

## 5-year Halfway of Association Agreement Implementation: Key Conclusions and Trends

According to the Association Agreement between Ukraine and the EU (Article 481), the Parties may conduct a comprehensive review of the achievement of objectives under the Agreement in five years after its entry into force. According to the results of the Monitoring Report “Ukraine and the Association Agreement. Monitoring of Implementation in 2014–2019”, Ukraine implemented the Agreement to the extent of 41.6%. This indicator includes all the work done, such as draft laws that have not yet become laws. This figure includes 12.3% of

tasks that have been implemented perfectly (all legislation that has been adopted and meets EU requirements), 10.4% with an advanced level of implementation (legislative work has been carried out, but not all necessary bylaws have been adopted), and 18.9% with an early level of implementation (regulatory acts are still being developed).

By analysing the subsectors of the Association Agreement through the lens of “perfect” indicators, we have identified 4 groups of sectors: leaders, average fulfilment rate, lagging behind, no progress:



# 41,6%

Implemented the Agreement



12,3%

perfect implementation



10,4%

advanced implementation



18,9%

an early level of implementation

5-year of Association Agreement Implementation

## Leaders:

Technical Barriers to Trade (TBT).....	<b>95,8%</b>
Public Procurement.....	<b>71,6%</b>
Company Law.....	<b>65,3%</b>
National Security and Defence.....	<b>43,3%</b>
Foreign and Security Policy.....	<b>38,5%</b>
Energy.....	<b>37,5%</b>
Consumer Protection.....	<b>36,8%</b>
Taxation.....	<b>35,3%</b>

## Average Fulfilment Rate:

Social Policy.....	<b>24,4%</b>
Sanitary and Phytosanitary measures (SPS).....	<b>24,3%</b>
Environmental Protection.....	<b>22,1%</b>
Rule of Law and Respect for Human Rights and Fundamental Freedoms.....	<b>16,3%</b>
Competition.....	<b>15,6%</b>
Public Health.....	<b>14%</b>
Financial Cooperation with Anti-Fraud Provisions.....	<b>12,5</b>
Dialogue and Cooperation on Domestic Reform.....	<b>10,3%</b>
Establishment, Trade in Services and Electronic Commerce.....	<b>7,5%</b>

## Lagging behind

Agriculture and Rural Development – **3,5%**

Customs and Trade Facilitation – **3%**

## No progress

Areas such as intellectual property, education, training and youth, transport, statistics, and audio-visual policy show a **0%** fulfilment rate.

# European Integration Leaders

## Technical Barriers to Trade

Ukrainian basic (horizontal) legislation and almost all Ukrainian sectoral (vertical) legislation have been fully adapted and implemented in accordance with the requirements of the Association Agreement and Annex III. More than 90% of the obsolete USSR standards have been replaced with modern international standards, the level of harmonisation of national standards over the past 5 years has doubled amounting to 65%.

Ukrainian quality infrastructure has been aligned with WTO and EU standards, a National Standardisation Body and a National Accreditation Agency have been established and their operation has been enabled; conformity assessment bodies and state market surveillance bodies have been accredited and designated in accordance with technical regulations; and mandatory product certification has been abolished. The newly established Ukrainian National Standardisation Body has acquired the appropriate status in international and European standardisation organisations; the National Accreditation Agency has become a full-fledged member and has been recognised in international and European accreditation organisations; and Ukraine has become a full member of the Metre Convention and the General Conference on Weights and Measures (CGPM).

Measures have been taken to create preconditions for a preliminary assessment by EU experts of the readiness of Ukrainian bodies of standardisation, conformity assessment, accreditation, metrology, and market surveillance to work in accordance with the requirements of European legislation with the subsequent signing of the ACAA Agreement.

## Public Procurement

Ukraine has made significant progress in meeting virtually all commitments to adapt its public procurement system to EU requirements. This is largely due to the fact that most of the measures were initiated earlier, in accordance with the Strategy for Public Procurement (Roadmap), as well as due to the effective reforms in this area that have been carried out since 2014.

The most successful step is the reforms introduced by the Law of Ukraine “On Public Procurement” in 2016, which first of all involve the creation of an electronic procurement system and significant approximation of the procurement terminology and procedures to the requirements of the relevant EU public procurement directives. The latest amendment, which came into force on April 19 this year, will bring Ukrainian legislation even closer to these requirements.

At the same time, several measures, chiefly those related to fulfilling the obligations to adapt legislation and harmonise legal protection, need further fulfilment, including by making appropriate amendments to the basic Law.

## Company Law

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

The sub-sector “Accounting and Auditing” needs some refinement at the level of implementation, in particular, regarding standards and methodological recommendations concerning the preparation of a report on payments to the state for certain categories of public interest enterprises, as well as strengthening the effectiveness of established audit oversight bodies. activities.

The sub-sector of Accounting and Auditing needs some refinement in terms of implementation, in particular, regarding standards and guidelines concerning the preparation of reports on payments made to government by certain categories of public-interest entities, as well as improving the performance of the established audit oversight bodies.

Within the subsector of Establishment and Activity of Companies the main legal framework has changed – i.e. Directive No. 2017/1132/ EU has been adopted, bringing together most

directives in this subsector, which in turn led to review by responsible authorities of the plans to implement the updated Directive No. 2017/1132/EU. The developed comprehensive draft law “On Joint Stock Companies” (No. 2493) contains both positive aspects in terms of the transposition of Directive No. 2017/1132/EU and significant shortcomings, and therefore needs to be improved before adoption.

### **Common Foreign and Security Policy**

Significant progress in the convergence between Ukraine and the EU and the fulfilment of the commitments under the Association Agreement is observed in the traditionally dynamic political and diplomatic area. At the same time, there was a temporary negative impact on the level of trust between Ukraine and the EU because of the initiatives of the Office of the President of Ukraine to establish the Advisory Council mechanism within the Minsk process. A certain slowdown in the deepening of the cooperation is also caused by the EU’s caution towards a more active policy as regards Eastern Europe. Successful steps have also been taken in the field of scientific and technological cooperation (space industry) and in the field of defence (convergence in the operational, educational and institutional segments), as well as in producing the necessary internal changes in these sectors. Shortcomings and lack of progress in meeting the commitments concern decisions to reform the area of state export control in accordance with EU requirements and standards and in the implementation of a consistent and systematic sanctions policy.

### **Energy Sector**

As part of the implementation of the commitments under updated Annex XVII of the Association Agreement, profound structural reforms have been carried out in the natural gas and electricity markets in terms of aligning their regulation with the requirements of the EU’s Third Energy Package, but their final implementation is hampered by political interventions in the mechanism of operation of these markets in order to maintain artificially low energy prices for the public. In addition, almost complete harmonisation of legislation with the EU standards in the energy efficiency sector has been achieved, except for approval of the framework law “On Energy

Efficiency”; Ukraine has introduced a system of energy labelling of household appliances and ecodesign and has begun creating and introducing energy efficiency improvement systems in buildings. Significant progress has also been made in the extractive industry, as evidenced by a number of successful e-tenders for the sale of special oil and gas permits and six new e-services aimed at ensuring transparency in extractive activities, as well as approximation of legislation to the relevant EU acquis and its enforcement in the field of nuclear energy. Despite some advancements made, there has been little progress in meeting the commitments under the Oil and Petroleum Products subsector, especially in terms of creating their strategic minimum stocks in case of supply disruptions.

### **Consumer Protection**

About half of the commitments have been fulfilled. It should be noted that a number of the norms of the Ukrainian legislation on consumer protection partially took into account 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 perceived by the state authorities as full and was not taken into account in the AA implementation, in particular, in preparing amendments to the Law “On Consumer Protection” and other acts on consumer protection.

In some areas of consumer protection (in particular, tourism), adaptation of legislation has not yet begun, even though the Law of Ukraine “On Tourism” is outdated and needs immediate updating.

The vast majority of commitments set out in the Government’s Action Plan for the Implementation of the AA are worded as requiring creation rather than improvement, which shifts the focus in assessing their implementation. Also, some of the commitments are formulated as tasks, which narrows their focus.

There is a group of commitments that manifest critical inconsistency.

In our opinion, progress in this area may be achieved due to adoption of the Concept of State Policy in the Field of Consumer Protection and

approval by the CMU of the Action Plan for the Implementation of the Concept of State Policy in the Field of Consumer Protection until 2020.

### **Taxation**

The progress is moderate. In general, the structure of the national excise tax meets the requirements of European legislation, especially in terms of the taxation of tobacco products, alcohol and spirit drinks, energy products and electricity.

The structure of the national value added tax generally meets the requirements of European legislation. However, there is a critical inconsistency in establishing the duality of the regulated gold bullion market and investment gold taxation (as required by Council Directive No. 2006/112/EC). Thus, the Government of Ukraine together with the National Bank of Ukraine have to (taking into account the implementation period – i.e. within 5 years from the date of entry into force of the AA) prepare a draft of comprehensive amendments to sectoral (regulating the market of banking metals, including investment gold market regulation) and tax legislation (instead of making transactions involving gold exempt from VAT, which makes it impossible to reimburse it from the state budget or include in the tax credit, a zero tax rate should be introduced).

Despite Ukraine's significant achievements in the field of fiscal reform and its adaptation to the requirements of EU legislation, improvement of the work of tax authorities, as part of the comprehensive reform of regulatory authorities in Ukraine, is the most difficult and long-lasting modernisation endeavour in the country. Since 2014, almost ten attempts have been made in one form or another to change the appearance of fiscal bodies and reduce corruption in their activities. At the same time, no results have been attained in trying to resolve the issue of liquidation of the tax police and creation of a single law enforcement body to combat economic crime – namely elimination of overlaps in functions concerning the fight against economic crimes of the SSU, the National Police and the Fiscal Service. The latest draft law in this regard (No. 1208-2) on the Bureau of Financial Investigations, adopted by the Verkhovna Rada of Ukraine at first reading, was defeated on January 17, 2020.

## **Average Fulfilment Rate:**

### **Social Policy**

Annex XL of the Association Agreement diversifies the timing of the approximation of legislation to EU acquis. By the end of 2019, Ukraine was to implement all thirteen directives in the subsectors of “Labour Law” and “Anti-Discrimination and Gender Equality”, as well as the five directives in the subsector of “Health and Safety at Work” (for the remaining directives within this subsector the approximation period is not over yet). The commitments have been partially fulfilled. Positive facts include the early fulfilment of the commitments concerning certain directives on health and safety at work (provision of personal protective equipment, occupational safety on construction sites, safety and health requirements for work with display screen equipment). The government also planned and performed tasks and activities that do not aim to approximate legislation to the directives specified in Annex XL but contribute to the objectives of Ukraine-EU cooperation under Chapter 21, Title V (including access to social services).

The reasons that have affected the status of implementation of the commitments within the Social Policy sector include some mistakes made at the initial stages of the planning of the state policy on European integration – i.e. the development of tasks and measures within the Government Action Plan for the Implementation of the Association Agreement to make them consistent with Ukraine's commitments concerning legislative approximation to EU acquis.

### **Sanitary and Phytosanitary Measures**

Within the framework of CMU Order No. 228-p “On Approval of the Comprehensive Strategy for Implementation of Chapter IV (Sanitary and Phytosanitary Measures) of Title IV ‘Trade and Trade-Related Matters’ of the Association Agreement between Ukraine, of the one part, and the European Union, the European Union The Atomic Energy Community and its Member States, of the other part”, Ukraine has developed almost all the regulations mentioned in the above document. However, it should be taken into account that the developed regulations are

pending consideration by the State Regulatory Service (hereinafter – SRS). In the field of phytosanitary measures (plants, plant products and other objects of regulation) about half of the necessary regulations have not been developed. The situation is the same in the area of chemicals and GMOs. This is the responsibility of the Ministry of Economic Development, Trade and Agriculture of Ukraine and the Ministry of Environmental Protection and Natural Resources of Ukraine.

### **Environmental protection**

Moderate progress. The efficiency of the practical implementation of the Agreement in the environmental area depends on the success of the relevant sectoral reforms, which essentially means radical transformation of the system of national regulation in such sectors. Currently, the greatest progress in terms of the practical implementation is observed with regard to the matters that did not require changes to the entire sector, such as EIA, SEA, and access to environmental information.

It can also be argued that the areas that require radical change in the management structure, full reboot, financial and investment support have failed to gain traction. This applies to air, waste, industrial pollution and, in part, to water resource management.

Ukraine has adopted an unsystematic approach to the implementation of directives and regulations in various sectors of environmental protection and climate change: some are subject to strict requirements and criteria, the so-called “gilding” of legislation (recently dismissed by EU member states), whereas other legislative initiatives are often devoid of the necessary European approaches. When implementing directives and regulations, the approach based on multiple variants is seldom used, and directives are often simply copied into the national legislation in Ukraine.

### **Justice, Freedom, Security, and Human Rights**

Title III of the Association Agreement is special for it has no annexes and its provisions contain no references to the relevant acts and regulations of the European Union. The relevant provisions are very broad and often relate not so much to EU acts as to the framework international instruments of the Council of Europe, the UN and

others, and therefore leave considerable room for interpretation.

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

### **Competition**

According to the analysis, moderate progress has been made in this area. Basic legislation has been adopted. At this stage, some issues remain unresolved both at the level of legislation and at the level of practical implementation. Regarding the sub-sector of “Anti-Competitive Practices and Mergers” at the level of national legislation: the criteria for group exclusion of vertical agreements on purchase or sale of goods or services have not been established; vertical agreements containing ancillary provisions on the transfer or use of intellectual property rights have not been included; there is no distinction between vertical agreements and concerted practices of economic operators that meet the criteria of Article 101 (3) of the TFEU and are subject to the exclusions and criteria of Article 101 (1) of the TFEU and distort competition; there are stricter thresholds than those set by the EU Merger Regulation; 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 have not been implemented; and the specifics of application of competition law to intellectual property rights, including the accession to technology transfer agreements, are insufficiently detailed. At the level of practical implementation: the AMCU does not pay attention to ensuring

control over the observance by the subjects of intellectual property rights of the provisions of the legislation on protection of economic competition, including when granting permission for concentration; and the practical implementation of the Discharge Procedure is very insignificant.

As regards the sub-sector on “State Aid”, the current legislation in the field of state aid does not fully implement the relevant EU acquis. At the level of practical implementation, there is a situation when the Law of Ukraine “On State Aid to Business Entities” and, consequently, the powers of the AMCU to monitor and control state aid do not extend to the decisions of the President, Verkhovna Rada of Ukraine and CMU, although such monitoring is one from the requirements of European legislation.

### **Public Health**

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

There are several obstacles to the successful implementation of the commitments, in particular:

- Frequent change of the Ministry of Health teams, which is the line ministry for fulfilling these commitments. Since 2014, six ministers have changed and all the changes resulted in adjustments or interruptions in the implementation of reforms;
- Lack of political will at the level of the top authorities to complete the initiated reforms of the healthcare and public health system. Even though the course of reforms remains

unchanged, political will could significantly accelerate and improve their implementation;

- Financial challenges to the implementation of an effective public health system and introduction of early detection programmes for cancer, programmes to reduce the burden of noncommunicable diseases, etc.

Overcoming these and other challenges to the implementation of the Association Agreement in the field of public health will allow Ukraine to achieve the goals of sustainable development and unlock its full economic potential.

### **Financial Cooperation with Anti-Fraud Provisions**

Ukraine has made significant progress in this sub-sector, as it has established cooperation and coordination with the European Anti-Fraud Office (OLAF).

At the same time, the procedures for cooperation between the institutions involved in the system of interdepartmental coordination on combating violations that affect the financial interests of Ukraine and the EU need to be harmonised.

In addition, it is necessary to develop and adopt regulations regarding the implementation of the provisions of EU legislation in the field of protection of the financial interests of the parties to the Association Agreement.

### **Dialogue and Cooperation on Internal Reforms**

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

During the four years of the public administration reform in terms of the institutional reform of the executive branch, only a common understanding with European partners of its goals and implementation methodology has been achieved and pilot versions have been tested, which yielded different results depending on the subjective factor (attitude to the reform of the relevant minister). As of mid-2019 much more progress

was made in the area of civil service reform (total competitive selection, developed competition methodology), but this has been largely offset by changes initiated by the Verkhovna Rada of the 9th convocation and Honcharuk's government.

Ukraine has implemented part of the Action Plan for the Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Union The Atomic Energy Community and its Member States, of the other part, approved by CMU Resolution No. 1106 of October 25, 2017 ( hereinafter – the Action Plan), in particular, the electoral legislation was codified, the provisions of the Constitution of Ukraine on the immunity of judges were amended, and the obligations concerning state funding of political parties were fulfilled.

On the other hand, the Parliament has completely abolished parliamentary immunity, rather than limited it, and still has to pass laws on national and local referendums (a draft law on the national referendum is currently being considered by the Verkhovna Rada of Ukraine) and the new version of the Law of Ukraine on Political Parties in Ukraine. Overall, some progress has been made, albeit rather slow.

### **Postal and Courier Services**

Most regulations have not yet been developed. We are cautiously optimistic concerning the slight progress in adapting national legislation to the requirements of EU acts in this area – i.e. a new version of the relevant draft law, which, if revised to take into account all important provisions of the EU Postal Directive and the Association Agreement, will create the preconditions and legal basis for the next steps, as provided by the Consolidated Action Plan (CMU Resolution No. 1106) and the Strategy (CMU Order No. 104-p), even though it will not provide for immediate fulfilment of all Ukraine's commitments. This, in turn, will contribute to the development of the postal services sector and Ukraine's entry into the world market of postal services.

### **Electronic Communications and Electronic Commerce**

Ready for a quantum leap. Ukraine's integration into the European Digital Single Market is recognised as one of the priorities of Ukraine's integration into the EU and activities within

the framework of the Eastern Partnership programme. This goal is extremely ambitious but quite realistic. Significant progress in the field of e-commerce allows us to hope for the success of individual pilot projects, which will clearly reveal the strengths and weaknesses of Ukrainian law enforcement practice, as well as practical mechanisms for their implementation. The unprecedented practice of simultaneous development and adoption of the Electronic Communications Code by Ukraine and the EU countries provided the platform for Ukraine's quantum leap into the European Digital Single Market. However, this leap is impossible without an independent and effective regulator, and there is still no legal framework for it. However, the most critical threat is posed by gaps in cybersecurity and personal data protection, which could completely thwart Ukraine's progress on its path to digital European integration.

### **Financial Services**

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

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

In the "Insurance" subsector, legislative approximation is at the stage of development and elaboration of relevant draft laws.



Due to the adoption of Laws No. 465-IX “On Amendments to Certain Legislative Acts of Ukraine to Improve Tax Administration and Eliminate Technical and Logical Inconsistencies in Tax Legislation” of 16.01.2020 and No. 79-IX “On Amendments to Certain Legislative Acts of Ukraine to Improve the Functions of State Regulation of Financial Services Markets” of 12.09.2019, significant progress is observed in the annual and consolidated reporting of insurance companies with regard to eliminating differences in the structure and content of balance sheets and establishing a single structure of profit and loss statement of insurance / reinsurance companies by legal regulation of accounting in insurance / reinsurance companies.

Some progress has been made in the “Market Infrastructure” subsector due to the adoption of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Attracting Investments and Introduction of New Financial Instruments” (VRU Reg. No. 2284 of 17.10.2019).

In the subsector of “Payment Services”, work on the implementation of the provisions of Directive (EU) No. 2015/2366 is still at the stage of elaboration and development of the relevant regulations, in particular the draft Law “On Payment Services”.

### **Transport Services: Maritime Transport**

Most acts have not yet been adopted. As part of the adaptation of Ukrainian legislation to EU legislation, a new version of the Law of Ukraine “On Inland Waterway Transport of Ukraine” was developed, which partly addresses the matters of maritime services. The draft of the new version of the Law of Ukraine “On Inland Waterway Transport of Ukraine” was registered with the Verkhovna Rada of Ukraine (1182-1-д of January 17, 2020). On April 24, 2020, the draft law was adopted by the Verkhovna Rada at first reading. Since 2017, the State Maritime and River Transport Service of Ukraine (Maritime Administration) has been in place. With the entry into force of the Law of Ukraine “On Seaports of Ukraine” in 2013, the reform of the industry began. However, the law now needs to be amended. Ukraine has acceded to a number of international conventions such as the 1988 Protocol to the 1966 Convention on Trade Marks (amended in 2003, 2004, 2006,

2008, 2012, 2013 and 2014). Decision has been approved to form a System for Monitoring the Surface Situation Using an Automated Identification System in the Black and Azov Seas in the Area of Responsibility of Ukraine. It is necessary to address issues of accession to a number of international conventions, ensuring maritime safety and taking organisational and legal measures to ensure safety at the institutional level. In particular, Ukrainian maritime administration system is overly complex and lacks a clearly identifiable competent authority to manage Ukraine’s international commitments and obligations in the field of maritime transport in accordance with the various IMO conventions to which Ukraine is a party.

## **Lagging behind**

### **Customs and Trade Facilitation**

Of the four and a half years of the application of the “economic” part of the Agreement, progress in fulfilling the commitments in the field of customs intensified only in the second half of 2019. Therefore, in customs matters, the implementation of the Agreement provisions lags far behind the timeline that was initially agreed upon.

## **No Progress**

### **Intellectual Property**

Despite certain developments, Ukraine has not fully fulfilled any of the tasks related to the commitments under Chapter 9, which can be due to the deadlines set by the Government implementation plan – i.e. 31.12.2023. However, the decisions of Ukrainian courts in the Zentiva lawsuit and similar cases indicate that the current state of fulfilment of the commitments is not satisfactory and does not correspond to the state of affairs with regard to the legal relations in the field of intellectual property protection.

This is also confirmed by the EC “Report on the Protection and Enforcement of Intellectual Property Rights in Third Countries”, published in

January 2020. According to the provisions of this report, Ukraine is classified as a priority 2 country (along with India, Indonesia, Russia and Turkey), where a number of systematic violations in the field of IPR protection and enforcement have been identified. The key problems identified by the Commission as systemic in our country include online piracy and transit of counterfeit goods to the EU (food, watches, jewellery, toys, clothing, etc.), including inefficient work of Ukrainian customs and insufficient protection of personal data.

### **Statistics**

The analysis reveals that little progress has been made in this area, as most regulations have not been developed.

### **Transport**

No regulations have been adopted. As part of the adaptation of Ukrainian legislation to EU legislation, draft laws of Ukraine in the field of road, rail and inland waterway transport were developed in order to align Ukrainian legislation in these areas with European Union acquis. However, the Verkhovna Rada of Ukraine failed to adopt basic European integration draft laws due to the low level of governmental cooperation with Parliament and lack of inclusive dialogue with business.

Draft acts on licencing conditions, establishing charges for access to railway infrastructure, recommendations for the development of safety management systems by railway undertakings, and rules of equal access to railway infrastructure are being developed.

### **Audio-Visual Policy**

The current legislation is outdated and, although it contains certain provisions of the Convention and the Directive, but in terms of its structure and logic, and especially its efficiency, it resembles a patchwork quilt rather than a holistic and effective mechanism. That is why the adoption of a new law is key for the entire media sphere, and the fact that this commitment was laid down in the Agreement is a very timely and necessary incentive for the legislators to find a compromise between quite different players and interests, to update legislation that is based on the line of thinking of the early 1990s, and to introduce some regulation

in this area, which is still lacking. Moreover, by adopting the law an important advantage will be obtained – i.e. full participation in the Creative Europe programme, which should serve as an incentive for the production of audio-visual products by Ukrainian companies. At the same time, by delaying its adoption we will contribute to preservation of the problems that have accumulated over the past decades, as well as to the deepening of unfair competition between similar market participants who use different technologies to convey content.

### **Education, Training and Youth**

None of the commitments under the AA has been fulfilled. The main obstacle to fulfilling these commitments is the lack of institutional memory in Ukraine in the process of changes of government teams – i.e. succession with regard to positive developments in the reform of education. The education system belongs to the areas with a long-term reform perspective and cyclical completion of specific educational degrees and educational programmes. Therefore, the need to continue performing the commitments under the Agreement between Ukraine and the EU, which was launched earlier, is especially important. In this context, a very telling development is the formation of the National Register of Qualifications.

However, there is another problem – i.e. the lack of a single institution and / or “political will” to take the necessary decisions. In this context, there are two opposite examples: after the National Agency for Education Quality Assurance started to operate, a lot of work was actually organised and coordinated over the year, and significant progress was made towards the implementation of the Association Agreement. On the other hand, there are problems with the legislative implementation of lifelong learning and adult education. There is an institute and university of adult education within the system of the Academy of Educational Sciences, a number of other departments, institutes, and universities, but the Law “On Adult Education” has not been adopted, there is no network of establishments / centres of adult education or education for “third age” people.

The failure to comply with the EU-Ukraine Association Agreement in the Education sector

deprives Ukraine of the opportunity to respond adequately to the current socio-economic challenges, academic mobility and distribution of labour force.

Having analysed all the subsectors under the Association Agreement, we have come to the conclusion that there are a number of factors that facilitate the implementation of the Agreement, their absence, instead, results in constant problems with its implementation.

## **Factors facilitating the implementation of the Association Agreement**

- institutional capacity of state bodies;
- presence in the institutions of professional experts in EU law or European projects that provide the relevant support;
- sustainability of policy and consistency of political priorities;
- political will to overcome the resistance that develops during legislative approximation;
- constant dialogue with business and other stakeholders within the subsector;
- benefits of trade with the EU;
- no need for significant costs from the state budget.

The policy brief was prepared by

**Liubov Akulenko,**

based on the analytical document “Ukraine and the Association Agreement: Monitoring of the Implementation of 2014-2019”.

Disclaimer:

*This document has been produced by the Ukrainian Centre for European Policy with the assistance of the Konrad-Adenauer-Stiftung Ukraine (Kyiv) and in the framework of Ukrainian Think Tank Development Initiative (TTDI), which is implemented by the International Renaissance Foundation (IRF) in partnership with the Open Society Initiative for Europe (OSIFE). TTDI is funded by the Embassy of Sweden in Ukraine. The information and views set out in this study are those of the authors and do not necessarily reflect the opinion of the Konrad Adenauer Stiftung e.V. or those of the Government of Sweden, IRF and OSIFE.*

All remaining mistakes in this study are the authors' sole responsibility.

All parts of this publication are protected by copyright.

© Ukrainian Centre for European Policy, 2020

© Konrad-Adenauer-Stiftung e.V. Ukraine Office Kyiv, 2020