

STUDY

Requested by the AFET committee



The Development of an Institutional Framework for the Implementation of the Association Agreements in Georgia, Moldova and Ukraine: a comparative perspective



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ABSTRACT

In recent years the EU concluded Association Agreements, including the creation of a Comprehensive Free Trade Areas with Georgia, Moldova and Ukraine. These are amongst the most complex and comprehensive legal treaties concluded by the EU with third countries. The treaties place a profound obligation on the partner countries of legal approximation, that is, to undertake extensive, binding commitments to adopt vast swathes of the *acquis* in order to stimulate political and economic development and institutional modernisation. This study shows that creating the institutional framework for implementation is a challenging and drawn-out process. While all countries have made some progress with devising these mechanisms, they are short of the necessary political leadership, policy planning, administrative capacity and there is a dearth of budgetary planning to enable effective implementation. There is also a notable need to embed implementation into wider reform strategies. While these issues are being addressed on the part of the countries, the EU can assist them by providing the necessary systemic support in an integrated, sequenced and long-term way.

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List of Acronyms and Abbreviations

AA	Association Agreement (with the Deep and Comprehensive Free Trade Area)
APG	Action Plan of the Government
CFPEI	Committee on Foreign Policy and European Integration
DCFTA	Deep and Comprehensive Free Trade Area
DG	Directorate General
EaP	European Partnership
EEAS	European External Action Service
ENI	European Neighbourhood Instrument
ENP	European Neighbourhood Policy
EEAS	European External Action Service
EU	European Union
GCEI	Governmental Commission on European Integration
GOEEI	Governmental Office for European and Euro-Atlantic Integration
IMF	International Monetary Fund
LPP	Legislative Programme of the Parliament on the Implementation of the Association Agreement
MFA	Ministry of Foreign Affairs
MFAEI	Ministry for Foreign Affairs and European Integration
MP	Member of Parliament
NAPIAA	National Action Plan for the Implementation of the Association Agreement
NGO	Non-Governmental Organisation
PCA	Partnership and Cooperation Agreement
PAR	Public Administration Reform
PARS	Public Administration Reform Strategy
RM2EU	Roadmap to the EU
SGUA	Support Group for Ukraine
SPS	Sanitary and phyto-sanitary standards
TBT	Technical Barriers to Trade
UEPLAC	Ukrainian-European Policy and Legal Advice Centre
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
VLAP	Visa Liberalisation Action Plan
VRU	Verkhovna Rada of Ukraine

Executive Summary

The EU has concluded Association Agreements (AAs), including Deep and Comprehensive Free Trade Areas (DCFTAs), with Georgia, Moldova and Ukraine. The Agreements, if successfully implemented, will help pivot each of the countries' economic, political and developmental trajectories towards prosperity and stability. This is because the AAs are designed to promote political association and economic integration with the EU and facilitate the modernisation of the partner countries. The key instrument in achieving these goals is legal approximation: the partner countries have taken on extensive, binding commitments to align their laws and institutions with the *acquis* in order to stimulate political and economic development and institutional modernisation.

European integration is a complex and drawn-out process. It is premised on political leadership, effective policy planning, governmental coordination and strong cooperation between the government and parliaments and well-functioning legislative practices, as well as close engagement with stakeholders and consultations with the EU institutions.

The study focuses on the following to ascertain progress in creating the institutional framework for the AA implementation: co-ordination within government structures both at the political and administrative levels and their synchronisation; co-ordination between government and parliament (and the presidential administration, where relevant); the role of parliament; implementation; transparency and inclusiveness; communication; as well as institutional support and assistance.

It was found that across all the areas, all partner countries had made significant efforts to either create or improve the institutional infrastructure which is necessary for successful implementation of the AAs.

However, noteworthy commonalities in terms of deficiency of implementation were also discerned. It was found that while the partner states demonstrated a commitment to integration with the EU by signing the Agreements, their scope and complexity pose a major challenge to policy makers in the partner countries. All three countries suffer from noteworthy weaknesses within their political systems, such as oligarchic control of parties, weak public administration and public policy making, as well as politicised judiciaries. In addition, despite the declarations, strong leadership on AA implementation has not yet been evident in all three countries, with a subsequent knock on effect on strategy and capacity, not least because the reforms have encountered strong resistance from self-interested elites and officials, especially in Moldova and Ukraine.

Furthermore, where implementation plans exist, they are underdeveloped and/or insufficiently integrated into wider reform process undertaken by the three states. As a result there are serious concerns whether these countries have the capacity to ensure the effectiveness of the vast and sophisticated corpus of EU law they are committed to import. Compounding the above is the fact that EU resources are either insufficient for the scale of the task of supporting the partner states (too few officials working on too many countries asked to do too much). Some of the instruments are inappropriate in terms of strategic rationale (such as relying on too many short term projects to deal with long-term systemic issues). Implementing the AAs fully within the specified deadlines is a challenge that seems almost impossible to meet for the three countries, *inter alia* due to their weak administrative capacities and financial constraints. However, there is a range of measures and solutions which can be applied both by the AA countries and the EU to support implementation as part of the broader reform process. The Study concludes with a number of generic and country-specific recommendations.

1 Introduction

The EU has concluded Association Agreements, including DCFTAs, with Georgia, Moldova and Ukraine.¹ These are amongst the most complex and comprehensive legal treaties concluded by the EU with the so-called third countries.² For the three countries concerned, the agreements are both ambitious and pivotal, as they may, if successfully implemented, help pivot each of the countries' economic, political and developmental trajectories towards prosperity and stability. This is because the AAs are designed to promote political association and economic integration with the EU and facilitate the modernisation of the partner countries. The key instrument in achieving these goals is legal approximation: the partner countries have taken on extensive, binding commitments to align their laws and institutions with vast swathes of the *acquis* in order to stimulate political and economic development and institutional modernisation.³

European integration is a complex and drawn-out process involving virtually all branches of the state. The transposition of the *acquis* into domestic legislation, aside from broader political reform, is a prerequisite if these countries are to benefit from closer relations with the EU. This process requires strong political leadership and the sustained engagement of the highest state authorities; however, it also needs to be underpinned by an institutionalised coordinating framework bolstered by wide-ranging administrative and legislative capacity. This is necessary because successful implementation of the AA, including legal approximation and institutional reforms, touches on virtually every aspect of public policy-making and implementation.⁴

In the accession countries from Central and Eastern Europe all the governments created effective coordinating mechanisms to deal with the sheer volume of inter-sectoral matters to be dealt with, something which required profound and extensive expertise in order to meet the tight time constraints.⁵ This is the challenge now faced by the AA countries.

This Study examines the institutional mechanisms in each country in considerable detail. It is based on an examination of relevant documents and three mission trips to each country during which meetings with numerous state officials, civil society, national and EU experts as well as staff in the EU Delegations were held in order to ascertain the developments within each country.

The key indicators of success or progress are now well known and the research in this Study homed in on eight specific areas:

1. strategic documents and legal basis for implementation
2. co-ordination within government structures both at the political and administrative levels and their synchronisation

¹ The AA/DCFTA with Ukraine was signed on 21 March 2014, its provisional application started on 1 November 2014 and it came into full force on 1 September 2017. For both Moldova and Georgia, the dates for these respective events were: 27 June 2014, 01 September 2014 and 01 July 2016.

² For an in-depth analysis of the AA/DCFTA see Van der Loo, G. (2016) *The EU-Ukraine Association Agreement and Deep Comprehensive Free Trade Area*, The Hague: Brill/Nijhoff.

³ Legal approximation is required for the implementation of two large sections of the agreements, namely 'the DCFTA' and 'Economic and Sectoral Cooperation'. In particular, access to the single market is premised on compliance in multiple areas such as, for example, public procurement, technical barriers to trade, anti-monopoly policy and food safety regulations.

⁴ Wolczuk, K. (2009) 'Implementation without Coordination: The Impact of the EU Conditionality on Ukraine under the European Neighbourhood Policy', *Europe-Asia Studies*, 61(2).

⁵ See, for example, Lippert, B. Umbach, G. and Wessels, W. (2001) 'Europeanization of CEE Executives: EU Membership Negotiations as a Shaping Power', *Journal of European Public Policy*, 8(6).

3. co-ordination between government and parliament (and the presidential administration, where relevant)
4. the role of parliament (including internal institutions and procedures and plans for legal approximation)
5. implementation
6. transparency and inclusiveness
7. communication
8. institutional support and international assistance.

By exploring each of these areas across the three countries, it was possible to get an overview of the extent to which each country has progressed on this arduous and challenging journey. Where possible the research drilled down as far as was feasible in order to identify what was actually happening in practice rather than merely relying on proclamations in strategic documents.

It is clear that the three countries have followed best practice by developing the institutional framework along the lines modelled by candidate states, in terms of coordination mechanisms, implementation plans and compliance checks.⁶ It is evident that the precedent provided by the accession countries has been built on, not least thanks to the analysis provided by EU and member states' assistance projects over the last decade.⁷

However, it is clear that it is not enough to merely copy what has been done elsewhere as the broader cultural, political and administrative contexts within which those frameworks exist are determinants of the effectiveness (or lack thereof) of those institutions.

2 Legal basis and strategic documents

The essential legal basis for the implementation of the AAs is provided by the signing and ratification by the partner states. According to their constitutions, by concluding the agreements the countries have taken on an obligation to implement the commitments in those agreements. In addition, all countries reiterated their commitment to European integration by concluding the Association Agendas, which list a number of priorities, but, in contrast to the AAs, are political rather than legal documents.

The decision to take on such extensive and wide-ranging commitments vis-à-vis the EU reflects the far-reaching aspirations of the countries, up to and including membership. These aspirations and their domestic ramifications have been reflected in the legislative basis for implementation in these countries as well as a range of strategic documents.

For example, **Georgia's** ambition to progress with European integration was evidenced when this goal was enshrined in the Georgian Constitution at the end of 2017. This was achieved through the

⁶ For an overview, see also a presentation on the coordination of European integration prepared by the 'Association4U' in Ukraine, which is available at: https://eu-ua.org/sites/default/files/inline/files/annex_c.3.19_a4u_presentations_coord_of_eu_affairs_in_the_transition_to_a_modern_public_administration.pdf.

⁷ For examples with regard to Ukraine, see Miroshnychenko, O. (2008) 'Aspects of planning for implementation of the EU-Ukraine New Enhanced Agreement', prepared by the Ukrainian-European Policy and Legal Advice Centre (UEPLAC) and Mayhew, A., Cremona, M. and Serafin, P. (2005) 'Ukraine's European Choice: A Review of the Mechanism for the Implementation of Ukraine's Policy towards the European Union', Final Report of a scoping study for the Government of Ukraine, which was funded by the UK. With regard to Moldova, see Groza, I. and Codreanu, R. (2015) Study on the coordination mechanism at national level of the European integration process, Chisinau (in Romanian) at: <http://ipre.md/2015/12/23/studiu-privind-mecanismul-de-coordonare-la-nivel-national-a-procesului-de-integrare-europeana-a-republicii-moldova/>

introduction of a dedicated article which required that all necessary measures would be taken by constitutional institutions to ensure the integration of Georgia with NATO and the EU.⁸ Similarly, in **Moldova**, a draft amendment to the Constitution, on the establishment of European integration of the country as a strategic objective, is currently under review.⁹

In **Ukraine** the legal basis for European integration dates back to the 1990s. Already in 1993, in the Decision adopted by the Ukrainian parliament (Verkhovna Rada) 'On the Key Directions of the Foreign Policy of Ukraine', it was stated that 'the priority of Ukrainian foreign policy is Ukrainian membership in the European Communities'. Ukraine declared its ambition to join the EU in 1998, when president Leonid Kuchma approved a strategy by presidential decree for Ukraine's integration into the EU.¹⁰ This resulted in the 'Integration of Ukraine into the EU' Programme, approved on 14 September 2000.¹¹ Since then, to achieve this strategic aim, a number of decisions have been adopted by the government to create a mechanism for European integration.¹² The specific legal basis for legal approximation was provided by the 2004 law 'On an All-State Programme of Adaptation of the Ukrainian Legislation to the EU Law'.¹³ However, this law was developed under the Partnership and Cooperation Agreement (PCA) i.e. the legal framework which preceded the AAs. Yet, this law remains the legal basis for the process of approximation.¹⁴ The legislative basis for Ukraine's closer relations with the EU remains also enshrined in Article 11 of the law 'On the Foundations of Internal and Foreign Policy' from July 2010. This article states that one of the key elements of Ukrainian external policy is 'ensuring the integration of Ukraine into the European political, economic and legal area in order to obtain EU membership'.¹⁵

In general, in **Georgia, Ukraine and Moldova**, the institutional mechanism for implementation is, in effect, established through decisions made by the governments and, in parallel, in the parliaments according to the existing rules and procedures. So far, there is no specific overarching legal document which structures the institutional cooperation between the government, parliament (and the presidential administration) with regard to European integration in these three countries. Cooperation between the branches of power occurs within existing frameworks which structure relations, something which is – by default – susceptible to the vagaries of the prevailing configurations of political forces.

⁸ Chapter 11. Art 78 of the Constitution of Georgia.

⁹ In Moldova the Constitutional Law is currently under review but it is not clear if the Constitution can be revised prior to the parliamentary elections in the autumn 2018. The law is available at :

<http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4033/language/ro-RO/Default.aspx>

¹⁰ Decree of the President of Ukraine No. 615

¹¹ For the coordination of European integration prior to the AA see Wolczuk, 2004; Wolczuk, 2009

¹² Governmental decisions include the following 1) Decree of the Cabinet of Ministers no.1202 of 26.12.2012], <<http://zakon4.rada.gov.ua/laws/show/1202-2012-п>; 2) Decree of the Cabinet of Ministers of Ukraine no.1742 of 24 December 2004], <<http://zakon4.rada.gov.ua/laws/show/1742-2004-п>; 3) Decree of the Cabinet of Ministers of Ukraine no.346 of 13.08.2014], <<http://zakon2.rada.gov.ua/laws/show/346-2014-п>.

¹³ First, the list of priority areas for approximation/adaptation was based on Article 51 of the EU-Ukraine PCA. With the passage of the AA, the Ukrainian strategic policy documents listed in the law are no longer relevant. Second, the law is too general: the set of actions comprising the approximation process (such as selection of the EU acts, their translation, impact analysis, legal drafting and implementation) all lack methodology at the secondary legislation level. Third, the law lays down that parliamentary scrutiny of the *acquis* and conformity checks should fall to the Ministry of Justice. However, those provisions are not realistic given the diminished capacity of the Ministry (following the dissolution of the specialised State Department for Legal Approximation in 2011), the increased number of draft laws and the increased role of the European Integration Committee in the AA implementation process. Fourth, the institutional framework envisaged by the law has become defunct; for example the Coordination Council on approximation, headed by the Prime Minister, has not met since 2012.

¹⁴ Law 1629-IV <http://zakon0.rada.gov.ua/rada/show/1629-15>.

¹⁵ In order to give the implementation of the AA a more specific legal footing, a new bill was drafted on the initiative of one of the members of the Committee for European Integration in the Ukrainian parliament (with assistance from international experts); yet this draft has not been subjected to public debates nor has it been registered in the Ukrainian parliament.

It is important to point out that **Georgia** is eager to advance relations beyond the AA. To this effect, the Georgian government (in consultations with the parliament) is preparing a new strategic document, the Roadmap to the EU (RM2EU), which promotes further integration through wide-ranging engagement. Alongside the AA, the RM2EU identifies new targets for sectorial integration (which go beyond the AA) as well as enhanced cooperation with EU community programmes and agencies, including security cooperation and democratisation. Crucially, the RM2EU envisages the screening of Georgian legislation for any gaps that could hinder approximation. The planned content of the RM2EU with its all-encompassing nature, straddling both domestic and foreign policy domains, endows it with a strategic rather than legal ethos. Given the already ambitious degree of relations envisaged in the AA, it is tempting to anticipate that the Roadmap will represent an aspiration rather than offer functional solutions, notwithstanding features such as the requirement to screen legislation, something which would be useful when it comes to the implementation of the AA.¹⁶

In a similar vein, **Ukraine** has been promoting the 'EU-Ukraine Policy Agenda within the AA implementation' in its dialogue with the EU. The Agenda consists of four components: the Energy Liberalisation Action Plan, Digital Liberalisation Action Plan, the Transit Liberalisation Action Plan and the new Agenda on Justice, Liberty and Security.¹⁷ This initiative reflects a demand for a sharper focus and vision for advancing relations. It is significant that this initiative involves the deliberate modelling of specific areas on the Visa Liberalisation Action Plan (VLAP), which resulted in Ukraine being granted visa-free travel within the Schengen area. In Ukraine (as well as in Georgia and Moldova), the VLAP is widely regarded as the most successful example of EU's impact on domestic reforms. As such, both the RM2EU and the EU-Ukraine Policy Agenda underscore the need for providing a medium-term vision and more strategic prioritisation in the AA implementation (see below).

2.1 Plans for the implementation of the AAs

In each country there is a spectrum of documents which relates to the process of implementation of the AAs. Their content and strengths and weaknesses are discussed in more detail throughout the Study. When it comes to AA implementation plans, once again, noteworthy differences can be discerned between the three countries.

In **Moldova**, there are two key planning documents: the National Action Plan for the Implementation of the Association Agreement for 2017-2019 (the NAPIAA) and the Action Plan of the Government for 2016-2018 (APG). The NAPIAA is a governmental document, which has normative force for the bodies subordinated to the government but also other relevant institutions such as the National Bank and various regulators.¹⁸ The drafting of the NAPIAAs is based on inputs from the line ministries and other executive agencies. The NAPIAA addresses specific provisions of the AA, and the corresponding provisions of the Association Agenda. It refers to planned measures, performance indicators, responsible institutions, time-frame for implementation, estimated costs and sources of funding.¹⁹ As such, it is a

¹⁶ However, the Roadmap is to be finalised by the end of 2018 so these observations are very preliminary and only based on interviews rather than an analysis of the text itself.

¹⁷ 'The Concept Note on the EU-Ukraine Policy Agenda within the AA implementation' presented by the Prime Minister of Ukraine in May 2018.

¹⁸ These bodies include, for example, the National Bank, the National Energy Regulating Agency, the National Anticorruption Centre, the Financial Markets National Commission and the Competition Council. This is a comprehensive governmental planning document and not presented to parliament.

¹⁹ The NAPIAA is prepared in Romanian and then translated into Russian. As the NAPIAA is very extensive, its translation is a major undertaking for the coordination body.

noteworthy improvement on its predecessor, the 2014-2016 version.²⁰ However, the actual costs are calculated in a general way or not factored in at all. The source of funding is referred to in only a very general way, such as 'state budget' or 'assistance project'. However, there is no established process for including these costs in the state budget.

The APG 2016-2018 was approved in early 2016 as a planning tool primarily for the newly formed government.²¹ The fact that many of the priorities of the APG are harmonised with the NAPIAA is likely to bolster the implementation of both action plans, although the formal relationship between the NAPIAA and APG is unclear.

In Moldova, the development of NAPIAAs is coordinated by the Ministry for Foreign Affairs and European Integration (MFAEI), with inputs from line ministries and other central public administration authorities, such as independent regulators. Despite the improvements over its predecessor, the NAPIAA 2017-2019 has some noteworthy shortcomings. Most importantly, the actions included in the NAPIAA do not always explicitly and directly address the most pressing aspects of the reforms as indicated in the Association Agenda.²² Furthermore, the priorities set out in the NAPIAA are not clearly harmonised with governmental strategic planning documents, resulting in various incongruities.²³ This issue is exacerbated by the sheer range of such documents, now estimated at over 200.

In Moldova, the effort to coordinate strategic planning by placing it within the remit of the State Chancellery (which is also responsible for coordinating external technical assistance) is certainly a step in the right direction but it is an ongoing process and it will take time to recruit staff and develop that capacity within the State Chancellery.²⁴ This means that as of mid-2018, Moldova is working on a bewildering range of priorities stemming from its commitments as a signatory to the AA, Association Agenda, the Macro-financial Assistance Memorandum with the EU concluded in 2017, the IMF Memorandum of Understanding, as well as related to the implementation of the Public Administration Reform Strategy (PARS), the Justice Sector Reform Strategy for 2011-2016 and the High Priority Roadmaps from 2016 and 2017. There is no doubt that the multiplicity of many donor-driven reform strategies offers the Moldovan political elites opportunities to exploit them to their own advantage.²⁵

Due to the large number of strategic planning documents and because of the inconsistencies which put horizontal planning documents at odds with sectoral ones, the implementation of the AA has progressed erratically. For example, in line with the PARS, staff in line ministries was reduced by up to 50% something

²⁰ The improvements include a) distinguishing between implementation actions which relate to the approval of a law and the approval of other normative acts; b) specific provisions of laws or other acts approved under the same or previous NAPIAA; c) planning for legal harmonisation has been integrated into the NAPIAA 2017-2019; d) inclusion of more indicative performance indicators; e) procedures which more accurately align estimated costs with technical assistance.

²¹ The APG is approved as a Government Decision and has the force of a normative act. There is also the Governing Programme of the Government, which is approved by the Parliament when approving a new cabinet. This is not published in the official journal and thus is a political document.

²² In Moldova the most pressing issues are those related to key institutional reforms to reduce and eliminate state capture by powerful actors, with the justice sector being a particularly salient one. Other such areas include the implementation of the integrity legislation, statements of assets and personal interests. The NAPIAA focuses on specific, more technical issues without addressing the overarching and more politically sensitive issues, such as approval of a new law on prosecutors' offices and its effective implementation, which has as its aim the depoliticisation of the institution.

²³ These include the repetition of activities across strategic planning documents, such as the APG for 2016-2018 and the emergence of different timings for implementation, an issue which is made worse by the fact that the NAPIAA is linked to the Association Agenda timeframe of 2017-2019, whilst the APG covers 2016-2018.

²⁴ Employment at the State Chancellery is to an extent an unattractive proposition owing to low salaries.

²⁵ While this allows the ruling elites in Moldova to act on many reform recommendations, this often fails to address the fundamental problem of state capture, whereby, through informal networks, institutions are controlled and used to monopolise power and engage in extensive rent extraction. On the political elites and functioning of the political system in Moldova see Calus, K. (2016) *The Unfinished state: 25 Years of Independent Moldova*, OSW Studies, No.59, Warsaw.

which impacted on staff responsible for the implementation of the AA. In other words, the synchronisation of the NAPIAA with the other functional reforms is at times poor. The process is further hindered by the multiplicity of reporting requirements for ministries and agencies which have just come through restructuring. So, while they continue to lack professional expertise on strategic planning and European integration, they are overburdened with diverse and often incompatible plans and onerous reporting requirements.

Georgia has developed an Annual Implementation Plan for the implementation of the AA and the Association Agenda.²⁶ This document is prepared and owned by the Directorate General for European Integration in the Ministry of Foreign Affairs (MFA). There is also a separate three-year DCFTA Implementation Plan prepared by the Ministry of the Economy and Sustainable Development. While the former plan is annual the latter spans three years. Horizontal issues, such as financial services, are divided between the sectoral and DCFTA components of the Plan. The Plan identifies 1) specific actions with reference to the Association Agenda; (2) bodies responsible for these particular actions; (3) results to be achieved; (4) indicators confirming the results; (5) timelines for implementation, usually in quarterly format and (6) the sources of financing. Each activity has its own indicators, such as whether a law has been passed, the number of officials trained or the number of seminars to be held.

However, given the long-term nature of the AA implementation process, the annual plan has evident limitations. Therefore, from 2019 the government will introduce a three year version, to be updated on a rolling basis. While the Georgian government is the owner of these plans, parliament has developed its own plan for the approximation of Georgian legislation with the EU law based on the Annual Implementation Plan (see below).

At present, the major limitations of the Annual Implementation Plan are: firstly, it lacks sound financial estimates for the implementation measures, meaning that funding cannot be fully planned for; secondly, it includes actions (such as training) as an indicator of implementation; thirdly, it prioritises the legal approximation and deadlines in the AA but it is not clear how the Plan relates to the national developmental strategy and any sectoral reform plans. It is also not clear how the implementation of the AA is aligned with other strategic plans such as, for example, the UN Sustainable Development strategy, which outlines specific targets across various areas, including environmental issues, such as waste management. While the AA obligations are given high priorities, it is important to stress that the AA and the Association Agenda ought not to be regarded as a reform strategies *per se*.

In terms of planning, **Ukraine's** experience is similar to that of Georgia and Moldova. The first Action Plan for the implementation of the AA was adopted for 2014-16 and the current 2017-20 plan was adopted in October 2017, by a governmental resolution, meaning that it is binding on the ministries and other executive agencies.²⁷ The current plan is an improvement on its predecessor, primarily due to its comprehensiveness, as it includes many measures beyond 2020. It lists both broader reform measures such as public administration reforms and specific actions needed to implement the AA. The plan might be considered an improvement compared to the previous one but it still has many limitations, as it focuses mostly on legal approximation, whereas other implementation actions are underspecified, especially with regard to institutional reforms (such as creation of institutions responsible for

²⁶ It is adopted by the European Integration Commission of the Government of Georgia. The preparation of the Implementation Plan for 2018 was delayed because of the need to reconcile it with the new Association Agenda which was concluded in the autumn of 2017 and then by ongoing structural changes in the government. Upon adoption by the government, the Plan become mandatory for implementation.

²⁷ Decision of the Cabinet of Ministers, 25 October 2017. The Plan is available at <https://www.kmu.gov.ua/storage/app/media/uploaded-files/zakhodiv-z-implementatsii-ugodi-mizh-ukrainoyu-ta-es-vid-25-zhovtnya-2017-roku.pdf>

implementing SPS standards, especially at the regional level). The Plan also does not identify a source of funding for the implementation.

At the same time the Ukrainian government adopted a Mid-term Plan of Reform Priorities for 2017-2020 which outlined the overarching reform priorities for the next three years and provided benchmarks for their achievement. The Mid-term Plan of Reform Priorities is a comprehensive plan which contains specific targets and indicators across many sectors; it also refers to 'European standards'. While the Plan for Reforms Priorities addresses many pre-conditions for the implementation of the AA, there is no clear cut relationship between the two plans. Despite efforts to synchronise them, the AA Action Plan seems to be developed in parallel to this strategic Plan for Reforms Priorities.

In all three countries, one of the crucial issues when it comes to the implementation of the AAs is the need to adopt a sector-wide approach in mind.²⁸ A sectoral approach is pivotal, as one expert with direct experience of working on EU projects explained:

Appropriate use of sectoral reform strategies means that tasks are prioritised and done in the right order to enable individual reforms to build on each other in a systemic way. The lack of sectoral strategies leads to chaotic interventions with inappropriate sequencing, little linkage and therefore little real impact. Premature interventions mean resources could have been used for higher priorities and late interventions mean time pressure and delay in dependent interventions or project outputs. Lack of coordination of strategies leads to duplications, gaps and political and technical tensions and inefficiencies.²⁹

Currently these broader sectoral reform strategies are not considered in the context of the AAs. This is understandable: the reform strategies need to be adopted and institutions need to be created in the first place. Thus, there has been a deliberate effort to promote a sectoral approach for adoption by the Ukrainian government, with the EU's explicit support, primarily through the efforts of the European Commission's Support Group for Ukraine (SGUA).

It is clear that many provisions of the AA are not always related to the most salient priorities facing each country. These tend to be spelt out in the Association Agendas, but only briefly. Given that the Association Agendas are a product of a diplomatic dialogue, they do not constitute stand-alone reform strategies (although in Georgia, the Agenda offers a degree of prioritisation of AA commitments). In the case of Ukraine, fiscal stability, public administration, judicial reform, land reform, healthcare, education, pension systems are structural reforms, which receive the highest level of highest political attention within the government and individual ministries. And yet, the most detailed parts of the AA, namely numerous annexes, list numerous commitments and deadlines on more detailed issues. But the provisions of the annexes, including the specific deadlines, assume that there are state institutions capable of applying EU's sophisticated *acquis*. Given those broader challenges, many of the existing deadlines in the AA seem overtly ambitious (see the section on Impact Assessment). This results in dual track planning inside AA countries: one which is focussed on legal approximation and AA implementation alongside a second track dealing with fundamental reforms (such as public

²⁸ On a very prosaic level, it is not always clear that modern project and programme management techniques are being used, or, that they are used in a systematic and comprehensive way. This is evident in the frequent confusion between outputs and outcomes. For example, training events and the number of people trained are outputs; however the impact of the training on people's effectiveness is an outcome. Yet too often, the former is reported on while the latter is neglected. While the latter are harder to measure, they produce more meaningful data. Wide-ranging training in programme management techniques across staff of all three countries, could be conducted at relatively low cost.

²⁹ Moody, R. (2011), 'Is EU Law an Appropriate Model for National Legislative and Judicial Reform in the Context of European Integration?', LLM Dissertation, Huddersfield, UK: The University of Huddersfield.

administration, public finance management, decentralisation, judicial reforms and pension reforms). These tracks remain insufficiently synchronised.

This duality is not always recognised and creates a degree of incongruence in planning as well as interactions with the EU. It is important to stress that on their own the current AAs and the implementation plans cannot and should not be regarded as self-contained and comprehensive reform plans; in the short- to medium-term they need to be linked to and embedded in the broader reform strategy.

3 Coordination within governmental structures

3.1 Political level

Given that EU integration is a complex and long-drawn out process, experience shows that without support from the highest authorities in the state, progress on integration tends to be turgid. How this support is provided within the executive and legislative branches depends on the constitutional provisions and institutional configuration within a given state. However, whatever configuration the state decides upon, unless implementation is driven from the very highest levels, across all branches of power, it is unlikely to be successful.

In **Ukraine**, since 2016 responsibility for European integration sits with the Vice Prime Minister for European and Euro-Atlantic integration. The post was created in order to drive the integration process forward and coordinate the activities of the various parts of government. This is a position without portfolio (i.e. ministry) and is supported by the Governmental Office for European and Euro-Atlantic Integration (GOEEI) within the Secretariat of the Cabinet of Ministers.

The Vice Prime Minister chairs the Governmental Committee for European and Euroatlantic Integration, International Cooperation and Regional Policy, which is the key intra-government platform for dealing with the AA implementation and consists of deputy ministers for European integration, posts which were specially created within each ministry.³⁰ Governmental committees are the main structure inside the Cabinet of Ministers for inter-ministerial coordination. In Ukraine, governmental committees have extensive prerogatives, including the right to review draft laws and draft presidential and governmental decrees. They can also adopt direct instructions to ministries and bodies, which are reflected in minutes of meetings.

Since her appointment, the Vice Prime Minister for European and Euro-Atlantic Integration, Ivanna Klympush-Tsintsadze, has been highly active in the international arena and has conducted an intensive communication campaign. However it has proven more difficult to raise the profile of European integration within the government. In the main, this is because, traditionally, ministers enjoy considerable autonomy within their remits. This political and bureaucratic autonomy of large and powerful ministries is reinforced by the nature of coalition government and presidential backing (or lack thereof) in Ukraine.

The political standing and administrative duties of the post of deputy ministers tasked with European integration within individual ministries are currently being determined with the revised structures. There is a need for the government to develop intra-ministerial coordination in order to agree a common

³⁰ Decision of the Cabinet of Ministers of Ukraine, No.330, 11 May 2016 available at <https://www.kmu.gov.ua/ua/npas/249029454> (in Ukrainian).

position on horizontal issues,³¹ such as telecommunications, cross-border cooperation, intellectual property rights, the anti-monopoly strategy and so forth.³² The effectiveness of having individual ministerial positions tasked with European integration in the government structures will be determined by ongoing reforms of the Cabinet of Ministers, its secretariat and individual ministries.

In relation to the AA implementation, interactions between the Cabinet and the parliament are regulated through existing Ukrainian legislation. However, there have been efforts to foster closer political cooperation on the AA implementation (see below).³³

In **Moldova**, the main coordination body at the governmental level is the Governmental Commission on European Integration (GCEI) involving members of government and independent regulators, such as the Governor of the National Bank.³⁴ The Prime Minister uses the GCEI to monitor implementation. However, there is no-one within the Prime Minister's office tasked with the monitoring. In early 2018, as part of a governmental reshuffle, the post of deputy Prime Minister responsible for European integration was created.³⁵ As in Ukraine, in Moldova this is a ministry without portfolio, although it has the support of MFAEI staff. The deputy Prime Minister has a small cabinet which assists him.

The role of the deputy Prime Minister is to provide strategic leadership on European integration. In order to do so, he created a task force, represented by state secretaries, as well as civil society representatives, to discuss pressing issues related to the implementation of targeted activities related to the NAPIAA and the Association Agenda. Yet, this work is hindered by the lack of dedicated personnel. Nevertheless, the deputy Prime Minister has become active on the international arena and, domestically, has focussed on increasing Moldovan exports to the EU under the DCFTA, a good if obvious example of much needed strategic prioritisation. Given the recent creation of this position, it is difficult at this stage to evaluate its effectiveness or how political initiatives and administrative capacity are being reconciled. However, there is evident misalignment: the coordinating body for European integration is in the MFAEI meaning that it is subordinated to a different minister to the one officially tasked with European integration.

In **Georgia** the Prime Minister chairs the coordinating body for EU integration – the EU Integration Commission. Established in 2004, the Commission is made up of the cabinet, while representatives of parliament, the judiciary and other state agencies are required to participate as necessary.³⁶ The Minister of Finance is required to cross-check the annual AA action plans with those of the Association Agenda to ensure financial feasibility. Georgia's EU Integration Commission has been in charge of vertical coordination across the ministries and agencies.³⁷ The work of the Commission is operationalised through a number of working groups, focussing on visa liberalisation, the transposition of EU legislation, the DCFTA and the development of the RM2EU, as of mid-2018 (see above).

³¹ 'Introducing the New Structures in Ministries – Initial Comments (from the Perspective of Weaknesses of the AA/DFCTA Implementation-Coordination)', a comment written by project experts funded within the 'Association4U' project in Ukraine. See https://eu-ua.org/sites/default/files/inline/files/annex_c.3.18_a4u_position_paper_n7_introducing_the_new_structures_in_ministries-initial_comments_from_aa-dcfta_point_of_view.pdf

³² For example, several ministries and agencies have not cooperated effectively on the construction of new border crossings, despite EU support.

³³ Laws of Ukraine 'On the Cabinet of Ministers of Ukraine', 'On Committees of Verkhovna Rada of Ukraine', 'On Rules of Procedure of Verkhovna Rada of Ukraine'; and 'Rules of Procedure of the Cabinet of Ministers of Ukraine'.

³⁴ The GCEI usually meets once a month and discusses the progress of implementation of the NAPIAA.

³⁵ In Moldova, this reform was preceded by lively debates on the mechanism for implementation during 2015-6. Interestingly, none of the main options proposed were implemented in the reform process apart from the creation of the position of the deputy Prime Minister. See Groza and Codreanu (2015).

³⁶ Government of Georgia, Decree No. 76, 2004

³⁷ The Commission met twice in 2014, thrice in 2015, twice in 2016 and 2017, and once in 2018.

The Minister of Foreign Affairs is the Deputy Chair of the Commission.³⁸ This Minister is tasked with European integration and internal coordination of EU integration issues and diplomatic support of the process. Also, within each ministry there is a deputy minister responsible for European integration and most ministries have separate structural units focused on European integration issues in their respective sectors. Discussions with governmental officials suggest that the set-up is regarded as effective in steering EU integration issues, no doubt bolstered by the political consensus on integration with the EU within the government. However, the process is perhaps too dependent on the political standing of the Minister of Foreign Affairs within the government (who may be also serving as Vice Prime Minister) and so is susceptible to the vagaries of politics, as the MFA is just one ministry and its role is not strengthened in institutional terms to work on European integration, which is essentially a matter of domestic policy.

3.2 Coordination bodies

The institutional mechanisms for policy-making in the government is absolutely critical to the successful pursuit of European integration. Experience shows that there needs to be one strong coordination centre within government. At the same time, the experience of the accession countries show that where this body is located (as a stand-alone unit or within the Ministry of Foreign Affairs) is relatively unimportant. What matters, however, is its policy-making and monitoring capacities as well as its control of the coordination mechanism, including cross-ministerial issues.

In all three countries, the above mentioned political level coordination is supplemented by specialised administrative structures which deal with the nuts and bolts of implementation. In other words, once the political structures have set the course to be pursued, the structures below fulfil the requirements of achieving that course.

When it comes to **Georgia**, the location of the coordinating body has changed considerably. In 2004 the State Minister's Office for European Integration was created and placed within the State Chancellery.³⁹ Over time its remit was expanded and it was renamed the State Ministry of European and Euro-Atlantic Integration.⁴⁰ In order to pursue European integration, the Office created two units: for Coordination of European Integration Issues, and for Coordination of EU assistance.⁴¹ So, while the Ministry of Foreign Affairs was tasked with relations with the EU (an outward facing role) the Office of the State Minister of European and Euro-Atlantic Integration oversaw domestic aspects of European integration (an inward facing role). However, as noted above, in December 2017 the State Minister's Office was subsumed into the MFA. The new General Directorate for EU integration was created to both deal with the EU and coordinate internal EU-related matters i.e. an external and internal facing role. While there is a clear rationale for combining these two roles, there is also a need to enhance the standing of the coordination body within the government with regard to domestic issues; it is not clear how the move to the MFA actually achieves this objective.

In line with a decree adopted by the government to implement the AA, ministries are required to specifically address the implementation of the AA where it pertains to the ministry in question.⁴² Because,

³⁸ At the time of writing, it is unclear if the Minister of Foreign Affairs will retain the Vice Deputy Minister position as well.

³⁹ Governmental Decree No. 16, 2004. The main function of the State Minister's Office was to elaborate the Strategic Action Plan, and coordinate the implementation of this plan and communicate with the EU institutions (Government of Georgia, Decree No. 24, 2004)

⁴⁰ Government of Georgia, Decree No. 133, 2004.

⁴¹ Government of Georgia, Decree No. 24, 2004.

⁴² Government of Georgia, Decree No. 186, 2014 The degree envisages the following measures: 1) to strengthen and increase the capacity of the units working on European integration issues within the ministry and appoint a person responsible for European integration issues (at the level of deputy minister); 2) to develop a section of the Annual National Action Plan for Implementation

as noted above, within each Ministry there is deputy minister responsible for European integration, most ministries have separate structural units focused on European integration issues in their respective sectors; sometimes, this function is also performed by the international cooperation departments. However, the actual capacity within line ministries varies and sometimes is limited and consists of only one or two officials with knowledge of EU law, thus making the issue of capacity building in line ministries a highly salient issue.

In **Ukraine** the GOEEI is tasked with coordinating and monitoring AA implementation. The Office is located within the Secretariat of the Cabinet of Ministers and headed by a Director General, while politically, it is subordinated to the Vice Prime Minister for European and Euro-Atlantic Integration since 2016. The GOEEI was designed with a strong mandate by a group of experts who wrote a comprehensive concept for the office, intending to create a powerful policy coordination centre. In order to steer European integration, the Office took over relevant tasks from the Ministry of Justice, including providing expertise on the compliance of legal drafts with the *acquis* for the approval of the Cabinet of Ministers. It also oversees preparations for Association Council and Committee meetings (including the Sub-Committee meetings), and ensures the implementation of their decisions. While the GOEEI is officially in charge of coordinating the EU's technical assistance on AA implementation, it does not perform this function, something which weakens its standing vis-à-vis other ministries. Furthermore, the GOEEI has the authority to draft the prime minister's instructions and provides expert opinions on cabinet decisions, regulations, and draft laws as well as on parliament draft laws, upon request. As it is, however, when it comes to legal approximation, the GOEEI acts as a secretariat as it can communicate on and advocate legal drafts, but it cannot lead the process of legal approximation, meaning that they cannot prepare relevant draft laws themselves.

Since its creation in 2014, the GOEEI has been reorganised several times. The most important restructuring took place in spring 2016 as a result of the formation of a new coalition government. However, at that time many staff members left the GOEEI, rendering it largely incapable of fulfilling its wide-ranging tasks. Most of those who remained had little experience, meaning that staff had to be recruited and trained. The EU provided critical complimentary support to the GOEEI at the time via the EU-funded 'Association4U' project.

The extensive list of competencies of the GOEEI have not yet been put to full use. As a result, some of the tasks related to the AA implementation – especially those having inter-ministerial and/or strategic character – are particularly difficult to accomplish (as is the case in Moldova and Georgia), especially vis-à-vis powerful ministries, such as the Ministry of Economic Development and Trade or the Ministry of Interior.

In **Moldova**, the main coordination body is the Directorate for European Integration in the MFAEI. This Department prepares the NAPIAA and evaluation reports,⁴³ as well as coordinates assistance to implement the AA. It is staffed by 27 people (as of June 2018). As in Ukraine, the main issue is of actual capacity as well as the overall standing of the coordination body.

In Moldova, since 2005 all ministries were required to create specialised European integration departments. These units were reorganised as part of the above-mentioned PAR in 2017-18. However, the staffing level and expertise available is inadequate to deal with the challenge facing them or help

of the AA/DCFTA within the responsibilities of the ministry; 3) to include the priorities of the AA in the Annual National Action Plan of the government of Georgia for the Association Agenda; 4) to report on the activities undertaken within the Annual National Action Plan for Implementation of the Association Agreement.

⁴³ Progress and evaluation reports on the implementation of the NAPIAAs may be found in Romanian at:
<http://www.mfa.gov.md/rapoarte-aa/>

realise the ambitions outlined in the key strategic documents: legal approximation requires a profound capacity and detailed knowledge of the *acquis* and of the transposition techniques as well as an understanding of what purpose legal approximation actually serves, i.e. the result it is to achieve and what degree of alignment is needed. The high turnover of personnel in the ministries, often due to unappealing conditions of service means that the ministries are continuously short of the necessary staff to develop a well-reasoned and structured approach to implementation in general and legal approximation in particular.⁴⁴

Overall, in most instances in the three countries, there has been a valiant effort to create the AA implementation framework, either through empowering pre-existing institutional structures, or by creating them in response to the signing of the AA. Yet the coordinating bodies lack not only capacity but also the political empowerment necessary to steer the implementation effectively. Within the ministries, there are noteworthy differences between institutions tasked with the AA implementation in terms of capacity and size, but, as a rule they are overwhelmed by the scale of the task. In other words, the existence of an institutional structure should not be confused with its functionality.

Moreover, the kinds of challenges which face all governmental institutions (such as internal restructuring and streamlining as part of wider public administration reforms) let alone those facing these three post-Soviet states specifically should not be underestimated.

3.3 Law drafting and compliance checks

Legal approximation involves three processes: translating the *acquis* into the national language, drafting of legislation and compliance checking. The accession countries developed a system of compliance checking of legislation with the *acquis*: essentially, a competent body (such as the coordinating body or a special unit in the Ministry of Justice) provides expert opinion on the compliance of drafts using a table of compliance. A negative opinion would block the progress of that bill. However, as will be seen, the adoption of this best practice in the AA countries is problematic for various institutional reasons, not least the complex nature of the AA itself.

Box 1: AAs and legal approximation⁴⁵

The AAs have a dual purpose: to enable political association and economic integration with the EU and promote modernisation of the partner countries. The key instrument in achieving these goals is the 'export of the *acquis*', whereby the EU's transformative engagement is based on the export of the *acquis communautaire*. Overall, by signing the AAs, the three countries have made a far-reaching commitment to adopt the *acquis*. This means that they have committed to amend their laws to align with EU law. This process is usually referred to as legal approximation, but other concepts are also used (see below). While this needs to be preceded by the translation of directives/regulations, it can be achieved by adapting existing laws, or adopting new laws which reflect EU law to a degree necessitated by the ends which the approximation serves.

In designing the AAs, the EU developed a large number of innovative features.⁴⁶ One of them is the varied nature and scope of the commitments, especially regarding legislative approximation. Legal approximation

⁴⁴ One of the key aspects of the lack of appeal of a public service career – the poor remuneration – is under review, with new legislation being developed at present and planned for approval by the end of July 2018 by parliament.

⁴⁵ The concept of 'legal approximation' could be more accurately described as 'approximation of legislation' or 'regulatory approximation' or, where appropriate, 'harmonisation of standards'. Indeed, the AAs contain a variety of concepts. However, despite its deficiencies, the concept of legal approximation has become a 'catch-all' concept and is used widely in the AA countries and in interactions with the EU institutions.

is the essence of the DCFTA and 'Economic and Sector Cooperation' parts of the agreements, which specifically define the key chapters on Technical Barriers to Trade (TBT), Sanitary and Phyto-Sanitary Measures (SPS), Establishment and Services, Public Procurement, Competition Customs and Trade Facilitation, and a wide-range of sectors, such as transport, science, and the environment.⁴⁷

In fulfilling their obligations, the associated countries need to approximate more or less fully established EU law. For many AA chapters, this legislation is included in Annexes to the Agreement, and is subject to explicit deadlines for implementation. In some areas, specific legislation is not listed, but left to the partner countries to determine subsequently. For example, in relation to SPS and TBT, the AAs provide only a number of priority areas of the EU *acquis* on the basis of which the countries have to develop their own strategy for implementation. Such selectivity offers greater scope for adjustment in areas of difficult and costly implementation, such as food safety. Similarly, in some sectors there are no specific deadlines, with extensive latitude regarding the time of implementation. In public procurement, for example, implementation is usefully prioritized by distinguishing five progressive phases of legislative approximation and implementation.⁴⁸

However, it is important to note that the benchmarks for the approximation commitment differ between different chapters of the agreements. The AAs refer to 'alignment with', 'achieving conformity with', 'incorporating into the legislation of' and other legal terms to convey the nature of the partner countries' obligation.⁴⁹ The approximation extends well beyond reform of laws on the books and requires profound institutional changes. In services, for example, Ukraine committed itself to ensuring effective 'administrative capacity to enforce' this legislation and 'provide a satisfactory track record of sector-specific surveillance and investigation, prosecutions, and administrative and judicial treatment of violations' (according to Appendix XVII-6 of the EU-Ukraine AA). The differences and their implications are not well understood by either the EU institutions or the AA countries. Yet, as Matta argues, 'clarifying the distinctions between approximation and related terms of harmonisation, unification and convergence is necessary to avoid further confusion within the Union and abroad.'⁵⁰

The AA countries have committed themselves to approximate their law to the *acquis* in force at the time of signing the AAs (the pre-signature *acquis*). But this raises the question of the further legal development of the *acquis* – new and amended future legislation (the post-signature *acquis*).⁵¹ This is addressed in different ways across different chapters: some chapters add their own enhanced procedure with specific duties to notify new legislation, add it to the list, and transpose it into domestic legislation. In the area of services, for example, Ukraine must take on any modification of the corresponding EU law – its scope for declining to do

⁴⁶ Those innovative features and the fundamental legal issues, such as the constitutional ramifications underpinning their domestic effectiveness, are worth examining in their own right. See the contributions in Petrov, R. and Van Elsuwege, P. (2018) *Post-Soviet Constitutions and Challenges of Regional Integration*, London New York: Routledge.

⁴⁷ For the sake of brevity, this section focuses on the EU-Ukraine AA. Although there are some interesting differences between the three AAs, they do not alter the overarching argument developed in this Study, which equally applies to all three AAs. For a comparative analysis of the three AAs, see Van der Loo, G. (2017) *A Comparative study of the Association Agreements and DCFTAs concluded with Ukraine, Moldova and Georgia*, CEPS Working Paper.

⁴⁸ Annex XXI of the EU-Ukraine AA.

⁴⁹ For a more extensive analysis see Van der Loo, G. (2014). 'The EU-Ukraine Deep and Comprehensive Free Trade Area: a coherent mechanism for legislative approximation?', in Van Elsuwege, P. and Petrov, P. (eds.), *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union*. London and New York: Routledge.

⁵⁰ Matta, A. (2014) 'Differentiating the methods of *acquis* export: the case of the Eastern neighbourhood and Russia', in Van Elsuwege, P. and Petrov, R., (eds.), *Legal Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union*, London and New York: Routledge.

⁵¹ Van der Loo, (2014).

so is highly limited. But, in other chapters, such post-signature approximation commitment is only vaguely formulated.⁵² This divergence presents a considerable challenge.

Notwithstanding the apparent parallels with previous exports of the *acquis*, the AAs with the Eastern partner countries represent a unique process: there is no precedent for promoting the *acquis* as a template for development and modernization without a concurrent offer of a membership perspective, a very specific challenge for countries lacking the capacity to implement the complex, wide-ranging and sophisticated corpus of EU rules.

As it is, the legal complexity of the Agreements actually presents a stumbling block to its implementation because it generates differences in interpretation and standards of assessment as to what legal approximation and implementation needs to amount to. At present, the support for legal approximation is provided via technical assistance projects.⁵³ However, this is not something which can be reasonably expected to be resolved by EU experts with sectoral experience (indeed this creates a challenge for EU experts working within the countries). Instead, this requires a concerted strategy by the EU and partner countries. This is why more tailored support needs to be given to the AA countries (see Recommendations).

3.3.1 Translation and law drafting

Moldova's legal approximation has been greatly facilitated by the fact that the *acquis* had already been translated into Romanian during the accession process of Romania, notwithstanding some divergences in legal terminology. External experts work with officials from ministries to draft the necessary legislation to transpose the *acquis* into Moldovan law. However, more domestic expertise is needed as EU directives may conflict with issues regulated at the national level. So, while technical support from the EU institutions or member states is indispensable, it cannot replace the development of domestic capacity. In addition, any new draft legislation, which affects the budget or involves structural changes, ought to be preceded by an *ex-ante* impact assessment – something that Moldova cannot afford owing to a dearth of trained staff capable of undertaking such assessments.

Paradoxically, in Moldova, there is a downside to a readily available translation of the *acquis*: the temptation to 'cut and paste' without sufficiently reflecting on why this transposition is needed and what it is trying to achieve – beyond the broad strategic objective of the 'implementation of the Association Agreement' – is often hard to resist (see Box 1 on legal approximation). This risk is significantly heightened by the outsourcing of legal drafting to EU experts (see below), something which tends not to promote ownership of legal reforms within Moldova or increase the likelihood of the law being actually implemented.

In **Georgia**, Matsne, a state organisation which is subordinated to the Ministry of Justice, is responsible for the translation of Georgian legislation into English and EU legislation into Georgian.⁵⁴ With EU support, a special translation software programme was purchased to translate the EU *acquis*. As elsewhere, the EU technical assistance available to Georgia is widely used for development of new legal

⁵² Wolczuk, K. (2017) 'Demystifying the Association Agreements. Review of the Trilogy of Handbooks: on the EU's Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine', *3DCFTAs project paper*, Centre for European Policy Studies, Brussels.

⁵³ In contrast, the candidate states are 'guided through' the *acquis* by a variety of documents and processes, including a document (a *sui generis* catalogue) listing 'typical' administrative structures required for implementation of the *acquis*, a process of screening of national legislation and detailed accession negotiations (structured along specific chapters).

⁵⁴ About 12 personnel work on translation within Matsne. This body has other responsibilities as well like publication of normative acts and maintenance of electronic database.

acts. Almost all assistance projects have inbuilt provision to support state organisations in drafting the legal acts. Two projects in particular were focussed on the approximation of legislation, namely the technical assistance project at the Ministry of Justice and the project for the MFA, which in parallel supported the government in its efforts to coordinate EU integration issues. However, there are plans to rely more on domestic experts.

Ukraine also faces the considerable challenge of translating the *acquis* into Ukrainian. Since 2014 the GOEEI has been responsible for translating the *acquis* and ensuring compliance of the draft laws with the *acquis* for the drafts prepared within the government. However, the capacity that existed within the Ministry of Justice (however limited) has been only gradually replicated in the GOEEI. To some extent this missing capacity has been filled by EU assistance projects, with experts from sectoral projects supporting individual ministries in drafting laws and providing opinions on compliance. The 'Association4U' project has trained 150 fellows as part of the new cadres for European integration and hired about 50 translators to translate the *acquis* into Ukrainian. Some of the fellows and translators, despite relatively short training, have already been tasked with specific implementation-related responsibilities in line ministries, demonstrating the dearth of suitable expertise. Alas, the Fellowships are coming to an end. In the meantime, a follow-up project is being designed. At the same time, there are several important initiatives to build up capacity within individual ministries as part of the PAR and sectoral reform strategies.

Overall, the implementation of the AA requires massive legal approximation on the part of the AA states. Yet in all cases the countries are still in the process of developing the expertise, institutions and structures to carry out this vast task.

Although it is commendable that the EU provides support for legal drafting via technical assistance, it is not necessarily an optimal way of promoting legal and institutional reform in beneficiary countries. Drafting has to be underpinned by deep local expertise on the political, administrative and legal context as well as a clear sense as to how the legislative changes fit into the existing corpus of law and how they are harmonised with broader reform measures. This is something best undertaken by domestic experts and officials.⁵⁵

While all the countries have taken steps in the right direction, further efforts are needed to reform the civil service to create a cadre of qualified national officials capable of driving legal approximation. Ukraine has benefitted from the more concerted efforts to strengthen the domestic capacity across the government.

It is clear that at present there is a tendency to see legal approximation in rather narrow terms, namely as an end in itself. In fact, there is a strong need to link legal approximation to – and embed it within – a wider reform strategy. This would ensure more effective implementation. In the meantime, the implementation of the AA cannot but be but adversely affected and it is important to adjust the expectations and implementation plans, including deadlines, in recognition of this.

3.3.2 Compliance checks within the government

Another important aspect is checking the compliance of draft laws. In **Moldova**, the check to ensure that draft normative acts conform with EU law takes place before its final submission for approval by the

⁵⁵ It is also important to stress that legal approximation does not have to be achieved exclusively by passing new laws. As the experience of the candidate countries indicates, some directives were transposed by governmental normative acts (ordinances, decrees etc.). AA implementation requires using a whole range of normative tools, but the emphasis so far has been on law drafting and passing.

competent authority, i.e. a ministry. This checking for compliance is mandatory for all pieces of legislation which transpose the *acquis*. This is done using a compatibility table, where the national and the EU *acquis* provisions are compared, analysed and the level of compatibility level is assessed.⁵⁶

It is noteworthy that the compliance of draft normative acts which do not relate specifically to the process of harmonisation is also assessed, though only through the drafting of an information note on the draft normative act. However, the law does not specifically require a check on compliance with the EU *acquis* if the draft normative act does not aim to transpose the *acquis*. This can result in a discontinuity in that there may be legislation which is not specifically relevant to the transposition of the *acquis*, but which is nevertheless affects the AA implementation. In other words, in the longer term, the process may create disjunctures, which only become apparent at a later stage.

In **Georgia**, any state institution that initiates a new legislative act is required to submit the relevant information about compliance with EU legislation to parliament. The submitting body is therefore responsible for ensuring the compliance of the legislation. As of July 2018, a new specific rule was introduced which requires a compliance table that compares each EU requirement with its respective change in the Georgian legislation. However, in practice the quality of checks is ultimately determined by the expertise available in line ministries, which tends to be very limited. Preparing compliance tables requires identification of the required directive, its translation, analysis, identification of the relevant norms and assessment of the degree of compliance of national legislation with those norms. This requires a high degree of expertise, which takes several years to develop. This makes the role of EU experts working on projects which provide assistance with legal drafting all the more important. The involvement of those experts serves as a guarantee of quality, though is not without its problems (see below). However, there are plans to lower reliance on external experts in drafting legislation and increase the role of Georgian officials and experts – this is a sound strategy.

Similarly in **Ukraine**, the compliance checks for the draft laws prepared within the government are officially done by the GOEEI, though hindered by a lack of capacity and expertise. Currently, there are no agreed criteria for evaluating the degree of compliance between domestic legal acts and EU law, not least because of the sheer complexity of the AA (see Box 1). In the main, the process seems to be dependent on officials making an *ad hoc* judgement on the degree of compliance. The officials concerned often lack the expertise to make technically demanding judgements, which requires several years of training. This means that too often compliance checks fall to EU experts working on assistance projects tasked with supporting drafting relevant legislation. However, this creates a temptation to substitute compliance checks with a simple note stating that drafting was done by EU experts, regardless of the degree of their involvement and the actual degree of compliance.⁵⁷ Project experts drafted a methodology for compliance checks and legal drafting guidance for the GOEEI but it remains to be seen to what extent they will be used by line ministries. It is important to stress that the involvement of experts in the compliance of law should not be seen on implying full harmonisation as it may not be feasible for institutional or financial reasons.

All three countries face significant challenges with legal approximation. There is tendency to view the AA as ready-made legal template and legal approximation as an end in itself. This view is a by-product of the enlargement process when the wholesale import of *acquis* was a key building block towards membership. However, for countries without a membership perspective and at a lower level of socio-

⁵⁶ Government Decision no. 1345/2006 on the harmonization of the national legislation with the legislation of the European Communities, available in Romanian at: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=318851&lang=1>

⁵⁷ In Ukraine, the 'Association4U' project provided important guidance on the involvement of EU experts in drafting and compliance checks. See Guidelines 'Interpretation of the Notion of agreement (of draft laws, concept papers, roadmaps) with EU experts, prepared by EU experts, September 2017.

economic and institutional development than the EU average, this assumption of universal applicability is problematic.

Owing to the vastly different political and legal cultures of the three states under review, from that which is embodied in the *acquis*, the extensive and rapid transposition process is in danger of promoting shallow legal transposition at the expense of deep and sustainable (even if gradual) legal reform. This is because law evolves by solving emerging legal challenges within the framework of existing laws of any jurisdiction. If laws transposing the *acquis* are not embedded within this framework they are unlikely to become effective. This challenge is most evident in Moldova, which has engaged in legal approximation for a decade but with relatively little impact on how the country functions. In other words, apparent progress may actually camouflage the lack of real progress.

To prevent such shallow progress, at the very least, domestic expertise needs to be deeply involved in drafting laws for the implementation of the AA. Effective reforms through changes of law cannot be achieved by mechanically transposing the *acquis* as best practice but have to be guided by a clear vision as to what the law is to achieve and its place in broader policy planning and legislative framework. Needless to say, this is a very high benchmark to reach for international experts. Any non-domestic experts involved in drafting laws should as a minimum have a robust knowledge of the administrative and legal system of the beneficiary country as well as surrounding political dynamics.⁵⁸ In essence, local input is critical in order to overcome the ‘problem of knowledge’, which is widely experienced when international actors promote legal reforms. As a distinguished expert on reforms, Carothers argues,

understanding how law functions in a society, the roles it plays, and how it can change is extremely difficult, especially in societies that are not well understood by aid providers from many points of view (...). Grasping the problem of the shortcomings of law throughout the developing and post-communist worlds is an enormous intellectual and practical challenge.⁵⁹

In a nutshell, the mechanical transposition of the *acquis* is less important than making the new laws work in the AA countries.⁶⁰ For this a more purposeful approach to legal approximation is needed.

4 Coordination between government and parliament

Overall, European integration requires close synchronisation of activities of the governments and parliaments. In terms of best practice, it is less important whether this is guided by tailored-made strategies or practical arrangements, as long as both bodies understand the need to work in tandem and have capacity to do so.

The turbulence which affected **Moldova** throughout 2015, had in the main subsided by 2016 and parliament and government are now working in a much more cooperative spirit.⁶¹ Since 2016, they have jointly established key priorities, leaving the more detailed provisions for the government to include in the NAPIAAs. In a move towards greater transparency, however, the parliament conducts public hearings dealing with the implementation of the AA using reports on the implementation of the NAPIAA. The Standing Committee on Foreign Policy and European Integration and the Parliamentary Council on

⁵⁸ Wolczuk, K. and Zeroulis, D. (2018) ‘Rebuilding the Ukrainian state: Assessing EU’s Assistance to Ukraine’, *Chatham House Research Paper*, London.

⁵⁹ Carothers, T. (2006) The Rule of Law Revival, in T. Carothers, *Promoting the Rule of Law Abroad: In Search of Knowledge* p.23.

⁶⁰ Channell, W. (2006) Lessons Not Learned About Legal Reform, in Carothers T, *Promoting the Rule of Law Abroad: In Search of Knowledge*, 140. See also Dragneva, R. and Wolczuk, K. (2011) ‘EU Law Export to the Eastern Neighbourhood and an Elusive Demand for Law’ in Cardwell, P. (ed.) *EU External Relations Law and Policy in the Post-Lisbon Era*. TMC Asser Press.

⁶¹ Tensions within parliament following its convocation in 2014 burst into the open when governments were twice dismissed within 3 months of approval, and there were three acting governments within a single year, i.e. 2015.

European Integration (a platform for public debate on European integration and the pace of implementation of the AA, which is currently chaired by the Chairman of the Parliament) also receives the report. The government also reports on how implementation of the NAPIAA is progressing through the Prime Minister's speech to the parliament. It is worth noting that cooperation is hindered by parliament's limited capacity to scrutinise the implementation of the AA, and review NAPIAAs.

However, the discords are far from over. While during 2014-2016 representatives of the presidential administration were involved in the process, this stopped in 2016 with the election of the new president, who opposes EU integration and instead favours closer ties with the Eurasian Economic Union. Indeed, the President vetoed some laws related to the implementation of the AA which had been approved by parliament.⁶²

In **Georgia**, the government shares draft annual AA and Association Agenda implementation plans with the parliament, taking into account any feedback and proposals. Furthermore, the parliament frequently requests further information from the government regarding the integration process, while governmental representatives regularly participate in hearings of the parliamentary committees on EU integration (which coordinates AA-related legislative procedures) and foreign relations. As noted above, a separate body, the EU Integration Commission has a key role in identifying problems and in particular any coordination gaps and unfulfilled actions from the Annual Action Plan, proposing specific measures to address the issues identified. There is, however, a chasm at the technical level between government and parliament in terms of expertise on EU integration, with the latter suffering from notable deficits. Nevertheless, coordination between the government and the parliament is noteworthy for its relative effectiveness, at least partially owing to the majority of the 'Georgian Dream'.

As in Georgia and Moldova, in **Ukraine** work between the cabinet and the parliament on the implementation of the AA is regulated by Ukrainian legislation.⁶³ While no specific provision is made for joint planning or review of the cabinet action plans in relation to the implementation of the AA, there have been efforts to promote coordination.⁶⁴ At the same time, government work is scrutinised through standing committees (see below), which focus on policy issues and the implementation of laws and rules. The cabinet has the opportunity to present its draft action plans to the European Integration Committee, in which deputy ministers for European integration and Cabinet/GOEEI representatives participate, and which formally reviews the implementation of the AA and associated government plans. So there is a considerable scope for improving coordination between the GOEEI and the European Integration Committee in parliament.

Nevertheless, there exists a degree of cooperation between the Ukrainian parliament and government, not least evidenced by the adoption of the legislative roadmap in early 2018 (see below). Members of the cabinet regularly meet with coalition factions to discuss and assess government-sponsored draft

⁶² In 2017 the Constitutional Court was tasked with interpreting the Constitution owing to the repeated refusal of the president to promulgate certain acts. The Constitutional Court judged that the option existed to suspend president from office but also urged the parliament to legislate on the process of sanctioning of the president for abusing its power to veto legislation or a certain candidate for a position in the government.

⁶³ Laws of Ukraine 'On the Cabinet of Ministers of Ukraine', 'On Committees of Verkhovna Rada of Ukraine', 'On Rules of Procedure of Verkhovna Rada of Ukraine'; and Rules of Procedure of the Cabinet of Ministers of Ukraine. The coordination between the parliament and the government during the legislative process takes place through the following procedures: 1) setting an agenda for a plenary week, in a meeting (usually taking place on Mondays of the plenary week) of heads of factions and committees, a Conciliation Board, with participation of top Cabinet members 2) introducing draft bills in the plenary meeting, answering MPs questions about the bills 3) questions to the Cabinet, usually on the Friday of the plenary week 4) interaction of top officials with parliamentary factions and committees to promote and discuss relevant draft bills and 5) participation of top and mid-level officials in committee meetings to discuss policy implementation and legislative work.

⁶⁴ This applies to all policy areas, except for some procedures of state budget approval, amendment and execution, which include some special cases for the VRU budget committee.

legislation, while deputy ministers and heads of departments participate in committee meetings to contribute to the development of legislation and discuss issues in regard to sectors which are affected by AA.

5 Role of parliaments

In terms of best practice in accession countries, many EU-related bills were fast-tracked and rarely subjected to thorough parliamentary scrutiny – parliaments played a limited role. This is because the governments had a strong political mandate (as well as capacity) to draft EU-related laws i.e. European integration was firmly executive-driven. Parliaments essentially rubber stamped government bills, as both institutions coordinated closely, including on the preparation for adoption of EU-related legislation. However, while the elaboration of national plans for legal approximation is desirable, it is not sufficient for the AA countries. The parliaments in the AA countries cannot assume that government bills are of the necessary quality and/or aimed at AA implementation. So, parliaments need to engage on EU-related matters, including checking compliance, post-legislative scrutiny and fostering cooperation between standing committees.

In **Moldova**, there is a full range of acts regulating legislative drafting and legal harmonisation, which have been updated and improved with a view to the implementation of the AA, such as the Legislative Programme of the Parliament (LPP) for 2017 on the implementation of the AA.⁶⁵ The Plan broadly resembles the structure and function of the NAPIAA 2017-2019.⁶⁶ Nevertheless, there is some ongoing concern regarding the process of scrutinising the priorities set out in the NAPIAAs, as parliament is not involved at the technical level in the establishment of these priorities, and instead simply relies on the government's decisions.⁶⁷ Indeed, in Moldova, while the vast majority of legislative drafts come from the government; it has been known for the government to use various strategies to speed up approval times of drafts, for example, by introducing drafts supposedly proposed by MPs. (This applies to all legislation and not only that related to the AA.)

Until the summer of 2018, in Moldova there was no provision for fast-tracking legislation; until then the government merely labelled as 'high priority' any key drafts submitted to parliament for urgent attention.⁶⁸ In this regard, the Law on Normative Acts, which entered into force in July 2018 constitutes an important innovation, as it updates the legal framework relating to the drafting of legislation, with particular reference to the harmonisation of national legislation with the EU *acquis*. It is worth analysing this law in more detail in terms of some of its key features. Firstly, the law prioritises acts of the *acquis* which Moldova has committed itself to implement, over that of domestic legislation, thereby enhancing the process of legal approximation. Secondly the process of *ex-ante* impact assessment and the requirements for legal drafting are clarified and enhanced. For example, the new Law requires mandatory

⁶⁵ For example, Law No. 100 from 22.12.2017 on normative acts (enters in force on 12.07.2018). This law repealed the previous laws. Law No. 780 from 27.12.2001 on legislative acts Law no. 317 from 18.07.2003 on the normative acts of the Government and other central and local public administration authorities Also, there is a Government Decision no. 1345 from 24.11.2006 on the Harmonisation of the legislation of the Republic of Moldova to the legislation of the European Communities

⁶⁶ Parliament harmonised its LPP for 2015-2016 and 2017 with the NAPIAAs.

⁶⁷ The priorities decided by the parliament and government are not very broad, but also include specific legislation to be approved to implement the AA and thus the NAPIAA. The technical actions are mostly suggested at line ministry level and after the process of filtering and coordination from the MFAEI and the State Chancellery, are included in the NAPIAA. The legislative priorities are based on suggestions from the Government but parliament representatives participate in these discussions and propose improvements. The administrative resources are however much bigger within the government, compared to those available to the MPs.

⁶⁸ It refers to the specific commitment in the informative note attached to the draft law and the sources of the commitment (AA, Association Agenda, NAPIAA, IMF Memorandum, Macro-financial assistance Agreement with the EU etc.). This note is used to highlight the importance of the draft.

ex-ante impact assessments to be conducted prior to the drafting process for normative acts which impact on the budget or which require institutional and structural change. Thirdly, any draft normative acts which transpose the *acquis* are required to be marked with an 'EU' label. This seemingly simple process is designed to distinguish between priority and non-priority drafts outlined in point one, above. Fourthly, the new law creates an obligation to monitor the effectiveness of the implementation of a new law no more than two years after its entry into force. Finally, the new law specified that draft acts which transpose the *acquis* need to be checked for compliance with the *acquis* through the use of a compliance table for draft normative acts, which is issued by the Centre for Legal Harmonisation in the Ministry of Justice. The transposition clause is also preserved, placed at the beginning of the draft normative act, which states which EU act the draft law is related to and the level of transposition.⁶⁹ It is of course too early to assess the effectiveness of the new law.

In **Georgia**, the efforts of the government and parliament are institutionally aligned, reflecting the dominance of the ruling party. So, for example, the parliament has its own legislative plan which is closely aligned with the annual AA implementation plan. This is facilitated by the fact that the vast majority of laws adopted to implement the AA are drafted and submitted by the government. As can be expected, rarely does parliament initiate legislation, such as when the Committee for European Integration prepared a draft law on 'Consumer Protection' in order to speed up the implementation of this particular aspect of the AA. However, this was a rare case as the Committee lacks the capacity to draft laws.

While there are no specific procedures for AA laws, there are fast track procedures that can be used in order to meet the timelines of legislative approximation as required by the AA, typically resorted to at the end of the year for all laws, not just those related to the implementation of the AA. The process is identical to the standard process – just faster. Also, in certain cases, MPs are asked to present initiatives as their own, as the procedure for MP's drafts are faster.

Ukraine, at first, lacked a specific legal plan for the implementation of the AA but this was addressed upon the initiative of the parliament and government in 2018.⁷⁰ While the wholesale parliamentary reforms have yet to be implemented, there have been noteworthy steps to remedy the situation. In February 2018, the Prime Minister, the Speaker of the parliament and the Vice Prime Minister for the European and Euro-Atlantic Integration jointly presented a 'Roadmap for the implementation of AA legislation'.⁷¹ This legislative roadmap is a symbolic recognition of the fact that the parliament's role in European integration needs to be strengthened. Such roadmaps are important as they identify and prioritise bills which should be brought to the parliament's consideration segregating them from the vast number of registered bills awaiting attention. Such roadmaps are proving to be a way forward as in 2018 relevant 'informal' legislative roadmaps were also presented by the Cabinet for decentralisation (17 draft bills)⁷² and economic development (35 draft bills).⁷³ Within the Roadmap on European integration, it is noteworthy that of the 57 bills included, 30 were drafts submitted by MPs. The creation of a roadmap

⁷⁰ It has to be noted that good progress was made on passing many AA-related laws in 2014-15.

⁷¹ 'The Government and the Parliament Approved a Roadmap of Implementation of an Association Agreement with the EU' (In Ukrainian), Government Portal, 28 February 2018. <https://www.kmu.gov.ua/ua/news/uryad-i-parlament-shvalili-dorozhnyu-kartu-vikonannya-ugodi-pro-asociaciyu-z-yes>

⁷² 'Hennadii Zubko i Georg Milbradt prezentuvaly zakonodavchyi marshrut z detsentralizatsii' (Hennadii Zubko i Georg Milbradt Presented a Legislative Roadmap for Decentralisation), Government Portal, 1 February 2018. http://old.kmu.gov.ua/kmu/control/uk/publish/article?art_id=250557629&cat_id=244276429

⁷³ My proponuiemo novyi poriadok denni reform - 35 zakonoproektiv dlia zrostannia ekonomiky na 5-7%, – Volodymyr Groisman (We Propose a New Reform Agenda – 35 Draft Bills for Growth of Economy at 5-7% - Volodymyr Groisman). Government Portal, 31 January 2018. <https://www.kmu.gov.ua/ua/news/mi-proponuyemo-novij-poryadok-dennij-reform-35-zakonoproektiv-dlya-zrostannya-ekonomiki-na-5-7-volodimir-groisman>

increases the probability of a bill being included into the plenary agenda, although has no impact on the voting outcome or the speed with which it is taken into consideration. Rather, any outcome will depend on the quality of the draft legislation presented, and the stance of the standing committee and the parliamentary factions.

However, the AA implementation is affected by the delays in reforming the parliamentary structures and procedures. The shortcomings of the Ukrainian legislative process, mainly because of the way that MPs use their right of legislative initiative, have long been recognised. The constitutional right of legislative initiative by MPs is under-regulated, and lacks essential and legitimate limits, such as those found in other legislatures such as the German Bundestag or Polish Sejm.⁷⁴ This makes it relatively easy for the MPs to propose bills and they do so in a largely unconstrained way, as the hurdles they have to overcome are vastly less onerous than those for governmental drafts. This has resulted in bit-part legislating; currently over 50% of legislation is targeted at amending current legislation.⁷⁵

Currently there are about 6500 bills placed before standing committees for their consideration. The total number of bills registered in the Rada for the current convocation (2014-19) already exceeds 8000.⁷⁶

De facto there is a prioritisation by the parliamentary leaders, but it is clear that sustainable improvement is premised on broader reform of the parliament in general and the rules of procedures in particular. To this effect, the European Parliament conducted a 'Needs Assessment Mission', which prepared a comprehensive report based on a wide-ranging engagement with parliamentary staff and MPs (the Cox mission). The report clearly points to an improved collaboration between the parliament and the government would lead to more efficient consideration of government legislation.⁷⁷

Nevertheless, despite the difficulties, legislative progress is being made in Ukraine, reflecting the domestic demand for change. For example, during 2014-15 around 50 so-called Eurointegration laws were adopted each year. This may have been somewhat anomalous as most drafts had been prepared in previous years and were presented when the opportunity arose in 2014. In 2017, 20 Eurointegration laws were adopted out of the 180 drafts presented, a respectable amount in light of the competition with other bills related to reform priorities, such as healthcare reforms.⁷⁸

The extensive public deliberations on many drafts is noteworthy in Ukraine, particularly on issues pertaining to judicial and anti-corruption reforms, a reflection of the engagement of civil society in the reform process, where it acts as a watchdog.

5.1 Committees for European integration

In accession countries, specialised parliamentary committees devoted to European integration played an important political role (in terms of coordination) and technical role (in terms of expertise on the *acquis*).

⁷⁴ The rules of procedure of Bundestag and Sejm require a minimum number of MPs to sign the bill for it to be registered. There is no such requirement in Ukraine.

⁷⁵ Moreover, MPs have a right to propose an unlimited number of amendments to the drafts in the second reading and the committees and the parliament is obliged to consider all those amendments. In practice this means that some drafts have thousands of amendments which are being considered for several days, as was the case with the law on the Anti-Corruption Court in July 2018. This renders any compliance checks of revised drafts totally unfeasible.

⁷⁶ The total registered exceeds the number being considered, the difference being due to the fact that some had either already been voted into law or had been declined.

⁷⁷ European Parliament (2016) 'Report and Roadmap on Internal Reform and Capacity-Building for the Verkhovna Rada of Ukraine', 7. The report is available at:

<http://www.europarl.europa.eu/resources/library/media/20160229RES16408/20160229RES16408.pdf>

⁷⁸ Of these 20, three were put forward by the government, nine were initiated by parliament and eight by the president to ratify a number of international agreements.

However, the role of other standing committees is also pivotal so the specialised committee can only be effective if it works effectively with other committees and is empowered politically to clear any emerging bottlenecks as well as block draft laws which contradict the AA commitments.

In **Georgia**, the EU Integration Committee is the main coordinating body within parliament, occasionally initiating legislation. It leads the Georgian delegation in the Eastern Partnership Euronest Parliamentary Assembly and represents Georgia in the EU-Georgian Association Parliamentary Committee.

Most standing parliamentary committees engage in discussions on the approximation of Georgian legislation with that of the EU. For example, the Committee of Sector Economy and Economic Policy oversees DCFTA related issues in the parliament while sectorial committees such as the Agrarian Issues Committee, the Education, Science and Culture Committee, the Environmental Protection and Natural Resources Committee and the Healthcare and Social Issues Committee contribute to sectorial related approximation in their respective areas. The Budget and Finance Committee has the challenging task of securing resources for the implementation of actions. Parliamentary committees have their own staff and expertise bolstered as necessary by technical assistance funded by EU assistance projects. The parliament also cooperates with local NGOs and utilises their expertise and know-how.

In **Moldova**, the key standing committee in the parliament in relation to the implementation of the AA is the Committee on Foreign Policy and European Integration (CFPEI), which as is implied in its title, functions in regard to international treaties generally and European integration specifically. In broad terms, the CFPEI coordinates European integration by overseeing the harmonisation of national legislation with that of the *acquis*, in accordance with Moldova's AA and Association Agenda commitments; it is also the primary mechanism via which parliament asserts control over the implementation of the AA. The standing committees review all legislative proposals within their domain, including those which are related to the implementation of the AA, while the CFPEI is involved only at a general level. So the broad mandate of the committee makes it more focussed on foreign policy rather than domestic implementation.

In fact, however, the harmonisation of Moldovan legislation with the *acquis* is mainly done on the initiative of the government. It is the Legal Department of the Secretariat of the Parliament which provides legal expertise when it comes to reviewing draft laws, offering opinions on draft laws put before it, including those which transpose the *acquis*. However, there is no mechanism for ensuring the quality of harmonisation. Both the CFPEI and the Legal Department of the Secretariat of the Parliament employ personnel with some knowledge of the *acquis* as well as consultants who maintain contact with the relevant line ministries and EU assistance projects. However, there is simply not enough of them for the vast workload related to the implementation of the AA: only four individuals work in the legal harmonisation division with, between 4-7 consultants employed on an *ad hoc* basis in the secretariats of the CFPEI.⁷⁹

In **Ukraine**, the European Integration Committee is a standing committee which has legislative, control and organisational functions. The Committee has nine members (supported by ten staff members) as of mid-2018. It is one of the smallest committees in the parliament. Yet, like in Moldova and Georgia the mandate of the Committee is very broad.⁸⁰ At the same time, the committee has only an acting head as

⁷⁹ In the case of Moldova, it should be emphasised that the resources and expertise available to parliament has gradually increased over the last ten years; originally MPs had no access to consultants and there were only 1-2 staff in the secretariats of the Standing Committees.

⁸⁰ In Ukraine, the Committee has the responsibility for: 1) participation of Ukraine in international integration processes related to the activities of the EU; 2) adaption of Ukrainian legislation to EU law and ensuring its conformity with Ukraine's obligations taken within the frameworks of the Council of Europe; 3) assessment of conformity of draft bills with international legal obligations of Ukraine in the sphere of European integration; 4) oversight of public policy in the sphere of European integration;

the ruling coalition failed to appoint the head of the committee, meaning that it is weakened in political terms.

In Ukraine, the standing of the Committee for European Integration in terms of legal approximation under the AA is somewhat less clear in procedural terms, than under the PCA.⁸¹ This is due to changes within the government: the responsibility for overseeing legal approximation shifted from the Ministry of Justice to the GOEEI. However, while a new coordination mechanism within the government was created, there was no corresponding update of its legal basis (see above). As a result, the special mechanism for joint planning of legislative work between the European Integration Committee and the government has been disrupted. The Committee, for example, is not able to receive legal opinions from the special unit responsible for legal approximation within the government, because while the old link to the Ministry of Justice was terminated, it was not replaced by a new procedure.⁸²

Within the Ukrainian parliament, the European Integration Committee is responsible for checking the conformity of, and providing a legal opinion on, all draft laws in the Verkhovna Rada. However, as was noted above, the sheer quantity of draft legislation awaiting consideration and adoption exceeds the capacity of the Committee, a problem which is exacerbated by its limited staffing. In pursuit of assistance and in order to overcome its own staffing limitations, the European Integration Committee requested the support of the Parliamentary Expert Group on European Integration. This non-governmental organisation (NGO) has now supported the Committee since June 2015 by providing legal opinions and organising training programmes for the Verkhovna Rada's staff.⁸³ However, this means that the NGO as well as EU assistance projects, such as Rada4Europe, have to compensate for the lack of capacity within the parliament itself. Furthermore, there is a desperate need to increase the capacity of the parliament's secretariat and improve coordination between the European Integration Committee and the standing Committees.⁸⁴

What is particularly noticeable is that, at present, in **all three countries**, at the most basic level, there is a dearth of detail as to the costs of implementation of public policies, including AAs. In theory draft laws ought to be accompanied by information on the investment needed and its sources (that is, to state whether they will come out of the budget of the bodies responsibly for the implementation of the draft law or to state that the legal changes do not require any additional funds for implementation). In practice, most information notes indicate that there are no financial implications associated with the draft law; parliamentary committees do not query these contentions. And while the parliaments in the three countries pass a number of laws related to European integration, this is often at the expense of thorough deliberations on the actual investments needed for their implementation.

5) facilitation of inter-parliamentary cooperation with the EU; 6) coordination of the EU technical assistance programmes provided to the Verkhovna Rada and of special training programmes; 7) preliminary approval of international agreements between Ukraine and the EU and its member states; 8) cross-border and inter-regional cooperation with EU member states.

⁸¹ The previous mechanism was based on the Law of Ukraine 'On All-State Programme on Adaption of Ukrainian Legislation to the EU Law', which was passed in 2004 to streamline the implementation of the PCA and remains in force as of mid-2018.

⁸² Along with that, the Committee for European Integration, like any other committee, has a right to request a legal opinion from the Cabinet or any ministry. But it is not appropriate to ask the government for an opinion on governmental drafts.

⁸³ The Parliamentary Expert Group is funded by the Open Society Foundation through the Civic Synergy Project. The has prepared more than 600 legal opinions, published about 100 articles and comments in the media on the most important draft bills. The training programmes, funded by the British Council, covered a number of staff members of the Verkhovna Rada.

⁸⁴ European Parliament (2016), 24

5.2 Procedure for checking conformity of draft laws

Given the stronger role of the parliament in drafting and scrutinising legislation on AA implementation (not least that prepared by MPs), it is important that the parliament has sufficient capacity to do so.

In **Ukraine** the European Integration Committee has extensive responsibilities but limited power and capacity to enact them. The committee is tasked with providing its opinion on the conformity of draft laws with the international obligations of Ukraine in the sphere of European Integration.⁸⁵ This is done for most draft bills at the stage of the first reading. In practice, given the vast number of draft bills, this means that as of mid-2018 currently the European Integration Committee is faced with having to provide opinions on more than 3000 draft bills. What weight does this opinion carry? According to the Rules of Procedures, the relevant standing committee, responsible for considering the particular draft bill, prepares a position on whether the bill shall be included in a plenary agenda, and submits this position together with opinions of the Budget, European Integration and Anti-corruption committees. Crucially, however, the European Integration Committee's opinion is not actually binding on the standing committees.

Moreover, the European Integration Committee's role in Ukraine is limited to providing opinions at the stage of the first reading only. The rules of procedure do not include norms on sending the draft for the consideration of the European Integration Committee. As a result, the opportunity to influence the draft laws is limited to lobbying factions and other standing committees. Aside from the Committee's opinion, an AA compliance check is often also embedded into opinions of the General Scientific and Expert Department and General Legal Department of the parliamentary apparatus. What really matters is that while the relevant committee responsible for a draft law considers all these opinions, these opinions are not binding.

There have been various attempts to improve things. In addition to the recommendations of the Cox report (see above), there have been proposals to amend the parliament's Rules of Procedure to improve the compliance check procedure (the so called Semerak's bill).⁸⁶ Later there was another initiative, coming from MP Olena Sotnyk and supported by Maria Ionova, acting head of the Committee for European Integration as well as Vice Prime Minister, Ivanna Klympush-Tsintsadze's team. This legislative initiative, called draft 'Law on European Integration Public Policy' was elaborated with the help of EU assistance projects and in cooperation with the GOEEI. It codified the currently existing practices on the European integration public policy in Ukraine, while introducing some improvements.⁸⁷ However, the law has not been yet registered – for successful passage is premised on the political support from the Speaker and faction leaders within the Ukrainian parliament.

In **Georgia**, the European Integration Committee checks the compliance of the submitted legislative initiatives with the obligations of Georgia under the AA or other agreements with the EU. Non EU-related legislation is also checked to find out whether there is a link between the legislative change and AA obligations. However, even in the case of a negative opinion the parliament was still in a position to debate and adopt a law.

⁸⁵ Article 93 of the Rules of Procedures of the Verkhovna Rada of Ukraine.

⁸⁶ It is a draft law No. 2046a about amendments to the Rules of Procedures, which aims to provide essential and sound procedures for AA implementation.

⁸⁷ The draft also defines clear rules for legislative drafting to support the overall AA related legal approximation process as well as establishes mechanisms to create the dialogue between the parliament and the Cabinet of Ministers, by stipulating the powers of the vice Prime Minister for European integration to ensure proper cooperation and coordination between key political actors as well as by strengthening the role and status of the Committee for European Integration in the Verkhovna Rada

In Georgia, in summer 2018 parliament adopted new procedures for the submission of legislative changes which include the provision of compliance tables according to the obligations of Georgia under the AA in case the respective legislative changes are related to the obligations. The binding nature of the recommendations resulting from compliance checking is determined by the actual obligations under the AA. The compliance tables have not yet been adopted in a comprehensive way. In the meantime, such compliance tables are already used for the approximation of food safety-related legislation as part of Georgia's obligation in the framework of an EU budgetary assistance project.

However, the capacity to conduct compliance checks is premised on extensive training of civil servants in legal approximation in departments which are already under-staffed. The table of compliance is usually a very complex document and requires considerable effort and knowledge of the *acquis*. A large EU assistance project on legal approximation has been conducted but it is coming to an end. A new project is being planned. This is an area where a longer term assistance is needed.

The staff of the Committee is regularly engaged in capacity-building activities in order to perform effectively. However, the main capacity is within the governmental structures and hence governmental bodies tend to be involved and provide opinion about any type of legislative changes. In order to improve the parliament's ability to oversee things, the intra-parliamentary capacity for scrutinising legislation needs to be developed.

In **Moldova**, the current legal system is checked for conformity with commitments undertaken through international agreements, including the AA. If a draft law is initiated by the government, an assessment of its conformity with the AA, Association Agenda and NAPIAA takes place at the drafting stage. If the draft law submitted by the government transposes an EU act, a mandatory table of compliance has to be produced along with a statement of compliance from the above-mentioned Centre for Legal Harmonisation in the Ministry of Justice. If the draft law comes from the parliament (MPs, parliamentary factions) or from the president or the autonomous region of Gagauzia, these draft laws should contain the table of compliance if they relate to transposing the *acquis*. This requirement is new and was introduced by the law on normative acts. The Centre developed a detailed methodology on the harmonisation of the national legislation to the *acquis* and guidelines on the development of the table of compliance.⁸⁸ However, the capacity to enact these standards outside the Ministry of Justice is limited and, as result, the most typical opinion offered is almost formulaic, stating either that the draft law is compliant with the *acquis* or that no corresponding *acquis* was identified.

Overall, in all three countries compliance checks have been introduced. But their effectiveness is limited. Compliance checks expose not only procedural gaps, but more profoundly a lack of broader expertise on EU law. But ultimately, not only is expertise on EU law inadequate, there is also a lack of understanding on how legal approximation is to be conducted (see Box on Legal Approximation) and how it is to be combined with a set of political compromises inherent in the legislative process. Without these pre-conditions, compliance checks cannot be but limited in their effectiveness. It can be concluded that the existence of this formal requirement and process is necessary but not sufficient for effective implementation of the AAs.

⁸⁸ The guidelines may be accessed in Romanian at:

http://www.justice.gov.md/public/files/publication/Centrul_de_armonizare/Ghid%20cu%20privire%20la%20intocmirea%20Tabelelor%20de%20concordanta.pdf. The methodology may be accessed in Romanian at:

http://www.justice.gov.md/public/files/publication/Centrul_de_armonizare/Metodologia%20de%20armonizare%20a%20legislatiei%20RO.pdf

5.3 Promulgation of laws

In terms of promulgation, while presidents in all three countries have relevant powers, only in Moldova and Ukraine do presidents use them to block some laws. Overall, the presidents do not play a significant role in the implementation of the AAs.

In **Moldova**, the Constitution states that the president of the country promulgates the laws approved by the parliament.⁸⁹ However, the president can veto only once any law approved by the parliament. If the parliament approves the law for a second time, unchanged, the president must promulgate the law.

In **Ukraine**, the role of the presidential administration in the legislative process is two-fold. First, the president, as *de facto* head of the political party with the biggest faction (the Block of Petro Poroshenko-Solidarnist) advises the faction leadership and key members on which political course to take, something which certainly influences voting. Second, the president can veto any laws including laws related to the implementation of the AA (as happened for example with the law on environmental impact assessment). The presidential veto has to be overridden by a two third majority, a very high threshold, which is very difficult to achieve with the complex political configuration of the Ukrainian parliament. It is noteworthy that the presidential administration has not driven any particular reforms, despite president's right to initiate legislation. If anything, presidential powers have been often used to block or revise certain important draft laws.

In **Georgia**, parliament is the sole source of law, while some sub-legal normative acts are developed and adopted by the government. Parliament can overcome any presidential veto as currently the ruling Georgian Dream party has constitutional majority in parliament (and even a simple majority of the full list of MPs is sufficient to override a presidential veto). Indeed, any veto has political and symbolic value as it merely delays rather than prevents the adoption of legislation. This is because in the event that the president invokes a veto, the head of parliament approves legislation instead.⁹⁰

6 Monitoring mechanism and implementation

As noted above, the AA is a complex agreement. With regard to legal approximation, drafting and passing laws has attracted most attention, whereas more important is the extent to which institutions and regulatory practices are aligned with EU rules and standards. Passing a law is merely the start of the implementation chain: enacting the rules is a more complex and demanding process, which, therefore, requires close monitoring of the implementation process across a number of sectors.

6.1 Monitoring mechanisms

In **Georgia**, the monitoring of AA implementation is conducted by the Directorate General for European Integration in the Ministry of Foreign Affairs and European Integration. In an effort to improve the efficiency and effectiveness of monitoring, an electronic monitoring tool has been used since 2018, allowing the instant production of outputs and oversight of relevant indicators.⁹¹ The precise methodology utilised, i.e. quantitative or qualitative, depends on specific actions. However, due to the challenges of developing qualitative indicators for complex policy and institutional issues, most

⁸⁹ Articles 74 (4) and 93 of the Constitution provides for that the President promulgates the laws approved by the Parliament. In accordance to article 93 (2) the President may refuse once the promulgation of the laws.

⁹⁰ The president's veto is overcome by the majority of the full list of MPs. Articles 66 and 68 of the Constitution provide detailed promulgation procedures.

⁹¹ aa-monitoring.ge. Planning and monitoring tools are available only for restricted users/respective civil servants.

indicators are quantitative, which indeed seems most appropriate given the complex nature of the tasks involved.

In Georgia, the Implementation Plans are 'living documents', adapted to requests for change by institutions involved in implementation. It is important to note that in December, 2017 the State Minister's Office for European Integration, which was a dedicated institution for planning and monitoring of the AA implementation was abolished as a stand-alone institution and its staff was incorporated into the MFA. Within the Georgian MFA, the General Directorate for EU integration was created with responsibility for both internal coordination of EU-related matters as well as cooperation with the EU. This restructuring was announced suddenly without wider consultations with the EU nor civil society. Restructuring, which took about four months, inevitably, impacted on the capacity to plan and monitor the implementation, even though significant staff losses were avoided. However, with 27 staff members, the newly formed General Directorate continues to focus mainly on planning, reporting and has limited capacity with regard to monitoring the implementation beyond what ministries provide in their reports.

In **Moldova**, the monitoring of the implementation of NAPIAAs is done by the MFAEI through progress and evaluation reports produced half-yearly, annually and at the end of the NAPIAA cycle.⁹² The reports have both quantitative and qualitative elements.⁹³ (The actual process of monitoring is done via an on-line tool managed by the MFAEI – PlanPro⁹⁴ - which is public and may be consulted by any interested party). The reports mainly refer to actions undertaken (i.e. whether an activity was completed or not) and offers no evaluation as to their effectiveness. Crucially, the evaluation of legal acts, which transpose the *acquis* or reflect EU and international practices, is not conducted by the MFAEI, which simply lacks the capacity to undertake it; instead compliance checking is done by the Legal Harmonisation Centre. Rather, the MFAEI simply coordinates the monitoring process and, when requested, proposes NAPIAA amendments. The amendments tend to be based on proposals from the relevant implementing authorities and are agreed with the MFAEI.

As part of the implementation of PARS, the evaluation of implementation of public policies was assigned directly to the ministries and other government agencies, responsible for particular public policies. At the same time, it is important to note that in the reform process of the central public administration launched in the summer of 2017, the number of ministries was reduced from 16 to 9. Therefore, the ongoing evaluation of implementation of particular policies, is hindered by disruptions and adjustments. For example, in the Ministry of Economy and Infrastructure the staff responsible for the planning and reporting on the implementation of the DCFTA was reduced from seven to two. The remaining staff noted that for every reporting period they often have to start with training new staff members in the reporting process due to high staff turn-over.

In **Ukraine**, in order to prepare for the implementation of the AA, in 2014 the government created the GOEEI within the Secretariat of the Cabinet of Ministers in 2014, which was restructured in 2016.

⁹² Progress and evaluation reports on the implementation of the NAPIAAs may be found (in Romanian) at:

<http://www.mfa.gov.md/rapoarte-aa/>

⁹³ The quantitative evaluation refers to implemented versus non-implemented activities. The qualitative assessment is selective and targets the key implementation activities, such as for example, preparing a draft law, joining an international convention or training staff in governmental agencies.

⁹⁴ The on-line tool may be accessed in Romanian at: <https://monitorizare.gov.md/reports/Raport%20PNAAA.html>. This on-line monitoring tool will be further developed and integrated within a larger IT architecture, with the support of the EU under its PARS technical assistance projects.

The GOEEI is tasked with reporting on implementation in line with the specific resolutions of the Cabinet of Ministers.⁹⁵ Ministries and other executive bodies have to provide quarterly reports as well as an annual report. Formally, the GOEEI assesses the progress, completeness and extent of Ukraine's compliance with its obligations under the AA and publishes the annual report on implementation, which is prepared together with the Office of Vice Prime Minister of Ukraine for European and Euro-Atlantic Integration, as well as experts from the EU assistance project 'Association 4U'. However, like its counterparts in Georgia and Moldova, at present the Office has insufficient capacity to evaluate the actual nature of implementation and to a large extent it can only compile the information provided by individual ministries and other executive bodies. However, the quality of reporting improved noticeably by 2017 as the GOEEI gained more experience.

In the autumn of 2017, a new system of planning and reporting was introduced called PULS which is based on a system of scorecards which contributes to greater clarity and more systematic reporting. Created with support from the 'Association4U' project, the PULS system allows both quantitative and qualitative evaluation. This online system is being fine-tuned especially as the correlation between the quantitative and qualitative assessment needs to be improved. For example, the quantitative score in the implementation report for 2017 was 41%. This triggered a lively debate, involving the Minister of Foreign Affairs, on the validity of the quantitative evaluation of the implementation.⁹⁶ This demonstrates that the implementation process is attracting scrutiny within the government and triggers public discussion, underscoring the interest in improving the reporting system.

The GOEEI has formal responsibility for defining the status of each implementation task and monitoring the extent to which it has been completed; it is up to each ministry and other executive bodies to produce a draft quarterly/annual report and insert into the scorecard information on progress. This requires trained staff in individual ministries as well as inter-ministerial coordination. While it is still a work in progress, Ukraine has actually more capacity in line ministries than Moldova and Georgia.

For all three governments, cross-cutting issues such as intellectual copy rights, which involve horizontal coordination among several ministries, tend to present a particular challenge, as does the coordination of legal drafting across several institutions. Add to the above, issues related to staff motivation and turnover, limited capacity on the implementation of European Integration, and the complexity of EU law and it can soon be seen that AA implementation is more than a matter of action planning.⁹⁷

Overall, in the three countries, there are no special mechanisms for the enforcement of the AAs. Difficulties and delays may be discussed in bilateral institutions established as a result of the AA, but, otherwise, there are no political nor administrative sanctions for delays in the implementation. Any delays tend to be simply dealt with by revising deadlines in the AA implementation plans.

Overall, the enforcement mechanism for AA implementation is the same as it is for other government policies. Thus, it reflects the general quality of governance, which is better in Georgia and weaker in Moldova and Ukraine. At the same time, policy making is subordinated to the preference of key political actors in Moldova and Georgia, while in Ukraine there is a greater degree of political pluralism and contestation than in the other two countries.

⁹⁵ The Decrees of the Cabinet of Ministers of Ukraine 'On the procedure for planning, monitoring and assessing the implementation of the Association Agreement between Ukraine, of the one part, and the European Union and the European Atomic Energy Community and their Member States, of the other part' of 31 May 2017 and 'On the Government Office for Coordination of European and Euro-Atlantic Integration' of 4 October 2017.

⁹⁶ <https://www.eurointegration.com.ua/experts/2018/03/6/7078403/>

⁹⁷ Sekarev, A., Antsu, G. and Maniokas, K. (2016) 'European integration co-ordination arrangements in AA/DCFTA implementing countries: Georgia, Moldova, Ukraine', *Policy brief* No.23, Estonian Centre for the Eastern Partnership Tallinn.

6.1.1 Oversight role of parliaments

In all three countries, parliament's overview of the implementation of the AA is governed by the routine procedures. The effectiveness of the overview is therefore a corollary of the efficacy of relations between parliament and government and the extant political configuration, especially with regard to coalition governments.

In **Moldova**, in theory, parliament oversees the government's implementation of approved legislation following requests from MPs for information and reports on specific issues, standing committees, plenary hearings on issues raised by committees, MPs and parliamentary factions,⁹⁸ as well as governmental reports. In practice, the oversight is hampered by parliament's limited capacities, a problem which is exacerbated by the complex nature of the AA and the NAPIAAs. While the new law on normative acts discussed earlier introduced the requirement that a new law ought to be evaluated within two years of entry into force, its effects have yet to be seen.

In **Georgia**, in a similar way, the parliament also oversees the government's work. Overall, oversight of the implementation of the AA is done through routine procedures; no special procedures have been developed. However, there have been innovations, such as joint hearings by the EU Integration Committee and sectoral committees, which have been conducted for AA implementation.

In **Ukraine**, parliament's oversight is hampered by unreformed parliamentary procedures and the complex political configuration of the parliament. As in Moldova and Georgia, committee hearings are a key mechanism of oversight. However, the large number of committees – 28 – makes this a cumbersome mechanism. Furthermore, there are conflicting views on this issue. The Cox mission heard conflicting opinions regarding the attendance of ministers and other top officials at committee meetings. While MPs complained that ministers often did not attend committees when invited, the officials themselves argued that the demands on them were too great (and if they attended when requested they would not be able to perform other functions).⁹⁹ This indicates an interest in ensuring governmental accountability on the one hand, and, on the other, a real need for streamlining the committee structure and improving coordination between the parliament and the government.¹⁰⁰

6.2 Implementation process and challenges

The mechanisms for implementation form part of the broader institutional landscape and largely depend on a combination of political salience, clear prioritisation, demand from domestic stakeholders, financial resources and administrative capacity. Therefore, progress in implementation is mainly dependent on the political leadership being committed to a specific reform measure, a commitment to and prioritisation of European integration by the political elites and the capacity of ministries, executive agencies and independent regulators.

The AA implementation is profoundly affected by these wider contextual issues. For example, the quality of the governments' overall reform strategy as well sectoral reform strategies affects progress on implementation. The often vast number of priorities in the respective national implementation plans, (which is perhaps unavoidable owing to the wide-ranging nature of the AAs), which spreads already thin

⁹⁸ The Permanent Bureau of the Parliament approved the schedule of hearings and parliamentary oversight to be conducted by the Standing Committees during the spring-summer session of 2018. The schedule is available in Romanian at: <http://www.parlament.md/LinkClick.aspx?fileticket=8I3vD9O5HiM%3d&tabid=266&language=ro-RO>

⁹⁹ European Parliament (2016), 23.

¹⁰⁰ This is being addressed within the framework of the implementation of the Cox report.

human and budgetary resources over a very wide area are inevitably a factor further hindering progress. The tendency to produce action plans rather than actions merely compounds the above problems.

Furthermore, ongoing reform of public administration tends to temporarily affect the already weak administrative capacity with a knock-on effect on implementation. Because of this lack of expertise, the technicalities of transposing directives tends to take precedence over consideration of an overarching vision in terms of what the actual purpose of the legal approximation is, in the context of the broader reform agenda and the administrative and budgetary resources available. (Indeed, all too often there is a lack of assessment of the budgetary implications of different degrees of approximation.)¹⁰¹ Thus, overall, a realistic implementation strategy underpinned by an effective impact assessment is usually missing. All the above factors affect the three countries to varying degrees across different sectors, as identified by a number of civil society organisations in their shadow reports,¹⁰² and discussed in the Trilogy of Handbooks,¹⁰³ as well as in a separate study commissioned by the European Parliament.¹⁰⁴ All of them indicate that the commitments exceed the capacity to implement them.

The implementation of the sanitary and phyto-sanitary standards (SPS) strategy in Moldova illustrate the problems faced by all three countries. The Moldovan approach has been very ambitious when it comes to the agriculture and SPS, even though the scope of legal approximation in SPS is not specified in the Agreement itself.¹⁰⁵ Interestingly, like Georgia and Ukraine, Moldova has adopted a maximalist approach to the SPS sector. The list was worked out in 2015 and jointly adopted at a meeting of the SPS submitted in June 2016. Moldova's list of SPS legislation is very ambitious, covering 235 EU directives and regulations.¹⁰⁶ Many of the directives relate to animal-based products, for which the adoption of SPS is the most onerous and requires extensive investment, with relatively short implementation periods (up to five years i.e. 2020). The costs of implementation are high and it is not clear to what extent they were fully evaluated during the preparation of the strategy. However as of 2018 the lack of financing is apparent. For example, Moldova needs to be build an incinerator for products of animal origin at an estimated cost of €18million. Indeed, it is difficult to disagree with the view that 'Moldova has made too many commitments too fast'.¹⁰⁷ Indeed, the excessively ambitious list may lead to implementation delays and failures and thereby actually weaken the resolve to implement the AA.¹⁰⁸ Yet the rapid and effective

¹⁰¹ In Moldova, for example, the budgetary planning and allocations are based on the proposals from the line ministries and other public authorities. But these bodies do not have the capacity to assess the investment needed for the implementation, not least because of the complexity of the commitments listed in the AAs. Notwithstanding the existence of the guidelines of the Ministry of Finance, these authorities require more capacity to properly evaluate the budget needs based on impact assessments.

¹⁰² See Report of the Ukrainian Side of the EU-Ukraine Civil Society 'From Objectives to Results: the Implementation of the EU-Ukraine Association Agreement as seen by stakeholders'. There are also shadow progress reports developed by the civil society in Moldova on the implementation of the NAPIAAs. See for example www.ipre.md and www.expert-grup.org.

¹⁰³ See the trilogy of handbooks on the implementation of the AA/DCFTA: Emerson, M. and V. Movchan (eds.) (2016) *Deepening EU-Ukrainian Relations - What, Why and How?* CEPS and Roman and Littlefield; Emerson, M. and T. Kovziridze, (eds.) (2016) *Deepening EU-Georgian Relations - What, Why and How?* CEPS and Roman and Littlefield; Emerson, M. and D. Cenusă (eds.) (2016) *Deepening EU-Moldovan Relations - What, Why and How?* CEPS and Roman and Littlefield. The second edition of the handbooks is coming out in the autumn of 2018.

¹⁰⁴ Groza, J., Jarabik, B., Kobzova, J., Konstantynov, V., Kuiumchian, T., Litra, L., Sharashenidze, T., Webb, I. (2017) *The State of Implementation of the Associations and Free Trade Agreements with Ukraine, Georgia and Moldova*, European Parliament

¹⁰⁵ Although the Agreement requires the strategy to be agreed within three months of entry force, it is up to the partner country to decide on the scale and speed of adoption of SPS standards. This approach to legal approximation is an eminently sensible approach in light of the sheer scale of this sector and its importance for all the countries as well as the relatively high costs of compliance for state institutions and business.

¹⁰⁶ Emerson and Cenusă (2016), 65. Ukraine has committed itself to implementing about 255 EU directives and regulations; Georgia has committed itself to 272 acts.

¹⁰⁷ Ibid, 176.

¹⁰⁸ Wolczuk, K. (2017) 'Demystifying the Association Agreements. Review of the Trilogy of Handbooks: on the EU's Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine', 3DCFTAs project, Centre for European Policy Studies, Brussels.

implementation of SPS regulations is of strategic importance for agricultural production, not least owing to Russia's trade embargo. When it comes to exports, even though SPS standards have been transposed, Moldova has not been able to utilise the DCFTA quotas for key non-animal products such as apples and (table) grapes. Clearly, the SPS strategy has not yet resulted in increased exports of strategically important products due to problems with competition, barriers to entry as well as a lack of capacity of producers. As is the case elsewhere, state institutions in charge of food safety suffer from limited resources and administrative capacity, a lack of modern technical equipment, all in the context of the ongoing reorganisation of the ministries.

Most interviewees agreed that more guidance is needed. Many of them emphasised that the visa liberalisation process serves as a good example of the mechanisms the EU has at its disposal to enact implementation. There appear to be three elements which contribute to its success. Firstly, the EU provided clear and motivating goals which state institutions and civil society could focus on and work towards. Secondly, the EU set out an explicit and detailed list of conditions. Thirdly, the EU created a comprehensive implementation strategy with a measurable interim system of goals and rewards encouraging domestic actors to focus on adherence to the rule of law.¹⁰⁹ Therefore, some experts argue that the AA countries need similar guidance and mechanisms for the implementation of key aspects of the AAs. As a Moldovan expert, Denis Cenusă, argued:

Thus, the EU can develop action plans for the crucial sectors of the Association Agreements, with multiplication effect, such as justice, infrastructure, competition and food security. In the absence of such Action Plans for the Association Agreement and without two stages of monitoring on the part of the EU, European integration will be reduced to the 'Europeanization' of the legal framework, making the implementation of the Agreement a secondary action.¹¹⁰

6.3 Impact assessment

Integration with the EU is a complex exercise in benefit-maximisation and cost-minimisation. In spite of what is often assumed, there is no one way to integrate with the EU and it is up to governments to work out what is the best route for them, given their limited financial resources. However, this can only be done when there is full cognisance of the different ways of implementing specific provisions for the country and the economic, financial, political, legal and social impact of adopting EU policy and regulation.¹¹¹

It is now clear that, for a variety of legitimate reasons, the three states took on AA commitments with an eye to securing a membership perspective, leading them to take on a rather 'maximalist' approach. In sum, the AA states underestimated what the agreement entails in terms of institution building and knowledge of the *acquis*. Conversely, the EU negotiators may have overestimated the willingness and ability of the partner countries to approximate and implement the proposed *acquis*.¹¹²

Without the accompanying membership perspective to justify the wholesale harmonisation with the *acquis*, implementing the AA has to be justified through specific, identifiable and articulated benefits.

¹⁰⁹ M. Kmezic (2015) 'The Western Balkans and EU Enlargement: Lessons learned, ways forward and prospects ahead', EP DGEP Paper, November

¹¹⁰ Cenusă, D. (2018) 'European integration, import of EU legislation and practical solutions for shaping benefits', 5 February, at <http://ipn.md/en/integrare-europeana/89211>

¹¹¹ Tokarski, S. and Mayhew, A. (2000) 'Impact Assessment and European Integration Policy'. Sussex European Institute Working Paper No. 38, Sussex University, UK.

¹¹² Wijkman, P. M. (2011) 'Fostering deep and comprehensive free trade agreements for the Eastern partners', *Eastern Partnership Review*, No. 8, December.

However, these benefits are not quick to materialise, especially the countries are undergoing root and branch reform of the public administration and have limited budgetary resources. The turgid implementation of the AA – whereby many actions have been initiated but with little generated tangible result – testifies to the limits of the current approach.¹¹³

However, solutions can be worked out:

The elements of the DCFTA being of varying complexity, cost and benefit, it makes sense to introduce the least complex and least costly/high benefit elements first, other things being equal, while leaving the more difficult, more costly/less benefit elements to later. The sequencing principle of starting with the easiest elements avoids the discouragement of initial difficulties that can well derail the whole process (...). Approximating legislation involving more complex issues (e.g. SPS, TBT, competition policy, state aids and intellectual property rights) are steps to be taken later. These issues involve implementing complex legislation, training personnel and building institutions – all of which takes time.¹¹⁴

It is vital to plan for the actions to be taken, especially with regard to building institutions and assess the investments required (e.g. for the implementation of SPS). Thus, for more complex aspects of the AA, impact assessment should underpin the implementation. The objectives of impact assessment are:

- to assess the most cost-efficient way to implement EU directives, including the assessment of alternative institutional arrangements to reach the stated objectives. This analysis should guide government on how to implement EU regulation;
- to assess the cost of implementation of EU regulation over time so that this can be taken into account in medium-term budgetary planning;
- to provide information for business and other groups in society on the changes which EU regulation will make to their operation and the costs which are likely to be incurred;
- to establish the costs of EU regulation to facilitate dialogue with the EU on implementation. Without an impact assessment it is very difficult to determine what implementation timelines are needed;
- to demonstrate to the EU that the associated countries are taking implementation seriously. It enables partners to answer questions about implementation strategies, which the EU monitors.¹¹⁵

The coordinating bodies on European integration together with EU assistance projects should encourage line ministries to identify the important areas in which impact assessment is needed in order to formulate the implementation plans in a more accurate and realistic way.¹¹⁶ This would allow them to prepare for the actual implementation of adopted laws.

¹¹³ On the limited impact of extensive legal approximation in Moldova see Cenusa (2018).

¹¹⁴ Wijkman, P. M. (2011) Fostering deep and comprehensive free trade agreements for the Eastern partners, *Eastern Partnership Review*, No. 8, December.

¹¹⁵ This is adapted from Tokarski, S. and Mayhew, A. (2000) 'Impact Assessment and European Integration Policy', *Sussex European Institute Working Paper* No. 38.

¹¹⁶ For example, in Ukraine the EU technical assistance project 'Further support of the Ministry of Ecology and Natural Resources of Ukraine in the implementation of sector budget support' conducted impact assessment with regard to environmental acquis in the AA/DCFTA by Seménienè, D., V. Myshchenko, T. Omelyanenko, Y. Makovetskaya, A. Karutsa and S. Vychrist (2014). Indicative quantitative assessment of approximation of Ukrainian legislation in the area of environment. Kyiv (In Ukrainian). The study was produced for the EU project entitled 'Additional support to Ministry of Ecology and natural resources of Ukraine in implementation of the sectoral budget policy'. This study then informed the 'National Strategy approximation of Ukraine to EU law in the field of environmental protection'.

All the countries are moving to adopt it as a formal aspect but are only in early stages of developing capacity for conducting impact assessment. It is important to note that impact assessment is important for government in general and is not specifically reserved for the European integration process. It should become part of the routine procedure of all the ministries and executive agencies in the associated countries.¹¹⁷ Techniques developed during the AA implementation should be highly beneficial to policy making and lead to more efficient government, especially given the limited financial resources and extensive developmental needs of the countries.

Technical assistance projects have provided some assistance in training in impact assessment as a way to assess the implications of different policy options, including different degrees of alignment with the *acquis* in order to assess the range of investments needed. However, until this is done on a comprehensive scale and in a systematic way the implementation process cannot but be adversely affected.

6.4 The Judiciary

The judicial branch is often neglected when it comes to implementing the AA, given that it is the branch of power in charge of ensuring the enforcement of the AAs and the laws adopted to implement them.¹¹⁸

Understandably, however, for the time being, reform of the judiciary is attracting most attention. Against this broader landscape, the preparation of the courts as they seek to interpret the AAs is somewhat overlooked. Indicatively, none of the interlocutors in the AA countries have referred to the judiciary as an actor in the enforcement process (rather than a target for reform). In many ways, this is understandable as the institution (re)building is a precondition for judiciary's effective participation in AA implementation.

The AAs and Association Agendas are fairly similar insofar as all three countries have committed to reform their judicial systems. However, the starting points for implementation are very different. This is the result of different reform strategies and shifting political configurations and trends in the three associated states. Georgia has made greatest progress though still lacks a fully independent judiciary. This is unsurprising as reform of the judiciary is a prolonged process; backsliding is not uncommon. While Ukraine has also initiated comprehensive judicial reform, for which there is strong domestic demand and great interest, corruption and political control still features. The intense scrutiny of the creation of the Anti-Corruption Court demonstrates the degree of contestation and publicity judicial reform attracts.

While progress, however turgid, is being made in Ukraine and Georgia, **Moldova** seems to be sliding backwards with courts merely serving as an instrument of powerful players, who use them to retain their grip on power. The area of judicial reform is an example where the ruling elites in Moldova tried to mimic (rather than actually make) progress. This was evident in the cancellation of the mayoral elections in the Chisinau municipal elections in June 2018. Citing insufficient progress in reforming the justice sector, the EU in 2017 took the unprecedented step of cancelling further budget support for justice sector reform (€28 million). It was highly appropriate for the European Parliament to express its explicit concerns over 'the lack of independence of the judiciary, and particularly the cases of selective justice being used as a tool to exert pressure on political opponents' and stress the need to reform the judicial system, including

¹¹⁷ Tokarski and Mayhew (2000).

¹¹⁸ This section is based on the more comprehensive analysis in Blockmans, S., Hriptievschi, N. Panasiuk, V. and Zguladze, E. (2018) 'Integrity on Trial: Judicial reform in Georgia, Ukraine and Moldova', *CEPS Working Document*, No 2018/04. For the pre-AA role of the judiciary in Moldova see Khvorostiankina, A. (2014). 'Legislative Approximation and application of EU law in Moldova', in Van Elsuwege, P. and Petrov, R. (eds.), *Legislative Approximation and application of EU law in the Eastern Neighbourhood of the European Union*, London and New York: Routledge.

nominating new judges, so as to prevent the judiciary from intervening in the electoral and political process or in any other way undermining the democratically expressed will of the people of Moldova.¹¹⁹

At the same time, the courts in **Moldova and Ukraine** have increasingly become more engaged with the AAs. The courts increasingly refer to AA commitments in their rulings. In Ukraine the courts tend to refer to EU law as a source of validation of their reasoning although in Moldova, the courts' application and enforcement of the AA has been something of a mixed bag. Lower courts have referred to provisions of the AA, though sometimes exposing their limited familiarity with the *acquis*, although incorrect interpretations are eventually corrected at a higher level court. The Moldovan Constitutional Court has adopted the legal canons that define the relationship between the supranational EU and its member states thereby allowing lower courts to use the AA as a source of inspiration and directly applicable law. It is expected that similar cases may reach the Constitutional Courts in Ukraine and Georgia, in order to clarify the complex questions of the direct applicability of the AA in the domestic legal orders.¹²⁰

However, as it is the courts' ability to enforce the AA provisions is premised on the effectiveness of the wider judicial reforms, which, as experience elsewhere shows, tends to be a slow and gradual process.

7 Inclusiveness and transparency

Insofar as inclusiveness and transparency is concerned, similar patterns can be discerned across all three countries: governmental officials declare lofty goals concerning the inclusion of civil society while the latter complain of their being excluded and a lack of transparency. Yet it has to be said that all three countries have made some progress in promoting an inclusive and transparent approach, albeit often on less politically sensitive issues for the governing elites.

It is worth mentioning the bilateral civil society platforms established under their respective AAs in all three countries. These are rather formal all-encompassing structures, composed of organisations with sometime opposing views (such as, NGOs, trade-unions and employers). They meet only twice a year and thus they do not always meet the expectations of civil society. But they do provide a forum for deliberations. They also prepare thematic reports on AA implementation in specific areas and adopt joint resolutions, which are then formally considered by other AA bodies.

In **Georgia**, the government has proclaimed that open and inclusive governance is one of its priorities.¹²¹ Officials claim that NGOs are heavily engaged at all stages and in all areas of the EU integration process, for example, involving civil society when drafting the annual plans of AA and Association Agenda Implementation. In addition, the government signed a memorandum with the Eastern Partnership Civil Societies Forum Local Platform (consisting of 180 organizations) that outlines how civil society will be involved in monitoring the implementation of AA. The memorandum also institutionalises sectoral meetings and high-level conferences between the government and NGOs.¹²² The prime minister, head of parliament and a variety of ministers have all contributed to conferences run by NGOs where thematic

¹¹⁹ European Parliament (2018) Resolution of 5 July 2018 on the political crisis in Moldova following the invalidation of the mayoral elections in Chişinău (2018/2783(RSP)).

¹²⁰ For a more extensive analysis of this important but intricate issue see Petrov and Elsuwege (2018).

¹²¹ For example, Prime Minister Kvirikashvili made the following statement at the UN in 2016: 'This year, we launched a comprehensive 4-point reform plan, which is about making the development of our country a success for each and every citizen of Georgia and for the development and stability of the region. Effective governance with transparent and accountable institutions is the key for building peaceful and inclusive societies and for sustainable development.' See: <https://civil.ge/archives/125773>

¹²² A Memorandum of Cooperation was signed between the government of Georgia and the National Platform of Georgia of the Eastern Partnership Civil Society Forum in November 2015. The Memorandum laid the foundations for strengthening cooperation between the executive branch of the government and the civil society in the process of planning, implementation and monitoring of the Association Agreement Action Plans.

issues, including the approximation of legislation, are discussed. Also the government has sought the views of NGOs involved in the monitoring of the AA implementation process, for example, consulting them when formulating Georgia's positions during negotiations with the EU on the Association Agenda for 2017-2020. Parliament is equally proactive, with the EU Integration Committee regularly consulting and cooperating with the Eastern Partnership Civil Societies Forum.

However, when a merger of the Office of the State Minister of Georgia on European and Euro-Atlantic Integration with the Ministry of Foreign Affairs was first mooted in November 2017, 25 civil society organisations released a joint statement voicing their concerns, stating that:

The existence of the Office of the State Minister of Georgia on European and Euro-Atlantic Integration demonstrates that the European integration is a national priority.¹²³ Against this backdrop, it is unacceptable to merge the Office of State Minister on European and Euro-Atlantic Integration with the Ministry of Foreign Affairs without prior consultations with the public, experts, and other stakeholders.¹²⁴

The civil society organisations called on the government and the parliament to convene 'open discussions about the political role and functions of the Office of the State Minister on European and Euro-Atlantic integration'. The merger went ahead without significant consultations with the NGOs.

In **Moldova**, there are established processes for consulting civil society but which are more effective when elites' vested interests are not at stake. Firstly, when forming working groups on the drafting of normative acts, the possible contribution of civil society and social partners as stakeholders is considered, with public authorities obliged to publish the first version of the draft normative act with an invitation for public contributions.¹²⁵ The 15 day time frame within which they are required to respond is however deemed too constraining. Secondly, the government created the National Participatory Council as a means of consulting with civil society. Thirdly, the Committee of Business Regulation has to conduct a mandatory review of draft laws which may impact on business, with the right to reject the draft normative act if it is deemed to negatively affect business activity. Fourthly, parliament offers public hearings of draft laws. Finally, there is a requirement to report on the informative note of a draft law. Alas, the failure to adhere to the consultation process does not hinder the process of approval of normative acts. This practice will be addressed through EU technical support projects which are designed to support the implementation of the PARS.

However, as of mid-2018, in fact, cooperation is not smooth. First, civil society organisations note that the Moldovan government is in fact rather closed and cautious when interacting with non-governmental organisations. Only those with close links to the government and MPs are granted a privileged access to the governmental structures. Second, civil society concerns tend to be ignored by the government, especially when they pertain to politically sensitive issues for the ruling elites in Moldova, such as control of the judiciary. Civil society, for example, highlighted that many appointments to key public institutions, such as Prosecutor General, Chairman of the Supreme Court of Justice, Chairman of the Constitutional Court, were conducted without competition and often result in appointments of people whose integrity and hence suitability for the position is highly questionable.

¹²³ See the website of the Eastern Partnership Civil Society Forum in Georgia: http://eap-csf.ge/images/doc/gancxadeba/statement-%20structural%20changes_geo.pdf

¹²⁴ Civil Georgia (2017) 'CSOs: Abolishing EU&NATO Minister's Office without Consultations "Unacceptable"', Tbilisi / 21 Nov available at <https://old.civil.ge/eng/article.php?id=30648>

¹²⁵ The website is: particip.gov.md

Similarly, in **Ukraine** the government is committed to consulting with civil society. In practice, the degree of inclusion varies across different bodies. However, civil society has been very pro-active in seeking linkages with the government and parliament. For example, early on, to support the reform process, NGOs have pooled their efforts to create a Reanimation Package of Reforms to facilitate (primarily through advocacy) and support the implementation of and monitoring of reforms related to European integration.¹²⁶ The body has been involved in preparing and supporting many laws related to European integration, as well as in monitoring their subsequent implementation.

Similarly, the Eastern Partnership Civil Society Platform, the EU-Ukraine Civil Society Platform¹²⁷ and other members of civil society participated in consultative meetings with a wide range of Ukrainian institutions. In Ukraine the platforms are particularly active. The Ukrainian part of the bilateral platform is considered by the Vice Prime Minister and the GOEEI as the key interlocutor from civil society. There was a governmental decree issued in 2016, according to which the deputy Prime Ministers and deputy ministers for European integration are required to meet the Ukrainian side of the EU-Ukraine civil society platform on a quarterly basis. During those meetings, platform members have an opportunity to voice their concerns.¹²⁸

Overall, Ukrainian civil society has been most strongly engaged in the reform process and has been seeking to exert more pressure on the ruling elites to take reform measures, such as an establishment of the Anti-corruption Court, despite robust opposition in parliament and from the president. However, some civil society actors and journalists have experienced pressure from law enforcement authorities (such as the Prosecutor's General Office), seeking to undermine their work and credibility.

The transparency and inclusiveness of AA implementation within the Ukrainian parliament is facilitated by standing committees' practices and the parliamentary web portal.¹²⁹ Each draft bill is placed on the portal with a dossier of supporting documents, the history of consideration, the opinions of the parliamentary departments and relevant committees. The web portal also presents transcripts of the plenary meetings and the results of voting structured by the parliamentary factions. In practice, civil society, business associations and the media have many opportunities to engage with MPs and standing committees.

Despite all the challenges, it is noticeable that Ukraine stands out in terms of the intensity and quality of public discussions and deliberations on the reform process and European integration, whereby official statements and actions are routinely subjected to public scrutiny.

Formally, all three countries are committed to transparency and inclusiveness. In practice, there are many limitations to the involvement of civil society. Consultations often start late, namely once the draft legislation is ready (not at the initial stage of policy making) and when conceptual changes are no longer possible. This often leaves civil society able to advocate changes to specific provisions (which also requires good knowledge of legal drafting). Second, proposals of civil society, even if taken into account first, are easily overridden when the draft legal act is being agreed with other ministries and/or in parliament. So establishing proper stakeholder consultation mechanisms and transparency has yet to be institutionalised.

At the same time, there is a proliferation of various platforms and initiatives supported with EU and other international funding, giving the impression of 'civil society industry' in the three countries. This means

¹²⁶ On the broader role of civil society in Ukraine see Ash et al. (2017) *Struggle for Ukraine, Chatham House Report*, London

¹²⁷ The EU supports the work of both platforms with the 'Civic Synergy' project.

¹²⁸ Yet, so far, there has not been much feedback on the extent to which those concerns were acted upon by the government.

¹²⁹ The website of the Verkhovna Rada is rada.gov.ua.

that the EU often competes with other donors to support civil society, something which is not conducive to the 'national ownership' of the reform agenda.

8 Coordination and consultation with EU bodies

In **Moldova**, the process of implementing the AA, Association Agenda and the NAPIAA, as well as other strategic planning documents, is guided by the Association council and the relevant sub-committee. Further advice on reforms under that formal framework is facilitated by the presence of EU high-level advisors, who liaise with the Moldovan public authorities and the EU Delegation in Moldova. Additionally, bilateral cooperation takes place with specialised units of the European Commission when it comes to the transposition of specific elements of the *acquis*. Other types of working relations tend to stem from previous technical assistance and contacts with experts from a number of EU member states and are of a technical nature.

In the case of **Georgia**, association cooperation institutions, especially the EU-Georgia Cooperation Committees and Sub-committees discuss Georgia's EU-related activities including approximation of legislation. Discussions revolve around the recommendations from the EU, particularly those from the relevant bodies within the EU Commission, and the explanatory notes on the interpretation of legislation and its compliance with Georgian legislation. But this cooperation is hindered by the limited capacity of the EU Delegation to offer an assessment of draft bills, which is often required at short notice. At the same time, important decisions, such as the decision to abolish the State Office for European Integration as a stand-alone institution and incorporate it into the MFA was not subject to consultation with the EU Delegation, having been taken by a narrow group within the government in a closed manner.

The EU Delegation to **Ukraine**, has since September 2017 (i.e. entry into force of the AA) a dedicated AA team whose primary role is to support proper and timely implementation of the AA commitments. The AA team has developed its own monitoring framework including dedicated tools to assess AA implementation progress independently (so called fact sheets and tracking tables).¹³⁰ The AA team also reaches out to key stakeholders in the Verkhovna Rada when it comes to AA implementation and has developed a dedicated approach of advocacy and communication, in close cooperation with the press and information team of the EU Delegation. Moreover, the team aims to facilitate a systematic monitoring of draft bills discussed and adopted in the Verkhovna Rada and coordinates the EU's possible position either during the consideration of the draft within the government or the parliament. In the most important cases, the EU Delegation also makes public statements as was the case with the timber export ban.¹³¹

When the draft bills are prepared by the executive bodies, EU-funded projects are involved either to help draft them or provide feedback but this is often insufficient to ensure that drafts are of a high quality. The parliamentary standing committees have opportunities to engage with the projects' experts, as well as with the EU Delegation. It would seem that, based on the information received from the Committees dealing with transport, energy and agriculture, they all have links with EU experts, as the assistance projects seek to cooperate with the parliament and approach relevant committees. However, the quality and quantity of cooperation varies and depends on the expertise of project staff, particularly in terms of

¹³⁰ The AA team contributes to streamlining the information flow, inter alia available through the established institutional set-up of the agreement (AA bodies), but also based on contacts with civil society representatives and provided by experts working in various technical assistance projects related to the AA implementation process.

¹³¹ 'Ukraine: all you need to know about the EU's stance on the wood export ban', Note by EU Delegation to Ukraine, 6 December 2016. <https://www.euneighbours.eu/en/east/stay-informed/news/ukraine-all-you-need-know-about-eus-stance-wood-export-ban>

their ability to present their findings to parliamentary staff and MPs. As was noted by EU experts, it is not clear what the involvement of EU experts in the drafting actually tells us about its compliance with the *acquis*. In the course of the last year, the AA team also facilitated the set-up of dedicated so called 'trilateral' sectoral meetings, bringing together representatives from the Government, the Parliament and the EU Delegation in order to discuss AA implementation in a given sector. On top of that, the AA team has advocated joint committee meetings between the Verkhovna Rada EU integration committee and the sectoral committees (for example, Transport or Customs and Taxation) with the presence of the EU Head of Delegation.

Overall, **in all three countries**, the EU Delegations face specific challenges and a considerable workload, which exceed the usual demands placed on EU Delegations in third countries: they oversee very intensive relations, the AA implementation in general and are also requested to provide expertise and comments on draft laws and the degree of compliance. The strain is exacerbated by the fact that comments on drafts and compliance checks require specialised sectoral expertise which EU Delegation staff may not necessarily have (as well as being short of a full understanding of the degree of existing legal harmonisation and the country-specific context). In Ukraine this is partially remedied by the AA team but more sectoral expertise is required. The EU Delegations in Moldova and Georgia would also benefit from having AA teams.

At the same time, the scarcity of resources within the Commission and the EEAS available to deal with the three AA countries is tangible and has been noted by many interviewees in the three countries. There is a tendency to rely on EU assistance projects to provide the necessary expertise and support. But this is not a feasible and realistic strategy, given the limitations of assistance projects per se. (Implementation is a massive challenge for the governments and it is not reasonable to expect that this can be dealt with by experts from EU assistance projects). Yet staff in individual DGs are not always be able to offer much support as sometime there is just one official dealing with 14 neighbourhood countries. Clearly this is a considerable capacity issue within the European Commission and the EEAS, which has yet to be addressed (see Recommendations).

There is also a need to strengthen cooperation between the EU and the three associated countries. New important initiatives include the Inter-Parliamentary Assembly involving the parliaments of Georgia, Moldova and Ukraine, which was launched in 2017. Also, within the Euronest, the ad hoc Working Group on the AAs provides an opportunity for interaction. At the same time, civil society has also become involved in tri-lateral initiatives devoted specifically to the AAs, such as the Association Exchange Forum, which brings officials and experts from the associated countries and the EU to discuss the problems and challenges in a comparative context.¹³²

9 Institutional support and assistance

The EU has been providing a massive and diverse assistance to the AA countries, depending on their specific needs.¹³³ For example, in all three countries, the EU is supporting fundamental and wide-ranging reform of state institutions, including public administration reforms (PAR).

In the case of **Moldova**, EU provides very extensive support ranging from macro-economic assistance to budget support and technical assistance. The support of high-level advisors within EU technical assistance projects, is noteworthy as the advice offered to the prime-minister, ministers and parliament

¹³² The Association Exchange Forum was first held in November 2017 in Kyiv and the second one is in September 2018.

¹³³ Funding comes mostly from the European Neighbourhood Instrument (ENI), Geographical Instruments -Regional and Cross-Border Cooperation; cooperation with EU Community programmes and Agencies; as well as the cooperation with financial institutions.

has contributed to the development of the reform process in line with the commitments Moldova undertook within the AA. But, despite their titles, the high-level advisers are deemed to be in 'technical positions', which is rather at odds with the need to engage at a political level.

As far as Moldova is concerned, support for the implementation of the AA is delivered through a number of projects.¹³⁴ There is also a Taiex project offering support to the Moldovan parliament with a resident adviser and a large number of external experts coming on short missions to provide training and advice on the reform of the Moldovan parliament.¹³⁵ The assistance was mainly focussed on public administration reform and agriculture and rural development between 2014 and 2017 but has subsequently been widened to four priorities: PAR, agriculture and rural development; police reform and border management (over 2018-2020).¹³⁶ Thus in Moldova, the EU provides extensive support for a broader reform agenda rather than the narrowly defined AA implementation. Since 2014, budgetary support for institution (re-) building has been accompanied by explicit conditionality.

The EU offer a great variety of assistance to **Georgia**. The main areas of assistance are: Good Governance, Justice Sector, Economy, DCFTA and Development of Small and Medium Enterprises, Agriculture and Rural Development, Education, Infrastructure, Regional Development, Environment and Climate Change, and Energy Efficiency.

More specifically, the EU has supported Georgia's implementation of the AA through three main technical assistance projects.¹³⁷ First, the Legislative Impact Assessment, Drafting and Representation project is designed to improve legislative processes, to make the Ministry of Justice more familiar with international law, human rights and arbitration and to promote the development of a Centre for the Translation of Georgian legal texts into English. An important output was a handbook and guidelines on the systematic harmonisation of legislation with EU law, which is intended to become a binding instrument in the legislative process of Georgia. Training on legal impact assessment has been also conducted. The second key project in Georgia is the 'Facility for the Implementation of the AA in Georgia'. It was designed to support the Georgian Governmental Commission for EU Integration in the implementation of the EU's bilateral agreements with Georgia. As part of the project, policy papers were drawn up to assist the Georgian authorities in the proper planning and implementation of the AA. Support is also available in relation to the DCFTA and how to align legislation, introduce reform measures to remove technical barriers to trade (TBT) and promote trade facilitation. Finally, the third project entitled 'Support to the Independence, Accountability and Efficiency of the Judiciary in Georgia', aims to support the Supreme Court, the High Judicial Council, the High School of Justice, the Constitutional Court and various courts in increasing the independence, efficiency and impartiality of Georgian judiciary and familiarise them with European human rights standards. The project also produced a strategy for judicial reform from 2017 to 2022 and an action plan for its implementation for 2017 and 2018.

From the Georgian perspective, twinning projects, available under the European Neighbourhood Instrument (ENI), are considered particularly effective, reflecting the stronger capacity in public administration in Georgia compared to Moldova and Ukraine. In total, 22 Twinning Projects have been implemented and nine are on-going. The scheme is regarded as successful because it enables Georgian ministries and agencies to cooperate intensively with their colleague agencies in the EU member states

¹³⁴ https://eeas.europa.eu/delegations/moldova/1539/eu-projects-republic-moldova_en

¹³⁶ European Commission (2016) Single Support Framework for EU Support to Moldova (2017-2020) https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/single_support_framework_2017-2020.pdf

¹³⁷ More information is provided on the website of the EU Delegation in Georgia: https://eeas.europa.eu/delegations/georgia/search/site_en/?ff0=im_field_regions%3A221&ff1=bundle%3Aeeas_project

and benefit from their experience. Through developing personal links, cooperation can continue between the beneficiary institution and partners even after respective projects are finished, thereby increasing the sustainability of the projects beyond their completion.

In **Ukraine**, an important innovation of the EU was the setting up of the Support Group for Ukraine (SGUA) in April 2014 to coordinate assistance to Ukraine. Consisting of about 35 officials from the European Commission and from member states,¹³⁸ its effectiveness is enhanced by the fact that the officials have specific sectoral expertise and can liaise across various DGs within the Commission and the EEAS. The SGUA has engaged in 'upstream' strategic coordination: identifying the country's needs and tailoring assistance accordingly, especially with regard to large flagship reforms such as decentralisation and PAR. It has also effectively coordinated the efforts of other European and international donors. Its experts have gained detailed knowledge of specific sectors in Ukraine (not an easy task given their size, complexity and the complex configuration of stakeholders). Some of SGUA staff are based in Ukraine as part of the operational section of the EU delegation.

At the operational level, EU support for AA implementation is mainly offered through technical assistance projects against a backdrop of a wide ranging instruments developed for Ukraine. As of mid 2018, there were over 20 horizontal or sectoral projects focussed on the implementation of the AA in Ukraine and coordinated by the AA team. The flagship programme in Ukraine is above mentioned 'Association4U', with funding of €7.7 million, which provides for technical assistance to the GOEEI and the ministries in four areas: 1) approximation of Ukrainian legislation with the EU *aquis*; 2) development of human resources; 3) policy development and coordination; and 4) public communication.¹³⁹ The overall outcome of the project was to reinforce the institutional capacity of the Ukrainian government to implement the AA commitments. It is characterised by some innovative features, including the Fellowship Scheme Programme to support AA implementation, one of the primary goals of which is to translate the 30,000 pages of the EU *acquis* into Ukrainian, a role that the Ukrainian government is not able to undertake with the specialised translation unit due to a shortage of experts and funding for outsourcing.

The European Parliament has also supported the parliaments. The most prominent has been the above-mentioned European Parliaments Needs Assessment Mission to the Verkhovna Rada led by Pat Cox, which prepared the 'Report and Roadmap on Internal Reform and Capacity-Building for the Verkhovna Rada of Ukraine'.¹⁴⁰ The Cox report is quite unique as it is based on detailed and extensive engagement with all stakeholders and generated specific recommendations which were then endorsed by the Rada. They are being followed-up by a mediated dialogue between leaders of the Rada and groups through the Jean Monnet Dialogue. Following the mission the EU has also launched the 'Rada4Europe' assistance project, implemented by the United Nations Development Programme (UNDP), supporting the implementation of the Cox report, especially those points related to European integration. Such continuous engagement is much needed. This is because when it comes to complex, sensitive institutional reforms, one-off missions and interventions tend to be less effective; continuous, iterative engagement is needed to promote institutional change, especially in the case of large institutions with diverse stakeholders, such as the Ukrainian parliament. With Moldova and Georgia there is also an inter-parliamentary policy dialogue in the context of Parliamentary Association Committees. The European Parliament has also capacity-building programmes to support the three associated parliaments.

Besides funding for state institutions, the EU and the member states provide extensive funding for civil society, including capacity building. So far funding has been mainly allocated to civil society

¹³⁸ European Commission (2016), 'Support Group of Ukraine. Activity Report. The First 18 Months'.

¹³⁹ See the project website: <http://www.association4u.com.ua/index.php/en/>

¹⁴⁰ European Parliament (2016).

organisations in the capital but it is recognised that more support is needed in the regions. Hence, for example, in Moldova and Georgia there are programmes for strengthening the capacity of grass-root civil society in the regions, involving transfer of knowledge from the established NGOs and think tanks in Chisinau in Moldova. Support for civil society in general, including its role in the implementation is also provided by other donors in Moldova, Georgia and Ukraine, such as the the United States Agency for International Development (USAID), UNDP and the Open Society Institute as well as many EU member states and Norway and Switzerland. In Ukraine in particular, Canada provides extensive support for reforms in coordination with the EU.

Box 2: Technical Assistance and its Limitations

However, it has to be admitted that technical assistance, including twinning, suffer from important shortcomings. With the emphasis on exporting 'best practice' and training, it can be only effective in supporting relatively well performing institutions, as is already the case in Georgia. As a rule, it is less effective in supporting malfunctioning institutions with weak capacity, high-staff turn-over and/or strong vested interests. This is especially relevant in countries like Moldova and Ukraine where PAR is being implemented and vested interests continue to permeate many state bodies.

To be effective in supporting sustainable institutional reform, assistance projects ought to be designed with a deep understanding of specific institutions, sectors and provide long-term, flexible engagement with the institutions they aim to support.¹⁴¹ A persuasive body of evidence shows that 'capacity and technical knowledge alone are insufficient to change deeply entrenched political interests and bureaucratic norms'.¹⁴² This is why international development experts promote 'thinking and working politically'; rather than having prescriptive projects, they champion 'flexible, responsive, adaptive programing'.¹⁴³

This argument resonates strongly with regard to Ukraine and Moldova, where the implementation of the AA needs to be accompanied – and in fact preceded by – institution building with PAR and curtailing vested interests.¹⁴⁴ This requires focusing on creating administrative capacity and developing an understanding of the underlying political dynamics to align with and provide support to reformers within the institutions. This means that institutions and capacity need to be created – rather than merely training civil servants in 'best practice' – in order for the countries to be capable of devising appropriate public policies and successfully implementing them. As the experience of Western Balkans in general and Croatia in particular indicates, corruption and the misuse of public funds needed to be addressed at an early stage of the European integration process.¹⁴⁵ Implementation of the more technical aspects of the AAs is premised on these more fundamental reforms taking place and should only focus on key priorities to avoid spreading attention and scarce resources too thinly.

¹⁴¹ Having a large number of short-term experts with a little knowledge of the country results in a 'revolving door' of experts, who provide 'best practice' in technical sense, but who at the same time often remain oblivious to the difficulties the reformers face in the beneficiary countries. In case of small institutions, having to interact with a large number of experts coming on short missions for short projects can be a burden for staff working in beneficiary institutions, unless they have a clear vision of how they can use the support, something which weak institutions often lack.

¹⁴² Teskey, G. (2017), 'Thinking and Working Politically: are we seeing the emergence of a second orthodoxy?' Abt Associates, 3, <http://www.abtassociates.com/White-Papers/2017/Paper-Thinking-and-Working-Politically---Are-We-Se.aspx>

¹⁴³ Ibid.

¹⁴⁴ For a more in-depth discussion of the past experience of international assistance to Ukraine see Leitch, D. (2016). *Assisting Reform in Post-Communist Ukraine, 2000–2012. The Illusions of Donors and the Disillusion of Beneficiaries*, Stuttgart: ibidem Press.

¹⁴⁵ Kmezic, M. (2015) 'The Western Balkans and EU Enlargement: Lessons learned, ways forward and prospects ahead', *In-depth Analysis*, European Parliament.

The effectiveness of technical assistance projects needs to be scrutinised within the EU institutions not only in terms of procedural compliance. While employing a large number of experts and generating a large number of deliverables, relatively few projects deliver sustainable results beyond the duration of the project. Too often, the knowledge of experts, as well as the materials and analysis produced by them, disappear with the end of the project. To enhance sustainability, the documents and materials prepared by assistance projects need to remain available and accessible as often beneficiary institutions struggle to sustain the positive effects of the projects. Even outputs of fundamental importance for the effective implementation of the AA, such as impact assessment studies, which have been produced for over a decade in Ukraine are not publicly available.¹⁴⁶

Alongside the EU institutions, a number of member states are engaged in implementing the AA, such as Germany, France, Sweden, Netherlands, Poland, Lithuania, Estonia and in the case of Moldova - Romania. This assistance includes the sharing of technical expertise on EU integration and sectorial reforms. The US, Canada, Japan and Switzerland also provide assistance on EU integration. In Georgia and Ukraine, the level of the US support is extensive, with the US being of the biggest donors for reform and modernisation in line with EU standards. The UNDP, the Council of Europe, the European Bank for Reconstruction and Development (EBRD) and the World Bank also provide similar types of support. At the same time, coordination amongst the donor community is much needed but rather difficult to establish in an institutionalised way.¹⁴⁷ In Ukraine, this important role is taken on by the SGUA, which has provided strategic coordination with international donors, such Norway, Switzerland or the World Bank. However, even some EU member states sometimes do not coordinate with the SGUA.

Nevertheless, it is important to stress that European integration has become a rallying point for many international donors to the three AA countries and they often step in to provide targeted and timely assistance. In Georgia a pragmatic example of donor assistance is the coordinated support offered for the development of an electronic monitoring tool for the implementation of the AA sponsored by the EU, UNDP and USAID. In Ukraine, the online tool was supported by funding from the UK and EU, while in Moldova this was provided by Estonia.¹⁴⁸

Overall, the EU and its member states provide massive assistance to the three AA countries. But volume cannot be equated with effectiveness. This is not a new phenomenon as most international donors struggle with this challenge. However, for the EU the stakes are particularly high, due to the novel use of integration with the EU below the membership threshold as a way to promote reforms in the associated countries. It is in this context that new modalities and scale of support for the AA countries needs to be considered from 2020 onwards.

10 Communication

Overall, the importance of a thorough public information and communication campaign on EU-related matters has been rather underestimated in the three partner states. The AAs require a high intensity

¹⁴⁶ Wolczuk and Zeroulis (2018). It is worth noting that the Ukrainian-European Policy and Legal Advice Centre (UEPLAC), which was a long-standing EU assistance project (and finished in 2012) prepared extensive materials on the institutional framework, including, for example, a collection of strategic planning documents from the candidate states. Unfortunately, like its counterpart in Georgia, the UEPLAC's depository was not supported beyond the duration of the project and is not publically available, despite its usefulness for AA implementation.

¹⁴⁷ In Georgia, there is a Donor Coordination Department in the administration of government.

¹⁴⁸ However, this modality of support created problems with 'ownership' and managing updates to the provided software.

public information and communication campaign especially given the depth and complexity of the reforms under the AAs.¹⁴⁹

In theory, this has been recognised. For example, in 2018, Ukraine adopted the Action Plan for the Implementation of the Communication Strategy in relation European integration for 2018-2021, indicating the aims, tasks, responsible bodies and implementation periods. In addition, the government launched the communication campaign 'Power of Opportunities'. The government of Georgia has annual action plans for the implementation of its Communication Strategy on 'Georgia's Membership into European and Euro-Atlantic Structures'. Also, the annual Action Plans include communication campaigns. Currently, the third wave of a visa information communication campaign is being implemented. Moldova has no separate communication plan but various projects have a communication component.

In practice, more comprehensive communication of the AA has been a challenge for a number of reasons: the staff in the institutions working on the implementation of the AA are already overburdened and have limited skills sets in effective engagement. Lacking a dedicated communications unit, public relations tends to fall to key officials responsible for European integration, who may spend valuable time in a time-consuming, country-wide engagement process across their countries. Individual ministries lack the capacity to communicate the AA commitments and their benefits. Even when they do so, they tend to focus on legal drafting and legal approximation rather than the benefits that are likely to accrue in the mid- to long-term.¹⁵⁰

Overall, communicating the AA faces several important challenges. First, it is apparent that in order to successfully explain the benefits and challenges of reforms in the context of AA implementation, it is necessary to understand them. Secondly, much to do with the AA is fairly arcane (e.g. state aid, public procurement, SPS), which does not lend itself to easy communication. While Action Plans have communication activities listed as actions taken to implement the AA, these are mostly seminars with specific stakeholders.

In communication with the public, there is a tendency to overstate the success of implementation. For example, the Moldovan government has reported rates of over 75% of implementation of the AA/NAPIAA, a figure disputed by civil society. Aside from statistics, there are issues to do with the quality of implementation. For instance, the Justice Sector Reform Strategy was reported to have been 90% implemented. However, in fact due to the complexity of the judiciary reforms, the integrity of reforms can be jeopardised by a few pivotal gaps in legislation and implementation, resulting in an inefficient and politicised judiciary and prosecutors' office, which undermine the public trust in reforms.

Communication has been misused in other ways too, such as when the AA implementation process is 'spun' to camouflage unpopular decisions. This was the case when amendments to the Tax Code of Georgia, which rapidly increased the excise tax rate on tobacco and alcohol were justified by the Ministry of Finance by the 'requirement' to approximate Georgian legislation with that of the EU. However, research conducted by civil society and tobacco and alcohol businesses contradicted this. Indeed, although Article 283 of the AA refers to the excise tax on tobacco, it also allows for a five year harmonisation period.¹⁵¹ It was concluded that the authorities increased an unpopular excise tax and

¹⁴⁹ Sekarev et al. (2016), 11.

¹⁵⁰ See for example, the information provided by the Ministry of Infrastructure on its implementation activities: <https://mtu.gov.ua/en/content/shchodo-stanu-implementacii-ugodi-pro-asociaciyu.html>

¹⁵¹ Georgia will be given a longer period for the implementation of this excise tax (perhaps up to 2025).

blamed it on the EU.¹⁵² However, it is also interesting to note that civil society sided with the tobacco lobby in Georgia. It was also noted in Moldova that civil society is not actually active in devising communication campaigns on specific issues, where it could be expected to do so, such as gender equality.

The EU provides considerable technical assistance to strengthen the communication component. For example, assistance projects supporting the implementation of the AA have a communication component. However, while technical assistance projects can offer training and assistance with drafting plans and strategies, the communication activities themselves have to be conducted by Ukrainian officials. And the simple fact is that the resources and capacity of the national administrations are inadequate for an effective communication campaign. Due credit needs to be given in this regard to civil society which makes strenuous efforts to disseminate information about EU integration reforms and processes. In Georgia, for example, that includes participating in the implementation of the action plan of the Communication Strategy of the government.¹⁵³

It has to be emphasised that EU institutions and some member states have conducted a number of successful projects and information campaigns such as 'EU Study Days in Ukraine' and 'Building Europe' run by the EU Delegation in Ukraine and, earlier, 'Stronger together' run by the UK Embassy in Ukraine.¹⁵⁴ In 2018, a new important EU information campaign 'Moving Forward Together' was launched in Ukraine – an example of a much-needed innovative approach. The EU Delegations in Chisinau and Tbilisi have also conducted a number of communication activities, despite their limited staffing, especially media officers. It is worth pointing out that in the EU Delegations the media staffing level is significantly lower than other international donors active in these countries, such as USAID and the UNDP. Fortunately, many international donors support European integration, including in communication activities.¹⁵⁵ Overall, the AA implementation has been supported by a number of communication campaigns and actions. These efforts, even though somewhat fragmented, have to be matched by the implementation steps which bring tangible benefits to the populations of the three countries.

¹⁵² Stercul, N. and Bucataru, V. (eds) (2016) Communicating Europe in a New Regional Security Environment, Foreign Policy Association of Moldova and Visegrad Fund, 36.

¹⁵³ <http://archive.eap-csf.eu/en/national-platforms/georgia/>

¹⁵⁴ Stercul and Bucataru (2016).

¹⁵⁵ For example, the program 'Enhance Non-Governmental Actors and Grassroots Engagement' (ENGAGE), funded by USAID and implemented by Pact in Ukraine, funded a national survey on attitudes towards the EU in May 2018 by the sociological company GfK Ukraine.

11 Conclusions

The conclusion of the AAs represents a profound shift in the EU's relations with the three countries in the Eastern Partnership. The agreements offer advanced market access while promoting their long-term modernisation and development. However, this fundamental change takes the EU and partner countries into uncharted territory: a body of detailed and complex legislation imported by countries which were and are still in the midst of political administrative and economic reforms and/or face profound challenges of socio-economic modernisation.

Yet by virtue of the fact that they willingly signed up to the AAs, they have demonstrated a commitment to EU values and standards which cannot but be deemed commendable for countries which do not have a concurrent membership perspective. But this means that the ambition, scope and complexity of the Agreements posed a challenge of an entirely new order for policy makers and experts both within the EU let alone the partner countries. To understand the impact of the AA-DCFTA, the partners needed to not only grasp the content of the agreement, but much more importantly understand its implications on institutions, decision making processes contained therein, and the further ramifications on the political, economic and societal context.

It is clear that all three countries are affected by noteworthy weaknesses within their political systems, such as self-interested political elites, and ineffective public administration and public policy making, as well as politicised judiciary. And as the necessary mechanisms emerge in Ukraine, it is evident that, out of the three, Ukraine has actually the greatest capacity on EU matters within the government and civil society, although the coordination mechanism and the role of the parliament needs to be enhanced. Nevertheless, it also needs to be acknowledged that there is a genuine contestation of policies and laws within a complex institutional set up, which makes reform a slow and turgid process, notwithstanding frantic work in the government and parliament.

Yet, notwithstanding all the declarations, strong leadership on EU integration has been insufficient in all three countries, with a subsequent knock on effect on strategy making and capacity building, not least because the reforms have often encountered strong resistance from self-interested elites and officials. The elites' perspective is still shaped by electoral cycles and/or opaque dealings and schemes, something which is not conducive to the creation of a long-term vision and planning, on which the AA implementation is premised.

For the AAs to achieve their objectives, it is imperative to recognise these underlying challenges and develop strategies to address the fundamental gap between commitment and capacity in the partner countries, be it at the political, administrative or financial levels.

As this Study argues, all the countries have been developing institutional frameworks for the implementation of the AA with Georgia and Moldova making greatest strides in formal terms. However, the institutional mechanisms do not exist and function in isolation. They reflect the broader patterns of institutional strength and weaknesses of political systems, political elites, public administration and public policy-making. It is all too clear that any institutional framework can only be effective if the political elites are willing actually to implement reforms rather than mimic them, and, second, only when it is harmonised with the broader context of the state within which it has been developed. More specifically, reform must be driven from the top, and linked to a wider national strategy which itself is bolstered by the necessary administrative capacity to deliver its objectives.

This study shows that while actors in all three countries appreciate the extent to which profound institutional change is necessary if implementation is to be successful, it is Georgia and Moldova which have made greatest progress in creating formal institutional frameworks and coordination mechanisms, in part because their AAs came into force earlier than Ukraine. Nevertheless, both of them lack the

administrative capacity to implement the AA in a sequenced way and tend to regard compliance in terms of legal approximation and training rather than effectiveness in solving particular problems.

The import of the *acquis* on a massive scale underpins the AAs.¹⁵⁶ As this Study indicates, there are serious concerns whether these countries have the capacity to ensure the effectiveness of the vast and sophisticated corpus of EU law they are committed to import. At the same time, there are high expectations that the *acquis* will actually help address the immediate developmental objectives of these countries. The import of the *acquis* clearly aims to drive economic integration but its suitability for the fast and cost-effective modernisation of the state and economy is unproven, and indeed, questionable. Implementing the AAs fully within the specified deadlines is a challenge that seems almost impossible to meet for the three countries *inter alia* due to their weak administrative capacities and financial constraints. However, there is a broad range of measures and solutions which can be applied both by these countries and the EU to support and improve the AA implementation, as part of a broader reform process.

Many experts argue for realistic and clear prioritisation in terms of bridging the dual track, whereby the AA implementation needs to be re-calibrated against the broader reform process:

Implementation of the Association Agreement is not about coordination. It is about **sectoral capacities in the line ministries, and about the policy-making and legislative capacities of the government**. They have to be strengthened, but this will take time, and the policy-making agenda is overburdened already.

In the meantime, however, the implementation of the AA might make this agenda even heavier. Thus, the set of priorities has to be narrowed down. This requires strong leadership not just from the prime minister, but from all ministers and agency heads.

Acquis transposition during a time of crisis is clearly secondary to major work in **strengthening the state, especially institutions and the rule of law**. However, if addressed properly (that is, from a policy planning perspective rather than one of mechanical implementation), transposition issues could create better awareness about the direction of reforms and their fiscal and socio-economic implications in the policy areas covered by EU law, thus raising overall administrative capacity (...) [*emphasis in the original*].¹⁵⁷

This means that there is considerable work to be done on the part of the EU. There is at times a limited appreciation of the challenges of implementation of the Agreements in the partner countries and within the EU. After all, these are merely three of many bilateral agreements signed by the EU. On the part of the EU, many individual DGs, the EU Delegations and EEAS lack the resources to provide both strategic and tactical support, notwithstanding some effective innovations such as the SGUA and the AA team in EU Delegation in Ukraine and the work of many EU officials and experts. Clearly at the strategic level, EU institutions need to be more in tune with the challenges presented by the implementation of the AAs.

The current strategy of supporting AA implementation mainly through EU-funded technical assistance projects is insufficient in the face of the scale of the challenges faced by the countries for three reasons. First, institution-building needs longer-term, better tailored and more flexible support than can be usually provided by technical assistance projects. Second, technical assistance cannot compensate for the lack of domestic expertise on how to implement a complex corpus of EU law in order to promote domestic reforms. Three, sequencing of implementation needs to reflect the most pressing modernisation priorities of each country. This paper will conclude by outlining its recommendations.

¹⁵⁶ See Blockmans, S. (2017) *The Obsolescence of the European Neighbourhood Policy*, Brussels: Centre for European Policy Studies, and London: Rowman and Littlefield International.

¹⁵⁷ Sekarev et al. (2016).

12 Recommendations

Two categories of recommendations are listed below: more general ones applicable to all three countries and/or the EU institutions as well as country-specific recommendations. It is also worth pointing out that, broadly, there are two types of recommendations: process-oriented and resource-oriented. Process-dependent recommendations are essentially about doing things better and are not dependent on greater resources, as is the case with resource-dependent recommendations, which typically relate to increasing capacity (e.g. hiring new staff). Of the two, process-dependent recommendations are significantly more important as they lie at the heart of improving the implementation process and are the *sine qua non* for successful implementation. In other words, significant improvements can be made at little or no additional cost either to the partner states or the EU. Indeed, it can be argued that it is more fruitful to focus on process-oriented recommendations when dealing with the partner states, as this avoids justification for inaction on the basis of a lack of resources.

Generic Recommendations

- A. The implementation of the AA needs to be firmly embedded within and linked to relevant components of each country's overarching reform strategy. This is particularly important when essential reform of state institutions and policies is being conducted in parallel, such as public administration reforms, decentralisation, judicial reforms and anti-corruption strategies. This is the foundation on which implementation needs to be based; without it, it is unlikely to generate the benefits expected of it. The AA implementation strategy itself needs to reflect these overarching priorities.
- B. The prevailing focus in monitoring is somewhat shallow, viewed as a simple matter of legal approximation. As is evident from the Moldovan example this results in a larger but not necessarily effective body of laws. However, the implementation of the AA needs to be seen as a means to an end, i.e. an improved political, legal and economic climate which is conducive to the emergence of a prosperous and stable, social democratic society rather than an end in itself. Therefore, it is necessary to adopt a more solution-focussed approach related to the key modernisation goals for the country as a whole and for specific sectors with a clear view of how the adoption of the AA serves to advance these goals.
- C. The debate on where the coordination bodies ought to be located within government tends to distract from the more important issue of the political leadership needed to drive the process by clearing bottlenecks when reforms are blocked by vested interests and/or lack of capacity and resources. In all three countries, there is an urgent need for greater political oversight, synergy and coordination of the European integration process at the highest political level
- D. As was seen with Visa Liberalisation Action Plans, it is possible to guide partners through complex procedures using explicit conditionality, a goal-oriented approach and strict monitoring of both legal approximation as well as implementation. This approach could be used more extensively in the implementation of the AA.
- E. AA implementation planning needs to be understood and appreciated as a profoundly political process and not just a technocratic exercise. In fact it requires considerable political leadership as well as sufficient administrative capacity to formulate and enact reform strategies across the government and in individual ministries and agencies.
- F. A particular challenge is ensuring the affordability of reform, in terms of both costing the reforms and aligning budget planning with policy planning – this requires an actual assessment of investments

needed, based on competently done impact assessment, which needs to be factored in budget planning and assistance requests (e.g. the investment needed to create a market surveillance system).

- G. Considerable institutional experience and memory has been already been developed within the coordinating bodies in Moldova, Georgia and Ukraine which needs to be protected from any politically-driven reshuffles. It is important that any further institutional restructuring should also be underpinned by a clear functional rationale, rather than political expediency.
- H. The implementation plans, which have been improved already, nevertheless, remain rather long, generic documents, and, as such, they do not deal with the specific reform sequences across different sectors in each country.
- I. In terms of planning, it is not always clear that modern project and programme management techniques are being used, or, that they are used in a systematic and comprehensive way. This is evident in the frequent confusion between outputs and outcomes. Often, the former is reported on while the latter is neglected. While outcomes are harder to measure, they produce more meaningful impact. Wide-ranging training in programme management across staff of all three countries, could be conducted at relatively low cost but this would require the buy-in of the respective governments.
- J. There is an urgent need to create capacity for impact assessment within the ministries and executive bodies. There should be a dedicated unit within the administration of the government to spearhead its implementation.
- K. It is advisable for the three countries to be strategic when transposing and implementing EU law – this process has to be guided by sector-specific reform strategies and be underpinned by a clear economic and social rationale based on sound impact assessments in areas which require complex systems and extensive investments by state authorities and business, such as SPS. It is important, however, not to limit consideration to economic factors alone with regard to issues such as labour standards, gender equality, or road safety measures.
- L. The Action Plan needs to include estimates of costs of implementing particular aspects of the AA (based on impact assessment where appropriate) and indicate specific sources of funding. The costs of implementing the AA need to be incorporated in the national budget planning.
- M. There is a need to expand the capacity on EU law and compliance checks within the parliament in order to match the expertise available to the government as well as to ensure post-legislative scrutiny of key EU-related legislation.
- N. The issue of ‘ownership of the AA’ needs to be addressed within EU institutions.¹⁵⁸ There is a need to increase capacity within the European Commission and EEAS to provide both strategic and tactical support in terms of AA implementation and its monitoring. This teams need to develop a common sense of purpose and mission. In the case of Ukraine, the SGUA provides considerable support, while the AA team in the EU Delegation in Ukraine provides first elements of structured monitoring of AA implementation. It is clear that similar support frameworks are needed for all three countries, including more dedicated staff in all three EU Delegations. Staff needs to consider the implementation within the context of bigger reforms, such as decentralisation or PAR.

¹⁵⁸ It needs to be stressed that the EU institutions committed considerable staff resources during the negotiations of the AAs and now there is a clear need for a systematic institutional ‘follow-up’. Five conditions are regarded as critical for the successful AA implementation: ownership, coordination, prioritisation, monitoring and communication/advocacy. It could be argued that this argument also applies to the EU institutions themselves.

- O. The EU should be more strategic in providing support for the implementation of the AA and its monitoring. More specifically, the following actions might be considered:
- a. Given the complexity of the agreement, the benchmarks for approximation and implementation are not easy to formulate. This has important implications for institutional reforms. Various options and their implications are not well understood either within the EU institutions or the AA countries. It is not realistic to expect that this can be addressed by technical assistance projects.
 - b. Institutionalised support for legal approximation needs to be provided for the transposition of the EU *acquis* in the associated countries in a cost-effective way to address the specific problems these countries face but also to ensure the essential benchmarks are formulated with sufficient clarity.¹⁵⁹
 - c. There is a need to reform the way technical assistance projects are designed and delivered, in order to take into account the needs of the beneficiary countries. Two types are recommended:
 - i) Institution-building projects, which need to support institutional reforms and/or horizontal issues of AA implementation, need to be designed with longer time scales (up to five or six years) than those of classic short-term projects. When it comes to institution-building, projects need to be designed with a limited but more focussed range of outcomes while supporting ongoing institution-building processes in a tailored and responsible way, as has been demonstrated by other donors.¹⁶⁰
 - ii) Narrowly defined, short-term (one-three years) technical assistance projects need to be made available only to institutions in which there are clearly identifiable reform-minded teams which have the necessary absorption capacity and willingness to support harmonisation with specific EU rules or procedures. EU-funded technical assistance projects, including Taiex and twinning, are appropriate where sufficiently strong institutions exist and there is an adequate guidance on what kind of AA implementation is sought.
 - d. EU assistance projects are focussed on individual countries and yet deal with many generic issues, such as legal approximation techniques and training for impact assessment or strategic communication. In order to improve the sustainability of the results of particular projects, it is important to create online, publically accessible national depositories which would form a common 'Association Depository' comprising analyses, briefing notes, and training materials.
- P. The three countries and their respective institutions grapple with similar challenges when it comes to the implementation of the AAs. Peer-to-peer contacts between institutions tasked with various

¹⁵⁹ http://www.ipre.md/eapttf2017/image/Policy-Recommendations-2017-EaP-Summit_Upgrading-the-EaP.pdf

¹⁶⁰ These recommendations are based on a bigger study of EU assistance to Ukraine Wolczuk and Zeroulis (2018). The author is also grateful to Duncan Leitch for his suggestions based on his extensive experience of working on assistance projects in Ukraine. See Leitch (2016), *Assisting Reform in Post-Communist Ukraine, 2000–2012*.

aspects of the implementation across the three countries are proving to be particularly useful. There is much scope for developing exchanges between the three countries.¹⁶¹ It is also advisable that cooperation between the three parliaments within the newly created Inter-Parliamentary Assembly is strengthened. It is important to use the Assembly not only for endorsing European integration as a common goal but also as a platform for identifying and solving the common challenges, something in which the European Parliament could assist.

Country specific recommendations

Georgia

- 1) The Prime Minister needs to focus on the most pressing issues and clear bottlenecks in order to overcome the propensity for the ministries to work in an isolated way. By prioritising this in his/her leadership, s/he would give the process the political impetus it is currently lacking.
- 2) The Minister of Foreign Affairs, who is also a deputy Prime Minister, needs to be more directly involved in overseeing and monitoring the process of implementation. Because the coordinating body is located within the MFA, and yet many of the issues need political leadership on domestic reforms, the Minister needs to ensure an effective role in driving domestic implementation. There should be regular meetings between the Minister and deputy ministers responsible for European integration in line ministries to create close and effective lines of communications. Any emerging issues need to be raised within the governmental Commission for European Integration.
- 3) The Implementation Plan is focused on the Association Agenda but it does not provide a coherent reform strategy per se. Individual ministries need to develop their own strategic planning strategies and embed AA implementation within these sectoral strategies.
- 4) The Implementation Action Plan needs to be focused on outcomes and avoid conflating them with actions (i.e. outputs). For example, implementation measures (such as training, seminars, study visits etc.) are actions that can only serve as proxies for outcomes. The implementation plan needs to consider the implementation measures and costs in a more comprehensive and realistic way, as it is predominantly focused on legal approximation and staff training. This will also help with procuring support from international donors.
- 5) Given that most of the implementation is a complex, lengthy and costly process it requires elaborate and detailed planning. In particular areas of implementation, such as the environmental *acquis*, explicit and detailed prioritisation and sequencing should be provided in the new three-year Implementation Plans (on the understanding that the implementation timelines may be longer than three years).

Moldova

- 1) The position of the deputy Prime Minister for European Integration (without portfolio) is misaligned with the positioning of the coordination body, which is in the Ministry of Foreign Affairs and European Integration. Furthermore, the coordination mechanism involves a number of institutions and there is scope for streamlining it. It is up to the government of Moldova to select best option but, first, the government should perform an institutional feasibility check and needs assessment in order to review the current mechanism of coordination of AA implementation and EU integration

¹⁶¹ To facilitate closer cooperation, it would be useful for Moldova to open an embassy in Georgia.

more generally and select the optimal framework. This review would involve dividing functions and roles among the State Chancellery (in charge for strategic coordination of policy planning), the Ministry of Finance (planning and coordination of the Mid-term Financial Budgetary Framework, as well as the EU financial assistance), the MFAEI (policy planning and coordination of AA implementation, maintaining dialogue with EU institutions and member states) as well as the Centre of Legal Harmonisation.¹⁶²

- 2) The multiplicity of plans, their overlap and lack of synchronisation needs to be eliminated. There is a lack of effective strategic planning, as there is a tendency to show compliance by preparing plans rather than implementing them, especially when it comes to vested interests. Public Finance Management, anti-corruption, public procurement, media and judiciary are examples of such areas, where declarations and reform strategies need to be matched by actual implementation.
- 3) It is important to eliminate the problem of proliferation of new institutions without sufficient attention being paid as to how they relate to each other. The role of State Chancellery needs to be carefully considered especially in terms of strategic planning and how this is coordinated with line ministries, especially while individual line ministries have to develop their own capacity for policy planning.
- 4) Sectoral strategies need to be developed and inform the priority setting within the NAPIAA. This requires increasing capacity on EU matters in individual ministries and ensuring that staff working in designated units for European integration are actually aware of, and consulted during policy planning. The NAPIAA needs to be organised according to specific sectors and intended results rather than articles of the AA. It needs avoid conflating actions with outcomes. For example, implementation measures (such as training, seminars, study visits etc.) are actions and are only proxies for outcomes. It is of particular importance, that in the case of more complex and costly aspects of implementation, such as the environmental *acquis*, explicit, detailed prioritisation and sequencing of measures should be developed and included in the NAPIAA.
- 5) The NAPIAA and legal approximation needs to be driven by impact assessments to overcome the tendency to adopt a 'cut and paste' approach to legal approximation (owing to access to the *acquis* in Romanian), which is easier and faster but ultimately less effective. Capacity for impact assessment needs to be created as key part of the broader toolbox for policy planning within the ministries and executive bodies. There should be a dedicated unit within the State Chancellery to spearhead its implementation across the ministries. At the same time, such impact assessment is only feasible and effective if there is a public information on how public finances are managed and utilised.
- 6) Realistic estimates of costs in the NAPIAA (based on impact assessment where appropriate) and specific sources of funding should be provided. The costs of the implementation of the AA need to be explicitly factored in budgetary planning and allocated in the national budget planning.
- 7) The new law on normative acts provides a suitable framework for legal approximation but it needs to be implemented in an effective and non-formulaic way. The formal obligations are necessary but not sufficient for effective legal approximation and it is their quality (including cost estimates and comparative tables) and relevance to the country's priorities, which underpins effective implementation.
- 8) In order to intensify interactions between the MPs dealing with European integration within the Committee for Foreign Affairs and European Integration and counterparts in other associated

¹⁶² See Groza and Codreanu (2015).

countries and in the European Parliament, the chairperson and MPs should be included in the Moldovan representation in the Euronest Parliamentary Assembly and in the Parliamentary Association Committee, including the ad hoc Working Group on the Association Agreements (as done in Georgia).

- 9) At present, the Moldovan parliament does not have a dedicated Committee for European Integration. For the next parliament, it would be advisable to create a special Committee for European Integration that would provide mandatory opinion on compliance, organising joint hearings with other standing committees on key draft EU-related bills as well as post-legislative scrutiny of the implementation of the AA laws. There is also a need to increase the capacity of the parliamentary staff and chancellery units with expertise on EU law and legal approximation.

Ukraine

- 1) In Ukraine the legal basis for the implementation of the AA needs to be updated and streamlined, especially in terms of cooperation between the government and parliament and legal approximation, given that the 2004 law currently in force is outdated and appropriate solutions and remedies are well understood.
- 2) The Action Plan for the AA Implementation needs include an estimate of the costs of implementation (based on impact assessment where appropriate) and specific sources of funding. The costs of the implementation of the AA need to be explicitly factored into budgetary planning and allocated in the national budget allocation for ministries and other agencies.
- 3) The capacity for impact assessment needs to be increased in individual ministries. There should be a dedicated unit within the Secretariat of the Cabinet of Ministers to control and coordinate the preparation of impact assessment by well trained staff across the ministries.
- 4) There is much scope for improving the functioning of the Verkhovna Rada, starting with curtailing the use of legislative initiative by MPs as part of the overdue revisions of the Rules of Procedures. The requirements for MP-proposed draft laws should be commensurate with those required from the government. The office of the Parliament Speaker, who is in charge of the political agenda within the Parliament, needs to be reinforced in order to cope with the demands of the reform process and the AA implementation.¹⁶³ The European Parliament Mission on Internal Reform and Capacity-Building for the Verkhovna Rada provided essential recommendations for key parliamentary reforms in general and, in particular, for enabling the Ukrainian parliament to participate in AA implementation, including capacity and compliance checks; most have yet to be enacted.
- 5) The Joint Governmental-Parliament Legislative Roadmap for the AA Implementation should be streamlined within the agenda setting process of the Rada. Further updates of the Roadmap should be subject to consultation with the EU Delegation.
- 6) The role and the status of the Committee for European Integration needs to be enhanced in the Rules of Procedures, by for example, giving it the right of legislative initiative and for its opinions on compliance to become mandatory for other committees. To provide political leadership within the Rada, it would be desirable to set up a conference of Committee Chairs dedicated to EU matters on a regular basis and/or to empower one of the Deputy Speakers to oversee the EU integration process in the Rada. The Committee for European integration will need to start using its formal

¹⁶³ The parliamentary leadership has expressed an interest in obtaining support via the Reform Delivery Office for the Rada.

powers to block legislation which contradicts AA commitments. In order to fulfil the need for compliance checks, the Committee should be equipped with relevant expert assistance.

- 7) In order to intensify interactions between the MPs dealing with European integration, the chairperson and MPs from the Committee for European Integration should be included in the Ukrainian representation in the Euronest Assembly, including the ad hoc Working Group on the AAs (as is the case in Georgia).

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