



Ukraine and the Association Agreement

*Implementation Monitoring
2014 – 2022*

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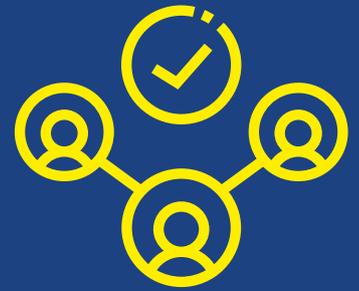
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Design and layout: Oleksandr Ivanov, UCEP

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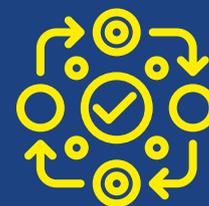
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Structure and logic of the monitoring report

The monitoring report of the UCEP NGO for the period from 2014 to 2022 offers assessments of Ukraine's progress in fulfilling the set of commitments clearly stipulated in the articles of the Agreement, annexes thereto or provisions of other international treaties specified in the Agreement. The commitments serve as a structural unit of assessment (for details, see progress assessment methodology) and are broken down by thematic areas. The thematic areas make up sections, which in turn are grouped according to the Titles of the Association Agreement.

Thus, the Monitoring Report 2014–2022 covers 24 full-fledged sections that constitute the main structural part of the Monitoring Report.

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

Methodology of progress assessment

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

Assessment unit. The progress measurement unit is a commitment, which implies a specific set of actions or tasks on the part of the Ukrainian authorities, aimed at progressive (planned) approximation of national legislation and ensuring its enforcement, to the requirements of one or more European Union acquis, as specified in the articles of and Annexes to the Association Agreement with the EU. Each of the tasks, in turn, involves a number of purely technical steps or measures, which, however, are not taken

into account in the assessment and are mentioned for reference purposes only. The deadline for fulfilling the commitment is the deadline set for the last task associated with this commitment, in accordance with the deadlines specified in the Annexes to the Agreement or in the latest version of the Government Action Plan on Implementation of the Association Agreement¹.

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

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

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

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

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

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

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

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

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

Status colour	Transposition		Implementation	
	Status name	Status description	Status name	Status description
	Transposition has not started	None of the provisions of the EU act has been transposed into Ukrainian law (or very few have been transposed)	Implementation has not started	Implementation of the provisions of European legislation has not started
	Early stage of transposition	(A) National law contains certain provisions that meet the requirements of the EU act, but this does not ensure comprehensive transposition of the provisions of the EU act into national law. (B) In the vast majority of cases, the rules and regulations of EU acquis have been transposed into national legislation only as proposals/ draft regulations of various levels.	Early stage of implementation	Necessary bylaws have been created to meet the requirements of European legislation, but there is no proper infrastructure (institutional, staffing and financial support)
	Advanced transposition	(A) The provisions of the EU act are enshrined in a Framework Law(s) of Ukraine, but amendments are needed at the level of bylaws (B) As of the time when the assessment is held, the relevant sectoral acquis have been updated in the EU and national legislation requires additional steps to achieve perfect transposition.	Advanced implementation	Necessary conditions and infrastructure have been created to meet the requirements of European legislation, but there is no effective enforcement
	Perfect transposition	All (or almost all) provisions of the EU act have been transposed into national law	Perfect implementation	All (or almost all) provisions of the EU act are implemented by the relevant public authority(ies)

	Critical nonconformity	Certain provisions of Ukrainian law significantly distort or run contrary to the provisions of certain EU act(s)	Critical nonconformity	Certain governance institutions/practices do not meet the requirements of European legislation and governance practices
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The progress with the implementation of the Association Agreement is assessed at the task level, for which purpose the number of tasks with a certain status is divided by the total number of tasks within a particular commitment, subsector, sector or the entire Association Agreement; the result obtained is multiplied by 100.

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

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

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

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

where:

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

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



The purpose of the report is to report on Ukraine's progress in fulfilling its commitments specified in Titles II, III, IV, V, and VI of the Association Agreement made in the second half of 2021 and 2022.

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

I. Political dialogue, national security and defence:

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

II. Justice, freedom, security, and human rights:

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

III. Trade:

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

IV. Economic and sector cooperation:

- Energy cooperation
- Taxation
- Statistics
- Environment

- Transport
- Company law
- Telecommunications
- Audiovisual policy
- Agriculture and rural development
- Consumer protection
- Social policy
- Public health
- Education, training and youth

V. Financial cooperation, with anti-fraud provisions

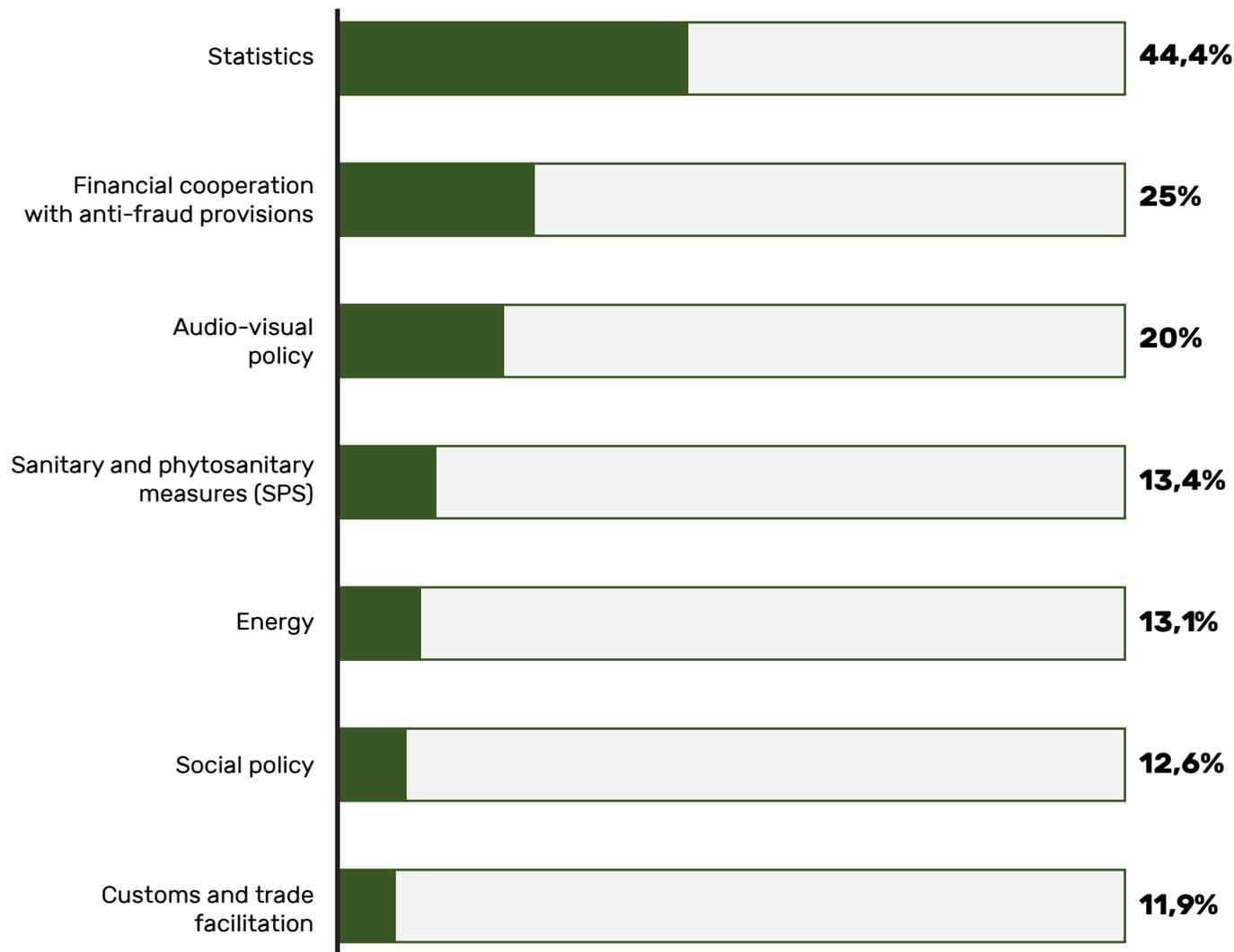
- Financial cooperation, with anti-fraud provisions

As of 2022, the overall progress of Ukraine's implementation of the Association Agreement amounts to 55%. This figure includes both fully fulfilled commitments and intermediate results. "Perfect" fulfilment, i.e. completion of all the tasks required to fulfil the commitment in full, accounts for 30.4%. 26.2% of the commitments are at an "advanced" stage of implementation, which means that legislative work has been carried out, but not all the necessary by-laws have been adopted and/or implemented or practical implementation has not been completed. 21% of the commitments are at an "early" stage of implementation – i.e. regulations or measures for their implementation are still under development. Work on 20.8% of commitments is yet to begin, while 1.6% manifest critical non-conformity with the relevant EU acquis.

In the period from the second half of 2021 to the end of 2022, no significant progress was made with the implementation of the Association Agreement. Compared to the previous monitoring period, for the year and a half, the overall progress with the implementation of the Agreement amounted only to 6%. Perfect fulfilment, i.e., complete commitment

fulfilment, increased to 4.8%. The greatest progress (more than 10% growth over the analysed period) was observed in the sectors of Public Procurement, Social Policy, Statistics, Sanitary and Phytosanitary Measures, and Audiovisual Policy.

The downtrend is due not so much to unwillingness to implement reforms as to the very complicated wartime situation in public administration. The war has dealt a double blow to the implementation of reforms. First of all, the government resources (especially in the first half of 2022) were re-allocated



to address the challenges brought about by Russian aggression. These include building a system of military defence, solving significant humanitarian problems, organizing the work of the government agencies, conducting negotiations on the provision of military and humanitarian support, etc. Secondly, the war has led to significant destruction in many sectors where European integration reforms have been carried out since 2016. Therefore, Ukraine had to focus on preserving the existing potential rather than on further reforms. The industry and energy sectors have suffered significant damage, the agricultural sector has lost up to a third of its assets, and infrastructure facilities have been destroyed. Another problem is the departure of qualified personnel abroad or their involvement in military service.

Due to martial law, the government has actually ceased performing some of its functions. Thus, for the period of martial law Ukraine has introduced the following:

- Suspension of state market surveillance measures;
- Suspension of the application of almost all procurement procedures laid down by the Laws on Public Procurement and on Defence Procurement, except for the open tender procedure;
- Suspension of the supervision of state aid.

The progress with the implementation of the political part of the Association Agreement, achieved in the first years of the Agreement, stalled when it came to practical implementation. The relevant difficulties include a lack of political will to complete the reform of the civil service and decentralization, the reform of law enforcement and judicial systems, and anti-corruption policy. Since the beginning of military aggression, the situation has been further exacerbated, as the transparency of the work of state bodies has decreased, and all efforts of society are aimed at countering armed aggression. In particular, due to the war, the level of transparency in the performance of certain state functions has decreased:

- For the period of martial law, online broadcasts of interviews with candidates to the High Council of Justice (HCJ) have been suspended, which makes it impossible to find out whether the candidates managed to resolve doubts concerning their integrity;
- Contests for vacant civil service positions have been abolished;
- State registers have been closed;
- Public participation in the discussion of reforms and legislative changes has been limited.

However, there has been some backsliding in areas not related to the announcement of martial law. These include, inter alia, the decision to exclude the range of 3400-3800 MHz from the Action Plans for the deployment of the fifth-generation technology standard for mobile communication in Ukraine¹.

Despite the martial law regime, many important European integration laws have been adopted in Ukraine, initiating systemic change in the relevant sectors. These include:

Under Title III “Justice, Freedom and Security” of the Association Agreement:

- Law of Ukraine “On the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence”;

- Law of Ukraine “On National Minorities (Communities) of Ukraine”.
- Under Title IV “Trade and Trade-Related Matters”:
- Law of Ukraine “On Postal Service”;
- Law of Ukraine “On Copyright and Related Rights”;
- Law of Ukraine “On Insurance”.

Under Title V “Economic and Sector Cooperation”:

- Law of Ukraine “On the Public Health System”;
- Law of Ukraine “On Official Statistics”;
- Law of Ukraine “On the National Commission for State Regulation of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services”;
- Law of Ukraine “On Joint-Stock Companies”;
- Law of Ukraine “On Energy Efficiency”;
- Law of Ukraine “On Multimodal Transportation”;
- Law of Ukraine “On Media”.

The adoption of these laws in the second half of 2021 and in 2022 means that in the coming years, the government will have a lot of work drafting and implementing the relevant bylaws². Only after that will it be possible to talk about the full implementation of the relevant commitments under the Association Agreement.

In some sectors, Ukraine’s progress, as well as cooperation with the EU, is much deeper than the level envisaged by the Association Agreement. In particular, in the field of foreign and security policy, as well as in the telecom sector. This is another indication that since the signing of the Association Agreement, the relations between Ukraine and the EU have changed significantly, and the regulation of the sectors covered by the Agreement has become much more complicated. The launch of EU accession negotiations could give a new impetus to European integration reforms, as it will build on the broader and more

¹ <https://zakon.rada.gov.ua/laws/show/930-2021-%D1%80#n2>

² For example, for the full implementation of the provisions of the Law of Ukraine “On Energy Efficiency,” specification of the general rules alone will require the approval of about 70 bylaws, not to mention the regulations necessary for their practical implementation.

recent EU legislation framework and take into account Ukraine's current progress with its implementation.

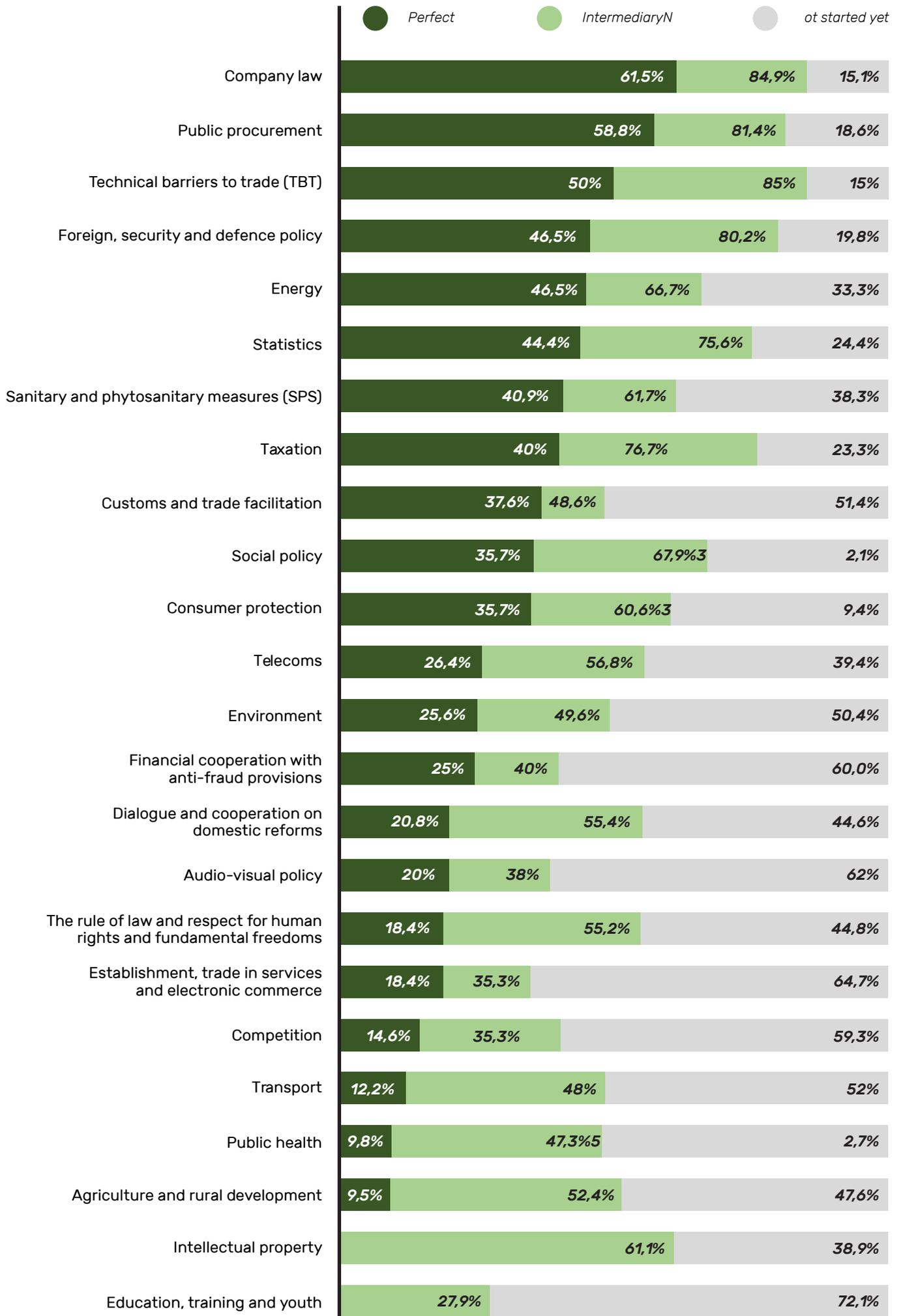
At the same time, for 20.8% of the commitments, implementation has not yet begun, and for another 21%, implementation is early. An early stage means that for these commitments Ukraine has drafted some regulations but has not adopted any. It is not uncommon for such commitments to require systemic and complex changes, the implementation of which demands political will or serious organizational efforts. These commitments include: the Law "On the Administrative and Territorial System of Ukraine", creation of the High Court on Intellectual Property, reform of customs authorities, development of a carbon emissions trading system, introduction of safety standards for road transport, and amendments to the Law "On State Aid" to cover all state aid providers, etc. Therefore, further progress with the implementation of the Agreement will depend on the ability to implement such changes.

The progress with the reform of state bodies (customs and tax authorities) envisaged by the Association Agreement is too slow and its results are not always obvious to society. And some newly created bodies, such as the Economic Security Bureau, have become ill-famed for their questionable personnel decisions.

Even in the areas where the approximation of legislation is very high, it is necessary to continue work on the practical implementation of the introduced changes. Thus, in the sector of Technical Barriers to Trade", in order to move towards the conclusion of the ACAA, which is of great interest to the domestic industry, it is necessary to eliminate the shortcomings identified during the preliminary assessment of the Ukrainian quality infrastructure by European experts. In particular, to amend the horizontal and sectoral legislation in the field of standardization, conformity assessment, metrology and market surveillance and to amplify the adoption of national standards based on international and European counterparts.

The cumulative progress of the fulfillment of commitments across all sectors covered by the Association Agreement for the period of 2014 - 2022 is presented below.

Before the EU accession negotiations start, the Association Agreement will remain the main tool for Ukraine's sectoral integration with the EU. Therefore, work on its implementation is the main tool for the further deepening of cooperation and obtaining bilateral benefits for Ukraine and EU Member States.





TITLE II.

Political dialogue,
national security
and defence

Dialogue and cooperation on domestic reform

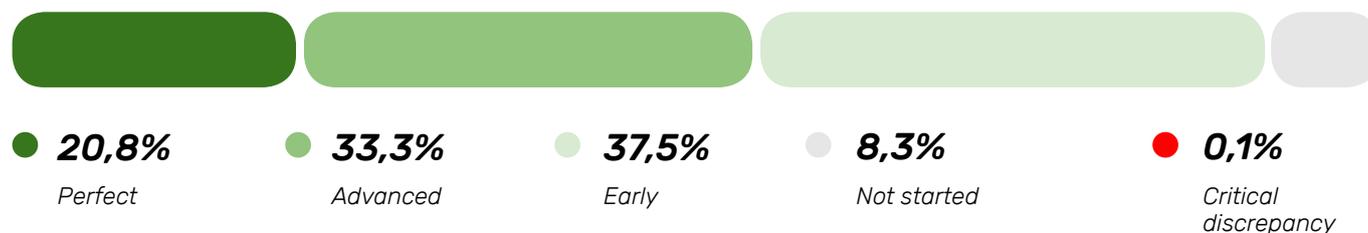


Viktoria Melnyk



Yulia Kyrychenko

Sector progress



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

One of the main tasks of the reform of local self-government and territorial organization of power is to amend the Constitution of Ukraine. On 29 November 2021, following the results of the extra-parliamentary public hearings, the Report "Amendments to the Constitution of Ukraine (regarding decentralization of power)" was presented, as well as a draft text of the amendments. The proposed amendments differ significantly from the provisions of draft law No. 2598 "On Amendments to the Constitution of Ukraine (regarding decentralization of power)", in particular, the powers of the prefect are more balanced and the powers of local self-government bodies are not completely suspended for the time of consideration by the Constitutional Court of cases on violation of the Constitution of Ukraine by acts of local self-government with regard to ensuring sovereignty and territorial integrity. The proposed changes involve consolidation of hromadas (communities) instead of ATCs, allocation of sufficient financial resources to local self-government, and performing the function of

administrative supervision by the central government through the prefect.

As of mid-2022, the draft law has not been submitted to the Verkhovna Rada of Ukraine, whereas, the previous draft law (No. 2598) "On Amendments to the Constitution of Ukraine (regarding decentralization of power)" was withdrawn on 17 January 2020. Consequently, during the entire reform period, no decisive steps have been taken to amend the Constitution, and this situation will persist due to the effect of martial law.

Legislative support for the activities of public self-organization bodies still remains unresolved. Draft Law No. 2466 "On Public Self-Organization Bodies" was withdrawn in connection with the early termination of the powers of the Verkhovna Rada of Ukraine of the VIII convocation. On 18 November 2021, the Cabinet of Ministers of Ukraine submitted to the Verkhovna Rada of Ukraine draft law No. 6319 "On Amendments to the Law of Ukraine 'On Public Self-Organization Bodies' to Improve the Procedure for Organizing, Operating and Terminating Public Self-Organization Bodies". The draft law proposes to make changes, in particular regarding:

- simplification of the procedure for creating a public self-organization body;
- determination of powers and territory of activity of the public self-organization body;
- clarification of the right to elect and be elected to the public self-organization body;
- elimination of inaccuracies regarding the procedure for the creation and term of powers of the public self-organization body and its personnel;
- legalization and registration of the public self-organization body as a legal entity;
- clarification of the procedure for termination of powers of the personnel of the public self-organization body and termination of the public self-organization body.

As of mid-2022, no legislative framework for further effective implementation of the reform has been ensured. Namely:

- Draft law No. 4664 "On the Administrative and Territorial Structure of Ukraine" was submitted for repeat first reading.
- Consideration of draft law No. 4298 "On Local State Administrations" (updated) has been postponed;
- Due to the lack of progress in amending the Constitution of Ukraine on decentralization, work on the draft law "On Local Self-Government" (updated) has been suspended.

Steps have been taken to improve the legislative framework for the distribution of the powers of village, settlement, city councils and their executive bodies, district and regional councils based on the principle of subsidiarity in connection with the change in the administrative and territorial structure of Ukraine. On 4 November 2021, the Cabinet of Ministers of Ukraine submitted to the Verkhovna Rada of Ukraine draft laws No. 6281 "On Amendments to the Law of Ukraine 'On Local Self-Government in Ukraine' Regarding the Distribution of Powers of Local Self-Government Bodies in Connection with Change in the Administrative and Territorial Structure" and No. 6282 "On Amendments to Certain Legislative Acts Regarding Decentralization and Separation

of Powers of Local Self-Government Bodies and Executive Bodies in Connection with Change in the Administrative and Territorial Structure".

On 9 July 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Law of Ukraine 'On the Principles of State Regional Policy'". This law is aimed at strengthening ties with strategic and budget planning, ensuring the practical implementation of the State Strategy for Regional Development and regional development strategies, as well as ensuring high-quality monitoring and evaluation of the implementation of the state regional policies.

In addition to these legislative initiatives, the draft laws "On Local Referenda," "On Public Consultations," and "On Service in Local Self-Government Bodies" are still pending consideration in the Parliament.

There has been a steady strengthening of hromada (community) cooperation. Thus, the number of inter-municipal cooperation agreements concluded amounted to:

- As of July 2021 – 91;
- As of October 2021 – 118;
- As of January 2022 – 153.

Implementation of public administration reform, including civil service reform

In 2021, the period of the Public Administration Reform Strategy – 2021 – ended and it was established that the target values were achieved for 12 out of 21 indicators, which is 57%. The Action Plan was implemented more effectively, namely, out of 69 measures 60 were implemented, which amounts to 87%. Thus, the Strategy initiated the reform of public administration but needed to be finalized in terms of mechanisms for implementation in practice.

Due to the need to continue the reform, on 21 July 2021, a new Public Administration Reform Strategy for 2022–2025 was adopted (hereinafter referred to as the PAR Strategy 2022–2025) (Order No. 831 of the Cabinet of Ministers of Ukraine dated 21 July 2021).

The goal of the PAR Strategy 2022–2025 is to build a capable service and digital state in Ukraine protecting the public interests based on European standards and experience.

The Government also established the expected results of the public administration reform until 2025, in particular:

- ensuring the provision of high-quality services and introduction of a convenient administrative procedure for citizens and businesses;
- creation of a system of professional and politically neutral civil service aimed at protecting the interests of citizens;
- development of effective and accountable government institutions responsible for state policy making and successfully implementing it for the sustainable development of the state.

Based on the analysis of the state of affairs, the Government, when developing the PAR Strategy 2022–2025, focused on the problematic aspects that have a significant impact on the efficiency of the state apparatus, namely:

- matters of remuneration of civil servants, including gender equality;
- professional development of personnel and effective management of human resources;
- holding competitions for civil service positions and the impact of the COVID-19 pandemic on these processes;
- low efficiency of planning of the activities of central executive bodies.

Taking into account the results of the implementation of the PAR Strategy 2021, the Government identified the following components of the PAR Strategy 2022–2025:

- **Component 1.** High-quality services and convenient procedures – involves introduction of an administrative procedure, bringing the regulatory framework in line with the changes made and further communication of the changes to civil servants and to the public. It also includes development and expansion of the system for providing administrative

services in order to improve the quality of their provision and accessibility for all segments of the public; as well as further modernization by way of introducing modern means of electronic communication and identification.

- **Component 2.** Professional civil service and personnel management – provides for the further development of a professional, integrity-based, politically neutral civil service, whose activities are aimed at protecting the interests of citizens. The PAR Strategy 2022–2025 aims at further improvement of provisions for competitive selection, career promotion, representation of women (including in senior management positions), popularization of the civil service, and involvement of young highly qualified professionals. Also, a set of tasks has been specified to improve the provisions on motivation and remuneration of civil servants. In addition, there are sets of tasks aimed at enhancing the system of human resources management and professional development of civil servants.
- **Component 3.** Good Governance – will aim to create the conditions for policy making based on analysis and communication with stakeholders for its further effective implementation. This component provides for the implementation of tasks aimed at improving the efficiency and accountability of public authorities, as well as creating conditions for ensuring citizens' constitutional right to appeal.

On 31 December 2021, the draft law “On Amendments to the Law of Ukraine ‘On Civil Service’ to Improve the Procedure for Entering, Engaging in, and Terminating Civil Service” was registered with the Verkhovna Rada (reg. No. 6496). The Law was prepared by the NAUCS with the aim of improving the procedure for entering, engaging in, and termination of civil service, optimizing the outcomes of competitive selection for civil service positions, and enhancing the procedure for applying disciplinary sanctions.

Creation and operation of directorates still remains a problematic aspect of the reform implementation. As of mid-2022, the process of creating directorates was not completed in all ministries. In fact, no systematic analysis of the policy and its improvement is conducted even in the already established directorates.

The draft law “On the Cabinet of Ministers and Central Executive Bodies”, which was prepared in 2018, has not yet been submitted to the Verkhovna Rada, and CMU draft law No. 5469 “On Amendments to Certain Laws of Ukraine regarding the Organization of the Activities of the Cabinet of Ministers of Ukraine and Central Executive Bodies” has not been considered by the Parliament.

Adoption of the Law “On Administrative Procedure” on 16 November 2021 seemed to be a significant achievement. Subsequently, it was vetoed and the President’s proposals were presented (exclusion from the scope of the Law of a number of legal relations, extension of the term of its entry into force). On 17 February 2022, the Law on Administrative Procedure was re-adopted with the President’s proposals fully taken into account. In June, the law was signed by the President. The law introduces a new philosophy of legal relations between the public and administrative bodies in the field of adoption of administrative acts (acts of individual nature). Thus, a person is granted basic rights such as the right to be heard before the adoption of an unfavourable administrative act, the right to access case materials; the obligation of the administrative authorities to provide reasons for unfavourable administrative acts and inform about the procedure for appealing them, etc. The concept of “stakeholder” and many other important innovations have been introduced.

Another important event was the adoption of the Law “On Electronic Public Registers”. This Law creates prerequisites for a single interoperable system of electronic public registers, unified requirements for registers, as well as for the collection of register information and its use, in particular, in the provision of administrative services.

As of mid-2022, the civil service in Ukraine continues to operate on the basis of the Law “On Civil Service” of 2015, formally meeting SIGMA standards. However, the low level of work organization capacity and/or increased remote work capacity (digital aspect) caused problems at the start of a full-scale invasion. No mechanisms were provided for emergency situations to ensure the safety of civil servants in the workplace. Only in April 2022, did the Cabinet of Ministers adopt a resolution regulating the organization of the work of state bodies under martial law.

On 12 May 2022, the Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding the Functioning of the Civil Service and Local Self-Government during the Martial Law Period” (cancellation of competitions and simplified procedure for appointment to civil service positions) was adopted.

Draft law No. 4380 “On Administrative Fee” has not been considered by the Verkhovna Rada of Ukraine.

Electoral and Parliamentary Reform

Conducting electoral reform

Ukraine undertook to harmonize its electoral legislation by codifying it as a single legal act (the Electoral Code of Ukraine). In 2019, the Verkhovna Rada of Ukraine adopted the new Electoral Code of Ukraine (No. 396-IX, dated 19 December 2019, Bulletin of the Verkhovna Rada of Ukraine (BVR), 2020, No. 7, No. 8, No. 9, Art. 48), which largely meets European requirements. Although the Electoral Code is already in force, it contains many conflicting provisions that will not help people exercise their electoral rights. These problems in the Election Code have not been corrected even after the first elections under this document (local elections in October 2020). During the analysed period, no changes have been made in the field of electoral reform.

Conducting parliamentary reform

In 2019, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to Article 80 of the Constitution of Ukraine (regarding parliamentary immunity)” (No. 27-IX, dated 3 September 2019, (Bulletin of the Verkhovna Rada (BVR), 2019, No. 38, Art. 160), whereby parliamentary immunity was completely abolished. The complete abolition of parliamentary immunity is contrary to European requirements; in addition, the Constitutional Court of Ukraine warned that, when deciding on abolition of parliamentary immunity, it is necessary to take into account the state of the political and legal system of Ukraine – its capacity, in the event of the complete absence of the institution of parliamentary immunity, to ensure the unimpeded and effective exercise by MPs of their powers, the functioning of the Parliament as such, as well as the implementation of the constitutional principle of separation of power (Opinion of the CCU of 6 June 2018 No. 1-B/2018).

However, on 1 November 2022, the Constitutional Court of Ukraine adopted Decision No. 2-p/2022 in the case filed by 50 MPs of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine “On Amendments to Article 80 of the Constitution of Ukraine (regarding parliamentary immunity)” (concerning constitutional control of amendments to the Constitution of Ukraine after their entry into force), whereby Law of Ukraine No. 27-IX was recognized constitutional.

Since the introduction of martial law on 24 February 2022 and during the period when it is in effect, it is impossible to amend the Constitution of Ukraine (Part 2 of Art. 157 of the Constitution of Ukraine).

Ensuring direct democracy

Ukraine undertook to ensure direct democracy through the adoption of relevant laws regulating the matters of national (all-Ukrainian) and local referenda. After the Constitutional Court of Ukraine declared unconstitutional Law of Ukraine No. 5475-VI “On All-Ukrainian Referendum” dated 6 November 2012 (The Official Bulletin of the Verkhovna Rada (BVR), 2013, No. 44-45, Art. 634), which, in addition, did not meet the EU requirements (see the CCU Decision in the case filed by 57 MPs of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine “On All-Ukrainian Referendum” (No. 4-p/2018, dated 26 April 2018), there appeared a significant gap in the legal regulation of the matter of referenda in Ukraine, which had to be filled.

On 26 January 2021, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On All-Ukrainian Referendum”. The law meets the requirements of the EU.

On 19 May 2021, the Verkhovna Rada of Ukraine registered draft law No. 5512 “On Local Referendum” of 19 May 2021, which specifies the legal principles for expressing people’s will through the local referendum, its organization and procedure. The draft law meets the requirements of the EU and received a positive opinion from the Venice Commission CDL-PI (2022)001-e. However, as of the end of 2022 the Parliament has not considered the draft law yet.

Thus, as regards electoral and parliamentary reform, the progress in fulfilling commitments as of the second half of 2022 is as follows:

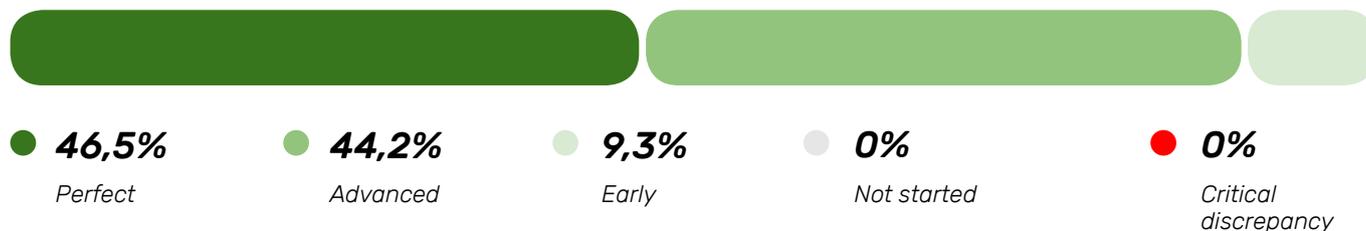
- Electoral legislation is codified: in 2019, the Verkhovna Rada of Ukraine adopted the new Electoral Code of Ukraine (No. 396-IX, dated 19 December 2019). In the future, it is necessary to optimize the current text of the Electoral Code of Ukraine in order to ensure the completeness and legal non-ambiguity of the electoral procedure, the convenience of the practical use of electoral legislation by those involved in the electoral process.
- Parliamentary reform was carried out in a questionable way. In 2019, the Parliament completely abolished parliamentary immunity instead of limiting it. The Constitutional Court of Ukraine warned that when deciding on the abolition of parliamentary immunity, it is necessary to take into account the state of the political and legal system of Ukraine, which was never done.
- Direct democracy is provided for by the Law of Ukraine “On All-Ukrainian Referendum”, adopted on 26 January 2021, the Draft Law “On Local Referendum” was submitted to the Verkhovna Rada of Ukraine but has not been considered during the analysed period.

Foreign, Security and Defence Policy



Snizhana Diachenko

Sector progress



Foreign and security cooperation between Ukraine and the EU has long transcended the priority areas specified by the Association Agreement, and after the beginning of Russia’s full-scale war against Ukraine, this gap has deepened even further. Now cooperation between Ukraine and the EU in foreign policy and security matters primarily focuses on sanctions against Russia, military and humanitarian assistance during the war, and bringing Russia to justice for war crimes. Ukraine is trying to use all possible mechanisms to strengthen its military cooperation with the EU to win the war, so the areas of cooperation indicated in the Association Agreement (holding mutually-beneficial dialogue and cooperation in the field of space; regional stability, conflict prevention, crisis management and military-technological cooperation; non-proliferation of weapons of mass destruction; disarmament, arms control, export control and combating illegal arms trade; combating terrorism; countering cyber threats) have become less of a priority.

The decision of the European Council to grant Ukraine EU candidate status proved to be an important event in relations between Ukraine and the EU. Ukraine’s course towards full membership in the European Union was enshrined in its strategic documents at the beginning of 2019. By the decision of the European Council on 23 June 2022, the EU recognized the European perspective of Ukraine and the fact that the future of this country and its citizens “lies within the European Union”¹. The Association Agreement does not provide for the prospect of membership for Ukraine, therefore the fact that Ukraine was granted the candidate status means that the provisions of the Agreement are “lagging behind” the real relations of the parties in the field of foreign policy.

In order to support Ukraine in the war against Russia, the EU uses the European Peace Facility (EPF) to systematically finance Ukraine’s military needs – as of December 2022, 6 tranches have been allocated worth a total of EUR 3.1 billion (out of EUR 5.7 – that is,

1) European Council conclusions on Ukraine, the membership applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans and external relations, 23 June 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/european-council-conclusions-on-ukraine-the-membership-applications-of-ukraine-the-republic-of-moldova-and-georgia-western-balkans-and-external-relations-23-june-2022/>

more than half of the EPF resources have been spent on Ukraine's needs). These funds have been used to compensate for the costs of EU Member States that transferred light and heavy weapons to Ukraine – so the EU for the first time began to finance the supply of lethal weapons to a third country. On 12 December 2022, the EU Council decided to increase the EPF budget to EUR 2 billion in 2023, and, if necessary, to raise it to EUR 3.5 billion by 2027². So, on the one hand, Ukraine can continue to expect military assistance from the EU, but, on the other hand, there may arise problems associated with depletion of Member States' stocks of ammunition and unattractive terms of compensation to the EPF³.

Another significant step towards deepening military cooperation with Ukraine taken by the EU was the EU Council's decision to deploy an EU CSDP Military Assistance Mission for Ukraine (hereinafter referred to as EUMAM) adopted on 15 November 2022 (Ukraine submitted the relevant request to the EU back in July 2021). The EU mission will operate on the territory of the Member States (Poland and Germany) and will have its operational headquarters within the European External Action Service in Brussels. The mandate of the Mission will initially last two years, and the financial reference amount for the common costs for this period will be EUR 106,700,000. The Mission will provide individual, collective and special military training to both Ukrainian Armed Forces units and Territorial Defence Forces. In addition, the EUMAM will facilitate the coordination and synchronization of Member States' initiatives in the delivery of training⁴. Currently, it is planned to train 15,000 servicemen in accordance with the needs of the Armed Forces of Ukraine, in particular, 12,000 Ukrainians will undergo general military training, and 2,800 servicemen will take part in special military training.

The creation of a training mission for Ukraine is a significant breakthrough both in terms of the EU's security policy and its military cooperation with Ukraine. Firstly, the EU for the first time deploys a CSDP mission for a country at war against an aggressor. The main beneficiaries of such EU missions in the past were mainly the armed forces of African

countries that opposed terrorists or militia groups⁵. Secondly, if earlier the EU distanced itself from the matters of resolving the Russia-Ukraine military conflict, now it directly helps to increase the defence capabilities of the Armed Forces in the war against Russia.

Ukraine also receives support from the EU's PESCO projects. In response to Ukraine's request of 18 February 2022, a few days before the full-scale invasion, the EU activated the Rapid Cyber Response Team (with Lithuania as project coordinator) and sent a team of cybersecurity experts to Ukraine. Another PESCO project – the Germany-led European Medical Command – is supporting the evacuation of wounded and sick people from Ukraine⁶. On the other hand, Ukraine has failed to become a member state of PESCO projects, although Kyiv has declared interest in participating in 20 such projects.

These examples attest to the fact that since the beginning of the full-scale invasion, cooperation between Ukraine and the EU has become more dynamic, albeit more asymmetric. On the one hand, Ukraine is a recipient of the EU's security and defence initiatives, but on the other hand, the Ukrainian Armed Forces are currently the largest contributor to the security of the European continent, resisting the RF's war of aggression. At the same time, the articles of the Association Agreement do not provide for mechanisms for coordination or cooperation between the partners in response to current security challenges, so in this analysis, the current military cooperation between Ukraine and the EU is viewed as taking place outside the scope of the Association Agreement, and therefore will not be subject to assessment.

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

In the second half of 2021 and 2022, intensive political dialogue between Ukraine and the EU continued

2) <https://www.consilium.europa.eu/en/press/press-releases/2022/12/12/european-peace-facility-council-agrees-2-billion-increase-of-the-financial-ceiling-in-2023/>

3) <https://www.globsec.org/what-we-do/publications/eus-assistance-ukraine-looking-ahead-2023>

4) <https://www.consilium.europa.eu/en/press/press-releases/2022/10/17/ukraine-eu-sets-up-a-military-assistance-mission-to-female-support-the-ukrainian-armed-forces/>

5) <https://www.martenscentre.eu/blog/with-the-new-ukraine-mission-eu-military-training-becomes-more-geopolitical/>

6) <http://prismua.org/123058635-2/>

within the Association bodies, as well as through the Ministry of Foreign Affairs, the Ministry of Defence, and the Office of the President. For objective reasons, the Ukraine–EU summit did not take place in 2022, but as of the end of December, the European party reported that the 24th summit is scheduled for 3 February 2023. Potential topics of discussion include: EU support for Ukraine in the war against Russia and assessment of Ukrainian prospects for EU membership⁷. In 2021, Ukraine joined 79% of the EU's foreign policy declarations⁸, which is 11% less than in 2020.

In addition, on 6 October 2022, Ukraine took part in the inaugural meeting of the European Political Community (EPC), a political dialogue platform created by the EU (at the initiative of Emanuel Macron) to discuss strategic matters of common interest for the states of the European continent. The summit was attended by 44 countries, whose leaders discussed matters of peace and security (in particular, in the light of the Russia–Ukraine war), the energy crisis and economic issues. However, at the end of the meeting, no joint declaration was adopted, which apparently attests to the unofficial nature of the summit. In the future, it is planned that meetings in this format will be held twice a year, but a clear framework for the further functioning of the EPC has not yet been agreed upon, the institutional structure is also unlikely to be created – the heads of states and governments have repeatedly stressed at a press conference that the EPC will serve as a platform for an informal exchange of views rather than fixed agendas⁹. Experts' opinions about the future of the EPC vary: on the one hand, this format can facilitate sectoral cooperation of EU Member States with other countries of the continent¹⁰, on the other hand, the EPC is unlikely to bring tangible results as long as there is no consensus on its functioning between France and Germany, as well as clear support for the format on the part of the latter¹¹.

Ukraine can use the EPC as another platform to voice its interests with regard to sectoral integration into

the EU. Kyiv's vision of the EPC involves candidate countries' integration into European markets along with the EU accession negotiations. Ukraine also believes that the EPC can become a platform for discussing security and military-political matters, primarily regarding cyber defence and information security¹². Kyiv has submitted its proposals to the EU, but it remains to be seen how this format will function.

In 2022, the EU approved its Strategic Compass for Security and Defence – a document that specifies the main vectors of cooperation between EU member states in the field of security and defence until 2030. The preparation of this document lasted from 2020, but after the beginning of the full-scale invasion of Russia into Ukraine, the first part of the Compass, which deals with the analysis of threats, was edited, taking into account the security situation in the context of the full-scale war. However, the part dealing with direct strategic actions and partnerships has not undergone significant changes¹³. The Compass aims at boosting the effectiveness of the EU military and civilian missions, development of the EU Rapid Deployment Capacity, which would make it possible to deploy five thousand troops in case of different types of crises (for example, for stabilization or evacuation). The document also mentions boosting intelligence analysis capacities, countering hybrid threats, in particular misinformation, and enhancing the EU's role as a maritime and space security actor by improving and developing appropriate strategies and investing in the development of innovative technologies¹⁴. However, in light of the current security threats, the tools described in the Compass appear ineffective and outdated¹⁵.

The Compass does not make a separate mention of security cooperation with Ukraine, instead it is considered together with other eastern neighbours – Moldova and Georgia – with a focus on strengthening their resilience (in the context of threats to their sovereignty and territorial integrity) and cooperation in the areas of countering misinformation, hybrid

7) EU-Ukraine summit set for Feb 3, location not decided, December 22, 2022, Reuters, <https://www.reuters.com/world/europe/eu-ukraine-summit-set-feb-3-location-not-decided-2022-12-22/>

8) High Representative of the Union for Foreign Affairs and Security Policy, Association Implementation Report on Ukraine, Brussels, 22 July, 2022.

9) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/734671/EPRS_BRI\(2022\)734671_XL.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/734671/EPRS_BRI(2022)734671_XL.pdf)

10) <https://ecfr.eu/article/friends-with-benefits-how-the-european-political-community-can-friends-european-integration/>

11) <https://dgap.org/en/research/publications/analysis-european-political-community-misses-point>

12) <https://www.ukrinform.ua/rubric-polytics/3587563-ukraina-vnesla-cimalo-propoziciji-do-evropejskoi-politicnoi-spilnoti-stefanina.html>

13) <https://apostrophe.ua/en/article/politics/foreign-policy/2022-03-23/novaya-strategiya-bezopasnosti-evropyi-chem-pomojet-kompas-ukraine/44981>

14) Council of the European Union, A Strategic Compass for Security and Defence – For a European Union that protects its citizens, values and interests and contributes to international peace and security, Brussels, 21 March 2022, <https://data.consilium.europa.eu/doc/document/ST-7371-2022-INIT/en/pdf>

15) <http://prismua.org/123058635-2/>

and cyber threats. Although the document mentions the EU's intention to provide Ukraine with political, financial, humanitarian and logistical support to counter Russia's military aggression, it fails to level the asymmetry between Ukraine's expectations for security cooperation with the EU (in particular, military-technological cooperation) and the EU's willingness for cooperation at the level of strategic documents. That is, although the EU provides military support to Ukraine in countering Russian aggression, the development of systematic military cooperation with Ukraine is not a strategic priority for the EU.

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

During the period under consideration, no changes have actually taken place in this area. Ukraine has not yet adopted the draft law "On State Regulation in the Field of Remote Sensing of the Earth". The VRU plan of work for 2022 contains consideration of the draft law on remote sensing scheduled for Q4. However, the draft law has not yet been submitted to the Verkhovna Rada. According to the Ministry of Strategic Industries of Ukraine, the draft law was to be submitted to the Verkhovna Rada in September¹⁶.

Regional stability, conflict prevention and military-technological cooperation

• Regional stability

Since the beginning of Russia's full-scale invasion of Ukraine, the EU has maintained its unity in condemning Russia's aggression, supporting Ukraine's sovereignty and territorial integrity. On 22 February 2022, the EU condemned Russia's decision to recognize the independence of the so-called DPR/LPR and deploy Russian troops in these territories,

emphasizing that this violates international law (the UN Charter, the Helsinki Final Act, the Paris Charter and the Budapest Memorandum), as well as Russia's commitments within the Normandy format and under the Minsk Agreements and undermines the work of the Trilateral Contact Group¹⁷. Following the meeting of the European Council on 24 February 2022, in response to the full-scale Russian aggression, the EU undertook to apply economic and sectoral sanctions against Russia, as well as to support Ukraine in confronting Russian aggression with political, financial, humanitarian and logistical means¹⁸.

Ukraine and the EU are holding consultations within the framework of international organizations to provide international support to Ukraine in standing up to Russia. For example, after Russia vetoed a UN Security Council resolution condemning the pseudo-referendums in the temporarily occupied territories of Ukraine, Ukraine and the EU intensified coordination in order to attract the support of the majority of UN members for the adoption of this resolution at the General Assembly. As a result, on 12 October 2022, the resolution was passed with an overwhelming vote of 143 in favour¹⁹.

As of December 2022, the EU has imposed 9 packages of sanctions against Russia in response to the full-scale invasion of Ukraine. The first package was adopted on 23 February after Russia recognized the so-called DPR and LPR²⁰. These restrictive measures complement the economic and sectoral sanctions that the EU has been applying against Russia since 2014. The EU also imposed restrictive measures against Belarus for its involvement in the Russian invasion of Ukraine (sanctions against 22 senior military leaders, SWIFT exclusion for five Belarusian banks, financial sanctions)²¹, as well as against Iran.

According to the War and Sanctions project, since 24 February 2022, the EU has imposed sanctions on 1,246 individuals and 364 companies (Ukraine on

16) <https://mspu.gov.ua/storage/app/sites/17/%D0%9F%D1%80%D0%BE%D0%B3%D1%80%D0%B0%D0%BC%D0%B8%20%D0%94%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D0%B8/plan-roboti-na-2022-rik-122021.pdf>

17) <https://www.consilium.europa.eu/en/press/press-releases/2022/02/22/ukraine-declaration-by-the-high-representative-on-behalf-of-the-european-union-on-the-decisions-of-the-russian-federation-for-undermining-ukraine-s-soprusty-and-territorial-integrity/>

18) <https://www.consilium.europa.eu/en/press/press-releases/2022/02/24/european-council-conclusions-24-february-2022/>

19) https://www.eeas.europa.eu/delegations/un-new-york/behind-scenes-defending-un-charter_en?s=63

20) <https://www.consilium.europa.eu/en/press/press-releases/2022/02/23/russian-recognition-of-the-non-government-controlled-areas-of-the-donetsk-and-luhansk-oblasts-of-ukraine-as-independent-entities-eu-adopts-package-of-sanctions/>

21) <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-belarus/>

3,264 and 1,604, respectively)²². There is currently no systematic coordination between Ukraine and the EU concerning sanctions, for example, the Yermak & McFaul International Expert Group has no capacity to work with the EU at the instrumental level²³.

- **Conflict prevention, crisis management**

With the beginning of the full-scale invasion, the President recalled all Ukrainian peacekeepers from international operations. Hence, Ukraine currently does not participate in EU military operations. In addition, although last year an order of the President of Ukraine was adopted to send national troops to participate in the EU's Operation Althea, no information is available about the participation of Ukrainian peacekeepers in the mission²⁴. Apparently, Ukrainian troops did not take part in Operation Althea.

- **Military-technological cooperation**

In 2022, there was a rollback in the field of defence procurement at the level of implementation, since the resolution of 11 November 2022 suspended the procedures laid down by the law "On Defence Procurement"²⁵.

Regarding practical cooperation, in 2021 Ukraine continued cooperation with the European Defence Agency, in particular at the level of expert groups (EG No. 10 – Ammunition, EG No. 14 – Life Cycle Technical Documentation, EG No. 15 – Quality of electric power supply/Portable electric power generators)²⁶.

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

Work is still underway to develop a new version of the Law of Ukraine "On Amendments to the Law of Ukraine 'On State Control over International Transfers of Military and Dual-Use Goods'". According to the report of the State Service for Export Control, the new version of the law takes into account the provisions of the Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting

up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast); the positions of the Ministry of Economy regarding certain provisions of the Law as well as comments and proposals of the NSDC Office, the Ministry of Defence and the Ministry of Foreign Affairs; comments and proposals of the SC Ukroboronprom. In accordance with the strategic plan of the Ministry of Economy for 2022–2024, the draft law was to be submitted to the Cabinet of Ministers for consideration in June 2022.

At the level of implementation, the Resolution of the Cabinet of Ministers of Ukraine "On Amendments to the Procedure for State Control over International Transfers of Dual-Use Goods" is being finalised by the State Service for Export Control – as of August 2022, it was undergoing public consultations²⁷.

Therefore, in the second half of 2021 and 2022, no progress was made.

Combating terrorism

The task of improving the physical protection of high-risk facilities has been fulfilled at the regulatory level. On 16 November 2021, the Verkhovna Rada adopted the Law "On Critical Infrastructure"²⁸.

At the level of practical implementation, Ukraine's cooperation with Eurojust continues – in 2021, the Ukrainian Liaison Prosecutor initiated 23 new cases, was involved in 81 new cases, 39 coordination meetings, 3 coordination centres, and 14 joint investigation teams²⁹.

The State Financial Monitoring Service carries out financial investigations to counter the financing of terrorism and separatism. In 2021, the State Financial Monitoring Service collected and transferred to law enforcement agencies 109 materials on financial transactions that may be related to the financing of terrorism or separatism, including 5 materials that blocked funds in the amount of UAH 0.8 million. The State Financial Monitoring Service has concluded a Memorandum of Understanding with the Financial

22) <https://sanctions.nazk.gov.ua/en/>

23) <https://verfassungsblog.de/eu-ukraine-sanctions-is-it-time-for-deeper-convergence/>

24) <https://www.euforbih.org/index.php/newsroom/2913-clarification-on-ukrainian-military-personnel-participation-in-eufor-op-althea>

25) <https://zakon.rada.gov.ua/laws/show/1275-2022-%D0%BF#n161>

26) <https://edstar.eda.europa.eu/ExpertGroups>

27) <https://dsecu.gov.ua/en/provedenna-elektronnih-konsultacij-z-gromadskistu-sodo-proektu-postanovi-kmu>

28) <https://zakon.rada.gov.ua/en/laws/card/1882-20>

29) <https://www.eurojust.europa.eu/states-and-partners/third-countries/liaison-prosecutors/ukraine>

Intelligence Analysis Unit of the Republic of Malta on cooperation in the field of combating the legalization (laundering) of proceeds from crime, terrorist financing and financing of proliferation of weapons of mass destruction³⁰.

Countering cyber threats

In this area, no changes have been made in the relevant period. Ukraine needs to implement the Convention on Cybercrime, as well as adopt draft laws “On Amendments to the Criminal Procedure Code of Ukraine and the Code of Administrative Offences of Ukraine to Improve the Effectiveness of Countering Cyberattacks” (Reg. No. 4003 of September 1, 2020) and “On Amendments to the Criminal Procedure Code of Ukraine to Improve the Effectiveness of the Fight against Cybercrime and the Use of Electronic Evidence” (Reg. No. 4004 of 1.09.2020). Both draft laws are pending consideration by the Verkhovna Rada.

In the second half of 2021 and 2022, there was no significant progress in the security cooperation between Ukraine and the EU in the areas provided for by the Association Agreement. At the level of transposition, attention should be given to the adoption of the law “On Critical Infrastructure”. Practical cooperation of Ukraine with the European Defence Agency continued, in particular at the level of expert groups. Also, Ukraine continued cooperation with Eurojust. Cooperation between Ukraine and the EU outside the scope of the Association Agreement is much more intense. This primarily refers to the EU candidate status granted to Ukraine and the EU’s military support of Ukraine in the war against Russia.

³⁰) <https://fiu.gov.ua/assets/userfiles/0350/zvity/zvit2021ukr.pdf>



TITLE III.

Justice, freedom, security
and human rights

Rule of law and respect for human rights and fundamental freedoms



Roman Smaliuk

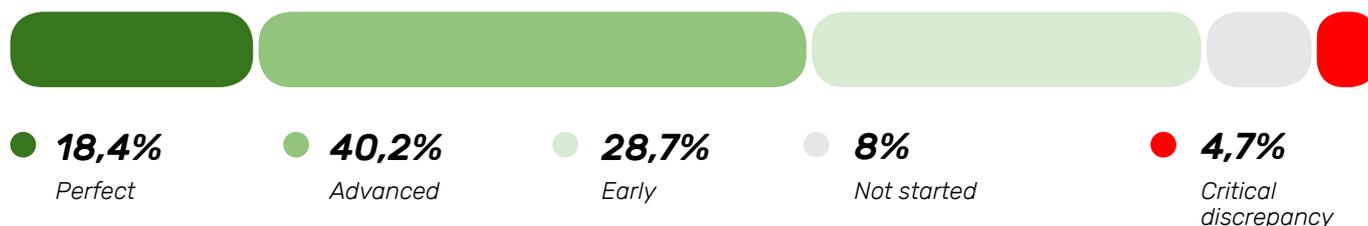


Iryna Sushko



Pavlo Kravchuk

Sector progress



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

Art.14 of the Association Agreements between Ukraine and the EU recognizes the particular importance of cooperation on the consolidation of the rule of law and reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. The key objectives of such cooperation are the strengthening of the judiciary, improving its efficiency, safeguarding its independence and impartiality, as well as combating corruption.

The implementation of effective judicial reform has been repeatedly mentioned as a condition for Ukraine's further European integration path¹. Even the

recommendations of the European Commission given to Ukraine when granting it the EU candidate country status mention that it is necessary to complete the formation of new HCJ and HQCJ – i.e., the judicial bodies that are key to the further implementation of judicial reform, and of the seven recommendations provided by the Commission three focus on the reform of law enforcement, anti-corruption bodies and the judicial system.

The approximation of Ukraine's legislation under its commitments in this sector is mostly advanced, as the necessary framework legislation making it possible to launch most of the key reforms was adopted in previous years². However, the reform of the Security Service of Ukraine has not yet begun – one of the key results of this reform should be to deprive this

1) Joint statement following the 23rd EU-Ukraine Summit // <https://www.president.gov.ua/news/spilna-zayava-za-pidsumkami-23-go-samitu-ukrayina-yevropejsk-71037>.

2) In particular, the laws of Ukraine "On the Prosecutor's Office" (2014), "On the Prevention of Corruption" (2014), "On the National Anti-Corruption Bureau of Ukraine" (2014), "On the National Police" (2015), "On the State Bureau of Investigation" (2015), "On the National Agency for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes" (2015), "On Amendments to the Constitution of Ukraine (regarding Justice)" (2016), "On the Judiciary and the Status of Judges" (2016), "On the High Council of Justice" (2016), "On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies" (2016), "On Enforcement Proceedings" (2016), "On National Security of Ukraine" (2018), "On the Economic Security Bureau of Ukraine" (2021).

body of the opportunity to abuse its powers. The necessary laws have not yet been adopted, and, in fact, after the beginning of the full-scale invasion the issue of comprehensive reform has been relegated to the background. What is more, during the martial law period, the Parliament received some legislative initiatives to strengthen the Security Service of Ukraine that contain rather controversial and alarming proposals³.

However, during the period under review, work on the approximation of legislation continued. At the beginning of August 2021, laws came into force on the reform of the HCJ⁴ and the restart of the competition to the HQCJ⁵ that fulfilled Ukraine's commitments to the International Monetary Fund and the EU undertaken back in 2020. The laws provide for the involvement of international experts with the right of decisive vote in the procedures for selecting members of the HCJ and the HQCJ, as well as conducting a one-time integrity check of the existing members of the HCJ with the possibility of their subsequent dismissal.

In October 2021, the Verkhovna Rada adopted a law bringing the procedure for electing the director and the legal status of NABU into line with the Constitution⁶. The Bureau turned into an executive body with clearly set safeguards of independence from the Government. The procedure for electing the NABU Director – who is now appointed by the Government (rather than the President as before) from among the candidates recommended following a transparent competition conducted by a separate competition commission involving international experts with the right of decisive vote – has been improved.

One of the key achievements in the field of anti-corruption legislation is the approval by the Parliament in June 2022 of the Anti-Corruption Strategy for 2021–

2025⁷, the draft of which was commended by the European Parliament. The practical implementation of anti-corruption reform is mostly advanced.

The SBI is a state law enforcement agency that began operation in 2018, taking over the investigation of cases from the Prosecutor's Office. The first leadership of the Bureau was appointed on the basis of a fairly non-transparent competition. After the dismissal of the head of the SBI in 2019, the new one was appointed only two years later based on the results of the competition that was also mired in scandals⁸, and, in fact, the President appointed the head of the Bureau contrary to the Constitution of Ukraine⁹.

The Economic Security Bureau is a central executive body entrusted with the task of counteracting offenses that encroach on the functioning of the state economy. The first head of this body was appointed in August 2021, and on 24 November of the same year, the Government by its order allowed the Bureau to begin work. There was no improvement in quality, since most of the employees of the new body are former employees of the tax police, which the Bureau, in fact, was created to replace. As a result, less than a year after its launch, politicians have already started talking of the need to reboot this body¹⁰, and scandals around personnel appointments made the Civil Supervisory Board under the Bureau suspend the participation of its representatives in personnel commissions in July 2022.

The NACP is a central body responsible for the development and implementation of the state anti-corruption policy. After the legislative changes of 2019, when the Agency became the sole-head body and its head was selected involving international experts, the efficiency of its activities has significantly increased. Currently, the NACP is developing the State Anti-Corruption Program, which should set forth the procedure for implementing the measures specified in the anti-corruption strategy.

3) O. Shcherban: Anti-reform of the SBU: How the Parliament Proposes to Change Counterintelligence and What Potential Threats are // <https://www.eurointegration.com.ua/articles/2022/05/24/7139938>

4) Law of Ukraine No. 1635-IX "On Amendments to Certain Legislative Acts of Ukraine concerning the Procedure for Election (Appointment) to the Positions of Members of the High Council of Justice and the Activities of Disciplinary Inspectors of the High Council of Justice" dated 14 July 2021 // <https://zakon.rada.gov.ua/laws/show/1635-20#Text>

5) Law of Ukraine No. 1629-IX "On Amendments to the Law of Ukraine 'On the Judiciary and the Status of Judges' and Certain Laws of Ukraine to Restore the work of the High Qualifications Commission of Judges of Ukraine" dated 13 July 2021 // <https://zakon.rada.gov.ua/laws/show/1629-20#Text>

6) Law of Ukraine No. 1810-IX "On Amendments to Certain Laws of Ukraine to Bring the Status of the National Anti-Corruption Bureau of Ukraine in Accordance with the Requirements of the Constitution of Ukraine" dated 19 October 2021 // <https://zakon.rada.gov.ua/laws/show/1810-20#Text>

7) Law of Ukraine No.2322-IX "On the Principles of the State Anti-Corruption Policy for 2021–2025" dated 20 June 2022 // <https://zakon.rada.gov.ua/laws/show/2322-20#Text>

8) D. Mokryk: The Head of the SBI Submitted for the Competition a Presentation Allegedly Created by his Subordinate // <https://bihus.info/ker-ivnyk-dbr-podav-na-konkurs-prezentacziyu-jmovirno-stvorenu-jogo-pidle-gloyu>; S. Andrushko: Under the Roof of the OP. How Zelensky's Administration Elected Head of the SBI, which Investigates the Cases of Poroshenko, Trukhin, Gogilashvili and 'Wagnergate' // <https://www.radiosvoboda.org/a/skhemy-dbr-konkurs-ofis-prezydenta/31674347.html>

9) President appointed the SBI Director Contrary to the Constitution // <https://pravo.org.ua/analytical-materials/shhotyzhnevyy-analiz-4-10-sichnya-2022-roku>

10) A. Zharykova: MPs Want to Reboot the Economic Security Bureau // <https://www.epravda.com.ua/news/2022/10/21/692908>

NABU is a pre-trial investigation body that has been dealing with high-level corruption cases since 2015. Despite regular attempts to politically remove A. Sytnyk from the position of NABU Director, he managed to remain in office until the end of his term of office (April 2022). The competition for the election of a new head of the Bureau is far from over, but from the beginning it was accompanied by problems. After the establishment of the competition commission in February 2022, the Government unreasonably tried to block the participation of one of the international experts who simultaneously participated in the competition commission for the election of the head of the SAP. It was only in July that this discriminatory norm was abolished, which created the preconditions for the beginning of the work of the competition commission, the first meeting of which was held on 22 August 2022.

The procedural management of the investigations conducted by NABU detectives is performed by SAP prosecutors. The first head of this body voluntarily resigned at the end of August 2020. The competition for the election of a new head lasted one and a half years, of which it took the Commission six months to make a formal decision on the approval of the results of the competition due to the sabotage of individual members appointed by the political authorities. There were attempts to block the competition also through court decisions¹¹. Finally, in July 2022, after numerous calls from international partners¹² and civil society representatives, the Commission announced the winner of the competition, who was appointed by the Prosecutor General.

The Asset Recovery and Management Agency is a body that has been responsible for the development and enforcement of the state policies in the field of finding, tracing and management of assets derived from corruption and other crimes since 2016. After the suspension and dismissal of the head of this body at the end of 2019, no new one has been appointed yet, and in the autumn of 2022, the competition for this position was in fact re-announced¹³.

Despite the war, active work is underway to reform the judiciary (HCJ, HQCJ). The HCJ is one of the key bodies in the justice system as it takes decisions concerning the appointment, transfer, prosecution and dismissal of judges, and the majority of its members must be judges. The lack of effective mechanisms for the selection of candidates for the positions of members of this body led to critical problems with the integrity of the HCJ, which has failed to become an agent of change in justice, as well as showed a high degree of tolerance for lack of integrity and corruption among judges. The scale of the problem made Ukraine recognize it in its commitments to the International Monetary Fund and the EU, and the Venice Commission in one of its conclusions emphasized that: "A judicial reform which does not tackle the functioning of the HCJ and the integrity of its members is doomed to fail."¹⁴

The problem was supposed to be solved by the law adopted in the summer of 2021 establishing an Ethics Council, which during the transition period should include three representatives from the Council of Judges and three international experts (with a decisive vote). It is designed to solve this problem. The Ethics Council was to check the integrity of the current members (having the power to recommend their dismissal based on the results of the check) and conduct a pre-selection based on the criterion of integrity of candidates for the HCJ.

Despite resistance from the justice system, the Ethics Council began its work in November 2021 and started to screen candidates who applied for already announced competitions to the HCJ. The current members of the HCJ at the time tried in every possible way to avoid the check by the Ethics Council, and when they failed, 12 members voluntarily resigned. As a result, at the time of the full-scale invasion, the HCJ consisted of only five members, which made it impossible to make any decisions. After a short break, the Ethics Council resumed its work at the end of April 2022, starting with the integrity check of the members of the HCJ who remained in office. As a result of the inspection, one member was dismissed.

11) O. Shcherban: The DACK Undermined the Competition for the Head of the SAP Using a Non-existent Norm of the Law: Analysis of the Scandalous Decision // <https://www.liga.net/ua/politics/opinion/oask-sor-val-konkurs-na-glavu-sap-nesuschestvuyushey-normoy-zakona-analiz-pozornogo-resheniya>

12) The completion of the appointment of the new head of the SAP was even specified as one of the recommendations provided by the European Commission when Ukraine received the EU candidate status.

13) The completion of the appointment of the new head of the SAP was even specified as one of the recommendations provided by the European Commission when Ukraine received the EU candidate status.

K. Ryzhenko, P. Demchuk: Election of a New ARMA Head: What is the Status of

the Two-Year-Long Competition? // <https://yur-gazeta.com/dumka-eksperta/obrannya-golovi-arma-yakiy-status-dvorichnogo-konkursu.html>

14) Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law No. 1029/2021, May 2021 // [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2021\)004-e&fbclid=IwAR-3rWfyoHafuQmahNh6WfoAZ1g-nqIKTfZv4H6Sx6wFy_Kig7K-_Tv3slbU](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2021)004-e&fbclid=IwAR-3rWfyoHafuQmahNh6WfoAZ1g-nqIKTfZv4H6Sx6wFy_Kig7K-_Tv3slbU)

Subsequently, the Ethics Council continued the selection of candidates for the vacant positions of members of the HCJ. At the end of the summer this year, three new members of the HCJ were elected with its participation, and work is underway to fill the remaining vacant positions.

Currently, one of the key problems in the activities of the Ethics Council is the termination of online broadcasts of interviews with candidates for the HCJ for the period of martial law, which makes it impossible for us to see whether candidates were able to resolve the doubts concerning their integrity. The public even made a public statement concerning the transparency of the selection procedure, to no effect though¹⁵.

In addition, the law on the reform of the HCJ provides for the creation of the institution of disciplinary inspectors in the Council, who are to act as HCJ rapporteurs in disciplinary cases. Due to the lack of authority of the HCJ, work on the establishment of this institution has not yet begun, hence no disciplinary proceedings against judges have been considered for more than a year now.

Ukraine has managed to reboot the competition to the HQCJ, which has been lacking authorized members since November 2019. The HQCJ is the body responsible for the selection of new and assessment of existing judges. The previous mechanism used to form it did not contain any safeguards against the entry of persons lacking integrity or potentially dependent persons into the commission, which resulted in the failure of the qualification assessment of judges, as well as in the occupation of the highest positions in the judicial system by persons whose integrity arouses considerable doubts¹⁶. According to the new procedure, the HQCJ competition is conducted by a specially created competition commission temporarily involving international experts with the right of decisive vote. The competition started in early February 2022, but due to the outbreak of full-scale war, it was temporarily suspended and resumed only in mid-July 2022.

The three-year period of inactivity of the HQCJ due to a lack of properly elected members led to the suspension of the procedures for qualification

assessment and selection of new judges, as well as the formation of the Intellectual Property High Court, the competition for which halted half way.

In August and September 2021, the authorized members of the Council and the disciplinary body of prosecutors were formed, which is a positive step towards building a European-style Prosecutor's Office, since the suspension of the activities of these bodies was severely criticised by the Council of Europe. At the same time, according to experts, there are a number of factors that significantly limit the effectiveness of these bodies¹⁷. So far, there has been no full-fledged personnel reboot of the Prosecutor's Office and the Prosecutor General is still appointed and removed in a purely political way¹⁸, which negatively affects the independence of the Prosecutor's Office.

The other projects within the reform of the judiciary have not been implemented due to the beginning of active hostilities, and the state focused primarily on ensuring the smooth functioning of courts and investigation of war crimes.

During the first years after the ratification of the Agreement with the EU, Ukraine developed and adopted a number of progressive laws aimed at building and strengthening the rule of law, the system of anti-corruption bodies and the judiciary. However, the implementation of these laws in practice stalls due to a lack of political will to make radical changes, strong opposition from the corrupt system, which had to be reformed, and the desire of the executive branch to maintain control over the newly created independent institutions. During the reporting period, a full-scale invasion of Ukraine by the Russian Federation exacerbated the situation making the implementation of comprehensive reforms almost impossible, and the efforts of the government and public are aimed primarily at countering the aggression.

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

In the period from July 2021 to the end of 2022, several laws and regulations were adopted to

15) Trust in the results of judicial reform is impossible when there is no transparency // <https://pravo.org.ua/dovira-do-rezultativ-sudovoyi-reformy-nemozhlyva-koly-vidsutnya-prozorist>

16) The newly elected judges of the Supreme Court took an oath // <https://grd.gov.ua/news/novoobrani-suddi-verkhovnoho-sudu-sklaly-prysiahu>

17) Self-governing and disciplinary bodies of the Prosecutor's Office resume work // <https://pravo.org.ua/analytical-materials/shhotyzhnevyyi-analiz-28-veresnya-4-zhovtnya-2021-roku/#link4>

18) Currently, the Prosecutor General is a former MP from the presidential faction A. Kostin, who replaced I. Venediktova, who also belonged to the President's party.

harmonise Ukrainian legislation with the EU acquis in the field of human rights protection, combating discrimination, preventing torture, and accounting for human toll in Russia's war.

One of the most notable achievements of the year was the ratification by the Verkhovna Rada of the Istanbul Convention aimed at combating domestic violence. Also, during the monitoring period, the law "On Social and Legal Protection of Persons Who Suffered Deprivation of Personal Freedom as a Result of the Armed Aggression against Ukraine" was adopted, which provides for the creation of a Unified Register of such persons. Work continued to improve the regulatory framework of the Custody Records system aimed at combating torture and ill-treatment, as well as the regulatory framework of the system for combating money laundering and terrorist financing.

The authorities and civil society continue to work on the matter of bringing the term "torture" into line with international standards.

Some current progress – albeit insufficient to change the commitment fulfilment assessment – is observed regarding the commitments in the field of personal data protection and combating discrimination.

During the monitoring period, the implementation of previously adopted legislative acts began or continued. Some of the previously introduced norms demonstrated sustainability in the crisis situation (in particular, the IDP accounting system, which continued to function when the number of IDPs almost tripled) and adapted to new conditions (for example, categorisation of social assistance depending on the situation of a particular internally displaced person).

Also in 2021, Ukraine launched the implementation of the new National Human Rights Strategy and the action plan for its implementation for 2021–2023; integrated into the operation of the Pompidou Group, officially joining it on 1 January 2022; continued the implementation of regulations related to combating domestic violence and ratified the Istanbul Convention, which made it possible to counter this phenomenon in a more consistent manner.

At the end of 2022, Law of Ukraine No. 2827-IX "On National Minorities (Communities) of Ukraine" dated 13 December 2022 was adopted. It will enter into force on 01.07.2023.

Risk Areas

Other commitments are at risk because of the near-zero rate of implementation over the past few years or significant discrepancies between the existing relevant policies and the essence of these commitments.

The law on the status of the Crimean Tatar people – as of 2022, work is underway on the relevant draft law with the participation of representatives of government bodies, the Crimean Tatar people, experts and researchers. It requires close monitoring.

Bringing decommunization legislation into line with the recommendations of the Venice Commission – no changes over the past three years.

Strengthening the institutional capacity of the Ombudsman – Ukraine has failed to complete such tasks as extending immunity to Secretariat employees, improving social guarantees for the Ombudsman, and obliging the government to take into account the Ombudsman's proposals concerning the Secretariat budget when drafting the budget.

Introduction of an administrative procedure for establishing the facts of birth and death in the occupied territories – even though the judicial procedure for establishing the facts of birth and death in the temporarily occupied territories due to changes in legislation has evolved towards simplification and greater accessibility, it is still not an administrative procedure as the authorities declared. To establish the fact of birth or death, one still must go to court, which raises the threshold of access for users and burdens the judicial system.

Migration, border management and movement of persons

Within the framework of fulfilment of tasks in the area of migration, asylum and border management, tangible progress has been made concerning the readmission policy. Due to the conclusion of operational protocols and high assessment of progress made by international partners regarding the readmission commitments, our assessment of the implementation stage can now be described as "advanced" rather than "early".

The least progress has been made in areas related to the improvement of infrastructure and the provision of decent conditions for refugees and illegal migrants.

The key causes of sluggishness pointed out by officials include the lack of resources, both financial and organizational, to advance this task. The temporary occupation and full-scale invasion of Ukraine by the Russian Federation also took their toll on the finalization of construction work and the opening of accommodation centres for foreigners and stateless persons who are illegally staying in Ukraine.

Regarding the lack of progress in providing decent conditions for refugees.

The action plan of the State Migration Policy Strategy contains a limited list of integration tasks. As of autumn 2021, Ukraine was developing drafts of a new Action Plan for the Migration Policy Strategy and Action Plan for Refugee Integration. However, the agencies in charge of this action plan do not include some government bodies that are involved in the process in practice – in particular, the Ministry of Social Policy and the Ministry of Education and Science. The potential of local authorities in integration processes is not used. Local and regional authorities have little idea of foreigners as residents of their region or community. The only exception are students, whose presence is noticeable for local authorities, but work with them mainly takes place in universities or the MES. Local authorities mostly do not have any developed policies clearly and explicitly aiming at the integration of foreigners and even lack any relevant units within their structure. Many refugee integration activities are implemented by UNHCR Ukraine and partner organizations through international projects. It is not uncommon for authorities to act as partners in such projects, but not as key actors.

Concerning several tasks, including the introduction of joint control, the negotiation process at the bilateral level has intensified. In particular, there have been active negotiations between Ukraine and Poland since May 2022. However, no results have been achieved so far, hence, no increase in the level of progress can be documented.

The war of the Russian Federation against Ukraine has had a direct impact on the management of borders and migration. It is necessary to update and adjust the tasks and measures described in the Strategy of State Migration Policy until 2025.

On 5 December 2022, the EC published the 5th post-liberalization report on Ukraine's compliance with

the visa-free criteria in relations with the EU. Despite significant changes in the movement of persons after the beginning of the full-scale war of Russia against Ukraine, the EC has not changed any of the criteria. The recommendations of the report include strengthening the work in the field of justice, security and freedom, in particular completion of judicial and anti-corruption reforms.

Infrastructure development to provide refugees with decent living conditions

In accordance with the requirements of the legislation, the model structure of the Centre for Social Integration of Refugees and Persons in Need of Additional or Temporary Protection, SMS, was approved; the structure of the SE Centre for Social Integration in Odessa was approved and put into effect; and Director of this institution was appointed (15.02.2022).

Currently, in accordance with Order No. 61 of the State Migration Service dated 30.03.2022, a forced downtime was declared for the employees of the SE Centre for Social Integration in Odessa.

The developments do not affect the progress regarding the task.

Development of infrastructure for the reception and accommodation of foreigners and stateless persons who are illegally staying in Ukraine

During the 10 months of 2022, 551 people were accommodated in the Volyn, Chernihiv and Mykolaiv MAC facilities.

As of 29 November 2022, there are 58 people in the MACs, including 37 people in the Volyn MAC, and 21 people in the Mykolaiv MAC.

The developments do not affect the progress regarding the task.

Cooperation on the readmission of persons with the states of origin (transit) of irregular migrants

As of November 2022, the parties at different stages are harmonizing the texts of the draft Implementation Protocols to the Agreement with the EU between the Government of Ukraine and the Governments of the following EU countries: Malta, Greece, Slovenia, Croatia, Bulgaria, Cyprus, Portugal, France, Italy, Slovakia, Germany and Sweden.

Preparations for the signing of the Implementing Protocols with Romania, Latvia, Hungary and Spain are in the final stage, their texts have been approved by the Government of Ukraine and the Head of the SMS has been authorized to sign them.

On 18 November 2021, the Fourteenth Regular Meeting of the Ukraine-EU Joint Readmission Committee was held as a videoconference, in accordance with Article 15 of the Agreement between the European Community and Ukraine on the Readmission of Persons.

According to the results of the meeting, it was noted that the implementation of the Agreement by the Ukrainian party remains at a high level.

Representatives of European countries pointed to an adequate level of interaction with Ukraine in the field of readmission, even taking into account the situation with the spread of the COVID-19 pandemic.

The proper implementation by Ukraine of this Agreement is also confirmed in the Fourth Report of the European Commission to the European Parliament and the Council on the visa suspension mechanism of 4 August 2021.

Expansion of the practice of joint control at the borders of Ukraine with the EU Member States

In May 2022, the Presidents of Ukraine and Poland agreed to conclude a new Agreement on joint customs and border control at all checkpoints across the Ukrainian-Polish border. In November 2022, the delegations of Ukraine and Poland discussed a draft intergovernmental agreement on the joint control of persons, vehicles and goods at joint checkpoints – the first round of negotiations began in Warsaw.

Creation and implementation of the Strategy of the State Migration Policy of Ukraine for the period until 2025

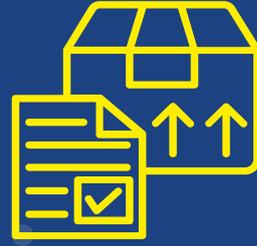
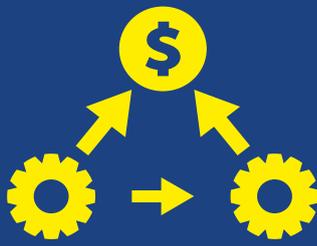
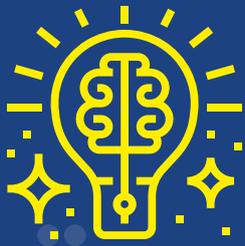
The draft order of the Cabinet of Ministers of Ukraine “On Approval of the Action Plan for 2022-2025 for the Implementation of the Strategy of the State Migration Policy of Ukraine for the Period up to 2025” (hereinafter referred to as the draft order) has been endorsed by all interested executive authorities and sent to the Ministry of Internal Affairs.

Due to the introduction of martial law in Ukraine, the Ministry of Internal Affairs by Letter No. 10652/1/36-2022 dated 28.04.2022 returned the above draft order to the SMS to be finalized and for the financial and economic calculations to be adjusted.

It should be mentioned that the Strategy of the State Migration Policy of Ukraine for the period until 2025 focused on the development of migration processes in peacetime. Since the beginning of the full-scale invasion of the Russian Federation on the territory of Ukraine, the migration situation has changed dramatically. Under martial law, Ukraine has faced new challenges that changed the vectors of migration development in Ukraine.

Movement of persons

On 5 December 2022, the EC published the 5th post-liberalization report on Ukraine’s compliance with the visa-free criteria in relations with the EU. Despite the significant changes in the movement of persons after the start of the full-scale war of Russia against Ukraine, the EC has not changed any of the criteria. The recommendations of the report focus on strengthening the work in the field of justice, security and freedom, in particular the completion of judicial and anti-corruption reforms.



TITLE IV.

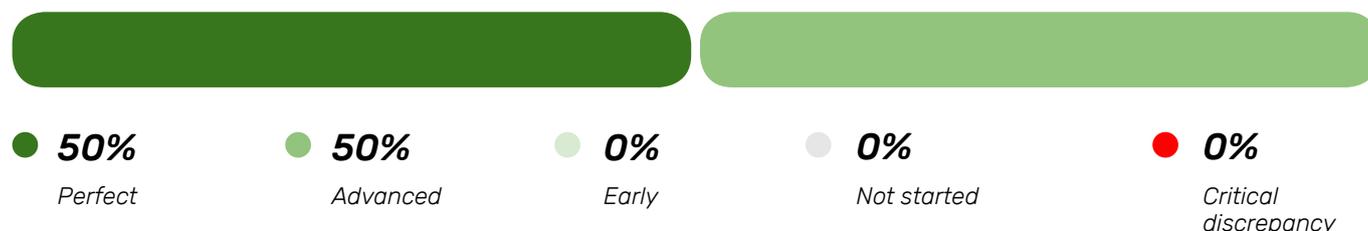
Trade and trade
related matters

Technical barriers to trade



Leonid Vitkin

Sector progress



During the second half of 2021 and 2022 (2021–2022), Ukraine continued reforming the technical regulation system along with the process of preliminary assessment of the Ukrainian quality infrastructure by European experts launched at the end of 2020 for the conclusion of the ACAA Agreement. During this period, national, international and European standards, new versions of technical regulations were adopted and amendments were made to the existing ones on the basis of European directives, institutional capacity was increased and the practice of the Ukrainian technical regulation bodies improved. The government adopted an action plan aimed at further improving the domestic system of technical regulation for the period up to 2025.

The status of an EU candidate country means that Ukraine will not only have to speed up its fulfilment of all the commitments contained in the Association Agreement, but also, probably, intensify the drafting and implementation of a national program for the adoption and implementation of all EU acquis, including in the field of technical regulation, for Ukraine to acquire full membership in the European Union.

Cooperation with the EU and national quality infrastructure

In 2021, the two-year TWINNING technical assistance project was launched to strengthen the institutional capacity of the Ministry of Economy of Ukraine in the field of quality infrastructure. Work is underway on the German technical assistance project that provides support for the implementation of the EU-Ukraine Association Agreement in the field of trade (GIZ). Another 4 projects are at the stage of preparation and launch: a British project for the support of the Ukrainian national quality infrastructure when preparing for the conclusion of the ACAA agreement (BSI with the support of GIZ); a German project aimed to identify the value chains in the Eastern Partnership countries (RTV with the support of GIZ), and two European TAIEX projects for the assessment of the market surveillance system of Ukraine and the activities of Ukraine's conformity assessment bodies in the framework of the EU pre-assessment mission to rate Ukraine's readiness for the conclusion of the ACAA Agreement.

In 2021–2022, Ukraine continued work to bring the adopted legislative and regulatory acts in the field of technical regulation in line with European norms and practices. The Ukrainian party has received the first conclusions and recommendations from the European expert mission working on the preliminary assessment of Ukraine's readiness to sign the ACAA Agreement. Overall, the assessment of the Ukrainian systems of standardization, metrology and accreditation was positive. Some critical comments concerned the use of terminology, the need to maximize the approximation to European *acquis*, an increase in the alignment of national standards with the best standards of other countries (an increase in CMC lines in the database of the International Bureau of Weights and Measures (BIPM)). During the reporting period, the Ukrainian party has been working to eliminate the deficiencies.

As a result of the measures taken by Ukraine, in October 2021, the European co-operation for Accreditation (EA) resumed the suspended EU recognition of the accreditation of product certification and inspection bodies by the National Accreditation Agency of Ukraine (NAAU), which will obviously facilitate the conclusion of the ACAA Agreement.

In the field of standardization, the process of harmonization of domestic standards with European and international ones has intensified, in particular, the lists of standards for the purposes of technical regulations have been updated. In accordance with the European equivalents and existing practice, some of the technical regulations have been updated and for individual technical regulations appropriate expert groups have been set up from among the designated conformity assessment bodies.

In the field of metrology, the Program for the Development of a List of Measurement Standards (83 national measurement standards) continues to be implemented and the number of CMC lines in the BIPM database has increased to 313. Ukraine has not managed to optimize the network of its scientific metrological centres in accordance with the recommendations of document D1 of the International Organization of Legal Metrology.

In the field of market surveillance, a comparative analysis of Ukrainian legislation and the provisions of EU Regulation No. 2019/1020 has started. At the same time, it should be noted that some of the bodies of the domestic technical regulation system situated in the area of active hostilities have been affected by the Russian aggression, in particular, their premises

been damaged, some test and metrological equipment has been broken, some personnel have been lost. Therefore, in order to restore the pre-war capacity in the field of technical regulation and for further development of the Ukrainian quality infrastructure, it may be necessary to attract some more European technical assistance through new projects.

In 2021–2022, Ukraine continued to inform the European party on a regular basis about its progress in the field of reforming its technical regulation system during joint events and meetings at various levels, in particular within the framework of Ukraine-EU Association bodies and expert working groups. At the same time, to boost the efficiency and transparency of the domestic quality infrastructure, the Government adopted Order No. 1145 of 22.09.2021 on approval of the action plan for the development of the technical regulation system for the period until 2025.

During 2021–2022, Ukrainian professionals participated in the work of individual units of international and European organizations, in particular in 81 ISO technical committees (TC), 28 IEC TCs, and 27 CEN/CENELEC TCs. Since the second half of 2021, Ukraine, having acquired in April 2021 full membership in the International Organization of Legal Metrology (OIML), has been working in this organization in accordance with its new status.

National standards

During 2021–2022, the National Standardization Authority of Ukraine (NSA) continued to harmonize the national regulatory framework with international and European standards. Currently, the standards fund includes 25,757 documents, of which 9,960 (39%) are European standards and 8,713 (34%) are international ones, i.e., the overall level of harmonization has increased to 72.5%.

The 2021 standardization program included 2,487 items for the development of national standards, of which 2,012 are international and European. For 2022, the standardization program specifies 2,715 tasks for the development of draft national standards, including 1,767 standards harmonized with international and European ones. For comparison, in 2020, only 664 standards were adopted, of which 484 are standards harmonized with international and European ones, even though the plan was to adopt 1000 standards. There have been regular updates of the lists of standards that provide for a presumption of compliance with the requirements of technical regulations equal to European directives.

Thus, updated lists of the national standards identical to harmonized European standards have been approved for the purposes of applying the priority technical regulations for the conclusion of the ACAA Agreement, in particular to the technical regulation on the safety of machinery (Directive 2006/42/EC) – 778 standards, to the technical regulation on electromagnetic compatibility (Directive 2014/30/EU) – 136 standards, and to the technical regulation on electrical low-voltage equipment (Directive 2014/35/EU) – 607 standards. That is, in 2021–2022, there has been a trend towards an increase in the rate of harmonization of the regulatory framework with international and European standards. The action plan for the development of the technical regulation system for the period up to 2025 provides for the annual adoption of 2,000 national standards harmonized with international and European equivalents. During this period, the current versions of the seven fundamental standards of the standardization system have not been updated. However, they are to be updated by the end of 2022.

Horizontal (framework) legislation

During 2021–2022, Ukraine's horizontal legislation in the field of technical regulation has not changed. According to the estimates of the European experts who conducted a preliminary assessment of the Ukrainian quality infrastructure in 2021–2022, the horizontal legislation in general meets international and European standards, but the results might require certain changes, in particular, terminological ones to the legislation in the field of standardization, conformity assessment, and metrology. It is also advisable to update the legislation of Ukraine in the field of market surveillance in view of the entry into force in July 2021 of European Regulation (EU) 2019/1020 on market surveillance and compliance of products. The introduction of such changes is, *inter alia*, envisaged in the important strategic document adopted by the Cabinet of Ministers of Ukraine, namely Order No. 1145 “On Approval of the Action Plan for the Development of the Technical Regulation System for the Period up to 2025” of 22 September 2021, which specifies 37 comprehensive measures to bring the technical regulation system in line with the European legislation and practice in the field of standardization, conformity assessment, accreditation, metrology and state market surveillance. Due to the granting of the EU candidate country status to Ukraine, this plan might need to be supplemented and amended. Instead, in view of the aggression of the Russian Federation against Ukraine, work was carried out to implement certain norms of basic legislation by

adopting and amending the relevant legal acts under martial law. For instance, in the field of metrology, the CMU adopted Resolution No. 412 “Certain Matters of Calibration of Legally Regulated Measuring Equipment under Martial Law” of 5 April 2022, which extends the validity of the positive results of calibration and verification of measuring equipment that expired during the martial law period for the said period and up to three months after its cancellation. In the field of state market surveillance, Government Resolution No. 303 “On Suspension of State Supervision (Control) and State Market Surveillance under Martial Law” of 13 March 2022 was adopted, which, among other things, makes it possible to conduct only unscheduled surveillance measures in case of a threat, which has significant negative implications for people's rights, legitimate interests, life and health, protection of the environment and ensuring the security of the state with regard to fulfilling Ukraine's international commitments.

Vertical (sectoral) legislation

Currently, the list of Ukraine's technical regulations includes 102 normative legal acts, 94 of which have entered into force. 87 regulations have been developed on the basis of European directives and regulations.

Of the 27 EU *acquis* provided for in Annex III of the Association Agreement, 25 have been adopted. Just like in the previous reporting period, Ukraine has not yet fulfilled 2 tasks that require developing regulations based on the high-speed rail directive (agency-in-charge is the Ministry of Infrastructure) and the packaging and packaging waste directive (agency-in-charge is the Ministry of Ecology). During 2021–2022, some of the technical regulations have been updated in accordance with changes in European sectoral legislation. Over 2021–2022, the Government has adopted 16 resolutions approving new and amending 34 existing technical regulations, in particular, on the safety of toys, electromagnetic compatibility, measuring equipment, restrictions in the use of certain hazardous substances in electrical and electronic equipment, pressure vessels, and simple pressure vessels, as specified in Annex III of the Association Agreement. At the same time, new versions of a number of technical regulations from this Annex, namely: regulations on medical devices, regulations on ecodesign, hot water boilers, and energy labelling are still to be adopted. In addition, 2 sectoral groups of designated machinery safety and electromagnetic compatibility authorities have been established.

Ukraine continued optimization of the structure of the designated conformity assessment authorities in the priority sectors for the conclusion of the ACAA Agreement. Thus, according to the technical regulations on the safety of machinery, 18 bodies of state and private ownership operate, and according to the technical regulations on electromagnetic compatibility, 31 bodies of state and private ownership operate.

ACAA

The EU-Ukraine Summit, held on 12 October 2021 in Brussels, testified to Ukraine's determination to move forward with the EU by taking practical European integration steps to become a member of the EU. On 22-23 November 2021, the sixth meeting of the EU-Ukraine Association Committee in Trade Configuration was held in Brussels, where further steps for the conclusion of the ACAA Agreement were identified. On 23 June 2022, the EU Summit unanimously granted Ukraine the status of a candidate for accession to the EU.

According to the Ministry of Economy of Ukraine, an EU mission for the preliminary assessment of the readiness of Ukraine's quality infrastructure for the conclusion of the ACAA Agreement was launched in October 2020. As of mid-2022, the preliminary assessment mission has assessed the status of adaptation of Ukraine's horizontal and vertical legislation concerning its quality infrastructure to the relevant EU legislation, which European experts assessed as positive with a high degree of adaptation of Ukrainian legislation to EU legislation (more than 85%); the standardization system with a positive assessment of the implementation by Ukraine of the European experience in the field of standardization and the effectiveness of the implementation of the European standardization system at the national level; and the metrology system of Ukraine. The Ukrainian party is working to take into account the recommendations of European experts provided based on the results of the assessment of the compliance of Ukrainian legislation with EU legislation.

The Ukrainian party maintains ongoing communications with the European party regarding the EU Preliminary Assessment Mission, in particular regarding the assessment of the accreditation system, market surveillance and the activities of the conformity assessment bodies of Ukraine, which is to be carried out during the second half of 2022.

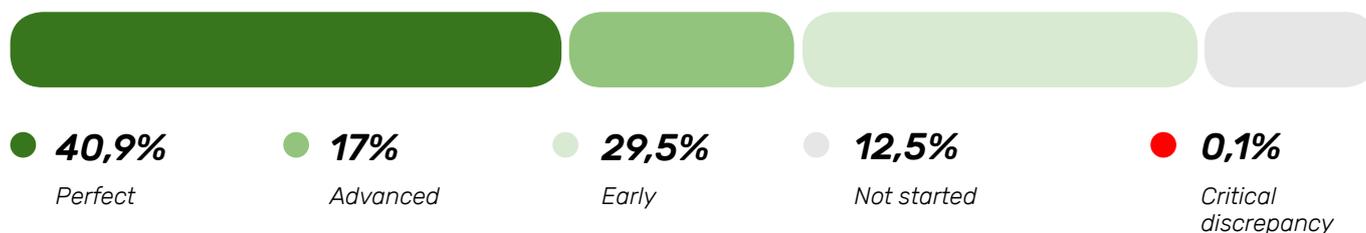
At present, the seventh meeting of the EU-Ukraine Association Committee in Trade Configuration was held on 25-26 October 2022, and the following steps were identified for the conclusion of the ACAA Agreement: taking into account the recommendations provided by the European experts following the results of the EU preliminary assessment mission; reaching an agreement on the start of the official EU assessment mission and starting negotiations for the conclusion of the ACAA Agreement; obtaining information on the possible date of receipt of the Mandate for the negotiation on the ACAA Agreement; work on the matter of expanding the ACAA Agreement to the sectors of industrial products listed in Annex III to the Association Agreement.

Sanitary and phytosanitary measures (SPS)



Iryna Ptashnyk

Sector progress



During the reporting period from 01/06/2021 to 01/10/2022, the following changes took place in the field of legal regulation of sanitary and phytosanitary measures.

At the level of laws, Ukraine has approximated its legislation in the following areas:

1. Production and marketing of food intended for infants and young children – by adopting Law of Ukraine No. 1822-IX “On Amendments to Certain Legislative Acts of Ukraine to Bring the Legislation of Ukraine in the Field of Provision of Food Intended for Infants and Young Children into Line with the Requirements of the European Union Legislation” dated 21 October 2021. It aims to bring the legislation of Ukraine in the field of production and marketing of food intended for infants and young children into line with the requirements of the EU legislation, namely, in accordance with Regulation No. 609/2013 and Regulation No. 2016/127. The adopted amendments bring the list of ingredients that are prohibited for use in the production of food intended for infants and young children into full compliance with the EU legislation. The law abolishes the requirement to draw up

“declarations of conformity” and to comply with “technical regulations”, since in the EU such regulations apply exclusively to non-food products.

2. Requirements and approaches to the use of materials and articles that come into contact with food – by adopting of Law of Ukraine No. 2718-IX “On Materials and Articles that Come into Contact with Food” dated 03.11.2022. This Law addresses:
 - requirements for materials and articles that come into contact with food; the procedure for state registration of substances and processes used in the production of such materials and articles;
 - approaches to labelling, declaration of conformity and ensuring the traceability of materials and articles that come into contact with food;
 - requirements for good manufacturing practice, etc. subject to the relevant provisions of EU acquis, in particular: Regulation (EC) 1935/2004 of the European Parliament and of the Council of 27.10.2004

on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC; Commission Regulation (EC) No 282/2008 of 27 March 2008 on recycled plastic materials and articles intended to come into contact with foods.

At the level of by-laws, the following have been adopted:

1. Order No. 682 of the Ministry of Agrarian Policy and Food of Ukraine "On Approval of Hygienic Requirements for Quick-Frozen Foodstuffs Intended for Human Consumption" dated 14 September 2022. In accordance with the Order, hygienic requirements regulate the general principles of compliance for quick-frozen foodstuffs; the temperature of handling, storage, transport and/or marketing of quick-frozen foodstuffs; requirements for freezing equipment and the list of cryogenic media (fluids) that are allowed to be used to quick-freeze foodstuffs; requirements for the labelling of quick-frozen foodstuffs; temperature monitoring during transport, handling and storage of quick-frozen food products.
2. Order of the Ministry of Agrarian Policy and Food of Ukraine No. 684 "On Approval of the Requirements for the Identification Mark and the Procedure for its Application" dated 14 September 2022, which specifies the requirements applicable to the identification mark applied in order to ensure traceability of foodstuffs of animal origin.
3. Order of the Ministry of Agrarian Policy and Food of Ukraine No. 367 "On Approval of the Requirements for the Facilities for Production, Processing and Storage of Reproductive Material, Donor Breeding Animals, Collection, Processing, Handling, Storage, Transport and Labelling of Reproductive Material" dated 20 June 2022, which regulates activities related to the production, processing, storage, transport and labelling of semen, embryos and oocytes of cattle, sheep, goats, pigs and horses.
4. Order of the Ministry of Agrarian Policy and Food of Ukraine No. 628 "On Approval of Requirements for Ensuring the Welfare of Animals During Slaughter and Killing" dated 29.08.2022,

which establishes rules for ensuring animal welfare when slaughtering farm animals bred or maintained for the purpose of obtaining foodstuffs of animal origin, wool, leather, fur or other slaughter products, or when killing animals for the purpose of depopulation, as well as rules for related operations.

5. MoH Order No.1734 "On Approval of the Requirements for the Release of N-nitroamines and N-nitrosatable Substances by Rubber and Elastomeric Bottle Teats and Pacifiers" dated 24.09.2022.
6. Order of the Ministry of Agrarian Policy and Food of Ukraine No. 323 "On Approval of Certain Regulatory Legal Acts on the Quarantine of Animals and Animal Collection Centres" dated 31 May 2022, applies to relations between operators of facilities, state veterinary inspectors, official veterinary doctors and licensed veterinary doctors responsible for the organization and conduct of preventive quarantine of animals when moving them from one facility to another.
7. Order of the Ministry of Agrarian Policy and Food of Ukraine No. 511 "On Approval of the Criteria for Determining the Presence of a Significant Impact of a Proposed Veterinary and Sanitary Measure or an Approved Emergency Veterinary and Sanitary Measure on the Export Capabilities of Foreign Countries, Approval of the Types of Facilities for the Maintenance of Terrestrial Animals, the Maintenance and Cultivation of Aquaculture Animals that Pose a High Risk of Spreading Animal Diseases, and the Limits of Aquaculture Animal Cultivation that Do not Require Licensing of the Facilities" dated 02.08.2022.
8. Resolution of the Cabinet of Ministers of Ukraine No. 884 "Certain Matters of Implementation of the Law of Ukraine 'On Safety and Hygiene of Feed'" dated 18 August 2021. This Resolution is a comprehensive document that approves:
 - The procedure for issuing, re-issuing and cancelling an operating permit for facilities and issuing a copy thereof;
 - The procedure for state registration of facilities;

- The procedure for the compiling and keeping of the State Catalogue of Feed Materials;
 - The procedure for the compiling and keeping of the State Register of Claims about the Properties of Feed Intended for Special Nutritional Purposes.
9. Order of the Ministry of Economy No. 610-21 "On Approval of the Methods of Sampling to Determine the Maximum Permissible Levels of Dioxins, Dioxin-like Polychlorinated Biphenyls and Non-dioxin-like Polychlorinated Biphenyls in Certain Foods for the Purposes of State Control" dated 24.09.2021, which regulates the procedures for the sampling of certain foods for laboratory testing in order to determine the content of dioxins, dioxin-like polychlorinated biphenyls and non-dioxin-like polychlorinated biphenyls.

Work continues to develop normative legal acts aimed to implement the provisions of the Law of Ukraine "On Veterinary Medicine". In particular, the following acts are at the stage of approval by the relevant central executive authorities:

- Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Regulation on State Registration of Veterinary Medicinal Products", which proposes to approve:
 - procedure for state registration of veterinary medicinal products;
 - requirements for the application for state registration of a veterinary medicinal product, registration dossier and other documents submitted for the purpose of state registration of a veterinary medicinal product, testing required for the state registration of veterinary medicinal products;
 - requirements for the veterinary medicinal product brief characteristics, instructions for use and labelling;
 - requirements for changes in conditions, suspension, and cancellation of state registration of veterinary medicinal products;
 - the form and procedure for maintaining the State Register of Veterinary Medicinal Products of Ukraine;
- approaches to state registration of certain types of veterinary medicinal products.
- Draft Order of the Ministry of Agrarian Policy and Food of Ukraine "On Approval of the Procedure for Inspection of Veterinary Medicine Market Operators".
- Draft Order of the Ministry of Agrarian Policy and Food of Ukraine "On Approval of the Form and Rules for Issuing Veterinary Prescriptions".

The activities planned for the 2nd half of 2022 and 2023 in the field of sanitary and phytosanitary measures are expected to include:

1. Adoption of the Draft Law of Ukraine "On Plant Protection" and further implementation of the relevant EU legislation in the field of phytosanitary measures;
2. Adoption of the Draft Law of Ukraine "On Amendments to Certain Laws of Ukraine to Improve the Requirements of Legislation on Food, Feed, Veterinary Medicine and Animal Welfare";
3. Adoption of the Order of the Ministry of Agrarian Policy and Food of Ukraine "On Approval of Hygienic Requirements for Food of Animal Origin";
4. Adoption of the Order of the Ministry of Agrarian Policy and Food of Ukraine "On the Welfare of Farm Animals during Transport";
5. Development and adoption of the Order on Approval of the List of Countries from which Live Animals and Reproductive Material can be Imported into Ukraine;
6. Development and adoption of relevant by-laws to implement the provisions of the Law of Ukraine "On Materials and Articles that Come into Contact with Food".

During the analysed period, the Ministry of Agrarian Policy and Food of Ukraine was carrying out intensive work to implement EU legislation. The most prolific work was done with regard to the legal regulation of animal welfare, food safety, and plant health.

Work should continue to develop and adopt the relevant by-laws, as well as clarifications and methodological recommendations aimed at the practical application of the legislation on food, feed, veterinary medicine and animal welfare.

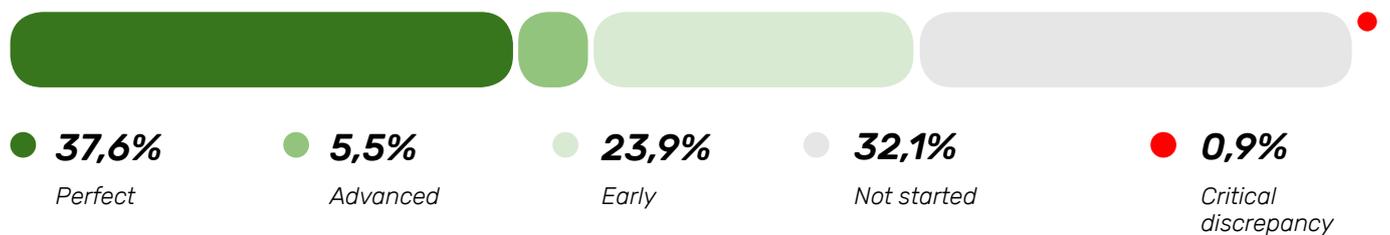
In addition, taking into account how dynamic the sector of sanitary and phytosanitary measures is and the regular updates of European legislation, it is a good idea to analyse the existing national legislation for compliance with the new regulations and directives adopted, in particular in the field of state control and animal welfare.

Customs and trade facilitation



Oleksandra Bulana

Sector progress



Throughout 2021 and 2022, Ukraine has remained committed to fulfilling its obligations in the area of customs and trade facilitation. In October 2022, the EU-Ukraine Association Committee in Trade Configuration made a decision to revise Annex XV of the Association Agreement, which concerns the approximation of customs legislation. The need for these amendments arose from the EU's update of its customs legislation, specifically the Union Customs Code introduced by Regulation No. 952/2013, which came into force on May 1, 2016. As part of the Association Agreement, Ukraine is obligated to implement these changes in its own customs legislation.

Regarding the commitments concerning reform of the public administration system in the field of customs based on the EU Customs Blueprints, progress is limited.

As part of the customs administration reform, the State Customs Service of Ukraine has been functioning as a single legal entity since July 1, 2021 (before that, regional customs offices had the status of separate legal entities). However, no positive outcomes of this consolidation, such as increased

manageability of the system or the standardization of law enforcement practices, have been reported yet. On the other hand, this new approach to customs administration may reduce regional authorities' incentives to take initiative and make communication between local officials more complex.

Progress in implementing the Union Customs Code in Ukraine has been moderate. Although the Customs Code of Ukraine has been amended to improve the procedure for appealing against customs authorities' decisions, this procedure applies only to a limited number of decisions, not covering all the requirements of EU law. Additionally, the concept of "customs debt" applies only to the procedure of common transit, as specified in the Convention on a Common Transit Procedure. For other cases, such as customs debt resulting from liabilities accrued by customs inspections, this institution has yet to be implemented. As a result, the implementation of the Union Customs Code remains fragmented, and consistent work is required to draft a new code to fully align with EU customs legislation.

The Customs Service has been working on introducing authorized economic operators, but progress has been slow. As of now, only one enterprise has received this status, indicating the need for further efforts to promote and facilitate the adoption of this institution by more businesses.

Undoubtedly, Ukraine's accession to the Convention on a Common Transit Procedure is the most significant achievement in the customs sphere over the past year. On October 1, 2022, Ukraine became a full-fledged member of the Convention, following much work on implementing its requirements in previous years. During the past year, the common transit regime has been tested at the national level, and an EU assessment mission examined Ukraine's readiness to join the system for international application.

In September 2022, the first enterprise obtained the right to apply simplifications within the Convention, such as "general financial guarantee," "use of special-type seals," "authorized consignor," and "authorized consignee." This achievement attests to Ukraine's commitment to fulfilling its obligations under the Convention.

Overall, Ukraine's accession to the Convention on a Common Transit Procedure marks a significant milestone in its customs reform efforts, and further work will be required to ensure its successful implementation and integration into the EU customs framework.

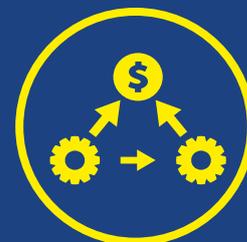
Two European integration draft laws have not been considered by the Parliament in the past year:

1. Draft Law No. 5353 on Amendments to the Customs Code of Ukraine to Bring the Procedure for Determining the Country of Origin of Goods into Line with the Union Customs Code dated 08.04.2021;
2. Draft Law No. 5810 on Amendments to the Customs Code of Ukraine to Implement the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, regarding the Exemption from Import Duty dated 20.07.2021.

To make further progress in the customs field, Ukraine must undertake comprehensive and complex reforms, such as customs procedure reform and implementation of the Union Customs Code. These reforms are crucial because the EU seeks to establish a unified customs framework across its member states. This requires the Ukrainian customs system to align with European legislation, practical functioning, institutional capacity, and technical support as closely as possible.

Overall, successful implementation of these reforms will require sustained political will, effective coordination among relevant institutions, and technical assistance and capacity building support from the EU and other partners.

Establishment, trade in services and electronic commerce



Oksana Hubrenko

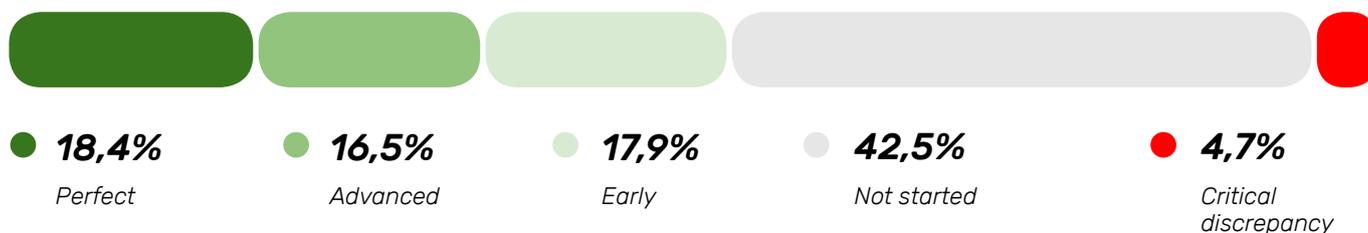


Mykyta Polatayko



Svitlana Brus

Sector progress



Postal and courier services

During the monitoring period (2nd half of 2021 and 1st half of 2022), the Law of Ukraine "On Postal Communications" (No. 2722-IX, dated 3 November 2022)¹ was adopted as a whole. This law takes into account the provisions of the EU Postal Directive only partially and in a rather limited way, specifically regarding:

- the terms and conditions governing the provision of postal services;
- provision of universal postal services;
- financing of universal postal services on conditions that guarantee the provision of services on a permanent basis;
- tariff principles and account transparency for universal postal service provision;
- the setting of quality standards for universal postal service provision and setting-up of

a system to ensure compliance with those standards;

- the harmonisation of technical standards.

However, there are a number of commitments that need to be addressed by introducing the relevant amendments in order to approximate the provisions of the Law of Ukraine "On Postal Communications" to the requirements of the EU Postal Directive. In particular with regard to:

- the list of postal services classified as universal. Clearance, sorting, transport and delivery of postal packages up to 10 kg with declared value should also be included in the minimum list of universal services in accordance with the Postal Directive;
- the possibility of designating more than one designated universal service provider (for all or part of the services) throughout the national territory or in its parts, which is clearly required by the Postal Directive (there are currently some inconsistencies between individual articles of

¹ <https://zakon.rada.gov.ua/laws/show/2722-IX#Text>

the Law of Ukraine “On Postal Communications,” for example, Article 10 still uses a plural noun, which probably comes from the previous versions of the Law drafted by the Ministry of Infrastructure, which, as we see, were closer to the requirements of the Postal Directive);

- elimination of the exclusive right (in fact, monopoly) granted to the designated operator for certain types of postal services such as clearance, sorting, transport and delivery of regular and registered items of domestic correspondence without declared value weighing up to 50 grams and postal cards. This provision runs counter to both the objectives of the EU Postal Directive, which aims at the demonopolisation of the postal market, competition and the free market, on the one hand (Postal Directive, Chapter 3 Financing of Universal Services, Article 7 (1). “Member States shall not grant or maintain in force exclusive or special rights for the establishment and provision of postal services”), and with the principles of the tariffs affordability for all universal services, rather than only some of them, for which also threshold tariffs are to be established by the regulator;
- state supervision (control) over postal operators with regard to their provision of universal services. The adopted Law of Ukraine “On Postal Communications” needs to be revised to make the regulatory regime in the field of postal services apply exclusively to the services included in the universal package rather than all the services provided by the designated operator(s) or non-exclusive (monopoly) services within the framework of universal (sending regular and registered items of domestic correspondence without declared value weighing up to 50 grams and postcards), because currently the adopted Law contains inconsistencies concerning powers;
- financing of universal postal services. This important provision of the EU Postal Directive was largely disregarded by the authors of the adopted Law of Ukraine “On Postal Communications.”

It is also necessary to change the approach to the terms and definitions in regard to the field of public relations as a subject of regulation: transition to

the terms established both within the EU and in the world (as specified in the EU Postal Directive and the regulations of the Universal Postal Union, where the postal sphere is not considered and is not regulated as a sphere of communication but is instead referred to a sphere of services). First of all, this implies that we need to replace the term “postal communications” (Ukr. “поштовий зв’язок”) (or “postal communication services” (Ukr. “послуги поштового зв’язку”) as enshrined in the adopted Law of Ukraine “On Postal Communications”) with the term “postal services” (Ukr. “поштові послуги”). This should be done not only to harmonise terminology but also to allow transition of the postal sector to the provision of services to users in practice. Thus, the EU Postal Directive uses only the term “postal services” rather than “postal communications” – the latter term is not found in European and other international official and informal documents, materials and information related to this sector. This is also manifested in the Association Agreement, where the provisions relating to the field of postal and courier services are referred to in Chapter 6 “Establishment, Trade in Services and Electronic Commerce,” separately from the field of communications and communication.

Therefore, we consider it necessary to support and continue the logic of using the term “postal services” in the relevant Law of Ukraine “On Postal Communications”, that is, both in its name and in the text, the term “postal communications” should be replaced with “postal services”. Should such amendments to the Law of Ukraine “On Postal Communications” be adopted, the same principle should be followed in other relevant laws, as well as in the drafting and adoption of relevant bylaws.

Practical implementation of the provisions of the European legislation has not begun. In accordance with Part 1 of Section IV Final and Transitional Provisions, the Law shall enter into force on the day following the day of its publication, and shall become effective six months after its entry into force, that is, from 25.05.2023.

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

During the monitoring period, the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 1971-IX “On the National Commission for the State Regulation

of Electronic Communications, Radio Frequency Spectrum and Postal Services” dated 16 December 2021 (hereinafter referred to as the NCEC Law)².

The law, at least in statutory terms, provides for the legal separation of the regulatory authority in the field of postal services and its functional independence from postal and courier service providers, as required by the EU Postal Directive. To balance the interests, it would also be advisable to provide an opportunity for at least one representative of the public and the expert community (for example, a member of the public council) to join the competition commission (instead of one person proposed by VRU committees). We hope that this suggestion will be taken into account in the future.

From February 2022 to the present day, the Chairman and members of the former National Commission for the State Regulation of Communications and Informatisation (NCCIR) continue to exercise their powers (for a period of time that is the difference between six years and the term of office until the entry into force of the Law on the NCEC) as part of the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services in accordance with paragraph 5 of Section III “Final and Transitional Provisions” of the NCEC Law.

The NCEC Law assigns a fairly wide range of tasks and powers in the field of postal services to the regulatory body in comparison with the previous ones and even with those that were assigned to the Ministry of Infrastructure of Ukraine.

With the adoption of the NCEC Law, a significant redistribution of powers in the field of postal and courier services is to take place in favour of the NCEC, including with regard to European integration and implementation of the Association Agreement. On the one hand, this is a positive development, because for many years the line ministry (i.e., the Ministry of Infrastructure) had no separate structural units or at least a specialized officer in charge the field of postal and courier services. On the other hand, it is quite an ambitious challenge and responsibility for the NCEC, because ensuring the efficient functioning of the postal services market while maintaining a balance between the interests of society, operators and users of postal services is a complex task and a serious responsibility.

Thus, the main tasks assigned to the regulatory body, in accordance with the NCEC Law, now include (Article 4 (2)): creating conditions for the effective functioning and development of the provision of postal services, facilitating the opening of markets and their mutually beneficial integration with the relevant markets of other states, in particular within the framework of the Association Agreement, ensuring the protection of consumer rights to receive services of proper quality, and promoting competition.

Ensuring the functional independence of the national regulator from suppliers of postal and courier services, as required by the EU Postal Directive, is envisaged by Article 18 of the NCEC Law, in particular, Part one “The activities of the regulatory body and its personnel shall be funded from the state budget.”

Also, Article 19 of the NCEC Law envisages that the remuneration of members of the regulatory body and employees of the regulatory body should ensure sufficient welfare for the independent performance of their official duties and stimulate conscientious work. The members of the regulatory body and its employees shall be paid official salaries in accordance with the subsistence minimum for able-bodied persons determined by the law on the State Budget of Ukraine for the relevant year: the chairperson of the regulatory body shall be paid 40; a member of the regulatory body shall be paid 30; the heads and deputy heads of independent structural units of the regulatory body and other employees shall be paid from 10 to 25. However, Law of Ukraine No. 2710-IX “On the State Budget of Ukraine for 2023” dated 03.11.2022³ suspended Article 19 for 2023. Despite this, we believe these provisions to be a positive development that in the future they will contribute to independence and impartiality in the performance of official duties by the chairperson and members of the NCEC.

As for practical implementation, the necessary legal framework has been created, but the proper infrastructure is missing or insufficiently developed.

In particular, the Cabinet of Ministers of Ukraine has not yet established a tender commission for the selection of candidates for the positions of members of the NCEC, the procedure and conditions for holding an open tender have not been approved. Since, in accordance with the Final and Transitional Provisions

2) <https://zakon.rada.gov.ua/laws/show/1971-20#Text>

3) <https://zakon.rada.gov.ua/laws/show/2710-20#n156>

of the NCEC Law, the chairperson and members of the NCCIR continue to exercise their powers as the chairperson and members of the NCEC, the new members of the regulatory body, except for one in seven, cannot be elected for several more years under the open competition procedure.

In addition, Law of Ukraine No. 2722-IX “On Postal Communications”, which further consolidated the powers of the NCEC in the postal sector, was adopted only on 3 November 2022, thus providing the authority to the regulator and specifying the range of tasks for which the NCEC should develop and adopt or submit for adoption the necessary by-laws.

Approval of the procedure for selecting and determining designated postal service providers

The commitment involves approval of the procedure for selecting and determining designated postal service providers in accordance with the requirements of Article 4 (Chapter 2) of the Postal Directive.

Thus, in accordance with the Postal Directive, in order for universal services to be provided throughout the national territory, it should be possible to designate one or more undertakings as a designated universal service provider(s). Different undertakings may be designated to perform different components of universal services and/or to cover different parts of the national territory.

Currently, universal postal services are provided by the national operator, whose functions, according to Order No. 10 of the Cabinet of Ministers of Ukraine “On the National Postal Operator” dated 10 January 2002⁴ were assigned to the Ukrposhta National Postal Operator (succeeded by Ukrposhta JSC with 100% of shares belonging to the state). Since Article 4 of the Postal Directive provides for the possibility of appointing several operators to perform various components of universal services and/or to cover different parts of the national territory, we consider it necessary after the adoption of the recommended amendments to the Law of Ukraine “On Postal Communications” that will make it possible (currently adopted Law No. 2722-IX of 3 November 2022 establishes (Art. 8) that the single designated operator is determined by the Central Executive Body responsible for the making and implementation of

the state policy and in the field of provision of postal services; in addition, there are certain inconsistencies regarding the designated operator(s) (Art.10), as described above in the analysis of Commitment 1) to adopt a relevant regulatory act to determine the procedure for selecting and determining the designated postal service providers, taking into account the requirements of the EU Postal Directive.

Introduction of a mechanism and determination of a procedure for financing universal postal services on the conditions under which permanent provision of services is guaranteed

Such an important provision of the EU Postal Directive as the financing of universal postal services was dismissed by the authors of Law No. 2722-IX of 3 November 2022 at all, even its truncated version proposed by the Draft Law of October 2018 was disregarded. In our opinion, it is likely that no calculations of the profitability/unprofitability of universal service-related activities to confirm such a statement were made (not even projections from providers/potential providers of universal postal services). We consider it crucial and extremely important to revise the Law of Ukraine “On Postal Communications” and add the relevant provision in line with the EU Postal Directive, which, if adopted, opens the way to the development and approval of the relevant procedure, that is, the mechanism for implementing this commitment.

The setting of quality standards for universal postal service provision and setting-up of a system to ensure compliance with those standards

Currently, the standards and terms for the sending of postal items are regulated and approved by Order No. 958 of the Ministry of Infrastructure of 28.11.2013⁵. Their separation depending on the type and kind of correspondence, as well as on the point of departure and destination, is not in line with the requirements of the Postal Directive. Consequently, the standards should be unified with those set forth by the Postal Directive, and, consequently, appropriate amendments should be made to this Order.

In accordance with the Law of Ukraine “On Postal Communications” (Article 9), state social standards for the provision of universal postal services are established by the Central Executive Body in charge of the making and implementation of state policy in the field of postal services.

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

5) <https://zakon.rada.gov.ua/laws/show/z0173-14>

In accordance with Part 4 of Section IV Final and Transitional Provisions of Law of Ukraine No. 2722-IX “On Postal Communications” dated 3 November 2022, regulatory legal acts must be adopted or aligned by the Cabinet of Ministers of Ukraine and ministries, other central executive bodies within six months from the date of publication, that is, until 25 May 2023.

Introduction of rules on tariff principles and transparency of accounts for the provision of universal postal services

Currently, the tariffs for universal postal services are developed by the national operator Ukrposhta JSC and approved by the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services (NCEC, previously NCCIR) on the basis of the Procedure for the Regulation of Tariffs for Universal Postal Services, approved by Decision No. 1301 of the National Commission for Regulation of Communications of Ukraine dated 20 January 2009 23.05.2017 No. 260⁶, without the requirements for compliance with these principles of tariffication and transparency of accounts for the provision of universal postal services as specified by the Postal Directive. The main criterion for the development of tariffs for universal services is the planned cost price, which is determined in accordance with the planned scope of services and economically justified planned costs for their provision, taking into account the planned profit.

Instead, according to Law of Ukraine No. 2722-IX “On Postal Communications” adopted on 3 November 2022 (Article 10), price-setting in the field of postal services is free, and the NCEC establishes threshold prices (tariffs) not even for all universal services but only for the postal services of sending regular and registered items of domestic correspondence without declared value weighing up to 50 grams and postal cards. There is no mechanism for achieving tariff principles and account transparency for the provision of the entire package of universal postal services in accordance with the requirements of the Postal Directive.

At the same time, the Final and Transitional Provisions of the NCEC Law envisage amendments to the relevant Law “On Postal Communications” (No. 2759-III, dated 4 October 2001) (Articles 8 and 9), in particular, with regard to the requirement that “universal postal services are subject to tariff

regulation in the field of postal communication services”, and the NCEC “is responsible for the pricing policy and regulates tariffs for universal postal services”, which is in line with the requirements of the Postal Directive, unlike the current version of the relevant provisions of the Law of Ukraine “On Postal Communications.”

In our opinion, it is necessary to adopt amendments to the Law of Ukraine “On Postal Communications,” which should take into account the relevant provisions of the EU Postal Directive, following which it is necessary to adopt a regulatory act specifying the rules on tariff principles and transparency of accounts for the provision of universal postal services (with regard to the procedure for the distribution (accounting) of the costs of universal postal service providers by types of postal services) and ensure the same rules of the game in the matter of tariffication of universal services for all universal service providers in the future.

Introduction of rules for obtaining permits for the provision of universal postal services

The adopted Law of Ukraine “On Postal Communications” (No. 2722-IX, dated 3 November 2022) established (Art.8) that the single designated operator is determined by the Central Executive Body that ensures the making and implementation of state policy in the field of postal services. Since according to Article 4 of the Postal Directive several operators can be designated to perform various components of universal services and/or to cover different parts of the state territory, we consider it necessary, after the adoption of the recommended amendments to the Law of Ukraine “On Postal Communications,” wherever possible, to adopt an appropriate regulatory legal act (preferably at the level of the Cabinet of Ministers of Ukraine) in order to introduce the rules for the procedure for granting permits for the provision of universal postal services by the designated operator(s).

Harmonisation of technical standards

Article 8 of the adopted Law of Ukraine “On Postal Communications” (No. 2722-IX, dated 03.11.2022) assigns the task of promoting harmonisation of technical standards for the provision of universal postal services to the NCEC.

6) <https://zakon.rada.gov.ua/laws/show/z0759-17>

Article 11 (Conformity assessment in the provision of postal services) envisages harmonisation in the provision of postal services to be carried out in accordance with the Law of Ukraine “On Technical Regulations and Conformity Assessment,” taking into account the standards adopted by one of the European standardisation organisations at the request of the European Commission referenced in the Official Journal of the European Union. At the same time, the Central Executive Body responsible for the making and implementation of the state policy in the field of postal services, approves the conformity assessment procedure in the field of postal services and designates conformity assessment bodies in the field of postal services.

We consider this a positive development from the point of view of fulfilling the relevant commitment under the Postal Directive. In order to universalise technical standards for postal service operators within Ukraine, as well as harmonise them with international standards, it is now necessary to adopt a regulatory act establishing postal technical standards in line with EU standards.

Introduction of rules for the provision of information

According to Article 8 (Competence of state bodies in the field of provision of postal services) of the adopted Law of Ukraine “On Postal Communications” (No. 2722-IX, dated 03.11.2022), the National Commission that performs state regulation in the fields of electronic communications, radio frequency spectrum and provision of postal services shall establish the procedure for submission and receive reporting and information from postal operators, including that containing financial and economic indicators, documents and materials necessary to exercise the powers assigned to the regulator by the Law.

Moreover, the NCEC Law (Article 4 (14)) specifies that the regulatory body, in addition to approving the forms of regulatory reporting and instructions for their completion, the timeline and procedure for their submission, shall also summarise and analyse the reports received. Article 16 of the above Law stipulates that the regulatory body in the annual report on its activities should include information, inter alia, on the state of development and analysis of sectoral markets, provision of universal services to consumers, the state

of network development, the introduction of new technologies and services, the state of the provision of these services, and consideration of consumer complaints, hence, the quality of the reports and information received by the regulator from service providers will play a decisive role.

In fact, postal service providers today provide financial and statistical information to tax authorities and statistical bodies, as well as certain data at the request of the NCEC, by filling in the table developed by the regulator and posted on the body’s website⁷.

At present, it is necessary to adopt a regulatory act that will establish the procedure for submitting reporting (information) by postal service providers to the national regulatory body, in particular financial information and information on the provision of universal services.

Introduction of rules to ensure consumer rights in the field of postal services

Currently, the Law of Ukraine “On Postal Communications” (No. 2722-IX, dated 3 November 2022) does not contain rules that would resolve this matter in accordance with the requirements of the Postal Directive.

Consumers of postal services currently can protect their rights only by settling claims with providers themselves either in accordance with the general law “On Protection of Consumer Rights” (applicable to consumers of goods and products rather than services) or in civil court. No relevant statistics are collected, no information in this regard is published. These provisions of the Postal Directive can be implemented through the adoption of a relevant regulatory legal act, possibly in cooperation with the national regulator with (an)other authorised executive body(s). The NCEC law (Article 16) stipulates that the annual report on the activities of the regulatory body should include information on the consideration of consumer complaints, therefore, this matter requires regulatory settlement and practical implementation.

As of the end of 2022, Ukraine’s commitments in the field of postal services under the Association Agreement have not been fulfilled. Although, compared to previous monitoring periods, there are positive developments.

7) <https://nkrzi.gov.ua/index.php?r=site/index&pg=8&language=uk>

We have a positive opinion of the progress made with regard to the adaptation of national legislation to the requirements of EU acquis in the field of postal and courier services as expressed in the Law of Ukraine “On Postal Communications” (No. 2722-IX, dated 3 November 2022), which, however, needs to be amended to take into account all the important provisions of the EU Postal Directive and the Association Agreement.

Another positive development is the adoption of the Law of Ukraine “On the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services” (No. 1971-IX, dated 16 December 2021). With the adoption of the NCEC Law, a significant redistribution of powers in the field of postal and courier services is to take place in favour of the NCEC, including with regard to European integration and the implementation of the Association Agreement. This Law assigns a fairly wide range of tasks and powers in the field of postal services to the regulatory body in comparison with the previous ones and even with those that were assigned to the Ministry of Infrastructure of Ukraine. On the one hand, this is a positive development, because for many years the line ministry (i.e., the Ministry of Infrastructure) had no separate structural units or at least a specialized officer responsible for the field of postal and courier services. On the other hand, it is quite an ambitious challenge and responsibility for the NCEC, because ensuring the efficient functioning of the postal services market while maintaining the balance between the interests of society, operators and users of postal services is a complex task and a serious responsibility.

Even though the adoption of the two above-mentioned laws does not ensure immediate and complete fulfilment of Ukraine’s commitments under the Association Agreement and requirements of the EU Postal Directive, it nevertheless creates certain prerequisites and legislative grounds for taking further steps and adopting the relevant by-laws, which together, taking into account the recommended improvements and changes, will cover all the measures necessary for the implementation of the provisions of the EU acquis in the legislation of Ukraine, thereby contributing to the development of the postal sector and helping Ukraine enter the global postal service market.

Electronic commerce

Since the adoption of Law No. 675-VIII in 2015, no consistent work has been carried out to introduce amendments to the legislation on e-commerce. However, on 5 October 2021, the Cabinet of Ministers of Ukraine submitted to the Verkhovna Rada of Ukraine a new draft version of the Law of Ukraine “On Consumer Protection”. According to the conclusion on the compliance of the draft law with Ukraine’s commitments in the field of European integration, the list of the EU acquis to be implemented by this draft law does not contain Directive 2000/31/EC.

At the same time, new legislative regulation of online payments and taxation of cross-border electronic trade in goods and services has been adopted. In particular, on 1 January 2022, amendments to the Tax Code of Ukraine became effective in Ukraine aiming to improve the procedure for VAT administration for transactions involving the supply of electronic services by non-residents to individuals. These amendments have approximated Ukrainian legislation to the relevant EU requirements, in particular, Law No. 1525-IX of 3 June 2021 lays down the requirements for the accrual and payment of VAT to the budget of Ukraine by foreign electronic service providers.

At the same time, there is no talk about VAT administration for the sale of other goods and services in retail e-commerce. Neither is it currently possible to integrate Ukraine into the EU’s single VAT window for SMEs (MOSS).

The provisions of the Directives on online payments (PSD 2007/64, 2015/7511, 2015/2366 (PSD2), 2009/110 (Second E-Money Directive)) were implemented in the new version of the Law of Ukraine “On Payment Services” dated 30 June 2021. As of the first half of 2022, most of the provisions of this Law did not enter into force. The National Bank of Ukraine should develop and adopt a significant number of by-laws to launch the updated payment services market, which is expected on 1 December 2022.

In 2021 and 2022, Ukraine demonstrated significant progress in fulfilling its commitments in the field of electronic commerce under the Association Agreement, but matters related to consumer protection, conclusion of contracts for the supply of digital content and digital services, postal services and the monopoly position of some business operators – marketplaces – remain unresolved and have not

been harmonised with EU acquis. Therefore, the level of fulfilment of the commitments can be described as advanced.

Financial services

Banking

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

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

On 1 January 2022, the minimum requirements for capital coverage of operational and market risks were introduced (Resolution No. 162 of the Board of the NBU "On Approval of the Regulation on the Procedure for Determining the Minimum Market Risk by Ukrainian Banks" dated 30 December 2021). The NBU intends to bring the capital structure of banks in line with EU acquis and new requirements for leverage indicators by 1 January 2024.

It should be noted that within these commitments, the NBU, together with experts of international technical assistance projects, has developed a number of regulations, including changes to the procedure for risk-based supervision of banks (SREP); the procedure for evaluating risk practices that account for expected capital losses of banks; the Concept of Introducing the Leverage Ratio (draft); draft amendments to improve the mechanisms for restoring the solvency and covering the insolvency of banks; draft methodology for estimating the bank's regulatory capital; and procedure for the analysis of business models of banks in accordance with the SREP methodology.

In addition, regulatory legal acts on the introduction of requirements for internal capital adequacy assessment processes (ICAAP), the introduction of new requirements for leverage, and improving the requirements for significant concentrations of credit risks are being developed.

Since 1 January 2022, according to the plan for the implementation of regulatory requirements, the NBU has tightened capital requirements for banks⁸. Banks now calculate capital adequacy taking into account operational and market risks, which is a common practice in the banking sector of EU Member States.

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

Improving regulation in the field of electronic money

The Verkhovna Rada adopted Law No. 1591-IX "On Payment Services" of 30 June 2021, which was signed on 29 July 2021. The Law regulates the activities of the Ukrainian payment and money transfer market and takes into account the relevant requirements of European acquis, including Payment Services Directive 2 (PSD2) and the E-Money Directive (EMD).

In 2022, the NBU adopted Resolution No. 210 dated 29 September 2022 and approved the Regulation governing the procedure for the provision by electronic money issuers of financial payment services of issuing electronic money and performing payment transactions with it, including opening and servicing electronic wallets; establishes requirements for issuers of electronic money, their commercial agents; restrictions on the use of electronic money; and aspects of performing payment transactions with electronic money.

Practical implementation of the commitments in the banking sector is at an early stage. It should be noted that the implementation of the obligations and tasks in the banking sector is rather uneven. The most advanced stage has been achieved for the commitments to improve the system of banking regulation and supervision and the procedure for the

8) <https://bank.gov.ua/en/news/all/natsionalniy-bank-posilyuye-vimogi-do-kapitalu-bankiv-z-01-sichnya-2022-roku>

winding up of banks. The NBU operates according to the plan developed in 2021.

The introduction of European regulation standards in the country is underway even under martial law. The NBU has developed and approved a number of regulatory legal acts, in particular with regard to the organization of corporate governance in banks, the process of assessing the adequacy of internal capital in banks and banking groups, and consolidated supervision. For the implementation of Law of Ukraine No. 1587-IX "On Amendments to Certain Legislative Acts of Ukraine to Improve the Organization of Corporate Governance in Banks and Other Matters of the Functioning of the Banking System," which was adopted on 30 June 2021, a three-year period is provided. For its implementation, the Regulation on the Organization of Internal Capital Adequacy Assessment Processes in Banks and Banking Groups was approved by Resolution No. 161 of the Board of the National Bank dated 30.12.2021. The Resolution enters into force on 6 January 2022.

The implementation of the tasks related to the deposit guarantee system and the requirements for additional supervision of the activities of credit institutions, insurance companies and investment companies is progressing at a slower pace. In these areas, certain draft laws require accelerated examination and appropriate legislative support.

Securities

Implementation of EU stock exchange rules

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

Introduction of a mechanism of compensation to investors in securities

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

Reducing market abuses in the securities market

On 24 February 2022 (the first day of the war), the Securities and Stock Market Commission of Ukraine adopted a number of restrictions on stock trading on the securities market, which were cancelled only on 4 August 2022. These included ceasing the placement, circulation and redemption of all securities, as well as operations in the depository accounting system and clearing accounting systems of persons engaged in clearing activities, except for the operations necessary for the performance of the National Bank's monetary and credit policy and the Ministry of Finance's operations of public debt management⁹.

Insurance

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

The Law of Ukraine "On Insurance" (No. 1909-IX) was adopted by the Verkhovna Rada of Ukraine on 18.11.2021 and entered into force on 19.12.2022. The Law will be fully enforced from the beginning of 2024. The Law is aimed at increasing the transparency of the ownership structure, in particular, disclosure of information about the owners of substantial participation and major shareholders of companies, changing certain requirements for the licensing of insurers and requirements for the corporate governance system.

9) <https://www.nssmc.gov.ua/en/nktspr-rishennia-u-zv-iazku-iz-vveden-niam-voiennoho-stanu/>

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

Regulatory approximation is at an early stage or has not started. Draft law No. 2651 “On Compulsory Insurance against Civil Liability of Owners of Land Vehicles to Improve the Regulatory Framework for the Compulsory Insurance against Civil Liability of Owners of Land Vehicles” of 20.12.2019 was submitted to the Verkhovna Rada. It was drafted with the participation of experts from the EU project “Strengthening the Regulation and Supervision of the Nonbank Financial Market” (EU-FINREG). The draft law has been pending consideration by the relevant committee since December 2019. In September 2022, the NBU initiated a public discussion on the changes envisaged by this draft law, inviting all stakeholders to take part in this discussion. The purpose of this initiative is to improve the regulation and reform of the domestic market of insurance against civil liability in line with the European Motor Insurance Directive 2009/103/EC.

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

Regulatory approximation is advanced.

The National Commission for Regulation of Financial Services Markets of Ukraine by Order No. 925 of 19.05.2020 amended the Procedure for the Compiling and Submission of Accounts by Insurance Market Participants in accordance with the requirements of the EU Directive. This Order introduced requirements for the disclosure of the ownership structure of insurance companies, raised the standards for disclosure of information and accounts of insurance companies, and enabled the switch-over to IFRS 9. In turn, the NBU continued to work in this regard and on 25.11.2021 adopted Resolution No. 123 “On Approval of the Rules for the Compiling and Submission of Accounts by Participants in the Nonbank Financial Services Market to the National Bank of Ukraine.” By this Resolution, the NBU approved the rules, standards and reporting mechanisms for nonbank financial institutions, including insurers, insurance and reinsurance brokers.

Regulation of insurance mediation

The Law of Ukraine “On Insurance” was adopted by the Verkhovna Rada of Ukraine in November

2021 and entered into force on 19.12.2022. It, inter alia, specifies the legal aspects of the provision of mediation services. It also takes into account the EU requirements for standards and regulations in the field of insurance mediation.

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

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

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

Payment services

Regulation of payment services

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

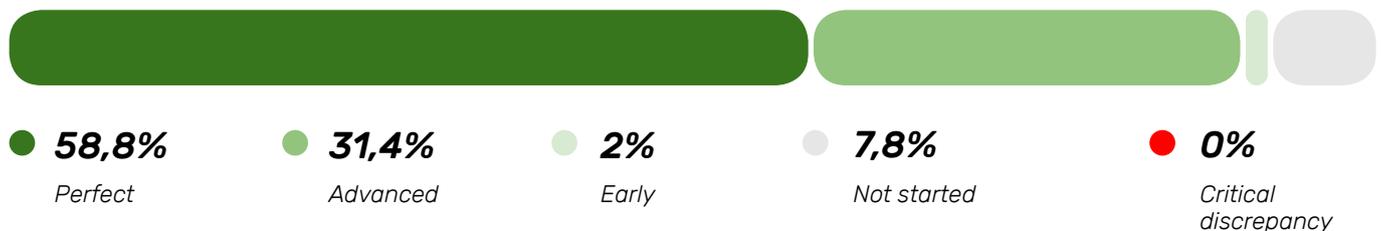
Practical implementation is advanced. On 1 August 2022, the Law was put into effect. The NBU, as the market regulator, started enforcing the provisions of the Law, amending and adopting new administrative and regulatory acts to bring the work of participants in the payment market into line with the adopted Law. These include Resolution No. 163 of the Board of the NBU dated 29 July 2022, which addresses the procedure for opening and closing accounts by banking and nonbank payment service providers; Resolution No. 208 of the Board of the NBU dated 26 September 2022 on the registration of payment systems, participants in payment systems and technological operators of payment services; Resolution No. 219 of the Board of the NBU dated 14 October 2022 on bank accounting; and a number of others.

Public procurement



Serhii Yaremenko

Sector progress



In previous reporting periods, Ukraine has made significant progress in fulfilling almost all its commitments with regard to adapting the public procurement system as required by the Association Agreement and the relevant Action Plan for the implementation of the Association Agreement, approved by CMU Resolution No. 1106 dated 25 October 2017.

However, due to the military aggression of the Russian Federation, martial law was introduced in Ukraine, which has had an impact on the organization of the procurement process and completion of the fulfilment of a number of international commitments in the field of public procurement, undertaken by our country within the framework of the Association Agreement.

During the period from February to October this year, a number of amendments were made to the legal acts regulating the field of public procurement – including the Law of Ukraine “On Public Procurement” – to temporarily (for the martial law period) grant the Cabinet of Ministers of Ukraine the right to regulate the public procurement of goods, work and services.

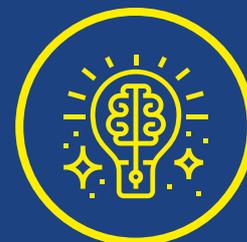
Currently, the public procurement process is carried out on the basis of the following resolutions of the Cabinet of Ministers of Ukraine: No. 1178 “On Approval of the Special Features of Public Procurement of Goods, Work and Services for Customers as Provided for by the Law of Ukraine ‘On Public Procurement’ during the Period when the Legal Regime of Martial Law is in Effect in Ukraine and within 90 Days from the Date of its Termination or Cancellation” dated 12 October 2022 and No. 1275 “On Approval of the Special Features of Defence Procurement for the Period when the Legal Regime of Martial Law is in Effect” dated 11 November 2022.

These special features include the suspension of almost all procurement procedures specified by the Laws on Public Procurement and on Defence Procurement, except for the open tendering procedure (which, however, includes a significant list of exceptions related to the introduction of the martial law regime), as well as such types of procurement as electronic catalogues and procurement under framework contracts.

To sum up, currently we have to acknowledge a certain slowdown in the implementation of certain measures in the field of “Public Procurement”. In particular, this applies to commitments such as the Introduction of concession contract procurement procedures, Introduction of an innovative partnership procedure, Introduction of special rules for the use of electronic auctions, reserved contracts and innovation partnerships by entities in the field of public utilities and the possibility of applying a dynamic procurement system; Introduction of non-binding rules for the period of non-conclusion of the procurement contract; Organization and continuous updating of the basic (online) training course for organizers of public procurement (work to restore the online course has begun with the support of the EU Project “Support to the Public Procurement Reform in Ukraine”).

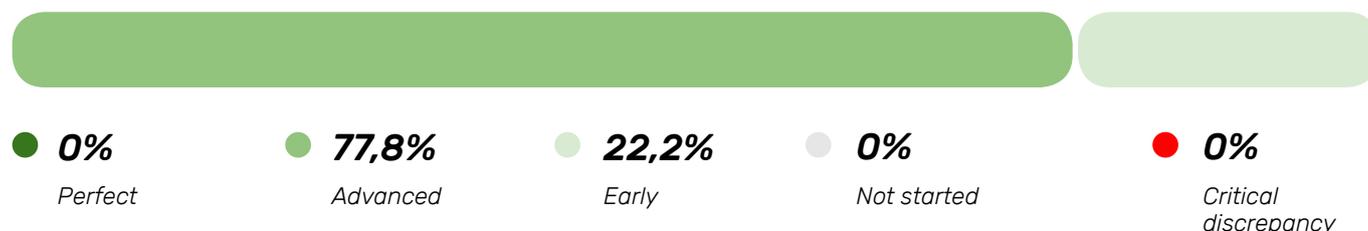
In addition, the Ministry of Economy has now created a working group and begun to develop a new Strategy for the Development of the Public Procurement System for the next 3 years, taking into account the current state of affairs in Ukraine and the need to take into account the fulfilment of the commitments previously assumed by the country within the framework of the implementation of the Association Agreement.

Intellectual property



Olena Sviatun

Sector progress



Intellectual Property Rights Standards

Copyright Protection and Collective Management Organizations

Regulatory approximation is advanced. On 1 December 2022, the Verkhovna Rada of Ukraine adopted the Law "On Copyright and Related Rights,"¹ aiming to improve the legal regulation of matters related to the exercising and protection of personal non-property and property rights of holders of copyright and related rights. The law came into force on 1 January 2023.

Improvement of legislation on the activities of collective management organizations (Directive No. 2014/26/EU)

Regulatory approximation is advanced. In 2018, the Law of Ukraine "On Effective Management of Property Rights of Holders of Copyright and (or) Related Rights" was adopted, aiming at the reform of the system of collective management of the rights of holders of copyright and related rights, prevention of illegal

activities of collective management organizations, preservation and development of intellectual activities of authors, performers and other creators. In June 2022, a new version of this Law was adopted². It should be noted that certain provisions of the adopted Law do not comply with the provisions of Directive 2014/26/EU. Specifically, Art. 12 provides for the possibility of only one accredited organization for each area of collective management, but the Directive does not impose any restrictions on the number of organizations entitled to operate in this area. In addition, according to Art. 12 (6), "Obligatory collective management does not involve withdrawal by the rightholder, in whole or in part, of their property rights from under the management by an accredited organization," which also contradicts the provisions of the EU Directive.

The practical implementation of the provisions of European legislation can be rated as advanced. In accordance with the adopted Law, the Commission for Accreditation of Collective Management Organizations was established in 2019³, and its members were

1) <https://zakon.rada.gov.ua/laws/main/2811-20#Text>

2) <https://zakon.rada.gov.ua/laws/show/2415-19#Text>

3) <https://zakon.rada.gov.ua/en/laws/show/z0972-20#n8>

approved in December of the same year. In addition, a register of collective management organizations and approved forms of documents for registration have been created⁴. As of the end of 2022, the Commission has already registered 10 collective management organizations⁵. However, the activities of the Commission itself attract a lot of criticisms, given the fact that it registers some organizations while refusing to register others.

Improvement of legislation on protection of computer programs

Regulatory approximation is advanced. On 1 December 2022, the Law of Ukraine “On Copyright and Related Rights” was adopted⁶, which takes into account the relevant EU acquis. The law came into force on 1 January 2023.

Sectoral Standards Related to Intellectual Property Rights

Trademarks and Designs

The transpositional approximation is advanced. On 1 July 2020, the Verkhovna Rada of Ukraine adopted the Law “On Strengthening the Security and Protection of Rights to Trademarks and Industrial Designs and Combating Patent Abuse.”

With regard to the protection of the right to industrial designs, in general, the Law is in line with the AA. However, it should be noted that in the proposed amendments to Art. 1 (1) of the Law “On Protection of Rights to Industrial Designs”, the term “industrial design” itself contradicts the definition enshrined in Art. 212 of the AA.

Considering the provisions on trademarks, we can also conclude that the Law as a whole is in line with the provisions of the AA in this area (Art. 193 to 202), as well as earlier EU acts of secondary legislation.

The practical implementation of this task is at the early stage. Thus, during the period under consideration, Ukrainian courts of different levels have adopted a number of decisions concerning the application of the provisions of the Association Agreement relating to the protection of intellectual property.

4) <https://zakon.rada.gov.ua/en/laws/show/z1433-18>

5) <https://me.gov.ua/Documents/Detail?lang=en-UA&id=2e29db4f-7ddf-49bc-bc06-608a149d0d69&title=KolektivneUpravlinniaUSferiAvtorskogoPravla-SumizhnikhPrav>

6) <https://zakon.rada.gov.ua/laws/main/2811-20#Text>

Improving the protection of recognized geographical indications

Regulatory approximation is mostly advanced. Amendments to the Law “On Protection of Indications of Origin” were adopted on 20 September 2019, whereby the name of the Law changed into “On Legal Protection of Geographical Indications”.

As for the implementation of this Law, it is advanced. In 2021, a number of bylaws were adopted to implement the provisions of the Law. In addition, in connection with the adoption of the Law “On Aspects of Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs, Protection of Rights and Application of Quality Schemes, Including Traditional Speciality Guaranteed for Agricultural Products and Foodstuffs”, the Law “On Legal Protection of Geographical Indications” was amended. Specifically, Article 11 (13) of the Law of Ukraine “On Legal Protection of Geographical Indications” was supplemented with paragraph eight of the following content: “If the objection relates to a name denoting a cross-border geographical location, and the application is filed by several applicants together, the objection procedure is carried out in the country of origin of each applicant, and the applicants must submit documents relating to the objection alongside their application, as well as the results of its consideration in each country.”⁷

Improving the protection of geographical indications and designations of origin of agricultural products and foodstuffs

Regulatory approximation is advanced. In June 2021, the draft Law “On Aspects of Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs, Protection of Rights and Application of Quality Schemes, Including Traditional Speciality Guaranteed for Agricultural Products and Foodstuffs” (No. 5616, dated 04.06.2021) was submitted to the Verkhovna Rada of Ukraine by the Cabinet of Ministers of Ukraine. The Law was adopted by the Verkhovna Rada of Ukraine on 6 September 2022 and after its signing by the President of Ukraine entered into force on 1 October 2022⁸. The entry into force of this Law led to amendments to a number of legislative acts, in

7) <https://zakon.rada.gov.ua/laws/show/752-14#Text>

8) <https://zakon.rada.gov.ua/laws/show/2572-20#Text>

particular: the Laws “On Information for Consumers concerning Foodstuffs”, “On Technical Regulations and Conformity Assessment,” and “On Legal Protection of Geographical Indications”.

Ensuring the protection of biotechnological inventions

Transposition-related activity is at an advanced stage. In July 2020, the Verkhovna Rada of Ukraine adopted the Law “On Amendments to Certain Legislative Acts of Ukraine Concerning the Reform of Patent Legislation”, which amended the Law “On Protection of Rights to Inventions and Utility Models,” which generally complies with the provisions of Directive 98/44/EC, although with some reservations (it does not include the term “microbiological process” enshrined in Art. 2 (1 (b)) of Directive 98/44/EC). There have been no changes during the analysed period.

Introduction of a mechanism for protecting the data provided for the purpose of obtaining marketing authorisation for medicinal products

In terms of transposition, the activity in this field may be described as advanced. According to the Law of Ukraine “On Medicinal Products,” those guilty of disclosure or misuse of registration-related information shall be subject to disciplinary, administrative, civil and/or criminal liability in accordance with the laws of Ukraine.

Implementation can also be described as advanced. According to Order No. 426 of the Ministry of Health dated 26 August 2005 (as amended on 10 November 2020), the State Expert Centre of the Ministry of Health of Ukraine is tasked with ensuring the protection of confidential registration information from disclosure and commercial misuse.

Introduction of a mechanism for data protection as related to plant protection products

The fulfilment of this commitment is aimed at meeting the requirements for safety and effectiveness before authorizing marketing of plant protection products.

Transposition is at an early stage. Back in January 2021, a draft “Law on Plant Protection” was submitted to the Verkhovna Rada of Ukraine and since then it has been pending consideration in VRU committees.

Improving the protection of the rights to topographies of semiconductor products

The transpositional approximation is advanced. On 19 September 2019, a new version of the relevant law was adopted in accordance with the said Directive with the updated name “On the Protection of Rights to Topographies of Semiconductor Products.” On 23.09.2019, the law was signed by the President of Ukraine. Currently, the version of 14.10.2020 is in force. The law meets the requirements of Directive 87/64/EEC. The latest amendments to the Law “On the Protection of Rights to Topographies of Semiconductor Products” were made in accordance with the provisions of the Law “On Amendments to Certain Legislative Acts of Ukraine to Ensure the Conclusion of an Agreement between Ukraine and the European Union on the Mutual Recognition of Qualified Electronic Trust Services and the Implementation of the European Union Legislation in the Field of Electronic Identification”⁹ adopted on 1 December 2022.

Implementation is at an early stage. In pursuance of the provisions of the above-mentioned Law, the Ministry of Economy is currently developing the relevant regulatory legal acts.

Harmonization of the classification of alcoholic beverages in accordance with EU standards

Transposition, which involves amendments to the Laws “On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages, Tobacco Products and Fuel”, the Tax Code of Ukraine, “On Grapes and Grape Wine”, etc., has not been started. Given the lack of a legislative framework for amending the current regulations, the relevant implementation approximation has not begun.

In September 2021, the Cabinet of Ministers of Ukraine issued a decree “On Approval of the Action Plan for the Development of the Technical Regulation System for the Period up to 2025”¹⁰, which sets the timetable regarding the preparation of drafts and adoption of regulatory acts on amendments to technical regulations as well as adoption of technical regulations in line with the EU acquis on the requirements for alcoholic beverages (Regulation (EC) No 110/2008 of the European Parliament and of the Council of

9) <https://zakon.rada.gov.ua/en/laws/show/2801-20#n112>

10) <https://zakon.rada.gov.ua/laws/show/1145-2021-%D1%80#Text>

15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89) for 2021–2025.

Improvement of the mechanism of protection of designations of origin of alcoholic beverages

Regulatory approximation is advanced. On 1 December 2021, the Verkhovna Rada of Ukraine adopted the Law on geographical indications of alcoholic beverages¹¹. The law as a whole complies with the provisions of Regulation (EU) No 2019/787, but one definition needs to be clarified with regard to the correctness of the translation.

The law became effective on 29 December 2022, but it will come into force on 29 December 2024.

Protecting Intellectual Property Rights

Public system of intellectual property protection

In 2020, a special law created a national intellectual property body, whose functions were temporarily assigned to the Ukrainian Institute of Intellectual Property (Ukrpatent). However, in 2022, the Cabinet of Ministers made a proposal to create a state organization “Ukrainian National Office of Intellectual Property and Innovation” (UkrNOIPI), which is supposed to take over the functions of Ukrpatent. UkrNOIPI was registered on 24 August 2022¹². In accordance with Order No. 943-p of the Cabinet of Ministers of Ukraine “Certain Matters of the National Intellectual Property Body”¹³ dated 28 October 2022, from 8 November 2022, the State Enterprise Ukrainian Institute of Intellectual Property (Ukrpatent) ceased all activities related to the performance of the functions of the NOIP.

On 1 December 2022, the Verkhovna Rada of Ukraine adopted the Law “On Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine Regarding Liability for Infringements of Copyright and (or) Related Rights”¹⁴, which entered into force on 29 December 2022.

The Law provides for mechanisms for addressing matters of legal regulation of copyright and related rights protection such as:

1. removing provisions on administrative and criminal liability in the context of control-marking of copies of audiovisual products, phonograms, videograms, computer programs, and databases;
2. increasing administrative and criminal liability for infringing copyright and related rights, which will help reduce the number of relevant offenses due to the threat of stricter sanctions.

In addition, on 1 July 2022, the Verkhovna Rada of Ukraine adopted the Resolution “On the Adoption of the Draft Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine to Strengthen the Protection of Intellectual Property Rights” (reg. No. 6464¹⁵). The purpose of the draft law is to bring the provisions of acts of civil, civil procedural, and economic procedural law, as well as legislation in the field of intellectual property into line with the commitment to protect intellectual property rights assumed by Ukraine under the Association Agreement between Ukraine and the EU. The draft law is in line with Ukraine’s commitments under the Association Agreement and EU acquis, but needs to be finalized in order to take into account the provisions of Article 242 of the Association Agreement. In particular, the proposed draft version of Article 432 (6) of the Civil Code of Ukraine only partially takes into account the provisions of Article 242 of the Association Agreement, which states that the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for disseminating the information concerning the decision, including displaying the decision and publishing it in full or in part. The Parties may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

Special importance in the system of protection measures is given to the creation of the Intellectual Property High Court (or IP Court). In December 2021, the draft Law on the Intellectual Property High Court was registered in the Verkhovna Rada of Ukraine¹⁶.

11) <https://zakon.rada.gov.ua/laws/show/2800-IX#Text>

12) https://youcontrol.com.ua/en/catalog/company_details/44673629/

13) <https://zakon.rada.gov.ua/laws/show/943-2022-%D1%80#Text>

14) <https://zakon.rada.gov.ua/laws/show/2803-IX#Text>

15) <https://zakon.rada.gov.ua/laws/show/2334-20#Text>

16) http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73540

The Intellectual Property High Court is supposed to serve as a specialized court in the judicial system of Ukraine. The task of the Intellectual Property High Court is to administer justice in accordance with the principles and procedures of justice established by law in order to protect violated or disputed rights and legitimate interests in the field of intellectual property guaranteed by the Constitution of Ukraine, laws of Ukraine, as well as international treaties recognised as binding by the Verkhovna Rada of Ukraine. Articles 4–7 of Section II of the Draft Law of Ukraine “On the Intellectual Property High Court” consolidate the key positions on the staff, powers and organization of the activities of the High Specialized Court on Intellectual Property.

The Intellectual Property High Court is supposed to be composed of judges who administer justice at the first-instance level, whereas the Appeals Chamber is tasked with the reviewing of appeals against decisions adopted by the Intellectual Property High Court as a first-instance court. If necessary, judicial chambers may be established within the court for first-instance consideration of certain categories of cases.

The draft law establishes the procedure for determining the number of judges of the Intellectual Property High Court and its Appeals Chamber in accordance with the Law of Ukraine “On the Judicial System and the Status of Judges”; the procedure for creating the Appeals Chamber of the Intellectual Property High Court to consider appeals, the grounds and principles of its operation; and potential creation of judicial chambers for first-instance consideration of certain categories of cases (Article 6). The territorial jurisdiction of the said judicial body will extend to the entire territory of Ukraine. As of the end of 2022, this draft law is pending consideration in VRU committees.

In addition, in response to the full-scale aggression of the Russian Federation against Ukraine in March 2022, the European Commission and the European Union Intellectual Property Office (EUIPO) developed the first package of measures aimed at protecting intellectual property in Ukraine. In accordance with this package, the EUIPO has:

- taken measures to provide its fullest support to its Ukrainian customers and to safeguard their IP rights while this situation prevents normal communication;

- halted all cooperation actions with Rospatent, the Russian Federal Service for Intellectual Property, and the Eurasian Patent Organisation (EAPO);
- taken measures to ensure that intellectual property rights originating from Crimea are not falsely registered as coming from Russia;
- at the request of the European Commission, taken measures to ensure that all data regarding parties’ addresses in its registries reflect Ukraine’s internationally recognised borders, correcting erroneous indications where necessary.

During the second half of 2021 and 2022, Ukraine has made significant progress in fulfilling its commitments in the field of intellectual property under the AA. Most of the legislative acts have been updated in light of the requirements of the AA, and the necessary institutional units have been created to ensure the practical implementation of the relevant acts. In addition, when considering cases concerning the protection of intellectual property rights, the Supreme Court of Ukraine and lower courts have repeatedly emphasized the fact that the relevant provisions of the AA have direct effect on the Ukrainian legal system, that is, the courts must apply these provisions of the AA, giving them priority over national legislation.

- Fast-track the adoption of the law on the protection of copyright and operation of collective management organizations in order to bring Ukrainian legislation into line with the EU Directives on the protection of copyright and related rights;
- Consider amending the current Law of Ukraine “On Effective Management of Property Rights of Holders of Copyright and (or) Related Rights” in order to abolish the restriction that implies that only one accredited organization for each area of collective management might exist, since it runs contrary to the relevant EU Directive, as well as to abolish the provision on the impossibility for the right holder to withdraw their rights from under the management of an accredited organization.

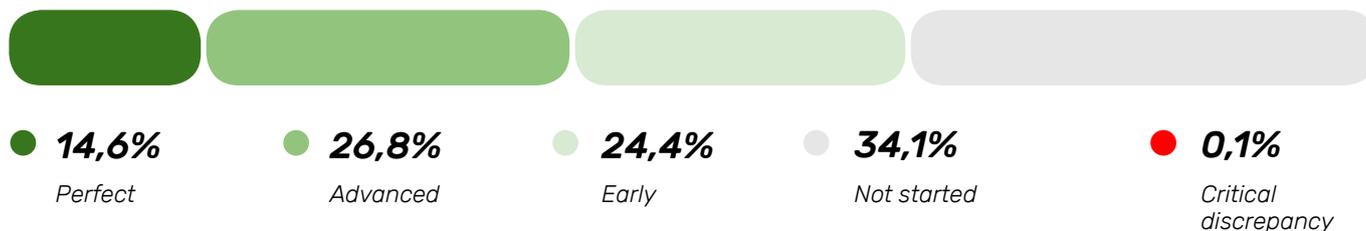
- Consider amending the current Law of Ukraine “On the Protection of Rights to Trade Marks and Services” and ensure that the provisions of the new EU acquis, namely Regulation (EU) 2017/1001 and Directive (EU) 2015/2436, as well as the definitions enshrined in the Association Agreement, are taken into account; Identify the available levers for amending the current Law of Ukraine “On the Legal Protection of Geographical Indications” in order to remove the existing contradictions: it is necessary to establish schemes for traditional specialities guaranteed and provide for the possibility of filing a joint application when the geographical indication concerns several states;
- Fast-track the adoption of the Law “On Intellectual Property High Court” and the competition for the positions of judges.

Competition



Oleksandra Bulana

Sector progress



Between 2021 and 2022, Ukraine made some progress in the field of competition, although the pace of reforms remained slow. Updating the Law of Ukraine “On Protection of Economic Competition” is necessary in the areas of anti-competitive practices and mergers, but the relevant draft law (5431) has not yet been considered in the second reading, even though it was adopted in the first reading in July 2021.

Despite this, the Antimonopoly Committee of Ukraine continues to monitor compliance with competition law. However, the committee’s capacity appears to be insufficient for the task at hand. According to the AMCU’s report in 2021, 22% of the committee’s positions were vacant, and personnel turnover was high at 23% over the year. It is essential to address these issues to ensure effective enforcement of competition law and create a level playing field for businesses in Ukraine.

In the field of State Aid, limited progress has been made with regards to the alignment of Ukraine’s legislation with EU standards. The current Law of Ukraine “On State Aid” falls short of the required level of compliance with EU regulations and has been expanded with numerous exceptions over time.

Consequently, it cannot effectively cover all cases of state aid in Ukraine.

On 1 April 2022, Law of Ukraine No. 2175-IX was adopted. According to this law, all state aid provided during the martial law period is considered compatible and exempts state aid providers from the obligation to notify the AMCU about such aid during the martial law period and for a year after it is over. As a result, during the martial law period, all state aid in Ukraine is deemed compatible with the market, and the AMCU ceases consideration of cases concerning state aid. The consideration of cases that were pending before the introduction of martial law is suspended. This may have negative implications for the fair and effective regulation of state aid in Ukraine.

The Verkhovna Rada is currently considering draft law 5648, which proposes amendments to the Law of Ukraine “On State Aid to Undertakings” and other relevant legislative acts. The aim is to improve the control and monitoring of state aid provided to undertakings. However, there has been no progress in this regard over the last year.

Meanwhile, the Antimonopoly Committee has been actively preparing legal acts to regulate the provision of specific types of state aid. For instance, in the second half of 2021, Resolution No. 1060 of the Cabinet of Ministers of Ukraine was passed, which approves criteria for assessing the compatibility of state aid for environmental protection.

The Antimonopoly Committee has also prepared the following draft resolutions of the Cabinet of Ministers of Ukraine:

- Draft Resolution of the Cabinet of Ministers of Ukraine “On Amendments to the Procedure for Recovery of Illegally Granted State Aid Inadmissible for Competition”;
- Draft Resolution of the Cabinet of Ministers of Ukraine “On Approval of Criteria for Assessing the Admissibility of State Aid in the Field of Aviation”;
- Draft Resolution of the Cabinet of Ministers of Ukraine “On Approval of Criteria for Assessing the Admissibility of State Aid to Undertakings to Support Culture and Preserve Cultural Heritage”;
- Draft Resolution “On Approval of Criteria for Assessing the Admissibility of State Aid to Undertakings to Ensure the Development of Regions and to Support Small and Medium Businesses”.

During the martial law period, the supervision of state aid has come to a halt. To make further progress in this sector, it is essential to make changes to two fundamental laws that regulate its functioning - the Law “On Protection of Economic Competition” and the Law “On State Aid”. These changes will help to improve the oversight and control of state aid, ultimately benefiting the economy and promoting fair competition among businesses.



TITLE V.

Economic and
sector cooperation

Energy Sector



Halyna Trypolska



Dmytro Naumenko

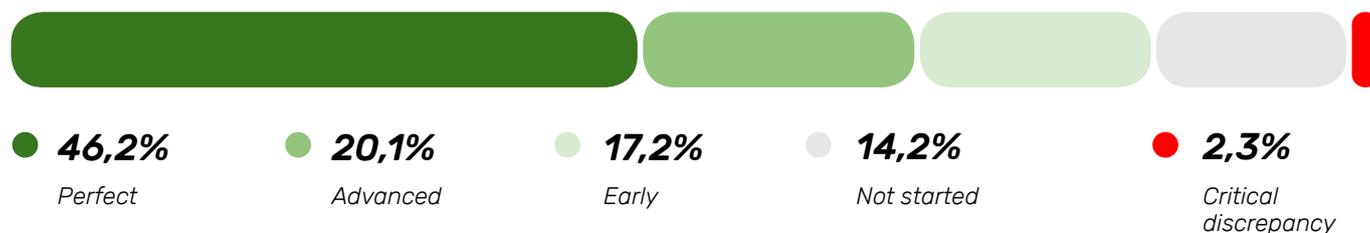


Hennadii Riabtsev



Olha Kosharna

Sector progress



Electricity

During the second half of 2021 and in 2022, on the electricity market of Ukraine reforms continued aiming to facilitate its practical integration into the European energy market.

Before the attacks on the energy infrastructure by the Russian Federation, the supply of electricity in Ukraine significantly exceeded demand, but since 11 October 2022, the country has been experiencing power shortages and turned into a country with energy deficit.

Regulatory approximation is advanced.

Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC:

- On 1 October 2021, NERC Resolution No. 1683 was adopted "On the Adoption of a Preliminary Decision concerning the Certification of the Electric Power Transmission System Operator and Repealing NERC Resolution No. 901 of 2

June 2021,"¹ whereby a preliminary decision concerning the certification of NPC Ukrenergo PJSC was adopted based on the independent system operator model. The final decision concerning the certification of NPC Ukrenergo PJSC based on the ISO model was made on 17 December 2021 when the NERC approved Resolution No. 2589 "On the Adoption of the Final Decision concerning the Certification of the Transmission System Operator."²

Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency:

- To implement Regulation 1227/2011, VRU Resolution No. 2607-IX "On Adoption of the Law of Ukraine on Amendments to Certain Laws of Ukraine to Prevent Abuse in Wholesale Energy Markets" (REMIT Regulation) was

1) <https://www.nerc.gov.ua/acts/pro-priynyattya-poperednogo-rishennya-pro-sertifikatsiyu-operatora-sistemi-peredachi-elektrichnoi-energii-ta-viznannya-takoyu-shcho-vtratile-chinnist-postanovi-nkrekp-vid-02-che-616d9a7c026ac>

2) <https://www.nerc.gov.ua/acts/pro-priynyattya-ostatochnogo-rishennya-pro-sertifikatsiyu-operatora-sistemi-peredachi>

adopted on 20 September 2022³. In reality, the REMIT regulation and the procedure for joint cross-border transmission capacity allocation have not yet been implemented. In fact, the Energy Community has initiated a dispute about Ukraine's failure to transpose the REMIT regulation.

A number of provisions for the implementation of the acquis in the field of electricity were approved, in particular:

- Establishing the rules for information exchange and the procedure for prompt notification of the granting of permission to connect;
- NERC Resolution No. 1234 "On Approval of Amendments to the Transmission System Code"⁴ dated 30.09.2022;
- Adopting the procedure for prompt notification for electrical installations of consumers at the power consumption facility or closed distribution network connected at a voltage level of more than 1000 V (or lower);
- Establishing requirements for synchronous power generating units;
- Establishing rules for existing high-voltage direct current systems and connected power centre units;
- Establishing requirements for active power regulation and the maintenance of frequency and reactive power as well as voltage maintenance;
- Establishing provisions on the potential of HVDC systems and connected units to suffer damage without disconnecting from the network, requirements for protective devices and requirements for restoring the operating mode;
- Establishing the requirements for the connected units of the energy centre and converting substations of HVDC systems;

- Establishing the rules for information exchange and the procedure for prompt notification of the granting of permission to connect;
- NERC Resolution No. 309 "On Approval of Amendments to the Transmission System Code"⁵ of 14.03.2018.

Practical implementation is advanced.

Ukraine's power system was disconnected from the power systems of Russia and Belarus on 24 February 2022, and an emergency synchronous connection of the unified energy system of Ukraine to the energy system of continental Europe ENTSO-E took place on 16 March 2022, almost a year ahead of schedule. NPC Ukrenergo received ENTSO-E observer status in April 2022⁶. On 1 June 2022, NPC Ukrenergo joined the centralized mechanism for financial settlement of unintentional deviations (FSkar)⁷.

The transmission system operator is certified according to the ISO model and has been unbundled. Distribution system operators have been de jure and de facto unbundled.

Commercial electricity exchange between Ukraine and continental Europe began on 30 June 2022 with a gradual increase in cross-border capacity. In particular, the capacity is allocated through unilateral auctions with Poland, Romania and Slovakia⁸.

On 15 February 2022, Law of Ukraine No. 2046-IX "On Amendments to Certain Laws of Ukraine regarding the Development of Energy Storage Installations" was adopted (entered into force on 16.06.2022)⁹, creating a legislative framework for energy storage systems.

Law of Ukraine No. 2371-IX "On Amendments to the Law of Ukraine 'On the Electricity Market' to address issues of electricity sale by electricity producers under bilateral agreements" was adopted on 8 July 2022¹⁰, whereby electricity producers (except for producers operating at the "green" tariff and those who are entitled to support based on auction results) sell electricity under bilateral agreements exclusively via electronic auctions.

3) <https://zakon.rada.gov.ua/laws/show/2607-20#Text>

4) <https://zakon.rada.gov.ua/en/rada/show/v1234874-22#Text>

5) <https://zakon.rada.gov.ua/laws/show/v1546874-21#Text>

6) <https://www.entsoe.eu/en/about/inside-entsoe/members/>

7) <https://www.energy-community.org/news/Energy-Community-News/2022/06/17.html>

8) <https://www.energy-community.org>

9) <https://zakon.rada.gov.ua/laws/show/2046-20#n8>

10) <https://zakon.rada.gov.ua/en/laws/show/2371-20#n2>

Law of Ukraine No. 1639-IX¹¹ “On Measures Aimed at Overcoming Crisis Phenomena and Ensuring Financial Stability in the Natural Gas Market” dated 14 July 2021 amended the Law of Ukraine “On the Electricity Market”, in particular, it introduced the concept of an “electronic auction for the purchase and sale of electricity.”

Draft Law of Ukraine No. 1819-IX “On Amendments to the Law of Ukraine ‘On the Concurrent Production of Thermal Energy and Electricity (Cogeneration) and Use of Waste Heat Recovery Potential’ Regarding the Development of Highly Efficient Cogeneration” dated 21 October 2021¹² was adopted in the first reading.

During the martial law regime, fines and penalties for non-payment of utilities are not charged (CMU Resolution No. 206 “Certain Matters Concerning the Payment for Housing and Utility Services under Martial Law”¹³ dated 5 March 2022), but people are not exempted from paying for utilities. At the same time, no definition of categories of vulnerable consumers have been provided yet.

Renewable energy sources

Regulatory approximation is early.

In Ukraine, Directive 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources (RES) should already have been transposed. For this purpose, a draft National Action Plan on Renewable Energy for the period up to 2030 has been developed, but it has not been adopted yet.

An important development was the adoption of Law of Ukraine No. 1820-IX “On Amendments to Certain Laws of Ukraine concerning the Development of Biomethane Production” dated 21 October 2021, which is aimed at forming the biomethane market in Ukraine. In 2022, the Procedure for the Operation of the Biomethane Register was approved, which is an integral part of the biomethane market.

Draft Laws of Ukraine “On Amendments to Certain Laws of Ukraine Ensuring Competitive Conditions for the Production of Electric Energy from Alternative Energy Sources” and “On Amendments to Certain Legislative Acts of Ukraine to Introduce Mechanisms Aimed to Minimize the Risks of Fluctuations in the

Prices of Electric Energy Produced from Alternative Energy Sources” were developed to introduce contracts for difference, but none of them has been adopted (and in October 2022, the second draft law was withdrawn from consideration).

Draft laws of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Develop the Trade in Solid Biological Fuels” (formation of an electronic trading system for biofuels by launching an exchange); on the exemption of biofuels from CO₂ emissions tax, as well as “On Amendments to Certain Legislative Acts of Ukraine regarding the Mandatory Use of Liquid Biofuels (Biocomponents) in the Field of Transport” (adopted at first reading in June 2021) have been developed.

An Integrated National Plan on Energy and Climate 2030 is being developed, and Ukraine’s Energy Strategy 2050 is being revised.

Practical implementation is advanced.

During the period from July 2021 to June 2022, there were no changes in the regulation of the use of energy from RES in transport that would contribute to the intensification of the development of the sector. The only exception is the change in taxation: temporarily, for the period of martial law, but not longer than until 1 July 2023, operations aimed at importing into the customs territory of Ukraine of biodiesel and alternative motor fuel shall be taxed at a rate of 7%. For the period until the termination or cancellation of martial law on the territory of Ukraine, but not longer than by 1 July 2023, the excise tax rate on alternative motor fuel is set at EUR 100/1000 liters¹⁴.

Since the beginning of the Russo-Ukrainian war, certain changes have been made in the regulation of the industry, in particular, the operating Solar Power Plants receive instructions to limit generation in order to balance the power system during the day: the restrictions range from 30% to 70%. During the war, the Ministry of Energy issued a number of orders that directly influence the payments for electricity supplied from RES:

- Order No. 103 dated 4 March 2022: full termination of settlements;

11) <https://zakon.rada.gov.ua/laws/show/1639-20#n267>

12) <https://zakon.rada.gov.ua/laws/show/1819-IX#Text>

13) <https://zakon.rada.gov.ua/laws/show/206-2022-n#Text>

14) <https://zakon.rada.gov.ua/laws/show/2755-17#n5506>

- Order No. 140¹⁵ dated 28 March 2022: partial payment;
- Order No. 206 dated 15 June 2022 – review of partial payment.

In particular, SE Guaranteed Buyer is instructed to reduce payments under the green tariff by 15–18% for solar power plants (SPPs), by 16–18% for wind farms, by 35% for small hydro power plants (HPPs), by 40% for biogas and by 60–75% for biomass power plants (compared to the average rate of the “green” tariff for 2021) for the period of martial law¹⁶.

Law of Ukraine No. 2479-IX “On Specific Features of the Regulation of Relations in the Natural Gas Market and in the Heating Sector under Martial Law and the Subsequent Restoration of their Functioning” of 29 July 2022 was adopted¹⁷, which allow RES electricity producers who sell it at the “green” tariff, to sell electricity on the “day-ahead” market, intraday market, bilateral agreements market, and the balancing market. In this case, the sale of electricity is organized by the RES producer without the participation of the Guaranteed Buyer. To do this, producers temporarily leave the Guaranteed Buyer’s balancing group without losing the “green” tariff, and can return to the Guaranteed Buyer’s balancing group and to the “green” tariff.

Since the beginning of the war, the approach to the settlements for electricity supplied to households has changed¹⁸. For the wartime period, a deferred payment option for months was introduced by universal service providers, that is, the payment period was extended to 60 days. Upon expiry of the 60-day period, or upon cessation or cancellation of martial law, Universal Service Providers (USPs) shall pay monthly in equal installments for the electricity supplied. To cover the debt, NPC Ukrenergo is obliged to transfer monthly to UPS not less than 19.5% of the cost of electricity produced by households in excess of their own consumption, which is calculated according to the “green” tariff.

The state budget for 2023 temporarily (for 2023) suspended the provision of the Law of Ukraine “On

Alternative Energy Sources,”¹⁹ which was to provide for expenditures from the state budget for the payment to Guaranteed Buyer SE of at least 20% of the projected electricity generation.

During the period from July 2021 to July 2022, there were no pilot auctions for the allocation of state support quotas for new RES installations. In August 2022, Resolution “On Amendments to Resolutions No. 420 and No. 1175 of the Cabinet of Ministers of Ukraine dated 23 May 2018 and 27 December 2019 respectively” was approved, which introduces auctions for the allocation of state support quotas for the new RES installations for the next four years.

Gas

Since 2015, the national gas market has undergone several stages of reform, which have fundamentally changed the situation in many of its segments, bringing the regulatory models and practices closer to European standards. Undisputed success stories include the organization of real and virtual gas reverse from the EU, unbundling of the vertically integrated company Naftogaz of Ukraine and establishment of an independent operator of the national gas transmission system (GTS), as well as creation of a competitive gas market in the segment of commercial consumers (gas used other than for households), incl. exchange trading of gas. At the same time, the approximation of the regulation of the gas market to the relevant provisions of the EU acquis contained in the so-called Third and Fourth energy packages of EU legislation and their effective implementation cannot be considered as fully completed as a result of political interference in the operation of the gas market for populist motives of maintaining subsidized gas prices for households. This has led to distortions of competition in the segment of gas supply to households (for direct consumption and heat generation by centralised heat supply systems), deterioration of the financial standing of Naftogaz NJSC, manipulation of gas volumes by regional gas supply companies, and also less than perfect protection schemes for vulnerable consumers and weak incentives for energy efficiency policies for the public. The war further exacerbated the situation in view of the critical condition of the economy and the

15) <https://expro.com.ua/novini/-mnenergo-obmejilo-viplati-zeleny-generac-na-perod-vonnogo-stanu->

16) <https://zakon.rada.gov.ua/laws/show/z0692-22#Text>

17) <https://zakon.rada.gov.ua/laws/show/2479-IX#Text>

18) <https://zakon.rada.gov.ua/rada/show/v0396874-22#Text>

19) <https://zakon.rada.gov.ua/laws/show/2710-IX#Text>

rapid decline in people's well-being, hence the topic of gas prices in the regulated segment of the market has become even more "unpopular" and has been put on the backburner awaiting post-war recovery.

Approximation of legislation. During the monitoring period, the following progress was achieved at the level of laws and by-laws to approximate the Ukrainian gas market regulation to EU acquis:

- (a) Certification of the operator of underground gas storage facilities (UGSF): on 13 December 2022, Law of Ukraine No. 2850-X on the certification of the operator of gas storage facilities was adopted²⁰ (in Ukraine, it is Ukrtransgaz JSC, a subsidiary of Naftogaz of Ukraine). Such certification is necessary, first of all, for the implementation and constant monitoring by the NERC²¹ of European standards governing the operation of gas storage facilities and recognition of the compliance with these standards by the EU (in particular, the final decision concerning the certification of the operator company must take into consideration the opinion of the Energy Community Secretariat).

From a practical point of view, successful certification will make it possible to keep the strategic gas reserves of EU countries (not only commercial gas of private gas companies) in the Ukrainian UGSF, maximize the use of the gas storage network, reduce risks for the security of natural gas supply, and also increase the operator company's revenues from providing underground storage services. In compliance with the law, on 24 January 2023, the NERC adopted Resolution No. 110 "On Approval of the Procedure for the Certification of the Gas Storage Operator,"²² which specifies all the procedural aspects of such certification.

- (b) Approximation of legislation to the requirements of EU Regulation No. 1227/2011 on wholesale energy market integrity and transparency (the so-called REMIT Regulation²³): this Regulation is key to ensuring the transparent operation of the wholesale energy market

(including the gas market) and establishing a number of safeguards against manipulation and abuse by market participants. In particular, by implementing the requirements of this Regulation Ukraine will provide the NERC with a number of powers and tools that will help the Commission to perform more effective monitoring of abuses in the market regarding price manipulation and trading insider information about future deals and sales volumes. An effective system of market monitoring and surveillance based on European counterparts will be created on the basis of the NERC. Also, the Commission will have enough powers to punish market participants for violations of REMIT rules severely enough through appropriate fines²⁴.

These changes were drafted and submitted to the Parliament back in April 2021 as draft law No. 5322²⁵, which was referred to the Committee on Energy, Housing and Utilities, where it was pending consideration until September 2022, when it was adopted in 1st reading. The draft law is currently undergoing second reading, and if the MPs vote in favour of adopting it, it will give impetus to important reforms in the gas and electricity markets.

- (c) Changes in the rules of operation of the GTS: in particular, during the second half of 2021, the NERC settled the following issues²⁶:
 - for customers of transmission services that supply natural gas to households, the commercial balancing mechanism for the GTS has been improved by granting such suppliers the right to join balancing groups within the limits of a separately created balancing portfolio (the inputs and off-takes of gas by the transmission service user);
 - the mechanisms of operation of the supplier of "last resort" have been improved by changing the approach to calculating the value of contracted capacity for the supplier of "last resort" and imposing a fee for exceeding it. This will contribute to a more

20) <https://zakon.rada.gov.ua/laws/show/2850-20#Text>

21) The National Commission for State Regulation of Energy and Public Utilities.

22) <https://zakon.rada.gov.ua/rada/show/v0110874-23#Text>

23) Regulation (EU) No. 1227/2011 on wholesale energy market integrity and transparency.

24) <https://ua-energy.org/uk/posts/intehratsiia-rynkviv-i-zelenyi-perekh-id-iak-kliuch-do-vidnovlennia-enerhosystemy>

25) Draft Law of Ukraine on Amendments to Certain Laws of Ukraine to Prevent Abuse in Wholesale Energy Markets (No. 5322, dated 1 April 2021).

26) For details, see the Bulletin to the 2021 Annual Report of the NERC.

effective performance by the “last resort” supplier of the function of uninterrupted supply of natural gas to end consumers who, due to objective circumstances, are left without a supplier;

- the financial burden on transmission service users has been alleviated by reducing the amount of adjustment for daily imbalances, which exceeds 5% (for distribution systems operators to cover their regulated as well as technological losses/costs – more than 15% (inclusive)) – from 20% to 10 %;
- to help reduce imbalances in the GTS associated with the insufficient accuracy of DSOs’ forecasts of natural gas off-take/ consumption volumes for non-daily metered consumers, the minimum forecasting accuracy limit has been established, which GDN operators must observe.
- (d) Transition to energy units in accounting and calculations on the natural gas market: due to the introduction of martial law, this important part of the gas market reform, which should have been launched on 1 May 2022, has been postponed until it is over²⁷. If implemented, this will allow national market players to switch to the European system of measuring natural gas in energy units (MW) instead of the outdated system of m³ and harmonise the accounting and calculation system with that used by European companies within the EU.

Implementation. During the monitoring period (from early 2021 to the end of 2022), progress with the implementation of the earlier approved changes to the “gas” legislation was multidirectional.

- (a) Unbundling: one of the greatest achievements of the previous years was the creation and EU certification of an independent GTS operator – i.e., Transmission System

Operator of Ukraine (GTSOU LLC) – which has helped to improve transparency in the natural gas transmission market as well as to ensure that Ukraine fulfils its obligations regarding the transit of Russian gas to the EU even under martial law. However, a critical problem for the normal operation of the GTSOU LLC is the regular accumulation of losses as debts for gas off-take from the GTS that has not been paid for by the Naftogaz group (represented by the GSC Naftogaz of Ukraine LLC, which is also the supplier of last resort in the regulated segment)²⁸ and by operators of gas distribution networks, which are mainly controlled by Dmytro Firtash’s RGC LLC²⁹. In addition, the obligation to fulfil the provisions of the Agreement on the Reimbursement of Income to JSC Ukrtransgaz is taking the financial toll on GTSOU – it was signed as part of the unbundling of Naftogaz NJSC, whereby the GTS operator has already paid the Naftogaz group (which includes Ukrtransgaz JSC) about UAH 38 billion, and the amount of monthly advance payments is about UAH 1.4 billion. The war caused additional losses for the GTS operator in the amount of approximately UAH 3 billion due to inaccurate data of the daily balancing system³⁰.

In September 2022, proposals for changes to the introduced legal model of the GTS operator were submitted to the Verkhovna Rada³¹, namely regarding the elimination of the two-level system of management and ownership³², which was established as a compromise between the Ukrainian authorities and European partners (in particular, the Energy Community Secretariat) within the framework of the unbundling of the GTS operator company from the Naftogaz group. Namely, it is proposed to liquidate the MGU JSC, and transfer its corporate rights and management bodies to the GTSOU LLC, incl. creation of a new supervisory board. Despite some obvious flaws of this system, such as the actual inability of the supervisory board of the MGU JSC to influence the

27) As stipulated by Law of Ukraine No. 2372- IX dated 8 July 2022.

28) As of January 2023, this debt was estimated at about UAH 22 billion, according to the information from Serhiy Makogon, ex-CEO of GTSOU LLC.

29) As of December 2022, the GTSOU LLC estimated the amount of this debt at UAH 16.8 billion according to information

30) https://www.rada.gov.ua/news/news_tsk/227415.html

31) For example, in draft law No. 8068 (and alternative Nos. 8068-1 and 8068-2) entitled “On Measures to Reform the Corporate Management of the Operator of the GTS of Ukraine.”

32) Mahistralni Gazoprovody Ukrainy JSC (MGU JSC), which received ownership rights to the GTS as well as management and supervisory functions, and the GTSOU LLC as the technical operator of the GTS.

operational and investment decisions of the GTSOU LLC, its unilateral change and the appointment of the new management of the GTSOU LLC outside the framework of the tender procedure and control by the supervisory board of the GTSOU LLC before its establishment³³ could potentially lead to a conflict with Ukraine's western partners and revocation of the GTS operator's certification by the Energy Community.

The unbundling of companies operating in the segment of gas distribution and supply to end consumers, launched in 2015 and completed at the beginning of 2020, has also come under threat when the so-called "oblgas" companies (regional gas companies) were divided into gas supply companies that sell gas and companies operating gas distribution networks (DSO). The market was dominated by Dmytro Firtash's Regional Gas Company group, which controlled the sale of gas to about 60% of end consumers (JE Energy LLC) and about 70% of gas distribution in the country (20 out of 43 working DSOs in the country). However, at the beginning of 2022, the process of "nationalization" of the RGC group companies by the state-owned Naftogaz of Ukraine JSC began. Initially, JE Energy LLC lost access to its own customer base (about 8 million customers), which was transferred to Naftogaz NJSC following changes to the "supplier of last resort" regulation. And in May, a court judgement was made whereby 26 DSOs, incl. 20 RGC group companies, were to be nationalized by transferring them to Naftogaz NJSC. The judgement was made in a legal action filed by the State Bureau of Investigation regarding the collection of rent from regional gas companies for the right to use gas distribution networks³⁴. Currently, the process has run into the sand on counterclaims, but if these legal proceedings are resolved in favour of the state, the supply and distribution companies will again find themselves within the framework of one vertically integrated structure³⁵ in violation of the requirements of the Third EU Energy Package. It is

noteworthy that the nationalisation of Dmytro Firtash's gas distribution companies, on the other hand, poses the risk of significant one-time losses for the GTSOU LLC due to the current debts of DSOs (see discussed above). It is obvious that Naftogaz NJSC, having come into ownership of the "nationalised" gas distribution companies, will not be able to pay these debts, given its own unsatisfactory financial condition.

- (b) Gas transit: the beginning of the war brought dramatic changes for the GTS as regards the volumes of Russian gas transported through Ukrainian gas pipelines to European consumers. Its transit is regulated by the long-term contract for 2020 - 2024 based on the "ship-or-pay" principle, according to which Russian Gazprom booked and had to pay (regardless of the actual volumes of gas pumped) a minimum of 40 billion m³ of transit capacity in 2022. However, the Russian full-scale invasion has led to rejection of Russian pipeline gas use by most European countries and its replacement with liquefied natural gas (LNG) from other suppliers (mainly from the Middle East). In addition, Russia itself unilaterally stopped supplying gas to "unfriendly" European countries that refused to pay for its gas in rubles in violation of the terms of existing contracts. As a result, the export of Russian gas to Europe in 2022 fell by a record 45% (compared to the volume exported in 2021) and amounted to only about 100 billion m³, record lowest since 1990³⁶.

However, the actual volume of Russian gas transported via the Ukrainian GTS also reached a historic low in 2022 and amounted to only 20.35 billion m³ (in 2021, it was 41.6 billion m³)³⁷. It is expected that the transit of Russian gas will stop completely in the next few years due to the irreversible process of the EU's refusal to purchase Russian gas and Russia's violation of the terms of the transit contract. As a

33) This can be done on the basis of CMU Resolution No. 643 dated 31.05.2022, whereby during the period of martial law competitive selection of heads of the executive bodies in the state-owned sector of the economy is made non-mandatory, hence a new chairman of the GTSOU LLC can be appointed simply upon their approval by the government, without holding a competitive selection.

34) Which were actually handed over for free use to private DSOs after the corresponding decision by the Ministry of Energy and Coal Industry back in 2017, in violation of the provisions of CMU Resolution No. 95 dated 21.02.2017, according to which operators should annually make payments for the use of gas distribution networks to the state in the amount of 10 percent of their residual book value.

35) In September 2022, in order to integrate the seized shares of the DSOs into its own corporate structure, Naftogaz NJSC even created the Gas Distribution Networks of Ukraine LLC, which was founded by Naftogaz's subsidiary company, Gaz of Ukraine, which supplies gas to households.

36) <https://expro.com.ua/novini/gazprom-skorotiv-vidobutok-ta-eksport-gazu-do-vropi-do-naynijchogo-v-stor-ros-rvnya>

37) The full design capacity of the Ukrainian GTS to the EU is 145 billion m³.

result of the occupation of the Luhansk region, Ukraine lost access to one of the two gas measuring stations (GMS), namely the Sokhranivka GMS, through which Russian gas “enters” the Ukrainian GTS from Russia. The GTSOU LLC offered to Gazprom to resume the measurement of incoming gas volumes by moving the “entry point” to another GMS – Sudzha, however the Russian company refused and reduced the payment for the contractual gas volumes specified in the transit contract. Currently, Naftogaz NJSC has initiated a new arbitration case with the International Court of Arbitration concerning this issue, which makes the extension of the current contract in 2023–2024 unlikely. There are also fairly high immediate risks of damage to the Ukrainian GTS infrastructure as a result of Russian missile attacks.

Due to the termination of the transit of Russian gas, Ukraine might have to fundamentally restructure the domestic gas transmission system, namely rearrange it to primarily serve the needs of domestic consumers, as well as consider the technical feasibility of transporting biomethane and gas-hydrogen mixture to the EU (the development of its production and export to the EU is one of the strategic goals of cooperation with the EU in the field of energy)³⁸. In particular, as early as in October 2021, a proposal for amendments to the Law of Ukraine “On Oil and Gas” was developed – draft law No. 6133 dated 05.10.2021³⁹ – according to which, in case of complete cessation of the transit of Russian gas to the EU, most of the compressor stations⁴⁰ (CS) of the Ukrainian GTS will be removed or mothballed, others, which are key to ensuring gas transmission within the country, will be modernised. Also, some of the CS can be converted into gas-fired power plants to compensate for the loss of generating capacity of the national energy system after Russian missile attacks.

- (c) Third-party access to the GTS infrastructure: most of the relevant European regulations have been transposed to the Ukrainian legislation after the adoption and implementation of two

framework documents – the GTS and DSO Codes and the norms of the related by-laws. However, some elements of these Codes have not yet been implemented, such as the daily balancing mechanism on the gas market and others. Also, the introduction of martial law suspended the effect of a number of requirements of the above-mentioned Codes regarding the transparency of operations on the gas market and disclosure of information.

- (d) Wholesale market and gas exchange trading: the beginning of a full-scale war caused significant deterioration in the wholesale gas buying and selling segment for a number of objective market reasons, but also due to the effect of martial law restrictions. The state-owned Naftogaz NJSC remained the only company on the market that continues to import gas from the EU, other traders have ceased import operations. Domestic gas trade has also halted, as Naftogaz remains the only gas supplier for households, and the demand for gas from the industrial sector (the main consumer in the unregulated market segment) has decreased by more than 50%, which is coupled with the ban on gas exports⁴¹ after the start of the war⁴². As a result, unable to sell gas in the regulated segment (Naftogaz has also stopped buying domestically produced gas from private companies after making relevant changes to the budget regulation)⁴³, private production companies are forced to pump most of the gas into the UGSF and store it until the situation normalizes. Therefore, currently, the volume of gas sales within the country is insignificant both due to market factors and the lack of a single exchange platform where all market participants trade in standardised short-term products, as required by European regulations, and which would establish a reliable price indicator for the gas consumed in the country. Naftogaz NJSC

38) For details, see the Memorandum of Understanding between the European Union and Ukraine on a Strategic Partnership on Biomethane, Hydrogen and other Synthetic Gases, which was signed before the Ukraine-EU Summit on 3 February 2022.

39) https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72931

40) In simple terms, CSs are designed to create and maintain the necessary pressure in the GTS system, which allows gas to move along the pipeline.

41) This segment includes the following markets: (i) gas sale by private mining companies to the Naftogaz Group, (ii) gas sale by private mining companies to industrial consumers, (iii) gas sale by the Naftogaz Group to industrial consumers.

42) In its latest version, the ban on exports is formalised by way of adding the category “natural gas of Ukrainian origin” to the 2022 list of goods whose export and import are subject to licensing and quotas, with a zero quota. For details, follow the link to see CMU Resolution No. 666 dated 10.06.2022. As of the late December, it was planned that this ban would be extended to 2023, as evidenced by the relevant draft of CMU Resolution published by the Ministry of Economy.

43) This refers to the permission to use budget funds for the purchase of natural gas for the heating season of 2022–2023 only for the purchase of imported gas, for details see CMU Resolution No. 1443 of 27 December 2022.

could potentially become a powerful market maker for the development of such a platform, but instead, in April 2022, the company started buying and selling gas on the UICE (Ukrainian Interbank Currency Exchange) on the previously unknown platform SSP UICE on exclusive and non-transparent terms⁴⁴.

- (e) Retail market: in August 2020, on the gas retail market there was formally announced “full liberalisation” of prices for gas for households, and therefore any supplier other than Naftogaz could offer gas for sale in the retail segment of the market at prices free from state regulation, and consumers, including households, can freely change the supplier⁴⁵. However, free competition on the retail market lasted for only about six months, when in the spring of 2021 state price regulation was re-established (with a ceiling of UAH 6,999 per 1 m³), using the PSO mechanism (public service obligation) for Naftogaz. Later, a mechanism was introduced to revise the preferential PSO price depending on price fluctuations for imported European gas, and “annual basic offers” were introduced for households and “three-year gas supply contracts for municipal dis companies – TKE,”⁴⁶ but this did not change the essence of the matter – the monopoly model was revitalized with Naftogaz as the only gas supplier and regional gas companies – as the only supply network for households and other suppliers have no room to compete for consumers⁴⁷.

After the start of the war and the introduction of the state of emergency on the gas market⁴⁸, the government finally returned to the direct strict regulation of prices and setting them at a preferential level for almost all categories of non-commercial consumers⁴⁹, namely for households, heating

companies, state-financed establishments, DCOs for technological needs, etc. As a result of the changes to the PSO regulation and its conditions, Naftogaz NJSC has remained the only player in the gas retail market, controlling all areas of gas sale to non-commercial consumers, from its production and consumption to distribution and sale to end consumers on the terms of the “supplier of last resort”. It is obvious that such a concentration of market power within one state-owned company contradicts the requirements of European regulation, but it is due to the martial law regime and is of a temporary nature⁵⁰. Therefore, further progress might be objectively assessed only after it is over and the government takes further actions to restore the competitive regime on the gas market.

Energy Efficiency

Since 2010, Ukraine has taken quite a few steps to approximate national regulation to the requirements of the EU acquis in various areas of the country’s policy in the field of energy efficiency. Of particular significance were the changes related to the creation of energy labelling systems for energy-related products and improvement of the energy performance of buildings, which made it possible to introduce EU best practices in this area. In other areas, progress has been slower or non-existent. The process was largely held back by the lack of a comprehensive vision of the state energy efficiency policy, hence the “whack-a-mole” approach without a coherent legislative and institutional foundation.

Approximation of legislation. The following changes have taken place in national legislation:

1. October 2021 witnessed, without exaggeration, a landmark event for the entire sector – the framework Law of Ukraine “On Energy Efficiency”

44) For more details, see the article prepared by the DiXi Group think tank.

45) The procedure for changing the supplier by household and non-household consumers is laid down in Sections I, V and V of the Natural Gas Supply Rules.

46) Or the so-called Teplokomunenergo – TKE.

47) One example of price “distortion” on the retail gas market is as follows: as of mid-February 2023, the fixed Naftogaz NJSC tariffs for households is UAH 7.96 per m³ and for TKE – UAH 7.42 per m³, while on the Ukrainian Energy Exchange the weighted average prices of the monthly gas resource were in the range of UAH 20–25 per m³.

48) Order No. 87 of the Ministry of Energy of Ukraine “On Announcing Emergency-Level Crisis Situation” dated 26 February 2022.

49) In particular, this matter was addressed in Law of Ukraine No. 2479- IX dated 29.07.2022 on the introduction of a moratorium on price increases (tariffs) on the natural gas market and in the field of heat supply during the period of martial law, CMU Resolution No. 222 of 6.03.2022 on general conditions for the assignment of special obligations (PSO) on the gas market and CMU

Resolution No. 812 dated 19.07.2022 regarding the functioning of the PSO in the supply of gas to TKE and state-financed establishments.

50) Currently, the effect of the PSO (CMU Resolution No. 222) has been extended until April 30, 2023 and will apparently continue in the future, at least for six months after the end or termination of martial law.

was adopted⁵¹. Finally, the activities of the government and various actors in the field of energy efficiency will be based on a clear-cut foundation in accordance with the requirements of Directive 2012/27/EU. This includes setting national goals, creating a strategic planning system, developing the necessary institutions, as well as shaping policies and measures to promote energy efficiency that prove to be necessary in the production, transport, transmission, distribution, supply and consumption of energy. An important practical innovation of this law is the commitment to allocate at least 1% of the expenditure budget every year for energy efficiency improvement programmes. For the full implementation of the new law, it will be necessary to adopt about 70 additional by-laws.

2. The National Energy Efficiency Action Plan for the period until 2030 has been approved⁵², setting new indicative goals for reducing energy consumption, namely the following (for the “business-as-usual” scenario of the development of the economy and the energy system):
 - by 22.3% (primary energy consumption);
 - by 17.1% (final energy consumption).

These targets are more ambitious than in the previous similar plan (9% by 2020), but it is clear that after the start of the war, which fundamentally changed the energy consumption profiles in various sectors of the economy and wreaked significant destruction to the energy system, this plan will also soon require updating, especially in view of the planning of post-war reconstruction involving broad application of energy-efficient technologies and practices, which is one of the conditions for getting assistance from the EU⁵³.

3. In pursuance of the new Law “On Energy Efficiency,” in July 2022 the State Agency on Energy Efficiency together with the Ministry of Energy prepared the drafts of the first “sectoral” energy modernisation programmes presented

as state target programmes for the energy modernisation of:

- housing stock⁵⁴;
- energy modernisation of state-owned or municipally-owned thermal power generation enterprises⁵⁵;
- energy modernisation of state-owned or municipally-owned water-supply and wastewater enterprises⁵⁶.

Also, at the end of December 2021, the State Agency on Energy Efficiency prepared a draft action plan to increase energy efficiency in higher education institutions until 2026⁵⁷ and concluded a memorandum on cooperation with the Ministry of Education and Science. Should it be implemented successfully, it might become one of the best demonstration practices in the field of energy efficiency on the part of the government.

4. A number of provisions of the framework laws that regulate energy management and energy audit matters have been clarified at the level of by-laws and should contribute to the streamlining of efforts in the field of energy efficiency between various executive authorities and organizations in the market, in particular:
 - The procedure for submitting information (to the State Agency on Energy Efficiency⁵⁸) about the certification of systems of energy and/or environmental management of economic operators (by certification bodies) and the procedure for maintaining the relevant register⁵⁹;
 - The procedure for exchanging information between the State Agency on Energy Efficiency and qualification establishments (that certify energy auditors)⁶⁰;
5. The following changes were approved in the field of energy labelling and eco-design:

51) Law of Ukraine No. 1818-IX dated 21 October 2011.

52) Approved by Order No. 1803 dated 29 December 2021.

53) What's more, even by “pre-war” standards, such a rate of energy savings is very ambitious, in the EU the rate of such savings is set at 3% per year.

54) https://sae.gov.ua/sites/default/files/Zvit_SAE_2021.pdf

55) For the draft of the relevant CMU order, please see the following link.

56) For the draft of the relevant CMU order, please see the following link.

57) For details, please see the following link.

58) The full name is the State Agency on Energy Efficiency and Energy Saving of Ukraine.

59) Approved by CMU Resolution No. 1238 dated 4 November 2022.

60) Approved by CMU Resolution No. 1315 dated 25 November 2022.

- the framework regulation on energy labelling of energy-related products has been brought into line with the latest Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling (to enter into force on 1 August 2023);⁶¹
- updates to the technical regulations for the labelling of energy-related products online and the verification procedures for compliance with the requirements for the labelling of energy-related products;⁶²
- new technical regulations establishing requirements for the eco-design of solid fuel local space heaters⁶³, solid fuel boilers (to enter into force on 30 December 2026)⁶⁴, ventilation units⁶⁵, refrigerating appliances (to enter into force on 28 June 2023)⁶⁶, air heating and cooling products, process chillers and fan coil units⁶⁷;
- changes to the framework Technical Regulation on the requirements for eco-design of energy-related products to clarify the powers of state market surveillance bodies and updates to the Technical Regulation on the requirements for eco-design for small, medium and large power transformers⁶⁸.

All in all, as of the beginning of 2023, 29 regulations on eco-design and 16 regulations on energy labelling have been implemented in Ukraine.

6. Cogeneration⁶⁹: at the end of 2021, the Parliament finally made some progress with regard to passing draft law No. 4527 on the development of high-efficiency cogeneration⁷⁰, which aims to introduce at the legislative level

a system of incentives for the wider use of cogeneration plants, in particular when restoring / modernising the plants of local heat generating companies and private companies. In October 2021, it was adopted in the first reading, and at the end of 2022, the process of second reading began, which gives us hope that this important law will be adopted, especially in view of the state's declared strategic course towards building a decentralised energy model. On 21 July 2021, the Ministry of Energy approved the Procedure for Qualification of Cogeneration Plants at the level of by-laws⁷¹.

Implementation:

1. In August 2022, implementation changes to the framework legislation regulating the matters of thermal modernisation of buildings and the work of the National Energy Efficiency Fund (hereinafter referred to as the Fund)⁷² entered into force. These changes include, inter alia, the following:

- The Fund now can provide grants not only for financing complex projects to improve the energy efficiency of apartment buildings with co-owners' associations (HOAs)⁷³ but also for financial support for other programmes in the housing sector, including those related to the restoration of buildings destroyed and/or damaged as a result of hostilities. This legislative innovation, in addition to the allocation of certain resources for urgent restoration, will play an important role in the post-war reconstruction of the housing sector in Ukraine⁷⁴ given the fact that the Fund was created in accordance with the best European regulation requirements and it already has the experience of attracting financing from Ukraine's European partners.

61) Order of the Ministry of Energy No. 164 dated 27 April 2022

62) https://sae.gov.ua/sites/default/files/Zvit_SAEF_2021.pdf

63) CMU Resolution No. 532 dated 3 May 2022.

64) CMU Resolution No. 1375 dated 23 December 2021.

65) CMU Resolution No. 1379 dated 23 December 2021.

66) CMU Resolution No. 1376 dated 23 December 2021.

67) CMU Resolution No. 1023 dated 13 September 2022.

68) The changes were approved by CMU Resolution No. 1222 of 31 October 2022.

69) Simultaneous generation of electricity and thermal energy by a cogeneration plant.

70) Draft law No. 4527 dated 21.12.2020 jointly drafted by the State Agency on Energy Efficiency and the Ministry of Energy.

71) Order of the Ministry of Energy No. 155 dated 21 July 2021.

72) This refers to Law of Ukraine No. 2392-IX dated 9 July 2022 submitted to the Verkhovna Rada at the end of 2021 (as draft law No. 6485), which aims to introduce changes to a number of laws of Ukraine, primarily to the laws "On the Energy Efficiency of Buildings" and "On the Energy Efficiency Fund".

73) HOA (Apartment Building Home-Owners' Association).

74) According to the Kyiv School of Economics, 40% of Ukraine's housing stock has been damaged as a result of hostilities.

- A step has been taken to reduce the financial burden on HOAs that carry out thermal modernisation projects by introducing stages for project implementation and making it possible for the Fund to split up grants into portions (tranches) based on the results of the works performed and/or services provided and their verification in accordance with the Fund's programmes. By splitting up such projects into smaller stages, co-owners' associations will find it easier to accumulate funds to pay their own share in the thermal modernisation project, since after the introduction of martial law and due to the difficult economic situation access of HOAs to credit products has become limited.
- The Fund has also been authorised to provide grant support for activities that are not included in the list of standard programmes (such as Energodim) but are important for the successful implementation of projects in individual cases (for example, structural strengthening of buildings before their thermal insulation).
- Clarification of a number of technical issues in the legislation regulating the energy efficiency of buildings that proved to be a barrier to the implementation of thermal modernisation projects. These include terms and definitions, scope of coverage of the minimum requirements for energy efficiency of buildings and aspects of their application, updates to the requirements for energy efficiency certification, energy audit of buildings and their results, certification requirements for energy auditors of buildings, updated requirements for energy management, etc.
- Introduction of a draft strategy for thermal modernisation of buildings until 2050⁷⁵ (with subsequent revision every 5 years),

which should serve as the basis for strategic planning and achievement of long-term goals in the field of the energy efficiency of buildings.

- State bodies are required to thermally modernise 1% of the heating area of state-owned buildings every year in order to produce best practices for other building owners to follow.

2. Results of work of the Energy Efficiency Fund: 2021 was the first year when the Fund began to demonstrate the first results of its activities in the field of thermal modernisation of multi-apartment residential buildings – both in terms of the number of applications received and in terms of the number of completed projects. Summary statistics⁷⁶ on the outcomes of Energodim, the Fund's major programme, show that the number of applications for participation from HOAs increased to 551, and the number of completed and verified projects amounted to 32 (for comparison, in 2020, it was only 1 project).

However, the beginning of the war had a negative impact on the grant support for the Fund's projects for thermal modernisation of multi-apartment buildings. With the introduction of martial law, the state limited the funding of the Fund for the provision of grants to HOAs participating in the Energodim programme, which, as announced, is not a priority in the conditions of martial law in accordance with CMU Resolution No. 590 "On Approval of the Procedure for the Exercise of Powers by the State Treasury Service in a Special Regime under Martial Law."⁷⁷ This is one of the reasons (the main of them being the start of the war, which prevented HOAs from operating to the full extent) why the number of applications dropped to only 31 in 2022. However, the number of completed projects as of 10 February 2023 has increased to 74 and the number of projects that are underway has amounted to 71^{78,79}, which is quite a positive dynamic even considering the problems caused by the war. Full funding from the state budget was also restored from 23 December

75) <https://www.minregion.gov.ua/base-law/grom-convers/elektronni-kon-sultatsiyi-z-gromadskistyru/proekt-rozporядzhennya-kabinetu-minis-triv-ukrayiny-pro-shvalennya-dovgostrokovoyi-strategiyi-termomoderni-zacziyi-budivel-na-period-do-2050-roku-ta-konczepcziyi-zagalnoderzhav-noyi-ekonomichnoyi/>

76) Periodic report on the status of implementation of the Energy Modernisation Support Program for Multi-Apartment Buildings ENERGODIM for 2019–2022.

77) <https://zakon.rada.gov.ua/laws/show/590-2021-%D0%BF#Text>

78) This is the number of projects included in the grant agreement (approved application for participation) excluding the number of completed projects (approved application for project verification).

79) <https://docs.google.com/spreadsheets/d/e/2PACX-1vSNduoPwgJ5n-V5CWNESE3ezxViN3lo0dciAKpW59ihcyXZCrhwwF6h6X97ZpWCZdP4m-HleogVth1CD1/pubhtml?gid=479983996&single=true>

2022⁸⁰, which will allow the Fund to further carry out its work in 2023 to the full extent.

The Fund also continued to simplify the procedures for the implementation and verification of thermal modernisation projects, aimed at reducing the administrative burden on HOAs and taking into account the consequences of martial law. For instance, the participating HOAs received the right to split construction works into 5 stages regardless of the total cost of complex thermal modernisation projects (which was laid down in Law No. 2392-IX), the obligation to submit documents to the Fund in paper copies was abolished, the deadline for finalising applications, etc., has been renewed. Also, starting in November 2022, the Fund launched a new program VidnovyDim⁸¹ to finance the restoration of residential buildings that suffered as a result of hostilities in the de-occupied territories, but at the same time did not suffer structural damage⁸². The programme is financed by the EU (the total amount of support is EUR 25 million), the grants cover 100% of the cost of restoration works for the affected HOAs, the amount of the single grant is UAH 7.2 million. At the first pilot stage, with the amount of funding of EUR 5 million, it is planned to restore about 60-100 apartment buildings.

3. The development and rollout of the necessary functionality in the Unified Electronic System in the Field of Construction (which contains data on energy certificates of buildings and data on qualified specialists in the areas of energy efficiency audit of buildings and survey of engineering systems of buildings) is underway, in particular in terms of ensuring the independent monitoring of issued certificates.
4. After the approval of the framework law “On Energy Efficiency,” the full-fledged operation of the ESCO mechanism was restored, which is used to implement energy-efficient measures in the buildings of public institutions (schools, kindergartens, hospitals, universities, etc.) by private investors – energy service companies

(ESCOs), and their remuneration is directly tied to the savings achieved (reduction of costs for the consumption of utility services and energy products) after the completion of such projects⁸³. In 2021, local self-government bodies announced 91 tenders, and 8 new contracts were concluded⁸⁴. All in all, by the end of June 2022, 578 ESCO contracts were concluded in Ukraine for a total amount of more than UAH 1.34 billion⁸⁵.

The information base of potential facilities and energy service providers is being filled on the website of the State Agency on Energy Efficiency. Its mechanism was laid down in the Procedure for the Formation, Publication and Updating of the List of Energy Service Providers and Potential Energy Service Providers⁸⁶ developed by the State Agency on Energy Efficiency together with the Ministry of Energy. Also, the State Agency on Energy Efficiency verifies the results of energy service performed on a regular basis. In 2021, 294 contracts under which ESCO services were provided during the heating season of 2020/2021 underwent verification, and the average annual savings achieved thanks to the energy service amounted to 30%⁸⁷.

5. Before February 2022, the rollout of the energy management/energy monitoring system in the buildings of public entities had been underway covering local self-government bodies (LSGBs) and central executive bodies (CEBs). As of the end of 2021, 225 LSGBs and 46 CEBs were covered. The database had been filled with data on the energy and operational characteristics of buildings that are listed as assets of CEBs, and the status of implementation of energy management and energy monitoring in such buildings had been monitored⁸⁸. In order to clarify procedural matters associated with the rollout of energy management/energy monitoring systems, the Procedure for the Introduction of Energy Management Systems was approved on 23 December 2021⁸⁹.

80) CMU Resolution No. 1420 of 23 December 2022.

81) Translated as ‘RestoreHouse’ in English. The programme was created on the basis of the relevant changes to the Fund’s Charter, which were introduced by CMU Resolution No. 1184 dated 18 October 2022.

82) For example, replacement or repair of window assemblies, external doors, facades and coverings, equipment of roof boiler plants and MEP.

83) https://sae.gov.ua/uk/content/energoserwis_1

84) https://sae.gov.ua/sites/default/files/Zvit_SAEF_2021.pdf

85) <https://sae.gov.ua/uk/news/4335>

86) Order of the Ministry of Energy No. 360 of 20 October 2022.

87) https://sae.gov.ua/sites/default/files/Zvit_SAEF_2021.pdf

88) The latest up-to-date data are not available due to restrictions imposed by martial law.

89) CMU Resolution No. 1460 dated 23 December 2021.

Energy infrastructure and security of supply

Safeguarding security of electricity supply (Article 338, Annex XXVII; Regulations (EU) 2019/941 and 2019/943, formerly Directive 2005/89/EC)

The Law of Ukraine “On the Electricity Market” adopted in 2017 provides for the development and approval of rules on security of electricity supply, which establish minimum security of supply criteria and are mandatory for all market participants. Before the start of the war, the transmission system operator had regularly published data on the maximum volume and structure of net capacity, the peak load, and the available generation capacity in the power system. Power supply safety rules have been developed and approved. The report for 2019 on the results of monitoring power supply security was published by the Ministry of Energy in January 2021. The progress would be more significant if the NEURC and the transmission system operator’s reports had integrated the changes introduced by Regulations (EU) 2019/941 and 2019/943.

Safeguarding the security of natural gas supply (Article 338, Annex XXVII; Regulation (EU) 2017/1938, formerly Directive 2004/67/EC)

Regulatory approximation is advanced. The Law of Ukraine “On the Natural Gas Market” adopted in 2015 provides for the development and approval of rules on security of natural gas supply, which establish minimum supply security criteria and are mandatory for all market participants. The provisions of the relevant EU acquis have been implemented. The Natural Gas Supply Safety Rules and the National Action Plan have been developed and approved and are regularly updated. The Ministry of Energy annually publishes Reports on the results of the monitoring of natural gas supply security, although it does so with a significant delay.

Creating conditions for the implementation of Projects of Energy Community Interest (PEICs) and Projects of Mutual Interest (PMIs) (Articles 337, 341, Annex XXVII; Regulation (EU) 347/2013)

Regulatory approximation is early or has not started. Although in 2019 the Ministry of Energy and Coal Industry reported that it had established a working

group to develop a mechanism for approving priority PEICs and their updated list, no mechanism for exchanging information with the Regional Group has yet been developed, and a methodology for cost-benefit analysis has not been approved. What is more, the NEURC resolution on the methodology and criteria for assessing investments in electricity and gas infrastructure projects, as well as on the increased risks associated with their implementation, can be adopted only “after the adoption of the law transposing Regulation (EU) 347/2013 on guidelines for trans-European energy infrastructure”. However, the draft law “On Amendments to Certain Legislative Acts of Ukraine Concerning Terms in the Field of Trans-European Energy Infrastructure” developed by the Government is still pending consideration by the Verkhovna Rada. Due to the lack of regulatory grounds, practical implementation of the provisions of European legislation has not begun.

Prospection, exploration for and production of hydrocarbons

Ensuring proper conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (Directive 94/22/EC)

The requirement to obtain 14 permits and perform six mandatory procedures has been abolished; endorsement of works for prospection and operation of oil and gas fields has been accelerated; the need to provide an act on obtaining a mining lease for the oil and gas industry has been abolished. Criteria have been approved for gauging the degree of risk from economic activity in the field of geological exploration and rational use of subsoil; and the frequency of scheduled state supervision measures (control) has been established. New Rules for the Development of Oil and Gas Fields⁹⁰, a new Procedure for Granting Special Permits for Subsoil Use and the Procedure for Conducting Auctions for the Sale of Special Subsoil Use Permits have been approved. The law of Ukraine⁹¹ aimed at reducing excessive state influence on the industry and creating a transparent, convenient and understandable system of subsoil use has been signed.

The State Service of Geology and Subsoil regularly publishes information on geographical areas open for prospecting, exploration and production, permits

90) <https://zakon.rada.gov.ua/laws/show/z1385-22#Text>

91) <https://zakon.rada.gov.ua/laws/show/2805-20#Text>

granted, list of licenced organisations and their composition, as well as on estimated reserves of hydrocarbon resources in Ukraine. Although the draft of the new version of the Subsoil Code of Ukraine has been undergoing finalisation for more than five years now, the current Code has been amended to partially take into account the requirements of Directive 94/22/EC.

Special authorisations for subsoil use are effectively sold through electronic auctions. An Investment Atlas, a Single Subsoil-User Window, and 15 open electronic registers have been created to provide information on hydrocarbon exploration in all regions of Ukraine. In 2023, the services of various government agencies are to be brought together into a single information system in the field of geological exploration and rational use of subsoil.

For perfect transposition, it is necessary to limit the licensing system in the field to state environmental impact assessment, examination of mineral reserves, conclusion of a contract for exploration works, obtaining approvals for changing the designated purpose and obtaining a land plot for use, permission to connect to the network, and notifications about approval of projects for drilling wells and construction of auxiliary facilities, pilot and commercial development.

Restructuring of the coal sector (Article 339)

The government has announced that Ukraine will phase out the use of coal. In September 2021, the Concept of the State Program for the Transformation of Coal Regions for the period up to 2030⁹². The development of the program itself is still ongoing.

With the support of the German government, it is planned to implement two pilot projects for the transformation of coal monotowns, namely Chervonohrad (in the Lviv region) and Myrnohrad (in the Donetsk region), which have been suspended due to the war.

Negotiations are underway to establish a multi-donor fund that will accumulate financial resources to finance other pilot projects. However, the practical realization of the phasing out of unprofitable and dangerous coal mines, their safe closing down and socio-economic transformation of the local municipalities has not begun.

Oil and petroleum products

Creation and maintenance of minimum stocks of crude oil and/or petroleum products (Directive 2009/119/EC)

In this regard, the draft resolution of the Cabinet of Ministers “On the Approval of the Model of Minimum Stocks” and the draft law “On Minimum Stocks of Oil and Petroleum Products” have been developed. A preliminary assessment of the need for additional tank capacity has been carried out.

However, action plans for using the stocks in case of oil supply disruptions have not yet been developed; the necessary amendments to the legislation have not been made; a stock management agency has not been established and its operation has not been ensured; an estimate of engineering and technical measures has not been made; and additional tank capacities have not been designed.

Preventing interruption of transit and transporting of oil and petroleum products (Articles 275, 276, Annex XXVI of the Association Agreement)

In Ukraine, criminal liability has been introduced for damage to pipeline infrastructure, as well as illegal interference with the operation of equipment.

Draft acts have been developed to introduce stricter sanctions for damage to oil pipelines, and a draft concept for ensuring their safety.

However, the Government has not cooperated with the EU institutions to get an early assessment of the potential risks and challenges associated with oil demand and supply. There have been no transit disruptions due to the fault of the operator, but the risk of such events is increasing due to the underfinancing of works to ensure the reliability of facilities.

Ensuring the proper quality and safety of petrol and diesel fuel (Directive 2016/802/EU, Directive 98/70/EC)

The designation of the State Environmental Inspectorate as a market supervision (control) body was rather formal. No regulatory framework has been created to establish an effective system for checking the quality of fuel, ensuring the proper functioning of the system of interlaboratory comparisons of test

⁹² <https://zakon.rada.gov.ua/laws/show/1024-2021-%D0%BF#Text>

results; creation of a system for responding to sudden changes in the supply of raw materials; development and introduction of a national fuel quality monitoring system that provides reliable data on the compliance of petroleum products with the EU requirements. Fuel quality and safety checks are carried out sporadically, mainly following consumer complaints. Due to underfinancing, regular fuel checks are not carried out.

Control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations (Directive 94/63/EC)

The draft technical regulation that lays down the relevant requirements has been developed but has not been endorsed and approved by the Government. The task of making an inventory of storage tanks and vehicles for the transport of petroleum products in accordance with EU standards was fulfilled through the introduction of licensing for the production, storage and marketing of motor fuel. The loss rates of petroleum products during their reception, storage, release, loading and transport have been approved.

However, it is impossible to directly fulfil the tasks necessary to create the regulatory framework required for the implementation of Directive 94/63/EC due to its incorrect translation into Ukrainian.

Practical implementation of the provisions of European legislation is insufficient. The Unified State Register of Business Entities that Received Licences for Producing, Storing, Wholesale and Retail Trade in Fuel, and Places of Production, Storage, Wholesale and Retail Trade in Fuel has been created. However, institutional, financial, staffing and other resources are insufficient to monitor compliance with the established requirements.

Nuclear power

The fundamental objectives of all 4 EU Directives in the field of nuclear power and radiation safety in Ukraine are specified in national special legislation and related regulations. During the second half of 2021 and 2022, work on the implementation of the EU Directives in this area was underway.

Establishment of the general principles of radiation protection of the general population and persons occupationally exposed to radiation in medicine and other occupations

The State Nuclear Regulatory Inspectorate of Ukraine (SNRIU) developed the draft law "On Amendments to the Law of Ukraine 'On the Use of Nuclear Energy and Radiation Safety' Regarding the Radiation Protection Expert," which was adopted as a whole on 16 November 2022 (No. 2758-IX)⁹³. The law introduces the institution of an expert in charge of advising entities in the field of nuclear energy use, other legal entities, individuals, and bodies on matters of compliance with the requirements of legislation on nuclear and radiation safety (hereinafter – NRS). The basic requirements for a person who intends to become a radiation protection expert have been established and the body that will certify the competence of the expert has been determined.

The Cabinet of Ministers is to approve the Regulation on the Radiation Safety Expert, which will specify the list of areas of competence, requirements for the expertise and practical skills of the expert and the procedure for certifying their competence. The draft of such a resolution "On Approval of the 'Regulation on the Radiation Protection Expert'" has been submitted for consideration to the Cabinet of Ministers.

Pursuant to the requirements of Law of Ukraine No. 107-IX "On Amendments to Certain Laws of Ukraine in the Field of Nuclear Energy Use"⁹⁴ dated 18 September 2019, the CMU by Decree No. 1417-p⁹⁵ (dated 27 November 2019) approved the "Action Plan to Reduce Exposure to Radon and Its Decay Products, and Minimize Long-Term Risks from the Spread of Radon in Residential and Non-Residential Buildings, and Workplaces for 2020–2024".

93) <https://zakon.rada.gov.ua/laws/show/2758-IX#Text>

94) <https://zakon.rada.gov.ua/laws/show/107-20#Text>

95) <https://zakon.rada.gov.ua/laws/show/1417-2019-%D1%80#Text>

In 2020, Ukraine should have:

- developed and approved the Procedure and Methodology for radon monitoring in Ukraine and notification of radiation risks;
- developed a sanitary regulation to determine the levels of radon concentration in the workplace;
- analysed the accumulated information on the levels of radon in the air of buildings, conducted assessment of the 2 existing radiation risks for the public and identified priority regions for radon monitoring and implementation of anti-radon measures.

However, these measures turned out to be rather declarative, because as of 01.07.2022, there is no Procedure or Methods for monitoring radon, no sanitary regulations for measuring radon concentration in the workplace, and no analysis has been carried out due to lack of information.

According to the explanations received from the Ministry of Healthcare contractors in the field of radon protection (Radiation Protection Institute of the Academy of Technological Sciences, Director V. Berkovskyi), work in this area under martial law has been deemed to be of little significance.

The CMU Action Plan for the Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, contains task 738 "Development and approval of a plan of measures to reduce the level of population exposure to radon and its decay products to minimize long-term risks from the spread of radon in residential and non-residential buildings and at workplaces, from any source of radon penetration – from the soil, building materials or water," which involves development and approval of a plan of anti-radon measures, which was adopted by the Cabinet of Ministers of Ukraine on 27 November 2019 under No. 1417-p, approving the "Plan of measures to reduce the level of exposure to radon and its decay products to minimize long-term risks from the spread of radon in residential and non-residential buildings, and workplaces for 2020-2024". But this plan is not yet implemented.

In accordance with clause 1.3, in 2020, "a Procedure and Methodology for radon monitoring in Ukraine and notification of radiation risks" should have been

developed and approved, clause 1.5 stipulated "development of sanitary regulations for measuring radon concentration at workplaces", and clause 1.7 – "analysis of accumulated information on radon levels in the air of buildings, assessment of existing radiation risks to the population and identification of priority regions for radon monitoring and anti-radon measures". However, these measures turned out to be declarative, because as of 13 July 2021, there is no Procedure and Methods for monitoring radon, sanitary regulations for measuring radon concentration at workplaces, no analysis has been carried out due to the lack of information.

Measures that were not fulfilled during 2020 (the timeline established by the abovementioned Action Plan) also include:

Para 2 of the Plan: Creating of an effective radon training system, namely:

1. providing training, advanced training and retraining, in particular using certification programmes, for different-level professionals in the field of anti-radon measures;
2. compiling a register of certified experts on anti-radon measures.

Para. 3: Introduction of a system for safeguarding the quality and effectiveness of anti-radon measures, namely:

1. approval of the requirements and procedure for measuring radon levels after performing anti-radon measures in buildings to reduce radon levels;
2. approval of the requirements and criteria for reporting in the field of anti-radon measures in the workplace, except for enterprises where radon irradiation is a consequence of the technological process (mines, uranium processing, etc.), and the activity is subject to regulatory control.

The tasks for 2022 specified on the website of the government Pulse of the Agreement monitoring (<https://pulse.kmu.gov.ua>) include the following:

- Compliance with the maximum permissible occupational radiation exposure;
- Compliance with the maximum permissible occupational radiation exposure for pregnant women;

- Compliance with the maximum permissible radiation exposure for the general public;
- Compliance with the maximum permissible radiation exposure during workplace accidents;
- Compliance with the maximum permissible indoor dose of gamma radiation from building materials.

This wording does not make sense because “compliance with permissible exposure” is enshrined in the law “On Protection of Individuals from Ionizing Radiation.” It cannot be set forth as a task. What is more, the permissible radiation doses are specified in the effective Order of the Ministry of Health “On Approval of the Radiation Safety Standards of Ukraine (RSSU-97)”⁹⁶ (No. 208, dated 14.07.1997), which has been in force for almost 30 years. During the period of effectiveness of the Order, the permissible doses for the specified categories have not been exceeded.

Assessment: advanced implementation in matters regarding anti-radon measures within the competence of the SNRIU, and “critical non-conformity” in matters within the competence of the Ministry of Health of Ukraine.

Approximation of regulation in the field of nuclear and radiation safety to EU requirements (as regards radiation protection)

Approximation of legislation is “perfect”. The Law of Ukraine “On Amendments to Certain Laws of Ukraine to Improve Licensing in the Field of Nuclear Energy Use” (No. 2755-IX, dated 16.11.2022)⁹⁷ addresses the matter of permits in the field of nuclear energy use and radiation safety in accordance with EU law. The implementation of the provisions of the law will contribute to the optimization of licensing activities in the field of nuclear energy use for undertakings that intend to conduct activities involving the use of ionizing radiation sources.

Practical implementation is “perfect”. The SNRIU has developed Resolution No. 949 of the Cabinet of Ministers of Ukraine “Certain Matters of State Regulation of Activities Involving the Use of Ionizing Radiation Sources, Control and Accounting of Individual Radiation Doses”⁹⁸ dated 01.09.2021.

96) <https://zakon.rada.gov.ua/en/rada/show/v0208282-97#Text>

97) <https://zakon.rada.gov.ua/laws/show/2755-IX#Text>

98) <https://zakon.rada.gov.ua/laws/show/949-2021-%D0%BF#Text>

The SNRIU, based on the above-mentioned Procedure and Regulation, maintains the State Register of Ionizing Radiation Sources and the Unified State System for Control and Accounting of Individual Irradiation Doses.

The Cabinet of Ministers by Decree No. 992-p dated 4 November 2022⁹⁹ approved the Concept of the National Targeted Environmental Program for Radioactive Waste Management. According to the Decree, the State Agency on Exclusion Zone Management (SAEZM) must prepare a draft Program within a year. The previous Program expired back in 2017.

The Cabinet of Ministers of Ukraine by Resolution No. 1254 dated 8 November 2022¹⁰⁰ approved amendments to the Procedure for the Decommissioning of Oil, Gas and Refined Products Main Pipelines, approved by Resolution No. 209 of the Cabinet of Ministers of Ukraine dated 28 March 2018. The amendments were made to address the handling of radionuclides of natural origin that pose a radiation hazard due to concentration. According to the last subparagraph of paragraph 3, the enterprise responsible for the operation of main pipelines must develop an action plan for the management of waste pipeline equipment containing measures for radiation control during its decommissioning, and have it endorsed by SNRIU.

Regulatory approximation to EU requirements in the field of nuclear and radiation safety (as regards the safety of nuclear installations)

Law of Ukraine No. 2762-IX “On Amendments to the Law of Ukraine ‘On the Use of Nuclear Energy and Radiation Safety’” dated 16.11.2022¹⁰¹ aims at aligning the provisions of the Law relating to the improvement of nuclear legislation with those of Council Directive 2014/87/Euratom, in particular by amending the relevant definitions and terms.

The implementation of the provisions of the law will contribute to:

- unification of the terms used in the legislation of Ukraine with those used in EU acquis;
- establishment of qualification requirements for contractors of entities using nuclear energy,

99) <https://zakon.rada.gov.ua/laws/show/992-2022-%D1%80#Text>

100) <https://zakon.rada.gov.ua/laws/show/1254-2022-%D0%BF#Text>

101) <https://zakon.rada.gov.ua/laws/show/2762-IX#Text>

which will contribute to improving the safety of such activities;

- improvement of the regulatory requirements regarding the obligations of nuclear installation operators to take all measures to prevent accidents and mitigate their consequences in the event of such;
- complementing the powers of the SNRIU regarding the organization of regular assessment of the regulatory framework in the field of nuclear energy use and the activities of the state regulatory body for nuclear and radiation safety, as well as international partner inspections.

Practical implementation is “perfect”. The procedures are regulated by regulatory legal acts approved by SNRIU orders registered with the Ministry of Justice or by CMU resolutions.

The key requirements specified in the EU Directives with regard to the safe use of nuclear power had been enshrined in Ukraine’s special legislation and regulations and enforced even before the signing of the Association Agreement. The state system of nuclear and radiation safety regulation is functioning effectively, there is a division of responsibilities among entities in the field of nuclear power use for safety. In 2022, through amendments to national legislation, certain procedures for obtaining a permit for activities with sources of ionizing radiation were improved, the relevant terms and definitions were clarified, and the institution of radiation protection expert was established.

The obligation to establish the general principles of radiation protection of the general public and persons occupationally exposed to radiation in medicine and other occupations and to approximate the regulation in the field of nuclear and radiation safety to the EU requirements (in terms of radiation protection), for which the SNRIU is responsible, have been fulfilled successfully.

The fulfilment of the tasks for which the Ministry of Health is responsible, namely, those associated with the regulation of the radiation protection of humans from the effects of natural radionuclides, has not started. Since after the reorganization of the Ministry of Health and the abolition of the sanitary service, some of the functions of the latter were transferred to the State Service of Ukraine on Food Safety and Consumer Protection, there is no unit within the structure of the Ministry of Health (Public Health Centre) responsible for the state regulation of human radiation safety, in particular from the effects of natural radionuclides. Thus, there is an institutional and organizational gap with regard to fulfilling these tasks. There are almost no qualified professionals in the field of radiation protection. Therefore, the Cabinet of Ministers needs to make organizational changes in the Public Health Centre and urgently create a unit for human radiation protection with appropriate powers.

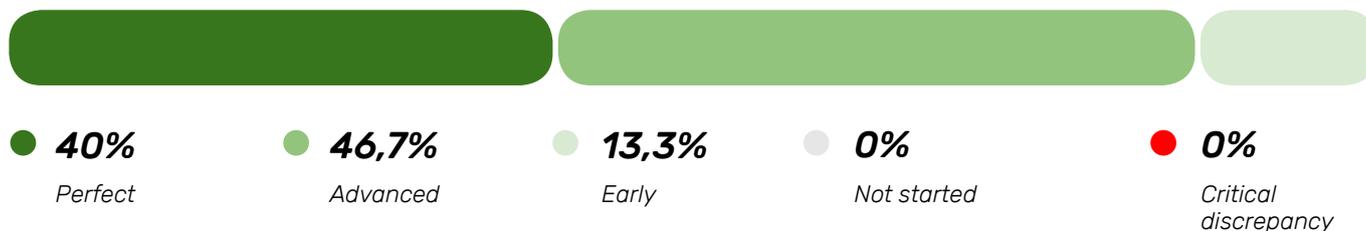
The commitment to harmonise regulation in the field of nuclear and radiation safety with the EU requirements (in terms of the safety of nuclear installations), for which SAEZM (under the Ministry of Ecology of Ukraine) is responsible, has not been fulfilled. Meanwhile, Ukraine lacks a National Environmental Radioactive Waste Management Program for five years now (the previous one expired in 2017) to implement the Radioactive Waste Management Strategy. It was only on 4 November 2022 that the Concept of this Program was finally approved.

Taxation



Vyacheslav Cherkashyn

Sector progress



Indirect Taxation: Excise Duty

Compliance with the general excise duty regime (conditions), in particular as regards establishing a list of 'excisable goods'

In general, the implementation of the legislation is advanced, although the national list of excisable goods is wider than that of the EU (due to the inclusion of passenger cars, their bodies, trailers and semi-trailers, motorcycles, vehicles intended for the transport of 10 people or more, and vehicles for the transport of goods) but it has been brought into formal compliance with the EU acquis.

Harmonization of excise duties on alcohol and alcoholic beverages

Comprehensive implementation is almost complete. Thus, Law of Ukraine No. 1914-IX dated 30 November 2021 brought into line with Article 3 of Council Directive 92/83/EEC the units of measurement of the excise rate for beer depending on the actual alcoholic

strength of the finished product (from "1 litre of finished product" to "per 1 litre of 100 percent alcohol", changes were made to clause 215.3.1 of the Tax Code of Ukraine).

According to the information of the Ministry of Finance of Ukraine¹, in August this year, official letter No. 25010-11-3/17291 was sent to the EU Party containing comparative tables on the implementation of Directive 2011/64/EU in order to obtain a relevant assessment, no opinion has been received from the EU Party yet.

Unification of the structure of excise duty applied to manufactured tobacco, gradual convergence of excise rates applied to manufactured tobacco

The practical implementation of the legislation is advanced, Ukraine is currently waiting for the European Party to assess the fulfilment of the commitment to implement the provisions of Council Directive No. 2011/64/EU. According to the Ministry of Finance of Ukraine², on 29 November 2021, during the

1) Report on the Implementation of the AA for Q3 2022 - <https://mof.gov.ua/en/vikonannja-ugodi-pro-asociaciju>

2) Report on the Implementation of the AA for Q2 2022 - <https://mof.gov.ua/en/vikonannja-ugodi-pro-asociaciju>

7th meeting of the EU-Ukraine Association Committee, it was noted that it was necessary to obtain a relevant opinion from the EU Party.

At the same time, there are certain methodological issues that need to be addressed, namely:

- the establishment for excise duty purposes of a mechanism for calculating the length of cigarettes of non-standard sizes, as provided for in paragraph 2 of Article 3 of Directive 2011/64/EU;
- partial compliance of the mechanism for calculating the weighted average retail price of cigarettes (clause 14.1.227-1 of the TCU, the norm comes into force on 1 January 2025) with the requirements of Article 8.2 of Directive 2011/64/EU (on 5 February 2019, comments were received from the EU Party, including a recommendation to indicate that when calculating the weighted average retail price all taxes are taken into account). The Government's attempt to eliminate this shortcoming in draft law No. 4101 dated 15.09.2020 was not supported by the Verkhovna Rada of Ukraine (the draft law and its legislative alternatives were withdrawn from consideration by the Verkhovna Rada of Ukraine on 06.09.2022). It should be taken into account that the timeframe for the implementation of Article 8 of Directive 2011/64/EU according to Annex XXVIII to the AA is not specified (the timetable for implementation should be set additionally).

The only significant change in the Ukrainian legislation on excise duties applied to manufactured tobacco was the transfer, starting from 1 May 2022 (instead of 1 January 2023), of the obligation to pay excise duty at a rate of 5% to manufacturers and importers from retailers selling manufactured tobacco, tobacco and alternative tobacco products, and liquids for use in electronic cigarettes (Laws of Ukraine No. 1914-IX "On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine to Ensure Balance of Budget Revenues" dated 30 November 2021 and No. 2218-IX "On Amendments to the Law of Ukraine 'On the State Budget of Ukraine for 2022'" dated 21 April 2022). However, this innovation is not covered by the AA.

Excise taxation of energy and electricity products

At the legislative level, the approximation of Ukraine and the EU in the energy and electricity taxation subsector is at the advanced level. At the same time, in accordance with the Government Action Plan for the implementation of the AA (CMU Resolution No. 1106 dated 25 October 2017), it is planned to develop (by 31 December 2021) the relevant draft law to bring national legislation on excise taxation of electricity and energy products in line with the requirements of Council Directive 2003/96/EC, but this did not happen. According to the Ministry of Finance of Ukraine³, Section 16 "Taxation" of Part II of the Questionnaire of the European Commission designed to form an opinion on granting Ukraine the status of a candidate for EU membership provided clarifications on the list of excisable energy goods, the tax base, exemptions, special regimes, etc. (letter No. 25010-11-3/8483 dated 25.04.2022). However, the timetable for the implementation of the provisions of Council Directive 2003/96/EC in accordance with Annex XXVIII (28) to the AA is set as "progressively, taking into account future needs of Ukraine".

Compliance with quantitative restrictions on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries

There has been no comprehensive transposition of the provisions of the EU acquis into national law. The Customs Code of Ukraine (Articles 269, 282, 287, 370, 374, 376 and 380), the Laws of Ukraine "On Humanitarian Aid" and "On the Customs Tariff of Ukraine" contain a number of provisions that only partially take into account the requirements of Titles I and II of Council Regulation (EC) No 1186/2009 and Section 3 of Council Directive 2007/74/EC.

For full implementation, a number of changes are needed, including:

- change of the monetary threshold for the customs duty-free imports of goods in hand luggage and/or in accompanied luggage at the level of EUR 430 for air and sea travellers, and at the level of EUR 300 for other travellers (applicable norms of EUR 1000 and EUR 500 respectively);

3) Report on the Implementation of the AA for Q3 2022 - <https://mof.gov.ua/en/vikonannja-ugodi-pro-asociaciju>

- adding cigars to the list of goods exempt from excise duty, while at the same time establishing special relevant restrictions (on the weight of cigarettes and cigars);
- doubling the period of relief from customs duties for persons moving for a permanent place of residence to Ukraine – up to 12 months (the current period is 6 months);
- granting relief for a consignment of different alcoholic beverages and tobacco products (with a value of not more than EUR 45 per consignment⁴), and adding “ethyl alcohol of 80% volume and over” to the list of tax-exempt goods;
- improvement of the norm on tax exemption for fuel contained in the standard tank and a quantity of fuel not exceeding 10 litres contained in a portable container for each vehicle.

Some of these amendments are contained in government Draft Law No. 5810, registered with the Verkhovna Rada of Ukraine on 20 July 2021, but the document is still under consideration in the relevant committee. Due to the lack of success in regulatory approximation, the ultimate implementation of EU legislation in practice is also impossible.

Indirect Taxation: Value Added Tax

Harmonization of legislation with the EU’s common system of value added tax

Since 2014, no provision of the Thirteenth Council Directive 86/560/EEC on measures to refund VAT to taxable persons not established in the territory of Ukraine has been transposed. But the timetable for the implementation of the said Directive needs to be determined by the Association Council, as provided for in Annex XXVII to the AA (on 26.10.2021, the Ministry of Finance of Ukraine by letter No. 44040-08-10/33081 sent a draft decision of the EU-Ukraine Association Council on the establishment of deadlines for the implementation of the Thirteenth Directive to the EU Delegation to Ukraine).

4) Provisions of Articles 25 to 27 of Chapter 6 of Council Regulation (EC) No 1186/2009

Cooperation to Further Improve Economic Relations, Trade, Investment and Fair Competition

Application of the principles of good governance and strengthening of international cooperation in the field of taxation

The implementation of legislation on international cooperation in the field of taxation is advanced and continues improving. Thus, on 16 November 2022, the Verkhovna Rada of Ukraine supported in the first reading draft law No. 8131 dated 17 October 2022 designed to implement the Common Reporting Standard for Automatic Exchange of Financial Account Information, approved by the OECD Council, which provides for the introduction from 2024 of an annual international automatic exchange of information on financial accounts⁵. The draft law was created involving experts from the EU Public Finance Management Support Programme in Ukraine (EU4PFM).

Also, on 3 November 2022, Ukraine joined the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports⁶, which is part of the BEPS Minimum Standards Action Plan, which Ukraine undertook to implement in 2017.

Improvement and Development of Ukraine’s Tax System and Administration

The processes of improvement and development of Ukraine’s tax system and administration are ongoing and generally meet the requirements of the EU acquis and AA. However, the comprehensive reform of tax and customs authorities during 2021–2022, just like before, has been slow and uncertain in view of the extremely high personnel turbulence in both departments, where regular managers have not yet been appointed. The liquidation of the tax police at the end of last year and the launch of the Economic Security Bureau of Ukraine (hereinafter referred to as the ESBU) were accompanied by controversial personnel decisions, when the former Head of the Fiscal Service was appointed to the position of the head of the new law enforcement agency, and the first personnel competitions showed that more than half

5) https://mof.gov.ua/en/news/parlament_pidtrimav_v_pershomu_chitan-ni_zakonoproiekt_shchodo_implementationtsii_v_ukraini_zagalnogo_standartu_zvitnosti_crs_common_reporting_standard-3716

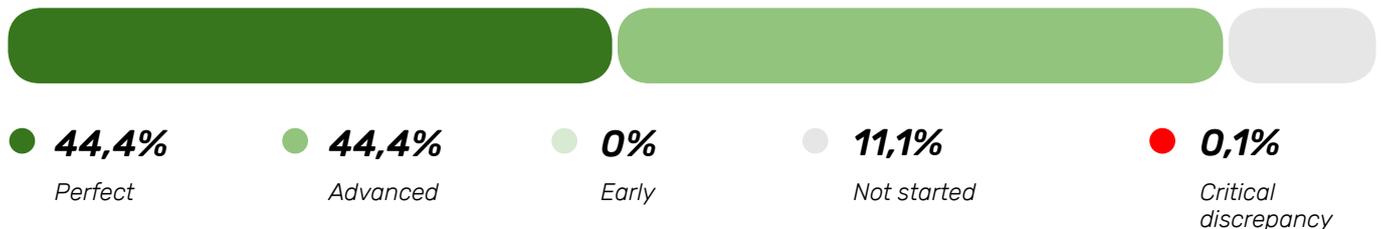
6) https://mof.gov.ua/en/news/minfin_ukraina_na_shliakhu_do_zaprovadzhennia_mizhnarodnogo_avtomatichnogo_obminu_zvitami_u_rozrizi_krain-3701

of the employees are former employees of the fiscal service/tax police. Far from becoming an agency with a “new face,” the ESBU in the nine months of its official existence has not yet been able to demonstrate to the public any significant results of its activity or even to start proper full-fledged operation.



Svitlana Chervona

Sector progress



Approximation of Ukrainian legislation in the field of statistics to EU acquis

Creation of a common legal framework for producers of official (state) statistics (Regulation (EC) No 223/2009)

In order to further implement the standards, rules and recommendations of the EU and other international organizations in national statistical practice, Ukraine has adopted:

- Law of Ukraine No. 2524-IX “On Official Statistics” dated 16 August 2022, to enter into force on 1 January 2023¹;
- Law of Ukraine No. 2438-IX “On Amendments to Certain Laws of Ukraine on State Statistical Activities” dated 19 July 2022, came into force on 27 October 2022².

Approximation of the statistical methodology to that of the EU

Introduction of a sampling method for the survey of monthly fuel consumption

During the analysed period, amendments were made to Order No. 215 of the State Statistics Service dated 17 July 2020 (Order No. 187 of the State Statistics Service dated 13 June 2022) “Methodological Principles for the Organization of State Statistical Observation of the ‘Use and Reserves of Fuel’ based on the Provisions of the Law of Ukraine ‘On State Statistics’”. These amendments take into account the requirements of Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics (as amended)³.

The “Methodological Principles for the Organization of State Statistical Observation of the ‘Use and Reserves of Fuel’” contain a description of the key provisions and methods of conducting state observation on this matter.

1) <https://zakon.rada.gov.ua/laws/show/2524-20#Text>

2) <https://zakon.rada.gov.ua/laws/show/2438-20#Text>

3) https://ukrstat.gov.ua/norm_doc/2020/215/215.pdf

The purpose of the development of the Methodological Principles is to set forth the methods of conducting and the system of indicators of state statistical observation of the “Use and Reserves of Fuel”, the development and dissemination of its results.

Introduction of Methodological Principles of Vocational and Lifelong Learning Statistics in order to consolidate organizational and methodological approaches to the implementation of observation in the field of vocational education and lifelong learning in the national statistical practice

The State Statistics Service by Order No. 49 dated 22 February 2022 approved the Methodological Principles of the Organization of State Statistical Observation of the Network and Activities of Educational Institutions⁴. The Methodological Principles take into account the provisions of Regulation (EC) No 452/2008 of the European Parliament and of the Council of 23 April 2008 concerning the production and development of statistics on education and lifelong learning (hereinafter referred to as Regulation (EC) No 452/2008), Commission Regulation (EU) No 912/2013 of 23 September 2013 implementing Regulation (EC) No 452/2008 concerning the data on enrolments, entrants, and graduates from pre-school, general secondary, vocational, higher, pre-tertiary vocational education and postgraduate training institutions, as well as those specified in Commission Delegated Regulation (EU) No 253/2013 of 15 January 2013 amending Annex II to Regulation (EU) No 692/2011 of the European Parliament and of the Council, as regards adaptations following the revision of the International Standard Classification of Education (ISCED) in relation to the variables and breakdowns to be submitted.

The purpose of the state statistical observation of the “Network and Activities of Educational Institutions” is to gather information on the characteristics of educational institutions, as well as research institutions for the training of postgraduate students (institutions of pre-school education, institutions of general secondary education, institutions of vocational education, institutions of higher education, institutions of pre-tertiary vocational education, institutions for the training of postgraduate students) to provide information for the analysis of the state of affairs in the educational system, to compile a satellite

account of education in Ukraine, and for international comparisons.

Development and implementation of a system of social exclusion and poverty indicators based on living conditions in accordance with EU requirements

In order to generate information on poverty and social exclusion, income distribution, as well as the living conditions of various socio-demographic groups of the population, the State Statistics Service by Order No. 323 dated 24 December 2021 (as amended by Order No. 141 of the State Statistics Service dated 6 June 2022) approved the Methodological Principles for the organization of a sample survey “Statistics on Income and Living Conditions (EU-SILC)”, which take into account the provisions of Regulation (EC) No 1177/2003 of the European Parliament and of the Council of 16 June 2003, No. 2019/1700 of 10 October 2019, No. 2019/2242 of 16 December 2019, No. 2019/258 of 16 December 2019, as well as the recommendations set out in the Methodological Guidelines and the Description of EU-SILC Target Variables (DocSILC065)⁵. The purpose of the sample survey “Statistics on Income and Living Conditions (EU-SILC)” is to generate information on poverty and social exclusion, income distribution, as well as living conditions of different socio-demographic groups of the population.

The Methodology for the sampling of respondents within the framework of the current system of conducting sample surveys, taking into account the sample survey “Statistics of Income and Living Conditions in the European Union EU-SILC” was developed and approved by the State Statistics Service in Order No. 325 dated 24 December 2021⁶.

The methodology provides the plan (design) for sampling and performing work to create territory-based samples and sample household datasets for conducting state surveys of the population (households) in 2024–2028 concerning living conditions of households, labour force, agricultural activity of the population in rural areas, taking into account the introduction to the survey “Statistics of Income and Living Conditions in the European Union EU-SILC”.

4) https://ukrstat.gov.ua/norm_doc/2022/49/49.pdf

5) https://ukrstat.gov.ua/norm_doc/2021/323/mp_du.pdf

6) https://ukrstat.gov.ua/norm_doc/2021/325/metod_EU-SILC.pdf

Improvement of statistical reporting on tourism in accordance with European and international standards, including the recommendations of the World Tourism Organization

The State Statistics Service by Order No. 265 dated 22 October 2021 (as amended by Order No. 280 of the State Statistics Service dated 10 November 2022) approved the Methodological Principles of the State Statistical Observation of 'Tourism Activities', which take into account the recommendations set out in the manual "Tourism Satellite Account: Recommended Methodological Framework 2008, International Recommendations for Tourism Statistics, United Nations, 2008, and Methodological Principles of Tourism Satellite Accounts in Ukraine, approved by Order No. 359 of the State Statistics Service dated 29 December 2017⁷.

The purpose of the state statistical observation of "Tourist Activity" is to gather information on the characteristics of tourism undertakings and the number of tourists served by tour operators and travel agents, to provide information for the analysis of the tourism industry, and to compile a tourism satellite account.

- The State Statistics Service by Order No. 333 dated 30 December 2021 approved the Methodology for Calculating the Indicators of State Statistical Observation of 'Tourist Activity', taking into account the activities of individual entrepreneurs, based on the provisions of the Law of Ukraine "On State Statistics," which was drafted in order to implement measures provided for by the Program for the Development of State Statistics for the period up to 2023, approved by Resolution No. 222 of the Cabinet of Ministers of Ukraine dated 27 February 2019⁸.

The Methodology contains a list of the sources of information necessary to calculate indicators for the activities of individual entrepreneurs, as well as a description of the key methods used to calculate these indicators. The Methodology describes the method and sequence of calculation of the indicators of state statistical observation of "Tourist Activity", taking into account the activities of individual entrepreneurs in accordance with the Methodological Principles of the State Statistical Observation of 'Tourist Activity'.

7) https://ukrstat.gov.ua/norm_doc/2021/265/265.pdf

8) https://ukrstat.gov.ua/norm_doc/2021/333/333.pdf

- The State Statistics Service by Order No. 334 dated 30 December 2021 approved the Methodological Principles of the State Statistical Observation of "Household Travel Survey (for Domestic and Outbound Tourism)", which take into account the provisions set out in Regulation (EU) No 692/2011 of the European Parliament and of the Council of 6 July 2011 concerning European statistics on tourism and repealing Council Directive 95/57/EC, Methodological Principles of Compilation of the Tourism Satellite Account in Ukraine, approved by Order No. 359 of the State Statistics Service dated 29 December 2017, Methodological Principles of Labour Force Survey, approved by Order No. 128 of the State Statistics Service dated 6 July 2018 (as amended), Tourism Satellite Account: Recommended Methodological Framework 2008, and International Recommendations for Tourism Statistics, United Nations, 2008⁹.

The purpose of the state statistical observation of "Household Travel Survey (for Domestic and Outbound Tourism)" is to generate information on household expenses related to travel and characteristics of their travel to gather information for compiling the tourism satellite account and the balance of payments.

- The State Statistics Service by Order No. 175 dated 10 June 2022 approved the Methodological Principles of the State Statistical Observation of "Collective Accommodation Facilities", which take into account the provisions set out in Regulation (EU) No 692/2011 of the European Parliament and of the Council of 6 July 2011 concerning European statistics on tourism and the Methodological Principles of the Compilation of Tourism Satellite Accounts in Ukraine, approved by Order No. 359 of the State Statistics Service dated 29 December 2017¹⁰.

The purpose of the state statistical observation of "Collective Accommodation Facilities" is to collect information on the characteristics of collective accommodation facilities and the number of persons who stayed there, to provide information for the analysis of the state of the tourism industry, and to compile a tourism satellite account.

9) https://ukrstat.gov.ua/norm_doc/2021/334/334.pdf

10) https://ukrstat.gov.ua/norm_doc/2022/175/mp_kzr.pdf

Therefore, during the analysed period, significant progress has been made in the Statistics sector. At the same time, in order to approximate Ukraine's statistical methodology to the EU methodology, the State Statistics Service of Ukraine still needs to:

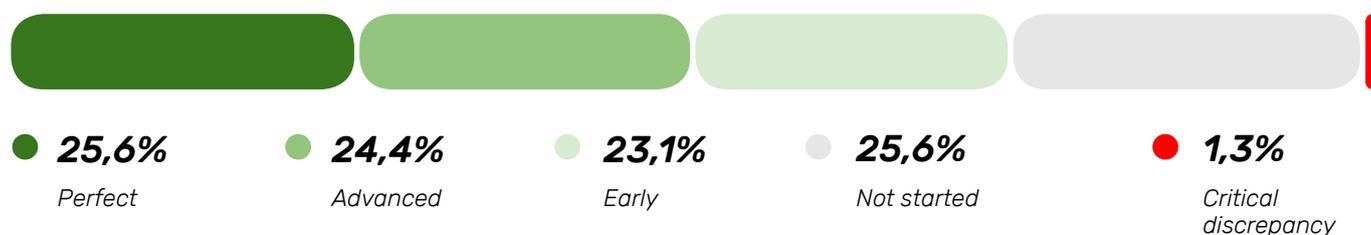
- develop and approve a methodology as well as reporting and statistical documentation of the state statistical observation regarding the structure of farms in accordance with Regulation (EU) 2018/1091 of the European Parliament and of the Council of 18 July 2018 on integrated farm statistics; and
- continue work on the implementation of standards, rules and recommendations of the EU and other international organizations into national statistical practice.

Environment



Andrii Andrushevych

Sector progress



During the second half of 2021 and 2022, Ukraine continued to implement reforms in the field of environmental protection, albeit at a slow pace.

In the field of environmental management, there were regular attempts to improve the EIA (Environmental Impact Assessment) and SEA (Strategic Environmental Assessment) procedures. These efforts are primarily aimed at formalizing and digitalizing these tools. An important achievement for Ukraine is its accession to the Second Amendment to the Espoo Convention, which expands the list of objects for cross-border consultations. A potentially important practical improvement is the introduction of the SEO register. The aggression of the Russian Federation has had a significant negative impact on this subsector due to restrictions in access to information and public participation, as well as exclusion of many projects from the EIA and SEO coverage.

In the field of atmospheric air quality, no significant changes were observed. This is partly due to the technical and financial difficulty of fulfilling the commitments that require the most attention (monitoring, air quality management, market surveillance).

In the field of waste and resource management, an important achievement was made – i.e., adoption of a framework law on waste (Law of Ukraine No. 2320-IX of June 20, 2022 “On Waste Management”). However, not to dwell upon the quality of this law and its compliance with European requirements, it must be mentioned that its adoption does not significantly change the overall assessment. This is due to the fact that it comes into force only in July 2023 and its real impact will depend on a number of laws and by-laws that are still to be developed.

Traditionally, the greatest progress has been observed in the sector of water resources. The development of river basin management plans (4 already developed), the approved Marine Environmental Strategy, the State Water Monitoring Program (as regards diagnostic monitoring of coastal and sea waters of the Black and Azov Seas) for the period up to 2026 is continuing. Flood risk management plans have been approved for individual areas within river basin areas (9 in total). The requirements for drinking water quality have been fully met.

In the areas of industrial pollution and nature protection, no progress has been made, except for emergencies: the legislation of Ukraine has been adapted to the requirements of the Seveso III Directive. Progress is hampered by political considerations and lack of a systematic dialogue on how to implement reforms in these areas. These areas (industrial pollution and nature protection) remain the major outsiders.

No significant progress has been made in the area of climate change and the ozone layer. Practical work has been carried out to introduce the relevant mechanisms (in particular, MRV), but the key commitment (greenhouse gas emission allowance trading) still has no clearcut conceptual approaches to implementation developed. Adoption of the updated nationally set allowance does not affect the assessment in this subsector.

In the field of GMOs, changes were not aimed directly at the implementation of the Association Agreement, but they will have a positive impact on this area in terms of compliance with the EU acquis. Ukraine has adopted the Biosafety and Biological Protection Strategy dated 16.11.2022 and Draft Law No. 5839 (as a basis) "On State Regulation of Genetical Engineering Activities and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security" to replace the current Law of Ukraine No. 1103-V "On the State Biosafety System in the Creation, Testing, Transportation and Use of Genetically Modified Organisms" dated 31.05.2007.

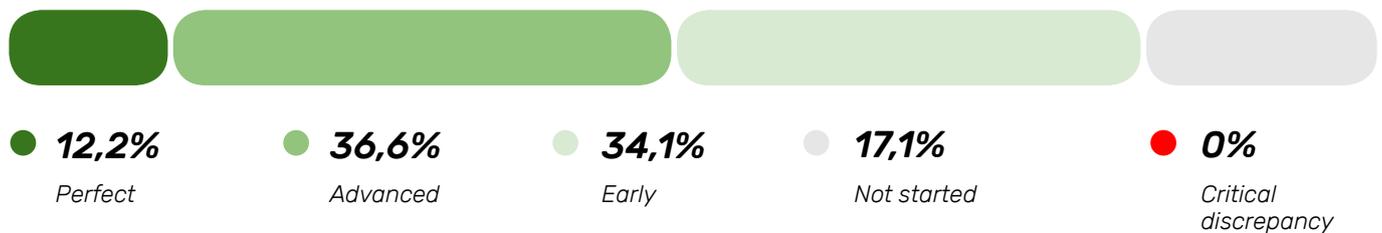
During the reporting period, Ukraine has made certain progress in some subsectors (especially in the area of water quality and water resources management), but in general, the implementation in this sector is at a standstill due to political and other difficulties. In addition, quite often we see that individual changes or innovations are introduced, but the overall assessment of the commitment progress (in terms of approximation or practical implementation) does not change. This is due to the fact that such reforms are either insufficient or "supplemental" to the efforts to implement the Association Agreement and do not affect the overall assessment of the fulfilment of the relevant commitment under the Agreement. The most problematic areas remain industrial pollution, waste, nature protection, and climate change.

Transport



Natalia Forsyuk

Sector progress



During the period from 01.07.2021 to 01.07.2022, the implementation of the Association Agreement with the EU in the field of transport was taking place in the context of numerous challenges that involved ensuring proper passenger and freight transport due to the launch of a full-scale war by Russia, closing of Ukraine's airspace to flights, its transport infrastructure being destroyed by the enemy, the humanitarian crisis and mass migration of the population within the country and immigration to other countries of the world.

Before 24 February 2022, the most significant event in the field of transport had been the long-awaited signing of the Common Aviation Area Agreement (CAA). Negotiations began back in 2010, but the signing of the Agreement had long been postponed by the EU due to uncertainty about the Gibraltar Airport. The Agreement was signed by the parties on 12 October 2021 within the framework of the 23rd EU-Ukraine Summit and ratified by the Verkhovna Rada of Ukraine on 17 February 2022. In accordance with the provisions of the Agreement, the parties will establish a Common Aviation Area between Ukraine and the EU on the basis of equal rules of aviation safety, air traffic management, social rights of workers, electronic

reservation systems, environmental protection and consumer protection. The agreement provides for two transitional periods for the implementation of all EU aviation rules and standards. The transition of Ukraine to the effective implementation of the requirements and standards of EU legislation in the field of civil aviation is subject to evaluation – compliance by Ukraine with the relevant EU requirements and standards will be monitored by the European Commission through technical assessments, as well as compliance inspections by the European Aviation Safety Agency (EASA).

Road transport and road facilities

Undoubtedly, in the context of the war and the complete blockade of Ukrainian ports, the signing of the Road Transport Agreement on 29 June 2022 was an important and significant event to support Ukrainian society and the economy. The Agreement is concluded in pursuance of Art. 136 of the Association Agreement with the EU providing for coordinated and progressive liberalisation of transport between the Parties based on special road transport agreements. The provisions of the Agreement abolished the need for Ukrainian transport operators to obtain

permits from EU countries to carry out bilateral and transit operations for a period until 30 June 2023 and provided for the possibility of its renewal by the decision of the relevant Joint Committee.

On 24 June, 2021, amendments were adopted to Order No. 340 of the Ministry of Infrastructure, which bring the provisions of the Regulation on Working Hours and Rest Periods for Drivers of Motor Vehicles into line with the requirements of Regulation No. 561/2006 of March 15, 2006 regarding the duration of the working day (shift), breaks for rest of drivers and the preservation of records on compliance with the work and rest regime. For further effective control of compliance with the regime concerning working time and rest periods, it is necessary to legislatively establish the obligation to use tachographs and make appropriate amendments to the Code of Administrative Offences in order to differentiate between different types of offences regarding the use of tachographs and compliance with this regime. The provisions of Directive 2002/15/EC, which applies to persons performing mobile road transport activities, have not been implemented either.

To fulfil the obligation regarding the maximum authorized weight and dimensions of vehicles, Resolution No. 105 of the Cabinet of Ministers of Ukraine dated 9 February 2022 was adopted, making the relevant amendments to the Traffic Rules and introducing the concepts of “maximum authorized axle weight,” “maximum authorized dimensions,” “indivisible cargo,” etc. It also establishes the toll rates for vehicles that exceed the set parameters. The Regulation is valid until 31 December 2023 and requires further revision and the bringing of some provisions into full compliance with the requirements of Directive 96/53/EC.

On 23 September 2021, Law No. 6087 on tolls for the use of public roads was registered, which partially transposes the provisions of Directive 1999/62/EC of 17 June 1999 and provides for the establishment of tolls for the use of vehicles with a gross laden weight of 12 tons or more, introduction of a system for controlling the movement of vehicles, and maintenance of an electronic system for the use of roads.

As of 01.07.2022, the Verkhovna Rada failed to consider the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine with Regard to the Regulation of the Road Transport Services Market in Ukraine in Order to Bring it into Line with the European

Union Act” (reg. No. 4560, dated 30.12.2020), which sets forth the licensing requirements for road transport in accordance with the provisions of Regulation (EC) No. 1071/2009. The adoption of this draft law may be an important factor in making a decision by the Joint Committee on renewal of the Road Transport Agreement concluded on 29 June 2022, as well as the implementation of Directive 2014/45/EU on periodic roadworthiness tests for motor vehicles and their trailers (the Ministry of Infrastructure has developed and promulgated numerous draft laws aimed to transpose its provisions).

Maritime and inland waterway transport

In the field of inland waterway transport

A lot of work has been done to include Ukraine’s inland waterways (Dnieper and Southern Bug) in the updated maps of the Trans-European Transport Network (TEN-T). On 29 June 2022, a corresponding Memorandum between Ukraine and the EU was concluded in Lyon. This was made possible due to the adoption of the Law of Ukraine “On Inland Waterway Transport”. Ukraine also applied to the European Commission with a request to include in this network the Ukrainian stretch of the Danube River, which has become an extremely important transport route to the EU because of the blockade of Ukrainian ports by Russia after 24 February 2022.

Special attention should be given to the progress in the development and adoption of bylaws for the proper implementation of the Law on Inland Waterway Transport and the Association Agreement with the EU in terms of the introduction of minimum technical requirements to ensure the safety of navigation, the safety of the navigation system, etc. Therefore, the following acts have been adopted:

- Order No. 62 of the Ministry of Infrastructure “On Approval of the Procedure for Assigning and Affixing a Unique European Identification Number to Inland Vessels” dated 31 January 2022, to meet the requirement concerning the establishment of technical requirements for inland vessels.
- Resolution No. 136 of the Cabinet of Ministers of Ukraine “On Approval of the List of Internal Sea Routes and Inland Waterways Classified as Navigable” dated 9 February 2022, which approved the list of sections of inland waterways

included in the European Agreement on Main Inland Waterways of International Importance as elements of the category E network of waterways with an indication of the class of the waterway in accordance with this Agreement.

- Order No. 447 of the Ministry of Infrastructure of Ukraine “On Approval of the Regulation on Navigation and Hydrographic Support of Navigation on Inland Waterways of Ukraine” dated 24.06.2022, which was developed to keep inland waterways navigable.
- Order No. 55 of the Ministry of Infrastructure “On Certain Matters of Keeping the Logbook of an Inland Navigation Vessel” dated 28 January 2022, which partially implements the requirements of Directive (EU) 2017/2397 on the recognition of professional qualifications in inland navigation.

The standard of higher education in the field of inland water transport at the level of educational training programs has been developed and approved – i.e., the educational program “Inland Navigation and Combined Navigation Vessels” of the Kyiv Institute of Water Transport of the State University of Infrastructure and Technologies takes into account the requirements for coastal navigation and entrepreneurial activity in IWW according to Directive 87/540.

Maritime transport

Two technical regulations have been approved:

- The Cabinet of Ministers of Ukraine by Resolution No. 676 dated 30 June 2021 approved the Technical Regulation on Marine Equipment, which sets forth the safety requirements for marine equipment, conformity assessment procedures, marking and marketing of such equipment based on Directive No. 2014/90/EU on marine equipment.
- The Technical Regulation for recreational craft and personal watercraft, which specifies the requirements for their design, construction, conformity assessment procedures, marking and marketing in line with Directive 2013/53/EU, was approved by a Resolution of the Cabinet of Ministers of Ukraine on 23 December 2021.

Amendments were made to the legislation of Ukraine with regard to conducting port state control and reorganization of services of seaport captains by Order

No. 621 of the Ministry of Infrastructure of Ukraine “On Approval of the Regulation on the Seaport Captain and Seaport Captain Service” dated 17.11.2021.

In order to fulfil the requirements for improving medical care on board vessels and provision of medical consultations from the shore by emergency (ambulance) medical aid stations, as well as delivering medicines to vessels during a disaster at sea, the Cabinet of Ministers of Ukraine adopted (on 06.03.2022) the Resolution “On the National Maritime Search and Rescue System in the Maritime Search and Rescue Region of Ukraine,” which regulates the implementation of measures for monitoring the movement of vessels from the shore, organizing communication and coordinating actions in the maritime search and rescue region of Ukraine aimed at the provision of aid to people who are in distress or imminent danger and specifies the list of health care facilities that can be involved.

Order No. 108 of the Ministry of Infrastructure of Ukraine dated 17 February 2022 fulfils the obligation to establish the requirements for the stability of ro-ro passenger ships.

Progress has been made with regard to fulfilling the obligation to accept ship waste and cargo residues at seaports and sea terminals – Order No. 242 of the Ministry of Infrastructure of Ukraine dated 25 April 2022 approved amendments to the Procedure for Providing Services to Ensure Prevention and Elimination of Pollutant Spillage in Seaports of Ukraine.

On 9 December 2021, draft laws of Ukraine “On Ukraine’s Accession to the International Convention for the Control and Management of Ships’ Ballast Water and Sediments (2004)” and amendments to the relevant national legislation were published for discussion.

The draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Merchant Shipping and Inland Waterways Navigation” was also published. It lays down the principles for ensuring the safety of navigation in the territorial sea, internal marine waters, in seaports, on inland waterways; restoration, clarification of the status of the seaport captain; providing an exhaustive list of crew members of sea and river vessels whose positions are classified as regulated professions under Ukraine’s international treaties or EU legislation and require certification.

Combined transport

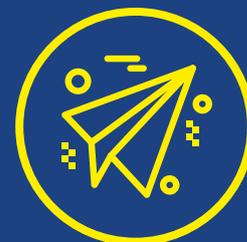
Significant progress has been made in this area – on 17.11.2021, Law of Ukraine No. 1887-IX “On Multimodal Transport” was adopted, which sets forth the legal and organizational principles of multimodal (combined) transport and is aimed at creating conditions for their development and encouraging the use of environmentally friendly modes of transport. The law defines the concepts of multimodal transport route, multimodal terminal, combined transport, etc. The law is the basic act for the further development of multimodal and combined transport, attracting investments in multimodal terminals and addressing the logistics crisis due to the military aggression of Russia in Ukraine, which, among other tragic consequences, led to a global food crisis.

Railway transport

As of 01.07.2022, the draft Law of Ukraine “On Railway Transport of Ukraine” is pending consideration by the Verkhovna Rada Committee. Unfortunately, unless this law is adopted, no further implementation of the Association Agreement in this area is possible.

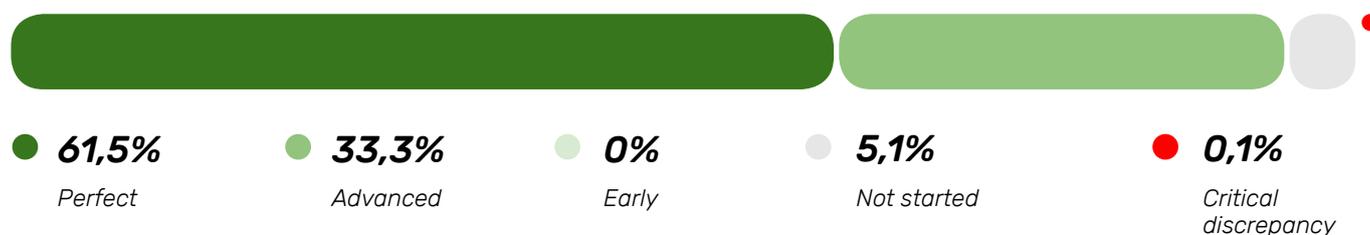
In general, in the period from 01.07.2021 to 01.07.2022, the greatest progress with the implementation of the Association Agreement with the EU took place in the field of air, maritime and river transport. Unfortunately, there has been no progress with the adoption of the draft law on bringing the transport of dangerous goods into line with EU legislation and the draft law on railway transport registered with the Verkhovna Rada. A large number of acts in the field of maritime and river transport have been developed and published for public discussion and coordination with stakeholders. Despite numerous attempts by the Ministry of Infrastructure to ratify the ILO Maritime Labour Convention (2006), there has been no progress in this regard, and no relevant laws have been registered with the Verkhovna Rada.

Company law



Bohdan Veselovskyi

Sector progress



Establishment and operation of companies

Approximation of the legislation on the protection of the rights of shareholders, creditors and other stakeholders in accordance with the requirements of the EU

On 27 July 2022, the Verkhovna Rada of Ukraine adopted the Law “On Joint Stock Companies”¹ (it will enter into force on 1 January 2023), which further implements the provisions of the “codification” Directive (EU) 2017/1132, as well as Directive 2007/36/EC (“Shareholders’ Rights Directive”). This Law makes it possible to hold a general meeting of shareholders electronically; improves the rules on the merger and division of joint-stock companies, in particular provides for the examination of merger/division conditions by independent experts; and regulates the activities of some market players, in particular corporate rights advisers. Most of the comments that were described in the previous monitoring period have been taken into account, and the very fact that this

Law has been adopted and is to enter into force on 1 January 2023 allows us to change the rating from early transposition to advanced transposition.

However, after the adoption and entry into force of the Law, it will be necessary to adopt a number of by-laws – i.e., implementing acts by the Ministry of Finance of Ukraine, as well as by the National Securities and Stock Markets Commission. In addition, checking how all these new provisions work in practice is of the utmost importance. Therefore, the assessment of the implementation measures has so far remained at the previous level.

Accounting and auditing

Gradual approximation of national legislation to EU law in the field of accounting

On 16 December 2021, the Parliament adopted the Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine to Ensure Transparency in Extractive Industries².

¹) Law of Ukraine “On Joint-Stock Companies” dated 27.07.2022: <https://zakon.rada.gov.ua/laws/show/2465-20#n2391>

²) Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Ensure Transparency in Extractive Industries” dated 16.12.2021: <https://zakon.rada.gov.ua/laws/show/1974-20#Text>

The law aims at ensuring transparency in the use by the government of revenues from the extractive industry, which prevents corruption and improves the efficiency of management of public financial resources. The Law implements the provisions of Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings. On 19 July 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to the Law of Ukraine ‘On Accounting and Financial Reporting in Ukraine’”,³ which introduces the division of groups of companies into small, medium and large groups, as provided for by Directive 2013/34/EU (“Accounting Directive”). As a rule, small and medium-sized groups are exempt from the obligation to prepare and submit consolidated financial statements.

These legislative acts further improve our approximation to the norms of Directive 2013/34/EU without affecting the key elements of the previously fulfilled obligations. The assessment remains perfect.

Corporate governance

Gradual approximation to EU rules and recommendations in the field of corporate governance

On 23 February 2022, the European Commission presented a draft Proposal for a Directive on Corporate Sustainability Due Diligence⁴, developed within the framework of the European Green Deal. Companies (except for small and medium-sized enterprises) will be obliged to conduct due diligence to address existing and potential negative impacts on human rights and the environment concerning not only in their own operations, but also in the operations of their subsidiaries and those of the value chain in established business relations.

Up till now, there have been no harmonisation acts in this sector in the EU, but at present the European Commission recognises that from now on the relevant legislation of the Member States alone is unlikely to be sufficient and effective when it comes to responding to changes in the context of sustainable development

policies. Companies operating in the domestic market and abroad need legal certainty and equal conditions for their sustainable development, and therefore, for the first time in this sector, such a significant intervention by the Union is justified.

Within the framework of the High-Level Dialogue on the European Green Deal and Ukraine’s Green Transition, Ukraine should take into account all the relevant changes in the EU in preparation for our country’s accession to the Green Deal.

In 2021 and 2022, even more positive shifts were made in some areas of this sector.

In the area of Accounting and Auditing, new necessary legislative acts were adopted aiming to improve implementation measures.

In the area of “Establishment and Operation of Companies”, the comprehensive draft Law “On Joint-Stock Companies” (No. 2493) was adopted as the Law of Ukraine in the second reading and signed by the President of Ukraine. The law will enter into force on 1 January 2023.

In the area of “Corporate Governance,” Ukraine has introduced no changes at the level of state bodies and policies, whereas the EU in February 2022 presented a draft Directive on Corporate Sustainability Due Diligence, making it the first EU harmonization act in this sector, which used to be regulated exclusively by the EU Member States. And Ukraine, as a candidate state, should already take into account these trends in the development of European legislation.

3) Law of Ukraine “On Amendments to the Law of Ukraine ‘On Accounting and Financial Reporting in Ukraine’” dated 19.07.2022: <https://zakon.rada.gov.ua/laws/show/2435-20#Text>

4) Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX-%3A52022PC0071>

Telecommunications

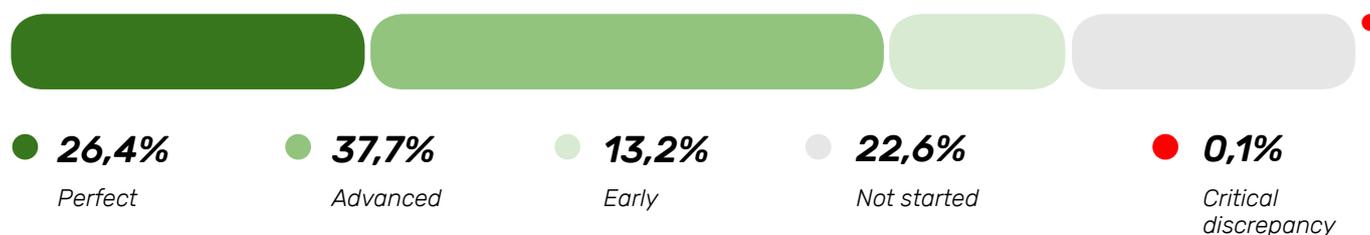


Olena Minitch



Mykyta Polatayko

Sector progress



Telecommunication Services

Over the past period from June 2021 to November 2022, two significant events took place in the field of electronic communications legislation.

The first one is amendments made to Appendix XVII-3 (Rules applicable to telecommunications services), Annex XVII to the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (the Agreement). The EU acquis referred to in Appendix XVII-3 have changed substantially since the initialling of the text of the Agreement on 30 March 2012. The EU-Ukraine Committee in Trade Configuration by its Decision No. 1/2021 of 22.11.2021 amended Appendix XVII-3.

The second change refers to the adoption on 16 December 2021 of the Law of Ukraine “On the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services”, which entered into force on 13 February 2022¹.

Next, we analyse the current and planned legislation that Ukraine has adopted or is to adopt in the field of electronic communications during the reporting period and rate the compliance of the current and planned legislation with Ukraine’s commitments as set forth in the updated Appendix on Telecommunications. The relevant regulatory documents are presented in the order of their implementation procedure in accordance with the updated Appendix XVII-3.

The analysed Ukrainian legislation includes, but is not limited to:

- The Law of Ukraine “On Electronic Communications,” which entered into force on 01.01.2022².
- The Law of Ukraine “On the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services,” which entered into force on 13.02.2022.

¹) <https://zakon.rada.gov.ua/laws/show/1971-20#Text>

²) <https://zakon.rada.gov.ua/laws/show/1089-20#Text>

- Resolutions of the Cabinet of Ministers of Ukraine, Resolutions and Decisions of the NCEC of 1 January 2022 made in pursuance of the Law of Ukraine “On Electronic Communications” and the Law of Ukraine “On the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services” (Annex 1).

Regulator (NCEC)

The long-awaited Law of Ukraine “On the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services” (hereinafter referred to as the NCEC Law) was adopted on 16.12.2021 and entered into force on 13.02.2022.

According to the NCEC Law, “the regulatory body is the central executive body with a special status formed by the Cabinet of Ministers of Ukraine. The special status of the regulatory body stems from its tasks and powers set forth by this Law and the Laws of Ukraine “On Electronic Communications,” and “On Postal Services,” and involves, inter alia, particular approaches to the organization and functioning of the regulatory body, a special procedure for appointing members of the regulatory body and terminating their powers, special procedural principles of the functioning of the regulatory body and ensuring its independence in making decisions within its statutory powers, and establishing conditions for the remuneration of members and employees of the regulatory body.”

This organizational form makes it possible to take into account most of the principles of institutionalization of an independent regulator specified in the relevant EU Directives, in addition to independent financing that can ensure adequate technical, financial and human resources.

To ensure financial independence, it is extremely important to review the Regulator’s funding source and move to the established market financing administered by the Regulator through a relevant commission. This financial model necessarily requires ensuring transparency and proportionality of the system, as well as minimizing additional administrative costs and related payments.

One of the critical matters for the successful work of the Regulator is to ensure the budgetary independence of the NCEC by providing a separately

managed budget based on the proposal of the NCEC and adopted by the NCEC, as well as the right to provide additional payments to employees to be able to compete in the employment market.

It is still necessary to enable the Regulator to establish internal procedures for making decisions on remuneration for the governing body and employees in order to increase the Regulator’s competitiveness in the employment market, attract qualified employees and bring the level of their remuneration in line with the remuneration of the relevant professionals in business entities.

Articles 18 and 19 of the NCEC Law provide almost all the necessary tools to ensure financial independence, except for a procedure for further modification of the NCEC’s funding requests after the relevant funding is included in the draft State Budget of Ukraine for the relevant year. This situation entails significant risks of reduction of budget items without the NCEC’s approval. The current situation around the adoption of the budget for 2023 clearly exposed these risks. In accordance with the adopted budget, Article 19 “Remuneration of members of the regulatory body and employees of the regulatory body staff” of the NCEC Law has been suspended for 2023, and the amount of funding has been significantly reduced.

Conclusion: 75% implementation

Directive 2002/77/EC on competition in the markets

Most of the basic requirements of Directive 2002/77/EC (of 16 September 2002) on competition have been transposed into Ukrainian law. For example, notions such as abolition of exclusive licensing rights and non-exclusive assignment of frequencies, universal service, etc. have been implemented in the Law of Ukraine “On Electronic Communications”. Obligations regarding vertically integrated public undertakings are implemented in the Law of Ukraine “On Protection of Economic Competition” and in the Commercial Code of Ukraine.

However, some of the provisions of Directive 2002/77/EC are no longer applicable in highly competitive markets and the implementation of such provisions may thwart current economic development (e.g., the provisions of Article 8 of the Directive).

Directive 2002/77/EC can be considered fully implemented in Ukrainian legislation.

Directive 98/84/EC on conditional access

The harmonisation of Ukrainian legislation with Directive 98/84/EC, the scope of which focuses on the implementation of the provisions of the EU Member States on measures against illicit devices which allow access to services free of charge, was revised in the light of the adopted Law of Ukraine “On Electronic Communications”.

The Law “On Electronic Communications” does not apply to relations associated with:

- electronic communication networks not connected to public electronic communication networks (except for radio broadcasting);
- regulation of audiovisual policy;
- analysis and editing of content transmitted through public electronic communications networks;
- provision of programming services to consumers.

However, the Law “On Electronic Communications” proposes the same definition of conditional access systems as the Directive: any technical measure, authentication system and/or arrangement whereby access to the protected service is made conditional upon subscription of any prior individual authorisation (Article 3). It is expected that the draft law “On the Protection of Services Provided Using Conditional Access” registered with the Verkhovna Rada on 27 August 2021 under No. 5870³ will ensure further implementation.

Directive 2000/31/EC on electronic commerce (2020)

The purpose of the European Directive on electronic commerce is to ensure the free movement of information society services between Member States. It covers matters such as information society services relating to the internal market, establishment of service providers, commercial communications, electronic contracts, liability of intermediaries, codes of conduct, out-of-court dispute settlement, judicial action and cooperation between Member States.

Law of Ukraine No. 675-VIII “On Electronic Commerce”⁴ dated 03.09.2015 regulates legal relations arising in the field of electronic commerce in the context of approximation to the legal framework of the EU. Despite the fact that Ukraine has officially fulfilled its commitments under the Agreement on Electronic Commerce (including Directive 2000/31), the implementation of EU legislation has not yet completed, and the rules and principles introduced by the Law of Ukraine “On Electronic Commerce” are not fully consistent with European ones.

The matter of electronic contracts was analysed from the point of view of the two aspects of Directive 2000/31/EC that are addressed in Ukrainian legislation: Article 3 of the Directive on the free movement of information society services and Articles 9-11 on the liability of intermediary service providers. In both cases, gap analysis shows that no general principle has been established to settle the matters addressed in the Electronic Commerce Directive.

According to the Action Plan for the Implementation of the Association Agreement, the Ministry of Digital Transformation is to develop a new sectoral law by 2023 based on Directive 2000/31/EC. Currently, there is no information on the status of the development of such a new law.

Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks (2021)

Directive 2014/61/EU is implemented into Ukrainian legislation through a number of laws, the main among them being Law of Ukraine No. 1834-VIII “On Access to Construction, Transport, and Electricity Facilities for the Development of Telecommunications Networks” dated 07.02.2017⁵ (as amended). This law implements the requirements of the Directive only partially and has a number of significant gaps in several areas, as described below.

1. Definitions

Absence of provisions on specific definitions in the examined primary legislation. Article 2 of the Directive requires the definitions of terms such as: “network operator,” “civil works,” “public sector body,” “public law bodies,” “overhaul works,” and “permit”. Article 2 (2) also requires that broadband access services at speeds of

3) http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72656

4) <https://zakon.rada.gov.ua/laws/show/675-19#Text>

5) <https://zakon.rada.gov.ua/laws/show/1834-19#Text>

at least 30 Mbps be included in the definition of “high-speed electronic communications network.” In the absence of such provisions in the relevant legislation, it is recommended that the national legislation be supplemented with the missing definitions and the existing ones be brought into line.

2. Coordination of civil works

Absence of provisions on coordination of civil works in the examined primary legislation. Article 5 of the Directive requires: ensuring the right to negotiate agreements concerning the coordination of civil works; ensuring that every network operator performing directly or indirectly civil works, either fully or partially financed by public means, meets any reasonable request to coordinate civil works made by undertakings providing or authorised to provide public communications networks with a view to deploying elements of high-speed electronic communications networks; and in the event of a dispute, the right to a transparent and timely resolution of the dispute. It is recommended that the primary legislation be supplemented with the missing provisions.

3. Transparency regarding planned civil works

Absence of transparency provisions concerning planned civil works in the examined primary legislation. Article 6 of the Directive requires access to minimum information (including through single information points (SIP)) on ongoing or planned civil works related to physical infrastructure for which a permit has been granted or is pending; establishes the grounds for refusing to provide such information; dispute resolution; and grounds for refusal. It is recommended that the primary legislation be supplemented with the missing provisions.

4. Provisions on the accelerated procedure for granting a permit for civil works

Absence of provisions on accelerated permit-granting procedure for civil works in the examined primary legislation. Article 7 (especially paragraph 3) of the Directive requires to ensure that the competent authorities grant or refuse permits within four months from the date of the receipt of a complete permit request; and ensure that the applicant has the right to receive compensation for the damage suffered as a result of non-compliance with the deadlines. It is recommended that the primary legislation be supplemented with the missing provisions.

5. Provisions on property rights

There are no provisions in primary or secondary legislation corresponding to Article 9 (6) of the Directive which would show clear respect for right to property of the owner of the access point or the in-building physical infrastructure in cases where the holder of a right to use that infrastructure or access point is not the owner thereof, and to the right to property of other third parties, such as landowners and building owners. It is recommended that the primary legislation be supplemented with the missing provisions.

General conclusion – single information point (SIP) and the competent authority to perform this function.

6. No single information point with the functions specified in Articles 4, 6, and 7 of the Directive has been established and no competent body at national, regional or local level has been designated to carry out the functions of a single information point as required by Article 10 (4) of the Directive.

However, under the Law on Electronic Communications, an Electronic Regulatory Platform is established and a regulatory body is appointed as the competent authority to carry out its functions. Given the fact that the Electronic Regulatory Platform does not cover the functions specified in Articles 4, 6, and 7 of the Directive, it is advisable to create a single information point as required by the Directive or to update the Electronic Regulatory Platform in line with the functions specified in the above Articles of the Directive.

7. National Dispute Settlement Body and Dispute Resolution Procedure

The national dispute settlement body required by Article 10 of the Directive has not been designated and there are no guarantees of dispute resolution for cases of coordination of civil works. Notwithstanding this, Article 23 of the Law on Electronic Communications – General Principles of Out-of-Court Dispute Resolution – sets forth the principles of out-of-court dispute resolution and the fact that the regulatory body shall resolve disputes arising between electronic communication networks and/or service providers in connection with the exercise of their rights and/or the performance of their duties, including access to electronic communication networks and infrastructure arising at any stage of the conclusion, amendment,

execution and termination of interconnection agreements. It is recommended that primary legislation be supplemented with the missing provisions concerning the appointment of national dispute resolution bodies and establish a clear procedure for resolving disputes arising from access to physical infrastructure and infrastructure sharing for network operators.

During the reporting period, a number of changes were made to related laws. We will consider these changes from the point of view of legislation harmonisation with EU acquis.

1. Law of Ukraine No. 2078-IX "On Amendments to Section V of the Final Provisions of the Law of Ukraine 'On Regulation of Urban Development Activities to Facilitate the Installation of Technical Means of Electronic Communication" adopted on 17 February 2022⁶ focuses on the regulation of urban development activities and facilitation of the installation of technical means of electronic communication. According to the Law, until 1 January 2026, paragraphs 24.3.1-5 of this Law of Ukraine "On Regulation of Urban Development" do not apply to cases when land plots with an area of up to 0.05 hectares are granted for use from state-owned or communal property lands located within villages and urban-type settlements and outside settlements (except for especially valuable lands and lands classified as recreational lands, lands used for health-related purposes, forestry purposes, as well as lands within green areas of settlements, intra-neighbourhood territories (inter-district green areas, landscaping elements, sports grounds, grounds for recreation and social services), for the installation, construction, operation and maintenance of mobile communication base stations, other technical means and/or electronic communications (except linear facilities). This provision contributes to ensuring the availability of locations for electronic communications.
2. Law of Ukraine No. 2254-IX "On Amendments to Certain Laws of Ukraine as Regards Priority Measures for Reforming the Field of Urban Development" dated 12 May 2022⁷ establishes a fee of UAH 1 for access to infrastructure elements of access facilities for the period of the legal regime of martial law or state of emergency

in Ukraine or in its certain areas and within one year after its termination or cancellation.

3. Law of Ukraine No. 2530-IX "On Amendments to Certain Legislative Acts of Ukraine to Ensure Conditions for the Restoration and Development of Electronic Communication Networks" dated 16.08.2022⁸ introduces the definition of the infrastructure access seeker and cable duct infrastructure of electronic communication networks, as well as addresses force majeure circumstances of access for the period of the legal regime of martial law and state of emergency in Ukraine or its individual territories and within one year after its termination or cancellation.
4. Draft Law No. 7544 "On Amendments to the Law of Ukraine 'On Access to Construction, Transport, Electricity Facilities for the Development of Electronic Communication Networks' (regarding the provision of conditions for the development and restoration of electronic communication networks)" dated 08.07.2022 addresses the force majeure circumstances associated with access and prices under martial law in the de-occupied territories. It does not address systemic gaps in the adaptation of legislation to EU acquis.

The draft amendments to Resolution No. 853 of the Cabinet of Ministers of Ukraine "On Amendments to the Rules for Granting Access to Infrastructure of Electric Power Facilities" dated 18 July 2018 (sent to the NCEC by the Ministry of Energy of Ukraine as Letter No. 26/1.1-4.2-14262 dated 30 September 2022) have not been found in public access and, hence, it is impossible to analyse them in terms of the adaptation of legislation to the provisions of the relevant EU Directives.

The draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Governing Land Relations with regard to Simplification of the Procedure for Allocation of Land Plots for the Development of Digital Infrastructure" – sent by the NCEC to the Ministry of Digital Transformation of Ukraine as Letter No. 1/04-1-8867 dated 05.10.2022 – has not been found in public access, and, hence, it is impossible to analyse it in terms of the adaptation of legislation to the provisions of the relevant EU Directives.

Conclusion: all the analysed amendments to the Law of Ukraine "On Access to Construction, Transport,

6) <https://zakon.rada.gov.ua/laws/show/2078-IX#Text>

7) <https://zakon.rada.gov.ua/laws/show/2254-20#n209>

8) <https://zakon.rada.gov.ua/laws/show/2530-20#n32>

and Electricity Facilities for the Development of Electronic Communication Networks” during the reporting period are aimed at addressing the priority challenges associated with the aggression of the Russian Federation against Ukraine and do not offer any systemic changes aimed at adapting legislation to EU acquis.

Regulatory Framework for Radio Spectrum Policy (2022)

The documents listed in Part B (Regulatory Framework for Radio Spectrum Policies) of Annex 1 to Appendix XVII-3 include the policy-related Decision 676/2002/EC of 7 March 2002 on a regulatory framework for radio spectrum policy and Decision 243/2012/EU of 14 March 2012 establishing a multiannual radio spectrum policy programme. All the principles of Decisions 676/2002 and 243/2012 were implemented in the Law of Ukraine “On Electronic Communications”, and, in particular, in Articles 46 to 63 (Section IX. Use of radio spectrum).

The listed documents also include other decisions of the European Commission and implementation decisions of the European Commission concerning the operation of mobile communication systems on board ships and aircraft or technical conditions of the use and harmonisation of important frequency bands within the EU.

Significant changes that took place in 2021 include Decision No. 930-p dated 04.08.2021 concerning Decree No. 1409-p of the Cabinet of Ministers of Ukraine “On Approval of Action Plan for the Introduction of the Fifth-Generation Mobile Communication System in Ukraine” dated 11 November 2020⁹. This decision excluded the range of 3400–3800 MHz from the action plans for the rollout of the 5th-generation mobile communication system in Ukraine, thereby cancelling the implementation of the EU decisions on the harmonisation of the spectrum use in the range of 3400–3800 MHz.

Directive 2018/1972 establishing the European Electronic Communications Code (EECC) (2024)

In view of the updated Appendix XVII-3, this analysis was carried out to assess the degree of approximation of the sectoral legislation of Ukraine to Directive 2018/1972 (European Electronic Communications

Code, hereinafter the EECC)¹⁰, taking into account the timetable for the implementation of the Directive until 31 December 2024. Where appropriate, the EECC analysis was carried out in the light of the measures presented in the EU Cybersecurity of 5G networks – EU Toolbox of risk mitigating measures (5G TBOX) to properly manage the risks to the security of networks and services. It should be noted that 5G TBOX includes measures related to Articles 64–70 of Section X of the Law of Ukraine “On Electronic Communications”, the scope and content of which are not part of the EECC.

The following legislative acts of Ukraine have been revised.

- The Law of Ukraine “On Electronic Communications” was adopted on 16.12.2020 and entered into force on 01.01.2022 (hereinafter referred to as the EC UKR) (as amended);
- The Law of Ukraine “On the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services”, effective from 13.02.2022 (hereinafter referred to as the NCEC Law).

Conclusions concerning the compliance of the articles of the EC UKR with EECC provisions

Article 5 of the EECC – National regulatory and other competent authorities

This provision of the EECC Directive seems to be fully implemented into the current Law of Ukraine “On Electronic Communications”. It should be noted that the formalization of a wide range of powers, tasks and responsibilities – including those related to the security of 5G networks – in the NCEC Law, the radio spectrum and the provision of postal services, might mean that the NCEC will have to upgrade its capacity in terms of the number, experience and structure of its personnel.

Article 17 of the EECC – Accounting separation and financial reports

Article 17 of the EECC requires, inter alia, that undertakings providing public electronic communications networks or publicly available electronic communications services with an annual turnover of more than EUR 50 million which have special or exclusive rights for the provision of services

9) <https://zakon.rada.gov.ua/laws/show/1409-2020-r#Text>

10) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972>

in other sectors (a) keep separate accounts for the activities associated with the provision of electronic communications networks or services, and (b) have structural separation for the activities associated with the provision of electronic communications networks or services.

These provisions do not seem to have been implemented in the EC UKR. It is not clear whether undertakings operating in the media sector or the utility sector that also provide electronic communication services, such as internet access as providers, are required to adopt the relevant accounting or functional division.

Article 40 of the EEECC – Security of networks and services and 41 – Implementation and Enforcement

These two articles of Title V of the EEECC focus on security. Their scope corresponds in part to Article 31 (Ensuring the security of electronic communications networks) of the EC UKR, which refers to ordinary circumstances. Special circumstances that may affect the security of networks are described and specified in Article 32 (Operational and technical control of electronic communications networks in emergency and martial law conditions).

In order to ensure the integrity of networks, continuous provision of electronic communication services, and prevention of unauthorized access to electronic communication networks, Article 31 of the EC UKR assigns responsibility for ensuring the security and stability of networks (both at the design stage and at the operational stage) to suppliers of electronic communication networks and/or services.

However, the EEECC in Articles 40 and 41 describes it is the responsibility of the State to ensure that providers take the appropriate and proportionate technical and organisational measures to appropriately manage the risks posed to the security of networks and services. In particular, the EEECC specifies measures, including encryption where appropriate, to be taken by providers to prevent and minimise the impact of security incidents on users and on other networks and services, as well as require that, in all circumstances, providers of public electronic communications networks or of publicly available electronic communications services shall notify without undue delay the competent authority of a security incident that has had a significant impact on the operation of networks or services and thereby inform their users

of any possible protective measures or remedies they may take. Among other things, Article 41 specifies that the competent authority shall have the power to issue mandatory instructions to providers, including those relating to measures necessary to eliminate a security incident or prevent its occurrence when a significant threat is identified, and set time limits for their fulfilment.

Article 60 of the EEECC – Rights and obligations of undertakings

In accordance with Article 34 of the EC UKR (Requirements for access to electronic communications networks and their infrastructure), operators have the right to negotiate and conclude agreements among themselves on the technical, economic and organizational conditions of access in accordance with the law. However, the relevant Article 34 of the EC UKR appears to be missing the last provision of Article 60 (Rights and obligations of undertakings) as regards the possibility where a State may provide for negotiations to be conducted through neutral intermediaries when conditions of competition so require.

Article 61 of the EEECC – Powers and responsibilities of the national regulatory and other competent authorities with regard to access and interconnection

In accordance with Article 61 (1) of the EEECC, national regulatory authorities or other competent authorities shall act independently to perform their responsibilities to encourage or ensure adequate access and interconnection. In this regard, Article 35 of the EC UKR specifies that the national regulator has the right to make decisions on granting access – but not on interconnection – on the basis of an out-of-court settlement mechanism only upon request.

Article 61 (2) of the EEECC (Powers and responsibilities of the national regulatory and other competent authorities with regard to access and interconnection) stipulates that national regulatory authorities or other competent authorities shall have the right to impose obligations on relevant undertakings providers of number-independent interpersonal communications services which reach a significant level of coverage and user uptake, to make their services interoperable “in justified cases, where end-to-end connectivity between end-users is endangered due to a lack of interoperability between interpersonal communications services, and to the extent necessary

to ensure end-to-end connectivity between end-users." The relevant Article 35 of the EC UKR does not grant such powers to the Ukrainian authorities.

Article 67 of the EECC – Market analysis procedure

According to Article 67 of the EECC, national regulatory authorities shall determine whether a relevant market is such as to justify the imposition of the regulatory obligations set out in the EECC. When conducting such analysis, national regulatory authorities shall consider developments from a forward-looking perspective in the absence of regulation imposed in that relevant market. The relevant Article 82 of the EC UKR (Market analysis procedure) does not seem to contain a requirement for a forward-looking perspective.

Articles 84–92 of the EECC – Universal service obligations

While Article 99 of the EC UKR (Article 99 Universal electronic communication services) is consistent with Article 84 of the EECC, there are differences in the mechanisms chosen to implement universal service in order to ensure the social integration of economically or geographically disadvantaged users. Since these mechanisms, described in detail in Articles 100–103 of the new Law "On Electronic Communications", differ from those envisaged by the EECC, their effectiveness in translating the European Code in the light of the Association Agreement can be assessed in a future revision of the implementation of the EC UKR.

It should also be noted that two points of ANNEX V of the EECC (Minimum set of services which the adequate broadband internet access service shall be capable of supporting), namely (6) – "job searching and job searching tools" and (7) – "professional networking", are not included in the relevant list of services in part two of Article 99 of the EC UKR. If these two missing services are included, it may also be appropriate to adopt Article 84 (5) of the EECC, which is also missing from the Ukrainian text, namely "Member States may extend the scope of application of this Article to end-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations."

Article 98 of the EECC – Exemption of certain microenterprises

Title III (End-User Rights) shall not apply to microenterprises providing number-independent

interpersonal communications services unless they also provide other electronic communications services. This principle is absent in the Law of Ukraine "On Electronic Communications".

Article 102 of the EECC – Information requirements for contracts

Article 105 (6) (Information on the provision of electronic communication services) of the EC UKR, which provides for the user's right to receive information about contracts in a convenient form, does not require that information be provided on a specific durable medium or, where provision on a durable medium is not feasible, in an easily downloadable document made available by the provider as required by Article 102 of the EECC. Neither does it require that the provider shall expressly draw the consumer's attention to the availability of that document and the importance of downloading it for the purposes of documentation, future reference and unchanged reproduction.

Article 103 of the EECC – Transparency, comparison of offers and publication of information

While the comparison tool referred to in Article 103 (2) of the EECC obliges suppliers to clearly disclose the owners and operators of the comparison tool and to use clear and unambiguous language, the relevant Article 110 (4) of the EC UKR does not provide for any of these conditions.

Article 105 of the EECC – Contract duration and termination

Article 105 of the EECC specifies that the conditions and procedures for contract termination do not act as a disincentive to changing service provider and that contracts concluded between consumers and providers of publicly available electronic communications services and do not mandate a commitment period longer than 24 months. However, Article 112 of the EC UKR (Conclusion and termination of agreements on the provision of electronic communication services) does not contain the above requirement.

Furthermore, contrary to the provision of Article 105 of the EECC, the relevant Article 112 of the EC UKR does not give users the right to terminate automatically prolonged contracts at any time with a maximum one-month notice period and without incurring any costs, nor does it include the provision that, where

an end-user has the right to terminate a contract before the end of the agreed contract period no compensation shall be due by the end-user other than for retained subsidised terminal equipment.

Article 106 of the EECC – Provider switching and number portability

Article 106 (5) of the EECC clearly states that operators whose access networks or facilities are used by either the transferring or the receiving provider, or both, shall ensure that there is no loss of service that would delay the switching and porting process. Article 113 (Switching of provider of electronic communication services and provision of number portability services) of the EC UKR does not provide for such an obligation.

Article 106 (7) of the EECC requires that Member States lay down rules on penalties in the case of a provider's failure to comply with the obligations laid down in this Article, including delays in, or abuses of, porting by, or on behalf of, a provider. However, such fines are not provided for in Article 113 of the EC UKR.

Article 113 of the EECC – Interoperability of car radio and consumer radio receivers and consumer digital television equipment

The Law of Ukraine "On Electronic Communications" does not provide for interoperability of car radio and consumer radio receivers and consumer digital television equipment.

Article 114 of the EECC – 'Must carry' obligations

The Law of Ukraine "On Electronic Communications" does not directly provide for 'must carry' obligations.

Analysis of amendments to the Law of Ukraine "On Electronic Communications":

- No. 1971-9 dated 16.12.2021 – Amendments to the EC UKR in relation to the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services, its powers, and clarification of certain aspects of network quality monitoring, etc. These changes are aimed at clarifying the rules, definitions and concepts regarding the powers of the regulatory body and contribute to the adaptation of the EC UKR to the EU legislation.

- No. 2137-9 dated 15.03.2022 – amendments to Article 121 "Conditions for granting access to information in cases provided for by law". The list of cases when there are legal grounds for access to information about the consumer, about the facts of electronic communication service provision, including data processed for the purpose of transmitting such information in electronic communication networks, is expanded to include cases when there is a relevant decision of a prosecutor, except for a court and an investigating judge.
- No. 2240-9 dated 03.05.22 – changes in the organization of work of suppliers of electronic communication networks and/or services with the National Centre for Operational and Technical Management of Electronic Communication Networks of Ukraine under a state of emergency or martial law.
- No. 2370-9 dated 08.07.2022 – postponement for one year of the transfer of powers to the Ministry of Digital Affairs as regards the functions of the central executive body in the field of electronic communications. From the point of view of further development of the field, this is a negative event, which will delay the institutional capacity of the Ministry of Digital Transformation to systematically and competently engage in the development of the area of electronic communications.
- No. 2530-9 dated 16.08.2022 – amendments to Article 2. Definition of terms, paragraph 28, where the definition of electronic communication (telecommunication) now includes the word "електрозв'язок" (telecommunication) in parenthesis.

Conclusion: the changes to the EC UKR that took place in 2022 are aimed at solving urgent issues in the field of electronic communications under martial law.

The implementation of the Law of Ukraine "On Electronic Communications" as regards the development of second-level regulations began in early 2022 due to the intense activity of the newly formed NCEC. The list of resolutions adopted by the NCEC during the reporting period is available in Annex 1.

Conclusion: the degree of adaptation to EU acquis is 55%.

Regulation 2015/2120/EU: concerning open internet access (2025)

In view of the updated Appendix XVII-3, this analysis was carried out to assess the degree of approximation of Ukraine's legislation to Articles 2-6 to Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access in view of the planned full implementation of its provisions by 31 December 2025.

Conclusion: the Directive is fully implemented in Ukrainian legislation.

Trust services

During the study period, there were no changes in the subsector.

In 2021 and 2022, the following steps were taken to fulfil the relevant commitments:

- A new version of the Rules of Procedure for the central certification body was approved¹¹;
- Requirements for technical means, processes of their creation, use and functioning as part of information and telecommunications systems in the provision of qualified electronic trust services were adopted¹².

In the period from 2018 to the second half of 2022, Ukraine made significant progress with regard to the fulfilment of its commitment under the Association Agreement in the field of trust services, however, it is necessary to develop and implement a plan for the implementation of the updated Appendix XVII-3, and therefore the status of fulfilment of the relevant commitments can be rated as advanced.

11) <https://zakon.rada.gov.ua/en/laws/show/z1313-21#n9>

12) <https://zakon.rada.gov.ua/en/laws/show/z1492-21#n2>

ANNEX 1 – NCEC RESOLUTIONS

Directive (EU) 2018/1972

Implementation into the Law of Ukraine “On Electronic Communications”

№	Resolutions/ Decisions	Laws of Ukraine
1	NCEC Decision (No. 205, dated 02.11.2022) On Approval of the Draft Resolution of the NCEC ‘On Approval of the Rules of Amateur Radiocommunication of Ukraine’	In accordance with Article 46 (5) of the Law of Ukraine “On Electronic Communications”, Article 4 (4.1.3 and 4.1.i) and in pursuance of Article 15 of the Law of Ukraine “On the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services”
2	NCEC Decision (No. 201, dated 26.10.2022) On Officials Authorized by the NCEC to Carry out State Supervision (Control), Conduct Joint Activities with Law Enforcement Agencies, Draw up Protocols and Consider Cases of Administrative Offenses	Law of Ukraine “On the National Commission...” Law of Ukraine “On Electronic Communications”
3	NCEC Decision (No. 200, dated 26.10.2022) On Approval of the Draft Resolution of the NCEC ‘On Approval of the Procedure for Provision by the Controlling Authority of Information about Non-Payment or Incomplete Payment of the Rent for the Use of Radio Frequency Resource (Spectrum) to the State Budget of Ukraine’	In accordance with Article 54 (7.2) of the Law of Ukraine “On Electronic Communications” and Article 4 (4) of the Law of Ukraine “On the National Commission...”
4	NCEC Decision (No. 198, dated 26.10.2022) On Determining the Possibility of Using RE and RED in the Territory of Ukraine	In accordance with Article 65 of the Law of Ukraine “On Electronic Communications” and the Regulation on the Register of Radio Equipment and Radiation Emitting Devices
5	NCEC Decision (No. 189, dated 12.10.2022) On Approval of the Draft Resolution of the NCEC ‘On Approval of the Procedure for Detection, Elimination and/or Termination of Radio Interference Sources and their Documentation at the Request of Users’	In accordance with subparagraph “e” (Article 4.1) and subparagraph “e” (Article 4.7) of the Law of Ukraine “On the National Commission...” and Article 73 (2) of the Law of Ukraine “On Electronic Communications”
6	NCEC Resolution (No. 179, dated 05.10.2022) On Approval of the Procedure for Taking Immediate Temporary Measures to Eliminate Threats to Public Security and Public Health, and Risks of Creating Serious Economic or Operational Problems for Radio Spectrum Users	In accordance with Article 14 (4) of the Law of Ukraine “On Electronic Communications” and Article 4 (4.1) of the Law of Ukraine “On the National Commission...”
7	NCEC Decision (No. 174, dated 28.09.2022) On Approval of the Draft Resolution of the NCEC ‘On Approval of the Procedure for Interaction of the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services with the General Staff of the Armed Forces of Ukraine to Eliminate the Effects of Radio Interference Sources in General Use Radio Frequency Bands for the Radio Equipment of Special Users’	In accordance with Article 15 of the Law of Ukraine “On the National Commission...” and Article 73 (4) of the Law of Ukraine “On Electronic Communications”
8	NCEC Decision (No. 173, dated 28.09.2022) On Approval of the Draft Resolution of the NCEC ‘On Approval of the Procedure for Holding a Tender or Auction for Obtaining Licenses for Radio Spectrum Use’	In accordance with Articles 59-61, Article 22 (7) of the Law of Ukraine “On Electronic Communications” and Article 4 (4.1.д) of the Law of Ukraine “On the National Commission...”

9	NCEC Resolution (No. 159, dated 14.09.2022) On Approval of the Methodology for Calculating the Amount of Fines for Violation of the Legislation on Electronic Communications and the Radio Spectrum	In accordance with Article 126 (1.5 and 1.6) of the Law of Ukraine "On Electronic Communications" and Article 4 (4.1) of the Law of Ukraine "On the National Commission..."
10	NCEC Resolution (No. 140, dated 10.08.2022) On Approval of the Rules for Interconnection of Electronic Communication Networks	In accordance with Article 33 of the Law of Ukraine "On Electronic Communications" and Article 4 (4.10.б) of the Law of Ukraine "On the National Commission..."
11	NCEC Resolution (No. 149, dated 17.08.2022) On Approval of the Procedure for Maintaining the Register of Radio Frequency Assignments to General Users	In accordance with Article 68 (4, 5, and 20) of the Law of Ukraine "On Electronic Communications", Article 4 (4.1.p) of the Law of Ukraine "On the National Commission..."
12	NCEC Resolution (No. 133, dated 03.08.2022) On Approval of the Procedure for the Performing and Provision of Electromagnetic Compatibility Calculation for General Users	In accordance with Article 69 (1 and 3), Article 72 (8) of the Law of Ukraine "On Electronic Communications" and Article 4 (4) of the Law of Ukraine "On the National Commission..."
13	NCEC Decision (No. 127, of 27.07.2022) On Approval of the Draft NCEC Resolution 'On Approval of the Procedure for Taking Immediate Temporary Measures to Eliminate Threats to Public Security and Public Health, and the Risks of Creating Serious Economic or Operational Problems for Radio Spectrum Users'	In accordance with Article 14 (4), Article 22 (7) of the Law of Ukraine "On Electronic Communications", and in pursuance of Article 15 of the Law of Ukraine "On the National Commission..."
14	NCEC Decision (No. 118, dated 20.07.2022) On Approval of the Draft Resolution of the NCEC 'On Approval of the Procedure for Identification of End Users of Services'	In accordance with Article 104 (5) of the Law of Ukraine "On Electronic Communications" and Article 4 (4.1) of the Law of Ukraine "On the National Commission..."
15	NCEC Resolution (No. 109, dated 13.07.2022) On Approval of the Methodology for Determining the Fee for Access to Telecommunication Cable Duct Infrastructure Facilities	In accordance with Article 10 (1.2) of the Law of Ukraine "On Access to Construction, Transport, Electricity Facilities for the Development of Electronic Communication Networks" and Article 4 (4.1) of the Law of Ukraine "On the National Commission..."
16	NCEC Decision (No. 105, dated 13.07.2022) On Approval of the Draft Resolution of the NCEC 'On Approval of the Regulation on the Distribution, Use and Accounting of Numbering Resources of Public Electronic Communication Networks'	In accordance with Articles 74-79 of the Law of Ukraine "On Electronic Communications," Article 4 (3.2 and 4.9.ж), and in pursuance of Article 15 of the Law of Ukraine "On the National Commission..."
17	NCEC Resolution (No. 96, dated 06.07.2022) On Approval of the Procedure for Maintaining the Register of Licenses for the Use of the Radio Spectrum	In accordance with Articles 48, 49, and 51-54 of the Law of Ukraine "On Electronic Communications" and Article 4 (4.1.п) of the Law of Ukraine "On the National Commission..."
18	NCEC Resolution (No. 95, 06.07.2022) On Approval of the Procedure for Establishing the Term of the License for the Use of the Radio Spectrum	In accordance with Article 50 (2) of the Law of Ukraine "On Electronic Communications" and Article 4 (4.1) of the Law of Ukraine "On the National Commission..."
19	NCEC Decision (No. 93, dated 06.07.2022) On Approval of the Draft NCEC Resolution 'On Approval of the Procedure for Performing Radio Frequency Monitoring of the Use of the Radio Spectrum by General Users and Payment for Its Performance in General Use Radio Frequency Bands'	In accordance with Article 45 (1.2), Article 47 (1.7) of the Law of Ukraine "On Electronic Communications" Article 4 (4.1 e and 4.7. е), and in pursuance of Article 15 of the Law of Ukraine "On the National Commission..."
20	NCEC Decision (No. 40, dated 11.05.2022) On Approval of the Draft Resolution of the NCEC 'Matters of Using the Radio Spectrum in the Radio Equipment of the Ship Station'	In accordance with Article 46 (3 and 4) and Article 63 (4) of the Law of Ukraine "On Electronic Communications", Article 4 (4) and Article 15 (2) of the Law of Ukraine "On the National Commission..."
21	NCEC Resolution (No. 30, dated 20.04.2022) Matters of Maintaining the Register of Suppliers of Electronic Communication Networks and Services registered with the Ministry of Justice of Ukraine on 7 May 2022 under No. 502/37838	In accordance with Articles 16 and 17 of the Law of Ukraine "On Electronic Communications" and Article 4 (4.1) of the Law of Ukraine "On the National Commission..."

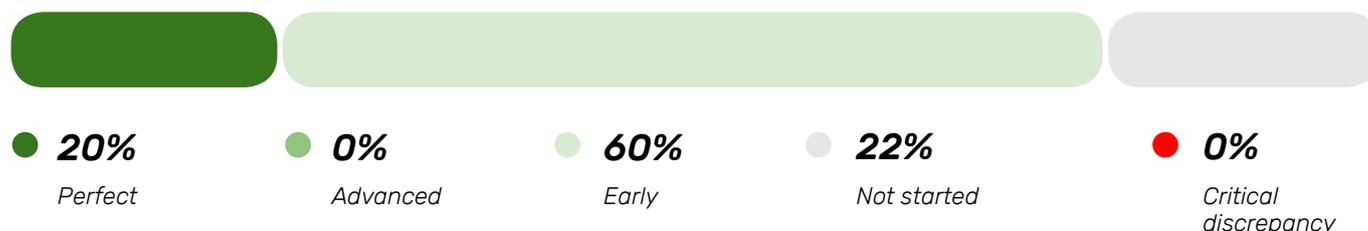
22	<p>NCEC Decision (No. 1, dated 18.02.2022)</p> <p>On approval of the Rules and Regulations of the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services</p>	<p>In accordance with Articles 4 and 14, paragraphs 4 – 6 of Section III “Final and Transitional Provisions” of the Law of Ukraine “On the National Commission ...”, taking into account the requirements of the Law of Ukraine “On Electronic Communications”</p>
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Audio-Visual Policy



Ihor Rozkladai

Sector progress



Creation of a modern market for audiovisual services in accordance with EU requirements

The main document that the EU is guided by in the field of audiovisual services is the Audiovisual Media Services Directive (AVMSD)¹. Article 397 of the Association Agreement provides for “gradual approximation to the EU law and regulatory framework and international instruments in the area of audiovisual policy shall be carried out in particular as set out in Annex XXXVII to this Agreement” – that is, in accordance with Directive No. 2010/13/EU within 2 years from the date of entry into force of the Agreement, i.e., by 1 September 2019.

During the implementation period, the above Directive was replaced with Directive No. 1808/2018/EU², which the EU countries have to implement into their national legislation within 21 months from the date of its entry into force.

One of the key advantages of the implementation of the Directive is the opening of full access to the opportunities of the Creative Europe program, which is a powerful incentive for the development of audiovisual products, both in cooperation with EU partners and independently. In addition, the prepared national framework, in case of full membership in the EU, makes it possible to become a member of the European Regulators Group for Audiovisual Media Services (ERGA)³ and use the Commission’s support in the situations set out in the Directive.

In 2022, Ukraine received the EU candidate status, subject to fulfilment of the previous seven commitments in the field of justice, anti-corruption, etc. One of these commitments is combatting the influence of vested interests by adopting a media law that will harmonise Ukraine’s legislation with the EU Directive on audiovisual media services and

1) <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/programmes/crea2027>

2) Directive (EU) No 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive No 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities: <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

3) <http://erga-online.eu/>

strengthen the independent regulator⁴. Thus, the EU requirements now contain a direct reference to the media draft law.

Approximation of legislation is early. The main implementing act in the national legislation should be the Law of Ukraine "On Media" (No. 2849-IX, dated 13.12.2022)⁵. The law enters into force on 31.03.2023, but some of its provisions will come into force later.

The law changes approaches to licensing, restricting this procedure exclusively to terrestrial broadcasting (whereas for other cases the existing licensing procedures are replaced with registration), expands and harmonises the regulator's powers to comply with Article 30 of the Directive with regard to efficiency, independence and accountability, introduces a mechanism of co-regulation and development of codes of conduct, and lays down the principles of countering all forms of hate and military aggression.

The draft law was adopted in first reading on 30 August 2022, and more than 2,000 amendments were received before second reading. In addition, the draft law was analysed by European experts from both the Council of Europe and the EU for its compliance with the Directive and general standards of freedom of speech. Another issue that arose in this regard was the need for urgent development of a number of amendments to the Law of Ukraine "On Advertising" as a prerequisite for the full implementation of the Directive and the recognition of the fulfilment of the commitments in the field of audiovisual services. The main difficulty in adopting such changes is that they should involve aligning the terms and definitions (including for the entities providing media services) in the draft law on advertising with those used in the law on media.

Practical implementation is for the most part early. It is impossible to adopt by-laws, namely acts of the National Council of Ukraine on Television and Radio Broadcasting, without adopting the relevant law.

4) https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232

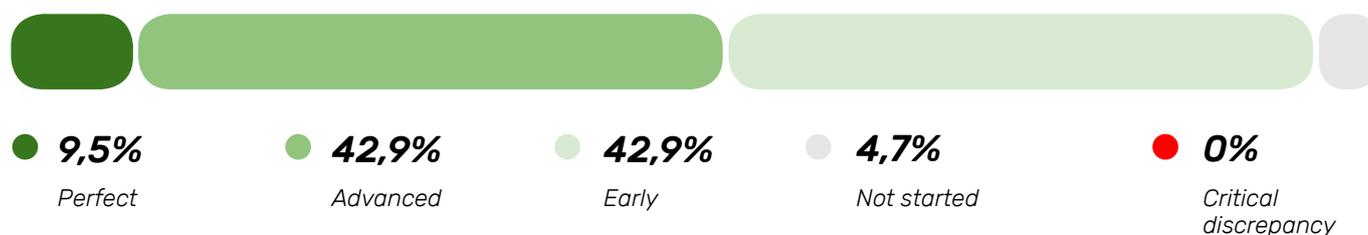
5) <https://zakon.rada.gov.ua/laws/show/2849-20#Text>

Agriculture and Rural Development



Yulia Voskobiinyk

Sector progress



Despite the war in the country, a lot has been done during the reporting period to approximate Ukrainian legislation to EU acquis, including the adoption of:

1. laws such as:

- Law of Ukraine No. 2572-IX “On the Specific Features of Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs, Protection of Rights and Application of Quality Schemes, Including Traditional Specialities Guaranteed for Agricultural Products and Foodstuffs” dated 6 September 2022¹;
- Law of Ukraine No. 2763-IX “On Amendments to Certain Legislative Acts of Ukraine to Align the Legislation in the Field of Protection of Plant Variety Rights and Seed and Planting Material with the Provisions of the Legislation of the European Union” dated 16 November 2022²;

1) <https://zakon.rada.gov.ua/laws/show/2572-20#Text>

2) <https://zakon.rada.gov.ua/laws/show/2763-20#Text>

- Law of Ukraine No. 2800-IX “On Geographical Indications of Spirit Drinks” dated 1 December 2022³;

2. government draft laws in first reading with a reduced preparation period:

- “On State Regulation of Genetic Engineering Activities and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security” (reg. No. 5839)⁴;
- “On Amendments to the Code of Ukraine on Administrative Offences to Increase Responsibility with Regard to the Handling of Genetically Modified Organisms” (reg. No. 5840)⁵.

3. regulations such as:

- Resolution No. 1005 of the Cabinet of Ministers of Ukraine “On Approval of the Criteria for Assessing the Degree of Risk from Economic Activities

3) <https://itd.rada.gov.ua/en/billInfo/Bills/Card/38701>

4) <https://itd.rada.gov.ua/en/billInfo/Bills/Card/27529>

5) <https://itd.rada.gov.ua/en/billInfo/Bills/Card/27530>

Performed by the Certification Body in the Field of Organic Production, Circulation and Labelling of Organic Products, and for Determining the Frequency of Planned State Supervision (Control) Measures by the State Service for Food Safety and Consumer Protection” dated 22 September 2021⁶;

- Resolution No. 102 of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Determining the Frequency of Planned State Control Measures over the Compliance of Undertakings’ (Facilities’) Activities with the Legal Requirements in the Field of Organic Production, Circulation and Labelling of Organic Products as carried out by the State Service for Food Safety and Consumer Protection, and the Criteria for Assessing the Degree of Risk from Their Performance” dated 9 February 2022⁷;
- Resolution No. 1274 of the Cabinet of Ministers of Ukraine “On Amendments to the Procedure for Certification, Issuance and Revocation of Certificates for Seeds and/or Planting Material” dated 11 November 2022⁸;
- Order No. 326 of the Ministry of Agrarian Policy “On Approval of the Procedure for Confirming the Expertise of the Inspector for Organic Production and/or Circulation of Organic Products in the Field of Organic Production” dated 2 June 2022⁹;
- Order No. 795 of the Ministry of Agrarian Policy “On Approval of the Requirements for Coffee Extracts and Chicory Extracts” dated 17 October 2022¹⁰, etc.

Quality policy

Improvement of the system of geographical indications for foodstuffs and agricultural products

Regulatory approximation is advanced.

On 6 September 2022, the Law of Ukraine “On the Specific Features of Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs,

Protection of Rights and Application of Quality Schemes, Including Traditional Specialities Guaranteed for Agricultural Products and Foodstuffs” was adopted¹¹, which sets forth the legal and organizational principles of quality schemes for agricultural products and foodstuffs, the approaches to preparation for registration, registration, use and protection of geographical indications for agricultural products (agricultural goods) and foodstuffs, control over such geographical indications, as well as the legal framework for the protection of traditional specialities guaranteed, including preparation for registration, registration, use, protection and control.

As regards practical implementation, no significant progress has been made during the period under study.

Thus, with regard to regulating geographical indications, practical implementation is at an advanced stage – due to the regulatory legal acts adopted in previous periods pursuant to the framework Law of Ukraine “On Legal Protection of Geographical Indications”¹².

As for the regulation of traditional specialities guaranteed, practical implementation is at an early stage due to the adoption of the Law of Ukraine “On the Specific Features of Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs, Protection of Rights and Application of Quality Schemes, Including Traditional Specialities Guaranteed for Agricultural Products and Foodstuffs” in the second half of 2022.

Improvement of the legal protection of geographical indications and designations of origin of agricultural products and foodstuffs in accordance with the requirements of EU law

Regulatory approximation for this commitment is advanced.

The Law of Ukraine “On the Specific Features of Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs, Protection of Rights and Application of Quality Schemes, Including Traditional Specialities Guaranteed for Agricultural Products

6) <https://zakon.rada.gov.ua/laws/show/1005-2021-%D0%BF#Text>

7) <https://zakon.rada.gov.ua/laws/show/102-2022-%D0%BF#Text>

8) <https://zakon.rada.gov.ua/laws/show/1274-2022-%D0%BF#Text>

9) <https://zakon.rada.gov.ua/laws/show/z0669-22#Text>

10) <https://zakon.rada.gov.ua/laws/show/z1356-22#Text>

11) <https://zakon.rada.gov.ua/laws/show/2572-20#Text>

12) <https://zakon.rada.gov.ua/en/laws/show/752-14#top>

and Foodstuffs” adopted on 6 September 2022¹³ entered into force on 1 October 2022. This Law, inter alia, provides for the need to specify detailed rules of origin and use of fodder when naming goods of animal origin, as well as to establish additional requirements for raw materials and fodder for animals.

Practical implementation has not started.

Improvement of the legislation on grapes and grape wine in accordance with the requirements of EU law

Approximation of legislation is early.

On 8 September 2021, the draft Law of Ukraine “On Amendments to the Law of Ukraine ‘On Grapes and Grape Wine’” was submitted to the Verkhovna Rada of Ukraine by MPs (reg. No. 6010)¹⁴.

This draft law was developed in order to align the norms of sectoral legislation with the requirements of international rules for the production of wine products and to implement the provisions of Regulations (EU) No. 1308/2013, No. 251/2014, 2019/33, 2018/274 and Delegated Regulation (EU) 2018/273 on winemaking practices, labelling and protection of geographical indications of wine products and control in the field of viticulture and winemaking, as well as facilitating entrepreneurship and deregulation in the grape and wine industry, creating favourable conditions for the development of undertakings of all forms of ownership and production of high-quality products with special properties due to the environmental conditions of the territory of origin.

The purpose of the draft Law was to create a unified state information system “Viticulture and Winemaking Register,” which is supposed to include information on: grape producers; producers of wine products; vine plots; and mandatory declarations and other data on wine products that must be entered according to this Law, which will ensure effective administration and state support for the field of viticulture and winemaking.

According to the expert opinion of the Verkhovna Rada Committee on Ukraine’s Integration into the EU, the draft law was in line with the law of the European Union. However, on 6 September 2022, the draft Law of Ukraine “On Amendments to the Law of Ukraine

‘On Grapes and Grape Wine’” (reg. No. 6010) was withdrawn from consideration.

Practical implementation has not started due to the lack of a proper regulatory framework.

Improvement of the legal protection of geographical indications and designations of origin of agricultural products and foodstuffs in accordance with the requirements of EU law on spirit drinks

Legislative approximation in relation to this commitment is advanced.

The CMU Draft Law of Ukraine “On Geographical Indications of Spirit Drinks” (reg. No. 6480)¹⁵ was adopted by the Verkhovna Rada of Ukraine on 1 December 2022.

The law, inter alia, aims: to define the concept of “spirit drinks” and to establish a common classification of categories of spirit drinks and requirements for them; to introduce requirements for ethyl alcohol and distillates used for the production of spirit drinks; to ensure compliance with the rules for the definition, description, presentation and labelling of spirit drinks, including those with geographical indications; to ensure compliance with the requirements for official names of spirit drinks, etc.

The Law is currently pending signature of the President of Ukraine.

Practical implementation has not started due to the lack of a proper regulatory framework.

Genetically modified crops

Implementation of the rules and principles to ensure the coexistence of genetically modified crops with conventional and organic farming

Legislative approximation with regard to this commitment is early.

On 16 November 2022, the government draft Law of Ukraine “On State Regulation of Genetic Engineering Activities and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security”

13) <https://zakon.rada.gov.ua/laws/show/2572-20#Text>

14) <https://itd.rada.gov.ua/en/billInfo/Bills/Card/27611>

15) <https://itd.rada.gov.ua/en/billInfo/Bills/Card/38701>

(reg. No. 5839)¹⁶ was adopted as a basis with a reduced preparation period.

This draft law aims at systematic and comprehensive revision of the existing state regulation in the field of handling GMOs, as well as at conducting state control over the circulation of genetically modified products; fulfilment of Ukraine's international commitments in accordance with Article 64 of the Association Agreement, and establishment in Ukraine of the same regulation as the EU has by implementing the relevant EU acts into the legislation of Ukraine.

The draft law proposes: to introduce European mechanisms for the state registration of GMOs; to improve the requirements for the labelling of such products and to introduce rules for their traceability; to strengthen state control in the field of handling GMOs and to establish responsibility for violations of legislation in this area; to improve the risk assessment system for genetically modified products regarding their potential effects on human health and the environment; to ensure clearcut division the powers of central executive bodies in order to eliminate overlapping of functions.

The draft law is currently being prepared for second reading.

On 1 December 2022, the Verkhovna Rada of Ukraine also adopted as a basis with a reduced period of preparation the government draft Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offenses to Increase Responsibility in the Field of Handling of Genetically Modified Organisms" (reg. No. 5840)¹⁷, which aims to align the provisions of the Code of Ukraine on Administrative Offenses with the Law of Ukraine "On State Regulation of Genetic Engineering Activities and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security", taking into account the relevant changes.

The draft law is being prepared for second reading.

Practical implementation has not initiated due to the lack of a regulatory framework.

Organic farming

Establishment of rules and principles of production and circulation of organic products and raw materials of plant origin and animal origin/aquaculture in line with EU requirements

Regulatory approximation is advanced.

At the legislative level, the matters of organic production, circulation and labelling of organic products were aligned with EU legislation in the previous reporting periods by adopting Law of Ukraine No. 2496-VIII "On Basic Principles and Requirements for Organic Production, Circulation and Labelling of Organic Products" dated 10 July 2018¹⁸, which entered into force on 2 August 2019.

Practical implementation of this commitment is advanced.

In pursuance of the above-mentioned Law, a number of regulatory legal acts have been adopted during the reporting period, in particular:

- Resolution No. 1005 of the Cabinet of Ministers of Ukraine "On Approval of the Criteria for Assessing the Degree of Risk from Economic Activities Performed by the Certification Body in the Field of Organic Production, Circulation and Labelling of Organic Products, and for Determining the Frequency of Planned State Supervision (Control) Measures by the State Service for Food Safety and Consumer Protection" dated 22 September 2021¹⁹, approving an exhaustive list of criteria for assessing the degree of risk from the certification body's economic activities in the field of organic production, circulation and labelling of organic products, their indicators and the number of points for each indicator;
- Resolution No. 102 of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Determining the Frequency of Planned State Control Measures over the Compliance of Undertakings' (Facilities') Activities with the Legal Requirements in the Field of Organic Production, Circulation and Labelling of Organic Products as Carried out by the State Service for Food Safety and Consumer Protection, and the Criteria for Assessing the Degree of Risk from Their Performance" dated 9 February 2022²⁰;

16) <https://itd.rada.gov.ua/en/billInfo/Bills/Card/27529>

17) <https://itd.rada.gov.ua/en/billInfo/Bills/Card/27530>

18) <https://zakon.rada.gov.ua/laws/show/2496-19#Text>

19) <https://zakon.rada.gov.ua/laws/show/1005-2021-%D0%BF#Text>

20) <https://zakon.rada.gov.ua/laws/show/102-2022-%D0%BF#Text>

- Order No. 326 of the Ministry of Agrarian Policy “On Approval of the Procedure for Confirming the Expertise of the Inspector for Organic Production and/or Circulation of Organic Products in the Field of Organic Production” dated 2 June 2022²¹, establishing the procedure for confirming the expertise of the inspector for organic production and/or circulation of organic products in the field of organic production by way of passing a qualification exam and obtaining a certificate of inspector for organic production and/or circulation of organic products.

Biodiversity

Creating the basis for the functioning of European rules regulating the management of genetic resources of plants, micro-organisms and animals that are used or potentially useful for agriculture

Legislative approximation in the subsector is at an early stage.

On 16 November 2022, the government draft Law of Ukraine “On State Regulation of Genetic Engineering Activities and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security” was adopted as a basis with a reduced preparation period (reg. No. 5839)²².

This draft law aims at systematic and comprehensive revision of the existing state regulation in the field of handling GMOs, as well as at conducting state control over the circulation of genetically modified products; fulfilment of Ukraine’s international commitments in accordance with Article 64 of the Association Agreement, and establishment in Ukraine of the same regulation as the EU has by implementing the relevant EU acts into the legislation of Ukraine.

The draft law proposes: to introduce European mechanisms for the state registration of GMOs; to improve the requirements for the labelling of such products and to introduce rules for their traceability; to strengthen state control in the field of handling GMOs and to establish responsibility for violations of legislation in this area; to improve the risk assessment system for genetically modified products regarding their potential effects on human health and the environment; to ensure clearcut division the powers

of central executive bodies in order to eliminate overlapping of functions.

The draft law is currently being prepared for second reading.

On 1 December 2022, the Verkhovna Rada of Ukraine also adopted as a basis with a reduced period of preparation the government draft Law of Ukraine “On Amendments to the Code of Ukraine on Administrative Offenses to Increase Responsibility in the Field of Handling of Genetically Modified Organisms” (reg. No. 5840)²³, which aims to align the provisions of the Code of Ukraine on Administrative Offenses with the Law of Ukraine “On State Regulation of Genetic Engineering Activities and State Control over the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Security”, taking into account the relevant changes.

The draft law is being prepared for second reading.

Practical implementation has not started due to the lack of a regulatory framework.

Standards of trade in plants, plant seed, plant products, fruit and vegetables

Requirements for the labelling, packaging, trade and consumer protection relating to sugar, fruit juices, coffee and chicory extracts, cocoa and chocolate, fruit jams, jellies and marmalades, olive oil

Legislative approximation in relation to:

- **certain types of sugar, as well as in relation to cocoa and chocolate is “perfect”;**

Requirements for the production of sugars intended for human consumption, their characteristics and chemical properties, in particular, extra white, white, semi-white sugars, sugar solutions, invert sugar solutions, invert sugar syrups, glucose-fructose syrups, dried glucose syrups, dextrose or dextrose monohydrate, dextrose anhydrous, and fructose were set forth back in 2017 by Order No. 592 of the Ministry of Agrarian Policy “On Approval of the Requirements for Sugars Intended for Human Consumption” of 2 November 2017²⁴.

21) <https://zakon.rada.gov.ua/laws/show/z0669-22#Text>

22) <https://itd.rada.gov.ua/en/billInfo/Bills/Card/27529>

23) <https://itd.rada.gov.ua/en/billInfo/Bills/Card/27530>

24) <https://zakon.rada.gov.ua/en/laws/show/z1434-17>

However, this year it was amended by Order No. 313 of the Ministry of Agrarian Policy dated 27 May 2022²⁵, according to which above-mentioned Order No. 592 shall become effective on 1 September 2022 and shall enter into force 3 months after the termination or cancellation of martial law.

Order No. 157 “On Approval of the Requirements for Cocoa and Chocolate Products” dated 13.04.2016 was adopted and came into force on 1 January 2018, bringing the relevant area into line with European standards²⁶.

- **extracts of coffee and chicory, juices, jellies and marmalades is advanced;**

Order No. 795 of the Ministry of Agrarian Policy “On Approval of the Requirements for Coffee Extracts and Chicory Extracts” dated 17 October 2022 was adopted²⁷, which will come into force on 15 May 2023.

As for juices, jellies and marmalades, the relevant orders of the Ministry of Agrarian Policy have not yet been adopted and have not been submitted for public discussion.

- **olive oil is at an early stage;**

At the end of November 2022, new European Union rules on the quality and labelling of olive oil came into force. The correct application of olive oil classification methods and the true labelling of olive oil are among the main points covered by Delegated Regulation 2022/2104²⁸ and Implementation Regulation 2022/2105²⁹.

At the same time, the Ministry of Economy by its Order No. 679 dated 1 April 2021³⁰ approved the Procedure and Special Requirements for the Labelling of Foodstuffs for which It is Mandatory to Indicate the Country of Origin or Place of Origin, establishing the rules for indicating the country of origin or place of origin in the labelling of virgin olive oil and extra virgin olive oil.

According to the Ministry of Agrarian Policy, the order “On Approval of the Requirements for Olive Oil and Olive Pomace Oil and the Relevant Methods for Testing Olive Oil” is being developed, but this order has not yet been posted for public discussion. In addition, this Order must now take into account the new rules of the European Union regarding the quality and labelling of olive oil, as set forth by Delegated Regulation 2022/2104 and Implementation Regulation 2022/2105.

Practical implementation of the updated regulations has been launched as regards the requirements for cocoa products, chocolate, sugar, coffee extracts and chicory extracts. Regarding juices, jellies and marmalades, and olive oil, no relevant regulations have been adopted, and implementation has not begun.

Requirements in the field of seed production, propagating material of fruit plants, grapes and ornamental plants, forest reproductive material, and cereal seed

Legislative approximation in relation to:

1. **the marketing of cereal seeds is perfect**

The task is actually completed, since Ukraine has been included in the list of non-EU countries that have the right to export cereal seed, such as oats, barley, rice, rye, wheat, triticale, corn and sorghum to the European market. The relevant decision was published in the Official Journal of the EU: European Parliament Decision 2020/1544 of 21 October 2020 amending Council Decision 2003/17/EC as regards the equivalence of field inspections carried out in Ukraine on cereal seed-producing crops and on the equivalence of cereal seed produced in Ukraine³¹. During the reporting period, there were no changes in this area.

2. **requirements for vegetative propagation of the vine, propagation of fruit plants and fruit plants intended for fruit production – is at an advanced stage.**

25) <https://zakon.rada.gov.ua/laws/show/z0626-22#Text>

26) <https://zakon.rada.gov.ua/en/laws/show/z0688-16>

27) <https://zakon.rada.gov.ua/laws/show/z1356-22#Text>

28) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uris-ery%3A0JL_2022.284.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A284%3A-TOC

29) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uris-ery%3A0JL_2022.284.01.0023.01.ENG&toc=OJ%3AL%3A2022%3A284%3A-TOC

30) <https://zakon.rada.gov.ua/laws/show/z0601-21#Text>

31) <https://www.me.gov.ua/News/Detail?lang=en-UA&id=323366fd-800d-4c7c-9e22-0a5d4a8b1cdb&title=UkrainskeNasinniaZernovikhKulturViznaneNavropeiskomuRinku>

On 16 November 2022, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Align the Legislation in the Field of Protection of Plant Variety Rights and on Seed and Planting Material with the Provisions of the Legislation of the European Union” was adopted³².

This Law aims at: approximating the legislation of Ukraine to the EU acquis in order to facilitate the status of the variety examination and application of the technological approach to the variety testing, including for fruit, berry and nut-bearing plants, grapes, and hops; introduction of electronic services for filing applications for plant varieties, obtaining permits for the import of seed samples for research purposes and conditions for electronic document management in matters of variety examination; use of terms and procedures in accordance with European regulations; maximising the efficiency of regulation of seed certification for varietal qualities in Ukraine and further introduction of European practices of a competitive approach in the provision of paid services for seed certification; provision of access to new varieties/hybrids for domestic agricultural producers immediately after the adoption and publication of the decision on state registration of the relevant variety; unambiguous and clear requirements for state control of all undertakings involved in seed production and supply.

The law comes into force in six months from the date of its publication, taking into account the specific regulations in force during the martial law period. All matters related to the approximation of legislation as required by the Association Agreement in this area shall also be settled by regulatory legal acts within six months from the date of publication of this Law.

In addition, on 11 November 2022, the Cabinet of Ministers of Ukraine adopted Resolution No. 1274 “On Amendments to the Procedure for Certification, Issuance and Revocation of Certificates for Seeds and/or Planting Material”³³, which clarifies, in line with European legislation, the procedure for certification of seeds and/or planting material (a set of measures aimed at determining the varietal and sowing qualities of seeds and the varietal and commercial qualities of planting material), issuance of certificates for seeds and/or planting material and their revocation.

- 3. rules for registration of seed and crops, conducting the necessary examinations, classification, registration of varieties and revocation of such registration – is at an advanced stage.**

On 16 November 2022, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Align the Legislation in the Field of Protection of Plant Variety Rights and on Seed and Planting Material with the Provisions of the Legislation of the European Union” was adopted³⁴, which provides for the introduction of progressive practices in accordance with the European legislation on the examination and registration of plant variety rights, their marketing, deregulation and streamlining of mechanisms for the registration of varieties and certification of seed, which are necessary for entering the market and creating a proper legal framework for the operation of seed selection and production enterprises and agricultural producers in a competitive environment.

The law comes into force in six months from the date of its publication, taking into account the specific regulations in force during the martial law period. All matters related to the approximation of legislation as required by the Association Agreement in this area shall also be settled by regulatory legal acts within six months from the date of publication of this Law.

- 4. production of vegetable seed for the purpose of marketing and distribution of materials for the propagation and planting of vegetable crops, except seeds – is at an advanced stage.**

On 16 November 2022, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Align the Legislation in the Field of Protection of Plant Variety Rights and on Seed and Planting Material with the Provisions of the Legislation of the European Union” was adopted³⁵, which provides for the introduction of progressive practices in accordance with the European legislation on the examination and registration of plant variety rights, their marketing, deregulation and streamlining of mechanisms for the registration of varieties and certification of seed, which are necessary for entering the market and creating a proper legal framework for the operation of seed selection and production enterprises and agricultural producers in a competitive environment.

32) <https://zakon.rada.gov.ua/laws/show/2763-20#Text>

33) <https://zakon.rada.gov.ua/laws/show/1274-2022-%D0%BF#Text>

34) <https://zakon.rada.gov.ua/laws/show/2763-20#Text>

35) <https://zakon.rada.gov.ua/laws/show/2763-20#Text>

The law comes into force in six months from the date of its publication, taking into account the specific regulations in force during the martial law period. All matters related to the approximation of legislation as required by the Association Agreement in this area shall also be settled by regulatory legal acts within six months from the date of publication of this Law.

On 11 November 2022, the Cabinet of Ministers of Ukraine adopted Resolution No. 1274 “On Amendments to the Procedure for Certification, Issuance and Revocation of Certificates for Seeds and/or Planting Material”³⁶, which clarifies, in accordance with the norms of European legislation, the procedure for certification of seeds and/or planting material (a set of measures aimed at determining the varietal and sowing qualities of seeds and varietal and commercial qualities of planting material), issuance of certificates for seeds and/or planting material and their revocation.

5. planting material of ornamental plants – is at an early stage.

On 11 November 2022, the Cabinet of Ministers of Ukraine adopted Resolution No. 1274 “On Amendments to the Procedure for Certification, Issuance and Revocation of Certificates for Seeds and/or Planting Material”³⁷, which clarifies, in accordance with the norms of European legislation, the procedure for certification of seeds and/or planting material (a set of measures aimed at determining the varietal and sowing qualities of seeds and varietal and commercial qualities of planting material), issuance of certificates for seeds and/or planting material and their revocation.

There were no other changes made during the reporting period in this regard.

6. requirements for the production and marketing of oilseeds and fibrous crops – is advanced.

On 16 November 2022, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Align the Legislation in the Field of Protection of Plant Variety Rights and on Seed and Planting Material with the Provisions of the Legislation of the European Union” was adopted³⁸, which provides for the introduction of progressive practices in accordance

with the European legislation on the examination and registration of plant variety rights, their marketing, deregulation and streamlining of mechanisms for the registration of varieties and certification of seed, which are necessary for entering the market and creating a proper legal framework for the operation of seed selection and production enterprises and agricultural producers in a competitive environment.

The law comes into force in six months from the date of its publication, taking into account the specific regulations in force during the martial law period. All matters related to the approximation of legislation as required by the Association Agreement in this area shall also be settled by regulatory legal acts within six months from the date of publication of this Law.

On 11 November 2022, the Cabinet of Ministers of Ukraine adopted Resolution No. 1274 “On Amendments to the Procedure for Certification, Issuance and Revocation of Certificates for Seeds and/or Planting Material”³⁹, which clarifies, in accordance with the norms of European legislation, the procedure for certification of seeds and/or planting material (a set of measures aimed at determining the varietal and sowing qualities of seeds and varietal and commercial qualities of planting material), issuance of certificates for seeds and/or planting material and their revocation.

There were no other changes in this regard during the reporting period, however, in previous years, a number of regulatory legal acts had been adopted that regulated, in particular, the matters related to the procedure for labelling and packaging of seed batches and label forms⁴⁰, including for oilseeds, as well as the methodology for field assessment of sunflower and rapeseed seeds⁴¹, designed to implement the provisions of Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants.

7. rules of production, labelling and marketing of forest reproductive material – has not started.

During the reporting period, there were no changes made in this regard.

Practical implementation of the vast majority of these commitments has not begun due to the fact that the Law of Ukraine “On Amendments to Certain Legislative

36) <https://zakon.rada.gov.ua/laws/show/1274-2022-%D0%BF#Text>

37) <https://zakon.rada.gov.ua/laws/show/1274-2022-%D0%BF#Text>

38) <https://zakon.rada.gov.ua/laws/show/2763-20#Text>

39) <https://zakon.rada.gov.ua/laws/show/1274-2022-%D0%BF#Text>

40) <https://zakon.rada.gov.ua/laws/show/z1142-17#Text>

41) <https://zakon.rada.gov.ua/laws/show/z1513-18#Text>

Acts of Ukraine to Align the Legislation in the Field of Protection of Plant Variety Rights and on Seed and Planting Material with the Provisions of the Legislation of the European Union” was adopted as late as in November 2022, and the relevant regulatory legal acts required to put it into practice are still to be adopted.

Requirements in the field of regulation in the market of agricultural products

Legislative approximation in the areas of:

- **systems of standards for the marketing of spirit drinks is advanced.**

On 1 December 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Geographical Indications of Spirit Drinks”⁴², which specifies the requirements for preparing for registration, use and protection of geographical indications of spirit drinks, as well as control over such geographical indications in order to prevent the illegal use of registered geographical indications of alcoholic beverages. The Law is currently pending signature of the President of Ukraine.

- **standards systems for the marketing of wine, wine products and spirit drinks is at an early stage.**

According to the Ministry of Agrarian Policy, a draft Law “On Amendments to the Law of Ukraine ‘On Grapes and Grape Wine’” is currently being developed.

- **regulatory approximation for hops and hop products is at an early stage.**

The Law of Ukraine “On Hops and Hops Products” has been developed, submitted to the Cabinet of Ministers of Ukraine and subsequently returned to the Ministry of Agrarian Policy in April 2022 to be updated. Currently, the preparation of proposals for the draft of the Law of Ukraine “On Hops and Hops Products” is underway.

- **Improvement of legislation on producer cooperation has not yet begun. Law of Ukraine No. 819-IX “On Agricultural Cooperation” of 21 July 2020⁴³ does not resolve this issue.**
- **Legislative approximation to harmonise national legislation on the market of fruit and**

vegetables and processed fruit and vegetables in accordance with European requirements is at an early stage.

Practical implementation has not yet begun, given the minor amount of work done to approximate legislation in this area.

Requirements for fodder in accordance with EU rules

Legislative approximation is at an early stage.

On 5 December 2022, the Ministry of Agrarian Policy published for public discussion the draft Order “On Approval of the Rules for the Production, Marketing and Application (Use) of Medicinal Fodder and Intermediate Products for the Production of Medicinal Fodder”⁴⁴, which is aimed at aligning the legislation of Ukraine with the requirements of the relevant EU acquis.

No other measures to fulfil this commitment, including additional measures for the proper functioning of the dry fodder market, were implemented during the reporting period.

Implementation has not started.

Marketing standards for live animals and animal products

Introduction of the European system for the identification and registration of bovine animals, marketing of animals, meat labelling, introduction of a classification of beef, pig and sheep carcasses and the reporting of prices thereof

Legislative approximation is at an early stage.

Measures to approximate the legislation to the requirements of EU acquis in this regard are being taken.

In particular, as regards the EU requirements for introduction of a classification of beef, pig and sheep carcasses and the reporting of prices thereof, a corresponding draft order of the Ministry of Agrarian Policy “On Approval of the Methodology for Classification of Beef, Pig and Sheep Carcasses” is currently being developed, taking into account, in

42) <https://itd.rada.gov.ua/en/billInfo/Bills/Card/38701>

43) <https://zakon.rada.gov.ua/en/laws/show/819-20#top>

44) <https://minagro.gov.ua/npa/pro-zatverdzhennya-pravil-virobnictva-obigu-ta-zastosuvannya-vikoristannya-likuvalnih-kormiv-i-promizh-nih-produktiv-dlya-virobnictva-likuvalnih-kormiv>

particular, the requirements of Council Regulation (EU) No. 1308/2013 establishing a common organisation of the markets in agricultural products.

Implementation has not started as the updated legislation is under development.

Establishing detailed rules for the marketing of bovine animals aged 12 months or less, conducting inspections and control of meat from third countries and cooperation with EU bodies in control matters

Regulatory approximation is at an early stage.

The draft order of the Ministry of Agrarian Policy “On Approval of the Requirements for Establishing Detailed Rules for the Marketing of Bovine Animals Aged 12 Months or Less” was developed⁴⁵ and published for public discussion on 23 September 2022.

Practical implementation of this commitment has not started, as updated legislation is under development.

Development and implementation of detailed marketing standards for eggs in accordance with European requirements, introduction of detailed marketing standards for eggs intended for hatching and farmyard poultry chicks, development and implementation of detailed marketing standards for poultry meat in accordance with the EU requirements

Regulatory approximation is at an early stage.

So far, the Ministry of Agrarian Policy has developed a draft Order “On Approval of Hygienic Requirements for the Production and Circulation of Foodstuffs of Animal Origin”, which provides for the approval of hygienic requirements for the production and circulation of categories (types) of foodstuffs of animal origin such as eggs and egg products. This draft order was published for public discussion on 13 September 2022 on the website of the Ministry of Agrarian Policy⁴⁶.

Implementation has not started as the updated legislation is under development.

Bringing the requirements for the percentage of fat in certain types of dairy products, as well as the conditions of the use of the designation “butter,” in accordance with EU law

45) <https://minagro.gov.ua/npa/pro-zatverdzhennya-vimog-shchodo-real-izaciyi-myasa-velikoyi-rogatoyi-hudobi-vikom-do-12-misyaciv>

46) <https://minagro.gov.ua/npa/pro-zatverdzhennya-gigiyenichnih-vimog-do-virobnictva-ta-obigu-harchovih-produktiv-tvarinnogo-pohodzhennya>

Regulatory approximation is at an early stage.

According to the Ministry of Agrarian Policy, draft orders “On Approval of Requirements for Fat Spreads with Vegetable Fats” and “On Approval of Requirements for Butter and Milk Fats” have been developed and are currently being discussed with stakeholders.

Practical implementation has not started.

Introduction of a system of standards for the marketing of agricultural products

Regulatory approximation regarding the standards for the marketing of hops, wine and wine products is at an early stage.

According to the Ministry of Agrarian Policy, the draft Law “On Amendments to the Law of Ukraine ‘On Grapes and Grape Wine’” is currently being developed. As for the draft Law of Ukraine “On Hops and Hops Products”, in the spring of 2022 it was sent to the Cabinet of Ministers of Ukraine for consideration and subsequently returned to the Ministry of Agrarian Policy in April 2022 to be updated. Currently, proposals for the text of the draft Law of Ukraine “On Hops and Hops Products” are being prepared.

Implementation has not started as the updated legislation is under development.

Bringing national honey legislation in line with EU law

The regulatory approximation is advanced.

During the reporting period, no changes have been made in this regard.

However, currently, there is effective Order No. 330 of the Ministry of Agrarian Policy “On Approval of Requirements for Honey” of 19 June 2019⁴⁷, which takes into account the key requirements of Council Directive 2001/110/EC of 20 December 2001, in particular the requirements for the labelling of honey to ensure that consumers (users) are properly informed and to prevent business practices that mislead the consumer.

Implementation of this commitment has not commenced.

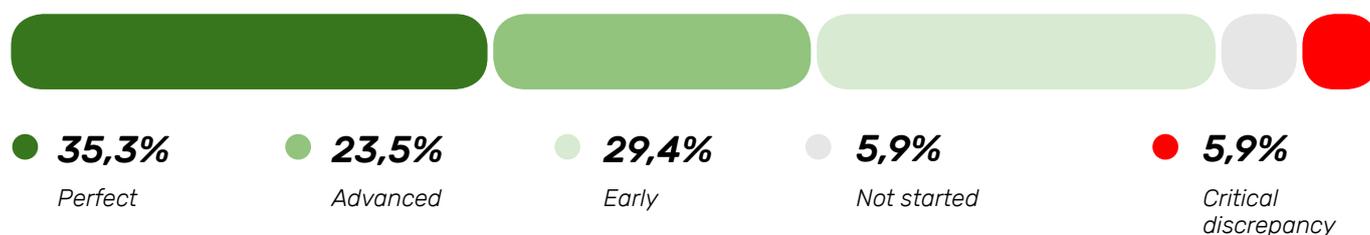
47) <https://zakon.rada.gov.ua/laws/show/z0725-19#Text>

Consumer Protection



Anna Vasylenko

Sector progress



Product safety

During 2022, no work on the rollout of the national market surveillance information system was carried out based on Section 1 (4) of the Resolution No. 263 of the Cabinet of Ministers of Ukraine "Certain Matters of Ensuring the Functioning of Information and Communication Systems, Electronic Communication Systems, and Public Electronic Registers under Martial Law"¹ dated 12 March 2022 in order to ensure the protection of the information contained in the information system. For the successful launch of the market surveillance information system after the abolition of martial law, it will also be necessary to resolve the issue of introducing a mechanism for interoperability between the market surveillance information system and the information system of the State Customs Service of Ukraine (some alignment measures have already been made, but additional steps are required), as well as to ensure one hundred percent connection for the system of market surveillance bodies and their territorial bodies.

The connection of the information system to the European RAPEX system also did not take place, so the fulfilment of this commitment is at an early stage.

In the second half of 2021 and in 2022, no progress has been made.

Marketing

With regard to improving consumer information and enabling consumers to compare prices (in accordance with Directive 98/6/EC), the Law of Ukraine "On Consumer Protection"² (Art. 15) almost fully transposed the requirements of the Directive back when it was adopted. The only difference is the mandatory indication of the unit price of the product in advertisements which mentions the selling price of the product. The current laws of Ukraine (Law of Ukraine "On Consumer Protection" and Law of Ukraine "On Advertising"³) do not address this matter either. However, in the new draft Law of Ukraine "On Consumer Protection" (new version), registered with

1) <https://zakon.rada.gov.ua/laws/show/263-2022-n#Text>

2) Law of Ukraine "On Consumer Protection" (No. 1023-XII, dated 12.05.1991)

3) Law of Ukraine "On Advertising" (No. 270/96-BP, dated 3 July 1996)

the Verkhovna Rada under No. 6134 dated 05.10.2021⁴, the matter of unit price indication was duly taken into account. Since in October 2022, this draft law was adopted as a basis and in first reading⁵, the degree of fulfilment of this commitment can be described as advanced.

The commitment to enhance consumer protection by improving the legislation on unfair business practices that harm the economic interests of consumers (Directive 2005/29/EC) is partially taken into account in the current Law of Ukraine “On Consumer Protection.” The remaining provisions that do not meet the requirements of the Directive are currently fully taken into account in the new draft Law of Ukraine “On Consumer Protection” (new version), registered with the Verkhovna Rada under No. 6134 dated 05.10.2021. In particular, the draft law enhances the relevant terms and definitions, provisions on misleading and aggressive commercial practices, undue influence, approach to establishing a list of unfair business practice by bringing them into full compliance with the Directive. In addition, the draft law introduces separate sanctions (fines) for unfair business practices. The draft law “On Protection of Consumer Rights” (new version) was adopted by the Verkhovna Rada in the first reading, hence the progress in fulfilling this commitment can be described as advanced. It should be noted that after the adoption of the Law, it will be important to ensure the practical implementation of the relevant provisions.

Contract law

The provisions of Directive 1999/44/EC are partially implemented in the current Law of Ukraine “On Consumer Protection”, the Civil Code of Ukraine, etc. However, there is a significant number of inconsistencies in many aspects of the provision of guarantee-related obligations between the provisions of Ukrainian legislation and the EU acquis.

In 2021, some aspects of guarantees to consumers, in particular when purchasing goods online, were addressed in the Law of Ukraine “On Amendments to Article 7 of the Law of Ukraine ‘On Consumer

Protection’ Concerning Guarantees in Electronic Form” (No. 1603-IX, dated 01.07.2021). The remaining inconsistencies are taken into account in the new draft Law of Ukraine “On Consumer Protection” (new version, reg. No. 6134, dated 05.10.2021). In October 2022, the Draft Law was adopted in first reading, therefore, we consider the degree of fulfilment of the commitment to be advanced.

Unfair contract terms

After the signing of the Association Agreement by Ukraine, both Directives No. 97/7/EC and No. 85/577/EC had been repealed (on 13 June 2014) and were replaced by Directive No. 2011/83/EU on consumer rights. The requirements for consumer protection in respect of distance contracts and doorstep selling have been updated, expanded and combined with the requirements for any other contracts. Ukrainian legislation concerning these aspects remained reactive for quite a long time and, although it was almost completely aligned with the requirements of Directive No. 93/13/EC (Art. 18 of the current Law of Ukraine “On Consumer Protection” and the Law of Ukraine “On Electronic Commerce”⁶) and implemented (Order of the Ministry of Economy of Ukraine “On Approval of the Rules for the Sale of Goods on Order and Away from Business or Office Premises”⁷), the requirements of new Directive No. 2011/83/EU were not fully taken into account until recently. The changes took place in 2020–2022 when the above-mentioned draft Law “On Consumer Protection” (new version) was drafted, registered with the VRU and adopted as a basis and in first reading. Therefore, the implementation can be described as advanced.

In respect of consumer contracts in the field of tourism, changes in the EU legislation that have taken place in recent years have not been taken into account in any of the numerous draft laws on amendments to the Law of Ukraine “On Tourism” (No. 324/95-BP, dated 15 September 1995)⁸ or in the actual amendments made to the Law after the entry into force of the AA.

4) <https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=6134&conv=9>

5) Resolution of the Verkhovna Rada “On Adoption of the Draft Law of Ukraine on Consumer Protection” (No. 2650-IX, dated 06.10.2022)

6) Law of Ukraine “On Electronic Commerce” (No. 675-VIII, dated 03.09.2015)

7) Order No. 103 of the Ministry of Economy of Ukraine “On Approval of the Rules for the Sale of Goods on Order and Away from Business or Office Premises” dated 19 April 2007, registered with the Ministry of Justice on 16 October 2007 under No. 1181/14448 (including amendments made to the Rules in 2017–2018, and in accordance with Order No. 1130 of the Ministry of Economy dated 6 June 2020.

8) <https://zakon.rada.gov.ua/laws/show/324/95-p#Text>

The draft law of Ukraine “On Amendments to the Law of Ukraine ‘On Tourism’ and Certain Other Legislative Acts Concerning the Basic Principles of Tourism Development” (No. 4162, dated 29.09.2020), which has been registered with the Verkhovna Rada, proposes a significant number of new contemporary standards but fails to take into account all the provisions of Directive No. 2015/2302/EU. In particular, the terms and definitions are not fully aligned, the obligations of the travel service provider to provide pre-contractual information, its components and binding force are not taken into account, the provisions concerning the termination of the travel contract differ, etc. In general, since compared to the requirements of Directive 2015/2302/EU, both the Law of Ukraine “On Tourism” and the above draft law protect consumer rights with regard to package travel and linked travel arrangements to a much lesser extent and despite the fact that the draft law is being prepared for second reading, we rate the degree of transposition as early.

There are significant difficulties in fulfilling the commitment to ensure the protection of consumers in respect of timeshare, long-term holiday product, resale and exchange contracts. This commitment is based on Directive 2008/122/EC⁹. In the travel industry, timeshare provides for the right to use movable and immovable tourist accommodation in the joint ownership of a certain number of persons for a specified period of time. There are no relevant provisions in the legislation of Ukraine at all, neither are there relevant legal relations. No draft law or draft by-law has been developed. The Ministry of Economy sent a letter to the Cabinet of Ministers of Ukraine with regard to revising Annex XXXIX to the Association Agreement and removing Directive No. 2008/122/EC from it. Corresponding changes to Annex XXXIX have not been made, and the commitment remains in force, therefore the degree of fulfilment of this commitment can be described as critical non-conformity.

Financial services

This thematic area includes one commitment that involves enhancing the guarantees and mechanisms for consumer protection in respect of the distance

marketing of financial services; the commitment is based on Directive No. 2002/65/EC. Law of Ukraine No. 122-IX “On Amendments to Certain Legislative Acts of Ukraine concerning Consumer Protection in Respect of Financial Services” adopted on 20 September 2019¹⁰ ensured the complete transposition of the provisions of Directive No. 2002/65/EC (at the perfect level). During 2020–2022, in accordance with the above-mentioned Law, the National Bank of Ukraine, which serves as the authorized institution for consumer protection in respect of financial services and regulation of the behaviour of banks and non-bank financial institutions in relation to their customers, carried out further practical implementation of the provisions of Directive No. 2002/65/EC into national regulations. Specifically, the National Bank approved the Regulation on Information Provision by Banks to Clients Concerning Banking and Other Financial Services (as amended)¹¹; approved the Regulation on Additional Requirements to Financial Services Contracts¹²; and improved the calculation by banks and non-bank financial institutions of the total cost of credit¹³.

Consumer credit

This thematic area focuses on consumer protection in respect of consumer credit agreements in accordance with the requirements of Directive No. 2008/48/EC¹⁴.

During 2021 – 2022, in accordance with Law of Ukraine No. 1349-IX “On Amendments to Certain Laws of Ukraine on Consumer Protection in the Settlement of Overdue Debts” dated 19 March 2021, the National Bank carried out the practical implementation of the requirements by adopting regulatory legal acts on such matters as information provision by banks to customers of banking and other financial services; establishment of additional requirements to contracts for the provision of financial (banking) services; calculation by banks and non-bank financial institutions of the total cost of credit for the consumer and the real annual interest rate under the consumer credit agreement; establishing the grounds and procedure for supervising compliance with the requirements for interaction with consumers

9) Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.

10) <https://zakon.rada.gov.ua/laws/show/122-20#Text>

11) <https://zakon.rada.gov.ua/laws/show/v0141500-19#Text>

12) <https://zakon.rada.gov.ua/laws/show/v0007500-21#Text>

13) <https://zakon.rada.gov.ua/laws/show/v0016500-21#Text>

14) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

of financial services when settling overdue debts (requirements for ethical behaviour), the procedure for documenting the results of such supervision; establishing requirements for creditors, new creditors, collection companies and their activities when they settle overdue debts, including interaction with consumers of financial services and other persons (requirements for ethical behaviour), etc. In July to October 2022, the NBU conducted a nationwide information campaign in Ukraine for financial consumer protection “Know Your Rights: Credits” in order to improve consumers’ awareness of credit services. Given the above, the degree of fulfilment of the commitments within the framework of this thematic area can be referred to as perfect.

Enforcement

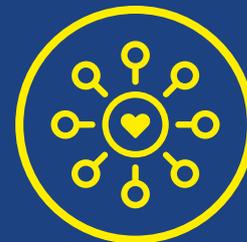
The new draft Law of Ukraine “On Consumer Protection (as amended),” adopted in first reading on 06.10.2022 brings the legislation of Ukraine closer to the relevant requirements of Directive No. 2009/22/EC, establishing a clear list of consumer protection system agents, including entities authorized to make decisions on action brought by qualified entities, as well as the list and powers of such qualified entities. General requirements for out-of-court resolution of disputes between consumers and businesses are established. At the same time, the draft law contains provisions that postpone the entry into force and practical implementation of the provisions on extrajudicial protection until the CMU develops and adopts a separate law on extrajudicial resolution of disputes between consumers and businesses. Given the above, the degree of fulfilment of the commitment is currently advanced. It should be noted that the perfect degree is to be expected not with the adoption of the Law of Ukraine “On Consumer Protection” (new version) but after the adoption of the Law of Ukraine on extrajudicial settlement of disputes, however its draft still needs to be developed.

We should mention that Directive No.2009/22/EC also establishes requirements concerning the need for the EU Member States to introduce into their national legislation provisions on interaction and the possibility for qualified consumer protection entities from other Member States, in some cases, to bring action. As Ukraine is not yet a member of the EU, it cannot currently introduce such provisions into national legislation, but this option should be envisaged upon its accession to the EU.

Since undertaking its commitment under the Association Agreement, Ukraine has taken a number of important steps that significantly harmonise its national legislation in the field of consumer protection with the EU acquis. This applies to aspects such as the general safety of products, the safety of certain types of goods, financial services and credit agreements, etc. Another positive and very appropriate step was the decision to develop the State Concept for Consumer Protection, which offers a systematic and comprehensive approach to transposition, as well as practical implementation of the commitments.

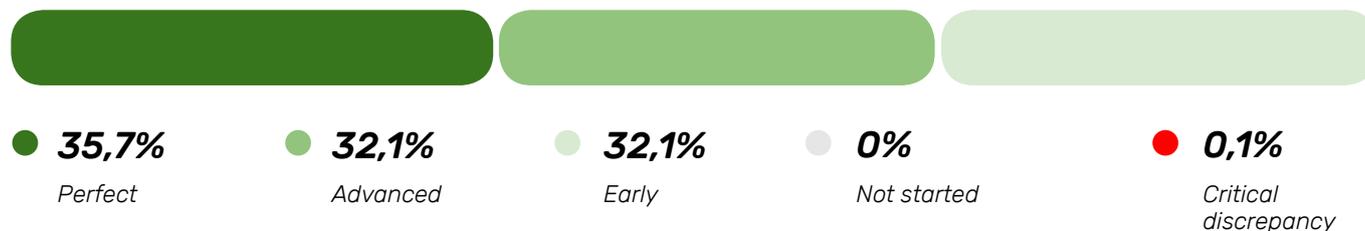
As a whole, Ukraine’s progress in fulfilling its consumer protection commitments has been rather uneven and too slow, because for most commitments the deadlines have already been 3 years overdue. At the same time, it should be noted that during 2021 and the second half of 2022, thanks to the painstaking work on the draft Law of Ukraine “On Consumer Protection” (new version), its adoption in first reading and preparation for second reading, significant progress is observed in several thematic areas (shifting them from the early stage to the advanced one).

Social Policy



Zoriana Kozak

Sector progress



Ukraine's cooperation with the EU in the field of social policy is mostly based on Chapter 21 "Cooperation on Employment, Social Policy and Equal Opportunities" of Title V of the Association Agreement. The strengthening of dialogue and cooperation is carried out with regard to a wide range of matters in the field of employment. The goals to be achieved through this cooperation are outlined in Art. 420 of the Association Agreement;

At the same time, Annex XL to Chapter 21 of the Association Agreement sets out a clear list of EU acquis to which Ukraine has undertaken to approximate its national legislation. The list covers EU acquis into three areas: "Labour Law", "Anti-Discrimination and Gender Equality", and "Health and Safety at Work".

Ensuring Decent Employment Conditions, Social Policy and Social Dialogue

Annex XL, "Labour Law"

Within the area of "Labour Law" of Annex XL to the Association Agreement, Ukraine undertook to

approximate national legislation to the seven EU directives on decent employment conditions, social policy and social dialogue ("Labour Law"). During the period from 01.07.2021 to 30.06.2022, work in this area focused on adapting Ukrainian legislation to the EU directives mainly by amending the current Labour Code and laws of Ukraine or developing draft laws.

Bringing the national legislation on collective redundancies into line with Council Directive 98/59/EC of 20 July 1998. On 12 May 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Improve the Protection of Workers' Rights"¹ modified the procedure for collective redundancies as set forth in the Labour Code of Ukraine and the Law of Ukraine "On Employment of the Population". The changes include:

- the requirement to notify the State Employment Service about the projected redundancies specifying the information to be submitted to the Service;

¹ Law of Ukraine No. 2253-IX "On Amendments to Certain Legislative Acts of Ukraine to Improve the Protection of Employees' Rights" dated 12 May 2022 // <https://zakon.rada.gov.ua/laws/show/2253-20#n6>

- the requirement to notify the elected body of the primary trade union organization (trade union representative), other representatives of employees;
- any liquidation/reorganization of the employer may be carried out after notifying the elected body;
- quantitative measurement of collective redundancies, identification of cases that are not taken into account (in particular, dismissals as a result of expiration of fixed-term employment contracts are not taken into account);
- holding consultations with representatives of employees, etc.

These changes have approximated the national legislation in the field of collective redundancies to European acquis, but they fail to fully take into account the requirements of the Directive, in particular in terms of compliance with quantitative criteria for redundancies.

As regards bringing the national legislation on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses in accordance with Council Directive 2001/23/EC of 12 March 2001, on 21 April 2022, the Law of Ukraine "On De-Sovietization of the Legislation of Ukraine"² clarified the guarantees for the extension of the employee's contract of employment in the event of change of the owner [rather than the employer] of the undertaking, business, of organization, as well as in the event of their reorganization (merger, acquisition, division, separation, transformation). There were no other legislative acts that regulate the guarantees of employees' rights in matters of succession in labour relations. However, on 23 September 2022 (which is outside the scope of the analysed period), the Ministry of Economy of Ukraine posted for discussion a finalized Draft Law of Ukraine on Labour³, which contains an article on this matter.

2) Law of Ukraine No. 2215-IX "On De-Sovietization of the Legislation of Ukraine" dated 21 April 2022 // <https://zakon.rada.gov.ua/laws/show/2215-20#n9>

3) Draft Labor Law of Ukraine prepared by the Ministry of Economy of Ukraine and posted for discussion on 23.09.2022 // <https://www.me.gov.ua/Documents/Detail?lang=en-UA&id=43600842-3772-427f-a725-39e35ae3adb8&-title=ProektZakonuUkrainiproPratsiu>

On 12 May 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Improve the Protection of Employees' Rights" was adopted⁴, which provides for the extension of the collective agreement in the event of transfer of undertaking, reorganization of a legal entity (separate subdivision of a legal entity) for the period for which the said agreement is concluded, but not more than one year, unless the parties agree otherwise (although the Directive establishes the term of one year as a minimum, not a maximum guaranteed period).

After the analysed period (01.07.2021–30.06.2022), several laws were adopted and work was carried out to develop draft laws that aim at the approximation of national legislation to the EU acquis in the field of labour. As regards informing employees about working conditions, transparency and predictability of working conditions (approximation to the requirements of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20.06.2019, which replaced Directive 91/533/EEC of 14.10.1991), Ukraine adopted:

- On 1 July 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Optimize Labour Relations"⁵, which specifies the information that the employer has to provide to the employee in a manner agreed with the employee before starting work;
- On 18 July 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Regulation of Labour Relations with Non-Fixed Working Hours"⁶, which sets forth the conditions for concluding employment contracts with non-fixed working hours.

As regards the introduction of a mechanism for the conclusion of fixed-term employment contracts and protection of employees working under such contracts:

- On 1 July 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Optimize Labour Relations" was

4) Law of Ukraine No. 2253-IX "On Amendments to Certain Legislative Acts of Ukraine to Improve the Protection of Employees' Rights" dated 12 May 2022 // <https://zakon.rada.gov.ua/laws/show/2253-20#n6>

5) Law of Ukraine No. 2352-IX "On Amendments to Certain Legislative Acts of Ukraine concerning Optimization of Labour Relations" dated 1 July 2022 // <https://zakon.rada.gov.ua/laws/show/2352-20#n2>

6) Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Regulation of Labour Relations with Non-Fixed Working Hours" dated July 18, 2022 No. 2421-IX // <https://zakon.rada.gov.ua/laws/show/2421-20#n6>

adopted⁷, according to which the employer has to inform employees working under a fixed-term employment contract about vacancies that correspond to their qualifications and provide for the possibility of concluding a permanent employment contract, as well as to ensure that such employees have equal opportunities to conclude it;

- On 23 September 2022, the Ministry of Economy of Ukraine posted for discussion the finalized Draft Law of Ukraine on Labour, which aims to enshrine at the legislative level the equality of the labour rights of employees working under fixed-term employment contracts.

On 6 October 2022, the VRU adopted as a basis the Draft Law of Ukraine “On Collective Contracts and Agreements” (ref. No. 7628, 02.08.2022)⁸, thereby revising the current Law of Ukraine “On Collective Contracts and Agreements” and amending the Law of Ukraine “On Social Dialogue”, in particular in terms of informing and advising employees and their representatives on labour matters within the framework of social dialogue.

Some changes to national legislation were also made because of the war unleashed by the RF against Ukraine. They also had some impact on the matters related to the approximation to EU acquis. Thus, for the period of martial law, special aspects have been introduced concerning:

1. the organization of labour relations under martial law⁹, in particular:
 - restrictions on constitutional human and civil rights and freedoms set forth in Articles 43 and 44 of the Constitution of Ukraine have been introduced for the period of martial law;
 - regarding individual labour relations – special aspects of the conclusion of employment contracts under martial law, transfer and change of essential working conditions, termination of the employment contract as initiated by the employee or the employer, establishment and

measurement of working hours and rest hours, the concept of “suspension of the employment contract”, etc. have been introduced;

- on collective labour relations – the possibility of suspending certain provisions of the collective agreement at the employer’s initiative; suspension of Article 44 of the Law of Ukraine “On Trade Unions, Their Rights and Activity Guarantees” and the relevant norms of collective agreements (as regards deduction of funds by undertakings, businesses, and organizations to primary trade union organizations for mass cultural, athletic and recreational events).
2. introduction of a simplified regime for regulating labour relations¹⁰ – among other things, the mandatory written form of the employment contract and its content has been introduced.

Anti-Discrimination, Gender Equality and Equal Opportunities

Annex XL, “Anti-discrimination and Gender Equality”

Within the area of “Anti-discrimination and Gender Equality” of Annex XL, Ukraine undertook to approximate its legislation to six EU directives. During the period from 01.07.2021 to 30.06.2022 the regulatory approximation varied, the adopted approximation-related changes mainly focused on ensuring equal treatment in the field of employment.

On 12 May 2022, amendments were made¹¹ to the Labour Code of Ukraine, including:

- extending the list of grounds on which discrimination in the field of labour is prohibited to cover membership in public associations;
- setting requirements for cases that are not considered discrimination in the field of labour, establishing the right for certain legal entities, in particular, public associations, to establish advantages for their founders and members in the field of labour;

7) Law of Ukraine No. 2352-IX “On Amendments to Certain Legislative Acts of Ukraine concerning Optimization of Labour Relations” dated 1 July 2022 // <https://zakon.rada.gov.ua/laws/show/2352-20#n2>

8) Draft Law of Ukraine “On Collective Contracts and Agreements” (ref. No 7628, 02.08.2022) // <https://itd.rada.gov.ua/billInfo/Bills/Card/40184>

9) Law of Ukraine No. 2136-IX “On the Organization of Labour Relations under Martial Law” dated 15 March 2022 // <https://zakon.rada.gov.ua/laws/show/2136-20#n58>

10) Law of Ukraine No. 2434-IX “On Amendments to Certain Legislative Acts of Ukraine to Simplify the Regulation of Labour Relations for Small and Medium Enterprises and Reduce the Administrative Burden on Entrepreneurial Activity” dated 19 July 2022 // <https://zakon.rada.gov.ua/laws/show/2434-20#n6>

11) Law of Ukraine No. 2253-IX “On Amendments to Certain Legislative Acts of Ukraine to Improve the Protection of Employees’ Rights” dated 12 May 2022 // <https://zakon.rada.gov.ua/laws/show/2253-20#n6>

- setting the right of persons who believe that they have been discriminated against to file a complaint with the executive authorities, local self-government bodies, the VRU Commissioner for Human Rights, and the court;
- the notion of “unreasonable refusal” is specified – that is, unmotivated refusal or one made on grounds that have nothing to do with the professional qualifications of the employee or on grounds not provided for by law;
- establishing the requirement for the employer to inform in writing of the reasons for refusal at the request of the person who seeks employment;
- prohibition of any direct or indirect restrictions in the conclusion, change and termination of an employment contract.

Similar requirements have been introduced to the Law of Ukraine “On Employment”. In addition, the Law of Ukraine “On Advertising” prohibits setting race-related requirements in advertisements about vacancies (employment), etc., and provides for fines and financial sanctions for violations of anti-discrimination legislation.

On 12 July 2021, the VRU registered a draft law¹² that introduces a requirement for decent treatment at work and a mechanism for prohibiting workplace mobbing (bullying). On 15 August 2022, the draft law was adopted as a basis. Matters related to the approximation of national legislation in the field of anti-discrimination and ensuring gender equality are also identified in the Draft Law of Ukraine “On Labour” (posted for discussion on 23.09.2022).

On 20 June 2022, Ukraine ratified the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence¹³.

To ensure equal rights with respect to social leaves, on 29 July 2022 (this took place after the analysed period) Ukraine adopted a law¹⁴ that ensures the

12) Draft Law “On Amendments to Certain Legislative Acts of Ukraine to Combat Violations of Rights in the Field of Labour” (ref. No. 5748, 12.07.2021) // http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=72469

13) Law of Ukraine No. 2319-IX “On Ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence” dated 20 June 2022 // <https://zakon.rada.gov.ua/laws/show/2319-IX#Text>

14) Law of Ukraine No. 2490-IX “On Amendments to Articles 10-1 of the Law of Ukraine ‘On Social and Legal Protection of Servicemen and Members of Their Families’ to Ensure Equal Childcare Opportunities for Mothers and Fathers who are Servicemen during a Special Period” dated 29 July 2022 // <https://zakon.rada.gov.ua/laws/show/2490-IX#Text>

equality of parents (mother and father) who are servicemen regarding the right to a childcare leave for a child under three. Such leaves shall be granted to one of the parents depending on their decision. Legislative norms on the procedure for granting parental leaves have been made more specific¹⁵.

During the analysed period, work was carried out to develop strategic state planning documents to ensure equal opportunities. These activities, inter alia, resulted in the adoption (albeit after the analysed period) of the State Strategy for Equal Rights and Opportunities for Women and Men for the period up to 2030 and the approval of the operational plan for its implementation¹⁶. Work is underway to develop a National Strategy to Reduce the Gender Pay Gap, the draft of which was posted for discussion on 31 August 2021¹⁷.

Central executive authorities continued work to combat gender-based discrimination and sexual harassment in the workplace. In particular, a relevant act was adopted by the Ministry of Foreign Affairs¹⁸.

Ensuring Healthy and Safe Working Conditions

Annex XL, “Health and Safety at Work”

Within the framework of the “Health and Safety at Work” section of Annex XL, Ukraine undertook to approximate its legislation to 27 EU directives. Some of these directives have become invalid due to the adoption of new ones, so the actual number of the directives concerning which the commitment has to be fulfilled now amounts to 24 directives. It is also worth mentioning that some amendments and

15) The procedure for granting parental leave at the birth of a child. Approved by Resolution No. 693 of the Cabinet of Ministers of Ukraine dated 7 July 2021 // <https://zakon.rada.gov.ua/laws/show/693-2021-%D0%BF#Text>

16) On approval of the State Strategy for Equal Rights and Opportunities for Women and Men for the period up to 2030 and approval of the Operational Plan for its implementation for 2022–2024. Resolution No. 752-p of the Cabinet of Ministers of Ukraine dated 12 August 2022 // <https://zakon.rada.gov.ua/laws/show/752-2022-%D1%80#Text>

17) Draft Resolution of the Cabinet of Ministers of Ukraine “On Approval of the National Strategy to Reduce the Gender Pay Gap until 2023 and Approval of the Action Plan for its Implementation”. Developed by the Ministry of Economy of Ukraine, 31.08.2021, published for discussion // <https://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=3d9c7947-fec4-4d24-9a4f-d2236db-41be4&title=ProektRozporiadzhenniaKabinetuMinistrivUkrainiproSkhvalenni-aNatsionalnoiStrategiiSchodoZmshenniaGendernogoRozrivuVOpIatiPrat-siNaPeriodDo2023-RokuTaZatverdzhenniaPlanuZakhodivSchodoYiiRealizatsii>

18) The procedure for organizing work on responding to, preventing and combating gender-based discrimination and sexual harassment in the workplace in the system of diplomatic service bodies. Approved by Order No. 22 of the Ministry of Foreign Affairs on 14 January 2022, registered with the Ministry of Justice of Ukraine on 23 February 2022 under No. 246/37582 // <https://zakon.rada.gov.ua/laws/show/z0246-22#Text>

additions have been made the relevant directives that are in force today, which should be taken into account during implementation.

As regards the regulatory approximation in this area during the period from 01.07.2021 to 30.06.2022, no framework laws or relevant regulations were adopted. Work focused on developing draft legal acts, which were posted or published in one way or another mostly after the analysed period.

As regards a framework draft law aimed at ensuring safe and healthy working conditions (which could ensure the approximation of national legislation to Directive No. 89/391/EEC), on 21 July 2021, the Ministry of Economy of Ukraine published a relevant draft law for discussion¹⁹. On 13 October 2021, the draft law was submitted to the CMU, which returned it for revision on 2 December 2021²⁰. The already finalized Draft Law of Ukraine "On the Safety and Health of Workers at Work" was posted for discussion on 17 August 2022²¹.

After the analysed period (01.07.2021–30.06.2022), the following draft regulations were made public:

- on safety rules in the oil and gas industry, in particular crude oil extraction by drilling²²;
- safety and protection of workers from the harmful effects of asbestos²³. On 6 September 2022, the VRU adopted the Law of Ukraine "On the Public Health System,"²⁴ which

introduced a ban on the production and use of asbestos regardless of the type, as well as asbestos-containing products and materials, in technological processes and during construction and installation works at any facilities (Art. 28.3). The Law shall enter into force on 1 October 2023;

- requirements for the provision of safety and health signs at work²⁵;
- prohibition of the production and use of certain hazardous chemicals at work²⁶;
- mechanism for assessing risks associated with exposure to carcinogens and mutagens²⁷;
- safety and health protection of workers potentially at risk from explosive atmospheres²⁸;
- threshold and operating levels of vibration in the workplace²⁹;
- threshold and operating values of noise exposure in the workplace³⁰;
- health and safety requirements regarding the exposure of workers to the risks arising from electromagnetic fields³¹;

19) Draft Law of Ukraine "On Safety and Health of Employees at Work" prepared by the Ministry of Economy of Ukraine and posted for discussion on 21.07.2021 // <https://www.me.gov.ua/Documents/Detail?lang=en-UA&id=-8c876ee6-0cbb-4ecf-9585-e7b1d24c1335&title=ProektZakonuUkrainiproBezpekuIaZdoroviaPratsivnikivNaRoboti>

20) Information on the implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, for Q3 2022. Ministry of Economy of Ukraine // <https://www.me.gov.ua/Documents/Download?id=04958f90-81af-491e-b8df-892d5101fa01>

21) Draft Law of Ukraine "On Safety and Health of Employees at Work" prepared by the Ministry of Economy of Ukraine and posted for discussion on 17.08.2022 // <https://me.gov.ua/Documents/Detail?lang=en-UA&id=1d23af02-a0ec-4458-9d88-2e4c9df8669f&title=ProektZakonuUkrainiproBezpekuIaZdoroviaPratsivnikivNaRoboti>

22) Draft Order of the Ministry of Economy of Ukraine "On Approval of Safety Rules in the Oil and Gas Industry", posted for discussion on 29 August 2022 by the State Labour Service of Ukraine // <https://dsp.gov.ua/povidomlennia-pro-opryliudnennia-proektu-nakazu-ministerstva-ekonomiky-ukrainy-pro-zatverdzhennia-pravyl-bezpeky-v-naftohazodobuvnii-pro-myslovosti-2/>

23) Draft Order of the Ministry of Health of Ukraine "On Approval of State Sanitary Standards and Rules 'On Safety and Protection of Employees from Harmful Asbestos Exposure as well as Materials and Products Containing Asbestos'". Submitted to the State Regulatory Service (letter dated 03.11.2022) // <https://www.drs.gov.ua/wp-content/uploads/2022/11/5715.pdf>

24) Law of Ukraine No. 2573-IX "On the Public Health System" dated 06.09.2022 // <https://zakon.rada.gov.ua/laws/show/2573-20#Text>

25) Draft Order of the Ministry of Economy of Ukraine "On Approval of Minimum Requirements for the Provision of Safety and Health Signs at Work", posted for discussion by the State Labour Service of Ukraine on 29 August 2022 // <https://dsp.gov.ua/povidomlennia-pro-opryliudnennia-proektu-nakazu-ministerstva-ekonomiky-ukrainy-pro-zatverdzhennia-minimalnykh-vymoh-do-zabezpechennia-znakamy-bezpeky-ta-zdorov-ia-na-roboti> Approved by Decision No.362 of the State Regulatory Service dated 03.10.22 // <https://www.drs.gov.ua/wp-content/uploads/2022/08/362.pdf>

26) Draft Resolution of the Cabinet of Ministers of Ukraine "On Prohibition of the Production and Use of Certain Hazardous Chemicals at Work". Submitted by the Ministry of Health of Ukraine to the State Regulatory Service (letter dated 25.08.2022) // <https://www.drs.gov.ua/wp-content/uploads/2022/08/4515.pdf>. Finalized on 21.09.2022, endorsed by Decision No.347 of the State Regulatory Service dated 23.09.22 // <https://www.drs.gov.ua/wp-content/uploads/2022/08/347.pdf>

27) Draft Order of the Ministry of Health of Ukraine "On Approval of the Procedure for Determining and Assessing Risks Related to Exposure to Carcinogens and Mutagens and Hygienic Regulations concerning the Maximum Permissible Workplace Concentration of Chemicals that are Carcinogenic and Mutagenic for Human Beings in the Air" (September 2022) // <https://spo.fpsu.org.ua/images/1841.pdf>

28) Draft Order of the Ministry of Economy of Ukraine "On Approval of Minimum Requirements for the Safety and Health of Employees Potentially at Risk from Explosive Atmospheres". The State Labour Service of Ukraine published it for discussion on 09.11.2022 // <https://dsp.gov.ua/povidomlennia-pro-opryliudnennia-proiektu-nakazu-ministerstva-ekonomiky-ukrainy-pro-zatverdzhennia-minimalnykh-vymoh-shchodo-bezpeky-ta-zdorov-ia-pratsivnykiv-ia-ki-potentsiino-zaznaiut-ryzkyku-u-vybukh>

29) Draft Order of the Ministry of Health of Ukraine "On Approval of Threshold and Operating Levels of Vibration in the workplace". Submitted to the State Regulatory Service (letter dated 20.10.2022) // <https://www.drs.gov.ua/wp-content/uploads/2022/10/5488.pdf>

30) Draft Order of the Ministry of Health of Ukraine "On Approval of Threshold and Operating Levels of Noise Exposure in the workplace". Submitted to the State Regulatory Service (letter dated 08.11.2022) // <https://www.drs.gov.ua/wp-content/uploads/2022/11/5802.pdf>

31) Draft Order of the Ministry of Health of Ukraine "On Approval of the Minimum Requirements for Health and Safety regarding the Exposure of Workers

- safety and health on board fishing vessels³²;
- medical care on board ship³³;
- compliance with safety and hygiene requirements for manual handling of loads³⁴.

In 2020, Ukraine approved hygienic regulations for the permissible content of chemical and biological substances in the air in the workplace³⁵. In 2021, the Hygienic Regulations for chemicals in the air in the workplace were amended twice³⁶. However, work on the harmonization of their provisions continues. Thus, in September 2022, some more changes were announced³⁷.

Cooperation on Social Protection and Social Inclusion

This commitment differs from the others since it is not related to the need to approximate Ukraine's legislation to the directives of Annex XL, but rather

testifies to the desire of the Cabinet of Ministers of Ukraine to reform its own legislation in the social sphere. The deadline for its implementation is set forth in by the Government's Action Plan for the Implementation of the Association Agreement – in this regard implementation means adoption of the relevant law. The corresponding law was adopted back in 2003, and in 2019 a new Law of Ukraine "On Social Services" was adopted³⁸. During the analysed period (01.07.2021–30.06.2022), it was amended twice. The first amendment concerned including mediation in basic social services³⁹. The second identified the aspects of the provision of social services during the declaration of a state of emergency or martial law in Ukraine⁴⁰. The provisions of this law were clarified through the development and adoption of state standards for the provision of social services, as well as through amendments to by-laws aimed at the practical provision of social assistance under martial law.

to the Risks Arising from Electromagnetic Fields" // <https://www.drs.gov.ua/wp-content/uploads/2022/08/4529.pdf>. Submitted to the State Regulatory Service, which approved is by Decision No. 337 dated September 21, 2022 // <https://www.drs.gov.ua/wp-content/uploads/2022/08/337.pdf>

32) Draft Order of the Ministry of Health of Ukraine "On Approval of Requirements for Safety and Health Protection of Workers on Board Fishing Vessels". Submitted to the Joint Representative Body of Trade Union Associations (letter dated 12.10.2022) // <https://spo.fpsu.org.ua/na-obgovo-renni-v-spo/8766-nakazu-ministerstva-okhorony-zdorov-ia-ukrainy-pro-zatverdzhennia-vymoh-shchodo-bezpeky-i-zakhystu-zdorov-ia-pid-chas-robit-na-bortu-rybolovnykh-suden>

33) Draft Order of the Ministry of Health of Ukraine "On Approval of Regulations on Medical Care on Board Ship", which approves (1) the Procedure for Medical Care on Board Ship, (2) the Procedure for Conducting Inspections of the Condition of Medical and Prehospital Care on Board Ship, (3) the List of Medicines and Medical Products that should be included in the medical kit for boats and life rafts. The Draft Order was sent for approval to the State Regulatory Service (letter dated 30.08.2022) // <https://www.drs.gov.ua/wp-content/uploads/2022/08/4559.pdf>

Draft Order of the Ministry of Health of Ukraine "On Approval of the Procedure for Providing Free Medical Consultations by Radio" (finalized). Submitted to the Joint Representative Body of Trade Union Associations (November 2022). <https://spo.fpsu.org.ua/images/2022/2415.pdf>

34) Draft Order of the Ministry of Health of Ukraine "On Approval of the Minimum Safety and Hygiene Requirements for Manual Handling of Loads" // <https://www.drs.gov.ua/wp-content/uploads/2022/09/4757.pdf>. Submitted to the Joint Representative Body of Trade Union Associations (October 2022).

35) On Approval of Hygienic Regulations of Permissible Content of Chemical and Biological Substances in the Air in the Workplace. Order No. 1596 of the Ministry of Health of Ukraine dated 14 July 2020, registered with the Ministry of Justice of Ukraine on 3 August 2020 under No. 741/35024 // <https://zakon.rada.gov.ua/laws/show/z0741-20#Text>

36) On Approval of Amendments to the Hygienic Regulations for Chemicals in the Air in the Workplace. Approved by Order No. 1715 of the Ministry of Health of Ukraine dated 10 August 2021, registered with the Ministry of Justice of Ukraine on 27 August 2021 under No. 1128/36750 // <https://zakon.rada.gov.ua/laws/show/z1128-21#Text>;

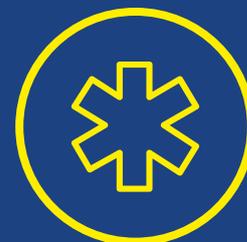
On Approval of Amendments to the Hygienic Regulations for Chemicals in the Air in the Workplace. Approved by Order No. 881 of the Ministry of Health of Ukraine dated 6 May 2021, registered with the Ministry of Justice of Ukraine on 10 June 2021 under No. 781/36403 // <https://zakon.rada.gov.ua/laws/show/z0781-21#Text>

37) Draft Order of the Ministry of Health of Ukraine "On Approval of Amendments to the Hygienic Regulations for Chemicals in the Air in the Workplace" (September 2022) // <https://spo.fpsu.org.ua/images/1914.pdf>

38) Law of Ukraine No. 2671-VIII "On Social Services" dated 17 January 2019 // <https://zakon.rada.gov.ua/laws/show/2671-19#Text>

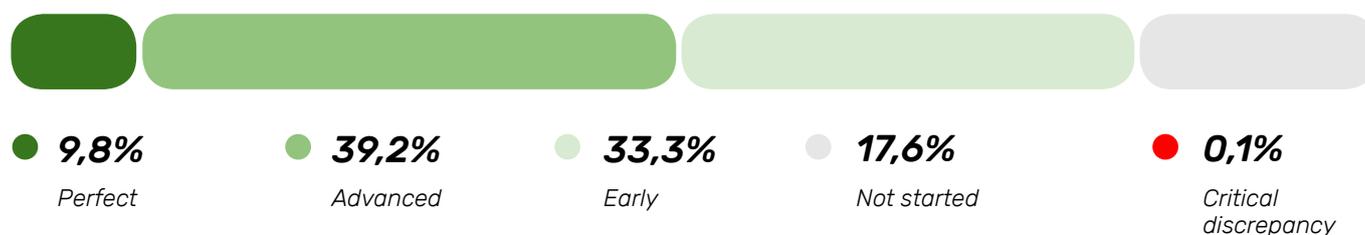
39) Law of Ukraine No. 1875-IX "On Mediation" dated 16 November 2021 // <https://zakon.rada.gov.ua/laws/show/1875-20#n253>

40) Law of Ukraine No. 2193-IX "On Amendments to Certain Laws of Ukraine on the Provision of Social Services Under the Conditions of State of Emergency or Martial Law in Ukraine or its Certain Territories" dated 14 April 2022 // <https://zakon.rada.gov.ua/laws/show/2193-20#n8>



Diana Savka

Sector progress



Strengthening of the Public Health System and its Capacity in Ukraine

The implementation of the comprehensive health financing system reform in accordance with the approved Concept is still at an advanced stage. Introduction of the electronic health care system has changed the situation significantly. In particular, the Cabinet of Ministers of Ukraine by Order No. 1671-p "On Approval of the Concept for the Development of Electronic Health Care" dated 28 December 2020 determined the purpose and key objectives of development of electronic health care, the current state of affairs, existing problems and ways to tackle them, as well as the expected results and matters of resource support. At the same time, within the framework of the reform of medical education, the Cabinet of Ministers of Ukraine by Resolution No. 725 dated 14.07.2021 approved the Regulation on the System of Continuous Professional Development of Medical and Pharmaceutical Workers, which includes doctors, pharmacists, junior specialists (professional junior bachelors, junior bachelors, bachelors) with medical education.

The development of the public health system is at an advanced stage.

It was decided to build a centralized public health system, as stipulated in the adopted Law of Ukraine No. 2573-IX "On the Public Health System" dated 06.09.2022, specifying the legal, organizational, economic and social principles of the functioning of the public health system in Ukraine. Centres for Disease Control and Prevention (CDC) have been launched in all oblasts of Ukraine and in the city of Kyiv, having received additional funding as evidenced by Resolution No. 103 of the Cabinet of Ministers of Ukraine "On Amendments to the Procedure for the Use of Funds Allocated from the State Budget for the Implementation of the Public Health and Epidemics Control Program" dated 9 February 2022.

Regarding the implementation of the Concept for the Development of Public Health, certain measures of the Action Plan for the Implementation of the Concept (Resolution No. 560 dated 18.08.2017) planned for 2017–2019 have not been implemented yet. Including:

- paragraphs 1.2 – On Amendments to the Law of Ukraine "On Approval of the National Target

Social Program on Combatting HIV/AIDS for 2014–2018” in order to include a mechanism to achieve the goals of the Joint United Nations Program on HIV/AIDS “Acceleration of Measures”;

- paragraphs 3.11 – introduction of an electronic information system for communicable disease surveillance;
- paragraphs 3.14 – development and approval of the Model Regulation on Oblast (or district at hospital districts) Coordination Councils for Public Health Emergency Preparedness and Response.

The new Concept for the Development of Public Health has not yet been approved.

Communicable diseases

The AA provides for the approximation of Ukrainian legislation to that of the EU in respect of the approval of the list of communicable diseases and related health conditions to be covered by the system of epidemiological surveillance and reporting in EU countries, as well as setting the criteria (clinical, epidemiological, and laboratory ones) based on which a case should be classified as a relevant communicable disease.

The creation of a network of Centres for Disease Control and Prevention and simultaneous development of e-health have somewhat helped to systematize approaches to data collection and analysis. For example, during the quarantine in Ukraine and 30 days from the date of its termination, the Order of the Ministry of Health “On the Epidemiological Surveillance of COVID-19 caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) in Ukraine” was in force. Thus, data were collected in the Electronic Integrated Disease Surveillance System within the framework of information interaction specified in the Agreement on Information Interaction between the National Health Service of Ukraine and the state institution Centre for Public Health of the Ministry of Health of Ukraine. At the same time, for most communicable diseases on the list of communicable diseases to be registered, no such system is available yet.

Adopted Law of Ukraine No. 2573-IX “On the Public Health System” dated 06.09.2022, in addition to creating a framework for the development of the public health system, also sets forth the relevant

rights and obligations of state bodies and local self-government bodies, legal entities and individuals in this area, establishes the legal and organizational foundations for conducting state supervision (control) in the areas of economic activity that may pose a risk to public sanitary and epidemiological well-being.

Prevention of injury and promotion of safety

There have been no changes over the period under study.

Blood safety

In order to strengthen the existing documents regulating the activities in the sector, the Cabinet of Ministers of Ukraine adopted Resolution No. 1229 “Certain Matters of the Functioning of the National Register of Donors of Blood and Blood Components, as well as Persons Not Eligible to Serve as Donors, in Electronic [...]” dated 24.11.2021. The Resolution aims at improving the state-guaranteed safety and quality of donor blood and blood components, the safety of donors and recipients, as well as persons who are not eligible to donate blood, through the National Register of Donors of Blood and Blood Components, which will make up part of the electronic health care system.

Tissue and cell transplantation

In 2018, the Law of Ukraine “On the Use of Transplantation of Anatomical Materials to Humans” was adopted. This brought about significant positive shifts in the field of transplantation and made it possible to save much more lives of Ukrainians compared to previous years. It was still necessary to make certain changes and amendments to the legislation in order to significantly improve some of its provisions and boost the efficiency of the existing system. For this purpose, the Verkhovna Rada adopted Law No. 1967-IX “On Amendments to Certain Laws of Ukraine Regulating the Transplantation of Anatomical Materials to Humans” (hereinafter referred to as the Law), which entered into force on 7 January 2022. According to the Law, until 1 January 2024, the organisation of medical care involving transplantation and/or conduct of activities related to transplantation shall be carried out at the expense of the state budget by implementing a pilot project to change the mechanism of financial support for surgical treatment involving transplantation of organs and other anatomical materials.

Practical implementation of the norms aimed at promoting the voluntary and free donation of tissues and cells is still forthcoming.

Tobacco

According to Annex XLI to the Agreement, Ukraine should implement the provisions of Directive 2014/40/EU into its national legislation.

To this end, Law of Ukraine No. 1978-IX “On Amendments to Certain Laws of Ukraine on Public Health Protection from the Harmful Effects of Tobacco” dated 16 December 2021 was adopted¹. This Law strengthens the protection of Ukrainians, especially children and young people, from the harmful effects of tobacco products and brings Ukrainian anti-smoking legislation in line with Directive 2014/40/EU.

Alcohol

There have been no changes over the period under study.

Mental health – drug dependence

The Action Plan for the Strategy for 2019–2020 adopted by CMU Decree No. 56-p of 6.02.2019 has partially transposed the EU norms, but not to the full extent. In 2021, the Ministry of Health posted for public discussion a draft CMU decree “On Approval of the State Policy Strategy on Narcotic Drugs for the Period up to 2030”, which partially takes into account European and global practices in preventing and combating drug dependence.

The implementation of the tasks related to the commitments in this area is at an early stage.

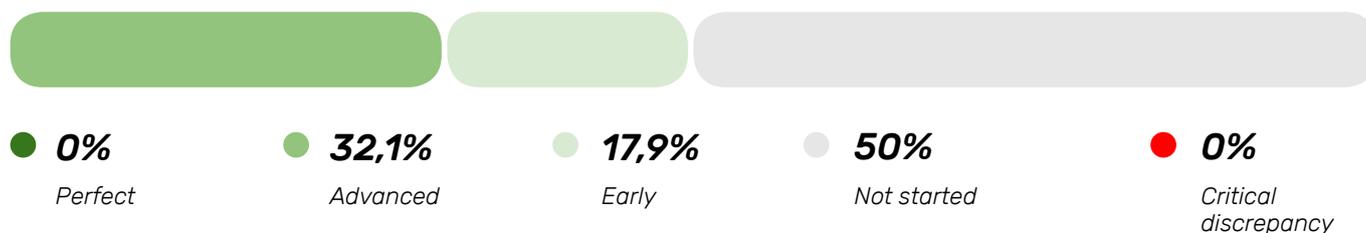
¹) http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=4358&skl=10

Education, Training and Youth



Halyna Usatenko

Sector progress



Ensuring international recognition of the National Qualifications Framework

Regulatory approximation is early. During the analysed period, Ukraine published the Self-Certification Report on Compliance of the National Qualifications Framework Criteria and Procedures with the Qualifications Framework for the European Higher Education Area¹, a methodical analysis of the compliance of the National Qualifications Framework with the EHEA Qualifications Framework criteria as a component of the implementation process of the national qualifications frameworks of EHEA countries.

Practical implementation of the recommendations can be described as early since Ukraine has taken the first step towards harmonisation of the European standards and principles of education quality assurance, taking into account employment market requirements to the competencies of professionals, with practice in Ukraine. The legislation in the field of education and social and employment relations underwent some adjustments only with regard to the martial law imposed.

1) <https://mon.gov.ua/en/tag/natsionalna-ramka-kvalifikatsiy>

Creation of the National Register of Qualifications

Regulatory approximation is advanced. The National Qualifications Agency (NQA) oversees the introduction of the National Qualifications Framework in compliance with the requirements of the Law of Ukraine "On Education," which, in turn, includes the NQF and provides free access to the Register of Qualifications on its website². At the same time, a regulatory framework has been formed that ensures the implementation of the recommendations of the European Parliament and the Council 2008/C 111/01: Resolution No. 620 of the Cabinet of Ministers of Ukraine dated 16 June 2021 (with amendments No. 986 dated 22 September 2021 and No. 1063 dated 27 September 2022) "On Approval of the Regulation on the Register of Qualifications". The website brings together and coordinates both educational qualifications and professional qualifications.

Practical implementation of the Recommendations of the European Parliament and the Council can be described as advanced. A regulatory framework

2) <https://register.nqa.gov.ua>

has been created, an open electronic resource with a register of qualifications has been developed, and Accreditation Examination Guidelines have been developed. However, the effectiveness of implementation cannot yet be measured as the National Qualifications Agency is now inviting professionals to take part in the selection of accreditation experts for qualification centres.

Implementation of European Standards and Guidelines for Quality Assurance in Higher Education Area (ESG)

Regulatory approximation is advanced. The National Agency for Quality Assurance in Education (NAQA)³ expanded its activities during 2021–2022. On 1 April 2022, a decision was made to amend the Order of the Cabinet of Ministers of Ukraine “On Approval of the Temporary Composition of the National Agency for Quality Assurance in Higher Education,” and new heads of the National Agency were approved until the end of the martial law period. In addition, the Temporary Procedure for the Accreditation of Study Programmes in Higher Education under Martial Law was approved (dated 14 April 2022, as amended (Protocol No. 19 (24) dated 25 October 2022)). On 18 October 2022, the National Agency became a member of the new Global Academic Integrity Network (GAIN).

In order to establish academic responsibility for transferring an academic work to a third party to be misrepresented as their own by this person, the Draft Law on Amendments to the Law of Ukraine “On Education” was adopted in first reading establishing responsibility for the transfer of academic works in violation of the principles of academic integrity⁴. This will make it possible to counteract academic misconduct more effectively, in particular, the practice of selling academic works.

During the analysed period, the NAQA primarily focused on expanding the sustainable practice of higher education quality assurance based on the transparency of educational programme accreditation procedures, as well as on the consistent

implementation of the policy of academic integrity and the introduction of the mechanisms of external quality assurance in education.

In the analysed period, the NAQA:

- Ensured the continuity of higher education quality assurance based on the transparency of educational programme accreditation procedures under martial law;
- Gained active membership in the community of European academic integrity organizations. One example is its presentation at the annual ENQA Members’ Forum⁵.
- Initiated the development of the National Action Plan for External Higher Education Quality Assurance in Ukraine for the period of 2022–2023. It was initiated by the National Agency for Higher Education Quality Assurance and compiled with the participation of the Committee on Education, Science and Innovation of the Verkhovna Rada of Ukraine, the Ministry of Education and Science of Ukraine, and other stakeholders⁶.

Improvement of mechanisms for awarding professional qualifications based on external assessment of competencies

Regulatory approximation is early. The matter of procedures and methods for the recognition of non-formal education and self-education was laid down in the Order of the Ministry of Education and Science of Ukraine (dated 08.02.2022) “On Approval of the Procedure for Recognition in Higher and Vocational Education of Learning Outcomes Obtained through Non-Formal and/or Informal Education”⁷. This is the first step.

However, procedures for assigning professional qualifications in this context have not yet been developed.

3) <https://zakon.rada.gov.ua/laws/show/244-2015-%D0%BF>

4) <https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=5461&conv=9>

5) <https://www.youtube.com/watch?v=Xp-B0jZwGZ0>

6) <https://naqa.gov.ua/wp-content/uploads/2022/06/%D0%9D%D0%B0%D1%86%D1%96%D0%BE%D0%BD%D0%B0%D0%BB%D1%8C%D0%B-D%D0%B8%D0%B9-%D0%BF%D0%BB%D0%B0%D0%BD-%D0%B4%D1%96%D0%B9-%D1%84%D1%96%D0%BD%D0%B0%D0%BB%D1%96%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%B8%D0%B9-14.pdf>

7) <https://zakon.rada.gov.ua/laws/show/z0328-22#Text>

One of the main problems is the less than effective interaction between sectoral councils and the state, including line ministries, on the development and assignment of professional qualifications, including results of non-formal education and self-education.

The practical implementation of the provisions of the European legislation is early or has not started. There are hopes that the National Qualifications Agency (NQA) will intensify its activities, which includes educational standards and professional qualifications, coordination of the work in the triangle of 'sectoral councils – line ministries – qualification centres'.

Ensuring access to lifelong learning

Regulatory approximation is early. Discussion of the Law "On Adult Education" has been underway in Ukraine for more than 10 years. This year, two draft laws were submitted to the Verkhovna Rada (the draft law of the Cabinet of Ministers of Ukraine was submitted to the Verkhovna Rada on 15.02.2022, and the draft of MP Hryshyna was submitted on 17.03.2022). These two draft laws are included in the agenda of the 8th session of the Verkhovna Rada of Ukraine. On 28 November 2022, following the results of consideration, a resolution was adopted "On the Adoption of the Draft Law of Ukraine 'On Adult Education'" (Reg. No. 7039)⁸ regarding the draft submitted by the Cabinet of Ministers of Ukraine. The Verkhovna Rada Committee should finalize it and submit it for consideration to the Verkhovna Rada of Ukraine in second reading.

Updating of education standards for the relevant levels, taking into account the basic competencies of lifelong learning

Regulatory approximation is early or has not started. The Law of Ukraine "On Adult Education", which was adopted as the basis by the Verkhovna Rada of Ukraine (reg. No. 7039), provides a definition for continuous professional development, including postgraduate education. It also indicates that educational programmes for non-formal education are to be developed based on professional standards.

Such legislation will make up the basis for updating educational standards for the relevant levels of education, taking into account the basic competencies of lifelong learning.

Despite some success, the Government has not yet fully fulfilled any of the tasks required by Recommendation 2008/C111/01; Directive 2005/36/EC; Recommendation 2006/962/EC; Communication from the Commission COM (2001) 678; Regulation (EU) 1288/2013.

The most important advances have been made with regard to introducing European recommendations and standards for higher education assurance. This was made possible due to the effective work of the National Agency for Quality Assurance in Education, which maintains institutional sustainability despite the large-scale invasion, as well as due to its active participation in international associations for quality assurance in education. This activity also lays the groundwork for ensuring continuous exchange of information with EU institutions concerning joint programmes in the field of education.

Work was also intensified with regard to the assignment of professional qualifications and compiling their register. This became possible due to the methodical activities of the National Qualifications Agency. This is also facilitated by legislative support on the part of the Ministry of Education and Science of Ukraine in terms of the recognition of learning outcomes obtained through non-formal and/or informal education in higher and vocational education. Significant expectations are also placed on the Law on Adult Education. This can help reconsider approaches to contemporary education, in particular vocational education, which might be extremely important during the post-war reconstruction of Ukraine.

8) <https://ips.ligazakon.net/document/DI08446A>



TITLE VI.

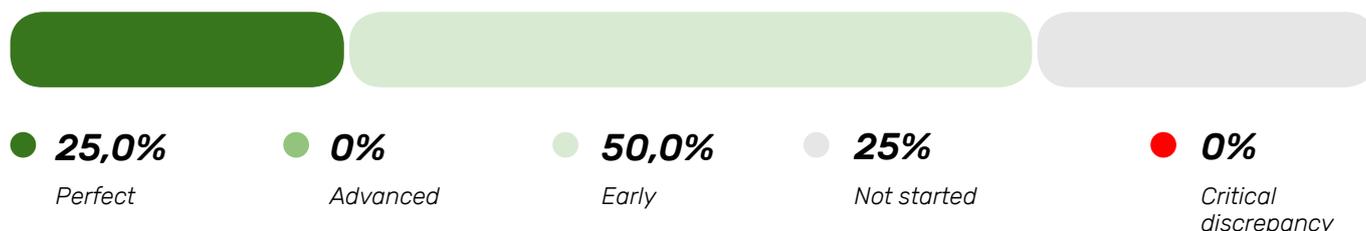
Financial cooperation,
with anti-fraud
provisions

Financial cooperation, with anti-fraud provisions



Svitlana Brus

Sector progress



Establishing cooperation and coordination with the European Anti-Fraud Office (OLAF)

Practical implementation is advanced. Coordination of cooperation with the European Anti-Fraud Office (OLAF) has been arranged by all regulators involved. CMU Resolution No. 1110 of 25.10.2017 established the Interdepartmental Coordination Council for Countering Violations that Affect the Financial Interests of Ukraine and the EU, approved its staff and Regulation, and authorized the Ministry of Internal Affairs to perform the functions of the National Contact Point (NCP) in liaising with OLAF and the European Court of Auditors (ECA) in respect of the implementation of Title VI of the Association Agreement and the relevant Annexes thereto. The NCP has initiated communication with the EU to conclude a separate agreement (memorandum) on cooperation between the Ministry of Internal Affairs and OLAF aimed at laying down the legal basis and procedure for operational cooperation.

The Cabinet of Ministers of Ukraine adopted Resolution No. 702 of 7 July 2021, which addresses the matters of cooperation with the European Anti-Fraud Office (OLAF) and the European Court of Auditors (ECA) with regard to implementing Title VI "Financial Cooperation

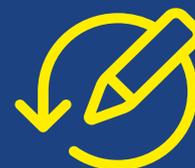
with Anti-Fraud Provisions" of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part.

Providing mutual administrative assistance and legal support in taking measures to prevent and fight fraud, corruption and other illegal activities

It involves the provision of mutual administrative assistance and legal support in taking measures to prevent and fight fraud, corruption and other illegal activities, align national legislation with the provisions set out in Annex XLIV to the Association Agreement, practical implementation of cooperation, and exchange of information with the EU at the operational level in accordance with effective procedures.

Legislative approximation is early or has not begun. Public authorities have not started any work to fulfil the task.

Abbreviations



AA	Association Agreement (abbreviation) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part.
ABCA	Apartment Building Co-owner Associations
ACAA	Agreements on Conformity Assessment and Acceptance of Industrial Products
AEO	Authorized economic operators
AF/AFU	Armed Forces/Armed Forces of Ukraine
ALTHEA	Operation EUFOR ALTHEA – EU military operation in Bosnia and Herzegovina
AMCU	The Antimonopoly Committee of Ukraine
ARMA	National Agency of Ukraine for Detection, Investigation and Management of Assets Obtained from Corruption and Other Crimes
ASM	Ancillary services market;
ASO	Administrative Service Offices
ATC	Amalgamated territorial community
AVMSD	Audiovisual Media Services Directive
B2C	Business-to-Consumer
BATs	Best available techniques
BCM	bilateral contracts market
BEPS	OECD project to combat tax base erosion and profit shifting
BIPM	International Bureau of Weights and Measures
BM	Balancing market
BRDO	Better Regulation Delivery Office
BRT	Broadcasting, Radiocommunications & Television Concern
BTG	Tactical Battle Group
CBRN	Chemical, biological, radiological and nuclear safety
CCU	Constitutional Court of Ukraine
CDC	Centre for Disease Control and Prevention
CEBs	Central Executive Bodies
CEN	European Committee for Standardization (Comité Européen de Normalisation)
CENELEC	European Committee for Electrotechnical Standardization (Comité Européen de Normalisation Électrotechnique)
CERT	Computer Emergency Response Team
CFSP	The EU's common foreign and security policy
CFSP	Common Foreign and Security Policy
CHP	Combined heat and power plant
CMU	Cabinet of Ministers of Ukraine
COARM	Troika of the Working Party on Conventional Arms Exports
CONOP/CODUN	Troika of the Working Party on Global Non-Proliferation and Disarmament
COSCE	EU Working Party on OSCE and the Council of Europe
CP	Checkpoint (at the border)

CPO	Centralized procurement organisation
CRO	Civil Registration Offices
CRS	Common Reporting Standard
CSDP	The EU's Common Security and Defence Policy
CSO	Civil Society Organisation
CSP	EU-Ukraine Civil Society Platform
DAM	day-ahead market
DBR	State Bureau of Investigation
DMA	Digital Markets Act
DSA	Digital Services Act
DSM	EU Digital Single Market
DSM	Digital Single Market
DSTU	State Standard of Ukraine
EA	European co-operation for Accreditation
EaP	Eastern Partnership
EASA	European Aviation Safety Agency
EC of Ukraine	Electoral Code of Ukraine
ECA	European Court of Auditors
EDA	European Defence Agency
EFTA	European Free Trade Association
EGNOS	European Geostationary Navigation Overlay Service
EIA	Environmental Impact Assessment
eIDAS	Regulation of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
EMD	Electronic money directive
EMIR	European market infrastructure regulation
EnC	EU Energy Community
ENISA	The European Union Agency for Cybersecurity
ENSTTI	European Nuclear Safety Training and Tutoring Institute
ENTSO-E	European Network of Transmission System Operators for Electricity
ERGA	European Regulators Group for Audiovisual Media Services
ESA	European Space Agency
ESBU	Economic Security Bureau of Ukraine
ESCO	Energy Service Company
ESDC	European Security and Defence College
ESG	Standards and Guidelines for Quality Assurance in the European Higher Education Area
ESS	European Statistical System
ESS	European statistical system
ETD	Energy Taxation Directive
ETIAS	European Travel Information and Authorisation System
ETL	Electricity transmission Line
ETS	European Convention on Transfrontier Television
ETSI	European Telecommunications Standards Institute
ETSON	European Technical Safety Organisations Network

EU	European Union
EU-FINREG	EU project “Strengthening the Regulation and Supervision of the Nonbank Financial Market”
EU-FINREG	EU project “Strengthening the Regulation and Supervision of the Nonbank Financial Market”
EU-SILC	EU statistics on income and living conditions
EUAM	European Union Advisory Mission Ukraine
EUAM	EU Advisory Mission Ukraine
EUBAM	European Union Border Assistance Mission to Moldova and Ukraine
EuBIS	European Blood Inspection System
EUIPO	European Union Intellectual Property Office
EUMETSAT	European Organisation for the Exploitation of Meteorological Satellites
Eurojust	European Agency for Criminal Justice
Europol	European Police Office
FATF	Financial Action Task Force on Money Laundering
FEC	Fuel and Energy Complex
FIU	Financial Intelligence Unit
FRG	Federal Republic of Germany
GDN	Gas distribution networks
GDPR	General Data Protection Regulation
GIZ	German Society for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit)
GM/GMO	Genetically modified/Genetically modified organisms
GMP	Good Manufacturing Practice
GNSS	Global navigation satellite system
GOST	The state standard (GOST) of the former USSR/interstate standard in the CIS countries
Government Action Plan or Action Plan on Implementation of the AA	Action plan on the implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, approved by CMU Resolution No. 1106 of October 25, 2017 (as amended)
GTS	Gas transmission system
GTSOU	Gas transmission system operator of Ukraine (LLC GTS Operator of Ukraine)
HACCP	Hazard Analysis and Critical Control Point
HCJ	High Council of Justice
HPP	Hydro Power Plant
HQCJ	High Qualification Commission of Judges
HTP	Heated tobacco products
ICAAP	Internal capital adequacy assessment processes
IDM	Intraday market
IDPs	Internally Displaced Persons
IEA	International Energy Agency
IEC	International Electrotechnical Commission
IFIAR	International Forum of Independent Audit Regulators
IFRS 9	International Financial Reporting Standard 9
ILO	International Labour Organisation
INSC	Instrument for Nuclear Safety Cooperation
IPTV	Internet Protocol Television (IP)
ISCED	International Standard Classification of Education

ISM Code	International Safety Management Code
ISO	Independent System Operator
ITC mechanism	Inter-Transmission System Operator Compensation
JFS	Justice, Freedom, Security and Human Rights
JRB	Joint Representative Body
JSC	Joint-Stock Company
LCR	Liquidity Coverage Ratio
LCU	Labour Code of Ukraine
LF	Law Firm
LITPOLUKRBRIG	Lithuanian-Polish-Ukrainian Brigade
LLC	Limited Liability Company
MAC	Migrant Accommodation Centre
MAGATE	International Atomic Energy Agency
MDT	Ministry of Digital Transformation of Ukraine
MES	Ministry of Education and Science of Ukraine
MGU	joint-stock company Mahistralni Gazoprovody Ukrainy
MIA	Ministry of Internal Affairs of Ukraine
MiFID	EU Markets in Financial Instruments Directive
MiFIR	EU Markets in Financial Instruments Regulation
MNP	Mobile Number Portability service
MNP	Mobile number portability
MoH	Ministry of Health of Ukraine
MOSS	Mini One-Stop-Shop
MRA	Mutual Recognition Agreement
MRA	Mutual Recognition Agreement
MRV	Monitoring, Reporting and Verification
MZV	Monitoring, reporting, and verification
NAAU	National Accreditation Agency of Ukraine
NABU	National Anti-Corruption Bureau
NACP	National Agency on Corruption Prevention
NAHEQA	National Agency for Higher Education Quality Assurance
NAQA	National Agency for Higher Education Quality Assurance
NASU	National Academy of Sciences of Ukraine
NATO	North Atlantic Treaty Organisation
NATURA 2000	Network of environmentally important protected areas of the EU
NAUCS	National Agency of Ukraine for Civil Service
NBU	National Bank of Ukraine
NCCIR	National Commission for State Regulation of Communications and Informatization
NCEC	National Commission for the State Regulation of electronic communications, radiofrequency spectrum and the provision of postal services
NCP	National Contact Point
NCRFSM	National Commission for Regulation of Financial Services Markets of Ukraine
NCRT	National Commission for State Regulation of Transport
NCSRT	National Commission for State Regulation of Transport
NCSSM	National Commission on Securities and Stock Market of Ukraine

NCTS	New Computerized Transit System
NEC	National Energy Company
NECP	Integrated National Energy and Climate Plan
NEURC	National Energy and Utilities Regulatory Commission
NEURC	National Energy and Utilities Regulatory Commission
NF of the AFU Forces	Naval Forces of the Armed Forces of Ukraine
NGO	Non-Governmental Organisation
NJCS	National Joint-Stock Company
NJSC	National Joint Stock Company
NNEGC	National Nuclear Energy Generating Company (Energoatom)
NPRE	National Plan for Reduction of Emissions from Large Combustion Plants
NQF	National Qualifications Framework
NRA	National Regulatory Authorities
NSDC	National Security and Defence Council of Ukraine
NSFR	Net Stable Funding Ratio
NSSMC	National Securities and Stock Market Commission
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development
OECD/G20 BEPS	Project of the Organisation for Economic Cooperation and Development and the G20 countries to develop measures to combat the erosion of the tax base and profit shifting
OIML	International Organisation of Legal Metrology
OLAF	European Anti-Fraud Office
OSCE SMC	OSCE's Special Monitoring Mission to Ukraine
OTT technology	Delivery of the audio, video, and other media content over the Internet, without the involvement of a multiple-system operator in the control or distribution of the content (Over-The-Top Content)
OU	Ownership Unbundling
PECI	Projects of Energy Community Interest
PESCO	Permanent Structured Cooperation
PIC	Public Integrity Council
PMG	Programme of Medical Guarantees
PMI	EU Projects of Mutual Interest
PSD	EU Payment Services Directive
PSH	Pumped-storage hydroelectricity
PSO	Public Service Obligation
PTB	National Metrology Institute of Germany (Physikalisch-Technische Bundesanstalt)
PTN	Production and technological needs
PV	Photovoltaic power station
QES	Qualified electronic signature
QSCD	Qualified Signature Creation Device
RAC	Refugee Accommodation Centre
RAPEX	EU Rapid Exchange of Information System
RCMU	Resolution of the Cabinet of Ministers of Ukraine
REFIT	European Commission's regulatory fitness and performance programme
REMIT	EU Regulation 1227/2011 of 25 October 2011 on Wholesale Energy Market Integrity and Transparency
RES	Renewable energy sources

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REWG	Roaming Expert Working Group
RF	Russian Federation
RGC	Regional Gas Company
RIMS	Remote integrity monitoring station
RLA	Regulatory legal act
RSA	Regional (Oblast) State Administration
RSS	Remote Signature Service
RTA	Road traffic accident
RW	Radioactive waste
SAEZM	State Agency on Exclusion Zone Management
SAPO	Specialized Anti-Corruption Prosecutor's Office
SBI	State Bureau of Investigation
SBU	Security Service of Ukraine
SE	State Enterprise
SEI EB	System of Electronic Interaction of Executive Bodies
SELEC	Southeast European Law Enforcement Centre
SEO	Strategic Environmental Assessment
SESU	State Emergency Service of Ukraine
SGEI	Services of general economic interest
SIGMA	OECD Support for Improvement in Governance and Management
SIMS	Single Integrated Metadata Structure
SMP	Significant Market Power
SMRAC	System for Monitoring Risk Assessment Criteria
SMS	State Migration Service of Ukraine
SMS	Statistical metadata system
SNF	Spent nuclear fuel
SNRIU	State Nuclear Regulatory Inspectorate of Ukraine
SPM	Sanitary and phytosanitary measures
SPS	Solar Power Station
SREP	Supervisory Review and Evaluation Process
SRS	The State Regulatory Service
SS	Service station
SSAU	State Space Agency of Ukraine
SSFSCP	The State Service of Ukraine on Food Safety and Consumer Protection
SSS	State Statistical Surveillance
SSTC NRS	State Scientific and Technical Centre for Nuclear and Radiation Safety
STS	The State Tax Service of Ukraine
TBT	Technical barriers to trade
TCU	Tax Code of Ukraine
TEN-E	Trans-European Networks for Energy
TEN-T	Trans-European Transport Network
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TKE	Teplokomunenergo (heat supply companies)

TPP	Thermal power plant
TSI	Technical specifications for Interoperability
TSO	Transmission system operator
UCG FEA (UKT ZED)	Ukrainian Classification of Goods of Foreign Economic Activity
UES	United Energy Systems
UHHRU	Ukrainian Helsinki Human Rights Union
UkrNOIPI	Ukrainian National Office of Intellectual Property and Innovation
UN	United Nations Organisation
UNDA	United Nations Development Accounts
USF	underground storage facilities
USIST	Unified State Information System for Organ and Tissue Transplantation
VAT	Value added tax
VOC	Volatile Organic Compounds
VR/VRU	The Verkhovna Rada of Ukraine
VSP	Video-Sharing Platforms
WHO	World Health Organisation
WMDA	World Marrow Donor Association
WPP	Wind power plant
WTO	World Trade Organisation



The **Ukrainian Center for European Policy (UCEP)** is an independent think tank for policy analysis and development, established in 2015.

Our mission is to promote reforms in Ukraine for sustainable economic growth and to build an open society in partnership with institutions at all levels.

Priority activity areas:

- development of expert-analytical materials to promote European integration reforms in Ukraine;
- promotion of European values among Ukrainian society;
- informing the public on opportunities and benefits of close cooperation with the EU;
- promoting enhanced economic, political, and trade cooperation between Ukraine and the European Union;
- informing the international community about the challenges and achievements of Ukraine's reform process under the EU-Ukraine Association Agreement.

