DEEPENING EU-Ukrainian Relations
What, why and how?

EDITED BY
MICHAEL EMERSON AND VERONIKA MOVCHAN

A Trilogy of Handbooks: Understanding the EU’s Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine
Deepening EU-Ukrainian Relations
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What, why and how?

2nd edition

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One of a trilogy of Handbooks explaining the EU’s Association Agreements and DCFTAs with Georgia, Moldova and Ukraine

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<td>AA</td>
<td>Association Agreement</td>
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<td>ACAA</td>
<td>Agreement on Conformity and Assessment and Acceptance</td>
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<td>AMCU</td>
<td>Anti-Monopoly Committee of Ukraine</td>
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<td>ATM</td>
<td>Autonomous trade measure</td>
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<td>CAA</td>
<td>Civil Aviation Agreement</td>
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<td>CBC</td>
<td>Cross-border cooperation</td>
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<td>CCC</td>
<td>Community Customs Code</td>
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<tr>
<td>CEN</td>
<td>European Committee for Standardisation</td>
</tr>
<tr>
<td>CENELEC</td>
<td>European Committee for Electrotechnical Standardisation</td>
</tr>
<tr>
<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<tr>
<td>CSDP</td>
<td>Common Security and Defence Policy</td>
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<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
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<td>CSP</td>
<td>Civil Society Platform</td>
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<td>DCFTA</td>
<td>Deep and Comprehensive Free Trade Area</td>
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<tr>
<td>DSM</td>
<td>dispute settlement mechanism</td>
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<tr>
<td>EaP</td>
<td>Eastern Partnership</td>
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<tr>
<td>EaTCP</td>
<td>Eastern Partnership Territorial Cooperation Programme</td>
</tr>
<tr>
<td>EBRD</td>
<td>European Bank for Reconstruction and Development</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EDA</td>
<td>European Defence Agency</td>
</tr>
<tr>
<td>EEF</td>
<td>Energy Efficiency Fund</td>
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<td>EFTA</td>
<td>European Free Trade Association</td>
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<td>EIA</td>
<td>Environmental impact assessment</td>
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<td>EIB</td>
<td>European Investment Bank</td>
</tr>
<tr>
<td>ENI</td>
<td>European Neighbourhood Instrument</td>
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<tr>
<td>ENPI</td>
<td>European Neighbourhood Policy Instrument</td>
</tr>
<tr>
<td>ERA-PLANET</td>
<td>European Network for Observing Our Changing Planet</td>
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<td>ERC</td>
<td>European Research Council</td>
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</table>
ESA European Space Agency
ETS Emissions Trading System (EU)
ETSI European Telecommunications Standards Institute
EU European Union
EUAM EU Assistance Mission
EUBAM EU Border Assistance Mission
FATF Financial Action Task Force
GATS General Agreement on Trade in Services
GATT General Agreement on Tariffs and Trade
GEOSS Global Earth Observation System of Systems
GI Geographical indication
GOST Gosudarstvenny Standart (State Standard)
GSP Generalised System of Preferences
ICDR International Commission for the Protection of Danube River
ICT Information and communications technologies
IDPs Internally displaced persons
IEC International Electrotechnical Commission
ILO International Labour Organization
IMF International Monetary Fund
INTERREG Inter-regional cooperation programmes of the EU
IOML International Organization of Legal Metrology
IPR Intellectual Property Rights
ISO International Standardisation Organisation
KhPG Kharkiv Human Rights Group
MFN Most favoured nation
MRV Monitoring, reporting and verification
NABU National Anti-Corruption Bureau
NAPC National Agency for Prevention of Corruption
NCP National Contact Point
NGO Non-governmental organisation
NCRCI National Commission for State Regulation of Communications and Information
NEO National ERASMUS+ office
NIF Neighbourhood Investment Facility
ODIHR Office for Democratic Institutions and Human Rights
OHCHR  Office of the United Nations High Commissioner for Human Rights
OECD  Organization for Economic Cooperation and Development
OSCE  Organization for Security and Cooperation in Europe
PEM  Pan-Euro-Mediterranean System of Rules of Origin
SBGS  State Border Guard Service (of Ukraine)
SEIS  Shared European Environmental Information System
SIPRU  State Intellectual Property Service of Ukraine
SMEs  Small- and medium-sized enterprises
SPS  Sanitary and phytosanitary (food safety) regulations
SPSA  State Service on Food Safety and Consumer Protection
TBTs  Technical barriers to trade
TRIPS  Agreement on Trade-Related Aspects of Intellectual Property Rights
TRQ  Tariff-rate quotas
UNHCR  United Nations High Commissioner for Refugees
USTR  United States Trade Representative
VLAP  Visa Liberalisation Action Plan
WEF  World Economic Forum
WTO  World Trade Organization
This Handbook seeks to explain the contents of a long and complex legal treaty – the Association Agreement, which includes a Deep and Comprehensive Free Trade Area (DCFTA) – between Ukraine and the European Union (EU). Like most complex legal texts, it is not intended to be read like a book. Therefore, the purpose here is to make it possible for anyone to understand basically what each chapter of the Agreement means, in terms of both the nature of the commitments that the parties undertake and the prospects for their implementation.

This second edition of the Handbook reflects developments in the two years that have elapsed since the first edition was published in 2016. It contains a comprehensive updating, including an early indication of how the implementation of the Agreements progresses.

The Handbook has in mind a broad range of readers, including officials, parliamentarians, business leaders, lawyers, business consultants, think tanks, civil society organisations, university teachers, trainers, students and journalists.

The 30 chapters in this Handbook are mainly the same as those in the Agreement, but they are not identical. Some chapters of lesser interest in the Agreement are not covered here, and there is some rearrangement of the various chapter headings.

The present volume is one of a trilogy of Handbooks that cover very similar but not identical agreements between the EU, on the one hand, and Georgia, Moldova and Ukraine on the other. All three books are available electronically for free downloading in English and the respective languages of the three countries at www.3dcftas.eu.

There are some references in the Handbook to an Association Agenda, which is an annual document drawn up jointly by Ukraine and the EU, reviewing progress in implementing the Association Agreement and which usefully provides updating and some greater detail on
various topics. The Agreement and Agenda are thus not to be confused. The official texts of both documents are also available in English and Ukrainian at www.3dcftas.eu.

A much shorter version of this book is aimed at a wider readership, including schools. It is also available online for free downloading in English and Ukrainian at www.3dcftas.eu.

The Handbook has been prepared by two teams of researchers from independent think tanks, the Centre for European Policy Studies (CEPS) in Brussels and the Institute for Economic Research and Policy Consulting (IER) in Kyiv. Founded in Brussels in 1983, CEPS is a leading think tank on European affairs, with a strong in-house research capacity and an extensive network of partner institutes throughout the world. Its mission is to produce sound policy research leading to constructive solutions to the challenges facing Europe.

The Institute for Economic Research and Policy Consulting is a leading Ukrainian think tank focusing on economic research and policy advice in such spheres as international trade, fiscal, social and monetary policies, regional development, financial markets, energy and infrastructure. The IER has extensive experience in modelling and analysing the impact of the DCFTA between Ukraine and the EU.

While much of the content of the Handbook is of necessity rather dry, we hope that the reader will appreciate the lighter touch in the artwork of Constantin Sunnerberg.

Thanks are due to the CEPS editorial team, Anne Harrington and Margarita Minkova, for their painstaking work.

Finally, the authors are most grateful to the Swedish International Development Agency (Sida) for their support and funding for the project, and in particular to Mirja Peterson, Maria Liungman and Sanna Leino.

The views expressed in this book are entirely those of the authors and should not be attributed to CEPS, IER, Sida or the European Union.

Michael Emerson
and Veronika Movchan
SUMMARY

What?

The Association Agreement (AA) between the European Union (EU) and Ukraine is a comprehensive treaty covering Ukraine’s political and economic relationship with the EU. The trade-related content is defined in a Deep and Comprehensive Free Trade Area (DCFTA), which is an important part of the overall Agreement.

The Agreement was negotiated during several years of the presidency of Viktor Yushchenko and Viktor Yanukovych. Initialled in March 2012, it was due to be signed at the EU’s Vilnius summit in November 2013. But at the last minute, President Yanukovych decided not to sign it, thereby triggering the Maidan uprising and ultimately Russia’s aggression in annexing Crimea and its hybrid war in the eastern Donbas region. Its signing therefore took place later in two stages, first in relation to its political content in March 2014 by Prime Minister Arseniy Yatsenyuk, and then its economic content in June 2014 by the newly elected President Petro Poroshenko. The Ukrainian Verkhovna Rada and the European Parliament ratified the Agreement in September 2014, and all but one EU member states followed in the course of 2015 and early 2016. In one EU member state, the Netherlands, the ratification process was interrupted by the negative result of a referendum held on 6 April 2016. However, the provisional application of the Agreement continues unchanged. The Netherlands completed its ratification, and thus the EU as a whole, on 30 May 2017.

The provisional application of the Agreement started in November 2014, except for the DCFTA, which entered into force
‘provisionally’ in January 2016, after a one-year delay at the request of Russia. The entire Agreement entered definitively into force on 1 September 2017.

**Why?**

While much of the contents of the Association Agreement and DCFTA are highly technical, its signing in 2014 was an act of strategic, geopolitical significance in the history of Ukraine. It became emblematic of a vital struggle, to both replace the Yanukovych regime at home and resist the attempt by Russia to deny Ukraine its ‘European choice’ as a democratic, independent state. The costs of this struggle have been tragically high in terms of territory, the economy and above all human life, but these losses must strengthen the country’s resolve to succeed.

The political and economic objectives of the Agreement, which are fundamental for the future of Ukraine as an independent and secure European state, can be simply defined. The political purpose is to deepen the realisation of Ukraine’s ‘European choice’. This means making a reality of fundamental European values, namely democracy, the rule of law and respect for human rights and norms of the European security order. Membership of the European Union is not prefigured in the Agreement, but neither is it excluded in the longer run.

The economic purpose is to help modernise the Ukrainian economy, by boosting trade with the EU and internationally and reforming economic regulations in line with best European practice. Combined with an improving business climate, Ukraine has the potential to become a good location for foreign as well as domestic investment, producing exports for the EU and international markets.

**How?**

The Agreement amounts to a charter for Ukraine’s modernisation through alignment on EU norms, which generally correspond to best international practice. Ukraine does not have to ‘re-invent the wheel’ in many technically complex areas, where the choice of regulations and standards that differ from tested international practice would be highly costly and inefficient. Still, this normative alignment is far more than a technical matter, and it goes to the heart of the urgent task of establishing sound, corruption-free governance.

The EU largely opened its market for tariff-free imports from Ukraine already in April 2014. For selected products, transition periods
are applied. This means the opening of major new export opportunities for Ukraine’s economy. Ukraine will itself remove its tariffs on imports from the EU only gradually over a number of years, starting in January 2016. The DCFTA is a roadmap for Ukraine to join the ranks of the several medium-sized to large European economies with highly developed and diversified industrial structures, like its neighbour Poland as a first point of comparison. Ukraine’s trade structure is already substantially diversified in favour of EU markets, offsetting losses in trade with Russia. The technical requirements for access to the EU market are demanding and strict, but they are applied in a professionally fair manner, without (as elsewhere) geopolitical manipulation.

Financial assistance is available to help with technical support and investment where there are heavy adjustment costs, with grants from the EU and loans or investment from European financial institutions.¹

The Agreement, with its DCFTA, is no magic wand with which to cure Ukraine’s political system and economy of all its problems. However, its provisions do engage with a substantial part of Ukraine’s political and economic reform agenda. Since the provisions of the Agreement and DCFTA are many and complex, there will be much ‘learning by doing’ for both Ukraine and the EU. There is some notable flexibility in fulfilling the commitments, with procedures for extending the timetable and amending the detailed legislative references if both parties agree.

**Part I. Political Principles, the Rule of Law and Foreign Policy**

The crucial political objective in the Agreement is for Ukraine’s democratic institutions to assure respect for core European values. The Agreements provide for the detailed monitoring of democratic institutions, including the rule of law and human rights. Respect for democratic values is considered in the Agreement to be of such ‘essential’ importance that in the event of their grave violation the Agreement may be suspended.

After the Maidan uprising in 2013–14, Ukraine returned to the objective of becoming a truly democratic state, which has since been evident in free and fair elections of the parliament and presidency. But

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¹ Notably, these include the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD).
there is a pressing need to continue improvements in the functioning of the democratic institutions. The Association Agenda document particularly urges constitutional reforms to achieve effective checks and balances between the institutions and a strengthening of local and regional government. In 2016, the first part of the constitutional reform, the judicial reform, was adopted. However, an important constitutional change related to a decentralisation remains blocked in the Rada. Moreover, there are widespread concerns over the distortion of certain political decisions through the influence of opaque interest groups in both the Parliament and the administration.

Table S.1. Political principles, the rule of law and foreign policy

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<th>Chapter</th>
<th>Assessment/results</th>
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<td>1.1 Political institutions</td>
<td>Lively, but chaotic democracy; institutional failings, influence of oligarchs</td>
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<td>1.2 Human Rights</td>
<td>Human rights largely positive but problems in occupied territories</td>
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<td>2.1 Judiciary</td>
<td>Institutional reforms undertaken, but with limited impact</td>
</tr>
<tr>
<td>2.2 Corruption</td>
<td>Legislative and institutional improvements made, but failing political will</td>
</tr>
<tr>
<td>2.2 Movement of people</td>
<td>Visa liberalisation very positive step</td>
</tr>
<tr>
<td>3. Foreign/security</td>
<td>EU supports Ukraine over conflict with Russia, continuing sanctions</td>
</tr>
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</table>

Success in anti-corruption policy is a prerequisite for the overall success of the Agreement and Ukraine’s economic future. Many chapters of the Agreement will contribute to this, such as transparency in public procurement, but there are still central challenges for Ukraine to address regarding the functioning of the judiciary, the prosecution office and the several anti-corruption institutions. There are also concerns over the real political will at top level to resolutely drive anti-corruption policies in the face of concrete realities.

Regarding the objective of visa-free travel to the EU, Ukraine had first to implement a comprehensive Visa Liberalisation Action Plan. In December 2015, the European Commission was able to recommend that the visa-free regime go ahead, and this entered into force in July.
2017. This was a major positive achievement for both sides, for Ukraine in meeting the EU’s conditions and for EU itself given the extreme political sensitivity of all aspects of border management and migration policies.

Cooperation between Ukraine and the EU in the foreign and security domains has been gradually building up for over a decade. Yet since 2014, with Russia’s annexation of Crimea and war in the eastern Donbas region, the question of security cooperation with the EU has moved up to the highest strategic level. Operational collaboration is envisaged in EU security and defence missions, and in some instances is already underway (for example, through the EU Border Assistance Mission on the borders of Moldova and Ukraine with the Transnistrian region), and there are plans to develop cooperation with EU security agencies. However there has been no progress over the conflict with Russia over the occupied territories of the eastern Donbas and Crimea.

Part II. Deep and Comprehensive Free Trade Area

The elimination of tariffs is the classic basis for a free trade area. The EU largely liberalised access to its market in April 2014 by providing Ukraine with ‘autonomous trade measures’ and eliminating 94.7% of its tariffs. Under the full provisional application of the DCFTA, which began on 1 January 2016, Ukraine is to eliminate its tariffs on imports from the EU progressively, mostly within seven years.

These measures initially had only a limited impact on Ukraine’s exports to the EU, because of the suspension of production in the occupied territories, logistical problems and the downward price trends on world commodity markets. However, exports to the EU have begun more recently to record a substantial growth rate, with a big jump of 30% in 2017. At the same time, the EU’s share of Ukrainian exports and imports has increased, owing to steep declines in trade with Russia. The structure of exports to the EU has shifted towards machinery, fats and oils, prepared foods and animal products. The utilisation of tariff-rate quotas for agricultural products has increased, as Ukrainian producers overcome problems with food safety and weak demand for its products.
Table S.2. Deep and Comprehensive Free Trade Area

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<td>4. Market access, goods</td>
<td>Strong growth of exports to EU emerging; Several violations of DCFTA</td>
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<td>5. Trade remedies</td>
<td>EU imposed an anti-dumping duty on some steel products</td>
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<td>6. Customs services</td>
<td>Slow legislative improvements, but in practice still inefficient and corrupt</td>
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<td>7. Tech. standards(TBT)</td>
<td>Progress with EU regulations and standards slowed in 2016-17. Preparations for ACAA talks</td>
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<td>8. Food safety (SPS)</td>
<td>Comprehensive SPS strategy engaged, vital for agri-food sector; expansion of individual access to the EU market for animal products by both products and companies</td>
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<td>9. Services</td>
<td>Ukraine more liberal than EU, slow legal approximation</td>
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<td>10. Public procurement</td>
<td>Good progress made, but a risk of backsliding in new draft law</td>
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<td>11. International property rights</td>
<td>Legal improvement, but weak practice provoking concerns in the EU and the US</td>
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<td>12. Competition policy</td>
<td>Legislation largely OK, but efficiency of anti-trust policy is still low</td>
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<td>13. Statistics</td>
<td>System well developed, adopting EU standards, still weaknesses</td>
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The main sectoral safeguard is for Ukraine’s car industry, which will continue to be protected against a significant growth of imports from the EU for up to 15 years. This will help Ukrainian producers in the short run, but it involves costs for consumers.

There are provisions on anti-dumping measures, subsidies and safeguards to protect the importing economy from serious damage or threats thereof. Anti-dumping duties have been applied in the past quite extensively by the EU against Ukrainian supplies of metallurgical and bulk chemical products, but currently this occurs at a much reduced level. In October 2017, the EU imposed a definitive anti-dumping duty on imports of steel products from Ukraine along with several other countries.
There are some problems of inconsistent trade policies by Ukraine, with some breaches of the ‘standstill’ provisions of the DCFTA.

The DCFTA also includes important measures to ensure fast and efficient customs services. Ukraine is advancing towards fulfilling its legislative commitments, with the new Customs Code broadly aligned with EU legislation. But the main task remains for border posts with the EU to function with less delay and without corruption.

The adoption of European standards for industrial and agri-food products is vital for the modernisation and competitiveness of the economy. Ukraine has outlined a strategy aimed at eliminating technical barriers to trade with the EU, through harmonising its legislation with key EU directives and adopting the very large number of EU standards. For the agri-food sector, Ukraine is embarking on a comprehensive strategy for applying EU sanitary and phytosanitary regulations. In due course, this will assure high health and safety standards for Ukraine’s consumers, as well as position Ukrainian enterprises to export to the EU and other international markets. These two chapters of policy for technical regulations and standards, for industrial and agri-food products, advance on a broad front, if not quite as fast as planned.

A competitive and diversified service sector is of huge importance for the Ukrainian economy. The Agreement is detailed and comprehensive in commitments to liberalisation as well as reservations, but with more liberalisation and fewer reservations on the Ukrainian side than the EU side. The Agreement makes provisions for a few service sectors to attain ‘full internal-market treatment’ by the EU as a long-term objective.

Work is in progress on the Agreement’s requirement for Ukraine to approximate related EU directives in its public procurement legislation. The government is already conducting e-procurement, which is proving effective in enhancing efficiency and reducing corruption. There are some shortcomings in Ukraine’s system for intellectual property rights compared to best EU and international practices, provoking many concerns on the part of the EU and the US. These gaps are expected to be addressed by forthcoming legislation and, above all, its enforcement.

Ukraine already has largely aligned its competition policy on EU and international standards, and further legislative and institutional reforms are envisaged.
Part III. Economic Cooperation

As regards the macroeconomic context, in the years since independence Ukraine has made only slow progress in economic policy reforms, with poor results except for periods of very favourable commodity prices. In 2014–15, Ukraine suffered a severe recession and losses of infrastructure as a result of Russian aggression, on top of the effects of the global recession. Nevertheless, positive growth resumed in 2016 and 2017 at a moderate rate (2.4% and 2.5%, respectively). The EU is supplying significant financial assistance through multiple channels, including macroeconomic loans alongside the IMF, budget grants and investment from the EIB and EBRD. For the period 2014–20, these could total €12.8 billion.

Ukraine’s financial sector has been under extreme pressure to maintain the stability of the banking system and to service external debt. The government and central bank have nonetheless proceeded with a comprehensive, long-term programme for updating regulations, anchored on EU legislation, as an important part of the general process of economic modernisation.

Table S.3. Economic Cooperation

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<th>14. Macroeconomics</th>
<th>Macroeconomic growth recovers modestly after big war damage</th>
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<td>15. Financial services</td>
<td>Turbulent period of structural reform</td>
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<td>16. Transport</td>
<td>Slow legal approximation and infrastructure rebuilding</td>
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<td>17. Energy</td>
<td>Radical but incomplete reforms; diversification from Russian gas</td>
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<td>18. Environment</td>
<td>Huge challenge to achieve EU standards; timetable slipping</td>
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<tr>
<td>19. Digital</td>
<td>ICT sector rapidly developing, slow alignment on EU law</td>
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<tr>
<td>20. Consumer protection</td>
<td>Gradual legal approximation and institutional capacity development</td>
</tr>
<tr>
<td>21. Company law</td>
<td>Substantial legislative reforms to approximate EU law</td>
</tr>
<tr>
<td>22. Agriculture</td>
<td>Limited commitments, controversial land legislation</td>
</tr>
</tbody>
</table>
23. Employment /social  | Largely compliant with EU and ILO rules; inspectorates an issue  
24. Education, culture  | Relatively high human capital endowment, but some slippage  
25. Science, technology  | Participates in Horizon 2020; considerable strengths  
26. Agencies, programmes  | Gradual development of cooperation  
27. Cross-border cooperation  | Important projects with PL, SK, H and RO, but some execution problems  
28. Civil society  | NGOs influential advocates of democratic practice; suffer some harassment  

The energy provisions of the Agreement are crucial from both an economic and geopolitical perspective and entail the commitment to approximate many EU laws, although implementation so far through the associated Energy Community Treaty is behind schedule. That notwithstanding, Ukraine’s energy policy is now at long last seeing radical and long overdue reforms. Gas supplies have been diversified away from the former total dependence on Russian supplies, with the aid of reverse-flow pipelines linked with neighbouring EU countries. Energy-saving programmes, in line with EU standards, are vital to ultimately achieving the independence of gas supplies. Yet for the domestic residential market this is going to be a long-term and very costly process, for which the European financial institutions are starting to assist. The major programme of securing the destroyed nuclear reactor site at Chernobyl is now largely completed with significant funding from the EU, the EBRD and other international donors.

The effective implementation of the ambitious environment chapter of the Agreement will see a huge upgrade in Ukraine’s environmental performance. This can only be achieved in the long run. The EIB and EBRD are among the financial institutions capable of contributing to the necessary investment.

Ukraine has huge capacity and potential in the agri-food sector. Reforms in the post-Soviet period got off to a slow start, but they are now seriously underway. However, there has been a serious setback with continued delays in land reform, notably over the very basic measure to make it legally possible to purchase and sell privately
owned agricultural land. The Agreement contains many references to EU agricultural legislation, but there is flexibility in the extent to which this should be applied, with no binding timetables.

The DCFTA sets out the EU’s detailed standards and regulations for road, rail, inland waterways, sea and intermodal transport, which Ukraine will progressively adopt, but which advances only slowly. Ukraine occupies a pivotal place in the pan-European corridors for road and rail connections. The EBRD and EIB are providing investment funding for improvements in these and other major aspects of the transport infrastructure.

The broad digital sector, embracing electronic communications and the entire ICT economy, is an essential part of the economic reform and modernisation process. Ukraine has considerable human capital in this field, which is the basis for rapid development of the sector, including earnings from business outsourcing. The Agreement provides for alignment on EU regulatory practices.

Ukraine started introducing a regime for consumer rights protection upon independence, but so far with questionable success. The Agreement requires the approximation of EU legislation on product safety and official procedures for protecting consumers and enforcing consumer rights. This advances only slowly.

The Agreement does not impose strict obligations on Ukraine in the area of company law, corporate governance or accounting, but still provides a framework of EU company law that will improve Ukraine’s business climate. In this sphere substantial progress is being made.

Labour laws mostly comply with ILO and EU standards. A new draft Labour Code has been prepared and subjected to lengthy negotiations and amendments, but it remains blocked in the Parliament at the time of writing. Attention should be focused not only on legislative work, but also on measures to ensure legal enforcement.

The Agreement sets out basic aims for the reform and modernisation of the education system, especially for higher education in line with the ‘Bologna process’. Ukraine’s educational standards are ranked in international comparisons as ‘high’ and comparable with its Central European neighbours in the EU. Over the period 2014–20, more than 4,000 Ukrainians are expected to participate in exchanges with EU universities under the Erasmus+ programme, and 7,000 in youth exchanges.

There are now opportunities for Ukraine to participate in many of the EU’s numerous specialised agencies and initiatives, for example
under the research programme ‘Horizon 2020’, in which Ukraine is now a full participant.

Sharing land borders with four EU member states (Poland, Hungary, Slovakia and Romania) and Moldova, Ukraine has a keen interest in EU-sponsored cross-border cooperation. Several projects are underway, typically on facilitating the cross-border labour market, environmental interests and matters of common historical heritage. Civil society in Ukraine has long been at the forefront of pressure for democratic reforms, good governance and the fight against corruption. The Agreement provides for support and official status for civil society forums.

**Part IV. Legal and institutional provisions**

A comprehensive and joint institutional framework, including an Association Council, monitors fulfilment of the Agreement and provide a platform for political dialogue. The Association Council and its subordinate committees are meeting regularly as planned. Inter alia these institutions have responsibility for updating the content of the Agreement. In addition, there are summit meetings at presidential level.

There are well-defined procedures for settling disputes that may arise in implementing the Agreement, but these have not had to be activated so far.

**Overall assessment**

These first years of implementation of the Association Agreement and DCFTA allow some preliminary assessments to be made.

At the political level these are difficult times for the democratic institutions, due in significant degree to the conflict with Russia and the consequential material hardships. There have been some notable successes on the reform front, for example over energy and public procurement policies, and in the judiciary. But tensions between the administration and parliament are resulting in delays in important measures, and there are disappointing confusions between the several bodies responsible for anti-corruption policy. The prospect of elections in 2019 further slows down the pace of reform.

Yet Ukraine’s democracy, while imperfect, remains a work-in-progress and is incomparably more respectful of the fundamental freedoms than its neighbouring regimes to the north and east.
At the macroeconomic level there are positive developments to report. Macroeconomic growth has resumed, albeit at a modest rate so far. However, a big jump in exports to the EU was recorded in 2017, suggesting a positive impact from the DCFTA.

The very ambitious agenda of the Agreement sees engagement on a broad front, with many acts of approximation on EU regulations and standards underway. There are delays in legislative action with more than a few chapters. Visa liberalisation has been an important achievement, tangibly appreciated now by the Ukrainian people.

After the initial period of application of the Agreement, fully in force since September 2017, the overall assessment is indeed one of work-in-progress, with sufficient signs of positive results to encourage a sustained implementation.
PART I.
POLITICAL PRINCIPLES,
RULE OF LAW
AND FOREIGN POLICY
1. **Political Principles**

Provisions of the Association Agreement

The Association Agreement is premised on a commitment to pursue and respect:

...the common values on which the European Union is built – namely democracy, respect for human rights and fundamental freedoms and the rule of law – [which] are essential elements of this Agreement.

The phrase “essential elements” links to Art. 478 of the Agreement, which provides that in the case of abuse of these principles the Agreement may be suspended.

Art. 6 provides for “dialogue and cooperation on domestic reform”. This political dialogue is conducted through regular meetings at different levels, including at summit, ministerial and senior official levels.

On the substantive implementation of the basic principles, the jointly agreed Association Agenda of 16 March 2015 is more explicit.² Priority matters for short-term action include constitutional reform, election reform, judicial reform, human rights and public administration reform. These challenges are addressed in considerable detail.

**Constitutional reform.** The Ukrainian government is urged to embark on a transparent process of constitutional reform that aims to

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² The “EU-Association Agenda to prepare and facilitate the implementation of the Association Agreement”, as endorsed by the EU-Ukraine Association Council on 16 March 2015.
develop effective checks and balances between state institutions. The functioning of local and regional governments should be strengthened, including through decentralisation, in line with the European Charter on Local Self-Government and with the delegation of substantial competences and related financial allocations.

**Electoral reform.** Electoral legislation should be improved and harmonised, including the laws on referenda, on the Central Electoral Commission and the financing of political parties.

**Human rights and fundamental freedoms.** Ukraine has committed itself to a swift implementation of the judgments of the European Court of Human Rights. The Association Agenda outlines measures regarding freedom of expression, assembly and association... Regarding the freedom of association, the Agenda pays particular attention to ensuring the rights of minorities; the equal treatment of men and women; children’s rights; and combating torture and inhuman treatment.

The issues of judicial reform and corruption are taken up in chapter 2.

**Implementation perspectives**

**The Constitution.** According to its Constitution, Ukraine is a democratic state that adheres to the principles of the rule of law, human rights and fundamental freedoms. Ensuring respect for these principles, however, has proved to be problematic. Ukraine has been an unstable democracy so far. After gaining independence in 1991, the country experienced two periods of disguised authoritarianism (1995-2004 and 2010-14), which were ended only by massive public protest. After the last wave of protests, known as Euromaidan, Ukraine embarked on a path of democratic development, but the reform process has been slow.

**An overview of democratic governance.** The most resilient component of the democratic system in Ukraine has been the ballot box. Although many of the elections in the 1990s and 2000s were not considered to be completely free and fair, they were still able to ensure a sizeable representation of the political opposition in the Parliament. They even produced electoral victories for the opposition in 1994, 2005, 2006, 2007 and 2010. After the Euromaidan, the election process improved substantially. Despite a number of problems, most observers considered the elections in 2014 and 2015 to be generally compliant with international standards. Problems remain with the non-
transparent financing of election campaigns, which allows wealthy businessmen and corrupt politicians to improperly influence the results with vote-buying and the abuse of power by officials.

Other components of the democratic system are weaker, however. After gaining independence, there was a power struggle between representatives of the executive and legislative branches of Ukraine’s government. The Constitution of 1996 established Ukraine as a semi-presidential republic, with a strong role for the president. But in the Constitution of 2004, adopted after the pro-democratic protests known as the Orange Revolution, the balance of power shifted towards a parliamentary system. Yet the new political system was flawed. A fierce struggle for power between President Viktor Yushchenko and Prime Minister Yulia Tymoshenko in 2007-09 reversed the gains of the Orange Revolution and caused the country’s democracy to backslide in the subsequent years. In 2014, the Constitution of 2004 was reinstated, but once again power imbalances posed risks to democracy.

For most of Ukraine’s independence period, the principle of the separation of powers has not been implemented properly. The judiciary and the prosecutor’s office were prone to political influence by the executive and the legislative branches of government.

Ukraine’s system of government is highly centralised, but with three levels of administrative, territorial entities: oblasts, rayons and towns/villages, each of which has elected representative bodies (councils). In reality the powers of these bodies are minuscule. Oblasts and rayons are governed by executives that are directly appointed by central government. This system is currently under review.

Finally, the participation of Ukrainian citizens in politics and civic life is not effective. Although the share of Ukrainians who work in political parties or action groups is higher than in most EU countries, activists have little influence over their parties’ decisions. Ukrainian parties typically lack coherent ideologies and are just vehicles for their leaders and financial patrons. As a result, political parties do not adequately represent large strata of society. Public trust in political parties, which grew in the 1990s and the first half of the 2000s, has fallen to 19% in recent years and has not really improved after the Euromaidan.³ In December 2017, only about 12-13% of the population

³ The figures represent the share of Ukrainians believing that at least one party in the country deserves to be entrusted with power, as reflected in surveys conducted by the Institute of Sociology of the National Academy of Sciences of
trusted political parties.\(^4\) The share of Ukrainians working in civil society organisations was lower than in EU countries,\(^5\) although volunteer activities have accelerated since the Euromaidan.\(^6\)

**Reform of democratic governance.** The scope of reforms since Euromaidan has been limited, and their pace slow. The reforms focused primarily on the decentralisation and independence of the judiciary, and less on contentious issues such as electoral rules.

In March 2015, President Poroshenko established a Constitutional Commission with a mandate to draft amendments to the Constitution. The Commission, which was composed of legal experts and politicians, decided not to prepare a comprehensive bill to amend the Constitution. Instead, it began to draft separate bills aimed at resolving particular issues. In 2015, the Commission prepared three bills. The first one dealt with decentralisation, the second concerned the judiciary and the third revised the chapter of the Constitution on human rights.

The bill creating a framework for the decentralisation of power was completed by the Constitutional Commission in June 2015. It made provision for the establishment of local governments (executive committees) subordinated to the councils at the rayon and oblast levels. The local governments were intended to replace centrally directed local state administrations, which had to be dissolved. The bill also established a framework for the modification of the administrative division of Ukraine, namely for the consolidation of the lowest-level administrative units.

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\(^5\) In 2004-12, the share of Ukrainians who worked in political parties or action groups in the past 12 months varied from 3.6% to 4.1%. The corresponding medians for the EU countries ranged from 3% to 3.8%. However, in that period only 1.4-2.3% of Ukrainians worked in other organisations or associations. The median for the EU countries ranged from 6.6% to 13.9%. Source: own calculations based on the data from the European Social Survey for 2004, 2006, 2008, 2010 and 2012 ([www.europeansocialsurvey.org/](http://www.europeansocialsurvey.org/)).

\(^6\) In 2017, 12% of the population participated in various volunteer activities, compared to 10% in 2012, according to regular surveys conducted by Razumkov Centre and Democratic Initiative Fund ([http://dif.org.ua/uploads/pdf/13963398165a9eef1b022177.77359526.pdf](http://dif.org.ua/uploads/pdf/13963398165a9eef1b022177.77359526.pdf)).
The proposed amendments regarding decentralisation sparked two serious controversies, however. First, the bill determined that local self-government in the occupied areas of Donetsk and Lugansk regions might have special features, which was a requirement of the Minsk II agreement aimed at settling the conflict in the Donbas. A number of MPs and political activists vigorously opposed that provision, fearing that it might undermine Ukraine’s sovereignty. Second, the bill expanded the powers of the president, who would have the right to terminate the powers of locally elected officials and bodies if their decisions posed a threat to the national security or territorial integrity of Ukraine. Certain MPs deemed that this posed a risk of usurpation by the president. As a result, the bill remains idle in the Parliament.

However, the decentralisation reform has progressed in the areas where the constitutional changes were not required. The fiscal decentralisation was conducted. Administrative consolidation began with the voluntary formation of amalgamated communities.7 As of December 2017, about 7008 were created, uniting about one-third of 11,000 of the lowest-level administrative units (villages, towns, and cities), while higher-level units, rayons and oblasts, would be still preserved.

With respect to the reform of electoral legislation, the authorities have so far fallen short of implementing the plans called for in the 2014 coalition agreement, although some progress has been made. In July 2015, the Parliament introduced a proportional system for local elections but it was not an open-list system and did not resolve campaign financing issues. In 2015, the Parliament also took a step to govern party financing by passing laws that allow for public (budget) financing of parties that win elections. In November 2017, the Verkhovna Rada voted a new Electoral Code in the first reading.9 The bill envisages an open-list proportional electoral system as a replacement of the current mixed proportional-majoritarian electoral system.

Progress on another topical issue – the removal of parliamentary immunity – has been slow as well. In October 2017, the President submitted to the Parliament a new draft law, which has been referred to the Constitutional Court for its conclusion.10

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**Human rights.** The Constitution of Ukraine proclaims that the main duty of the state is to affirm and ensure human rights and fundamental freedoms. The list of respected civil and political rights mentioned in the Constitution is consistent with international human rights norms. In practice, the majority of those rights and freedoms are generally protected. Notable exceptions concern the right to an effective remedy before a national authority, the right to a fair trial and the prohibition of torture.

The Constitutional Commission has drafted a bill that revised the chapter of the Constitution on human rights. It is intended to align the contents of the chapter with the Charter of Fundamental Rights of the European Union, and to extend the protection of human rights. Specifically, it reduces the term for judicial approval for taking a person into custody from 72 hours to 48 hours and explicitly prohibits the death penalty. However, the bill was not submitted to the Parliament. As a member of the Council of Europe alongside all EU member states, Ukraine adheres to the European Convention on Human Rights (ECHR) and Fundamental Freedoms and is bound by the rulings of the European Court of Human Rights (ECHR). Statistics from the European Court of Human Rights indicate an improvement in human rights protection in Ukraine. In particular, the number of applications allocated to a judicial formation declined from 14,181 in 2014 to 4,387 in 2017. Altogether, the Strasbourg-based Court rendered 1,213 judgments in cases against Ukraine, including 87 judgements in 2017. Historically most violations were over the right to a fair trial (45%), followed by the length of proceedings (30%) and the protection of property (29%). In 2017, the most common infractions exposed by the Court were the right to an effective remedy (49%) and the length of proceedings (45%), while the right to a fair trial violation was exposed only in 24% of cases.

Open issues regarding Ukraine’s record are set out in detail in the Association Agenda document. According to the Agenda, Ukraine had to adopt and implement a National Human Rights Strategy, with a view to improving its record of treating both individual cases pertinent to human rights and issues concerning international law.

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instruments. The latter includes swift implementation of all judgments of the Strasbourg-based Court of Human Rights.

The National Human Rights Strategy of Ukraine was approved by the president in August 2015, while the Action Plan for its implementation was adopted by the Cabinet of Ministers only in November 2015.

Although the implementation of the Strategy has been slow and partly superficial, there are several important achievements. In particular, a procedure allowing individuals and legal entities to file a constitutional complaint was introduced in 2016, and by mid-2017, it had been used by 138 complainants. The law establishing the State Bureau of Investigation as an independent body for investigating complaints about deprivation of life or torture, cruel, inhumane or degrading treatment or punishment was adopted in late 2015, and the Head of the Bureau was selected in late 2017. The Interdepartmental Commission on Application and Implementation of International Humanitarian Law (IHL) in Ukraine was established in 2017.

As regards anti-discrimination, there have been some noticeable achievements. In November 2015, the Verkhovna Rada approved amendments to the Labour Code, which explicitly prohibits discrimination on the basis of sexual orientation, which was required in the framework of the implementation by Ukraine of the Visa Liberalisation Action Plan (VLAP). The law on local elections, passed in July 2015, requires that at least 30% of candidates on party lists should be women. The law on preventing and combating domestic violence was adopted, together with the changes in the criminal and criminal procedural codes, in December 2017, with the aim of creating new effective mechanisms for preventing and combatting violence against women in line with the Istanbul Convention. In the same month, the Ministry of Healthcare abolished the decree prohibiting

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14 The Decree of the President of Ukraine No. 501/2015, from 25 August 2015.  
17 The respective provision is still to be incorporated into the new version of the Labour Code, which is now pending in the Parliament.  
women from performing certain jobs that are generally considered as discriminative.\textsuperscript{19}

In July 2017, the Cabinet of Ministers established a position of the Government Commissioner for Gender Policy.\textsuperscript{20} The position was awarded to the human rights advocate Kateryna Levchenko based on an open competition. A year after the previous Ombudsman’s tenure had come to an end, in March 2018, the Verkhovna Rada appointed Lyudmila Denisova, a former member of the People’s Front Party as the Ombudsman. The appointment drew criticism, as she has no experience in human rights protection, has a negative track record on LGBT rights, and has an affiliated business in Crimea.\textsuperscript{21}

Ukraine’s political rights rating, conducted annually by Freedom House, remained at 3 in 2017 after it rose in 2015 from 4 to 3.\textsuperscript{22} The country’s freedom rating improved from 3.5 to 3.\textsuperscript{23}

According to the Ukraine 2016 Human Rights Report issued by the Bureau of Democracy, Human Rights and Labour of the US Department of State, Ukraine’s most acute problems are related to the annexation of Crimea and the war in the East (see discussion below) and impunity for corruption and justice deficiencies (see chapter 2).\textsuperscript{24} Other systemic problems include alleged beatings and torture of detainees and prisoners; nongovernmental attacks on journalists; societal violence against women and discrimination and harassment against LGBT persons;\textsuperscript{25}

Protection of the Roma minority was improved in 2013, with approval of a ‘Strategy of integration of Roma minority by 2020’.\textsuperscript{26} In 2014, Crimean Tatars were recognised by the Ukrainian Parliament as indigenous people of Crimea/Ukraine.

\textsuperscript{19} See: http://zakon2.rada.gov.ua/laws/show/z0051-94.
\textsuperscript{20} See: https://www.kmu.gov.ua/ua/npas/250049925.
\textsuperscript{24} See https://www.state.gov/documents/organization/265696.pdf.
\textsuperscript{26} See http://zakon4.rada.gov.ua/laws/show/201/2013.
The situation in Crimea and Donbas. The political and human rights situation is far worse in Crimea, which was annexed by Russia in 2014, and in a part of the Donetsk and Luhansk regions (Donbas), controlled by Russia-backed insurgents. The political regimes in those territories are de facto authoritarian, with limited freedoms and systematic human rights violations. The human rights situation in Donbas is also aggravated by the military conflict that has been there since April 2014. The conflict undermined the most basic rights – to life and security. As of August 2017, a conservative estimate of the number of casualties from the conflict reached 34,766, including 10,225 deaths (at least 2,505 of whom were civilians) and 24,541 injured.27 Also, about 1,500 people are reported missing in the conflict zone since April 2014.28 Evidence has also revealed that Ukrainian civilians and military personnel have been tortured and ill-treated by armed groups controlled by Russia.

The rights of some Ukrainians are also violated in the criminal proceedings conducted against them by the Russian authorities (see the cases, for example, of Oleh Sentsov and Oleksandr Kolchenko). In this context, the European Parliament adopted a resolution requiring Russia to release all illegally detained Ukrainian citizens.29

Masses of people were forced to leave their homes. The number of registered internally displaced persons (IDPs) who fled to government-controlled areas reached a peak of 1.7 million in 2016 and decreased to about 1.5 million as of January 2018. In addition, according to the Office of the United Nations High Commissioner for Human Rights (OHCHR), over 1 million Ukrainians sought asylum or protection abroad, primarily in Russia and Belarus.30 Individuals

28 According to a report by the mission of the Office of the UN High Commissioner for Human Rights, the number of missing persons varies from 1,476 to 1,646 (depending on the source of information). See: http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf
registered as IDPs are not eligible for extensive government support. Instead, civil society, churches, volunteers and international donors make tremendous efforts to support them.

The effectiveness of the State Agency on Donbas Recovery, established in autumn 2014, with the aim inter alia to ensure social and professional adaptation of the IDPs, was quite low. The Office of the United Nations High Commissioner for Human Rights (UNHCR) called on Ukraine’s government to establish more effective systems to protect the human rights of IDPs, many of whom left behind all they had. In April 2016, the Ministry of Temporarily Occupied Territories and IDPs was established, replacing state agencies dealing with Donbas and Crimea issues. In 2017, the Government adopted the Strategy for Integrating Internally Displaced Persons and Implementing Long-Term Internal Displacement Solutions 2020.

The rule of law is virtually absent in the territories controlled by insurgents. Some 2.7 million people living in the area are without access to a fair trial. Numerous allegations of killings, arbitrary detention, torture and ill-treatment are reported. Freedoms of expression, religion, peaceful assembly, and association are substantially limited. Freedom of movement is also restricted as crossing the contact line between Ukrainian armed forces and insurgent groups is complicated. Human rights are structurally violated in Crimea post-annexation, as there are cases of deprivation of liberty and the alleged ill-treatment of Ukrainians belonging to the Crimean Tatars ethnic group. In particular, in April 2016, the so-called Supreme Court of Crimea banned the activities of the Mejlis, a self-governing body of the Crimean Tatars, thereby violating basic rights of this ethnic group. The local authorities harass and intimidate Crimean Tatars, pro-Ukraine activists and journalists. The authorities also failed to properly investigate cases of killings, torture and beatings by para-military groups. Ukraine has lodged five inter-state applications against Russia concerning events in

31 For the description of government policies on IDPs, see H. Brenzel, O. Betliy and R. Kirchner, “Economic issues of internally displaced people in Ukraine”, Policy Paper Series, PP/06/2015, GAG/IER, December 2015.
Crimea and Eastern Donbas at the European Court of Human Rights.\textsuperscript{34} Besides, more than 4,000 individual applications related to the events in Crimea or the hostilities in Eastern Ukraine are registered at the Court.\textsuperscript{35}

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\textbf{Political principles at a glance} \\
\textbf{After the government changeover that followed the Euromaidan protests, Ukraine embarked on a path of democratic reforms.} \\
\textbf{The most notable reforms aim to change the Constitution to enhance the rule of law and curb corruption, and to substantially increase the powers of local authorities via decentralisation. Changes to electoral legislation are also expected.} \\
\textbf{Overall, Ukraine’s human rights record is now relatively positive, while still needing improvements.} \\
\textbf{On the other hand, Crimea and the eastern Donbas, which are not controlled by the government, see a return to authoritarianism and systematic human rights violations.} \\
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\textsuperscript{34} See: https://www.echr.coe.int/Documents/CP_Russia_ENG.pdf. \\
2. **Rule of Law and Movement of People**

This chapter deals with a nexus of related issues, notably the fight against organised crime, corruption and terrorism, and policies for border management and the movement of people, including the key issue of visa-free travel between Ukraine and the EU.

**The fight against corruption, crime and terrorism**

The Association Agreement underlines the paramount case for a sound rule of law, but it does not provide any detailed guidelines. The Association Agenda document of March 2015, however, was far more explicit on the need for judicial reform and improvement in the rule of law more generally.\(^3^6\)

The rule of law is the weakest component of democratic governance in Ukraine. One aspect of this is that law enforcement is biased. For instance, groups of top officials and wealthy businessmen seem to enjoy low levels of accountability and high levels of illicit privileges, while others cannot have certain rights protected (see also Chapter 1).

Another aspect is the high level of corruption. Over the last 15 years, Transparency International’s Corruption Perception Index has ranked Ukraine in the range of 21 to 30 on a scale of 0 (the highest level

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36 See Joint Press Release, “EU-Association Agenda to prepare and facilitate the implementation of the Association Agreement, as endorsed by the EU-Ukraine Association Council on 16 March 2015”, 16 March 2015.
of corruption) to 100 (an absence of corruption). The judiciary, police and public administration have largely been perceived as the most corrupt institutions in the country. The situation has improved a little since the revolution of 2013-14.

The authorities have launched a series of reforms aimed at enhancing the rule of law and curbing corruption.

**The judiciary.** First, the parliament passed long-awaited and comprehensive reforms to the judiciary in June 2016, inter alia, amending the constitution and the Law on the Judiciary, and adopting a new law on the enforcement of judgements. According to the new legislation, judges will henceforth be selected on a competitive basis by the High Council of Justice, composed mainly of the judiciary and the association of lawyers. This applies to the selection of judges for local courts, the regional Appeals Courts and a new Supreme Court. Parliament has been stripped of powers to appoint judges, and neither the parliament nor the president now has the right to dismiss judges. The bill also provides for checks on the powers and integrity of incumbent judges, while at the same time dramatically increasing their salaries. Importantly, judges who cannot verify the legality of their assets and those of their family can now be dismissed. The state’s monopoly on the enforcement of judgements has been abolished through the introduction of private bailiffs.

The changes to the constitution were approved by the Venice Commission, and the launch of the judicial reforms has been positively assessed by EU and US officials. In 2016-17, several more laws were passed including laws on the High Council of Justice (2016)\(^\text{37}\) and the Constitutional Court (2017)\(^\text{38}\) and on changes in procedural mechanisms (2017)\(^\text{39}\). However, the selection of judges to the new Supreme Court completed in November 2017 only partly contributed to the judicial system’s clean-up as the Public Integrity Council questioned the integrity, independence and professional records of about a quarter of the newly appointed judges.\(^\text{40}\) The level of trust in

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\(^{40}\) See https://www.radiosvoboda.org/a/news/28851931.html.
judges remained low (9% of population, as of October 2017), and Ukraine is still ranked at 129th out of 137 countries in the category “judicial independence”, according to the WEF Global Competitiveness Report 2017-2018.

Second, reform of the prosecutor’s office is underway. In December 2015, a new system of local prosecutors’ offices began operating. Local prosecutors are now selected through a competitive process. Amendments to the constitution and relevant laws are intended to increase the independence of prosecutors while narrowing their mandate, notably depriving them of their ‘general supervision’ function.

Progress was finally made in establishing the State Bureau of Investigation by the end of 2017. The Head was selected and the organisational structure and funding were approved. In 2018, the regional offices of the Bureau should be set up. The Bureau will take over the Prosecutor’s functions regarding pre-trial investigation in criminal proceedings committed by senior officials, judges and law enforcers.

Third, the government has embarked on reforms to police administration. In November 2015, the police force, officially called ‘militia’, was replaced by the National Police of Ukraine. Some of the police officers have been hired on a competitive basis, but most of them will be re-categorised following a competency check, which will involve civil society representatives. The EU Assistance Mission (EUAM) actively assists in the reform of the country’s National Police, bringing crucial changes in four main areas: community policing, criminal investigation, human resources and public order.

Fourth, reforms of Ukraine’s civil service have been enacted. The new law on the civil service entered into force in May 2016, and the Public Governance Reform Strategy for 2016-20, in June 2016. In line with the law, the selection of civil servants is based on an open competition, with civil society representatives being involved in the selection process. The establishment of state secretaries’ institution and

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42 See more in Chapter 3.
public policy directorates aimed to de-politicise the civil service and improve its professionalism is progressing.

Fifth, the authorities have worked on a set of reforms aimed at curbing corruption, on which more detail is warranted.

**Ant-Corruption Policies.** Institutional reforms include establishing anti-corruption bodies: the National Anti-Corruption Bureau (NABU), the Special Anti-Corruption Prosecutor’s Office (SACPO), the National Agency for Prevention of Corruption (NAPC), and the new High Anti-Corruption Court (HAC).

The National Anti-Corruption Bureau (NABU) was created on time, and its head appointed in April 2015, following an open and competitive selection process. Yet, its full operational start was delayed owing to the late establishment of a specialised anti-corruption prosecution office, the head of which was not appointed until the end of November 2015. Amendments to the Law on Prosecution were passed in February 2016, making this office independent of the general prosecutor. Still, relations between the NABU and the Prosecutors Office remain tense as shown by the public disclosure of NABU’s undercover investigations in November 2017.

Also, in 2016, the National Agency for Prevention of Corruption (NAPC), empowered to monitor (the lifestyles of) officials, became fully operational. However, its current efficiency raises major concerns related to its management, cooperation with other agencies and failure to establish automatic verification of e-declarations. The latter is expected to be launched in 2018, being the key conditionality for Ukraine to receive macro-financial assistance and for the visa liberalisation monitoring.

The lack of convictions in cases falling under the NABU is an important source of concern. By the end of 2017, only a quarter out of 107 cases passed by the NABU to courts were resolved, while trials have not even started for about one-third of the cases.46

The establishment of the High Anti-corruption Court (HAC) is expected to facilitate the process. In March 2018, Parliament approved

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44 The Bureau was set up in accordance with the timetable in the Visa Liberalisation Action Plan.
in first reading a bill submitted by the President, which was criticised however for not being in line with recommendations from the Venice Commission.\textsuperscript{47} In June 2018, after intense debates, the \textit{Verkhovna Rada} adopted the law on the HAC, the text of which is largely in line with the international recommendations. The only remaining concern is that the appeals regarding ongoing trials will not be considered by the HAC.

Several other important legislative acts were passed with the aim of reducing corruption, notably the laws on asset recovery, seizure and special confiscation, and electronic declarations for civil servants.

The pace of the reforms, however, is widely considered inadequate by the public, with complaints persisting, for example, about appointment procedures for local prosecutors. Re-establishing citizens’ trust in the justice sector is arguably one of the most daunting challenges to put Ukraine firmly onto the reform track.

\section*{Movement of persons and visas}

In the Association Agreement, the movement of persons is dealt with only in summary terms, but the Visa Liberalisation Action Plan (VLAP) goes into much more detail.\textsuperscript{48} The Agreement confirms that Ukraine is required to fully implement the visa facilitation and readmission agreements and to take gradual steps on the road to visa liberalisation (i.e. visa-free access). In December 2015, the European Commission formally recommended to the Council of the EU that the EU apply the visa-free regime to Ukrainians for short trips to the EU.\textsuperscript{49} In April 2016, the European Commission proposed issuing a visa waiver for Ukrainian citizens with biometric passports, having concluded that Ukraine had met all the benchmarks set in the four blocks of the VLAP’s second phase, namely:\textsuperscript{50}

\begin{footnotesize}
\begin{enumerate}
\item See \url{http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63218}.
\item The VLAP is applied in two phases: first through legislation and institutional arrangements, and then implementation. Successful completion of these conditions is now at the top of the political agenda.
\item See the Commission’s proposal of April 2016 (\url{http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-236-EN-F1-1.PDF}).
\end{enumerate}
\end{footnotesize}
PART I. POLITICAL PRINCIPLES, THE RULE OF LAW AND FOREIGN POLICY

1) document security, including biometric passports (see section below);
2) integrated border management, migration management and asylum (see section below);
3) public order and security (see chapters 1 and 3); and
4) external relations and fundamental rights (see chapters 3 and 1, respectively).

The final decision to grant a visa-free regime to Ukraine’s citizens was taken only in May 2017 after the European Commission completed the revision of a visa suspension mechanism, and the visa-free regime was launched on 11 June 2017.

**Document security, including biometric passports.** Ukraine began issuing biometric passports that comply with the requirements of the International Civil Aviation Organisation in 2015. The number of biometric passports issued jumped from 749,000 in 2015 to 3,051,000 in 2017. Another 975,000 applications were being processed, but not yet issued due to insufficient printing capacity. A second line of control was introduced at Kyiv Boryspil airport, which can access information on fingerprints stored in Ukrainian passports. Since January 2016, new biometric ID cards have been issued.

**Migration and border management.** The Agreement sets the stage for comprehensive dialogue and cooperation on legal and illegal migration, trafficking and smuggling of people, border management, asylum, return policies and the movement of persons. Ukrainian policies on migration and border management have been amended during recent years as part of implementing the VLAP.

Of particular importance was the approval by the Ukrainian parliament of the law on external labour migration in November 2015. This law sets the parameters for regulating reintegration, which is essential when taking into account the large number of external labour migrants from Ukraine (1.3–2.5 million people according to different estimates). The State Migration Policy until 2025 was adopted in July 2017. The Agreement also protects Ukrainian workers legally employed in the EU against discrimination (Art. 17).

As mentioned in chapter 3 (on foreign and security policy), the EU has established special advisory missions to assist the Ukrainian

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authorities on border management issues. For example, in the context of the EUAM, in May 2015 it set up a Border Management Assistance Group with Ukrainian partners, which is currently confronted with exceptional challenges on its borders with Russia and the separatist regions of eastern Donbas. Another mission, the EU Border Assistance Mission (EUBAM), is part of the EU’s combined effort to help Moldova and Ukraine meet the mandatory requirements of Title III of the Agreement (Justice, Freedom, and Security).\(^5^3\) The Ukrainian authorities have ensured access to Interpol databases at border crossing points and have taken further steps to cooperate on border control and border surveillance with neighbouring countries. The government also approved an Integrated Border Management Strategy for the period 2016–20.\(^5^4\) The State Border Guard Service is advancing towards its transition to a modern law-enforcement agency aligned with EU best practices.

In December 2017, the European Commission issued the first review under the visa suspension mechanism. According to the assessment, Ukraine continues to fulfil the visa liberalisation benchmarks, but “immediate actions” have to be taken to ensure the sustainability of reforms, in particular the fight against corruption.

\(^5^3\) See EUBAM, “What we do” (http://eubam.org/what-we-do/#2).
Justice, freedom and security at a glance

Improving the rule of law and anti-corruption policy is universally considered to be indispensable to the overall success of the Association Agreement and Ukraine’s economic future.

Significant reforms were at last underway by mid-June 2016, notably with the judiciary.

There have been significant institutional developments in the anti-corruption sphere, which is characterised by complex and sometimes problematic inter-institutional relations.

In June 2017, Ukraine obtained visa-free access for its citizens to travel to the EU. The sustainability of this regime should remain high among the state’s policy priorities.

Border management has become a matter of increasing and indeed strategic significance for Ukraine, for which the EU has introduced specific programmes.
3. FOREIGN AND SECURITY POLICY

The Association Agreement aims to facilitate the gradual alignment of Ukraine’s foreign, security and defence policies with those of the EU at bilateral, regional and multilateral levels. These include areas covered by the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP).

The CFSP encompasses the objectives and issues of strategic interest to the EU, the joint actions and common positions adopted by the Union and the procedures for implementing these actions and positions. In 2017, Ukraine aligned its position to 88% of the CFSP declarations.55

The CSDP may undertake a wide range of tasks, including humanitarian, conflict prevention, disarmament and peacekeeping operations; the deployment of combat forces in crisis management; and post-conflict stabilisation.

Provisions of the Agreement

Conflict diplomacy. The parties undertake to work together for the peaceful resolution of regional conflicts and reaffirm their commitment to the international canons of sovereignty, territorial integrity and the inviolability of borders in accordance with the Charter of the United Nations and the Helsinki Final Act of 1975. The Association Agenda goes further by stating that the parties will make use of the bilateral and

multilateral fora to achieve a sustainable political solution for the conflicts caused by Russia’s “illegal activities” on Ukrainian territory.

Examples include the Geneva Joint Declaration between representatives of the EU, the US, Ukraine and Russia (17 April 2014) and diplomatic efforts undertaken in the ‘Normandy format’ (Germany, France, Ukraine and Russia), which led to the adoption of the Berlin Declaration in July 2014, the Minsk Protocol and Memorandum in September 2014, and the Minsk II declaration of February 2015. The EU has supported these efforts and maintained pressure on Russia by applying targeted and sectoral sanctions. It supports the role given to the Organisation for Security and Cooperation in Europe (OSCE) in overseeing the implementation of the Minsk protocols, with the OSCE Special Monitoring Mission and the OSCE Observer Mission tasked with monitoring the borders and ceasefire agreement.

In parallel, a series of trilateral talks were held in 2014-15 between the European Commission, Russia and Ukraine in support of the Package of Measures for the Implementation of the Minsk Agreements, with the aim of “finding practical solutions to Russian concerns about the implementation of the DCFTA”.56 Russia raised “concerns” about customs cooperation, technical barriers to trade (TBTs) and sanitary and phytosanitary issues (SPS). In response, it was agreed to delay the provisional application of the DCFTA until 1 January 2016 while talks continued. However, Russia made various proposals that would have effectively destroyed the DCFTA or delayed its implementation further. In a series of trilateral meetings, the European Commission and Ukraine sought clarification on the alleged problems for Russia, and offered various formulae to give reasonable reassurances, but no agreement could be reached. The trilateral negotiations were discontinued at the end of 2015, the DCFTA entered provisionally into force on 1 January 2016 and fully on 1 September 2017.

**CSDP missions in Ukraine.** The EU is carrying out two missions: i) a Border Assistance Mission to Moldova and Ukraine (EUBAM), which aims to strengthen border control facilities at the borders of the Transnistrian region of Moldova; and ii) an Advisory Mission for Civilian Security Sector Reform in Ukraine (EUAM) (see further below on both).

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**Ukraine in CSDP operations elsewhere.** The Association Agreement envisages Ukraine and the EU cooperating in conflict prevention and crisis management elsewhere in the world. In 2005, Ukraine and the EU adopted a framework agreement facilitating the participation of Ukraine in EU crisis management operations and an agreement on security procedures for the exchange of classified information. Ukraine contributes to the EU-led Naval Military Operation for combating piracy off the east coast of Africa (EUNAVFOR Atalanta). After the annexation of Crimea, Ukraine kept its forces at EUNAVFOR Atalanta’s headquarters but pulled out its frigate ‘Hetman Sahaydachny.’

The Association Agenda calls for consultations with a view to increasing the inter-operability of peacekeeping forces through advancing military and technical cooperation. Ukraine is able to collaborate with CSDP agencies and bodies, including the European Defence Agency, the European Union Satellite Centre and the European Security and Defence College.

**Weapons of mass destruction and disarmament.** Ukraine and the EU have also agreed to advance the non-proliferation of weapons of mass destruction, combat terrorism and the illegal arms trade, and cooperate on arms controls, arms export control and arms trafficking, including small arms.

**International Criminal Court.** The Association Agreement focuses on the ratification and implementation of the 1998 Rome Statute of the International Criminal Court, which Ukraine has signed, but still not ratified. However, Ukraine has recognised the Rome Statute jurisdiction in two cases – regarding the ‘Maidan’ and the occupation of Crimea and Eastern Donbas.

**Implementation perspectives**

The basic framework for the alignment of Ukraine’s foreign and security policy with that of the EU began to be developed in 2000.\(^{57}\) Since then, the EU and Ukraine have signed several bilateral agreements aimed at strengthening their cooperation. Specifically, they agreed on the Mechanisms for consultations on crisis management

\(^{57}\) See address by the President of Ukraine to the Verkhovna Rada of 6 March 2001, “On the internal and external situation of Ukraine in 2000” (http://zakon5.rada.gov.ua/laws/show/n0002100-01 (in Ukrainian)).
(2002), concluded the Agreement on the security procedures for the exchange of classified information (2005) and the Agreement establishing a framework for the participation of Ukraine in the EU-led crisis management operations (2005). Those steps reflected Ukraine’s intention to expand cooperation with the European Union, even if the intensity of coordination efforts was uneven due to a variation in positions of subsequent Ukrainian governments.

Russia’s annexation of Crimea and its ‘hybrid’ war in Donbas in 2014 dramatically changed the focus for joint cooperation efforts in the foreign and security policy domains. As Russia officially denied its involvement in the military conflict in Donbas, Ukraine was not able to achieve any de-escalation through bilateral negotiations. The ‘Minsk’ peace process was launched with the support of the EU. Active diplomatic efforts by the EU and its member states, combined with sanctions imposed on Russian individuals and entities, contributed significantly to the reduction of hostilities, albeit incompletely.

Ukraine supports the EU’s sanctions imposed on Russian targets and considers them as a tool to curb the aggression. It joined in certain EU decisions by imposing several sets of sanctions, which included travel bans and asset freezes on individuals and entities responsible for action against Ukraine’s territorial integrity. Ukraine has also imposed an embargo on the import and export of certain goods from/to Russia, including arms and related materials, withdrew a free trade regime as a reciprocal step and banned flights of Russian airlines to the country. Since spring 2017, trade with the occupied territories has been temporary banned. Ukraine also advocates a tightening of international sanctions against Russia. In December 2015, the Parliament of Ukraine called on the Parliaments of other countries to extend and strengthen sanctions against Russia for organising terrorist acts in Ukraine.

Since 2015, Ukraine has called for the UN peacekeeping mission on the occupied territories of Donbas, and in late 2017, the discussion


was reactivated due to some interest expressed by Russia. Several EU countries, in particular Sweden and Finland, expressed their readiness to consider participation in the mission if it is properly established.60

Building on the Association Agreement, Ukraine intends to enhance the convergence of its foreign policy with the CFSP/CSDP.61 This does not mean that Ukraine is willing to embrace EU positions unconditionally, however. Some approaches proposed by the EU might not be acceptable for Ukraine, for example, over constitutional amendments providing for special rules for local self-government in Donbas, which have been virtually blocked in the Parliament for fear of undermining Ukraine’s sovereignty.

According to the AA implementation plan, Ukraine intends to advance proposals for joint EU-Ukraine positions based on a monitoring of the security situation in Eastern Europe. In 2017, Ukraine joined 424 out of 504 positions of the EU on acute international issues.

**EUBAM and EUAM.** Ukraine generally views cooperation with the EUBAM Mission to Moldova and Ukraine as fruitful and valuable, for many reasons. First, it has helped the State Border Guard Service of Ukraine (SBGS) to draft strategic documents, including the Development Strategy of the SBGS and the Integrated Border Management Concept and is supporting their implementation. Second, it provided technical assistance in improving the low level of border and customs standards with procedures to harmonise them with those in EU member states. Third, it has contributed to the development of border infrastructure (border crossing points). Fourth, joint border control operations, carried out at the Transnistrian segment of the Moldova-Ukraine border, were instrumental in fighting cross-border crime. Fifth, a monitoring presence of the EUBAM and its confidence-building measures contributes to ensuring security in that region. Sixth, the EUBAM facilitated development of the cooperation between

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61 See Cabinet Order No. 847-r, 17 September 2014, “On the implementation of the Association Agreement between the European Union and the European atomic energy community and their member states, of the one part, and Ukraine, of the other part” (http://zakon1.rada.gov.ua/laws/show/847-2014-%D1%80 (in Ukrainian)).
Ukraine and Moldova, as well as between Ukrainian and EU law enforcement bodies.\textsuperscript{62}

The EUAM mission was initiated in 2014, and its mandate was extended to take into account Ukraine’s concerns regarding the insufficiency of the EUAM initial mandate and operational capacity.\textsuperscript{63} Kęstutis兰činskas, former Chief of the Vilnius County Police, became the new Head of Mission. The new mandate includes: i) Strategic advice on civilian security sector reform, in particular the need to develop civilian security strategies; ii) Support for the implementation of reforms, through the delivery of hands-on advice, training and other projects; and iii) Cooperation and coordination, to ensure that reform efforts are coordinated with Ukrainian and international actors.\textsuperscript{64} Since 2016, the EUAM has implemented about 60 projects, mostly in areas related to five priority areas of the mission, namely human resource management, community policing, public order, delineation of competences and criminal investigations. The EUAM has a contingent of 260 persons, with three regional offices – in Kharkiv and Lviv (2016) and in Odesa (2018), while the activities cover all regions through the mobile missions. In November 2017, the EUAM was again extended until 31 May 2019.

\textit{EU-led crisis management operations.} Ukraine is willing to take measures to enhance military and technological cooperation with the EU. Ukraine participated in an EU Battle Group in 2016,\textsuperscript{65} and is ready to participate in more developed European military formations, if established.\textsuperscript{66} The European Security and Defence College (ESDC) has regularly conducted the 'European week' in Kyiv at the National


\textsuperscript{63} Kateryna Zarembo, “Mission Possible? Where the EU is wrong in reforming the security sector in Ukraine”, 2017 (see http://www.eurointegration.com.ua/rus/articles/2017/03/23/7063459/).

\textsuperscript{64} See http://www.euam-ukraine.eu/our-mission/about-us/


\textsuperscript{66} Interview with Minister of Foreign Affairs of Ukraine Pavlo Klimkin in Evropeiska Pravda, 3 March 2015 (www.eurointegration.com.ua/news/2015/03/11/7031701/ (in Ukrainian)).
Defence University of Ukraine (NDUU). In November 2017, there was the fourth event, after which the NDUU declared its intention to become an Associated Network Partner of the ESDC in the near future. In 2015, Ukraine’s Ministry of Defence and the European Defence Agency signed an agreement, with a view to boosting military and technical cooperation. In 2016, the Ministry of Defence of Ukraine joined the Technical Agreement between the Ministries of Defence of Poland, Slovakia, Hungary and the Czech Republic on cooperation within the framework of the European Union Military Tactical Group formed by the Visegrad countries.

In September 2015, the National Security and Defence Council (NSDC) adopted a new Military Doctrine of Ukraine reflecting the country’s objective of integration into the EU. The old law on the national security fundamentals stipulates the country’s priority to become a member of the EU (amendments dated December 2014) and NATO (amendments dated June 2017). The same objectives are envisaged in a new law on national security drafted with the support of EU, US and NATO experts and aimed to align Ukraine’s national security and defence policy with EU standards. In July 2018, the new law entered into force.

### Foreign and security policy at a glance

Cooperation between Ukraine and the EU in the foreign and security domains has been building up for over a decade.

However, since 2014, with Russia’s annexation of Crimea and its ‘hybrid’ war in Donbas, the question of security cooperation with the EU has been raised to the highest strategic level.

Increased alignment with EU foreign and security policies will reframe Ukraine’s relations with Russia and the rest of the world.

Operational collaboration takes places in two missions (EUBAM and EUAM), and there are developments in cooperation with EU security agencies.

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PART II.
DEEP AND COMPREHENSIVE FREE TRADE AREA
4. **Market access for goods**

Tariff liberalisation is the basic starting point for a free trade area. The DCFTA almost completely liberalises trade in goods between the EU and Ukraine, but with a significant asymmetry in that the EU liberalises totally and immediately for most products, whereas Ukraine liberalises for many products, over three to seven years. This means exceptional opportunities for Ukrainian producers to boost their exports to the EU market before facing full competition on the home market.

**Provisions of the Agreement**

The DCFTA establishes a free trade area for trade in goods over a transitional period of a maximum of 10 years. Quantitative restrictions on imports and exports are also prohibited, unless allowed by the relevant WTO rules (i.e. Art. XI GATT).

The DCFTA tariff liberalisation is asymmetrical; the EU needs to abolish its customs duties faster than Ukraine. This should give Ukrainian exporters the time to prepare for competition from the EU and support the Ukrainian market. This asymmetrical pace of liberalisation started with the EU’s ‘autonomous trade measures’ (ATM) towards Ukraine, which entered into force on 23 April 2014, and unilaterally reduced the EU’s tariffs on Ukrainian goods in line with the EU’s DCFTA commitments. These autonomous trade measures expired on 1 January 2016, when the DCFTA as a whole entered provisionally into force, after a delay under a trilateral arrangement.

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68 Regulation 374/2014.
agreement between Ukraine, the EU and Russia on 12 September 2015. Five years after the AA’s entry into force, the parties may consider broadening the scope of tariff liberalisation by a decision of the Trade Committee.

According to the European Commission, Ukraine and the EU will eliminate 99.1% and 98.1%, respectively, of their duties in trade volume. Ukrainian exporters will save €487 million annually due to reduced EU import duties, whereas Ukraine will remove around €391 million in duties on imports from the EU.69

**Industrial products and raw materials.** Existing EU tariffs for industrial goods exported from Ukraine have been removed for 94.7% of the tariff lines. For the remaining handful of products, the tariffs will be eliminated after a transitional period.70 For example, a transitional period is envisaged for a limited number of minerals (three years), chemicals (up to five years), fertilisers (up to seven years), wood products (up to five years), footwear (up to five years) and several copper articles (five years) and aluminium articles (seven years). Significantly, cars and trucks will only be liberalised after seven years.

Ukraine, on the other hand, grants immediate preferential treatment to only 49.2% of EU exports of industrial products. After a transitional period of seven years, the share of EU exports liberalised by Ukraine will increase to 96%. For example, Ukraine will apply a gradual liberalisation on several minerals (up to seven years), organic chemicals (up to three years); fertilisers (three years), rubber tyres (up to five years), leather articles (up to five years) and textiles such as headgear (three years).

The DCFTA includes specific rules for Ukraine’s car sector, which has already had to digest Ukraine’s WTO accession that reduced import tariffs from 25% to 10%.71 Ukraine’s motor vehicles sector (both for passenger and goods transport) will have a particularly long transition period of 10 years. Moreover, Ukrainian negotiators

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managed to include specific safeguard measures on passenger cars (see below) in the agreement.

**Agricultural products.** Ukraine has committed to fully eliminate tariffs for 88.5% of the tariff lines on agricultural products. Around half of its agricultural products were liberalised immediately. For the other products, a transitional period of up to seven years is envisaged. However, not all the import duties will be reduced to zero; 8.7% of agro-food tariffs will be subject to limited linear reductions by 20-60% over 5-10 years (for example dairy, eggs, sugar, animal oils and fats). After this transitional period a residual tariff will remain. Moreover, for 2.8% of the agro-food tariff lines (e.g. types of meat and sugar groups), tariff rate quotas (TRQs) are applied.

The EU liberalisation process for Ukrainian agricultural products is rather different. Where the EU commits to reducing agro-food tariffs, in almost all cases it will fully abolish them. Moreover, the EU uses shorter transitional periods than Ukraine: 82.2% of the relevant tariffs are nullified immediately and only 1.2% will be reduced to zero in a transitional period of up to seven years.

However, the EU applies more tariff rate quotas than Ukraine, especially on specific types of cereals, pork, beef, poultry and sugar. In most cases the tariff-free quantities are allocated on a first-come, first-served basis, although a licensing procedure is set for wheat, corn, meats, eggs and selected dairy products. This reduces the scope of the liberalisation process. Nevertheless, in total, regarding agro-food products, the simple average EU tariff will drop from 9.8% to 0.4% by the end of the tenth year, whereas for Ukraine this will be from 8% to 0.9%. According to the European Commission, the DCFTA will lead to a tariff reduction of €330 million for Ukrainian agricultural products and €53 million for processed agricultural products.

**Export duties.** Ukraine applies export duties on a number of products, such as types of livestock and hide raw materials, sunflower seeds and types of metal. The EU has been contesting these export duties as it claims that they are used as an indirect subsidy to Ukraine’s domestic industry. The DCFTA now prohibits export duties in principle. However, existing export duties applied by Ukraine on products such as livestock and raw hide materials, seeds of some types of oil-yielding crops and types of scrap metal, will be phased out over a transitional period of 10 years in accordance with a schedule included in Annex I-C. Moreover, a specific safeguard measure mechanism is provided for Ukraine’s export duties during a period of 15 years following the entry into force of the agreement. This mechanism allows
Ukraine to impose a surcharge on the export duty on several goods such as raw hide materials, sunflower seeds and selected scrap metal, if during a yearly period the cumulative volume of exports from Ukraine to the EU exceeds a trigger level (set out in Annex I-D).

**Standstill.** A standstill clause states that neither party may increase any existing customs duty or adopt any new customs duty on goods originating from the territory of the other party. This clause has been effectively broken by Ukraine several times already. In February 2015, it imposed a temporary surcharge of 5% on imports of industrial goods and 10% on imports of agricultural goods as a crisis measure to tackle its significant reduction of international reserves and to restore its balance of payments. Although the DCFTA was not – provisionally – in force at the time of the adoption of this measure, this import surcharge violated the spirit of the DCFTA. Moreover, the EU’s autonomous trade measures regarding Ukraine had been conditional on abstention by Ukraine from introducing new duties or increasing existing levels of duties on EU products. Nevertheless, considering Ukraine’s economic crisis, the EU did not object to this measure. Also at the level of the WTO, most members considered this measure to be in line with the WTO rules concerning balance of payments (Art. XII GATT). However, they encouraged Ukraine to terminate this import surcharge by the end of 2016, and Ukraine cancelled this surcharge on 1 January 2016.

In April 2015, the Verkhovna Rada passed the law establishing a ten-year moratorium on exports of wood logs, explicitly contradicting the DCFTA commitments. Despite the official promise to reconsider the policy, as of March 2017 it had not done so. Abolishing the

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72 Art. 2(d) Regulation (EU) No 374/2014 of 16 April 2014 on the reduction or elimination of customs duties on goods originating in Ukraine.

73 WTO, “Members adopt report on Ukraine’s import surcharge imposed for balance-of-payments reasons”, press release, 19 June 2015 (www.wto.org/english/news_e/news15_e/bop_19jun15_e.htm). The report was considered at the WTO General Council Meeting held on 27-28 July 2015; however as one member (Russia) was not in agreement, it was decided to conclude the consultations. Download report at https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/132826/q/WT/BOP/R110.pdf.


moratorium was among the unfulfilled conditions of the EU macro-financial assistance to Ukraine that prevented the disbursement of the €600,000 tranche in late 2017.\textsuperscript{76}

In July 2016, Ukraine introduced a temporary surcharge on exports of metal scrap in direct violation of the country’s obligations.\textsuperscript{77} In 2017, the application of the surcharge was extended for another year. Exports to the EU was, however, exempted.

**Rules of origin.** These are laid down in Protocol I of the Association Agreement. Rules of origin confirm when a product is wholly obtained from the territory of one of the parties, or when products have undergone “sufficient working or processing” in order to obtain a movement certificate ‘EUR.1’ or an invoice declaration. An annex to the Protocol defines four different criteria for “sufficient processing” for each product (i.e. tariff heading): i) a change of tariff heading (e.g. a screw will originate from Ukraine if it is made from imported materials of any other heading); ii) a minimum value added (e.g. for passenger cars, the value of all the non-originating materials used to manufacture the car may not exceed 40\% of the total value of the product); iii) specific processing or working requirements or iv) a combination of the first three requirements. The DCFTA also allows bilateral cumulation, meaning that producers in the EU and Ukraine can use materials and components originating in each other’s country as if they originated in their own country when seeking to qualify for preferential treatment. For example, when a Ukrainian car producer imports intermediate parts from the EU to manufacture a car, those intermediate parts will be considered as Ukrainian and will not have to be taken into account in the calculation of the maximum threshold of the non-originating materials (i.e. 40\%, as explained above).

Membership by Ukraine of the Regional Convention on Pan-Euro-Mediterranean preferential rules of origin (for which procedures are underway) softens the rule of origin provision of the DCFTA by introducing a diagonal cumulation opportunity. According to the Final Provisions of Protocol I, the Customs Sub-Committee may decide to replace the rules of origin set out in the DCFTA by the preferential rules of the PEM when Ukraine joins the Convention.

\textsuperscript{77} See http://zakon2.rada.gov.ua/laws/show/1455-19/paran11#n11.
Implementation perspectives

The provisional application of DCFTA started on 1 January 2016. However, even before this, in April 2014, the EU provided Ukraine with the autonomous trade measures (ATMs) to support its economy in times of crisis. Application of ATMs meant that the EU lowered its import tariff protection to the level of the first year of DCFTA implementation and provided Ukrainian exporters with certain tariff quotas.

Since the DCFTA provisionally entered into force, Ukraine also started the tariff-reduction process on EU goods and introduced certain tariff quotas. In addition to the DCFTA trade regime, Ukrainian exporters were able to sell goods to the EU under the Generalised System of Preferences (GSP) for two more years. According to the Ministry of Economy of Ukraine, the GSP provided more liberalised access for 547 Ukrainian goods in 2016 and 424 goods in 2017.

In 2017, trade with the EU returned to the 2014 level after it took a strong hit due to the economic and political crises in the country in 2014-15. While a growth of imports had resumed already in 2016 amidst a boost of a domestic investment demand, the recovery of exports was initially more sluggish. In 2017, however, Ukrainian exports to the EU saw a big jump by 30%, from $13.5 billion, to $17.5 billion, the highest level since 2012 (see Table 4.1). This acceleration of the growth of exports to the EU was twice as much as exports to the rest of the world. Moreover, it was largely due to the ‘real’ expansion of the volume of exports, rather than price increases. As a result, the share of the EU in Ukraine’s total exports reached 41%, the highest level ever (the previous peak was 38% in 2003).

Imports from the EU grew 21% in 2017, a bit slower than the total imports. The share of the EU in Ukraine’s total imports was 42% of the total, remaining in a 39-44% range after Ukraine switched to the gas supplies from the EU in 2014.

Compared to 2013, the role of the EU as the trade partner of Ukraine significantly strengthened. In exports, the EU’s share gained 14 percentage points, reflecting the reduced share of Russia and other CIS countries (see Table 4.2). In imports, the share of the EU increased more moderately by 7 percentage points.

The commodity trade structure also changed during 2013-17. Exports shifted mainly from mineral products and base metals to machinery, animal or vegetable fats and oils, prepared foodstuffs and animal products. The structure of imports was more stable with some
shift to minerals and machinery and equipment at the expense of agricultural products, chemicals and pulp & paper (see Table 4.3).

**Table 4.1 Merchandise trade turnover between Ukraine and the EU, 2008-17 ($ bn)**

<table>
<thead>
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<tbody>
<tr>
<td>Total turnover</td>
<td>152.5</td>
<td>85.1</td>
<td>112.1</td>
<td>151.0</td>
<td>153.5</td>
<td>140.3</td>
<td>108.3</td>
<td>75.6</td>
<td>75.6</td>
<td>92.9</td>
</tr>
<tr>
<td>Turnover w. EU</td>
<td>47.2</td>
<td>25.0</td>
<td>32.2</td>
<td>43.8</td>
<td>43.4</td>
<td>43.8</td>
<td>38.1</td>
<td>28.3</td>
<td>30.6</td>
<td>38.3</td>
</tr>
<tr>
<td>Growth %</td>
<td>30</td>
<td>-47</td>
<td>29</td>
<td>36</td>
<td>-1</td>
<td>1</td>
<td>-13</td>
<td>-26</td>
<td>8</td>
<td>25</td>
</tr>
<tr>
<td>Share %</td>
<td>31</td>
<td>29</td>
<td>29</td>
<td>29</td>
<td>28</td>
<td>31</td>
<td>35</td>
<td>37</td>
<td>41</td>
<td>41</td>
</tr>
<tr>
<td>Total exports</td>
<td>67.0</td>
<td>39.7</td>
<td>51.4</td>
<td>68.4</td>
<td>68.8</td>
<td>63.3</td>
<td>53.9</td>
<td>38.1</td>
<td>36.4</td>
<td>43.3</td>
</tr>
<tr>
<td>Exports to EU</td>
<td>18.3</td>
<td>9.5</td>
<td>13.1</td>
<td>18.0</td>
<td>17.1</td>
<td>16.8</td>
<td>17.0</td>
<td>13.0</td>
<td>13.5</td>
<td>17.5</td>
</tr>
<tr>
<td>Growth %</td>
<td>30</td>
<td>-48</td>
<td>38</td>
<td>38</td>
<td>-5</td>
<td>-2</td>
<td>1</td>
<td>-23</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>Share %</td>
<td>27</td>
<td>24</td>
<td>25</td>
<td>26</td>
<td>25</td>
<td>26</td>
<td>32</td>
<td>34</td>
<td>37</td>
<td>41</td>
</tr>
<tr>
<td>Total imports</td>
<td>85.5</td>
<td>45.4</td>
<td>60.7</td>
<td>82.6</td>
<td>84.7</td>
<td>77.0</td>
<td>54.4</td>
<td>37.5</td>
<td>39.2</td>
<td>49.6</td>
</tr>
<tr>
<td>Imports from EU</td>
<td>28.9</td>
<td>15.4</td>
<td>19.2</td>
<td>25.8</td>
<td>26.2</td>
<td>27.0</td>
<td>21.1</td>
<td>15.3</td>
<td>17.1</td>
<td>20.8</td>
</tr>
<tr>
<td>Growth %</td>
<td>29</td>
<td>-47</td>
<td>24</td>
<td>35</td>
<td>2</td>
<td>3</td>
<td>-22</td>
<td>-27</td>
<td>12</td>
<td>21</td>
</tr>
<tr>
<td>Share %</td>
<td>33</td>
<td>34</td>
<td>32</td>
<td>31</td>
<td>31</td>
<td>35</td>
<td>39</td>
<td>41</td>
<td>44</td>
<td>42</td>
</tr>
<tr>
<td>Balance with EU</td>
<td>-10.7</td>
<td>-5.9</td>
<td>-6.1</td>
<td>-7.8</td>
<td>-9.1</td>
<td>-10.3</td>
<td>-4.1</td>
<td>-2.3</td>
<td>-3.6</td>
<td>-3.3</td>
</tr>
</tbody>
</table>

*Source: State Statistics Service of Ukraine.*
Table 4.2 Ukraine’s merchandise trade structure by country or region, 2013 and 2017

<table>
<thead>
<tr>
<th>Country</th>
<th>2013 Exports ($ mn)</th>
<th>2013 Exports (%)</th>
<th>2013 Imports ($ mn)</th>
<th>2013 Imports (%)</th>
<th>2017 Exports ($ mn)</th>
<th>2017 Exports (%)</th>
<th>2017 Imports ($ mn)</th>
<th>2017 Imports (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU</td>
<td>16,758</td>
<td>26.5</td>
<td>27,046</td>
<td>35.1</td>
<td>17,535</td>
<td>40.5</td>
<td>20,796</td>
<td>41.9</td>
</tr>
<tr>
<td>Russia</td>
<td>15,065</td>
<td>23.8</td>
<td>23,234</td>
<td>30.2</td>
<td>3,937</td>
<td>9.1</td>
<td>7,202</td>
<td>14.5</td>
</tr>
<tr>
<td>Other CIS</td>
<td>6,998</td>
<td>11.1</td>
<td>4,697</td>
<td>6.1</td>
<td>2,974</td>
<td>6.9</td>
<td>4,255</td>
<td>8.6</td>
</tr>
<tr>
<td>Other Europe</td>
<td>467</td>
<td>0.7</td>
<td>1,582</td>
<td>2.1</td>
<td>446</td>
<td>1.0</td>
<td>2,139</td>
<td>4.3</td>
</tr>
<tr>
<td>US</td>
<td>888</td>
<td>1.4</td>
<td>2,759</td>
<td>3.6</td>
<td>828</td>
<td>1.9</td>
<td>2,525</td>
<td>5.1</td>
</tr>
<tr>
<td>China</td>
<td>2,726</td>
<td>4.3</td>
<td>7,900</td>
<td>10.3</td>
<td>2,039</td>
<td>4.7</td>
<td>5,647</td>
<td>11.4</td>
</tr>
<tr>
<td>Rest of world</td>
<td>20,407</td>
<td>32.2</td>
<td>9,743</td>
<td>12.7</td>
<td>15,508</td>
<td>35.8</td>
<td>7,035</td>
<td>14.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>63,312</strong></td>
<td><strong>100.0</strong></td>
<td><strong>76,964</strong></td>
<td><strong>100.0</strong></td>
<td><strong>43,267</strong></td>
<td><strong>100.0</strong></td>
<td><strong>49,599</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

*Source: State Statistics Service of Ukraine.*

Table 4.3 Merchandise structure of Ukraine’s trade with the EU, 2013 and 2017

<table>
<thead>
<tr>
<th>Category</th>
<th>2013 Exports (%)</th>
<th>2013 Imports (%)</th>
<th>2017 Exports (%)</th>
<th>2017 Imports (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Animal products</td>
<td>0.3</td>
<td>2.5</td>
<td>1.6</td>
<td>1.6</td>
</tr>
<tr>
<td>Vegetable products</td>
<td>18.8</td>
<td>3.3</td>
<td>17.3</td>
<td>2.3</td>
</tr>
<tr>
<td>Fats and oils</td>
<td>3.0</td>
<td>0.4</td>
<td>8.4</td>
<td>0.3</td>
</tr>
<tr>
<td>Prepared foodstuffs</td>
<td>4.7</td>
<td>5.3</td>
<td>4.9</td>
<td>5.6</td>
</tr>
<tr>
<td>Mineral products</td>
<td>17.5</td>
<td>11.5</td>
<td>13.0</td>
<td>15.0</td>
</tr>
<tr>
<td>Chemical products</td>
<td>4.1</td>
<td>18.4</td>
<td>2.5</td>
<td>17.2</td>
</tr>
<tr>
<td>Plastics, rubber</td>
<td>0.6</td>
<td>7.9</td>
<td>0.8</td>
<td>7.5</td>
</tr>
<tr>
<td>Leathers, skins</td>
<td>0.8</td>
<td>0.4</td>
<td>0.8</td>
<td>0.7</td>
</tr>
<tr>
<td>Wood</td>
<td>3.7</td>
<td>1.1</td>
<td>4.8</td>
<td>0.6</td>
</tr>
<tr>
<td>Pulp, paper</td>
<td>0.5</td>
<td>4.6</td>
<td>0.6</td>
<td>3.0</td>
</tr>
</tbody>
</table>
Deeper EU-Ukrainian Relations: What, why and how?

<table>
<thead>
<tr>
<th></th>
<th>2013 Exports (%)</th>
<th>2013 Imports (%)</th>
<th>2017 Exports (%)</th>
<th>2017 Imports (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Textile</td>
<td>3.3</td>
<td>2.6</td>
<td>3.5</td>
<td>3.4</td>
</tr>
<tr>
<td>Footwear, headgear</td>
<td>0.8</td>
<td>0.2</td>
<td>0.8</td>
<td>0.2</td>
</tr>
<tr>
<td>Articles of stone</td>
<td>0.4</td>
<td>1.9</td>
<td>0.9</td>
<td>1.2</td>
</tr>
<tr>
<td>Precious stones and metals</td>
<td>0.2</td>
<td>0.9</td>
<td>0.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Base metals</td>
<td>27.3</td>
<td>5.9</td>
<td>21.4</td>
<td>5.0</td>
</tr>
<tr>
<td>Machinery and equipment</td>
<td>11.5</td>
<td>19.7</td>
<td>14.2</td>
<td>21.8</td>
</tr>
<tr>
<td>Vehicles, aircraft</td>
<td>1.1</td>
<td>10.7</td>
<td>0.9</td>
<td>10.8</td>
</tr>
<tr>
<td>Instruments and apparatus</td>
<td>0.3</td>
<td>1.6</td>
<td>0.2</td>
<td>1.7</td>
</tr>
<tr>
<td>Misc. manufactured articles</td>
<td>1.2</td>
<td>1.1</td>
<td>3.1</td>
<td>1.3</td>
</tr>
<tr>
<td>Other goods</td>
<td>0.0</td>
<td>0.1</td>
<td>0.1</td>
<td>0.6</td>
</tr>
</tbody>
</table>

Source: State Statistics Service of Ukraine.

Tariff rate quotas (TRQs). Ukrainian exporters were able, under the ATM regime, to export to the EU under TRQs for almost two years before the provisional application of the DCFTA started.

Ukraine’s experience of TRQs utilisation during 2014-17 shows that although the country was still not able to fully use their potential, its usage of the TRQs grew significantly. In 2014 Ukraine fully utilised only six out of 36 TRQs (natural honey, cereals, processed tomatoes, grape and apple juice, wheat, maize), whereas 12 more TRQs were only partially utilised. In 2017 the number of fully utilised TRQs increased to 10 out of 36 (butter, sugar, poultry, wheat, barley meal and pellets in addition to those fully utilised in 2014), while the number of partly utilised TRQs reached 16, and only 10 TRQs remained unused.

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A number of factors limit the use of TRQs, including non-compliance with EU food safety and SPS standards, insufficient domestic production, orientation towards other export partners, low demand in the EU, and lack of trading partners in the EU. The positive trend in the TRQs utilisation highlights the efforts to overcome the challenges. For example, in 2017, Ukraine fully utilised the TRQ on butter, while in 2014, this product had no access to the EU market due to food-safety restrictions.

Figure 4.1 Ukraine’s actual exports to the EU compared to amount of TRQs, 2014 and 2017

Another important issue is whether the TRQs are binding, i.e. whether import tariffs outside the quotas are so high that it is too costly to ship goods to the EU above TRQs volumes. Comparison of actual exports to the EU and the TRQs (done for fully utilised quotas) shows that currently most of them are not binding as exports significantly exceed TRQs volume (Figure 4.1). For example, honey exports was 9 times higher than TRQs: 48.3 thousand tons vs 5.2 thousand tons in 2017.

Moreover, the export volumes tend to expand over time as products find their niches in the EU market, thereby the difference between actual exports and TRQ grows. It happened for a majority of the TRQs fully utilised in 2017. One of the notable exemptions is soft wheat, where the export volume has remained around the quota amount for four years. Geographical diversification helps make the
EU’s TRQs less onerous. For example, wheat and maize are actively exported to Asia and Africa.

At the same time, the change in the EU tariffs for products subject to the TRQs could be damaging. For instance, the EU introduced an adjustable non-zero import duty on corn (along with several other grains) in August 2017.79 Initially, the duty was set at 5 euro per ton, increased to 11 euro per ton in September and went down to about 6 euro in mid-October. Notably, Ukraine’s exports of corn to the EU almost stopped in October but then reached previous volumes in response to downward adjustment of the duty rate.

For its part Ukraine applies TRQs on its imports for certain products, and since 2016, the EU has started to use these. There are Ukrainian TRQs for three products - pork, poultry, and sugar. Only a main TRQ for poultry has been fully utilised in 2017, while the level of utilisation for pork was 39% and for sugar 2%.

In October 2017, the EU introduced new three-year autonomous trade preferences (ATPs) for Ukraine in addition to the DCFTA. There were two sets of measures: i) a temporary increase of 8 TRQs: wheat, barley, oats, maize, milling products, processed tomatoes, grape juice and honey; and ii) a temporary elimination of import duties for 22 tariff lines in 6 categories: fertilizers, pigments, footwear, copper and product thereof, aluminium and products thereof, and selected equipment. Although positive, their impact will likely be minor. It is estimated that exports to EU will grow by $79.3 million or 0.6% per year due to the new measures, mostly due to price effects.80

Safeguards. As mentioned above, the car industry received special treatment under the DCFTA. At the start Ukraine’s import tariffs are brought down mostly into the 9-10% range, with further gradual elimination during the period from 7 to 10 years. The EU car market also remains relatively closed with the most import tariffs at 10%, which will be gradually eliminated during the seven-year period. However, Ukraine can also apply a special safeguard measure on passenger cars. Starting from the second year of the DCFTA’s implementation, Ukraine can hold its import tariff at the level of 10% for up to 15 years if during the previous year: i) imports from the EU

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exceeded 45,000 cars, or ii) imports from the EU amounted to 25% newly registered cars.

The Government adopted the mechanism for implementation of these safeguard measures,81 but has not launched them in practice. However, these measures are likely to be introduced alongside the renewed growth of domestic demand and imports. On the one hand, this will create favourable conditions for Ukrainian car producers, but there is only one Ukrainian passenger car producer, ZAZ, which has a full production cycle. The remaining producers, including Bogdan, Eurocar, KrASZ and Vipos, assemble passenger cars under the trademarks of foreign companies. Foreign producers can therefore choose to produce cars in Ukraine in order to avoid the high protection against imports. On the other hand, expensive imports will negatively affect both Ukrainian consumers and the prospects for Ukrainian producers to become integrated with competitive European supply chains.

Ukraine also has other safeguard mechanisms provided by the DCFTA, such as an entry price for worn clothes. Measures for export duties are mentioned above.

**Rules of origin.** The general rules have been outlined above. In order to be eligible for exporting to the EU, Ukrainian goods should be issued with the certificate of origin ‘EUR.1’. Until 2018, however, Ukrainian producers could obtain Certificate of Origin Form A, and export goods under the GSP trade regime, as for some goods GSP is more beneficial than DCFTA. The State Fiscal Service of Ukraine took over responsibility for the issue of EUR.1 certificates in 2016 in accordance with the Agreement.

In 2017, Ukraine completed the ratification procedures for joining the Regional Convention on Pan-Euro-Mediterranean preferential rules of origin (PEM). As the Convention is based on a network of FTAs with identical origin protocols, joining it allows parties to apply a principle of diagonal cumulation when determining the country of origin of goods. Currently, the parties of the Convention include the EU, EFTA states, Moldova, Georgia, Ukraine, participants in the Barcelona Process (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia and Turkey), and participants in the

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EU's Stabilisation and Association Process (Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo).

Out of the PEM members, Ukraine has FTAs with 36 countries – the EU, EFTA, Macedonia, Montenegro, Georgia and Moldova, and is negotiating with Turkey and Israel. To apply the PEM, however, changes still have to be introduced into the protocols’ regulating rules of origin in each FTA with the above-mentioned countries.

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**Market access for goods at a glance**

Due to political pressure by Russia, the EU and Ukraine postponed the provisional application of the DCFTA to 1 January 2016.

Positive impacts are now emerging for Ukraine’s exports to the EU, with a large 30% increase in 2017. The structure of exports to the EU has shifted towards machinery, fats and oils, prepared foods and animal products.

The EU’s share in Ukrainian exports and imports has also increased because of a sizeable fall in trade with Russia.

The utilisation of EU tariff-rate quotas for agricultural products expanded over 2014-17 as Ukrainian producers gradually overcame problems with food security and weak demand for its production.

Safeguards for Ukraine’s car industry could become a major source of protection, but so far, these measures have not been launched.

Ukraine has effectively already broken DCFTA standstill provisions several times, for example with temporary surcharges on imports in 2015 (now scrapped) and on exports of scrap metal in 2016.

In 2017, Ukraine completed procedures for joining the Pan Euro-Mediterranean system for rules of origin, allowing for diagonal cumulation.
5. TRADE REMEDIES

This DCFTA chapter includes rules on ‘trade defence’ measures that the EU and Ukraine can take against imports from the other party that cause or threaten to cause injury to the domestic industry, notably anti-dumping, anti-subsidy and safeguard measures. These DCFTA provisions essentially incorporate the relevant WTO rules.

Anti-dumping and countervailing measures. The anti-dumping provisions that are most actively used rely on Art. VI of GATT (1994), the WTO Anti-Dumping Agreement and the WTO Agreement on Subsidies and Countervailing Measures (SCM). If a company exports a product at a price lower than the price it normally charges on its own home market, it is considered to be ‘dumping’ the product. The WTO agreement allows governments to act against dumping where there is a ‘material’ injury to the competing domestic industry. In order to do that the government has to be able to show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter’s home market price) and demonstrate that the dumping is causing injury or threatening to do so. The importing country may then impose an anti-dumping duty to correct any damage to its industry.

The DCFTA adds specific features of the EU’s trade defence practice that go beyond the WTO Agreements, such as the ‘public interest’ and the ‘lesser duty’ rules. The former implies that a party may decide not to impose anti-dumping or countervailing measures if it is not in the public interest to do so, for example if the interests of consumers or the employment situation were negatively affected. The
lesser duty rule implies that the amount of a (provisional) anti-dumping duty shall not be higher than adequate to remove the injury in the domestic industry. This rule stresses the remedial rather than punitive character of the EU’s approach to trade defence.

Until 2005, several Ukrainian exports to the EU were subject to anti-dumping measures, mainly metallurgical and chemical products, in which Ukraine has large production capacities that until recently have benefited from artificially low energy input costs. The large number of these anti-dumping measures against Ukrainian products is also a reflection of the fact that Ukraine had not yet obtained Market Economy Status (MES) recognition by the EU. This meant that the EU was entitled to use a rather flexible procedure (the analogue country procedure) to determine the dumping margins. After Ukraine obtained the MES in 2005, the calculation of dumping margins had to be done strictly on the basis of costs and prices observed with the Ukrainian producers or the Ukrainian market. More recently the energy costs for its industry have also been aligned to international market prices. As a result the number of EU anti-dumping cases against Ukraine has dropped to zero by mid-2017. In October 2017, however, the EU imposed a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel from Ukraine (and several other countries).

Ukraine is itself applying anti-dumping measures on products from several non-EU countries, including Russia, China, Belarus and the Kyrgyz Republic, and several investigations are ongoing. In April 2018, Ukraine launched an anti-dumping investigation regarding medical gum plugs from Poland. Russia is currently challenging Ukraine’s anti-dumping measures imposed by Ukraine on imports of

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82 For an overview of all the EU’s anti-dumping measures against Ukrainian products, see http://trade.ec.europa.eu/tdi/completed.cfm

83 For an overview of ongoing EU trade-defence investigations against Ukrainian products, see http://trade.ec.europa.eu/tdi/completed.cfm

84 Commission implementing Regulation (EU) 2017/1795 of 5 October 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Serbia.

ammonium nitrate originating from Russia.\textsuperscript{86} Ukraine has requested WTO consultations with Kazakhstan regarding anti-dumping measures levied by Kazakhstan on certain types of steel pipes imported from Ukraine.\textsuperscript{87}

\textit{Safeguard measures.} This is a separate instrument, reliant on Art. XIX of GATT (1994) and the WTO Agreement on Safeguards. These rules regulate when and how WTO members may take a safeguard action (e.g. quantitative restrictions or duty increases higher than bound tariffs) to protect a specific domestic industry from an increase in imports of any product that is causing, or threatening to cause, serious injury to the industry. The key difference here, compared to the anti-dumping provisions, is that it does not require an 'unfair' practice to be found by particular supplying enterprises or countries. Correspondingly, the safeguard action has to be applied to all WTO member states, and the country imposing these measures may have to pay compensation to other members whose trade is affected. This largely explains why anti-dumping measures are much more used than safeguard measures.

The DCFTA contains one specific safeguard measure protecting that Ukrainian automobile industry. The agricultural sector is also covered by other specific provisions (see chapter 4 for both cases).

The EU and Ukraine will establish an expert-level ‘Dialogue on Trade Remedies’ which will serve as a forum for cooperation on these questions. However, the DCFTA provisions on safeguard, anti-dumping and countervailing measures cannot be challenged under the DCFTA’s Dispute Settlement Mechanism.

\textsuperscript{86} WTO, DS493: Ukraine — Anti-Dumping Measures on Ammonium Nitrate (On 24 January 2018, the Chair of the panel informed the WTO Dispute Settlement Body that the panel expected to issue its final report to the parties by June 2018.)

\textsuperscript{87} WTO, ‘Ukraine files WTO complaint over Kazakhstan steel duties’, 21 September 2017.
Trade remedies at a glance

There are provisions for anti-dumping, anti-subsidy and safeguard measures to protect the importing economy from serious damage, or threats thereof.

Anti-dumping duties have been applied quite extensively in the past by the EU against Ukrainian supplies of metallurgical and bulk chemical products, but this now occurs less frequently, as Ukrainian industry no longer profits from artificially low energy input costs. However, an anti-dumping duty on certain steel products was imposed by the EU on Ukraine in October 2017, and Ukraine is involved in several anti-dumping cases with other trade partners.
6. CUSTOMS SERVICES

For the DCFTA to work well there have to be a high quality customs services at the frontiers with efficient and speedy facilitation of traffic, avoiding delays and corruption with long queues of heavy trucks. This chapter of the DCFTA seeks to fix key principles for customs legislation and procedures and to enhance operational cooperation between the customs services of the EU and Ukraine.

Provisions of the Agreement

*Key principles for customs legislation and procedures.* At a general level, the EU and Ukraine commit to ensure that their customs legislation and procedures will be stable and comprehensive, proportionate, transparent, predictable, non-discriminatory, impartial and applied uniformly and effectively, and will prevent fraud. They also aim at reducing and simplifying the data and documentation required by customs agencies.

At the legal and operational levels, the parties undertake the following commitments:

- Adopt the EU’s customs code, establish modern transit conditions and cooperation between customs services (see details below).
- Apply relevant international instruments, including those developed by the World Customs Organization and the revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures.
• Apply a single administrative document for customs declarations.
• Provide for advance binding rulings on tariff classification and rules of origin.
• Adopt rules that ensure that any penalties imposed for the breach of customs regulation or procedural requirements are proportionate and non-discriminatory.
• Provide effective and transparent procedures guaranteeing the right of appeal against the administrative actions, rulings and decisions of customs and other agencies.
• With regard to fees and charges imposed by customs authorities, Ukraine must prohibit administrative fees having the equivalent effect of import or export duties. Moreover, fees and charges have to be transparent and made publically available and may not exceed the cost of the service provided by the customs authority.

**Customs code.** Ukraine will approximate the Modernised Community Customs Code (CCC), laid down in Regulation 450/2008/EC, which sets out the general rules and procedures applicable to goods brought into or out of the customs territory of the EU. The CCC was mainly drafted to implement IT solutions for a simple and paperless environment for customs and trade. It introduces electronic data-processing techniques for all required exchanges of data, accompanying documents and notification between customs authorities and between economic operators and customs authorities. Ukraine is not obliged to implement the entire CCC, however, as Annex XV identifies provisions that are excluded from approximation or where approximation is based only on the ‘best endeavours’ principle.

The CCC provisions that Ukraine is obliged to implement relate mainly to data protection obligations, information requirements in customs procedures, transparency rules (including procedures to appeal), customs controls, methods of customs valuation, customs declaration, the release of goods, storage of goods, free zones and temporary admission of goods. The CCC was replaced in October 2013 by the Union Customs Code (UCC) (in Regulation 952/2013/EU). The

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88 See Regulation 952/2013/EU laying down the Union Customs Code. The Regulation entered into force on 30 November 2013 and repealed Regulation 450/2008/EC. In 2015, the European Commission adopted the Delegated Act
new UCC will complete the progression to a paperless and electronic customs environment and introduces several new procedures. The substantive provisions of the UCC have entered into force on 1 May 2016, but there is a transition period until 31 December 2020 to develop new IT systems or to upgrade existing ones. The new procedures will need to be transposed in the DCFTA by the Customs Sub-Committee.

Within three years, Ukraine also has to implement the EU rules on the relief of customs duties as set out in Regulation 1186/2009/EC and on actions against goods suspected of, or actually infringing, certain intellectual property rights in Regulation 1383/2003/EC.

**Transit traffic.** The EU and Ukraine are to ensure progressive interconnectivity of their respective customs transit systems, with a view to Ukraine acceding to the Convention of 20 May 1987 on a common transit procedure (which was amended in 2017 in order to be aligned with the new UCC). This procedure is used for the movement of goods between the 28 EU member states, the EFTA countries, Turkey, Serbia and Macedonia. Ukraine already has observer status in relation to the Convention and has to fully implement it within a year after the Agreement enters into force.

An action plan for Ukraine’s accession to the EU’s Common Transit Convention was approved in May 2015. A crucial step in this regard will be Ukraine’s adoption of the New Computerised Transit System (NCTS), which enables an economic operator to submit common transit declarations electronically. In addition, Ukraine will and Implementing Act allowing the Union Customs Code to enter into force on 1 May 2016.

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89 See Regulation 1186/2009/EC of 16 November 2009 setting-up a Community system of reliefs from customs duty.

90 See Regulation 1383/2003/EC concerning customs actions against goods suspected of infringing certain intellectual property rights, and the measure to be taken against them. This regulation was repealed in 2013 by Regulation 608/2013/EU concerning customs enforcement of intellectual property rights.


have to apply the relevant WTO provisions, such as Art. V of GATT, and adopt any future WTO measures for improving trade facilitation. Ukraine ratified the WTO Trade Facilitation Agreement in December 2015, which entered into force in February 2017. This agreement contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues.

**Customs cooperation.** The EU and Ukraine are also to strengthen their customs cooperation. The EU and Ukraine have to exchange information concerning customs legislation and procedures, cooperate on the automation of customs procedures, exchange relevant information, best practices and data, cooperate in the planning and delivery of technical assistance, etc. In particular, the DCFTA outlines a procedure for “Mutual Administrative Assistance in Customs Matters”, foreseeing information exchange in cases of suspected or actual fraud under customs legislation.

The DCFTA has also established a Customs Sub-Committee to monitor the implementation and administration of this customs and trade facilitation chapter. The Committee met for the first time in June 2017 to discuss Ukraine’s implementation of Rules of Origin, its approximation to the UCC, the state of play as concerns the Authorised Economic Operator and IPRs.

In addition to the DCFTA, the EU and Ukraine have developed other instruments for customs cooperation, notably in the context of the Eastern Partnership. For example, in May 2012, the EU and Ukraine adopted a Strategic Framework for customs cooperation. This initiative identified various priority areas, most of which have been taken over by the DCFTA. One particular point of interest relates to safe and fluid trade lanes to achieve maximum trade facilitation and enable reliable business, with customs acting as a link in the supply chain. For example, the EU and Ukraine intend to create fast lanes to move pre-approved eligible goods across the border quickly. Recognition of authorised economic operators (AEOs) could be part of this process. In the EU, economic operators can apply for AEO status to benefit from reduced controls and simplified customs procedures. The AEO status

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is granted to reliable operators that comply with security and safety standards.

Another important instrument in EU-Ukraine customs cooperation is the EU Border Mission (EUBAM), launched in 2005 and with its mandate now extended to 2020 (see Chapter 2).94 As an advisory, technical body mandated to enhance the border-management capacities of Moldova and Ukraine, EUBAM plays an important role in strengthening the customs procedures and institutions of these two countries. For instance, EUBAM monitors customs clearance and border guard checks, provides assistance in preventing the smuggling of goods and persons, examines border control documents and makes unannounced visits to any locations on the Moldovan-Ukrainian border, including border units, customs posts and revenue accounting offices.

In October 2017, the EUBAM passed the responsibility regarding the organisation of the regional Trade Facilitation Working Group to the US Department of Commerce’s Commercial Law Development Program (CLDP), which supports the Government of Ukraine in fulfilling its WTO obligations on trade policy.95 The Trade Facilitation Working Group was set up in 2015 as a platform for communication and cooperation between the relevant national agencies, business and international development partners, such as USAID, the American Chamber of Commerce in Ukraine and the European Business Association. In collaboration with, among others, the EU Directorate-General for Taxation and Customs Union, EUBAM helped to promote reforms related to the AEO and the Post-Clearance Audits.96

In 2013, the European Anti-Fraud Office and Ukraine signed an Administrative Cooperation Agreement. It sets out a framework for practical cooperation between the EU and the Ukrainian authorities on measures to prevent and detect cigarette smuggling, which include information exchange and joint investigations.97

95 http://eubam.org/newsroom/eubam-hands-over-its-trade-facilitation-working-group/
Implementation perspectives

The customs-related reforms in Ukraine prove to be difficult. Moving products across the border of Ukraine has remained a cumbersome and costly process compared with neighbouring countries. Vehicles are frequently forced to queue at border crossings for hours, or even days for commercial trucks, waiting for customs clearance and other controls.

According to the World Bank Group’s report “Doing Business 2018”, Ukraine is ranked 119 out of 190 countries in the category “Trading across borders”, showing no change in relation to the ‘best performance frontier’. The lengthy and costly process of documentary compliance remains problematic. Problems with documentary compliance were similarly reported by exporters and importers surveyed by the IER in 2015 and 2016. While the State Fiscal Services (SFS) of Ukraine claims that 96% of customs declarations were submitted electronically in 2015, business respondents reported that they occasionally provide both electronic and paper copies of declarations. Moreover, most of the other necessary documents are submitted in paper form, which largely undermines the positive impact of introducing electronic declarations. According to an IER survey, 17% of exporters and importers do not use any electronic documents. The key reason for submitting paper documents is the legal requirement to provide the ‘original’ document.

Customs valuation has also remained a problematic issue. Business complains that the customs authorities are still reluctant to use Method 1 of valuation, based on the actual paid price, and tend to apply other methods resulting in artificial changes in customs value. According to the SFS, the transaction cost method was used in 83% of the cases in 2016, while in the EU this method is applied to over 90% of imports. But the situation is improving. Importers of agro-food products see a higher share of their products accepted using Method 1 (70% in 2016 vs 62% in 2015) while the respective shares for importers

98 The surveys were conducted as part of the project “Trade Facilitation Dialogue”, funded by the EU (http://tfd.ier.com.ua/wordpress/en/home/).
99 See the “Report on the implementation of the plan by the State Fiscal Service” (http://sfs.gov.ua/data/files/131201.pdf).
of textiles are 75% in 2016 vs 70% in 2015. Importers of mineral products faced the most frequent use of other methods – in 67% of cases in 2016.

Inefficient and corrupt customs are reported to be among the most significant trade barriers by both international observers and Ukrainian business. Customs inefficiency is partly explained by poor equipment and an insufficient number of customs officers working on the border. For instance, in the Lviv oblast, where joint customs controls take place at three out of six vehicle customs checkpoints at the Ukraine–Poland border, there are 20% fewer Ukrainian customs officers than Polish officers. The low wages of customs officers are an additional factor discouraging efficient work and create incentives for corruption.

Corruption scandals have stimulated the government to advance reforms to the customs service. In August 2016, the ‘single customs window’ was launched, the duration of controls reduced and additional monitoring equipment introduced to ensure transparency and accountability. The use of the ‘single customs window’ remained much lower than expected, however, due to problems with intragovernmental coordination and inconsistent legal provisions. As a result, the share of the customs clearance through the ‘single customs window’ was about 27% after a year in force. Large enterprises tend to use the ‘single customs window’ more intensively (35% of respondents use the ‘single customs window’), while small enterprises lagged behind (15% of respondents used it). In November 2017, the Government passed another decree making use of the ‘single customs window’ mandatory as of February 2018.

Ukraine has gradually moved forward in fulfilling its DCFTA customs and trade facilitation commitments. Since 2013, the SFS has published binding advance rulings on tariff classification, although

102 See the website of the Cabinet of Ministers on the introduction of single customs windows (www.kmu.gov.ua/control/uk/publish/article?art_id=249056564&cat_id=244274130).


105 See the SFS “Registry [of] previous decisions on the classification and coding of goods in the Nomenclature” (http://sfs.gov.ua/baneryi/mitne-oformlennya/subektam-zed/klasifikatsiya-tovariv/62835.html); see also the SFS “list of products on which classification decisions [have been] taken”
with some delays. Since 2016, the SFS has been responsible for issuing EUR1 certificates for rules of origin, using a procedure equivalent to that of the EU. A status of approved exporter, further simplifying the procedures for complying with the rules of origin, was introduced in 2015, and the Odesa Sparkling Wine Company was the first exporter that obtained this status in February 2016.\textsuperscript{106} Currently, over 100 Ukrainian exporters received this status.

In December 2015, a pilot of online administrative services for exporters and importers was launched.\textsuperscript{107} It is expected to substantially reduce costs and time spent on documentary compliance in cross-border trade.

The draft law on AEOs was agreed by the government in spring 2016, but still needs to pass through parliament. The AEOs were envisaged in the Customs Code passed in 2012, but the institutional setup was insufficient to make them operational.

The new Customs Code was passed 2012 to bring the Ukrainian legislation closer to international and in particular EU norms. Still, it was amended several times and further changes are in the pipeline to harmonise requirements for AEOs in the EU and Ukraine, further simplify customs clearance and increase the IPR protection in line with EU norms.\textsuperscript{108}

Ukraine is delaying the ratification and implementation of the transit conventions. According to the DCFTA, the ratification had to occur within the year after enactment of the Agreement, but the respective draft laws are still pending in Parliament.\textsuperscript{109} Moreover, the interconnection of the NCTS and Ukraine’s electronic system did not

\textsuperscript{106} See “First authorized exporter to Odesa customs” (http://customs.odessa.ov.ua/otrymaty-status-upovnovazhenogo-eksportera-na-odeskij-mytnytsi-ne-skladno/).
\textsuperscript{107} See “Foreign Trade”, Unified State portal administrative services (https://poslugy.gov.ua/info/services/byservicescope/82)
occur. The only positive step was the harmonisation of the coding systems used in the declarations.\footnote{Order of the Ministry of Finance #1193 on 28 December 2016.}

In March 2017, the Cabinet of Ministers adopted the decree envisaging a reorganisation of the Customs Service by establishing the centralised intra-regional customs and a network of customs points, e.g. removing the regional customs. However, the decision drew a lot of criticism from other stakeholders and was postponed. A working group has been formed to find the solution regarding the best way to reform the customs.

**Customs and trade facilitation at a glance**

Customs-related reforms in Ukraine prove to be difficult. Moving products across its border remains a cumbersome and costly process compared with neighbouring countries. Vehicles are frequently forced to queue at border crossings for hours, or even days for commercial trucks. Customs valuation has remained a problematic issue.

Inefficient and corrupt customs are reported to be among the most significant trade barriers by both international observers and Ukrainian business.

Ukraine is progressing towards fulfilling its legislative commitments under the DCFTA, but with delays, notably with regard to commitments concerning transit systems.
7. TECHNICAL STANDARDS FOR INDUSTRIAL GOODS

Customs tariffs between the EU and Ukraine are set to disappear almost completely, so non-tariff barriers such as technical standards will become the main obstacle to trade. In order to tackle these barriers, Ukraine will adopt the relevant EU legislation, standards and procedures. This will be a long and complex process, but one that is fundamental to modernising and making Ukraine’s industry internationally competitive.

Provisions of the Agreement

Basic features of the European system. While the system for setting technical standards is highly complex and has been changing over time, its basic, two-level system can be summarised as follows:

- First level: EU harmonisation laws, of which a few ‘horizontal’ regulations or decisions cover the general methodology and institutional framework, and around 30 directives cover broad ‘sectoral’ product groups such as ‘machinery’. For the product groups the directives outline the ‘essential’ health and safety requirements they have to meet before they can be placed on the EU market.
Second level: around 5,000 product-specific ‘harmonised standards’ that provide the technical means to comply with the essential health and safety requirements defined in the sectoral product directives. These standards are produced at the request of the European Commission by one of the three technical organisations (CENELEC for electrical products, ETSI for telecommunications equipment and CEN for the largest number of other products). When the Commission is satisfied with the proposed standards it publishes them in the Official Journal of the European Union, so they then have official status as ‘harmonised’, which are presumed to meet the ‘essential requirements’ of the applicable directive.

An overview of the harmonised standards, grouped by the existing sectoral product directives, can be found on the European Commission’s website. For example, for the very important category of ‘machinery’, there is the applicable directive that defines the health and safety requirements, followed by several hundred harmonised standards for specific products or components.

The qualitative difference between directives and standards is that while directives are binding laws, the harmonised standards, while having official recognition, are voluntary for manufacturers who may choose to use them or to apply their own specifications. However, in the latter case the manufacturer still has to prove ‘conformity’ with the directive, which will usually be a more costly procedure than adopting the harmonised European standards that give automatic conformity with the relevant directive.

When placing a product on the EU market covered by the EU’s harmonisation legislation, the manufacturer has to draw up and sign an ‘EU Declaration of Conformity’ in which he ensures and declares that the products concerned satisfy the ‘essential requirements’ of the

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111 Author’s own calculation on the basis of data in the 2014 annual report of the three European standardisation organisations (www.cencenelec.eu/Pages/default.aspx and www.etsi.org/)

112 CEN: European Committee for Standardisation; CENELEC: European Committee for Electrotechnical Standardisation; ETSI: European Telecommunications Standards Institute.

relevant product directive and that the relevant conformity assessment procedures have been fulfilled. By signing the EU Declaration of Conformity, manufacturers assume responsibility for the compliance of the product. Only then can a manufacturer affix the ‘CE’ marking to the product. Products bearing the CE marking are presumed to comply with the applicable EU legislation and benefit from free circulation in the European Market.

**Horizontal methodological directives.** Important horizontal EU legislation to which Ukraine must approximate are two legal acts of 2008 known as the New Legislative Framework, namely a Decision on a common framework for the marketing of products\(^\text{114}\) and a Regulation on the requirements for accreditation and market surveillance\(^\text{115}\). The former sets out a common framework of general principles and reference provisions for the marketing of products. It establishes criteria for EU sectoral legislation by providing the definitions of fundamental concepts (e.g. what is “placing on the market” and what are “harmonised standards”?). It also defines the obligations for manufacturers, importers and distributors and defines several modules of conformity assessment procedures, explained below, together with the accreditation requirements. This decision is to be approximated by Ukraine within one year.

In addition, Ukraine has to approximate to a Directive on general product safety\(^\text{116}\), which imposes general safety requirements on any product placed on the market and defines criteria for when a product is considered safe. Ukraine has to ensure that producers comply with these rules and monitor product compliance with the applicable EU requirements. It will have to identify products that pose a serious risk to health and safety and prohibit such products from being marketed. It also has to put in place a system of liability for defective products, in line with the relevant EU rules.

**Sectoral directives.** According to Annex III of the Agreement, Ukraine has to approximate to 27 sectoral directives covering a wide range of products such as machinery, lifts, safety of toys, medical devices and simple pressure vessels (see Box 7.1). This task is complicated by the fact that these directives are currently being updated in light of the New Legislative Framework, in particular of the EU’s Decision of 2008 on a common framework for the marketing of

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\(^{114}\) Decision 768/2008/EC.

\(^{115}\) Regulation 765/2008/EC.

\(^{116}\) Directive 2001/95/EEC.
products, which aims to improve market surveillance and boost the quality of conformity assessments (see further below on conformity rules and procedures). The 27 directives define ‘essential’ health and safety requirements for each product group and the specific conformity assessment procedures to be followed (explained further below). Most of the directives have to be approximated within two to three years, although some have four to five years.

In order to bring product harmonisation legislation into line with the provisions of Decision 768/2008/EC, the EU has aligned recently – mainly after the Association Agreement was negotiated – 20 sectoral directives to the new common framework of the marketing of products (see Box 7.1). Further aligning proposals are pending on medical devices and other product groups. Ukraine will need to take into account these new legislative developments when approximating to the EU’s sectoral directives. For example, in the EU-Moldova Association Agreement, the joint Trade Committee adopted a decision to update the corresponding annex.117

Box 7.1 New sectoral product legislation for approximation by Ukraine

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<td>2.</td>
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<td>Pyrotechnic articles - Directive 2013/29/EU</td>
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<td>12.</td>
<td>Lifts - Directive 2014/33/EU</td>
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117 Decision No 1/2016 of the EU-Moldova Association Committee in Trade Configuration of 19 October 2016 updating Annex XVI to the Association Agreement.
European standards. The Agreement requires Ukraine to adopt the ‘corpus’ of European standards, which includes, in addition to the 5,000 harmonised standards, around 24,000 European standards (i.e. standards developed by CEN, CELELEC or ETSI). This is a considerable challenge, but substantial progress is already being made. Ukraine must also repeal any conflicting national standards, such as the GOST standards developed before 1992.

Ukraine has to ensure that its relevant national bodies participate fully in the European and international organisations for standardisation and conformity assessment, including accreditation. Ukraine is also obliged to progressively fulfil the membership conditions for the European standardisation organisations (CEN, CENELEC and ETSI).

Conformity and surveillance procedures. The Agreement envisages wide-ranging cooperation between the two parties in the fields of market surveillance and conformity assessment procedures.

As noted above, Ukraine has to approximate to the Decision of 2008 on a common framework for the marketing of products. This Decision establishes a highly complex set of differentiated models (called ‘modules’ in the text) for conformity assessment procedures. The sectoral directives covering the different product groups identify which module of conformity assessment is required. For certain groups of products that could pose a risk to the public (e.g. pressure vessels, lifts and certain machine tools), a conformity assessment by a third party is required before placing the product on the market. These third parties are laboratories, inspection and certification bodies, which are known generally as ‘conformity assessment bodies’, or more formally

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118 Decision 768/2008/EC.
as ‘notified bodies’. For various low-risk products, manufacturers can make the ‘declaration of conformity’ themselves.

Ukraine also has to approximate to the EU’s 2008 Regulation\textsuperscript{119} that lays down rules on the requirements for accreditation of conformity assessment bodies and for market surveillance of products to ensure that products placed on the EU market fulfil the specific health and safety requirements defined in the sectoral EU legislation. There has to be a single national accreditation body, operating with impartiality and objectivity, and on a non-profit basis.

Ukraine will have to establish and maintain surveillance authorities that monitor and control whether products placed on its market meet EU health and safety requirements. These market authorities must perform checks on the characteristics of products through documentary, physical and laboratory checks. The surveillance authorities must have the competence to withdraw products from the market that pose a serious risk. Moreover, Ukraine would have to notify the Commission of such a decision and notify it to Rapid Alert System for dangerous non-food products (RAPEX).

The Agreement also aims to conclude an Agreement on Conformity and Assessment and Acceptance of Industrial Products (ACAA). ACAAs are a type of mutual recognition agreement envisaged by the EU for any country of the eastern or southern parts of the European Neighbourhood Policy and the Western Balkan countries. By concluding an ACAA, the parties agree that industrial products listed in the annexes of an ACAA and fulfilling the requirements for being lawfully placed on the market of one party may be placed on the market of the other party, without additional testing and conformity assessment procedures. However, before concluding an ACAA, Ukraine would first have to fully implement its obligations related to EU directives, including the harmonised standards, and accreditation and conformity assessment institutions, described above. These reforms will be closely monitored by the EU institutions. An ACAA would consist of a framework agreement, providing for the recognition of equivalence of the conformity assessment, verification and accreditation procedures, and one or more annexes setting out the products covered. The sectors to be covered by the first ACAA between the EU and Ukraine are simple pressure vessels, low voltage equipment, electromagnetic compatibility and machinery. More sectors can be added later.

\textsuperscript{119} Regulation 765/2008/EC.
Relations with third countries. Ukrainian producers are entirely free to manufacture for export to third-country markets, such as Russia, according to those countries’ own technical standards. On the import side, the question is more sensitive, as exemplified by the difficult ‘trilateral’ dialogue between Ukraine, the EU and Russia on the implications of the DCFTA for Russia. This question is being made redundant, however, since the Eurasian Economic Union is increasingly adopting European standards. Once the sectoral EU directives are implemented, imports, including those from Russia, will have to meet the essential health and safety requirements of those directives before they can be placed on the Ukrainian market.

Implementation perspectives

Recently, Ukraine has progressed significantly with harmonisation with relevant EU legislation, the transposition of EU standards, the elimination of outdated Soviet norms and the development of the relevant structures. In August 2015, the Cabinet of Ministers adopted a Strategy for the Development of the Technical Regulation System until 2020 (the TBT Strategy),120 aimed at the elimination of technical barriers in trade with the EU, thereby stimulating the modernisation of Ukraine’s economy. The Strategy envisages the harmonisation of technical regulations with EU law (the list of EU norms appears in the Action Plan accompanying the TBT Strategy), a development of institutions and infrastructure and a preparation for signing the ACAA. The export of Ukrainian products to the EU market without additional testing and conformity assessment procedures is one of the expected results following implementation of the Strategy.

Horizontal legislation. By now, Ukraine’s national legislation has largely aligned with the relevant EU horizontal legislation, explained above, although some small changes are still expected.121. There are seven key laws in the sphere:

- Law No. 2735-VI on State Market Surveillance and Control over Non-food Products122 (2010, last amended 2015)

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The Strategy foresees the development of a secondary legislation for laws on metrology and metrological activity and on technical regulations and conformity assessment to ensure that the horizontal laws are properly implemented. In addition, the laws on technical regulations and conformity assessment and on market surveillance require further modification, in particular to remove a duplication of functions of various public bodies, simplify procedures and increase responsibility of involved parties.

**Sectoral legislation.** Ukraine has intensified reforms in the sphere of technical regulations since the country joined the WTO in 2008; over 50 technical regulations have been passed, using the EU directives as a basis. By the end of 2017, technical regulation for 24 out of 27 sectors envisaged in the DCFTA were adopted, and 23 implemented.\(^{129}\)

The technical regulations adopted before the DCFTA were not identical to the EU directives, however, which is a precondition for the conclusion of an ACAA. The government of Ukraine is therefore

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currently working on the completion of sectoral legislation alignment with the support of the EU technical assistance projects. By the end of 2015, eight technical regulations had been closely aligned with the corresponding EU directives, including most of the sectors earmarked for the first round of the ACAA like electromagnetic compatibility, electrical equipment and machinery. By mid-2018, Ukraine harmonised its technical regulations with 10 out of 20 directives of the new common framework of the marketing of products referred in Box 7.1.

Alongside the alignment of sectoral legislation with the EU directives, the government has to cancel other legal norms like sanitary and labour safety norms that contain additional mandatory requirements regarding product characteristics, production methods and processes, and hence duplicate technical regulations. In January 2016, the government made an important step forward in this sphere by cancelling numerous sanitary, epidemiologic and hygienic norms adopted before 1991. This decision entered into force on 1 January 2017.

Ukraine’s plan for harmonisation of technical regulations with the EU norms does not focus exclusively on the 27 sectors foreseen in the DCFTA. Technical regulations in other sectors are also set for alignment with the EU legislation, e.g. with REACH.

In July 2016, the EU and Ukraine launched the TBT Regulatory Dialogue (as called for in Art. 55 of AA) as the appropriate technical cooperation forum for carrying out the detailed assessment of the Ukrainian system in order to verify its compliance (in terms of legislation, its enforcement and institutional capacity) with the EU rules and standards. Ukraine identified three priority sectors for an ACAA: low-voltage equipment, electromagnetic compatibility and machines. The EU still considers that Ukraine has not made sufficient progress in these three areas to start ACAA negotiations.

Delays in starting a new technical assistance project in the TBT sphere have held back the legal harmonisation progress.

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Adoption of standards. In 2017, 1,439 standards were adopted in Ukraine, 94% of which are harmonised with European and international standards. Thus, as of the end of 2017, there were 20,227 national standards in Ukraine, including 12,067 aligned with the international and European standards. Compared to previous years, two major changes occurred. First, the total number of standards was reduced by about one third from 29,600 documents in 2014. Second, the number of national standards harmonised with international ones reached 60% and their share doubled from 30% in 2013.

The changes were mostly due to the abolition of obsolete GOST standards from before 1992, as required by the DCFTA (see above). In 2015, the Ministry of Economic Development and Trade annulled over 12 thousand GOSTs, a great acceleration compared to 122 standards withdrawn in 2014 and 3.8 thousand in 2006-13.

In parallel, Ukraine intensified alignment with international and European standards: 6,112 standards, almost half of all international standards adopted over the years of independence, were adopted in 2014-16.

Importantly, access to national standards has improved significantly. Most standards can be bought and downloaded online at http://shop.ukrndnc.org.ua/ua/about, supported by the national standardisation authority.

Standardisation: institutional setup. In accordance with the new law on standardisation enacted in 2015, standardisation was passed from the public body to a national standardisation authority, namely to the state-owned enterprise ‘Ukrainian Scientific Research and Training Centre for Standardisation, Certification and Quality’ (UkrNDNC). This institution has become responsible for the organisation and coordination of standardisation activities, including setting up technical committees for the standardisation, adoption and abolishment of standards, and to represent Ukraine in international bodies.

By the end of 2017, 186 technical standardisation committees embracing representatives of all stakeholders have been registered under the auspices of the UkrNDNC, and to ensure a proper balance of interests among stakeholders, the Management Board, as an advisory and supervisory body of the national authority on standardisation, and the Appeals Commission were established. The efficiency of the

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committees remained questionable, however, as about one third of the committees are inactive, and business complains about its inability to impact the development of standards.

The UkrNDNC has already received confirmation of its membership in the International Standardization Organization (ISO) and the International Electrotechnical Commission (IEC), an international counterpart of the CENELEC.

Ukraine’s State Service of Technical Regulation, a predecessor of the UkrNDNC, had been an affiliate member of the CEN\textsuperscript{133} and the CENELEC.\textsuperscript{134}

**Metrology.** The law on metrology adopted in 2014 completely changed the principles and institutional structure of metrological activity in the country and aligned it with European and international norms. The new national metrology system has been developed based on norms and practices of the International Organization of Legal Metrology (OIML)\textsuperscript{135}, in particular the OIML international document “Elements for a Law on Metrology,”\textsuperscript{136} the EU, the WTO and other international organisations.

In 2016, secondary legislation regarding metrology, including 22 decrees, was developed and adopted to ensure the timely launch of the new system in 2017.

**Accreditation.** The National Accreditation Agency of Ukraine (NAAU), an independent authority in the sphere of accreditation, was established in 2002 by the Ministry for Economic Development and Trade. Together with the NAAU, the Accreditation Council, the Technical Committee on Accreditation and the Appeals Commission were set up. To ensure a balance of interests, the Accreditation Council consists of representatives of three groups of stakeholders, namely central public authorities, accredited conformity assessment bodies and other stakeholders (i.e. representatives of business, expert community, academia and civil society organisations). The impartiality of NAAU is guaranteed by law.

\textsuperscript{133} See https://standards.cen.eu/dyn/www/f?p=CENWEB:9:::NO:::


\textsuperscript{135} Ukraine is a member of the International Organization of Legal Metrology (OIML), www.oiml.org/en/structure/members/contactmember_view?IDCountry=222&CountryName=UKRAINE&iso=UA&M=2

\textsuperscript{136} See www.fundmetrology.ru/depository/04_IntDoc_all/D_E_1.pdf.
The NAAU is an associate member of the European Cooperation for Accreditation (EA) and signed several bilateral agreements with the EA, which recognises and accepts the equivalence of the operated accreditation systems, as well as the reliability of the conformity-assessment results provided by conformity assessment bodies.

In addition, the NAAU is a full member of the International Laboratory Accreditation Cooperation (ILAC). In 2014, it signed several Mutual Recognition Agreements with the ILAC regarding assessment and accreditation of conformity assessment bodies according to two international standards: ISO/IEC 17025 and ISO/IEC 17020. The accreditation bodies that signed the ILAC MRA were peer-evaluated in line with ISO/IEC 17011 requirements to prove their competence.

**Conformity assessment and market surveillance.** The new law on technical regulations and conformity assessment adopted in 2015 established unified principles of conformity assessment in line with the EU and WTO norms and practices and stipulates that the mandatory certification of products, an archaic element of the Soviet system, will no longer be in force by 2018. The register of the conformity assessment bodies for specific technical regulations has been available online at the Ministry of Economic Development and Trade website.

The market surveillance and control over non-food products is regulated by the law passed in 2010 and developed according to EU norms and practices. However, further changes in market surveillance legislation are expected to increase the efficiency of the system.

Currently, the State Service on Food Safety and Consumer Protection (SPSA) is the key responsible authority in the sphere of non-food products market surveillance. Formally established in 2015, this Service was launched only in 2016 (see more in Chapter 20 of this Handbook).

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137 See www.european-accreditation.org/the-mla.


139 See http://ilac.org/ilac-mra-and-signatories/.

140 Compared to 2009, the list of products subject to mandatory certification reduced by 70%.

To sum up, Ukraine made significant progress in its approximation to EU legislation in the sphere of technical regulations, mostly in 2014-16. Major efforts are required to ensure the proper implementation of these changes, including capacity development of the institutions involved in standardisation, conformity assessment and market surveillance, and the creation of adequate infrastructure. EU technical assistance is expected to play a key role in this process.

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**Technical standards for industrial goods at a glance**

The adoption of European technical standards for industrial products is vital for the modernisation and competitiveness of the Ukrainian industry.

Ukraine has adopted a Strategy for Development of Technical Regulation System until 2020 to eliminate technical barriers in trade with the EU.

Ukraine is making good progress in first approximating the limited EU relevant directives, and second in adopting the huge number of European standards. In 2017, however, the pace of approximation slowed down due in part to the absence of EU technical assistance.

Ukraine’s national accreditation system achieved recognition from the European Cooperation for Accreditation and the International Laboratory Accreditation Cooperation.

Ukraine has identified three priority sectors for an ACAA (low-voltage equipment, electromagnetic compatibility and machinery), but the EU still considers that the country has not made sufficient progress to launch ACAA negotiations.

Progress in establishing proper market surveillance system is proving more difficult.
The chapter officially entitled “Sanitary and PhytoSanitary Measures” (SPS) concerns the food safety standards required to facilitate trade in agricultural and food commodities and plants covered by SPS regulations, and to safeguard human, animal and plant life or health (Art. 59). The key mechanism is for the law of Ukraine to approximate its SPS law to that of the EU, with procedures to establish their effective equivalence. The Agreement also aims to reach a ‘common understanding’ on animal welfare standards.

**Provisions of the Agreement**

*Approximation.* The Agreement did not itself define the list of laws to be approximated, but instead required Ukraine to submit a Comprehensive Strategy for the implementation of EU SPS standards within three months of its entry into force. In February 2016 agreement was reached between Ukraine and the European Commission on the contents of the Comprehensive Strategy, which is a list of roughly 255 EU regulations and directives. This sets out the implementation schedule for each regulation or directive (see below and Figure 8.1 in particular).

*Equivalence.* Rules are established for recognising the equivalence of measures taken by Ukraine with those of the EU, or for groups of measures, for sectors or sub-sectors, and commodities or groups of commodities (Art. 66). The process should be launched by the exporting party based on the “objective demonstration of equivalence” and the “objective assessment of this demonstration” by
the importing party. This should be an interactive process. It is then for the importing party to determine equivalence or not, or to withdraw or suspend equivalence, based on internationally recognised standards or proper scientific evidence. Verifications may be made by the importing party, for which there are detailed rules. Where equivalence is recognised there will be a reduction of physical checks at frontiers and simplified procedures.

Audits are conducted by the EU to verify that SPS conditions are being met. For example an audit conducted in 2015 on cereal seeds was positive: “Overall, the national authorities responsible for implementation of seed certification in Ukraine are competent and operate appropriately. Once the abovementioned minor shortcomings have been addressed, seed produced in Ukraine can be considered equivalent to seed produced in the EU”.

**Trade conditions.** When the approximation has been fully undertaken the import conditions for the products or sectors in question shall apply to the whole territory of Ukraine as exporting country (Art. 69). However, this still requires that enterprises wishing to export to the EU obtain certification from the ‘competent authority’ of Ukraine, which has to guarantee that the establishment meets the relevant health requirements of the EU and has the power to suspend the establishment’s listing in the case of non-compliance (Art. 4 of Annex VIII).

**Pests, animal and plant diseases.** There are detailed provisions for handling problems of animal or plant diseases and of pests. The diseases and pests in question are listed (Annex VI). Procedures are established to recognise the pest-free status of given regions for the purpose of trade and for the notification of risks to public, animal or plant health through diseases.

**Safeguard measures.** Where the importing country needs to take measures to control a serious health hazard or risk it may take provisional restrictive measures affecting imports, but these have to be suitable or proportional in order to minimise the disruption to trade.

**SPS Sub-Committee of the Association Council.** This sub-committee has the task of reviewing the implementation of the SPS

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chapter and may *inter alia* decide upon modifications to the annexes. Decisions shall be taken on the basis of consensus of the parties.

**Pre-existing import arrangements.** The EU maintains a comprehensive system for the regulation of imports of agri-food products from third countries world-wide to assure their compliance with its SPS requirements, notably under Regulation 854/2004/EC on rules for the organisation of controls of products of animal origin.

This Regulation first of all sets the rules for the approval within the EU itself of ‘establishments’ (i.e. slaughterhouses, or food processing factories) and requires that officially designated ‘competent authorities’ carry out or organise controls to verify compliance with SPS requirements. However, this Regulation goes on to establish comparable rules for approving establishments in third countries for the purpose of exporting to the EU market. These arrangements are currently being used by Ukraine and will remain in force while the provisions of the Agreement are implemented. The most active categories of recognised establishments and the number of enterprises recognised are as follows:143

- Meat from poultry, rabbits - 8
- Fishery products - 24
- Dairy plants – 49
- Facilities for collecting and handling animal by-products - 117
- Processing plants - 48
- Pet food plants - 21
- Fertiliser and soil improvers – 10
- Frog legs and snails – 5

These lists show that a considerable number of Ukrainian agri-food enterprises producing commodities of animal origin are already recognised for exporting to the EU in compliance with its SPS requirements. As of December 2017, the total number of SPS-compliant exporters had reached 289.144

This mechanism can effectively continue to be used and expanded alongside entry into force of the Agreement, since its requirements are the same as those in Art. 69.2-5, described above. The enterprises in question have to comply with the same relevant SPS regulations as set out in the SPS strategy. Others may lag behind, but

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143 See https://webgate.ec.europa.eu/sanco/traces/output/non_eu_listsPerCountry_en.htm/.
144 See http://www.minagro.gov.ua/node/24976/.
this does not hold back the more progressive export-oriented enterprises.

In conclusion, total SPS compliance for the whole of the territory of Ukraine is an ambitious long-term objective, and the system will take a number of years to become effectively applied throughout the agri-food sector. In the meantime, procedures exist for those enterprises willing and able to comply with export certification for the EU. This is an important element of effective flexibility in the Agreement and can help avoid excessive costs of compliance.

In addition, there are provisions within the EU to exempt small-scale production from various SPS requirements (Regulation 853/2004/EC on hygiene rules). For example, hygiene rules do not apply to production for private domestic consumption, or small quantities supplied to local retail establishments and markets. Ukraine remains free to apply similar exemptions for local markets.

Implementation perspectives

*Early legislation.* Development of the national SPS system in Ukraine started in 1991, when the first legislation was passed. Since then, Ukraine developed relevant legislation and infrastructure aimed at the protection of human health and safety of plant and animal products.

*WTO accession.* Reforming the SPS system was an integral part of Ukraine’s accession to the WTO. As a result, all SPS regulations in Ukraine are already consistent with the provisions of WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Harmonisation occurred without transition periods.

Ukraine is also a member of Codex Alimentarius, the Office International des Epizooties (OIE) and the International Plant Protection Convention (IPPC).

*Types of control.* According to the Customs Code of Ukraine, the current SPS system requires three types of border control: sanitary and epidemiological, veterinary and sanitary, and phytosanitary control.

Sanitary and epidemiological control aims to protect the territory of Ukraine from the spread of infectious diseases and to test the compliance of goods with the sanitary standards. This type of control is obligatory, mainly for imported food products, some consumer products and for the export of sunflower oils. Transit of farm produce, however, is not subject to sanitary and epidemiological control.
Veterinary and sanitary control aims to prevent the spread of animal diseases. It is applied for exports, imports and transit of animals, animal products (including meat products, eggs, milk, fish and honey), reproductive material, biological products, pathological material, veterinary preparations, animal-care products, feed additives, premixes and feeds.

The purpose of phytosanitary control is to prevent the spread of pests and supervise quarantine regimes. This type of control is applied for exports, imports and the transit of plants and plant products (including food products), packaging, means of transportation, soil and other products that spread regulated pests.

**Institutional infrastructure.** Development and implementation of policies on SPS is directed and coordinated by the Cabinet of Ministers of Ukraine through the Ministry of Agriculture and Food of Ukraine, the Ministry of Economic Development and Trade and the Ministry of Healthcare of Ukraine. Before 2016, the main operational authorities were the State Sanitary and Phytosanitary Service of Ukraine, the State Inspection for Consumer Protection of Ukraine and the State Sanitary and Epidemiological Service of Ukraine.

The State Sanitary and Phytosanitary Service of Ukraine conducted veterinary and sanitary control, supervised animal health, the safety and quality of all food products and feeds, and protected Ukraine from pathogens of dangerous diseases. The State Sanitary and Epidemiological Service of Ukraine, among other functions, performed sanitary measures to protect the country against the entry and spread of dangerous (including quarantine) infectious diseases, conducted sanitary and epidemiological supervision and control at checkpoints across the state border, and supervised compliance with sanitary standards. The State Inspection for Consumer Protection of Ukraine was an authorised consumer rights protection body. It conducted state control for compliance with the legislation on consumer protection and carried out market surveillance for compliance with technical regulations.

As part of the administrative reform, the system of main operational bodies in the SPS sphere was revised. The single State

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145 See www.vet.gov.ua/.
146 See www.dsesu.gov.ua/ua/.
147 See www.dsiu.gov.ua/.
Service on Food Safety and Consumer Protection of Ukraine (SPSA)\footnote{Decree of the Cabinet of Ministers No. 442 of 10 September 2014.} was established by reorganising the State Sanitary and Phytosanitary Service and merging it with the State Inspection for Consumer Protection and the State Sanitary and Epidemiological Service. The new State Service was launched in spring 2016.

The progress of SPS-related reforms is monitored by the Sanitary and Phytosanitary Management Sub-Committee. It was established in accordance with Article 74 of the DCFTA. The SPS Sub-Committee was to meet within three months of the entry into force of the Agreement, but the first meeting took place in Kyiv in May 2017. The Parties discussed the progress of SPS-related reforms and agreed on further steps. Article 74 stipulates that meetings should be held at least once a year or upon the request of either Party.

**Legislation.** In order to implement its SPS-related obligations under the Association Agreement, in February 2016, Ukraine adopted a Comprehensive Strategy for Sanitary and Phytosanitary Measures. This entails adopting 255 EU directives and regulations.\footnote{Decree of the Cabinet of Ministers No. 228-p of 24 February 2016 (https://www.kmu.gov.ua/ua/npas/248928183).} Most of the legislation should be passed in 2016-19 with major implementation to occur in 2018-20 (see Figure 8.1), aimed at closing the gap between Ukrainian and EU SPS-related legislation and infrastructure. In July 2017, the Cabinet of Ministers introduced a few minor changes into the Comprehensive Strategy, postponing adoption and implementation of two regulations for two years and adding Council Regulation (EC) No 1/2005 on the list\footnote{Decree of the Cabinet of Ministers No. 444-p of 04 July 2017 (http://zakon3.rada.gov.ua/laws/show/444-2017-%D1%80).}.

In October 2017, the government adopted an Action Plan for Implementation of the AA, which also included SPS-related objectives.\footnote{Decree of the Cabinet of Ministers No. 1106 of 25 October 2017 (https://www.kmu.gov.ua/ua/npas/pro-vikonannya-ugodi-pro-associaciymizh-ukrayinoyu-z-odniyeyi-storoni-ta-yevropeyskim-soyuzom-yevropeyskim-spivtovaristvom-z-atomnoyi-energiyi-i-yihnimi-derzhavami-chlenami-z-inshoyi-storoni).} In total, the document entails implementation of 233 EU directives and regulations by the end of 2021 (see Figure 8.2). In general, the time-schedule corresponds to the Comprehensive Strategy.
Although the Cabinet of Ministers adopted the Comprehensive Strategy for the implementation of the SPS commitments in line with the Association Agreement Schedule, the SPS Sub-Committee has not yet approved it.

**Figure 8.1 Schedule for approximating SPS legislation of the EU (based on the Comprehensive Strategy for Sanitary and Phytosanitary Measures)**

The legislative changes required by the Comprehensive Strategy will cover the following ground:

- **Principles and requirements for food and feeds safety** - on official controls, rapid alert system, traceability and veterinary checks.
- **Labelling and information on foodstuff** – on health and nutrition claims for foods, vitamins and minerals.
- **Hygiene rules** – approximation of hygiene rules for food of animal products, temperatures in transport and storage, etc.
- **Food additives** – regulations on additives, enzymes and flavourings.
- **Packaging materials** – best EU practices on manufacturing of materials and articles intended to come into contact with food.
- **Animal health** – on health protection of bovine and porcine animals, poultry, live fish, crustaceans, molluscs, bees and other mammals, etc.
- **Animal diseases** – legislation on swine vesicular disease, African horse sickness, bluetongue, infectious salmon anaemia (ISA), etc.
- **Identification and registration of animals** – of equidae, bovines, ovine and caprine animals as well as swine.
- **Animal welfare standards** – EU standards of stunning and slaughter of animals, as well as farming animals should be implemented.
• **Plant health** – on plant health checks, standardisation of plant passports, control of certain plant diseases, phytosanitary certificates, etc.

• **Protection of plant variety** – Ukraine should apply the EU approach to plant protection rights.

• **Registration of plant protection products** – labelling requirements, maximum residue levels of pesticides, etc.

• **Fertilisers** – a number of regulations and directives should be adopted.

• **Seeds** – regulations on marketing of different seeds, minimum conditions for seeds and related field inspections.

• **Regionalisation/zoning and compartmentalisation** – requirements for regions, buffer and quarantine zones.

• **Genetically modified organisms (GMO)** – traceability of the products containing GMO, labelling requirements and provisions on inspections.

Ukraine has already adopted and implemented about 20 SPS-related EU directives and regulations. In particular, the Verkhovna Rada approved a number of laws regarding food safety, some of which are framework legal acts that will direct development of SPS-regulations.

In July 2014, the Verkhovna Rada adopted the law "On Amendments to Some Laws on Food Products"152 introducing the principles of the Hazard Analysis and Critical Control Points (HACCP) methodology to become mandatory in Ukraine. Only certain provisions of the new law came into force in September 2014, but for most of requirements concerning HACCP principles, there are transitional periods for implementation. Since 20 September 2017, all food producers who use unprocessed animal ingredients (raw meat, eggs, fish, etc.) are obliged to use procedures based on the HACCP. From 20 September 2018, the same requirement will be extended to all food-producing facilities. At the beginning, implementation of the HACCP...

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system in general applies only to big entities. It will be extended to small entities only after 20 September 2019.153

In December 2017, the Verkhovna Rada adopted the law “On Safety and Hygiene of Forages”,154 which improves safety throughout the whole production chain in the sector. Besides, there is a number of draft SPS-related laws, which have already been submitted to the parliament, but they have not been adopted yet.

The Ministry of Agrarian Policy and Food and the SPSA have adopted a number of legal acts that implement EU directives and regulations. Ukraine introduced rules on the registration of production facilities155 and a catalogue of forages.156 The Ministry of Agrarian Policy and Food approved new rules concerning identification and registration of horses.157 Finally, Ukraine introduced new instructions about preventing and fighting animal diseases (salmonellosis, African swine fever)158. In general, recent legislative changes mainly correspond to time markers of the Comprehensive Strategy.

The EU implements significant technical assistance projects (including twinning projects) to support the work of the State Veterinary and Phytosanitary Service of Ukraine to get in line with European standards. One important project, costing €3.9 million, aims to improve the food safety control system ‘from farm to fork’. Another project costing €2.6 million will supply laboratory equipment and

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software to increase the range of tests undertaken by state food laboratories and strengthen database collection and processing.

**Likely impact of SPS reforms.** Proper implementation of Ukraine’s SPS-related obligations under DCFTA will contribute dramatically to the development of its agriculture and food industry, improvement of consumer protection rights and protection of human, animal and plant health. Given the huge potential of Ukraine’s agriculture sector to export to European and world markets the task of getting Ukrainian SPS standards fully in line with the best EU and international practice is of the highest importance. Today the most promising markets for export expansion may well be in Asian countries, which consume almost one-half of Ukraine’s agriculture export products, rather than in Europe. Nevertheless, the approximation of EU standards becomes a brand asset and a sufficient technical qualification for accessing many world markets.

In 2016, Ukrainian companies exported agricultural products worth $4.12 billion to the EU. As compared with the previous year, this represented a moderate growth of 1.7%. In 2017, agricultural exports to the EU reached $5.8 billion, which is about 37% higher than in the previous year. Besides, the European market consumes about 32.4% of Ukraine’s agricultural sales abroad and ensures growth of its exports in total.

Continuing improvement of food safety will allow Ukrainian companies to gain even greater access to the EU market. According to the reforms schedule, however, the new SPS regime will be fully established only by 2021. But there remains the possibility for individual export-oriented enterprises to be recognised by the EU as SPS-compliant. Ukraine’s 2020 agriculture strategy prioritised the expansion of the number of enterprises individually recognised in this way.

Consumers will benefit from better quality of products and better protection of consumer rights in all sectors related to agro-food

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159 See http://minagro.gov.ua/node/24865.
160 See http://minagro.gov.ua/node/23348.
161 See http://minagro.gov.ua/node/25274.
163 The strategy was developed by Ukraine’s Ministry of Agrarian Policy and Food, but it has not approved by the Cabinet of Ministers.
production. For example, since 20 September 2017, the requirements of the HACCP system are applied to the catering industry.\textsuperscript{164} Earlier, ISO 22000 certificates could serve as a marketing tool to attract new consumers and increase the trust of existing clients. In the next few years, it will become the basic document testifying to the quality of food products for all enterprises. Yet Ukrainian producers will face higher costs in order to comply with higher quality standards. At the same time, however, common regulation environment will decrease quality inequality.

Some small producers will be hit by higher costs, but under EU regulations the authorities retain considerable flexibility in defining how local markets and traditional regional specialities may be exempted from full compliance with SPS standards. Besides, small enterprises have a transitional period until 20 September 2019 for implementing the HACCP system.

Government policy on SPS is expected to be more transparent. The system of government bodies will be better structured and coordinated, with the application of best-European experience. This entails applying early warning systems on SPS-related emergencies.

Taking into account the number of regulatory changes planned, the year 2018 will be decisive in determining the success of reforms in food safety field.

\textit{Food safety regulations at a glance}

Ukraine adopted a Comprehensive Strategy for applying EU SPS regulations in its agri-food sectors, which is programmed to take approximately five years to implement. The year 2018, however, will be a decisive year for implementing new measures.

This major reform will assure high health and safety standards for Ukrainian consumers. It will also position Ukrainian enterprises to export to the EU and other international markets, which is of great importance given Ukraine’s huge potential in the agri-food sector.

For the time being, individual enterprises can still be certified by the Ukrainian authorities for exporting to the EU, ahead of the SPS standards being applied across the entire territory of Ukraine by 2021.

9. SERVICES

Development of a dynamic and competitive service sector is of huge importance for the modernisation of the Ukrainian economy. In this regard the DCFTA provides for a comprehensive and extremely detailed liberalisation of establishment and trade in services, subject still to reservations - more by the EU than Ukraine. For several services sectors, the agreement envisages the integration of Ukraine into the EU Internal Market. However, this far-reaching integration is conditional upon Ukraine’s approximation to the relevant EU legislation.

Provisions of the Agreement

The provisions of the agreement are organised under three headings i) establishment, ii) cross-border supply of services and iii) temporary presence of natural persons for business purposes.

Establishment. This entails the right of either enterprises (‘legal persons’), or individuals (‘natural persons’) to pursue business in the country of the other party. Enterprises may create or acquire branches or representative offices. Individuals may pursue their business as self-employed persons or set up undertakings that they control.

The Agreement provides for national treatment and MFN treatment for establishment. This means that the EU and Ukraine must grant the ‘established’ enterprises treatment no less favourable than that accorded to its own enterprises, or those of any third-country, whichever is better.
However, for several service sectors both the EU and Ukraine have reservations that restrict this national treatment or MFN treatment. These reservations are laid down in the annexes to the agreement (Annex XVI-A and D) and essentially replicate the parties’ reservations under the WTO’s General Agreement on Trade in Services (GATS), which entered into force in 1995.\textsuperscript{165} Ukraine has fewer reservations than the EU and its member states (see Table 9.1). Ukraine’s liberal approach mainly reflects the fact that it has only a few reservations at the level of the WTO (i.e. in its Schedule of Specific Commitments on Trade in Services).\textsuperscript{166} It is important to note that these reservations in the DCFTA are listed in a negative list. This means that the EU and Ukraine will, by default, open up all services sectors, except those sectors listed in which reservations apply (as detailed in the annexes). This approach guarantees automatic coverage for new services not listed as exceptions.

Ukraine has for example some important reservations with regard to land ownership (i.e. foreign citizens and persons without citizenship have no right to the acquisition of agricultural land). In several other areas, Ukraine requires that the service provider must have Ukrainian nationality (e.g. notary services, ownership of forests or directing educational institutions), or must obtain a licence (e.g. several postal activities), or must meet professional qualification requirements according with Ukrainian legislation (e.g. medical and dental services; health-related and social services). Ukraine has also no national treatment or MFN obligations for air transport services and national cabotage transport.

The list of EU reservations is complicated by a distinction between horizontal and sectoral reservations and includes both EU-wide and member state-specific reservations. With regard to horizontal reservations (i.e. reservations applying to all sectors or sub-sectors), important EU-wide reservations concern, for example, economic activities that are considered as public utilities or may be subject to public monopolies. Several member state-specific reservations exist, for example, for real estate purchase. Numerous EU-wide or member

\textsuperscript{165} For an overview of the parties’ reservations under the GATS, see http://i-tip.wto.org/services/Search.aspx.

\textsuperscript{166} See https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=((%20Symbol=%20wt/acc/ukr/*%20or%20wt/1/718%20or%20wt/1/718/%20or%20 (%20Symbol=%20wt/min%20and%20%20@Symbol=%20accession%20and%20working %20and%20party%20and%20ukraine)))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#).
state-specific reservations remain in the area of agriculture and hunting, fishing, energy mining, professional services, financial services, transport services, etc.

The agreement also includes a standstill clause that forbids, subject to the reservations in the Annex, the EU and Ukraine to adopt new discriminatory regulations regarding the establishment of legal persons of the other Party by comparison with their own legal persons. A soft commitment is included to further negotiate investment protection provisions and an investor-state dispute settlement mechanism.

Table 9.1 National treatment or MFN reservations to establishment

<table>
<thead>
<tr>
<th></th>
<th>EU party reservations</th>
<th>Ukraine reservations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>EU-wide reservations</td>
<td>Member state-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>specific reservations*</td>
</tr>
<tr>
<td>Horizontal reservations</td>
<td>3</td>
<td>22</td>
</tr>
<tr>
<td>Sectoral reservations</td>
<td>21</td>
<td>59</td>
</tr>
<tr>
<td>Total</td>
<td>105</td>
<td>21</td>
</tr>
</tbody>
</table>

* The number of member state-specific reservations stands for the number of reservations that are being applied by different EU member states.

Cross-border supply of services. The DCFTA section on cross-border supply of services covers both:

- Cross-border supply, from the territory of a party into the territory of the other party without the supplier’s presence in the importing country (GATS Mode 1), and
- Consumption abroad, where a service consumer (e.g. a tourist or patient) moves to another country’s territory to obtain a service (GATS Mode 2).

However, it does not apply to audio-visual services, national maritime cabotage and domestic and international air transport services. The EU and Ukraine have to accord services and service suppliers of the other Party market access and national treatment. However, contrary the section on establishment, the section on cross-border supply of services works with a positive list. This means that the

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167 The conditions of mutual market access in air transport are covered by the bilateral Common Aviation Area Agreement (explained in the transport chapter).
EU and Ukraine only make market access and national treatment commitments in those service sectors listed in the annex.

In the sectors where market access commitments are undertaken, the EU and Ukraine may not limit:

(i) the number of service suppliers (e.g. by quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test);
(ii) the total value of service transactions or assets in the form of quotas or the requirement of an economic needs test; or
(iii) the total number of service operations, the total quantity of service output by quota or the requirement for an economic needs test.

The sectors or subsectors liberalised, including the applicable market access and national treatment reservations, are listed in great detail in Annex XVI-B (EU and its member states) and XVI-E (Ukraine). However, the liberalisation is – similar to establishment – rather asymmetrical: whereas Ukraine only has a limited number of reservations or unbound service sectors in its list, the EU has numerous reservations (Table 9.2). Again, this is mainly due to Ukraine’s liberal approach in the GATS.

Table 9.2 Market access and national treatment reservations for cross-border services

<table>
<thead>
<tr>
<th>Service Sector</th>
<th>EU Mode 1</th>
<th>EU Mode 2</th>
<th>Ukraine Mode 1</th>
<th>Ukraine Mode 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business services</td>
<td>79</td>
<td>23</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Communication services</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Construction and related engineering</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Distribution services</td>
<td>13</td>
<td>4</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Educational services</td>
<td>11</td>
<td>8</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Environmental services</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Financial services</td>
<td>33</td>
<td>13</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Health services and social services</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Tourism and travel related services</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Recreational, cultural, sporting services</td>
<td>5</td>
<td>7</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Transport services</td>
<td>25</td>
<td>11</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Other services</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Energy services</td>
<td>12</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>190</strong></td>
<td><strong>72</strong></td>
<td><strong>27</strong></td>
<td><strong>1</strong></td>
</tr>
</tbody>
</table>
Notes: EU reservations above are both EU-wide and individual member state reservations. EU-wide and member state-specific reservations are grouped together. The number of member state-specific reservations stands for the number of reservations that are being applied by different EU member states.

Temporary presence of natural persons for business purposes.
This section covers measures of the parties concerning the entry into and temporary stay in their territory of categories of natural persons providing services such as “key personnel” (i.e. senior personnel responsible for the setting-up or operation of an establishment), or as an “independent professional” (i.e. persons engaged in the supply of a service and established as self-employed for such purposes).

With regard to key personnel, a legal person of the EU party or of Ukraine is entitled to employ employees who are nationals of the other party respectively. The residence and work permits of such employees only cover the period of such employment and the entry and temporary stay of such employees shall be for a period of up to three years. The entry and temporary presence of business visitors will be for a period up to 90 days in any 12-month period.

Legal persons of the EU or Ukraine are also entitled to employ graduate trainees who are nationals of the other party for a period of up to one year. The EU and Ukraine will also allow the temporary entry and stay of sellers of business services for a period of up to 90 days in any 12-month period.

The DCFTA also partly liberalises services provided by contractual services suppliers in 18 sectors. However, this liberalisation is subject to several conditions and reservations. Important conditions are, for example, that the natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract not exceeding twelve months. Moreover, they must possess at least three years professional experience in the relevant sector and must have a university degree or a qualification demonstrating knowledge of an equivalent level and relevant professional qualifications. The reservations are listed in two Annexes (EU reservations in Annex XVI-C and Ukraine’s reservation in Annex XVI-F). The EU party has again more reservations than Ukraine.168 Whereas Ukraine only imposes limited reservations in the

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168 Whereas the EU party has in total 82 reservations (member state reservations or EU-wide reservations), Ukraine has only 2 reservations (the number of member state-specific reservations stands for the number of reservations that are being applied by different EU member states).
area of research and development services and entertainment services, several or most of the EU member states have specific reservations in each of the 18 listed sectors, such as the requirement of an economic needs tests (i.e. a test that conditions market access upon the fulfilment of certain economic criteria). Similar or identical conditions and reservations also apply for the six sectors for which the parties liberalise the supply of services by independent professionals.\textsuperscript{169}

\textit{Regulatory framework and Internal Market treatment.} The EU and Ukraine also aim to tackle regulatory barriers to trade in those services sections where they have made specific commitments. For example, the DCFTA defines some basic rules for licensing (i.e. the process through which a service supplier or investor is required to obtain a license from a competent authority before being allowed to supply a service). The DCFTA requires that licensing and licensing procedures proceed in clear, transparent and pre-established manner, and that it is proportionate to a legitimate public policy objective and made public. The agreement also envisages the mutual recognition of necessary qualifications and/or professional experience that natural persons must possess to provide a specific service. The EU and Ukraine shall encourage their relevant professional bodies to make recommendations to the Trade Committee on mutual recognition of requirements, qualifications, licenses and other regulations.

In four services sectors, i.e. i) postal and courier services, ii) electronic communications, iii) financial services and iv) international maritime transport, the DCFTA includes specific rules and procedures on regulatory cooperation and even envisages a far-reaching integration into the EU internal market on the basis of legislative approximation. Ukraine has committed itself to approximate to the EU’s key legislation in these four services sections (included in Annex XVII). After the EU has determined, after a strict monitoring procedure, that Ukraine has effectively implemented these EU rules, the Trade Committee may grant reciprocal “internal market treatment” with respect to the services concerned. This internal market treatment means that there shall be no restrictions on the freedom of establishment of juridical persons of the EU or Ukraine in the territory of either of them and that juridical persons of one Party shall be treated in the same way

\textsuperscript{169} These six sectors are i) legal services, ii) architectural services, iii) engineering services, iv) computer services, v) management consulting services and vi) translation services.
as juridical persons of the other Party. This shall also apply to the freedom to provide services in the territory of the other Party. In practice, this means that for these four specific sections, the reservations of the EU and Ukraine to market access and national treatment, listed in the corresponding annexes, will be lifted. The Agreement defines detailed rules on how Ukraine has to implement and enforce this legislation in its domestic legal order and how the EU shall monitor this implementation.

These sectors are discussed in further detail in the chapters concerned.

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**Box 9.1 Summary of commitments and reservations of the EU and Ukraine for service sectors**

**EU**

Reservations on establishment: *substantial horizontal and sectoral national treatment reservations*

Commitments on liberalisation of cross-border supply of services: *large liberalisation, but with extensive reservations*

Commitments on contractual services and independent professionals: *extensive reservations*

**Ukraine**

Reservations on establishment: *substantial national treatment reservations*

Commitments on liberalisation of cross-border supply of services: *large liberalisation with few reservations*

Commitments on contractual services and independent professionals: *almost no reservations*

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**Ukrainian perspectives**

Ukraine’s service industry is one of the most important sectors of Ukrainian economy. In 2017, it employed around 60% of the country’s workforce and was the major contributor to its GDP (UAH 2 trillion or

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170 Art. 4 Annex XVII.

171 Annex XVI-A, point 1(3) and Annex XVI-B point 7.

172 Annex XVII.
60% of value added).\textsuperscript{173} 65% of Ukrainian enterprises (state and private) and 91% of private entrepreneurs work in services. In 2017, the services sector continued to recover with 3.3% real growth after a cumulative drop of over 12% in 2014-15, amid the economic crisis and the loss of government control over Eastern Donbas.

The biggest number of companies and entrepreneurs works in trade and automobile maintenance (49%), professional, scientific and technical activities (7%) and information and telecommunications (7%). At the same time, the biggest employers in the services sector are trade and automobile maintenance (34%), education (14%) and healthcare (10%). This shows, first, that trade attracts most entrepreneurs and, second, that there is a vast public sector in education and healthcare.

After a significant decline in 2014-15, caused by the political and economic instability in Ukraine, the total bilateral trade in services between the EU and Ukraine increased by 7% in 2017 (to $5.8 billion) compared to 2016 ($5.4 billion). Trade in services remained almost a third lower than in 2013, however, dragged down by decline in transportation services.

\textit{Table 9.3 EU trade in services with Ukraine, 2013-17 ($ million)}

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>% change 2017-13</th>
<th>% change 2017-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exports to EU</td>
<td>4,196</td>
<td>3,992</td>
<td>2,928</td>
<td>3,005</td>
<td>3,330</td>
<td>-21%</td>
<td>11%</td>
</tr>
<tr>
<td>Imports from EU</td>
<td>4,212</td>
<td>3,149</td>
<td>2,750</td>
<td>2,422</td>
<td>2,503</td>
<td>-41%</td>
<td>3%</td>
</tr>
<tr>
<td>Total Trade</td>
<td>8,408</td>
<td>7,140</td>
<td>5,678</td>
<td>5,427</td>
<td>5,833</td>
<td>-31%</td>
<td>7%</td>
</tr>
<tr>
<td>Trade Balance</td>
<td>-16</td>
<td>843</td>
<td>178</td>
<td>583</td>
<td>827</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Ukrstat.

One of the fastest growing service sectors is the \textbf{IT service and software R\&D} sector. Ukrainian developers often work on mobile, software, enterprise and web projects solving complex engineering tasks.

\textsuperscript{173} Services include trade, repair and maintenance, transportation, postal and courier services, accommodation and food services, information and telecommunications, finance and insurance, real estate, professional, scientific and technical services, administration, state governance and defence, education, healthcare, culture, sports and recreation, and other services.
Ukraine also has the largest and fastest-growing number of IT professionals in Europe (116,000 IT professionals in 2017, the highest number in Europe). The main destination of Ukrainian IT firms is the US market (around 80% of exported IT services). According to IT Ukraine, the export volume of Ukraine’s IT industry reached around $3.6 billion in 2017 (third largest export sector), showing double-digit growth year after year. Moreover, Ukraine is home to over 1600 IT companies and over 100 R&D subsidiaries of global companies from a variety of industries, including telecoms, software, gaming and e-commerce.

The Association Agreement will impact the IT sphere mainly via legislative regulation of the rights of both suppliers and consumers of IT services. The key issue here is protection of intellectual property rights according to the EU’s E-commerce Directive 2000/31/EC, whose key provisions are enshrined in the DCFTA IPR Chapter (see Chapter 11 of this handbook). Stronger intellectual property rights legislation in Ukraine will mean for the business higher protection of investments into new technologies and innovations thus increasing investment attractiveness of the country.

The DCFTA requirements related to the banking industry mean the introduction of new macro-prudential supervision tools aimed at strengthening financial stability, implementation of Basel II and Basel III principles, progressive introduction of free movement of capital, improvement of monetary and financial statistics. With regard to the approximation commitments in the area of financial services, the EU adopted several new packages of legislation in the aftermath of the financial crisis, including ones creating a Banking Union and a Capital Markets Union. Mainly because of a more centralised supervisory framework that does not have legal authority to act beyond EU borders, however, the Commission concluded that “it is not feasible for Ukraine to implement EU acquis in full in the area of financial services”. On the other hand, the Commission underlined that Ukraine can take inspiration from the EU law to design its own regulatory and supervisory frameworks conducive to financial stability (see also Chapter 15 on Financial Services).

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174 See: http://www.uadn.net/2018/01/18/ukrainian-it-services-export-reaches-3-6-billion-in-2017/.

The insurance sector of Ukraine despite being treated with caution due to low consumer confidence and thus low demand for insurance products, nevertheless, holds “definite long-term potential”. Many segments, in particular life and health insurance, are underdeveloped with low penetration rate. The DCFTA requires measures of prudential supervision on the insurance market to protect investors, policyholders and beneficiaries.

The healthcare system in Ukraine is highly inefficient with oversized and fragmented infrastructure. The government health expenditures account for about 4.2% of GDP, the rest in patients’ out-of-pocket expenditures. Ukraine has 2,400 hospitals and 300,000 beds, which is twice the number of Spain, a country with a similar population. Yet crude adult death rates in Ukraine are higher than in its neighbours, Moldova and Belarus, and for its men among one of the highest in the world. For the healthcare, the DCFTA is important mainly in the light of the intellectual property rights protection which includes medicinal products and protection of exclusive data of medicinal testing. In the sphere of protection of biotechnological inventions Ukraine protects the inventions according to its national patent laws. Ukraine must also harmonise its technical regulations for medicinal products with that of the EU.

For the labour market, the mutual opening of markets for natural persons for business purposes (e.g. independent professionals and key personnel) can lead to increased competition on the Ukrainian market and, accordingly, to higher qualification levels in certain spheres. Moreover, Ukrainian contractual service suppliers and independent professionals will have access to the EU market. For example, the employer will obtain rights for the computer programs created by a hired professional under the labour contract (now both the employer and the employee have the rights). This will induce the employers looking for IT professionals in Ukraine to formalise their relations via labour contracts and thus ‘de-shadow’ the IT market in Ukraine. The visa-free regime for short-term travel will help these processes. As illustrated above, however, the EU has imposed

177 Arts 219-223.
178 Annex III to the TBT Chapter states that Ukraine will approximate to the EU sectoral (New Approach) Directives in the area of medical devices, active implantable medical devices and in vitro diagnostic medical devices.
numerous reservations in this area. The Agreement doesn’t make it easier for Ukrainian professionals to find job in the EU. On the contrary, it stimulates EU employers to establish companies in Ukraine and Ukrainian companies to provide services to the Europeans.\textsuperscript{179}

In \textit{telecommunications}, the Agreement envisages new rules for setting tariffs, mutual access to networks, new regulation methods, market liberalisation, strengthening the regulator. “All in all, the level of trade liberalisation and the parties’ concessions in trade in telecommunications services do not go far beyond the commitments under the GATS. The value-added of this agreement seems to lie elsewhere, namely in its detailed provisions on domestic regulation.”\textsuperscript{180} Thus, as before, EU companies cannot provide telecom services directly to customers in Ukraine on a cross-border basis since, according to Ukrainian laws, only a locally incorporated company may provide these services in Ukraine. A foreign company also cannot apply for any telecom or frequency license. It can operate in Ukraine only through a local subsidiary (whether wholly or partially owned).

A draft law on \textit{postal services} that would implement the EU Directive on universal services has been under development since 2015. The Ministry of Infrastructure prepared an implementation plan on Directive 97/67/EC on common rules for the postal services market (approved in March 2015).\textsuperscript{181} In February 2018, the Cabinet of Ministers adopted the roadmap and the action plan on the harmonisation of Ukrainian legislation to the EU \textit{acquis} on postal and courier services.\textsuperscript{182} According to the Cabinet, the Ministry of Infrastructure should finish the draft law on postal services in 2018.\textsuperscript{183}

For \textit{audio-visual services}, Ukrainian legislation must follow major European principles in this sphere:\textsuperscript{184} everyone (not just institutions licensed under the laws of Ukraine) has the right to freedom of expression and freedom to receive and impart information

\begin{enumerate}
\item \textsuperscript{179} See http://europa-torgivlia.org.ua/it-business/.
\item \textsuperscript{180} Olga Batura and Olga Kretova, “Opportunities of Trade in Services between the EU and Ukraine: the Case of Telecommunications Services under the GATS and the Association Agreement”, ZERP-Working Paper No. 1/2015.
\item \textsuperscript{181} See: http://zakon0.rada.gov.ua/laws/show/ru/222-2015-%D1%80.
\item \textsuperscript{182} See: http://zakon0.rada.gov.ua/laws/show/104-2018-%D1%80.
\item \textsuperscript{183} See: https://mtu.gov.ua/projects/view.php?P=162.
\item \textsuperscript{184} According to European Convention on Transfrontier Television of 1989.
\end{enumerate}
without interference by public authorities. According to the audio-visual media services Directive, which Ukraine should implement within two years of the entry into force of the DCFTA (Annex XXXVII), “governments may not restrict which broadcasts people can receive or what programmes foreign broadcasters can retransmit in their country” if the broadcasts comply with the Directive. European standards do not require the legislative authorities of Ukraine to encourage full public disclosure of information on ownership and control in the media sector (although Ukraine has every right to go beyond the requirements of European standards, introducing stricter requirements for media). Audio-visual services are exempted from the DCFTA, however, both for establishment and cross-border supply.

Further details on the digital sector are given in Chapter 19.

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**Services sector at a glance**

A competitive and diversified services sector is of huge importance for the Ukrainian economy.

The Agreement is detailed and comprehensive in both commitments to liberalisation and reservations. The text is asymmetric, with more liberalisation and fewer reservations on the Ukrainian side, which however is consistent with the urgent need for the Ukrainian economy to be modernised.

The Agreement makes provisions for a few services sectors to attain ‘full internal market treatment’ by the EU as a long-term objective.

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10. PUBLIC PROCUREMENT

Public procurement is of great economic importance to both the EU and Ukraine; it accounts for around 18% of GDP in the EU and offers an enormous potential market for Ukrainian companies. The DCFTA provides for the gradual and reciprocal liberalisation of the parties’ public procurement markets under the strict condition that Ukraine implements the EU’s key public procurement rules. Ukraine must ensure that the public purchase of goods, works and services are transparent and fair, guarantee sound competition, tackle corruption and get the best value for taxpayers’ money.

Provisions of the Agreement

In the DCFTA chapter on public procurement the EU and Ukraine envisage mutual access to their respective public procurement markets, based on the principle of national treatment at national, regional and local level for public contracts and concessions in traditional sectors and for utilities. It covers any state, regional or local authority, including public undertakings in the field of utilities, such as state-owned enterprises and private undertakings operating on the basis of special and exclusive rights. Defence procurement is not covered.

The DCFTA procurement rules only apply to contracts above certain value thresholds listed in Annex XXI-P (Table 10.1). The agreement states, however, that these thresholds should be adapted at the moment of entry into force of this agreement to reflect the
thresholds in place under the EU directives. As further explained below, the EU adopted in 2014 a new legislative package on public procurement. In light of this new EU legislation on public procurement, both the EU and Ukraine have already completed their internal procedures to update the thresholds (Table 10.1) and the annexed EU legislation on public procurement, which Ukraine needs to approximate (see below). Nevertheless, the joint Trade Committee still needs to adopt a decision to formalise this approximation.

Table 10.1 Thresholds for application of public procurement rules

<table>
<thead>
<tr>
<th>Description</th>
<th>Value threshold (DCFTA)</th>
<th>Envisaged updated value threshold*</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Public supply and service contracts awarded by central government authorities</td>
<td>€133,000</td>
<td>€135,000</td>
</tr>
<tr>
<td>b. Public supply and public service contracts not covered by point a.</td>
<td>€206,000</td>
<td>€209,000</td>
</tr>
<tr>
<td>c. Public works contracts and concessions</td>
<td>€5,150,000</td>
<td>€5,225,000</td>
</tr>
<tr>
<td>d. Works contracts in the utilities sector</td>
<td>€5,150,000</td>
<td>€5,225,000</td>
</tr>
<tr>
<td>e. Supply and service contracts in the utilities sector</td>
<td>€412,000</td>
<td>€418,000</td>
</tr>
</tbody>
</table>

*As foreseen in the EU’s internal procedures to update the Annexes XXI-A to XXI-P on regulatory approximation in the area of public procurement.

The DCFTA includes provisions relating to i) institutional reforms and the award of procurement contracts, ii) Ukraine’s approximation to the EU’s public procurement laws and iii) market access.

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187 Council Decision (EU) 2017/43 of 12 December 2016 on the position to be adopted, on behalf of the European Union, in the Association Committee Trade configuration established by the Association Agreement, in relation to the update of Annexes XXI-A to XXI-P on regulatory approximation in the area of public procurement.
Institutional reforms. Ukraine has to establish and maintain an appropriate institutional framework for the proper functioning of its public procurement system. In particular, Ukraine has to designate a central executive body that guarantees coherent economic policy in all areas related to public procurement, which will also be responsible for the implementation of this chapter. Ukraine also has to establish a separate, impartial and independent body that will review decisions taken by contracting authorities or entities during the award of contracts.

Award of contracts. The DCFTA also defines “basic standards regulating the award of contracts”, which are derived directly from EU public procurement law and include the principles of non-discrimination, equal treatment, transparency and proportionality. Ukraine must comply with these basic standards no later than six months after the entry into force of the Agreement. Ukraine has to ensure that all its intended procurements are properly published to enable the market to be opened up to competition and to allow any interested economic operator to have access to information regarding the intended procurement prior to the award of the contract. Concerning the award of contracts, these basic standards state that all contracts have to be awarded through transparent and impartial award procedures that prevent corrupt practices. This impartiality has to be ensured, especially through a non-discriminatory description of the subject matter of the contract, equal access for all economic operators and appropriate time limits. Contracting entities may not impose conditions that directly or indirectly discriminate against the economic operators of the other party, such as the requirement that economic operators interested in the contract must be established in the same country, region or territory as the contracting entity. The final decisions are to be communicated to all applicants, and upon the request of an unsuccessful applicant, reasons must be given in sufficient detail to allow a review of the decision.

Legislative approximation. According to the provisions of the Agreement (Annex XXI), Ukraine needs to approximate to Directive 2004/18 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and to Directive 2004/17 on coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (i.e. utilities). In 2014, however, the EU adopted a new legislative package on public procurement, which replaced Directives
These new directives aim to simplify the EU procurement regime, introduce more flexibility, establish better access to EU procurement markets for SMEs and ensure that greater consideration is given to social and environmental criteria. Moreover, a specific directive is adopted on the award of concession contracts. This legislative package was adopted in February 2014, and the member states had until April 2016 to transpose the new rules into national law. In order to catch up with these new EU public procurement rules, the EU-Ukraine Trade Committee needs to update Annex XXI. As noted above, both the EU and Ukraine have already completed their internal procedures to update Annex XXI, and a formal decision of the EU-Ukraine Trade Committee is expected in 2018. The new acts for approximation are Directive 2014/23 on the award of concession contracts, Directive 2014/24 on public procurement, as well as the Directive 2014/25 on procurement by entities operating in the water, energy, transport and postal services sectors. Yet, these directives do not have to be implemented in their entirety or all at once. Annexes from XXI-B to XXI-N divide these directives into “basic”, “mandatory” and “non-mandatory” elements (i.e. provisions that are not mandatory but recommended for approximation) and elements “that fall outside the scope of legislative approximation”.

**Market access.** This DCFTA chapter clearly links market access to Ukraine’s progress in approximating to the annexed EU public procurement rules and institutional reforms. Annex XXI includes an “indicative time schedule for institutional reform, legislative approximation and market access” (hereinafter “the indicative time schedule”). This time schedule sets out five phases indicating the provisions of the EU public procurement Directives that Ukraine has to implement and the specific market access that Ukraine and the EU will grant to each other (Table 10.2). The market access granted in each phase implies that the EU shall grant access to contract award procedures to Ukrainian companies - whether established or not in the EU - that is no less favourable than that accorded to EU companies and vice versa. This schedule also indicates that the EU and Ukraine will open their respective procurement markets gradually and simultaneously. Unlike other DCFTA chapters such as trade in goods,
the EU will not grant access to a section of its procurement market until Ukraine offers the same market access to the EU. Moreover, each phase shall be evaluated by the Trade Committee and the reciprocal granting of market access will only take place following positive assessment by this Committee, which will take into account the quality of Ukraine’s legislation, as well as its practical implementation. The Trade Committee shall only proceed to the evaluation of the next phase once the measures to implement the previous phase have been carried out and approved.

Table 10.2 Updated indicative time schedule for approximation of public procurement rules (still to be approved by the Trade Committee)

<table>
<thead>
<tr>
<th>Phase</th>
<th>Action</th>
<th>Indicative time schedule (period after the entry into force of the DCFTA)</th>
<th>Market access granted to EU by Ukraine</th>
<th>Market access granted to Ukraine by EU</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Implementation of the basic standards, the institutional reforms and the public procurement roadmap</td>
<td>6 months</td>
<td>Supplies for central government authorities</td>
<td>Supplies for central government authorities</td>
</tr>
<tr>
<td>2</td>
<td>Approximation and implementation of the basic elements of Directive 2014/24 and of Directive 89/665/EEC</td>
<td>3 years</td>
<td>Supplies for state, regional and local authorities and bodies governed by public law</td>
<td>Supplies for state, regional and local authorities and bodies governed by public law</td>
</tr>
<tr>
<td>3</td>
<td>Approximation and implementation of basic elements of Directive 2014/25 and of Directive 92/13/EEC</td>
<td>4 years</td>
<td>Supplies for all contracting entities in the utilities sector</td>
<td>Supplies for all contracting entities</td>
</tr>
<tr>
<td>4</td>
<td>Approximation and implementation of other elements of Directive 2014/24</td>
<td>6 years</td>
<td>Service and works contracts and concessions</td>
<td>Service and works contracts and concessions</td>
</tr>
</tbody>
</table>
### Implementation Perspectives

Public procurement policy reform has been a government priority for several years and remains so, given the general government deficit and the need for fiscal consolidation and greater efficiency in public spending.

Ukraine started legislating on public procurement when negotiating membership of the WTO. The basis for this was the WTO Government Procurement Agreement (signed by WTO members in 1994). The Cabinet of Ministers approved several resolutions in 1997-

Prior to the beginning of legislative approximation, Ukraine has to submit a comprehensive roadmap to the Trade Committee for the implementation of this procurement chapter (hereinafter: the public procurement roadmap), covering all reforms in terms of legislative approximation and institutional capacity building. This roadmap has to comply with the five phases of the indicative schedule of Annex XXI (Table 10.2). In February 2016, the Ukrainian Government adopted the comprehensive roadmap (taking into account the new EU procurement package), and the favourable Opinion of the Trade Committee is expected in 2018 (the EU has already completed its internal procedures for this). This roadmap will be considered as the reference document for the implementation of this chapter.

<table>
<thead>
<tr>
<th>Phase</th>
<th>Action</th>
<th>Indicative time schedule (period after the entry into force of the DCFTA)</th>
<th>Market access granted to EU by Ukraine</th>
<th>Market access granted to Ukraine by EU</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>and approximation and implementation of Directive 2014/23</td>
<td>for all contracting authorities</td>
<td>for all contracting authorities</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Approximation and implementation of “other elements” of Directive 2014/25</td>
<td>8 years</td>
<td>Service and works contracts for all contracting entities in the utilities sector</td>
<td>Service and works contracts for all contracting entities in the utilities sector</td>
</tr>
</tbody>
</table>
with a view to introducing WTO principles on procurement. In particular, it approved the principles for procurements by central and local government entities, enterprises and organisations, if they are subject to budget financing or credits guaranteed by the government. Overall, these regulations were evaluated to be in compliance with international practice and WTO provisions, and in 2000 they were consolidated into the single law. While a welcome step, the law had several drawbacks. The Tender Chamber of Ukraine, a non-government platform for state procurement, became known for corruption, non-transparent procedures and expensive services. SMEs were de facto excluded, and there were many delays in organising and conducting tenders – all factors that led to the abolition of this law in 2008.

A long-debated public procurement reform finally occurred in 2010, when the State Procurement Law became effective. The law was positively evaluated by the expert community in Ukraine and international organisations, including the European Commission. The law envisaged more transparent rules for state procurements, even though it did not fully comply with the EU law. However, almost immediately the Parliament amended it and extended the number of exceptions for which procurements should be conducted according to special procedures (e.g. the purchase of energy, housing and utility services were taken out of the scope of the Law).

As a result, the European Commission suspended its budget support programmes in Ukraine and only resumed them after the amendments to the Law on public procurement were introduced in order to make the procedures more transparent. In July 2011, the President signed the amendments to the state procurement Law, which included some positive steps but also created many problems. Overall, in four years the State Procurement Law of 2010 was amended more than 20 times, mainly to increase the list of exemptions, which did not bring it closer to EU standards.

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189 No. 694 from 28 June, 1997; No.1058 from 24 September, 1997; No.1369 from 1 September, 1998.
191 This Law was abolished according to the Law No.150-VI from 20 March 2008.
192 The Law No. 2289-VI from 1 June 2010 (became effective 30 July 2010).
193 The Law No. 3681-17 from 8 July 2011.
In April 2014, the Parliament approved a new State Procurement Law, whose key provisions were harmonised with EU rules. The law was drawn up by the Ministry of Economic Development and Trade (MinEc) with the aim to increase transparency and openness in the area of procurements, to simplify procedures, reduce corruption and approximate legislation to the EU norms. The law extended the list of procuring entities to be covered, reduced the list of exemptions and narrowed the grounds for non-competitive procedures. The openness of state procurements was ensured by publication of information on all tenders on the special web-portal (www.tender.me.gov.ua).

The MinEc was defined as the authorised government entity in public procurements, while the Anti-monopoly Committee was an appeal entity. Such institutional arrangements complied with the EU Directive 2004/18. The only provision of this Directive that was not in the law, but should have been implemented within six months of the Association Agreement becoming effective, related to the provision that entitled the entity that did not win the tender to receive clear explanations for rejection.

Still, according to estimates of the MinEc, losses from corruption and low competitiveness in public procurements accounted for nearly 20% of procurement spending in 2014. As procurements were paper-based, they often resulted in the non-transparent selection of the winner, with possible changes of documents and difficulties of control by stakeholders. To increase the efficiency of budget spending and reduce corruption the government promised to introduce e-procurement in compliance with EU standards, which is envisaged in the DCFTA. As a result, the MinEc has initiated a pilot scheme for e-

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194 The Law No. 1197-VII from 10 April 2014.
197 See http://reforms.in.ua/sites/default/files/upload/docs/7.1_20150514_nrc_public_procurement_presentation_v9_a4_dr_0.pdf.
procurements through a system called ProZorro.\footnote{The same ‘ProZorro’ was selected, as the system is transparent compared to the previous one (the Ukrainian adjective ‘prozoro’ is translated as ‘transparent’). See http://prozorro.org/ .} The system was elaborated with the support of Transparency International before it was transferred to the Government. On 12 February 2015, the Ministry of Justice, the Ministry of Defence, the State Management of Affairs and the state-owned company Energoatom conducted pilot e-procurements\footnote{See www.president.gov.ua/news/32246.html.} through ProZorro. Six e-trading markets were connected to ProZorro (Prom.ua, SmartTender.biz, E-tender.biz, NEWTEND, NEtCast and PublicBid). Other central executive bodies joined e-procurement in 2015.

During the pilot phase, the ProZorro was administered by Transparency International, and its creation and operation were financed by international donors and user fees. Overall, during the first year of work 73,500 tenders were conducted through ProZorro for a total amount of UAH 15.3 billion. The savings have been officially estimated to represent 14\% of allocated financing.

At the end of 2015, the Parliament approved the Public Procurement Law drawn up by the Government. The law mostly complies with the norms of the Directives 2014/24/EC and 2014/25/EC. The Ukrainian law envisages the compulsory e-auctions regulation, while such auctions are not compulsory according to the EU Directives. In Ukraine, the requirement of compulsory e-auctions, which was agreed with the European Commission, is officially explained by the traditionally high level of corruption in public procurement. All central executive bodies and state-owned natural monopolies began conducting procurement through the ProZorro e-system in April 2016, and other public entities switched to ProZorro in August 2016. ProZorro should be used for purchases of goods and services above UAH 200,000 and for works above UAH 1.5 million (these thresholds are raised for procurement of natural monopolies to UAH 1.0 million and UAH 5.0 million, respectively). Besides, the law stipulates that any entity that conducts small procurement should make the contract public if the tender is not conducted through ProZorro. All information on procurements conducted through the ProZorro is publicly available. Therefore, the monitoring and the verification of procurement tenders became easier.
The law envisages an electronic appeal procedure and introduces centralised procurement organisations. In addition, it provides for procedures of auction at a minimum price, auctions with the ‘MEAT’ criteria\textsuperscript{200} and competitive dialogue and negotiations. E-tenders through the ProZorro have built-in mechanisms to reduce corruption. Moreover, to increase the transparency and public control over procurement, the business intelligence module of the platform is public (bi.prozorro.org).

The ProZorro platform was transferred to the state company Zovnishtorgvydav in early April 2016. Eight e-trading markets received accreditation. The participation in e-procurement is on a cost recovery basis, which helps to filter spurious bids. This is expected to allow ProZorro to be self-financing, ensure higher competition between e-trading markets for new suppliers and increase quality of services provided by e-trading markets.\textsuperscript{201} In May 2016, the Prozorro system became the winner in the category of Public Sector awards in the World Procurement Awards 2016.\textsuperscript{202}

The MinEc is generally responsible for the implementation of public procurement reform and the implementation of DCFTA provisions. The MinEc elaborated the public procurement roadmap (see above), which was approved by the Government in February 2016.\textsuperscript{203} The roadmap complies with the different phases of the indicative time schedule of the DCFTA’s public procurement chapter, explained above (Table 10.2). It already takes into account new EU Directives (i.e. 2014/25/EC and 2014/24/EC). The MinEc further plans to harmonise rules of concluding agreements, usage of framework of agreements, etc. The detailed report on the implementation of the roadmap is to be prepared at the end of each year.

\textsuperscript{200} The ‘MEAT’ criterion means that contracting authorities must base the award of public contracts on the Most Economically Advantageous Tender, which aims to ensure the best value for money (rather than the lowest price). The quality as well as the price or life-cycle costs of the work, good or service in questions have to be taken into account.

\textsuperscript{201} In April and May 2016, more than 25,000 tenders were announced in the ProZorro. The savings were estimated at 15.8%. Overall, since the introduction of the ProZorro in 2015, the number of tenders announced in the ProZorro by 5,000 entities exceeded already 100,000.

\textsuperscript{202} See www.procurementleaders.com/world-procurement-awards/winners

\textsuperscript{203} See http://zakon4.rada.gov.ua/laws/show/175-2016-%D1%80
Deepening EU-Ukrainian Relations: What, why and how?

The fine-tuning of the ProZorro system continued in 2016 and 2017. In May 2016, the Parliament approved the Law on the Specifics of Public Procurement for Defence Needs,\(^ {204}\) which was aimed to ensure faster defence procurement at the time of military actions in the East of Ukraine. At the end of 2016, the Government started the pilot operation of the Central Purchasing Body (CPB).\(^ {205}\) In particular, it conducted procurement of office appliances, computers, taxis and translation services, etc. for 24 central executive bodies.\(^ {206}\) Depending on the results from the pilot project, the Government plans to introduce the full-scale CPB on the permanent basis.

Overall, the MinEc is active in implementing public procurement reform in line with the indicative time schedule on public procurement envisaged in the Association Agreement and the Government’s roadmap. The introduction of the open and transparent e-procurement system ProZorro corresponds to the priorities of Ukraine aimed at fiscal consolidation, higher efficiency of public spending and increased competition. The introduction of the e-procurement system ProZorro increased the number of participants in public procurement on the side of both consumers and suppliers and reduced administrative costs for the public sector and for suppliers of goods and services. SMEs also received better access to public procurement: the share of individual entrepreneurs in public procurement increased from 24% in 2016 to 42% in March 2017.\(^ {207}\) According to the MinEc, there have been significant savings in public procurement.\(^ {208}\) The monitoring of the system became easier, which also generated several local initiatives for the verification of tenders in regions.

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\(^ {205}\) See CMU Resolution No. 928, 23 November 2016 http://zakon2.rada.gov.ua/laws/show/928-2016-%D0%BF.

\(^ {206}\) See the order of the Ministry of Economic Development and Trade.

\(^ {207}\) “Impact of ProZorro”, Centre of Excellence in Procurement and the Kyiv School of Economics (http://cep.kse.org.ua/assets/img/articles/Prozorro_report_ua.pdf).

\(^ {208}\) According to the methodology of the MinEc, the savings rate in public procurement is measured as the difference between the expected value of procurement and the contract price. The reports on public procurement are available at the MinEc web-site (http://www.me.gov.ua/Documents/List?lang=uk-UA&id=ca5d0012-c7f9-4750-b1f8-cf5550ecb270&tag=Zviti).
There are still drawbacks in the current legislation. The Government’s Action Plan for the implementation of the Association Agreement envisages a detailed list of amendments to be made in the Public Procurement Law in the period 2017-22.

The public procurement reform allowed Ukraine to join the WTO Government Procurement Agreement (GPA): in November 2015, the WTO’s Committee on Government Procurement took a decision to invite Ukraine to join the GPA.²⁰⁹ In March 2016, the Verkhovna Rada ratified the WTO GPA, which means that Ukrainian companies have the opportunity to access public procurement markets in 48 countries (worth an estimated total of $1,700 billion).²¹⁰ Full-scale implementation of the new Public Procurement Law is expected to result in lower corruption in public procurement, greater efficiency in government consumption, greater transparency and openness of procurement and higher competition.

There is also a risk of undesirable developments. In December 2017, the Parliament approved in the first reading a draft “Buy Ukrainian” law, which envisages amendments to the Public Procurement Law.²¹¹ If the draft is approved, Ukrainian producers will receive advantages in prices, but it might increase corruption, particularly due to the increased number of documents required to prove the Ukrainian origin of the producer. This law would be incompatible with the fundamentals of the EU procurement acquis and the WTO GPA.

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²⁰⁹ See www.wto.org/english/news_e/news15_e/gpro_11nov15_e.htm
²¹⁰ Law No. 679-VIII from 15 September 2015.
Public procurement at a glance

The Association Agreement calls for Ukraine to approximate its public procurement legislation to the respective EU directives to increase transparency and competition.

The Government has introduced a major reform in this field, with a new Public Procurement law adopted in 2016, and with compulsory e-procurement in the public sector on the basis of the ProZorro system. The new law increasing the transparency and competition in the system, enhancing efficiency and reducing corruption.

The Government continues to work on improvements in the system, with further changes in the Public Procurement law required to harmonise the system with the EU directives.

Very recently, however, the parliament has been taking retrograde and contradictory steps.
11. INTELLECTUAL PROPERTY RIGHTS

In our knowledge-based economies, the protection of intellectual property is important, not only for promoting innovation and creativity, but also for developing employment and improving competitiveness. The DCFTA requires Ukraine to modernise its IPR (Intellectual Property Rights) system. These reforms will contribute to a stable legal environment in Ukraine for the protection of IPR, which is crucial for attracting foreign investment.

Provisions of the Agreement

The DCFTA chapter on IPRs aims to facilitate the production and commercialisation of innovative products while guaranteeing an adequate level of protection and enforcement of intellectual property rights. It complements and further defines Ukraine’s obligations under the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This WTO agreement establishes minimum levels of protection that each government has to provide to the intellectual property of fellow WTO members. The DCFTA confirms these WTO rules and even goes beyond them in several areas. This has important implications for Ukraine as in principle it has to extend these ‘TRIPS-plus provisions’ to all WTO members in line with TRIPS’ MFN clause (Art. 4 TRIPS). In addition to the TRIPS Agreement and the DCFTA, Ukraine is also under pressure from the USA to reform its IPR system. Ukraine is on the ‘301 Priority Watch List’ due to widespread
(and admitted) use of illegal software by Ukrainian government agencies and its failure to effectively combat the widespread online infringement of copyrights (see below).

Unlike other DCFTA chapters, the IPR section does not oblige Ukraine to approximate to a selection of the EU’s IPR legislation annexed to the agreement. However, the main text of the DCFTA is very detailed, and its provisions reflect – or sometimes even copy – several principles and procedures of the EU’s IPR legislation. The DCFTA lays down rules on copyright, trademark, geographical indications (GIs) and designs, including detailed enforcement provisions.

**Copyright.** The parties must comply with several international conventions and agreements (e.g. the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the Berne Convention for the Protection of Literary and Artistic Works and the World Intellectual Property Organisation Copyright Treaty). With regard to the duration of authors’ rights, the DCFTA states that the rights of an author of a literary or artistic work have to be protected for 70 years after his/her death and critical and scientific publications may be protected for a maximum of 30 years after publication. The agreement also covers broadcasting and communication to the public; protection of technological measures; computer programs; rights of management information and release rights. The provision on cooperation on collective management of rights, which goes beyond the TRIPS agreement, envisages that the parties’ collecting societies\(^\text{212}\) conclude agreements with each other in order to ensure easier mutual access to and delivery of content between the EU and Ukraine, as well as to ensure the mutual transfer of royalties for the use of parties’ works.

**Trademarks.** Ukraine must establish a fair and transparent system for the registration of trademarks in which any refusal by the relevant trademark administration is duly reasoned, including the possibility to appeal a final refusal before judicial authorities. Ukraine has to provide a publicly available electronic database of trademark applications and registrations. A trademark may be revoked if, within a period of five years, it has not been put to genuine use in the relevant

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\(^{212}\) For example, authorities established under national IPR law that represent the holders of a certain IPR and who have the responsibility to administer the IPR rights of its members, such as collecting societies responsible for collection of copyrights royalties for musicians.
territory in connection with the goods or services in respect of which it is registered.

**Geographical Indications (GIs).** The text of the Agreement recognises that Ukraine’s IPR legislation (e.g. the Law of Ukraine on the Protection of Rights to Indications of Origin of Goods of 16 June 1999 and its implementing rules) already meets the required conditions with regard to registration and control of GIs (Annex XXII), and therefore it does not require further legislative approximation to EU law. The annexes contain an elaborate list of geographical indications of agricultural products, foodstuffs and types of wines and spirits of both parties, which will be protected against commercial use or misuse of a protected name for comparable products, going beyond the TRIPS requirements. This list can be expanded after an objection procedure. Because numerous Ukrainian producers of foodstuffs and types of spirit drinks are still using protected EU GIs, the agreement provides for several transition procedures. Products that were produced and labelled before the DCFTA entered into force, but which do not comply with its GI requirements, may continue to be sold until stocks run out. Moreover, a transitional period of seven or ten years is provided during which Ukrainian producers may still use a selection of EU GIs for their comparable products, such as Champagne, Cognac, Porto, Calvados, Parmigiano Reggiano and Feta. A specific sub-committee on GIs shall monitor the implementation of these provisions and report to the Trade Committee. Moreover, this Committee is responsible for amending the annexes to this chapter, including the list of protected GIs.

**Designs and patents.** Ukraine also has to protect independently created designs that are new and have individual character. The protection shall be provided by registration and shall confer exclusive rights upon the holder to at least have the exclusive right to use the design and to prevent third parties from using it without consent, in particular to make, offer, put on the market, import or export it. The duration of protection following registration shall amount to at least five years, but the holder may have the term of protection renewed for one or more periods of five years each, up to a total term of 25 years from the date of filing. Specific rules are provided for patents for medicinal and plant products. For example, the provisions on pharmaceutical data protection, which go beyond the TRIPS agreement, require that Ukraine shall implement a comprehensive system to guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a medicinal product on the market.
Enforcement of IPRs. The Agreement has a strong section on the enforcement of IPRs. These commitments go beyond the TRIPS Agreement. The section on civil measures and procedures, which is largely based on the EU’s IPR enforcement Directive,\(^{213}\) includes detailed procedural provisions on the judicial enforcement of IPRs (e.g. on transparency, procedural fairness, right to information, measures for preserving evidence and publication of judicial decisions). Judicial authorities must have the competence to recall products from the market that are found to infringe an intellectual property right or to order the destruction of those goods. Ukraine has to comply with these obligations within 18 months of the entry into force of this Agreement.

It should be noted that, as announced in the Single Market Strategy and Digital Single Market Strategy, on 29 November 2017, the Commission adopted a comprehensive package of measures to further improve the application and enforcement of IPRs and to step up the fight against counterfeiting and piracy.\(^{214}\) Several of these new IPR rules will be relevant for Ukraine. For example, in November 2017, the Commission adopted a Guidance Communication clarifying the provisions of the IPR enforcement Directive.\(^{215}\)

Implementation perspectives

Overview of intellectual property system. The development of the national system of intellectual property in Ukraine started in 1992 with the creation of the State Patent Office of the Committee for Scientific and Technological Progress under the Cabinet of Ministers of Ukraine. It was reorganised several times. Since 2011, the State Intellectual Property Service of Ukraine (SIPRU) has been a central government body on IPR policy.\(^{216}\) The SIPSU also supervised a number of special bodies dealing with the evaluation of applications for industrial property (Ukrainian Institute of Industrial Property – also known as


\(^{216}\) See http://sips.gov.ua/ua/polozhennia.
Ukrpatent), the management of copyright (Ukrainian Agency of Copyright and Related Rights) and issuing checkmarks (Intelzakhyst).

Recently, Ukraine’s government launched the institutional reform of the national IPR system.\textsuperscript{217} It is envisaged that three-level structure of the state IPR system should be replaced by a two-level structure. It is believed that that the new system would increase effectiveness of governance and transparency in the sector. In August 2016, the Government decided to abolish the SIPSU and transfer its functions to the Ministry of Economic Development and Trade;\textsuperscript{218} the transformation was finished in May 2017.\textsuperscript{219} The Government should establish the National Office of Intellectual Property, which will inherit some of the functions of IP protection, but will be supervised by the Ministry. It is planned that the Ukrpatent would be reorganised, and Intelzakhyst should be abolished.\textsuperscript{220} It should be noted that the Government also developed a draft law “On the State System of IP Protection”,\textsuperscript{221} but the document has not been submitted to the Parliament and its future is unclear.

Judicial reform in Ukraine envisages the establishment of the High Court for Intellectual Property Matters.\textsuperscript{222} In September 2017, the President launched the selection process of judges to this specialised court.\textsuperscript{223} According to the schedule, approved in March 2018, the qualification process will run throughout much of the remainder of the year.\textsuperscript{224} Presumably, the Court will start its work in 2019.

\textsuperscript{217} In June 2016, the Cabinet of Ministers adopted the Strategy on Reform of the State System of IP Protection in Ukraine; two months later it approved the Action Plan for the Strategy.

\textsuperscript{218} See https://www.kmu.gov.ua/ua/npas/249287197/.

\textsuperscript{219} See https://www.kmu.gov.ua/ua/npas/249972120/.

\textsuperscript{220} See https://www.kmu.gov.ua/ua/npas/249287204?=print


\textsuperscript{222} In June 2016, the Vekhovna Rada adopted the new version of the Law on the Judiciary and Status of Judges (http://zakon3.rada.gov.ua/laws/show/1402-19).

\textsuperscript{223} See http://www.president.gov.ua/documents/2992017-22722/.

As for the legislative framework, the Verkhovna Rada passed the first set of laws on IPRs in December 1993. The standards system in the field of industrial property in Ukraine entered into force in 1998\footnote{These standards include the “Patent Card, Basic Provisions, Drawing up and Execution Procedure” and “Patent Research, Basic Provisions and Conducting Procedure”.}; in 1998-2000 another four laws were passed, which elaborated the IP system. Another important development in intellectual property rights protection was Ukraine’s accession to the WTO in 2008, when it also joined the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Further legislative changes have been taken within the implementation process of the AA/DCFTA.

**State of intellectual rights protection.** Despite this substantial legislation and infrastructure, IPR protection in Ukraine is quite poor, as shown in the evaluations by the US and the EU.

Ukraine has been included in the ‘Special 301 Report’ of the United States Trade Representative since 1998., but its status has not been constant (see Table 11.1). Starting with the most moderate status in the Watch List in 1998, Ukraine was then downgraded by 2001 as a ‘Priority Foreign Country’, which means the worst protection of IPR. In 2008-11 Ukraine’s status was again updated to the Watch List, and later in 2013-14 the situation worsened again. As of 2017, Ukraine remained on the Priority Watch List.\footnote{US Trade Representative, 301 Report 2017 (https://ustr.gov/sites/default/files/301/2017%20Special%20301%20Report%20FINAL.PDF).} Ukraine did not solve the problems but demonstrated some efforts to improve the situation.

According to the Office of the United States Trade Representative (USTR), Ukraine has three major IPR problems:

- unfair and non-transparent administration of the system for collective management organizations (CMOs);
- widespread use of illegal software by government agencies; and
- failure to combat the widespread online infringement of copyright.\footnote{See https://ustr.gov/sites/default/files/301/2017%20Special%20301%20Report%20FINAL.PDF.}
Table 11.1 Evolution of Ukraine’s status under the USTR Report 301

<table>
<thead>
<tr>
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Source: International Intellectual Property Alliance, Office of the United States Trade Representative, Washington, D.C.

The report states that little has changed with respect to collective management organisations in Ukraine, as though rogue CMOs continue to operate freely and do not pay royalties to the rightful owners.\(^{228}\) As a result, in December 2017, the USTR announced partial suspension of Ukraine from the US Generalized System of Preferences (US GSP). The suspension has become effective since end-April 2018.

In its recent report on intellectual property rights in third countries (released in March 2018), the European Commission states that the protection and enforcement of IPRs remains weak in Ukraine.\(^{229}\) Moreover, Ukraine was downgraded from Priority 3 list to Priority 2 (Priority 1 is defined as the most detrimental for the EU) because of its lack of implementation of the DCFTA and the high level of piracy and counterfeiting reported.

Among other major IPR-related concerns, the European Commission’s list reiterated low efficiency of the custom authorities and regulatory data protection. Ukraine remains one of the four main transit points for counterfeited goods to the European market. In general, during 2017, the State Fiscal Service of Ukraine reported about 9,000 cases of customs clearance suspensions due to suspected violation of intellectual property rights (55% more than in 2016). However, the

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\(^{228}\) As of June 2018, there are 19 CMOs in Ukraine (based on the list of CMOs on MERD website (http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=e200bfec-91ec-427a-baa5-10cd5204f56f&title=PerelikOrganizatsiiKolektivnogoUpravlinnia).

customs services prepared only 11 administrative protocols on violation of customs rules in four regions of Ukraine. Moreover, the simplified procedure for destruction of seized counterfeit products was applied only once. This shows that the customs authorities need more effective procedures and legal framework.

Nevertheless, the EC admitted that there have been some minor improvements, including adoption of a Law on Cinematography, successful operations against illegal websites, refinement of the pending trademark applications database and establishment of the High Court for Intellectual Property Matters.

Ukraine’s progress is also monitored within the IPR dialogue. In recent years, the meetings of the Dialogue have covered implementation of the DCFTA requirements. The last meeting of the IPR Dialogue, held in June 2017, showed that Ukraine should accelerate its efforts because of the delay in the legislative process on the IPR reform. Ukraine committed to submit the required draft laws to the Verkhovna Rada by autumn 2017. The delays occurred notably on the package of four laws (on CMOs, on the creation of the new IP office, on inventions and utility models and on copyright and related rights). It was noted, however, that Ukraine had improved its system of combatting internet piracy.

Recent steps by the government. In March 2015, the Cabinet of Ministers approved the Plan of Implementation of the Association Agreement in the sphere of intellectual property. It was intended to adopt 19 EU legislative acts (12 directives and 7 regulations) in 2015-17. The drafts of laws that would bring the necessary amendments to

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230 The EU-Ukraine IPR Dialogue has been a part of EC-Ukraine cooperation since 2006 (http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151001.pdf).
232 Cabinet of Ministers Resolution №164, 4 March 2015. This implementation plan was prepared by the State Intellectual Property Service of Ukraine (SIPSU) with the assistance of an EU Twinning project “Strengthening the protection and enforcement of intellectual property rights in Ukraine,” http://sips.gov.ua/en/twinning_eng.
the current legislation on IPRs had to be developed by July 2015. The drafts were submitted to the Parliament, but this process has stalled.

In October 2017, the Government approved the Action Plan on Implementation of the AA. The Plan contains 124 objectives regarding adoption and implementation of IPR-related legislation, mainly based on the EU directives and regulations. All objectives are to be fulfilled by the end of 2023. This gives Ukraine enough time to comply with its obligations in the sphere of IP protection and enforcement. But it can be hard to evaluate the advance of IPR-related reforms as though there are no interim deadlines in the Action Plan.

As of today, Ukraine demonstrates slow progress in protection and enforcement of IPRs. Even though Ukraine’s copyright system mainly complies with the DCFTA provisions, harmonisation with the EU acquis is needed. The amendments proposed include regulations on resale rights for the benefit of the author of an original artwork, the legal protection of computer programmes and databases, lease, loan and related rights in the field of intellectual property, and the harmonisation of issues regarding satellite broadcasting and cable retransmission. New legislation should also eliminate conflict between the provisions of legislation regarding property rights on office computer programs; provide for exemptions from copyrights (freedom of panorama); introduce the concept of public licence agreement in order to legalise end-user licence agreements, free software and free content.

Ukraine’s Law on State Support of Cinematography extended the possibilities for fighting online infringement of IPRs. The law introduced new notions into the Law on Copyright and Related Rights, including 'camcording' and 'cardsharing'. Besides, its provisions set procedures for blocking web pages that contain pirated content.

Ukraine needs to develop separate legislation on collecting societies in order to implement the relevant provisions of EU legislation. The proposed amendments include detailed provisions on the collection and distribution of royalties, including those obtained from home use and cable retransmission. At the end of 2017, the draft law on CMOs was submitted to the Verkhovna Rada. However, the Parliament did not manage to pass it before the US GSP suspension came into force.

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235 Also referred as the Law on Cinematography.

on April 26, 2018. The law on CMOs was approved by the Rada on May 15.\textsuperscript{237}

In March 2018, the Verkhovna Rada also approved on the first reading draft laws on GIs, license seals and superconductors. The first draft law is designed to introduce a new system of GI protection\textsuperscript{238}.

The METD also supports adoption of other laws which are still under consideration by the people's deputies. In January 2017, the Cabinet of Ministers submitted to the Parliament a draft law On Improvement of Intellectual (Industrial) Property, which should approximate Ukraine's legislation on trademarks and industrial designs.\textsuperscript{239} In February 2018, the Government submitted draft laws On inventions and utility models and On copyright and related rights.\textsuperscript{240}

\begin{boxedtext}
\textbf{Box 11.1 Technical assistance projects}

In 2014-16, the EU funded a twinning project, “Strengthening the protection and enforcement of intellectual property rights in Ukraine”. The project intended to support legislative changes and to organise training courses and study tours for officials and judges working in the field of intellectual property. The experts of the Twinning project prepared nine draft laws on IP and about 700 professionals (experts of Ukrpatent, judges and customs officers) were trained.

\textit{Source: Ukrpatent, EU-Ukraine IPR Dialogue.}
\end{boxedtext}

**Opportunities and challenges for implementation.** Proper implementation of the AA (DCFTA) provisions would bring Ukrainian legislation on intellectual property rights close to the best EU practices. This would contribute significantly to Ukraine’s economic development and international economic relations and would resolve most of the current concerns of the EU and US.

The implementation of the DCFTA provisions on GIs will be challenging, as numerous Ukrainian producers of foodstuffs and types of spirit drinks are still using protected EU GIs. Both the Ukrainian government and businesses should take a number of steps to fulfil

\textsuperscript{237}See http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63283.
\textsuperscript{238}See http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61052.
\textsuperscript{239}See http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60982.
Ukrainian obligations regarding the protection of the EU GIs. The DCFTA gives these producers a long transition period to adjust (up to 10 years for some products), however.

Another important change would be the improvement of legislation on the collective management of copyright and related rights, which is one of the major IPR-related problems in Ukraine. The adopted law increases the transparency of collecting societies and improves the system of collecting and distribution of royalties.

The new national IPR system would increase transparency of governance in this sphere. The launch of the High Court for Intellectual Property Matters would improve the quality of legal defence because of the higher qualification of the specialised judicial body.

According to the Action Plan on the AA Implementation, Ukraine is to finish harmonisation of its legislation and the EU acquis by the end of 2023. Nevertheless, the Government and the Parliament should not postpone actions that are important for IPR reform in order to stimulate Ukraine’s innovation development and to leave behind the country’s negative reputation in this field.

**Intellection property rights at a glance**

Ukraine’s IPR system has some gaps in relation to the best European and international practices, which raises many concerns for the US and the EU. These gaps will be addressed by forthcoming legislation.

Ukraine is a member of the main IPR-related international organisations (WIPO) and international treaties (TRIPS).

The main problems are: non-transparent work of collecting societies (addressed by newly adopted law); use of illegal software by public authorities; and online and offline infringement of copyright.

Ukraine has started an institutional reform of the national IPR system and established the High Court for Intellectual Property Matters. Besides, the Government developed draft laws on the main IPR problems.

Major changes will deal with copyright and related rights, trademarks, patents and designs, geographical indications and enforcement.
12. COMPETITION POLICY

An effective competition policy that controls monopolistic behaviour by companies and trade-distorting subsidies by the government is essential for the sound functioning of a modern economy. It assures a level playing field for economic operators, lower prices for consumers with better quality and wider choice, and reduces the scope for corruption. However, the starting point for today’s Ukraine shows there is much to be done.

Provisions of the Agreement

Antitrust and mergers. The DCFTA prohibits and sanctions anticompetitive practices and transactions, with the following practices deemed illegal:

(a) agreements, concerted practices and decisions by associations of undertakings that have the aim or effect of impeding, restricting, distorting or substantially lessening competition in the territory of either party;

(b) the abuse by one or more undertakings of a dominant position in the territory of either party or

(c) a concentration between undertakings, which results in monopolisation or a substantial restriction of competition in the market in the territory of either party.

These principles are clearly derived from EU competition law (i.e. Arts 101 and 102 TFEU). The above practices are only prohibited “insofar as they may affect trade between the Parties”. However, the Commission interprets very widely what may affect trade between EU countries,
and sets the bar quite low for what is not considered to affect such trade, notably if (a) the aggregate market share of the parties on any relevant market does not exceed 5% and, (b) the aggregate annual turnover of the undertakings does not exceed €40 million. Implicitly, a similar interpretation may apply to the DCFTA.

The DCFTA gives Ukraine considerable discretion in how to implement and enforce these antitrust and mergers principles. The agreement only requires that Ukraine maintains i) competition laws that effectively address these anti-competitive practices, and ii) authorities responsible for the effective enforcement of these competition laws. These competition laws and enforcement authorities have to be transparent and non-discriminatory, respecting the principles of procedural fairness and rights of defence. While Ukraine is not obliged to approximate to the entire body of EU antitrust and merger law, it has to implement specific provisions of important EU competition regulations within three years of the entry into force of the DCFTA. For example, Ukraine has to approximate to the concentration thresholds of the EU merger Regulation (No 139/2004), which define when a merger has an ‘EU dimension’ and therefore needs to be notified to the Commission and subjected to the publication requirements of Directive 1/2003. The latter implies that the Ukrainian competition authority has to properly publish its decisions while taking into account the legitimate interest of undertakings in the protection of their business secrets.

State aids. The provisions here apply to all goods and services, except agriculture and fisheries. Again, the DCFTA provisions are largely inspired by the key principles of EU competition law. Reflecting Art. 107(1) TFEU, the DCFTA states that:

any aid granted by Ukraine or the [EU member states] through state resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the proper functioning of this Agreement insofar as it may affect trade between the Parties.

Here, too, the DCFTA only prohibits state aid when trade between Ukraine and the EU “may be affected”. In the EU, state aid granted by a member state to a single undertaking that does not exceed €200,000 over a period of three fiscal years falls outside the scope of EU state aid control. The agreement also takes over from the Treaty (TFEU) the types of state that “shall” or “may be considered to be” compatible with the agreement: for example, various social aids and disaster relief
“shall” be considered compatible, and various regional economic development aids “may” be compatible, including state aid to achieve the objectives allowed under the EU horizontal block exemption regulations (e.g. aid for environmental protection and for R&D). Ukraine and the EU must notify each other of the total amount annually, types and sectoral distribution of state aids that may affect trade between them, although any aid below €200,000 is exempted from this requirement.

**Institutional aspects.** The Agreement is largely silent on how Ukraine’s competition policy should be administered. Only in the area of state aid does the DCFTA explicitly oblige Ukraine to establish an independent authority with powers to authorise state aid schemes, as well as to order the recovery of state aid that has been unlawfully granted. There is a crucial political issue here that goes beyond the question of formal institutional organisation; namely, how the system works in practice.

The EU’s own experience in this regard has some strong messages. To take just three examples from EU member states, Belgium, France and Germany, the general rules are that the government and/or parliament make the top-level appointments for fixed terms for medium-term periods (five or six years), but the appointees cannot be dismissed at the discretion of the government or parliament. Most important, individual case decisions of these competition policy bodies are sovereign, and not subject to approval by the government. These member state examples are perhaps more relevant than the EU’s own institutional structure, where the competition authority (Directorate-General) works as part of the European Commission. However, even in this case, there is a strongly established convention that competition policy decisions are taken according to a strict interpretation of EU law and minimum politicisation.

The overall conclusions for Ukraine are that top-level appointments to the Anti-Monopoly Committee should be for fixed periods of several years and should be protected from politically motivated dismissal by transparent and strict procedures that guarantee the right of defence, and that the case decisions of the Anti-Monopoly Commission should be made independently of the government or parliament.
Implementation perspectives

Competition policy and institutions in Ukraine. The first set of competition-related laws were adopted in 1992-96, in the initial period of state formation. The Law on Limitation of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activities, dated February 1992, focused on abuses of dominance, anti-competitive concerted actions and discrimination of enterprise by public authorities, and on unfair competition among business entities.\(^{241}\) This law also established the Anti-Monopoly Committee of Ukraine (AMCU) as the public authority responsible for protection of businesses against unfair competition and monopoly power abuses and for state control over the implementation of the anti-monopoly legislation. In July 2000, important changes were introduced to the organisational structure of the AMCU,\(^{242}\) reducing its independence. Since then, the Chairman of the AMCU has been appointed and dismissed by the President of Ukraine after the Rada’s consent. Similarly, the Commissioners have been appointed and dismissed the President based on submissions of the Prime Minister following the proposals of the Chairman of the AMCU. The AMCU Law\(^ {243}\) stipulates several clear reasons for the AMCU Chairman and Commissioners’ dismissal, namely health, their personal decision, a crime and a major violation of duties (for Commissioners), thereby shielding the Commissioners from politically motivated dismissals.

A new Law on Protection of Economic Competition,\(^{244}\) passed in January 2001, followed the patterns of EU competition rules, bringing Ukrainian legislation closer to international standards.\(^ {245}\) It provided a clearer definition of monopolistic activity, especially the description of a dominant position on the market and concerted practices and also expanded the role of the AMCU. Since 2010, the AMCU’s responsibilities have been further widened as it became an appeals

\(^{244}\) See http://zakon4.rada.gov.ua/laws/show/2210-14/ed20010111.
body for public procurement and a monitoring and control authority for state aid.

Until recently, there had been no unified rules on oversight of the state aids, which were regulated by the Commercial, Budget and Tax Codes, the Law on Protection of Economic Competition, the Law on Stimulating Regional Development and numerous sectoral development programmes.\(^{246}\) However, in 2014, the framework Law on State Aid to Commercial Entities\(^{247}\) was passed, bringing the system of state aid provision in line with European norms. The law designated the AMCU as a public authority responsible for monitoring and authorising state aids, and assessing their impact on competition and thus their legality, and also empowered the AMCU to recover the unlawfully granted state aid. This was, as explained above, a key DCFTA requirement. Although selected provisions of the law have become effective since 2014, its key provisions have only been implemented since 2017.

A peer review of Ukraine’s competition law and policy conducted by UNCTAD (United Nations Conference on Trade and Development) in 2012 concluded that Ukraine has developed a rather comprehensive body of competition law largely aligned with international best practices, and thus did not require drastic changes.\(^{248}\) At the same time, the UNCTAD experts advised that more effort was needed on law enforcement, and to strengthen the AMCU as the independent and powerful competition authority.

While Ukraine’s anti-monopoly legislation is relatively well developed, the monopolisation of the economy remains high, although there are some signs of improvement. According to the Global Competitiveness Report (GCR) 2017-2018,\(^{249}\) Ukraine’s “intensity of local competition” is ranked 78\(^{\text{th}}\) out of 137 states surveyed, a notable improvement over its ranking in 101\(^{\text{th}}\) place two years ago. The “extent


\(^{247}\) See http://zakon4.rada.gov.ua/laws/show/1555-18/paran205#n205


of market dominance” is ranked 106th (up from 129th in the GCR 2014-2015) and the “effectiveness of anti-monopoly policy” is 124 (136). Still, according to AMCU assessments, only 43% of Ukraine’s markets were competitive in 2015-16.\(^{250}\) The highest level of market concentration is observed in utility services, energy and transport.

**Reforms in legislative and institutional set-up.** Reforms for the protection of competition and antitrust laws have been identified among 62 key reforms of the Presidential Strategy 2020, although it was not placed among the top eight reform priorities. At the same time, reforms of the juridical and law enforcement system are among the country’s priorities, and their successful accomplishment would be beneficial, also for the competition policy enforcement.

In October 2017, the government approved the revised Action Plan for the Association Agreement, including the competition chapter.\(^{251}\) Several important steps have been already taken.

As required by the DCFTA, in September 2015, the AMCU issued an official clarification on the methods of setting penalties for anti-competitive practices,\(^ {252}\) based on the European Commission guidelines.\(^ {253}\) Since July 2015, the AMCU has started publishing its decisions. In November 2015, Law No. 782-VIII was also passed, improving the transparency of the AMCU by requiring timely and full publication of all Committee’s decisions on the official website. The law was reviewed and generally supported by the European Commission.\(^ {254}\)

Law No. 935-VIII aiming to increase efficiency of control over economic concentration envisaging simplification of concentration

\(^{250}\) The AMCU changed the format of the reporting since 2016 and stopped releasing their aggregate assessment of the structure of the Ukraine’s economy by the level of markets’ competitiveness (see www.amc.gov.ua/amku/doccatalog/document?id=122547&schema=main; and http://www.amc.gov.ua/amku/doccatalog/document?id=133712&schema=main).


\(^{252}\) AMCU, Clarifications No. 16-pp, 15 September 2015 (http://search.ligazakon.ua/l_doc2.nsf/link1/FN013589.html).


\(^{254}\) See http://zakon5.rada.gov.ua/laws/show/782-viii/.
practices and their harmonisation with the EU norms was passed in January 2016.\textsuperscript{255} The main novelties include higher thresholds for controlled concentrations, removal of the 30% market-share criterion for notification of concentration, improvement of the procedure for considering the application and introduction of simplified procedure for certain types of concentrations. In December 2016, the AMCU issued clarifications regarding the assessment of concentrations.\textsuperscript{256}

The draft Law No. 2431 amending the Law on the Protection of Economic Competition regarding penalties imposed by the AMCU for anti-competitive practices awaits its second reading.\textsuperscript{257} Its adoption has been stuck since 2016 by debates on the role of courts in appeal procedures regarding penalties imposed by the AMCU. Meanwhile, in February 2016, the AMCU issued the renewed methodology regarding the imposition of penalties\textsuperscript{258} to ensure the unified treatment.

The implementation of the new law in the area of state aid began in August 2017, and since then, the AMCU must be notified regarding new state aid measures. In 2017, the AMCU received 133 notifications, including 100 concerning the new measures.\textsuperscript{259} The state aid inventory is to be completed by August 2018. The Government progressed in the adoption of the secondary legislation, including the procedure for a return of ineligible state aid and the ‘compatibility criteria’ for the state aid on professional training, the creation of new jobs and enterprise restructuring. Several more criteria are still to be adopted. The full concordance of the Ukraine’s state aid with the new legislation is foreseen by 2022.

A new Chairman and set of Commissioners of the AMCU were appointed in 2015. The appointment ended a period of weak operational capacity of the AMCU, as in 2014 the institution lacked a Chairman and four out of nine Commissioners, causing delays in its work and making the process more burdensome for all participants. According to the AMCU report, the economic impact of the AMCU

\textsuperscript{255} See http://zakon5.rada.gov.ua/laws/show/935-viii/.


\textsuperscript{257} See http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54479/.

\textsuperscript{258} See http://www.amc.gov.ua/amku/control/main/uk/publish/article/121390.

activities have been significant, in particular due to the prevention of the uncompetitive practices, while penalties amounted to UAH 340 million.260

**Competition policy at a glance**

The provisions in the DCFTA for competition policy are substantial and strong in terms of legal commitments, requiring Ukraine to reform control of monopolistic behaviour and state subsidies in line with established EU practices.

Ukraine has already largely aligned its competition legislation on EU and international standards and further legislative and institutional reforms are envisaged. The adoption of the Law on State Aid marks an important achievement in the implementation of the DCFTA competition chapter.

However, the effective implementation and enforcement of these and other envisaged competition laws will be the key challenge for Ukraine. The situation is gradually improving, but enhancement of the efficiency of the AMCU remains the priority.

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13. STATISTICS

A modern and internationally comparable statistical system is indispensable for informed policy-making and for the work of the business sector and civil society. All the post-Soviet states have had to face the same challenges of radical reform to their statistical systems, notably the move from systems that essentially served the needs of the state to systems that serve the private sector and society as a whole and, more technically, to a greater use of sampling methods rather than exhaustive data collection.

Provisions of the Agreement

The EU has engaged all six Eastern Partnership states and the Central Asian states in extensive cooperation programmes to assist this long and complex process. Many of the projects listed below are ‘group activities’ for the whole Eastern Partnership and, in some cases, also with the Central Asian states.

For Ukraine, Moldova and Georgia this is enhanced by collaboration and by the explicit commitments made in the Association Agreements to align their statistical systems to that of the EU: Eurostat, which sets out a huge number of legal regulations in the Statistical Requirements Compendium. This is a highly ambitious programme. The time horizon for compliance with EU regulations is not specified, however, but experience from the accession of the new member states of the EU would indicate that this is a long-term process. For a realistic perspective, it took around 15 years for other new EU members to
complete the transition, with much more support from the EU than Ukraine, Moldova or Georgia will be receiving.

Cooperation between Eurostat and the partner states is structured as follows:

- Seminars on statistical strategies, once a year for three days
- Training courses on current issues and recent developments in statistical systems, about five to six times over a two-year cycle
- Collection of selected data series, about 300 in number (i.e. a selection of key series, but less than what the EU member states comply with), in which the partner states submit data in accordance with Eurostat questionnaires, allowing Eurostat to publish comparable data series
- In-depth assessment of the statistical systems of Ukraine, Moldova and Georgia (called Global Assessments), on which see further below
- Activity of the Eastern Partnership multilateral platform and panel on statistical systems. This consists of conferences held in EaP capitals at a rate of about two per year, each taking up a particular theme in depth (such as labour market, migration, etc.).

Developments in Ukraine’s statistical services

Ukraine has a relatively well-developed statistical agency, Ukrsstat. Since the early 2000s, Ukrsstat has received a lot of help from international donors to upgrade data collection processes, data quality and methodology, including a major $45 million loan from the World Bank.261 A recent assessment of the Ukrainian statistical system noted significant progress in the quality of statistical products,262 but it also noted continued institutional problems. Ukrsstat is not an independent agency, and a new law on statistics that would bring institutional setup of the statistics system in line with AA commitments remains stalled in Parliament.

Thanks in part to international funding, Ukrsstat has moved most key statistical products significantly closer to internationally accepted standards and Eurostat reporting forms. It has also introduced or plans

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to introduce several new statistical products. For example, the consumer prices index was reformed in 2007-08, and the methodology was further revised to bring it closer to EU standards in 2015-17. National accounts are now produced based on standardised models (SNA-2008 and NACE 2.0). The methodology for the industrial output index was revised several times in recent years. Its household survey methodology was harmonised with EU-SILC data. All publications produced by the Ukrsstat central office are now also published online and generally on time. Newly published data include economic sentiment indicators, value added at factor cost, innovation and IT statistics harmonised in accordance with EU rules.

However, the many revisions in methodology have caused breaks in data series, including four such breaks for the industrial output index. Recent structural breaks are also present in most of the short-term statistics. Ukrsstat is still adjusting for important discontinuities resulting from the loss of Crimea and the conflict over the Eastern Donbas. Regarding the loss of Crimea, most of the statistics were backcast from 2010 to provide comparable data for Ukraine, excluding Crimea. Data for eastern Donbas were and still are included in Ukrainian statistics on an ‘as reported’ basis. This means that e.g. industrial production, retail sales, construction and service output for the Donetsk and Lugansk oblasts are not adjusted if the company in the occupied part of Donbas stops reporting to Ukrsstat. Thus, economic statistics in 2014-15 show a steeper decline in economic activity than would be the case otherwise. This also impacted data quality, as household surveys stopped being conducted in eastern Donbas in 2014, leading to imbalances in national accounts. After most economic interaction with eastern Donbas was forbidden in March 2017, the reporting of economic activity in the region became very small. This means that starting from 2018 onwards, the impact of eastern Donbas on Ukraine’s national statistics should be negligible.

The main challenges for Ukrsstat are its lack of independence, insufficient coverage of individual entrepreneurs and households, and delays in surveying households and agricultural undertakings. Individual entrepreneurs are not subject to mandatory statistical reporting, although they account for large market shares in a number of service sectors, including hotels and restaurants, IT, real estate, professional and business services, etc. So far Ukrsstat has resorted to extrapolation, based on data reported to tax authorities, but it has not made much progress in voluntary surveys.
The household survey has a relatively high response rate (77%), but the response from urban households was lower, at 64% for large cities. This probably means that a large share of middle-income households and most high-income households are excluded from the sample. This is reflected in an improbably low Gini index of 0.255 for distribution of income by Ukrainian households, which is among the lowest recorded by the World Bank. Ukrstat attempted to integrate income data for high-income individuals from tax files to remedy the problem, but with little success.

A census of households was initially planned for 2011, i.e. ten years after the previous census in 2001. But this has been pushed back repeatedly, most recently to 2020. This would align the census in Ukraine with an internationally recommended date. Very little preparatory work has been done so far, however, for the 2020 census. This means that Ukrstat’s demographic estimates will be based on the 2001 census, adjusted for administratively registered births, deaths and migration at least until 2020. The reliability of demographic estimates is further complicated by increased (unofficial) labour migration and the large number of internally displaced persons. The planned agricultural census was cancelled entirely, despite the large share of agricultural production produced by households.

Plans for the implementation of EU standards cover an extensive range of statistical series, including business sentiment, structural statistics, a labour force survey, household survey, education statistics, gas and electricity prices, agricultural holdings, fisheries, livestock and meat statistics, and pesticide statistics. For most of these series EU rules are either already implemented or implementation is well under way. Several outstanding issues will likely be resolved over the next few years. In some cases, however, EU standards will have to be better adapted to the realities of a transition economy, for example in the case for ICT and innovation statistics. Ukrstat data delivery also remains lacking.

The website of Ukrstat is antiquated and navigation can be difficult for new users. There is no interface to download data series. Ukrstat plans to unveil a new website next year with the help of EU funding, but it remains to be seen if this effort will remain on track.

Ukrainian statistics at a glance

Ukraine has a relatively well-developed statistical agency, although its data delivery is far from perfect.

Harmonisation with European methodologies is well advanced and is proceeding as planned. However, continuing delays in conducting a new census undermines data quality, and more effort is needed to adapt EU standards to Ukrainian realities.

Besides, legislative changes to the basic Law on Statistics remain stalled. This has prevented harmonisation of institutional aspects of the national statistic system with EU rules.
PART III.
ECONOMIC COOPERATION
The macroeconomic context

In the first decade of the post-Soviet period, Ukraine suffered a more dramatic recession than many of the other transition economies. Real GDP decreased by 59% between 1990 and 1999, and labour market adjustment mainly took the form of a drastic fall in real wages. Despite progress in privatisation and price liberalisation, many structural reforms were postponed.

Economic recovery started in 2000, led by a global commodity price boom and later by increased domestic demand. Real GDP grew by 6.9% on average between 2000 and 2008.

The Ukrainian authorities did not use these years of easy growth to implement reforms, however. Tax and regulatory burdens remained high and pension, social welfare, health care and education reforms were incomplete. Substantial universal energy subsidies were provided in the form of discounted gas, heating and electricity tariffs. The government did succeed in a degree of international trade liberalisation, which allowed the country to become a member of the WTO in May 2008.
Ukraine’s economy entered into recession in 2008 as the world financial crisis aggravated its inherent weaknesses. The hryvnia depreciated sharply, resulting in high inflation. In 2008 and 2009, the economy’s external payments were supported by an IMF loan programme, but the drop in external and domestic demand caused a severe contraction of real GDP in 2009 by 15.2%.

The economy began to bounce back in 2010. Nevertheless, serious budgetary problems obliged the government to ask for another IMF programme, which was approved after the Ukrainian authorities accepted budgetary conditions, raised gas tariffs for the population and increased the independence of the central bank. The tax code and a new version of the budget code were approved, although high tax levels and unfair tax administration remained in place. Fiscal decentralisation was not introduced.
In 2011, Ukraine’s economy continued its recovery, but then the external environment for Ukraine took a turn for the worse in both the EU (with recession and then stagnation in 2012-13) and Russia (with decelerating growth in 2012, leading to recession in 2014), and with metal commodity prices falling continuously from 2011 onwards. External demand for Ukrainian products remained weak and unstable. In 2012, real GDP growth almost stopped, and in 2013 a new phase of recession started. The budget deficit increased sharply, with acute pressure also on the foreign exchange market. The economic situation again signalled the need for long-delayed structural reforms.

But in 2014 and 2015, Ukraine faced tougher challenges still, with the annexation of Crimea by Russia, military conflict in the Eastern Donbas and an extreme financial and economic crisis. Real GDP dropped by 6.6% in 2014 and by 9.9% in 2015. Industrial output plummeted, partly due to the destruction and closure of some companies in the occupied territory, broken supply links and trade tensions with Russia. The decline in exports and higher demand for foreign currency led to a sharp depreciation of the hryvnia. Average consumer price inflation reached 48.7% in 2015.

A fragile macroeconomic stabilisation was reached towards the end of 2015. Since then real GDP increased by 2.4% in 2016 and is estimated to grow by 2.5% in 2017, which is a positive development,
but still too slow to catch up with the economies of neighbouring countries.

There has been continuous and intense cooperation with the IMF, with a two-year Stand-By Agreement for a $17 billion package agreed in April 2014, which was replaced in March 2015 by a four-year Extended Fund Facility for the same amount, to which the EU added complementary funds (see below). The Ukrainian authorities intensified reforms efforts only in 2015. Deregulation and public procurement reform were among the largest successes. The central bank became more independent and moved to a more flexible exchange-rate policy. The banking sector became more solid, as problem banks were taken out of the market, and one of the strategic banks, PrivatBank, was nationalised at great cost to the budget.

The fiscal situation improved as high inflation and better tax administration (particularly of VAT) resulted in additional revenues, while energy subsidies to households were lower than the deficit of the Naftogaz before the hikes in gas tariffs. The Government also started the decentralisation reform, which increased the institutional and financial capacities of local communities. In autumn 2015, the Ministry of Finance agreed on sovereign debt restructuring with debt holders, which reduced financing needs for the next three years by $15.2 billion. In 2017, Ukraine returned to the international capital markets for the first time since 2013.

Important institutions for fighting corruption, namely the National Anti-Corruption Bureau of Ukraine, the National Agency on Corruption Prevention and the Specialized Anti-Corruption Prosecutor’s Office, were established. The E-declaration for public servants’ assets was launched to create greater transparency and prevent corrupt practices by government officials. The implementation of anti-corruption measures was still ineffective, however, due to the delay of the judicial reform, and in particular the need to introduce a special anti-corruption court. The IMF and the European Commission

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265 At the same time, the government imposed the moratorium on the repayment of $3 billion Eurobond held by Russia (maturing on 31 December 2015), which is expected to lead to a legal challenge by Russia against Ukraine in a British court.

266 Ukraine placed 15-year Eurobonds of $3 billion at 7.375% p.a., of which $1.6 billion were directed for the buyback purchase of sovereign Eurobonds with maturity in 2019-20.
stand for the necessity to create such court, and the respective law was finally passed in June 2018.

In 2017, the health, education, and pension reforms received legislative support. The health reform will start already in 2018. However, the comprehensive social welfare reform was not implemented. Slowdown of reforms, and delays in approval of the State Budget for 2017 resulted in the suspension of disbursements under the IMF programme, and a cancelled last tranche from the EU under the MFA III at the end of 2017.

Real GDP is forecast to increase by about 3% in 2018 and 2019. The Government expects to receive another loan tranche from the IMF and is arranging a new MFA with the EU in 2018. Eurobond placements are also planned for 2018. However, economic development is subject to many risks, including a possible escalation of war, higher political uncertainty and blockage of reforms.

Provisions of the Association Agreement and financial assistance from the EU

The text of the Association Agreement on macroeconomic cooperation (chapter 2 of Title V) is short and simple. It foresees regular dialogue on macroeconomic policy and forecasts. Ukraine is expected to achieve “gradual approximation of its policies to those of the EU”, but there is no legally precise backing to this aspiration in the Agreement.

The actual macroeconomic cooperation and financial assistance to Ukraine is substantial, however, with the EU normally topping up aid from the IMF, largely subject to the same conditions. For the period 2014-20, the EU announced a package of possible financial measures totalling €11 billion, including grants from the EU budget and investments by the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD), as detailed in Table 14.2. Later, the support package was increased to €12.8 billion.267

After signature of the Association Agreement in June 2014 the EU extended fresh macroeconomic loans to Ukraine under the microfinance assistance program (MFA), alongside the main macroeconomic assistance programme led by the IMF with its $17 billion stand-by arrangement agreed in April 2014. In January 2015, the EU Commission proposed €1.8 billion of loan operation, which was

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agreed by the EU authorities in April 2015, following €1.6 billion of loans in the preceding years. These loans will carry a low interest rate with a maturity of 15 years. The new loan operation is subject to a memorandum of understanding rapidly agreed with the Ukraine authorities in May, outlining the policy programme attached to the loans. The programme largely builds on the reform agenda pursued by the Ukrainian authorities and covers a broad range of areas, including public finance management, governance and transparency, the energy sector, social safety nets, the business environment and financial sector. A first tranche of €600 million was disbursed in July 2015, and the second in April 2017.

In 2017, however, Ukraine lost a chance to receive the final tranche under the MFA III from the EU as it failed to fulfil four out of 22 policy commitments. In particular, Ukraine did not cancel the moratorium on untreated timber exports, nor launch automatic reviews of e-declarations of government officials and the verification of the information on beneficial owners of companies, and failed to adopt a law on the Credit register. The Law on the Credit register was approved by Parliament in February 2018. At the beginning of 2018, the new talks started on the arrangement of the MFA IV, and in June 2018, the European Parliament and the EU Council approved the decision to provide Ukraine with €1 billion of support the MFA IV.

Table 14.2 EU support for Ukraine, indicative package for 2014-20

<table>
<thead>
<tr>
<th>Source</th>
<th>Indicative amounts/ ranges (€ mn)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. European Commission</strong></td>
<td></td>
</tr>
<tr>
<td>1.1 Development assistance (grants)</td>
<td>Up to 1,565</td>
</tr>
<tr>
<td>- Annual Action Plan for 2014</td>
<td>140-200</td>
</tr>
<tr>
<td>- Annual Action Plans for 2015-20</td>
<td>780</td>
</tr>
<tr>
<td>- Umbrella Programme ‘more for more’, 2015-20</td>
<td>240-300</td>
</tr>
<tr>
<td>- Neighbourhood Investment Facility</td>
<td>200-250</td>
</tr>
<tr>
<td>- Instrument contributing to Stability and Peace (IcSP)</td>
<td>20</td>
</tr>
<tr>
<td>- Common Foreign and Security Policy</td>
<td>15</td>
</tr>
<tr>
<td><strong>1.2 Macro financial assistance (loans)</strong></td>
<td>1,610</td>
</tr>
<tr>
<td><strong>2. European financial institutions</strong></td>
<td>Up to 8,000</td>
</tr>
<tr>
<td>2.1 European Investment Bank</td>
<td>Up to 3,000</td>
</tr>
<tr>
<td>2.2 European Bank for Reconstruction and Development</td>
<td>5,000</td>
</tr>
<tr>
<td><strong>Grand total</strong></td>
<td>Up to 11,175</td>
</tr>
</tbody>
</table>

*Source: European Commission.*
The EU is executing a number of grant programmes provided for in the indicative package for 2014 to 2020. This includes €355 million of grants for a State-Building Contract and a share for Ukraine (with Georgia and Moldova also profiting) of a €200 million programme for supporting small- and medium-sized enterprises to be executed over the next 10 years. This programme is expected to leverage total investment of up to €2 billion. Further initiatives to support decentralisation and local government reform with over €100 million were announced in December 2015. In the framework of this initiative, the large project U-lead was launched in the end of 2016. In the second half of 2017, 153 EU technical assistance projects have been implemented, totalling approximately €352 million.

Humanitarian aid from the EU and its member states has been supplied since 2014 to support the basic needs of the population hit by the conflict in eastern Ukraine. The total volume of EU humanitarian aid to Ukraine which has been provided since July 2014 is about €399 million.

Ukraine is also a leading recipient of grants from the Neighbourhood Investment Facility (NIF), which supplies grant funding in support of investment operations led by European financial institutions, notably the EIB and the EBRD, and the national investment institutions of Germany, France, Italy, Spain and Austria. From its inception in 2008 to 2014, the NIF supplied €1 billion of grants alongside €12 billion of investments by the financial institutions, with a leveraging of total investments of €25 billion. For the period after the signing of the Association Agreement, Ukraine is expected to receive an increased level of NIF funding, with €200-250 million up to 2020.

The EIB expects to increase its investments in Ukraine in the period until 2020 to €3 billion, up from the €2.4 billion invested between 2010 and 2014. New commitments made in 2015 amounted to €857 million, devoted to the energy, transport and environmental sectors. Between 2015 and 2018, the EIB has already financed projects worth €3.3 billion.

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269 See http://www.me.gov.ua/Documents/Download?id=c60809df-8bf7-4375-ba67-b64efb4b5779/.
The EBRD is also stepping up its activity in Ukraine, planning up to €5 billion of investments up to 2020. It will concentrate on energy efficiency and energy security, industry, quality infrastructure and the financial sector. The EBRD has already invested €8.5 billion on projects in Ukraine. The EBRD currently contributes to 173 projects, with a portfolio totalling €4.1 billion. Energy and infrastructure each account for one-quarter of the portfolio, 11% is allocated to financial institutions, and the rest is industry, commerce and agribusiness.\(^{272}\) The EBRD also administers the multi-donor account established for the financing of high-level technical assistance: support of the Strategic Advisory Group, Offices of Reforms and Reform Supporting Groups in the Cabinet of Ministers and the ministries.

Macroeconomics and funding for the EU at a glance

In the years since independence, Ukraine made slow progress in economic policy reforms and consequentially saw a slow recovery of output, except for a period of very favourable commodity prices.

In 2014-15, Ukraine suffered a very severe recession and losses of infrastructure as a result of the war with Russia over the eastern Donbas, on top of the effects of the global recession. The drastic economic situation and the need for assistance from the international community pushed the new Government to finally start reforms in many areas.

From 2016 onwards, a modest rate of GDP growth resumed, which is forecast to continue in 2018-19.

The biggest challenge in the immediate future will be to sustain policy reform efforts, taking into account populist pressures in view of the Presidential and Parliamentary elections in 2019.

The EU is supplying significant financial assistance to help economic recovery through multiple channels, including macroeconomic loans alongside the IMF, budget grants and investments from the EIB and EBRD.

These financial instruments support concrete operations under the sectoral policy chapters of the Association Agreement, notably in the energy, environmental, agri-business, SME and financial sectors.

\(^{272}\) See http://www.ebrd.com/cs/Satellite?c=Content&cid=1395237187476&d=Mobile&pagename=EBRD%2FContent%2FContentLayout/.
15. FINANCIAL SERVICES

The Agreement envisages the comprehensive adoption by Ukraine of the European system for regulating banks, insurance and securities markets with adoption, at least in the end, of the entire EU legislative complex of laws. After a series of major financial crises, the priority now is for the financial markets to be safe and efficient for consumers, systemically sound for the economy and for industry to have open access to European markets and to secure its competitiveness and modernisation.

Provisions of the Agreement

**General provisions.** The Agreement commits Ukraine to reform its financial market regulations to ensure that they are “gradually made compatible” with those of the EU for banking, insurance, securities and asset management. A large number of EU laws, 51 in total (listed in Annex XVII-2), will be approximated with implementation delays of mostly four years.

While the ‘gradual’ language in the main text of the Agreement (Art. 133) appears to be quite soft, the Annexes list the legal acts to be transposed into Ukrainian legislation with their timetables (Annex XVII on Regulatory Approximation in general, and particular Annex XVII-2 on approximation for financial services). Art. 2 of Annex XVII states that compliance with the laws listed within the stipulated time delays “shall be binding”, although Ukraine may request delays in the event of difficulties.

**National treatment.** In general, the Agreement provides for national treatment for establishment and the cross-border supply of
services, meaning that each party shall grant to the other party’s operators treatment no less favourable than for its own. This is in line with standard WTO/GATS principles. However, there are still numerous specific reservations by individual EU member states (listed in Annex XVI-B), which complicate and limit the openness of the market. In the case of Ukraine, its commitments replicate its very liberal GATS schedule.

**Market access.** Annex XVII goes on in Art. 3 to specify the specific conditions for “full internal market treatment” to be granted. Full internal market treatment is defined as meaning:

- No restrictions on the freedom of establishment, including agencies, branches or subsidiaries, where the two parties treat each other’s juridical persons in the same way as their own; and

- No restrictions similarly on freedom to provide services.

For this purpose, Ukraine “shall transpose and continuously implement the existing EU legislation”. This covers “all new or amended” legislation, so this part of the Agreement is to be automatically updated. Actually, the legislation listed (in Annex XVII-2) predates major revisions to EU law and international norms that had already been undertaken in the wake of the financial crisis that began in 2008-09. For full internal market treatment to be granted, the EU must carry out an assessment that the conditions are fulfilled and then the Trade Committee of the two parties may decide on the granting of full internal market treatment.

It will surely take a considerable number of years before Ukraine achieves full internal market access. In the meantime, conditions close to GATS commitments prevail. Under the Association Agreement, however, GATS provisions will be subject to accelerated dispute settlement.

**International standards.** At the same time, the Agreement calls in Art. 127 for Ukraine “to make its best endeavours” to apply internationally agreed standards, inter alia:

- Core Principle for Banking Supervision under the Basel rules
- Insurance Core Principles of the International Association of Insurance Supervisor (IAIS)
- Objectives and Principles of Securities Regulation of the International Organisation of Securities Commissions (IOSC)
- OECD’s Agreement on exchange of information on tax matters
- G20 Statement on transparency and exchange of information for tax purposes
- Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing, issued by the Financial Action Task Force (FATF)

In practice, Ukraine has been making efforts to implement Basel principles since the 2000s, and its IMF programme should also lead to better compliance. FATF rules have been implemented as part of Ukraine’s compliance efforts after the country was called out by FATF. Ukraine’s regulators are also members of IOSCO and IAIS.

**Banks**

*Capital requirements.* The global financial crisis of 2008-09, with the collapse or near-collapse of major banks of systemic importance, has led to a radical strengthening of the capital reserve requirements of banking systems. When the Association Agreement was negotiated, Ukraine was adhering to core Basel I rules. Meanwhile the EU was implementing the newer Basel II capital adequacy requirements, and the Association Agreement binds Ukraine to harmonise with these rules. Since then, however, the EU has moved on to the latest international standard, i.e. the Basel III rules, and repealed older legal instruments. Accordingly, among the key EU laws to be implemented are the following:

- The 2006 Directive on capital adequacy of investment firms and credit institutions (2006/49/EC), replaced in 2013 by a Regulation on prudential requirements for credit institutions and investment firms (575/2013/EU – CRR)
- Another related Directive of 2006 on the business of credit institutions (2006/48/EC), replaced now by a Directive of 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (2013/36/EU - CRD IV)

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273 Basel I was the first internationally agreed set of banking regulations negotiated and produced by the Committee on Banking Supervision at the Bank for International Settlements (located in Basel), while Basel III is the most recent version that takes into account of the need for changes in light of the 2009 financial crisis. While these norms are international, the EU legislates to make them strictly operational and binding.
These key prudential requirements are now set in the above EU regulations, which are directly applicable to banks.\textsuperscript{274} While the basic minimum capital requirement of 8% of equity capital is unchanged (as in Basel I and the Basel II), the definition of capital is tightened and additional categories of reserve requirements are introduced, giving essentially the following regime (under Basel III and the new 2013 laws):

- Minimum capital reserve requirement of 8%, plus...
- Capital conservation buffer of 2.5%
- Countercyclical capital buffer of 0 to 2.5%
- Capital buffer of 0 to 3.5% for systemically important institutions
- Systemic risk buffer of 0 to 3 to 5% (usually not cumulative with systemic institution buffer)

As a result, capital adequacy requirements can range from 10.5% to 16.5% of risk-adjusted assets (exposure), depending on the systemic status of banks (based on size or specialisation). Small- to medium-sized banks can be largely exempt from the additional requirements. These capital reserve requirements are subject to extremely complex methodologies of definition and calculation, which take up the bulk of the texts in question.

**Accounting rules.** Five accounting directives, cited in Annex XVII-2, set requirements for annual accounts by banks and other financial institutions.

**Insurance.** The key law for regulating the insurance industry is a Directive on the taking-up and pursuit of the business of insurance and reinsurance also known as Solvency II (2009/138/EC), which is a fundamental text detailing the rules for the conduct of the industry, its supervision and solvency. Ukraine should comply within four years. It is understood that implementation of Solvency II will pose a big challenge for Ukraine and will take considerable time to be realised. Ukraine also promised to implement EU rules on insurance intermediaries (2002/92/EC – IMD II) and the motor insurance Directive (2009/103/EC). So far, the Ukrainian insurance regulator has focused its efforts on implementing the last two directives referred to above.

**Securities.** The EU has established a comprehensive regulatory regime for investor transactions by stock markets, other trading

\textsuperscript{274} For a detailed analysis of the new laws, see Karel Lannoo (ed.), *The Great Financial Plumbing: From Northern Rock to Banking Union*, Brussels and London: CEPS and Rowman and Littlefield, 2015.

On 1 January 2018, a revised and highly complex second version of MiFID (MiFID 2) entered into force in the EU after long and cult negotiations, based on the proposal of 2014 (2014/65/EU). Various delays in its implementation by EU member states have been agreed, given the heavy burden of reporting requirements. As noted below, the first annual report on EU-Ukraine DCFTA implementation noted that “it is not feasible for Ukraine to implement in full EU acquis in the area of financial services”, which presumably applies to MiFID 2.

**Investment funds (UCITS).** The basic law of the EU for investment funds was revised in 2009 in the wake of the Madoff scandal of 2008, and this text on the Regulation of collective investment in transferable securities (2009/65/EC – UCITS) is cited in Annex XVII-2. Moreover, this text has undergone a further important revision in 2014 (2014/91/EU). There was also in 2011 a significant addition to this domain of regulation with a Directive to govern alternative investment fund managers (2011/61/EU – AIFMD), aimed at hedge funds and other highly leveraged institutions, but it is not listed in Annex XVII-B.

**Financial derivatives.** The EU has introduced complex rules to regulate financial derivatives in a Regulation on over-the-counter (OTC) derivatives, central Counterparties and trade repositories, also called EMIR (648/2012/EU). This was a major development, enabling the European Union to deliver the G20 commitments on OTC derivatives agreed at the Pittsburgh summit in September 2009.

**Implementation perspectives**

*Present structure and state of Ukrainian financial markets.* Ukrainian financial markets have developed practically from zero since independence in 1990. The banking and insurance sector started with Ukrainian branches of Soviet state banks and insurance companies, while securities markets, investment funds and others literally started from scratch. The development of the financial sector has not been a
smooth process, however, having witnessed no less than three financial and economic crises (1998-99, 2008-09, and 2014-17).

The decade between first two crises, i.e. from late 1999 to September 2008, was marked by rapid expansion of all segments of financial markets from the banking sector to credit unions, insurance companies and stock markets. Between 2003 and 2008, bank loans outstanding increased from 20% of GDP to 59% of GDP and bank deposits from 18% of GDP to 33% of GDP. Before 2008, the financial sector also attracted large amounts of foreign investment. By 2008, FDI in the financial services sector reached about $12.7 billion or about 30% of the total FDI stock, with about half of the assets of the banking system being held by foreign owned banks.

Structurally the Ukrainian banking sector was diffused. On the eve of the 2008 crisis, over 180 banks operated in Ukraine. The top 10 banks held only 49% of total assets of the banking sector with 113 small banks contributing 8.4% to the total. Quite a few small and medium banks operated as ‘pocket’ banks, performing treasury, funding and tax-optimising functions for the owners.

In late 2008 and in 2009, the financial services sector went through a ‘perfect storm’. Spillovers from the global economic and financial crisis were compounded by domestic structural problems, high dollarisation and overheating from the lending boom. Depreciation of the hryvnia from 5 to 8 per USD instantly reduced the quality of loan portfolios. The crash of the real estate market reduced the value of collateral assets. Most market participants were able to pull through the crisis due to regulatory forbearance and generous stabilisation loans from the National Bank. Parent companies of foreign-owned banks injected additional funds to help keep their recently acquired subsidiaries afloat. In all, less than 20 banks failed in 2009 and 2010, and eight new banks were created. By 2013, number of active banks was back to 180.

Nevertheless, the 2008 crisis inflicted lasting damage on the banking sector despite (or because of) the few bankruptcies. The banks that survived were left holding large portfolios of problem loans that were not adequately provided for. The capitalisation of banks appeared sound on paper, with average ratios of capital to risk-weighted assets of over 20% in 2010, but this reflected under-provisioning, opportunistic risk-weighting of assets and over-capitalisation of state-owned banks. In reality, many banks were weakened by the 2008 crisis and were still struggling by the time the next crisis started.
The 2014-15 crisis presented a mix of new and old challenges to the banks. A sharp depreciation of the hryvnia, lower cash flows of borrowers due to the economic downturn and difficulties in selling collateral in a buyer’s market were present in 2009. But, in addition, the armed conflict in the Donbas region and the annexation of Crimea presented new problems to deal with. Donetsk and Lugansk oblasts in 2013 produced 31% of output of extractive industries and over 23% of manufacturing output, and were thus major borrowers. Banks with larger exposure to Donbas and Crimea were disproportionately affected, and several regional banks simply ceased to function, as their offices and documentation were located outside the effective control of the Ukrainian authorities.

The result of these accumulated challenges was a large number of bank failures. In 2014-2017, 94 of 180 banks failed and eight more merged or closed voluntarily. This includes a bail-out of the largest bank and failure of two more banks ranked in the top-15 by assets in 2013. Second-tier banks were decimated as 11 out of the next 15 largest banks failed.

The bailout of Privatbank may be regarded as the culmination of the last banking crisis. In 2016, negotiations between the owners of Privatbank275 (the largest Ukrainian bank) and banking regulators on how to bring the bank back into compliance with prudential requirements broke down. According to the NBU, over 90% of Privatbank business loans were issued to affiliated companies. The owners of Privatbank did not provide good collateral on these loans, despite earlier promises. In December 2016, Privatbank was declared insolvent, its liabilities to affiliated companies and individuals were bailed in (converted to equity) and the Deposit Guarantee Fund sold the bank to the State for a symbolic one hryvnia. However, the government spent over UAH 150 billion (around €5 billion) to cover Privatbank losses from non-performing loans.

As foreign owners were more conservative in granting loans and had less difficulty in recapitalising banks, the ownership structure of the banking system changed significantly (see Figure 15.1). Between 2009 and 2012, some foreign owners sold their Ukrainian banks to Ukrainian owners and expanded their assets at a slower pace than Ukrainian-owned banks.

275 Igor Kolomoyski and Gennady Bogolyubov, who also own a number of companies known as Privat group.
Figure 15.1 Ownership structure of Ukrainian banks (by assets*)

* Not adjusted for minority stakes.

Source: Own calculations and Raiffeisen Bank Aval based on NBU data. This figure updates data from the figure in “Banking Sector Monitoring Ukraine”, Policy Brief 10/2017 by German Advisory Group and Institute for Economic Research and Policy Consulting.

During the last crisis, most of the private banks that failed had Ukrainian owners. By 2017, the asset share of private domestic-owned banks decreased to just 14%. The share of state-owned banks in total bank assets swelled to 55%, including Privatbank. Other state-owned banks picked up business from failed banks and continued lending to public-sector entities. The share of foreign-owned banks (excluding Russian) increased slightly to 26%.

In 2017, the banking sector started to recover. Bank deposits grew significantly and lending also expanded. Remaining banks are now better capitalized. However, non-performing loans (NPLs) remain a large problem, accounting for 55% of the total loan portfolio in the end of 2017 and hampering further recovery.

*Present state of regulatory system before the Agreement.* The requirements of Basel I were broadly in force in Ukraine since at least
1995,\textsuperscript{276} with the National Bank of Ukraine (NBU) applying the minimum ratio required by Basel I, i.e. 8\% for the overall capital adequacy ratio (CAR) and 4\% for Tier 1 CAR. In 2004, the CAR was raised to 8\%, and in the middle of 2008, the Tier 1 ratio was replaced by a leverage ratio defined as the regulatory capital to total assets (gross assets net of provisions). It was set at 9\%.

After Basel II was approved, there were plans to transition to new rules\textsuperscript{277} at the NBU, but they were delayed during the lending boom and abandoned during the 2008 crisis. While key ratios did not change much over the last 20 years, the NBU made numerous revisions to what could be included in regulatory capital, risk-weighting, deductions and exceptions.

After the 2009 crisis, the banking authorities learned some lessons. For example, to limit dollarisation, the NBU implemented tougher requirements for foreign currency loans, and new consumer foreign exchange loans were prohibited altogether. Reserve requirements on foreign currency deposits were increased. In an effort to make provisioning for non-performing loans more effective, new rules for loan loss provisions were implemented.

In 2015, the NBU took a first step towards implementing Basel III by inserting some elements, e.g. concerning core capital ratio and capital buffers, for their gradual introduction between 2019 and 2023 (i.e. after an IMF loan programme is scheduled to end). For example, the Tier 1 capital ratio at 7\% will become effective in 2019 and the capital conservation buffer will be phased in during 2020-23, increasing each year by 0.625\% to 2.5\% in 2023. The NBU will also apply a countercyclical buffer of up to 2.5\% of risk-weighted assets in case of debt overheating. Systemic banks will be subject to a systemic bank buffer of 1-2\%.

**Reform and approximation prospects and priorities.** From the above, it is evident that there will be many issues of timing of approximation and implementation of individual EU laws and on how and when to update the list of laws for approximation in the financial area. Financial regulators (NBU, financial services and securities regulators) have jointly drawn up a very detailed action plan,

\textsuperscript{276} Rulemaking by the NBU in the beginning of the 1990s was informal. Thus, it is difficult to establish when CARs were established. In any case, hyperinflation made CARs meaningless before 1995.

\textsuperscript{277} See http://zakon.rada.gov.ua/go/v3749500-04.
Comprehensive Programme of Financial Market Development of Ukraine until 2020,\textsuperscript{278} which integrates commitments under the Agreement with the EU with those made with other international partners and of course the domestic context.

In early 2017, the regulators revised the Programme\textsuperscript{279} to push back initial deadlines from 2019 until 2021 to reflect the slow progress in the adoption of legislation and delays in preparing draft laws. The programme was also revised to update the list of EU legislation targeted for implementation, taking into account the evolution of the EU norms.

A more detailed listing of the current deadlines set in early 2017 is given in Table 15.1. Further revisions are likely, however, given the growing delays: by February 2018, only three out of 10 directives and regulations, whose harmonisation was earmarked for 2016-18, have been implemented at least to some extent.

Table 15.1 Deadlines for implementation of EU legislation in the 2020 Programme (amended as of January 2017)

<table>
<thead>
<tr>
<th>2016-18</th>
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<tbody>
<tr>
<td>1606/2002 (IAS Regulation, 2016)*</td>
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<tr>
<td>2013/34/EU (EU accounting Directive, 2017)*</td>
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<tr>
<td>2009/103/EC (motor insurance Directive)</td>
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<td>2002/92/EC (IMD I)</td>
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<td>2003/41/EC (IORP Directive)</td>
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<td>2014/51/EU (Omnibus II, 2018)</td>
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<td>648/2012/EU (EMIR)</td>
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<td>2015/847 (2nd funds transfer Regulation)</td>
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<tr>
<td>2008/48/EC (consumer credit Directive)*</td>
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\textsuperscript{278} For the original Programme approved by NBU resolution 315 from 18.06.2015, see http://zakon.rada.gov.ua/go/laws/show/v0391500-15/ed20150618.

\textsuperscript{279} For the revised Programme approved by NBU resolution 28 from 16.01.2017, see http://zakon.rada.gov.ua/go/vr028500-17
<table>
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<th>2019</th>
<th>2020-21</th>
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<tbody>
<tr>
<td>2009/65/EC (UCITS IV)</td>
<td>575/2013 (CRR IV)</td>
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<tr>
<td>2007/16/EC (eligible assets Directive)</td>
<td>2013/36/EU (CRD IV)</td>
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<tr>
<td>537/2014 (statutory audit Regulation)</td>
<td>909/2014 (CSD Regulation)</td>
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<td>2009/138/EC (Solvency II)</td>
<td>2002/47/EC (collateral Directive)</td>
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<td>2013/36/EC (CRD IV)</td>
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<td>2014/49/EC (recast DGS Directive)</td>
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<td>2014/59/EU (BRRD)</td>
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<tr>
<td>97/9/EC (investor compensation Directive)</td>
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<td>2014/57/EU (market abuse Directive)</td>
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<tr>
<td>596/2014 (market abuse Regulation)</td>
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<tr>
<td>1060/2009 (CRA Regulation)</td>
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<tr>
<td>86/635/EEC (bank reporting Directive)</td>
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<tr>
<td>2006/46/EC (company reporting Directive)*</td>
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<tr>
<td>2007/14/EC (transparency Directive)</td>
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<tr>
<td>2001/34/EC (prospectus and listing)</td>
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<tr>
<td>2003/71/EC (prospectus Directive)</td>
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<tr>
<td>2004/109/EC (listed companies transparency Directive)</td>
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<tr>
<td>2014/17/EU (mortgage credit Directive, 2017)*</td>
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<td>2001/65/EC (fair value Directive)</td>
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<td>1569/2007/EC (accounting standards equivalency)</td>
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<td>91/674/EEC (insurance accounts Directive)</td>
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<td>2001/24/EC (bank resolution Directive)</td>
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<tr>
<td>2014/65/EU (MiFID 2)</td>
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<tr>
<td>2002/87/EC (FICOD)</td>
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Note: * Means implemented in part or in full.
In particular, a new consumer credit law\(^{280}\) was adopted in 2016, largely fulfilling the consumer credit Directive (2008/48/EC). A new law aiming at simplification of doing business and attracting investment by securities issuers (2017)\(^{281}\) updated rules for issuing securities and public offers of securities, information disclosure rules for security issuers and regulation of professional security market participant. This implemented part of MIFID/MIFID II regulations. The NBU significantly progressed in regulatory changes in bank supervision to bring it closer to EU rules.

Despite the undeveloped financial markets and the slow progress in the transposition of EU norms into Ukrainian legislation, the NBU and Securities Commission seem to be implementing the newest EU legislation without waiting for the formal update of the AA commitments. Ukraine’s Financial Market Development Programme contains an implementation schedule for EU legislation in financial services listed in Annex XVI-2 that is still relevant as well as new EU legislation, such as Directives 2015/2366, 2015/849, 2014/59/EU, etc.

This position corresponds to the 2015 EU-Ukraine Association agenda, which recommends implementation of EU legislation on financial services based on an updating of the list in Annex XVI-2,\(^{282}\) as a significant number of legislative acts in the Annex were repealed and replaced with new versions.

When the AA was signed, regulatory approximation in the financial services sector was planned with the end goal of full internal market treatment. This would mean that Ukrainian financial services providers would be free to provide services in the EU on the same basis as EU-domiciled firms. It is not clear if this goal is achievable given that the EU moved closer to a centralised supervision model in the banking sector and other financial services sub-sectors. As noted in the first annual report on EU-Ukraine DCFTA implementation,\(^{283}\) “it is not feasible for Ukraine to implement in full EU *acquis* in the area of financial services. On the other hand, Ukraine can take inspiration from


\(^{282}\) Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement as endorsed by EU-Ukraine Association Council on 16 March 2015 ([http://eeas.europa.eu/ukraine/docs/st06978_15_en.pdf](http://eeas.europa.eu/ukraine/docs/st06978_15_en.pdf)).

In the banking sector, the implementation of EU norms could be justified by the significant market share of subsidiaries of EU banks (among non-state banks). Moreover, the AA commitments converge with NBU plans to implement Basel III prudential regulations.

The AA commitments may set the stage for an improved financial sector as compared to the status quo. Still, government should take a fresh look at the best way forward for financial sector reform, bearing in mind the reduced prospects for full internal market treatment as the end goal of the AA approximation. This may include arguing for more flexibility in implementing AA commitments.

Financial markets at a glance

At the starting point of the Agreement, Ukraine’s financial sector was in the midst of extreme tensions regarding the stability of the banking system and the servicing of external debt, following a major financial crisis.

Nevertheless, the government is proceeding with a comprehensive, long-term programme for regulatory modernisation, anchoring on EU legislation, which is a crucial part of the general economic modernisation process.

The country’s experience so far with the approximation process is that the original timetables have often proved excessively ambitious, and some new EU legislation such as MiFID 2 seems excessively complex for the relatively modest level of development of Ukraine’s financial markets.

Still there is a good case to be made for continuing to adopt international best practices in Ukrainian legislation.
Transport has been a key sector for the EU’s internal market since the early days of the European integration process. As a result, the EU has a well-established body of law and policies on transport. The DCFTA aims to expand and strengthen Ukraine’s cooperation with the EU in the field of transport and thereby to promote efficient, safe and secure systems with greater interoperability. This will be fundamental to integrating Ukraine’s industries into the European supply chain and to boosting contact between people, especially when visa-free travel becomes possible.

Provisions of the Agreement

Overall, the DCFTA provides for a progressive liberalisation of transport in road, rail and inland waterways, with approximation to many EU standards and, in some instances, conclusion of further special agreements. Before the conclusion of such agreements, the EU and Ukraine may not restrict the conditions of mutual market access. Mutual market access for shipping services will only materialise when Ukraine transposes and implements a designated list of EU regulatory measures. Air transport is mentioned but does not fall under the Association Agreement. The conditions of mutual market access in this sector are dealt with in a bilateral Common Aviation Agreement, which waits full ratification.

Road transport. At the present time road freight services operated between the EU and Ukraine are regulated by bilateral intergovernmental agreements between EU member states and Ukraine. These agreements impose quota and licence arrangements on
hauliers from both sides.\textsuperscript{284} A recent study has shown that abolition of these restrictions would give a significant boost to trade, output and employment for both parties.\textsuperscript{285} However, because EU member states fear that their markets could be overrun by lower-paid Ukrainian truckers, they have not so far been willing to adopt a mandate for the Commission to negotiate an EU-Ukraine road transport agreement. While the DCFTA does not allow foreign investors to provide road passenger transport services within a member state (cabotage), it does offer an exception for the rental of non-scheduled services of buses with operators (Annex XVI-A).

Under the terms of the DCFTA, goods and passenger road transport companies, operators and drivers from Ukraine have to fully comply with the EU regulatory standards within three to five years of the entry into force of the Agreement.\textsuperscript{286} This puts the onus on Ukraine’s legislature to approximate domestic rules and standards to those of the EU and to introduce the necessary monitoring, inspection and enforcement mechanisms to assure the proper implementation of the EU directives and regulations. In view of the need to create more transparency in the licensing system and to level the playing field for road transport operators, priority should be given to the approximation of legislation on a single state electronic register for road transport

\textsuperscript{284} According to the case law of the European Court of Justice, these bilateral agreements have to conform to existing EU transport law. See Judgments in Cases C-466-9/98, C-471-2/98, C-475-6/98, Commission v United Kingdom, Denmark, Sweden, Finland, Belgium, Luxembourg, Austria and Germany, 5 November 2002.

\textsuperscript{285} See “Study on the economic impact of an agreement between the EU and Ukraine”, 14 October 2014 (http://ec.europa.eu/transport/modes/road/studies/doc/2015-07-24-icf-eu_ukraine-roadfl-finalreport.pdf), which concludes that an EU agreement that abolished these requirements “would deliver a modest but positive boost to trade, output and employment for both parties. The largest gains come from removal of bilateral permitting arrangements; removal of transit permits has a smaller effect. Full liberalisation could boost total trade by more than €0.5 billion per year. Liberalisation increases the EU’s road-freighted exports to Ukraine more than it does imports from Ukraine under all scenarios.”

\textsuperscript{286} See Annex XXXII.
operators\(^{287}\) and the confirmation of the professional qualifications of drivers\(^{288}\)

**Air transport.** The DCFTA refers to the Common Aviation Area Agreement (CAA) between Ukraine and the EU, which was negotiated separately and initialled in 2013. When the CAA enters into force\(^{289}\), Ukraine will be committed to approximate its legislation to more than 60 legal acts of the EU (Annex I of the CAA) concerning flight safety and certification regulations; the strengthening of the administrative capacity of the aviation authorities to implement EU aviation standards; and further cooperation with the European Aviation Safety Agency (EASA), including convergence of the airworthiness certification system with that of the EU.

The transition of Ukraine towards the full implementation of the CAA will happen in stages, as it is subject to assessments and standardisation inspections by the European Commission and the EASA, as well as a decision of the Joint Committee. The CAA does not immediately confer complete internal market access to Ukrainian carriers: at first they only obtain the right to fly between Ukraine and an EU destination, either directly or via an intermediate point in the neighbourhood, in the European Common Aviation Area or in Iceland, Liechtenstein or Switzerland (Art. 16 and Annex II). That precludes Ukrainian carriers from operating flights within EU member states (cabotage) and flights between two EU member states unconnected to a flight to or from Ukraine. Such rights would come at a second stage (cf. Art. 33 and Annex III).

The legal regime applicable to air transport services is convoluted. In general terms, the DCFTA defers to the CAA, once it enters into force. In the meantime, the DCFTA excludes national and MFN treatment for domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights. There are, however, exceptions to this rule, with respect to: i) aircraft repair and maintenance services during which an aircraft is withdrawn from service; ii) the selling and marketing of air transport services; iii) computer reservation system


\(^{288}\) Directive 2003/59/EC.

\(^{289}\) The CAA was initialled on 28 November 2013 in Vilnius but its signature has been postponed by the EU because Spain and the UK have not yet agreed to the Agreement’s territorial application to Gibraltar.
(CRS) services; iv) ground-handling services; v) airport operation services” (Arts 87-88 of the DCFTA). However, the reservations mentioned in the DCFTA have to be regularly reviewed by the Association Council’s sub-committee dealing with transport in order to progressively liberalise the establishment conditions and resolve the legal inconsistencies between the CAA and the DCFTA.290

**Railway transport.** The DCFTA aims to reform the rail transport sector in Ukraine and gradually liberalise the freight and passenger rail market over a period of eight years. As with other modes of transport, this requires equal access to infrastructures and improvement of technical and technological quality standards.

One of the difficulties of achieving interoperability with the rail networks in the EU is that the three Eastern Partnership countries still operate on the Russian gauge, which at 1,520 mm is wider than the European standard of 1,435 mm. Finland is currently offering technical expertise to the Support Group on Ukraine to help organise rail connections in a cost-efficient way, in particular through the use of equipment to change the undercarriages at border crossings.

**Inland waterway transport.** The Agreement does not foresee any national and MFN treatment obligations with respect to national cabotage (either in the EU or Ukraine), but respects the traffic rights reserved under existing or future agreements (e.g. following the Rhine-Main-Danube link). Still, Ukraine is expected to gradually approximate its legislation (within five years of entry into force of the Agreement) concerning the conditions for access to the domestic market, i.e. qualifications for operators, a central register, harmonised information

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290 This should forego any problems of hierarchy of legal regimes when the CAA enters into force. In the same vein, Arts 87-88 relate to the freedom of establishment and not to the cross-border provision of services. As these services are typically provided through establishment, one could argue that the DCFTA regime will prevail in practice. In some cases, however, services are provided without establishment (e.g. self-handling), which will mean that the applicable rules will have to be derived from the CAA. Similarly, the DCFTA lists two EU-wide reservations on establishment in the area of air transport services, one relating to the rental of aircraft with crew, the other with respect to CRS (Annex XVI-A). The relevant provision on CRS in the CAA (Art. 13) refers to access to the market, without detailing whether this is through or without establishment; this may indeed create a conflict, in which case one could either argue that the specialised (i.e. the CAA) or the later agreement (DCFTA) takes precedence.
services, safety standards for vessels and the establishment of a network of logistics centres.

**International maritime transport.** The Agreement grants “unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis” and MFN treatment to vessels with regard to, inter alia, access to ports, the use of infrastructure and services of ports, and the use of maritime auxiliary services, as well as related fees and charges, customs facilities and facilities for loading and unloading (cf. Art. 135, paras. 4 and 5).291 Yet, EU-wide and member state-specific reservations on national treatment and MFN limit that access until Ukraine has approximated its legislation to 19 measures relating to the qualification of seafarers, safety standards for passenger and cargo ships, the liability of carriers of passengers by sea in the event of accidents, port state control, etc. (cf. Annex XVII) within prescribed timetables of 3-7 years of the entry into force of the Agreement.292

In other areas of international maritime transport, a formal procedure (also regulated in Annex XVII) prescribes that it is for the European Commission to formally assess if revised/new Ukrainian legislation conforms to the EU’s acquis, and, if so, for the Association Committee (in trade configuration) to decide whether Ukraine has indeed fulfilled its commitments and that markets can be opened. In practice, it will take years before internal market treatment is extended to Ukraine. Ukraine has developed a roadmap for the approximation of Ukrainian legislation to EU norms in the international maritime transport and passed it to the EU for comments.

**Implementation perspectives**

The transport sector accounts for 7% of Ukraine’s GDP and 6% of total employment.293 The Government’s reform priorities in this area are to conform to European standards, to reduce the state’s role in the activities of monopolies, to decentralise the functions of the Ministry of Infrastructure and to privatise revenue-generating operating units of

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291 The Agreement does not apply to domestic maritime transport, with the exception of the movement of equipment (e.g. empty containers not being carried as cargo against payment between ports).

292 See Art. 3 of Annex XVI-A and Art. 4(3) of Annex XVII.

293 See http://www.ukrstat.gov.ua/.
state enterprises. In May 2018, the Cabinet of Ministers approved National Transport Strategy “Drive Ukraine 2030”. The Strategy sets objectives regarding sector’s competitiveness, innovations, environmental protection, and other transport-related issues.294

To harmonise Ukrainian transport legislation with that of the EU, the Ministry of Infrastructure has introduced changes to the rules of transportation of dangerous goods and standards for licence plates, and has simplified the business environment in seaports. Currently, the main goal is to sign the Common Aviation Area (CAA) Agreement with the EU.

According to the Report on Implementation of the AA, in 2017, the transport sector is one of the spheres where the progress of reforms is very low. In particular, the Verkhovna Rada did not fulfil any of the obligations for the reported year. As a result, Ukraine made only about 10% progress in reforming the sector.295

Road transport. This transport mode is the economically most vibrant in EU-Ukraine relations and is growing rapidly for both international road haulage and passenger traffic. Around 80% of EU exports to Ukraine and 30% of imports, in value terms, travel by road. Eurostat data suggest that 5.2 million tonnes of EU exports and 5.5 million tonnes of EU imports were carried by road to/from Ukraine in 2017. The development of public roads in Ukraine is currently lagging behind the pace of motorisation in the country and the operational condition of roads is poor. The average speed on roads in Ukraine is 2-3 times lower than in Western countries and there are barely 200 km of highways. One of the biggest challenges facing Ukraine is the high death toll from road accidents.

In June 2017, Ukraine adopted the Strategy on Improvement of Road Safety in Ukraine until 2020.296 In November 2017, the Cabinet of Ministers reduced speed limits within towns from 60 to 50 kilometers

295 In the report, the relevant chapter is dedicated to both the transport sector and postal services.
per hour,\textsuperscript{297} and submitted a draft law that would increase penalties for speeding violations and drunk driving.\textsuperscript{298}

As of June 2018, Ukraine had not yet harmonised legislation on automobile transportation in accordance with \textit{EU acquis}. In May 2016, the Cabinet of Ministers submitted to the Parliament a specially designed draft law, but it was returned for revision in February 2017.\textsuperscript{299} A few similar draft laws have been submitted by deputies, but they have not yet been considered by the \textit{Verkhovna Rada}.\textsuperscript{300}

\textbf{Air transport.} Ukraine’s aviation sector has developed very quickly in recent years. This was partly thanks to the visa-free regime for EU nationals to travel to Ukraine, visa facilitation for Ukrainians to travel to Europe and major investments in infrastructure for the Euro 2012 football tournament. In 2014-15, passenger turnover via Ukrainian airports fell by one-third, but passenger air transportation recovered in 2016 and overcame the pre-crisis level in 2013.\textsuperscript{301} On 11 June 2017, EU visa-free travel for Ukrainian citizens came into force. Therefore, this rapid growth is expected to continue. It will be further boosted when the CAA Agreement enters into force.

In 2017, 32 Ukrainian air companies (including 18 passenger airlines) were operating in the domestic market. International flights were offered by 10 Ukrainian and 29 foreign air companies. The biggest passenger-carrying companies in 2017 were Ukrainian International Airlines, Windrose, Azur Air Ukraine, AtlasJet Ukraine and Bravo. They transported 93\% of all air passengers (including both regular and charter flights). Some 23 Ukrainian companies offer cargo services, of which the biggest are: Antonov, Ukrainian International Airlines, ZetAvia, Maximum Airlines, Ukrainian Helicopters, Ukraine Air Alliance and Alpha Air. They account for 85\% of the total volume transported. Among the 20 active airports in Ukraine, the biggest are Boryspil (near Kyiv), Kyiv (Zhulyany), Odesa, Lviv, Kharkiv, Zaporizhia and Dnipro.\textsuperscript{302}

\textsuperscript{297} See http://zakon3.rada.gov.ua/laws/show/883-2017-%D0%BF//.

\textsuperscript{298} See http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62877//.

\textsuperscript{299} See http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59136//.


\textsuperscript{301} See http://avia.gov.ua/pro-nas/statistika/periodychna-informatsiya/.

\textsuperscript{302} Ibid.
In 2017, the volume of passenger air transportation by Ukrainian air carriers increased by 30.1% to 10.5 million passengers. International passenger air transportation increased by 28.5% to 9.6 million passengers. The highest growth rates in passenger traffic were at the airports in Kyiv (Zhuliany) (64.2%), Lviv (46.3%), Kharkiv (34.7%), Zaporizhia (26.5%), Boryspil (22.1%) and Odesa (18.8%).

In February 2017, the Cabinet of Ministers approved the Action Plan on Implementation of the CAA Agreement. According to it, adoption of new aviation safety rules was one of the main priorities and should have taken place by the end of 2017, but the execution of the Action Plan has fallen behind the schedule.

Ukraine would also like to bring its Antonov aircraft production into compliance with EU acquis and would like UA certification to be regarded as equivalent to EU standards. Ukraine retained the right to certify the older versions of Antonov airplanes but for the new models it needs to obtain EASA certificates in order to fly within the EU. In January 2017, the State Aviation Administration of Ukraine (SAAU) signed an Agreement with the European Commission on harmonisation of aircraft certification systems. In June 2017, the European Aviation Safety Agency (EASA) and Ukraine started a three-year project (managed by the former) designed to support convergence of certification systems.

Railway transport. The Ukrainian railway network ranks as the third-longest in Europe (ca. 22,000 km, half of which is electrified), but due to the break-of-gauge to the west and south (Hungary, Poland,

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303 Ibid.
Romania and Slovakia), international rail transport is mainly directed towards former Soviet states. While investments were made to improve rail links between Euro 2012 cities, the economic weight of today’s passenger and freight transport via rail cannot be compared with that of road and air.

As of June 2018, Ukraine had not yet harmonised its legislation on rail transport with the *EU acquis*. The Government has already submitted two draft laws to the Parliament, but neither of them has reached the stage of voting.\(^\text{307}\)

**Inland waterway transport.** Ukraine has limited access to European inland waterways via the Danube and the Black Sea. Its internal navigable waterway system is limited to 2,240 km, 40% of which consists of the Dnieper. Whereas the Ukrainian government is developing plans to increase transportation of corn via Kyiv to Odesa, the volume is still marginal in economic terms.

The Ministry of Infrastructure prepared a draft law on inland water transport and submitted it to the Parliament in August 2015, but it has been under review a few times. As of June 2018, the draft law is still being considered by the Committees of the *Verkhovna Rada*.\(^\text{308}\)

**International maritime transport.** The ports of Odesa and Mykolayiv are the major outlets for maritime transport. In 2017, 31.6% of all cargo was handled by the Yuzhny seaport near Odesa (41.9 million tons), 18.2% by Odesa seaport (24.1 million tons) and 17.8% by Mykolayiv seaport (23.5 million tons).\(^\text{309}\) The five Crimean ports (in Yevpatoriya, Kerch, Sevastopol, Feodosiya and Yalta) accounted only for 8% of all cargo handling in 2013.\(^\text{310}\)

In September 2017, the Cabinet of Ministers established the State Administration for Maritime and Inland Waterway Transport (Maritime Administration of Ukraine).\(^\text{311}\) It is planned that the new state body will be launched in August 2018.\(^\text{312}\)

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\(^{308}\) See http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=56230.


In October 2017, the Government approved the Strategy on Implementation of Provisions of EU Directives and Regulations on International Maritime Transport and Inland Waterway Transport (‘road map’). One of its objectives is to provide mutual access to state procurement in the sector.⁴¹³ As of June 2018, Ukraine had not prepared any draft law on maritime transport.

**Pan-European Corridors.** Ukraine occupies a pivotal position in the network of Pan-European Corridors, defined in 1994 as a long-term strategic plan for Europe’s multi-modal network of continental road, rail and waterway connections. This planning framework provides the reference for prioritising major infrastructural investments, which can be funded on the European side by investment from the EIB and EBRD, with the addition of some grant funding from the European Commission. These investments naturally complement regulatory transport policy measures, including the approximation agenda of the Association Agreement.

Four of the ten Pan-European Corridors involve Ukraine, as follows:

- **Corridor IV** consists of road and rail connections from Brussels to Kyiv, via Dresden, Krakow and Lviv.
- **Corridor V** starts in Venice and goes through Slovenia and Hungary before entering Ukraine and Uzhgorod, and thence on to Lviv and Kyiv.
- **Corridor VIII** is the Danube waterway, which at its mouth in the Black Sea gives access to Ukraine.
- **Corridor IX** contains the major north-south connections, starting in Helsinki and St Petersburg, with one branch transiting Belarus and another passing through Moscow, both reaching Kyiv.

All these corridors converge on Kyiv as a central crossroad point. The context for these corridors is now taking on the intercontinental dimensions of China’s ‘New Silk Road’ programme. This programme is likely to increase European-Chinese cooperation, which will be of interest to Ukraine in view of various Eurasian corridors that may pass through its territory. In 2017, Ukraine announced the Go Highway project, which would enforce a Southern Silk Road route bypassing

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Russia. It is planned to reduce transit time between the Black and the Baltic Seas and increase cargo flows between Ukraine and the EU.\textsuperscript{314}

\begin{center}
\textbf{Transport at a glance}
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The DCFTA sets out the EU’s detailed standards and regulations for road, rail, inland waterways, sea and intermodal transport, which Ukraine will progressively adopt. These concern the qualifications of transport operators, the technical safety of vehicles and vessels, and the activities of inspection bodies.

Air transport is referred to in the DCFTA but regulated in a separate EU-Ukraine Civil Aviation Area Agreement, which is pending full ratification and will in due course open the air transport market to low cost competition.

In the case of road haulage transport access to the EU’s market is currently subject to quota provisions at the level of the member states.

Overall commitments in the DCFTA to harmonise on the basis of EU laws are behind schedule, with limited progress.

Ukraine occupies a pivotal place in the Pan-European Corridors for road and rail connections. The EBRD and EIB are supplying investment funding for improvements in these and other major transport infrastructures.

\textsuperscript{314} See https://ec.europa.eu/transport/sites/transport/files/2017-03-17-ua-go-highway.pdf.
The reform and modernisation of Ukraine’s energy sector is a challenge of the utmost priority, for both economic and geopolitical reasons. Ukraine is currently the most wasteful energy user in the industrialised world. If it approached average European energy efficiency standards it would no longer need to import gas. The provisions of the Agreement are highly relevant for the necessary policy reforms in the energy sector.

**Provisions of the Agreement**

The Agreement contains two separate chapters on energy: under the DCFTA heading one chapter concerns trade-related issues, and the second concerns broader energy policy cooperation. Both chapters include references to the Energy Community Treaty, to which Ukraine acceded as a full member in 2011, following Moldova in 2010. We first set out the content of this Treaty.

**Energy Community Treaty.** The contents of this Treaty pre-date the Agreement, but are carried over into it. The purpose of the Treaty is to provide for the application of much of the EU’s energy and environmental law in neighbouring non-member states. Since the intentions and content of the Treaty are entirely consistent and overlap with the Agreement, the latter includes references to the Treaty and, in particular, it states in Art. 278 that in the event of conflict between the two texts, the Treaty shall have legal precedence.

The blocks of EU law that feature in the Treaty cover:

- Electricity and gas: rules for internal markets, access to networks, cross-border exchanges and security measures
- Renewable energy promotion
- Energy efficiency measures
- Oil: provision for maintaining minimum stocks
- Environment (see also chapter 18)

Among these provisions, of particular importance for Ukraine are the rules for electricity and gas networks in the so-called unbundling Directives\textsuperscript{315} of the Third Energy Package.

\textit{Trade-related requirements of the DCFTA.} The DCFTA chapter on ‘trade-related’ energy applies basic free trade provisions to the electricity, crude oil and natural gas sectors. Customs duties and quantitative restrictions on the import and export of energy goods are generally prohibited. Energy prices for the supply of gas and electricity to industrial consumers shall be determined solely by market prices. Related to this is the prohibition of dual pricing, where the Commission has imposed several anti-dumping duties on numerous energy intensive products from Ukraine to offset the trade-distortive effects of dual pricing of energy.\textsuperscript{316}

This chapter also includes provisions on cooperation with regard to infrastructure, the establishment of an independent regulatory authority and the exploration for and production of hydrocarbons.

Regarding the transit of energy goods, the DCFTA incorporates elements of Art. V GATT 1994 and of Art. 7 of the 1994 Energy Charter Treaty,\textsuperscript{317} both of which assure freedom of transit. Furthermore, under Art. 276 of the Agreement the EU and Ukraine shall ensure that transmission system operators minimise the risk of accidental

\textsuperscript{315} Directive 2009/72/EC for common rules for the internal market for electricity, replacing Directive 2003/54/EC; and Directive 2009/73/EC concerning common rules for the internal Market in natural gas, repealing Directive 2003/55/EC. The Agreement in its Annex XXVII actually refers to the two repealed directives, while (paradoxically) the Energy Community Treaty is more up-to-date, and in any case its provisions have legal precedence.

\textsuperscript{316} Dual pricing of energy is a two-tier pricing policy when domestic prices for energy are kept low compared to export or world prices.

\textsuperscript{317} The Energy Charter Treaty of 1994 is not to be confused with the Energy Community Treaty of 2005. The Energy Charter was an early attempt to establish a wider international energy legal order for the post-Soviet era, including the EU, Russia and all other former Soviet Union states, and a number of non-European states. Russia never ratified this Treaty, however, and the enterprise has had only a limited effect, although its transit provisions are legally and operationally significant.
interruption or stoppage of transit and transport. But a party shall not be held responsible for an interruption of supply over which it has no control (e.g. Ukraine shall not be held liable for an interruption caused by Russian actions).

For the transport of electricity and gas, and in particular third-party access to fixed infrastructure, Ukraine must approximate its legislation to the EU law referred to in Annex XXVII of the Agreement and in the 2005 Energy Community Treaty.

**Broader energy cooperation provisions.** This Agreement envisages cooperation in general terms over virtually the whole landscape of energy policy issues, including policy strategies, crisis mechanisms, infrastructure modernisation, enhancement of energy security, energy efficiency and savings and support for renewable energies. Annex XXVII of the Agreement lists numerous EU laws and the timetables for Ukraine’s ‘gradual approximation’. These include the main provisions of the Energy Community Treaty, for which the implementation delay is zero. For other laws the implementation periods range from two to eight years.

Of strategic importance for the EU’s own long-term energy saving and climate policy goals are Directives for energy efficiency, notably that covering the energy performance of buildings\(^ {318} \) and energy end-use efficiency.\(^ {319} \) The implementation periods in the EU itself are quite long, in some cases extending to 2020. Both Directives have proved difficult to implement in many EU member states and have recently been replaced by updated Directives.\(^ {320} \) This is one of many instances where the provisions of the Agreement already need to be updated with revisions of EU laws. The new Directives introduce the concept of ‘nearly zero-energy buildings’ – to become mandatory for new buildings or major renovations by 2020, albeit with a number of provisions allowing for flexibility.

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\(^ {319} \) Directive on energy end-use efficiency, 2006/32/EC, subsequently replaced by Directive 2012/27/EU.

A central indicator is that buildings should emit no more than 3 kg of CO₂ emissions per square meter per year.³²¹ This principle is important because if the EU itself is to achieve its own objective of reducing greenhouse gas emissions by 80% by 2050 compared to 1990 levels, this would require a 90% reduction of the buildings stock. However, the EU itself will need to invest around €62 billion per year, which indicates the scale of the implementation challenge for Ukraine.

**Technical requirements for energy-using products.** The Agreement also sets out two framework Directives for energy-using products in Annex XXVII. The first defines eco-design requirements of energy-using products such as household electrical appliances to be implemented within three years of the entry into force of the Agreement.³²² The second concerns the labelling of similar household appliances regarding their energy consumption, to be implemented in two years.³²³ These regulations specify the technical conditions for the CE conformity mark that allows the products to be sold on the EU market. These Directives have been included in the Ukrainian government’s implementation plan.³²⁴ After the full implementation of the Directives, all household appliances produced in Ukraine will bear the CE conformity mark and can be sold on the European market.

**Nuclear issues.** Cooperation over nuclear safety is provided for in general terms, with reference to EU (Euratom) policies and standards of the International Atomic Energy Agency (IAEA). This concerns such issues as nuclear fuel management and radioactive waste management. The most important operational programme concerns the site of the Chernobyl disaster (see chapter 18).

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³²¹ For a detailed study of NZEB, see “Principles for Nearly Zero-Energy Buildings – paving the way for effective implementation of policy requirements”, Building Performance Institute Europe (BPIE), 2011.


Implementation perspectives

The energy-saving landscape in Ukraine. This has been thoroughly surveyed by the Energy Charter secretariat, and by the International Energy Agency and the UN. The Ukrainian economy’s energy intensity (of 0.28 kg of oil equivalent per $ of GDP) is comparable to that of Russia, but without, of course, the latter’s natural resource endowment. Ukraine’s energy intensity is twice that of the United States (also an energy-rich economy) and three times that of Germany and Japan. This gives a long-term perspective of the potential for energy-saving. The energy-intensity ratio may in reality be more favourable if the value of the shadow economy is taken into account (the Ministry of Economy has estimated the value creation not represented in official data at 37% of Ukraine’s GDP in the first quarter of 2017.)

A new Energy Strategy for Ukraine by 2035 was adopted in August 2017. The nuclear power plants are expected to produce 50% of the electricity in the country, renewable energy sources will produce 25%, major hydro-power plants will give 13% and the remaining 12% will be produced by thermal power plants. These are ambitious plans given that in 2017 renewable energy sources accounted for only 1.2% of the total electricity generation, and thermal power plants produced 33%.

According to the Energy Strategy, in order to decrease energy intensity by 28%, Ukraine will have to cut its total primary energy supply by 9% by 2020 (assuming that GDP growth resumes from 2017). That would mainly be achieved by cutting coal consumption by 34%. By 2035, the 25% share targeted for renewables will be achieved by the substitution of coal and oil with biomass, solar and wind energy. The

energy-intensity ratio of GDP is expected to fall to 0.13 kg of oil equivalent per $ of GDP.

**Energy reform policies of Ukraine.** In 2014-15, Ukraine began radical reform in the energy sector, driven by a combination of conditions set by the IMF for macroeconomic financial aid and the legal obligations of the Agreement with the EU and Energy Community Treaty.

In its February 2015 Letter of Intent to the IMF the government of Ukraine pledged to raise household gas prices to parity with import costs, which was part of the IMF’s conditions to grant an Extended Fund Facility Arrangement. Actual prices were increased by 285% in early 2015 and were supposed to reach 75% of import cost levels by April 2016, before reaching 100% parity by April 2017. However, prices reached 100% parity in May 2016, ahead of schedule when the government unified gas prices in Ukraine to a single market price for both retail and industrial users. The new price-setting mechanism for gas prices is based on the forecast gas price at Germany’s gas hub (Net Connect Germany – NCG) and takes into account transportation, distribution, supply and other costs. This permitted the progressive elimination of state budget subsidies to the Naftogaz, whose deficit in 2014 amounted to 5.7% of GDP, decreased to 0.9% of GDP in 2015, and declined to zero in 2016. At the same time, these huge budget savings permitted an expansion of social assistance to the poorest households unable to afford the price rises. Such benefits rose from 0.4% of GDP in 2013 to 1.3% in 2014 and 2015, and further increased to 1.9% in 2016, alongside the price rises in 2016-17. However, these increased expenditures are far less than the savings to the budget from eliminating subsidies to Naftogaz.

The process of bringing household gas prices to parity with import costs stalled in June 2017, when the Ukrainian government refused the plans to increase gas tariffs for the population, stating that Naftogaz should provide the gas to households at a discounted price. In August 2017, the Energy Community Secretariat initiated a dispute.

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settlement case (ECS-2/17) against Ukraine for violating the *acquis communautaire* on natural gas, as this decision contradicts the announced gas market reform.

Setting world energy prices in the domestic market continued with electricity and coal prices. In 2016, the National Energy and Utilities Regulatory Commission (NERC) set the wholesale forecast price for electricity (which is then used to compute the retail tariffs) for II-IV quarters of 2016 using the new methodology. The price of coal in the electricity tariff is now based on the API2 index, an indicator of the coal price index in the ports of Amsterdam, Rotterdam and Antwerp. The new methodology is transparent and eliminates the difference between domestic and world prices on energy resources.

At the same time, however, it created imbalances in the electricity and coal markets. In particular, electricity producers gained from the higher electricity tariffs, but continued paying a low price for domestically produced coal. As a result, coal mines reported losses and lack of funds for wage payments. So a new methodology for calculating the price of coal that is used for the production of electricity by thermal power plants (TPPs) was introduced in 2017. According to the methodology, the cost of coal is comprised of two components. The first component includes an average of future price quotations on the main international markets for the coming six months. The second component is based on the coal transportation costs from the sea ports of Amsterdam, Rotterdam or Antwerp for the previous 12 months. The cost of coal can be lowered if its quality is less than the defined characteristics. This methodology sets market prices for coal placed on the Ukrainian market regardless of where that coal was produced.

The structure of the Naftogaz and the gas sector is being radically changed in line with the norms of the ‘unbundling’ Directives. The general framework was set up by the Law of Ukraine ‘On the natural gas market’, which came into force on 1 October 2015. The law separates the functions of the market operator from those of producers and suppliers, and it tries to minimise the influence of gas producers and suppliers on the operators of the gas transportation, storage and distribution systems. The gas transportation business of the Naftogaz therefore has to be separated out into a new independent operator. The law envisages the development of free and fair competition in the natural gas commodity market. To that end, the law cancels the licences

of wholesale gas traders and establishes free pricing on the wholesale and retail markets for natural gas, as well as the free choice of gas suppliers.

In November 2016, in pursuance of the previously adopted ‘unbundling’ plan, the Government established a new operator of the Ukrainian GTS, Main Gas Pipelines of Ukraine. After unbundling, Naftogaz will retain only the function of gas trading. Gas storage and transportation will be performed by other companies.

The national energy regulator also underwent changes. In September 2016, a law “On the National Energy and Utilities Regulatory Commission (NERC)” was adopted, which established an independent regulator in the energy market. In particular, the NERC received an independent source of financing and its decisions remain in force even when they are being disputed in court. The full composition of the NERC was renewed by the end of May 2018 on a competitive basis.

The law “On the Electricity Market of Ukraine” adopted in May 2017 introduced a new energy market model in accordance with the Third Energy Package, namely the unbundling of transmission and distribution system operator requirements.

In 2017, Energorynok, the national operator of the wholesale electricity market in Ukraine, created a branch ‘Market Operator’ for selling electricity in the ‘day ahead’, with 24-hour electricity markets, according to the new energy market model. In addition, the state enterprise Ukrenergo, the national operator of the electricity network, was transformed into a private joint stock company with a 100% state ownership. Corporatisation of the company and its unbundling were the two prerequisites for its certification as an operator of the transmission system according to the Third Energy Package. The Ukrenergo will have a Supervisory Board consisting of four independent members and three state representatives. Members of the Board will be selected during the competition.

In March 2018, the NERC adopted secondary legislation necessary for the implementation of the law on electricity market: market rules, transmission system code, distribution system code, code of commercial market for electricity accounting, and rules for the retail electricity market.

In June 2017, several important laws were adopted, including the law on general rules for commercial metering of utility services, on the Energy Efficiency Fund and on energy performance of buildings.
Despite the fact that Energy Community experts recognised the latter one as not fully implementing Directive 2010/31/EC, the provisions on energy performance certification of a substantial number of building categories, including new buildings, are expected to launch a fundamentally new market and enable the Energy Efficiency Fund (EEF) to operate. The EEF is a special fund to finance thermal and energy modernisation measures of buildings. It partially compensates for the cost of work aimed at increasing the energy efficiency of buildings. The EEF’s activities are financed by the central budget and international donors’ contributions. In April 2018, IFC, the EU and Germany set up the multi-donor fund with initial investment from donors of €53 million, complementing the central budget funding of the EEF set at UAH 1.6 billion (€51 million) for 2018.

In 2017, ENTSO-E and Ukrenergo signed an agreement on the terms of the future unification of the energy systems of Ukraine and Moldova with the continental power grid of Europe. Synchronisation with ENTSO-E requires not only resolving complex technical issues but also introducing different principles of selling electricity (when any consumer in Ukraine can buy electricity from any European producer and Ukrainian producers can export electricity to any consumer in Europe).

**Implementation of the Energy Community Treaty provisions.**

The annual implementation report of the Energy Community Secretariat offers a detailed account of how Ukraine is proceeding.\(^{332}\) Ukraine’s progress and problems in implementing the Energy Community Treaty provisions have also been analysed by the Energy Reforms Coalition (a Ukrainian NGO),\(^{333}\) with continuous monitoring reported in DixiGroup’s monthly updates.\(^{334}\) Their analysis shows that progress is underway at the level of legislation, but the problems of concrete implementation remain formidable.

The findings of these reports may be summarised as follows:

**Electricity:** Adoption of the new Electricity Market Law has brought the legal framework into compliance with the Third Energy Package. Work on developing secondary legislation has to be


\(^{334}\) See, for example http://dixigroup.org/publications/energetichni-reformi-oglyad-listopada-2017-roku/.
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intensified. The first priority here is the unbundling of both Ukrenergo and the distribution network operators. The biggest challenge ahead is the development of trading platforms and software for system balancing, day-ahead and intraday trading and settlement, as well as for electronic joint auctions for allocation of cross-border capacity.

Gas: full implementation of the gas secondary legislation is still missing. Ukraine failed to amend the relevant outdated laws, in particular, those, which would enable the correct unbundling of Naftogaz. Its unbundling remains the biggest challenge. Moreover, Ukraine should amend the Public Service Obligation Resolution to allow full market opening.

Oil: no progress can be reported so far. The main priorities remain approving the oil stockholding model and the action plan for building up emergency oil stocks, beginning the collection of monthly data necessary for operating the emergency oil stockholding system.

Renewable energy: Ukraine has to step up its efforts to create a comprehensive framework for the promotion of renewable energy and to bring it in compliance with the State aid legislation. A revised National Renewable Energy Action Plan in compliance with the Guidelines on State Aid for Environmental Protection and Energy 2014-2020 is recommended to ensure that Ukraine is on track to meet the 11% target in 2020.


The shortcomings in Ukraine’s performance in relation to its Treaty obligations have led to a number of legal infringement proceedings being launched by the Energy Community Secretariat. These concerns capacity allocation for electricity connectors, non-compliance with the Directive on sulphur in fuels, the lack of an action plan for renewable energies and the lack of legislation on state aids in the energy sector. One of the cases was closed by the Secretariat after the National Renewables Action Plan was submitted. The other two cases on failing to prohibit state aid and on Ukrainian capacity allocation rules remain open.

Energy saving in households. The reform of gas prices for households currently underway is indispensable for getting Ukraine onto a serious energy saving and efficiency track, accompanied by
subsidies for the poorest households. However, in itself this does not address the problem of funding energy saving investments in low-income households. This requires specific financing schemes with grant and loan funding, principally by the EU and the EBRD.

There is already a valuable initiative in operation, administered by the EBRD, called the East European Energy Efficiency and Environment Partnership (E5P), supported by a coalition of donors led financially by grants from the EU and Sweden, with the EBRD also contributing loan funds. The project duration is 2011-19, with the total budget of €180 million covering six Eastern Partnership countries. In Ukraine, the project has launched 23 projects, mostly for the modernisation of the district-heating system and energy efficiency improvements in public buildings. While this improves the delivery systems up to housing blocks, it does not solve the problem of energy waste within the buildings and individual apartments. As a result, a new initiative of the EBRD aims at energy saving investments in apartment blocks and individual households, which would mobilise €100 million of loan funds, with the objective of adding another 20-30% in grant funding from the EU and other bilateral donors.

A necessary complement for such programmes is the improvement of the governance of the standard apartment block. Comprehensive energy-saving investment in apartment blocks requires collective decision-making. There is a form of legal entity established in Ukrainian law since 2001, namely the Law of Ukraine on Associations of Co-owners of Multifamily Buildings. Only about 27,000 of the 75,000 apartment blocks have adopted this practice,335 however, and the numbers are not growing fast. This is at least in part because of the large number of poor people who could not afford to share in investment expenditures, and more well-off people not wanting to run the risk of having to bear financial responsibility for defaulting neighbours. A new Law on Specifics of the Right of Ownership in Multi-Family Apartment Buildings, adopted in 2015, is intended to facilitate decision-making and management in multi-family apartment blocks.336 This law would facilitate major investment decisions such as for energy efficiency by allowing them to be adopted by a 75% majority rather than 100% as in the past, with lesser decisions to be adopted by a simple 50% majority.

Strategic diversification of gas supplies. Given the last decade’s tensions with Russia over gas supplies and now open conflict with Russia, Ukraine is developing gas pipeline connections with neighbouring EU states. The technique is not to build new pipeline connections, which have large capacities, but to make necessary engineering investments to enable gas to flow in ‘reverse’ direction compared to the original uses. These ‘reverse flow’ connections are via Slovakia and Hungary. Ukraine has built a small 400-meter pipeline connecting the Voyany-Uzhgorod and Soyuz pipelines, which allows direct gas flows from Slovakia.\(^{337}\) The Slovakian Eustream enterprise is reported to invest around €20 million to prepare Vojany to reverse-flow mode,\(^ {338}\) with a gas metering station and a pipeline to the Ukrainian border.\(^ {339}\)

At the end of 2016, operators of gas transportation systems in Ukraine and Poland, Ukrtransgaz and Gaz-System S.A., signed an agreement on the rules for designing and construction of a gas interconnector between Hermanowice in Poland and Bilche Volytsia in Ukraine.\(^ {340}\) The pipeline is projected to have a capacity for up to 5 bn cubic meters (bcm) of gas per year by 2020, when the upgrading of the gas transportation system in Poland is completed. The project will help diversify gas supplies to Ukraine (including LNG) and integrate regional gas markets in Eastern Europe.

At the end of February 2018, the three-year-long dispute between Russian Gazprom and Ukrainian Naftogaz ended in Naftogaz’s favour. The Stockholm Arbitrage Court obliged Gazprom to pay Naftogaz $4.6 billion for violating the “take or pay” condition of the gas transit contract. The contract covers the period of 2009-2019 and includes an obligation of Gazprom to transport annually 110 billion cubic meters of gas via Ukrainian gas transportation system to Europe. In its turn, Naftogaz has to pay $2 billion to Gazprom for the gas consumed in 2014. The net amount of payment Gazprom should make in favour of Naftogaz according to the two rulings is $2.6 billion.

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Energy policy at a glance

The energy provisions of the Agreement are of exceptional economic and geopolitical importance, with a commitment to approximate much of the technical content of EU laws.

Ukraine’s energy policy is now finally undergoing radical and long overdue reforms, centred upon the alignment of energy prices with import costs and the unbundling of gas and electricity distribution structures in line with IMF and EU requirements.

However, the implementation of provisions of the Agreement through the linked Energy Community Treaty is still behind schedule.

Gas supplies have been diversified away from the former total dependence on Russian supplies, with the aid of reverse-flow pipelines linking to neighbouring EU states.

Ukraine passed main laws on energy efficiency of buildings but the adoption of secondary legislation is pending. Energy-savings programmes, in line with EU standards, remain of vital importance to the independence of gas supplies.
The environment chapter of the Agreement is a very ambitious one and commits Ukraine to cooperation across the whole landscape of environmental policy issues. Implementation will be a long and difficult process, given Ukraine's starting point, but it will ultimately mean a radical transformation of environmental quality and the modernisation of key heavy industries in the country.

Provisions of the Agreement

Ukraine agrees to undertake a gradual approximation of its legislation to that of the EU within two to ten years in accordance with Annex XXIX of the AA, which lists 35 EU directives. This represents the main body of EU environmental law and policy, including environmental governance methods, air and water quality, waste management, industrial pollution and hazards, nature protection, the use of GMOs (genetically modified organisms) in agriculture and climate change.

Environmental governance. The centrepiece is the environmental impact assessment Directive, introduced in 1985 and amended several times (in 1997, 2003, 2011 and 2014 – the key text is Directive 2011/92/EC). This requires that a long list of major projects types (such as refineries, metallurgical smelters, major transport infrastructures, dams, etc.) should not receive the go-ahead before a published assessment of their impact on humans, fauna and flora, soil, water, air, climate and the landscape.

Major pollutants and dangerous substances. The centrepiece here is the industrial emissions Directive (2010/75/EU), which revises
and modernises seven previous directives, simplifying existing legislation and cutting unnecessary administrative costs. The Directive covers all industries liable to produce harmful emissions: energy, metals, minerals, chemicals, pulp and paper, large-scale pork and poultry production, waste-management industries, etc. It sets out the main principles for the licensing and control of such installations, specifying limit values for noxious substances. It requires the application of best available techniques (BAT).

To counter air pollution, the ambient air quality framework Directive (2008/50/EC) and four ‘daughter’ Directives lay down limits for specific pollutants. The parties are obliged to enforce standards of air quality within the prescribed limits. Where ambient air exceeds any limit or target value in a given zone or agglomeration, the authorities shall ensure that air quality plans are established for those zones and agglomerations in order to achieve the relevant limit value. Procedures exist for exemptions or the postponement of deadlines where limit values cannot be respected because of site-specific dispersion characteristics, adverse climatic conditions or transboundary factors.

The large combustion plant Directive (2001/80/EC) applies to combustion installations, such as thermal power stations, with a rated thermal input equal to or greater than 50 MW. Its purpose is to limit the amount of sulphur dioxide, nitrogen oxides and dust emitted from large combustion plants. It encourages the combined production of heat and electricity (cogeneration). The limit values and timetables to be respected are graduated according to the age of installations, starting with ‘existing plants’ authorised before 1987, and on to later installations. The governments must prepare national emission reduction plans for existing plants by a specified date. The Directive allows existing plants to be exempted from compliance with the emission limits on condition that the operator undertakes not to operate the plant for more than 20,000 hours between 1 January 2008 and 31 December 2015. The Energy Community Treaty requires that Ukraine comply by 2018.

A further key law is the water framework Directive of (2000/60/EC, subject to several subsequent amendments), which has established a framework for the protection of inland surface waters, ground waters and coastal waters. Its objective for the EU itself has

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341 Notably 1) sulphur dioxide, nitrogen dioxide and oxides of nitrogen, and lead, 2) carbon monoxide and benzene, 3) ozone and 4) polyaromatic hydrocarbons, arsenic, nickel, cadmium and mercury.
been to achieve a good status of all waters by 2015. The approach is based heavily on river basins, for which member states must prepare management plans and detailed management programmes. The parties should ensure that the pricing of water encourages consumers to use resources efficiently.

Legislation by the EU for the prevention and control of catastrophic industrial accidents was triggered by the major accident at a chemicals factory in the Italian town of Seveso in 1976. The resulting Seveso Directive (96/82/EC) was later amended in view of the lessons learned from later accidents such as at Bhopal, Toulouse and Enschede (2012/18/EU). The Directive now applies to more than 10,000 industrial establishments in the EU where dangerous substances are used or stored in large quantities, mainly in the chemical, petrochemical, logistics and metal refining sectors. The Directive has contributed to reducing the number of major accidents and is widely considered as a benchmark for industrial accidents policy and a role model for legislation in many countries worldwide.

According to the hierarchy of waste management techniques, landfilling is the least preferable option and should be limited to the necessary minimum, in accordance with the landfill Directive (1999/31/EC). Where waste needs to be landfilled, it must be sent to landfills that comply with the requirements of the Directive. The objective is to prevent or reduce, as far as possible, negative effects on the environment, in particular on surface water, groundwater, soil, air and human health from the landfilling of waste, by introducing stringent technical requirements for waste and landfills. The Directive sets up a system of operating permits for landfill sites. Existing landfill sites may not continue to operate unless they are brought into compliance with the provisions of the Directive. Ukraine has a six-year time limit for implementation.

Natural habitat. Nature protection is subject to two Directives for natural habitats and sanctuaries for wild birds (92/43/EC and 2009/147/EC). These Directives establish principles and procedures for the designation of special protection zones and would be helpful references for the work of Ukrainian NGOs in this domain.

Climate change. The central element of EU climate change policy is the emissions trading system (ETS) Directive (2003/87/EC, updated in 2009/29/EC); Ukraine is due to establish a compatible system within 2 years. This requires establishing a system for registering relevant installations, a national development plan for the distribution of allowances and a system for these to be traded domestically. Ukraine
further undertakes to fully implement the Kyoto Protocol and develop a long-term action plan for the mitigation and reduction of greenhouse gas emissions.

Implementation perspectives

*The environmental status quo in Ukraine.* In 2018, the environmental performance of Ukraine was ranked 109th out of 180 countries, while the majority of the EU member states are in the top 30. This gives a good indication of the scale of the challenges for Ukraine to approach European standards. According to the State Statistics Service of Ukraine, in 2015 on a per capita basis 105.5 kg of pollutants were emitted into the air, 20.5 m$^3$ of polluted wastewaters discarded, and 7.3 tons of solid wastes discarded (including 14 kg of I-III hazard classes).

**Implementation progress and plans**

In 2014, government of Ukraine developed a strategy for approximation of national environmental legislation to EU acquis, which was updated in 2015. In 2015, the Cabinet of Ministers approved 21 Implementation Plans for the transposition of 26 EU environmental directives and regulations, defining the activities of ministries and agencies required for the timely implementation of environmental EU legislation. The plans are also important to ensure transparency and enable effective monitoring of implementation by civil society and business representatives. Administrative planning is thus quite well advanced as a first step in what will be a long process. However, the 2017 government report on implementation of the AA shows quite modest progress in the environmental domain as implementation of most plans is considerably delayed. In particular, progress on implementation of measures planned for 2017 is estimated

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344 Environmental statistics excludes Crimea and part of the zone of the antiterrorist operation starting from 2014.
at 27% for environmental sector while overall progress across all sectors is 41%.

**Environmental Impact Assessment (EIA) and Strategic EIA Directives.** In the last five years, several attempts were made to implement the IEA agreement as this is the requirement not only under the AA but also under Energy Community Treaty. The process was very challenging due to the resistance of the business lobby and government officials interested in the status quo.

According to the Implementation Plan for the Directive on Environmental Impact Assessment (2011/92/EC) approved by the Cabinet of Ministers in 2015, all activities required for the transposition of this directive should have been undertaken during 2015-16. The law № 2059-VIII ‘On Environmental Impacts Assessment’ was finally approved by the Parliament and signed by the President in June 2017. It came into effect on 18 December 2017, with a number of by-laws were approved to guide its practical implementation and the government launched EIA register.

At the same time, another important draft law № 6106 ‘On Strategic EIA’ still awaits its second reading by the Parliament. This draft law was developed to ensure compliance with requirements of Directive 2001/42/EC, and is also crucially important for environmental policy reform in Ukraine.

**Large combustion plants Directive (LCPD).** According to its commitments under the Energy Community Treaty, Ukraine was supposed to implement the large combustion plants Directive (2001/80/EC) by 1 January 2018. Similar requirements were established in 2008 by the Ministry of Environmental Protection. However, the required modernisation has not been carried out due to financial constraints and limited possibilities to pass on costs to end-

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349 http://eia.menr.gov.ua/.
users through increased electricity and heat tariffs. Clearly, it is not feasible to ensure compliance of over 140 installations with the LCPD Directive within a short period of time.

Box 18.1 Costs of environmental upgrading of large combustion plants

It was estimated by the study commissioned by the Energy Community in 2013 that Ukraine would need between €3.8 and €5.1 billion, depending on the scenario for meeting the requirements of the Large Combustion Plants Directive and €6 billion to upgrade power plants for compliance with Industrial Emissions Directive (IED).

 Estimates prepared for NERP delivered different results. The total funds required for installation of modern flue gas cleaning equipment (to comply with IED) is €2.6 billion. Assuming capital investment costs at €1800/kWh, €16.4 billion is needed for the construction of new capacities of coal-based thermal power plants (TPPs). Construction of new coal-based combined heat and power plants (CHPPs) will require investment of €4.60 billion. Thus, the total costs of modernisation of thermal power sector are over €23.5 billion. The Cabinet of Ministers and relevant executive bodies are responsible for determining and approving financial mechanisms for the enforcement of such massive modernisation.

Several installations subject to the Large Combustion Plants Directive are located at the territories, which are currently not controlled by the Ukrainian government (parts of Donetska and Luhanska regions and Crimea), but these are still included in the NERP under the assumption that Ukraine will regain control over its temporarily lost territories. According to the NERP, emission reduction measures are planned at Zujivska, Muronivska and Starobeshivska TPPs, while the CHPPs of the Alchevcky Steel Plant, the Central Electric Blower Plant of Makiivsky Steel Plant as well as four Crimean CHP plants (Simferopolska, Sevastopolska, Sakska and Kamysh-Burunska) will be decommissioned.

As a result, Ukraine has chosen the alternative pathway for meeting the requirements of the Directive (2001/80/EC), as envisioned by the

352 Electricity and heat tariffs are regulated by the National Commission for State Regulation of Energy and Public Utilities (NCSREPU) and the investment component in the price structure is very restricted.
Ministerial Council of the Energy Community. In particular, parties are allowed to use national emission reduction plans up to 31 December 2027, which impose national emission caps for certain pollutants (SO₂, NOₓ, dust) for all power plants taken together, rather than imposing emission limit values on each large combustion plant. Ukraine submitted its draft National Emissions Reduction Plan (NERP) by the deadline of 31 December 2015. On 8 November 2017, the Cabinet of Ministers approved final version of the plan. Implementation of the NERP is planned from 1 January 2018, to 31 December 2028 for SO₂ and dust, and to 31 December 2033 for NOₓ. This long implementation period (contrary to the Ministerial Council of the Energy Community decision mentioned above) is due to the schedule of the energy sector reconstruction, as envisioned in the current Energy Strategy. To avoid interruptions in power supply, no more than five installations (out of 90 TPP units) can be stopped at any given time for reconstruction or replacement. After the NERP is completed large combustion plants will have to comply with emission limits defined in the Part 1 of the Annex V of the Directive 2010/75/EC.

**Industrial emissions Directive.** Although the national legislation of Ukraine partly meets the requirements of this Directive (2010/75/EC), much work needs to be done to develop the required by-laws and regulations.

Estimates indicate that the administrative and operational costs at the stage of legislation approximation will be relatively modest. As regards implementation costs, estimates are only available for a number of the largest sectors as there are more than 30 industrial sectors and sub-sectors concerned. In addition to the large combustion plants described above, the modernisation of the metallurgy sector is expected to cost between €1.6 and €1.9 billion; €1.8 billion for the coking industry; and for glass factories between €260 and €300 million. These

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353 Decision D/2013/05/MC-EnC approved in 2013.
356 See http://zakon5.rada.gov.ua/laws/show/796-2017-%D1%80
data are for 2013 and include major industrial plants in the East Donbas regions, which are not currently controlled by Kyiv.

Transposition of this Directive is lagging behind the approved plan. The Cabinet of Ministers approved the Concept on reforming the state supervision (control) in the field of environmental protection of Ukraine in May 2017359, which envisions liquidation of the State Ecological Inspection and instead establishment of the State Environmental Protection Service of Ukraine. This will be a single controlling body responsible for environmental monitoring and control. Competences of the latter should cover all requirements of the Directives 2010/75/EC and 2008/50/EC. At the same time, draft law on system of environmental permits is still at the development stage360.

**Seveso Directive on dangerous substances.** Ukraine’s national legislation is partially compliant with the provisions of the Seveso-III Directive (2012/18/EU).361 However, certain provisions in the current legislation still need to be improved, in particular procedures for informing the population in the case of an accident at high-risk objects such as chemical plants, and for the interaction between operators of high-risk objects and state bodies.362 Ukraine has registered more than 9,000 high-risk objects. Implementation of the Action Plan363 on this Directive is considerably delayed. The State Emergency Service developed a draft law amending text on objects of high danger, but it is not even registered in the Parliament as of beginning 2018.

**Landfill Directive.** Ukraine’s waste management system differs significantly in its definitions from that of the EU. Landfills are often overfilled and a long way from complying with EU standards. The landfill Directive (1999/31/EC) is likely to be one of the most

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359 See [https://www.kmu.gov.ua/ua/npas/250269536](https://www.kmu.gov.ua/ua/npas/250269536).
challenging and costly, both in terms of administrative costs for the development of the required regulations and for their technical implementation. Estimates of the administrative and operational costs at the stage of legislative approximation indicate that they are likely to be relatively modest. However, funds needed for the development of a large-scale waste management infrastructure, the rehabilitation or decommissioning of existing landfills, introduction of recycling, etc. are likely to be much higher (in the range of €3 to €5 billion) and will have to be mostly funded from state and municipal budgets, with possible contributions from the EIB and EBRD.

Legislative approximation was planned to be completed by 2017 and practical implementation measures are planned for 2018-20. However, implementation of this Directive is delayed. The main achievement is approval of the Strategy on waste management by the Cabinet of Ministers on 8 November 2017. The strategy introduced important principles (i.e. hierarchy of waste management, polluter pays principle, extended producer responsibility, etc.) of the EU waste management policy into national legislation of Ukraine. The next step is development of the Waste Management action plan.

Ambient air quality framework Directive. Current legislation is considered to be partially compliant with the provisions of the air quality Directive (2008/50/EC). However, the air quality monitoring system requires certain improvements as it dates back more than 20 years. Implementation of the Directive is lagging behind the approved plan. Draft resolutions of the Cabinet of Ministers concerning state system on monitoring of air quality and Concept on reforming of state system of environmental monitoring are still at the development stage. The Draft Order of the Ministry of Internal Affairs concerning the procedure for establishing zones and agglomerations depending on the level of air pollution and their classification is developed but not yet approved. In addition current network of observation posts was

365 See http://zakon2.rada.gov.ua/laws/show/820-2017-%D1%80
366 See www.menr.gov.ua/docs/activity adaptation/Table%20of%20Concordance_Dir_2008_50_ambiant_03.11.11.pdf.
analysed with respect to compliance with requirements of the Directives 2008/50/EC and 2004/107/EC, and measures to improve the current system were designed.  

**Water framework, water quality and waste-water treatment Directives.** Transposition of the water framework Directive (2000/60/EC) into national legislation of Ukraine was undertaken largely in line with the Implementation Plan. A law № 1641-VIII amending current texts on integrated approaches to water basin management was approved by the parliament on 4 October 2016, and came into effect in January 2017. Notably, this is the first law, which was approved for implementation of EU environmental acquis.


**Natural habitats and birds Directives.** Ukrainian legislation on the conservation of natural habitats and of wild fauna and flora is partly compliant with the habitats and birds Directives (92/43/EC and 2009/147/EC) as Ukraine is a party to a number of international conventions in this area.

Implementation plans envisioned full transposition of both directives by the end of 2017 with certain organisational and coordination measures to be performed by 2018. In the last two years several laws were approved including law № 1829-VIII concerning implementation of European environmental standards for protection of natural habitats of rare animal and plant species. In addition, a list of 271 Ukraine’s sites of Emerald network of Europe was developed and approved by the Standing Committee of the Bern Convention in November 2016.

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**Emissions trading system (ETS)**

The AA requires Ukraine (in Annex XXX) to approximate to the EU ETS (Directive 2003/87/EC) within two years, i.e., by August 2016. However, this was highly unrealistic given the complexity of the instrument and a number of technical regulations to be developed and tested. As of beginning 2018, limited progress had been achieved in implementing the Directive. However a draft law on MRV, which is in the cornerstone of the ETS, is under development.\(^{373}\) Clearly, several more years are needed to prepare all required legislation and launch pilot ETS in Ukraine.

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**Chernobyl.** In 1986, the world’s most catastrophic nuclear accident took place at the Chernobyl nuclear power plant in northern Ukraine near the Belarus border. The EU has subsequently played a leading role in funding work to repair the site and contain contamination, including a huge ‘shelter’ or ‘sarcophagus’ to cover the failed reactor. The AA makes only a passing reference to Chernobyl, but the operations for securing the site are at the final stage.

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Overall, in the last two years certain progress in implementation of environmental component of the AA was achieved, but with many delays. The water management sector is the most advanced in terms of transposition of the EU Directives into national legislation. It seems that another 2-3 years are needed for Ukraine to complete transposition of all environmental directives and regulations listed in the AA into national legislation, while technical implementation of new environmental norms will take from several years to even decades in certain cases.

Donetsk and Lugansk separatist regions. A substantial part of Ukraine’s heavy industry lies in the separatist regions, which are currently out of the control of the Ukrainian government. Information about accidents at energy infrastructure and high-risk industrial sites appear in the media from time to time but the Ukrainian government does not have access to organise repair, or collect reliable information about the level of environmental contamination.

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Environment at a glance

The effective implementation of the ambitious environment chapter of the Agreement would upgrade Ukraine to the level of the top 30 countries globally in terms of environmental performance indicators.

This huge improvement of environmental standards is only likely to be observed in the long run because just the legal transposition of the EU directives will take several years, while their technical implementation will take up to 18 years in certain cases.

Some directives are straightforward acts of policy modernisation and will help establish effective environmental quality and resource management systems. Others are very challenging in terms of economic costs (for example, the large combustion plants and industrial emissions Directives).

The EIB and EBRD are among the major financial institutions capable of making substantial contributions to the funding of necessary investments, leveraging in other public and private sources. These investments in environmental quality will generate payback in terms of improved production efficiency and health benefits for both present and future generations.

The effective timetables for implementation of specific EU directives see widespread delays, and revisions will need to be agreed by the two parties in the Association Council.
19. Digital sector

This chapter deals with the ‘digital’ family of chapters and sub-chapters of the Agreement on electronic communications and postal services, the information society and audio-visual policy. Ukraine is already showing encouragingly positive trends in this broad sector of strategic importance for an internationally competitive economy.

Provisions of the Agreement

Electronic communications. The provisions on electronic communications fall under the special category of service sectors that are treated within the DCFTA as having a specific roadmap for securing ‘full internal market treatment’. As described in chapter 9 on services, there is an explicit procedure, set out in Annex XVII, for checking whether Ukraine complies with its commitments to approximate to EU legislation.

For electronic communications there are complex provisions in Arts 115 to 124, laying the ground rules for a competitive and well-governed sector. These concern the regulatory authority, principles for the authorisation of licences to service providers, the rights of access to interconnections with other service providers and principles for governing the allocation of scarce resources, such as radio frequencies. Existing EU legislation with which Ukraine should comply within 4 years is specified in Annex XVII-3, which includes a set of key Directives adopted in 2002 and amended in 2009:


- Directive 2002/19/EC (also as amended by Directive 2009/140/EC) on the requirements that operators with significant market power assure open access to network facilities and control for non-discriminating interconnection charges.

- Universal service Directive 2002/22/EC (as amended by Directive 2009/136/EC), which requires respect for the interests and rights of users, such as ‘number portability’ between operators.

*Postal and courier services.* Regulatory rules aim to prevent anti-competitive practices in this sector, license provisions for universal service providers and maintain the independence of the regulatory body. Several directives are specified in Annex XVII of the internal market regulation for postal services. Courier services in the EU are increasingly subject to criticism for their high costs, and action on this account is planned.

*Information Society.* The objective here is to ensure the widespread availability of information and communication technologies (ICT) with quality services at affordable prices. In particular, there should be broadband access for citizens, business and public administration through services of e-business, e-health, e-government and e-learning. Joint research projects are envisaged under the Horizon 2020 programme. Specific EU legislation for approximation by Ukraine within three years includes the E-commerce Directive (2000/31/EC) and a framework law on electronic signatures (Directive 1999/93/EC).

*Audio-visual services.* Ground rules for the regulation of television broadcasting are laid down in the audio-visual media services Directive (2007/65/EC, 2010/13/EU). Ukraine will implement these provisions within two years.

*Digital Single market.* This broad ‘digital’ domain, including electronic communications, information society and audio-visual markets are together witnessing the fastest rate of technological change and development of any sector in the economy. This means that the
stock of EU laws and regulations in this field, as represented in Annex XVII-3 of the Agreement, is also subject to rapid change. The European Commission has set out directions for the next developments in its comprehensive 2015 policy paper “A Digital Single Market for Europe”.374 This addresses the agenda for action under three broad headings: i) better online access for consumers and businesses, ii) creation of the right regulatory conditions for advanced digital networks and iii) building the digital economy through investment, interoperability and standardisation. Sixteen specific action points are highlighted, several of which will see amendment to the laws cited in the Agreement for approximation, including reform of the Directives on electronic communications, copyright regimes, consumer protection, courier services, audio-visual services and a Priority ICT Standards Plan.

Ukraine has shown a keen interest to participate in the Digital Single Market, which comprises commitments that go well beyond the DCFTA. In 2015, the European Commission adopted the Digital Single Market strategy, which aims to ensure access to online activities for individuals and businesses under conditions of fair competition, consumer and data protection, removing geo-blocking and copyright issues among other goals. Two years after it kicked off, the Commission has made proposals on all the 16 key measures identified and has delivered 35 legislative proposals, covering e-commerce, copyrights, cybersecurity, the European data economy, e-privacy, etc.375 Whereas some of these proposal already led to concrete results (e.g. the end of roaming charges for all travellers in the EU and new rules on data protection and privacy in electronic communications and on cross-border portability of online content services), the remaining proposals still need to be approved by the European Parliament and the Council.

Specific cooperation between the EU and Ukraine on the Digital Single Market took already place in the context of the Eastern Partnership. For example, the second EaP Ministerial meeting on Digital Economy, held in Tallinn on 5 October 2017, discussed cooperation in this area and during the latest EaP Summit in November 2017, the participants agree to cooperate in the area of Harmonisation

of Digital Markets, in order to extend the benefits of the Digital Single Market to the partner countries. This will be fostered in the framework of the EU4Digital initiative, which aims to deliver the benefits of the Digital Single Market to the EaP countries.\textsuperscript{376} In this context, cooperation will focus on supporting the partner countries in strengthening the independence of national telecom regulators, harmonising spectrum allocation and roaming pricing, implementing national strategies for broadband development, cybersecurity, digital innovation, interoperable eHealth services and digital skills and piloting cross-border e-Signatures, electronic trade and Digital Transport Corridors.

At this point the EU and Ukraine are not considering the update the DCFTA (services) annexed to take of specific elements of the new Digital Single Market legislation, but this should be pursued in the future in due course.

**Implementation perspectives**

*Ukraine’s growing IT sector.* The share of IT industry in Ukraine’s economy is estimated at 3% GDP in 2017\textsuperscript{377}. Ukrainian IT sector employed 116,000 people (software developers, engineers, architects, QA engineers and testers, business analysts, project managers, etc.) with the majority of specialists working in IT outsourcing. The average monthly software engineering salary was $1,600 in 2017.\textsuperscript{378} Every year more than 4,000 IT specialists graduate Ukrainian universities, with 10 times as many graduating from private IT-schools and courses.\textsuperscript{379}

It is estimated that in 2016 the number of IT companies in Ukraine reached 1,650. This is four times more than in 2012\textsuperscript{380}. According to some calculations, Ukraine’s IT industry is valued at over


\textsuperscript{377} “Ukraine IT market: 2017 year in review & 2018 outlook” (https://dou.ua/lenta/articles/2017-summary/) (DOU is an online community of Ukrainian ICT professionals).


\textsuperscript{379} IT Boom in Ukraine: Market grows – Education Drops Behind (/a-41453482)

\textsuperscript{380} BRDO Green Book Software Development Market.
$5 billion. The capitalization of the top-10 Ukrainian IT companies might overcome $4 billion. Ukraine is a popular destination for IT outsourcing due to the large number of skilled developers and moderate costs compared to the US or Western Europe, and this boosts the growth of the sector.

The IT industry is primarily export-oriented. More than 90% of software companies work with foreign orders. According to official statistics, in 2017 the IT sector accounted for 14.5% of the total service exports ($1.5 billion). However, many Ukrainian IT companies operate in the informal sector. PwC estimates that in 2017 Ukraine IT service exports actually rose by 20% and reached $3.6 billion. This places Ukrainian IT software in the top three export products after agriculture and metal. It is projected that in 2018 IT exports will grow by 25%.

To develop the industry, Ukrainian IT companies are creating IT clusters in 16 Ukrainian cities, mainly in major ones (Kyiv, Lviv, Kharkiv, Odesa, etc.). These clusters aim to increase the quality of IT education in local universities, offering specially designed academic programs and IT courses, and conducting advocacy and popularisation campaigns.

Overall, Ukraine’s digital sector is developing fast and showing encouraging signs of becoming a successful and dynamic branch of the economy, with good export prospects via outsourcing business. However, it requires the proper attention of government and implementation of appropriate legislation.

**Approximation process.** Ukrainian laws on telecommunications and radio frequency resources already partly complied with EU legislation, but lacked compliance in the distribution of responsibilities.

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381 Is Ukraine the World’s Smartest Startup Nation (http://igniteoutsourcing.com/publications/best-ukrainian-it-startups/) (Ignite Outsourcing is one of Israeli top software companies.)

382 BRDO Green Book Software Development Market.

383 Ibidem.

384 See: http://www.ukrstat.gov.ua/.


386 Ibidem.
on policy development, regulation, licensing, market analysis, technical neutrality, and the provision of universal services. In September 2014, the Cabinet of Ministers approved the Action Plan for DCFTA implementation for 2014-17. The plan envisaged harmonization of Ukrainian legislation with EU directives on telecommunications (electronic communications) by the end of 2017. The same actions were included into the Action Plan for Chapter IV implementation.

The State Service of Special Communication and Information Protection, together with the National Commission for State Regulation of Communications and Information (NCRCI) were to develop a roadmap for changes to Ukrainian legislation, introduce European terminology and definitions for electronic communications, and increase the independence of the national regulator. Initially, it was planned to submit the roadmap to the Association Committee in Trade Configuration for approval by mid-2016, but, at the moment of writing, it has not been done yet. In February 2018, it was declared that the roadmap is one of priority goals for the current year.

In October 2017, the Government adopted a new Action Plan for AA implementation. The plan envisages development of draft laws on state information e-resources, amendments considering telecommunications, implementation of electronic trust services, and some other actions. Besides, in January 2018, the Government endorsed the “Concept of development for digital economy and society in Ukraine in 2018-2020” which corresponds to the “Digital Agenda for Europe”, one of the flagship initiatives of the Europe 2020 Strategy.

A law "On Electronic Communications" is one of the key legal acts to be adopted. It should introduce a European model of market regulation in the electronic communications. A few draft laws “On electronic communications” were developed and submitted to the

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Parliament in 2015-2016.\(^{391}\) The main one (#3549-1) was marked by the President as a priority one, but it was returned for amendments on first reading in February 2017. This draft law did not correspond to the DCFTA and was criticized by experts.\(^{392}\) As of June 2018, a new version of the draft law has not been considered by the Parliament yet. Therefore, this law remains a priority goal for 2018.\(^{393}\)

The Cabinet of Ministers regularly approves action plans on supporting the IT industry.\(^{394}\) The scope of action plans ranges from the simplification of regulatory procedures for the provision of IT services to IPRs protection. In particular, 2018 Action plan envisages introduction of dual IT education system, improvement of cyber security, and development of electronic systems for healthcare and education.\(^{395}\)

Within the information society, Ukraine adopted a law on e-commerce in September 2015 that complies with Directive 2000/31/EC.\(^{396}\) In October 2017, the Parliament approved the law “On electronic trust services”\(^{397}\) which implements Regulation 910/2014/EU on electronic identification and trust services.\(^{398}\) The law develops a unified system of electronic trust services and introduces mutual recognition of Ukrainian and foreign public key certificates and electronic signatures and seals. It comes in force in November 2018.\(^{399}\)

In October 2014, the government approved the Action Plan for the State Committee for Television and Radio Broadcasting for implementation of the European Convention on Transfrontier Television and EU Directive 2007/65/EC on audio-visual media

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395 See https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-planu-za/.
services\textsuperscript{400}. The State Committee prepared a new draft law on television and radio broadcasting that would incorporate the norms of the EU \textit{acquis} and presented it for public discussion, but it is still pending for consideration.\textsuperscript{401}

\begin{quote}
\textbf{The digital sector at a glance}

This broad sector, embracing electronic communications and the entire ICT economy, is a vital, strategic part of the economic reform and modernisation process in Ukraine.

Ukraine has quite advanced human capital skills in this field, which is the basis for rapid development of the sector, including earnings from outsourcing business.

The Agreement provides for comprehensive alignment on EU regulatory practices, mostly within four years. However, the approximation process lags behind the fast-changing technological environment.
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\textsuperscript{400} See: http://comin.kmu.gov.ua/control/uk/publish/printable_article?art_id=115390.

\textsuperscript{401} See: http://comin.kmu.gov.ua/control/uk/publish/printable_article?art_id=125568.
20. CONSUMER PROTECTION

Provisions of the Agreement

EU legislation is intended to ensure a high and consistent level of protection for the health and safety of consumers by means of strict common safety rules and standards for products and services circulating within the internal market (see. Arts 203-204 on geographical indications). Many EU policies directly affect consumers. This is especially the case in such areas as telecommunications, digital, energy, transport and food. The EU has also adopted measures to increase the transparency and access to retail financial services and to facilitate the switching of bank accounts. This trend of mainstreaming consumer protection is reflected in the Association Agreement, which integrates the interests of consumers into its policies.

Chapter 20, on consumer protection, nevertheless lays down a number of general commitments. The most fundamental of these is that the parties to the Agreement “shall cooperate in order to ensure a high level of consumer protection and to achieve compatibility between their systems of consumer protection” (Art. 415). This requires, among others, the exchange of information on consumer protection systems; providing expertise on legislative and technical capacity to enforce legislation and market surveillance systems; improving information provided to consumers; and encouraging the development of independent consumer associations (Arts 416 and 418).

Crucially, it also requires Ukraine to approximate its legislation to the EU acquis, as set out in Annex XXXIX to the Agreement, while avoiding barriers to trade. Generally speaking, Ukraine has committed
to stricter implementation timeframes than Georgia (three instead of five years).

Product safety is an important achievement of consumer policy. Within three years of the entry into force of the Agreement, Ukraine is expected to have transposed into its legal order the provisions of the main acts in this field, i.e. the general product safety Directive 2001/95/EC and Directive 87/357/EEC concerning products which, appearing to be other than they are, endanger the health or safety of consumers. Certain products whose composition, manufacture or use may pose a risk to consumers are subject to more specific provisions.

It is worth noting that in 2013, the European Commission adopted a Product Safety and Market Surveillance Package that aims to improve further product safety, in particular through enhanced product identification and traceability. At the same time, the Commission has adopted measures to reinforce safety in the food chain. Regarding the safety of cosmetic products, new rules entered into force in mid-2013.


To protect consumers from unfair contract terms, the general Directive 93/13/EEC has to be incorporated, as well as, inter alia, Directive 97/7/EC on the protection of consumers in respect of distance contracts.

Other EU legal acts to be approximated concern doorstep selling, package holidays and consumer credit.

Finally, in terms of the enforcement of consumer rules, the provisions of Directive 98/27/EC on injunctions for the protection of consumers’ interests have to be transposed into Ukrainian legislation within three years of the entry into force of the Agreement, whereas the provisions of Regulation (EC) No 2006/2004 on Cooperation between national authorities responsible for the enforcement of consumer protection laws have to be implemented within five years.

Ukrainian legislators should be aware that thanks to Directive 2013/11/EU on alternative dispute resolution and Regulation (EU) 524/2013 on online dispute resolution simple, fast and low-cost, out-of-court procedures for consumers to seek redress will also soon become available throughout the EU.
Implementation perspectives

Although a system for the protection of consumer rights in Ukraine was first set up more than 25 years ago, further efforts are necessary to ensure that the system is effective, efficient and aligned with EU regulations.

For Ukraine, the key task is to find a proper balance among consumer rights protection, a reduction in the administrative burden on businesses and the elimination of corruption incentives associated with state control functions. For instance, in 2016-2017, a moratorium on state inspections of entrepreneurs was enforced.402 This decision was welcomed by businesses while being lambasted by representatives of consumer rights protection organisations who claimed that it undermined consumer safety.

In 2018, the moratorium of inspections was prolonged, although for fewer number of inspections. In particular, since April 2018, the regular checks of food producers has been restored under the newly adopted law on the state control over the implementation of legislation regarding food and related products and animal welfare.403 These inspections are carried by the State Service on Food Safety and Consumer Protection (SPSA). The SPSA was launched in 2016 as a key public body responsible for implementing consumer rights protection policy, and is subordinated to the Ministry of Agrarian Policy and Food, which raised some doubts about the competence of the supervisory authority to implement consumer rights protection over non-food products.

A new law on consumer credit (2016)404 improved the consumer rights protection in the field of finance. Agencies responsible for regulation and oversight of certain financial services are also responsible for regulation and oversight over respective consumer crediting. For instance, the NBU regulates and oversees bank credit. The new law sets information disclosure requirements and increases the responsibility of financial institutions for the violation of consumer rights.

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Apart from the SPSA and financial service regulators, several other public authorities are responsible for consumer rights protection in specific areas, for example:

- National Commission for the State Regulation of Communications and Information\textsuperscript{405} – communication services;
- State Labour Services\textsuperscript{406} – social services;
- State Administration on Medical Products\textsuperscript{407} – pharmaceutical products; and
- State Inspection on Architecture and Construction\textsuperscript{408} – construction norms.

The law ‘On Consumer Rights Protection’ (1991; last amended in 2017)\textsuperscript{409} remains a key legal act regulating the mutual rights and obligations of consumers and providers of goods and services, as well as consumer protection mechanisms. In December 2016, the draft amendments aligning the law with the provisions of EU Directives on distance contracts, collective interests, minimum guarantees etc. was submitted, but is still pending in the Verkhovna Rada.

However, recent reforms in the areas of technical standards for industrial and food products (TBT and SPS) bring Ukraine’s legislation much closer to the EU legislation. In 2015, a new edition of the Law on General Product Safety\textsuperscript{410} was passed in Ukraine, aligned with the respective EU directive. There are several other important laws enhancing consumer protection, including:

- Law on State Market Surveillance and Control over Non-Food Products (2010, last amended 2016),\textsuperscript{411}
- Law on Key Principles and Requirements regarding Food Safety and Quality (1997, last amended 2017).\textsuperscript{412}

\textsuperscript{405} See http://nkrzi.gov.ua/index.php?r=site/index&pg=77&language=uk.
\textsuperscript{406} See http://dsp.gov.ua/.
\textsuperscript{407} See www.diklz.gov.ua/control/main/uk/index.
\textsuperscript{408} See http://dabi.gov.ua/.
\textsuperscript{409} See http://zakon5.rada.gov.ua/laws/show/1023-12.
\textsuperscript{410} See http://zakon3.rada.gov.ua/laws/show/2736-17.
\textsuperscript{411} See http://zakon3.rada.gov.ua/laws/show/2735-17.
\textsuperscript{412} See http://zakon3.rada.gov.ua/laws/show/771/97-%D0%B2%D1%80.
Ukraine has also made significant progress in the adoption of technical regulations and standards harmonised with the EU norms.

Although more efforts are necessary to harmonise legislation, an urgent task is to ensure adequate state control over the implementation of consumer protection norms executed by the SPSA and other involved authorities. These efforts also require the establishment of an adequate quality infrastructure.

The involvement of civil society activists in consumer rights protection is an important complement to the public authorities. There are multiple NGOs involved in consumer rights protection, including the All-Ukrainian Federation of Consumers ‘Puls’; the All-Ukrainian Association in Consumer Rights Protection Issues; the Civic Control of Consumer Rights Protection; the Institute for Consumer Expertise; and the All-Ukrainian Union of Consumers of Ukraine etc. Most of these NGOs have a network of regional representative offices.

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**Consumer protection at a glance**

Ukraine’s key task in the sphere of consumer rights protection is to find a proper balance among consumer rights protection, a reduced administrative burden on businesses, and the elimination of corruption.

The AA requires approximation to relevant EU acquis in the consumer protection field within 3 years of the entry into force of the Agreement.

Ukraine’s obligations in the area of consumer protection under the AA can be divided into several categories. First: general commitments related to information exchange and improvement of information provided to consumers, etc. Second: obligations related to an approximation of legislation concerning product safety, but also institutional and administrative procedures of protection of consumers and the enforcement of consumer rights.

Ukraine progressed in consumer rights protection in the spheres of finance and food safety, but many more tasks lie ahead.

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To further support Ukraine’s transition to a fully functioning market economy and to create a stable environment for investment, the Association Agreement includes a brief chapter on company law, corporate governance, accounting and auditing. This chapter entails a relatively soft provision on Ukrainian cooperation with the EU in these areas.

**Company law.** In the area of company law, to improve the protection of shareholders, creditors and other stakeholders, Ukraine “undertakes” to approximate a list of EU company law directives, included in Annex XXXIV. In particular, recently adopted Directive 2017/1132/EC codified a number of directives that are listed in the Annex XXXIV. As a result, it covers several areas of company law. In provisions regarding transparency, it requires companies with limited liability to disclose basic information and documents relating to, for example, their instruments of constitution and statutes, annual accounts and other rules for the management of the company. This information has to be recorded in a file opened in a central register, commercial register or company register, made available in electronic format and published in a national gazette or by other means.

Another important area of company law, covered by this directive, aims at protecting shareholders and creditors of public limited liability companies (PLCs) by fixing rules for creating and running companies and for increasing or reducing their capital. It requires that the company statutes include certain information, such as

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414 See Title V Chapter 13.
the objectives of the company, the details of its share capital and various rules for managing the company. The Directive sets the minimum capital requirement for an EU PLC at €25,000. It also regulates the distribution of dividends as well as the issue and acquisition of shares.

Ukrainian legislation in 2017 complies with many of the rules of this Directive. In 2014 and 2015, parliament revised the law on company registration.415 As a result, the registration of companies became easier, with the goal of completing formalities in 24 hours. It also added annual accounts and foundation documents to the business registries. Access to business registry information was extended with free access to basic information and ability to download basic data for all legal entities. However, annual statements and company statutes are not available online.

Ukrainian corporate law also seems to comply with the rules on formation and nullity of companies. Ukrainian corporate law416 was revised significantly in 2015-2017. A separate law on (private) limited liability companies was approved in the early 2018. Major revisions were made that brought shareholder rights, disclosure requirements for public companies and merger rules closer to the EU rules. They also reduced sharply reduced number of public companies by allowing all non-listed companies one-time opt-out from rules applicable for public companies. Thus extended requirements for public companies would apply for only a few listed companies that now exist, those non-listed public companies that choose to continue as such, and new public offerings. Ukrainian complies with most of the merger and acquisitions provisions of Directive 2017/1152/EU and also Directive 2004/25/EC on takeover bids.

In addition, Annex XXXIV includes several other EU directives in the area of company law that Ukraine has to put into effect within two to four years after the Agreement enters into force (Table 21.1). In this regard Ukraine seems to have implemented rules regarding single-member companies and some of the transparency rules for listed

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companies. However, recent large changes in corporate law will have to be tested in practice and remaining shortfalls in harmonisation will need to be rectified.

Table 21.1 EU Directives on company law in the EU-Ukraine Agreement

<table>
<thead>
<tr>
<th>Directive</th>
<th>Substance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council Directive 89/666/EEC concerning disclosure requirements in respect of branches opened in a member state by certain types of companies governed by the law of another state (replaced by Directive 2017/1132/EU)</td>
<td>Introduces disclosure requirements for foreign branches of companies.</td>
</tr>
<tr>
<td>Directive 89/667/EEC on single-member private limited liability companies (replaced by Directive 2009/102/EC)</td>
<td>Provides a framework for setting up a single-member company (in which all shares are held by a single shareholder).</td>
</tr>
<tr>
<td>Directive 2004/25/EC on takeover bids</td>
<td>Establishes minimum guidelines for the conduct of takeover bids involving the securities of companies, where all or some of those securities are admitted to trading on a regulated market.</td>
</tr>
<tr>
<td>Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (amended by Directive 2013/50/EU)</td>
<td>Seeks to improve information supplied to investors about issuers of securities admitted to trading on a regulated market. This transparency Directive was amended in 2013 by Directive 2013/50/EU, which aims at reducing the administrative burden for SMEs.</td>
</tr>
</tbody>
</table>

Establishes rules to help exercise shareholders’ rights at general meetings of companies that have their registered office in an EU country and are listed on an official stock exchange. This Directive was amended by Directive 2017/828 which facilitates the interaction between companies and their shareholders and adds transparency of institutional investors.

*Source: Annex XXXIV of the EU-Ukraine Agreement.*

**Accounting and auditing.** Here Ukraine is to harmonise its legislation with Council Directive 78/660/EEC on the annual accounts of certain types of companies and Council Directive 83/349/EEC on consolidated accounts. These two directives have since been replaced by Directive 2013/34/EU, which simplifies and reduces the administrative burdens for firms. It is intended to facilitate greater EU cross-border comparability of accounts. It also introduces mandatory requirements for disclosing payments by companies in the extractive and logging of primary forest industries to government agencies.

Ukraine will also need to approximate Regulation 1606/2002/EC on the application of international accounting standards. This regulation requires EU companies to prepare their accounts in accordance with international accounting standards (IAS) and international financial reporting standards (IFRS). These standards are issued by the International Accounting Standards Board. In 2018 major revisions to Accounting law⁴¹⁷ became effective and the new Auditing law is due to become effective in October 2018⁴¹⁸. These laws seem to implement most of the provisions of the Accounting and Auditing Directives. Ukrainian law now requires reporting based on IAS and IFRS for public companies, banks and other financial sector companies, public interest entities and companies in extractive

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⁴¹⁸ [Audit and Auditing Law](http://zakon.rada.gov.ua/go/2258-19).
industry. However the financial regulator expressed concern that a majority of non-bank financial services providers would qualify for the simplification of reporting requirements allowed for small and medium enterprises.

**Corporate governance.** The EU and Ukraine agreed to cooperate on the further development of corporate governance policy in line with international standards (i.e. the OECD Principles on Corporate Governance), as well as gradual approximation to the EU legislation listed in Annex XXXVI. This includes Commission Recommendation 2004/913/EC on fostering an appropriate regime for the remuneration of directors of listed companies and Recommendation 2005/162/EC on the role of non-executive or supervisory directors of listed companies and the committees of the supervisory board. After the financial crisis, these two recommendations were completed by Recommendation 2009/385/EC. With regard to the structure of the policy on directors’ remuneration, these recommendations require a balance between fixed and variable remuneration, with the allocation of the variable component conditioned on performance criteria. Termination payments (‘golden parachutes’) should also be subject to various limitations. Each listed company should publish a statement on these aspects of its remuneration policy.

In 2014, the Ukrainian securities regulator (NSSMC) approved a new version of the Corporate Governance guidelines, which seems to be based on the OECD’s Principles of Corporate Governance. Recent revisions of the corporate law (see above) expanded corporate governance requirements to public companies, including rules on the remuneration of directors and independent board members. Independent directors are optional for private corporations, but public and state-controlled corporations are required to appoint at least one-third of independent directors. Independent directors have to chair and constitute a majority of members in the audit and remuneration committees of supervisory boards for these companies.

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Company law at a glance

The Association Agreement does not impose strict obligations on Ukraine in the area of company law, corporate governance or accounting. Instead, it provides a framework of EU company law for Ukraine to implement.

Ukraine has moved to transpose EU rules relatively quickly. Some provisions have already been incorporated and a recent revamp of company law applied most of the remaining key provisions.

Alignment with EU company law will improve Ukraine’s business climate and help to create a transparent environment for companies, including an appropriate level of protection for company shareholders and creditors. It remains to be seen how, however, it will be implemented given weak government institutions and judicial system.
22. AGRICULTURE

Sometimes referred to as ‘the bread basket of Europe’, Ukraine’s expanses of rich black earth endow it with both a huge capacity and potential in the agricultural and food sectors. Necessary reforms to the farm sector were slow to get under way in the post-Soviet period, but are now progressing well.

Provisions of the Agreement

The text states that: “the Parties shall cooperate to promote agricultural and rural policies, in particular through progressive convergence of policies and legislation”. It goes on to list general objectives, such as improving competitiveness, exchanging best practices and promoting modern and sustainable agricultural production (Arts 403-404).

Art. 405 says that “the parties will support gradual approximation to relevant EU law and standards”, in particular those listed in Annex XXXVIII, which contains 58 EU laws that constitute the essence of the EU’s agricultural policy (see Box 22.1). These include the mechanisms of market organisation and support measures for specific commodities and rules for direct income support payments for farmers.

There are no timeframes stipulated for approximation, however, and the texts are careful to say that the listed regulations “constitute the legislative references when gradual approximation of legislation in a specific sector or product is considered by the Ukrainian side” (introductory phrase in Annex XXXVIII).
Box 22.1 Summary of EU agricultural policy laws referred to in the Agreement

*Quality policy*, 7 regulations. These set the rules for the protection of geographic indications and traditional specialities.

*Organic farming*, 3 regulations that set rules for organic production and the labelling of organic products.

*Genetically modified crops*, 1 recommendation offering guidelines for the coexistence of genetically modified crops and conventional and organic farming.

*Biodiversity*, 1 regulation that establishes a programme in the EU for conservation of genetic resources in agriculture.

*Marketing standards for plants and derived products, fruit and vegetables*, 33 regulations and directives. These mostly set technical standards for the marketing of specific commodities, as well as basic regulations on the organisation of markets and direct support schemes.

*Marketing standards for live animals and animal products*, 14 regulations and directives that mostly set technical standards for the marketing of specific commodities, as well as for the common organisation of markets.

The subsequently agreed Association Agenda document of 16 March 2015 defines the approach as follows: “The Parties cooperate to support Ukraine ... to prepare for implementation of EU acquis mentioned in relevant annexes of the Association Agreement, in particular through enhanced activities of the established agricultural dialogue”.

While the texts might suggest different legal interpretations of precisely what commitments Ukraine is undertaking, the overall message is that Ukraine retains much flexibility over how far or how fast to replicate elements of EU farm policy.

The policy dialogue, which takes place in a Sub-Committee of the Association Council, is supported by technical assistance projects. One of these supports the improvement of the land market in line with best EU practices, concerning land law, the land cadastre and related administrative structures (€1.8 million). Another aims to strengthen the capacity of the Ministry of Agrarian Policy to implement its 2015-20 strategy (€3 million).

The EU can also help with funding and investment; for example in October 2015 the European Investment Bank (EIB) agreed to provide
€400 million of loan funding for projects to modernise Ukraine's agricultural infrastructure and to develop aquaculture. Key investment gaps to be addressed include agricultural field machinery; drying, storage, processing and logistics capacity; and investments in aquaculture. The loan will also be available for investment in public sector infrastructure, such as testing laboratories, research and vocational training facilities and fish-stock monitoring capacity that supports the sustainable flow of produce from producer to consumer along these value chains.

**Developments in Ukraine’s agriculture sector and policy**

**Overview of the sector.** Ukraine’s natural resources are well suited for agricultural production, with 69% of its territory allocated to agriculture, much of which is the especially fertile chernozem soil (black earth). Another important advantage is the year-round access to deep port capacities on the Black Sea coast, which are crucial for grain exports. A well-developed crop production sector provides cheap feed and raw materials for animal farming and the food industry. Ukraine is already the world’s largest sunflower oil exporter and a leading wheat and poultry exporter.

The agricultural sector provides about 14% of Ukraine’s GDP. In 2017, agricultural production decreased by 2.7% (after 6.3% growth in 2016), while the food industry grew by 4.2%. The agri-food sector has gained a foothold as the leading export sector in Ukraine. In 2017, agri-food exports reached $17.9 billion, or 16.3% more than in 2016 ($15.5 billion). Plant products made together 93.2% of this value and accounted for $2.1 billion out of $2.4 billion of total export growth. However, products of animal origin demonstrated a higher growth rate (44.8%) after some Ukrainian producers of animal-origin goods became authorised to exports to the EU. Sunflower oil (24% of total value), corn (16.6%) and grain (15.4%) are the top three agricultural. As of today, Asian and the EU countries are the main consumers of Ukrainian agri-food exports (42.6% and 32.4% of total value respectively).

In spite of mainly positive trends, continuing lack of financial resources at the enterprise level, an underdeveloped infrastructure and arbitrary state regulations hold back productivity growth. Average

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420 The State Statistics Service of Ukraine.
421 See http://minagro.gov.ua/node/25237.
yields of wheat, corn, rapeseed, and sunflower seed are all lower than in neighbouring Poland, despite better natural conditions. Changes in agricultural policy could remove the factors hampering the huge potential of Ukraine’s agricultural production.

The most crucial agricultural reform in the history of independent Ukraine took place in the 1990s, when the land of former collective farms was distributed among workers and rural employees. As of today, about 7 million people own shares of agricultural land (“pai”) that make together 27.7 million hectares. Agricultural land is still under a moratorium, however, that forbids its owners to sell or mortgage their land shares.\textsuperscript{422} The moratorium was adopted by the \textit{Verkhovna Rada} in 2001 and still remains in force (see further below).\textsuperscript{423} Today the majority of ‘pai’ owners are of retirement age and only have limited access to credit resources for several reasons - high interest rates, the underdeveloped system of agricultural credits, and lack of collateral security. As a result, the majority of owners do not cultivate the land themselves, but rent it to enterprises. \textbf{Strategic planning of reforms}. Today the reforms in the sector are guided by the Coalition Agreement, the “Strategy for Sustainable Development: Ukraine-2020” (drawn up in compliance with a memorandum of understanding with the IMF), and “The Medium-Term Government Priority Action Plan up to 2020”\textsuperscript{424} In addition, in 2015 the Ministry of Agrarian Policy and Food, with the support of Ukrainian and EU experts, developed a strategy and action plan for 2015-20 to guide agricultural reforms over the next five years.\textsuperscript{425} Further, the Government endorsed the "Concept of the State Target Program for Agricultural Development until 2020",\textsuperscript{426} and the Ministry prepared a draft of the Program.\textsuperscript{427} In

\textsuperscript{422}See https://voxukraine.org/uk/moratoriynazemli-ua/.


\textsuperscript{425}Ministry of Agrarian Policy and Food of Ukraine, “Single and Comprehensive Strategy and Action Plan for Agriculture and Rural Development in Ukraine for 2015-2020”, October 2015. (The Strategy was approved by the National Reforms Council, but the Cabinet of Ministers has not validated it.)

\textsuperscript{426}See https://www.kmu.gov.ua/ua/npas/248907971.

\textsuperscript{427}See http://minagro.gov.ua/node/10516 (it has not been approved).
September 2017, the Cabinet of Ministers adopted the "Development concept for farming and agriculture cooperation in 2018-2020". One of its goals is to increase the share of farmers in gross agricultural output from 6-8% to 12%. Therefore, this field might be one of the reform priorities in the sector in the next years. In spite of the preparation of many documents, it seems that the sector lacks coherent strategic planning.

In October 2017, the Government approved the Action Plan for Implementation of the EU-Ukraine Association Agreement. It envisages measures considering quality policy, organic farming, fishing, GMOs, standards for trade of plants and animals, etc. In total, the Action Plan contains more than 400 agriculture-related objectives (about a fifth of the total number in the document) that implement EU directives and regulations and must be fulfilled in the period 2018-21. The highest number of objectives is planned for 2020-21.

Figure 22.1 Schedule for Implementation of the EU-Ukraine AA in the agricultural sector and development of the rural areas (based on the Action Plan for Implementation of the EU-Ukraine AA)

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In March 2018, the draft law on the fundamentals of state agrarian policy and state policy of rural development was submitted to the Verkhovna Rada. It is expected to become a basic law to determine priorities of agrarian policy.

**Overview of recent developments.** Land reform remains one of the key concerns that could be decisive for development of the sector. It is estimated that the lifting of the moratorium would bring some €50 billion to finance agriculture in Ukraine. Since 2016, land reform has been one of the key requirements for new instalments of IMF financial support. In December 2017, however, the Verkhovna Rada prolonged the moratorium until 1 January 2019. As of June 2018, the Cabinet of Ministers had not presented a draft law on the sale of agricultural land. The forthcoming parliamentary and presidential elections in 2019 create further uncertainties and doubts over the prospects for land reform.

Deregulation measures dominated the agricultural reforms of 2014-15, cancelling unnecessary legislation with immediate effect and mostly without creating new regulations. Overall, 56 agricultural permits and procedures were cancelled in 2015–16, creating estimated savings of 12 billion UAH. In particular, Parliament cancelled grain quality certificates, the mandatory certification of warehouses on compliance of services for grain and the licensing of import of plant protection products. The issuing of the phytosanitary certificates was accelerated and the registration of nitrogenous fertilisers simplified. Various other permits regarding transportation of plant products, the import of agrochemicals, livestock certification, food safety, fisheries etc. Deregulation remained on the agenda in the years of 2016-17. Ukraine adopted laws and regulations on food safety, feed quality control, identification and registration of animals and animal by-products.

In the 2016-17, much work was undertaken to harmonise Ukraine’s agri-food legislation with that of the EU (see also chapter 8 of

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430 See http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63695/.
In 2016, within the administrative reform, Ukraine launched the State Service on Food Safety and Consumer Protection, which is now a single body responsible for consumer protection, veterinary and phytosanitary service, sanitary and epidemiological service. In the same year, the Government introduced regulations on organic food (products of beekeeping, animal or plant origin). Besides, a draft law on organic production was submitted to the Verkhovna Rada for consideration. In December 2017, the Parliament approved the law “On Safety and Hygiene of Forages”. Provisions of the new law will improve safety of the production chain in the sector. The harmonisation of Ukrainian laws with those of the EU will open the EU market for the export of new products, but there are still more than 230 EU directives and regulations that must be implemented by the end of 2021. Until the provisions of the Agreement are implemented, Ukraine can use arrangements that provide the possibility for individual enterprises to be verified for SPS compliance.

Deregulation and harmonisation stimulated development of the sector, and access to international markets. Ukrainian dairy produce and egg exporters started gaining access to the EU market in 2015. This harmonisation also facilitated successful negotiations regarding the export of dairy products from Ukraine to China. Also, in February 2016, companies already exporting poultry to EU received the permission to export their products to the United Arab Emirates. As of end of 2017, 289 enterprises were recognised for export to the EU. Deregulation measures also decreased the costs of doing business in the sector. In 2017, it was estimated that agricultural enterprises could save $270 million due to simpler and better certification procedures.

Another important element of agricultural policy is financial support for producers. Due to the constant shortage of budgetary resources, Ukraine built a support system that relies not on direct

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436 The Action Plan for Implementation of the EU-Ukraine AA.

payments but on tax privileges and exemptions. According to OECD estimates, the fixed agricultural tax and special VAT regime constituted 93% of all support to agriculture in 2014. Expert opinions differ about the effectiveness of this system. According to one expert, this support is adequate and at the EU’s level, if account is also taken of the very low rent prices for agricultural land in Ukraine. Another expert found that support was insignificant since 2011, given the absence of VAT refunds for grain exporters.

The Association Agreement with the EU envisages harmonisation of Ukraine’s tax legislation. Besides, the IMF requested the elimination of tax exemptions in agriculture. Since 2016, the special VAT regime was gradually eliminated and replaced by direct state subsidies. In 2017, agricultural producers received about 6 billion UAH; 6.3 billion UAH were earmarked for 2018. However, experts have criticised the design of the new system as almost half of the money was distributed to big companies in 2017.

There have been some major changes concerning VAT refunds to exporters of grain and technical crops (changed several times over recent years). Ukraine restored the refund of VAT to grain exporters, although it temporarily limited the refund to exporters of oilseeds (sunflower, soybeans, and rapeseed).

The future development of the sector remains unclear. On the one hand, Ukraine keeps up its reforms in the field of SPS, which directly influences the agri-food industry. The sector demonstrates significant growth in exports. On the other hand, the Government should improve enterprises’ access to financial resources, decrease administrative burdens on producers and lead to better management of land resources.

439 See http://voxukraine.org/2015/02/23/is-ukrainian-agriculture-subsidized/.
Agricultural policy at a glance

Ukraine has a huge capacity and potential in the agri-food sector. Recently, the agro-food has become the leading export sector of Ukraine.

Reforms in the post-Soviet period got off to a slow start. Important reforms have been prepared, but the key issue of land reform has been postponed.

The contribution of the Agreement is essentially through policy dialogue, supported by technical assistance and investment finance.

The Agreement contains many references to EU agricultural legislation. The Action Plan for the Association Agreement implementation sets a timetable of reforms in the sector. They should be finished by the end of 2021.
23. EMPLOYMENT AND SOCIAL POLICY

This chapter of the Association Agreement seeks to promote cooperation over a large part of EU labour law and related conditions of work, much of which is closely related to the content of International Labour Organisation (ILO) conventions. A major reform of the Ukrainian Labour Code is currently before the parliament and is long overdue, modernising the Code inherited from the Soviet period.

Provisions of the Agreement

The Agreement sets out (in Annex XXIX) a comprehensive agenda for gradual approximation under three basic headings: labour law, anti-discrimination and gender equality and health and safety at work. The first two headings cover basic principles of the labour code, which leave a wide margin of flexibility as to how onerous the implementing provisions may be. For example, one can compare the broad range of actual policies followed by different EU member states, all of which are in conformity with EU law. This is important when considering how to ensure that approximation of the EU legislation does not impose excessive costs in Ukraine.

There is a close relationship between the content of many EU directives and ILO conventions, as explained in Box 23.1.
Box 23.1 Relationships between EU employment and social directives and ILO conventions

Quotation from an official EU document:

“There is an interplay between EU labour law, the European Social Charter and ILO Conventions: EU law, in particular the Charter of Fundamental Rights, takes into account the European Social Charter and ILO Conventions and in turn influences the evolving content and monitoring of the latter instruments.

All EU member states are also members of the ILO. The EU is committed to promoting the ILO’s Decent Work agenda to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen social dialogue on work-related issues.

All EU countries have ratified the core labour standards – that is, the fundamental ILO Conventions on freedom of association, collective bargaining, forced and child labour, equal remuneration and the elimination of discrimination. EU countries have also ratified the ILO Governance Conventions on labour inspection, employment policy and tripartite consultations, as well as a considerable number of other ILO Conventions.

While ILO standards cover a wider range of areas than those in which the EU is competent to legislate and EU law often goes beyond the minimum provisions of ILO Conventions, the principles that underlie the action of both organisations are similar. There is much common ground in the content of EU Directives and ILO Conventions, with EU law reinforcing ILO standards. Directives on issues such as working time and young workers (see Chapter 3) explicitly seek to take into account relevant ILO standards.

The protection, realisation and enforcement of core labour standards as well as the promotion of the ratification and effective application of other up-to-date ILO Conventions underpinning the Decent Work Agenda, are part of a growing number of bilateral agreements between EU and third countries, such as the new generation of EU free trade agreements. The follow-up mechanisms of these agreements include monitoring mechanisms involving social partners.”

Labour law. The individual employment conditions Directive (991/533/EEC) establishes the employer’s obligation to inform employees in writing of the conditions applicable to the contract or employment relationship. The aim of the Directive is to provide employees with improved protection, to avoid uncertainty and insecurity about the terms of the employment relationship and to create greater transparency on the labour market.

The fixed-term contract Directive (1999/70/EC) aims to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and to prevent abuses arising from the use of successive fixed-term employment contracts. The part-time contract Directive (97/81/EC) sets out to eliminate unjustified discrimination against part-time workers and improve the quality of part-time work. It also aims to facilitate the development of part-time work on a voluntary basis and contribute to the flexible organisation of working time in a way that takes account of employers’ and workers’ needs.

The Directive on collective redundancies (98/59/EC) sets out requirements for the information to be given to workers on the reasons, the numbers and categories of workers concerned, and of redundancy compensations payments. The public authorities have to be notified, and the redundancies cannot be effective within 30 days of this notification.

These directives require approximation within three to four years.

Anti-discrimination and gender equality. This section includes four directives aiming at anti-discrimination and gender equality in general terms, with two more specific directives concerning parental leave and conditions for pregnant workers.

The employment equality framework Directive (2000/78/EC) is a key part of EU labour law, which aims to combat discrimination in conditions of work or contract on grounds of disability, sexual orientation, religion or belief and age in the workplace. This framework directive accompanies the equal treatment Directive on gender (2004/113/EC) and the racial equality Directive (2000/43/EC).

The equal treatment Directive on gender prohibits any less favourable treatment of men or women by reason of gender, or of women due to pregnancy or maternity. It also prohibits sexual
harassment. A detailed analysis of this directive has been published by the European Commission.\footnote{Susanne Burri and Sacha Prechal, “EU Gender Equality Law - Update 2013”, European Network of Legal Experts in Gender Law, European Commission, Directorate-General for Justice Unit JUST/D/1, Theme - Equal Treatment Legislation.}

The \textit{racial equality Directive} implements the principle of equal treatment between people, irrespective of racial or ethnic origin. It gives protection against discrimination in employment and training, education, social protection and gives victims of discrimination a right to make a complaint through a judicial or administrative procedure. It further provides for the establishment of organisations to promote equal treatment and assistance to victims of racial discrimination.

\textit{The Directives on parental leave} (96/34/EC) provides for three months of leave; the \textit{Directive on pregnant workers} (92/85/EEC) prohibits work that risk engendering health and safety and also for leave before and/or after confinement of 14 weeks.

\textbf{Health and safety at work.} The centrepiece is the \textit{Framework Directive for health and safety at work} (89/391/EEC). The scope of the directive is expansive, applying to all sectors including industry, agriculture, commerce and services. The Directive describes employer obligations, which include providing workers with information and safety training, taking necessary measures for first aid and fire-fighting. This Directive is limited to setting out general principles. It is to be approximated by Ukraine in a relatively short period of three years, but its concrete implementation will depend more on a family of 27 implementing directives, specifying which the safety requirements for particularly dangerous products, such as carcinogens or explosives, or the working environment in specific industries such as construction sites or underground mineral extraction.

Some examples illustrate the substance of the specific directives. \textit{The Directive for protection against asbestos} (83/18/EEC) reduces the limit value for occupational exposure of workers to asbestos at 0.1 fibres per cm\textsuperscript{3}, while the \textit{Directive for safety against noise} (2003/10/EC) sets the exposure limit value at 87 decibels. An example of particular significance for the coal mining industry in Ukraine, which suffers a high incidence of tragic mining accidents, is a \textit{Directive on the minimum requirements for improving the safety in surface and underground mineral-extracting industries} (92/104/EEC), which sets out a comprehensive set of minimum standards.
Implementation perspectives

According to the Association Agreement Ukraine should ensure “gradual approximation” of its labour regulation to the EU law, as well as ratify ILO conventions. The parties agreed to “strengthen their dialogue and cooperation on promoting the decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and non-discrimination” (Art. 419). Important legislative reforms are currently under way in Ukraine, which will be largely consistent with the provisions of the Agreement.

Ukraine has already ratified all fundamental ILO conventions and core standards, which are mostly taken into account in the effective legislation.

The main legislative act regulating the labour market in Ukraine is the Labour Code, inherited from the former Soviet Union. It was amended many times since Ukraine became independent. However, it remained very rigid, providing de jure little flexibility on the labour market. It focuses on rights and guarantees for employees, while paying little attention to employers (dismissal of employees is very difficult). The Code does not have specific provisions on mass redundancies. Actual rigidities are lower in practice as law enforcement is poor, which leaves employees without adequate protection and puts employers at risk of penalties if a violation is identified.

Heated debates on the approval of new Labour Code have been ongoing for many years, but a new law taking account of the new realities of the market economy and modern labour market requirements has not yet been approved. A new Draft Code was submitted to Parliament at the end of 2014 (draft law No. 1658), and approved in its first reading on 5 November 2015. The new law envisages more flexibility in labour relations and more rights provided to employers. The major differences with the current version of the Labour Code include:

- Written contracts become compulsory.

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444 The current Labour Code was approved in 1971 (the Law No. 322-VIII, from 10 December 1971.

Employers have a right to dismiss an employee for skills mismatch, publication of official secrets and violation of labour safety rules.
- There is the prohibition of discrimination on the basis of a person’s race, gender, sexual orientation, etc.
- The working week is to be limited to 40 hours, but could be increased to 44 hours upon the agreement of both sides.
- There will be regulation of a flexible work schedule and work from home.
- The list of reasons for fixed-term contracts is to be extended.
- Redundancy payments are to be increased.
- Special provisions of employees’ dismissals are envisaged for cases of mass redundancies.

Overall, these changes seem to be mostly in compliance with the Association Agreement. According to the Ministry of Social Policy, the provisions of the draft Labour Code comply with EU legislation; but Ukrainian trade unions did not agree with this claiming that their role will be very limited. Taking into account the lack of consensus between major stakeholders (government, trade unions and representatives of employers), on 12 November 2015 the text of the draft Labour Code was sent to the ILO with the request to analyse its compliance with international standards and ILO Conventions. The ILO position on the draft was received in April 2016. It concluded that the Draft Labour Code broadly complies with the ILO Conventions, but made several remarks. General recommendations were made to reduce the level of detail in some provisions, as they should be approved in laws or secondary legislation. Many of these recommendations were introduced into the version of the Draft Labour Code prepared for the second reading in 2017. It is still unclear, however, when the Parliament will vote on the Draft following requests to the Speaker of the Parliament for another round of talks with trade unions and taking into account political resistance.

Meanwhile, on 12 November 2015, members of the Rada introduced the anti-discrimination clause into the current version of the Labour Code to fulfil obligations undertaken in the Visa Liberalisation Action Plan.

Another essential regulation of labour relations is the Law on Employment of the Population, which was finally approved in 2012

446 See http://search.ligazakon.ua/l_doc2.nsf/link1/MU16012.html.
after long discussions, replacing the law of 1991. This law regulates many labour market issues, such as the rights of employees, guarantees in case of job loss, conditions for unemployment benefits, etc. The law also contains provisions on collective redundancies, which comply with the respective EU Directive.

The new Law on Collective Bargaining has not been elaborated, even though a working group was established in 2017. The discussions on the involving the NGOs into the social dialogue has started, but so far without much success.

**Health and safety at work.** The Constitution of Ukraine states that every person has a right to safe and healthy work conditions (Art. 43). Major legislative acts that regulate safety at work include the Law on Labour Protection, the Law on Compulsory State Insurance in Case of Working Accidents and Occupational Diseases, and a number of normative acts.

The Law on Labour Protection was approved in 1992, revised in 2002 and later amended several times. According to the law, employers should inform an employee of the working conditions, and the presence at the workplace of hazardous and harmful factors. There are provisions for special clothing, footwear and other personal protective equipment for those working in dangerous environments. The employer is also responsible for financing regular medical checks and work safety measures. Such provisions mostly comply with the EU Framework Directive for health and safety (including Directive 92/104/EEC for mineral-extracting industries), although the Directive has a larger list of employers’ responsibilities than Ukrainian legislation. However, law enforcement remains low, especially in the coal mining sector, which sees many deaths due to violation of work safety requirements.

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447 The Law No. 5067–VI from 5 July 2012, became effective in 2013.
448 Law on employment of the population, No. 03-XII from 1 March 1991.
449 This Law defines the definition of the collective (mass) redundancies and broadly defines policies related to these issues. In turn, current Draft Labour Code envisages measures that could be taken by employers to reduce the risk of collective redundancies.
452 E.g. not all miners carry gas meters with them and cannot check whether the gas level exceeds safety norms.
guilty of causing accidents at work. The system of work accident insurance is inefficient. 453 Firms have no incentive to invest in work safety as their insurance premium remains unchanged.

Since 2017, the Government has strengthened authorities of labour inspectors, and in 2018, joint inspections by the representatives of the Labour Inspection, the State Fiscal Service, and the local councils have been launched. The ILO does not support joint inspections.

According to the Ministry of Social Policy, national legislation is already mostly compliant with EU norms (see Table 23.1). But the Ministry has failed to implement required directives according to the schedule, 454 which is partly linked to the failure to approve the new version of the Labour Code.

There were some achievements in the promotion of equal treatment between men and women. The government introduced a new position, namely the Commissioner on Gender Policy, and in December 2017 appointed Kateryna Levchenko as the Commissioner. Besides, in 2017, it removed almost all restrictions on the number of jobs that cannot be occupied by women. The Ministry of Finance is to integrate gender budgeting into its strategic documents.

Table 23.1 Implementation plans of EU directives on labour issues

<table>
<thead>
<tr>
<th>Directive</th>
<th>Status of compliance of national legislation with the provisions of directives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directive 2002/14/EC: informing and consulting employees</td>
<td>Mostly in compliance*</td>
</tr>
<tr>
<td>Directive 97/81/EU: part-time work</td>
<td>Mostly in compliance*</td>
</tr>
<tr>
<td>Directive 91/383/EEC: fixed-duration or temporary employment relationship</td>
<td>Mostly in compliance</td>
</tr>
<tr>
<td>Directive 91/533/EEC: obligation to inform employees</td>
<td>Partial compliance</td>
</tr>
<tr>
<td>Directive 1999/70/EC: fixed-term employment</td>
<td>In compliance</td>
</tr>
</tbody>
</table>

Directive 98/59/EC: collective redundancies  Mostly in compliance*
Directive 2004/113/EC: equal treatment between men and women  Mostly in compliance
Directive 2010/18/EC: parental leave  Mostly in compliance
Directive 79/7/EEC: social security  Mostly in compliance
Directive 2000/43/EC: racial equality  Mostly in compliance
Directive 2000/78/EC: employment equality framework  Mostly in compliance
Directive 2003/41/EC: institutions for occupational retirement provision  Mostly in compliance

*Some of the provisions of these directives are already included in the draft Labour Code. Source: Ministry of Social Policy of Ukraine.

The State Labour Service has already approved the implementation plans for several directives related to the Framework Directive for health and safety (89/391/EEC), including those concerning computer screen equipment (90/270/EEC), temporary or mobile construction sites (92/57/EEC), mineral-extracting industries (92/104/EEC and 92/91/EEC) and the use of work equipment (2009/104/EEC).

Overall, the government currently fails to implement certain obligations taken in the Association Agreement in the field of employment, mainly the adoption of the proposed new version of the Labour Code, which envisages most of the changes required for 2017. If the new Code is introduced, more changes would be needed in laws and secondary legislation.

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Employment and social policy at a glance

The Association Agreement calls for Ukraine to ratify ILO conventions and approximate EU directives. Ukraine has already ratified all major ILO conventions.

A new draft Labour Code was approved in the first reading in 2015 and prepared for the second reading in 2017 after the ILO provided its recommendations. Most of the current version of the draft complies with the EU directives. However, the Parliament has failed to approve this important legislation, which is opposed by trade unions, as the labour market would become less rigid and favour employers.

Overall, the implementation of the Association Agreement is likely to help move Ukrainian labour regulation towards best international practice. Attention should be focused not only on legislative work, but also on measures that would ensure law enforcement.
24. EDUCATION, TRAINING AND CULTURE

Education and training

The Association Agreement sets out basic aims for the education system, notably its reform, modernisation and convergence in the field of higher education on the Bologna Process and the enhancement of the quality and relevance of higher education. While the Agreement is largely silent on the instruments for doing this, the Association Agenda document is more substantial.

Several indices on Ukraine’s educational standards and human capital endowment show its current rankings to be “very high”. The global human capital index calculated by the World Economic Forum (WEF) is the most favourable, ranking Ukraine 24th out of 130 countries in 2017, ahead of most of its immediate neighbours Poland, Hungary and Slovakia, and most of the EU’s southern member states (such as Portugal, Spain, Italy and Romania). The UNDP’s education index ranks Ukraine 40th out of 188 countries, slightly behind other East European countries. The UNDP’s education index for Ukraine has been improving steadily since 1980, similar to developments observed in its immediate neighbours. Thus, unlike Ukraine’s economic performance, its relative performance in education and human capital endowment is comparable to its EU neighbours, such as Poland and

Hungary. This suggests a human capital basis for a major recovery in economic performance.

The EU supports the implementation of the new 2014 Ukrainian Law on Higher Education, with a view to further integration into the European Higher Education Area in line with the Bologna Process. The main objective of the Bologna Process since its inception in 1999 has been to ensure more comparable, compatible and coherent systems of higher education in Europe. Ukraine joined the Bologna Process in May 2005, leading to the adoption of the three-cycle higher education system (bachelor, masters and doctorate). According to the new system, bachelor programmes should include no less than 240 ECTS credits; masters programmes are expected to consist of no less than 120 ECTS credits, and doctoral programmes no less than 180 ECTS credits. The new law will bring Ukrainian universities into compliance with the Bologna Agreement, recognise foreign degrees and introduce several other reforms (decentralise administration and simplify bureaucracy, give more control to universities, expand student self-governance and promote transparency). The full implementation of the Bologna model, however, remains challenging. The adopted regulations must be implemented in order to put the new law into force. The proper functioning of the National Agency for Higher Education Quality Assurance, established in September 2015, is one of the important tasks. Important reforms are also necessary in quality assurance through introducing the National Qualification Framework, in alignment with the European Qualifications Framework, as well as in making use of the European Credit System for Vocational Education and Training. The Association Agenda also promotes the introduction of international assessment criteria and the professionalisation of higher education management.

The EU’s largest direct contribution is through the Erasmus+ programme for educational exchanges, training, youth and sport. For the period 2014-20, there is a total budget for the EU itself plus third countries of €14.7 billion. In the field of higher education, Erasmus+ supports the following main actions:

- International credit mobility of individuals, with the Erasmus Mundus Joint Master Degrees promoting the mobility of students and staff from and to partner countries;

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459 ECTS stands for the European Credit Transfer and Accumulation System.

460 See http://naqa.gov.ua/.
- Capacity-building projects in higher education to modernise and internationalise higher education institutions and systems in partner countries, with a special focus on those neighbouring the EU;
- Support to policy dialogue through the network of Higher Education Reform Experts in partner countries neighbouring the EU, an international alumni association and promotion events;
- Jean Monnet activities to stimulate teaching and research in the field of European Union studies worldwide.\textsuperscript{461}

Institutional arrangements to support the implementation of the ERASMUS+ Programme include the National ERASMUS+ office (NEO), which was officially registered in the Ministry of Economic Development and Trade in March 2015. The NEO’s responsibility covers all issues dedicated to supporting, promoting, monitoring and disseminating activities related to the Erasmus+ activities in higher education open to cooperation with partner countries.\textsuperscript{462}

During the 2014-20 period, more than 4,000 young Ukrainians are expected to benefit from university exchanges, and 7000 Ukrainians will have the opportunity to take part in youth exchanges under the European Voluntary Service programme.

The AA encourages the development of vocational education and training as well as professional life-long learning (in line with Recommendation 2008/C111/01), taking into account the European Quality Assurance Reference framework for Vocational Education and Training.

\textbf{Culture}

The cultural cooperation between Ukraine and the EU is based on the promotion of exchanges and the mobility of arts and artists. Ukraine participates fully in the EU’s Creative Europe programme for cultural and creative sectors, signing an agreement to this effect with the Commission in November 2015.\textsuperscript{463} Participation in this programme will help Ukrainian cultural and creative organisations to collaborate with

\textsuperscript{462} See www.erasmusplus.org.ua/en/.
\textsuperscript{463} The Verkhovna Rada ratified the agreement in February 2016.
partners from all over Europe and access funding for cultural cooperation projects, literary translation schemes, cultural networks and platforms. For the Ukrainian audio-visual sector it will be also opportunity to obtain funding for training, festivals, audience development and market access activities. Creative Europe supports transnational cooperation projects involving cultural and creative organisations from different countries taking part in the programme. As of October 2017, Ukraine had submitted three applications that unfortunately were not successful, so more effort for full participation in the programme will be needed.

The parties also pledge to cooperate in the framework of UNESCO and the Council of Europe, in order to sustain cultural diversity and preserve and valorise cultural and historical heritage.

Education, training and culture at a glance

Ukraine’s human capital endowment is rated as ‘high’ in international comparisons, comparable to its immediate European neighbours, but with worrying evidence of relative decline in recent decades.

Basic education reforms are supported in the Association Agreement, notably for Higher Education through the Bologna Process and European Higher Education Area and with concrete programmes such as Erasmus+ benefiting large numbers of Ukrainian students.

Ukraine has joined the EU’s culture programme with an agreement signed in November 2015.

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Science and technology

The Agreement sets out wide-ranging objectives for cooperation in the area of science and technology, aiming to strengthen research capacities, human potential and the sharing of scientific knowledge. It intends to facilitate the involvement of Ukraine in the European Research Area. While the terms of the Agreement are mostly quite general, it has already been followed up by an important operational agreement signed in March 2015 for Ukraine’s full participation as ‘associated country’ in the Horizon 2020 – the EU Framework Programme for Research and Innovation for the period 2014-20, which was ratified by the Ukrainian Parliament in July 2015.

The Horizon 2020 programme is the centrepiece of the EU’s scientific research activity, endowed with very substantial funds (€80 billion) for the period 2014-2020. The areas eligible for project funding by Horizon 2020 cover both the natural and social sciences, under three main thematic pillars (see Table 25.1 below).466

Ukraine’s associate membership of Horizon 2020 allows it to participate as if an EU member state, including participation in the Horizon 2020 Programme Committees. It also allows Ukrainian teams to take the role of leading partner within consortia. Membership comes

with an obligation to make financial contributions, but half of this can be covered by using the European Neighbourhood Instrument (ENI) funds earmarked for Ukraine.

Table 25.25.1 Main thematic priorities of Horizon 2020

<table>
<thead>
<tr>
<th>Excellent science</th>
<th>Industrial leadership</th>
<th>Societal challenges</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Research Council (ERC)</td>
<td>Leadership in enabling and industrial technologies (LEITs): nanotechnologies, materials, biotechnology, manufacturing, ICT, space</td>
<td>Health, demographic change</td>
</tr>
<tr>
<td>Future and Emerging Technologies</td>
<td>Access to risk finance</td>
<td>Food security, sustainable agriculture, marine research</td>
</tr>
<tr>
<td>Marie Skłodowska-Curie actions career development</td>
<td>Innovation in SMEs</td>
<td>Energy, transport, climate action</td>
</tr>
<tr>
<td>Research infrastructures (including e-infrastructure)</td>
<td></td>
<td>Europe in a changing world; protecting freedom and security</td>
</tr>
</tbody>
</table>

In order to stimulate cooperation between the researchers of the Eastern Partnership (EaP) countries and EU member states, and to encourage participation in the Horizon 2020 programme, the Commission set up a project called ‘STI International Cooperation Network for EaP Countries Plus (EaP PLUS).’ The project consist of five actions, from supporting policy dialogue to outreach:

1. Strategic priority setting through supporting EU-EaP policy dialogue and maximizing the impact of the association to H2020.
2. Stronger interaction between researchers & participation in H2020, i.e. Info days, cooperation with scientific diaspora, and grants for networking.
3. Promotion of the research-innovation interface supporting communities of excellence, i.e. co-patenting analyses, clustering schemes, promotion of the technology platforms concept to EaP countries.
4. Optimal framework conditions and increasing coordination in policies and programmes through training seminars for STI policymakers, increased coordination and synergies with policies and programmes of EU member states.

Communication and outreach through innovative actions.

467 See https://www.eap-plus.eu/.
In the preceding Framework Programme (FP7) Ukraine was one of the top ten most performing third countries, with a total number of 274 successful participations in several priority areas (environment, climate change, transport, aeronautics, nanotechnologies, materials technologies, biotechnologies, food and agriculture and space)\textsuperscript{468}. It was expected that its enhanced status in Horizon 2020 should open the way for an even stronger performance.

As of September 2017, Ukrainian teams had submitted 1,190 applications for 404 concluded calls, while 117 were successful (9.8%), winning total funding of €17.23 million\textsuperscript{469}. Ukraine is ranked in sixth place among the Associated Countries by the number of participations and the EU’s contribution. To support participation in the Horizon 2020 a network of Ukrainian National Contact Points (NCPs) was established, comprising universities and institutions of National Academy of Sciences of Ukraine. As of May 2018, there are 38 NCPs and 5 Regional CPs\textsuperscript{470}.

The Agreement encourages the EU and Ukraine to organise joint measures and events dedicated to scientific and technological advancement. The EU-Ukraine Association Agenda specifically refers to the need to facilitate partnerships between research and industry, and to work towards the marketability of research products.

\begin{flushleft}
\textit{Box 25.1 Examples of collaborative EU-Ukraine research projects}
\end{flushleft}

ANIMA\textsuperscript{471} (Aviation Noise Impact Management through Novel Approaches) aims to develop new methodologies and tools to manage and mitigate the impact of aviation noise, improving the quality of life near airports while facilitating the growth and competitiveness of the EU aviation sector within the environmental limits. The project budget is €7.5 million for the period 2015-19 for the consortium, which includes 22 partners from 11 countries. The Ukrainian partner is the National Aviation University.

\textsuperscript{468} See https://ec.europa.eu/research/evaluations/pdf/archive/fp7_monitoring_reports/7th_fp7_monitoring_report.pdf#view=fit&pagemode=none.

\textsuperscript{469} See https://ri-links2ua.eu/object/document/481.


\textsuperscript{471} See https://cordis.europa.eu/project/rcn/212369_en.html.
ERA-PLANET\textsuperscript{472} (European Network for Observing Our Changing Planet) aims to strengthen European leadership within the Global Earth Observation System of Systems (GEOSS). ERA-PLANET will provide advanced decision support tools and technologies to better monitor our global environment in different domains of Earth Observation. The project budget is €11 million for the period 2016-20 for the consortium, which includes about 40 institutions. Ukrainian teams: the Space Research Institute of National Academy of Sciences of Ukraine and the State Space Agency of Ukraine.

AMMODIT\textsuperscript{473} (“Approximation Methods for Molecular Modelling and Diagnosis Tools”) project in the area of applied mathematics with emphasis on medical and life science applications. Budget: €823,500. Ukrainian teams: Institute of Mathematics, NAS of Ukraine, Institute of Hydromechanics, NAS of Ukraine, Taras Shevchenko National University of Kyiv, National Technical University of Ukraine, Kyiv Polytechnic Institute.

UKRAINE\textsuperscript{474} (“UKraine Replication, Awareness and INnovation based on EGNSS”). The UKRAINE project was established in January 2015, following the EU-Ukraine Cooperation Agreement in the field of Global Navigation Satellite Systems (GNSS). Key components of the project will be development of solutions for multimodal transport logistics, with opportunities for commercial relationships between EU and Ukrainian enterprises. Budget: €1,429,252. Ukrainian teams: National Aviation University, National Technical University of Ukraine, Kyiv Polytechnic Institute, State Space Agency of Ukraine.

The BLACK SEA HORIZON\textsuperscript{475} (BSH) project aims to support the EU’s external relations with the target region by contributing to ongoing bi-regional and regional science, technology and innovation (STI) policy dialogues. Budget: €1,499,503. Ukrainian team: Institute for Economics and Forecasting of the National Academy of Science of Ukraine.

**Space**

The EU’s most important tool for space exploration is the European Space Agency (ESA), of which Ukraine is not a member, but with which it has had a cooperation agreement since 2008. In early 2014 this agreement was extended until 2019. The ESA focuses on cooperation in

\textsuperscript{472} See www.era-learn.eu/network-information/networks/era-planet.

\textsuperscript{473} See http://cordis.europa.eu/project/rcn/194356_en.html.

\textsuperscript{475} See https://blacksea-horizon.eu/project.
satellite systems; earth observation and global monitoring; space science and applied space technologies. In July 2015, the Ukrainian State Space Agency and ESA started consultations on cooperation between Ukrainian rocket-and-space industry enterprises and European companies within ESA projects. Major possible directions of bilateral cooperation under consideration include Earth Remote Sensing (ERS) and rocket carriers. Concretely, the ESA’s new Vega-class rocket carrier, which launches low-earth orbit cargo weighing from 300 to 1500 pounds, uses the RD-843 engine for the upper stage of this rocket, developed by the Yuzhnoye State Design Office and the Yuzhmash enterprise.\(^476\) Several successful launches of "Vega" LV with Ukrainian engines took place in 2016-17.\(^477\) Ukraine is currently taking further steps towards becoming a full member of the ESA. The Action Plan on Implementation of the EU-Ukraine Association Agreement sets an ambitious goal to arrive at membership by 2022.

Ukraine may benefit from Horizon 2020 projects that support space research based on the principles set out in the Commission’s Communication on “EU Space Industrial Policy: Releasing the Potential for Growth in the Space Sector”.\(^478\) The EU prioritises, among other things, the European Global Navigation Satellite System (EGNSS), Copernicus, the setting up of a Space Surveillance and Tracking system (SST) and general support for space science and exploration as well as industry’s competitiveness.


\(^{478}\) COM/2013/0108, final, 28 February 2013.
Science, technology & space at a glance

In accordance with the Association Agreement, in 2015 Ukraine became a full participant in the EU’s main research funding instrument - Horizon 2020.

Ukraine has considerable traditional strengths in some important scientific domains, including medicine, physics, astronomy, biology, chemistry, material sciences, space and earth sciences.

Participation in Horizon 2020 should enable stronger performance in these areas.
26. EU AGENCIES AND PROGRAMMES

The EU operates 46 agencies, which are semi-autonomous and specialised bodies funded and controlled by the EU, with the objective of supporting the functioning of EU policies. There are also around 45 programmes, most of which (but not all) are funded and administered by the European Commission. Of these a considerable number are open to participation by Ukraine as partner under the Association Agreement, notably the 20 agencies and 19 programmes listed in Tables 26.1 and 26.2. The agencies and programmes with which Ukraine already has ongoing cooperation at different levels (projects, seminars, study visits, etc.) appear in bold in these tables.

Table 26.1 EU agencies open to Ukraine, Moldova and Georgia*

<table>
<thead>
<tr>
<th>European Fisheries Control Agency (EFCA)</th>
<th>European Aviation Safety Agency (EASA)</th>
<th>European Maritime Safety Agency (EMSA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Agency for Safety and Health at Work (EU-OSHA)</td>
<td>European Defence Agency (EDA)</td>
<td>European Food Safety Authority (EFSA)</td>
</tr>
<tr>
<td>European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)</td>
<td>European Police College (CEPOL)</td>
<td>European Institute for Gender Equality (EIGE)</td>
</tr>
</tbody>
</table>
Table 26.2 EU programmes open to Ukraine, Moldova and Georgia

<table>
<thead>
<tr>
<th>Programme</th>
<th>European Union’s Judicial Cooperation Unit (EUROJUST)</th>
<th>European Police Office (EUROPOL)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>European Union Institute for Security Studies (EUISS)</strong></td>
<td>European Centre for Disease Prevention and Control (ECDC)</td>
<td>European GNSS Agency (GSA)</td>
</tr>
<tr>
<td><strong>European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)</strong></td>
<td>European Environment Agency (EEA)</td>
<td>European Network and Information Security Agency (ENISA)</td>
</tr>
<tr>
<td>European Chemicals Agency (ECHA)</td>
<td>European Asylum Support Office (EASO)</td>
<td></td>
</tr>
<tr>
<td>European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Bold text denotes EU agencies open to Ukraine.

* Bold text denotes EU programmes open to Ukraine.
Such participation offers a useful means of in-depth integration of professional experts and administrative organisations with EU counterparts and aids reform processes.

Membership of an agency requires negotiation of a specific international agreement and a decision on the financial contribution of the partner. Cooperation with a programme is carried out on the basis of a protocol or specific Memorandum of Understanding stating the details of participation for each programme. The participation of Ukraine in these EU agencies and programmes is subject to regular dialogue and review.

Membership of the agencies and inclusion in programmes gives full access to the infrastructure and governing bodies, but also involves costs. To ease the financial burdens on Ukraine, the EU can negotiate temporary rebates. Ukraine is also able to pay up to 50% of membership fees from EU aid funds. The process of participating in some programmes, such as for research projects under Horizon 2020, is extremely competitive, but here Ukrainian institutes will normally be joining consortia and counterparts in EU member states in these initiatives.

The agencies of most interest to Ukraine include the following:

**European Aviation Safety Agency (EASA).** The State Aviation Service of Ukraine (SAS) is one of EASA’s Pan-European Partners (PANEP) since 2009. The Working Arrangements cover all aspects of the regulation of civil aviation safety and environmental protection of products, organisations and personnel. Ukraine's participation in EASA was a key precondition for proceeding with the Common Aviation Area Agreement (CAA Agreement) between Ukraine and the European Union.

**European Maritime Safety Agency (EMSA).** The European Maritime Safety Agency (EMSA) cooperation partner in Ukraine is the State Transport Safety Service, a new agency established in 2014. In 2014-16, Ukraine participated in TRACECA II - Maritime Safety and Security project, while since 2017, the country has actively participated in the Black and Caspian Sea (BCSEA) Project, which aims at ensuring maritime safety and security and the protection of the marine environment.

**European Agency for Safety and Health at Work (EU-OSHA).** In 2014 Ukraine became one of the partners of EU-OSHA’s project for

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neighbouring countries. In 2014-16, there has been an opportunity to participate in the work of Agency with establishment of a country contact point and platform for sharing information and future cooperation.480

**European Defence Agency (EDA).** Cooperation between Ukraine and EDA is foreseen in the EU-Ukraine Association Agreement, and in December 2015, the administrative agreement between the Ministry of Defence of Ukraine (MDA) and the European Defence Agency (EDA) was signed. This covers the main principles, activities and mechanisms of the EU-Ukraine cooperation related to improving defence capabilities and strengthening military cooperation,481 including cooperation between defence firms.

**European Police College (CEPOL).** There are ongoing negotiations on signing formal agreements on cooperation between European Police College (CEPOL) and the Ministry of Internal Affairs of Ukraine. All EU member states expressed support for Ukraine's accession to CEPOL. It will open training and learning opportunities for law enforcement officers of Ukraine. Training covers topics ranging from law enforcement techniques to economic crime.

**European Union's Judicial Cooperation Unit (EUROJUST).** In February 2015, the final version of the Agreement on cooperation between Ukraine and the EU Judicial Cooperation Unit (Eurojust) was concluded. The College (Board) of Eurojust approved the Agreement in March 2015. On 28 June 2016, the Agreement was officially signed.482

**European Police Office (EUROPOL).** The agreement on cooperation between Europol and Ukraine was signed back in 2009. The document sets out to coordination efforts of the member states and Ukraine in preventing and combating all forms of international crime, terrorist threats, human trafficking, drugs and illegal migration. An important step was signing of a Memorandum of Understanding with Europol in April 2015, setting up a special secured communication channel called SIENA for the exchange of information.

**European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX).** Cooperation between the State Border Guard Service of Ukraine and Frontex was initiated in 2007, and has been working under renewing cooperation

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481 According to the Ministry of Defence of Ukraine.
plans. Key activities involve the exchange of information, risk analysis, joint operations and personnel training. Training projects are mostly focused on the detection of stolen vehicles and falsified documents, the training of dog handlers, learning English, the implementation of a common core curriculum for border guards and preparation of a common web platform for border guards training.

**European Environment Agency (EEA).** Cooperation with Ukraine started in 2009, but the main focus now is to implement the relevant provisions of the Association Agreement, raising cooperation to a new qualitative level, including harmonisation of Ukrainian legislation with EU laws. A key objective is to develop the infrastructure in Ukraine in the framework of the Shared European Environmental Information System (SEIS) and identification priorities in relation to the Strategy of the State Environmental Policy of Ukraine up to 2020.

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**The EU agencies and programmes at a glance**

There are extensive possibilities for inclusion in EU agencies and programmes, with the potential to develop institutional capabilities and advance policy reforms.

Ukraine is taking up a considerable number of these possibilities, for example for health and safety standards, policing and justice, research, education and culture.

EU offers financial assistance to contribute to the costs of participation.
UKRAINE SHARKS 1,152 KM OF LAND BORDERS WITH EU MEMBERS POLAND, SLOVAKIA, HUNGARY AND ROMANIA, AND ABOUT 1,000 KM OF BORDER WITH EU ASSOCIATE MOLDOVA, WHICH OFFERS EXTENSIVE OPPORTUNITIES FOR ENHANCED COOPERATION AT THE CROSS-BORDER REGIONAL LEVEL. THE AA CALLS FOR CROSS-BORDER COOPERATION (CBC) IN GENERAL TERMS AND IN SPECIFIC SECTORS SUCH AS TRANSPORT, ENERGY, EDUCATION, TOURISM AND HEALTH AND THE MODERNISATION OF CROSS-BORDER EMERGENCY SERVICES.

IN MOST CASES UKRAINIAN BORDER REGIONS HAVE COMMON HISTORY, TRADITIONS AND STRONG PERSONAL AND BUSINESS TIES TO THEIR EU COUNTERPARTS. TO MAINTAIN THESE TIES UKRAINE HAS SIGNED AGREEMENTS WITH THEM THAT ESTABLISH SPECIAL PROVISIONS FOR SMALL/LOCAL CROSS-BORDER TRAFFIC BASED ON THE EU’S REGULATION (1931/2006/EC) ON LOCAL BORDER TRAFFIC AT THE EXTERNAL LAND BORDERS OF EU MEMBER STATES. HUNGARY WAS THE FIRST COUNTRY TO SIGN SUCH AN AGREEMENT IN 2007, WHICH, AFTER ENTERING INTO FORCE IN JANUARY 2008, GAVE ADVANTAGES TO UKRAINIAN CITIZENS RESIDING IN SETTLEMENTS AND TOWNS TO VISIT THE BORDER AREAS IN HUNGARY IDENTIFIED IN THE AGREEMENT. UKRAINE AND SLOVAKIA SIGNED A SIMILAR AGREEMENT IN 2008. THE AGREEMENT WITH POLAND, SIGNED THE SAME YEAR, WAS MODIFIED IN 2014-15, AND NOW ALLOWS VISITS TO BORDER AREAS UP TO 30 KM FROM THE FRONTIER, FOR UP TO 90 DAYS. SINCE MAY 2015, THE AGREEMENT BETWEEN UKRAINE AND ROMANIA ENTERED IN FORCE, EASING BORDER CROSSINGS FOR UP TO 90 DAYS FOR ABOUT 2 MILLION PEOPLE RESIDING ALONG THE UKRAINIAN-ROMANIAN BORDER.

THROUGH THE EASTERN PARTNERSHIP TERRITORIAL COOPERATION (EaPTC) THE EU IS STIMULATING CROSS BORDER COOPERATION BETWEEN THE
Eastern Partnership countries. In particular, Ukraine’s Odesa, Vinnytsya and Chernivtsi Oblasts are cooperating with Moldova. Under the same programme, Volyn, Rivne, Zhytomyr, Kyiv and Chernihiv Oblasts of Ukraine are cooperating with Brest and Gomel Oblasts of Belarus.483

In the period 2007-13, the EU spent €950 million on 13 cross-border cooperation programmes along its eastern and southern neighbourhood under the European Neighbourhood and Partnership Instrument (ENPI).484 For the period 2014-20, the number of programmes was increased to 17, 12 of which are for land borders, one for a sea crossing and four for sea basin programmes.485 Three of the land border programmes are of particular importance for Ukraine, namely cross-border cooperation between a) Poland, Belarus and Ukraine; b) Hungary, Slovakia, Romania and Ukraine; and c) Romania and Ukraine. Ukraine is also involved in the Black Sea Basin programme.

In December 2015, the European Commission adopted a Joint Operational Programme for Poland-Belarus-Ukraine for the years 2014-20,486 following a previous programme for 2007-13. The new programme contributes to four thematic objectives of the CBC, namely:

(i) promotion of local culture and preservation of historical heritage (Heritage),
(ii) improvement of accessibility to the regions, development of sustainable and climate-proof transport and communication networks and systems (Accessibility),
(iii) common challenges in the field of safety and security (Security) and
(iv) promotion of border management and border security, mobility and migration management (Borders).

The programme’s budget is €201 million, the largest part of which (€183 million) comes from the EU.

483 See http://eaptc.eu/.
### Box 27.1 Regional beneficiaries of cross-border cooperation in Ukraine, Poland and Belarus

<table>
<thead>
<tr>
<th>Ukraine</th>
<th>Poland</th>
<th>Belarus</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Core areas:</strong> Lvivska, Volynska and Zakarpatska oblasts</td>
<td><strong>Core areas:</strong> Krośnieński and Przemyski (in Podkarpackie voivodeship), Białostocki, Łomżyński and Suwalski (in Podlaskie voivodeship), Bialski and Chełmskozamojski (in Lubelskie voivodeship) and Ostrołęcko-siedlecki (in Mazowieckie voivodeship)</td>
<td><strong>Core areas:</strong> Grodno and Brest oblasts</td>
</tr>
<tr>
<td><strong>Adjoining regions:</strong> Rivnenska, Ternopilska and Ivano-Frankivska oblasts</td>
<td><strong>Adjoining regions:</strong> Rzeszowski and Tarnobrzeski (in Podkarpackie voivodeship); Puławski and Lubelski (in Lubelskie voivodeship)</td>
<td><strong>Adjoining regions:</strong> Minsk Oblast (including the city of Minsk) and Gomel Oblast</td>
</tr>
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</table>

The projects supported by this programme in 2007-13 were mainly in the priority areas of: increasing competitiveness, improving quality of life and people-to-people cooperation. Some projects aimed to improve environmental protection in the infrastructure of Poraż and Zagórz in Poland and Horodok in Ukraine. In another, the experience of Lublin was used in a project to set up a municipal system for processing household electronic and electrical equipment waste in Lviv. The development of IT infrastructure for Ukrainian customs and border guard services is implemented jointly by Podkarpackie Voivodeship Office, Lublin Voivodeship Office (Poland) and the Administration of State Border Guard Service of Ukraine. A Museums without Barriers project brought together a coalition of Polish and Ukrainian museums for adapting them to become accessible to disabled visitors.

In the framework of the Poland-Belarus-Ukraine programme for 2007-13, six umbrella projects were implemented.\(^{487}\) Beneficiaries of these projects coordinated 56 different micro projects. Representatives of local governments, the tourism sector, NGOs, cultural and educational institutions and sports organisations were partners of these micro projects.

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\(^{487}\) For more information, see [www.pl-by-ua.eu/](http://www.pl-by-ua.eu/).
projects. Poland was represented by 60 partners, Ukraine by 45 partners and Belarus by 10 partners. The total project financing was €2.9 million.

Box 27.2 Joint Operational Programme Poland-Belarus-Ukraine, 2014-20

Some 18 large infrastructure projects were identified under the Programme (10 on the main list and 8 on the reserve list). The selected projects concern the improvement and development of transport services and infrastructure, common security challenges, support of efficiency and security of borders, health care and promotion of local culture and history.

The 1st call for proposals within the Programme was launched on 11 October 2016 for all thematic objectives: Heritage, Accessibility, Security and Borders and all their priorities. The grant value for a project was within a range €100,000–2,500,000 with total amount of €112.4 million to finance the selected projects.488

In 2017, nearly 750 concept notes and more than 380 full applications were submitted in all of the Programme’s thematic objectives. Some 48 projects have been selected for a total amount of over €89 million within Heritage, Accessibility and Borders thematic objectives, while projects under Security are still under evaluation.

In the 4th quarter of 2018, a 2nd call for proposals is planned to be announced.

* For more information, see https://www.pbu2020.eu/pbu/en.

The project to upgrade six Ukrainian checkpoints at crossings with Poland, Hungary, Slovakia and Romania was launched in 2014 within the cross-border programmes Poland-Belarus-Ukraine, Hungary-Slovakia-Romania-Ukraine and Romania-Moldova-Ukraine. As of the end of 2017, none of the six checkpoint projects had been completed, even though the EU contributed €29.2 million for the project. As of February 2018, the situation with project implementation and possible reimbursement of EU money from the Ukrainian side remains unclear.489

The Hungary-Slovakia-Romania-Ukraine 2014-20 programme was also adopted by the European Commission in December 2015. This focuses on the promotion of local culture and the preservation of historical heritage, environmental protection, climate change adaptation and disaster management. The programme budget is €81 million. In 2017, 9 grant applications were submitted in the 1st call for proposals opened for Large Infrastructure Projects and 137 proposals from 494 applicants (207 of them from Ukraine) were submitted in the 2nd call for proposals.

A further programme, for Romania-Ukraine 2014-20 was adopted to facilitate economic development and improve quality of life, with joint investments in education, economic development, culture, infrastructure and health. The programme has a budget of €60 million.

All Joint Operational Programmes were developed with the broad involvement of stakeholders from participating countries.

Ukraine is also part of the Black Sea Basin Programme for 2014-20, which aims to support sustainable growth and improve joint environmental protection in the Black Sea region (e.g. through the joint reduction of marine litter).

Three Danube sub-basins, partly located in Ukraine (the Tisza, Prut and Siret Basins) pose specific challenges and opportunities in terms of cross-border flood prevention, the environment, energy, the economy, social and security-related issues. In February 2016, the International Commission for the Protection of Danube River (ICDR) adopted two plans for water management priorities for the Danube River Basin until 2021. The Danube River Basin Management Plan aims to further protect and enhance the state of waters, to prevent their deterioration and to ensure the sustainable, long-term use of water resources. The Danube Flood Risk Management Plan addresses aspects of flood risk management, focusing on prevention, protection and

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490 See https://huskroua-cbc.eu/.
493 See www.ro-ua.ro-ua.md.net/en/.
494 See www.icpdr.org/.
preparedness. As an official contracting partner of ICDR, Ukraine may participate in the implementation of the projects under these plans.

The EU also funds the EU Border Assistance Mission to Moldova and Ukraine (EUBAM) aiming to improve border management (see chapter 2).

During 2007-13, Ukraine participated in two programmes to encourage interregional cooperation between European cities and regions and enhance their and attractiveness, namely INTERREG IVC and the Central Europe Programme.

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**Box 27.3 Examples of projects in the framework of INTERREG IVC and the Central Europe Programme with Ukrainian participation***

- Sustainable flood management strategies for cross-border river basins
- ‘Via Regia plus’ - Sustainable Mobility and Regional Cooperation along the Pan-European Transport Corridor III
- Improvement of regions’ accessibility through air transport interconnectivity
- Capitalising on cultural heritage for sustainable development and competitiveness of cities and regions


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The EU also cooperates with Ukraine through its eastern regional dimension, the Eastern Partnership, which has given rise to new platforms for dialogue at the government and expert level (thematic platforms), as well as in the fields of parliamentary and participatory democracy.

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495 See [www.interreg4c.eu/](http://www.interreg4c.eu/).


Cross-border cooperation at a glance

Ukraine’s border with Poland, Hungary, Slovakia and Romania in the EU, as well as with Moldova and Belarus, offers extensive opportunities for business, social and cultural cross-border exchanges.

Joint Operational Programmes are the main tools of cross-border cooperation between EU and Ukraine, but some of these are experiencing problems in implementation.

Ukraine also participates in specific programmes to maintain the Danube sub-basin.
Civil society in Ukraine has long been at the forefront of change, from the Orange Revolution (2004) to the Maidan uprising (2013-14). Ukrainian civil society has consistently shown a great sense of unity and determination in its quest for democracy. A total number of registered civil society organisations is about 70,000. The State Statistics Service of Ukraine revealed that there were 23,365 civil society organisations reporting in 2013, and 25,988 by the end of 2017. These organisations focus on a wide range of issues such as human rights, culture, minorities, women’s rights and sport.

The EU has long supported Ukrainian civil society. The NGOs have functioned both as a watchdog to provide input to the EU on the progress of reform in Ukraine and as a pressure group vis-à-vis the government, thus acting as a driver of change. According to the EU-Ukraine Association Agenda, the EU provided €10 million support to civil society in 2014. The formal framework of cooperation between civil society in Ukraine and the EU consists of three somewhat overlapping platforms that work in parallel. These are on the one hand the multilateral Civil Society Forum for all six Eastern Partnership countries together, and on the other hand the bilateral Civil Society Platform and the DCFTA Advisory Group both established under the Association Agreement.

**Multilateral Civil Society Forum.** One of the major avenues for the EU to engage Ukrainian civil society has been the multilateral Civil

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Society Forum of the Eastern Partnership, established prior to the signature of the Association Agreement in 2009. The Forum brings together the members of civil society from all six countries of the Eastern Partnership with individual country platforms. As of July 2018, the Ukraine National Platform consisted of 218 registered organisations and actively participates in all the working groups and sub-groups of the Civil Society Forum:

- **WG1** “Democracy, human rights, good governance and stability” – 80 NGOs
- **WG2** “Economic integration and convergence with EU policies” – 28 NGOs
- **WG3** “Environment, climate change and energy security” – 29 NGOs;
- **WG4** “Contacts between people” – 43 NGOs
- **WG5** “Social and labour policies and social dialogue” – 39 NGOs.499

In a unique set-up for the Association Agreement countries, the Ukrainian National Platform of the Eastern Partnership Civil Society Forum and the bilateral platform are currently funded by the EU Delegation in Kyiv via the Renaissance Foundation’s Civic Synergy project. The bilateral platforms in Georgia and Moldova have much more limited funding.

In November 2013, Platform members expressed their strong disagreement with the decision of former President Viktor Yanukovych not to sign the Association Agreement at the Eastern Partnership Vilnius Summit. His reneging on the Association Agreement triggered the Maidan. Many of the civil society organisations included in the Platform were active in the process.

**Bilateral Civil Society Platform.** This platform was created as part of Association Agreement (Arts 443 to 445) and continues the EU’s approach of including civil society in the process of reforms in Ukraine. This has also created some overlap with the (above) Ukrainian national platform within the multilateral Civil Society Forum.

The Agreement is both general and specific in its provisions related to the bilateral Civil Society Platform. It offers a long list of general goals, from fostering civil society cooperation as a tool to familiarise the societies of the EU and Ukraine with each other, through to the involvement of the NGOs in the implementation of the

Agreement. To this end, the members of the EU-Ukraine Civil Society Platform (CSP) have decided to meet in plenary session twice a year, with meetings of experts in between. Confirming the official status of the Platform, the Agreement pledges regular contacts between it and the intergovernmental Association Committee and Parliamentary Association Committee "in order to obtain [its] views on how to attain the objectives of [the Association] Agreement".500

The CSP was officially launched on 16 April 2015 with an inaugural meeting.501 However, the Agreement is considered by many NGOs to be too rigid when it comes to the composition of the Civil Society Platform. The agreement states that the Platform “shall consist of members of the European Economic and Social Committee (EESC) on the one hand, and representatives of civil society on the side of Ukraine, on the other, as a forum to them to meet and exchange views” (Art. 469 (2)). The CSP is made up of 30 members, 15 from each side, representing the EESC and Ukrainian civil society and three sectors - trade unions, employers and other civil society organisations. The civil society organisations of Ukraine claim that the EESC imposes its tripartite structure on the Platform. The civil society organisations working especially on the human rights and democracy issues argue the need to go well beyond the EESC’s conception of social dialogue. Trade unions, on the other hand, welcome recognition of their role as communicators between society and the government. Criticism of the civil society organisations did not produce any substantial change, however.

In 2017, the CSP focused on the following topics:
- Assessment of the Association Agreement and DCFTA implementation
- Environmental protection under the EU-Ukraine Association Agreement
- Implementation of reforms in the field of Science and Technology
- Rights of Internally Displaced Persons (IDPs).

In April 2018, the sixth meeting of the CPS took place in Brussels. The members of the CSP discussed the state of the implementation of

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the Association Agreement, held a debate and adopted reports on the role of salary in poverty reduction and its impact on labour migration, and climate change in the context of the commitments made under the Paris Agreement.502 The joint declaration of the CSP contains calls for determined and consistent implementation of reforms under the Association Agreement, the establishment of the Anti-Corruption Court and thoroughly implement judicial reform.

The CSP members also urged the Parliament and the President of Ukraine to “withdraw the provisions of the anticorruption law, introduced in March 2017, which anticipates the disclosure of assets belonging to civic anti-corruption activists, except in cases where the organisations they represent are receiving funding from Ukraine’s budget”.

**Advisory Group of the DCFTA.** Ukrainian civil society should also participate in monitoring the DCFTA through a so-called Advisory Group. The Commission’s DG Trade has made it general practice to consult civil society organisations over its free trade agreements. The Advisory Group should include NGOs and representatives of employers and workers’ organisations. They are expected to meet once a year at an open Civil Society Forum (not to be confused with the Civil Society Forum of Eastern Partnership mentioned above) to discuss issues related to sustainable development. The mechanism of cooperation and distribution of roles between the Civil Society Platform and the Civil Society Forum (of the Association Agreement) is not specified and creates ambiguity. This was the main reason why neither the Advisory Group nor the Civil Society Forum has been formed yet. In June 2018, the CMU created the Council on Trade and Sustainable Development aimed to establish the Advisory Group.503

**Eastern Partnership Think Tank Forum.** In cooperation with the Eastern Partnership Civil Society Forum, the launch of the Eastern Partnership Think Tank Forum took place in Chişinău on 22 September 2017. The aim of the Think Tank Forum is to bring together think tanks from the region in order to amplify their impact and promote European integration through drafting policy recommendations and creating partnerships.

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Current status of Ukrainian civil society organisations. Ukrainian civil society experienced rapid growth after the Maidan (or Revolution of Dignity) of 2013-14. An example of a civil initiative arising during the Maidan was the Reanimation Package of Reforms (RPR), which unites different NGOs with the aim of monitoring and stimulating reforms in the country. It serves as a coordination centre between the civil society and the government drafting laws and lobbying reforms in the Parliament. As of July 2018, there were 83 NGOs registered as RPR members, who work in 22 expert groups in specific areas ranging from anti-corruption, judicial and media reforms to tax policy, culture and environment protection.

In November 2015, a survey of the participants of the Civil Society Development Forum in Kyiv assessed the efficiency of NGO influence on solving the problems in the country as being mostly effective (43.7%). The Top-3 tasks of the NGOs in Ukraine were named control over the government, civic education, support and stimulation of reforms.

To influence European policymakers, in March 2014 Ukrainian think tanks organised the Ukrainian Think Tanks Liaison Office in Brussels. The Office helps think tanks to organise conferences and expert discussions on topical Ukrainian issues in Brussels and in EU member states, to present and promote its members’ research and establish communication channels between members and EU institutions. Currently there are 18 members of the Liaison Office.

Think tanks are important for promoting reforms in Ukraine. They are more flexible than the state research centres and more trusted by society, and they generate new ideas. However, their development is hampered by the unwillingness of the state institutions to cooperate.

507 See http://ukraine-office.eu/.
with think tanks. The 2017 “Global Go to Think Tanks Index Report” listed 39 think tanks in Ukraine.

In March 2017, the Verkhovna Rada passed the law obliging anti-corruption activists to declare their assets publicly on par with government officials. The requirement faced severe criticism by Ukraine’s civil society, the Venice Commission, an advisory body of the Council of Europe in the field of constitutional law, and the G7. The President’s draft law suggesting elevated reporting requirements for all NGOs instead of e-declarations for anti-corruption activists was also criticised. As of mid-2018, the legislation was not amended.

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**Civil society at a glance**

Civil society in Ukraine has been active in advocating for democracy and human rights since the country’s independence.

Ukrainian NGOs seek to influence the Ukrainian reform agenda through drafting laws and lobbying reforms in the Parliament.

The EU has supported Ukrainian civil society organisations, considering them both a driver for democratic change in Ukraine and a watchdog of government activities.

The EU’s structured cooperation with the Ukrainian civil society has several somewhat overlapping and conflicting platforms, causing some frustration among Ukrainian NGOs.

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509 See https://repository.upenn.edu/cgi/viewcontent.cgi?article=1012&context=think_tanks/.

PART IV.
LEGAL AND INSTITUTIONAL PROVISIONS
29. DISPUTE SETTLEMENT

The Agreement has two different dispute settlement mechanisms (DSM); one that covers disputes related to the agreement in general but excluding the DCFTA; and another more detailed one that covers the DCFTA itself.

The general dispute settlement mechanism

This mechanism is defined in quite simple terms in Arts 476 to 478 of the Agreement. It concerns disputes over the interpretation, application or implementation of the non-DCFTA parts of the Agreement. It is based on a traditional ‘diplomatic’ approach, under which the Association Council has the key role.

A party can initiate this DSM by sending a formal request to the other party and the Association Council. The parties shall then try to resolve the dispute by entering into good-faith consultation within the Association Council or other relevant bodies (i.e. the Association Committee, or a specific sub-committee). The Association Council can eventually settle the dispute, after a consultation period, by way of a binding decision. Because the Association Council takes decisions “by agreement”, both the EU and Ukraine would need to approve the decision to resolve the dispute.

As long as the dispute is not resolved, it shall be discussed at every meeting of the Association Council. If an agreement cannot be reached in the Association Council after three months, the complaining

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511 Art. 465(3) EU-Ukraine Association Agreement.
party is allowed to take “appropriate measures” such as the suspension of parts of the agreement, but not of the DCFTA part (except in the special case of violations of the ‘essential elements’ of the Agreement – see further below). In the selection of appropriate measures, priority shall be given to those which least disturb the functioning of the Agreement.512

The ‘essential elements’ clause. As in other Association Agreements concluded by the EU, the EU-Ukraine Agreement includes a suspension clause (in Art. 478(3)) relating to ‘essential elements’ of the Agreement (defined in Art. 2). This refers to “Respect for democratic principles, human rights and fundamental freedoms”, as defined in several international agreements and conventions, and “respect for the principle of the rule of law, the principles of sovereignty and territorial integrity, inviolability of borders and independence and countering the proliferation of weapons of mass destruction…”

In the event of violation of these fundamental principles the complaining party can immediately suspend the agreement, including rights and obligations under the DCFTA.513

In practice the EU very rarely uses these suspension clauses. If an EU reaction is required to address a specific human rights situation in the territory of the partner country, it prefers to act through diplomatic means (e.g. in the Association Council or annual summit meetings), or by using limited restrictive measures such as arms embargoes, asset freezes or visa bans. Total suspension or termination of an Agreement is viewed as the ‘nuclear’ option – best not used.

Recent EU-Ukraine relations actually clearly saw violations of many of the ‘essential elements’ by the administration of former President Yanukovych. The predecessor of the Association Agreement, namely the Partnership and Cooperation Agreement (PCA), already included an ‘essential elements’ and suspension clause. In 2013, the Yanukovych administration was heavily criticised for ‘selective justice’ over the imprisonment of former Prime Minister Yulia Timoshenko. Instead of suspending the PCA, however, which would have had little impact, the Union threatened to postpone the signature of the Association Agreement unless the Tymoshenko and other cases of

512 The requirement of a 3-month consultation period and the condition that the measures may not include the suspension of any DCFTA rights or obligations do not apply in the case of violation of the essential elements, referred to in Art. 2 of the AA (and further explained below).

513 Art. 478(3) EU-Ukraine Association Agreement.
‘selective justice’ were corrected. In a second phase, the Yanukovych administration’s use of force against the Maidan demonstrators in 2013-14 escalated with Russia’s violation of Ukraine’s sovereignty and territorial integrity. In this fast-moving situation, the EU adopted sanctions against Russia and Ukrainian persons involved and also suspended negotiations with Russia on a ‘New Agreement’. Overall, these episodes illustrate the kind of circumstances under which the ‘essential elements’ suspension provisions might be activated, even if the very specific conditions of these recent developments made its use inappropriate.

The DCFTA dispute settlement mechanism

**Arbitration.** For disputes concerning the interpretation and application of DCFTA provisions, a separate and more sophisticated DSM is laid down in a long and detailed chapter (Arts 303-323) of the DCFTA. The mechanism is largely inspired by the WTO Dispute Settlement Understanding (DSU). If there is a dispute regarding the interpretation and application of DCFTA provisions, the parties shall first seek to come to an agreement through consultations.

If these consultations fail, the complaining party may request the establishment of an arbitration panel to rule on the dispute. The panel shall be composed of three arbitrators chosen by the parties. The arbitrators must be independent, serve in their individual capacity, not take instructions from any government and comply with a Code of Conduct annexed to the Agreement. One party cannot block the establishment of an arbitration panel, because if the parties cannot agree on the composition of the panel, the panellists will be drawn by lot from a permanent list of arbitrators.514

Rulings of the arbitration panel shall be binding and each party must take the necessary measures to comply with them. If the party to whom the complaint was addressed fails to comply without offering at least temporary compensation, the other party is entitled to suspend obligations arising from the DCFTA at a level equivalent to the violation (e.g. by imposing again the MFN tariff on specific products). Again, in practice the EU very rarely relies on the DSM in its FTAs to resolve a trade dispute. It prefers to use diplomatic means (e.g. by

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514 The Trade Committee has to establish a list of 15 experts who are willing and able to serve as arbitrators. Each of the parties has to propose five individuals and the two parties shall also select five individuals that are not nationals of either party and who shall act as a chairperson to the arbitration panel.
discussing this in bilateral meetings such as the Association Council or in unilateral statements) or, in some cases, the WTO DSU. For example, in April 2016 the EU Delegation in Kyiv issued a statement criticising Ukraine’s proposal to increase its export duties on metal scrap, as it considers that this would be in breach of Ukraine’s DCFTA commitments (see chapter 4). The use of the DSM was not triggered.\textsuperscript{515}

This DCFTA DSM is without prejudice to possible dispute settlement under the WTO. However, the parties are not allowed to pursue dispute settlement under both systems at the same time.

The DCFTA DSM includes several specific features. First, several elements of the DCFTA are excluded from this DCFTA DSM, such as parts of the chapter on Trade Remedies,\textsuperscript{516} and chapters on Trade and Sustainable Development\textsuperscript{517} and Antitrust and Mergers.\textsuperscript{518} Secondly, as regards energy disputes, the DCFTA DSM foresees quicker procedures if one party considers that dispute settlement is urgent because of an interruption of the transport of gas, oil or electricity, or a threat of interruption. This procedure, obviously tailored to the challenges of the EU-Ukraine-Russia triangular energy relationship, should allow the parties to react in a swift manner to any future energy disputes. Third, there is a procedure that obliges the arbitration panel to ask the Court of Justice of the European Union (CJEU) for a binding preliminary ruling when there is a dispute concerning the interpretation and application of EU law (i.e. EU legislation annexed to the Agreement).\textsuperscript{519} This procedure aims to ensure a uniform interpretation and application of the Agreement’s annexed EU legislation without jeopardising the exclusive jurisdiction of the CJEU to interpret EU law.

\textbf{Mediation.} A separate, lighter mechanism is included (in Arts 327 to 333) for ‘mediation’ rather than ‘arbitration’, which the parties can use to tackle market access problems, including non-tariff measures. This mechanism functions through the appointment of a single mediator who can advise and propose a non-binding solution within 60 days. The aim of the mediation is not to review the legality of a measure, but to find a quick and effective solution to market access

\textsuperscript{515} EU Delegation to Ukraine, “EU Delegation in Kyiv criticises Ukraine proposal to raise export duties on metal scrap”, 29 April 2016.
\textsuperscript{516} Art. 52 EU-Ukraine Association Agreement.
\textsuperscript{517} Art. 300(7) EU-Ukraine Association Agreement.
\textsuperscript{518} Art. 261 EU-Ukraine Association Agreement.
\textsuperscript{519} Art. 322 EU-Ukraine Association Agreement.
problems without recourse to litigation. If the solution is agreed by the
two parties it will be adopted as a decision of the Trade Committee.
This mediation mechanism does not exclude the possibility, if a
solution is not agreed, to have recourse to the dispute settlement
mechanism with arbitration.

Transparency. In addition, the DCFTA includes detailed rules
on transparency (in Arts 281 to 288). Ukraine has to establish “an
effective and predictable regulatory environment for economic
operators doing business in its territory, due account being taken of the
requirements of legal certainty”. For example, laws, regulations,
judicial decisions and administrative rulings that have an impact on the
AA (i.e. measures of general application) must be properly and timely
published and communicated. A contact point has to be established
that responds to enquiries from interested persons regarding such
measures of general application (proposed or in force). This chapter
also includes rules on administrative and ‘review and appeal’
procedures. According to the latter, each party shall establish or
maintain impartial and independent courts, or other independent
tribunals or procedures, for the purpose of the prompt review and,
where warranted, correction of administrative actions in areas covered
by the DCFTA.

Dispute settlement at a glance

There are two basic dispute settlement mechanisms: a ‘general’ one
applicable to all parts of the Agreement except the DCFTA and a second one
applicable to the DCFTA itself.

The ‘general’ mechanism relies on the two parties finding a mutually agreed
solution in the Association Council, failing which the aggrieved party may
take ‘appropriate measures’.

For DCFTA-related disputes there is a more elaborate system that provides
two alternative tracks: either binding arbitration, or softer mediation for
consensual solutions.

There is also provision for the special case of violation of the ‘essential
elements’ of the Agreement (i.e. basic political principles), which can lead to
suspension of the entire Agreement.

In practice these procedures are rarely used as the EU prefers the ‘diplomatic
approach’, but the tensions experienced with the Yanukovych regime before
the signing of the Agreement are illustrative of the circumstances when
these procedures might be activated.
30. INSTITUTIONAL PROVISIONS

The institutional arrangements for reviewing and controlling the implementation of the Agreement are well developed.

Ratification and provisional application. The Agreement’s ‘political’ chapters were signed on 21 March 2014, and the remaining chapters, including the one on the DCFTA, on 27 June 2014. The European Parliament had to give its consent, which it did on 16 September 2014, simultaneously with the Verkhovna Rada’s ratification. Moreover, because the Agreement is a ‘mixed agreement’ (i.e. it includes provisions falling under the competences of EU member states), all EU member states also had to ratify it according to their national laws and procedures.

In order to avoid ratification delays, the EU and Ukraine agreed to apply large parts of the agreement ‘provisionally’, namely most provisions that fall within the Union’s competences. The scope of this provisional application is exceptionally broad and covers almost the entire DCFTA and many chapters on general principles, political dialogue, the rule of law and numerous items of sectoral cooperation. The provisional application started on 1 November 2014, with the exception of the DCFTA part, which only started on 1 January 2016. The delay for the DCFTA was the result of a trilateral meeting between the EU, Ukraine and Russia on 12 September 2014, when it was decided – under Russian pressure – to delay its provisional application. However, the EU’s autonomous trade preferences (i.e. the unilateral implementation of the DCFTA tariff section) were applied in the intervening period, so, overall, little was lost in these delays.
After ratification by all the EU member states (which had been jeopardised for several months following a negative outcome in an advisory referendum in the Netherlands in April 2016), the agreement finally and fully entered into force on 1 September 2017.

**Institutional framework.** The Agreement establishes a comprehensive institutional framework, which plays a crucial role in the monitoring and implementation process. The annual EU-Ukraine summits are given a clear legal basis, which was not the case in the previous Partnership and Cooperation Agreement. The highest level of political dialogue is in evidence at these summits; they provide overall guidance for the implementation of the Agreement and an opportunity to discuss any bilateral or international issues of mutual interest. The latest EU-Ukraine Summit took place on 12-13 July 2017 (the first once after the completion of the ratification of the Association Agreement). The discussion focused on the importance of pursuing an ambitious reform process, especially in the fight against corruption, the entry into force of the EU visa-free regime for Ukrainians and the conflict in eastern Ukraine.

Below the summit level the key institution is the Association Council, composed of members of the EU Council and Commission on the one hand and members of the government of Ukraine, on the other. The Association Council meets at least once a year at ministerial level and is the core institution to monitor the application and implementation of the Agreement. Furthermore, it examines any other major issues in the relationship between the two parties. Since the entry into force of the agreement, the Association Council has met four times. At its latest meeting on 8 December 2017, the EU and Ukraine welcomed progress in pursuing a comprehensive reform agenda in spite of severe security challenges, assessed steps in the implementation of the Association Agreement and underlined the need to step up reform efforts. In particular, the Association Council reviewed and discussed the way forward in reforms set out jointly by the EU and Ukraine in the Association Agenda, welcoming the progress made in decentralisation, public administration reform, the adoption in first reading of the electoral code and the law on privatisation.520

The Association Council can take ‘binding’ decisions where provided for by the Agreement. This means that the EU (and its member states) and Ukraine are obliged to implement these decisions.

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520 EU-Ukraine Association Council - Joint communiqué, 8 December 2017.
It can also adopt non-binding recommendations, such as the ‘Association Agenda’ document, which goes through the implementation process in detail.\textsuperscript{521} Both decisions and recommendations are taken by consensus between the parties. The scope of decision-making powers is rather strict as this joint institution can only take decisions where its competence is provided for in the Agreement.

The Association Council is assisted by an Association Committee, composed of representatives of the parties at senior official level, which in turn is assisted by specific sub-committees. At its first meeting on 15 December 2014, the Association Council adopted rules of procedure for itself, the Association Committee and sub-committees.\textsuperscript{522} It also established sub-committees on Freedom, Security and Justice and on Economic and Sector Cooperation.\textsuperscript{523} The Agreement already established a Trade Committee to address all issues related to the DCFTA,\textsuperscript{524} complemented by several sub-committees (e.g. SPS, Customs and Trade and Sustainable Development).\textsuperscript{525}

Finally, the Agreement established a Parliamentary Association Committee, consisting of Members of the European Parliament, the Verkhovna Rada and a Civil Society Platform (see chapter 28).

\textit{Dynamic approximation}. These joint institutions also play a crucial role in the process of Ukraine’s (dynamic) approximation to EU legislation (i.e. the continuous updating of the list of EU directives or regulations in the many annexes to the Agreement, in light of the relevant legislative developments in the EU itself). As indicated in earlier chapters, numerous EU acts listed in the annexes of the Agreement have already been replaced or amended in the EU. Therefore, the agreement includes a general provision attributing to the

\begin{footnotesize}
\begin{enumerate}
\item EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement as endorsed by the EU-Ukraine Association Council on 16 March 2015 (http://eeas.europa.eu/ukraine/docs/st06978_15_en.pdf).
\item Decision 1/2014 of the Association Council adopting its Rules of Procedure and those of the Association Committee and of Sub-Committees.
\item Decision 2/2014 of the Association Council adopting on the establishment of two sub-committees.
\item Art. 465(4) EU-Ukraine Association Agreement.
\item See, respectively, Arts 74, 83 and 300 of the EU-Ukraine Association Agreement.
\end{enumerate}
\end{footnotesize}
Association Council the competence to update or amend the annexes “taking into account the evolution of EU law”. However, this provision does not give the Association Council a ‘carte blanche’ to modify other annexes not related to legislative approximation. Moreover, as the Association Council decides by consensus, both the EU and Ukraine need to agree on the updating of the annexes. Several chapters of the DCFTA include specific provisions to update the annexed EU legislation (e.g. SPS, Services and Public Procurement). In December 2014, the Association Council delegated to the Trade Committee the competence to amend or update the DCFTA annexes related to export duties, safeguard measures on passenger cars, TBT, Customs and Trade Facilitation, Services and Public Procurement.

The EU has already completed its internal procedures to update the annexes related to public procurement (Annex XXI) and SPS (the ‘SPS strategy’) but a formal decision of the Association Council or Trade Committee still needs to take place.

While the Association Council has broad powers to amend the annexes, it cannot change the main body of the Agreement since, being a Treaty, this would require opening up once again the complex procedures of ratification according to the internal procedures of the EU and Ukraine.

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526 Art. 463(2)/(3) EU-Ukraine Association Agreement.
527 See, respectively, Art. 74(2), Annex XVII and Art. 153(2) EU-Ukraine Association Agreement.
528 Decision 3/2014 of the Association Council on the delegation of certain powers by the Association Council to the Association Committee in Trade configuration.
529 Council Decision (EU) 2017/43 of 12 December 2016 on the position to be adopted, on behalf of the European Union, in the EU-Ukraine Association Committee in Trade configuration established by the Association Agreement, in relation to the update of Annexes XXI-A to XXI-P in the area of public procurement.
530 The Union position on the adoption of the Annex V to the Association Agreement at matter was adopted on 17 July 2017.
Institutional and final provisions at a glance

The Association Agreement finally and fully entered into force on 1 September 2017, after ratification delays in one member state (the Netherlands).

A comprehensive joint institutional framework will monitor the implementation of the agreement and provides a platform for political dialogue.

The Association Council has a broad competence to amend the annexes of the Agreement, but not the main body of the Agreement.

These institutional arrangements have been working effectively since the Association Agreement entered into force.
These Handbooks offer a one-stop guide to the Association Agreements – the authors have painstakingly analysed the incredibly complex Agreements to deliver a compact and accessible overview to all those who need to grasp their contents. The national teams also shed light on the salience of the content for domestic reforms. Even though the Handbooks are not meant to be read like a book, the reader who does so is rewarded with a panoramic overview of the sheer scale and ambition of the AA-DCFTA. The Handbooks offer a plethora of pivotal insights into the Agreements while at the same time they throw up a number of important questions. A 'bible'.

— Kataryna Wolczuk, Centre for Russian, European and Eurasian Studies, University of Birmingham

For Ukraine, the signing of the Association Agreement and the DCFTA with the European Union in 2014 was an act of strategic geopolitical significance. Emblematic of the struggle to replace the Yanukovych regime at home and to resist attempts by Russia to deny its 'European choice', the Association Agreement is a defiant statement of Ukraine's determination to become an independent democratic state.

The purpose of this Handbook is to make the complex political, economic and legal content of the Association Agreement readily understandable. This second edition, published two years into the Agreement's implementation, adds new value, charting Ukraine's progress in putting the Agreement into effect.

Two teams of researchers from leading independent think tanks, CEPS in Brussels and the Institute for Economic Research and Policy Consulting (IER) in Kyiv, collaborated on this project, with the support of the Swedish International Development Agency (Sida). This Handbook is one of a trilogy examining similar Association Agreements made by the EU with Georgia and Moldova.

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