of Education and Science of Ukraine by its order approved the Standard of Higher Education in Specialty 271 'River and Maritime Transport' for the first (bachelor's) level of higher education, developed and registered with the Verkhovna Rada of Ukraine draft laws to amend certain laws of Ukraine with regard to the transport of dangerous goods.⁵⁶⁰

Despite the adoption of Law No. 1054-IX and a number of by-laws, to ensure full-fledged fulfilment of the commitments undertaken by Ukraine under the Association Agreement and effective implementation of the provisions of this Law, it is necessary to further update and supplement the relevant legislation and regulatory framework.

557 <https://zakon.rada.gov.ua/laws/show/z0556-17#Text>

558 <https://zakon.rada.gov.ua/laws/show/z1053-20#Text>

559 <https://zakon.rada.gov.ua/laws/show/z0663-15#Text>

560 Main URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=1193&skl=10;
alternative, URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66922.

Combined transport

Council Directive 92/106/EEC

Ukraine's commitments to approximate legislation in the field of combined transport are set out in Article 368 of the Association Agreement, with more details in Annex XXXII (2), and consist in transposing common EU rules for certain types of combined transport into national law.

This commitment is directly related to the need to develop the transport system of Ukraine in general (especially rail and inland waterway transport), and its implementation will make it possible for Ukraine to unlock its transit potential, optimize the load on the transport infrastructure, increase its investment attractiveness, and significantly reduce the volume of harmful emissions during the transport of goods in the future.

For a long time since the conclusion of the Association Agreement, no significant progress has been made with regard to this commitment. Currently, the draft law of Ukraine "On Multimodal Transport" is pending consideration by the Verkhovna Rada of Ukraine (Reg. No. 4258 of 23.10.2020)⁵⁶¹ It was adopted in March 2021 in the first reading.

The draft law provides for the introduction of a number of legal concepts, in particular: "multimodal transport", "combined transport of goods", "multimodal transport contract", "single transportation document", "multimodal terminal", etc., lays down the legal and organisational principles of multimodal transport, creates a legal framework for the making and implementation of state policy in the field of multimodal transport and support for the development of the multimodal transport market in Ukraine.

Implementation of the relevant law will promote the use of more environmentally friendly and energy efficient modes of transport (rail, inland waterway transport) for the main section of the multimodal transport chain, which will help reduce air pollution and improve public health.

Meanwhile, despite the fact that no relevant law has been adopted, according to the Ministry of Infrastructure,⁵⁶² the Roadmap for the Development of Multimodal Transport in Ukraine is being drafted to provide practical steps for building a network of multimodal terminals.

So far, we can argue that the transposition of the relevant provisions of the Directive is at an early stage and their implementation has not started.

Space

According to [Articles 371 to 373 of Chapter 8 "Space" of the Association Agreement](#), the parties have undertaken only "soft" commitments, which do not involve any specific mandatory actions with clear-cut deadlines, focusing instead on the development of mutually beneficial cooperation on civil space research and space applications, in particular in the following areas: global navigation satellite systems; earth observation and global monitoring; space science and exploration; and applied space technologies, including launcher and propulsion technology.

As regards sustainable development of the national transport system, improving transport safety and quality of transport services, Ukraine's involvement in the development and use of global navigation satellite systems is of great importance.

The Cabinet of Ministers of Ukraine by its Order No. 15 of January 13, 2021 approved the Concept of the National Targeted Scientific and Technical Space Programme of Ukraine for 2021-2025, which describes the creation of domestic terrestrial and satellite-based positioning and navigation systems using global navigation satellite systems, including GALILEO, as a key objective of its implementation.

According to the Cabinet of Ministers of Ukraine, in January 2019 the Government of Ukraine and the European Space Agency (ESA) agreed to extend the Agreement between the Government of Ukraine and the ESA concerning space cooperation for peaceful purposes of January 25, 2008. The Agreement recognizes the provision of satellite navigation services as having a special potential for cooperation between the parties.

In this context, it is extremely important to ensure cooperation within the European Geostationary Navigation Overlay Service (EGNOS) project, aimed at improving the accuracy and reliability of satellite navigation systems (GPS, GALILEO), ensuring quality navigation services and improving the safety of air, sea and land transport.

⁵⁶¹ https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70239

⁵⁶² <https://mtu.gov.ua/news/32665.html>

Under the Cooperation Agreement on a Civil Global Navigation Satellite System (GNSS) between the European Community, its Member States and Ukraine, a project to install ground monitoring stations (RIMS) in Kyiv is being implemented.

However, to achieve full coverage of the territory of Ukraine with EGNOS and its application in the interests of the Ukrainian party, it is necessary to conclude an agreement between Ukraine and the European Union to expand the use of the European satellite navigation system EGNOS to cover Ukraine.

In order to lay down the legal, economic, organisational and financial principles of activities of public authorities and economic operators in the field of satellite navigation in Ukraine and improve the principles of state regulation in this area, two draft laws on state regulation in the field of satellite navigation were developed, however both have been withdrawn. It is expected that after the adoption of the framework Law on regulation in the field of satellite navigation and conclusion of the specified Agreement, it will be necessary to develop and approve the relevant general rules and technical regulations in the field of satellite navigation and extension of the EGNOS satellite systems to cover Ukraine.

COMPANY LAW

Experts: Bohdan Veselovskyi



not started early stage advanced perfect critical non-conformity (0.1%)

Pursuant to Article 387 (1) (a) of the Association Agreement, the Parties (Ukraine and the EU) have agreed to cooperate on the protection of the rights of shareholders, creditors and other stakeholders in line with EU rules in this area as listed in Annex XXXIV to this Agreement. This sector includes the following areas: general provisions of EU law on the establishment (registration) of companies, procedures for their liquidation and disclosure of information about them and provisions on joint stock companies, limited liability companies, protection of shareholders' rights, implementation of relevant international standards and gradual approximation to EU law in the field of accounting and auditing, as well as corporate governance policy in accordance with international standards.

Implementation of these commitments will help increase investor confidence in the Ukrainian market and boost direct foreign investment.

Establishment and operation of companies

Directive 2017/1132/EU

Within this thematic area, Ukraine has to approximate its legislation on the protection of the rights of shareholders, creditors and other stakeholders in line with EU rules. The commitment involves the harmonisation of national legislation with the provisions of Directive 2017/1132/EU relating to certain aspects of company law such as disclosure information on legal persons; merger, acquisition, and division procedures; and approximation of law on single-member limited liability companies.

On November 25, 2019, the draft law "On Joint Stock Companies" was registered with the Verkhovna Rada of Ukraine to replace the current version of the Law of Ukraine "On Joint Stock Companies".

According to the opinion of the Verkhovna Rada Committee on Ukraine's EU Integration and the Government Office for Coordination on European and Euro-Atlantic Integration, some provisions of the draft law were found to be inconsistent with Directives 2017/1132/EU and 2007/36/EU, and some of their provisions were found to have been taken into account in other commitments.⁵⁶³ Within this assessment, it is important to point out that the draft law "On Joint Stock Companies" does not include any rules designed to transpose the provisions of Directives 2017/1132/EU and 2007/36/EU on the introduction of sanctions for non-disclosure of mandatory information by branches of foreign companies, as well as the introduction of requirements to convene the general meeting of shareholders in case of significant losses of the authorized capital of the company.

563 Opinion of the Committee on Ukraine's Integration into the European Union 05.03.2020 <https://cutt.ly/xtV1PpC>

On June 16, 2020, the draft law “On Joint Stock Companies” (No. 2493) was adopted in the first reading and is currently being prepared for the second reading by the line committee. On July 12, 2021, the Verkhovna Rada Committee on Economic Development approved a comparative table to the draft law and recommended the Verkhovna Rada to adopt it as a whole based on the results of the second reading. At present, the comparative table of amendments and proposals is not available on the website of the Verkhovna Rada of Ukraine and cannot be analysed in the context of this opinion. However, according to the official press release, before the second reading the Committee took into account the amendments of the relevant bodies to introduce a mechanism for holding general meetings using electronic voting and to introduce requirements for convening a general meeting of shareholders in case of significant losses.

In view of the above, the overall assessment in this area remains at the level of early transposition, and after the adoption of this draft law it will be necessary to adopt a number of by-laws by the Ministry of Finance and the National Commission on Securities and Stock Market.

Accounting and auditing

Audits of accounts

Directive 2006/43/EC

Within this thematic area, Ukraine is to achieve a gradual approximation to EU law in the field of auditing and accounting at the national level.

It involves determining the conditions and procedure for authorising auditors to conduct auditing activities, creating a register of auditors and organising a public oversight body in the field of auditing.

Regulatory approximation is perfect: the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 2258-VIII “On Audits of Accounts and Auditing Activities” of 21.12.2017, which entered into force on 07.02.2018 and was enacted on 01.10.2018. In particular, positive opinions were received from the European Commission, the International Forum of Independent Audit Regulators (IFIAR), the Financial Reporting Council of the United Kingdom and the Audit Office of the Federal Republic of Germany, as noted in the European Commission’s 2019 Report on the Association Agreement with Ukraine.⁵⁶⁴

The level of fulfilment of the implementation tasks has shifted from advanced to perfect: in accordance with Article 19 (8) of Law of Ukraine No. 2258-VIII “On Audits of Accounts and Auditing Activities” of 21.12.2017, certification of auditors is carried out by the certification commission. The Ministry of Finance of Ukraine by its Order No.1081 of 21.12.2018 established the Auditor Attestation Commission. The Ministry of Finance of Ukraine by its Order No. 20 “On Approval of the Regulation on the Attestation Commission” of 22.01.2020 approved the Regulation on the Attestation Commission. The Ministry of Finance of Ukraine approved Order No. 765 “On the Establishment of the State Institution Audit Public Oversight Body” of 18.09.2018, whereby its Charter was approved.

In 2020-2021, important implementation steps were taken: Order No. 149 of the Ministry of Finance of Ukraine “On Approval of Amendments to the Procedure for Quality Control of Audit Services” of 10.03.2021 was developed; Order No. 236-p of the Cabinet of Ministers of Ukraine “On Approval of the Budget of the State Institution Audit Public Oversight Body for 2021” of 24.03.2021; as well as Resolution No. 311 of the Cabinet of Ministers “On Amendments to Resolution No. 313 of the Cabinet of Ministers of Ukraine of April 10, 2019 (regarding the amount of fees payable by auditing entities to the Audit Public Oversight Body)” of 07.04.2021. Given the above, the status of fulfilment of the implementation tasks in this area might be deemed perfect.

⁵⁶⁴ JOINT STAFF WORKING DOCUMENT 12.12.2019 Association Implementation Report on Ukraine:
https://eeas.europa.eu/sites/eeas/files/swd_2019_433_f1_joint_staff_working_paper_en_v4_p1_1056243.pdf

Gradual approximation to EU law in the field of accounting at the national level

Directive 2013/34/EU

In the field of accounting, regulatory approximation is perfect: on October 5, 2017, Law of Ukraine No. 2164-VIII “On Amendments to the Law of Ukraine ‘On Accounting and Financial Reporting in Ukraine’ as regards Improving Certain Provisions” was adopted.⁵⁶⁵ As regards by-laws, on June 20, 2018, Order No. 564 of the Ministry of Finance of Ukraine of June 20, 2018 was adopted,⁵⁶⁶ amending the National Accounting Regulation (Standard) 1 “General Financial Reporting Requirements” and approving a new version of the National Accounting Regulation (Standard) 2 “Consolidated Financial Statements”.

The only implementation task that remained unfulfilled as of the beginning of 2020, was the one that involved developing and approving guidelines for compiling reports on payments to the state. It was fulfilled in the second half of 2020: the Ministry of Finance of Ukraine with the participation of the State Forest Resources Agency of Ukraine developed and approved Order No. 499 “On the Approval of the Form and Procedure for Reporting on Payments to the State by Enterprises Engaged in Timber Harvesting” of August 13, 2020, which applies to enterprises engaged in timber harvesting that also are of public interest.⁵⁶⁷

Therefore, the status of this commitment can also be described as perfect.

Corporate governance

This thematic area involves gradual approximation to the EU rules and recommendations in the field of corporate governance.

Regulatory approximation is perfect: on September 25, 2018 the NSSMC approved the Requirements for the Regulation on Remuneration and Report on Remuneration to Members of Supervisory Boards and Executive Bodies of Joint Stock Companies, and on November 30, 2018 the document was registered with the Ministry of Justice of Ukraine. The document is made taking into account [Commission Recommendation 2004/913](#). Another Recommendation concerns the role of non-executive or supervisory directors of listed companies and supervisory board committees – the key provisions of this document were taken into account by the Verkhovna Rada of Ukraine and adopted in Law of Ukraine No. 2210-VIII “On Amendments to Certain Legislative Acts of Ukraine for Business Facilitation and Attraction of Investments by Issuers of Securities”, whereby amendments were made to the Law of Ukraine “On Joint Stock Companies”.

In 2020 and the first half of 2021, some actions of the Ukrainian authorities towards Naftogaz received negative feedback from the EU in the context of comprehensive corporate governance reform in accordance with EU standards and OECD principles. In July 2021, the Government of Ukraine launched a dialogue with international partners on rebooting corporate governance reform, within which a meeting of the nomination committee to form the Supervisory Board of Main Gas Pipelines of Ukraine was held after a long break and some by-laws are being drafted aimed at restarting the effective implementation of corporate governance reform.

⁵⁶⁵ Law of Ukraine No. 2164-VIII of 5.10.2017 “On Amendments to the Law of Ukraine ‘On Accounting and Financial Reporting in Ukraine’ with regard to Improving Certain Provisions” <https://zakon.rada.gov.ua/laws/show/2164-19>

⁵⁶⁶ Order No. 564 of the Ministry of Finance of Ukraine “On Approval of Amendments to Certain Regulations of the Ministry of Finance of Ukraine on Accounting” of 20.06.2018 <https://zakon.rada.gov.ua/laws/show/z0817-18#n2>

⁵⁶⁷ Order No. 499 of the Ministry of Finance of Ukraine “On Approval of the Form and Procedure for Reporting on Payments to the State by Enterprises Engaged in Timber Harvesting” of August 13, 2020.

TELECOMMUNICATIONS

Experts: **Lilia Malion (Telecommunication Services, Regulator)**
Andrii Melashchenko (Trust Services)



not started early stage advanced perfect critical non-conformity

Electronic communications are one of the important components in the development and functioning of the information society, and the development of telecommunications infrastructure is the basis for the development of the digital market and digital economy, including the introduction of next-generation technologies. Significant progress in the field of digitalization and development of new technologies made in recent years has significantly affected the development of electronic communications in general, requiring changes in approaches to their regulation and development of new legislation, strengthening the role of regulatory institutions and competent authorities, as well as creating favourable conditions for the introduction of new technologies.

Within the framework of the Association Agreement, cooperation between Ukraine and the EU in the field of telecommunications (electronic communications) is laid down in Sub-sections 3 and 5 of Section 5 of Chapter 6 “Establishment, Trade in Services and Electronic Commerce” of Title IV “Trade and Trade-Related Matters”, Section 6 of Chapter 6 of Title IV, Chapters 14 and 15 of Title V “Economic and Sector Cooperation” of the Association Agreement, as well as Annex XVII and Appendix XVII-3 “Rules Applicable to Telecommunication Services” to Chapter 6 of Title IV of the Association Agreement (hereinafter referred to as Appendix XVII-3), which specifies the list of the EU acquis on the information society and electronic communications that need to be implemented.

At present, Appendix XVII-3 lays down Ukraine’s commitment to approximate national legislation to EU law in the field of electronic communications, and contains a package of EU directives of 2002 as amended in 2009.⁵⁶⁸ At the same time, taking into account the changes that have taken place in EU legislation in response to the changes in the field of electronic communications, Ukraine and the EU are currently finalising agreements on updating Annex XVII-3 to Annex XVII to the AA to supplement it with new EU acquis specified in the Strategy for Ukraine’s Integration into the Digital Single Market of the European Union proposed by the Ukrainian party and the relevant Action Plan for its implementation, including:

1. Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code;
2. Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services and Regulation (EU) No 531/2012⁵⁶⁹ on roaming on public mobile communications networks within the Union;
3. Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme, taking into account subsequent EU implementing acts and about forty Commission implementing decisions;
4. Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks.

⁵⁶⁸ https://www.kmu.gov.ua/storage/app/media/ugoda-pro-asociaciyu/17_Annexes.pdf

⁵⁶⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R0531>

The key tasks in the framework of approximation of Ukrainian legislation to the EU acquis in the field of telecommunications (electronic communications) include the implementation of the EU acquis in Ukrainian legislation to the extent necessary to extend the EU internal market regime to this area, as well as practical integration of Ukraine into the EU Digital Single Market.

The key goal is the adaptation and harmonisation of legislation, as well as changing the principles of regulation in this area, which includes, inter alia:

- strengthening the independence and administrative capacity of the national regulator in the field of electronic communications;
- introduction of public consultation procedures for new regulatory measures and establishment of effective mechanisms for appeal against the decisions of the national regulator;
- defining the relevant product and service markets in the electronic communications sector that are susceptible to ex ante regulatory procedures and analysing those markets with a view to determining whether significant market power exists on them, as well as imposing on operators found to have significant market power on the relevant markets, appropriate regulatory obligations;
- implementing a regulation on providing for general authorisations, and restricting the need for individual licences to specific, duly justified cases;
- regulation of the rights and duties of users and providers of Universal Service in accordance with EU law;
- introduction of the number portability service, etc.

At the same time, it is also important to develop the existing telecommunications infrastructure and harmonise it with the EU. This, in particular, involves creating an infrastructure of broadband access to the Internet in all territory of Ukraine, providing roaming on public mobile networks, as well as harmonisation of the use of the radio frequency spectrum.

Regulator

Strengthening the independence and administrative capacity of the national regulator in the field electronic communications

[Article 116 of the Association Agreement](#)

[Article 391 of the Association Agreement](#)

[Article 394 of the Association Agreement](#)

[Appendix XVII-3 to the Association Agreement](#)

[Directive 2002/21/EC](#)

[Directive 2002/19/EC](#)

[Directive \(EU\) 2018/1972](#).

An independent regulator is key to creating an effective regulatory system and properly reforming the electronic communications sector. The objective of strengthening its independence is to ensure its ability to take appropriate regulatory action and enforce its decisions and all relevant norms, and to ensure fair competition in markets.

The relevant articles of the Association Agreement, as well as EU acquis, including Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, stipulate that the regulator must: be legally distinct from, and functionally independent of any external interference or political pressure in the performance of its tasks; be sufficiently empowered to regulate the electronic communications sector, including the power to carry out market analysis and make decisions whether to impose or withdraw of relevant regulatory obligations concerning service providers identified as having significant market power (SMP) in the relevant markets; have adequate technical, financial and human resources, as well as its own guaranteed budgets and autonomy to dispose of the allocated funds; take transparent and non-discriminatory decisions and procedures for all market participants, and shall not seek instructions from any other body in relation to the exercise of its tasks (the regulator's decisions do not have to be endorsed by other bodies and can only be appealed against in court); the appointment and dismissal of members of the regulator should be transparent and based exclusively on law effective at the time of their appointment; have the right to request and receive data and information necessary for the performance of its functions from market representatives/service providers; the regulator's decisions that will have a significant impact on the relevant market should be made public and should be taken upon consultations with stakeholders, etc.

On December 11, 2015, draft law No. 3549-1 “On Electronic Communications” was registered with the Verkhovna Rada of Ukraine. It aimed at addressing the matters of improving the independence and administrative capacity of the national regulator in the field of telecommunications (electronic communications). On January 18, 2016, the President identified the draft law as urgent. Despite this, consideration of the draft law was delayed for a long time, and on August 29, 2019, the draft law was withdrawn for the Verkhovna Rada of the relevant convocation had failed to consider it in the first reading.

In September 2020, the draft Law of Ukraine “On the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services of Ukraine” (reg. No. 4066 of 07.09.2020)⁵⁷⁰ was registered with the Verkhovna Rada of Ukraine. According to the explanatory note to the draft law, it was developed taking into account the provisions of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, to improve the institutional and financial independence of the regulator and expand its powers and tasks.

At the plenary session on May 20, 2021, the Verkhovna Rada of Ukraine considered the draft law and took a decision to re-submit it for a second reading. On June 30, 2021, the Verkhovna Rada Committee on Digital Transformation had a meeting, where it decided to submit a new version of the draft law prepared by the Committee to the Verkhovna Rada of Ukraine and recommend that the Verkhovna Rada of Ukraine adopt it as a basis.

This draft law is related to the Law of Ukraine “On Electronic Communications”, which in turn lays down the legal and organisational framework of public policies in the field of electronic communications and radio frequency spectrum, as well as the rights, duties and responsibilities of individuals and legal entities engaged in the relevant activities or using electronic communication services.

As of the time of writing this, neither the said draft law nor any other draft law fulfilling Ukraine’s commitments to strengthen the independence and administrative capacity of the national regulator in the field of electronic communications has been adopted.

If the relevant draft law is not adopted or its adoption is delayed, this will give rise to a legal conflict preventing appropriate and timely implementation of the Law of Ukraine “On Electronic Communications”, as well as might lead to:

- uncertainty regarding the regulation of electronic communications, radio frequency spectrum and the provision of postal services in Ukraine;
- inability of the regulator of communication services to ensure the provision of appropriate administrative services, as well as to make the necessary decisions required for businesses, providers of electronic communications services, and consumers of such services.

At the same time, it is important to point out that the key goal of such a draft law should be to ensure the institutional, financial and functional independence of the regulator, sufficient powers and competencies, and human resources for its proper operation, as well as to provide the legal framework for the functioning of the independent regulator based on the principles and approaches enshrined in the relevant EU acquis and taking into account the European practice of their application.

To sum up, this commitment has not been fulfilled to date, it is at an early stage of transposition, and, hence, its practical implementation has not begun. The Law of Ukraine “On Electronic Communications” stipulates that the regulatory authority is a permanent central executive body with a special status in the fields of electronic communications, radio frequency spectrum and the provision of postal services in Ukraine, as well as specifies its individual functions. However, the related draft law that should specify the legal status of the National Commission for State Regulation of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services of Ukraine, its tasks, functions, powers and the procedure for their implementation, has not been adopted.

Telecommunications services

Legislative regulation of electronic communications

Article 391 of the Association Agreement
Article 394 of the Association Agreement
Directive (EU) 2018/1972.

On December 16, 2020, the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 1089-IX “On Electronic

⁵⁷⁰ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69864.

Communications,”⁵⁷¹ which enters into force on 01.01.2022 and lays down the legal and organisational framework of the state policy in the field of electronic communications and radio frequency spectrum, as well as the rights, duties and responsibilities of individuals and legal entities engaged in the relevant activities or using electronic communications services.

By adopting this law, Ukraine made a significant step towards approximating its legislation in the field of electronic communications to EU law. This act was developed based on the provisions of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code. This is the first time that Ukraine implemented a new EU regulation almost simultaneously with the EU Member States, taking into account the fact that Ukraine has no formal commitments to implement the Directive, as it is not yet part of the Association Agreement. However, since the Directive absorbed the package of directives of 2002 as amended in 2009, namely: Directives 2002/19/EC, 2002/21/EC, 2002/20/EC as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 and Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, which are mandatory for implementation under the Association Agreement (Appendix XVII-3 to Annex XVII), the decision to implement the European Electronic Communications Code is a logical and progressive step on the part of Ukraine.

Today, after the adoption of the Framework Law of Ukraine “On Electronic Communications” of December 16, 2020 (No. 1089-IX),⁵⁷² this commitment can be considered fulfilled at the level of regulatory approximation and transposition, and Directive (EU) 2018/1972 can be considered implemented (perfect fulfilment). However, it should be pointed out that in order to apply the provisions of the law in practice, it is necessary to develop more than a hundred by-laws. Currently, the process of their drafting by the government bodies in charge is still ongoing, and its progress is difficult to assess.

Defining the relevant product and service markets in the electronic communications sector that are susceptible to ex ante regulatory procedures and analysing those markets with a view to determining whether significant market power exists on them, as well as imposing on operators found to have significant market power on the relevant markets, appropriate regulatory obligations

Article 116 of the Association Agreement

Article 391 of the Association Agreement

Article 394 of the Association Agreement

Appendix XVII-3 to the Association Agreement

Directive 2002/21/EC

Directive 2002/19/EC

Directive (EU) 2018/1972.

Identification of the product and service markets in the electronic communications sector that are susceptible to ex ante regulatory procedures and analysing those markets with a view to determining whether significant market power exists on them, as well as imposing on operators found to have significant market power on the relevant markets, appropriate regulatory obligations are one of the key tasks and functions of the regulator in the field of electronic communications, which, if fulfilled, will have an impact on the formation of highly competitive markets.

The regulator in the field of telecommunications (NCCIR) by Decision No. 640 of 11.12.2018 approved the Procedure for Analysing the Markets of Certain Telecommunications Services and Identifying Operators, Telecommunications Providers with Significant Market Power in the Markets of Such Services, registered with the Ministry of Justice of Ukraine on 17.01.2019 under No. 54/33025. The markets for certain telecommunications services that are subject to regulation are specified in the Annex to the Procedure and are fully in line with Ukraine's Indicative List of the relevant markets (17 markets identified) to be analysed according to Article 116 of the Association Agreement.

On July 14, 2020, by Decision No. 269, the NCCIR also approved the Procedure for Defining Markets of Certain Telecommunications Services, registered with the Ministry of Justice on September 10, 2020 under No. 866/35149.

During 2019 and 2020, 3 telecommunications markets underwent scheduled analysis and 6 more telecommunications markets were analysed. The analysis of another 2 telecommunications markets has started. Today, the analysis of the market of services for the provision of telecommunication channels with a bandwidth of up to 2 Mbit/s to end users is also carried out (NCCIR Decision No. 50 of 09.02.2021).

571 <https://zakon.rada.gov.ua/laws/show/1089-20#Text>

572 <https://zakon.rada.gov.ua/laws/show/1089-20#Text>

Given the above, as well as based on the provisions of the current Law of Ukraine “On Telecommunications” of November 18, 2003 (No. 1280-IV),⁵⁷³ we can speak of the actual fulfilment of the commitment to define the product and service markets in the electronic communications sector that are susceptible to ex ante regulatory procedures and analysing those markets with a view to determining whether significant market power exists in them in practice. However, it should be noted that at the legislative level this commitment is regulated not by the Law of Ukraine “On Telecommunications” but by the Law of Ukraine “On Electronic Communications” (Section XII “Analysis of Electronic Communications Markets”), entering into force on 01.01.2022, which in turn, will require drafting new or updating current relevant regulatory acts. That is why the fulfilment of this commitment can be described as advanced transposition.

On December 16, 2020, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Electronic Communications”, which enters into force on January 1, 2022. Pursuant to Article 84 of this Law, the regulatory body shall, in accordance with the procedure established by this body, take decisions with regard to imposing regulatory obligations on providers of electronic communications networks or providers of electronic communications services found to have significant market power as provided for in Articles 85-90 and 92-98, as well as with regard to changing and lifting such obligations. Currently, no such procedure exists, as the powers of the regulator (the NCCIR) to impose regulatory obligations are not stipulated in current legislation. In addition, the Law also does not provide for the powers of the NCCIR to develop relevant regulations.

On the other hand, this issue is resolved in the draft law “On the National Commission for State Regulation of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services of Ukraine” (reg. No. 4066 of 07.09.2020), which stipulates that the national regulator shall develop and approve regulatory legal acts, including those provided by the laws of Ukraine “On Electronic Communications” and “On Postal Services”. Therefore, the relevant procedure will be developed after the law on the regulator enters into force.

Commitments to impose regulatory obligations on operators found to have significant market power on the relevant markets are regulated only partially at the level of transposition in that the relevant provisions are included in the Law of Ukraine “On Electronic Communications”. However, it is also necessary to resolve this issue in the associated draft law “On the National Commission for State Regulation of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services of Ukraine” and to develop a relevant regulatory act, which indicates the advanced stage of transposition, but practical implementation has not yet begun.

Introduction of a public consultation procedure for new regulatory measures and creation of an effective mechanism for appealing against decisions of the National Telecommunications Regulator

Article 391 of the Association Agreement

Article 394 of the Association Agreement

Appendix XVII-3 to the Association Agreement

Directive 2002/21/EC

Directive (EU) 2018/1972.

The Law of Ukraine “On Electronic Communications” adopted by the Verkhovna Rada of Ukraine on December 16, 2020 and entering into force on January 1, 2022, includes Article 22 that provides for consultations with market participants and other stakeholders. However, further practical implementation of the procedure of public consultations concerning new regulatory measures requires development and approval by the Regulator in the field of electronic communications of the relevant procedure for public consultations.

Regarding the creation of an effective mechanism for appealing against its decisions, this law also establishes the right to appeal against the regulator’s decision to the court in the manner prescribed by law. Specifically:

- providers of electronic communications networks and/or services, users of the radio frequency spectrum in respect of which state oversight (control) measures are carried out, have the right to appeal against the results of state oversight (control) measures and decisions adopted by the regulator concerning them (Article 15);
- economic operators may appeal against the decisions of the regulator out-of-court in the framework of an out-of-court dispute settlement procedure conducted by the regulator (Article 24);
- the decision of the regulator to revoke the licence may be appealed to court (Article 54);
- the economic operator has the right to appeal to the court against the decision of the regulator to impose administrative and economic sanctions on it (Article 127).

⁵⁷³ <https://zakon.rada.gov.ua/laws/show/1280-15#Text>

However, the mechanism for appealing against decisions of the regulator in the field of electronic communications should also be specified in the draft Law of Ukraine “On the National Commission for State Regulation in the Field of Electronic Communications, Radio Frequency Spectrum and Postal Services of Ukraine”.

Given the above, these commitments are fulfilled only at the level of regulatory approximation and transposition by adopting framework legislation – i.e. the Law of Ukraine “On Electronic Communications” (advanced and perfect transposition). However, to enact these provisions of the law, appropriate regulations have to be developed.

Introduction of the procedure of general authorisation and restrictions on individual licences in certain cases

Article 117 (1) of the Association Agreement
Article 394 of the Association Agreement
Appendix XVII-3 to the Association Agreement
Directive 2002/20/EC
Directive (EU) 2018/1972.

On December 25, 2019, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Shorten the List of Types of Economic Activities Subject to Licensing” entered into force, amending, inter alia, the Law of Ukraine “On Telecommunications,” lifting licensing for certain types of economic activities in the field of telecommunications, as well as introducing the notification principle in the registration of economic operators in the field of electronic communications.

This means that from 25.12.2019, in accordance with the requirements of the Law, economic operators will acquire the right to carry out activities in the field of telecommunications by submitting to the NCCIR a notification of launching activities in the field of telecommunications.

In order to establish clear-cut, transparent and non-discriminatory rules and conditions for the activities in the field of telecommunications, including to replace the current licensing conditions for certain activities, the NCCIR developed the Rules for Conducting Activities in the Field of Telecommunications, which entered into force on 14 January 2020 (NCCIR Decision No. 541 of November 19, 2019, registered with the Ministry of Justice on December 28, 2019 under No. 1309/34280).

In addition, in pursuance of the requirements of this law, the NCCIR by its Decision No. 610 on “Matters of Maintaining the Register of Operators, Telecommunications Providers” of 17.12.2019, registered with the Ministry of Justice on 02.01.2020 under No.11/34294, approved: the Procedure for Maintaining the Register of Operators, Telecommunications Providers; the Form of Notification of the Start of Activities in the Field of Telecommunications; Indicative List of Types of Telecommunication Services, Forms of Description of Telecommunication Services. The NCCIR website also contains all the necessary information and explanations on the issue.⁵⁷⁴

The measures within this commitment have been fully fulfilled and its implementation by the responsible body (NCCIR) is ensured in practice (perfect transposition).

Regulation of the rights and obligations of users and providers of universal telecommunications services in accordance with EU law

Article 394 of the Association Agreement
Appendix XVII-3 to the Association Agreement
Directive 2002/22/EC
Directive (EU) 2018/1972.

Section XIII of the Law of Ukraine “On Electronic Communications” adopted by the Verkhovna Rada of Ukraine on December 16, 2020 and entering into force on January 1, 2022, focuses on universal electronic communications services.

It is also necessary to develop a draft resolution of the Cabinet of Ministers of Ukraine on amendments to the Rules for the Provision and Receiving of Telecommunications Services, as well as to create a new version of the rules for operation in the field of telecommunications, which must be approved by the regulator. These documents have not been developed yet.

574 <https://nkrzi.gov.ua/index.php?r=site/index&pg=51&language=uk>

Introduction of the mobile number portability service

Article 394 of the Association Agreement
Appendix XVII-3 to the Association Agreement
Directive 2002/22/EC
Directive (EU) 2018/1972.

On May 1, 2019 Ukraine introduced the mobile number portability (MNP) service. As of August 2021, telecom operators have provided this service for 155 823 mobile numbers.

In addition, measures are being taken to improve the Procedure for Providing Mobile Number Portability Services. The purpose is to improve the Procedure and the Basic requirements to the contract for the provision of telecommunications services, approved by NCCIR Decision No. 624 of 29.11.2012, which will facilitate obtaining MNP services.

In order to meet the demand of consumers for MNP services, certain norms of the Procedure, as well as the Basic Requirements are to be improved, making it possible to:

- simplify the procedure for submitting applications for MNP;
- simplify the process of identifying the subscriber who applied for MNP;
- ensure registration of the subscriber with the recipient operator upon submitting the application for MNP if the said subscriber intends to receive services in a way other than based on the written contract;
- make changes to the agreements on the provision of telecommunications services to provide for the termination of the public contract in case of MNP for subscribers who receive telecommunications services without concluding a contract in writing;
- introduce the principle of “One Stop Shop process,” providing solutions of all issues related to MNP by way of contacting one entity – the recipient operator.

The NCCIR by its Decision No. 107⁵⁷⁵ of 23.03.2021 approved amendments to certain decisions of the NCCIR with regard to the provision of MNP services; the Decision was registered with the Ministry of Justice on 05.04.2021 under No. 442/36064 and enters into force on 01.12.2021.

This commitment has been fulfilled in full and its implementation in practice is ensured (perfect transposition).

Providing roaming on public mobile communications networks

Article 390 of the Association Agreement
Article 391 of the Association Agreement
Regulation (EU) 531/2012, taking into account the new EU implementing acts⁵⁷⁶

Regulation of roaming and reduction of charges for roaming services are laid down in such EU acts as: Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, as well as in part Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

Ukraine has no direct commitments to implement these EU acts under the Association Agreement. At the same time, given the fact that roaming regulation is one of the key elements of the EU's Digital Single Market Strategy⁵⁷⁷ as well as Ukraine's intention to integrate into the EU Digital Single Market, Ukraine is actively working towards creating a common space for international roaming and reducing charges for international roaming services between Ukraine and the EU, in particular in the framework of the international Roaming Expert Working Group (REWG), which, based on the results of two studies of the roaming market, has drafted an Agreement on Reducing Roaming Tariffs among the Eastern Partnership countries.

In accordance with the provisions of the Agreement, the signatory parties agree to reduce roaming tariffs based on the principles and standards of the EU. The regulators in the field of electronic communications of the EaP countries shall ensure that the Agreement be fulfilled, including (but not limited to) regulation of termination charges for incoming international telecommunication traffic in voice telephony on telecommunications networks of telecommunications operators for regulated roaming calls initiated and terminated in EaP countries.

⁵⁷⁵ <https://nkrzi.gov.ua/index.php?r=site/index&pg=465&id=9627&language=uk>

⁵⁷⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R0531>

⁵⁷⁷ <https://ec.europa.eu/digital-single-market/en/connected-continent-single-telecom-market-growth-jobs>

The Agreement is to be signed in 2021. It will become the first stage designed to introduce roaming regulation in accordance with EU acquis, the next stage is to reduce roaming tariffs with the EU. To this end, a relevant study was launched in October 2020, aiming to identify possible ways to create a common space for international roaming with the EU. Therefore, the conclusion of the Agreement is an important step towards reducing roaming charges between Ukraine and the EU in both regional and bilateral dimensions.

It should also be mentioned that in practice the regulator (NCCIR) also fulfils certain tasks related to this commitment, namely: provides a set of measures aimed at collecting and analysing the necessary data of telecommunications operators providing international roaming services, and conducts a dialogue with the EU on reducing charges for international roaming services during the stay of Ukrainian citizens in the territory of EU member states by participating in the REWG, which is currently conducting research on possible ways to reduce roaming charges among the EaP and EU countries.

Given the above, we can claim that as of now the transposition of EU acquis within this commitment has not begun. However, a number of practical measures are taken to attain it (advanced and early stage of implementation).

Creating broadband Internet access infrastructure throughout Ukraine and reducing the cost of deploying high-speed electronic communications networks

Article 391 of the Association Agreement

Article 394 of the Association Agreement

EU Directive 2014/61

According to Article 99 of the adopted Law of Ukraine “On Electronic Communications”, broadband Internet access services at a fixed location are classified as universal electronic communications services. In addition, in order to ensure maximum coverage of the territory of Ukraine by mobile networks, the following acts have been approved:

- Decree No. 242/2019 of the President of Ukraine “On Providing Conditions for the Introduction of the Fifth Generation Mobile Communication System”⁵⁷⁸ of 17.05.2020;
- Decree No. 497/2019 of the President of Ukraine “On Measures to Improve Access to Mobile Internet”⁵⁷⁹ of July 8, 2019;
- Order No. 1272-p of the Cabinet of Ministers of Ukraine “On the Approval of the Action Plan to Create Conditions for the Development of Mobile Broadband Internet Access”⁵⁸⁰ of 4.12.2019.

Also, the Ministry of Digital Transformation of Ukraine (hereinafter referred to as the MDT) has developed the draft Order of the Cabinet of Ministers of Ukraine “On Approval of the Action Plan for the Development of Broadband Internet Access in 2021” (according to available information, the draft order is being prepared to be submitted to the government) and the draft order of the Cabinet of Ministers of Ukraine on “Certain Matters of Development of Broadband Internet Access”, which includes the National Plan for the Development of Broadband Electronic Communication Networks and the Action Plan for its implementation for 2022-2024. According to the Law of Ukraine “On Electronic Communications”, the draft act must be adopted by the Cabinet of Ministers of Ukraine by 01.01.2022. These acts have not yet been adopted by the government.

Another related matter is that of infrastructure mapping – i.e., producing maps of infrastructure. The MDT has developed an interactive fibre-optic network map, where everyone can find their village or city and check the data,⁵⁸¹ but it cannot be considered a full-fledged infrastructure map, because it is primarily an interface for users.

The National Broadband Development Plan and infrastructure mapping are elements of an integrated approach to broadband roll-out, and are aimed at achieving the goals set out in the EU strategic documents on the DSM and the development of the digital economy and society.

It should also be pointed out that broadband deployment is also closely linked to the implementation of Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks by using access to the existing infrastructure in other sectors (water, gas, electricity), as well as simplifying granting procedures, jointly investing in network deployment, easy access to information (single information point) etc.

578 <https://zakon.rada.gov.ua/laws/show/242/2019#Text>

579 <https://www.president.gov.ua/documents/4972019-27953>

580 <https://zakon.rada.gov.ua/laws/show/1272-2019-%D1%80#Text>

581 <https://thedigital.gov.ua/fiber>

This Directive is not mentioned in Appendix XVII-3 but is included in the list of EU acquis under the Roadmap, and some progress has been made with its implementation. In particular, on June 4, 2017, the Law of Ukraine “On Access to Construction, Transport, and Electricity Facilities for the Development of Telecommunications Networks” came into force, aiming to establish the principles for and approaches to using the infrastructure of construction, transport, and electricity facilities and access to them for the deployment of public telecommunications network of Ukraine to meet the needs of consumers of telecommunications services and information society in Ukraine, as well as to ensure approximation of national legislation to European law, including the following directives of the European Parliament and Council: 2002/19/EC, 2002/21/EC, 2002/22/EC.

In 2018, the following bylaws were adopted:

- Resolution No. 586 of the Cabinet of Ministers of Ukraine “On Approval of Rules for Granting Access to the Infrastructure of Transport Facilities” of 18.07.2018;
- Resolution No. 610 of the Cabinet of Ministers of Ukraine “On Approval of Rules for Granting Access to the Infrastructure of Construction Facilities” of 18.07.2018;
- Resolution No. 611 of the Cabinet of Ministers of Ukraine “On Approval of Rules for Granting Access to the Infrastructure of Building Distribution Facilities” of 18.07.2018.

However, this law only partially implements the provisions of the Directive, as a number of important issues remain unresolved.

Instead, the Law of Ukraine “On Electronic Communications”, among other things, implements some principles of Directive 2014/61/EU. However, the scope of the Law is limited exclusively to the relationship between electronic communications operators, providers of electronic communications services and providers of electronic communications networks, including “access to the physical infrastructure of electronic communications networks and/or service providers for deployment of public electronic communications networks”. At the same time, the scope of the Law does not extend to relationships between electronic communications network operators with other companies that provide physical infrastructure suitable for the deployment of elements of electronic communications networks, such as electricity, gas, water supply, sewerage, heating and transport services.

Therefore, at the transposition level this commitment can be described as advanced but requires improvement and further implementation in practice (early stage of implementation).

Harmonisation of the use of radio spectrum in the context of the implementation of the provisions of Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community

As part of the implementation of the provisions of [Decision 676/2002/EC](#) of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community, in particular as regards the harmonisation of the use of radio frequency bands in Ukraine with those in the EU as required by [Decision 676/2002/EC](#), the Ukrainian party has completed a number of implementation measures to harmonise the use of radio frequency resources in Ukraine with the EU acquis, including:

- analysis of [Decision 2006/771/EC](#) (as amended in 2019) and full harmonisation of the technical and operational conditions for 62 ranges (58%). In addition, another 17 ranges (16%) specified in the relevant EC Decision have been analysed;
- partial implementation of six EC decisions for the ranges available in Ukraine for IMT systems;
- development of radio interfaces for harmonised radio frequency bands in line with Article 3 (3) of Commission Decision 2000/299/EC of 6 April 2000 establishing the initial classification of radio equipment and telecommunications terminal equipment and associated identifiers;
- a number of resolutions of the Cabinet of Ministers of Ukraine recognizing certain radio frequency bands in Ukraine as harmonised with four other EC decisions;
- Decision No. 391 of the NCCIR of October 13, 2020 amending the rules for the use of radio equipment without authorisation, taking into account the decisions of the EU and CEPT.

In addition, during the period from 2016 to 2018, the following resolutions of the Cabinet of Ministers of Ukraine were drafted and adopted:

- No. 367 “On Amendments to the National Table of Allocation of Radio Frequency Bands of Ukraine and the Plan for the Use of Radio Frequency Resources of Ukraine” of 14.02.2017;
- No. 265 “On Amendments to the National Table of Allocation of Radio Frequency Bands of Ukraine and the Plan for the Use of Radio Frequency Resources of Ukraine” of 12.04.2017;
- No. 625 “On Amendments to the Plan for the Use of Radio Frequency Resources of Ukraine” of 18.08.2017;
- No. 580 “On Amendments to the Plan for the Use of Radio Frequency Resources of Ukraine” of 18.07.2018.

In order to improve the efficiency of the use of radio frequency resources within the radio frequency bands of 800/900 MHz, the CMU adopted Resolution No. 41 “On Amendments to the Plan for the Use of Radio Frequency Resources of Ukraine” of 05.02.2020 (as part of the implementation of the Action Plan to create conditions for the development of mobile broadband Internet access, which was approved by CMU Order No. 1272-p of 04.12.2019).

As part of the fulfilment of the task to review the use of radio frequency resources of Ukraine by general and special users in line with Commission Implementing Decision 2013/195/EU, the Cabinet of Ministers of Ukraine adopted Order No. 1409-p “On Approval of the Action Plan for the Deployment of Fifth Generation Mobile Communication in Ukraine” of 11.11.2020, and Order No. 1457-p “On Approval of the Action Plan to Free 790-862 MHz and 694-790 MHz Radio Frequency Bands occupied by Broadcasting Services (Television) to Introduce LTE Communication Technology” of 18.11.2020. These regulations approve regulatory policies and principles, ensuring harmonisation and efficient use of the spectrum in accordance with Commission Decision No. 676/2002/EC and Commission Implementing Decision 2013/195/EU.

Another important matter in relation to harmonising the use of the radio frequency spectrum and introduction of 5G is the use of the 700 MHz frequency band. In this regard, as well as in order to fulfil the agreements reached at the second Eastern Partnership Ministerial Meeting on Digital Economy (October 2017, Tallinn, Estonia) concerning the implementation by 2020 of work to ensure coordination of the use of radio frequencies, in particular freeing the 700 MHz part of the spectrum in order to promote national spectrum coordination among EaP partners and the EU. The Spectrum Expert Working Group on the use of the 700 MHz band (SEWG) has drafted a Regional Spectrum Agreement (RSA) on harmonized technical conditions between the Eastern Partnership countries for Land Mobile Radio-Communication Networks in the 694-790 MHz and 3.4-3.8 GHz frequency bands.

The Agreement aims to stipulate the willingness and readiness of the Eastern Partnership countries to align the current and future implementation of innovative technologies with the standards and decisions set by corresponding European organizations and bodies and ensure the harmonized usage of spectrum resources along with technical parameters across EaP and EU countries. The document aims to assist the coordination between the parties involved without interfering with any bilateral or multilateral agreements, which exist or could be signed in the future. The Agreement also takes into account national priorities for the release and allocation of the 694-790 MHz and 3400-3800 MHz parts of the spectrum.

It should be mentioned that for several years work was carried out to prepare a draft law on amendments to the Law of Ukraine “On Radio Frequency Resources of Ukraine”, which was even approved at a meeting of the Government on 04.10.2017. However, neither the mentioned draft law nor other draft laws “On Radio Frequency Resources of Ukraine” have been adopted. Meanwhile, the use of the radio frequency resources of Ukraine will be regulated by the Law of Ukraine “On Electronic Communications”.

The commitment is partially fulfilled both at the level of transposition due to the adoption of relevant regulations and at the level of practical implementation due to the actual harmonisation and usage of radio frequency bands. However, given the long list of EC decisions adopted under Decision 676/2002/EC, only half of them have been implemented, the rest need further regulatory approximation and implementation, and, hence, relevant amendments are to be made to the National Table of Radio Frequency Allocations of Ukraine and the Plan of Use of the Radio Frequency Resources of Ukraine for the purpose of harmonisation of the radio frequency resources available in Ukraine.

In addition, based on the results of frequency allocation harmonization, it is necessary to perform measures aimed at conducting analysis of European standards in the field of radio frequency resource use (ETSI) and establishing the list of EU standards to be adopted in Ukraine in order to fulfil its sectoral tasks, as well as to ensure the availability of information via the Internet on the results of harmonisation of radio frequency allocations in Ukraine, publication of radio interfaces for general-purpose radio technologies, taking into account Commission Decision 2007/344/EU.

Trust services

Trust services in the EU were laid down in the eIDAS regulation (Regulation 910/2014⁵⁸²) in 2014, which specified 9 basic types of electronic trust services that transform the identification of individuals and legal entities, paperwork and document management in electronic/digital format while maintaining the legal force of e-signatures, e-seals, methods of attaching them, as well as methods of verification and safekeeping.

Given the fact that document flow and, more broadly, the exchange of data and information make up an integral part of most social and economic relations, the impact of digital transformation on society is growing rapidly. In the context of the Association Agreement and due to the development of EU acquis, it has an impact on the following titles and articles of the Agreement: Title III (Justice, Freedom and Security) Article 15 Protection of Personal Data, Title IV (Trade and Trade-Related Matters) Articles 56, 65, 84, 114, 133, 138, Annexes 3, 4, 7, 15, and 17; Title V (Economic and Sector Cooperation), in particular Articles 368, 387, 397, 405, 417, 424, Annexes 32, 34, 35, 36, 37, 39, Chapter 14 (Articles 390, 391 (a), 392, 394), it is also relevant to Articles 453–459 of Title VI.

In the field of regulation of Trust Services, in 2017 Ukraine adopted the Law “On Trust Services” (2155-VIII), which brings the regulatory field closer to the requirements established by eIDAS (Regulation 910/2014). Over the next 3 years, nine relevant by-laws (resolutions and regulations) were adopted. It is important to mention that Law 2155-VIII and the relevant by-laws refer to more than 150 technical standards and regulations, which may differ from the relevant EU standards. The alignment and maintenance of the field of standards is a dynamic process that requires constant attention, expertise and resources. The Mutual Recognition Agreement (MRA) between the EU and Ukraine can serve as an indicator of progress made in the field of trust services, which will enable cross-border provision and recognition of such services. The MRA was initiated in 2019, and in 2020 a roadmap for its implementation was created. The EU guidelines with regard to achieving the internal market regime and mutual recognition are based on a common vision for risk management and the use of technical standards (described in detail in the MRA Cookbook 2021⁵⁸³). Ukraine’s accession to the EU’s Digital Single Market (DSM) could be the next step. The Association Agreement does not provide for this possibility (the concept of the DSM was not formed and formalized at the time of signing of the Agreement), but it logically follows from the adoption of other EU acquis and the development of a common digital economy. The above integration steps will require a) improvement of legislation on eID (electronic identification), data protection, e-contracting and archiving; and provision of public services in electronic format (direct requirement of Article 391 of the Agreement), b) harmonisation of technical standards and ways of their implementation (conformity assessment of providers, operators, etc.), c) development and adoption of an information society development strategy harmonised with EU norms and plans (direct requirement of Article 390 of the Agreement).

During the period from 2014 to 2019, the following key legislative changes were adopted:

- Law of Ukraine No. 2155-VIII “On Electronic Trust Services” of 05.10.2017;⁵⁸⁴
- Resolution No. 1215 of the Cabinet of Ministers “On Approval of the Conformity Assessment Procedure in the Field of Electronic Trust Services” of December 18, 2018;
- Resolution No. 775 of the Cabinet of Ministers “On Approval of Mandatory Requirements for the Trusted List” of September 26, 2018;⁵⁸⁵
- Resolution No. 992 of the Cabinet of Ministers “On Approval of Requirements in the Field of Electronic Trust Services and the Procedure for Verifying Compliance with the Requirements of the Legislation in the Field of Electronic Trust Services” of November 7, 2018;⁵⁸⁶
- Resolution No. 749 of the Cabinet of Ministers “On Approval of the Procedure for the Use of Electronic Trust Services by State-Owned Public Authorities, Local Governments, Enterprises, Institutions and Organisations” of September 19, 2018;⁵⁸⁷
- Resolution No. 914 of the Cabinet of Ministers “On Approval of Criteria for Assessing the Degree of Risk from Economic Activities in the Field of Electronic Trust Services and Determining the Frequency of Planned State Oversight (Control) Measures by the Administration of the State Service for Special Communications and Information Protection” of October 31, 2018;⁵⁸⁸

582 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.257.01.0073.01.ENG

583 https://esignature.ec.europa.eu/intl-comp/dss-demo/downloads/MRAinfo_Cookbook_v1.0.pdf

584 <https://zakon.rada.gov.ua/laws/show/2155-19#Text>

585 <https://zakon.rada.gov.ua/laws/show/775-2018-%D0%BF#Text>

586 <https://zakon.rada.gov.ua/laws/show/992-2018-%D0%BF#Text>

587 <https://zakon.rada.gov.ua/laws/show/749-2018-%D0%BF#Text>

588 <https://zakon.rada.gov.ua/laws/show/914-2018-%D0%BF#Text>

- Resolution No. 60 of the Cabinet of Ministers “On Approval of the Procedure for the Mutual Recognition of Ukrainian and Foreign Public Key Certificates, Electronic Signatures, as well as the Use of Information and Telecommunications System of the Central Certification Body to Ensure Recognition of Electronic Trust Services and Foreign Public Key Certificates Used in the Provision of Legally Significant Electronic Services in Interaction between Entities from Different States” of January 23, 2019;⁵⁸⁹
- Order No. 60 of the State Agency for e-Governance “On Approval of Requirements for Electronic Document Management Data Formats in Public Authorities” of 07.09.2018.⁵⁹⁰

In the period from 2020 to the first half of 2021, the following regulations were adopted:

- Resolution No. 991 of the Cabinet of Ministers “On Approval of Technical Regulations for Cryptographic Information Security Means” of October 21, 2020;⁵⁹¹
- Law No. 1368-IX “On Amendments to Law of Ukraine No. 4992 ‘On the Unified State Demographic Register and Documents Confirming Citizenship of Ukraine, Identity or Special Status’ of March 30, 2021.”⁵⁹²

As regards implementation, in the period from 2014 to 2019 the following was done:

- Standards of work for Providers of Qualified Trust Services updated;
- Trusted List created;
- Procedures and technical support for storing and attaching Qualified Electronic Signatures using the new ID-card developed;
- Possibility of submitting tax returns in electronic format with the use of qualified electronic signatures (QES) and seals introduced.
- System of electronic registered delivery for CEBs and local authorities (SEI EB) and an interoperability framework for national and regional information systems (Trembita) introduced.

In the period from 2020 to the first half of 2021, the following steps were taken to implement the commitments:

- Developing and putting into operation the Diia software designed to facilitate access to public services and use of trust services by the public;
- Introducing new server-based storage for qualified electronic signatures (RSS) using a server-based QSCD (Qualified Signature Creation Device) with biometric access of users through the government Diia application;
- Adoption of a new Procedure for Keeping the Trusted List (2020), Order No. 104 of the Ministry of Digital Transformation of Ukraine of July 08, 2020.⁵⁹³

In the period from 2018 to the first half of 2020, Ukraine has made significant progress with the implementation of the commitments under the Association Agreement in the field of trust services, but it is necessary to update Appendix XVII-3 and take the necessary steps for its further implementation. Therefore, the commitment fulfilment status can be described as advanced.

589 <https://zakon.rada.gov.ua/laws/show/60-2019-%D0%BF#Text>

590 <https://zakon.rada.gov.ua/laws/show/z1309-18#Text>

591 <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-tehnichnogo-reg-a991>

592 <https://zakon.rada.gov.ua/laws/show/1368-20#Text>

593 <https://zakon.rada.gov.ua/laws/show/z0719-20#Text>

AUDIO-VISUAL POLICY

Experts: Ihor Rozkladai



Today, the audio-visual sector is represented by traditional linear broadcasting: television and radio, which is delivered via terrestrial, satellite and cable broadcasting, as well as via IPTV and OTT technologies. In addition, the market for online catalogues and cinemas, which provide paid access to both cinema and television, is growing. As of the end of 2020, 1495 information activity entities were registered in Ukraine,⁵⁹⁴ specifically 799 TV and radio broadcasters, as well as 623 providers offering packages of TV channels and other related services, including 231 IPTV providers and 1 OTT provider. Most traditional broadcasters are active on the Internet, both by providing access to the channel through their own website within Ukraine and by posting news and other programmes on YouTube or in their own catalogues.

Blogging is another new field that is both a derivative activity where well-known presenters or other media personalities establish a channel, thus covering a non-TV audience, and a competing activity when channels are established as a free alternative to oligarchic TV. Special attention should be paid to Telegram channels, which have become both a source of news and a convenient way to influence the audience.^{595,596}

The coronavirus pandemic has accelerated Internet penetration and brought closer the balance between online news consumption and news consumption through classic TV. This trend has been observed since 2019, when Internet sources first beat⁵⁹⁷ television as a source of news. In 2020, at the regional level, online sources prevailed, and the national level of consumption is also high.⁵⁹⁸

Despite the fact that the Parliamentary Assembly of the Council of Europe as far back as in 2003 and 2005⁵⁹⁹ pointed to the need to ensure the transparency of ownership in the media, create a level playing field for all media, and ensure that the new version of the Law on Television and Radio Broadcasting complies with the standards of the Council of Europe and the recommendations of its experts, in recent years Ukraine has made no significant progress in implementing these recommendations. Thus, a new version of the 1993 Law of Ukraine "On Television and Radio Broadcasting" adopted in January 2006⁶⁰⁰ (with a number of amendments made after the beginning of the active phase of Russian aggression) was already obsolete back then: specifically, the draft law did not take into account the outcomes of the Geneva-2006 conference⁶⁰¹ of the International Telecommunication Union, which lasted from 2004 to 2006. As a result, Ukraine now has a dominant terrestrial digital broadcasting operator/provider, the transparency of which is still very questionable. And the ideology behind constructing a digital terrestrial network with digital zones in practice comes down to the use of the existing antenna infrastructure of the BRT

594 Report of the National Council of Ukraine on Television and Radio Broadcasting for 2020: (PDF)

<https://www.nrada.gov.ua/wp-content/uploads/2021/01/REPORT-NC-2020.pdf>

595 No longer anonymous: 12 popular Telegram channels work for the GRU (Russian military intelligence service). Investigation of the Security Service of Ukraine:

<https://ua-news.liga.net/politics/articles/bilsh-ne-anonimni-12-populyarnih-telegram-kanaliv-pratsyuyut-na-gru-rf-rozsliduvannya-sbu>

596 Telegram for "Sluga": How Telegram Channels Allegedly Managed from Russia Affect the Rada Performance <https://texty.org.ua/articles/101438/>

597 USAID-Internews Media Consumption Survey: <https://bit.ly/3DxIw7L>

598 <https://internews.in.ua/wp-content/uploads/2020/10/2020-Media-Consumption-Survey-FULL-FIN-Ukr-1.pdf>

599 Resolution 1466 (2005) of the Parliamentary Assembly of the Council of Europe "Honouring of Obligations and Commitments by Ukraine":

https://zakon.rada.gov.ua/laws/show/994_611#Text

600 Law of Ukraine "On Television and Radio Broadcasting": <https://zakon.rada.gov.ua/laws/show/3759-12>

601 Regional Agreement relating to the planning of the digital terrestrial broadcasting service in Region 1: https://zakon.rada.gov.ua/laws/show/979_001

Concern. One of the significant shortcomings of the legislative regulation of the audio-visual sphere is the obvious weakness of the regulator – i.e., the National Council of Ukraine on Television and Radio Broadcasting. For instance, despite the fact that legislation provides for a mechanism for imposing fines, the mechanism itself was introduced as late as in 2015. Besides, there are some violations of the law that should be punishable, but the law fails to specify any sanctions for them. Another problematic matter is the election period, where the role of the regulator is uncertain and the provisions of the election law are excessive and discriminatory with regard to the media.

The peculiar nature of the development of the media market gave rise to its early oligarchization, leaving no room for independent broadcasters. Although the media transparency requirements introduced in 2015 constituted the first significant step towards meeting the commitments made to the Council of Europe, de-oligarchization and, consequently, market development are yet to come.

As regards the audio-visual sector, the Association Agreement provides for the harmonisation of Ukrainian legislation with EU acts, i.e., updating media legislation in accordance with the requirements of the EU's Audiovisual Media Services Directive, which includes broadcasting events of significant public interest, quotas for content production by independent studios, requirements for video sharing platforms, etc. However, this commitment is 2 years overdue, which is of great concern, because it, in particular, may pose an obstacle to the participation of national actors in international content production programmes, such as the Creative Europe Programme (2021-27).

Cross-border broadcasting

Compliance with commitments under the European Convention on Transfrontier Television

European Convention on Transfrontier Television

In the field of cross-border broadcasting, the European Convention on Transfrontier Television is mentioned in Annex XXXVII of the AA⁶⁰² (ETS No-132). The mention of the Convention in the Agreement, on the one hand, implies historical longevity, as the Convention was the first international act adopted to ensure free cross-border broadcasting. Based on this Convention the European Economic Community Directive 89/552/EEC was developed,⁶⁰³ which became the forerunner of the Audiovisual Media Services Directive. On the other hand, the Convention is an act of the Council of Europe and was ratified by Ukraine back in 2008. Therefore, the Convention serves as an international act, while the transposition of its provisions into the relevant law has not fully taken place, in particular this concerned Art. 9bis.

The provisions of the Convention are mostly implemented in the current laws “On Television and Radio Broadcasting” (No. 3759-XII of 21.12.1993) and “On Advertising” (No. 270/96-BP of 03.07.1996). At the same time, some of the provisions remain rather declarative due to the lack of proper powers and market characteristics. Also, in the context of Russia's aggression, the mechanism of international cooperation has proved practically ineffective. It should also be noted that the European Union primarily relies on the Audiovisual Media Services Directive, which was last amended in 2018. Instead, the text of the Convention was not updated (as was the case, for example, with the Council of Europe's Convention No. 108, which was updated after the adoption of the EU GDPR), making it obsolete and ineffective, particularly in the field of online audiovisual media services.

Audio-visual media services

Creating a modern market for audio-visual services in line with EU requirements

Directive 2010/13/EU as amended by Directive 1808/2018/EU

The main document that governs the field of audio-visual services in the EU is the Audiovisual Media Services Directive (AVMSD).⁶⁰⁴ According to Article 397 of the Association Agreement: “Gradual approximation to the EU law and regulatory framework and international instruments in the area of audio-visual policy shall be carried out in particular as set out in Annex XXXVII to this Agreement” – i.e. in accordance with Directive 2010/13/EU within 2 years from the date of entry into force of the Agreement (until 1 September 2019). It should be taken into account that during the implementation period this Directive was updated by Directive (EU) 2018/1808.⁶⁰⁵

⁶⁰² European Convention on Transfrontier Television: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/132>

⁶⁰³ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31989L0552>

⁶⁰⁴ <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/programmes/crea2027>

⁶⁰⁵ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities: <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

One of the key benefits of implementing the Directive is the opening of full access to the opportunities of the Creative Europe programme (2021-2027), which is a powerful stimulus for the development of audio-visual products, both in cooperation with EU partners and independently. In addition, the prepared national framework, in case of full membership in the EU, makes it possible to become a member of the European Regulators Group for Audiovisual Media Services (ERGA)⁶⁰⁶ and the use of Commission's support in the situations set out in the Directive.

Legislative approximation for audio-visual services is at an early stage, and as regards amendments to the law on advertising "the implementation has not started". The main implementing act in national legislation is supposed to be the law on audio-visual media services. Currently, this is a draft Law of Ukraine "On the Media". The law has been drafted since 2012, when the line committee of the Verkhovna Rada of Ukraine approved the concept of a new version of the law "On Television and Radio Broadcasting,"⁶⁰⁷ and in November of the same year the first version of the draft law was presented.⁶⁰⁸

According to Clause 1444 of the Government Action Plan,⁶⁰⁹ by 1 September 2019, the State Committee for Television and Radio Broadcasting, the National Council of Ukraine on Television and Radio Broadcasting (subject to consent), the Ministry of Finance, the Ministry of Economic Development, and the Ministry of Justice had to ensure the drafting and submission to the Government of a draft law on audio-visual services and a draft law on amendments to the legislation on advertising, review the draft laws with EU experts and provide support for the consideration of the draft laws by the Verkhovna Rada of Ukraine.

MPs of the Committee on Humanitarian Policy registered the draft law "On the Media", which after revision in July 2020⁶¹⁰ was assigned number 2693-д. The draft law aims to implement the provisions of the Directive, in particular Article 28a on video-sharing platforms (VSP), and to replace a number of laws: on the press, on television and radio broadcasting, on the National Council, etc.

The draft law changes the approaches to licensing, restricting this procedure exclusively to terrestrial broadcasting (whereas for other cases the existing licensing procedures are replaced with registration), expands and harmonises the regulator's powers to comply with Article 30 of the Directive with regard to efficiency, independence and accountability, introduces a mechanism of co-regulation and development of codes of conduct, and lays down the principles of countering all forms of hate and military aggression.

Despite attempts to update the draft law and take into account the interests of various stakeholders in 2019-21, the prospects of the draft law seem rather uncertain. One of the obstacles is posed by the regulation of online media outside the scope laid down by the Directive. Representatives of traditional media demand a level playing field in the market and representatives of online media claim that censorship is being introduced, and this conflict stopped the process in its tracks and significantly reduced the chances of it passing in parliament. Potential scenarios include either substantial revision for the second reading or return to the concept of the law on audio-visual media services focusing on linear and non-linear broadcasting and online video platforms. At the same time, the issue of purely online players is yet to be specified in future EU acts on online services and online marketing (DSA, DMA).

Practical implementation has not started, as the adoption of by-laws, namely the acts of the National Council of Ukraine on Television and Radio Broadcasting, is impossible without the adoption of the relevant law. It is also important to focus on co-regulation and codes of conduct. Despite the fact that these tasks are also contained in the mentioned draft law, their implementation requires primarily a pro-active stance on the part of the media and their ability to agree upon common principles for the existence of this institution. Codes of conduct are also an extremely useful practical document that should help the media in the context of legal requirements for content restrictions, development of practical recommendations, lists of prohibited subjects or objects, etc.

606 <http://erga-online.eu/>

607 https://detector.media/doc/images/news/72581/Concept%20New%20Broadcasting%20Law_UKR%20Final%2012.06.2012.pdf (PDF)

608 Draft Law on Amendments to the Law of Ukraine "On Television and Radio Broadcasting":

<https://detector.media/infospace/article/77171/2012-12-03-pershii-tekst-novoi-redaktsii-zakonu-pro-telebachennya/>

609 CMU Resolution No. 1106 "On Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part" of October 25, 2017: <https://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF>

610 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69353

AGRICULTURE AND RURAL DEVELOPMENT

Experts: Yulia Voskobiinyk



not started early stage advanced perfect critical non-conformity

The commitments in this sector are specified in Title V “Economic and Sector Cooperation”, Chapter 17 “Agriculture and Rural Development”, Art. 403-406, and Annex XXXVIII to the Association Agreement.

First of all, it should be mentioned that over the past year there have been delays with the fulfilment of the commitments and implementation of legislation in this sector. This is primarily due to the fact that the Ministry of Agrarian Policy was liquidated in 2019 and its powers were transferred to the Ministry of Economy, and then it resumed work in 2021. This has significantly slowed down the drafting and approval of a number of regulations and the deadlines for the implementation of some commitments have been moved by a year or more.

In recent years, work on legislative approximation has focused on bylaws – i.e., resolutions of the Cabinet of Ministers and orders of the Ministry of Agrarian Policy/Ministry of Economy, as well as on the development of a number of draft laws, which will require a new legal framework to be implemented. Thus, during 2021, the following acts have been developed and submitted to the Verkhovna Rada of Ukraine:

- draft law “On Special Aspects of the Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs, Protection of Rights and Application of Quality Schemes, Including Traditional Specialities Guaranteed for Agricultural Products and Foodstuffs” (Reg. No. 5616 of 04.06.2021);⁶¹¹
- draft law “On Amendments to the Law of Ukraine ‘On Seed and Planting Material’” (Reg. No. 4593 of 14.01.2021);⁶¹²
- draft law “On State Regulation of Genetic Engineering Activities and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security” (Reg. No. 5839 of 05.08.2021⁶¹³);
- draft law “On Amendments to the Code of Ukraine on Administrative Offences to Increase Responsibility with Regard to the Handling of Genetically Modified Organisms” (Reg. No. 5840 of 05.08.2021⁶¹⁴);
- draft law “On Amendments to the Laws of Ukraine ‘On Protection of Plant Variety Rights’ and ‘On Seed and Planting Material’” (Reg. No. 3680-д of 16.07.2021).⁶¹⁵

It should be noted that the least progress has been made in promoting rural development, including through mutual understanding of policies in this area. During the period from 2018 to 2021, no systematic effort has been made in this regard. In particular, so far, no common vision has been developed for rural development policy making and implementation; what is more, there is no clear distinction between the state agricultural policy, rural development policy, and regional development policy. There have been several failed attempts to draft a new Concept for Rural Development. The latest version of this draft was returned by the government for revision to the Ministry of Agrarian Policy.

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612 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70825

613 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72618

614 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72619

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Policy of quality

The Association Agreement (Art. 404) among other areas of cooperation between the parties, mentions promoting the policy of quality of agricultural products in the areas of product standards, production requirements and quality schemes. It should be added that in this area the Association Agreement focuses on mutual recognition of geographical indications and matters of cooperation.

Thus, Annex XXXVIII to Title V “Economic and Sector Cooperation”, Chapter 17 “Agriculture and Rural Development” specifies a number of Regulations of the EU Council and the EU Commission to be taken into account by Ukraine for the gradual legislative approximation in this sector. In particular, this applies to the protection of geographical indications and designations of origin for agricultural products and foodstuffs; definition, description, presentation, labelling and protection of geographical indications of spirit drinks; support programmes, trade with third countries, production capacity and control of the wine industry; guaranteed traditional composition and method of production of agricultural products and foodstuffs.

It should be mentioned that the first geographical indications of Ukrainian products were registered in 2019. Thus, in December 2019, the first Certificate on the Right to Use the Registered Qualified Indication of Origin of Goods was issued for the Hutsul Sheep Bryndza Cheese.

Thus far, such geographical indications as “Hutsul Cow Bryndza Cheese”, “Hutsul Sheep Bryndza Cheese,” and “Melitopol Cherry” have been registered in Ukraine. In addition, in July 2021, the Ministry of Economy held a meeting of the expert commission to agree on the specifications of goods with geographical indications, where the specifications of eight products that aspired to qualify for protection as geographical indications were considered and approved.

In general, it can be argued that the work on legislative approximation in this area is progressing at a fairly good pace.

Improving the system of geographical indications for foodstuffs and agricultural products

Council Regulation (EC) 510/2006 and Council Regulation (EC) 509/2006 (repealed and replaced by Regulation (EU) 1151/2012 of 21 November 2012)

This commitment aims to ensure compliance with the rules of protection of geographical indications and designations of origin for agricultural products and foodstuffs.

The regulatory approximation is mostly “advanced.”

The Cabinet of Ministers of Ukraine approved the draft law of Ukraine “On Special Aspects of the Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs, Protection of Rights and Application of Quality Schemes, Including Traditional Specialities Guaranteed for Agricultural Products and Foodstuffs”, which was submitted to the Verkhovna Rada on June 4, 2021 (Reg. No. 5616)⁶¹⁶

This draft law proposes, inter alia, to introduce the concept of “traditional speciality guaranteed”, the conditions for granting it legal protection, the concept and procedure for the application of special quality indicators; to clarify the conditions for granting legal protection to a geographical indication for agricultural products and foodstuffs, and the grounds for refusing to grant such protection; to specify the range of persons who have the right to prepare specifications and other documents required for state registration of geographical indications for agricultural products and foodstuffs; to review the requirements for documents for state registration of geographical indications and traditional specialities guaranteed; to establish the procedure for the approval of specifications and other documents required for state registration of geographical indications for agricultural products and foodstuffs, traditional specialities guaranteed; to determine the requirements for the technical conditions to be met by the product for which the geographical indication or traditional speciality guaranteed is claimed; to clarify the list of the rights and commitments arising from the state registration of geographical indications; and to establish the procedure for certification of goods with regard to their conformity to the specification of goods with a geographical indication and traditional speciality guaranteed.

On June 16, 2021, the VRU Committee on Ukraine’s Integration into the European Union considered the draft law and came to the conclusion that it is generally in line with the relevant EU legislation and the Association Agreement.

The practical implementation is at an “advanced” stage; as compared to the previous periods, some practical steps have been taken in this area over the past year.

616 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72136

Thus, the resolution of the Cabinet of Ministers of Ukraine No. 439 “On Designating Specially Authorised Bodies for Approval of Product Specifications as well as Defining and Controlling the Special Qualities and Other Characteristics of Goods” of June 3, 2020, was adopted,⁶¹⁷ which designated the Ministry of Economy as a special authorised body for agricultural products, foodstuffs, wines, aromatized wine products, and spirit drinks.

The Government also approved the Rules for Drawing up, Submitting and Conducting Examination of Applications for the Registration of a Geographical Indication (Order No. 536 of the Ministry of Economy of March 12, 2021⁶¹⁸) and Requirements for the Specifications of Goods with Geographical Indications and for the Procedure of Their Approval (Order No. 743 of the Ministry of Economy of April 12, 2021, registered with the Ministry of Justice on April 26, 2021 under No. 552/36174⁶¹⁹). These requirements also apply to agricultural products, foodstuffs, wines, aromatized wine products, and spirit drinks, as well as the procedure for their approval.

As for the registered geographical indications, Ukraine has so far submitted documents for such authentic Ukrainian goods as “Hutsul Cow’s Bryndza Cheese”, “Hutsul Sheep Bryndza Cheese” and “Melitopol Cherry” to be included in the European register of geographical indications.

In addition, at the meeting on July 22, 2021, the Ministry of Economy Expert Commission on approval of specifications of goods with geographical indications considered and approved the specifications of eight products eligible for protection as geographical indications,⁶²⁰ including such products as still wines: “FRUMUSHYKA VALLEY”, “YALPUH”, “TRANSCARPATHIA/TRANSCARPATHIAN WINE”; still and sparkling wines: “PRYDUNAISKA BESSARABIA”, “ASHA-ABAG”; watermelon: “KHERSON WATERMELON”; honey: “HONEY OF TRANSCARPATHIA/TRANSCARPATHIAN HONEY”; lamb meat: “FRUMUSHYKA LAMB/LAMB of FRUMUSHYKA”.

Improving the legal protection of geographical indications and designations of origin for agricultural products and foodstuffs in accordance with EU law

Commission Regulation (EC) 1898/2006 and Commission Regulation (EC) 1216/2007 (repealed and replaced by Commission Delegated Regulation (EU) 664/2014 of 18 December 2013)

It is necessary to ensure compliance with the rules of protected designation of origin for feed and raw materials to inform consumers about the characteristics, conditions and the specific character of the production of such products.

The regulatory approximation in this regard remains “early”.

Only after the adoption of Draft Law No. 5616 “On Special Aspects of the Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs, Protection of Rights and Application of Quality Schemes, Including Traditional Specialities Guaranteed for Agricultural Products and Foodstuffs” will a number of bylaws be developed for proper implementation, in particular as regards the establishment of detailed procedures and rules for the production of feed, as well as informing consumers in compliance with the requirements of the EU law on the protected designation of origin for feed and raw materials.

The practical implementation has “not started” due to lack of proper legal framework.

Improving the legislation on grapes and grape wine in accordance with the requirements of EU law

Council Regulation (EC) 479/2008 (repealed and replaced by Council Regulation (EC) 491/2009 of 25 May 2009)
Commission Regulation (EC) 555/2008 (replaced by Commission Delegated Regulation (EU) 2016/1149 of 15 April 2016)

It is necessary to establish European rules for the production of wine and other products deriving from grapes and requirements for them, as well as approaches to supporting wine producers.

Current Law of Ukraine No. 2662-IV “On Grapes and Grape Wine” of 16.06.2005⁶²¹ contains some provisions concerning the definition of wines with controlled designation (Article 1 (1)), the prototype of the wine (Article 1 (41)) and wines with controlled designation of origin (Article 8).

617 <https://zakon.rada.gov.ua/laws/show/439-2020-%D0%BF#Text>

618 <https://ukrpatent.org/atachs/pravya-gz-nakaz-536-21.pdf>

619 <https://zakon.rada.gov.ua/laws/show/z0552-21#Text>

620 <https://bit.ly/35Anyaf>

621 <https://zakon.rada.gov.ua/laws/show/2662-15>

The legislative approximation in this area is “early.” So far, the Ministry of Agrarian Policy has developed the draft law of Ukraine “On Amendments to the Law of Ukraine ‘On Grapes and Grape Wine’” and presented it for public discussion on June 14, 2021.⁶²²

It should be added that this draft law had already been presented by the Ministry of Economy for public discussion on February 15, 2021.⁶²³ What is more, according to the Ministry of Economy, it was submitted to the Ministry of Justice of Ukraine for legal expert assessment. However, due to the fact that the Ministry of Agrarian Policy was restored and got some functions re-assigned from the Ministry of Economy, the procedure for approving the draft law began anew. As a result, the implementation of legislation in this area was delayed for almost a year, as the draft law “On Amendments to the Law of Ukraine ‘On Grapes and Grape Wine’” was to be approved by the government and submitted to the Verkhovna Rada of Ukraine in Q4 2020 and now it is postponed to November-December 2021.⁶²⁴

With regard to support for wine producers, it should be noted that so far no real steps have been taken to develop and introduce support schemes for wine producers.

Currently, there is only the mechanism of financial support for horticulture, viticulture and hop growing, approved by CMU Resolution No. 587 “On Approval of the Procedure for the Use of Funds Provided in the State Budget for Viticulture, Horticulture and Hop Growing” of July 15, 2005 (as amended by CMU Resolution No. 185 of March 10, 2021).⁶²⁵ However, this type applies only to the purchase of planting material and storage of table grapes.

The practical implementation has not started due to lack of proper legal framework.

Improving the legal protection of geographical indications and designations of origin for agricultural products and foodstuffs in accordance with the requirements of EU law on spirit drinks

Regulation (EC) 110/2008 of 15 January 2008

These commitments aim at developing and complying with European requirements for the production, labelling of products, compliance with the rules on the geographical indication of spirit drinks.

The legislative approximation with regard to this commitment is “early”.

A draft law of Ukraine “On Geographical Indications of Spirit Drinks” has been developed. On January 15, 2021, it was posted on the official website of the Ministry of Economy for public discussion.⁶²⁶ After that, the draft law was sent for approval to the Ministry of Finance, the State Tax Service, the State Service on Food Safety and Consumer Protection, and the Ministry of Digital Transformation. The State Service of Ukraine on Food Safety and Consumer Protection provided endorsement and comments, and the Ministry of Digital Transformation provided endorsement. Taking into account the comments, it was finalised as the draft law “On the Special Features of Legal Protection of the Geographical Indications of Spirit Drinks” and on June 23, 2021, it was re-submitted for approval to the Ministry of Finance, the State Tax Service, the State Service of Ukraine on Food Safety and Consumer Protection and the Ministry of Digital Transformation.

The practical implementation has not started due to the lack of proper legal framework.

Genetically modified crops

The commitments set out in the Association Agreement in this area take into account Commission Recommendation 2010/C 200/01 on guidelines for the development of national co-existence measures to avoid the unintended presence of GMOs in conventional and organic crops, which replaced the Commission Recommendation of 23 July 2003 on guidelines for the development of national strategies and best practices to ensure the coexistence of genetically modified crops with conventional and organic farming.

As a result, rules and conditions for safe coexistence of genetically modified crops with conventional and organic farming should be developed and implemented.

622 <https://bit.ly/37dfi0v>

623 <https://bit.ly/3K3zINE>

624 <https://minagro.gov.ua/ua/napryamki/regulyatorna-politika/plani-pidgotovki-proektiv-regulyatornih-aktiv/2021>

625 <https://zakon.rada.gov.ua/laws/show/587-2005-%D0%BF#Text>

626 <https://bit.ly/3NjtbED>

Implementation of the rules and principles to ensure the coexistence of genetically modified crops with conventional and organic farming

Commission Recommendation 2003/556/EC (repealed and replaced by Commission Recommendation 2010/C 200/01 of 13 July 2010)

The commitments in this subsector involve developing and putting into practice guidelines for the development of rules and principles to ensure the coexistence of genetically modified crops with conventional and organic farming. Such recommendations should be developed separately for each type of crop.

The legislative approximation for this commitment is “early”.

Currently, the Verkhovna Rada of Ukraine has registered a CMU draft law “On State Regulation of Genetic Engineering Activities and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security” (Reg. No. 5839 of 05.08.2021⁶²⁷), which aims to systematically and comprehensively revise the existing state regulation in the field of the handling of GMOs, as well as regarding the state control over the circulation of genetically modified products; to fulfil Ukraine’s commitments under the Association Agreement; and to align Ukraine’s regulation with EU law by transposing the relevant EU acquis into the legislation of Ukraine.

This draft law provides for the division of the powers of public authorities in order to eliminate overlaps in functions in the field of GMO handling; to improve the system of GMO risk assessment in terms of their potential impact on human health and the environment; to introduce mechanisms for the state registration of GMOs in accordance with European legislation; to improve the requirements for the labelling of GM products and introduce rules on their traceability; to strengthen state control in the field of GMO handling; as well as to establish liability for violations of legislation in this area.

The Verkhovna Rada of Ukraine also registered a CMU draft law “On Amendments to the Code of Ukraine on Administrative Offences to Increase Responsibility with Regard to the Handling of Genetically Modified Organisms” (Reg. No. 5840 of 05.08.2021⁶²⁸), aiming to bring the provisions of the Code of Ukraine on Administrative Offences in line with the Law of Ukraine “On State Regulation of Genetic Engineering Activities and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security,” taking into account the relevant changes.

Practical implementation has not started due to a lack of legal framework.

Organic farming

In accordance with Article 405 and Annex XXXVIII of the Association Agreement, Ukraine undertook to gradually approximate national legislation to European requirements for organic products, in particular:

- to introduce European approaches to the regulation of the market of organic products, including rules and principles of production and circulation of organic products and raw materials;
- to introduce European rules for the production of organic foodstuffs through processing;
- to make a single list of terms and logos related to the labelling of organic products in accordance with EU rules;
- to introduce European control mechanisms in the field of organic production;
- to introduce European approaches to regulating the import of organic products from third countries.

Establishment of rules and principles of production and circulation of organic products and raw materials of plant origin and animal origin/aquaculture in line with EU requirements

Council Regulation (EC) 834/2007 of 28 June 2007

Commission Regulation (EC) 889/2008 of 5 September 2008

Commission Regulation (EC) 1235/2008 of 8 December 2008

These commitments involve creating the basis for the full-fledged functioning of the organic market in Ukraine in accordance with the European requirements for the production and circulation of organic products.

The regulatory approximation is “advanced”.

627 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72618

628 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72619

Law of Ukraine No. 2496-VIII “On Basic Principles and Requirements for Organic Production, Circulation and Labelling of Organic Products” of July 10, 2018 brought the terms in the field of organic production in line with EU legislation and harmonised them with the Ukrainian legislation governing the relevant areas; established clear and transparent rules, principles and requirements for organic production, circulation and labelling of organic products in line with EU legislation; and will facilitate the development of the organic market.

The practical implementation of this commitment is “advanced”.

On August 2, 2019, Law of Ukraine No.2496-VIII “On Basic Principles and Requirements for Organic Production, Circulation and Labelling of Organic Products” entered into force. A number of by-laws have been adopted for its implementation, in particular:

- CMU Resolution No. 87 “On Approval of the Procedure for Maintaining the State Register of Operators Producing Products in Accordance with the Legislation in the Area of Organic Production, Circulation and Labelling of Organic Products, the State Register of Certification Bodies in the Field of Organic Production and Circulation of Organic Products, the State Register of Organic Seeds and Planting Material” of February 12, 2020,⁶²⁹ establishing the mechanism for maintaining these registers and requirements for their content;
- CMU Resolution No. 1032 “On Approval of the Procedure for Certification of Organic Production and/or Circulation of Organic Products and Amendments to Resolution No. 970 of the Cabinet of Ministers of Ukraine of October 23, 2019” of October 21, 2020,⁶³⁰ introducing a mechanism for the certification of organic production and/or circulation of organic products, issuance/reissuance of the relevant certificate and its form;
- Order No. 1336 of the Ministry of Economy “On Approval of Amendments to the Technical Description of the State Logo for Labelling Organic Products” of July 15, 2020,⁶³¹ introducing amendments to the description of the state logo to allow manufacturers to use black-and-white images as the logo;
- Order No. 109 of the Ministry of Economy “On Approval of the Application Form for Inclusion in the State Register of Certification Bodies in the Field of Organic Production and Circulation of Organic Products” of January 30, 2020,⁶³²
- Order No. 985 of the Ministry of Economy of May 26, 2020,⁶³³ approving the Procedure for Maintaining the List of Foreign Certification Bodies;
- Order No. 1073 of the Ministry of Economy of June 9, 2020,⁶³⁴ approving the List of Substances (ingredients, components) that are Allowed for Use in Organic Production and Allowed to be Used in the Maximum Permissible Quantities.

According to the Ministry of Agrarian Policy, a draft resolution of the Cabinet of Ministers of Ukraine has been developed to approve the criteria for assessing the degree of risk from the economic activity of the certification of organic production and/or circulation of organic products conducted by the certification body and to specify the frequency of scheduled state oversight (control) measures conducted by the State Service of Ukraine on Food Safety and Consumer Protection. A draft order of the Ministry of Economy is also being developed to approve the form of an act drawn up following a scheduled (unscheduled) measure of state oversight (control) regarding compliance by certification bodies with the legislation in the field of organic production, circulation and labelling of organic products.

Biodiversity

Under the Association Agreement, the commitments in this regard must take into account the provisions of Council Regulation (EC) No. 870/2004 of 24 April 2004 establishing a Community programme on the conservation, characterisation, collection and utilisation of genetic resources in agriculture and repealing Regulation (EC) No. 1467/94. This Regulation applies to the genetic resources of plants, micro-organisms and animals used or potentially useful for agriculture and contains requirements for activities supported under the framework programmes of the European Community for research, technological development and demonstration activities.

629 <https://zakon.rada.gov.ua/laws/show/87-2020-%D0%BF#Text>

630 <https://zakon.rada.gov.ua/laws/show/1032-2020-%D0%BF#Text>

631 <https://zakon.rada.gov.ua/laws/show/z0729-20#n2>

632 <https://zakon.rada.gov.ua/laws/show/z0173-20#Text>

633 <https://zakon.rada.gov.ua/laws/show/z0506-20#Text>

634 <https://zakon.rada.gov.ua/laws/show/z0763-20#Text>

Creating the basis for the functioning of European rules regulating the management of genetic resources of plants, micro-organisms and animals that are used or potentially useful for agriculture

Council Regulation (EC) 870/2004 of 24 April 2004

The commitment involves creating a regulatory basis for Ukraine's participation in the programme on the conservation, characterization, collection and utilisation of genetic resources in agriculture, the system for informing non-governmental organisations and other stakeholders about the programme on the conservation, characterization, collection and utilisation of genetic resources in agriculture, establishing an effective mechanism for information exchange and coordination between Ukraine and EU Member States on the conservation, characterization, collection and utilisation of genetic resources in agriculture.

The legislative approximation in the subsector is “early”.

The practical implementation has not started due to lack of legal framework.

Standards of trade in plants, plant seed, plant products, fruit and vegetables

Legislative approximation in this area is supposed to focus on the requirements of the provisions of 15 Commission Regulations and 18 Council Directives specified in Annex XXXVIII to Chapter 17 “Agriculture and Rural Development” of the Association Agreement.

In general, the liabilities identified in this subsector fall into the following categories:

- requirements for the labelling, packaging, trade and consumer protection relating to sugar, fruit juices, coffee and chicory extracts, cocoa and chocolate, fruit jams, jellies and marmalades, olive oil;
- requirements in the field of seed production, material for propagation of fruit plants, grapes and ornamental plants, forest reproductive material, cereal seeds;
- requirements in the field of regulation in the market of agricultural products;
- requirements for feed in line with EU requirements.

Requirements for the labelling, packaging, trade and consumer protection relating to sugar, fruit juices, coffee and chicory extracts, cocoa and chocolate, fruit jams, jellies and marmalades, olive oil

Council Directive (EU) 2001/111 of 20 December 2001

Directive 1999/4/EC of 22 February 1999

Council Directive 2001/112/EC of 20 December 2001

Council Directive 2001/113/EC of 20 December 2001

These commitments focus on establishing clear-cut requirements for the production of the said products intended for human consumption, their characteristics and chemical properties, ensuring the provision of appropriate consumer information.

EU legislation contains clear definitions and requirements for sugars, juices and nectars, jellies and marmalades, coffee, cocoa and other similar products in order to use common terms and eliminate unfair competition that may mislead the consumer, as well as sets out general requirements for their production and labelling.

The legislative approximation concerning:

1. certain sugars, as well as cocoa and chocolate is “perfect”;

The Ministry of Agrarian Policy adopted Order No. 592 “On Approval of the Requirements for Sugars Intended for Human Consumption” of November 2, 2017⁶³⁵ laying down requirements for the production of sugars intended for human consumption, their characteristics and chemical properties, in particular, extra white, white, semi-white sugars, sugar solutions, invert sugar solutions, invert sugar syrups, glucose-fructose syrups, dried glucose syrups, dextrose or dextrose monohydrate, dextrose anhydrous, and fructose.

Order No. 157 “On Approval of the Requirements for Cocoa and Chocolate Products”⁶³⁶ of 13.04.2016 was adopted and came into force on January 1, 2018, bringing the relevant area into line with European standards.

635 <https://zakon.rada.gov.ua/laws/show/87-2020-%D0%BF#Text>

636 <https://zakon.rada.gov.ua/laws/show/1032-2020-%D0%BF#Text>

2. coffee and chicory extracts, juices, jellies and marmalades is at an “early” stage;

The Ministry of Economy developed the draft order “On Approval of the Requirements for Coffee Extracts and Chicory Extracts,”⁶³⁷ which was presented for public discussion on April 9, 2020. The draft order was endorsed by the experts of the EU Project “Support to Agricultural and Food Policy of Ukraine” and the relevant CEBs but rejected by the State Regulatory Service. According to the SRS, it is necessary to amend the Law of Ukraine “On the Basic Principles and Requirements for Food Safety and Quality”. The same is true for the draft order of the Ministry of Economy “On Approval of Requirements for Fruit Juices and Certain Similar Foodstuffs.” As for jellies and marmalades, the draft order of the Ministry of Economy “On Approval of Requirements for Jams and Certain Similar Foodstuffs”⁶³⁸ has been developed but has never been submitted for public discussion.

3. olive oil is at an “early” stage;

According to the Ministry of Economy, the only thing that has been done is a round table that was held on October 15, 2020 to discuss with businesses and retail chains the special features of regulation in the EU olive oil market. A draft order “On Approval of the Requirements for Olive Oil and Olive-residue Oil and Appropriate Methods for the Analysis of Olive Oil” is currently being developed, taking into account the proposals received at the round table. However, this draft order has not been submitted for public discussion yet.

At the same time, the Ministry of Economy by its Order No. 679 of April 1, 2021⁶³⁹ approved the Procedure and Special Requirements for the Labelling of Foodstuffs for which It is Mandatory to Indicate the Country of Origin or Place of Origin, establishing the rules for indicating the country of origin or place of origin in the labelling of virgin olive oil and extra virgin olive oil.

Practical implementation of the updated standards for cocoa, chocolate and olive oil has just taken off. The updated requirements for sugars come into force only on September 1, 2022. For other products, regulations have not been adopted, and implementation has not started.

Requirements in the field of seed production, propagating material of fruit plants, grapes and ornamental plants, forest reproductive material, and cereal seed

Council Directive 66/402/EEC of 14 June 1966, Council Directive 68/193/EEC of 9 April 1968, Council Directive 92/33/EEC (repealed and replaced by Council Directive 2008/72/EC of 15 July 2008), Council Directive 92/34/EEC (repealed and replaced by Council Directive 2008/90/EC of 29 September 2008), Council Directive 98/56/EC of 20 June 1998, Council Directive 2002/53/EC of 13 June 2002, Council Directive 2002/54/EC of 13 June 2002, Council Directive 2002/55/EC of 13 June 2002, Council Directive 2002/56/EC of 13 June 2002, Council Directive 2002/57/EC of 13 June 2002, Council Directive 1999/105/EC of 22 December 1999

Legislative approximation concerning:

1. the marketing of cereal seed is “perfect”.

The Ministry of Agrarian Policy adopted Order No. 476 “On Approval of the Methodological Requirements in the Field of Seed Production to Preserve the Varietal and Sowing Qualities of Cereal Seed,” which has already entered into force.⁶⁴⁰ It regulates a number of commitments on the harmonisation and implementation of European norms in the field of seed production, in particular the provisions of Council Directive 66/402/EEC on the marketing of cereal seed and OECD Schemes for the varietal certification or the control of seed moving in international trade, revised and approved by Council Decision OECD C (2000) 146 of 28 September 2000.

As a result, Ukraine has been included in the list of non-EU countries that have the right to export grain seed, such as oats, barley, rice, rye, wheat, triticale, corn and sorghum to the European market. The relevant decision was published in the Official Journal of the EU: European Parliament legislative resolution of 21 October 2020 amending Council Decision 2003/17/EC as regards the equivalence of field inspections carried out in Ukraine on cereal seed-producing crops and on the equivalence of cereal seed produced in Ukraine.⁶⁴¹

637 <https://zakon.rada.gov.ua/laws/show/z0729-20#n2>

638 <https://zakon.rada.gov.ua/laws/show/z0173-20#Text>

639 <https://zakon.rada.gov.ua/laws/show/z0506-20#Text>

640 <https://zakon.rada.gov.ua/laws/show/z1219-18>

641 <https://bit.ly/35zbMNE>

2. requirements for vegetative propagation of the vine, propagation of fruit plants and fruit plants intended for fruit production is at an “early stage”.

The Verkhovna Rada of Ukraine has registered a government draft law of Ukraine “On Amendments to the Law of Ukraine ‘On Seed and Planting Material’” (Reg. No. 4593 of 14.01.2021),⁶⁴² which aims to promote the efficiency of the propagation of fruit, berry, and nut plants, vine and hops, to help the domestic producers of planting material achieve the modern level in terms of quality and phytosanitary status, facilitate doing business by improving the existing legal norms governing the field of propagation of perennial plants through the implementation of European Union legislation.

According to the opinion of the Committee on Ukraine’s Integration into the European Union, this draft law does not contradict EU law, in particular, the terms proposed by the draft law do not contradict the relevant terms of Article 2 of Directive 66/402/EEC, and the draft law itself does not contradict Articles 9 and 10 of Directive 2002/55/EC and Regulation (EC) No 874/2009 as regards the requirements for registration and application for registration of plant seeds. The Committee on Agrarian and Land Policy, after examining the draft law, recommended that it be sent to the Committee to prepare it for re-submission for the second reading.

Hence, all matters in these areas related to the legislative approximation under the Association Agreement, will be addressed in the relevant regulations after the adoption of the draft law of Ukraine “On Amendments to the Law of Ukraine ‘On Seed and Planting Material’”.

3. rules for registration of seed and crops, conducting the necessary examinations, classification, registration of varieties and cancellation of such registration is at an “early stage”.

Thus, the Verkhovna Rada of Ukraine registered a draft law of Ukraine “On Amendments to the Laws of Ukraine ‘On Protection of Plant Variety Rights’ and ‘On Seed and Planting Material’” (Reg. No. 3680-д of 16.07.2021),⁶⁴³ which aims to implement progressive practices in accordance with the European legislation on the examination and registration of plant variety rights, their marketing, deregulation and streamlining of mechanisms for the registration of varieties and certification of seed, which are necessary for entering the market and creating a proper legal framework for the operation of seed selection and production enterprises, and agricultural producers in a competitive environment. This draft law is still undergoing finalisation by the committees of the Verkhovna Rada of Ukraine.

In addition, the Ministry of Economy adopted relevant Order No. 2162 “On Amendments to the Guidelines for Conducting Tests of Plant Varieties for Distinctness, Homogeneity and Stability” of October 27, 2020,⁶⁴⁴ and the Ministry of Economy adopted Order No. 23 “On Amendments to the Guidelines for Conducting Tests of Fruit, Berry, Nuts and Vine Plant Varieties for Distinctness, Homogeneity and Stability” of January 6, 2021.⁶⁴⁵

4. production of vegetable seed for the purpose of marketing and distribution of materials for the propagation and planting of vegetable crops, except seeds – is at an “early stage”.

According to the Ministry of Agrarian Policy, Council Directive 2002/55/EC is included in the indicative plan for the translation of EU acquis for 2021. It is proposed to settle these issues by issuing the relevant orders of the Ministry of Agrarian Policy, but there are no draft orders yet.

At the same time, the CMU adopted Resolution No. 1187 of December 2, 2020, approving amendments to the Procedure for certification, issuance and revocation of certificates for seed and/or planting material.⁶⁴⁶ It reviewed, inter alia, the validity of certificates certifying the sowing qualities of seed or marketable qualities of planting material for seed: vegetables, melon crops, fodder root crops in open and protected agriculture; sugar beets; and potatoes.

Also, the government approved the Guidelines in the field of seed production to preserve the varietal and sowing qualities of sugar beet and fodder beet by Order No. 831 of the Ministry of Economy of April 20, 2021, registered with the Ministry of Justice on June 2, 2021 under No. 735/36357,⁶⁴⁷ which aims to implement the provisions of Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed and OECD schemes for the varietal certification or controlling of seed traded internationally, as revised and approved by the OECD Council Decision of 28 September 2000 C(2000)146.

642 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70825

643 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72556

644 https://sops.gov.ua/uploads/page/Orders_KO/order2162-20.pdf

645 https://sops.gov.ua/uploads/page/orders_of_the_competent_authority/2021-01-06_23-21.pdf

646 <https://zakon.rada.gov.ua/laws/show/1187-2020-%D0%BF#Text>

647 <https://zakon.rada.gov.ua/laws/show/z0735-21#Text>

Order No. 91 of the Ministry of Economy of January 19, 2021, registered with the Ministry of Justice on March 9, 2021 under No. 300/35922, approved the Guidelines for determining the varietal and sowing qualities of seed potatoes, which implement, inter alia, the provisions of Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes.⁶⁴⁸ The Guidelines establish the rules for the field assessment of seed potato plantations, plot (soil) varietal control and laboratory varietal control, sampling and testing of seed potatoes (determining its sowing qualities) for varieties entered in the State Register of Plant Varieties Suitable for Distribution in Ukraine, and used by certification auditors (agrospectors), research institutions, and seed production undertakings.

5. propagating material of ornamental plants is at an “early stage”.

Law of Ukraine No. 864-VIII “On Amendments to Certain Laws of Ukraine to Bring the Legislation of Ukraine in the Field of Seed Farming into Line with European and International Norms and Standards” of December 8, 2015⁶⁴⁹ introduced amendments to the Law of Ukraine “On Seed and Planting Material,” which also applies to ornamental plants.

6. requirements for the production and marketing of oilseeds and fibrous crops is “advanced”.

The government adopted CMU Resolution No. 97 “On Approval of the Procedure for Certification, Issuance and Revocation of Certificates for Seed and/or Planting Material and Forms of Certificates for Seed and/or Planting Material” (as amended) of February 21, 2017,⁶⁵⁰ Order No. 348 of the Ministry of Agrarian Policy “On Approval of the Procedure for Labelling and Packaging of Seed Batches and on Label Forms” of July 10, 2017,⁶⁵¹ Order No. 558 of the Ministry of Agrarian Policy “On Approval of the Guidelines for Field Assessment of Sunflower and Rapeseed Seed” of November 21, 2018,⁶⁵² designed to implement the provisions of Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants.

7. rules of production, labelling and marketing of forest reproductive material has “not started”.

Legislative approximation in this area is to start in 2021.

Practical implementation for the vast majority of commitments has not started. With regard to beet seed, seed potatoes, sunflower seed and rapeseed, the practical implementation can be described as “advanced”, given the fact that special rules and detailed regulations have been established in the effective acts. However, for the full-scale implementation of seed regulations in Ukraine, it is necessary to carry out a number of systemic reforms – bring the seed certification scheme into line with the European quality control procedure at the level of relevant laboratories and trained professionals.

Requirements in the field of regulation in the market of agricultural products

Council Regulation (EC) 1234/2007 (repealed and replaced by Regulation (EU) 1308/2013 of 17 December 2013)

Commission Regulation (EC) 1345/2005 and Commission Regulation (EC) 507/2008 (replaced and repealed by Commission Delegated Regulation (EU) 2016/1237 of 18 May 2016)

Commission Regulation (EC) 1850/2006 of 14 December 2006

Commission Regulation (EC) 223/2008 (repealed and replaced by Commission Delegated Regulation (EU) 2016/232)

Commission Regulation (EC) 1580/2007 (repealed and replaced by Commission Implementing Regulation (EU) 543/2011)

Legislative approximation in these areas is at an “early” stage.

Regulatory approximation in relation to hops and hop products is at an “early” stage. Currently, only a working group has been set up on the development of hop growing in Ukraine. According to the Ministry of Agrarian Policy, the draft law of Ukraine “On Hops and Hop Products” is to be developed and submitted to the government in November or December 2021.⁶⁵³

The improvement of legislation on producer cooperation is at an “early” stage. Law of Ukraine No. 819-IX “On Agricultural Cooperation” of July 21, 2020⁶⁵⁴ will not resolve this issue properly.

648 <https://zakon.rada.gov.ua/laws/show/z0300-21#Text>

649 <https://zakon.rada.gov.ua/laws/show/864-19#top>

650 <https://zakon.rada.gov.ua/laws/show/97-2017-%D0%BF#n16>

651 <https://zakon.rada.gov.ua/laws/show/z1142-17#Text>

652 <https://zakon.rada.gov.ua/laws/show/z1513-18#Text>

653 <https://minagro.gov.ua/ua/napryamki/regulyatorna-politika/plani-pidgotovki-proektiv-regulyatornih-aktiv/2021>

654 <https://zakon.rada.gov.ua/laws/show/819-20#top>

Legislative approximation to harmonise national legislation on the market of fruit and vegetables and processed fruit and vegetables in accordance with European requirements is at an “early” stage.

Practical implementation has not yet started, given the small amount of work done to approximate legislation in this area.

Requirements for fodder in accordance with EU rules

Commission Regulation (EU) 382/2005 of 7 March 2005

Legislative approximation – measures to implement this commitment, including additional measures for the proper functioning of the dry fodder market, are to be implemented by December 31, 2021.

Implementation has not started.

Marketing standards for live animals and animal products

Legislative approximation in this area should take place in accordance with the requirements of 12 EU Commission Regulations and 2 EU Council Directives specified in Annex XXXVIII to Chapter 17 “Agriculture and Rural Development” of the Association Agreement.

In general, the commitments in this area fall into the following categories:

- requirements concerning the introduction of a European system for the identification and registration of bovine animals, marketing of animals, meat labelling, introduction of a classification of beef, pig and sheep carcasses and the reporting of prices thereof;
- requirements concerning the establishment of detailed rules for the marketing of bovine animals aged 12 months or less, conducting inspections and control of meat from third countries and cooperation with EU bodies in control matters;
- requirements concerning the development and implementation of detailed marketing standards for eggs in accordance with European requirements, introduction of detailed marketing standards for eggs intended for hatching and farmyard poultry chicks, development and implementation of detailed marketing standards for poultry meat in accordance with the EU requirements;
- requirements for the percentage of fat in certain types of dairy products, as well as the conditions of the use of the designation “butter”, in accordance with EU law;
- requirements concerning the implementation of a system of standards for the marketing of agricultural products;
- requirements for honey in accordance with the requirements of EU law.

Introduction of the European system for the identification and registration of bovine animals, marketing of animals, meat labelling, introduction of a classification of beef, pig and sheep carcasses and the reporting of prices thereof

Commission Regulation (EC) 1249/2008 of December 10, 2008

Legislative approximation is at an “early” stage.

The EU has introduced compulsory registration of bovine animals, a system of identification and registration, which consists of the following elements: ear tags for individual identification of animals, computerized databases, animal passports, individual registers kept in each farm. There are also requirements for the mandatory labelling of beef, and requirements for the content of labels in order to make it possible to trace the animal to the farm where it grew up.

Ukraine does not have the right to export livestock and beef and pork products to the EU. The permission to sell animal products on EU markets will be granted after Ukraine receives a positive report from EC inspectors and is included in the list of countries that are allowed to import such products to the EU. To achieve this, first of all, it is necessary to put into practice the EU requirements for identification. They are partially taken into account in Law of Ukraine No. 1445-VI “On Identification and Registration of Animals” of 04.06.2009⁶⁵⁵ with further amendments

⁶⁵⁵ <https://zakon.rada.gov.ua/laws/show/1445-17>

the Regulation “On the Unified State Register of Animals”, approved by Order No. 578 of the Ministry of Agrarian Policy of 25.09.2012.⁶⁵⁶

In addition, the Ministry of Economy by Order No. 679 of April 1, 2021⁶⁵⁷ approved the Procedure and Special Requirements for the Labelling of the Foodstuffs for which it is Mandatory to Indicate the Country of Origin or Place of Origin, establishing rules for indicating the country of origin or place of origin when labelling beef, pork, lamb, and goat meat.

Measures to approximate legislation to the EU acquis in this area are planned for 2021.

Implementation has not started, as updated legislation is still under development.

Establishing detailed rules for the marketing of bovine animals aged 12 months or less, conducting inspections and control of meat from third countries and cooperation with EU bodies in control matters

Commission Regulation (EC) 566/2008 of 18 June 2008

The EU has detailed rules for the application of the Union scales for the classification of beef, pork and sheep carcasses slaughtered at 12 months and more, as well as rules for reporting prices, rules for categorizing bovine animals aged 12 months or less and additional requirements for the labelling of such meat, which also includes control over the classification of bovine animals in slaughterhouses.

The current Instruction on the Trade Analysis and Labelling of Meat, approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine of April 4, 2012,⁶⁵⁸ does not contain requirements concerning special branding of bovine animals aged 12 months or less.

By implementing the provisions of Commission Regulation (EC) 566/2008, Ukraine will introduce the classification of beef used in the European Union, expanding the current category of this meat to include the category of “young beef” (for animals aged from 8 to 12 months), which will provide new marketing opportunities for meat producers in the domestic market. Also, the introduction of the EU’s current classification of beef, labelling and official control will facilitate the potential trade relations between Ukrainian farmers and EU market operators.

Regulatory approximation is at an “early” stage.

The Ministry of Economy has drafted the order “On Approval of the Requirements for the Marketing of the Meat of Bovine Animals Aged 12 Months or Less,” which is undergoing endorsement.

However, the current regulations contain no norms that authorise the Ministry of Economy to approve such regulatory legal acts. In this regard, Letter No. 2842-06/47 was prepared and sent (of 02.02.2021) with a proposal to amend Article 7 of Law of Ukraine No. 771/97-BP “On the Basic Principles and Requirements for Food Safety and Quality” of 23 December 1997 to expand the powers of the central executive body that ensures state policy making and implementation in the field of food safety and certain indicators of food quality.

The practical implementation for this commitment has not started as the updated legislation is under development.

Development and implementation of detailed marketing standards for eggs in accordance with European requirements, introduction of detailed marketing standards for eggs intended for hatching and farmyard poultry chicks, development and implementation of detailed marketing standards for poultry meat in accordance with the EU requirements

Commission Regulation (EC) 598/2008 of 24 June 2008

Commission Regulation (EC) 617/2008 of 27 June 2008

The regulatory approximation is at an “early” stage.

Approximation of the national legislation in this area should take into account the provisions of EU law, namely Commission Regulation (EC) No 598/2008 of 24 June 2008 amending Regulation (EC) No 589/2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards the marketing standards of eggs Commission Regulation (EC) 617/2008 of 27 June 2008.

656 <https://zakon.rada.gov.ua/laws/show/z1713-12>

657 <https://zakon.rada.gov.ua/laws/show/z0601-21#Text>

658 <https://zakon.rada.gov.ua/laws/show/z0586-12#Text>

At the request of the Ministry of Economy, experts of international technical assistance projects prepared a draft order of the Ministry of Economy with the working title “On Market Requirements for Eggs for Hatching and Farmyard Poultry Chicks,” laying down detailed rules for implementing Regulation (EC) 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks. This draft order was submitted to the ministry in late January 2020.

However, in April 2020, the Ministry of Economy decided to combine all other sectoral draft acts regulating the circulation of all foodstuffs into one act – a draft order “On Approval of Hygienic Requirements for the Production and Circulation of Foodstuffs of Animal Origin,”⁶⁵⁹ which the Ministry of Economy published for public discussion on December 18, 2020.

In addition, the Ministry of Economy by its Order No. 679 of April 1, 2021⁶⁶⁰ approved the Procedure and Special Requirements for the Labelling of the Foodstuffs for which it is Mandatory to Indicate the Country of Origin or Place of Origin, establishing rules for indicating the country of origin or place of origin when labelling poultry meat.

It should also be mentioned that most of the measures to approximate legislation in this area are planned for 2021.

Implementation has not started as updated legislation is still under development.

Bringing the requirements for the percentage of fat in certain types of dairy products, as well as the conditions of the use of the designation “butter,” in accordance with EU law

Commission Regulation (EC) 445/2007 of 23 April 2007

The regulatory approximation for this commitment has not started and is planned for 2021.

Practical implementation has not started either.

Introduction of a system of standards for the marketing of agricultural products

Council Regulation (EC) 2991/94 (repealed and replaced by Council Regulation (EC) 1234/2007, repealed and replaced by Regulation (EU) 1308/2013 of 17 December 2013)

Regulatory approximation regarding the standards of sales of hops, wine and wine products is “early”.

Ukraine has started developing or has developed draft laws and regulations involving experts. In particular, the classification of wine products is laid down in the draft law “On Amendments to the Law of Ukraine ‘On Grapes and Grape Wine’” published by the Ministry of Agrarian Policy for public discussion on June 14, 2021.⁶⁶¹

With regard to hops, in order to approximate legislation, including standards for the marketing of hops, only a working group on the development of hop production in Ukraine has been set up. According to the Ministry of Agrarian Policy, the draft law of Ukraine “On Hops and Hop Products” is to be developed and submitted to the government in November or December 2021.⁶⁶²

In other areas concerning this commitment, measures to approximate legislation are planned for 2021.

Implementation has not started as updated legislation is still under development.

Bringing national honey legislation in line with EU law

Council Directive 2001/110/EC of 20 December 2001

The commitment involves adapting national legislation to the EU law in the field of labelling, production and marketing of honey and ensuring that the consumer is properly informed by establishing mandatory requirements for quality indicators and labelling of honey, preventing business practices that mislead the consumer.

Regulatory approximation is “advanced”.

During the past year, work has been carried out to develop draft orders of the Ministry of Economy “On Approval of Hygienic Requirements for Facilities for the Production of Beekeeping Products” and “On Certain Matters in the Field of Beekeeping.”⁶⁶³ However, these draft laws have not been presented for public discussion. Because the Ministry of Agrarian Policy has resumed its work, the relevant draft orders must again undergo public discussion and endorsement.

659 <https://bit.ly/3j1J632>

660 <https://zakon.rada.gov.ua/laws/show/z0601-21#Text>

661 <https://bit.ly/3u5GUho>

662 <https://minagro.gov.ua/ua/napryamki/regulyatorna-politika/plani-pidgotovki-proektiv-regulyatornih-aktiv/2021>

663 <https://bit.ly/3NJU62X>

Currently, there is effective Order No. 330 of the Ministry of Agrarian Policy “On Approval of Requirements for Honey” of June 19, 2019,⁶⁶⁴ which takes into account the key requirements of Council Directive 2001/110/EC of 20 December 2001, in particular the requirements for the labelling of honey to ensure that consumers (users) are properly informed and to prevent business practices that mislead the consumer. This order shall enter into force on January 1, 2023.

Implementation in respect of this commitment has not been initiated, because Order No. 330 has not entered into force.

664 <https://zakon.rada.gov.ua/laws/show/z0725-19#Text>

CONSUMER PROTECTION

Experts: Anna Vasylenko



not started early stage advanced perfect critical non-conformity

Within the “Consumer Protection” sector of the Association Agreement (Chapter 20, Title V of the AA and Annex XXXIX to the AA), Ukraine must fulfil 15 commitments in the following areas: 1) product safety; 2) marketing; 3) contract law; 4) unfair contract terms; 4) doorstep selling; 5) financial services; 6) consumer credit; 7) enforcement; and 8) consumer protection cooperation. In one more area (“redress”) no commitments are specified, as it is of recommendatory nature.

The main goal to be achieved in accordance with the requirements of the EU acquis within the subsector is to ensure a high level of consumer protection in the specified areas and to achieve compatibility with the EU system in the field of consumer protection (Art. 415 Association Agreements).

It should be mentioned that a number of provisions of the Ukrainian legislation on consumer protection had partially complied with the provisions of the relevant EU legal acts before the signing of the Association Agreement, and required revision rather than development from scratch. However, in many cases, such partial compliance was taken into account when preparing the government’s Implementation Plan and in the implementation of the AA, in particular, when drafting amendments to the Law on Consumer Protection and other consumer protection acts.

Product safety

Commitments within the area of “Product Safety” (non-foods) involve transposition and implementation of a number of framework acts and technical regulations and aim at the systematic improvement of mechanisms to ensure the safety of non-food products, in particular:

- regulation of general non-food product safety (in accordance with the requirements [Directive 2001/95/EC](#) on general product safety), and
- certain legislation on market surveillance, exchange of information with the EU (implementing aspects of [Directive 2001/95/EC](#)), prevention of risks to the health or safety of consumers through certain goods, and ensuring that certain categories of consumer goods, such as lighters and magnetic toys which, appearing to be other than they are, do not endanger the health or safety of children.

With regard to the harmonisation of general product safety requirements with EU law, we can speak of the perfect level of compliance. Law of Ukraine No. 2736-VI “On the General Safety of Non-Food Products” of 2.12.2010 and Law of Ukraine No. 2735-VI “On State Market Supervision and Control of Non-Food Products” of 2.12.2010 as amended since their adoption, as well as Law of Ukraine No. 367-IX “On Amendments to Certain Legislative Acts of Ukraine to Reduce the Pressure on Businesses by Market Supervision Authorities” of 12.12.2019, sufficiently ensure the transposition of the requirements of [Directive 2001/95/EC](#).

However, as regards the commitments concerning the practical implementation of certain requirements of [Directive 2001/95/EC](#), progress varies. Thus, full compliance with product safety guidelines has been achieved, and

a national market surveillance information system has been created (comprehensive information protection systems have been developed and their state expert assessment has been conducted; government agency systems have been connected to the national system). Although the national market surveillance information system has not been launched yet, the level of implementation of this commitment can be described as advanced. However, Ukraine has not yet connected to the European RAPEX system, and, hence, this commitment is at an early stage.

Also, the perfect level⁶⁶⁵ of fulfilment within this area has been achieved for the following two commitments: preventing risks to the health or safety of consumers produced by products which, appearing to be other than they are, endanger the health or safety of children ([Council Directive 87/357/EEC](#)) and protection of children from potential risks related to swallowing magnetic elements of children's toys ([Commission Decision 2008/329/EC](#)).

The last commitment in the thematic area involves introduction of a system to prevent the use of lighters by children in order to prevent injuries and fires related to children playing with lighters, including those that are not child-resistant or look like toys. The articles of [Commission Decision 2006/502/EC](#) have been transposed through Order No. 80 of the Ministry of Economic Development "On Amendments to the Rules of Retail Trade in Non-Food Products" of 23.01.2018 and DSTU EN 13869:2018 "Lighters. Child safety requirements for lighters." However, these acts do not take into account all the provisions of Commission Decision 2006/502/EC, which makes the transposition incomplete and makes it impossible to fully implement the Decision. In the Ukrainian market, one can still easily buy both lighters that are not child-resistant and lighters resembling toys. The changes do not ensure comprehensive transposition of the provisions of the EU acquis into national law, so the status of implementation of the commitment can be described as early.

In 2020 and the first half of 2021, no progress has been made.

Marketing

This thematic area includes a number of general requirements for ensuring consumer protection when purchasing goods and services and specifies two commitments, in particular, for providing the consumer with appropriate information ([Directive 98/6/EC](#) of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers) and for improving the legislation on good business practices to safeguard the economic interests of consumers ([Directive 2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market). It is important to point out that many norms required by the relevant EU acquis already existed in Ukrainian legislation at the time of signing the AA, and regulatory approximation actually meant improving the existing norms rather than developing a new legal framework.

With regard to improving consumer information and enabling consumers to compare prices, the Law of Ukraine "On Consumer Protection" (Art. 15) almost fully transposed the requirements of Directive 98/6/EC back when it was adopted. The only difference is the mandatory indication of the unit price of the product in advertisements which mention the selling price of the product. Law of Ukraine No. 270/96-BP "On Advertising" of 3 July 1996 does not address this matter either. For this reason, we consider the level of regulatory approximation to be advanced rather than perfect as claimed by the government.

The commitment to enhance consumer protection by improving the legislation on unfair business practices that harm the economic interests of consumers (Directive 2005/29/EC) are partially taken into account in the current Law of Ukraine "On Consumer Protection." However, some requirements of the Directive still require transposition (in particular, the relevant terms and definitions, provisions on misleading and aggressive commercial practices, undue influence, approach to establishing a list of unfair business practices to improve the protection of the most vulnerable consumer groups) and further implementation. In addition, there are no specific sanctions for the use of unfair business practices.

At the same time, as part of measures to implement the Concept of State Policies in the Field of Consumer Protection until 2020, the Ministry of Economy through a specially created working group developed a new draft law of Ukraine "On Consumer Protection (as amended)". This draft law actually replaced the withdrawn draft law "On Amendments to Certain Legislative Acts of Ukraine concerning Consumer Protection" (Reg. No. 5548 of 16.12.2016), which was long considered the main act but was less than perfect in terms of the fulfilment of the commitments under the AA. During 2020, the new draft law was widely discussed by the public and stakeholders (on the website

⁶⁶⁵ Resolution No. 136 of the Cabinet of Ministers "On Amendments to the Procedure for Conducting Trade Activities and Rules of Trade Services in the Consumer Goods Market" of March 10, 2017, a new version of the Technical Regulations for Toy Safety (Cabinet of Ministers Resolution No. 151 of February 28, 2018), and state standard DSTU EN 71-1:2016 (EN 71-1:2014, IDT) Safety of toys. Part 1. Mechanical and physical properties.

of the Ministry of Economy, through webinars and online meetings). In the first half of 2021, the draft Law “On Consumer Protection (as amended)” with comments and suggestions was submitted to the Ministry of Justice for legal expert assessment, after which it will be submitted to the government. The draft law has been developed taking into account the commitments of Ukraine in accordance with Title V of the AA and Annex XXXIX to the AA, therefore it fully takes into account the above inconsistencies with the commitments in the area of “Marketing”. Since this draft law currently has the status of proposal and has not been submitted to the Verkhovna Rada, the commitment fulfilment can be described as early according to the assessment methodology.

Its practical implementation can be duly assessed after the adoption of the draft Law “On Consumer Protection (as amended)” by the Verkhovna Rada of Ukraine.

Contract law

The area of “Contract Law” contains requirements for the protection of the legal and commercial interests of consumers when concluding contracts for the purchase of goods. Transposition of the relevant requirements of [Directive 1999/44/EC](#) on certain aspects of the sale of consumer goods and associated guarantees will mean an improvement of consumer protection regarding the compliance of the characteristics of consumer goods with their description in the contract and guarantees in case of non-compliance with their description in the contract.

The provisions of Ukrainian legislation on offering guarantees on goods against any defect which becomes apparent within a certain period in many respects had been close to the requirements of European legislation, in particular Directive 1999/44/EC, before 2014. Provisions of Directive 1999/44/EC are partially implemented in the current Law of Ukraine “On Consumer Protection”, the Civil Code of Ukraine, etc. However, there are a number of inconsistencies in many aspects related to guarantees between the provisions of Ukrainian law and EU acquis.

In 2021, some aspects of guarantees to consumers, in particular, when purchasing goods online, were addressed in Law No. 1603-IX “On Amendments to Article 7 of the Law of Ukraine ‘On Consumer Protection’ Concerning Guarantees in Electronic Form” of July 1, 2021. The remaining discrepancies are taken into account in the new draft law “On Consumer Protection” (as amended) presented by the Ministry of Economy in 2020. The draft law is currently undergoing the preliminary stages of approval and legal expert assessment by the Ministry of Justice, and has not yet been submitted to the government. Given the relatively small number of inconsistencies in the current legislation, as well as the fact that certain changes have been introduced and proposals have been developed, the fulfilment can be described as advanced.

Unfair contract terms

The requirements included in this thematic area are aimed at protecting consumers from unfair terms of various consumer contracts, including contracts of a general nature, as well as distance contracts and contracts for the provision of tourist services.

The commitment to ensure adequate consumer protection against unfair contract terms ([Directive 93/13/EEC](#)) involves addressing general matters relating to any consumer contracts. The provisions of Directive 93/13/EEC in Ukrainian legislation are implemented in Art. 18 of the current Law of Ukraine “On Consumer Protection” and the Law of Ukraine “On Electronic Commerce” of 03.09.2015 (No. 675-VIII). In general, the provisions of this article are almost completely aligned with Directive 93/13/EEC.

Practical implementation is ensured by Order No. 103 of the Ministry of Economy of Ukraine “On Approval of the Rules for Distance Selling and Selling away from Business Premises” of 19.04.2007, registered with the Ministry of Justice on October 16, 2007 under No. 1181/14448 (as amended in 2017-2018 and on 06.06.2020 by Order No. 1130 of the Ministry of Economy).

The Association Agreement specifies two commitments regarding the terms of consumer contracts negotiated away from business premises: one such commitment is included in the area of “Unfair Contract Terms – i.e., as regards improving consumer protection and guarantees in respect of distance contracts (Directive 97/7/EC) and as regards improving consumer protection and guarantees in respect of doorstep selling (Council Directive 85/577/EEC). However, both Directives 97/7/EC and 85/577/EEC were repealed on 13 June 2014 and have been replaced by [Directive 2011/83/EU](#) on consumer rights. The requirements for consumer protection in respect of distance contracts and doorstep selling have been updated, expanded and combined with the requirements for any other

The area of Unfair Contract Terms also includes several commitments in respect of consumer contracts in the field of tourism. However, these commitments, as well as recent changes in EU legislation, have not been taken into account in any of the numerous draft laws amending the Law on Tourism that have been submitted to the Verkhovna Rada since the entry into force of the AA.

The latest of the draft laws registered with the Verkhovna Rada “On Amendments to the Law of Ukraine ‘On Tourism’ and Certain Other Legislative Acts in Respect of the Basic Principles of Tourism Development” (No. 4162 of 29.09.2020) does introduce a significant number of the new standards but only partially takes into account the provisions of [Directive 2015/2302/EU](#). In particular, relevant terms and definitions are not fully aligned, the responsibilities of travel service providers to provide preliminary information, its content and binding force are not taken into account, the provisions on the termination of the package travel contract differ, etc. In general, the new draft law to a much lesser extent ensures consumer protection in respect of package travel and linked travel arrangements, so the status of compliance can be described as early.

Commitments to ensure the protection of consumers in respect of timeshare, long-term holiday product, resale and exchange contracts are based on [Directive 2008/122/EC](#). In the travel industry, timeshare provides for the right to use movable and immovable tourist accommodation in the joint ownership of a certain number of persons for a specified period of time. There are no relevant provisions in the legislation of Ukraine at all, no draft law or draft by-law has been developed, so the status of fulfilment of this commitment can be described as “critical non-conformity.”

At the same time, in 2020 the state body responsible for fulfilling the AA commitments on consumer protection in the field of tourism changed: on January 1, 2020 the functions in the field of tourism were transferred from the Ministry of Economy to the Ministry of Culture and Information Policy (CMU Resolution No. 885 of 16 October 2019).

Financial services

This thematic area includes one commitment that involves enhancing the guarantees and mechanisms for consumer protection in respect of the distance marketing of financial services; the commitment is based on [Directive 2002/65/EC](#). With the adoption of Law of Ukraine No. 122-IX “On Amendments to Certain Legislative Acts of Ukraine concerning Consumer Protection in Respect of Financial Services” of September 20, 2019, the commitment was fully fulfilled (at the perfect level).

In 2021, the relevant requirements introduced into domestic legislation were also supported by measures for practical implementation. Thus, the Board of the National Bank of Ukraine, which is an authorized institution for consumer protection in respect of financial services and regulation of activities of banks and non-bank financial institutions towards their customers, adopted Resolution No.15 “On Approval of the Regulation on the Oversight by the National Bank of Ukraine over Banks to Ensure Their Compliance with the Legislation on Consumer Protection in respect of Financial Services” of 09.02.2021.

Consumer credit

This thematic area focuses on consumer protection in respect of consumer credit agreements in accordance with the requirements of [Directive 2008/48/EC](#) of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

In 2016, Law of Ukraine No. 1734-VIII “On Consumer Lending” of November 15, 2016 was adopted. Its provisions significantly improve the regulation of legal relations regarding the provision, servicing and repayment of consumer credit, and provide greater consumer protection. However, some differences remain unresolved.

In 2020-2021, additional steps were taken both at the level of transposition and at the level of practical implementation:

- Law of Ukraine No. 1349-IX “On Amendments to Certain Laws of Ukraine with regard to Consumer Protection in Settlement of Overdue Debts” of March 19, 2021 was adopted, providing definitions of a number of important terms in contracts, as well as establishing requirements for work with overdue debts. The definition of terms is supposed to eliminate situations that can be interpreted in favour of one or the other party, as well as make it easier for consumers to understand the terms of the contract they enter into with the bank. To comply with the requirements of this Law, banks of Ukraine shall harmonise their consumer credit agreements with the new legislation on consumer credit.

- After the introduction on January 19, 2020 of new legislation on consumer protection in respect of financial services, the NBU changed the approach based on which banks will calculate the cost of consumer credit: now the cost of consumer credit in banks will include the cost of insurance and tax payments, fees for mandatory state pension insurance, the cost of notary services, payments for the services of state registrars, appraisers, etc.

However, not all the requirements of the relevant EU legislation have been taken into account, therefore the status of fulfilment of the commitment is advanced rather than perfect.

Redress

This thematic area is based on two EU recommendations: 1) [Commission Recommendation 98/257/EC](#) of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, and 2) [Commission Recommendation 2001/310/EC](#) of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes. As the documents are of a recommendatory nature, Annex XXXIX to the Association Agreement states that there is no need for legislative initiative and no commitment is specified.

Enforcement

The thematic area of “Enforcement” covers the matters related to the mechanisms of judicial protection of the collective interests of consumers. When the AA was signed, it was based on Directive 98/27/EC on injunctions for the protection of consumers’ interests. Directive 98/27/EC was repealed and replaced by [Directive 2009/22/EC](#) on injunctions for the protection of consumers’ interests. In Ukraine, the collective rights of consumers are regulated by the Law of Ukraine “On Consumer Protection” and the Law of Ukraine “On Public Associations” of March 22, 2012 (No. 4572-VI). Both laws do not fully take into account the provisions of Directive 2009/22/EC.

The new draft Law on Consumer Protection (as amended), developed and presented by the Ministry of Economy in 2020, brings Ukrainian legislation closer to the relevant requirements of Directive 2009/22/EC, proposing, for example, provisions on qualification criteria for consumer protection associations, pre-trial mediation provisions, etc. However, some differences remain unresolved, such as the consideration of cross-border violations of consumer rights. Taking into account the fact that this draft law is currently only a proposal, the status of fulfilment of the commitment is early.

Consumer protection cooperation

The commitment to cooperate with the EU and Member States on consumer protection under the conditions established by the relevant EU legislation is based on [Regulation \(EC\) No 2006/2004](#) of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation). The current Law “On Consumer Protection” does not contain provisions on the principles and conditions of international cooperation in the field of consumer protection.

A new draft law “On Consumer Protection” (as amended), developed and submitted to the Ministry of Economy in 2020, contains a number of provisions on international cooperation in this area. In particular, Art. 44 of the draft law provides for the possibility of international cooperation with the relevant bodies of other states and international organisations on matters related to consumer protection, as well as determines the ways for conducting international cooperation. However, given the fact that this draft law is currently only a proposal, the status of fulfilment of the commitment is considered early.

As regards practical implementation, Ukraine’s international cooperation with the authorised bodies of the EU countries is conducted on the basis of bilateral agreements (e.g., with the relevant authorised bodies of Lithuania, Latvia, Hungary, Austria, etc.).

SOCIAL POLICY

Experts: Zoriana Kozak

57.7

19.2

23.1

not started early stage advanced perfect critical non-conformity

Ukraine's cooperation with the EU in the field of social policy is largely specified in Chapter 21 "Cooperation on Employment, Social Policy and Equal Opportunities" of Title V of the Association Agreement. The parties are to strengthen their dialogue and cooperation on the following issues:

- decent work, employment policy, social dialogue,
- gender equality and non-discrimination,
- safe and healthy working conditions,
- social protection and social inclusion.

The goals to be achieved by such cooperation are outlined in Art. 420 of the Association Agreement.

The list of the EU acquis to which Ukraine has undertaken to approximate its national legislation is specified in Annex XL to Chapter 21 of the Association Agreement. The list covers the EU acquis in three areas: "Labour Law", "Anti-Discrimination and Gender Equality", and "Health and Safety at Work".

The key objectives within the area of "Labour Law" include: ensuring transparent and predictable employment conditions; protection of part-time and fixed-term employees; improvements in the safety and health of workers with fixed-duration and temporary employment relationship; introduction of mechanisms for the employer to inform and consult employees' representatives in the field of labour, in particular regarding collective redundancies, transfers of undertakings or businesses, as well as protection of employees.

The EU acquis in the field of anti-discrimination and gender equality focus on the implementation of the principle of equal treatment in respect of access to employment and occupation, goods and services, social security, as well as the prevention and elimination of discrimination on the grounds of race and ethnicity, religion and belief, age and disability, gender and gender identity. There are special rules for working parents, pregnant workers and workers who have recently given birth or are breastfeeding.

The EU Acquis on Health and Safety at Work aim to ensure safe and healthy working conditions by introducing a system of:

- framework requirements that establish the basic principles of creating safe and healthy working conditions, including the introduction of a risk-oriented approach to health and safety at work;
- cross-cutting requirements implemented by all employers, regardless of the area of their economic activity; sectoral/special requirements that take into account the specific features of safe and healthy working
- conditions in certain sectors of the economy, and special requirements with regard to specific production risks.

In addition, the Cabinet of Ministers has undertaken a commitment to reform the social services system. The commitment is not provided for in Annex XL, but is in line with Articles 419 and 420 of the Association Agreement with regard to the cooperation on social protection and social inclusion. The commitment is aimed at reforming the system of social services to persons/families who are in difficult life circumstances, in order to prevent, overcome and minimize the negative consequences.

Labour law

Ensuring decent work, social policy and social dialogue

Articles 419, 420, and 424 of the Association Agreement; Council Directive 91/533/EEC of 14.10.1991 (on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship). On July 31, 2022, it is to be repealed and replaced by Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 (on transparent and predictable working conditions); Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP; Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC; Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship; Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies; Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses; Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

Within the area of Labour Law under Annex XL to the Association Agreement, Ukraine has undertaken to approximate its national legislation to seven EU directives on decent work, social policy and social dialogue. Their transposition into national legislation was to take place within 3-4 years of the entry into force of the Association Agreement, but was never performed. In the period from 2014 to 2019, work in this area was focused on the adaptation of Ukrainian legislation to EU directives mainly through the drafting of a new Labour Code,⁶⁶⁶ special framework laws,⁶⁶⁷ or making changes to existing laws.⁶⁶⁸ Unfortunately, the draft laws registered in the Verkhovna Rada have never been adopted to produce the necessary laws.

The same is true for 2020 and 1st half of 2021 – no necessary laws have been adopted, so the regulatory approximation is early. Laws passed during this period⁶⁶⁹ tend to apply a whack-a-mole approach to addressing the matter of legislative approximation to ensure transparent and predictable employment conditions (in particular as regards concluding employment contracts in writing, providing information on working conditions, aspects of employment contract conclusion) and labour protection (in particular, distribution of responsibilities for safety and health at work and conducting occupational safety briefings) when using certain forms of labour organisation such as teleworking, work from home and work with flexible working hours.

In 2020 and 1st half of 2021, transposition has been performed at the level of draft laws. The draft law on labour (No. 2708), which comprehensively covered a range of transposition issues, was withdrawn due to the government's resignation. Subsequently, the government continued revising it to re-submit it to the Verkhovna Rada. However, neither the original nor the revised draft law⁶⁷⁰ was endorsed by the Joint Representative Body of trade union associations as contrary to the Constitution of Ukraine, acts of international law ratified by Ukraine, and directives of the European Union.⁶⁷¹

Approximation of Ukraine's labour legislation continued to focus on drafting separate laws including individual points covered by the Directives. The VRU has registered draft laws on amendments to the current Labour Code of Ukraine and laws of Ukraine on:

- the definition of the concept and aspects of labour relations (No. 5054 of 09.02.2021⁶⁷², No. 5054-1 of 25.02.2021⁶⁷³). In particular, it is proposed to supplement the Labour Code of Ukraine with articles defining the concept of the employment contract and signs of employment and determining the conditions for transferring rights and duties when business ownership is transferred. The draft law needs to be harmonised with the directives on the principle of legal presumption of employment relations, the principles of transparency and predictability of working conditions, the principle of the transfer of rights and duties when business ownership is transferred, and taking into account all requirements for such transfers (information to be provided, entity responsible for providing information, deadlines for providing information, holding consultations, etc.);

⁶⁶⁶ E.g., draft Labour Code of Ukraine No. **0955** of 29.08.2019, draft Labour Code of Ukraine No. **2410** and draft Labour Code of Ukraine No. **2410-1** of 08.11.2019.

⁶⁶⁷ E.g., draft labour law No **2708** of 28.12.2019.

⁶⁶⁸ E.g., draft law No. **10069** on amendments to the Labour Code of Ukraine to improve the protection of workers' rights when concluding an employment contract and dismissal from work of 20.02.2019.

⁶⁶⁹ Law of Ukraine No. **540-IX**: "On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Protection in Connection with the Spread of the Coronavirus Disease (COVID-19)" of March 30, 2020; Law of Ukraine No. **1213-IX** "On Amendments to Certain Legislative Acts of Ukraine Concerning the Improvement of Legal Regulation of Telework, Work from Home, and Work with Flexible Working Hours" of 04.02.2021.

⁶⁷⁰ Draft Law on Labour (**finalized**).

⁶⁷¹ Letter No. **01-12/608-CFO** of the JRB of trade union associations dated 25.06.2020.

⁶⁷² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=71071

⁶⁷³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=71251

- addressing some non-standard forms of employment (No. 5161 of 25.02.2021,⁶⁷⁴ No. 5161-1 of 16.03.2021⁶⁷⁵). The draft laws introduce a new type of employment contract – an employment contract with flexible working hours, and establish its forms and conditions for concluding it. It is necessary to align the terms relating to this type of contract as well as the requirements concerning the provision by the employer of full information on working conditions for this type of contracts and other employment contracts, etc.;
- enhancing the protection of workers' rights (No. 5266 of 18.03.2021,⁶⁷⁶ No. 5266-1 of 06.04.2021⁶⁷⁷). Among other things, the draft laws are aimed at implementing the requirements for collective redundancies and the effect of the collective agreement in the transfer of business ownership. It is necessary to align the provisions on quantitative criteria for recognizing the dismissal of employees as collective redundancies, as well as the minimum duration of the collective agreement in case of the transfer of business ownership;
- simplification of regulation of labour relations for employees working for small businesses (No. 5371 of 13.04.2021,⁶⁷⁸ No. 5371-1 of 27.04.2021⁶⁷⁹). The draft laws are aimed at establishing the aspects of the regulation of these labour relations, but also contain provisions to introduce a requirement that such employment contracts be concluded in writing, the possibility of concluding them for a certain period, requirements for their content, and so on. The main draft law introduces a “contractual regime of labour relation regulation”, which goes beyond the range of entities specified in the title of the draft law and beyond individual contractual regulation, or the relationship of the latter with collective bargaining and state regulation. This approach does not meet the goals and objectives set out in the transposition directives;
- deregulation of labour relations (No. 5388 of 16.04.2021,⁶⁸⁰ No. 5388-1 of 30.04.2021⁶⁸¹). The draft laws, inter alia, specify the cases of concluding fixed-term employment contracts, the maximum duration of the latter, informing about the availability of vacancies for concluding permanent employment contracts, and fulfilment by the employer of the duty to inform the employee about working conditions. At the same time, the draft laws do not address the issue of predictability of working conditions, introduced by Directive (EU) 2019/1152. In the context of the principle of equality and non-discrimination, the fact that they establish additional grounds for dismissal of employees under fixed-term contracts, change the procedure for imposing liability for damages on fixed-term employees, etc. are somewhat concerning.

It should be mentioned that representatives of trade unions and part of the civil society have voiced their reservations about the above draft laws.⁶⁸²

Anti-discrimination and gender equality

Combating discrimination, ensuring gender equality and equal opportunities

Articles 419, 420, and 424 of the Association Agreement; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC; Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding; Council Directive 79/77/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

Within the field of anti-discrimination and gender equality (Annex XL), Ukraine has committed itself to approximating its legislation to six EU directives. Legislation was to be transposed within 3-4 years of the entry into force of the Association Agreement. Regulatory approximation during the period from 2014 to 2019 varied, depending on the type of commitments, in particular, Ukraine adapted changes to legislation to ensure equal labour

674 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=71242

675 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=71426

676 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=71455

677 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=71601

678 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=71653

679 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=71775

680 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=71684

681 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=71828

682 Statement of the Presidium of the Federation of Trade Unions of Ukraine on the government's legislative initiatives aimed at deregulating labour relations that are registered with the Verkhovna Rada of Ukraine (Resolution No П-34-19) of the Presidium of the FTUU of April 20, 2021).

WG5 UNP “Social and Labour Policy and Social Dialogue” and WG4 CSP “Employment, Social Policy, Equal Opportunities and Health” prepared a joint statement on the reform of Ukraine's labour legislation // UNP CSP EaP / news / Online meeting of WG5 UNP held on **07.06.2021**.

rights and opportunities,⁶⁸³ improve the general terms and definitions related to discrimination,⁶⁸⁴ and abolish the list of physically demanding jobs and jobs with harmful and dangerous working conditions where the use of women's labour was prohibited.⁶⁸⁵

In 2021, there has been some progress in the regulatory approximation to ensure equal rights and opportunities for working parents (both women and men) as regards reconciling work and family life. On April 15, 2021, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Ensure Equal Opportunities for Mothers and Fathers in Caring for a Child" was adopted (No. 1401-IX⁶⁸⁶). The law ensures equal rights for both parents in respect of reducing working hours and providing childcare leaves, and introduces a new type of leave – i.e., childbirth leave, including for a husband whose wife has given birth. However, the law does not take into account the requirements of either Directive 2010/18/EU or Directive (EU) 2019/1158 to establish non-transferrable parental leave for both parents, "time off" on the grounds of force majeure for urgent and unexpected family reasons, and flexible working arrangements.

The matter of flexible working arrangements for pregnant women and working parents is partially addressed by Law of Ukraine No. 1213-IX "On Amendments to Certain Legislative Acts of Ukraine to Improve the Legal Regulation of Telework, Work from Home and Work with Flexible Working Hours" of 04.02.2021.⁶⁸⁷ However, the possibility of working remotely or from home is provided for pregnant women, workers who have a child under the age of three or are carers of a child under the age of six based on a medical assessment report. However, according to Directive (EU) 2019/1158, flexible working arrangements can be demanded by parents or carers of children under the age of 8.

The government adopted pin-point changes to improve the legal mechanism for ensuring equal rights and opportunities in matters of employment based on age (extending age limits for the civil service and service in local self-government bodies)⁶⁸⁸ and access to retirement benefits (eliminating discrimination of payers).⁶⁸⁹

Certain matters of transposition into national legislation on anti-discrimination ensuring gender equality and equal opportunities have been addressed through individual draft laws concerning:

comprehensive matters of anti-discrimination (clarification of the grounds for elimination of discrimination in employment, identification of cases that are not considered discrimination, prevention of sexism);⁶⁹⁰

ensuring equal rights and opportunities for certain categories of persons (pregnant women and women with children under the age of three, workers with family responsibilities, domestic workers, the elderly, people with disabilities, etc.).⁶⁹¹

In the period from 2014 to 2019, Ukraine was introducing a mechanism of implementation of the principle of equal treatment, prevention/elimination of discrimination, and functioning of special bodies (institutions). Work in this area is advanced, given the establishment of special institutions, creation of appropriate structural agencies within central and local executive bodies, introduction of gender and legal expert examination, publication of special reports, carrying out of relevant research, etc.

During 2020 and the 1st half of 2021, a number of documents aimed at ensuring equal opportunities have been adopted,⁶⁹² in particular regarding the implementation of the state policy to ensure unimpeded access of all groups to various spheres of life – a national strategy has been adopted and an advisory body has been established.⁶⁹³ At the same time, considerable attention has been paid to ensuring equal rights and opportunities for women and men and gender equality in practice, in particular with regard to:

- taking into account the gender approach in public policy making,⁶⁹⁴

683 Law of Ukraine No **785-VIII** "On Amendments to the Labour Code of Ukraine to Harmonise Legislation in the Area of Preventing and Countering Discrimination with European Union Law" of 12.11.2015.

684 Law of Ukraine No. **2229-VIII** "On Preventing and Countering Domestic Violence" of 07.12.2017.

685 Order No. **1254** of the Ministry of Health of Ukraine "On Recognizing Invalid Order No. 256 of the Ministry of Health of Ukraine of December 29, 1993" of 13.10.2017.

686 <https://zakon.rada.gov.ua/laws/show/1401-20#Text>

687 <https://zakon.rada.gov.ua/laws/show/1213-20#Text>

688 Law of Ukraine No. **1086-IX** "On Amendments to the Law of Ukraine 'On Civil Service' to Remove Age Restrictions for Employment in the Civil Service" of 16.12.2020.

689 Law of Ukraine No. **592-IX** "On Amendments to the Law of Ukraine 'On Collecting and Accounting of the Single Contribution for Compulsory State Social Insurance' to Eliminate Discrimination of Payers" of 13.05.2020.

690 Draft law No. **5265** on amendments to certain legislative acts of Ukraine to improve the protection of workers' rights of 18.03.2021; draft law No. **4598-2** on amendments to certain legislative acts of Ukraine to prohibit manifestations of sexism in society of 02.02.2021.

691 Draft law No. **4174** on amendments to certain legislative acts to ensure equal opportunities in the field of labour of 30.09.2020; draft law No. **4285** on amendments to certain laws of Ukraine with regard to social protection of the elderly of 29.10.2020; draft law No. **5344** on amendments to certain laws of Ukraine to create favourable conditions for employment of persons with disabilities of 07.04.2021.

692 National strategy for creating a barrier-free environment in Ukraine until 2030. Approved by Order No. **366-p** of the Cabinet of Ministers of 14.04.2021.

693 On the establishment of Barrier-Free Environment Council. CMU Resolution No. **443** of 14.04.2021.

694 On the National Strategy in the field of human rights. Decree No. **119/2021**; of the President of Ukraine of 24.03.2021; On approval of the action plan for the implementation of the Poverty Reduction Strategy for 2020. CMU Order No. **202-p**; of March 3, 2020; On approval of the action plan to fulfil the commitments of the Government of Ukraine in the field of promotion of gender equality undertaken within the framework of the international Biarritz Partnership initiative. CMU Order No. **1578-p** of 16.12.2020.

- inclusion of the gender component in the adoption of legislation and acts for the regulation of collective bargaining,⁶⁹⁵
- expansion of the powers of state bodies,⁶⁹⁶ creation of special structural subdivisions in state bodies,⁶⁹⁷ establishment of advisory bodies on ensuring equal rights and opportunities for women and men,⁶⁹⁸ monitoring, accounting, and reporting.⁶⁹⁹

Despite this progress, it is necessary to improve the mechanism for ensuring equal rights and opportunities in respect of access to employment and occupation, goods and services, social security, effective prohibition, prevention and countering of discrimination on other grounds (except gender), and simplification of access to administrative and judicial protection procedures.

Health and safety at work

Ensuring healthy and safe working conditions

Articles 419, 420, and 424 of the Association Agreement; Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work; Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual Directive); Council Directive 89/655/EEC of 30 November 1989, concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive); Directive 2001/45/EC of the European Parliament and of the Council of 27 June 2001 amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC); Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (eleventh individual Directive within the meaning); Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries; Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace; Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites; Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC, amended by Directives 91/382/EEC of 25.06.1991 and 2003/18/EC of 27.03.2003. The Directives were repealed by Directive 2009/148/EC of 30.11.2009); Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (sixth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC - Codification of Directive 90/394/EEC; Directive 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC); Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive); Council Directive 92/58/EEC of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work (ninth individual Directive); Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive); Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (fifteenth individual Directive); Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents (vibration) (sixteenth individual Directive); Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents (noise) (seventeenth individual Directive); Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (18th individual

⁶⁹⁵ Guidelines for assessing the gender impact of sectoral reforms. Approved by Order No. **257** of the Ministry of Social Policy of 14.04.2020; Guidelines for the integration of gender approaches in the development of regulations. Approved by Order **86** of the Ministry of Social Policy of 07.02.2020, registered with the Ministry of Justice on February 27, 2020 under No. 211/34494; Guidelines for the introduction in collective agreements of provisions aimed at ensuring equal rights and opportunities for women and men in employment relations. Approved by Order No. **56** of the Ministry of Social Policy of 29.01.2020.

⁶⁹⁶ On determining issues within the competence of the Vice Prime Ministers of Ukraine. CMU Resolution No. **274** of 25.03.2020.

⁶⁹⁷ Model Regulation on the Unit in Charge of Equal Rights and Opportunities for Women and Men and Model Regulation on the Advisor on Equal Rights and Opportunities for Women and Men, Preventing and Countering Gender-Based Violence. Approved by CMU Resolution No. **930** of 09.10.2020

⁶⁹⁸ On the establishment of the Commission for the Coordination of Interaction of Executive Bodies to Ensure Equal Rights and Opportunities for Women and Men. CMU Resolution No. **784** of 02.09.2020.

⁶⁹⁹ Matters of data collection for monitoring gender equality. CMU Order No. **1517-p** of 02.12.2020.

Directive); Directive 2006/25/EC of the European Parliament and of the Council of 5 April 2006 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation) (19th individual Directive); Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive); Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels; Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (fourth individual Directive); Commission Directive 91/322/EEC of 29 May 1991 on establishing indicative limit values by implementing Council Directive 80/1107/EEC on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work; Commission Directive 2000/39/EC establishing a first list of indicative occupational exposure limit values; Commission Directive 2006/15/EC establishing a second list of indicative occupational exposure limit values.

Within the area of Health and Safety at Work (Annex XL), Ukraine has committed itself to approximating its legislation to 27 EU directives. Some of these directives have been repealed by new ones, so the actual number of directives to be transposed is now 24 directives. It should also be mentioned that the directives that are in force today and that should be transposed into national legislation have been amended, which should be taken into account during implementation. The legislation was to be transposed within 2 to 10 years of the entry into force of the Association Agreement.

The regulatory approximation in this area varies. During the period from 2014 to 2019, transposition was mainly carried out through the adoption of by-laws (mainly by the Ministry of Social Policy of Ukraine) that took into account the requirements of certain directives adopted in the EU to specify the framework Directive 89/391/EEC. In particular, such acts were adopted to establish rules for the safety and health of workers when using work equipment, personal protective equipment, when working with display screen equipment, manual handling of loads, safety requirements at construction sites, safety and health protection of workers in surface and underground mineral-extracting industries, protection of workers from risks related to exposure to biological and chemical agents at work, etc.⁷⁰⁰ The same is true for 2020 and the 1st half of 2021, when individual regulations were adopted by individual ministries. Thus, in July 2020, the Ministry of Health of Ukraine adopted new hygienic regulations for chemicals (amended in May 2021)⁷⁰¹ and hygienic regulations for biological substances in the air at the workplace,⁷⁰² and the Ministry of Infrastructure of Ukraine made changes to stipulate that the ship crew should include a ship doctor who would provide medical care.⁷⁰³

As regards the approximation of national legislation to Framework Directive 89/391/EEC, it is at an early stage. According to the Concept of reforming the occupational safety management system in Ukraine and the Action Plan regarding its implementation (CMU Order No. 989-p of 12.12.2018⁷⁰⁴) to introduce a risk-oriented approach to the occupational safety management system, it is necessary to adopt a new Labour Code; and in 2020 a special law should be adopted. The necessary acts have not been adopted.

As for the special law, on January 29, 2021 the Ministry of Economy, among other measures, promulgated draft law of Ukraine “On the Safety and Health of Workers at Work,”⁷⁰⁵ which aims to introduce a risk-based approach and implement the provisions of Council Directive 89/391/EEC. The draft law mostly takes into account the requirements of the latter. Its content was commented on by stakeholders both at the national⁷⁰⁶ and at international levels. In particular, on July 18, 2021, within the EU-ILO project “Towards Safe, Healthy and Declared Work in Ukraine” technical recommendations were provided concerning this draft law.⁷⁰⁷ On July 21, 2021, the Ministry of Economy published the revised draft law for discussion. Currently, the relevant draft law has not been registered with the Verkhovna Rada, no special law has been adopted.

700 Rules for the protection of workers during loading and unloading works. Approved by Order No. **21** of the Ministry of Energy and Coal Industry of 19.01.2015, registered with the Ministry of Justice on 03.02.2015 under No. 124/26569; Minimum safety and health requirements at mobile construction sites. Approved by Order No. **1050** of the Ministry of Social Policy of 23.06.2017, registered with the Ministry of Justice on September 8, 2017 under No. 1111/30979; Safety and health requirements for the use of production equipment by workers. Approved by Order No. **2072** of the Ministry of Social Policy of 28.12.2017, registered with the Ministry of Justice on January 23, 2018 under No. 97/31549; Safety and health requirements for work with display screen equipment. Approved by Order No. **207** of the Ministry of Social Policy of 14.02.2018, registered with the Ministry of Justice on April 25, 2018 under No. 508/31960; Requirements for the safety and health protection of workers in surface and underground mineral-extracting industries. Approved by Order No. **943** of the Ministry of Social Policy of July 2, 2018, registered with the Ministry of Justice on July 27, 2018 under No. 872/32324; Minimum health and safety requirements for the use by workers of personal protective equipment at the workplace. Approved by Order No. **1804** of the Ministry of Social Policy of November 29, 2018, registered with the Ministry of Justice on December 27, 2018 under No. 1494/32946.

701 Hygienic regulations for the content of chemicals in the air at the workplace. Approved by Order No. **1596** of the Ministry of Health of Ukraine of 14.07.2020, and registered with the Ministry of Justice of Ukraine on 03.08.2020 under No. 741/35024; Changes to the Hygienic regulations for the content of chemicals in the air at the workplace. Approved by Order No. **881** of the Ministry of Health of Ukraine of 06.05.2021, and registered with the Ministry of Justice of Ukraine on June 10, 2021 under No. 781/36403.

702 Hygienic regulations for the content of biological substances in the air at the workplace. Approved by Order No. **1596** of the Ministry of Health of Ukraine of 14.07.2020, and registered with the Ministry of Justice of Ukraine on 03.08.2020 under No. 741/35024.

703 On amending the Procedure for establishing the minimum crew complement of the vessel. Approved by Order No. **399** of the Ministry of Infrastructure of Ukraine of 16.07.2020, and registered with the Ministry of Justice on 31.07.2020 under No. 736/35019.

704 <https://zakon.rada.gov.ua/laws/show/989-2018-%D1%80#Text>

705 <https://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=2aef0adc-3565-4b0c-a018-df258017427a&title=ProektZakonuUkrainiproBezpekuTaZdoroviaPratsivnikivNaRoboti>

706 Decision No. **19-1** of the JRB of trade union associations “On the Opinion of Trade Unions about the Draft Law of Ukraine ‘On the Safety and Health of Workers at Work’” of 02.02.2021.

707 https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/legaldocument/wcms_815565.pdf

Partial transposition of occupational safety and health requirements took place through the development of draft regulations by CEBs. Including:

- updating safety rules in the oil and gas industry,⁷⁰⁸ which include a separate section on drilling wells. However, the draft act applies only to the oil and gas industry rather than to all mining enterprises;
- revision of the requirements for safety and health at the workplace,⁷⁰⁹ which needs clarification to designate the competent authority and specify its powers, stipulate the responsibility of the employer for compliance with the minimum requirements, etc.;
- conducting risk assessment at the workplace, developing and taking measures necessary to protect the health and safety of workers;⁷¹⁰
- provision of medical care on board ships.⁷¹¹ The draft law is designed to implement the requirements of the ILO conventions on the work in maritime shipping, but it contains provisions for medical care on board vessels that are provided by EU directives. In particular, the bylaw provides for the requirement for a detailed list of medicines, medical equipment and antidotes on board vessels;⁷¹²
- protection of workers from risks associated with the use of asbestos. This matter is partially covered in the draft law of Ukraine “On the Public Health System” (registered with the Verkhovna Rada on September 22, 2020 under No. 4142⁷¹³), its Art. 27 prohibits “manufacturing and use of asbestos irrespective of its type and asbestos-containing products and materials in the technological processes and during construction and installation work at any sites.” Currently, the draft law has been adopted only in the first reading.

With regard to other matters, the transposition in the ministries and CEBs is only at the stage of planning to draft the necessary by-laws. In particular, this applies to:

- the approval of the State Public Health Rules and Regulation “On the Protection of workers from Risks Related to Exposure to Asbestos and Asbestos-Containing Materials and Products” and approval of the Concept for the Elimination of Diseases Associated with Asbestos Dust for 2021-2028 and long-term perspective and approval of the Action Plan for its implementation;⁷¹⁴
- approval of the Minimum Health and Safety Requirements for Work in Potentially Explosive and Flammable Atmosphere.⁷¹⁵

The shortcomings related to the adoption of the necessary transposition regulations on occupational safety and health and their practical implementation include failings at the stage of government planning measures to implement the Association Agreement, delays by responsible ministries/CEBs because the deadlines have not yet passed, and inconsistencies in cooperation between the CEBs responsible for performing the measures set out in the government plan.

The positive aspects for both regulatory and implementation approximation include the EU and ILO technical assistance. Thus, since January 2020, the EU-ILO Project “Towards Safe, Healthy and Declared Work in Ukraine” has been implemented. The project supports the drafting and advocacy of CMU laws and regulations with a view to the proper and sustainable transposition into national law of a number of EU directives specified in Annex XL to Chapter 21 of the Association Agreement.

Cooperation on social protection and social inclusion

Articles 419 and 420 of the Association Agreement.

The commitment differs from others in that it is not due to the need to approximate the directives of Annex XL, but rather testifies to the CMU’s desire to reform its own legislation in the social sphere. The term for its implementation is specified in the government’s Action Plan on the implementation of the Association Agreement – it implies adoption of a relevant law. The Government of Ukraine identified it as its commitment in the Action Plan on the implementation of the Association Agreement based on Art. 420 of the Association Agreement.

708 Draft order of the Ministry of Economy, Trade and Agriculture of Ukraine “On Approval of Safety Rules in the Oil and Gas Industry” (developed by the State Labour Service of Ukraine **1, 2**). The draft document has not been endorsed by the JRB of trade union associations (**3**), but has received a positive decision from the State Regulatory Service of Ukraine (**4**).

709 Draft order of the Ministry of Development of Economy, Trade and Agriculture of Ukraine on approval of the Technical Regulation on safety and health signs at work (pp. **9-49**).

710 Guidelines for the employer in respect of occupational safety and health measures based on a risk-oriented approach (developed by the State Labour Service and published for discussion on **01.07.2020**).

711 Draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine in Connection with the Ratification of the Maritime Labour Convention (MLC) of the International Labour Organization, 2006, as amended” (developed by the Ministry of Infrastructure and published for discussion on **11.05.2021**).

712 Draft Rules for the Control of Vessels to Ensure the Safety of Navigation (new version) (developed by the Ministry of Infrastructure and published for discussion on **29.03.2021**)

713 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70025

714 Clauses 15 and 28 of the Action Plan of the Ministry of Health of Ukraine to prepare draft regulatory acts for 2020, approved by Order No. **2713**, of the Ministry of Health of Ukraine of 28.12.2019.

715 Clause 2.6 of the Action Plan of the State Labour Service of Ukraine to prepare draft regulatory acts for 2021. Annex 1 to Order No. **161** of the State Labour Service of 10.12.2020.

Regulatory approximation is perfect. The law laying down the legal basis for the provision of social services in Ukraine was adopted back in 2003. In May 2016, draft law No. 4607 was registered, which was considered on January 17, 2019 and adopted as the new Law of Ukraine “On Social Services” (No. 2671-VIII).⁷¹⁶ During 2014-2019, state standards for the provision of social services were approved. During 2020 and 1st half of 2021 this process continued, new standards⁷¹⁷ and by-laws aimed at the practical provision of social assistance were adopted.⁷¹⁸

The practice of enforcement of the current legislation in the field of social services has demonstrated the need to improve it, in particular with regard to introducing a licensing system in the field of social services, introducing state supervision and control in the field of social services, stimulating the development of social services, and changing mechanisms for financing social services. In 2021, a special advisory body was established to improve the legislation,⁷¹⁹ which has already started its work.

⁷¹⁶ <https://zakon.rada.gov.ua/laws/show/2671-19#Text>

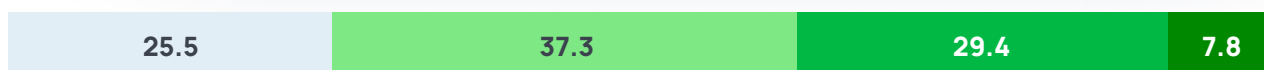
⁷¹⁷ In particular, the State Standard for Social Services in Kind. Approved by Order No. **147**, of the Ministry of Social Policy of Ukraine of March 25, 2021, registered with the Ministry of Justice on April 29, 2021 under No. 589/36211; State Standard for Social Services of Respite Care for Children with Disabilities Provided to Parents or Carers. Approved by Order No. **13** of the Ministry of Social Policy of Ukraine of January 19, 2021, registered with the Ministry of Justice of Ukraine on April 20, 2021 under No. 534/36156.

⁷¹⁸ For example, “On Arranging Social Services.” CMU Resolution No. **587** of 01.06.2020.

⁷¹⁹ On the establishment of a working group to improve legislation on the development and regulation of the social services market. CMU Resolution No. **125** of February 17, 2021.

PUBLIC HEALTH

Experts: Olesia Tsykaliuk



not started early stage advanced perfect critical non-conformity

Under the Association Agreement, Ukraine has undertaken the following commitments in the area of public health:

1. carrying out reforms in the field of healthcare, including public health;
2. strengthening the system of prevention and control of communicable diseases;
3. reform of the “blood safety” sector, as well as that of “tissues, cells and organs”;
4. reducing the burden of non-communicable diseases caused by drug, alcohol and tobacco dependence, as well as early detection of cancer and prevention of injury.

Within the EU, healthcare systems vary a lot, due to both organisational features and the health status of the population of the respective countries and regions. As there is no single model, EU legislation in this area is rather limited. Most binding EU acts have to do with communicable diseases, in particular the compatibility of surveillance and information exchange systems, as well as in the field of “blood safety”. The other EU public health legislation, in particular on the policies to prevent a number of risk factors associated with non-communicable diseases, are largely of recommendatory nature.

The implementation of this part of the Agreement is of great importance for Ukraine’s national security, in particular in respect of ensuring biosafety and biosecurity for public health, as well as improving the quality of life and life expectancy of the population – currently life expectancy in Ukraine amounts to 72.2 years (as of 2020⁷²⁰), which is 9 years less than in the EU.

Strengthening of the public health system and its capacity in Ukraine

Although there are no EU acquis on the general public health system (there are only some regulations on communicable and non-communicable diseases) and despite the significant differences in the organisation of healthcare in different countries, the AA includes the task of strengthening Ukraine’s public health system in general, and the EU is constantly monitoring Ukraine’s progress in this area.

The Agreement does not contain any specific commitments on how to strengthen the public health system. However, Article 427 of the Agreement includes the following areas: implementation of reforms, development of primary healthcare and training of staff; prevention and control of communicable and non-communicable diseases. Ukraine shall gradually approximate its legislation and practice to the principles of the EU acquis in this sector (Chapter 22, Article 427 (c)).

The practical implementation of healthcare financing reform is at an advanced stage. In this area, Ukraine has made significant progress over the past 5 years, in particular, it has developed and adopted Law of Ukraine No. 2168-VIII “On State Financial Guarantees of Public Healthcare” of October 19, 2017. From April 1, 2020, the funding for all types

720 <https://www.macrotrends.net/countries/UKR/ukraine/life-expectancy>

of medical care has been provided under a new system – i.e., the Programme of Medical Guarantees. However, the pandemic, which began in the world in 2019 and affected Ukraine in 2020, has significantly shifted the priorities of the state policy in the field of healthcare. Nevertheless, the Cabinet of Ministers of Ukraine has approved the Programme of Medical Guarantees (PMG) for 2021, and the PMG budget has increased. Primary healthcare finance reform began in mid-2018 and has been gradually influencing the quality of healthcare provision. The introduction of the e-health system has been somewhat less effective, as well as the implementation of medical education reform, which are an integral part of other reforms.

The practical implementation of public health reform is still at an early stage. CMU Order No. 1002-p “On Approval of the Concept of Development of the Public Health System” of 30.11.2016 laid the foundation for the development of the system. However, until 2020, most of the measures of the plan had not been implemented, and the draft law “On the Public Health System” had not been submitted to the Verkhovna Rada. On May 31, 2016, the Ministry of Health established the State Institution Public Health Centre of the Ministry of Health of Ukraine.⁷²¹ By 2020, a network of regional public health centres had been developing, some of which had begun work on assessing public health challenges and priorities for their regions. In 2020, the situation changed: the public health system received priority attention at the political level, which has led to a radical change in the vision of the system, in particular, all regional public health centres have been eliminated. Instead, a decision was made to build a centralized public health system, the MoH’s regional laboratory centres have been renamed into disease control centres and received additional funding. In addition, the draft law “On the Public Health System” (Reg. No. 4142) has been adopted by the Verkhovna Rada of Ukraine in the first reading, although discussions around the act still continue. Legislative regulation of the development of the public health system remains fragmentary.

Communicable diseases

The matter of prevention and control of communicable diseases is considered at the EU level in terms of threats to public health. Although non-communicable diseases are the leading cause of morbidity and mortality in both the EU and Ukraine, the COVID-19 pandemic, which began in 2019, has confirmed that it is communicable diseases that pose a global threat. In this context, the EU has established a framework for cooperation between EU Member States to exchange information on public health emergencies, introduce elements of a network for surveillance and a system for early detection and timely response to threats.

The system of epidemiological surveillance and early response to communicable diseases is closely linked to a similar system of the WHO – the International Health Regulations, which have been adopted by Ukraine.

The AA provides for the approximation of Ukrainian legislation to that of the EU in respect of the approval of the list of communicable diseases and related health conditions to be covered by the system of epidemiological surveillance and reporting in EU countries, as well as setting the criteria (clinical, epidemiological, and laboratory ones) based on which a case should be classified as a relevant communicable disease.

Ukraine has not approved any regulatory documents to approximate the national legislation on information exchange with EU law, the exchange is not systematic: Ukraine provides information on only a few medical conditions, case definitions in Ukrainian and EU legislation and practices do not always coincide, registration of communicable diseases in Ukraine is also unsystematic. This is largely due to the inconsistency of sectoral legislation and in many cases its obsolescence, uncertainty of the institutional framework at the central and regional levels, weak communication links among different sectors and among public health institutions and healthcare institutions.

To ensure implementation in the relevant areas, it is necessary to create a strategic framework for the development of communicable disease control system, update legislation and bring it into line with EU legislation, create a single national institution responsible for public health. These steps have been partially completed. In particular, the institutional framework (i.e., the Centre of Public Health of the Ministry of Health) has been created, the procedures of epidemiological surveillance have been updated, and the legislation on communicable diseases subject to epidemiological surveillance has been partially harmonised. The Ministry of Health adopted Order No. 1726 of 30.07.2020, introducing the procedure of epidemiological surveillance of communicable diseases, approving the list of communicable diseases subject to registration, and eliminating the inconsistency in the national legislation on these matters.

Another important step is the development and adoption by the Verkhovna Rada in the first reading of the draft law “On the Public Health System.” The draft law introduces the basic definitions and framework for the functioning of the public health system in Ukraine.

721 <https://www.kmu.gov.ua/news/249080727>

Some steps have also been taken to create a strategic framework for combating communicable diseases, including the Concept of Public Health Development, national strategies for preventive immunization, biosafety, tuberculosis control, and antimicrobial resistance. At the same time, no single vision/strategy for the communicable disease control system has been developed.

Commission Decision 2002/253/EC, laying down clinical, laboratory and epidemiological criteria for case definitions for reporting communicable diseases to the Community network, has been fully transposed into national law by Order No. 905 of the Ministry of Health of 28.12.2015. In addition, in 2019, the definitions of measles and rubella were updated. At the same time, there have been no updates to any other orders of the Ministry that also approve the definitions of communicable diseases. In this regard, it is necessary to revise the regulatory framework in the field of communicable diseases to bring it in line with the said Commission Decision.

Prevention of injury and promotion of safety

Council Recommendation of 31 May 2007 on the prevention of injury and the promotion of safety

When it comes to European recommendations concerning the prevention of injury and the promotion of safety, we focus primarily on road accidents. Ukraine is one of the leaders among European countries in terms of relative accident rates and the consequences of road accidents. Thus, on average there are 5 fatalities per 100 thousand inhabitants in road accidents in EU member states, while in Ukraine this figure amounts to 8.22 people (as of 2019).

In 2020, road accident statistics further worsened – 168 thousand accidents (compared to 160,675 accidents in 2019), which killed 3,541 people, including 168 children, 1,198 pedestrians and 235 cyclists.⁷²² This also damages Ukraine in socio-economic terms. Thus, the damage from road traffic injuries is estimated at USD 4.5 billion a year,⁷²³ and tens of thousands of Ukrainians get injured or disabled every year and have their lifestyle changed because of injuries forever.

The EU recommendations, which are not binding on Ukraine, focus on taking measures to prevent injuries, which is always a better option than dealing with the consequences of events that have already taken place. The recommendations also promote a coordinated approach to the use of data on injuries, their monitoring and reporting to improve national injury prevention policies.

Regulatory implementation of the recommendations is at an advanced stage. Currently, Ukraine has such regulations as the Strategy for Improving Road Safety in Ukraine until 2020⁷²⁴ and a new Strategy for Improving the Road Safety in Ukraine until 2024,⁷²⁵ as well as the National Transport Strategy of Ukraine until 2030.⁷²⁶ In 2021, Law of Ukraine No. 1231-IX “On Amendments to Certain Legislative Acts of Ukraine to Strengthen the Liability for Certain Violations in the Area of Road Safety” was adopted,⁷²⁷ which significantly increases the financial, administrative and criminal liability for traffic violations.

These measures are aimed at preventing offences, promoting more self-controlled and sensible behaviour of drivers on the roads, which, in turn, should help reduce the number of accidents.

Hence, we can argue that the implementation is advanced.

Blood safety

Donor blood safety is an important part of public health, and the relevant adaptation includes both the institutional component (reform of the establishments responsible for the collection of blood and blood components) and legislation (laws and regulations). In 2020, important changes were made to the functioning of both the blood system and donation in general. Special attention was paid to the definition of voluntary unpaid donation in Ukrainian conditions, ways to promote it and involve various actors in its development.

⁷²² Clarification from the Patrol Police <http://patrol.police.gov.ua/statystyka/>;

⁷²³ CMU Order No. 481-p “On Approval of the Strategy for Improving the Road Safety in Ukraine until 2020” of June 14, 2017;

⁷²⁴ CMU Order No. 481-p “On Approval of the Strategy for Improving Road Safety in Ukraine until 2020” of June 14, 2017.

⁷²⁵ CMU Order No. 1360-p “On Approval of the Strategy for Improving Road Safety in Ukraine until 2024” of October 21, 2020;

⁷²⁶ CMU Order No. 430-p “On Approval of the National Transport Strategy of Ukraine until 2030” of May 30, 2018;

⁷²⁷ Law of Ukraine No. 1231-IX “On Amendments to Certain Legislative Acts of Ukraine to Strengthen the Liability for Certain Violations in the Area of Road Safety” of 16.02.2021.

Reforming the safety of blood and blood components

Directive 2002/98/EC setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components;

Commission Directive 2004/33/EC implementing Directive 2002/98/EC as regards certain technical requirements for blood and blood components;

Commission Directive 2005/62/EC implementing Directive 2002/98/EC as regards Community standards and specifications relating to a quality system for blood establishments;

Commission Directive 2005/61/EC implementing Directive 2002/98/EC as regards traceability requirements and notification of serious adverse reactions and events.

An effective system of blood establishments and development of blood donation depend on the concerted action of various-level government agencies that are responsible for blood safety. That is why in recent years Ukraine has focused on creating an effective top-down structure of authorities in the field of blood safety and the adoption of relevant legislation on their work.

The regulatory approximation of the field of blood safety varies from early to advanced. To approximate the national blood system to the European requirements, in 2019 the government adopted a Strategy for the Development of the National Blood System until 2022, and in 2020 new Law of Ukraine No. 931-IX “On Safety and Quality of Blood” of September 30, 2020 was adopted,⁷²⁸ which replaced the outdated regulatory act and encouraged the drafting of new by-laws, taking into account European practices. The new law largely focuses on the contemporary definition of blood safety and quality, establishes a top-down structure of the blood system with a clear-cut distribution of functions and responsibilities among its components to ensure compliance with these requirements. Also, according to the new law, a National Register of Blood Donors and Blood Components, as well as Persons Prohibited from Performing the Donor Function should be established in Ukraine within a year (it was never created in 2020). The Law also specifies the modern institutional structure of the blood system, consisting of 3 levels: central, regional and hospital-based.

Today, the Ministry of Health is the central executive body responsible for the state policy making in the field of blood safety, the Ukrainian Transplant Coordination Centre performs the functions of the National Transfusiology Centre as a coordinator in the blood system,⁷²⁹ promoting the implementation of the state policy in the field of blood, coordinating the operation of blood system entities, managing and monitoring the implementation of state programmes by such entities, as well as providing guidance in the field of blood donation.

The new law also specifies the authorized body, which must perform the following functions: licensing of economic activities of blood system entities for the collection and testing of donor blood and blood components; carrying out control and inspection measures at various levels; receiving information about serious adverse events and serious adverse reactions; carrying out state supervision (control) in the field of donation of blood and blood components, collection, testing, processing, storage, distribution, transportation and sale of donor blood and blood components.

Given the above, it is clear that the authorized body will have to perform the tasks undertaken by Ukraine under the Association Agreement (state supervision and control over the activities of blood system institutions and establishments, the mechanism of periodic reporting on the quality and safety of blood and blood components, mechanism for monitoring and exchanging information on adverse events and reactions, etc.). Therefore, today it is important to create an authorized body and approve the relevant regulations, which will allow us to talk about the practical implementation of these tasks.

The update of the framework Law entailed a partial update of the by-laws on the blood system. Thus, the following acts were drafted and adopted:

- On Approval of the Procedure for Issuing the Certificate of the Donor of Blood and Blood Components and its Form;⁷³⁰
- On Amendments to the Procedure for the Quarantining of Donor Plasma and to the Procedure for Medical Examination of Donors of Blood and (or) Blood Components.⁷³¹

⁷²⁸ <https://zakon.rada.gov.ua/laws/show/931-20#Text>

⁷²⁹ Order of the Ministry of Health No. 962 “On Approval of the Regulation on the Specialized State Institution Ukrainian Transplant Coordination Centre” of 18.05.2021.

⁷³⁰ CMU Resolution No. 193 “On approval of the Procedure for Issuing the Certificate of the Donor of Blood and Blood Components and its Form” of March 10, 2021;

⁷³¹ Order No. 207 of the Ministry of Health “On Amendments to the Procedure for the Quarantining of Donor Plasma and to the Procedure for Medical Examination of Donors of Blood and (or) Blood Components” of 08.02.2021;

However, a number of bylaws still need to be revised and updated, for example: the Order of the Ministry of Health “On Approval of the Procedure for Monitoring Compliance with Safety and Quality Indicators of Donor Blood and Blood Components,”⁷³² Order of the Ministry of Health “On Approval of the Regulation on the Blood Transfusion Establishment (regarding the organisation of management of the system of quality and safety of donor blood and blood components)”⁷³³ etc.

The updated legislation introduced changes to the criteria for donor eligibility/non-eligibility. Thus, the terms of donor non-eligibility due to vaccination and small surgical interventions were reduced, and changes were made to the process of examination of donors in blood centres (liver tests were abolished). These measures significantly expand the range of people who can become donors. Due to the revision of contraindications to donation, people who were recognized temporarily or permanently ineligible can again try to donate blood.

One of the key criteria for bringing blood system entities into line with EU requirements for the safety and quality of donor blood and blood components, in particular for the introduction of quality systems, is the ability of such entities to get accreditation in accordance with the requirements of the European Blood Inspection System (EuBIS). Currently, the requirements for such establishments are laid down by the order of the Ministry of Health on the standards of accreditation of healthcare establishments,⁷³⁴ and the procedure for accreditation was approved by the relevant resolution of the Cabinet of Ministers. To this end, in 2018, the American International Health Alliance in Ukraine (USA), as part of the technical assistance to the Ministry of Health of Ukraine, launched and conducted an assessment of 16 blood system establishments in different regions to determine if they are ready for accreditation under Directives 2002/98/EC and 2005/62/EC, as well as EU-GMP and PIC/S GMP standards for blood transfusion establishments, the CoE “Guide to the preparation, use and quality assurance of blood components,” and ISO 9000 using an adapted evaluation tool. In 2020, GFA Consulting Group GmbH (Germany), in the framework of the EU technical assistance project “Support to Ukraine for developing a modern Public Health System” provided to the State Institution Public Health Centre of the Ministry of Health of Ukraine, conducted assessment of 13 blood establishments. Based on the results, recommendations were prepared to improve the operation of blood establishments.

Hence, we can argue that the implementation varies from an early stage to an advanced stage.

Implementation of policies to encourage voluntary and unpaid donation of blood and blood components

Directive 2002/98/EC setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components.

Voluntary and unpaid blood donation is the global gold standard in the area, and therefore its introduction and promotion are extremely important for Ukraine. According to Directive 2002/98/EC, voluntary and unpaid blood donation is a factor which can contribute to high safety standards for blood and blood components and therefore every effort should be made to develop it.

Regulatory approximation is early. According to the Strategy adopted in 2019, important steps are to be taken to raise the awareness of the general public about voluntary and unpaid donations, but the relevant by-laws have not been developed. The new law on blood safety and quality also covers a number of areas for the development of voluntary and unpaid donations, but implementation has not yet begun.

Tissue and cell transplantation

After many years of discussions on the reform and rebooting of transplantation in Ukraine, it was at the end of 2019 that changes to legislation were made that have yielded significant results in a short time. Thousands of Ukrainians need organ and tissue transplants every year, and in 2020 the number of such transplants in Ukraine increased to 129 operations; whereas in the first half of 2021, 126 organ transplants have already been performed. In addition, the ratio between the number transplants from living donors and post-mortem donors has changed – now it is equal (1:1). Today, kidney, heart and liver transplants are most often performed in Ukraine. Bone marrow transplantation also started in Ukraine in 2020.

⁷³² Order No. 211 of the Ministry of Health “On Approval of the Procedure for Monitoring Compliance with Safety and Quality Indicators of Donor Blood and Blood Components” of 09.03.2010;

⁷³³ Order No. 1112 of the Ministry of Health “On Approval of the Regulation on the Blood Transfusion Establishment (regarding the organisation of management of the system of quality and safety of donor blood and blood components)” of 14.12.2010;

⁷³⁴ Order No. 142 of the Ministry of Health “Standards for the Accreditation of Health Care Establishments” of 14.03.2011.

Such changes testify to the development of transplantation in Ukraine, and the allocation of funds to support the domestic transplantation system is financially beneficial to the state. Thus, in previous years, the costs under the state “Treatment Abroad” programme, provided for transplant surgery abroad, had been growing steadily – in 2020 the figure was set at UAH 1.09 billion, which was UAH 300 million more than in 2019. However, in 2021, due to the successful launch of transplantation in Ukraine, the relevant costs were reduced to UAH 20 million.

The European integration commitments also include encouraging voluntary and unpaid tissue and cell donation. To introduce this approach, it is necessary to change the public attitudes towards transplantation: overcome prejudice and fears and conduct a competent awareness-raising campaign.

Reforming the field of human tissue and cell transplantation

Directive 2004/23/EC

Directive 2006/17/EC implementing Directive 2004/23/EC

Directive 2006/86/EC implementing Directive 2004/23/EC

When analysing the compliance of the Ukrainian transplantation system with European standards, we will primarily focus on the institutional component. The CMU by its resolution established the Ukrainian Centre for Transplant Coordination.⁷³⁵ The Centre is charged with organisational management and coordination of healthcare establishments that provide medical care involving transplantation and coordinates the work of the blood service of Ukraine. The Ministry of Health of Ukraine believes that the establishment of the Centre will help increase the number and quality of transplant procedures.

Today, the network of transplant establishments includes 47 pilot healthcare facilities. It is important to mention that in 2019 the limited list of institutions engaged in transplantation was abolished, and this medical procedure can now be used by any medical institution regardless of the form of ownership on condition that it is licensed by the Ministry of Health.

For transplant surgery and the relevant new policy to be effective, new specialists were needed – i.e., transplant coordinators. That is why in 2021 four institutions introduced training programmes for these specialists (Shupyk National Medical Academy of Postgraduate Education, Shalimov National Institute of Surgery and Transplantology under the National Academy of Medical Sciences, Zaporizhia Medical Academy of Postgraduate Education of the Ministry of Health, and Bohomolets National Medical University). It is planned that professionals from the USA, Spain and Germany will be involved in the training of Ukrainian transplant coordinators.

Financial support for the development of this area is important – in 2021 the government adopted a resolution on changes to the list of services and rates for transplantation services,⁷³⁶ increasing the rates for transplant surgery (liver, kidney and bone marrow transplantation) paid by the government. This may provide new healthcare establishments with financial incentives to provide transplantation services. The rates cover all the components necessary for transplantation, including reimbursement of costs at the donor stage, which can be carried out in the vast majority of healthcare establishments, which, in turn, will have a positive effect on their development and quality of care in intensive care units.

The regulatory approximation is at an “advanced stage.”

In 2020-2021, Ukraine continued adopting legislation required to create an effective system of transplantation.

Another important factor was the introduction of the Unified State Information System for Organ and Tissue Transplantation (USIST),⁷³⁷ which is designed to automatically match donors and recipients and effectively and promptly (in real-time mode) provide participants in the national system of organ transplantation with the necessary information. The USIST also makes possible collection, accumulation, archiving, prompt processing and transfer of information about recipients and donors, anatomical materials, bioimplants and their use for transplantation and implantation, which makes it possible to track the movement of tissues and cells. The USIST ensures unbiased matching of donor-recipient pairs.

In order to improve the functioning of the USIST and ensure the transparency of the distribution of anatomical materials, the relevant order of the Ministry of Health was adopted and registered with the Ministry of Justice.⁷³⁸

⁷³⁵ CMU Order No. 1154-p “On the Establishment of the Specialized State Institution Ukrainian Centre for Transplant Coordination” of September 23, 2020;

⁷³⁶ Government Resolution No. 698 “On Amendments to CMU Resolutions No. 1083 of December 18, 2019 and No. 181 of March 3, 2021” of July 7, 2021;

⁷³⁷ CMU Resolution No. 1366 “On Approval of the Regulation on the Unified State Information System for Organ and Tissue Transplantation” of December 23, 2020.

⁷³⁸ Order No. 293 of the Ministry of Health “On Approval of the Procedure for Distribution of Anatomical Materials and Criteria for Matching Donors and Recipients” of 18.02.2021, registered with the Ministry of Justice on 16.04.2021 under No. 527/36149;

In addition, Ukraine has adopted legislation on ways to engage in donation or for a person to refuse to donate⁷³⁹ (consenting and withdrawing previously given consent to the removal of anatomical materials, application for appointment, change or revocation of an authorized representative) to create transparent rules for interaction in this field.

The basic concepts of the import/export of tissues and cells are defined, which is important for coordination of work with international partners. Thus, work was arranged on the use of information in non-governmental registers on potential hematopoietic stem cell donors and the search for hematopoietic stem cell donors in the WMDA (World Marrow Donor Association) registry, thus providing access to the necessary transplant material for Ukrainian patients.⁷⁴⁰

The Law⁷⁴¹ has introduced tighter liability for intentional violations during transplantation – amendments have been made to the Criminal Code, in particular:

- Article 143 establishes liability for violations of the statutory procedure for transplantation of anatomic materials to humans;
- punishment for deceptively or forcibly removing a person's anatomical materials for the purpose of their transplantation;
- punishment for actions committed against persons in a position of vulnerability or economically or otherwise dependent on the offender;
- punishment for illegal trade in human anatomical materials.

47 medical institutions have already received a licence to perform transplant operations, but it should be mentioned that the licensing conditions were drawn up in 2016 and need to be revised in line with European standards.⁷⁴²

Hence, we can say that the implementation is advanced.

Development and implementation of measures to encourage voluntary and unpaid tissue and cell donation

Directive 2004/23/EC

Directive 2004/23/EC emphasizes the need to hold information and awareness campaigns at national and European levels on the donation of tissues, cells and organs based on the theme “we are all potential donors”. Given the established worldview and traditions in society, the topic of transplantation is still quite new and needs support at the state level.

Regulatory approximation is “advanced.” The Law of Ukraine “On the Use of Transplantation of Anatomical Materials to Humans” provides for the introduction of a system of information support for transplantation and activities related to transplantation, in particular through informing and awareness raising to form a positive public attitude to the donation of anatomical materials.

The practical implementation of the norms on encouraging voluntary and unpaid donation of tissues and cells is at an early stage. In 2020 and the first half of 2021, progress has been negligible and mainly concerns individual information messages from activists and NGOs, informing about events in the field of transplantation and encouraging those who care to become donors, help form the bone marrow donor base, etc. However, today it is also important to conduct national awareness-raising campaigns.

Tobacco

Tobacco smoking is one of the most significant risk factors for non-communicable diseases and remains a public health challenge in middle- and low-income countries, such as Ukraine. Therefore, this commitment aims to minimize the harmful effects of tobacco smoking on the health of the population of Ukraine.

⁷³⁹ CMU Resolution No. 457 “On Amendments to Resolution No. 1211 of the Cabinet of Ministers of Ukraine of December 27, 2018” of May 12, 2021;

⁷⁴⁰ CMU Resolution No. 257 “On Approval of the Procedure for Collecting and Providing Hematopoietic Stem Cells and Exchange of Information on Available Human Anatomical Materials Intended for Transplantation” of March 25, 2020;

⁷⁴¹ Law of Ukraine “On the use of Transplantation of Anatomical Materials to Humans”;

⁷⁴² CMU Resolution No. 286 “On Approval of the Licence Conditions for Conducting Economic Activities by Banks of Umbilical Cord Blood, Other Human Tissues and Cells in Accordance with the List Approved by the Ministry of Health” of March 2, 2016.

Transposition of policies for the production, presentation and sale of tobacco products and related products

Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products;

Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products;

Council Recommendation of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control.

Under Article 428 of the Agreement, Ukraine is to approximate its legislation and practice to the principles of the EU acquis, in particular in the field of tobacco regulation. The list of relevant EU acquis is specified in Annex XLI to the Agreement. Although according to the Annex, Ukraine has to align its legislation with the provisions of Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001, in April 2014 the European Parliament and the Council took a decision to adopt new Directive 2014/40/EU and repeal Directive 2001/37/EC. Therefore, the commitments under Annex XLI to the Agreement should be interpreted as Ukraine's commitments to transpose into national law the provisions of Directive 2014/40/EU provided for in the Action Plan on the Implementation of the EU-Ukraine Association Agreement.

Ukraine is still at an early stage of transposition of EU legislation. National legislation fully complies with Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products, but the 2014 update requires that Ukraine introduce relevant changes to national legislation. Draft law No. 2719 "On Amendments to Certain Legislative Acts of Ukraine Concerning the Adaptation of Ukrainian Legislation to the Requirements of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014" of 11.01.2020 can fulfil the transposition commitment. But the lack of political will undermines the adoption of this draft law by the Verkhovna Rada.⁷⁴³

The Action Plan on the implementation of the Association Agreement contains nine implementation tasks designed to fulfil this commitment. However, without the adoption of the relevant law or laws, they cannot be implemented.

Alcohol

Alcohol is a readily available substance with addictive potential that can adversely affect the physical, mental and social health of those who abuse it. Alcohol is one of the four leading risk factors for premature mortality and accounts for approximately 5% of the global burden of disease.⁷⁴⁴ Recent studies show that 66% of the population in Ukraine consume alcoholic beverages.⁷⁴⁵ Special risks are associated with alcohol abuse in children and adolescents, 85.7% of whom have experience of alcohol use and almost half have consumed alcohol ten times or more. At the same time, it is rather significant that access to alcohol has become easier – most respondents said that they can easily get beer, wine and soft drinks.⁷⁴⁶

Gradual approximation of legislation to the principles of the EU acquis establishing the key health determinants, such as alcohol dependence, and reducing of alcohol consumption by young people

The introduction of strategies to prevent alcohol abuse among children, adolescents and the general population is in line with the Association Agreement, whereunder Ukraine undertook to approximate its legislation to the principles of the EU acquis, specifically as regards "promoting healthy lifestyles, addressing major health determinants and problems, such as mother and child health, mental health, and addiction to alcohol, drugs and tobacco" (Chapter 22, Article 427 (c), of the Association Agreement).

In Ukraine, this area is regulated by Law of Ukraine No. 481/95-BP "On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes, and Fuel" of December 19, 1995, which contains the basic principles of the state policy with regard to alcohol consumption and is constantly updated.

⁷⁴³ CMU Resolution No. 1106 of October 25, 2017 <https://bit.ly/3qYBFhx>

⁷⁴⁴ WHO. Adolescent alcohol-related behaviors: trends and inequalities in the WHO European region, 2002-2014. Collaborative, cross-national study, 2018. http://www.euro.who.int/_data/assets/pdf_file/0007/382840/WH15-alcohol-report-eng.pdf?ua=1

⁷⁴⁵ Rating Group study "Alcohol Consumption in Ukraine" http://ratinggroup.ua/research/ukraine/potreblenie_alkogolya_v_ukraine.html

⁷⁴⁶ Ukrainian Institute for Social Research. Smoking, Alcohol and Substance Abuse among Adolescents who Study: Prevalence and Trends in Ukraine. ESPAD-2019. http://www.uisr.org.ua/img/upload/files/B_Report_ESPAD_2019_Internet.pdf

Due to the launch of public health reform and adoption by the government of sustainable development goals gave an impetus to activities aimed at preventing alcohol-related harm to public health, as specified in the National Action Plan on Non-Communicable Diseases.⁷⁴⁷ This plan envisages national awareness-raising campaigns based on international experience, creation and use of teaching materials in schools and universities, development of a plan of fiscal measures based on international experience, improvement of national legislation based on international experience, alcohol abuse prevention, etc. Such transformative measures, if applied effectively, will help improve the statistics on alcohol consumption by the public. However, no relevant regulations have been developed to implement these measures, so legislation and implementation are still at an early stage.

At the same time, in 2021, the liability for selling alcohol to minors has been increased: financial sanctions are applied to economic entities – a fine of UAH 6800 hryvnias (used to be UAH 1700) or revocation of the licence for retail trade in alcoholic beverages and tobacco products.⁷⁴⁸

The existing legal framework banning the advertising of alcoholic beverages on television and radio between 6:00 a.m. and 11:00 p.m. is not properly enforced, as there are regulatory loopholes, such as the permission for alcoholic beverage producers to place sponsorship messages, which enables their presence in the information space. The oversight of compliance with the ban on selling alcohol drinks to minors is performed rather sporadically by law enforcement agencies, and no systemic intersectoral measures are taken. Therefore, we can conclude that **the implementation of measures aimed at reducing alcohol consumption among young people is at an early stage.**

Cancer

Cancer is a major cause of early death, especially in low- and middle-income countries. Statistics show that in developed countries the 5-year survival rate for people diagnosed with cancer amounts to 85%, whereas in Ukraine this figure is only 53%. Only 68% of primary cancer patients are covered by specialized treatment in Ukraine. We rank second in Europe in terms of the rate of cancer spread, with almost 1 million patients with malignant neoplasms registered. Worldwide, one of the most effective methods of combating cancer is early diagnosis and prevention.

EU legislation in this area is of recommendatory nature. At the same time, the implementation of these recommendations will have a positive effect on both public health and the economy.⁷⁴⁹

Запровадження комплексного підходу до діагностики ракових захворювань, заснованого на кращих практиках держав-членів ЄС

Рекомендація Комісії 2003/878/ЄС «Про обстеження на виявлення ракових захворювань» від 2.12.2003

Рекомендація Комісії 2003/878/ЄС спрямована на покращення комплексного підходу до раннього виявлення ракових захворювань, що дозволить зменшити пов'язану смертність, а також знизити витрати на лікування раку. Серед ключових рекомендацій: запровадження скринінгових програм, розвиток централізованих баз даних, забезпечення доступності цільових груп до впроваджених скринінгових програм, регулярний моніторинг ефективності програм, навчання персоналу, впровадження новітніх тестів з врахуванням результатів міжнародних досліджень тощо.

Це зобов'язання не передбачає безпосередньої розробки законодавчих актів.

Національний план заходів щодо неінфекційних захворювань для досягнень глобальних цілей сталого розвитку містить раннє виявлення онкологічних захворювань як один із пріоритетних напрямів попередження розвитку⁷⁵⁰ неінфекційних хвороб. Раннє виявлення раку молочної залози, колоректального раку та раку передміхурової залози серед осіб з груп підвищеного ризику наразі входять до переліку послуг на первинній ланці⁷⁵¹. Проте дані заходи стосуються ранньої діагностики раку, а не скринінгових програм, які виявляють рак на досимптомній стадії та прописані у рекомендаціях ЄС.

⁷⁴⁷ CMU Order No. 530-p "On Approval of the National Action Plan on Non-Communicable Diseases to Achieve Global Goals of Sustainable Development" of July 26, 2018.

⁷⁴⁸ Law of Ukraine No. 1019-IX "On Amendments to Certain Legislative Acts of Ukraine to Restrict the Circulation of Excisable Goods and Devices for Heated Tobacco Products and Improve Control over the Sale of Such Goods" of December 2, 2020.

⁷⁴⁹ The global economic toll from cancer exceeds USD 1 trillion. Ukraine also suffers from the damage caused by this disease, especially considering that according to statistics, 35% of cancer deaths are people of working age.

⁷⁵⁰ CMU Order No. 530-p of August 26, 2018

⁷⁵¹ <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-nacionalnogo-planu-zahodiv-shchodo-neinfekciynih-zahvoryuvan-dlya-dosyagnennya-globalnih-cilej-stalogo-rozvitku>

⁷⁵¹ Order No. 504 of the Ministry of Health of Ukraine "On Approval of the Procedure for Providing Primary Care" of 19.03.2018

https://moz.gov.ua/uploads/0/4207-dn_20180319_504.pdf#page=3

Mental health – drug dependence

Addiction to drugs or other substances is a disease that manifests itself in compulsive substance seeking, despite the adverse consequences. The rate of risky behaviours among drug users correlates with the level of drug criminalisation – the higher the level of criminalisation, the greater the negative impact on health. However, there are effective ways to treat and prevent drug dependence, as well as mechanisms to reduce harm to health among drug users. It is in order to minimize the harm to health from drug addiction that this area has been included in Chapter 22 of the AA. Monitoring and systematic study of drug use in the EU have been the key to successfully overcoming the challenges of drug dependence. In Ukraine, drug addiction has been addressed and resolved mostly through law enforcement.

Gradual approximation of legislation to the principles of the EU acquis establishing the key health determinants, such as drug dependence, in order to reduce the adverse health and social consequences of drug dependence

Council Recommendation 2003/488/EC of 18 June 2003 on the prevention and reduction of health-related harm associated with drug dependence

The document recommends introducing national strategies to prevent drug dependence and drug use, as well as introducing a number of services, including (but not limited to) providing information and counselling to drug users to promote risk reduction, developing and implementing outreach guidelines, applying peer-to-peer methods in working with drug users, informing communities and families, promoting hepatitis B vaccination, providing various methods of treatment for drug dependence to drug users in accordance with their individual needs, access to condoms and injection materials, etc.

The regulatory approximation in Ukraine is at an advanced stage. Ukraine has officially expressed its desire to join the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group) in January 2022. This decision is based on the adopted law on joining this group.⁷⁵² By joining this group, Ukraine will improve its policies and measures to combat drug abuse.

Currently, the Centre for Mental Health and Monitoring of Drugs and Alcohol of the Ministry of Health of Ukraine is monitoring problems related to drugs and their use in Ukraine based on the indicators of the European Monitoring Centre.⁷⁵³ We have a corresponding report for 2020.⁷⁵⁴ It involves regular monitoring of the situation concerning the trafficking in psychotropic substances, combating their illicit trafficking, prevention of non-medical use of psychotropic substances, treatment, resocialisation, diagnosis and rehabilitation (medical and social) of addicts.

The strategy of the state narcotic drug policy for the period up to 2020 was adopted by CMU Order No. 735-p back in 2013,⁷⁵⁵ but it did not meet the EU standards in this area. The Action Plan for the Strategy for 2019-2020, adopted by CMU Order No. 56-p of February 6, 2019, partially approximated the EU norms, but not in full. In 2021, the Ministry of Health published for public discussion a draft order of the Cabinet of Ministers “On Approval of the State Narcotic Drug Policy Strategy until 2030”, which partially takes into account the European and world practices as regards the prevention and combating of drug addiction.

The implementation of the tasks within the commitments in this area is at an early stage. Although Ukraine has introduced a monitoring mechanism for problems related to narcotic drugs and their use in accordance with the indicators of the European Monitoring Centre, due to the lack of any strategic document, the measures necessary to combat drug addiction are not taken.

⁷⁵² Law of Ukraine of No. 1647-IX “On Ukraine’s Accession to the Partial Agreement on the Establishment of a Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group)” of 14.07.21.

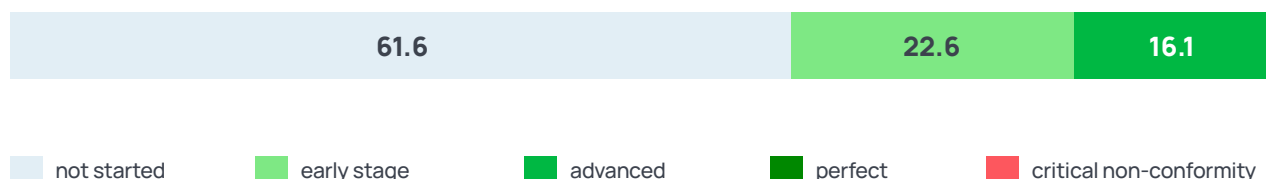
⁷⁵³ CMU Resolution No. 689 “Matters Related to the Monitoring of the Drug and Alcohol Situation in Ukraine” of July 10, 2019

⁷⁵⁴ National reports <https://cmhmda.org.ua/report/>

⁷⁵⁵ <https://zakon.rada.gov.ua/laws/show/735-2013-%D1%80>

EDUCATION, TRAINING AND YOUTH

Experts: Halyna Usatenko



In the field of education, in 2020 and 2021, no significant progress has been made in the implementation of the key tasks regarding Recommendation 2008/C111/01; Directive 2005/36/EC; Recommendation 2006/962/EC; Communication from the Commission COM (2001) 678; Regulation (EU) 1288/2013.

The commitments within the sector of Education remain relevant and have not been fully fulfilled in three areas:

- Reform of the qualifications system (National Qualifications Framework, which includes the National Register of Qualifications);
- Implementation of the principles of academic integrity;
- Lifelong learning (dual education, adult education, etc.).

Reform of the qualifications system

The following goals are expected to be achieved:

- harmonisation of the European standards and principles of quality assurance in education taking into account the requirements of the employment market for the competencies of professionals with practice in Ukraine;
- reconciliation of legislation in the field of education and social and employment relations;
- promoting national and international recognition of the qualifications obtained in Ukraine;
- establishing effective interaction between educational services and the employment market.

This thematic area includes several commitments:

1. Ensuring international recognition of the National Qualifications Framework ([Recommendation 2008/C111/01](#)).
2. Establishment of the National Register of Qualifications ([Recommendation 2008/C111/01](#)).
3. Improving the mechanisms for awarding professional qualifications based on external assessment of competencies ([Directive 2005/36/EC](#), [Recommendation 2008/C111/01](#)).
4. Establishing rules for conducting professional activities ([Directive 2005/36/EC](#), [Recommendation 2008/C111/01](#)).

In the period from 2014 to 2019, the Cabinet of Ministers of Ukraine by Resolution No. 1341 of November 23, 2011 approved the National Qualifications Framework (NQF).⁷⁵⁶ However, for international recognition it is necessary to introduce a set of regulatory procedures in the field of education and establish effective interaction with the employment market. No systemic steps have been taken in this regard.

⁷⁵⁶ <https://zakon.rada.gov.ua/laws/show/1341-2011-%D0%BF#n12>

On June 6, 2019, Law No. 2745-VIII “On Professional Higher Education” was adopted,⁷⁵⁷ which regulates the activities of professional educational institutions. On June 12, 2019, the Cabinet of Ministers of Ukraine at its meeting approved the concept of “Modern Professional (Vocational) Education,”⁷⁵⁸ identifying key areas for reform until 2027.

During 2020 and the first half of 2021, some attempts at legislative action have been made. Specifically, the long-awaited draft law “On Professional (Vocational) Education” has been registered with the Verkhovna Rada, included in the agenda under No. 1164-IX⁷⁵⁹ of 02.02.2021, and discussed in the committees of the Verkhovna Rada. However, the vote did not take place.

Two important regulatory acts on the promotion of national and international recognition of qualifications obtained in Ukraine include CMU Resolution No. 620 “On Approval of the Regulation on the Register of Qualifications” of June 16, 2021⁷⁶⁰ and CMU Resolution No. 762 “On Amendments to the List of the Fields of Knowledge and Specialties in which Students Seeking Higher Education are Trained” of July 7, 2021.⁷⁶¹ The latter Resolution is important in that it harmonises the educational specialties (i.e. higher education) of Ukraine with the International Standard Classification of Education.

The regulatory approximation is early. The practical implementation of the recommendations of the European Parliament and the Council can be described as early. On the one hand, until recently, there was no single national-level institution that would collect information and form sub-registers to create a National Register of Qualifications. On the other hand, there were no regulatory acts that would ensure international recognition of the National Qualifications Framework and creation of a National Register of Qualifications. Another important factor contributing to the lack of mechanisms for practical implementation is the outdated law on professional (vocational) education. Delayed reform of vocational training, in particular in terms of its inconsistency with the framework Law “On Education” and contemporary challenges of the employment market, make full-fledged work on the National Register of Qualifications impossible.

In 2020 and the first half of 2021, some necessary steps have been taken to implement the recommendations of the European Parliament and the Council. However, the implementation of the CMU Resolution “On Approval of the Regulation on the Register of Qualifications” has not yet begun.

Implementation of the principles of academic integrity

The following goals are expected to be achieved:

- enshrining in legislation and constant practice of quality assurance in higher education based on the principle of transparency of the accreditation procedures for educational programmes;
- streamlining, in the process of accreditation, of educational standards and professional qualifications with employment market demands;
- consistent implementation of the policy of academic integrity; and
- introduction of mechanisms for an external system of quality assurance in education.

Institutionally, this mission is assigned to the National Agency for Higher Education Quality Assurance (NAQA).

This thematic area involves the commitment to implement the European guidelines and standards for quality assurance in higher education (ESG) ([Recommendation 2008/C111/01](#), [Recommendation 2006/143](#)).

In 2019, the NAQA:

1. developed a regulatory framework for introducing an external system of quality assurance in education – i.e., accreditation of educational programmes;
2. initiated a digital culture of accreditation;
3. contributed to the functioning of internal systems for higher education quality assurance;
4. contributed to the internationalisation of higher education in Ukraine;
5. arranged systematic work on academic integrity in higher education establishments and the academic and scientific environment.

757 <https://zakon.rada.gov.ua/laws/show/2745-19>

758 <https://zakon.rada.gov.ua/laws/show/419-2019-%D1%80>

759 <https://zakon.rada.gov.ua/laws/show/1164-IX#Text>

760 <https://zakon.rada.gov.ua/laws/show/620-2021-%D0%BF#Text>

761 <https://bit.ly/3u5nqJN>

However, in 2020, certain socio-political processes in Ukraine hindered the NAQA's work. This is mentioned in the report of the Agency for 2020.⁷⁶² In particular, it emphasized: "In 2020, the National Agency's experience of upholding the principles of academic integrity during accreditation, in the public context and in courts has led us to the conclusion that today Ukraine cannot do without a special law also containing certain procedural rules. Therefore, the Agency developed a draft law of Ukraine "On Academic Integrity", which has already received positive feedback from experts of the National Academy of Legal Sciences and has been submitted to the Committee on Education, Science and Innovation of the Verkhovna Rada of Ukraine."

To improve the practical implementation of the commitments in the area, the Academic Integrity and Quality Initiative (Academic IQ) project implemented by the American Councils for International Education with the assistance of the US Embassy in Ukraine (Public Affairs Section), the Ministry of Education and Science of Ukraine, and the National Agency for Quality Assurance in Higher Education, intensified its activities, aiming to bring together the professional community of educators to share their experience and collaborate for the institutionalisation of the principles of academic integrity in the system of secondary and higher education of Ukraine.⁷⁶³

Lifelong learning (dual education, adult education, etc.)

The commitment involves implementation of the Millennium Development Goals,⁷⁶⁴ adopted by Ukraine in 2000 in line with the global Millennium Development Goals proclaimed by the United Nations, where the provision of quality lifelong learning is recognized as one of the most important goals. In practice, it means developing/revising educational standards taking into account the core competencies of lifelong learning as well harmonised interaction of the educational and industrial spheres in order to train qualified professionals within the framework of organisationally distinct forms of education.

This thematic area includes several commitments:

1. Ensuring access to lifelong learning ([Recommendation 2006/962/EC](#), [Recommendation 2008/C111/01](#));
2. Updating educational standards for the appropriate levels, taking into account the basic competences of lifelong learning ([Recommendation 2006/962/EC](#), [Recommendation 2008/C111/01](#));
3. Introduction of a dual education system ([Communication from the Commission COM \(2001\) 678](#)).

In the period from 2014 to 2019, regulatory approximation was not launched.

It should be mentioned that in April 2019 the Cabinet of Ministers by its Order No. 214-p of April 3, 2019 approved the Action Plan on the implementation of the Concept of Training Specialists under the Dual Education Form.⁷⁶⁵ However, no item of this Plan was fulfilled in time.

There was no practical implementation of the provisions of European legislation.

However, on 20 September 2020, the draft law "On Adult Education" was published for public discussion on the website of the Ministry of Education and Science of Ukraine, establishing the key innovations introduced by this law.⁷⁶⁶ Specifically, this draft law introduces into the legislation the term "adult education provider" as a complex concept that covers all legal entities and individuals providing educational services to adults, and proposes a new institution – the National Council for Adult Education.

However, this discussion did not yield any results and the draft law was never submitted to the Verkhovna Rada.

The same is true for the draft regulation on the dual form of tertiary and pre-tertiary education.⁷⁶⁷ The draft act was discussed but was not approved. It was preceded by the signing of a memorandum of cooperation between the Ministry of Education and Science of Ukraine, the Friedrich Ebert Foundation and the Scientific and Methodological Centre for Pre-Tertiary and Tertiary Education.⁷⁶⁸ According to the memorandum, the parties undertake to work together and make concerted efforts to implement a pilot project for training specialists under the dual form of education in tertiary and pre-tertiary education establishments.

The regulatory approximation has not started.

762 <https://naqa.gov.ua/wp-content/uploads/2021/02/%D0%A0%D1%96%D1%87%D0%BD%D0%B8%D0%B9-%D0%B7%D0%B2%D1%96%D1%82-2020.pdf>

763 <https://academiq.org.ua/>

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TITLE VI

**FINANCIAL COOPERATION,
WITH ANTI-FRAUD PROVISIONS**

FINANCIAL COOPERATION, WITH ANTI-FRAUD PROVISIONS

Experts: Svitlana Brus



not started early stage advanced perfect critical non-conformity

Ukraine is currently creating mechanisms that will allow it to detect financial offences and increase liability for damages as a result of such offences, as well as increase liability and punishment for crimes and fraud in the financial sector. In general, bringing the anti-fraud legislation in line with European standards and the practical implementation of such cooperation will enhance the legal protection of financial cooperation under the AA between Ukraine and the EU.

The main objectives of the sector: to create a mechanism for conducting audits and checks of the use of EU assistance and cooperation with the European Anti-Fraud Office (OLAF); to implement into national law provisions establishing measures to prevent, remedy and punish for fraud affecting the financial interests of the EU, in accordance with the EU Convention on the Protection of the European Communities' Financial Interests and Protocols thereto.

Establishing cooperation and coordination with the European Anti-Fraud Office (OLAF)

It involves designating the Ukrainian institutions involved in the anti-fraud activities in the framework of technical cooperation projects/programmes and drafting a relevant resolution of the Cabinet of Ministers of Ukraine on coordination of cooperation with the European Anti-Fraud Office (OLAF).

The legislative approximation is advanced.

The practical implementation is also advanced. Coordination of cooperation with the European Anti-Fraud Office (OLAF) has been arranged by all regulators involved. CMU Resolution No. 1110 of 25.10.2017 established the Interdepartmental Coordination Council for Countering Violations that Affect the Financial Interests of Ukraine and the EU, approved its staff and Regulation, and authorized the Ministry of Internal Affairs to perform the functions of the National Contact Point (NCP) in liaising with OLAF and the European Court of Auditors (ECA) in respect of the implementation of Title VI of the Association Agreement and the relevant Annexes thereto. The NCP has initiated communication with the EU to conclude a separate agreement (memorandum) on cooperation between the Ministry of Internal Affairs and OLAF aimed at laying down the legal basis and procedure for operational cooperation.

Providing mutual administrative assistance and legal support in taking measures to prevent and fight fraud, corruption and other illegal activities

It involves the provision of mutual administrative assistance and legal support in taking measures to prevent and fight fraud, corruption and other illegal activities, align national legislation with the provisions set out in Annex XLIV to the Association Agreement, practical implementation of cooperation, and exchange of information with the EU at the operational level in accordance with effective procedures.

Legislative approximation has not begun. Public authorities have not started any work to fulfil the task.

PART 2

KEY CONCLUSIONS AND RECOMMENDATIONS

TITLE II

**POLITICAL DIALOGUE,
NATIONAL SECURITY AND
DEFENCE**

DIALOGUE AND COOPERATION ON DOMESTIC REFORM

Decentralization and public administration reform

Key conclusions:

Within the reform of local self-government and decentralization, Ukraine has fulfilled the task of reforming its administrative and territorial system, which was a necessary prerequisite for the reform of local self-government and decentralization of authoritative and financial powers. However, a lot remains to be done in terms of legislation – first of all, no amendments have been made to the Constitution of Ukraine regarding local self-government and territorial organisation of power, although all the preparatory work for this has long been done.

After five years of reforming public administration in respect of the institutional reform of the executive authorities, we have only managed to reach an understanding with European partners concerning its goals and implementation methodology; and tested pilot variants, which yielded different results depending on subjective factors (attitude of the relevant minister to the reform). By mid-2021, much more progress had been made in the field of civil service reform (totally competitive selection, tried-and-tested methodology of competitions), but confidence in this reform was largely undermined by the changes of 2019, whose negative impact did not disappear after their abolition. In order to ensure the capacity of the Government of Ukraine to develop and implement the policy of sustainable development and the policy of European integration for our country, it is necessary to give a major impetus to the reform of the public administration system.

Recommendations:

- Adopt the Law “On the Administrative and Territorial Structure of Ukraine”;
- Adopt the Law “On Amendments to the Constitution of Ukraine to Reform Local Self-Government and Territorial Organization of Power”;
- Legislatively expand opportunities for citizen participation in local self-governance through local referenda, citizens’ assemblies, public self-organisation bodies, etc.;
- Adopt the Law “On Local State Administrations” (No. 4298) (or on prefectures – should amendments be made to the Constitution);
- Finalize and approve a new law “On Local Self-Government” or the Municipal Code;
- Complete the transfer of powers and relevant financial resources to local self-governments in the framework of decentralization.
- Adopt a new Law “On the Cabinet of Ministers and Central Executive Bodies”;
- Approve the structure of the relevant public policy and complete the creation of a system of directorates in all ministries (4-7 directorates in each) so that they would cover the entire sphere of public policy;
- Approve the concept of public policy strategic planning to ensure Ukraine’s sustainable development;
- Reform the CMU Rules of Procedure and the CMU Secretariat based on the results of the three above items;
- Perform functional analysis of all ministries and other central executive bodies and consecutive reform of the CEB system so that ministries could focus exclusively on public policy making and analysis, whereas all administrative powers would be exercised by government bodies without overlaps, gaps and conflicts of interest;
- Steadily develop and improve competition-based procedures for employment, training and education of civil servants, increasing the remuneration of civil servants;
- Finally adopt the Law “On Administrative Procedure”, organising a set of measures for its implementation;
- Complete the establishment of Administrative Service Offices in all communities, accelerating the decentralization and digitalization of administrative services, and adopt the Law “On Administrative Fees”.

Electoral and parliamentary reform

Key conclusions:

Overall, Ukraine has managed to make progress in meeting its commitments in this area, however, a number of measures remain to be taken (see recommendations below).

Recommendations

- Optimize the provisions of the Electoral Code of Ukraine in order to eliminate the existing inconsistencies.
- Streamline the legal regulation of the election process and the process of organising and holding referenda in Ukraine (after the law “On Local Referenda” is adopted).
- Amend the Constitution of Ukraine to ensure functional parliamentary immunity.
- Adopt the law “On Local Referendum.”
- Restore the right of political parties to receive state funding for their statutory activities if supported by at least 2% of voters in the latest regular or extraordinary elections to Ukraine’s parliament in the national multi-member constituency.
- Adopt the new version of the Law of Ukraine “On Political Parties in Ukraine”.

FOREIGN, SECURITY AND DEFENCE POLICY

Key conclusions:

The EU has chosen a “cautious” and restrained strategy for cooperation with Ukraine in the area of security, resulting in a lack of clear-cut objectives and specific commitments in the Association Agreement. Moreover, the text of the security articles of the Agreement is somewhat outdated and does not take into account the change in the security situation in the region after Russia’s aggression. The lack of ambitions in mutual security commitments is one of the reasons for the high fulfilment status in this sector. Despite the fact that there is an intensive political dialogue between Ukraine and the EU, the security component is of secondary importance. As regards countering Russian aggression against Ukraine, the EU is not directly involved in the conflict resolution process, limiting itself to political, advisory and logistical assistance. The desire to strengthen security cooperation makes Ukraine resort to unilateral proactive steps, such as enshrining the aspiration to become an EU member in the Constitution and strategic documents as Ukraine’s priority interest, as well as aspiring to join new EU security initiatives such as PESCO. Thus, along with updating the sectoral part of the Agreement, there is a need to revise the political one, in particular the articles on foreign policy, security and defence.

The existing commitments and identified areas of cooperation are generally progressing at a satisfactory pace. In 2020-2021, there has been some progress in cooperation between Ukraine and the EU in the field of crisis management – Ukraine is gradually resuming its participation in EU operations. In the field of military-technological cooperation, the Law on Defence Procurement was adopted in July 2020, but the regulatory framework for its implementation needs to be improved. In 2020, the Ministry of Defence continued cooperation with the EDA in the specified areas. Ukraine also continues approximating the procedures of state export control to the EU standards and cooperation on combating terrorism and cyber threats.

Recommendations for further implementation of commitments

Deepening dialogue and cooperation, promoting gradual convergence in foreign and security policy, including the Common Security and Defence Policy (CSDP)

- Initiate negotiations with the EU to revise the foreign policy and security articles of the Association Agreement. Deepen the dialogue in the defence and military spheres.

Holding mutually-beneficial dialogue and cooperation in the field of space (security component)

- Adopt the Law “On State Regulation in the Field of Remote Sensing of the Earth.”
- Conclude an Agreement between the State Space Agency of Ukraine and the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT) on the technical conditions for obtaining Earth remote sensing data.

Regional stability, conflict prevention and military-technological cooperation

- Establish effective, high-quality and transparent work in the field of sanctions policy in respect of counteracting Russian aggression.
- Finalize regulations for the implementation of the Law “On Defence Procurement”.
- Adopt the Law “On Military-Technological Cooperation”.
- Ukraine needs to seize opportunities and expand institutional cooperation with the European Defence Agency and the European Security and Defence College, as well as establish cooperation with the EU Institute for Security Studies.

Cooperation on disarmament, arms control and non-proliferation of weapons of mass destruction

- Adopt a new version of the Law of Ukraine “On State Control over International Transfers of Military and Dual-Use Goods”; bring the legal acts in the field of state export control in line with the new Law.
- Make changes to the Unified List of Dual-Use Goods in order to implement the decisions of international export control regimes.

Combating terrorism

- Adopt the Law “On Critical Infrastructure”.
- Continue negotiations and launch counter-terrorism cooperation between the SBU and Europol.

Countering cyber threats

- Adopt laws to implement the Council of Europe Convention on Cybercrime.

TITLE III

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

RULE OF LAW AND RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Key conclusions:

During the first years after the ratification of the Agreement with the EU, Ukraine drafted and adopted some progressive laws aimed at developing and strengthening law enforcement, anti-corruption bodies and the judiciary. However, the enforcement of these laws ran against a lack of political will to make radical changes, strong opposition from the corrupt system that was to be reformed, and the authorities' desire to maintain control over the newly established independent institutions.

In February 2021, Ukraine and the EU issued a joint statement⁷⁶⁹ following the 7th meeting of the EU-Ukraine Association Council, pointing out the need for Ukraine to step up efforts on strengthening the rule of law and to ensure the independent and effective operation of the anti-corruption institutions. It was also reconfirmed that a comprehensive judicial reform remains vital.

Work on the implementation of the provisions of Title III of the Association Agreement for all subsectors is systematic but slow. The key achievements in 2020 and the first half of 2021 include the adoption of the Law "On Indigenous Peoples of Ukraine", approval of a new National Strategy for Human Rights for 2021-2023, further progress in issuing biometric documents, approval of the Government Action Plan for the construction of priority checkpoints for 2021-2023, opening of a new Orlivka-Isaccea checkpoint in 2020, and adoption and signing of a law on joining the Pompidou Group.

Over the years of implementation of the AA, there have been a large number of developed, registered, and then withdrawn legislative initiatives (especially in the area of "Anti-Discrimination"). It may be a good idea for the Ukrainian authorities to revive these initiatives and approve at least some of them.

Recommendations:

Reform of law enforcement and the judiciary

- Strengthen the institutional capacity and ensure the political independence of law enforcement and anti-corruption bodies, bring the relevant legislation in line with the Constitution.
- Ensure transparent, depoliticized competitions for the positions of NABU, SAPO, DBR, and ARMA leaders.
- Reform the SBU to turn it into a purely counterintelligence and counterterrorism body.
- Adopt a new Anti-Corruption Strategy and ensure its implementation.
- Continue and accelerate the implementation of ongoing judicial reform projects that can be successful. Develop an action plan for the implementation of the judicial reform strategy for 2021-2023 with the involvement of the professional community, international experts and representatives of the business community.
- Complete the evaluation of judges and prosecutors taking into account the previous errors.
- Reboot the judicial governing bodies (HQCJ, HCJ) on a competitive basis with the involvement of international experts with a casting vote, focusing on the integrity and independence of their members, as provided for by the new laws.
- Debureaucratize and digitize the judicial process, introduce service-focus standards for courts.
- Improve the quality of legal education by giving up the practice of training lawyers in militarized educational institutions subordinate to specific agencies.
- Introduce a transparent and fair mechanism for forming the system of bar and prosecutorial self-government bodies.

769 <https://www.kmu.gov.ua/news/spilna-zayava-za-rezultatami-7-go-zasidannya-radi-asociaciyi-mizh-ukrayinoyu-ta-yes>

Non-discrimination and protection of human rights (including protection of personal data)

- Adopt draft law No. 5488 of 13.05.2021 “On Amendments to the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine to Combat Discrimination,” adding provisions in respect of Articles 131 and 132 of the Criminal Code of Ukraine.
- Develop an implementation mechanism and implement Decision No. 65 of the Council of Judges of Ukraine on the data and statistics on court decisions in the field of discrimination.
- Strengthen the institution of the Ukrainian Parliament’s Commissioner for Human Rights, taking into account the recommendations of the Twinning project.
- Approve a code of good administrative conduct.
- Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).
- Carry out an independent assessment of the fulfilment of the commitment to bring conditions of detention of convicts and detainees in line with international norms and standards for convicts at the military detention facilities of the Central Office of the Military Police.
- Approve draft law No. 5336 of 05.04.2021 on amendments to the Criminal Code of Ukraine on criminal liability for torture.
- Continue to develop preventive and compensatory measures to combat torture and ill-treatment, in particular, the ITT custody records system.
- Develop and approve a draft law on guarantees for freedom of peaceful assembly, taking into account the recommendations of Council of Europe experts.
- Determine the legal status of persons captured and illegally imprisoned in the territory of the Russian Federation and the occupied territories.
- Develop and implement an effective mechanism for recognizing births and deaths in the occupied territories.
- Monitor the implementation of the Programme for Physical, Medical, and Psychological Rehabilitation and Social and Professional Re-Adaptation of Participants in the Anti-Terrorist Operation and Persons Who Participated in Measures to Ensure National Security and Defence, Repel and Restrain Armed Aggression of the Russian Federation in the Donetsk and Luhansk Oblasts.
- Bring the decommunization legislation in line with the recommendations of the Venice Commission by adopting amendments to the Law “On Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols”.
- Develop and adopt a draft law on changes to the legislation on personal data protection, taking into account the recommendations of the Twinning project.

Migration, border management and movement of persons

- Establish Centres for Social Integration in Kharkiv and Kyiv, and ensure the proper functioning of the Centre in Odesa.
- Continue the improvement of MACs in Kivertsi, Rozsudiriv and Martynivske of the Mykolaiv oblast. Provide access to the procedure for applying for refugee status or status of a person in need of additional protection in MACs. Provide detained foreigners with access to translators.
- Continue work on readmission agreements with countries identified as sources of migration risk. Carry out a comprehensive assessment of the implementation of existing readmission agreements. Based on the evaluation, initiate changes and additions to the agreements whose provisions and mechanisms do not fully ensure the achievement of the objectives specified therein.
- Continue work on concluding implementation protocols with EU countries. Carry out a comprehensive assessment of the implementation of the existing protocols.
- Continue the implementation of measures for joint border control in accordance with the objectives of the Action Plan on the Implementation of the Integrated Border Management Strategy.
- Resolve the conflict with EU law that thwarts the updating and signing of Joint Control Agreements, either by streamlining the relevant issues with the EU or by avoiding to locate joint checkpoints on the territory of Ukraine. Sign an updated Agreement with Poland, sign Agreements with Hungary and Slovakia. Start negotiations on an agreement with Romania.

- Develop technical and regulatory solutions to solve the problems associated with using ID cards.
- Continue to implement the Migration Policy Strategy. Revise clause 46 of the Action Plan “Introduce a mechanism for conducting a preliminary check of the grounds for entry into Ukraine of foreigners, primarily citizens of the Russian Federation, and stateless persons who come from countries at risk of migration, using electronic notification of intent to visit Ukraine”, which contradicts the logic of the European travel authorisation system y (ETIAS), which aims at citizens of countries with visa-free regimes, while the countries with migration risks proposed by Ukraine are not visa-free and their citizens undergo in-depth checks when applying for a visa.
- Carry out systematic awareness raising concerning the correct use of visa-free travel, taking into account the new conditions during the pandemic.
- Approve the New Agenda in the field of JFS (Justice, Freedom and Security), develop and approve an Action Plan for its implementation.

Cooperation in the fight against illicit drugs, and on precursors and psychotropic substances

- Continue and deepen cooperation with the European Monitoring Centre for Drugs and Drug Addiction, in particular in respect of the monitoring of the drug situation in Ukraine.

Fight against crime and corruption, judicial cooperation

- Intensify efforts to sign memoranda of cooperation with ENISA, SELEC and the NATO Trust Fund.
- Transpose the provisions of EU Directive 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

TITLE IV

TRADE AND TRADE RELATED MATTERS

TECHNICAL BARRIERS TO TRADE

Key conclusions:

In the period from 2014 to 2019, Ukraine demonstrated significant progress in implementing its commitments under the Association Agreement in the field of technical regulation. Further improvement of the domestic quality infrastructure continued in 2020-2021. Virtually all commitments and most tasks have been fulfilled, namely all laws and regulations for the implementation of basic legislation have been adopted, a number of technical regulations have been updated in line with the relevant European acquis, the National Standardisation Body has adopted international and European standards as national, monitored the activities of accredited and authorised conformity assessment bodies, all institutions of the national quality infrastructure have worked in accordance with the norms adapted to the European legislation, cooperation with the EU institutions has continued, in particular in the framework of technical assistance projects. Finally, the European party has launched a preliminary assessment of Ukraine's quality infrastructure with a view to concluding the ACAA Agreement. The status of fulfilment of all the commitments and tasks, both in terms of approximation and implementation, currently remains perfect. If the Ukrainian party manages to promptly eliminate the existing non-critical shortcomings in the field of standardisation, conformity assessment, accreditation, metrology, and market surveillance, and the pace of reforms in technical regulation does not slow down, by the end of 2022 Ukraine can expect to conclude the ACAA Agreement for the first three priorities.

Recommendations:

- In 2021, the Ukrainian party first of all needs to eliminate the shortcomings identified during the preliminary assessment of the Ukrainian quality infrastructure by European experts.
- Continue to improve framework legislation in the field of standardisation, metrology and market surveillance.
- Adopt all new versions of technical regulations on the basis of updated European directives from Annex III to the Association Agreement.
- Significantly increase the rate of adoption of both national, international and European standards and abolish outdated GOST standards.
- Within the audit of the Ukrainian accreditation system by European experts in September 2021, ensure that the EA recognition of accreditation for product certification bodies and inspection bodies be restored.
- The Cabinet of Ministers of Ukraine should adopt the Strategy for the Development of the Technical Regulation System for 2021-2025.
- The Ukrainian party should take the necessary measures to conduct the second stage of the preliminary evaluation by European experts in 2021-2022 to inspect the activities of domestic institutions, as well as work on updating legislation in line with European practice in order to conclude the ACAA Agreement.

SANITARY AND PHYTOSANITARY MEASURES (SPS)

Key conclusions:

In the field of sanitary and phytosanitary measures, significant progress has been made. The key factor in the progress was the adoption of the Law of Ukraine “On Veterinary Medicine”, which per se resolved a significant part of Ukraine’s commitments. The progress is also due to the fact that some of the draft RLAs have been adopted as orders of the ministries, because in June this year the bureaucratic procedure for their adoption was completed. As for other areas of phytosanitary measures, such as those related to chemicals and GMOs or plants, plant products and other objects of regulation, the situation has not advanced in the past year. A lot of draft RLAs are pending consideration by the State Regulatory Service (hereinafter – the SRS). No work has been launched to fulfil other commitments.

Recommendations

- In order to approximate Commission Decision 2002/226/EC, it is necessary to adopt an RLA laying down rules for checks of certain bivalve molluscs.
- Adopt the draft law “On State Regulation of Genetic Engineering and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security”, thereby implementing Commission Recommendation 2010/C 200/01, Directive 2009/41/EC, Commission Regulation (EC) 649/2004, Regulation (EC) 1830/2003, and Regulation (EC) 1820/2003. This will set out guidelines for the development of measures to avoid the unintended presence of GMOs in conventional and organic crops; requirements for the contained use of GMOs; requirements for the application for the authorisation of a new genetically modified food and feed; requirements for the registration of genetically modified feed.
- Adopt draft law No. 4600 “On Plant Protection” in order to fulfil the commitments in the field of plant health, which will help to implement in domestic legislation Regulation (EC) 1107/2009, Regulation (EU) 2016/2031, Regulation (EU) 625/2017, Regulation (EU) 2017/2313, Regulation (EU) 2019/1715, Regulation of the European Parliament 2019/1014, Directive 2009/128/EC of the European Parliament, Commission Directive 92/90, Commission Directive 92/105, Commission Directive 93/51, and Council Directive 2000/29/EC.

CUSTOMS AND TRADE FACILITATION

Key conclusions:

Since the second half of 2019, Ukraine has been making significant progress in implementing its commitments under the Association Agreement in the customs sector. In fact, it has fully implemented Regulation (EU) 608/2013 and Commission Implementing Regulation (EU) 1352/2013, related to the protection of intellectual property rights when moving goods across the customs border. Significant progress has been made in implementing the Conventions on the Common Transit Procedure and on the Simplification of Formalities in Trade in Goods. If the pace of reforms in this area remains the same, in early 2022 Ukraine might expect to get invitations to accede to these Conventions. Ukraine is significantly lagging behind in respect of the implementation of the Customs Code of the Union – in this area only pinpoint changes have been introduced. And the implementation of regulations on duty exemptions has not started at all.

Recommendations:

- Prepare and adopt a new Customs Code of Ukraine, implementing the Customs Code of the Union (Regulation (EU) 952/2013) and, accordingly, draw up a new set of bylaws to ensure its full-fledged effectiveness.
- Complete accession to the Conventions on the Common Transit Procedure and on the Simplification of Formalities in Trade in Goods. To this end, complete the drafting of the necessary bylaws. At the same time, perfect the practical application of the common transit regime with regard to the use of the IT system, issuance of permits for the simplifications, application of individual and general financial guarantees, etc.
- Adopt Draft law No. 5810 of 20.07.2021 in order to implement the exemptions from customs duties in force in the EU (Council Regulation (EC) 1186/2009).

ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE

Postal and courier services

Key conclusions:

In view of the above, it can be concluded that as of August 2021, Ukraine's commitments under the Association Agreement in the field of postal services have not been fulfilled. No progress has been made between 2020 and the first half of 2021. Due to the lack of regulatory basis, the practical implementation of the provisions of European legislation has not started for any of the commitments under examination.

However, we are cautiously optimistic about the slight progress in adapting national legislation to the requirements of EU acquis in the field of postal and courier services that took place through the drafting of the 2019 law "On Amendments to the Law of Ukraine 'On Postal Services'". We consider it necessary to finalize this draft law immediately to take into account all the relevant provisions of the EU Postal Directive and the Association Agreement, taking into consideration the expert opinion of industry experts and market representatives, obtaining approval from stakeholders, and submitting it to the Verkhovna Rada of Ukraine. Amendments to the relevant law, although not immediately and fully ensuring the fulfilment of Ukraine's commitments under the Association Agreement and compliance with the requirements of the EU Postal Directive, will still create the preconditions and legal basis for further steps, as described in the consolidated Action Plan (CMU Resolution No. 1106) and the Strategy (CMU Order No. 104-p). And by adopting relevant by-laws covering all measures necessary to implement the provisions of the EU acquis specified in Appendix XVII-4 to the AA, Ukraine will give an impetus to the development of postal services and will be able to enter the global market of postal services.

Recommendations:

- Find out the reasons for non-fulfilment of Ukraine's international commitments within the terms specified both directly in the Association Agreement and in the implementation plans;
- Stop the practice of postponing the fulfilment of commitments and outstanding tasks and their duplication in the action plans of the government and public authorities in charge;
- Introduce personal responsibility of the heads of central executive bodies for completing the tasks aimed at fulfilling Ukraine's international commitments.
- Adopt the draft law on amendments to the Law of Ukraine "On Postal Services" on condition that it is revised to take into account all key provisions of the EU Postal Directive and the Association Agreement, in particular, in respect of:
 - ◊ ensuring the independence of the national regulatory authority;
 - ◊ uniform rules and conditions governing the provision of postal services;
 - ◊ provision of universal postal services, selection and designation of operators as universal service providers;
 - ◊ financing of universal postal services on the terms that guarantee the provision of such services on a permanent basis;
 - ◊ establishing quality standards for the provision of universal postal services and introducing a system to ensure compliance with these standards;
 - ◊ tariff principles and transparency of accounts for the provision of universal postal services;
 - ◊ licence-based procedure for the provision of universal postal services;
 - ◊ harmonisation of technical standards;
 - ◊ provision of information (financial and statistical) by postal service operators;
 - ◊ ensuring consumer rights in the field of postal services,
- Finalize the analysis of the regulatory impact of the draft law on amendments to the Law of Ukraine "On Postal Services" involving financial and economic estimates.

- Adopt relevant by-laws on the basis of and following the introduction of framework rules in the postal and courier services sector by amending the law to implement in practice the rules of operation of the postal services sector harmonised with EU legislation.
- Ensure, in line with the ultimate goal of European postal policies, reliable and high-quality postal services at least five working days a week throughout the territory for all citizens and businesses at affordable prices, and pursue further integration into the European economic area based on common rules, free competition and the open market (after adopting the law and a number of bylaws).

Electronic commerce

Key conclusions:

The study of Ukraine's sectoral integration with the EU in the field of electronic commerce⁷⁷⁰ demonstrated that due to the adoption of Law No. 675-VIII "On Electronic Commerce" in 2015 Ukrainian legislation complies with Directive 2000/31/EC, but needs to be revised in most of the above sectors related to electronic commerce. In the parts of the legislation where changes have taken place (e.g., updated legislation on a) trust services,⁷⁷¹ b) payment services and systems, cost and procedure of electronic payments/acquiring of payment tools⁷⁷²) or an update is possible (e.g., regulation of postal items⁷⁷³), such changes are not considered from a comprehensive perspective and in terms of implementation of the decisions that are already provided for in EU regulations and directives. This approach generates both potential and current challenges. Already, changes in EU tax law are halting cross-border sales through electronic commerce channels to EU countries (both direct and through international or localized marketplaces). Only later will the amount of economic losses become clear. No further work is being performed to adopt and implement EU electronic commerce standards and accede to the Digital Single Market (DSM).

Recommendations:

- Update the Association Agreement concerning all aspects of electronic commerce, as well as Appendixes XVII-2, XVII-3, and XVII-4 to the AA.
- Align the procedures for electronic payments and interest fees on such payments with the EU norms (Directive 2015/2366/EU (PSD2), Regulation (EU) 2015/751).
- Align the relevant rules with EU norms to put an end to unjustified geo-blocking (Regulation (EU) 2018/302).
- Align rules on cross-border parcel delivery services with EU norms (Regulation (EU) 2018/644).
- Align consumer protection rules in the field of electronic commerce with EU norms (Directive 2019/2161/EU).
- Align legislation with the amendments to Directive 98/6/EC, Directive 2005/29/EC, and Directive 2011/83/EU.
- Align legislation with EU requirements for contracts for the supply of digital content and digital services (Directive 2019/770/EU); and subsequently with the DSA.
- Align legislation with the EU rules on VAT for online sales of goods and services, as well as on changes in customs clearance and taxation procedures (electronic commerce VAT package).

770 <https://ucep.org.ua/doslidzhennya/na-shlyahu-do-yedynogo-zyfrovogo-ryнку-yes-elektronna-kommerciya-telekomunikaciyi-dovirchi-poslugy.html>

771 <https://zakon.rada.gov.ua/laws/show/2155-19#Text>

772 Law of Ukraine No. 1591-IX "On Payment Services", <https://zakon.rada.gov.ua/laws/show/1591-20#Text>; Law of Ukraine No. 2346-III "On Payment Systems and Money Transfer", <https://zakon.rada.gov.ua/laws/show/2346-14#Text>; as amended <https://zakon.rada.gov.ua/laws/show/1587-20#Text>

773 <https://zakon.rada.gov.ua/laws/show/738-20#Text>; Law of Ukraine No. 2664-III "On Financial Services and State Regulation of Financial Services Markets",

<https://zakon.rada.gov.ua/laws/show/2664-14#Text>

773 Law of Ukraine No. 2759-III "On Postal Services", <https://zakon.rada.gov.ua/laws/show/2759-14#Text>; Resolution No. 270-2009 "On Approval of the Rules for the Provision of Postal Services", <https://zakon.rada.gov.ua/laws/show/270-2009-%D0%BF#Text>; draft law on postal services of November 10, 2020 (No. 4353).

Financial services

Key conclusions:

In 2020-2021, the implementation and adaptation of Ukrainian legislation in the field of financial services to the norms and standards of the relevant EU Directives has shown an upward trend. During this period, laws have been adopted that are of key importance to the sector, in particular Law of Ukraine No. 465-IX “On Amendments to Certain Legislative Acts of Ukraine to Improve Tax Administration, Eliminate Technical and Logical Inconsistencies in Tax Legislation” of 16.01.2020; Law of Ukraine No. 738-IX “On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Attracting Investments and Introducing New Financial Instruments (on Capital Markets and Organised Commodity Markets)” of June 19, 2020, which entered into force on July 1, 2021; and Law of Ukraine No. 1591-IX “On Payment Services” of June 30, 2021. The Verkhovna Rada of Ukraine registered the draft law “On the National Commission on Securities and Stock Market” (registration date 01.02.2021), and the draft law “On Amendments to the Law of Ukraine ‘On Non-State Pension Provision’ and Other Legislative Acts on Non-State Pension Provision” (registration date 11.02.2020). In June 2021, the draft law “On Insurance” was passed in the first reading. The above measures have accelerated the further implementation of the EU Directives for the financial sector and are mainly implemented as scheduled or almost as scheduled. It should be pointed out that for the main commitments, implementation is at the stage of advanced regulatory approximation, whereas the status of practical implementation is early.

Recommendations:

- Accelerate the implementation of the provisions relating to capital markets, in particular on oversight and mechanisms of liability that arises from breaches of securities law.
- Establish requirements for the management bodies of investment undertakings.
- Determine the procedure and conditions for licensing investment undertakings, the procedure for providing additional services to investment undertakings.
- Establish operational requirements for investment undertakings and the procedure for assigning the status of “accredited investor” by investment undertakings, restrictions on transactions with financial instruments for non-accredited investors.
- Establish the procedure and deadlines for submission of reporting data by investment undertakings and market operators.
- Bring the scope and forms of liability for violation of stock market disclosure requirements in line with EU law.
- Ensure that the mechanism for preventing insider trading and illegal disclosure of insider information is brought in line with EU law.
- Ensure the establishment of a mechanism to prevent stock market manipulation in accordance with EU law.
- Establish a mechanism for disclosing insider information in accordance with EU law.
- Bring the NSSMC’s powers to combat stock market abuse in line with EU law.
- Establish the procedure and deadlines for issuers to disclose insider information.
- Establish the procedure for stabilizing financial instruments.
- Establish requirements for share reacquisition programmes and the procedure for their implementation.
- Establish a procedure for applying sanctions and other enforcement actions by the NSSMC.
- Introduce compensation schemes for investors in securities.
- Improve the mechanism of timely compensation payments to victims of road accidents.
- Establish the procedure for compensation for damage to the property as a result of a traffic accident caused by an unidentified vehicle.
- Introduce the procedure for obtaining extracts by owners concerning third party claims regarding insurance against civil liability of owners of land vehicles.
- Improve compensation procedures for injured persons and provisions on the liability of guilty persons covered by insurance.
- Establish uniform requirements for the professional competence of insurance intermediaries.

- Implement the provisions establishing uniform rules for the publication of annual reports and accounting documents for each retirement scheme.
- Determine the powers of the competent authorities to resort to enforcement action with regard to institutions for occupational retirement provision in accordance with EU requirements.
- Improve occupational retirement provision on a funded basis taking into account EU requirements. Establish uniform requirements for the rules of investment for institutions for occupational retirement provision.
- Improve requirements for significant concentrations of credit risks (due to changes in capital requirements).
- Introduce new requirements for leverage.
- Bring the procedure for deposit compensation in line with EU law.
- Improve the procedure for recovery and winding up of banks.

PUBLIC PROCUREMENT

Key conclusions:

Ukraine has made significant progress in fulfilling almost all commitments to adapt the public procurement system in accordance with the Association Agreement and the relevant Action Plan on Implementation of the Association Agreement approved by CMU Resolution No. 1106 of 25.10.2017. This is largely due to the fact that most of the measures were initiated earlier according to Strategy for the Development of the Public Procurement System (“road map”), as well as effective reforms in this area carried out since 2014.

The most important steps include the reforms introduced by the Law of Ukraine “On Public Procurement” in 2016, involving primarily the creation of an electronic procurement system and significant approximation of procurement-related terms and procedures to the requirements of the relevant EU directives on public procurement. The changes, which came into force on 19 April 2019, made it possible to further harmonise the Ukrainian legislation in the field of procurement with these requirements.

However, we also have to point out to some negative trends associated with the amendments to the Law “On Public Procurement” adopted in June of this year (Law No.1530-IX of 03.06.21). First of all, it involves the fact that works related to the construction (including services accompanying these works) of the Large Ring Road around the city of Kyiv (Kyiv region) have been removed from the scope of this Law.

This sets a negative and ill-founded precedent without parallel in the international practice of public procurement. In fact, the amendments make the law ineffective for a significant share (tens of billions of hryvnias) of the construction sector, which in all developed countries tends to be funded on the basis of competitive procedures.

Two other provisions of the amendments to the law involve introducing a negotiation-based procedure for the procurement of goods, works and services necessary for the preparation and holding of events to mark the 25th anniversary of the Constitution of Ukraine and the 30th anniversary of Ukraine’s independence, according to the list of goods, works and services approved by the Cabinet of Ministers of Ukraine.

There are no proper justifications and reasons for applying a non-competitive procedure. Moreover, these events were planned and arranged in advance, and therefore their organisers had enough time to carry out the procedures established by law.

Although these norms are temporary, the very practice of solving local problems arising from mismanagement of the procurement process by amending the law is rather negative. Even more alarming is the fact that the above-mentioned list includes goods, works and services that are not directly related to the preparation and holding of events to celebrate these public holidays (such as completion of a new medical and diagnostic centre of the National Children’s Specialized Hospital Okhmatdyt of the Ministry of Health of Ukraine).

Another source of concern is the recent amendment (Article 18 (5) (5)) making it obligatory for persons appealing against tender decisions to submit a “list of documents (evidence) confirming that the entity filing the appeal had their rights violated [...]”. According to experts, not all complaints, especially those related to tender documents, can be supported by evidence, and therefore there is a risk that the AMCU might dismiss complaints without reasons.

However, the biggest risks of non-compliance with Ukraine’s international legal commitments, primarily in the field of European integration, are contained in the draft law on amendments to the Law of Ukraine “On Public Procurement” with regard to creating conditions for sustainable development and modernization of domestic industry (No. 3739), adopted by the Verkhovna Rada in the first reading in July 2020.

This draft law inter alia proposes to establish a temporary (for ten years) list of goods for which the use of localization requirements becomes mandatory in public procurement. Only participants who supply products with the degree of localization in Ukraine that is equal to or exceeds the relevant degree specified by law are eligible for participation in public procurement.

The draft law, if approved, could provoke a negative response from the EU and international organisations of which Ukraine is a member (including the WTO).

Recommendations:

- Complete the fulfilment of the commitments to adapt legislation and harmonise legal protection (in particular regarding: “introduction of the innovation partnership procedure; introduction of special rules for the use of electronic auctions, reserved contracts and innovation partnerships by entities in the field of public utilities and the possibility of applying a dynamic procurement system; defining the concept of “mixed agreements”; establishing optional rules for the period of non-conclusion of the procurement contract);
- Eliminate discriminatory rules that require that participants provide evidence of existing violations when filing appeals concerning procurement procedures;
- Remove exceptions from the law that are not in line with EU directives (in particular regarding road construction).
- Public authorities should prevent the adoption of laws in the field of procurement that might distort competition and constitute discrimination against participants and, as a consequence, results in violation of Ukraine’s commitments under the Association Agreement.
- Continue to provide legal and technical support for procurement procedures, as well as ensure further development of centralized procurement tools, framework agreements, electronic catalogues (as part of fulfilling the commitments regarding professionalization and digitisation of procurement).
- Complete drafting by-laws required for the implementation of the Laws “On Defence Procurement” and “On Concession”.

INTELLECTUAL PROPERTY

Key conclusions:

During 2020 and the first half of 2021, Ukraine has made significant progress with the implementation of its commitments under the AA in the field of intellectual property (deadline – 31.12.2023). Most of the legislative acts have been updated in line with the requirements of the AA, and the necessary institutions responsible for the practical implementation of the relevant acts have been created.

In addition, in cases concerning the protection of intellectual property rights the Supreme Court of Ukraine has repeatedly emphasised that the relevant provisions of the AA have direct effect in the Ukrainian legal system, i.e., that courts should apply these provisions of the AA, giving them priority over national law.

However, there are still certain unsettled issues, which do not let us describe the implementation of Chapter 9 of the AA as advanced. This is evidenced by the report of the European Commission on the enforcement of intellectual property rights in third countries, published in April 2021. According to the report, Ukraine is classified as a Priority 2 country (along with Russia and Turkey), where a number of systematic violations in the field of protection of intellectual property rights and their enforcement have been identified, and which have not improved or improved very little in this area. The key problems identified by the Commission as systemic violations in our country are online piracy, transit of counterfeit goods to the EU (food, watches, jewellery, toys, clothing, including inefficient activities of the Ukrainian customs, insufficient protection of plant diversity)⁷⁷⁴. In fact, these are the matters that the AA specifies as Ukraine's commitments in the field of intellectual property, but the European Commission hopes that the reform of the intellectual property protection system (which is ongoing) should have a positive impact on Ukraine's progress in this area.

Recommendations:

- Accelerate the adoption of the law on the protection of copyright and the activities of collective management organisations in order to bring Ukrainian legislation in line with the EU Directives on the protection of copyright and related rights;
- Consider amending the current Law of Ukraine “On Effective Management of Property Rights of Copyright Holders and (or) Related Rights” in order to remove the restriction on the existence of only one accredited organisation for each area of collective management, as it contradicts the relevant EU Directive and abolish the provision that makes it impossible for the right holder to withdraw their rights from the management by the accredited organisation.
- Consider amending the current Law of Ukraine “On Protection of Rights to Marks for Goods and Services” and ensure that the provisions of the new EU acts, namely Regulation (EU) 2017/1001 and Directive (EU) 2015/2436, as well as the definitions specified in the Association Agreement be taken into account;
- Identify the existing levers for amending the current Law of Ukraine “On Legal Protection of Geographical Indications” in order to resolve the current contradictions: it is necessary to establish schemes for traditional specialities guaranteed and make it possible to submit a joint application when the geographical indication concerns several states;
- Intensify activities on the adoption of special laws on the protection of geographical indications and designations of origin of agricultural products and foodstuffs;
- Accelerate the development and adoption of an appropriate regulatory framework in the field of biotechnology, taking into account the need to include the term “microbiological process” enshrined in Art. 2 (1 (b)) of Directive 98/44/EC in Art. 1 (1) of the Law of Ukraine “On Protection of Rights to Inventions and Utility Models”;
- Ensure the prompt passage in the Verkhovna Rada of Ukraine of the draft law on compliance with safety and efficiency requirements before granting authorisation for the marketing of plant protection products;
- Ensure the prompt approval of the draft law “On Geographical Indications of Alcoholic Beverages” in order for it to be submitted to the Cabinet of Ministers for consideration and subsequently to be adopted by the Verkhovna Rada of Ukraine;

774 https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159553.pdf.

- Consider amending the current Law of Ukraine “On Protection of Rights to Inventions and Utility Models” to ensure alignment with the provisions of the AA and the TRIPS Agreement on the conditions for obtaining authorisation for a second patent.
- Intensify the activities of the National Intellectual Property Authority – i.e. SE Ukrainian Institute of Intellectual Property;
- Consider amending the provisions of the Customs Code regarding the definition of counterfeit products in accordance with Regulation (EU) 608/2013;
- Ensure that all necessary procedures are passed in the Verkhovna Rada of Ukraine for the adoption of the draft law “On Amendments to Certain Legislative Acts of Ukraine Concerning the Acquisition, Exercise and Protection of Intellectual Property Rights”;
- Accelerate the competitive selection of judges to the High Court on Intellectual Property, as the High Court cannot start its operation due to the lack of staff.

COMPETITION

Key conclusions:

During 2020 and the first half of 2021, no regulations have been adopted that could change the level of implementation of the commitments under the Association Agreement within the area of anti-competitive practices and mergers. At the same time, both in 2020 and in the first half of 2021 5 draft laws of Ukraine have been registered aiming to reform the legislation on protection of economic competition. These draft laws also propose to change the powers of the AMCU in the field of protection of economic competition.

On 13 July 2021, draft law No. 5431 “On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of the Activities of the Antimonopoly Committee of Ukraine” was adopted in the first reading. This draft law needs to be thoroughly revised before the second reading.

Our analysis has shown that the commitments to improve the system of protection of economic competition and introduce an effective system for the monitoring and control of state aid to economic operators have not been fulfilled.

At the level of practical implementation, the issues that remain unaddressed by the AMCU include ensuring control over the observance by intellectual property right holders of the provisions of the legislation on the protection of economic competition, including when granting permission for concentration; the practical implementation of the Procedure for Exemption from Liability remains very low.

In the thematic area of “State Aid”, the current legislation does not fully implement the EU acquis. The Law of Ukraine “On State Aid to Undertakings” and, consequently, the powers of the AMCU to monitor and control state aid do not apply to decisions of the President, the Verkhovna Rada of Ukraine, and the Cabinet of Ministers; we cannot speak of full harmonisation of state aid programmes and individual state aid measures with the requirements of the legislation.

In general, the implementation of European integration commitments in the competition sector can be accelerated by implementing the following measures:

- continue to conduct advocacy activities and clarify the provisions on state aid to economic operators. In the first half of 2021, the AMCU intensified its work in this regard. This work should continue to be carried out at all levels: both at the level of public authorities and local governments, and at the level of economic operators – market participants and recipients of state aid;
- increase the number of trainings and seminars on the application of the legislation on state aid to undertakings, which is a new institution for Ukraine.

Рекомендації:

- Significantly revise draft laws proposing antitrust reform in order to better implement the EU acquis in this area;
- Initiate work on control over the observance by intellectual property right holders of the provisions of the legislation on the protection of economic competition and the practice of application of the “leniency” programme, in particular by taking measures to advocate the programme;
- Change the personnel policy to reduce staff turnover and logistics of the AMCU, which is responsible for protecting economic competition in virtually all areas: prevention, detection and termination of violations of legislation on the protection of economic competition, concentration control, monitoring and control of state aid.
- Finalize the draft law of Ukraine “On State Aid to Undertakings” developed by the AMCU aiming to equally take into account Ukrainian interests and meet the requirements of the Association Agreement;
- Develop and adopt the regulations that have not yet been developed – from the criteria for assessing the eligibility for state aid and to regulations on the provision of certain types of state aid. At the same time, it is necessary to analyse the changes in the EU acquis that are currently being developed or adopted, adapting to the new European Green Deal;
- Focus on training the judges who are to consider complaints filed by interested persons against decisions made by the AMCU in accordance with the Law of Ukraine “On State Aid to Undertakings”.

TITLE V

ECONOMIC AND SECTOR COOPERATION

ENERGY

Electricity

Key conclusions:

The main progress in the implementation of Ukraine's commitments to reform the electricity market was achieved in 2017-2019 due to the adoption of relevant legislation (in line with the provisions of Directive 2009/72/EC and Regulation (EC) 714/2009), as well as the launch of a new retail and wholesale markets. At the same time, during 2020 and the first half of 2021, there were numerous pinpoint changes to the previously adopted legislation, as well as regulatory interventions by the NEURC to return the market to normal. Based on the general objectives of the sector reform, we can argue that the market is insufficiently competitive and pricing is distorted. At the same time, Ukraine is lagging behind with the implementation of the provisions of Regulation (EU) 1227/2011 (REMIT). The preparation for the integration of Ukraine's energy systems with ENTSO-E as a whole is on target, except for the certification of the transmission system operator, which also prevents us from joining the mechanism of compensation for costs incurred as a result of hosting cross-border flows of electricity (ITS), according to EU Regulation 838/2010.

Recommendations:

- Amend the CMU Resolution "On Approval of the Regulation on Imposing Public Service Obligations on Electricity Market Participants to Ensure Public Interests in the Operation of the Electricity Market" regarding the introduction of the PSO mechanism and gradual raising of electricity prices for households to market levels.
- Accelerate the consideration and adoption of the draft law on amendments to certain laws of Ukraine to prevent abuse in wholesale energy markets in compliance with the provisions of Regulation 1227/2011 (REMIT), which will make it possible to perform more effective monitoring of the electricity market and its participants, counteract unfair competition, abuse of market power, and discriminatory practices in the market.
- Take measures to stabilise the financial situation, as well as ensure proper agency subordination of PJSC NPC Ukrenergo, aimed at meeting the Energy Community conditions for successful certification as an electricity transmission system operator and joining the mechanism of compensation for costs incurred as a result of hosting cross-border flows of electricity in accordance with EU Regulation 838/2010.
- Ensure proper fulfilment by market participants of the requirements of NEURC Resolution No. 459 "On Approval of the Procedure for Collection and Submission of Data on the Functioning of the Electricity Market for Publication on the ENTSO-E Transparency Platform" of 19.06.2018.

Renewable Energy Sources

Key conclusions:

Legislative approximation in the field of support for RES development to the requirements of Directive 2009/28/EC is generally at an advanced level, which led to a rapid increase in installed capacity and electricity production from RES during 2019-2020 and the first half of 2021. At the same time, due to the existing technical and financial imbalances, as well as distortions in the electricity market, the current practical implementation of the commitments is incomplete (auctions for the allocation of support quotas do not work, there is a significant debt to producers etc). At the same time, there are threatening signs indicating that Ukraine might be unable to further fulfil its commitments in the field of RES development.

Recommendations:

- Adopt amendments to the legislation aimed at guaranteeing the origin of electricity from RES, as well as providing the possibility for producers of electricity from RES to sell it directly on the electricity market.
- Ensure the launch and proper holding of auctions to allocate the state support quota for electricity production from RES in 2021 and beyond to ensure acceptable economic efficiency.
- Hold tenders for the construction of manoeuvring generating capacity and implement demand management measures, as well as draft changes to legislation aimed at developing storage systems and “smart” grids.
- Gradually minimise subsidies for fossil energy sources, in particular power-station coal, and introduce an effective tax on CO₂ emissions along with the targeted use of relevant revenues, including to support the development of RES.
- Draft amendments to the legislation regarding the introduction of new effective and flexible mechanisms to support the development of electricity production from RES, in particular as a mechanism of contracts for difference (feed-in premium).
- In order to support the development of bioenergy, create a transparent and competitive market for solid biofuels, it is advisable to adopt a draft law to introduce a single electronic platform for trading in solid biofuels.

Gas***Gas market organisation*****Key conclusions:**

The domestic gas market underwent a radical transformation in 2015-2019, when its framework model and basic-level regulation were significantly closer to the requirements of the EU “gas” legislation. The creation of an appropriate regulatory framework made it possible to open the wholesale segment of the gas market (mainly for industrial needs) for competition, to start importing natural gas from the EU by organising physical and virtual reverse supplies, and to separate gas transportation activities (main and distribution pipelines) from other types of activities of the largest company on the market – Naftogaz of Ukraine NJSC – and to organise access to GTS facilities on a competitive basis, which made it accessible for European gas companies. A mechanism for exchange trading of gas and a new contractual basis for the purchase and sale of gas on the free market were created and began to develop.

However, the “perfect” implementation of the European gas market model is hampered by the persistent political populism, which results in regular government interventions in the segment of natural gas supply for the needs of households through the distorted application of the so-called PSO model and, more recently, direct restrictions on the prices of the gas owned by the state-owned company Naftogaz NJSC (gas that is mainly domestically produced but also imported from the EU) by setting so-called price caps or indirect influence on the company’s management by the government (which is the sole shareholder of the company). Such actions of politicians and the government, having an obvious effect of alleviating the price burden for the entire population (and not only the most vulnerable groups that are supported via special housing and utility subsidies) during the heating seasons, on the other hand, “removes” almost 40% of gas consumption in the country from the market influence and creates insurmountable barriers to real competition in the retail gas market (because the government created an exclusive regime for Naftogaz NJSC and regional gas companies (Oblgases) of Firtash’s RGC group).

Recommendations:

- The government needs to find an alternative to the existing practice of social support for households by way of setting low gas prices and blocking competition in this market segment. Options may include shifting to entirely market-based pricing starting in May next year, while expanding the coverage of housing and utility subsidies, or introducing a temporary “financial” PSO regime that does not distort the market mechanism (but requires funding from the state budget to compensate Naftogaz for the supply of gas at reduced prices);
- In addition, a number of steps need to be taken to further increase the purchase and sale of gas in the spot market and to develop its tools in order to enable hedging against risks for sellers and buyers of gas. This includes a number of purely technical tasks, such as creation of centralized clearing, and steps to increase market liquidity, such as the use of a gas release programme, under which a certain share of domestic gas (which today fully transferred to Naftogaz for the needs of households bypassing the market) will be sold on the stock market.

Unbundling of Naftogaz NJSC and management of the gas transmission system**Key conclusions:**

Ukraine has managed to effectively unbundle Naftogaz NJSC and separate the activity of natural gas transportation by main gas pipelines and related assets (gas transmission system – GTS) within its structure, transferring the relevant assets to the independent (from Naftogaz NJSC) GTS operator GTSOU, which has received European certification (from the Energy Community).

Unbundling also has made it possible to harmonise the regulation of the GTS and the conditions of access for gas market participants with the relevant European regulations, and provided a basis for signing a new gas transit contract with Russia, which significantly increased the transparency of this (previously quite corrupt) segment of the gas market.

At the same time, during 2021, a number of risks arose that threaten the stable operation of the GTSOU and the functioning of the GTS in the future. These include both purely “internal” issues – such as the government’s attempts to use the GTSOU’s resources from gas transit to support subsidized gas supplies for households and the unresolved problem of unauthorised taking of gas from the GTS by regional gas companies, and a very serious “external” threat of almost complete termination of the transit of Russian gas through the GTS after the launch of Nord Stream 2, which will make it necessary to conduct technical reconfiguration of the GTS to cater exclusively for the needs of gas imports from the EU and providing service to domestic consumers.

Recommendations:

- Carry out a thorough assessment of threats to the independence of GTSOU – MGU as a result of the transfer of the corporate rights for MGU management to the Ministry of Energy in July 2021, in cooperation with the Energy Community Secretariat. Based on the results of this assessment, it is necessary to eliminate any risks of political interference in the work of the GTS operator.
- Avoid attempts to interfere in the work of GTSOU – MGU by Naftogaz (in order to compensate for the losses of the state company), which go beyond the agreements signed between them and pose a threat to the certification of GTSOU by the EU.
- With EU support, obtain guarantees for gas transit from Russia after 2025, simultaneously developing a technical action plan and preparing for a potential rapid reduction in Russian gas transit after 2025.
- Develop a long-term vision of the development of the GTS under the conditions of transition of the EU economy to carbon-free development; conduct a thorough analysis of the use of the GTS for the transport of so-called “green gases”, such as biomethane, hydrogen, etc.
- Intensify cooperation between GTSOU and operators of neighbouring EU countries to expand opportunities for physical reverse gas supplies from the EU in the event of a possible cessation of the transit of Russian gas after 2022.

Implementation of the norms of the EU Network Codes

Key conclusions:

At the end of 2019, Ukraine completed the transposition of the EU Network Codes into national legislation, legislatively addressing the matters of compatibility of the gas transmission systems of Ukraine and the EU and the exchange of data on gas transportation, power distribution, allocations and conditions of access to the GTS for other gas market participants, as well as the issue of pricing for gas transportation services and GTS balancing.

In practice, the work of the GTS gradually transitioned to European rules, including transition to daily balancing, which was a significant step that contributed to better compatibility between the GTS of Ukraine and the neighbouring European countries and greatly simplified gas imports from the EU. However, a critical problem for the sustainable operation of the GTS today is posed by the regulatory gaps in GTS balancing, enabling regional gas supply companies (so-called “oblgas”) to perform unauthorised taking of gas from the GTS beyond the agreed volume and increase their debt to GTSOU. This situation is threatening both in terms of the physical balancing of the GTS and for the finances of the GTS operator, which might make it impossible to maintain the GTS in working condition in the future.

Recommendations:

- Make changes to the GTS and GDN codes to address the interrelated issues of liability for imbalances, gas taking by GDN operators to cover production and technological needs and establish natural gas distribution tariffs that would take into account the needs of regional gas companies to cover the necessary and operating costs and obtain reasonable profit rates.
- Consider the possibility of creating a system of distribution accounts for regional gas companies (draft law No. 3800) and updating the terms of their contracts with Naftogaz to clearly establish the gas volume supplied by regional gas companies for the needs of households and Teplokomunenergo.

Energy Efficiency

Public policy in the field of energy efficiency

Key conclusions:

The field of energy efficiency is complex and requires a rather intricate cross-sectoral regulatory system, planning and institutional support system, policy instruments, as well as significant funding for energy efficiency measures, especially given the extremely high levels of energy consumption in Ukraine compared to other countries.

The creation of such a system in Ukraine is progressing rather slowly, it is only in October 2021 that we expect the approval of the Law “On Energy Efficiency,” which should provide a framework for the coordination of all other policies in this sector. Institutional and financial support for energy efficiency is also rather weak, this area is scattered among several institutions and, unfortunately, it is still not a priority for state funding. On the other hand, the involved CEBs are currently updating strategic plans for the field and working on developing new energy efficiency support tools, such as the Decarbonisation Fund and a targeted national energy efficiency programme for 2022-2026, which holds out the promise of further development in this area.

Recommendations:

- Adopt in the second reading the draft law of Ukraine “On Energy Efficiency” (reg. No. 4507), taking into account the requirements of Directive 2012/27/EU;
- Approve the CMU Order “On the National Action Plan on Energy Efficiency until 2030”, which is currently pending consideration by the Cabinet;
- Implement institutional reform in the sector by eliminating the dispersion of functions and powers in the field of energy efficiency between three CEBs;
- Launch a decarbonisation fund to support energy efficient projects in industry;
- Approve the State Target Programme for Energy Efficiency for 2022-2026.

Energy labelling and eco-design of energy consumer products

Key conclusions:

The creation of a system of energy labelling and eco-design of energy products can be considered a “success story” in the energy efficiency sector, given the quality of approximation to European regulations, efforts to implement it, and the effect for the public. Energy labelling has become an integral part of the technical regulation system and effectively informs consumers about the levels of energy consumption in almost two dozen consumer goods, eco-design has only just begun to be integrated in the production of energy consumer goods and will have a number of benefits for both Ukrainian exporters of such products to EU markets and consumers of such products within the country.

Recommendations:

- Continue to adopt new and update already approved technical regulations in the field of energy labelling and eco-design in order to take full account of the requirements of the current versions of the relevant EU implementing regulations;
- Facilitate the implementation of regulatory requirements for eco-design among domestic producers of energy consumer goods.

Energy efficiency in residential and public buildings

Key conclusions:

The energy efficiency in buildings is a separate large segment in the energy efficiency sector and covers a number of specific matters with varying degrees of progress.

Thus, commercial energy accounting is based on a detailed approved regulatory framework, but we are still nowhere near to achieving the planned 100% level of equipment with commercial metering units due to the insufficient capacity of utility companies to act on the law, as well as insufficient sanctions for failure to install them.

There has been some progress in setting minimum energy performance requirements for buildings, but this is not enough for their full-fledged implementation in the construction of new or reconstruction of existing buildings. At the same time, Ukraine has created and continues to develop a system of energy certification of buildings and a system for training and certification of energy auditors and MEP systems inspection professionals, which should have a positive impact on the quality of housing modernization projects. Energy management and the system of energy performance contracts (ESCOs) in the public buildings sector are developing quite dynamically, but they need to overcome a number of barriers both at the legislative level and at the organisational level, which hinders the implementation of energy efficient projects in the public sector.

Programmes of financial support for energy efficiency projects in the housing sector are at various stages and suffer from both a lack of funding and updating of administrative instruments (“Warm Loans”) and problems in the development of the institution of Apartment Building Co-owner Associations, including the need to deploy a complex infrastructure to support them (Energy Efficiency Fund).

Recommendations:

- Continue efforts to achieve 100% provision of energy consumers with commercial metering units as one of the critical prerequisites for the implementation of energy efficiency improvement projects;
- Complete developing the bylaws on the minimum requirements for energy efficiency in buildings, remove barriers to the development of energy audit and energy certification of buildings;
- Promote the development of energy management in local governments and the public sector;
- Remove barriers to the further development of the ESCO mechanism, especially in terms of investor protection;
- Given the role of the housing sector in achieving energy efficiency goals, give greater priority to financing energy efficiency projects for private homes and ABCAs in apartment buildings; reformat the Warm Loans programme and support the deployment of Energy Efficiency Fund projects (especially in terms of strengthening the capacity of ABCAs to implement the Fund’s projects).

Development of cogeneration (highly efficient concurrent production of electricity and thermal energy)

Key conclusions:

Investment in the construction of new and renovation of existing cogeneration units requires updating the support system, based on the requirements of Directive 2012/27/EU, by approving the relevant section in the future Law “On Energy Efficiency” and amending the relevant Law “On Combined Heat and Power Production (cogeneration) and the Use of Waste Energy Potential”.

Recommendations:

- Take into account the issue of stimulating cogeneration in the Law “On Energy Efficiency”;
- Approve draft law No. 4527 “On Amendments to the Law of Ukraine ‘On Combined Heat and Power Production (cogeneration) and the Use of Waste Energy Potential’ concerning the Development of High-Efficiency Cogeneration”.

Energy infrastructure and security of supply

Key conclusions:

Significant progress has been made in implementing the requirements of EU regulations on the supply of electricity and natural gas (Directive 2005/89/EC)⁷⁷⁵ and Regulation (EU) 2017/1938, instead the practical implementation of the provisions of Regulation (EU) 347/2013 as regards creating conditions for the implementation of projects for mutual interest (PMI) and cross-border projects (PECI) has significantly slowed down.

Recommendations:

Recommendations regarding the security of electricity and natural gas supply:

- clarify the tasks of ensuring the security of electricity supply in view of the fact that Directive 2005/89/EC has been repealed by Regulation (EU) 2019/941 on risk-preparedness in the electricity sector, in particular develop and approve a Risk-Preparedness Plan;
- create a regulatory framework for creating safety (non-reducible) natural gas reserves in the amount of not less than 60 days of average domestic daily consumption.

Recommendations for creating conditions for the implementation of projects for mutual interest (PMI) and cross-border projects (PECI):

- ensure proper support in the Verkhovna Rada of the draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Terms in the Field of Trans-European Energy Infrastructure”;
- accelerate the consideration by interested central executive bodies and approve the guidelines for cost-benefit analysis of Energy Community projects for mutual interest (PMI) and cross-border projects (PECI).

Nuclear power

Key conclusions:

The main requirements set out in the EU Directives on the safe operation of nuclear energy had been transposed into Ukraine’s national special legislation and regulations before the signing of the Association Agreement and implemented in practice. The state system of regulation of nuclear and radiation safety functions effectively, there is a division of responsibilities among entities in the field of use of nuclear energy and safety. By fulfilling the commitments under the EU Directives in this area, Ukraine will improve some procedures and unify approaches to the development of national strategies and programmes.

⁷⁷⁵ This directive has been repealed by Regulation (EU) 2019/941 on risk-preparedness in the electricity sector.

Regarding the establishment of the basic principles of radiation protection of the population and persons against occupational and medical exposure and approximation of regulations in the field of nuclear and radiation safety to EU requirements (in terms of radiation protection), the commitments for which the State Nuclear Regulatory Inspectorate of Ukraine is responsible have been successfully fulfilled, one measure is at an advanced stage and its implementation depends on the Verkhovna Rada.

Fulfilment of the tasks within the commitments for which the Ministry of Health is responsible, namely, regulation of human radiation protection, including from the effects of natural radionuclides, is at the stage of critical non-conformity, because after the reorganisation of the Ministry of Health and the abolition of the public health (sanitary) service, some of whose functions were transferred to the State Service of Ukraine on Food Safety and Consumer Protection, there is no agency responsible for state regulation of human radiation safety, including from the effects of natural radionuclides. Thus, there is an institutional and organisational vacuum as regards these tasks.

In terms of approximation of regulations in the field of nuclear and radiation safety to EU requirements (in respect of the safety of nuclear installations), the matters within the competence of the State Agency on Exclusion Zone Management under the Ministry of Environmental Protection are not only uncompleted, their fulfilment has not even started.

Meanwhile, the country has had no National Environmental Programme for RW Management in four years (the previous one expired in 2017) to implement the RW Management Strategy.

The Ministry of Ecology of Ukraine fails to fully exercise effective control over the activities of the State Agency on Exclusion Zone Management. The personnel “turnabout” in the management of the SAEZM including persons who do not meet the qualification requirements for education, experience in safe management of radwaste (which is the main task of the SAEZM according to its Regulation) and questionable background, leads to loss of qualified professionals and middle managers from the SAEZM, which has an extremely negative impact on the Agency’s efficiency.

Key recommendations

- Cabinet of Ministers of Ukraine, Ministry of Health: Introduce organisational changes in the Public Health Centre and urgently create a unit for human radiation protection with appropriate powers.
- Cabinet of Ministers of Ukraine: Improve control over the activities of the Ministry of Environmental Protection of Ukraine in respect of its management of radwaste and spending of funds from the RW Management Fund and make the SAEZM perform its direct functions of implementing state policy in the field of radwaste management.

Prospection, exploration for and production of hydrocarbons

Key conclusions:

Significant progress has been made in implementing the requirements of Directive 94/22/EC, as evidenced by the effectiveness of electronic auctions for the sale of special licences for the use of oil and gas subsoil and six new electronic services aimed at ensuring the transparency of extraction activities.

With regard to reforming the coal sector, Ukraine has undertaken commitments that go beyond the Association Agreement but are in line with the recently proclaimed EU Green Deal. To specify them at the level of goals and measures, it is necessary to clarify the strategic energy development at the level of documents, which are currently being developed. However, the government has already announced a policy aimed at phasing out coal use and the socio-economic transformation of coal regions. To this end, the Concept of Transformation of Coal Regions of Ukraine for the period up to 2030 was approved and a relevant state Programme is being drafted. The first practical steps to implement this transformation were initiated with the support of the German government and will be implemented through pilot projects in two selected mining towns.

Recommendations

Recommendations for ensuring equal access and performing of activities for prospection, exploration for and production of hydrocarbons:

- ensure drafting and approval of a legal act on further simplification of the permit system in the oil and gas industry, which should be limited to state environmental impact assessment, state examination of mineral reserves, conclusion of a contract for exploration works, obtaining approvals for changing the designated purpose, and obtaining a land plot for use, permission to connect to the network, and notifications about approval of projects for drilling wells and construction of auxiliary facilities, pilot and commercial development;
- accelerate the work on the new version of the Subsoil Code by the concerned central executive bodies and provide support in the Verkhovna Rada for the new version of the Subsoil Code, which, inter alia, should provide definition of the concepts of “operator function”, “contractual joint venture”, “special permit transfer mechanism”, “concept of minimum work programme and minimum work obligation,” “mandatory regulation specific to the extraction of unconventional hydrocarbons”; address the matters of disclosure of geological information on strategic resources, in particular oil and gas, as provided by law; improve the procedures for the sale of the right to use subsoil on a competitive basis; determine the key criteria for selecting the winner; codify the provisions of the Laws of Ukraine “On Oil and Gas”, “On Coal Bed Gas (Methane)”, “On the State Geological Survey”, the Mining Law of Ukraine;
- ensure the drafting and submission to the Verkhovna Rada of Ukraine of a draft law on amendments to the Tax Code of Ukraine aimed at stimulating production in depleted and small fields, new and low-yield wells, fields with complicated prospection conditions;
- accelerate the work by concerned CEBs and provide support in the VRU for draft amendments to the Law of Ukraine “On Approval of the National Programme for the Development of the Available Mineral Resources of Ukraine until 2030” to take into account the current needs of the national economy in energy; align the domestic classification of reserves and forecast resources of oil, gas condensate and natural gas with the European one; introduce guidelines for calculating the reserves-to-production ratio (R/P Ratio).

Recommendations regarding the reform of the coal sector and transformation of coal regions:

- Ukraine’s declared intention to gradually abandon coal and ensure socio-economic transformation of coal regions needs to be enshrined in strategic documents specifying Ukraine’s movement towards a climate-neutral economy;
- The approved Concept of Transformation of Coal Regions for the period up to 2030 should be based on clearly defined sources of funding and established organisational infrastructure, with the transformation involving all relevant stakeholders – from the relevant ministry to representatives of ordinary residents of mining regions;
- Ukraine should make full use of the experience and financial support of Germany and other European countries when deploying pilot projects for the transformation of coal regions and their scaling.

Oil and petroleum products

Key conclusions:

Despite some progress, the Government has not fulfilled any of the tasks set out in the plans for implementation of Directive 2009/119/EC. The situation regarding the prevention of interruptions of transit and transport of oil and petroleum products (Articles 275 and 276 of the Association Agreement) can be improved only based on a comprehensive and coordinated approach by the competent state authorities, which is currently lacking. The incentives to use energy produced from renewable sources, in particular in transport (Directive 2009/28/EC), have highlighted the need to improve the monitoring of energy sector reform by civil society, including in view of attempts by certain business groups to take advantage of Ukraine’s need to fulfil its commitments for their own purposes.

Excessive commitments, lack of resources and lack of continuity in the actions of Ukrainian governments have led to the failure to complete most of the tasks set out in Directives 98/70/EC and 2016/802/EU, whereas errors stemming from the inaccurate Ukrainian translation of Directive 94/63/EC made it impossible even to set tasks correctly.

Recommendations:***Recommendations for maintaining minimum stocks of crude oil and/or petroleum products:***

- accelerate the work on the draft Law of Ukraine “On Minimum Stocks of Oil and Petroleum Products” by the interested central executive bodies and provide support for the draft law in the Verkhovna Rada, ensure the drafting and adoption of regulations necessary to implement its provisions in accordance with Directive 2009/119/EC as well as their completion within the timeframe set by the updated Annex XXVII to the Association Agreement between Ukraine and the EU;
- ensure the development and adoption of a legal act requiring that economic operators maintain stocks of petroleum products equivalent to 30 days of average domestic consumption for interventions in case of crisis (addressing the right to buy out certain amounts at market prices);
- create regulatory preconditions to limit the volume of supplies of each type of petroleum products from one supplier to 30% of the total volume of imports;
- make an inventory of storage facilities for crude oil, motor gasoline, diesel and aviation fuel, available within the structure of the State Reserve Agency of Ukraine and JSC Ukrtransnafta;
- conduct a feasibility study for the storage of crude oil in underground storage facilities located, in particular, in Solotvyno, Ivano-Frankivsk region, Hoholevo and Lubny, Poltava region, as well as in the salt caverns of the Dnieper-Donets basin, Transcarpathia, Prykarpattia and the Southern Buh delta.

Recommendations regarding the prevention of interruptions of transit and transport of oil and petroleum products:

- resume work on the development of draft regulations aimed at increasing the responsibility for damage to main oil pipelines, and a draft concept for ensuring their safety.

Recommendations for encouraging the use of energy from renewable sources in transport and ensuring the proper quality and safety of motor fuel:

- ensure the fulfilment of Ukraine’s international commitments to increase the share of energy from renewable sources to 11% in gross final energy consumption in transport in 2020, primarily by creating a market for E85 fuel (a blend of 85% second-generation bioethanol and 15% light hydrocarbons);
- approve new Rules of Retail Trade in Petroleum Products and harmonise them with European requirements, in particular by extending them to operations with liquefied petroleum and compressed natural gas, fuel blends and biofuels;
- simplify the authorisation system in the motor fuel market by abolishing registers for payment transaction, mandatory second-level environmental assessment, regular renewal of licences for the operation of equipment for storage of hazardous substances, the need to install early detection systems, and exclude service stations from the list of outdoor advertising facilities;
- correct errors in the official translation of Directive 94/63/EC and its implementation plan;
- ensure the development and submission to the Verkhovna Rada of Ukraine of a draft law that will assign at least 0.4% of the total budget revenues from the excise tax on petroleum products to finance laboratory inspections of their quality and safety;
- develop and approve a new instruction on quality control of petroleum products, establishing, in particular, the legal status of inspections using express laboratories;
- develop and approve technical requirements for the quality and safety of petroleum blends containing over 5% of biocomponents;
- ensure the development and submission to the Verkhovna Rada of Ukraine of draft amendments to the Criminal Code of Ukraine aimed at increasing the liability of legal entities, officials and citizens for the production and sale of petroleum products that do not meet the requirements of the Technical Regulations⁷⁷⁶ and for their illegal production.

776 <http://zakon.rada.gov.ua/go/927-2013-n>

Energy regulator

Key conclusions:

The National Energy Regulator – i.e., the National Energy and Utilities Regulatory Commission (NEURC) – was reformed in 2016-19 after amending national legislation in line with the requirements of the relevant EU directives. However, its uncertain constitutional status has led to political interference in the rotation of NEURC commissioners (albeit the measure is formal and temporary) and pressure on them on the part of the government and major energy market companies to distort regulation in their interests, creating a real threat to the independence of the NEURC.

Recommendations:

- The Verkhovna Rada should initiate and complete the process of amending the Constitution of Ukraine to specify the status of independent (from other branches of government) regulatory agencies;
- After settling the issue of their constitutional status, necessary amendments should be made to the relevant Law “On the NEURC”;
- Resolve legal conflicts associated with the rotation of NEURC members by amending the relevant law, eliminate as soon as possible the “temporary” procedures introduced after the changes in November 2019 and resume the selection of commissioners based on open competition;
- Law enforcement agencies, in particular the State Bureau of Investigation, should investigate and put an end to attempts to put pressure on NEURC commissioners by business entities in the energy market, as well as the government, as these constitute direct violations of the law on the NEURC.

TAXATION

Key conclusions:

All in all, the structure of the national excise tax meets the requirements of European legislation. Significant discrepancies are only found in respect of the provisions of Chapter 3 of Council Directive 2007/74/EC. The next steps will be to eliminate pinpoint inconsistencies and finalise the synchronization of legislation, as well as to prepare for the next stage of adaptation to take into account the amendments to the basic Directives on energy and electricity and tobacco taxation that are to be made by the end of this year (2003/96/EC and 2011/64/EU).⁷⁷⁷

Since 2014, Ukraine has made significant progress in fulfilling its commitments under the AA in respect of the value added tax. The structure of the national VAT generally meets the requirements of European legislation (except for non-conformity of the requirements for the taxation of gold bars and investment gold).

Ukraine is actively involved in international cooperation in the field of taxation and applies the principles of good governance at a high level. However, the institutional reform of tax and customs authorities is still very slow and uncertain given the staff rotation and the lack of tangible progress in reducing corruption in the relevant field.

Recommendations

- Adopt draft law No. 5810 of 20.07.2021 on amendments to the Customs Code of Ukraine to implement the requirements of Chapter 3 (concerning quantitative limits) of Council Directive 2007/74/EC.
- The Government of Ukraine should eliminate methodological and practical inconsistencies for the comprehensive implementation of Council Directives 2011/64/EU and 92/83/EEC by preparing and adopting relevant laws and regulations, in particular a comprehensive Strategy to combat fraud and smuggling of excisable products for the period of 2021-2023, and together with the Verkhovna Rada of Ukraine finally adopt the draft laws passed in the first reading on:
 - ◊ changes in the methodology of fixing excise duty rates on beer – i.e., by reference to the number of litre/degrees of actual alcoholic strength by volume of finished product (No. 5600 of 02.06.2021);
 - ◊ introduction of reduced excise duty rates for alcoholic beverages produced by small breweries (No. 5118 and No. 5119 of 19.02.2021).
- Submit to the Verkhovna Rada of Ukraine a draft law on Ukraine's accession to the Protocol to Eliminate Illicit Trade in Tobacco Products,⁷⁷⁸ which requires a mechanism for tracking the movement of tobacco products (supply chain control), establishment of enhanced licensing requirements, regulation of online sales, duty-free sales and international transit of tobacco products, as well as rules on offences, liability, payments, detention and disposal of confiscated products, other requirements aimed at enhancing international cooperation and information exchange.
- Adopt draft laws on:
 - ◊ exemption from taxation of investment gold transactions (No. 5600 of 02.06.2021);
 - ◊ introduction of criminal liability for fraud with value added tax, in particular “carousel fraud” (No. 3959-1 of 25.08.2020).
- Initiate development and adoption of a draft law on VAT refunds to taxable entities that are not registered in Ukraine.
- In order to improve the efficiency of tax collection, check the current tax reliefs and privileges for compliance with state aid commitments under the AA and based on its results prepare a draft law to eliminate those that are harmful to trade and competition.
- Ensure Ukraine's accession to automatic exchange procedures according to the international CRS standard.

⁷⁷⁷ <https://bit.ly/3J7bBaf>

⁷⁷⁸ Protocol to Eliminate Illicit Trade in Tobacco Products, набув чинності у вересні 2018 року.

STATISTICS

Key conclusions:

The State Statistics Service of Ukraine has carried out a significant amount of work to fulfil the commitments in the field of Statistics under the Association Agreement, in respect of approximation of both Ukrainian legislation in the field of statistics to EU legislation and national statistics methodology to EU methodology.

Recommendations:

- Adopt the Law of Ukraine “On Official Statistics”.
- Adopt the Law of Ukraine “On Amendments to Certain Laws of Ukraine Regulating State Statistical Activities”.
- Develop and approve the methodology as well as reporting and statistical documentation for the state statistical survey on the structure of agricultural holdings in accordance with Regulation (EU) 2018/1091 of 18 July 2018 on integrated farm statistics.
- The State Statistics Service of Ukraine should continue modernising state statistics in order to integrate the standards, rules and recommendations of the EU and other international organisations into national statistical practice.

ENVIRONMENT

Key conclusions:

In general, the results of the study confirm the conclusion that the effectiveness of the practical implementation of the Agreement in the field of environment depends on the success of the relevant (sub)sector reforms, which essentially implies a radical restructuring of the national regulatory system in these (sub)sectors.

Currently, the greatest progress with regard to practical implementation has been made with matters such as EIA, SEA, access to environmental information and, partly, water resource management. However, the areas that require radical change in the governance structure, a full reset, and financial and investment support are currently stalling. This applies to air, waste, industrial pollution and, in part, to water resource management and countering climate change.

The introduction of the European Green Deal and Ukraine's desire to be part of this process have a positive impact on the implementation of the Agreement with regard to climate commitments. In particular, this may give impetus to the introduction of carbon pricing mechanisms.

In Ukraine, the approach to the implementation of directives and regulations in various sectors of environmental protection and climate change is inconsistent: some are subject to strict requirements and criteria, the so-called "gilding" of legislation (abandoned by EU member states), whereas other legislative initiatives are often deprived of the necessary European approaches. When implementing directives and regulations, multiple variants are almost never used: directives are often simply rewritten into draft national legislation in Ukraine. Recently, many European principles have been replaced or distorted when drafting regulations, partly due to the lack of institutional capacity of the key stakeholders, business sector lobbying and corruption mechanisms existing in many areas (e.g., waste, industrial pollution, etc.).

Recommendations:

- Eliminate all inconsistencies in legislation with the EU directives and the relevant judicial practice of the Court of Justice of the European Union in the areas of environmental impact assessment and strategic environmental assessment.
- Carry out a comprehensive analysis of the effectiveness of the practical implementation of EIA and SEA in Ukraine – as relevant experience of application has already been accumulated (post ante regulatory impact assessment) – in order to improve these mechanisms.
- Increase the amount of environmental information available online and in open data, in particular on the impact of environmental pollution on public health and on the populations of wild flora and fauna species.
- Accelerate the transposition and establish an effective fuel quality control system.
- Ensure the deployment of a modern system for air quality monitoring and assessment, in particular by gradually updating and expanding the relevant facilities and resources, as well as its integration with the European air quality monitoring system.
- Ensure the development and implementation of air quality management plans in populated areas based on its quality indicators.
- Accelerate the modernisation of national legislation in line with the requirements of the Waste Framework Directive and other special directives, ensuring the adoption of all necessary laws, based on an effective waste management model and its socio-economic and investment evaluation.
- Complete the development and adoption of regional waste management plans.
- Develop a national (state) programme for household and other waste management.
- Continue the practical implementation of basin water resources management, in particular, approve river basin management plans.
- Consider abandoning the administrative and territorial division of functions among the regional bodies of the State Water Agency to ensure full-fledged basin management of water resources.
- Analyse the results of the assessment of the condition of the drainage system and urban wastewater treatment and disposal, identify vulnerable zones and agglomerations, and develop a national (state) investment programme to fulfil urban wastewater treatment requirements.

- Ensure the adoption of flood risk management plans.
- Urgently develop and approve a maritime strategy for the Black and Azov Seas to achieve good ecological status.
- Start transposing the Nitrates Directive as soon as possible.
- Eliminate critical inconsistencies in the requirements for drinking water quality, introduce control to ensure that water supply establishments comply with these requirements.
- Introduce a European system for the prevention and control of industrial pollution, including introduction of integrated pollution permits based on the best EU technologies and methods. Finalise draft law No. 4167.
- Develop a realistic financial plan for the implementation of the National Emission Reduction Plan for large combustion plants, ensuring strict compliance with this Plan.
- Complete the adaptation of national legislation to the requirements of the Seveso-III Directive (both laws and by-laws), in particular, finalise the relevant draft law (No. 4407).
- Hold negotiations with the EU on a mechanism to establish and finance NATURA 2000 sites in Ukraine in accordance with the Association Agreement. Move away from the approach that involves creating the Emerald Network.
- Accelerate the adaptation of national legislation, especially in the field of hunting.
- Create a system for monitoring the conservation status of habitats and flora and fauna species with the support of the EU.
- Make a political decision to establish a greenhouse gas emissions trading system.
- Urgently complete preparations for the practical implementation of the requirements of the new law, in particular by establishing a system to monitor compliance with the requirements for the circulation of ozone-depleting substances and fluorinated greenhouse gases.
- Ratify the Kigali Amendment to the Montreal Protocol.
- Accelerate the adaptation of national legislation in the field of biosafety, in particular by establishing a procedure for the release of GMOs both for testing and for placing on the market (cultivation), establishing a procedure for restricting/prohibiting release of GMOs in certain territories to place them on the market for purposes of “cultivation,” etc.
- Complete drafting of the law “On State Regulation of Genetic Engineering and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security.”
- The implementation of the Association Agreement with regard to the environment and climate change should include all the relevant provisions of the AA, in particular Chapter 6 “Environment” and not only Annex XXX. The cooperation between Ukraine and the EU on these matters deserves special attention, as the Agreement is a bilateral commitment rather than a home assignment for Ukraine;
- The fulfilment of the Association Agreement commitments on the environment and climate change has significant potential for Ukraine’s involvement in the European Green Deal, where environmental and climate matters are cross-cutting;
- Update the provisions of the Association Agreement on the environment and climate change, specifically by including new versions of the relevant directives and regulations (Annex XXX) and the Paris Agreement (Annex XXXI), as well as include some areas (acts) of EU law that are not included in the current Association Agreement but are of critical importance (such as those on chemicals, zoos, noise pollution, etc.).

TRANSPORT

Key conclusions:

It should be admitted that, despite the great importance of transport development for the Ukrainian economy, no significant progress has been made since the conclusion of the Association Agreement in 2014 in transposing and implementing the provisions of the relevant EU acquis. Currently, the transport sector ranks one of the worst in terms of progress with fulfilling Ukraine's commitments.⁷⁷⁹

In particular, the laws "On the National Commission for State Regulation of Transport", "On Railway Transport", "On Multimodal Transportation", "On State Regulation in the Field of Satellite Navigation," which are critical for the sustainable development of the national transport system and the market of transport services, have not been adopted. No significant changes have been made to the Code of Merchant Shipping of Ukraine, the Laws of Ukraine "On Transport", "On Road Traffic", "On Motor Transport", and "On Transport of Dangerous Goods". Also, the process of restructuring JSC Ukrainian Railways in order to liberalize the railway transport market has not been completed.

This means that we need to intensify the process of approximation of national regulatory and normative frameworks to EU acquis, taking into account the following recommendations.

Recommendations

- Ensure implementation of the Action Plan for Implementation of the National Transport Strategy of Ukraine for the period up to 2030.
- Develop and adopt detailed long-term plans for the implementation of the National Transport Strategy of Ukraine until 2030 for all modes of transport.
- Continue work on the inclusion of Ukraine's inland waterways in the indicative TEN-T maps.
- Adopt a basic European integration law on the transport of dangerous goods involving further updates of the regulatory framework.
- Adopt a basic European integration law on the organisation and conditions of providing socially important services for the transport of passengers by rail and road.
- Create a National Commission for State Regulation of Transport.
- Adopt a law on concessions to stimulate private investment in infrastructure projects.
- Make amendments to the legislative acts of Ukraine in the field of road transport and related legislative acts in order to regulate the market of road transport services in Ukraine, increase the safety of operation of wheeled vehicles.
- Adopt the Resolution of the Cabinet of Ministers of Ukraine "On Approval of Licensing Conditions for Business Activities involving the Carriage of Passengers, Dangerous Goods and Hazardous Waste, International Transport of Passengers and Goods by Road".
- Amend the Regulation on Working Hours and Rest Periods for Drivers of Motor Vehicles, taking into account the requirements of the relevant EU acquis.
- Adopt regulations on the use of speed limitation devices and tachographs on road transport and on setting the maximum weight and dimensions of vehicles.
- Adopt regulatory acts to ensure periodic inspection of the technical condition of vehicles for roadworthiness, and technical roadside inspection of vehicles used for commercial road transport activities.
- Improve the current regulatory acts in order to ensure the required level of professional competence of managers of road transport.
- Update the Law of Ukraine "On Railway Transport", in particular in order to create a new model of the railway transport market, similar to European railway systems, and make appropriate changes to the regulatory framework.

⁷⁷⁹ https://eu-ua.kmu.gov.ua/sites/default/files/inline/files/aa_implementation_report_2015-2020_ukr_final_0.pdf

- Complete the restructuring of JSC Ukrainian Railways (Ukrzaliznytsia) in order to ensure fair access to the transport market and infrastructure.
- Create national registers of networks and trains authorised on the territory of Ukraine.
- Update legislation and regulatory framework to ensure independent investigation of rail transport incidents.
- Create an effective system for the licensing of train drivers by making appropriate changes to the regulatory framework.
- Sign and ratify the Agreement on the Common Aviation Area between Ukraine and the EU.
- Make changes to the Code of Merchant Shipping of Ukraine, the Law of Ukraine “On Transport”, the relevant regulatory framework for technical (conventional) supervision of seagoing vessels, regulation of the activities of recognized supervision organisations, implementation of the International Maritime Organisation Code for Recognized Organisations.
- Ensure Ukraine’s accession to the Maritime Labour Convention (2006) of the International Labour Organisation, the International Convention for the Control and Management of Ships’ Ballast Water and Sediments (2004), the 2002 Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea (1974), and make the relevant amendments to national legislation.
- Complete the reorganisation of the seaport captain services by separating the functions of ensuring maritime safety and those of maritime safety supervision.
- Create a comprehensive integrated database of Ukrainian merchant ships open for use by participants in the global merchant shipping market (Unified Information System of the Maritime Administration).
- Amend the Code of Merchant Shipping of Ukraine and the Code of Ukraine on Administrative Offences regarding the obligation of the shipowner to maintain the safety management system for the shipping company and vessels, as well as liability for administrative offences in this area. Introduce relevant updates to the regulatory framework.
- Make changes to the regulatory framework to introduce an institutional mechanism as well as a procedure and conditions for issuance, control over the availability of insurance certificates for ships.
- Approve rules on the safety of construction, stability and operation of regular passenger seagoing ships, ro-ro passenger ships and high-speed passenger craft.
- Make changes to the legislative and regulatory framework regarding the mandatory double hull or equivalent design of oil tankers operating in the sea waters of Ukraine; develop and approve a procedure for decommissioning of single-hull oil tankers.
- Amend the Rules for the Provision of Services in the Seaports of Ukraine regarding the safe loading and unloading of bulk carriers in the seaports of Ukraine.
- Adopt a law, develop and approve relevant by-laws to establish a minimum level of training for seafarers and to introduce electronic registration of seafarers’ documents in accordance with Directive 2008/106/EC.
- Make changes to the legislation and regulatory framework in respect of the acceptance of ship waste and cargo residues in seaports and sea terminals and prohibition on the use of organotin compounds on ships.
- Establish and ensure the functioning of a national information network for the exchange of information on maritime transport in the European Union (SafeSeaNet).
- Review and update the Regulation on the Procedure for Issuing Certificates Allowing Persons to Operate Merchant Vessel Involved to Navigation on Navigable Inland River Waterways.
- Develop and approve Technical Requirements for inland waterway vessels.
- Review and update the Standard of Higher Education in Specialty 271 ‘River and Maritime Transport’ for the first (bachelor’s) level of higher education, develop and approve the Standard of Higher Education in Specialty 271 ‘River and Maritime Transport’ for the second (master’s) level of higher education.
- Adopt a basic European integration law on multimodal (combined) transport of goods and commodities.
- Adopt the Law of Ukraine “On State Regulation in the Field of Satellite Navigation”.
- Conclude an Agreement between Ukraine and the European Union to expand the use of the European satellite navigation system EGNOS to cover Ukraine.

COMPANY LAW

Key conclusions:

In 2020 and the first half of 2021, positive changes have taken place in some areas of this sector.

In particular, in the area of “Accounting and Auditing” at the level of implementation the necessary acts were adopted to introduce standards and guidelines for reporting on payments to the state for certain categories of enterprises of public interest, as well as to increase the efficiency of established bodies for oversight of auditing activities.

In the field of “Establishment and Company Law”, a comprehensive draft law “On Joint Stock Companies” (No. 2493), containing both positive aspects for the transposition of Directive 2017/1132/EU and significant shortcomings, was adopted in the first reading and approved for consideration in the second reading by the relevant committee.

Recommendations

- Update Annexes XXXIV and XXXV to Chapter 13 “Company Law and Corporate Governance, Accounting and Auditing”, in line with the updated EU standards in the sector.
- Finalise and adopt the draft law “On Joint Stock Companies” taking into account the provisions of Directive 2017/1132 relating to certain aspects of company law;
- Develop a mechanism for disclosure of information by branch offices of companies from third countries.
- Continue the comprehensive corporate governance reform in line with EU standards and OECD Principles.

TELECOMMUNICATIONS

Telecommunications services and regulator

Key conclusions:

Overall, Ukraine has made progress in fulfilling the Association Agreement in the field of telecommunications. Some commitments have already been fulfilled in full, for some laws have been developed but it is necessary to develop by-laws to enact them. At the same time, today, some of the commitments and tasks remain unfulfilled.

Based on the above, it is necessary to emphasize the need to intensify the work on the implementation of EU acquis, as well as on the implementation of commitments under the Association Agreement in the field of telecommunications.

Also, Ukraine is dynamically developing both legislative and practical areas of trust services and electronic identification. Progress in the development of trust services is indirectly required in the Agreement in Articles 121, 122, 123, 125, 133 and 394; but for successful implementation of EU legislation, it is necessary to update Appendix XVII-3 (Rules applicable to telecommunication services).

Recommendations regarding the further implementation of the commitments in the field of telecommunications are as follows:

1. Regulation of electronic communications through legislation:

Develop the necessary regulatory legal acts to enact the provisions of the Law of Ukraine “On Electronic Communications.”

2. Strengthening the independence and administrative capacity of the national regulator in the field of electronic communications:

Strengthening the independence and administrative capacity of the regulator in the field of electronic communications should be achieved through the adoption of relevant legislation, in particular draft law No. 4066. The main task is to timely adopt the relevant draft law and ensure that it enters into force on 01.01.2022, given its interconnectedness with the Law of Ukraine “On Electronic Communications.” Launch the work of the regulator of electronic communications after the relevant law is adopted, providing for the necessary financial and human resources, as well as autonomy to dispose of the allocated funds and manage its resources.

3. Defining the relevant product and service markets in the electronic communications sector that are susceptible to ex ante regulatory procedures and analysing those markets with a view to determining whether significant market power exists on them, as well as imposing on operators found to have significant market power on the relevant markets, appropriate regulatory obligations:

- complete the ongoing analyses of the relevant markets and analyse the other markets specified in the Indicative List of the relevant markets in Ukraine to be analysed in accordance with Article 116 of the Association Agreement;
- ensure that the draft law “On the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services of Ukraine” (reg. No. 4066 of 07.09.2020) cover the matter of the regulator’s powers to make decisions to impose regulatory obligations on providers of electronic communications networks or providers of electronic communications services with significant market power, as provided for in Article 84 of the Law of Ukraine “On Electronic Communications”;
- the regulator should develop and make a decision to impose regulatory obligations on providers of electronic communications networks or providers of electronic communications services with significant market power.

4. Introduction of public consultation procedures for new regulatory measures and establishment of effective mechanisms for appeal against the decisions of the national regulator in the field of telecommunications:

- legislate the regulator’s powers to develop the procedure for public consultations in the draft law “On the National Commission for State Regulation of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services of Ukraine” (reg. No. 4066 of 07.09.2020);

- develop the appropriate procedure for conducting public consultations, as provided for in Article 22 and approve it by the decision of the regulator in the field of electronic communications;
- legislate the mechanism of appealing against the regulator's decisions in the draft law "On the National Commission for State Regulation of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services of Ukraine" (reg. No. 4066 of 07.09.2020).

5 Regulation of the rights and obligations of users and providers of universal telecommunications services in accordance with EU law:

- develop and adopt a resolution of the Cabinet of Ministers of Ukraine on amendments to the Rules for the Provision and Receiving of Telecommunications Services;
- develop a new version of the rules for conducting activities in the field of telecommunications, which must be approved by the Regulator's decision.

6. Providing roaming on public mobile communications networks:

- Sign the Agreement on Reducing Roaming Tariffs among the Eastern Partnership countries, which is scheduled for December 2021, and implement it in practice, as well as continue the bilateral dialogue with the EU.

7. Creating broadband Internet access infrastructure throughout Ukraine and reducing the cost of deploying high-speed electronic communications networks:

- adopt the National Plan for Development of Broadband Internet Access. The document should lay down the key indicators that Ukraine seeks to achieve in the deployment of broadband networks, coverage of the territory, access of the public to high-speed Internet, as well as concerning public-private partnerships and compensation mechanisms. In addition, this document should also include the task of creating infrastructure maps;
- carry out analysis aimed at identifying loopholes and making appropriate amendments to the Law of Ukraine "On Access to Construction, Transport, and Electricity Facilities for the Development of Telecommunications Networks", or address certain matters in the Law of Ukraine "On Electronic Communications". Also, it is necessary to develop relevant by-laws and implement them in practice;
- clearly establish the regulator's powers to develop broadband Internet access, collect relevant information, and develop an infrastructure map. This matter should also be addressed in the draft law "On the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services of Ukraine" (reg. No. 4066 of 07.09.2020).

8. Harmonisation of the use of radio spectrum in the context of the implementation of the provisions of Decision No. 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community:

- continue the implementation of Decision 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community and other related decisions of the European Commission, and introduce changes to the National Table of Allocation of Radio Frequency Bands of Ukraine and the Plan for the Use of Radio Frequency Resources of Ukraine in order to harmonise the radio frequency resources available in Ukraine;
- adopt the necessary EU decisions and implementing acts aimed at harmonising the use of radio spectrum with the EU acquis, conducting long-term spectrum management, and freeing frequency bands for further deployment of 5G, in particular 700 MHz;
- sign the Regional Spectrum Agreement (RSA) on harmonized technical conditions between the Eastern Partnership countries for Land Mobile Radio-Communication Networks in the 694-790 MHz and 3.4-3.8 GHz frequency bands, which is to be signed in December 2021;
- perform measures aimed at conducting the analysis of European standards in the field of radio frequency resource use (ETSI) and establishing the list of EU standards to be adopted in Ukraine in order to fulfil its sectoral tasks, as well as to ensure the availability of information via the Internet on the results of harmonisation of radio frequency allocations in Ukraine, publication of radio interfaces for general-purpose radio technologies, taking into account Commission Decision 2007/344/EU.

TRUST SERVICES

Key conclusions and recommendations

In Ukraine, both legislative and practical aspects of trust services and electronic identification are developing dynamically. Progress in the development of trust services is indirectly required by the Agreement in Articles 121, 112, 123, 125, 133, and 394, but it is necessary to update Appendix XVII-3 (Rules applicable to telecommunication services). To achieve compliance with the EU legal framework by updating technical standards, we recommend the following:

- Develop an information society development strategy until 2030 (Digital Agenda) and harmonise it with EU standards (requirements of Article 390 of the Agreement). It should clearly specify the intended results of the development of eID, trust services, electronic public services, electronic document management and data exchange, protection of information and personal data, and cybersecurity.
- Initiate the inclusion of Ukraine in international indices, in particular the Digital Economy and Society Index (DESI) or as an intermediate stage to I-DESI, and the descriptive part of the standard for the global acceptance of EU trust services (ETSI TR 103 684) – required by Articles 355, 356, and 357.
- Amend the current legislation on the conformity assessment of Ukrainian qualified trust service providers (QTSPs) and qualified services themselves, including by European conformity assessment bodies, which will reduce the risks of non-compliance (eIDAS 910 requirements).
- Eliminate discrepancies in standardization for Qualified Trust Services, Qualified Trust Service Providers, Remote Signature Service (RSS), Qualified Signature Creation Device (QSCD), and conformity assessment of Qualified Trust Service Providers by reviewing and updating the relevant standards.
- Introduce international Common Criteria, Evaluation Assurance Level (EAL) for hardware used by devices during encryption, providing infrastructure for public keys and provision of trust services.
- Finalise and adopt the 2020 Strategy in the field of electronic document archiving, in particular on the long-term preservation of electronic documents, studying and adopting the relevant experience of EU member states.
- Create an electronic signature verification service compatible with international electronic signature formats (based on ECDSA, RSA) in accordance with international standards and formats.
- Adopt and start implementing standard EN 301 549 – Accessibility requirements for ICT products and services. Update the legal framework to include the European Web Accessibility Directive (requirements of Article 424 and Annex XL).
- Streamline the formats and approaches for the electronic identification scheme after or along with changes in eIDAS.
- Update the Association Agreement (Chapter 14) to take into account changes in the EU Digital Society strategy and the practical part (Appendix XVII-3) in respect of trust services and eID.

AUDIO-VISUAL POLICY

Key conclusions:

Unlike the European Community, Ukraine's audiovisual sector developed in the context of its rapid transition from the totalitarian past to a market economy. Since the transition was not evolutionary, it has led to the politicization of the media and produced an oligarchic market. At the same time, this gave rise to a number of serious conflicts, in particular during election campaigns, as well as in the period from 2010 to 2013, which spawned a general distrust among the stakeholders. The factor of war further aggravates the situation, as the public sometimes demands conflicting responses from the regulator – from protecting freedom of speech to shutting down “unpatriotic” media. Given the ecosystem, it is impossible to quickly elaborate the necessary package of legislative amendments, pass them through the parliament and begin implementation.

Despite attempts to accommodate the interests of various market participants in the draft law, including by introducing a new version of the draft law, the process is stalling and the parliament is not ready to support it at the moment. This situation is extremely damaging, as not only does it imply a 2-year delay in fulfilling Ukraine's commitments under the AA, which undermines the country's reputation, but it also prevents Ukrainian media and productions from fully participating in EU programmes such as Creative Europe.

Recommendations:

- Raise the issue of the effectiveness of the provisions of the Council of Europe Convention on Transfrontier Television in the context of cooperation to counter the warmongering and other violations by the aggressor country.
- Find a political solution as soon as possible and initiate parliamentary consideration and adoption of a draft law that will make it possible to fulfil the commitments to harmonise national legislation with the Audiovisual Media Services Directive.

AGRICULTURE AND RURAL DEVELOPMENT

Key conclusions:

During the past year, work on legislative approximation has been carried out in almost all areas, but with a delay, which was primarily due to the redistribution of powers between the Ministry of Economy and the restored Ministry of Agrarian Policy.

Currently, the greatest progress in meeting the relevant commitments has been made with regard to improving the system of geographical indications for foodstuffs and agricultural products; organic farming; marketing of cereal seed; establishing requirements for labelling, packaging, trade and consumer protection in respect of sugar, cocoa and chocolate; requirements for the production and marketing of oilseeds.

If the Verkhovna Rada of Ukraine adopts the relevant draft laws, significant changes can be expected in the implementation of commitments related to:

- improving the legal protection of geographical indications and designations of origin for agricultural products and foodstuffs in accordance with the requirements of EU law;
- introduction of the rules and principles of growing genetically modified cereals;
- determining the rules for regulating the handling of genetic resources of plants, microorganisms and animals that are used or can be used in agriculture;
- improving the requirements in the field of seed production and propagation;
- protection of plant variety rights.

The least progress has been made in promoting rural development, including through mutual understanding of policies in this area.

It should be added that, despite some of the recent developments in the legislative approximation on the marketing standards for plants, plant seed, plant-derived products, fruit and vegetables, and standards of trade in live animals and livestock products, there is still a lot of work to be done.

Recommendations:

- The Ministry of Agrarian Policy, together with interested central executive bodies, should focus on supporting the consideration by the Verkhovna Rada of already registered draft laws of Ukraine on legal protection of geographical indications of agricultural products and foodstuffs (reg. No. 5616), on state regulation and control of genetically modified organisms (No. 5839 and No. 5840), on seed and planting material (reg. No. 4593), and on the protection of plant variety rights (reg. No. 3680-д). The adoption of these draft laws can significantly advance the implementation of the commitments in the sector of "Agriculture and Rural Development", as it will entail the development and implementation of a significant share of regulations for their fulfilment.
- Intensify work on the development and submission to the Verkhovna Rada of Ukraine of the draft laws of Ukraine "On Hops and Hop Products", "On Amendments to the Law of Ukraine 'On Grapes and Grape Wine'" and "On Geographical Indications of Alcoholic Beverages."
- The Ministry of Agrarian Policy should speed up the work on finalizing, passing the procedures of public discussion and approval, as well as adoption of regulations that have already passed the approval procedure at the Ministry of Economy but have not been adopted. This applies in particular to the regulations developed to fulfil the commitments set out in the Association Agreement as regards setting standards for the marketing of plants, plant seed, plant-derived products, fruits and vegetables, as well as standards for trade in live animals and livestock products.
- As regards developing proposals for promoting rural development, including through mutual understanding of policies in this area, it is necessary to intensify the work of the Ministry of Agrarian Policy together with all interested central executive bodies. Approaches to the organisation of work in this area should also be reviewed, in particular by involving national and international experts of international technical assistance projects jointly with local governments to work in this area, creating an effective platform for cooperation of all stakeholders.

CONSUMER PROTECTION

Key conclusions:

Since undertaking commitments under the Association Agreement, Ukraine has taken a number of important steps that significantly approximate national consumer protection legislation to EU acquis. This applies to such aspects as general product safety, safety of certain types of goods, financial services and credit agreements, etc. Another positive and very appropriate step was the decision to develop a State Consumer Protection Concept, which provides a systematic and comprehensive approach to transposition, as well as ensures practical implementation of the commitments.

However, in general, Ukraine's progress in fulfilling its consumer protection commitments is rather uneven: for some commitments the level of transposition and practical implementation is perfect or advanced, while others demonstrate critical non-conformity. From the very beginning, Ukraine had a certain advantage, as in many cases the domestic legislation in the field of consumer rights even before the signing of the AA was developed taking into account the requirements of EU legislation; for many commitments, the starting point was not development of new RLAs from scratch but refinement of the existing ones (a representative example is the Law "On Consumer Protection"). However, this advantage has not been used properly. The slow pace of fulfilment of the commitments in an area such as protection of the rights of consumers of tourist services attests to the importance of the correct choice of the transposition mechanism.

Recommendations:

- Update the Action Plan for the Implementation of the Concept of State Policy in the Field of Consumer Protection until 2020 and extend its validity for the next period, taking into account the unfinished tasks from the previous period and changes in the relevant EU legislation;
- Accelerate the full-fledged deployment of the national market surveillance information system;
- Take a more proactive stance on granting Ukraine access to the European RAPEX system;
- Recognize the underperformance concerning the issue of child-resistant lighters and ensure full implementation of the relevant EU requirements;
- Ensure that the EU experts conduct an expert assessment of the new draft Law on Consumer Protection (as amended), which is key for the sector, before submitting it to the government and further to the Verkhovna Rada, and expedite the adoption of the law;
- Bring the draft Law "On Amendments to the Law of Ukraine 'On Tourism' and Certain Other Legislative Acts in Respect of the Basic Principles of Tourism Development" (No. 4162 of 29.09.2020) into line with the provisions of Directive 2015/2302/EU and expedite its adoption;
- Study the international experience in the legal regulation of guarantees and mechanisms of legal protection of consumers in case of sale and resale of timeshare contracts, and determine the best way to transpose the relevant requirements of European law (Directive 2008/122/EC);
- Fully align the legislation of Ukraine with that of the EU in respect of the relevant terms and definitions and preliminary notification of the consumer about the full cost of the credit

SOCIAL POLICY

Key conclusions:

As of June 2021, Ukraine was to implement all directives in the areas of Labour Law and Anti-Discrimination and Gender Equality. The commitments have been partially fulfilled, one of the main reasons for the incomplete fulfilment is the inability of stakeholders to adopt the new Labour Code of Ukraine.

In the area of Occupational Health and Safety, five directives were to be implemented, but in fact the legislation was brought closer to two directives on the safety and health requirements for the use of work equipment by workers at work and the safety and health protection of workers in surface and underground mineral-extracting industries. As for the other directives in this area, the approximation period is not over yet – for some directives the deadline is October 2021, for others 2024. The key issue is the need to adopt a framework law that will lay down the national mechanism for ensuring the safety and health of workers at work. Based on this law, a system of implementing regulations should be developed.

Recommendations:

- Adopt a new Labour Code of Ukraine (or amend the current Labour Code of Ukraine) in order to ensure transparent and predictable employment conditions, protect employees working under special types of employment contracts, introduce mechanisms for the employer to inform and consult employees' representatives in the field of labour, in particular regarding collective redundancies, transfers of undertakings or businesses, as well as protection of employees.
- Update or adopt new versions of laws on social dialogue and the legal status of its parties and bodies, conducting collective bargaining on collective agreements and contracts, in particular to include provisions that approximate national legislation to EU acquis.
- Reform and improve the mechanism of implementation of transposition legislation, in particular as regards administrative and judicial protection of labour rights, and a procedure for resolving individual and collective labour disputes/conflicts.
- Promote social dialogue and take into account the views of all parties to the social dialogue when developing and adopting relevant laws and codes.
- Update framework laws in the field of equal rights and opportunities and anti-discrimination – i.e. the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" and the Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine" – streamline the relevant terms and definitions, specify the mechanism for the protection of human rights to ensure equal treatment and non-discrimination (regarding entities and their powers, the role of the public in this area, establishing the details of administrative and judicial protection, monitoring, accounting and data collection).
- Adopt a national strategy in the field of gender equality, as well as integrate gender equality issues into all areas of public administration and at various levels of legal regulation (national, sectoral, regional and local).
- Adopt a new Labour Code of Ukraine or amend the current Labour Code of Ukraine to ensure equal rights and opportunities and prevent and combat discrimination in the field of labour and employment – specify the grounds for discrimination, identify cases of positive action, establish the details of legal regulation for certain categories of workers, eliminate the gender pay gap, etc.
- Supplement the current legislation with provisions aimed at ensuring equal rights and opportunities, preventing and overcoming discrimination in the field of social security.
- The priority task in this area is adoption of a framework law on the safety and health of workers at work, which will transpose Framework Directive 89/391/EEC into national law.
- Review the system of legislation on the safety and health of workers at work. The core and central role should be played by the framework law, which provides the grounds for further integration of its requirements into other laws governing certain issues of labour protection. It is also necessary to outline the by-laws, including technical ones, that need to be adopted.

- Determine the type/level of regulations (in particular by their legal effect) that should be adopted in the context of transposition. Consider the possibility of simplifying the array of by-laws and transferring labour protection issues to the level of government decrees, which will also increase the legal effect of the transposed provisions.
- In order to put the requirements of the directives on occupational safety and health into practice, it is necessary to strengthen cooperation/coordination between the bodies-in-charge of measures envisaged by the government plan, as well as to review the latest reform of ministries in the field of labour, employment, and labour protection.
- Bring the legislation of Ukraine on the functioning of the State Labour Service of Ukraine into line with the requirements of ILO conventions and directives.
- Consider revising Annex XL to the Association Agreement to include a separate item on social protection and security in order to approximate Ukrainian legislation to the EU acquis in this area.

PUBLIC HEALTH

Key conclusions:

The coronavirus pandemic has given a significant impetus to the prioritization and, consequently, financing and development of public health infrastructure, and especially its laboratory component. At the same time, the sector has come under significant political influence, which has spawned certain steps that are contrary to the previously adopted strategy in the sector, such as the reinstatement of chief public health inspectors and refusal to decentralize the public health system without assessing the effectiveness of the previous actions. Attention to the matter of public health has accelerated the adoption in the first reading of the draft law on public health, which is important in the implementation of the Association Agreement.

On the other hand, the healthcare provision system and the reform of healthcare financing have also faced serious challenges over the past year and a half, both due to the pandemic and due to the general opposition to the introduction of transparent rules for healthcare financing. Despite such obstacles, the reform of financing for both primary healthcare and specialized healthcare continues.

Regarding road safety, Ukraine currently demonstrates sad statistics, which are deteriorating from year to year. The Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Strengthen the Liability for Certain Violations in the Area of Road Safety” significantly increases the liability of road users, both in financial and criminal liability terms. Such changes in legislation should prevent accidents and improve road safety statistics.

In 2020 and the first half of 2021, significant progress has been made in the legislative approximation in the field of blood to European standards. It is due to the adoption of a new law and by-laws, respectively. At the same time, work on the implementation is still ongoing – a new institutional system in the field and the relationship between blood actors is being built. We also expect the launch of a single electronic register of donors, which will allow us to see the overall picture of blood donation in Ukraine. It is also necessary to improve the implementation of the statutory norms for the promotion of voluntary and unpaid donation. At the same time, we are witnessing an increase in the role of business entities in the blood system, which may be fraught with some risks for the development of voluntary and unpaid donation in Ukraine.

The legislation on transplantation has been updated and steps have been taken towards the practical launch of transplant operations in Ukraine (currently in test mode). Another important aspect was the expansion of transplant service providers – the eligibility requirements for medical institutions in the field have been simplified. In accordance with its commitments, Ukraine has:

- assigned a central body that acts as a coordinator in the sphere and is responsible for the quality and safety of human tissue and cell transplantation (Ministry of Health of Ukraine);
- established the Centre for Transplant Coordination responsible for the organisational management and coordination of healthcare institutions that provide medical care involving transplantation;
- introduced amendments to the Criminal Code to increase the liability in the field of transplantation;
- created the USIST.

These changes are the first steps, and for the full-fledged functioning of the sphere comprehensive decisions and appropriate regulatory framework should be adopted, including standards for improving the quality and safety of the transplantation of human tissues and cells in accordance with European standards.

At the same time, although Ukrainian legislation on tobacco control is currently rather progressive, it does not take into account the important recent legislative changes that took place in the EU in 2014.

To implement EU recommendations concerning alcohol consumption reduction, national legislation has to be updated to take into account international best practices and awareness-raising campaigns should be held for the public in general and young people in particular.

The situation with cancer in Ukraine is threatening, as evidenced by sad statistics. Currently, the matter of launching screening programmes is being discussed at various levels, but no decision concerning implementation has been made.

In the subsector of Mental Health – Drug Dependence, certain institutional preconditions have been created for further development, but the comprehensive implementation of the recommendations set out in EU legislation has not yet taken place.

Recommendations:

- Further implementation of the Law of Ukraine “On State Financial Guarantees of Public Healthcare”, introduction of a monitoring system with a gradual strengthening of the focus on quality indicators of medical care.
- Revision and adoption of draft law No. 4142 “On the Public Health System.”
- Accession to the EU network of epidemiological surveillance and control of communicable diseases.
- Implementation of Order No. 1726 of the Ministry of Health “On Approval of the Procedure for Keeping Records, Reporting on and Epidemiological Surveillance of Communicable Diseases and the List of Communicable Diseases Subject to Registration” of 30.07.2020.
- Revision of by-laws on certain communicable diseases.
- Conduct national awareness-raising campaigns on the need to comply with traffic rules, both by drivers and pedestrians aiming to improve the public awareness of their own safety and the safety of others.
- Develop and adopt by-laws to implement the new Law of Ukraine “On Safety and Quality of Blood”, which will launch a mechanism for implementing the provisions of the Law and thereby help fulfil Ukraine’s commitments;
- The Ministry of Health of Ukraine, as the central executive body responsible for public policy making in the field of blood safety, should ensure appropriate conditions for the institutional development of the Specialized State Institution Ukrainian Centre for Transplant Coordination and the proper performance of its functions by the National Transfusion Centre responsible for coordination in the blood system.
- Designate the authorized body in the field of blood safety and quality, assigning it to perform new functions in the blood system in accordance with European recommendations.
- Revise the existing regulatory framework and update it, in particular with regard to the infection control of donor blood, safety and quality indicators.
- Promote the implementation of public-private partnership in accordance with European practices and taking into account the requirements for the development of voluntary and unpaid donation, meeting 100% of healthcare needs for safe and high-quality donor blood and blood components, and taking into account that donor blood is one of the key factors of national security.
- Together with the Ministry of Education and Science initiate awareness-raising events for university students to promote voluntary and unpaid donation of blood and blood components.
- Update the donor incentive system: revise the policy of benefits and awards.
- Update the legal framework or adopt new by-laws on transplantation, in particular on: the licensing of healthcare establishments, safety and quality of cell and tissue transplantation, monitoring of transplantation, etc.
- Create favourable conditions for the involvement of new healthcare facilities in transplantation and for an increase in such operations in Ukraine in general.
- Launch an all-Ukrainian awareness-raising campaign on the importance of tissue and cell donation.
- Create a pool of experts and celebrities to be involved in public campaigns and discussions so that they would draw public attention to the issue of donation.
- Amend national legislation to bring it closer to updated Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products.
- Use competitive selection of research and development projects, to set an assignment for studies of the problem of alcohol consumption by young people.
- Implement the measures of the National Action Plan on Non-Communicable Diseases Related to Alcohol Use.
- Revise the National Action Plan on Non-Communicable Diseases to Achieve the Global Sustainable Development Goals and supplement it with measures aimed at reducing alcohol consumption among young people, with clear-cut implementation indicators and a system of periodic monitoring and evaluation.
- Revise the National Action Plan on Non-Communicable Diseases to Achieve the Global Sustainable Development Goals to include cancer screening programmes, with clear-cut implementation indicators and a system of periodic monitoring and evaluation.

- Develop by-laws to ensure compliance with non-communicable disease control commitments within an integral public health and healthcare system.
- Draft a by-law of the Ministry of Health to provide a differentiation of the definitions of “early diagnosis” and “screening” of cancer.
- Develop key standards for the economic feasibility and ethical acceptability of screening for the most common cancers, taking into account the epidemiological situation and access to treatment under state medical guarantees.
- Ensure adaptation of EU practices on screening programmes for the cancers that should be screened in Ukraine.
- Provide funding for screening programmes in line with the reform of healthcare financing and public health system financing.
- Integrate the drug monitoring strategy into a broader strategy for the development of medical statistics.
- Adopt a strategic document taking into account European and global norms for the progressive development practices aimed to reduce the harm to health associated with drug addiction;
- Apply a cross-sectoral approach for the gradual legislative approximation to the principles of the EU acquis on defining the key determinants of health, such as drug dependence, in order to reduce the adverse health and social consequences of drug dependence.

EDUCATION, TRAINING AND YOUTH

Key conclusions:

The lack of significant steps to meet the commitments is due to several factors. On the one hand, another change in the team of the Ministry of Education and Science of Ukraine, on the other hand, the approaches to educators' work during the pandemic of 2020 – significant efforts were invested in creating conditions for online learning in secondary and higher education. Therefore, Article 433 (Title V) of the Agreement “The Parties shall examine the possibility of developing their cooperation in other areas, such as secondary education, distance education, and life-long learning” has moved to the front burner.⁷⁸⁰

Also, during 2020 and the first half of 2021 various environments demonstrated a negative response to changes – i.e., the AA objectives that had already been implemented (in particular, this applies to the activities of the National Agency for Quality Assurance in Education).⁷⁸¹ This also hampers the implementation of the Action Plan and the provisions of the Association Agreement.

There is also the practice of submitting for public discussion regulations that subsequently generate no discussion results or no outcome – i.e., are never adopted.⁷⁸²

Therefore:

- Ukraine has started work on most tasks. It is gradually changing educational policies and the approaches of those involved in the educational process – i.e., academic integrity. Education is obtained through the acquisition of competencies, as well as “grassroots” initiatives for dual education in pre-tertiary and tertiary educational establishments.
- There are initiatives that remain incomplete (e.g., the adoption of the Law “On Adult Education” or the Resolution “On the Dual Form of Education”) or face unnecessary obstacles (such as in the NAQA).
- The AA commitments within this sector are special in that they go far beyond the education system and concern a number of social issues (determining the level of qualifications), central government and local government (adult education), changing the mentality and values (academic integrity). Therefore, to fulfil the commitments, it is necessary to ensure the institutional continuity in fulfilling them and performing the implementation tasks, as well as coordinated work of various institutions and agencies.

Recommendations:

Based on the policy analysis procedures, update the timeframes for the tasks set by the resolutions of the

- Cabinet of Ministers of Ukraine on the implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, and synchronize them with different thematic groups;
- The relevant departments of the Ministry of Education and Science of Ukraine together with experts in the field of education should monitor the work of public sector experts on the availability of regulatory legal acts and other documents in the matters associated with the commitments under the AA. Based on the results of the monitoring, use the experience and insights to apply them when performing tasks for the implementation of the AA;
- Recommend that the relevant committee of the Verkhovna Rada finalise the draft law “On Professional (Vocational) Education” submit it to the VRU;
- Ensure the development and approval of a legal act on the procedure for recognition of non-formal education and self-education;
- Recommend that the National Accreditation Agency coordinate its work with the NGO Institute of Professional Qualifications, which has experience in developing the Repository of Professional Qualifications;
- Oblige the National Accreditation Agency to ensure effective work on the establishment of the National Register of Qualifications;
- Develop the principles of cooperation and interaction for sector-specific councils – i.e., educational institutions of different degrees and different forms of subordination – the NAQA – of the National Accreditation Agency of Ukraine;

780 <https://www.kmu.gov.ua/diyalnist/yevropejska-integraciya/ugoda-pro-asociacyu>

781 <http://osvita.ua/blogs/78941/>

782 <https://mon.gov.ua/ua/news/mon-proponuye-dlya-gromadskogo-obgovorennya-proyekt-polozhennya-pro-dualnu-formu-zdobuttya-osviti>

- Revise the classifier of professions DK 003 in accordance with professional qualifications;
- Recommend that the relevant VRU committee consider the draft law “On Academic Integrity”;
- Ensure continuity of the NAQA’s mission and action plan, improve awareness-raising work with target groups of stakeholders;
- Continue the practice in approaches to the accreditation of educational programmes, harmonisation of educational standards (by specialties) and professional qualifications (by competencies and learning outcomes);
- Recommend that the relevant VRU committee consider the draft law “On Adult Education”;
- Recommend that the Ministry of Education and Science of Ukraine and local authorities consider the possibility of creating a network of state and municipal educational establishment for professional training/retraining;
- Recommend that the Ministry of Education and Science of Ukraine consider the possibility of expanding the mechanisms and methods of training and retraining in establishments of postgraduate education;
- Recommend that local authorities, in cooperation with education departments, consider the possibility of establishing training centres for “third age” people so that they could acquire relevant professions.

TITLE VI

FINANCIAL CO-OPERATION, WITH ANTI-FRAUD PROVISIONS

FINANCIAL CO-OPERATION, WITH ANTI-FRAUD PROVISIONS

Key conclusions:

Within the sector of Financial Co-operation, with Anti-fraud Provisions, no progress has been made in 2020 and the first half of 2021.

Recommendations:

- Develop draft laws to implement the provisions of EU legislation to protect the financial interests of the European Communities.

ABBREVIATIONS

ACAA	Association Agreement (abbreviation) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part.
ABCA	Apartment Building Co-owner Associations
ACAA	Agreements on Conformity Assessment and Acceptance of Industrial Products
AEO	Authorized economic operators
AF/AFU	Armed Forces/Armed Forces of Ukraine
ALTHEA	Operation EUFOR ALTHEA – EU military operation in Bosnia and Herzegovina
AMCU	The Antimonopoly Committee of Ukraine
ARMA	National Agency of Ukraine for Detection, Investigation and Management of Assets Obtained from Corruption and Other Crimes
ASM	ancillary services market;
ASO	Administrative Service Offices
ATC	Amalgamated territorial community
AVMSD	Audiovisual Media Services Directive
B2C	Business-to-Consumer
BATs	Best available techniques
BCM	bilateral contracts market
BEPS	OECD project to combat tax base erosion and profit shifting
BM	Balancing market
BRDO	Better Regulation Delivery Office
BRT	Broadcasting, Radiocommunications & Television Concern
BTG	Tactical Battle Group
CBRN	Chemical, biological, radiological and nuclear safety
CCU	Constitutional Court of Ukraine
CEBs	Central Executive Bodies
CEN	European Committee for Standardization (Comité Européen de Normalisation)
CENELEC	European Committee for Electrotechnical Standardization (Comité Européen de Normalisation Électrotechnique)
CERT	Computer Emergency Response Team

CFSP	The EU's common foreign and security policy
CFSP	Common Foreign and Security Policy
CHP	Combined heat and power plant
CMU	Cabinet of Ministers of Ukraine
COARM	Troika of the Working Party on Conventional Arms Exports
CONOP/CODUN	Troika of the Working Party on Global Non-Proliferation and Disarmament
COSCE	EU Working Party on OSCE and the Council of Europe
CP	Checkpoint (at the border)
CPO	Centralized procurement organisation
CRO	Civil Registration Offices
CRS	Common Reporting Standard
CSDP	The EU's Common Security and Defence Policy
CSO	Civil Society Organisation
CSP	EU-Ukraine Civil Society Platform
DAM	day-ahead market
DBR	State Bureau of Investigation
DMA	Digital Markets Act
DSA	Digital Services Act
DSM	EU Digital Single Market
DSM	Digital Single Market
DSTU	State Standard of Ukraine
EA	European co-operation for Accreditation
EaP	Eastern Partnership
EC of Ukraine	Electoral Code of Ukraine
ECA	European Court of Auditors
EDA	European Defence Agency
EFTA	European Free Trade Association
EGNOS	European Geostationary Navigation Overlay Service
EIA	Environmental Impact Assessment
eIDAS	Regulation of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
EMD	Electronic money directive

EMIR	European market infrastructure regulation
EnC	EU Energy Community
ENISA	The European Union Agency for Cybersecurity
ENSTTI	European Nuclear Safety Training and Tutoring Institute
ENTSO-E	European Network of Transmission System Operators for Electricity
ERGA	European Regulators Group for Audiovisual Media Services
ESA	European Space Agency
ESCO	Energy Service Company
ESDC	European Security and Defence College
ESG	Standards and Guidelines for Quality Assurance in the European Higher Education Area
ESS	European Statistical System
ETD	Energy Taxation Directive
ETIAS	European Travel Information and Authorisation System
ETL	Electricity transmission Line
ETS	European Convention on Transfrontier Television
ETSI	European Telecommunications Standards Institute
ETSON	European Technical Safety Organisations Network
EU	European Union
EU-FINREG	EU project “Strengthening the Regulation and Supervision of the Nonbank Financial Market”
EU-FINREG	EU project “Strengthening the Regulation and Supervision of the Nonbank Financial Market”
EU-SILC	EU statistics on income and living conditions
EUAM	European Union Advisory Mission Ukraine
EUAM	EU Advisory Mission Ukraine
EUBAM	European Union Border Assistance Mission to Moldova and Ukraine
EuBIS	European Blood Inspection System
EUMETSAT	European Organisation for the Exploitation of Meteorological Satellites
Eurojust	European Agency for Criminal Justice
Europol	European Police Office
FATF	Financial Action Task Force on Money Laundering
FEC	Fuel and Energy Complex
FIU	Financial Intelligence Unit
FRG	Federal Republic of Germany

GDN	Gas distribution networks
GDPR	General Data Protection Regulation
GIZ	German Society for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit)
GM/GMO	Genetically modified/Genetically modified organisms
GMP	Good Manufacturing Practice
GNSS	Global navigation satellite system
GOST	The state standard (GOST) of the former USSR/interstate standard in the CIS countries
Government Action Plan or Action Plan on Implementation of the AA	Action plan on the implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, approved by CMU Resolution No. 1106 of October 25, 2017 (as amended)
GTS	Gas transmission system
GTSOU	Gas transmission system operator of Ukraine (LLC GTS Operator of Ukraine)
HACCP	Hazard Analysis and Critical Control Point
HCJ	High Council of Justice
HPP	Hydro Power Plant
HQCJ	High Qualification Commission of Judges
HTP	Heated tobacco products
ICAAP	Internal capital adequacy assessment processes
IDM	Intraday market
IDPs	Internally Displaced Persons
IEA	International Energy Agency
IEC	International Electrotechnical Commission
IFIAR	International Forum of Independent Audit Regulators
IFRS 9	International Financial Reporting Standard 9
ILO	International Labour Organisation
INSC	Instrument for Nuclear Safety Cooperation
IPTV	Internet Protocol Television (IP)
ISM Code	International Safety Management Code
ISO	Independent System Operator
ITC mechanism	Inter-Transmission System Operator Compensation
JFS	Justice, Freedom, Security and Human Rights
JRB	Joint Representative Body

JSC	Joint-Stock Company
LCR	Liquidity Coverage Ratio
LCU	Labour Code of Ukraine
LF	Law Firm
LITPOLUKRBRIG	Lithuanian-Polish-Ukrainian Brigade
LLC	Limited Liability Company
MAC	Migrant Accommodation Centre
MAGATE	International Atomic Energy Agency
MDT	Ministry of Digital Transformation of Ukraine
MES	Ministry of Education and Science of Ukraine
MGU	joint-stock company Mahistralni Gazoprovody Ukrainy
MIA	Ministry of Internal Affairs of Ukraine
MiFID	EU Markets in Financial Instruments Directive
MiFIR	EU Markets in Financial Instruments Regulation
MNP	Mobile Number Portability service
MNP	Mobile number portability
MoH	Ministry of Health of Ukraine
MOSS	Mini One-Stop-Shop
MRA	Mutual Recognition Agreement
MRA	Mutual Recognition Agreement
MRV	Monitoring, Reporting and Verification
MZV	Monitoring, reporting, and verification
NAAU	National Accreditation Agency of Ukraine
NABU	National Anti-Corruption Bureau
NACP	National Agency on Corruption Prevention
NAHEQA	National Agency for Higher Education Quality Assurance
NAQA	National Agency for Higher Education Quality Assurance
NASU	National Academy of Sciences of Ukraine
NATO	North Atlantic Treaty Organisation
NATURA 2000	Network of environmentally important protected areas of the EU
NBU	National Bank of Ukraine
NCCIR	National Commission for State Regulation of Communications and Informatization

NCP	National Contact Point
NCRFSM	National Commission for Regulation of Financial Services Markets of Ukraine
NCRT	National Commission for State Regulation of Transport
NCSRT	National Commission for State Regulation of Transport
NCSSM	National Commission on Securities and Stock Market of Ukraine
NCTS	New Computerized Transit System
NEC	National Energy Company
NECP	Integrated National Energy and Climate Plan
NEURC	National Energy and Utilities Regulatory Commission
NF of the AFU Forces	Naval Forces of the Armed Forces of Ukraine
NGO	Non-Governmental Organisation
NJCS	National Joint-Stock Company
NNEGC	National Nuclear Energy Generating Company (Energoatom)
NPRE	National Plan for Reduction of Emissions from Large Combustion Plants
NQF	National Qualifications Framework
NRA	National Regulatory Authorities
NSDC	National Security and Defence Council of Ukraine
NSFR	Net Stable Funding Ratio
NSSMC	National Securities and Stock Market Commission
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development
OECD/G20 BEPS	Project of the Organisation for Economic Cooperation and Development and the G20 countries to develop measures to combat the erosion of the tax base and profit shifting
OIML	International Organisation of Legal Metrology
OLAF	European Anti-Fraud Office
OSCE SMC	OSCE's Special Monitoring Mission to Ukraine
OTT technology	Delivery of the audio, video, and other media content over the Internet, without the involvement of a multiple-system operator in the control or distribution of the content (Over-The-Top Content)
OU	Ownership Unbundling
PECI	Projects of Energy Community Interest
PESCO	Permanent Structured Cooperation
PIC	Public Integrity Council

PMG	Programme of Medical Guarantees
PMI	EU Projects of Mutual Interest
PSD	EU Payment Services Directive
PSH	Pumped-storage hydroelectricity
PSO	Public Service Obligation
PTB	National Metrology Institute of Germany (Physikalisch-Technische Bundesanstalt)
PTN	Production and technological needs
PV	Photovoltaic power station
QES	Qualified electronic signature
QSCD	Qualified Signature Creation Device
RAC	Refugee Accommodation Centre
RAPEX	EU Rapid Exchange of Information System
RCMU	Resolution of the Cabinet of Ministers of Ukraine
REFIT	European Commission's regulatory fitness and performance programme
REMIT	EU Regulation 1227/2011 of 25 October 2011 on Wholesale Energy Market Integrity and Transparency
RES	Renewable energy sources
REWG	Roaming Expert Working Group
RF	Russian Federation
RGC	Regional Gas Company
RIMS	Remote integrity monitoring station
RLA	Regulatory legal act
RSA	Regional (Oblast) State Administration
RSS	Remote Signature Service
RTA	Road traffic accident
RW	Radioactive waste
SAEZM	State Agency on Exclusion Zone Management
SAPO	Specialized Anti-Corruption Prosecutor's Office
SBU	Security Service of Ukraine
SE	State Enterprise
SEIEB	System of Electronic Interaction of Executive Bodies
SELEC	Southeast European Law Enforcement Centre
SEO	Strategic Environmental Assessment

SESU	State Emergency Service of Ukraine
SGEI	Services of general economic interest
SIGMA	OECD Support for Improvement in Governance and Management
SIMS	Single Integrated Metadata Structure
SMP	Significant Market Power
SMRAC	System for Monitoring Risk Assessment Criteria
SMS	State Migration Service of Ukraine
SMS	Statistical metadata system
SNF	Spent nuclear fuel
SNRIU	State Nuclear Regulatory Inspectorate of Ukraine
SPM	Sanitary and phytosanitary measures
SPS	Solar Power Station
SREP	Supervisory Review and Evaluation Process
SRS	The State Regulatory Service
SS	Service station
SSAU	State Space Agency of Ukraine
SSFSCP	The State Service of Ukraine on Food Safety and Consumer Protection
SSS	State Statistical Surveillance
SSTC NRS	State Scientific and Technical Centre for Nuclear and Radiation Safety
STS	The State Tax Service of Ukraine
TBT	Technical barriers to trade
TCU	Tax Code of Ukraine
TEN-E	Trans-European Networks for Energy
TEN-T	Trans-European Transport Network
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TKE	Teplokomunenergo (heat supply companies)
TPP	Thermal power plant
TSI	Technical specifications for Interoperability
TSO	Transmission system operator
UCG FEA (UKT ZED)	Ukrainian Classification of Goods of Foreign Economic Activity
UES	United Energy Systems

UHHRU	Ukrainian Helsinki Human Rights Union
UN	United Nations Organisation
UNDA	United Nations Development Accounts
USF	underground storage facilities
USIST	Unified State Information System for Organ and Tissue Transplantation
VAT	Value added tax
VOC	Volatile Organic Compounds
VR/VRU	The Verkhovna Rada of Ukraine
VSP	Video-Sharing Platforms
WHO	World Health Organisation
WMDA	World Marrow Donor Association
WPP	Wind power plant
WTO	World Trade Organisation

