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Association Implementation Report on Ukraine

Association Implementation Report on Ukraine

1. Summary

In line with the revised European Neighbourhood Policy, this report outlines the state of play of Ukraine's implementation of its commitments under the EU-Ukraine Association Agreement (AA). It covers developments since the publication of the previous Association Implementation Report on Ukraine on 12 December 2019 and ahead of the EU-Ukraine Association Council of 8 December 2020.

Following Ukraine's election of a new President and Parliament in 2019, the "Servant of the People" party associated with President Volodymyr Zelenskyy attained a Parliamentary majority and formed a Government. A new Prime Minister and a number of new Ministers were appointed following a significant Government reshuffle in March 2020. Up until the outbreak of the COVID-19 pandemic in Ukraine around this time, rapid legislative activity characterised the early months of the Parliament and Government, reflecting reform expectations from Ukraine's citizens. The President, Parliament and the Government have all underlined their commitment to continuing implementation of the AA.

The Ukrainian Government published its own AA implementation report for the year 2019 in spring 2020¹ and continued to work on prioritisation and implementation of the AA. The current Government programme includes a section dedicated to implementation of the AA, which is defined as a priority. The Government has also engaged in renewed efforts to prioritise legislative reforms relating to AA commitments and coordination in this regard. Ukrainian civil society continues to play an important role in the pursuit and monitoring of reform progress.

A new Electoral Code, which harmonises rules for all types of elections, was adopted in December 2019 and amended further in July 2020 to address technical shortcomings. On the basis of the new Code, nationwide local elections were held in Ukraine in October 2020, based on a new administrative structure resulting from decentralisation reform.

Ukraine's territorial integrity, sovereignty and independence, along with democracy and human rights for its citizens, continue to face the challenge of **Russia's destabilising actions in eastern Ukraine**, as well as in the illegally annexed Crimea and Sevastopol and in and around the Sea of Azov. Forced disappearances, politically motivated prosecutions and torture to extract false confessions appear to remain a recurring practice among the *de facto* "authorities" in Crimea. Violations of the ceasefire in eastern Ukraine continue on a daily basis, although significantly fewer since a July 2020 re-commitment to the ceasefire. Since April 2019, an estimated 200,000 Russian Federation passports have allegedly been issued to residents of the non-government controlled areas in eastern Ukraine. Russia's maritime inspection regime, launched in June 2018, of all vessels going through the Russia-controlled Kerch Strait on their way to or from the Ukrainian Sea of Azov ports also continues to have negative economic consequences for the region. The COVID-19 pandemic led to the closure of several entry-exit crossing points on the line of contact in March. More than 3.4 million people on both sides of the line of contact remain in need of humanitarian assistance and protection.

¹ https://eu-ua.org/sites/default/files/inline/files/ar_aa_implementation-2019-4_eng.pdf

In the area of **justice, rule of law and the fight against corruption**, Ukraine's institutional framework now includes the High Anti-Corruption Court (HACC), which began working on high-level corruption cases in September 2019 and handed down its first verdict in June 2020. Cooperation between the National Anti-Corruption Bureau of Ukraine (NABU) and the Specialised Anti-Corruption Prosecutor's Office (SAPO) has improved, though the rate of convictions from corruption investigations remains low for the time being. A selection commission for a new head of SAPO has been appointed, while there have been various political attempts to dismiss the head of NABU. In August and September the Constitutional Court of Ukraine (CCU) declared certain provisions of the law on the National Anti-Corruption Bureau of Ukraine (NABU) and the appointment of its director unconstitutional, creating legal uncertainty, undermining NABU's independence. On 27 October the CCU decided on the unconstitutionality of elements of the anti-corruption legislation in Ukraine related to the electronic declaration system for public officials and politicians and core powers of the National Agency for Prevention of Corruption. Several legislative initiatives were registered in the Parliament to restore the anti-corruption legislation and to reform the CCU with discussions ongoing.

An anticipated law on judiciary was put on hold following a negative opinion of the Venice Commission late 2019 and a CCU ruling in March 2020. New legislation addressing these reservations was submitted to Parliament in July 2020, and is under consideration in the Legal Policy Committee. A Venice Commission Opinion on the draft law was published in October 2020, accepting a reform in stages, on the condition that the High Qualification Commission of Judges (HQCJ) be made autonomous from the High Council of Justice (HCJ) and the reform of HCJ will be launched in parallel. An Intelligence Service law, establishing democratic control and oversight over agencies with intrusive powers, including the Security Service, was adopted. Consideration of new broader legislation on the Security Service continues, along with work on the establishment of the Economic Security Bureau.

In the area of public administration reform, a series of institutional reorganisations and civil service law changes led to the replacement of more than a third of top management posts in Ukrainian ministries and agencies. This coincided with a suspension of merit-based recruitment to the civil service for the duration of the COVID-19 quarantine measures, leading to the appointment of over 7000 civil servants without competition, including more than 60 high-level posts.

Despite the commendable stabilisation efforts of recent years, the COVID-19 pandemic hit the Ukrainian **economy** hard. Financial support from the IMF and the EU has played a part in helping Ukraine to cope with ensuing recession and a deteriorating budget outlook. This support is conditional on Ukraine's commitment to safeguarding existing achievements and advancing on the structural reforms agenda. The pandemic inevitably slowed down reform progress by deviating resources and political attention, while abrupt Government reshuffles and changes to the personnel and management of state agencies added further uncertainty during this period.

Some notable reform progress was achieved in the area of agrarian and rural development policy (in particular the opening of the land market). Developments in the area of state-owned enterprise reform have undermined the chances of its success, in spite of the Economy Ministry's publication of a plan to align corporate governance practices with European principles.

The adoption of a **banking** resolution law in May 2020 helped to safeguard Ukraine's financial stability, but the resignation of the Governor of the National Bank of Ukraine in July

raised concerns over central bank independence and longer-term monetary and financial stability, an important consideration for Ukraine's international partners. Legal cases relating to PrivatBank, nationalised in 2016 after allegations of massive (USD 5.5 bn) and unresolved fraud, also continue in Ukrainian and foreign courts, with potentially significant financial implications for the state. In the meantime there has been little progress in criminal prosecution aimed at bringing those responsible to justice.

Following many years of uninterrupted growth favoured by the Deep and Comprehensive Free Trade Area (DCFTA) established by the AA, bilateral **trade** in the first eight months of 2020 compared to the same period in 2019 decreased by around 11% as a consequence of the COVID-19 pandemic. The EU remains by far Ukraine's biggest trading partner. Regarding Ukraine's wood export ban, a longstanding bilateral trade-irritant, a bilateral arbitration panel under the AA has been established and a final ruling of the panel is expected still in 2020. Recent draft legal proposals which would introduce local content requirements in public procurement procedures are a cause of concern as they breach the equal treatment and non-discrimination principles of public procurement under the AA, the WTO and the WTO Agreement on Government Procurement (WTO GPA). Regarding trade defence activities, the recent proliferation of safeguard investigations launched by Ukraine have not always been carried out in strict adherence with criteria and standards.

With regard to the Trade and Sustainable Development chapter of the Agreement, the list of experts for arbitration has still not been agreed (a requirement from entry into force of the agreement), and progress on reforming labour and environmental provisions is very slow.

A new gas transit contract was signed in late 2019 securing important **energy** supplies to Europe until 2024. Unbundling was driven forward successfully with the establishment of new gas transmission system operator, although the process of unbundling the electricity transmission operator has stagnated. The opening of electricity wholesale market remains equally challenging despite some legislative steps forward. Reform progress has been slow in relation to **transport, environment and climate change**. In transport, key draft laws on market opening, including on railway and on dangerous goods transport, remain blocked in Parliament, a draft law on inland waterways passed its first reading in May 2020. Ukraine has expressed its ambition to approximate its policies and legislation with the European Green Deal and launch a focused dialogue in this area.

In **digital** transformation, Ukraine has made considerable progress by launching mobile application for digital public services. A law on electronic communication was adopted on 30 September, but sent back to Parliament by the President with his recommendations. The EU has provided broader assessment of the implementation of Ukraine's commitments in the AA and recommendations for further alignment of the adopted law with the EU acquis.

In the area of **education**, legislative initiatives regarding secondary and higher education were passed and the introduction of the "New Ukrainian School" continued. In this context, it is important to implement further the recommendations of the Venice Commission, in close cooperation with relevant stakeholders. Ukraine continues to make good use of EU programmes such as **Erasmus+ and Creative Europe**.

While COVID-19 restrictions significantly reduced travel between Ukraine and the EU in the early months of 2020, Ukraine celebrated three years of **visa-free travel** to the EU for its citizens on 11 June. Ukrainians have made more than 50 million visits to EU Member States and the Schengen area during this time.

The EU bolstered its support for Ukraine in the context of its response to the COVID-19 pandemic and continues to provide **financial assistance** as part of support for Ukraine's stabilisation and reform process, having mobilised, together with financial institutions, more than EUR 16.5 billion in grants and loans for this purpose since 2014.

2. Political dialogue, good governance and strengthening institutions

2.1 Democracy, human rights and good governance

Following the presidential and parliamentary elections held in 2019, the “Servant of the People” party associated with President Volodymyr Zelenskyy achieved parliamentary majority and formed a Government. A new Prime Minister and a number of new Ministers were appointed following a Government reshuffle in March 2020.

Since the launch of a **decentralisation reform** and during the course of 2015-2019, 4492 local communities merged voluntarily into 983 larger amalgamated communities covering 41% of Ukraine’s territory. The remaining 6469 communities were included into enlarged communities under a compulsory amalgamation process in 2020. In May 2020, the Cabinet of Ministers finalised the process by approving the list of a total 1469 amalgamated communities. In a number of cases, local communities claimed a lack of proper consultation and arbitrary decisions on amalgamation by the executive authorities. The new territorial structure at local and sub-regional level includes 31 communities located in the territories of Donetsk and Luhansk not controlled by the government, but does not cover the illegally annexed Crimea and Sevastopol. A new sub-regional (rayon) structure was also approved reducing the number of rayons from 490 to 138 which also includes non-government-controlled areas in the east and the illegally annexed Crimea and Sevastopol. While amendments to the Budget Code secure direct allocation to the budgets of local communities 60% of personal income tax (PIT) collected on their territory, the authorities plan on comprehensive reform of internal structures of the local self-government and its relations with central authorities, including in Constitution.

A new **Electoral Code** harmonising the rules for all types of elections, was adopted in December 2019 and has entered into force, ahead of nationwide local elections in October 2020. The Electoral Code introduces new election systems for parliamentary and local elections. It enfranchises internally displaced persons and other mobile groups of the population. It contains more progressive provisions on gender representation, and improves access to elections for persons with disabilities. In July 2020, shortly before the start of the electoral process, Parliament addressed some of the technical shortcomings, strengthened electoral justice and introduced new important changes to the electoral rules. According to the Preliminary Conclusions of the OSCE-ODIHR Limited Election Observation Mission for 2020 local elections, the revised Code does not address a number of ODIHR’s long-standing priority recommendations.

Nationwide **local elections** were held on 25 October. Elections were held neither in the illegally annexed Crimea and Sevastopol nor in the non-government-controlled areas in the east. In addition, elections were not held in 18 communities in the government-controlled part of Donbas.

The elections were competitive and were characterised overall positively by domestic and international observers, although various irregularities and legal shortcomings were recorded. COVID-19 posed an additional challenge to the organisation of the elections.

The National **Human Rights** Strategy, adopted in 2015, reached the end of its five year duration in 2020. A new Strategy has been elaborated by the current administration, following a consultative process, and it is pending approval. Following the adoption of the new Strategy, a new Human Rights Action Plan is foreseen to be elaborated, under the lead of the Ministry of Justice, containing clearer results indicators.

The situation **in the illegally annexed Crimean peninsula** continued to deteriorate in 2020. Forced disappearances, politically motivated prosecutions and torture to extract false confessions appear to remain a recurring practice among *de facto* “authorities”. Freedom of expression remains suppressed through administrative decrees and court-imposed sanctions against individuals sharing content on social media. Ethnic Ukrainians and those using the Ukrainian language face targeted discrimination. Access to education in Ukrainian remains severely curtailed. 45,000 Crimeans have been displaced. Around 300,000 Russian citizens seem to have been relocated to Crimea. The Decree signed by President Putin in March 2020 officially prevents “foreigners” from owning land throughout a major part of Crimea and Sevastopol. OHCHR estimates that 9,747 or more Ukrainian citizens who have not taken Russian citizenship face the risk of their land being subject to “enforced sale or nationalisation” within 12 months.

Reports also indicate continuing systematic attempts to destroy Crimean Tatar identity and cultural heritage. *De facto* “authorities” disproportionately detain and impose fines on Crimean Tatars protesting against their arrest and persecution of representatives of their community. The activities of the Crimean Tatar Mejlis remain banned under Russian legislation with wide-ranging restrictions against the community, especially against its leadership. *De facto* “authorities” in Crimea have not officially registered the independent **Orthodox Church of Ukraine** (OCU). The church's “unofficial” nature leaves it open to seizure of property, as well as other forms of administrative harassment.

Human rights and fundamental freedoms continue to be severely curtailed by armed groups **in non-government controlled areas (NGCA) of eastern Ukraine**, including through targeted killings, arbitrary and incommunicado detention, sexual and gender-based violence, torture and arbitrary violation of property rights. Freedom of media as well as freedom of religion or belief remains severely affected in these areas, where civic space is also highly restricted.

The **humanitarian situation in eastern Ukraine** presents a fundamental challenge for the sixth consecutive year. More than 3.4 million people on both sides of the line of contact remain in need of humanitarian assistance and protection. Indiscriminate shelling of civilian infrastructure, water stoppages and electricity cuts, environmental damage and problems of limited humanitarian access to NGCA continue, while humanitarian funding is constantly decreasing. According to the UN Office for the Coordination of Humanitarian Affairs, current funding only covers 28% of the 2020 UN Humanitarian Response Plan.² The situation is particularly grave in the sectors of health, food and livelihood, shelter, protection, preparation for winter and access to basic infrastructure and utilities (including water provision). The effects of COVID-19 in the conflict area have also been dramatic: entry/exit crossing points

²https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_20_20_revised_hrp_due_to_the_covid-19_pandemic_-_9_jun_2020.pdf

have been all but completely sealed-off for civilians since mid-March 2020, blocking access to pensions and social payments for hundreds of thousands of civilians residing in NGCA, seriously deteriorating the well-being of the population. International aid humanitarian cargos have passed on, but with extreme difficulties and in smaller numbers than planned. The economic repercussions of COVID-19-related measures have affected the socio-economic welfare of conflict-affected people adversely. Large-scale wildfires in October 2020 heavily affected Luhansk oblast, including significant damage to the Stanitsya Luhanska bridge.

Under the new Electoral Code, enfranchising **Internally Displaced Persons** (IDPs), the latter were able to vote in the nationwide local elections held on 25 October. There has also been progress in implementing by-laws on the access of IDPs to social benefits, especially for IDPs with special needs. However, IDPs continue to face difficulties in the exercise of a number of civic rights, including access to employment and healthcare services. The payment of social benefits and pensions remains one of the major concerns, overall in the NGCA where they remain suspended. A draft law outlining a mechanism for pension payments is currently under consideration in Parliament. Procedures for crossing the contact line have further improved on the government-controlled side, but the number of crossing points is insufficient and closed since mid-March 2020.

A state policy and mechanisms on remedy and reparation for civilians injured during the hostilities, as well as compensation schemes for lost and damaged property, remain to be established. According to the UN, eastern Ukraine is one of the places most severely affected by **mines and unexploded ordnance** in the world³. In September 2020, Parliament adopted an amendment to the new Law on Mine Action, which defines the specificities of military, humanitarian and operational demining, and creates a number of new agencies, such as the National Mine Action Authority and the National Mine Action Centre.

According to the OSCE, physical or sexual violence affected around 25% of **women** in Ukraine over the age of 15.⁴ A 72% rise in the number of calls to the national Domestic Violence Hotline⁵ was recorded between February and May 2020, illustrating a negative impact of the COVID-19 crisis on the domestic violence situation, similar to other affected countries. In Ukraine, women represent over 83% of healthcare workers, who are most exposed to infection. Ukraine has yet to ratify the Istanbul Convention and has not yet ratified the Rome Statute of the International Criminal Court (ICC). The constitutional amendments adopted in 2016 allowing the ratification contained a transitional provision that ended in June 2019.

OHCHR documented some violations related to discrimination, hate speech and violence targeting members of Ukraine's plethora of minority groups.⁶ Marches marking International Women's Day were held peacefully. The Kyiv Equality March was held online due to ongoing COVID-19 related restrictions. The Roma minority continues to remain a particularly vulnerable minority group due to a lack of access to identification documents, adequate education or poverty reduction actions.

Freedom of the **media** remain broadly respected in Ukraine, notable achievement in the context of ongoing Russian disinformation campaigns. Physical attacks (some with fatal

³ <https://www.unhcr.org/news/stories/2019/4/5ca200c04/clearing-landmines-ukraine-careful-step-time.html>

⁴ OSCE Survey on the Well-being and Safety of Women, 2019: <https://www.osce.org/secretariat/413237>

⁵ Hotline run by civil society organisation "La Strada"

⁶ https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Feb-15May2019_EN.pdf (pp. 20, 22)

consequences) and acts of intimidation of journalists and media professionals continue to occur. Investigations into the killing of the prominent journalist Pavel Sheremet in 2016 have yet to bring results. While oligarch-owned outlets continue to dominate the media landscape, the Public Broadcasting Service (PBS) remains underfinanced hampering the functioning of the channel. Ukraine still needs to adopt the audio-visual media legislation that would align this with EU law, Ukraine's commitment within the Association Agreement. The envisaged law is important for enhancing the role of the National TV and Radio Council, vital institution in ensuring the transparency of media ownership, providing equal conditions for actors on the media market and resilience against disinformation.

The Law on Secondary **Education**, adopted by Parliament on 16 January 2020 aims to implement the remaining recommendations of the Venice Commission following its assessment of the 2017 Framework Law on Education. At the same time, Ukraine is yet to adopt a Law on National **Minorities**, which is a recommendation made by the Venice Commission on Ukraine's adoption of the Law on State Language in May 2019. Some representatives of minority groups continued to voice concerns regarding the diminishing space for their linguistic identity in the absence of a dedicated law that sets out and regulates these rights. The State Service of Ukraine on Ethnic Policy and Freedom of Conscience was established during the second quarter of 2020, and is expected to develop - in close cooperation with representatives of national minorities and international interlocutors - a national strategy for minorities, and to contribute to the Law on National Minorities.

Despite challenges, Ukraine's **civil society** continues to play an active role in the promotion and oversight of reforms, as well as monitoring of AA implementation.

A series of institutional reorganisations following two successive governments and changes to the civil service (**public administration**) legislation simplifying dismissal of senior civil servants led to the replacement of more than one-third of top management posts in Ukrainian ministries and agencies. This coincided with suspension of merit-based recruitments to the civil service during COVID-19 quarantine measures leading to the appointment of over 7000 civil servants without competition, including 60 high-level posts. The Government prepared draft changes to the Law on Civil Service to address some of these challenges however the legislative proposal was rejected end of September 2020. Similar legislative attempt is ongoing at the proposal of a member of Parliament, pending adoption. A human resources management information system was launched in seven ministries in late 2019 and early 2020, while the Government approved the concept of civil service salary reform reflecting lessons learned from the introduction of Reform Staff Posts. A unified portal of civil service vacancies (career.gov.ua) was modernised, reflecting increasing interest in the civil service. A unified regulation on organisation of ministries was also adopted. After several years of preparatory work, the draft Law on general administrative procedure initiated by the Government, passed the first reading in Parliament in September 2020.

In digital transformation, Ukraine has made considerable progress. The newly-formed Ministry of Digital Transformation proceeded with **e-government** and administrative service modernisation reforms including development of the network of unified service centres at the local level. The Ministry has also led the effort of moving forward with a unique government inter-operability system TREMBITA, creating new interface "DIYA" for users of digital public services, and implementing some flagship public service initiatives, such as "e-baby".

The Ukrainian Government includes a Deputy Prime Minister for European integration, who is expected to work closely with the Parliament Committee on EU integration. A

Government-Parliament platform established in 2019 was re-launched following the appointment of a new Deputy Prime Minister in June 2020. A joint Government-Parliament Road Map on legislation linked to the AA was updated in 2019. The current Government programme includes a section dedicated to implementation of the AA, which is defined as a priority.⁷ Among a number of renewed initiatives to prioritise and better coordinate legislative reforms relating to AA implementation with stakeholders including Parliament and the President's Office, the Government launched a new high-level working group (Coordination Commission) chaired by the Prime Minister and focused on AA-related legislation in September 2020.

2.2. Foreign and security policy

According to updated UN (OHCHR) estimates, as of 30 September 2020, at least 3,368 civilians have been killed (including 298 on board of MH17 flight on 17 July 2014) and over 7,000 injured since the beginning of the conflict in eastern Ukraine. This includes 1,109 civilian casualties caused by mines and explosive remnants of war (335 killed and 774 injured), amounting to 10% of total civilian casualties. OHCHR estimates the total number of conflict-related deaths (civilians and combatants) at 13,200, comprising 3,365 civilians, an estimated 4,150 Ukrainian forces and some 5,700 members of armed groups.⁸ The total number of conflict-related injuries (civilians and combatants) is estimated at 31,000-35,000: 7,000–9,000 civilians, 11,000–12,000 Ukrainian forces and 13,000-14,000 members of armed groups.

Russia-backed armed formations in eastern Ukraine have continued to violate Ukraine's territorial integrity, sovereignty and independence. **Violations of the ceasefire in eastern Ukraine** continued to be reported by both the Organisation for Security and Cooperation in Europe Special Monitoring Mission (OSCE SMM) and the Ukrainian armed forces, albeit at significantly lower levels since the entry into force of the recommitment to ceasefire, entered into force on 27 July. The work of the OSCE SMM continues to face obstacles, mainly in areas not controlled by the Government (NGCA), in particular those close to the Russian border. De facto "authorities" in NGCA have further hindered OSCE SMM movement across the line of contact for several months under the pretext of COVID-19 measures.

An estimated 200,000 **Russian Federation passports** have allegedly been issued to residents of self-proclaimed separatist entities in eastern Ukraine, according to the Ukrainian Joint Forces Operation, since the decree signed by Russian President Putin in April 2019 and further measures enabling the simplified issuing of such passports, in violation of Ukraine's sovereignty and the objectives and provisions of the Minsk agreements.

Russian passport holders living in parts of Donbas temporarily outside Government control were encouraged to vote in the Russian constitutional amendments referendum from 25 June to 1 July 2020 in settlements of the Russian Rostov region. Special bus trips were organised by the Russia-backed de facto "authorities" to facilitate this. In violation of international law, voting on constitutional amendments in Russia was organised on the Crimean peninsula.

Russia's **maritime inspection regime**, launched in June 2018, of all vessels going through the Russia-controlled Kerch Strait on their way to or from Ukrainian Sea of Azov ports, has

⁷ Decree of the Cabinet of Ministers of Ukraine of June 12th 2020 № 471 on the adoption of the Government programme: <https://zakon.rada.gov.ua/laws/show/471-2020-%D0%BF?lang=en#Text>

⁸ https://www.ohchr.org/EN/Countries/EN_ACARegion/Pages/UARports.aspx

remained in place, affecting many EU-owned, EU-flagged or EU-bound vessels, although during the COVID-19 pandemic delays faced by vessels were reduced significantly. However, the delays increased again as of June. The accompanying Russia-imposed discriminatory delays in the strait have resulted in additional costs for ship-owners worldwide. They have also had negative consequences for the Ukrainian Sea of Azov ports and the region, which have already suffered economically since 2014 due to their vicinity to the conflict area in eastern Ukraine.

Four individuals, three of whom have Russian nationality and one Ukrainian nationality, have been charged in June 2019 with crimes for their role in the downing of **Malaysian Airlines Flight MH17** over eastern Ukraine on 17 July 2014, resulting in the death of 298 people. The criminal trial against these four suspects started on 9 March 2020. Legal proceedings are taking place under Dutch law before the District Court of The Hague.

For the first time in three years, a “Normandy Four” Summit took place in Paris (December 2019), resulting in a renewed engagement in the talks on the **implementation of the Minsk agreements**, both at Trilateral Contact Group and Normandy levels. Russia has yet to reciprocate several constructive initiatives and steps taken by Ukraine. As regards the specific commitments agreed in Paris, with the notable exceptions of the release and exchange of detainees and a re-commitment to the ceasefire, which entered into force on 27 July, which has held largely, progress has been limited so far: no additional disengagement areas have been established, no de-mining plan has been adopted, no new entry-exit crossing points and no new measures to implement the political provisions of the Minsk agreements.

Since 21 March, the Line of Contact has been closed with no crossings any longer allowed for citizens and strong restrictions introduced for international actors. As of June, some easing was made possible with two of the five Entry-Exit Crossing Points allowed to operate, though in a very restricted manner. Non Government Controlled Areas (NGCA) imposed a *de facto* visa system, requiring pre-approval before being allowed to cross from NGCA to Government Controlled Area. Compared to pre-COVID times, only an estimated 2% of the earlier one million crossings per month are currently taking place. OSCE Special Monitoring Mission freedom of movement continues to be severely strained by the closure of the Line of Contact. Deliveries of humanitarian aid to NGCA remain difficult.

Ukraine has improved its cybersecurity in cooperation with EU and international partners, while further alignment with EU law is needed on information systems protecting Ukraine's critical infrastructure.

Parliament adopted in September amendments to the 2018 Mine Action Law. The amendments foresee the chairmanship of the ‘National Mine Action Authority’ and Secretariat to be in the hands of the Ministry of Defense. Its operationalisation should allow military, humanitarian and operational demining.

Ukraine has until May 2020 aligned itself with the EU on 81% of its Common Foreign Security and Defence Policy declarations.

2.3 Justice, Freedom and Security

Following a transparent selection procedure and appointment of its judges, the new **High Anti-Corruption Court (HACC)** began operating officially on 5 September 2019, its mandate focused on high-level corruption cases. Building the capacity of the Court, including

through recruitment of staff, has continued. A law was passed providing the HACC with permanent premises in June 2020, but some outstanding issues need to be resolved before the Court can take ownership allowing adaptation of the premises to its needs. The first year of activity of the HACC resulted in 16 verdicts in high-level corruption cases, in some cases leading to lengthy prison sentences. Through respect of high professional standards, the HACC is building up a track record. The **National Anti-Corruption Bureau of Ukraine (NABU)** has continued its work based also on improvements to its capacities granted in 2019 (autonomous wire-tapping powers, automatic access to the register of electronic asset declarations). An e-case management system has been developed for NABU and the Specialised Anti-Corruption Prosecutor's Office (SAPO), but has yet to be launched. NABU has, in cooperation with SAPO since its establishment in 2015, launched 986 pre-trial investigations in high-level corruption cases. NABU has submitted a total of 265 cases to the courts, resulting in 41 convictions, as the vast majority of cases were blocked in Ukraine's ordinary courts. With HACC now operational, a higher rate of convictions is anticipated.

Political pressure on NABU and its Director has continued. Following constitutional complaints submitted by a number of MPs, the Constitutional Court of Ukraine (CCU) in August declared unconstitutional the 2015 presidential decree appointing the NABU Director, and in September certain provisions of the law on NABU unconstitutional, including the provisions empowering the President to establish NABU, to appoint and dismiss the NABU Director, and to delegate representatives to the panel choosing the Director. While the Director still exercises his functions, the CCU's decisions leave NABU in a situation of legal uncertainty.

While marked by tension, relations between the management of NABU and **SAPO** - as well as cooperation between the two institutions - have improved since the summer of 2019, contributing to HACC verdicts. In August 2020 the head of SAPO, tarnished by allegations of misconduct and lack of independence, resigned, following a period of extended leave. A process for the selection of the future head of SAPO has been launched by the Office of the Prosecutor General. In September, the Parliament filled its quota of seven members in the commission to select a new head of SAPO, despite misgivings by civil society as to the professionalism and integrity of some of those appointed. The selection commission consisting of eleven members – four are appointed by the prosecutorial system – has started its work.

In October 2019, a law was adopted in order to reboot the **National Agency for Corruption Prevention (NACP)**, in particular changing its management structure from a collegiate body to a single head. Following an open and transparent selection process that included the participation of international experts, a new head of the NACP was appointed in January 2020. The work of the rebooted NACP had been progressing. In order for electronic asset declaration system to be effective, the Agency must ensure verification of the annual declarations of income and property of public officials. The NACP had been granted access to all relevant registries and databases. More than 900,000 declarations had been received by the NACP by the end-May deadline for 2020 submissions. The Agency was in the process of establishing a system for monitoring the financing of political parties. However, the Constitutional Court of Ukraine (CCU) declared on 27 October elements of the anti-corruption legislation in Ukraine related to the electronic declaration system for public officials and politicians and core powers of the NACP unconstitutional. Further to the CCU decision, the Cabinet of Ministers issued an order on 29 October to reinstate the powers of the NACP.

Following NACP's launch in June of a process to draw up a new anti-corruption strategy for Ukraine for 2020-2024, with a state programme for the implementation of the strategy to follow, the strategy was approved by the Cabinet of Ministers in September sent to Parliament for consideration. It is foreseen to be implemented through a Government approved action plan.

In October 2019, the newly elected Parliament adopted a new law on the **judiciary**. It foresaw the involvement of international experts in the selection and vetting of judicial governance bodies, and a reduction in the maximum number of judges of the Supreme Court from 200 to 100, as well as their renewed vetting. The Venice Commission in its Opinion of December 2019 recommended the revision of some provisions in the law, in particular those related to the Supreme Court, in order to bring it into compliance with the fundamental principle of independence of the judiciary. In March 2020 the CCU found parts of the law unconstitutional, in particular regarding the reduction of the number of the Supreme Court judges, the establishment of the new High Qualification Commission of Judges (HQCJ) and of the Integrity and Ethics Commission (additional vetting and disciplinary body at the High Council of Justice (HCJ)).

With the entry into force of the law, the mandate of the HQCJ members expired while the establishment of the new HQCJ was blocked, impeding the judicial selection and qualifications evaluation processes. It has been impossible to organise competitions for the recruitment of new judges, and in the meantime there are about 2,000 judicial vacancies. In February 2020, the CCU ruled on the judicial reform from 2016. While the CCU found that the establishment of the new Supreme Court (SCU) was in line with the Constitution of Ukraine, the CCU found part of the liquidation of the (previous) SCU unconstitutional and concluded that its judges should continue to exercise their powers as judges of the new SCU. Draft Law No. 3711 aimed at addressing the above-mentioned issues was registered in Parliament in June 2020. It foresees a weakened role of international experts in the selection process, gives more powers to the unreformed HCJ and it does not provide adequate mechanisms for ensuring the accountability and integrity of its members. A Venice Commission Opinion on the draft law was published in October. On 5 November, a draft law (3711) was returned by the plenary to the Legal Policy Committee to include the Venice Commission recommendations before its repeated first reading. In parallel, Ukrainian authorities work on a separate bill addressing the reform and vetting of HCJ members, as required under the new IMF programme and EU macro-financial assistance (MFA).

On 27 October, the CCU declared unconstitutional parts of Ukraine's anti-corruption legislation related to the electronic declaration system for public officials and politicians, and the core powers of the National Agency for Prevention of Corruption. The decision caused significant public criticism, as it called into question reforms demanded by post-Maidan Ukrainian reform forces and the international community, including through conditions under successive IMF programs, MFA, the Visa Liberalisation Action Plan (VLAP) and the 2014 State building contract. Several legislative initiatives were registered in Parliament aimed at both restoring the anti-corruption legislation and reform the CCU, but remain yet to be considered. A law on reform of the **Public Prosecutor's Office (PPO)** entered into force in September 2019, following the appointment of a new Prosecutor General (PG) with established reform-oriented credentials. This significant reform of the PPO foresees the vetting of all prosecutors in Ukraine, a process that is ongoing and expected to run until December 2020. The new law is expected to lead to a reduction of PPO staff by one-third (from 15,000 to 10,000). The first stage of the process, attestation of some 1,300 prosecutors

at the Prosecutor General's Office, was successfully concluded at the end of December 2019, resulting in the dismissal of 55% of prosecutors. The attestations at regional level resulted in 2485 of 3697 prosecutors passing the test (3 % failed). Attestation at local levels has begun, and will be finished by the end of the year, COVID-19 restrictive measures in Ukraine permitting. A growing number of appeals against attestation results have been recorded in court, some of them leading to reversals of previous decisions. In March 2020, the new Prosecutor General was replaced by a successor who pledged commitment to continuing PPO reform. However, the selection of prosecutors for management level positions remains a challenge.

Ukrainian law enforcement agencies are reviewing the legislative framework on **combatting organised crime**, but as of yet no major steps have been taken in this direction. Parliament has adopted amendments to the legislation to criminalise so-called elite "thieves-in-law". A national coordination authority in this area has not yet been defined, but the Strategy on Combatting Organised Crime, under approval by the Cabinet of Ministers, provides for its establishment. Current legislation still does not define clear delineation of organised crime functions between law enforcement agencies in charge. The level of cooperation and coordination between law enforcement bodies is still unsatisfactory. Implementation of intelligence-led policing, which foresees improving decision-making from the strategic level down to the operational level, including enhancing interagency cooperation, is at an early stage. The first Serious and Organised Crime Threat Assessment (SOCTA Ukraine) report prepared in 2019 has not yet been approved by all law enforcement agencies concerned.

The **State Bureau of Investigation (SBI)**, operational since November 2018, investigates crimes committed by top officials, law enforcement officers and judges, which do not fall under the special jurisdiction of NABU, along with offences (including corruption) committed by NABU or SAPO staff or by the military. SBI became a state law enforcement body in December 2019 following a legal amendment. The law led to the transfer of investigators dealing with Maidan cases to SBI. The amended law paved the way for the dismissal of the then director of the SBI and established a special procedure for selection of the new director through a Selection Commission. Stipulated deadlines have long passed, but Parliament appointed the three members of its quota in July, and the President changed his quota of three members in September. The selection process has not started yet. The selection of SBI deputy directors was conducted with very short application deadlines and limited transparency. SBI's new organisational structure, approved by the President in February 2020, allowed a reboot of SBI top management through a re-appointment procedure. Recruitment of 400 employees or 40% of staff, including operatives, have been ongoing since May 2020. As of 31 May 2020, the SBI was investigating 16,652 cases, including the Maidan investigations.

In September, the law on **Intelligence Services** was adopted by Parliament. The long awaited law foresees the establishment of a parliamentary oversight committee over civilian security sector agencies. Parliament is expected to consider a draft law on the **Security Service** in the autumn.

The reform of the **National Police of Ukraine (NPU)** has faced significant challenges after the change of NPU's management in September 2019. NPU strengthened its capacity in modern public order management during mass events and protests, but the NPU Development Strategy until 2023 has been pending adoption since the beginning of 2019. A number of crimes committed by police officers remain to be fully investigated and have had a significant negative implication on the public trust in the police.

The **Integrated Border Management (IBM)** Strategy 2020-2025 came into effect in September 2019. A corresponding IBM action plan 2020-2022 has been approved by the Cabinet of Ministers and establishes a strong information coordination role of the State Border Guard Service (SBGS). Support is being provided to the SBGS in order for it to be able to perform its increased responsibility and further development. It was agreed that the criminalisation of smuggling is an indispensable element of border management, but the necessary legislation has not been adopted yet.

A legal package aiming at establishing a new body to deal with serious **economic and financial crimes** has been tabled in Parliament after the withdrawal of an earlier similar legal proposal in the first half of 2020. The creation of the new entity to follow the liquidation of the existing Tax police, is a condition under the EU Macro-financial assistance programme.

3. Economic developments and market opportunities

3.1. Economic developments

After decelerating in the last quarter of 2019, economic activity contracted noticeably in early 2020. GDP annual growth rate slowed down to 1.5% in Q4 2019. The 1.3% contraction in Q1 2020 accelerated to a slump by 11.4% in Q2. The index of sectoral economic output lost more than 15% in April, rebounding thereafter to a contraction of 9.6% in June and 5.3% in July. The recession did not affect all sectors equally. While agriculture and industry contracted by 9.8% and 7.4% year-on-year by August, retail trade expanded by 6%. These differences must be due to the occupational limitations imposed by the Covid-19 related lockdown, as well as to sector-specific factors. Construction sector output declined by 4.6%. Against the backdrop of the economic recession, unemployment deteriorated, though moderately for now. After a minor increase in Q4 2019 already, the unemployment rate reached 8.6% in Q1 and 9.2% in Q2 2020, which remains however below the peak of 10.1% from early 2017. Wage growth moderated significantly down to 7.3% in the first half of the year (5% in real terms), as opposed to 18.0% (9% in real terms) in June 2019. The average monthly wage reached EUR 350.

A lower official interest rate and volatile investor confidence have contributed to the depreciation of the domestic currency. The NBU continued to lower its main refinancing rate, from 11% at the beginning of the year to 6% since mid-June, but has kept it unchanged thereafter despite the very low inflation and bleak outlook, pointing to policy continuation under the new Governor appointed since early July. Since the beginning of the year and by late September, the hryvnia had lost 19%, also due to somewhat eroded confidence in the currency. Indeed, in the first nine months of the year, the NBU's cumulative purchases of foreign exchange amounted to USD 1.1 billion, down from USD 3.6 billion a year ago.

The economic recession is expected to result in a **severe deterioration of the budgetary deficit**, which will test the sustainability of the buffers that Ukraine has managed to build up so far. The steady economic improvements over the past years allowed Ukraine to strengthen its public finances. The budget deficit fell below 2% for the last three years and the consolidated public debt-to-GDP ratio decreased to 44.3% of GDP in 2019, or 51.5% when government guarantees are included. This rather positive environment has enabled the Ukrainian authorities to take a number of **anti-coronavirus crisis measures** including limited and temporary tax relief, as well as one-off income support for pensioners and the most

vulnerable. The revised 2020 budget, adopted by Parliament on 13 April, provides for a EUR 2.5 billion coronavirus fund for immediate measures to counter the spread of COVID-19, including support to doctors and procurement of medical equipment. For the first seven months of 2020, consolidated revenues remained stable on a yearly basis, while government outlays increased by 7.6%, or about EUR 1.7 billion. Expenditure for promoting economic activity was up 38%, or almost EUR 700 million, well ahead of healthcare spending, which increased by 11.9% (EUR 240 million). While changes in government expenditure broadly reflect the impact of the policy response to the crisis, spending on public order, security and judiciary also increased by almost 13% (EUR 280 million).

In light of the expected recession-driven deterioration of public finances, Parliament revised the 2020 budgetary deficit to 7.5% of GDP, or the equivalent of USD 10.5 billion. While some of the budget deficit can be financed domestically, the government also has USD 5 billion in external debt repayments falling due in 2020. Against this backdrop, the Executive Board of the **International Monetary Fund (IMF)** approved on 9 June an 18-month Stand-by Arrangement for Ukraine to the amount of USD 5 billion, of which USD 2.1 billion in the form of budget support was immediately disbursed. The programme aims to help Ukraine to cope with COVID-19 pandemic challenges and advancing key structural reforms. This support is conditional on Ukraine's commitment to safeguarding achievements to date and advancing a small set of key structural reforms.

Following the agreement of the new Stand-by Arrangement with the International Monetary Fund, the EU approved and disbursed for its part a EUR 500 million loan as part of **its fourth EU macro-financial assistance (MFA) programme to Ukraine**. With this disbursement, the EU has provided Ukraine with EUR 3.8bn in MFA loans since 2014, the largest amount of MFA funds that the EU has disbursed to any single partner country. The EU made **further MFA loans of EUR 1.2 billion** available to Ukraine to help limit the economic fallout from the coronavirus pandemic.

There was little progress in the **budget process reform** in 2020. Despite Budget Code amendments of 2018 providing for a full-scale implementation of medium-term budget planning and the preparation of a new budget calendar, in 2020, the Budget Declaration was not adopted due to difficulties in forecasting linked to COVID-19. Most of the spending reviews started in 2020 have not been finalised. While in previous years, the **debt strategy** planned for a gradual reduction of the public debt levels, in spring 2020 the public debt ceiling was increased from 52% to 61% of GDP. The public deficit ceiling was also increased.

A **reform of the State Audit Service**, launched in early 2020, was not continued following the spring 2020 government reshuffle. The creation of a downsized and more analytical Office of Financial Control was reversed. Ukraine's Public Finance Management strategy and action plan 2020-2024 foresees the strengthening of state financial control and prevention of financial abuse and fraud with public and local resources. A Strategy for Development of the State Audit Service for the Period until 2024 was developed, which established the basic principles of state financial control. This will start with pilot and a draft Methodology of risk-oriented approach.

The Accounting Chamber of Ukraine launched in early 2020 a Development Strategy on human resources management and organisational reform in early 2020 aiming at developing INTOSAI standards on external audit.

Ukraine continued to implement Single Legal Entity reform in both tax and customs administration according to the obligation under the new IMF programme. The necessary secondary legislation was adopted during July-September, 2020.

The adoption of the law 466 in spring 2020 has been important in implementing Ukraine's Base erosion and profit shifting (BEPS) commitments. Starting from August 1, 2020, electronic-cash registers became operational and have been implemented by the business on a voluntary basis. The mandatory use of the cash registers for all types of taxpayers (with a minor list of exclusions for certain types of activities) should commence gradually from January 1, 2021, and from April 1, 2021. However, there are initiatives in Parliament to keep the wider range of exemptions.

The Ministry of Finance developed the draft secondary legislation on requirement for companies to keep accountancy in line with the standard audit file (SAF-T), as a precondition for implementation e-audit initiative within the State Tax Service. It has been announced about possible adoption of the Law on capital amnesty in the following months.

Adoption by Parliament of the revised Law on **Statistics** focusing on the independence of the State Statistics Service of Ukraine (SSSU) is still pending. The Cabinet of Ministers decided in April 2020 to postpone to a later date **the population census**, initially planned for 2021, due to the COVID-19 pandemic.

The draft law on Basic Principles of **State Agrarian and Rural Development (ARD) Policy** was re-registered in Parliament, but remains to be finalised, notably as regards the status of small farms. Six sub-legal acts regulating the **certification of organic production** and state register of certification bodies have been adopted between January and August 2020. Ukraine continues to strengthen its **geographic indication (GIs) system**. The framework Law on GIs entered into force in January 2020 and a decree regulating the authorised bodies for control of products characteristics was adopted by the Cabinet of Ministers in June 2020. Numerous laws and by-laws are still required to enforce the GI system, including specialised draft laws to regulate GIs for spirit drinks, wines and aromatised wines, agricultural products, foodstuff and traditional specialities guaranteed. The law regulating state controls over genetically modified products is being re-drafted in order to fully align it with EU requirements. Its adoption has been postponed by Parliament for the end of 2020.

After almost 20 years during which sales and purchases of farmland were banned, the Law on Land Turnover modifying the Land Code was adopted by Parliament on 30 March 2020 and endorsed by the President at the beginning of May. **The opening of the land market** is foreseen for 1 July 2021. Until 1 January 2024, land turnover will be limited to physical persons up to a maximum of 100 hectares and the sale of state land will be prohibited. After 2024, state land will be sold through electronic auctions and land registries will be merged and all digitalised. To secure a transparent and inclusive land reform, a set of three laws regulating safeguard measures on decentralisation of land management and State Land e-auction and establishing an independent Partial Credit Guarantee Fund to increase the access of small farms to flexible finance is still pending adoption by Parliament. In the new Land Code, foreign nationals, foreign legal entities and Ukrainian legal entities with foreign participation will not be entitled to buy agricultural land unless otherwise decided in a referendum.

Following the signature in May 2019 of the Bucharest Ministerial declaration, Ukraine is part of the **Common Maritime Agenda for the Black Sea**⁹ (CMA) a unique framework for regional cooperation on maritime affairs and blue economy in the region, which is complemented by its scientific pillar, the **Strategic Research and Innovation Agenda for**

⁹ https://ec.europa.eu/maritimeaffairs/press/black-sea-ministers-endorse-common-maritime-agenda_en

the Black Sea (SRIA). The implementation of the Common Maritime Agenda has been launched in February 2020 under the Bulgarian coordination. Ukraine actively takes part to the CMA Steering Group meetings, contributing to the discussion on impact of pandemic on blue economy sectors, future flagship projects and related investment perspectives.

Fisheries management towards sustainability of marine resources is being reviewed by the Ukrainian authorities, including the fight against illegal, unregulated and unreported fishing, but reform of the governance remains slow. The adoption of the strategy and relevant action plan was postponed as a result of a further institutional re-shuffle in June 2020. In addition, the implications of the illegal annexation of the Crimean peninsula continue to overshadow technical aspects and international cooperation.

Legislative work continued on aligning the rules **in the area of company law and corporate governance, accounting and auditing**, with EU and international practices. The National Commission for Securities and Stock Market adopted a new Code on Corporate Governance in February 2020, aligned with the latest OECD and G20 recommendations. New regulations have been adopted on supervisory boards committees, remuneration policy and information disclosure by issuers of securities. A new edition of the Law on Joint Stock Companies was adopted in first reading on 16 June 2020, aiming to further align the Ukrainian company law with the EU codifying Directive 2017/1132, in particular on mergers and acquisitions. The Audit Public Oversight Body of Ukraine is being strengthened gradually, with EU support. It is already carrying out inspections and has become a member of the International Forum of Independent Audit Regulators (IFRS). The start of a single window electronic financial reporting system for enterprises has been delayed due to technical difficulties.

The Law on Amendments to Some Legislative Acts of Ukraine on Improving Functions in State Regulation of Financial Services Markets (“SPLIT” Law) entered into force on 1 July 2020, bringing about important changes to the distribution of functions for regulating **financial services markets**. The National Bank of Ukraine has developed and released for public consultations a new draft framework Law on Financial Services. Work is ongoing, with EU support, on the development of new draft Law on Insurance. A new Law on Simplifying investments and new financial instruments was adopted on 19 June 2020. It establishes the new rules for market access, capital and other licensing requirements to ensure financial soundness of institutions, and for market integrity. It also introduces comprehensive regulation over organised spot commodities trading and commodity exchanges, including energy.

In May 2020 following several months of negotiations and notable advocacy in its favour by President Zelenskyy, Parliament approved a law on **banking** resolution. Parliament’s adoption of the required law the prior implementation of a fast track procedure to overcome the deposition of a record 16,300 amendments to the draft after its first reading. The law is considered an important measure to ensure Ukraine’s financial stability and a safeguard against possible court decisions undermining banking sector reform. Its enactment was a key outstanding condition for agreement on further cooperation with the International Monetary Fund (IMF) and for EU macro-financial assistance.

The **National Bank of Ukraine (NBU)** continued progressively lifting restrictions for currency operations, following further liberalisation of currency operations and capital flows in 2019. The Governor of the NBU tendered his resignation on 1 July 2020, citing “systematic political pressure”, preventing him from fulfilling his duties. The EU and Ukraine’s

international partners issued statements urging the authorities to ensure and maintain the independence of NBU and its competent management of monetary policy. Three of the remaining five members on the NBU Board have since been replaced following their resignation or non-renewal of their mandates. The two remaining Board members have come under pressure to resign, including through reprimands for speaking in public and a downgrading of the First Deputy Governor's responsibilities. While the NBU has shown a high degree of policy continuity, concerns about the independence of the institution remain.

Legal cases related to **PrivatBank** (Ukraine's largest commercial bank), including on the recovery of funds allegedly embezzled (USD 5.5 bn) from the bank prior to its nationalisation in December 2016, have continued in Ukrainian and international courts. The High Court of England announced in June 2020 that its hearing in PrivatBank's fraud claim against its former owners would be held in March 2022. The bank's former owners and associates have continued meanwhile seeking to have the nationalisation overturned in Ukrainian courts. On 15 June the Supreme Court of Ukraine ruled in favour of the bank and the Ukrainian state in an appeal case relating to the "bail-in" of assets as part of the nationalisation. A number of court hearings are nonetheless pending in relation to claims stemming from the "bail-in" procedure deployed during the nationalisation and other challenges to the bank's current legal standing.

In late 2019, the Ministry of Economy published a plan to align corporate governance practices in the largest 10 **State-Owned Enterprises (SOEs)** with OECD principles. In the first six months of 2020, several actions had a negative impact on the reform. Several supervisory board members and chief executive officers were dismissed or were pressured to resign. This was followed by disincentives to independent foreign supervisory board participation through the imposition of e-declarations obligations, salary reductions and cap in line with those of government employees for the duration of COVID-19 quarantine measures. In October 2020, the Ukrainian government lifted the cap on remuneration of supervisory board members. EU macro-financial assistance and IMF programmes require progress in several SOE corporate governance areas. Ukraine has applied to become an adherent to the OECD SOE corporate governance guidelines and on 22 June, the OECD started the review of Ukraine's framework. The findings will be available in one to one and a half years.

Corporate governance reform in the defence industry has not progressed. The new UKROBORONPROM agency Head launched some important steps in this regard to reorganise the sector in line with OECD principles. He was dismissed, however, from his position in October. In parallel, in July, a new Ministry for Strategic Industries was established under a new Deputy Prime Minister who will take on management of all state owned defence industry enterprises.

In the area of **privatisation**, the new management of the State Property Fund (SPF) has made some progress in modernising procedures and in revamping the institution. In late 2019 and early 2020, SPF also received a record number of new SOEs to be privatised. Progress continued with the privatisation of small assets, largely thanks to the Prozorro sales platform. No large privatisation has taken place in 2020, due primarily to COVID-19.

The political responsibility for **labour and employment policy** shifted from the Ministry of Social Policy to the Ministry of Economic Development, Trade and Agriculture. The Government made the modernisation of labour relations one of its priorities, committing to respect ILO labour standards and obligations undertaken under the AA. Labour legislation

reform including the long-anticipated adoption of a new Labour Code has stalled since March 2020. Progress in further legal alignment to EU occupational safety and health legislation stalled, with an approximation of the respective framework directive outstanding. Ukraine reintroduced a temporary moratorium on labour inspections during the COVID-19 quarantine, in contravention of ILO Conventions. Ukraine intends to modernise legislation on trade unions, social dialogue and collective bargaining that will require constructive consultation with social partners. Draft legislation on trade-unions remains controversial, in contradiction with ILO fundamental standard on freedom of association and collective bargaining. An appropriate institutional framework needs to be created before considering introducing a second pillar (supplementary) **pension system**.

The COVID-19 pandemic, combined with frequent changes in the leadership of the Ministry of Health have had an impact on the **reform in the health sector**. Healthcare financing reform was successfully rolled out at secondary and specialised care level in April 2020, but subsequent adjustments by the Government may affect its character and financial sustainability. The President and the Minister of Health have vowed to review reform details and stretch its implementation, temporarily reintroducing subsidies the Central Procurement Agency has become the main vehicle for medical procurements, while the creation of an adequate regulatory framework for medical procurement is still in progress. The Ministry issued an order regulating medical procurement, which restricts the independence of the Agency. The Agency is involved in procurement of less than a half positions foreseen in the budget. In September, the Ministry of Health started to form a Supervisory Board for the Central Procurement Agency. Reforms to the public health system have not progressed, with relevant legislation pending finalisation and further needs to strengthen the capacity of the Public Health Centre in epidemiological surveillance and disease prevention. As a result of COVID-19 discussions on re-organisation of Public Health Center was delayed. In late September 2020, Parliament approved the Law on blood safety in compliance with relevant EU Directives.

3.2. Trade and trade-related matters¹⁰

In the first eight months of 2020 as a consequence of the COVID-19 pandemic, EU exports to Ukraine decreased by 6.4% while EU imports from Ukraine decreased by 18 % compared to the same period in 2019. The **EU maintains its position as Ukraine's primary trading partner with 40.2% of total trade in 2019** and has moved from being EU's 21st largest trading partner in 2017 to its 18th largest in 2019. China, ranks second with 11.6%, Russia third with 9.3% and Belarus fourth with 4.8 % of total trade.

Ukraine has yet to remove an **export ban on unprocessed wood**, which runs counter to the provisions of the Deep and Comprehensive Free Trade Area (DCFTA) established by the AA. A bilateral arbitration panel under the AA has been established. The hearing of the panel took place in September 2020 and a ruling is expected by the end of 2020. On the positive side, the value added tax law on the cancellations of refunds the export of soybeans and rapeseed, have been repealed.

¹⁰ See also Report From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Implementation of Free Trade Agreements - 1 January 2019 - 31 December 2019 (COM(2020)705 final)

Ukraine continued progress in removing **technical barriers to trade (TBT)**. A twinning project with the National Standardisation Body has continued to strengthen administrative capacity in this area, while a team for a new Twinning project on National Quality Infrastructures has been selected and is due to begin operations in early 2021. Legislative reforms in the area included new proposed amendments to the law on Market Surveillance and Consumer Protection. A team of legal experts has been contracted in October 2020 to carry out a pre-assessment on the preparedness of Ukrainian quality infrastructure and legislation in view of opening negotiations on the Agreement on Conformity Assessment and Acceptance of Industrial Products. Regarding **Sanitary and Phytosanitary (SPS)** provisions, the Ministry of the Development of the Economy, Trade and Agriculture has started to play a stronger coordination role in the approximation of Ukrainian legislation to EU norms, while the State Service of Ukraine for Food Safety and Consumer Protection (SSUFSCP) remains responsible for technical expertise and implementation. The position of SSUFSCP Director has not yet been filled after the resignation of the previous Director in autumn 2019. The SPS Strategy approved in November 2019 continues to guide the approximation process to EU legislation that slowed down somewhat in 2019-2020. In particular, three ministerial orders were adopted between April and August 2020, notably on health claims and nutrition claims of food, whereas the law on veterinary medicine and animal welfare, which passed first reading in Parliament on 17 June 2020, will markedly help advance the approximation process. Veterinary certificates for poultry meat and egg products have been agreed and put into circulation, while further discussions are ongoing to finalise five additional certificates for the export of poultry products into Ukraine. Recognition of EU regionalisation principles for African Swine Fever outbreaks by the Ukrainian authorities is outstanding, while the EU recognised Ukraine's regionalisation principles for Highly Pathogenic Avian Influenza and has finalised its recognition of the equivalence of Ukraine's seed certification system.

Regarding legislation in the field of **financial services**, Ukraine has made some progress on securities markets. New legislation on financial services, insurance and investment funds is being developed. There are delays with adoption of new legislation relating to **postal services**.

In the **electronic communications** sector, the Law on Electronic Communications (adopted by the Parliament, not signed by the President) is an important step on the way for an in-depth sectoral reform and approximation with the EU Digital Single Market acquis. The on-site assessment of Ukraine's commitments on telecommunication services under Appendix XVII-3 of the AA/DCFTA showed that notable progress has been made in the fields of legislative developments and regulatory capacity building. However, with a view to fully benefitting from the AA/DCFTA, further initiatives and improvements are required, in particular when it comes to ensuring the effective independence of the telecoms regulator. The EU continues to provide support for formulating concrete action plans for policy and administrative capacity improvements.

The new law on **public procurement** adopted in 2019 came into force in April 2020 thus bringing Ukraine closer to EU legal standards. Discussions continued on the legislative proposals regarding the Anti-monopoly Committee of Ukraine's (AMCU) public procurement review function. The EU is working closely with the Ukrainian authorities in order to ensure that the current level of guarantees for the independence and impartiality of the members of the AMCU dealing with public procurement complaints are maintained. The legal initiatives to introduce local content requirements in public procurement raised concerns as it would breach both the DCFTA and WTO Agreement on Government Procurement.

There has been progress in the field of **intellectual property rights** (IPRs). Several draft laws presented by the Government as part of an IPR reform package were adopted, including law on IPR border measures in October 2019 and law on Geographical Indications in September 2019. As regards institutional changes, the law on establishing National Intellectual Property Body was approved by Parliament in June 2020. New laws on trademarks and patents were adopted in the first half of 2020. The Law on Collective Management Organisation, adopted in July 2018, includes some provisions not in line with the EU Collective Rights Management (CRM) Directive, which need to be addressed by the draft Copyright reform law still under preparation by the Government.

Ukraine has been enforcing **State Aid** control since 2017. The AMCU has continued gaining experience in the enforcement of the State Aid rules although most cases continue to be small, while large ones are not being subject to State aid control. On **competition**, work is ongoing to adopt new legislation in antitrust and merger control and to make the work of AMCU more efficient.

With regard to the Trade and Sustainable Development (TSD) chapter of the DCFTA, five years into the FTA, the list of experts for arbitration is still not finalised by Ukraine, but there was commitment to do so by end of July 2021. With regard to the reform of the Ukrainian forest-based sector, including wood harvesting and trade and, in particular, wood legality, Ukraine authorities from the Ministry of Environment Protection and Natural Resources committed during a TSD Sub-committee meeting in October 2020, to the need for a separation of functions between the management of resources and control functions and thus a reorganization and distribution of responsibilities between control and inspection on the one hand, and wood harvesting and trade on the other. Regarding labour, Ukraine - during the same above meeting - clarified that the moratorium on inspections had been a partial and temporary one during the COVID-19 pandemic emergency state. While reforms were with Parliament now, the Ministry continues to work on ad-hoc and smaller regulatory changes, to already address some of the shortcomings in the application of ILO standards on labour inspection, collective bargaining.

4. Connectivity, Energy Efficiency, Climate Action, Environment and Civil Protection

An agreement on a **new gas transit contract** between Ukraine and Russia was reached at the end of 2019 and ensuring continued gas transit from Russia through Ukraine to Europe from 2020 until 2024, based on EU rules. By decision of the Cabinet of Ministers from 18 September 2019, the government separated the new gas transmission system operator (TSO LLC) from Naftogaz. The company was subsequently certified and started operations as of 1 January 2020. Due to high reserves and a mild winter, gas volumes in Ukrainian storage facilities at the end of the heating season 2019-2020 were the highest for the past 30 years, 45% more than the previous year or 15.8 bcm (7 April 2020).

Despite the legal opening up of Ukraine's electricity wholesale market in July 2019, this maintains an oligopolistic structure, with major persisting structural problems. The government and the Regulator kept strong price regulations at wholesale and retail level, which contributed to a deep financial crisis in the sector, further affected by the economic consequences of the COVID-19 pandemic. While a law (#719-IX of June 2020) addresses old debts in the electricity market, a mechanism to stop the accumulation of the debts in the new market has not yet been established and other structural problems in the market design

(market concentration, lack of competition, below-cost prices and tariffs) have not been addressed. The financial stability of state owned companies, Ukrenergo and Energoatom, taking the largest burden of the public service obligation imposed by the government to cover expenses for below-cost electricity for the household consumers and the cost of renewables, is not anymore certain. This situation also questions possible certification of **Ukrenergo** as an independent transmission system operator, which has been delayed for more than two years. Several alternative draft laws providing for the change of the unbundling model, from initially planned ownership unbundling to an independent transmission system operator, have been in Parliament since spring this year.

Since October 2019 the Ukrainian authorities have been in discussions with investors on further amendments to the existing support scheme for investment in **renewable energies**, which proved costly for the Ukrainian market. In June 2020, the Government and some domestic and foreign investors signed a memorandum covering set of commitments on both sides, including the obligation of Ukrainian authorities to improve electricity market functioning. Later, in July Parliament adopted a law N 810-IX amending the support scheme and reducing the feed in tariffs as of 1 August. The implementation of other provisions of the Memorandum is delayed and the debt of the market to investors for electricity produced from renewable energy sources has been growing since March 2020. This situation may further affect the investment climate in Ukraine.

Parliament adopted amendments to the primary legislation in December 2019 changing the status of the **Energy Regulator** to a central executive authority under the Cabinet of Ministers of Ukraine. At the end of June 2020, the President approved the rotation procedure in the regulator starting as of 1 July 2020. The independence of the Regulator, including with regard to the appointment and rotation scheme of the Commissioners, needs to be closely monitored as is not yet fully in line with best European practice and transparency of the selection process for the new members of the Regulator shall be improved.

In the field of **energy efficiency**, in June 2020, Parliament initiated changes to the law on commercial heat and water metering and billing which might not be compliant with the EU acquis (in particular Directive 2012/27/EU on Energy Efficiency and Directive 2009/73/EC concerning common rules for the internal market in natural gas). The EU has invited Parliament to initiate consultations with the European Commission in accordance with the revised Annex XXVII of the Association Agreement.

By July 2020, the EU-supported **Energy Efficiency Fund** had received over 120 applications from homeowners' associations for the total project cost amount of over UAH 600 mln (EUR 20 mln). However, the foreseen EEF financing by the Government in 2020 was cut because of reallocation of funds for the COVID-19 purposes, despite the commitment of regular annual allocation as per the EU-Ukraine Financing Agreement.

In the area of **nuclear safety**, the Law on re-establishing the powers of the State Nuclear Regulatory Inspectorate (#613-IX) entered into force on 11 June 2020, re-establishing the independence of the Inspectorate, and enabled the disbursement of a further tranche of an outstanding EURATOM loan. The financial situation of Energoatom was affected by flaws in the operations of the electricity market and may have an impact on the nuclear safety.

In the area of **transport**, the key draft laws on market opening, including on railway and on inland waterway transport, dangerous goods and multimodal transport have not been adopted. Similarly, the action plan for implementation of the **National Transport Strategy**, as well as the Complex Action Plan for reforming infrastructure projects and important to provide the basis for the introduction of EU standards for infrastructure management, are still not in place.

The financial situation of the unreformed Ukrainian Railways company remains critical.

Little reform progress has been made during the reporting period in the **environmental sector**, and discussions on amending Annex XXX to the AA are ongoing. There are attempts to limit the implementation of the law on Environmental Impact Assessment (EIA). Ukraine adopted a law on the Regulation of Amber Extraction in December 2019 that is not compliant neither with the EU EIA Directive nor Ukraine's international obligations under the ESPOO Convention on Environmental Impact Assessment in a Transboundary Context. The reform of the Environmental Inspectorate did not take place. A new Ministry for Environmental Protection and National resources was created.

On 20 February 2019, the Cabinet of Ministers approved a national **waste management** plan, which outlines practical measures to properly implement a waste management policy that is more compliant with EU standards. Preparations for a draft framework waste law are ongoing in Parliament.

In the area of **climate action**, two important Laws were adopted in December 2019, on monitoring, reporting and verification of greenhouse gas emissions and on ozone depleting substances. The key documents planned for 2020, an updated Nationally Determined Contribution (NDC) under the Paris Agreement and an Integrated Energy and Climate Strategy have not yet been delivered. The development of a national Strategy on Adaptation to the Climate Change has been delayed.

Ukraine has expressed its ambition to approximate its policies and legislation with the European Green Deal and launch a focused dialogue in this area. To this end a kick-off meeting between Prime Minister Smyhal and EVP Timmermans is foreseen.

Ukraine continues to cooperate with the EU under the Union **Civil Protection** Mechanism (UCPM), from which it benefitted in 2020 with the delivery of COVID-19 related assistance from EU Member States.

5. Mobility and People-to-People contacts

On 11 June 2020, Ukraine celebrated three years of **visa-free travel** to the EU for its citizens. Ukrainians made more than 50 million visits to EU countries and the Schengen area during this time. Ukraine continues implement its commitments under the visa free regime as reported by the Commission in third annual assessment under the visa suspension mechanism.¹¹ In response to the COVID-19 pandemic, Ukraine implemented a significant series of measures in March 2020, including a general ban on the entry of foreign citizens, with exceptions, and the suspension of all regular commercial international flights, train and bus traffic in and out of Ukraine, along with a broad prohibition on Ukrainian citizens leaving the country, with exceptions, until mid-June 2020. Ukraine also repatriated several thousand citizens through hundreds of flights organised for the purpose. COVID-19 response measures on the part of the Ukrainian authorities and those of its neighbours resulted in a significant temporary reduction in all other travel and migratory flows in and out of Ukraine.

Education reform was maintained as a Government priority in 2020. Since the COVID-19 pandemic lockdown, the system shifted to on-line teaching/learning mode and substantial funding for education was cut. The Law on **Secondary Education** (of 16 January 2020)

¹¹ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/20200710_com-2020-325-report_en.pdf

provides a framework for further implementation of New Ukrainian School (NUS) and aims to implement the remaining recommendations of the Venice Commission regarding Law on Education. Following NUS implementation in primary schools, on 30 September 2020 the Government approved State standards for basic secondary education (grades 5-9). In April 2020 the Government adopted Action plan on implementation of the reform concept for **vocational education** until 2027 in Ukraine (“Modern Vocational Education”). On 1 October 2020 the Ministry of Education and Science established a Working group on the development of Strategy of Vocational Education and Training. The development of Law on Vocational Education continues. Ukraine also started implementation of the Law on “On amendments of certain Laws of Ukraine to improve Higher Education” (#392-IX of December 2019), which foresees a new governance and funding system for Higher Education as well as further optimisation of the Universities network, based on quality education, research and employment of graduates. A draft Strategy on the development of Higher Education is under public discussion till the end of October 2020.

Ukraine continues to make good use of the **EU's Erasmus+ programme and Horizon 2020 programmes**. As part of Erasmus+ Programme in 2020, 3904 higher education student and staff mobilities were awarded in 555 projects involving EU and Ukraine's universities. Moreover, Ukraine is a partner in 10 awarded Capacity Building projects for Higher Education, out of which it is the coordinator in three projects. In addition, there were 40 Erasmus Mundus full degree scholarships were awarded to Ukrainian students. In the field of youth in 2020, 2 201 youth exchanges, volunteering and youth workers mobilities were awarded to young Ukrainians.

As of September 2020, Ukrainian entities participated 283 times to 200 signed grants (collaborative, Marie Skłodowska-Curie Actions, European Research Council grants and SME Instrument actions), receiving 36.9 million euros of direct EU contribution from Horizon 2020. Ukraine's overall success rate is 9.7%, which scores below the overall Horizon Europe success rate of 12%. Ukraine has officially expressed interest in associating to Horizon Europe.

Ukraine made use of the specific R&I instruments deployed under the European Research Area Action Plan to fight the COVID-19 pandemic. For example, Ukrainian entities participate to 6 COVID-19 projects, and a Ukrainian entity, part of an international consortia, was shortlisted in the top 6 projects of the EUvsCorona Hackathon held in April 2020.

In 2020, few elements attest for progress in implementing recommendations of the Peer Review of Ukrainian **Research and Innovation** System (2017), e.g. enforcement of the activities of the National Research Council and launch of 2 calls for proposals in May, 2020, by the National Research Fund. A second Policy Support Facility is under preparation to provide Ukraine with recommendations on improving their research infrastructures.

Ukraine's participation rate in the **Creative Europe** programme gradually improved in 2019-2020, but people-to-people and mobility schemes under international and national assistance instruments were put on hold in early 2020 due to the COVID-19 pandemic.

COVID-19 related state budget amendments also affected the expenditures for **culture** with a decrease of 44%. Similarly, the budget of the Ukrainian Cultural Fund was decreased by 35%, although it continues to provide project based support to Ukrainian cultural operators. Ukraine acceded the Euroimages agreement early 2020.

6. Financial Assistance

The EU continues to provide financial assistance to support Ukraine's stabilisation and reform process. To this end, the EU has mobilised together with European Financial Institutions over EUR 16.5 billion in grants and loans since 2014 (exceeding its EUR 11.175 billion pledge made in 2014). This amount includes the EUR 1.2 billion emergency assistance.

In June 2020, the EU disbursed the last tranche of EUR 500 million of its fourth EUR 1-billion macro-financial assistance (MFA) programme to Ukraine, following Ukraine's meeting all committed reform measures and reaching the agreement of the new Stand-by Arrangement with the International Monetary Fund. In total, the EU has provided Ukraine with EUR 3.8 billion in MFA loans since 2014, which is the largest amount of MFA funds that the EU has disbursed to any single partner country. The EU emergency assistance of EUR 1.2 billion available to Ukraine will help to limit the economic fallout from the COVID-19 pandemic. The MoU outlining specific conditions attached to the second tranche of the MFA has been agreed and approved.

Under the European Neighbourhood Instrument (ENI), in 2020 the EU is funding actions for the amount of EUR 200 million. EUR 105 million (Annual Action Programme I) will fund support to small and medium enterprises (SME), agriculture and small farm development, as well as support for the implementation of key reforms, including health, and capacity building of Ukrainian government institutions in implementing the AA/DCFTA. These actions will also contribute to the mitigation of the economic impact of the COVID-19 pandemic. Further EUR 95 million (Annual Action Programme II and additional bilateral assistance) will support civil society, enhance resilience of vulnerable regions in eastern Ukraine, development of climate-neutral, clean and resource efficient energy production and use, digitalisation of justice sector institutions as well as local currency lending for SMEs. The design of the second package of programmes was revised in order to provide both COVID-19 response and continued reform support.

Overall, the EU mobilised a package of EUR 190 million to support Ukraine's COVID-19 response. The package consists of both bilateral and regional (EU COVID-19 Solidarity Programme for the Eastern Partnership) funds, both newly mobilised and reallocated under ongoing projects. COVID-19 assistance is structured along the axes of emergency response to the health crisis, strengthening the health system and addressing socio-economic consequences. In addition, Ukraine also benefits from support including access to the EU Health Security Initiative, observer status in the EU Health Committee, access to existing credit lines for SMEs for approximately EUR 200-million and a EUR 500-million guarantee scheme for Eastern Partnership countries.

As part of the Annual Action Programme II 2020, the EU adopted the above-mentioned EUR 30-million EU4ResilientRegions action. This targets *social capital, human security and information integrity in specific regions of Ukraine that have been identified as particularly vulnerable based on their socio-economic situation, location, exposure to effects of the conflict and illegal annexation of Crimea and Sevastopol, as well as potential exposure to disinformation. As part of the EU COVID-19 response package for Ukraine, the programme will also address the impact of the pandemic on the target regions including with regard to socioeconomic, health and information aspects.*

This programme complements the ongoing EUR 60 million "EU support to the east of Ukraine" programme addressing social and economic recovery, in line with the Joint Humanitarian and Development Framework. Within this framework, the EU continues to provide humanitarian assistance to people affected by the conflict in eastern Ukraine along

both sides of the line of contact and in the non-government controlled areas, which has amounted to EUR 164.8 million since 2014. Through its Instrument contributing to Stability and Peace (IcSP), the EU has also supported peacebuilding, stabilisation and early recovery efforts with projects of a total value of EUR 118 million. In 2020, new actions focused on supporting the OSCE Special Monitoring Mission, de-mining, countering disinformation and other hybrid threats, as well as building resilience in the Sea of Azov region.

Ukraine participates in the ENI Cross Border Cooperation programmes as well as in the Danube Transnational Cooperation Programme benefitting from the overall programme budget of more than 350 million Euro. The cooperation programmes with Ukrainian participation contribute to tackle wide range of challenges in the cross border regions including the promotion of economic and social development, addressing common challenges in environment, public health and security and the promotion of better conditions and modalities for ensuring the mobility of persons, goods and capitals.

Many ENI CBC programmes are directly contributing to the fight against the COVID-19 pandemic, as well as its negative economic effects. As an example of rapid response several projects under the Poland-Belarus Ukraine ENI CBC Programme, implemented by hospitals and other healthcare institutions, purchased equipment (Coronavirus tests, diagnostic and respiratory equipment as well as means of personal protection) to mitigate the effects of the health crisis. Five healthcare cross-border cooperation projects with Ukrainian partners could purchase additional equipment or introduce new activities to better response to the crisis (while still implementing regular project activities).

The accumulated budget of the **EU Advisory Mission for Civilian Security Sector Reform**, under EU's Common Security and Defence Policy, amounts to EUR 142 million since 2014.

European Commission's Support Group for Ukraine (SGUA), a unique task force created in 2014, continues to support the implementation of reforms in Ukraine.

7. Concluding remarks and future outlook

Having undergone a successful democratic transition and the renewal of key institutions in 2019, Ukraine advanced swiftly in the implementation of its Association Agreement (AA) with the European Union and reforms demanded by its citizens in the earlier part of 2020. The impact of the global COVID-19 pandemic, combined with some abrupt changes to Government and state agency personnel, have had a significant impact on these efforts and the pace of reforms since then has not been on par with that of late 2019. There have also been some tendencies to resort to protectionist and non AA-compatible policies to address economic problems triggered by the pandemic. Some important progress has been achieved during this period nonetheless, in areas such as intellectual property rights, standardisation and technical regulations, agrarian and rural development or the banking and digital sectors.

As Ukraine seeks to minimise the negative impact of the COVID-19 crisis and overcome the resulting economic challenges with the support of its international partners, continuing dialogue with stakeholders and attention to reform policy continuity will be essential for stability, increasing resilience and prosperity. This will in turn ensure the maintenance of Ukraine's strategic orientation, as enshrined in its Constitution and set out in the Association Agreement, towards closer ties with the European Union, its Institutions and Market, its Member States and its citizens.

Further concerted efforts will be required in sectors such as energy, corporate governance of state owned enterprises along with further critical reforms in the area of judiciary reform and the rule of law more broadly, where Ukraine's citizens can be expected to continue their demand for progress. This has been reflected clearly in the reaction from Ukrainian society to recent decisions by the Constitutional Court affecting the country's anti-corruption efforts and achievements in this regard since the Revolution of Dignity. The European Union will continue to support Ukraine's reform efforts, constantly adapting and calibrating its support through engagement and dialogue, with the all the means at its disposal.