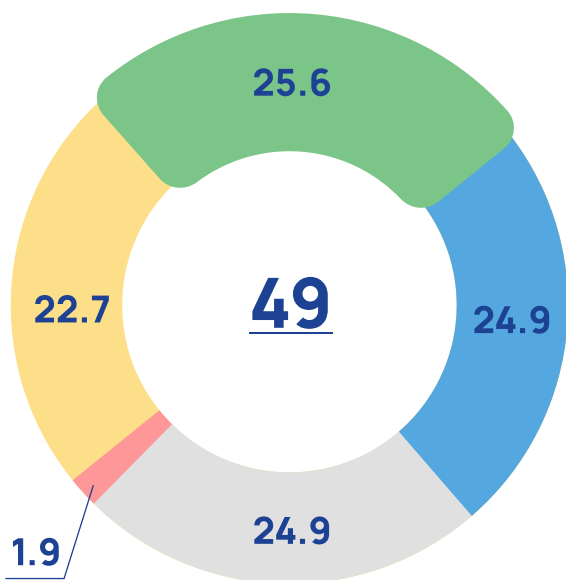


European integration despite COVID: implementation progress of Association Agreement in 2020 - 1H 2021

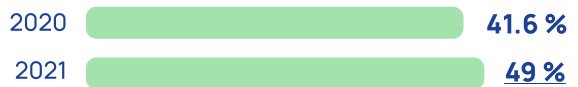
As of the second half of 2021, the overall progress in the implementation of the commitments under the Association Agreement between Ukraine and the EU amounts to **49 %**. This figure includes both fully fulfilled commitments and intermediate results. "Perfect" fulfilment, i.e. completion of all the 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.

Compared to the previous study, the indicator of overall progress in the Agreement implementation has increased (from **41.6 %** to **49 %**); 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.



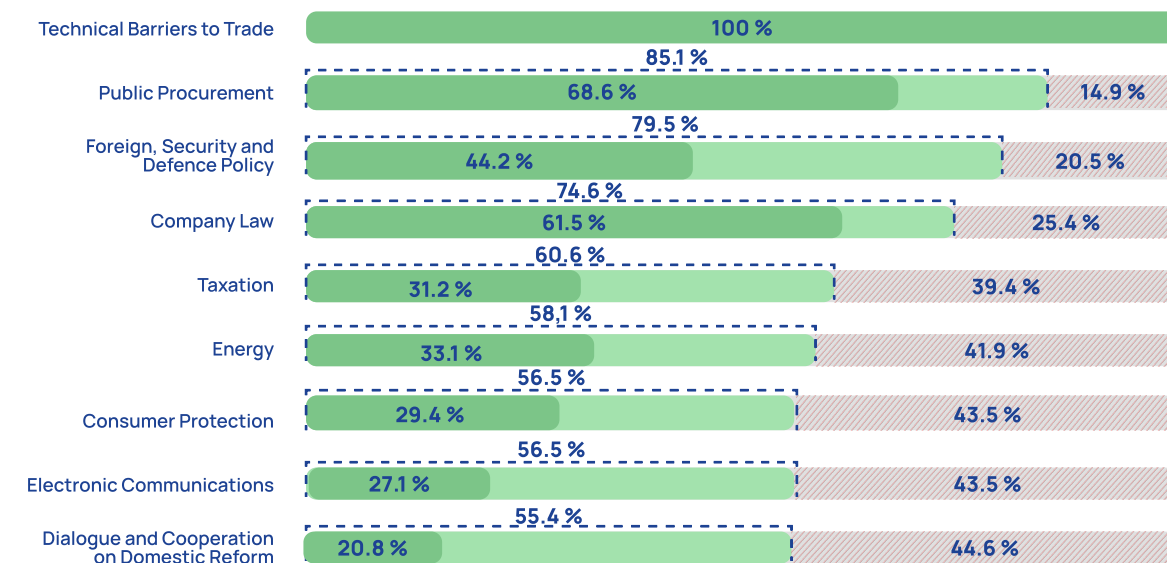
OVERALL PROGRESS



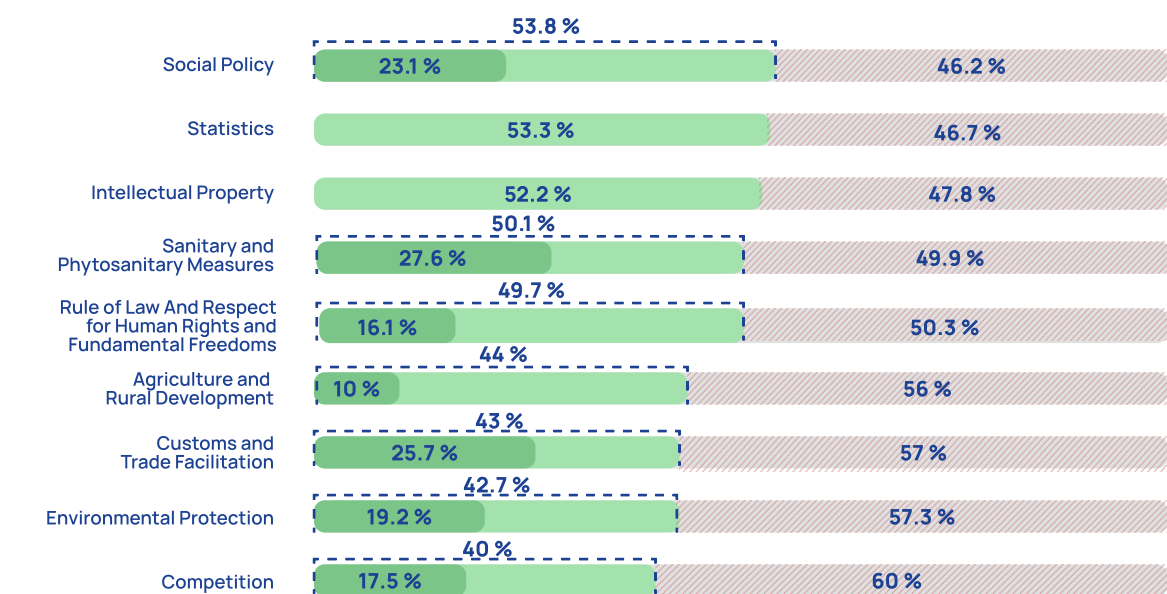
PERFECT IMPLEMENTATION



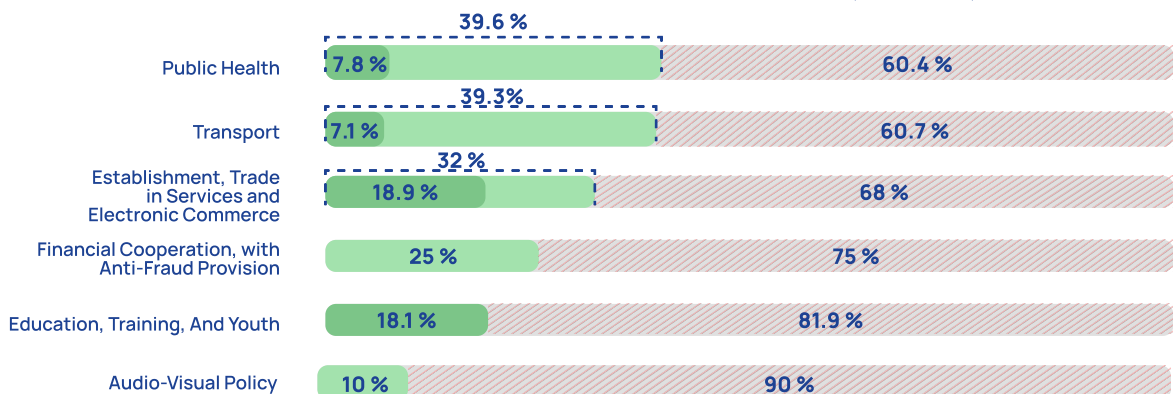
LEADERS (> 55 %)



PARTIAL PROGRESS (40 - 55 %)



AN EARLY LEVEL OF IMPLEMENTATION (< 40 %)



*The sum of the statuses "Not begun" and "Critical non-compliance"

LEADING SECTORS

(those with more than 55 % of fulfilled commitments)

According to the results of the analysis for 2020 and the first half of 2021 the leading sectors remained the same (compared to the last year). The best sectors rated "perfect" include: technical barriers to trade (TBT), public procurement, company law, foreign policy, security and defence policy, energy, consumer protection and taxation.

TECHNICAL BARRIERS TO TRADE

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 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.

PUBLIC PROCUREMENT

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.

FOREIGN, SECURITY AND DEFENCE POLICY

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.

COMPANY LAW

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.

TAXATION

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 harmonization of excise duties on alcohol and alcoholic beverages, fuels products and electricity. Harmonization of tax legislation with the common EU value added tax system has yet to be implemented.

ENERGY

In the sector of energy (**58.1 %** overall progress, **33.1 %** perfect progress), during previous periods major structural reforms were carried out in the natural gas and electricity markets to bring their 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 households. 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 poses 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.

CONSUMER PROTECTION

In the sector of consumer protection, slightly more than a half (**56.5 %**) of the tasks have been fulfilled and only **29.4 %** of these have been carried out in full (perfect fulfilment). However, 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.

ELECTRONIC COMMUNICATIONS

In the sector of electronic communications (**56,5 %** overall progress, **27,1 %** perfect progress), Ukraine has achieved a dynamic development in the field of telecom services, as well as trust services. Some commitments have already been fulfilled in full. In 2020, a comprehensive law was adopted in this area – i.e. the Law of Ukraine “On Electronic Communications” of December 16, 2020 (No. 1089-IX). 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 of Appendices XVII-2, XVII-3, and XVII-4.

DIALOGUE AND COOPERATION ON DOMESTIC REFORM

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. Completion of the decentralization reform lacks of settlement (at the level of the Constitution) of an important block of issues on the organization of local self-government. 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 in February 2021 (Law No. 1285-IX of February 23, 2021). 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: dialogue and cooperation on domestic reform, rule of law and respect for human rights and fundamental freedoms, sanitary and phytosanitary measures (SPS), customs and trade facilitation, intellectual property, competition, statistics, environment, audio-visual policy, agriculture and rural development, and social policy.

SOCIAL POLICY

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.

STATISTICS

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.”

INTELLECTUAL PROPERTY

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.

SANITARY AND PHYTOSANITARY MEASURES

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.

RULE OF LAW AND RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

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. At the same time, in order to successfully complete the reform of law enforcement, anti-corruption and the judiciary, there is a lack of will to make drastic changes aimed at building their proper institutional capacity and achieving real political independence.

AGRICULTURE AND RURAL DEVELOPMENT

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.

CUSTOMS AND TRADE FACILITATION

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 bill has yet begun.

ENVIRONMENTAL PROTECTION

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.

COMPETITION

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.

AN EARLY LEVEL OF IMPLEMENTATION

(less than 40 %)

PUBLIC HEALTH

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 organizational 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.

TRANSPORT

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. Reforms in the field of railway transport were merely partial. The most significant bills 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.

ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE

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 **e-commerce** subsector, most issues related to e-commerce have been settled since the adoption of Law No. 675-VIII, but it already needs numerous clarifications and updates to bring it into line with recent changes in the relevant regulation in the EU.

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 Organized Commodity Markets)" of 19.06.2020 (No. 738-IX) have been adopted in 2021.

FINANCIAL COOPERATION, WITH ANTIFRAUD PROVISION; EDUCATION, TRAINING, AND YOUTH; AUDIO-VISUAL POLICY

The most challenging situation regarding the implementation of the Agreement has developed in the sectors of financial cooperation, with anti-fraud provision (**25 %** overall progress, **25 %** perfect progress); education, training, and youth (**18.1 %** overall progress, **0 %** perfect progress); audio-visual policy (**10 %** 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.

RECOMMENDATIONS

In order to effectively harmonize Ukrainian laws with the EU acquis, it is necessary to update certain sectoral annexes and appendices. Including the following:

- Appendices XVII-2, XVII-3, XVII-4 (concerning electronic commerce, trust services and electronic identification);
 - Annex XXX and Annex XXXI (on the environment and climate change);
 - Annexes XXXIV and XXXV (company law).
-

In order to approximate national legislation to the requirements of the EU acquis in the sectors with limited progress, it is necessary to develop and/or adopt the following comprehensive laws:

- Law "On the Administrative and Territorial Structure of Ukraine";
- Law "On Amendments to the Constitution of Ukraine to Reform Local Self-Government and Territorial Organization of Power";
- Law "On Local State Administrations" (No. 4298) (or on prefectures – should amendments be made to the Constitution);
- Law "On Local Self-Government";
- Law "On the Cabinet of Ministers and Central Executive Bodies";
- Law "On Administrative Procedure";
- Law "On Local Referendum";
- Law "On Political Parties in Ukraine" as amended;
- Regarding the optimization of the provisions of the Electoral Code of Ukraine aimed to eliminate the current inconsistencies in its text;
- On Amendments to the Constitution of Ukraine to Ensure Functional Parliamentary Immunity;
- Law "On State Regulation in the Field of Remote Sensing of the Earth";
- Law "On State Control over International Transfers of Military and Dual-Use Commodities" as amended;
- Bring the decommunization legislation in compliance 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 the Propaganda of Their Symbols";
- Law on Guarantees for Freedom of Peaceful Assembly, taking into account the recommendations of Council of Europe experts;
- Law on Plant Protection;
- Customs Code of Ukraine
- Law "On the National Commission for State Regulation in the Fields of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services of Ukraine";
- Law "On the National Commission on Securities and Stock Markets";
- Law "On Insurance";
- Law "On Geographical Indications for Alcoholic Beverages";
- Law "On Official Statistics";
- Law "On Energy Efficiency";

- 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";
 - Law "On Railway Transport of Ukraine";
 - Law "On the National Commission Performing State Regulation of Transport";
 - Law "On Transport of Dangerous Goods";
 - Law "On State Regulation in the Field of Satellite Navigation";
 - Law "On Joint Stock Companies";
 - Law "On Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs";
 - Law "On Seeds and Planting Material";
 - Law "On Protection of Plant Variety Rights";
 - Labour Code of Ukraine;
 - Law "On the Public Health System";
 - Law "On Vocational Education";
 - Law "On Adult Education".
-

For the practical implementation of the commitments under the Association Agreement, the following measures must be taken:

- persistently develop and improve competitive procedures for recruitment, training and education of civil servants, increase the remuneration of civil servants;
- conduct functional analysis of all ministries and other central executive bodies and use its results to reform the CEB system so that ministries would 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;
- complete the process of transferring powers and relevant financial resources to local governments in the framework of decentralization;
- initiate negotiations with the EU concerning revision of the foreign policy and security articles of the Association Agreement. Enhance the dialogue in the defence and military spheres;
- conclude an Agreement between the State Space Agency of Ukraine and the European Organization for the Exploitation of Meteorological Satellites (EUMETSAT) on technical conditions for obtaining Earth remote sensing data;
- expand institutional cooperation with the European Defence Agency and the European Security and Defence College, establish cooperation with the EU Institute for Security Studies;
- develop and implement an effective mechanism for recognizing births and deaths in the occupied territories;
- continue improvement of Temporary Accommodation Centres (THCs) for Foreign Nationals and Stateless Persons in Kivertsi, Rozsdiv, and Martynivske in the Mykolayiv oblast. Provide access to the procedure for applying for the status of refugee or person in need of additional protection in the THCs. Ensure that detained foreigners have access to translators;
- continue work on concluding readmission agreements with the countries identified as sources of migration risk and conclude implementation protocols with EU countries;
- resolve the conflict with the EU law that prevents from updating and signing Joint Control Agreements, either by alignment 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;

- eliminate the shortcomings identified during the preliminary assessment of the Ukrainian quality infrastructure by European experts in order to be ready for negotiations on the ACAA Agreement;
- regain the recognition by the European Co-operation for Accreditation (EA) of the accreditation of NAAU in the areas of accreditation of product certification bodies and inspection bodies;
- complete work on acceding to the Conventions on Trade Facilitation and a Common Transit Procedure;
- launch the regulator of electronic communications after the relevant law is adopted;
- sign the Agreement on Reducing Roaming Tariffs among the Eastern Partnership Countries, which is scheduled for December 2021, and ensure its practical implementation;
- sign the Regional Spectrum Agreement 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 GHz1 frequency bands;
- create an electronic signature verification service that can work with international electronic signature formats (based on ECDSA, RSA);
- introduce competitive selection for the positions of judges and bring into operation the High Court of Intellectual Property;
- eliminate shortcomings in the electricity market caused by the use of the PSO instrument, as well as adopt a new model of support for producers of electricity from RES;
- forgo state intervention in price formation in the retail segment of the gas market for the public and instead support target groups using tools harmonized with European mechanisms;
- create a mechanism to counter unauthorized gas offtake from the GTS by operators of regional gas networks and hold offenders accountable, review the mechanism of gas distribution price formation;
- ensure development of a modern air quality monitoring system and its quality assessment, in particular by gradually updating and expanding the relevant facilities and resources, its integration with the European air quality monitoring network;
- continue work on including the inland waterways of Ukraine in the indicative TEN-T maps;
- complete the restructuring of Ukrainian Railways JSC in order to ensure fair access to the market of transportation and infrastructure;
- create a comprehensive integrated database of Ukrainian merchant vessels open for use by actors in the global market of merchant shipping (Unified Information System of the Maritime Administration);
- continue work on gaining access to the European RAPEX system for Ukraine;
- ensure accession to the EU networks for the epidemiological surveillance and control of communicable diseases.

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based on the analytical paper "Ukraine and the Association Agreement: Monitoring of the Implementation 2014 - 1 half 2021".

Disclaimer:

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