



## The Eastern Partnership Roadmap to the Vilnius Summit

*An assessment of the roadmap implementation by the Eastern Partnership Civil Society Forum, co-ordinated by the Regional Environmental Centre, Moldova, and PASOS – Policy Association for an Open Society, October 2013*

**UKRAINE: Assessment May 2012 – October 2013**

*by Oleksandr Sushko, Institute for Euro-Atlantic Cooperation, Yaryna Borenko, European Dialogue, and Andriy Kohut, Centre SIM*

### A few steps forward, a few steps back

*Association Agreement can launch new era in European integration, but checks and balances must be strengthened in democratic governance*

**Does the government engage with civil society on policymaking?**

Partially

**Is policymaking participatory, e.g. public consultations on draft legislation?**

Partially

**Does the government actively engage in dialogue with EU and civil society?**

No

**Is the process of drafting agreements between Ukraine and the EU transparent with public consultations?**

No

**Does the EU delegation actively engage in dialogue with government and civil society?**

Partially

**Does the EU delegation promote dialogue talks with government and civil society?**

Partially

#### Positive developments:

- Conclusion of negotiations on Association Agreement between Ukraine and the EU, its initialling in 2012, and preparation for signing in 2013
- New Code of Criminal Procedure came into force (drafted in co-operation with Council of Europe experts)
- Changes into Criminal Executive Code regarding conditions of sentencing and serving sentence
- New Law on Civic Associations secures a more friendly legal environment for civil society organisations
- Legislative amendments to ensure transparency in property relations for mass media
- Some anti-corruption measures adopted into law, including amendments in line with the Council of Europe Criminal Convention against Corruption
- Establishment of National Preventive Mechanism Against Tortures
- Improvement in World Bank Doing Business ratings

#### Negative developments:

- Parliamentary elections of 2012 lacked “level playing field”
- Referendum law enables parliament to be bypassed over constitutional changes
- Introduction of special import duty on cars and car recycling fee; proposal to renegotiate hundreds of tariff lines with WTO
- Delayed elaboration and adoption of new election law despite wide consensus achieved for reforms
- Failure to adopt upgraded anti-discrimination law.

**THE GOVERNMENT'S** engagement with civil society has deteriorated since the roadmap was launched, while the Association Agreement was negotiated between the government and the European Commission behind closed doors without open consultation with Ukrainian society. The state of democracy has also slipped backwards, with increasing concentration in the powers of the President,

and the new referendum law enables the constitution to be amended or even annulled without any vote in parliament. Corruption remains widespread, and politically motivated judicial decisions remain a widely recognised problem, not least with the continuing imprisonment of former premier Yulia Tymoshenko.



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The conclusion of the Association Agreement and Deep and Comprehensive Free Trade Area Agreement (DCFTA) between Ukraine and the EU ahead of other Eastern Partner countries was not matched by achieving the “determined action and tangible progress” sought by the EU Council in its Conclusions of December 2012. Nevertheless, cross-party agreement has been reached in Ukraine on making European integration a key priority on the national policy agenda, and NGO experts in Ukraine conclude that the EU would have the best leverage if it signed the Agreement at the Vilnius summit on 30 November 2013 while preserving a certain controlling mechanism – the Agreement is the start, not the end of close integration between the EU and Ukraine.

### **Government engagement with civil society**

The level of engagement between government and civil society has deteriorated since the end in December 2012 of cabinet-level representation of a figure with responsibility for co-ordination of European integration. Before September 2012, Valery Khoroshkovsky, the Deputy Prime Minister responsible for European integration, arranged a number of informal meetings with the leaders of the Civic Expert Council and the National Platform of the Eastern Partnership Civil Society Forum (EaP CSF) with the aim of discussing future co-operation. In November 2012, he took part in the CSF National Platform’s Annual Conference promising further engagement with civil society. However, in December 2012 Khoroshkovsky was dismissed, and subsequently there have been no attempts by cross-sectoral governmental bodies to establish structured dialogue with civil society.

On 18 September 2013, the Cabinet of Ministers adopted the Concept of implementation of state information and communication policy towards civil society on European integration of Ukraine for the period until 2017. The concept was adopted without public consultation, and covers sociological surveys, information in mass media, public events, competitions for youth, children and journalists, publication of learning books for school students, and support for information points for programmes in the field of education, youth, sports and culture.

The information and communication plan does not contain consultations between the government and civil society, and is directed mainly at government structures and local

government officials, who are obliged to conduct formal measures, albeit with no consultation with civil society on the content of these measures. The budget allocated for those activities is not indicated.

At the same time “Inter-sectoral” structures and task-focused initiatives are, however, being led by civil society aiming to provide public consultation on a range of policy issues, for instance anti-discrimination legislation, legislation on combating corruption, amendments to electoral law, environment etc,

### **Developments in participatory policymaking**

The practical engagement of NGOs in co-operation with the government is usually of a formal or token nature, with a lack of real impact.

Prior to the launch of the roadmap in May 2012, civil society actors were involved in the Constitutional Assembly held by President Viktor Yanukovich on 25 January 2012, in the formation of the Strategy of Government Policy for Civil Society Development, adopted on 24 March 2012, and, to a lesser extent, in the National Anti-Corruption Committee, established on 16 March 2012.

However, some influential actors dropped out of co-operation in the Constitutional Assembly (e.g. New Citizen Partnership) and in the National Anti-Corruption Committee (e.g. Transparency International-Ukraine), claiming lack of impact and growing risk of manipulation.

The voice of civil society actors was ignored on many occasions when politically sensitive issues were concerned.

In most cases, the government continued to engage in dialogue with civil society in the recently established formats. Hundreds of civic councils continued to work at different levels of government in accordance with a new regulation (No. 996) adopted by the cabinet in late 2010, but the effectiveness of the councils has been negligible, and some play a largely decorative role. The unclear procedure of election of civic council members led to competition between various politically connected NGO. As a result, in many regions grassroots organisations were eliminated from the process by newly established bodies - often directly connected to political forces.

The government also established the communication platform, “Civil Society and the Government”, with an interactive function for online consultation and for input of civil society expertise.

Under existing procedures, any draft law should be accompanied by a notice that it either needs “public debates” or it does not. There is an official practice of flagging “public debates” when certain drafts are published on ministries’ home pages before being officially submitted to parliament (e.g. the recent case of the draft law introducing changes to election legislation, submitted by the Ministry of Justice, July 2013).

The Ministry of Justice is the most open institution, establishing online consultations with civil society. Nevertheless, there are no instructions explaining how civil society can advocate its positions during such consultations. Four roundtables, combined with online consultations, were launched, but to date there are no mechanisms ensuring interconnections between those consultations and the final drafting of the laws.

The procedures for public consultations should formally last one month, after which the relevant governmental agency finalises the consultation report. However, this rule is routinely disregarded, as in case of the draft Amendments to the Law on Charity. In this case, the government proposed the draft legislation for adoption before the report was published. Due to a successful advocacy campaign led by charity organisations, the relevant parliamentary committee did not accept the introduction for adoption of the draft law.

Human rights organisations participated actively in establishing the National Preventive Mechanism Against Torture (the public consultations took place in first half of 2012, and the relevant amendment to the Law on Ombudsman was adopted in October 2012). The Ombudsman office also provided a mechanism for public consultations (the Ombudsman+ model was agreed upon during public debates), public expertise (the Expert Council on implementation of the National Preventive Mechanism was established), and trainings for civil servants on implementation of the Mechanism. In 2013, the Ombudsman Office published a monitoring report on the implementation of the National Preventive Mechanism.

However there are many cases (especially when serious political and/or economic interests are concerned) when the notice states

that “no public debates are needed” – in which case the draft goes directly to parliament without publication at the ministry/government home-page. Formally, the government directive on involvement of civil society in policymaking indicates that the relevant executive agencies are obliged to launch consultations on any draft law if this is initiated by at least three civil society organisations. In reality, if the drafts are not published or are not submitted directly by members of parliament to civil society actors, civil society is not aware of the legislative proposals, and can appeal only post factum.

### **Role of EU as catalyst to foster policy dialogue**

Concerning the majority of policy debates, the EU delegation communicates separately with the government and with civil society actors. For instance, the EU delegation arranges separate meetings with civil society leaders during EU officials’ visits to Kyiv. The most notable case was in December 2011, when European Commission President José Manuel Barroso and President of the European Council Herman Van Rompuy attended and spoke to the national platform conference in Kyiv during the EU-Ukraine annual Summit.

On the other hand, when it came to working to ensure the signature of the EU-Ukraine Association Agreement, the EU Delegation involved both governmental and non-governmental actors, for instance in June 2013, when the reform of election legislation in Ukraine was discussed on the premises of the EU Delegation.

There are no trilateral structures bringing together the EU delegation, the government and civil society for regular consultations. The CSF national platform has itself initiated trilateral consultations on selected policy issues, however they were not realised because there was a lack of will from the governmental side.

On 10 September 2013, the EU delegation to Ukraine - in close co-operation with embassies of EU member states - officially launched a public awareness campaign to explain the benefits of closer association of Ukraine with the EU. The initiative, entitled “Stronger Together”, was started with a media presentation to outline the opportunities that will develop for the Ukrainian people if the Association Agreement and Deep and

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Comprehensive Free Trade Area Agreement (DCFTA) are signed.

Ukrainian civil society is active in monitoring bilateral agreements between the government and the European Union, but the main source of information is the EU level. There is a lack of transparency and clarification of the bilateral process, as well as differing political interpretations of the documents.

Generally, the negotiation process of the Association Agreement was closed on both sides – the policy of both the Ukrainian government and the European Commission, resting on the premise that the texts should be made public only after the completion of negotiations. As a result, access to drafts was very limited and possible only through informal channels.

An exception was made on the part of the Ministry of Financial Affairs and the Ministry of Economy, which tried to involve a limited circle of stakeholders, primarily the business sector, to prepare national positions for negotiations. To this end, the Ukrainian negotiators disseminated questionnaires to gather the opinions and concerns of business stakeholders during talks on the DCFTA.

On the other hand, the limited attempts to establish formal dialogue came from the EU institutions, which are pushing the idea of dialogue and consultations. In practice, the involvement of civil society in the policymaking process is rather project-oriented and non-systematic. There are no legal, institutional and organisational frameworks for civil society involvement. There is also no reporting/feedback and long-term planning system.

**Impact of Comprehensive Institution Building Programme (CIB)**

All sectors of the public administration in Ukraine suffer from the vague separation of powers between responsible governmental agencies, the lack of a general strategic framework, and poor institutional capacity, so the Comprehensive Institution Building (CIB) programme in Ukraine can play a key role in reform of the public administration, and is focused on the vertical level, e.g. migration policy, food safety.

The overall allocation of the CIB programme for Ukraine is € 43 million. In general, evaluation of the CIB efficiency is rather positive; however some shortcomings should be noted. In particular, with regards Twinning TAIEX and SIGMA instruments (parts of CIB) the Commission's report says: "In the majority of cases, coherence and complementarity between Twinning, TAIEX and SIGMA, the three institutional capacity building tools, are adequately guaranteed, although Twinning and TAIEX may sometimes have been mixed up by beneficiaries, mostly at the preparation stage of the twinning cycle. Coherence and complementarity are weaker in relation to projects funded by other donors."

Administrative reorganisations in Ukraine in 2011-2012 have affected CIB implementation. In particular, the reorganisation of the central administration had negative effects on twinning activities: several twinning projects have been postponed and several calls for proposals suspended. Moreover, the absorption of one twinning direct beneficiary by another agency caused massive layoffs and also the loss of a great deal of training results that had been achieved under the ongoing twinning project before the merger took place. The EU delegation pointed out that, after the administration reform was launched, civil servants became far less proactive, which then became a very important issue.<sup>1</sup>

1

[http://ec.europa.eu/europeaid/where/neighbourhood/overview/documents/20121002-final-report\\_en.pdf](http://ec.europa.eu/europeaid/where/neighbourhood/overview/documents/20121002-final-report_en.pdf)

## **ROADMAP IMPLEMENTATION BY POLICY AREA**

### **POLITICAL ASSOCIATION AND ECONOMIC INTEGRATION**

**Implementation of common values and principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law**

#### **POLICY OBJECTIVES**

**Further implementation of Sections 2.1 and 2.2 of the Association Agenda, including in particular:**

**- building and strengthening institutions linked to democracy and the rule of law**

**- ensuring the independence and impartiality of the judiciary and effective court, prosecution and law enforcement agencies**

The parliamentary election held on 28 October 2012 was widely recognised as a step back from previously attained democratic standards. The election process proved that the election law created a favourable legal framework for the ruling party (Party of Regions) to sustain a slim majority while a majority of the electorate voted for various opposition parties. Elections in majoritarian districts involved much more administrative resources providing more chances for governing-party candidates to win.

According to the OSCE/ODIHR statement, the elections were characterised by “the lack of a level playing field”. The main areas left wanting were the abuse of administration resources, and lack of transparency of campaign and party financing. The tabulation process of votes also lacked transparency.

The national political stage in Ukraine is represented by a variety of political actors, which demonstrate real pluralism and the diversity of the political spectrum. However, an authoritarian trend is visible. The system of checks and balances within the government has been undermined by the concentration of power in the hands of President Yanukovich.

Furthermore, the law on referendum adopted in November 2012 poses a threat to the constitutional order as it provides the option for a change or even cancellation of the

Constitution to proceed without any vote in parliament.

Furthermore, on 20 November 2012 a new Code of Criminal Procedure came into force. The Code was welcomed as a positive outcome of cooperation with experts from the Council of Europe.

The phenomenon of selective (politically motivated) judicial decisions is a widely recognised problem. Former Prime Minister Yulia Tymoshenko remains in prison while former Interior Minister Yury Lutsenko was released in April 2013, which was welcomed as a step in the right direction.

The reform of the judiciary and prosecution service remain a crucial point.

On 10 October 2013, the Verkhovna Rada approved amendments to the Constitution of Ukraine to strengthen the guarantees of the independence of judges. The amendments do not envisage the cancellation or restriction of human rights and freedoms.

According to the Venice Commission<sup>2</sup>, the adopted amendments contain a number of positive elements, foremost that the President is bound by the proposals of the High Judicial Council when appointing judges, the abolition of probationary periods for judges, the automatic distribution of cases between the judges, and an improved composition of the High Judicial Council.

At the same time, the Venice Commission stated that Ukraine should be aware that this is only a first step, and that further amendments to the respective legislation will be necessary - and the changes will have to be implemented in practice.

Prosecution service reform entered a crucial phase in the summer 2013. A draft law on the prosecutor's office, which was drawn up by the administration of the President, introduces European standards for its activities, and was submitted for consideration by the Venice Commission in August 2013.

On 14 October 2013, the Venice Commission expressed general approval of the bill on reforms to the prosecutor's office, but also

<sup>2</sup> The European Commission for Democracy through Law - better known as the Venice Commission - is the Council of Europe's advisory body on constitutional matters.

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submitted to Kyiv a number of recommendations to improve the draft.

Consideration of the recommendations, and adoption of the final version of the law, is expected to take place in parliament in November 2013.

**POLICY OBJECTIVES****- co-operation on protecting human rights and fundamental freedoms**

On 5 June 2013, the Ombudsman (Ukrainian Parliament Commissioner for Human Rights) submitted the latest Annual Report on the state of observance and protection of the rights and freedoms of persons and citizens in Ukraine, indicating the problems and challenges existing in the country. In 2012, according to the report, about 100,000 people submitted appeals to the Ombudsman office. The main areas in need of special attention were:

- prevention of torture and ill-treatment,
- observance of social, economic and human rights,
- observance of the rights of children,
- non-discrimination,
- and gender equality.

The report was negatively received by the Parliament, including the opposition.

The main criticisms concerned the lack of active measures in the field of restoration of rights, especially in cases of violation of the right of assembly, violence against journalists and selective justice.

Substantial progress has been achieved with regards to securing a legal framework for non-profit activity. The new Law on Civic Associations that came into force in January 2013 emerged as a rare example of productive co-operation between the government and the third sector to secure a friendly legal environment for the activity of CSOs. The law has opened wider space for non-profit activity, liberalising the registration of new CSOs and removing some administrative barriers.

**POLICY OBJECTIVES****- promoting freedom of expression and freedom of the media**

The political environment doesn't provide a positive basis for full-fledged media freedoms. On the national level, direct censorship cannot be detected, but biased coverage in favour of the government is prevalent at some TV channels, and self-censorship remains a visible phenomenon. On a positive note, the consolidated efforts of journalists and non-governmental organisations succeeded in preventing an attempt to adopt a defamation law in the parliament on the eve of the October 2012 parliamentary elections.

On 25 July 2013, legislative amendments to ensure transparency in ownership of the mass media came into force. The Law on Amendments to the Ukrainian Laws on Ensuring Transparency of Mass Media Ownership is designed to ensure the disclosure of information on ownership of the mass media. The law fulfils the conditions of the Conclusions of the EU Council of the EU on the signing of the Association Agreement with Ukraine. Subsequently, the priority of interested stakeholders is to ensure proper implementation.

**POLICY OBJECTIVES****- ensuring rights of minorities**

On 10 August 2012, the Law on the Principles of the State Language Policy in Ukraine, which expands the sphere of use of the Russian language and languages of other minorities, came into force. The official justification for the Law rested on the basis that it should be the tool for implementation of the European Charter for Regional or Minorities Languages.

The adoption of the law prompted several political protests in the country, and arguments against the measure included the points that the law contradicts the Constitution of Ukraine, violates the Budget Code, and is directed towards the elimination of the Ukrainian language. The Venice Commission (European Commission for Democracy through Law), upon analysing the draft law, called "for a fair balance between the protection of the rights of minorities, on the one hand, and the preservation of the State language as a tool for integration within society, on the other hand".<sup>3</sup>

Regarding the policy of ensuring the rights of national minorities, no significant steps have been taken by Ukraine. Besides attempts at favouritism towards the Russian language through the new Law on the state language, there are no effective tools for preserving the national identity of other minorities.

Nevertheless, the language law prompted tendencies in western border areas to adopt regional regulations for wider use of the corresponding languages (for instance, Hungarian and Romanian). Although the law extends their use as official languages, tools such as official translations are lacking, so – beyond official declarations of some communities and regions to approved second official languages – there has been no change in practice. The education system and cultural development of national minorities relies on several programmes and support coming from the countries of origin corresponding to the respective languages.

The issues of Roma and Crimean Tatars are special cases. Ukraine has not provided effective tools for the integration of Roma for a long time. Moreover, an increase in cases of hate speech and discrimination have been registered in the past two years, including instances in the media. On 8 April 2013, the Strategy of Protection and Integration of Roma National Minority into Ukrainian society until 2020 was approved by the President. The strategy is aimed at providing appropriate conditions for the protection and integration of Roma and at ensuring equal opportunities for their participation in society. The action plan for the strategy was approved by the government in September 2013.

With regards to the Crimean Tatars, no significant steps have been taken to restore their rights. In September 2013, the European Commissioner for Enlargement and European Neighbourhood Policy Štefan Füle visited Crimea, and appealed to the government to continue co-operation with the OSCE High Commissioner on National Minorities, and to sustain attention on the issues of land, living conditions and property rights, social and economic aspects of returning and integration, language, culture, religion, and education of Crimean Tatars.

The issue of gender and sexual minorities remains a very sensitive topic in Ukraine. Ukraine failed to adopt an anti-discrimination law required within the Visa Liberalisation Action Plan.

On 2 October 2012, parliament approved at the first reading the draft law no. 8711 “On

introduction of Changes to Certain Legislative Acts of Ukraine (regarding protection of children’s rights on the safe information sphere). This draft law was evaluated as discriminatory by the Venice Commission and several human rights NGOs. The draft law no. 1029 on the ban of propaganda of homosexuality aimed at children still remains under consideration by parliament. By the end of September 2013, the situation had changed as the necessity of anti-discrimination measures for the prospects of visa liberalisation became clearer.

However, the new draft law no. 5207 “On the Basis of Prevention and Counteraction to Discrimination in Ukraine” excluded the issue of sexual orientation.

On 6 November 2013, open parliamentary hearings were held on European integration and anti-discrimination measures. The coming-out of the leader of the LGBT organisation “Tochka Opori” (Fulcrum), openly declaring homosexuality and making an appeal to stop discrimination, positively changed the perception of the issue. This has improved the climate in the debate around the inclusion of the word “sexual” in the definition of non-discrimination in the draft law on prevention and combating of discrimination, which is still awaiting consideration by parliament.

**POLICY OBJECTIVES** - combating  
degrading treatment torture and

Significant progress has been made in the field of legal provision for combating torture and degrading treatment. On 4 November 2012, the Law of Ukraine “On amendments to the Law of Ukraine ‘On the Ukrainian Parliament Commissioner for Human Rights’” came into force concerning the national preventive mechanism under the Ombudsman model.

According to this law, the Ombudsman will have the right to make proposals concerning the improvement of Ukrainian legislation in the sphere of the protection of human and citizens’ rights and freedoms. The Ombudsman will also have access to documents, including information with restricted access, from state and local authorities, unions of citizens, enterprises, institutions, and prosecution authorities, including materials from court cases.

**UKRAINE: Assessment May 2012 – October 2013****POLICY OBJECTIVES****- ensuring equal treatment by gender**

In September 2013, the Cabinet of Ministers adopted the State Programme for Ensuring Gender Equality in Ukraine until 2016. The Programme requires institutional and financial provisions starting from 2014 for improving the situation in the labour sector, for combating gender stereotypes in society, and for conducting awareness campaigns to promote gender equality. The roadmap for the implementation of the programme was drafted in November 2013 by the Ukrainian Gender Forum with the participation of NGOs and the support of the Ministry of Social Affairs, UN Women, OSCE, and Friedrich Ebert Foundation.

orphanages, and discriminatory content in school educational programmes and text books.

The law "On prevention and counteraction to domestic violence" is currently under discussion in parliament. This important law has included significant contributions and proposals from the Ombudsman office and NGOs. In addition, recent changes to the Criminal Executive Code regarding conditions of sentencing and serving sentences provide space for the introduction of the element of juvenile criminal justice, which also remains a sensitive issue in Ukraine.

**POLICY OBJECTIVES****- ensuring respect for children's rights**

In 2011, the Presidential Administration Office of the Ombudsman of Children was created by the Directive of the President. There is no clear legal provision for this position, and the role of the Ombudsman of Children is rather consultative. According to the Directive, the Ombudsman of Children is obliged to undertake monitoring of the rights of children, to make proposals to the President for measures banning and preventing violation of children's rights, to propose draft laws in the sphere of protection of children's rights, and to carry out informational activities to promote the rights of children. Co-operation is also envisaged between the Ombudsman of Children and relevant authorities on resolving concrete cases.

The Ombudsman of Children should sustain attention on issues, including:

- the situation of young prisoners,
- the right of children for health care and recreation,
- the right of disabled children to education, development and extracurricular education,
- children's right to family life, and
- the right to information.

However, the office of the Ombudsman of Children has stayed silent concerning several cases of violation of children's rights raised by NGOs and the Ombudsman, for instance, the forcing of minors to attend political demonstrations in support of the ruling party, repression against demonstrations by schoolchildren, violations of children's rights in

**POLICY OBJECTIVES****- combating corruption**

Corruption remains widespread in Ukraine. According to the report of the Group of states against corruption of the Council of Europe (GRECO), the Strategy and Anti-Corruption Programme adopted in 2012 "still need to be adjustable instruments depending on needs expressed by the State institutions, by representatives of the civil society in Ukraine as well as by the international community". Generally assessing the implementation of recommendations to Ukraine in the field of fighting corruption, GRECO noticed that "out of the 25 recommendations issued to Ukraine, in total only 12 recommendations have been implemented satisfactorily or dealt with in a satisfactory manner". Some important and positive pieces of anti-corruption legislation were adopted in May 2013. However some substantial shortcomings were also indicated.

To address the shortcomings of recently adopted amendments to anti-corruption legislation, the Ministry of Justice prepared another draft in August 2013. In contrast to previous practice, this draft and attached comments were published on the website of the Ministry. The draft law On Amendments to some Legislative Acts on Implementing the Recommendations of the European Commission in terms of the National Anti-Corruption Policy was approved at the Cabinet meeting on 11 September 2013 and submitted to the parliament on 23 September. Despite some positive regulations, the last draft doesn't remove all shortcomings.

In particular, further steps are needed in particular to introduce proper conflict of interest policies and to establish an independent anti-corruption investigatory body.



## **Conclusion of Association Agreement**

### **POLICY OBJECTIVES**

#### **- joint agreement on Association**

**Agenda annual priorities anticipating Agreement obligations, including regulatory approximation (other than approximation related to the DCFTA)**

**- progress towards respect for democratic principles, human rights and fundamental freedoms, rule of law**

**- mainstreaming of Association Agenda priorities into all existing dialogue structures**

**- targeted 'action plans' linked to priority areas (mobility, public financial management, etc)**

**- planning of Institution strengthening (migration, state aids, sanitary-phytosanitary)**

**- public awareness, sensitisation of stakeholders to encourage ratification**

**- encouraging international assistance to support core reforms covered by the Association Agreement**

The Association Agreement, including DCFTA, between the EU and Ukraine was negotiated over a period of five years (2007-2012) and was finally initialled in March-July 2012. Ukraine was the first Eastern Partner country to complete negotiations on the Association Agreement. However, the tense political atmosphere between the EU and Ukraine due to negative political trends in Ukraine poses a challenge to the process of moving towards signing and ratification of the Agreement. A consensus has not been reached among the EU member states with regards to signing the agreement at this year's Eastern Partnership summit in Vilnius on 30 November 2013.

On 10 December 2012, Conclusions of the Council of the EU on signing the Association Agreement with Ukraine were issued. According to the Conclusions, before signature of the Agreement the EU needs to see "determined action and tangible progress", i.e. positive change and determination of Ukraine in the following areas:

- Electoral law and practice, and balanced media coverage;
- Selective justice, implementations of the judgements of the European Court of Human Rights, and detention conditions

- Criminal Procedure Code, the National Preventive Mechanism against Torture, and professional self-government of the Bar
- Judicial reform and reform of the prosecution
- Reform of the police
- Constitutional Reform
- Preparation for the establishment of a Deep and Comprehensive Free Trade Area with the EU
- Fight against corruption
- Public Finance Management Reform
- Broadening the remit of the Accounting Chamber
- Improvement of the business and investment climate.

According to independent monitoring by Ukrainian NGOs, led by the International Renaissance Foundation, European integration has finally taken a priority place on the domestic policy agenda. Amid fierce political confrontation, the government and the opposition are co-operating in the parliament on European integration laws. Both sides have declared their commitment to ensure signature of the EU Association Agreement this November.

As of 1 October 2013, the monitoring confirms that Ukraine has achieved certain progress with regard to most of the 11 benchmarks since the first comprehensive monitoring report released on 18 June 2013. Over the subsequent few months, to a large degree as a reaction to unconstructive pressure from Russia, a consensus developed among the political elite that it was a priority to implement measures that would enable the signing of the Association Agreement with the EU.

As a result, a positive trend emerged, in particular in the adoption by the Ukrainian parliament of laws necessary in the areas of fighting corruption, data protection, and the independence of the judiciary (constitutional changes submitted to the Constitutional Court).

A new law on prosecution reform and changes to the election law were awaiting consideration in October 2013. The election of MPs in five districts where no one was identified as the winner in October 2012 has been scheduled for 15 December 2013.

As of late October 2013, there is no confidence that this trend and recent developments are sufficient to guarantee the signing of the Agreement at the Vilnius summit in November 2013.<sup>4</sup> On 21 October 2013, the EU Council

<sup>4</sup> Civic monitoring of benchmarks implementation for signing EU-Ukraine Association Agreement

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postponed its decision on Ukraine until its next meeting scheduled for 18 November 2013. The final decision will take into consideration the European Parliament monitoring mission report regarding Yulia Tymoshenko's case (the mission is headed by Pat Cox, former President of the European Parliament and Aleksander Kwaśniewski, former President of Poland).

Despite critical evaluation of some Ukrainian realities, the NGO experts stress that signature of the Association Agreement by the EU would amount to a correct strategic decision even if tangible progress had been achieved only on a few key issues. The EU would have the best leverage on political developments in Ukraine by signing the Agreement and at the same time preserving a certain controlling mechanism.

**Establishment of Deep and Comprehensive Free Trade Area****POLICY OBJECTIVES****Full**

**implementation of the annual priorities as listed in Section 5 on "Trade and trade-related matters" of the Association Agenda**

**Preparation of regulatory approximation in line with the DCFTA provisions and launch of the approximation process**

**Initiation of a high-level dialogue on improving the business and investment climate**

**Substantial and rapid elimination of the long-standing trade irritants discussed within the framework of existing institutional dialogues (notably specific Sub-Committees)**

Initialing the Deep and Comprehensive Free Trade Area Agreement (as a part of the Association Agreement) in March-July 2012 represented a remarkable step forward; however, some particular policies persist that could contradict future obligations within the DCFTA.

On 19 December 2012, the Cabinet of Ministers approved the Action Plan to encourage the activity of foreign investors (Resolution of the Cabinet of Ministers #1074). The document outlines many objectives to amend the national legislation, which are of

high importance for the European investors. In addition, on 30 January 2013 the protocol decision of the Cabinet of Ministers approved the plan of actions to improve Ukraine's position in the ranking of the World Bank and the IFC's Doing Business ranking. Actions are envisaged to simplify: business start up, construction permits, protection of investors' rights, registration of property, tax payments and insolvency problems.

These policies have brought some positive outcomes. Current evaluations of the business and investment climate are ambivalent, but the overall trend is rather positive. Essential improvements were registered by the World Bank Doing Business-2014 ratings compared with 2013 and 2012: Ukraine improved by 15 positions, from 152nd to 137th place (out of 185 economies) in 2013, **and by 25 positions more to 112th place in the 2014 ratings.** According to the World Bank, "Ukraine is the most improved economy this year".<sup>5</sup> This was achieved primarily as a result of significant improvement in the "starting business" and "registering property" parameters, as in total eight out of ten parameters were improved.

At the same time, according to the Rating of Economic Freedom-2013 by Heritage Foundation, Ukraine remains among the "Repressed" economies (the worst category), ranking 161st among 177 countries rated (with a slight improvement by two positions as compared with 2012).<sup>6</sup>

In response to current economic difficulties (decline of industrial output, growing budget deficit), Ukraine initiated numerous changes in tariffs set by Ukraine's WTO accession in 2008. In late 2012, many WTO members were expressing strong concerns over a request by Ukraine to renegotiate some 350 tariff lines that had been approved during its accession negotiations four years earlier. Concerns were raised over the lack of transparency, lack of information, the unusually large number of tariff lines that is has been proposed to change, and the lack of explanation as to how Ukraine planned to compensate other WTO members as a consequence.

In April 2013, the Ukrainian government introduced a special import duty on cars to protect domestic producers. A "special duty" was added to the existing 10% levy on all imported cars. For vehicles with an engine capacity of 1,000-1,500 cubic centimetres, the

<sup>5</sup> <http://www.doingbusiness.org/>

<sup>6</sup> <http://www.heritage.org/index/ranking>

special duty is 6.46%, while for cars with an engine capacity from 1,500-2,200 cubic centimetres it is 12.95%. These measures contradict Ukraine's obligations vis-à-vis WTO.

## **ENHANCE MOBILITY IN A SECURE AND WELL-MANAGED ENVIRONMENT**

### **Visa facilitation and readmission agreements**

#### **POLICY OBJECTIVES**

**Continuous implementation of the existing visa facilitation and readmission agreements**

The agreements have been implemented to a satisfactory level, according to the assessments of both sides. The parties continue to work within Joint Committees established by both agreements to ensure proper implementation.

#### **POLICY OBJECTIVES**

**Undertaking all internal procedures necessary for preparation for signature and conclusion of the amended visa facilitation agreement**

Amendments to the existent Visa Facilitation Agreement (from 2008) came into force from 1 July 2013, extending the scope of privileged categories of travellers and clarifying conditions for granting multiple entry visas with long-term validity (1 to 5 years). Ukraine was the first among the Eastern Partner countries to upgrade its VFA. The upgraded VFA came into force in July 2013. Overall implementation of both the VFA and readmission agreements is recognised as satisfactory by both parties.

## **Implementation of Visa Liberalisation Action Plans**

#### **POLICY OBJECTIVES**

**Adopt and implement the relevant legislative, policy and institutional measures to meet the VLAP benchmarks**

Ukraine was granted a two-phased Visa Liberalisation Action Plan (VLAP) by the EU in November 2010.

Ukraine implemented about 90% of measures within the first (legislative) phase of the VLAP. However, some additional steps still need to be taken for Ukraine to be able to proceed to the second-phase benchmarks monitoring (with regards to implementation of the legal acts adopted). Ukraine trails behind Moldova, which passed to the second phase of VLAP in 2012.

The legislation that needs to be amended within the first phase of the VLAP includes anti-corruption and anti-discrimination laws, as well as shortcomings identified in the regulations on refugees and asylum-seekers.

The third progress assessment was submitted to the EU by the Ukrainian government in July 2013. The third progress report by the European Commission is expected in November 2013.

Detailed independent monitoring is available at the NGO Europe without Barriers website.<sup>7</sup>

<sup>7</sup> <http://novisa.org.ua/en/monit1/>

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**Promote Partner Countries' participation in the work of EU agencies**

**POLICY OBJECTIVES**

**Partner countries need to identify priority agencies and explore possibilities for co-operation activities or formal agreements as appropriate**

**Negotiate agreements with individual agencies**

**Arrangements for specific agencies:**

**POLICY OBJECTIVES**

**Europol: Enhance co-operation with Europol – ongoing**

Ukraine has signed a framework agreement with Europol.

Signing of an operational agreement is dependent on the assessment of Ukraine's data protection service and policies in place.

**POLICY OBJECTIVES**

**EUROJUST: signature of the operational co-operation agreement**

The agreement with Eurojust has been elaborated and initialled. The signing of the agreement with Eurojust as well as the agreement with Europol will be determined by the assessment of Ukraine's data protection policy and its compliance with EU standards.

**POLICY OBJECTIVES**

**FRONTEX: implementation of the working arrangement**

The working arrangement with FRONTEX is in place. Its implementation is assessed as satisfactory by both parties.

**ENERGY**

**POLICY OBJECTIVES**

**Promote energy security and sustainability, notably through infrastructure, energy efficiency and renewables**

In 2013, Sustainable Energy Week in Ukraine was celebrated on June 24-28. The various activities took place throughout all Ukraine helping the country in building its sustainable energy future.

**POLICY OBJECTIVES**

**EaP countries to continue developing and sustaining strategic oil stocks**

**EaP countries to pursue electricity tariff reforms, implement measures to ensure full cost-recovery, strengthen capacity and independence of regulators, and set up appropriate legislative frameworks**

**To ensure sector viability, carry out sector reforms, modernise the natural gas (GTS) transmission system and domestic gas distribution network, restructure financially and corporatise Naftogaz and ensure domestic gas prices reflect costs**

In order to approximate laws with EU legislation in accordance with commitments under the Energy Community Treaty, several laws were adopted, in particular:

The Law of Ukraine "On Amending Certain Legislative Acts of Ukraine on improving management of items of state property" (№ 4498-VI), adopted on 13 March 2012, aims at optimising the management of state property. The Law of Ukraine "On Amendments to the Law of Ukraine On Pipeline Transport (the reform of the oil and gas sectors)" (№ 4658-VI), signed on 28 April 2012, removes the legislative prohibition on the reorganisation of "Naftogaz of Ukraine", and clears the way for the disposal of the company's non-core assets.

**POLICY OBJECTIVES**

**Strengthen the overall institutional framework for promoting energy efficiency and renewable energy in Ukraine and engage further with Energy Community Secretariat to approximate with EU legislation**

The programme of investment support for renewable energy technologies in Ukraine has been developed, and is being gradually implemented. An agreement was also reached on the involvement of EU experts into the development of Ukrainian standards of energy labelling for household consumption, and industrial adoption of new energy-efficient equipment corresponding to the relevant EU

Directives as well as Western European practice.

The main strategic document is the State Target Economic Programme on Energy Efficiency for the Period 2010-2015 and the action plan for its implementation.

#### **Enhance levels of nuclear safety**

##### **POLICY OBJECTIVES**

**Approximation of a regulatory framework for nuclear safety**

**Upgrade safety standards of existing NPPs (Nuclear Power Plant), in co-operation, where appropriate, with other IFIs (notably EBRD)**

**Implementation of a comprehensive programme on nuclear safety improvement at Ukrainian NPPs (the 'upgrade package') to address the Ukrainian regulatory requirements and take into account the findings of the Joint European Commission-IAEA-Ukraine project on evaluating of the nuclear safety of the Ukrainian NPPs**

Following the successful conclusion of the joint European Commission-International Atomic Energy Agency-Ukraine project on the evaluation of the nuclear safety of Ukrainian nuclear power plants, Energoatom has started the implementation of a Comprehensive Programme on Nuclear Safety Improvement at Ukrainian Nuclear Power Plants (the 'upgrade package'). In order that the Programme may be implemented in a reasonable timeframe (completion by 2017), Energoatom has applied for Euratom and EBRD loans.

##### **POLICY OBJECTIVES**

**Implementation of a Joint**

**Declaration on comprehensive risk and safety assessments of nuclear plants (stress tests)**

Following the Fukushima Daiichi accident in Japan, Ukraine decided to carry out comprehensive risk and safety assessments ("stress tests") of its nuclear power plants, taking into account the specifications agreed by the European Commission and the European Nuclear Safety Regulators Group (ENSREG).

On 4 October 2012, the European Commission released a Communication on the results of the

stress tests. The report contains the findings and recommendations for Ukraine with the aim of further improving the safety of the nuclear power plants.

#### **TRANSPORT**

##### **Conclusion and implementation of Aviation Agreements**

##### **POLICY OBJECTIVES**

**Regulatory approximation through gradual implementation of EU aviation legislation, including in the following areas: aviation safety, aviation security, consumer protection (such as passenger rights), environment (noise), social aspects, air traffic management, market access related issues such as slots and ground handling and airport charges.**

The negotiations on a Common Aviation Area (CAA) started in 2007, and were delayed in 2010 mainly due to Ukraine's increased rates for air navigation services. Nevertheless, in 2011 Ukraine managed to approve the new Air Code, and in July 2013 amended the Law on State Air Safety Programme for Civil Aviation, harmonising Aviation regulations in line with EU standards and other international agreements. It was anticipated that negotiations would be successfully completed in November 2013.

By the end of 2012, Ukraine had approved new rules for passengers that correspond to the requirements set out in the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention). These new rules correspond also to the EC Regulation 261/2004 on common rules on compensation and assistance to passengers in the event of denial of boarding, flight cancellations, or long delays of flights. Ukraine also established the cross-institutional Commission on Safety for Civil Aviation.

On 23 October 2013, Ukraine and the EU managed to finalise the text of the agreement on CAA. The agreement covers gradual liberalisation of markets, which should lead to an increased number of international and domestic flights for lower tariffs, application of EU civil aviation requirements, including air safety standards, improvement of customer service, and facilitation of industrial co-operation. The government has declared an aim of joining the CAA in 2014-2015 on the basis of a gradual transition period of up to two years.

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The EU is providing substantive policy support in the transport sector by supporting the implementation of the Transport Strategy of Ukraine and supporting the implementation of EU standards in air traffic and navigation (through twinning projects). The reforms focused on safety regulation are also supported by the TRACECA-EASA Co-operation Fund.<sup>8</sup>

**REGIONAL DEVELOPMENT, AGRICULTURE AND RURAL DEVELOPMENT****POLICY OBJECTIVES**

**Launch or enhancement of regional policy dialogues and development of Pilot Regional Development Programmes (PRDPs)**

The EU support for PRDPs in Ukraine totals € 30.79 million (€ 6 million for policy advice and implementation and up to € 26 million in calls for proposals). The first call for proposals was launched on 3 May 2013. The aim is to alleviate regional disparities through targeting the least developed regions of Ukraine (Indicative allocation of funds: € 4 million with projects up to € 2 million each), and to promote sustainable rural development (indicative allocation of funds: €2 million with projects up to € 0.5 million each). The second call with an indicative allocation of funds of € 20 million is scheduled to be launched in March 2014.

Co-operation between Ukraine and the EU has a strong focus on regional development, including Cross Border Co-operation Programme (CBC), Community Based Approach (CBA) To Local Development Programme operated by the United Nations Development Program (UNDP) - the second phase of the CBA covers the period from 2011 to 2015 - and the soon to be established Joint Co-operation Initiative in Crimea.

With regards to CBA-II, there has been a lot of criticism of its performance. Grassroots organisations claim that the infrastructure components introduced in local communities create “fake civil society” in the fields. Moreover, the request to involve NGOs into projects is often followed by the creation of new “pro-government” NGOs, called “Agencies of Local Development”, which are often used for political or corrupt purposes and as a result

compromise the idea of grassroots civic initiatives.

Moreover, the current economic situation in the country and the centralised administration system have affected a lot of projects. In order to secure the provision of social policy, the State Treasury of Ukraine has blocked transfers to local government designated for infrastructure and social development measures, and directed the funds for social purposes. As a result, a lot of CBA-II and CBC projects, as well as other regional development measures, have been delayed, the project agencies have fallen into debt, or the activities have been postponed.

**POLICY OBJECTIVES**

**Promote a strategy-based, inclusive approach to reducing economic and social regional disparities and realising regional economic potential**

The agreed topics/issues on regional development include a wide range of topics like infrastructure upgrade and renovation, employment stimulation, tourism development, support to business initiatives, energy efficiency measures, and agricultural market development. Nevertheless, the centralised administration system in Ukraine, and the lack of institutional and economic independence for regional and local government, can weaken the efficiency of the programmes. Therefore, the successful implementation of PRDPs depends on progress in administrative reform, the realisation of decentralisation and legal/institutional provisions for local democracy and transparent local governance.

**POLICY OBJECTIVES**

**Revision of the regional development Strategy**

The Strategy for regional development of Ukraine until 2015 was approved in 2003 with small “technical” amendments in 2007 and 2011. There is no public dialogue on the revision of the strategy.

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Transport Corridor Europe Caucasus Asia - European Aviation Safety Agency (EASA)

**Agricultural sector dialogue and European Neighbourhood Programme for Agriculture and Rural Development (ENPARD)**

**POLICY OBJECTIVES**

**Sector dialogue on agriculture and rural development covered by existing subcommittees, established high-level dialogues or regional dialogues (to be established)**

The Agriculture Development Strategy until 2020 has been approved by the Ukrainian government. It includes social, economic, and environmental issues, and in general is in accordance with EU strategic approaches. However, plans or programmes to establish the legal, institutional and financial frameworks for the strategy's implementation have been neither developed nor discussed.

The launch of ENPARD in Ukraine was proposed in 2007, but this possibility has been never been realised. In May 2013, the government declared again the will to enhance co-operation with the EU in the field of agricultural policy. Ukraine, like other Eastern Partner countries, should negotiate and define three sectors for inclusion in ENPARD.

**ENVIRONMENT AND CLIMATE CHANGE**

**POLICY OBJECTIVES**

**Work on approximating environmental legislation, especially in view of new Association Agreements**

Ukraine has implemented a number of initiatives in the field of the environment. The best performance has been manifest in the adaptation of Ukrainian laws to EU legislation and co-operation in the field of climate change. Other activities are non-systematic and primarily project-oriented, and the level of implementation of legislation has been insufficient.

By the end of 2012, the Ministry of Ecology and Natural Resources of Ukraine approved the Baseline Plan for Harmonisation of Ukraine's Environmental Legislation with EU Law. Nevertheless, a lot of measures outlined in the National Environment Strategy for the period until 2020 and the National Environment Action Plan for 2009-2012 have been not fulfilled. The main reason underlying this has been the suspension of EU Sectoral Budget Support

caused by the lack of appropriate reforms in the system of public finance and government procurement, compounded by the lack of a systematic and cross-sectorial approach in the field of the environment.

**EMPLOYMENT AND SOCIAL CO-OPERATION**

**POLICY OBJECTIVES**

**Co-operation in line with the provisions of the ENP Action Plans/ Association Agendas including ensuring respect for trade union rights and core labour standards. Engaging in a dialogue on employment and social policy with a view to develop an analysis of the situation and to identify key challenges and policy responses (employment policy, social protection policy, social inclusion policy, social dialogue, health and safety at work, labour law, gender equality) gradually moving towards EU practices and including implementation of the EU acquis on health and safety at work, labour law and working conditions.**

The nature of social dialogue in Ukraine is very complicated. Local trade unions that are pro-government and pro-employer are officially included in social dialogue. On the other hand, independent trade unions and small and medium-sized enterprises (SMEs) have more influence and more authorities among their target groups, but there is no adequate legislative provision for their participation in tripartite negotiations. Therefore the decision-making process in the field of social issues is complicated, and often causes conflict situations.

Ukraine continues in the process of discussion and adoption of the new Labour Code, which started in 2007. According to preliminary estimates, the draft Labour Code that would meet European standards should be adopted by the end of 2013. An earlier draft of the Code, after approval at the first reading, was rejected for further consideration due to non-compliance with European standards, along with the active opposition of NGOs and independent trade unions who protested against the adoption of the Code without proper public consultation.

Some progress has been observed in 2012-2013 in combatting discrimination in employment and social protection, particularly with regards to persons with disabilities, and the introduction of equality standards between

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men and women. There have also been attempts to introduce a new system of delivering social services, based on needs assessments of target groups, with the involvement of NGOs as service providers. Nevertheless, incoherent legislation and insufficient fiscal regulation have excluded several civil society organisations from the process of service provision. The available financial tools are not sufficient for ensuring the quality of services, and more transparency is required in budget allocation.

The Law on Volunteering, which requires the certification of volunteering organisations, represents an obstacle for NGOs working in the sphere of social services. Moreover, the European dimension of volunteering is impeded due to the lack of tools to provide long-term residence permits for long-term volunteers serving in the framework of the European Volunteering Service of Youth in Action Programme.

Ukraine failed to live up to its plans to finalise the implementation of pension reform by the end of 2013 in the face of permanent budget deficits in the pension fund. The reform of the Ukrainian healthcare system has also been delayed for the same reason.

The process of ensuring the horizontal dimension of anti-discrimination, social inclusion and social protection is different for many policy areas. Formally, this domain is under the responsibility of the Ministry of Social Policy. As in the case of the environment, this policy area needs to be built and reformed in the framework of a cross-sector approach.

To date, the introduction of social protection issues in trilateral dialogue have not been accompanied by changes in other policy fields such as justice, education, youth, culture, science and research, which have instead seen increasing steps backwards from the standards of social inclusion and non-discrimination, and a return to protectionist practices and policies that lead to the widening of inequalities between different social groups.