



Association agreements between the EU and Moldova, Georgia and Ukraine

European
Implementation
Assessment

STUDY

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European Implementation Assessment

In August 2017, the European Parliament's Committee on Foreign Affairs (AFET) was requested to draw up three own-initiative reports on the implementation of the EU association agreements with Moldova ([2017/2281\(INI\)](#)), Georgia ([2017/2282\(INI\)](#)) and Ukraine ([2017/2283\(INI\)](#)).

Petras Auštrevičius (ALDE, Lithuania) was appointed rapporteur on Moldova.

Andrejs Mamikins (S&D, Latvia) was appointed rapporteur on Georgia.

Michael Gahler (EPP, Germany) was appointed rapporteur on Ukraine.

This European Implementation Assessment (EIA) has been prepared to accompany the scrutiny work of the AFET committee and its implementation reports.

The first part of this assessment, an opening analysis prepared within the European Parliamentary Research Service, presents the most recent opinions of the EU monitoring and supervising bodies on the implementation of the three association agreements (AAs). It also presents the participation of the three associated countries in selected EU programmes.

The second part contains three briefing papers prepared by external experts, who evaluate the implementation of the AAs with Moldova, Georgia and Ukraine in detail. These papers present the successes and shortcomings of the implementation as well as the reforms undertaken. The analyses are accompanied by recommendations on how to improve the implementation processes.

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PART I. IN-HOUSE OPENING ANALYSIS

Table of frequently used abbreviations and acronyms

AA	Association Agreement
Commission	European Commission
CSP	Civil society platform
DCFTA	Deep and Comprehensive Free Trade Area
DG	Directorate-General
EACEA	Education, Audiovisual and Culture Executive Agency
ECA	European Court of Auditors
EEAS	European External Action Service
EaP	Eastern Partnership
ENI	European Neighbourhood Instrument
ENP	European Neighbourhood Policy
ERC	European Research Council
EU	European Union
FDI	Foreign trade investment
FP7	Seventh framework programme for research
H2020	Horizon 2020 – the framework programme for research and innovation
HE	Higher education
HR/VP	High Representative of the Union for Foreign Affairs and Security Policy
JRC	Joint Research Centre
MSCA	Marie Skłodowska-Curie Actions
MFA	Macro-financial assistance
Moldova	Republic of Moldova
NCP	National contact point
PAC	Parliamentary Association Committee
Parliament	European Parliament
PPP	Purchasing power parity
SME	Small and medium-sized enterprises
TBT	Technical barrier to trade
WTO	World Trade Organization

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Executive summary

This opening analysis presents the opinions on the implementation of the association agreements with Moldova, Georgia and Ukraine, expressed in the most recent documents of the EU supervising and monitoring bodies. It also presents information on the participation of the three associated countries in selected EU programmes. Further on, it provides the gist of selected resolutions and recommendations of the European Parliament and reports on the results of the survey on the perception of Moldovan, Georgian and Ukrainian citizens about the EU. The opening analysis is predominantly based on existing EU documents and data.

Moldova, Georgia and Ukraine signed their respective association agreements with the European Union on 27 June 2014. These entered into force on 1 July 2016 in the case of Moldova and Georgia, and on 1 September 2017 in the case of Ukraine.

In November 2017, the European Parliament in its recommendation on Moldova, Georgia and Ukraine addressed to the European Partnership summit, underlined the need to deepen EU cooperation with these countries beyond the association agreements with them and to acknowledge their European aspirations.

While the official EU documents conclude that the implementation of the association agreements with the three countries is progressing, all reports underline the need for further reforms in these countries. The EU documents welcome, *inter alia*, the free mobility of people (visa liberalisation) between the EU and the three associated countries (which entered into force in 2014 in the case of Moldova and in 2017 in the case of Georgia and Ukraine). This information can be found under 'key findings' in chapter 1.9. of the opening analysis.

It is also worth mentioning that the World Bank's 2018 report on doing business ranks Georgia 9th in the world in terms of the ease of doing business there, between Norway and Sweden. Moldova ranks 44th and Ukraine 76th.

Moldova, Georgia and Ukraine's participation in EU programmes such as Erasmus+ and Horizon 2020 is increasing. Ukraine also participates in the Euratom research and training programme and has recently joined the Copernicus programme. Moldova has recently joined the EU Health for growth programme.

The three association countries' citizens perceive the EU quite positively. According to a 2017 poll, 93 % of respondents from Georgia, 82 % of respondents from Moldova and 78 % of respondents from Ukraine said they had a positive or neutral image of the EU.

1.1. Basic statistical data on Moldova, Georgia and Ukraine

Table 1: Basic statistical data on Moldova, Georgia and Ukraine

	Moldova	Georgia	Ukraine
Capital	Chişinău	Tbilisi	Kiev
Area (sq.km)	33 800	69 700	603 000 ³⁾
Population, 2017 (000 persons)	3 550.9	3 718.2	42 584.5*
GDP in current prices: ¹⁾			
– € billion	6.1	13.0	84.2
– €/per capita	1 722	3 484	1 974
GDP per capita (USD) ⁵⁾	2 120	3 810	2 310
GDP per capita, PPP (USD) ²⁾	5 039	9 679	7 916
Annual GDP growth rate, April 2018 (%) ¹¹⁾	3.5	4.5	3.2
Annual inflation rate (%)	3.7 ⁶⁾	2.7	9.8
Unemployment rate, 2016 (%) ¹⁾			
– general	4.2	11.8	9.3
– youth (aged 15-24)	11.2	30.5	23.0
Democracy level 2018 ⁷⁾ (1 – most democratic, 7 – least democratic)	4.93	4.68	4.64
Democracy Index 2017 (rank of 167) ⁸⁾	78	79	83
Doing business 2018 (rank of 190) ⁵⁾	44	9	76
Corruption perception 2017 (rank of 180) ⁴⁾	122	46	130
Global Gender Gap Index (rank of 144) ⁹⁾	30	94	34
World Press Freedom Index 2018 (rank of 180) ¹⁰⁾	81	61	101

Source: Data of the [National Bureau of Statistics of the Republic of Moldova](#), [National Statistic Office of Georgia](#) and [State Statistics Service of Ukraine](#); and:

¹⁾ [Basic figures on the European Neighbourhood Policy – East countries, 2018 edition](#), Eurostat; ²⁾ Data for the SDGs produced by the [UNESCO Institute for Statistics](#); ³⁾ [EU assistance to Ukraine](#), European Court of Auditors' special report 2016; ⁴⁾ [Corruption-Perception Index 2017, Amnesty International](#); ⁵⁾ [Doing Business 2018](#), World Bank; ⁶⁾ [Annual inflation](#), National Bank of Moldova; ⁷⁾ [Nations in transition 2018](#), Freedom House; ⁸⁾ [Democracy Index 2017](#), The Economist Intelligence Unit; ⁹⁾ [The Global Gender Gap Report 2017](#), World Economic Forum; ¹⁰⁾ [World Press Freedom Index 2018](#), Reporters without borders; ¹¹⁾ [World Economic Outlook \(April 2018\)](#), International Monetary Fund.

* Excluding the temporarily occupied territories of the Autonomous Republic of Crimea and the city of Sevastopol.

1.2. Moldova, Georgia, Ukraine and the Eastern Partnership

The Eastern Partnership (EaP) is a joint initiative of the EU and its Member States, which is a specific dimension of the **European neighbourhood policy** (ENP). Launched in 2004 and revised in 2015, the ENP aims to foster stabilisation, security and prosperity in 16 of the EU's closest southern and eastern neighbours.¹ It focuses on four priority areas: a) good governance, democracy, rule of law and human rights; b) economic development for stabilisation; c) security; and d) migration and mobility ([JOIN\(2017\) 18](#) and [JOIN\(2015\) 50](#)).² EU policy support is predominantly provided via the European Neighbourhood Instrument (ENI), with a budget of €15.4 billion for 2014-2020. This support is offered to the ENP countries and Russia, which takes part in cross-border cooperation activities under the ENP ([Regulation \(EU\) No 232/2014](#)).

Figure 1: Map of the Eastern Partnership



Source: [The Eastern Partnership](#), European Parliament.

The EaP was launched in 2009 to strengthen EU relations with six eastern European countries: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine (see figure 1). The EaP is focused on four priority areas of cooperation, identified during the 2015 fourth EaP summit in Riga and reconfirmed at the 2017 fifth EaP summit in Brussels: a) strengthening institutions and good governance; b) economic development and market opportunities; c) connectivity, energy efficiency, environment and climate change; d) mobility and people-to-people contacts.

The EaP is implemented on the basis of bilateral and multilateral cooperation. Bilateral cooperation is based on association agreements, including deep and comprehensive free trade areas (DCFTAs). Association agreements include provisions on sectoral cooperation. In each of the six countries,

¹ Southern neighbours: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine*, Syria and Tunisia; eastern neighbours: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

* Palestine: the designation is not to be seen as a recognition of a State of Palestine and is without prejudice to the individual positions of the Member States on this issue.

² See also: Philippe Perchoc, [The European Neighbourhood Policy](#), In-Depth Analysis, EPRS, European Parliament, 2016, and [European Neighbourhood Policy \(ENP\)](#), European External Action Service website.

cooperation is steered by an association council, an association committee, an association committee in trade configuration and a number of subcommittees covering sectoral cooperation. Multilateral cooperation between all six eastern partner countries and the EU is carried out through thematic platforms and panels. Both bilateral and regional levels of cooperation benefit from the European Neighbourhood Instrument, which provides the basis for bilateral and regional programmes.³

Cooperation is supported by the following key structures: a) the EuroNest Parliamentary Assembly, a platform of cooperation between the Members of the European Parliament and the EaP's national parliaments, b) the EaP civil-society forum, and c) the Conference of local and regional authorities for the Eastern Partnership (CORLEAP).⁴

In June 2017, 20 (updated) tangible deliverables for the Eastern Partnership, to be achieved by 2020, were adopted ([SWD\(2017\) 300](#)). Seventeen deliverables were established within the four priority areas of cooperation; the remaining three have a cross-cutting character and cover civil society, gender issues and the media (see Annex I). These deliverables will contribute to a stronger society, economy, governance and connectivity of the partner countries, thereby boosting their resilience in a broad societal sense, as foreseen by the 2016 EU Global Strategy.⁵

The fifth EaP summit took place in November 2017 in Brussels.⁶ On this occasion, the European Parliament prepared recommendations to the Council, the Commission and the European External Action Service ([2017/2130\(INI\)](#)).⁷ The Parliament recommended, *inter alia*, adopting a forward-looking attitude toward the EaP and setting a clear political vision for the partnership as a long-term policy.

The Parliament further recommended a longer-term 'EaP+' model for those associated countries that have made substantial progress in implementing AA/DCFTA-related reforms. This model could, as a start, offer access to the customs-, energy- and digital unions and the Schengen area. As regards Moldova, Georgia and Ukraine, the Parliament underlined the need to deepen cooperation with them beyond their association agreements with the EU and to acknowledge their European aspirations.

In their [joint declaration](#) at the fifth EaP summit, the participants welcomed the achievements of the EaP to date and the strengthened differentiation in bilateral relations between the EU and each of the partner countries, while also reconfirming their commitment and the high importance they attach to the EaP. The participants further acknowledged the European aspirations and European choice of the partners concerned, as stated in their association agreements.

The summit participants also endorsed the twenty deliverables for 2020, set in four priority areas of cooperation identified in Riga in 2015 and reconfirmed at the Brussels summit in 2017. They also endorsed the revised multilateral structure of the EaP, geared towards the implementation of the 20 deliverables.

In relation to Moldova, Georgia and Ukraine, the summit participants commended 'the full entry into force of the Association Agreements and Deep and Comprehensive Free Trade Areas with Georgia, the Republic of Moldova and most recently with Ukraine following the December 2016 decision by the EU Heads of State or Government'. Furthermore, the joint declaration recognised that '...while

³ See also: [EU cooperation with Eastern Neighbourhood](#), presentation by the European Commission.

⁴ See also: Philippe Perchoc: [Eastern Partnership: 2017 Brussels summit. Taking stock and new objectives](#), Briefing, EPRS, European Parliament, November 2017 and EuroNest Parliamentary Assembly [website](#).

⁵ [Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign And Security Policy](#), European External Action Service, 2016.

⁶ [Eastern Partnership summit, 24/11/2017](#), European Council.

⁷ Philippe Perchoc, *op.cit.*

preserving the inclusivity of the EaP, it is timely to engage the AA/DCFTA partners in joint discussions on the progress, opportunities and challenges concerning the association-related reforms, as requested by these partners, and with the aim of facilitating full implementation of the AA/DCFTAs'.

President Donald Tusk, in his [remarks](#) after the summit, stated that he 'would prefer that the wording of the joint declaration were more ambitious', but the participants – based on compromise – decided that 'the demonstration of our unity is the most important objective'.

The next Eastern Partnership summit is planned for 2019.

1.3. Implementation of the AAs according to the EU monitoring and supervising bodies

Table 2: The EU's association agreements with Moldova, Georgia and Ukraine

	Moldova	Georgia	Ukraine
Signing	27 June 2014	27 June 2014	21 March 2014 and 27 June 2014
Provisional application since	1 September 2014	1 September 2014	1 November 2014 (DCFTA: 1 January 2016)
Entry into force	1 July 2016	1 July 2016	1 September 2017

The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova was signed on 27 June 2014 ([OJ L 260 of 30.8.2014](#)). The agreement has provisionally been applied in part since 1 September 2014; it came into force on 1 July 2016.

The Association Agreement between the European Union and the European Atomic Energy Community and their Member States and Georgia was signed on 27 June 2014 ([OJ L 261 of 30.8.2014](#)). The agreement has provisionally been applied in part since 1 September 2014; it came into force on 1 July 2016.⁸

The Association Agreement between the European Union and the European Atomic Energy Community and their Member States and Ukraine was signed on 27 June 2014 ([OJ L 161 of 29.5.2015](#) and [OJ L 181 of 12.7.2017](#)). The agreement has provisionally been applied since 1 November 2014, with the DCFTA being provisionally applied in part since 1 January 2016; it came into force on 1 January 2017.⁹

The EU monitors and evaluates the application and implementation of the association agreements (AAs) through structures set up in accordance with the provisions of the AAs. The institutional framework chapters of the AAs specify the establishment and functioning of four bodies per country: an association council, an association committee, a parliamentary association committee and a civil-society platform:¹⁰

⁸ [EU-Georgia Association Agreement fully enters into force](#), Press release of 1 July 2016, European Commission.

⁹ [EU-Ukraine Association Council - Joint communiqué](#), No 760/17 of 8.12.2017, Council of the European Union.

¹⁰ Articles 433-443 of the AA with Moldova, Articles 403-413 of the AA with Georgia, Articles 460-470 of the AA with Ukraine.

- *The association council's main role is to supervise and monitor the application and implementation of the AA and to periodically review the functioning of the AA in light of its objectives. The association council meets at the ministerial level, regularly, at least once a year. Additionally, the association council examines any major issues arising within the framework of the AA and any other bilateral or international issues of mutual interest.*
- *The association committee's role is to assist the association council in the performance of its duties. In principle, it should be composed of senior civil servants from the EU and, respectively, Moldova, Georgia and Ukraine.*
- *The parliamentary association committee (PAC) consists of representatives of the European Parliament and the parliaments of, respectively, Moldova, Georgia and Ukraine. The PAC is a forum for the members of parliaments to meet and to exchange views. Each PAC establishes its own rules of procedure.*
- *The civil-society platform (CSP) has been established to promote regular meetings of representatives of the civil societies from both sides of the AAs. The CSP consists of civil-society representatives from the EU, including members of the European Economic and Social Committee and representatives of the civil community of, respectively, Moldova, Georgia and Ukraine. Each CSP establishes its own rules of procedure.¹¹*

In the case of Ukraine, bilateral summits are also organised on the basis of Article 460.1 of its AA.

The findings made by the EU as a result of monitoring and evaluating the application and implementation of the association agreements are also reflected a) in the EU Foreign Affairs Council conclusions on EU cooperation with, respectively, Moldova, Georgia and Ukraine; and b) in association implementation reports jointly prepared by the Commission and the HR/VP.

The latest documents produced by the above-mentioned bodies (except the association committees) with regard to Moldova, Georgia and Ukraine are presented below in chronological order (starting from the latest).

Moldova

The **EU-Moldova Association Council** held its fourth meeting on 3 May 2018.¹² The EU Foreign Affairs Council adopted its relevant conclusions on 26 February 2018; the association implementation report was published on 5 April 2018 (see below).

In the [joint statement](#) following the fourth meeting, the Association Council stressed, inter alia, the need for translating the adopted legislation and policies into concrete actions and underlined the importance of structural reforms for growth, job creation and poverty reduction. The Association Council also confirmed the strict conditionality of EU assistance, subject to the presence of 'concrete and satisfactory progress in all areas of reform, including justice and anti-corruption', and at the

¹¹ What is more, the CSPs are informed of the decisions and recommendations of the association councils and may make recommendations to them. The association committees and PACs organise regular contacts with representatives of the CSPs 'in order to obtain their views on the attainment of the objectives of this AAs'.

¹² The first meeting of the Association Council on Moldova took place on 15 March 2015, the [second meeting](#) on 13 March 2016, the [third meeting](#) on 31 March 2017 and the [fourth meeting](#) on 3 May 2018.

same time urged Moldova, *inter alia*, to progress in investigating the 2014 country's bank fraud cases.

The Association Council also welcomed the increase in trade volumes and the overall good progress made under the DCFTA and acknowledged the efforts toward promoting renewable energy sources and energy efficiency, and appreciated Moldova's participation in EU-led crisis management operations. The Association Council also acknowledged the recent steps to associate civil society with decision-making processes, and also welcomed the effective implementation of the short-term visa-free regime and the progress under the 5+2 process concerning Transnistria.

On 5 April 2018, the Commission and the HR/VP published a joint **Association implementation report** on Moldova ([SWD\(2018\) 94](#)).¹³ The report highlights Moldova's progress in implementing certain reforms (such as the reform of the national sanitary and phytosanitary measures to boost food safety) and the DCFTA provisions. The report however concludes that further efforts are required, for instance in reforming the justice sector and fighting against corruption.

It is worth pointing out that Moldova and the EU agreed on setting 13 key priorities for reforms in the Association Agenda 2017-2019, including strengthening the judiciary's independence, preventing and counteracting corruption, increasing energy security and energy efficiency, and implementing trade-related reforms.

The **EU-Moldova Parliamentary Association Committee** (PAC) held its sixth meeting on 5 April 2018.¹⁴ In the [final statement and recommendations](#), the PAC stressed the importance of an impartial and well-functioning judiciary and of ensuring that the upcoming parliamentary elections comply with the international obligations and standards for democratic elections. The PAC also expressed its satisfaction with the increasing volume of trade as a result of the implementation of the DCFTA, commended the role played by civil society in fostering participation in the political debate, welcomed the reforms of the central public administration and called for reforms in the energy sector.

The **EU-Moldova Civil Society Platform** (CSP) held its third meeting on 6 March 2018. In the [joint declaration](#) following the meeting, the CSP welcomed the adoption of the revised EU-Moldova Association Agenda, which identified 13 key priority areas for the reform process. At the same time, the CSP underlined the 'rather poor' implementation rate of the AA/DCFTA Action Plan and the Priority Reform Action Roadmap and called on the EU 'to continue monitoring and to impose strict conditionality on the Moldovan authorities'.

The CSP also took note of the signature, in November 2017, of a Memorandum of Understanding, a Loan Facility Agreement and a Grant Agreement on micro-financial assistance worth €100 million for the 2017-2018 period.

On 28 February 2018, the Foreign Affairs Council adopted its conclusions on the Republic of Moldova ([No 6280/18](#)) where it stressed, among other things, the importance of respecting effective democratic mechanisms (including a multi-party democratic system), the rule of law and human rights.

The Council welcomed the reforms aimed at ensuring macroeconomic and financial stability, and those aimed at restoring credibility with international donors. The Council also underlined the need for the country to continue implementing the reforms started in 2016. The Council also recalled that

¹³ The previous joint report was published on 10 March 2017 ([SWD\(2017\) 110](#)).

¹⁴ The sixth meeting of the EU-Moldova PAC was held in Chisinau on 5 April 2018 and was co-chaired by Andi Cristea, on behalf of the European Parliament, and Eugen Carpov, on behalf of the Parliament of the Republic of Moldova.

EU assistance¹⁵ is based on strict conditionality, and is related to satisfactory progress in the field of reforms. At the same time, the Council welcomed the signature in November 2017 of a memorandum of understanding, a loan facility agreement and a grant agreement on micro-financial assistance with Moldova.

The Council recalled that Moldova needs to press on with steps to ensure media freedom and pluralism and the fight against corruption (with tangible results), as well as to implement a thorough reform of the judiciary (including the prosecution service). The Council expressed regret that the new electoral law did not address some of the key recommendations of the Council of Europe Venice Commission and the OSCE/Office for Democratic Institutions and Human Rights' joint opinion.

On 28 May 2018, the Council adopted the **EU Annual Report on Human Rights and Democracy in the World 2017**. The report underlined, *inter alia*, that in 2017, Moldova adopted reforms shifting its electoral system from a proportional to a mixed one, counter to the June 2017 joint opinion issued by the Council of Europe Venice Commission and the Organisation for Security in Europe/Office for Democratic Institutions and Human Rights, which referred, *inter alia*, to the lack of consensus on the proposed reform. Moldova has also signed the Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted a new Human rights action plan covering the 2018-2022 period and updated the EU-Moldova Association Agenda. The EU report also pointed to areas for improvement, such as detention conditions and the prevention of ill-treatment and torture as well as investigations and prosecutions on the massive bank fraud unveiled in 2014. The report further acknowledged the EU financial support provided to Moldova, particularly through the ENI.¹⁶

On 13 January 2017, the Commission adopted a proposal for €100 million in **macro-financial assistance** (MFA)¹⁷ to Moldova, out of which up to €40 million in grants and up to €60 million in medium-term loans ([COM\(2017\) 014](#)). The Parliament and the Council approved the proposal by [Decision \(EU\) 2017/1565](#) and the assistance became operational on 23 September 2017.¹⁸ The first disbursement under the MFA programme has not yet taken place and is linked to the staying of the IMF programme on track and the fulfilment of specific policy conditions and political preconditions (e.g. the functioning of effective democratic mechanisms, respect for the rule of law and respect for human rights).

The **European Court of Auditors** published its Special Report No 13/2016 on [EU assistance to Moldova](#)¹⁹ in September 2016. The Commission has also taken measures to follow up on the report on the respective Council conclusions of 19 December 2016.

Georgia

¹⁵ According to Council [information](#), the EU assistance supports the modernisation of Moldova through reforms for growth and jobs, for respect of human rights and for strengthening democracy. The EU has agreed to provide macro-financial assistance to Moldova subject to certain precise and specific preconditions, including political ones. A memorandum of understanding, a loan facility agreement and a grant agreement for this macro-financial assistance was signed in November 2017.

¹⁶ [EU Annual Report on Human Rights and Democracy in the World 2017](#), Council of the European Union, No 9122/18, 28 May 2018, and [Country Updates on Human Rights and Democracy 2017](#).

¹⁷ See also: Ana Claudia Alfieri, [Macro-financial assistance](#), Briefing, How the EU budget is spent, EPRS, European Parliament, June 2017.

¹⁸ See also: European Commission's website on [micro-financial assistance to Moldova](#) and Naja Bentzen: [Micro-financial assistance to Moldova](#), At a Glance, EPRS, European Parliament, July 2017.

¹⁹ [EU assistance for strengthening the public administration in Moldova](#), Special report No 13/2006, European Court of Auditors.

The **EU-Georgia Parliamentary Association Committee** (PAC) held its sixth meeting on 26 April 2018. In the [final statement and recommendations](#), the PAC welcomed the deepening of EU-Georgia relations and expressed satisfaction with the accountability and transparency of the AA implementation process. The PAC, *inter alia*, welcomed the good functioning of the visa-free travel system and the progress towards the integration of Georgia's energy market with that of the EU through regulatory convergence. The PAC also underlined the importance of ongoing public administration reform and urged the Georgian government to pursue the implementation of public finance management reform. The PAC encouraged the Commission to further enhance its assistance in line with the political ambitions of the EU-Georgia partnership.

The **EU-Georgia Civil Society Platform** (CSP) held its third meeting on 22 March 2018. In the [joint declaration](#) following the meeting, the CSP acknowledged the overall progress achieved in implementing the EU-Georgia Association Agenda. It furthermore welcomed the strengthening of democracy and the rule of law as well as the achievements in improving the business and investment climate and the SME sector in Georgia. Additionally, the CSP expressed concern over the repeated violation of human rights and discrimination on the grounds of ethnic origin in both breakaway regions of Georgia.

The **Association Council** held its fourth meeting on 5 February 2018.²⁰ In the [joint press release](#) (No 50/2018) following the meeting, it welcomed the progress in the implementation of the AA/DCFTA and in EU-Georgia relations. It also commended Georgia, *inter alia*, for the respect for fundamental freedoms during its local elections, for the adoption of constitutional reform and reforms in the justice sector, for the evolution towards a parliamentary system, and for the effective implementation of the short-stay visa-free regime. The Association Council also encouraged Georgia to increase women's participation in politics and to effectively implement the Istanbul Convention on preventing and combating violence against women and domestic violence, as well as the anti-discrimination law. The Association Council stressed Georgia's strategic role in the field of energy, transport and connectivity. Finally, it also welcomed the Commission's proposal of a new macro-financial assistance programme to Georgia of up to €45 million.

On 9 November 2017, the Commission and the HR/VP published their joint **Association implementation report** ([SWD\(2017\) 371](#)), which underlined Georgia's commitment to implementing reforms, while also strengthening democracy and the rule of law. The report also noted Georgia's achievements in the area of phytosanitary policy and legislation, and recalled the efforts in the area of food safety to ensure the effective access of Georgian agriculture products to the EU market. The report also pointed to the mutual benefits of the DCFTA.

Furthermore, the report stressed the EU support for Georgia's sovereignty and territorial integrity within its internationally recognised borders, and for its conflict resolution efforts.²¹

In its part dealing with Georgia, the **EU Annual Report on Human Rights and Democracy in the World 2017** underlined, *inter alia*, that in 2017, the country continued implementing its AA with the EU, embarked on a fundamental constitutional reform; progressed in the area of human rights; and pressed ahead with the implementation of the 2016 third package of judiciary reforms and the adoption of the revised anti-corruption strategy and action plan for 2017-2018. The EU report also pointed out actions for improvement, such as investigating and prosecuting human rights violations committed by law enforcement agencies; combating violence against women; ensuring

²⁰ The [first meeting](#) of the Association Council on Georgia took place on 17 November 2014, the [second meeting](#) on 16 November 2015, the [third meeting](#) on 2 December 2016 and the [fourth meeting](#) on 5 February 2018.

²¹ See also: Philippe Perchoc, [Georgia: European engagement in an unstable environment](#), Briefing, EPRS, European Parliament, February 2017.

gender equality; and strengthening the fight against drugs. It furthermore noted a need for achieving progress in combating child poverty and improving labour conditions.²²

On 29 September 2017, the European Commission proposed a new batch of **macro-financial assistance (MFA)** to Georgia worth €45 million (of which up to €10 million in grants and up to €35 million in loans) ([COM\(2017\) 559](#)), which the European Parliament approved in March 2018 and the Council in April 2018 ([Decision \(EU\) 2018/598](#)). While giving their consent, the Members of the European Parliament insisted on preconditions for the assistance: 'respect for democracy, rule of law and human rights, along with efficient and transparent public financing and structural reforms'.²³

in recent years, Georgia has had access to macro-financial assistance worth €46 million (half of which in grants and half in loans) based on [Decision No 778/2013/EU](#). The assistance was fully implemented in 2015-2017, with the last disbursement made in May 2017 ([COM\(2017\) 559](#)).²⁴

Ukraine

The fourth meeting of the **EU-Ukraine Association Council** was held on 8 December 2017.²⁵ In the [joint communiqué](#) following the meeting, the Association Council declared the EU's support for Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders, while at the same time expressing concern over the deterioration in the security situation in eastern Ukraine. The Association Council welcomed the country's progress in pursuing a comprehensive reform agenda, while also underlining the need to step up reform efforts.²⁶ The Association Council highlighted the importance of media freedom and a pluralistic media environment. It furthermore called for the continuation of reforms in the energy sector and welcomed the deepening of EU-Ukraine bilateral trade relations.

The 19th **EU-Ukraine summit** took place on 12-13 July 2017. According to the information provided by the Council, the leaders discussed: 1) the importance of pursuing an ambitious reform process, especially in the fight against corruption; 2) the conflict in eastern Ukraine and Russia's illegal annexation of Crimea and Sevastopol, including the implementation of the Minsk agreements; and 3) ways to maximise the benefits/potential of the EU-Ukraine association agreement.²⁷

The **EU-Ukraine Parliamentary Association Committee (PAC)** held its seventh meeting on 18- 19 April 2018. In the [final statement and recommendations](#) following the meeting, the PAC *inter alia* stressed that the AA did not constitute the final goal in EU-Ukraine relations and welcomed Ukraine's European aspirations.²⁸ The PAC also acknowledged the reform efforts made by the Ukrainian authorities since 2014.

At the same time, the PAC expressed its disappointment at the further lack of progress in the implementation of the Minsk agreements and recalled that the security situation in the east of Ukraine remained tense and continued to gradually deteriorate, yielding a high number of casualties. The PAC also expressed its deep concern about the environmental deterioration in the

²² [EU Annual Report on Human Rights and Democracy in the World 2017](#), Council of the European Union, No 9122/18, 28 May 2018, and [Country Updates on Human Rights and Democracy 2017](#).

²³ [MEPs approve further financial help to Georgia](#), Press release of 14 March 2018, European Parliament.

²⁴ See also: European Commission's website on [micro-financial assistance to Georgia](#).

²⁵ The [first meeting](#) of the Association Council on Ukraine took place on 15 December 2014, the [second meeting](#) on 7 December 2015, the [third meeting](#) on 19 December 2016 and the [fourth meeting](#) on 8 December 2017.

²⁶ On the Ukrainian reforms, see also: Naja Bentzen: [Ukraine's on-going reform process: Progress and challenges since Euromaidan](#), Briefing, EPRS, European Parliament, July 2017.

²⁷ [EU-Ukraine Summit, 12-13/07/2017](#), Council of the EU website.

²⁸ On EU-Ukraine relations, see also: Naja Bentzen, [Ahead of the EU-Ukraine Summit: Increasing pressure for progress](#), Briefing, EPRS, European Parliament, November 2016.

east of Ukraine. The PAC also stressed its discontent with the fact that, four years after the illegal annexation of Crimea and the city of Sevastopol by the Russian Federation, no concrete proposal for an international format of negotiations on de-occupation of the peninsula (in line with point 1.5 of the EP resolution of 16 March 2017 on the subject) had been discussed in international fora.

In relation to the EU macro-financial programme, the PAC expressed its regret that Ukraine had not fulfilled the conditions that would have given it access to the last tranche of the previous EU macro-financial programme. At the same time, the PAC welcomed the proposal for new macro-financial assistance and called on Ukraine to meet the conditions built into the proposal as soon as possible.

The **EU-Ukraine Civil Society Platform** (CSP) held its sixth meeting on 12 April 2018. In the [joint declaration](#) following the meeting, the CSP welcomed the new action plan on implementing the association agreement. At the same time, the CSP called, *inter alia*, for determined and consistent implementation of reforms and for the completion of the online monitoring system of the AA. It furthermore stressed the need for a system of public, scientific and technical expertise based on European rules. The CSP also called on the Ukrainian parliament to develop and pass a framework law on European integration and implementation of the AA. Moreover, the CSP called for full complete fulfilment of the action plan on implementing the national human rights strategy and expressed its concern about the serious ongoing violations of human rights in Crimea (particularly concerning Crimean Tatars) and occupied territories in the east of Ukraine.

On 9 November 2017, the Commission and the HR/VP published their joint **Association implementation report** ([SWD\(2017\) 376](#)). The report underlined, *inter alia*, that Ukraine had implemented structural reforms that had generated positive trends in the economic and social sphere (despite internal and external challenges), including reforms in the fight against corruption. The report also identified five priority sectors for further reform: pension, privatisation, health care, land ownership, and education. The report furthermore highlighted the legislative developments that have taken place in the country in areas such as the electricity market, energy efficiency, the environment, education and decentralisation, economic growth and currency stability.

The report underlined that despite the difficult economic circumstances related to the conflict in the east, total trade between the EU and Ukraine had increased. According to the report, in 2017 the EU continued to provide macro-financial and reform assistance to support Ukraine's stabilisation and reform process.

In its part dealing with Ukraine, the **EU Annual Report on Human Rights and Democracy in the World 2017** stressed that 'the human rights situation in Ukraine continues to be impacted negatively by the ongoing active conflict in the eastern part of the country, as a consequence of the Russian destabilising actions, as well as by the illegal annexation of the Crimean peninsula by the Russian Federation' and that as a result of conflict 'there are approximately 1.6 million internally displaced persons (IDPs), who continue to face a difficult situation'. The EU report further pointed out that overall, minority rights in Ukraine remain protected and the 'right to education in the context of the new Law on Education was also raised'. Among the areas identified as being problematic was the lack of safety of journalists; the fact that although the Ukrainian government had signed the Istanbul Convention on preventing and combating violence against women and domestic violence, its national parliament had not ratified it (while also pointing out that 'however, some domestic legislation has been aligned with it'); the fact that the fight against corruption and law enforcement were not sufficiently effective; and the fact that the ambitious national human rights strategy and action plan were being implemented at a very slow pace. The EU report

underlined the EU financial and technical support provided to the Ukrainian civil society, among others.²⁹

On 8 March 2018, the Commission proposed a **new batch of macro-financial assistance (MFA)** for Ukraine worth €1 billion, to support economic stabilisation and structural reforms in the country ([COM\(2018\) 127](#)).³⁰

The **European Court of Auditors (ECA)** published its report on [EU assistance to Ukraine](#) for the 2007-2015 period in 2016. EU assistance amounted to €1.6 billion in grants (half of which in the form of budget support) and €3.4 billion in macro-financial loans. The ECA concluded that EU assistance had been partially effective in producing tangible and sustainable results in public finance management and the fight against corruption; in improving governance in the gas sector; and in securing gas supplies via Ukraine.

1.4. Main similarities and differences between the AAs and challenges faced in implementing them

In 2017, the **Centre for European Policy Studies** prepared a comparative analysis on the three association agreements,³¹ which concluded that the three AAs are similar in structure, provisions and level of market opening. The reasons given for these similarities were that: a) the AAs shared the same policy framework, i.e. the European Neighbourhood Policy and the Eastern Partnership; b) the starting point for all three AA-related negotiations was very similar; c) the AAs with Moldova and Georgia were modelled upon the AA with Ukraine. The analysis also pointed to differences between the AAs, which are mainly due to the different economic situations and political preferences of the three associated countries.

The analysis established that all three AAs have the same broad coverage. Their institutional framework is almost identical, with the association council standing at the top. None of the AAs mentions EU accession, 'despite the efforts of the partner countries during the negotiations'. The three AAs also include similar provisions related to political dialogue and cooperation in the area of Common Foreign and Security Policy as well as in the area of justice, freedom and security. However, with regard to the first area, only the Ukraine AA envisages close collaboration with the European Defence Agency to strengthen military-technical cooperation, while with regard to the second area, while the Moldova and the Georgia AAs envisage cooperation with FRONTEX, the Ukraine AA does not. Similarly, while the Moldova and the Georgia AAs include provisions related to their 'frozen' conflicts or breakaway regions, the Ukraine one does not. Conversely, all three AAs include a title on economic and sector cooperation, with most chapters being very similar, and all AAs include almost similar titles on general and final provisions.

The analysis revealed that the structure and outline of the three countries' DCFTAs are almost identical. However, in areas such as trade in goods, the Ukraine and Moldova DCFTAs foresee a gradual and asymmetric trade liberalisation with regard to the pace of tariff elimination, while the Georgia one does not. Furthermore, only the Moldova and the Georgia DCFTAs foresee reducing and eliminating tariffs on the basis of a negative list and only the Ukraine DCFTA includes a sector-specific safeguard or transitional measures (e.g. with regard to cars, export duties and textiles). The provisions in the three technical barriers to trade (TBT) chapters are very similar, particularly as far

²⁹ [EU Annual Report on Human Rights and Democracy in the World 2017](#), Council of the European Union, No 9122/18, 28 May 2018, and [Country Updates on Human Rights and Democracy 2017](#).

³⁰ See also: European Commission website on [micro-financial assistance to Ukraine](#) and Naja Bentzen: [Further macro-financial assistance to Ukraine](#), EPRS, European Parliament, June 2018.

³¹ Guillaume Van der Loo, [The EU's Association Agreements and DCFTAs with Ukraine, Moldova and Georgia: A Comparative Study](#), 24 June 2017, Centre for European Policy Studies (CEPS).

as the Moldova and the Ukraine DCFTAs as concerned, while the Georgia DCFTA includes softer and fewer approximation commitments. As for competition, only the Ukraine DCFTA includes the approximation clause. The chapters on sanitary and phytosanitary measures are also almost identical as are the chapters on customs and trade facilitation and those on public procurement.

The Centre for European Policy Studies also prepared a comparative analysis of the handbooks to the three AAs.³² The analysis underlined that the AA-DCFTAs are 'a truly innovative legal instrument in the EU's external relations because of their comprehensiveness, complexity and conditionality', and that AAs 'belong to a very small group of "integration-oriented agreements"'. The author compared the AA-DCFTAs to the European Economic Area (EEA) agreement.

The analysis identified agriculture as a key economic sector in all three countries, while also pointing out the slow and challenging adoption of international standards for food safety. Among the obstacles identified were the high costs of implementation in some areas such as sanitary and phytosanitary measures and environmental protection.

A November 2017 study prepared for the **Policy Department** of the European Parliament³³ called the signing and ratification of the AAs an 'impressive affirmation of Brussels' soft power', particularly due to the fact that the AAs came 'neither with a membership promise nor with the kind of financial assistance that is given to the EU's Central European member states'. According to the study, Moldova, Georgia and Ukraine's AAs align them with the EU, and together with the associated assistance they serve as key drivers of reform in these countries.

As for implementation, the study acknowledged the 'technical and legislative progress with regards to AA implementation' and noted the rise of exports to the EU in all three countries. Among the biggest challenges identified were those related to: the rule of law; judicial and media reform; the lack of political will to depoliticise state institutions; and the fight against corruption.

1.5. Visa liberalisation

- **Moldova.** *Since 28 April 2014, Moldovan citizens with a biometric passport can travel to the Schengen area without a visa for short stays of up to 90 days in any 180-day period. The upgraded [Visa Facilitation Agreement](#) continues to apply to Moldovan citizens with non-biometric travel documents, but with a reduced visa fee of €35, a fee waiver for students, those visiting family in the EU and various other groups of citizens, as well as easier access to multiple-entry visas with a long validity.*³⁴

*Over a period of four years, more than 1 million Moldovan citizens travelled to the Schengen area without a visa.*³⁵ *As regards irregular migration challenges, according to the Commission's report (for the 2014-2016 period), the number of Moldovan citizens refused entry at the external Schengen borders has increased from 1 845 (in 2014) to over 2 725 (in 2015) to 4 660 (in 2016). The number of Moldovan citizens apprehended as illegally present in the Schengen area amounted to 2 245 in 2014, increasing to 4 050 in 2015 and to 7 660 in 2016. Asylum applications*

³² Katarzyna Wolczuk, [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](#), 27 June 2017, Centre for European Policy Studies (CEPS).

³³ [The state of implementation of the associations and free trade agreements with Ukraine, Georgia and Moldova with a particular focus on Ukraine and systemic analysis of key sectors](#), Policy Department, European Parliament, November 2017.

³⁴ Report from the Commission to the European Parliament and the Council, [First Report under the Visa Suspension Mechanism](#) (COM(2017) 815 final).

³⁵ EU assistance to Moldova, European Commission, June 2018.

by Moldovan citizens in the Schengen countries increased from 475 in 2014, to over 1 850 in 2015, to 3 675 in 2016. Over 95 % of the asylum applications came from first-time applicants³⁶

According to the [Passport Index 2018](#), visa liberalisation has elevated the attractiveness of Moldovan passports, promoting them to 42th position in the world ranking, shared with Georgia.

A Mobility Partnership³⁷ with Moldova was signed on 5 June 2008.³⁸ It offers a political framework for dialogue and cooperation on matters related to migration and mobility. The EU has provided support to Moldova for reforms in the areas of justice and security (including in the area of the fight against corruption, where it relates to visa liberalisation).³⁹

- **Georgia.** Since 28 March 2017, Georgian citizens with biometric passports have been able to travel to the Schengen area without a visa for short stays of up to 90 days in any 180-day period. Ireland and the United Kingdom are exempted from the application of these provisions, in accordance with the protocols annexed to the EU treaties.⁴⁰

Between 28 March 2017 and 30 April 2018, 253 000 Georgian citizens enjoyed visa-free travel to the Schengen area, and this figure only takes into account those who left the country by plane (air borders).⁴¹ As regards irregular migration challenges, according to Eurostat data, 1 330 Georgian citizens were refused entry at the external borders of the Schengen+ area in 2015. There were 5 405 Georgian citizens apprehended as illegally present in the Schengen+ Area in 2015 and 5 240 in 2016. The number of asylum seekers in the Schengen+ area increased from 8 110 in 2015 to 8 700 in 2016.⁴²

According to the [Passport Index 2018](#), visa liberalisation elevated the attractiveness of the Georgian passports to 42nd position in the world ranking, shared with Moldova.

A Mobility Partnership with Georgia was launched in 2010 as the political framework for cooperation on migration and mobility issues between the EU and the country. About 15 projects are currently being carried out within this framework.⁴³

- **Ukraine.** Since 11 June 2017, Ukrainian citizens holding a biometric passport have been able to travel visa-free to the Schengen area for short stays of up to 90 days in any 180-day period.⁴⁴ According to information held by the Commission, there were 9 594 490 entries of Ukrainian citizens to the Schengen area between 11 June and 10 November 2017. As regards irregular migration challenges, 23 795 Ukrainian citizens were refused entry at the external borders of the Schengen+ area in 2015 and 22 495 in 2016. There were 23 480 Ukrainian citizens illegally present

³⁶ Commission staff working document (accompanying the Commission's First Report under the Visa Suspension Mechanism ([SWD\(2017\) 480 final](#))).

³⁷ [Joint Declaration on a Mobility Partnerships between the European Union and the Republic of Moldova](#), Council of the European Union Brussels, May 2008, No 9460/08; and [Information](#) on projects supported by the EU and EU Member States under the EU-Moldova Mobility Partnership.

³⁸ The EU-side partners in the Mobility partnership are: the European Commission, FRONTEX, the European Training Foundation and 16 EU Member States: Bulgaria, the Czech Republic, Cyprus, France, Germany, Greece, Italy, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, Hungary and Latvia.

³⁹ [EU-Moldova relations, Factsheet](#), European External Action Service.

⁴⁰ Report from the Commission to the European Parliament and the Council, [First Report under the Visa Suspension Mechanism](#) (COM(2017) 815 final).

⁴¹ EU assistance to Georgia, European Commission, June 2018.

⁴² Commission staff working document accompanying the Commission's First Report under the Visa Suspension Mechanism ([SWD\(2017\) 480 final](#)).

⁴³ [EU-Georgia relations, Factsheet](#), European External Action Service.

⁴⁴ Report from the Commission to the European Parliament and the Council, [First Report under the Visa Suspension Mechanism](#) (COM(2017) 815 final);

See also: Anita Orav, [Visa liberalisation for Ukraine](#), At a Glance, EPRS, European Parliament, March 2017.

in the EU+ area in 2015 and 29 565 in 2016. The number of asylum seekers in the Schengen+ area decreased from 22 100 in 2015 to 12 460 in 2016.⁴⁵

According to the [Passport Index 2018](#), visa liberalisation elevated the attractiveness of the Ukrainian passport to 30th position in the world ranking.

Ukraine does not have a mobility partnership with the EU.⁴⁶

1.6. European Parliament's selected recommendations and resolutions

Selected recommendations and resolutions of the European Parliament are presented in a chronological order, starting with the latest one:

- The European Parliament recommendations of 16 October 2017 to the Council, the Commission and the EEAS **on the Eastern Partnership, in the run-up to the November 2017 Summit (2017/2130(INI))**, as already mentioned in part 1.2: 'called for inter alia, a forward-looking attitude toward the EaP and setting a clear political vision of the partnership as a long-term policy. Moreover, the Parliament recommended a longer-term 'EaP+' model for those associated countries that have made substantial progress in implementing AA/DCFTA-related reforms. The 'EaP+' model could offer, in the first place, access to the customs-, energy- and digital union and the Schengen area. In relation to Moldova, Georgia and Ukraine, the Parliament underlined the need to deepen cooperation beyond the association agreements and to acknowledge their European aspirations.
- The European Parliament resolution of 5 October 2017 **on the cases of Crimean Tatar leaders Akhtem Chygoz, Ilmi Umerov and journalist Mykola Semena (2017/2869(RSP))**, inter alia, called for the imposition of restrictive measures on all individuals responsible for human rights violations, including the Crimean and Russian officials directly responsible for charging and sentencing the above-mentioned persons; such measures should include freezing assets in EU banks and imposing travel bans. The EP reiterated its support for the EU's decision to prohibit imports from Crimea and the export of certain goods and technologies, investment, trade and services to Crimea.
- The European Parliament resolution of 15 June 2017 **on the case of Azerbaijani journalist Afgan Mukhtarli (2017/2722(RSP))**, recalled that Afgan Mukhtarli, an exiled Azerbaijani investigative journalist who had moved to Tbilisi in 2015, disappeared from Tbilisi on 29 May 2017 and resurfaced a few hours later in Baku. In the resolution, the Parliament inter alia 'condemned the abduction of Afgan Mukhtarli in Tbilisi and his subsequent arbitrary detention in Baku considering this as a serious violation of human rights' and urged the Georgian authorities 'to ensure a prompt, thorough, transparent and effective investigation into Afgan Mukhtarli's forced disappearance'. The resolution also called for 'an immediate, full, transparent, credible and impartial investigation into the death of Azerbaijani blogger and activist Mehman Galandarov while in the custody of the Azerbaijani authorities'.
- In its resolution of 16 March 2017 **on the Ukrainian prisoners in Russia and the situation in Crimea (2017/2596(RSP))**, the Parliament, inter alia, condemned the illegal annexation of Crimea and Sevastopol by the Russians and called on Russia to: release all illegally and arbitrarily detained Ukrainian citizens; cease issuing Russian passports to all inhabitants of Crimea; cease the systematic intimidation of local citizens opposed to the annexation of Crimea; investigate all cases of human rights violations; and to respect the fundamental freedoms of all residents.

⁴⁵ Commission staff working document accompanying the Commission's First Report under the Visa Suspension Mechanism ([SWD\(2017\) 480 final](#)).

⁴⁶ See also: [Mobility partnerships, visa facilitation and readmission agreements](#), European Commission website.

Parliament also urged all sides to fully implement the provisions of the Minsk agreements, including the end of military activities in Donbas.

- The European Parliament resolution of 13 December 2016 **on rights of women in the Eastern Partnership States (2016/2060(INI))**, stressed the need for improvement, inter alia, in terms of increasing equality between women and men in society and ensuring women equal access to power and representation at all levels of government and decision-making. The Parliament also called for combating domestic violence and gender-based violence, including sexual harassment; for giving women and girls equal access to education, and for eliminating all forms of child labour, especially in Moldova, Georgia and Azerbaijan. The Parliament also stressed the need 'to provide support from the European Neighbourhood Instrument (ENI) to grassroots women's organisations and civil society'.⁴⁷

1.7. Moldova, Georgia and Ukraine's participation in selected EU programmes

Moldova, Georgia and Ukraine participate in the EU's bilateral (e.g. the European Neighbourhood Instrument) as well as multilateral programmes (e.g. Horizon 2020).

1.7.1. European Neighbourhood Instrument

The **European Neighbourhood Instrument (ENI)**,⁴⁸ with a budget of €15.4 billion for the 2014-2020 period, was established on the basis of Regulation No 232/2014,⁴⁹ while the common rules and procedures for the implementation were established under Regulation No 236/2014.⁵⁰ The previous edition of the programme was implemented over the 2007-2013 period.

The ENI covers 16 countries encompassed by the European Neighbourhood Policy (ENP). Russia takes part in cross-border cooperation activities under the ENP. The ENP is chiefly an instrument of bilateral cooperation between the EU and each partner country. It is complemented by regional and multilateral cooperation initiatives: a) the Eastern Partnership and b) the Union for the Mediterranean.

The areas of support provided by the ENI are: human rights and justice; civil society; economic and rural development; youth education and employment; boosting small business; energy cooperation; management of natural resources; climate change adaptation; transport connections; and easier mobility of people.

Moldova

Support to Moldova is based on the Single Support Framework for EU support to Moldova (2017-2020).⁵¹ The indicative allocation for the 2014-2020 period is from € 610 million to €746 million. In

⁴⁷ Further European Parliament resolutions on the Eastern Partnership can be found on the EuroNest Parliamentary Assembly [website](#).

⁴⁸ See: Matthew Parry, [European Neighbourhood Instrument](#), Briefing, How the EU budget is spent, EPRS, European Parliament, October 2016.

⁴⁹ [Regulation \(EU\) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument](#), OJ L 77 of 15.3.2014.

⁵⁰ [Regulation \(EU\) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action](#), OJ L 77 of 15.3.2014.

⁵¹ [Programming of the European Neighbourhood Instrument \(ENI\) – 2017-2020. Single Support Framework for EU support to Moldova \(2017-2020\)](#).

September 2017, the European Commission adopted a new Single Support Framework for the 2017-2020 period (indicative allocation – €284–€348 million, focused on delivering tangible and visible results for the citizens (see also Annex II). The priority sectors reflect the new Association Agenda and the revised European Neighbourhood Policy, and are coherent with the Eastern Partnership priorities reflected in the '20 Deliverables for 2020'.

Four priority areas of intervention have been chosen: 1) economic development and market opportunities, including sustainable and inclusive economic growth; 2) strengthening institutions and good governance, including the rule of law and security; 3) connectivity, energy efficiency, environment and climate change; and 4) mobility and people-to-people contacts, including support to the continuous fulfilment of the Visa liberalisation action plan benchmarks and to education, training and research.

On 28 February 2018, the EU Delegation to the Republic of Moldova together with the EU Member States and Switzerland presented the first European Joint Development Cooperation Strategy to the Moldovan government. This joint programming document serves as a key reference for planning future EU assistance to Moldova by presenting a consolidated view of development priorities agreed amongst European donors.

Funded by the EU, the EU High-Level Advisers support the Moldovan government in implementing its reform agenda. In particular, this support is focused on developing the capacities required for the implementation of the AA, including the DCFTA. It is also focused on ensuring the necessary follow-up for the post-visa liberalisation stage, by providing specific advice to warrant the political, institutional and financial feasibility (hence, the effective implementation) of the planned reforms.⁵²

Georgia

The support to Georgia is based on the Single Support Framework for the 2014-2016 period and the Single Support Framework for the 2017-2020 period.⁵³ The indicative allocation of ENI funds for the 2014-2016 period was €610–€746 million, and for the 2017-2020 period, €371–€453 million (see also Annex III).

For the 2017-2020 period, four priority sectors for intervention have been chosen: 1) economic development and market opportunities, including smart, sustainable and inclusive economic growth; 2) strengthening institutions and good governance, including the rule of law and addressing security; 3) connectivity, energy efficiency, environment and climate change; 4) mobility and people-to-people contacts, including support for the continuous implementation of the visa liberalisation benchmarks, and for vocational education and training.

Ukraine

Support to Ukraine is based on the country programme (2018-2020).⁵⁴ The indicative allocation for the 2018-2020 period is €433.8–€530.2 million (see also Annex IV).

For the 2018-2020 period, Ukraine has chosen four priority sectors for intervention: 1) strengthening institutions and good governance, including the rule of law and security; 2) economic development and market opportunities, including private sector development and improvement of the business

⁵² Project [website](#).

⁵³ [Programming of the European Neighbourhood Instrument \(ENI\) – 2017-2020. Single Support Framework for EU support to Georgia \(2017-2020\)](#), European External Action Service.

⁵⁴ [Programming of the European Neighbourhood Instrument \(ENI\) - 2017-2020. Single Support Framework for EU support to Ukraine \(2018-2020\)](#).

climate; 3) connectivity, energy efficiency, environment and climate change; 4) mobility and people-to-people contacts, including social inclusion.

Cross-border cooperation

The ENI also offers cross-border cooperation (ENI CBC), with the aim to promote cooperation between EU countries and neighbouring countries sharing a land border or sea crossing.⁵⁵ In the financial 2014-2020 period, there are, inter alia:⁵⁶

- **Bilateral programmes:** the Romania-Republic of Moldova Programme (with €81 million in EU support) and the Romania-Ukraine Programme (with €60 million in EU support). In the 2007-2013 period, the cooperation had a multilateral character: Romania-Ukraine-Republic of Moldova.

The ENI CBC Romania-Republic of Moldova Programme covers the whole territory of Moldova. The programme covers four areas on the Ukrainian side.⁵⁷

- **Multilateral programmes:** Poland-Belarus-Ukraine Programme⁵⁸ (with EU support worth €170 million) and Hungary-Slovakia-Romania-Ukraine Programme (with EU support of around €74 million).⁵⁹

The ENI CBC Poland-Belarus-Ukraine Programme covers three core areas and adjoining regions on the Ukrainian side. The ENI CBC Hungary-Slovakia-Romania-Ukraine Programme covers two core regions and one adjoining region on the Ukrainian side.

The ENI CBC Black Sea Basin (with EU support worth €49 million) covers, among others, the whole territories of Moldova and Georgia and six core areas in Ukraine. The objective of the programme is to improve the welfare of the people in the Black Sea basin regions through sustainable growth and joint environmental protection.⁶⁰

- **EaP territorial cooperation.** There are four territorial cooperation programmes (with EU support worth €3.3 million): Armenia – Georgia, Azerbaijan – Georgia, Belarus – Ukraine and Moldova – Ukraine.⁶¹

1.7.2. The area of economic development and market opportunities

The EU and the EaP countries agreed on 20 deliverables to be achieved to 2020 in four key priority areas, one of which is economic development and market opportunities. Within this area, four main deliverables were established ([SWD\(2017\) 300](#)): 1) enhancing the regulatory environment and SMEs development; 2) filling the gaps in access to finance and financial infrastructure; 3) creating new job opportunities at local and regional level, 4) harmonising digital markets.⁶² Progress on these deliverables has already been achieved, as illustrated by the examples presented below.

The EU4Business is an umbrella initiative bringing together regional and bilateral programmes for Eastern partner countries, aimed at supporting SMEs in the EaP region and thereby tackling obstacles such as limited access to finance, burdensome legislation and difficulties entering new

⁵⁵ [Programming document for EU support to ENI Cross-Border Cooperation \(2014-2020\)](#), European Commission.

⁵⁶ Cross Border Cooperation [website](#), European Commission.

⁵⁷ [The Joint Operational Programme Romania – Republic of Moldova ENI 2014-2020](#) and [Joint Operational Programme Romania – Ukraine 2014-2020](#).

⁵⁸ [The ENI Cross-Border Cooperation Programme. Poland-Belarus-Ukraine 2014-2020](#).

⁵⁹ [Hungary-Slovakia-Romania-Ukraine. Cross-border Cooperation Programme 2014-2020. Joint Operational Programme](#).

⁶⁰ Black Sea Basin 2014-2020 Programme [website](#).

⁶¹ Eastern Partnership Territorial Cooperation [website](#).

⁶² See also: [Eastern Partnership. 20 Deliverables for 2020: Bringing tangible results for citizens](#), prepared for the 5th EaP summit, European External Action Service.

markets.⁶³ In the EaP region, SMEs represent between 83 % and 99 % of all firms, and account for 50 % of all jobs. The initiative should help SMEs to create jobs and drive economic growth.

EU4Business is co-funded by the EU and implemented by partner organisations.⁶⁴ In the 2009-2016 period, loans worth more than €1.5 billion were granted, supporting the creation of at least 10 000 jobs, benefiting more than 110 000 SMEs and providing training to 20 000 people.

The programmes are implemented in a particular country, in selected countries or in all six EaP countries. Below are examples of the regional programmes implemented within the EU4Business initiative:⁶⁵

- *DCFTA Initiative East (2016-2031), with a budget of €62.74 million, implemented in Georgia, Moldova and Ukraine by the European Investment Bank (EIB). The programme aims to: enhance access to finance in the form of improved lending terms and conditions; support micro-finance institutions to provide financing to local micro-enterprises; and provide targeted finance and technical assistance to priority value chains in the agri-food sector.*
- *Advice for Small Businesses (2010-2018), with a budget of €16 million, implemented in six EaP countries by the European Bank for Reconstruction and Development (EBRD). The programme aims to promote good management in the SMEs sector by providing technical assistance to individual enterprises, helping them to grow their business.*
- *From Policies to Action (2017-2020), with a budget of €4 million, implemented in six EaP countries by the OECD (in cooperation with the European Commission, the EBRD and the European Training Foundation). The programme aims to support competitiveness and business-environment reforms. At the country level, support is provided for the design, monitoring and upgrading of strategies and programmes to promote private-sector development, evidence-based policy-making and broader business-environment reforms.*
- *Strengthening Auditing and Reporting in the Countries of the Eastern Partnership (STAREP) (2013-2018), with a budget of €1 million, implemented in six EaP countries by the World Bank. The programme aims to help participating countries both to improve their frameworks for corporate financial reporting and to raise the capacity of local institutions to implement these frameworks effectively.*
- *Women in Business (2016-2022), with a budget of €5.035 million, implemented in six EaP countries by the EBRD. The programme aims to promote women's entrepreneurship and access to finance, and more broadly women's participation in business, by facilitating access to finance and advice for women-led SMEs.*

A concrete example of how the EU4Business initiative works is the first business cluster within its framework – the Georgian Furniture Cluster (GFC) – created in August 2017 in Georgia. Support for the cluster is funded by the EU and implemented by the German Development Agency (GIZ) within the framework of the Support to EU-Georgia DCFTA and SMEs programme. The Georgian Furniture Cluster members commit to joint production to take advantage of market opportunities in Georgia and in Europe by achieving economies of scale.⁶⁶

⁶³ EU4Business [website](#).

⁶⁴ Partner organisations: European Bank for Reconstruction and Development (EBRD); European Investment Bank (EIB); Kreditanstalt für Wiederaufbau (KfW); OECD; GIZ; Eurochambres; The World Bank; The International Trade Centre; UEAPME; the UNDP, the Eastern Europe Studies Centre (EESC), the KAS (Konrad-Adenauer-Stiftung); SMEDNC (SME Development National Centre of Armenia); the Initiatives for Development of Armenia (IDeA) Charity Foundation; and the Microsoft Innovation Center Armenia Foundation.

⁶⁵ Programmes implemented in the framework of the EU4Business initiative, [website](#).
See also: [Georgia. Country report. May 2017](#), [Moldova. Country report. May 2017](#), [Ukraine. Country report. May 2017](#), European Commission.

⁶⁶ [First Georgian Business Cluster Established under the EU4Business Initiative](#), EEAS website.

COSME (2014-2020)⁶⁷ is the EU programme for the competitiveness of enterprises and SMEs, which has a budget of €2.3 billion. COSME supports SMEs in the following areas: a) facilitating access to finance; b) supporting internationalisation and access to markets; c) creating an environment favourable to competitiveness; and d) encouraging an entrepreneurial culture. COSME implements the Small Business Act.⁶⁸

Moldova and Ukraine have joined the COSME programme. Moldova signed the International Agreement on 29 September 2014; the agreement entered into force on 7 April 2015. Ukraine signed the International Agreement on 4 May 2016; the agreement entered into force on 21 March 2017. Neither Moldova nor Ukraine participates in the COSME financial instruments.⁶⁹

Example of projects implemented by beneficiaries from Moldova and Ukraine are as follows:⁷⁰

- *The 'Business-INN-Moldova' project is being implemented within the Enterprise Europe Network, from 1 January 2017 to 31 December 2018, with a total budget of €305 806 (the EU contribution is €183 484). The project is coordinated by the Moldovan Chamber of Commerce and Industry (CCI RM).*
- *The 'MOVE-YE Mobilizing entrepreneurial values and ideas across Europe' project is being implemented within the Erasmus for young entrepreneurs, from 1 February 2018 to 31 January 2020, with the total budget of €551 371 (the EU contribution is €377 722). The project is coordinated by the Italian partner and the Moldovan Chamber of Commerce and Industry (CCI RM) is the partner on the Moldovan-side participating in the project.*
- *The 'Innovation capacity building in Ukrainian SMEs and enhancing cooperation with European SMEs' project is implemented within the Enterprise Europe Network. It gathers eight Ukrainian partners with the coordinating role of the Institute of Physics at Ukraine's National Academy of Science.*

In 2016, Moldova joined the **EU Health for growth programme** aimed at encouraging innovation in and the sustainability of health systems. Moldova has participated in four joint actions under the programme.

1.7.3. The area of strong society

The European Parliament, in its recommendations to the fifth Eastern Partnership summit, underlined, *inter alia*, the need 'to pursue efforts aimed at tackling unemployment, especially youth unemployment', 'to support Moldova, Georgia and Ukraine in implementing the visa liberalisation agreements' and 'to further increase opportunities for closer cooperation in the fields of education, research and innovation' ([2017/2130\(INI\)](#)).

The EU and the EaP countries agreed on 20 deliverables to be achieved to 2020 in four key priority areas, one of which – mobility and people to people contacts – is aimed at strengthening society. Four main deliverables were established within this area ([SWD\(2017\) 300](#)): 1) progress on visa liberalisation dialogues and mobility partnerships; 2) strengthening investment in young people's skills, entrepreneurship and employability; 3) establishing an Eastern Partnership European school; 4) integration of EaP and EU research and innovation systems, with the main aim to strengthen the

⁶⁷ [Regulation \(EU\) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises \(COSME\) \(2014-2020\) and repealing Decision No 1639/2006/EC](#), OJ L 347, 20.12.2013.

⁶⁸ COSME programme [leaflet](#), European Commission.

⁶⁹ Based on [information](#) of the European Commission from 19 December 2017.

⁷⁰ Based on the [COSME data hub](#).

participation of the EaP countries in EU research and innovation programmes.⁷¹ There has been progress in achieving the deliverables, examples of which are presented below.

Eastern Partnership European School. The first such school will be opened on 4 September 2018 at the New School, International School of Georgia, in Tbilisi. This will mark the start of the academic year for the first 30 students from the six Eastern partner countries who have received scholarships for a full two-year cycle of the International Baccalaureate Diploma Programme. The students will have the opportunity to engage in the study of Europe and European Union-related issues in a multilingual, multicultural, non-EU context, through academic courses and extra-curricular activities. They will also be able to participate in high-level conferences on EU-related topics.⁷²

Moldova

Erasmus+ programme. The participation of higher education institutions in the programme is as follows:⁷³

- *International credit mobility: in 2015-2017, 260 proposals involving Moldova were submitted, out of which 159 were selected for financing; 915 staff members and students participated in the mobility to Europe, and 419 staff members and students participated in the mobility to Moldova.*
- *Erasmus Mundus Master Degrees: in 2014-2017, 23 scholarships were granted to Moldovan citizens.*
- *Erasmus Mundus Doctoral fellowship: in 2014-2017, no fellowship was granted to a Moldovan citizen.*
- *Capacity building for HE: in 2015-2017, 123 proposals involving Moldova were submitted, out of which 11 received financing (1 coordinated by Moldova), with 57 Moldovan organisations participating.*
- *Jean Monnet Activities: in 2014-2017, 38 proposals from Moldova were submitted, out of which 12 were selected for financing.*

Additionally, in 2015-2017, more than 2 300 young people and youth workers from Moldova took part in Erasmus+ exchanges, youth policy dialogue and volunteering activities.⁷⁴

Creative Europe programme. The agreement on Moldova's participation in this programme was signed on 18 March 2015.⁷⁵ A Creative Europe Desk was created within the programme to help the Ministry of Culture to promote existing opportunities; the EU undertook a technical mission in September 2016 ([SWD\(2017\) 110](#)).

Horizon 2020 programme.⁷⁶ Moldova has been an associated H2020 member since 1 January 2014.⁷⁷ Moldova was also an associated member to the FP7 programme, joining it in January 2012. Integration with the European Research Area is the priority of Moldova's international scientific

⁷¹ See also: [Eastern Partnership. 20 Deliverables for 2020: Bringing tangible results for citizens](#), prepared for the 5th EaP summit, European External Action Service.

⁷² [Eastern Partnership European School Scholarship Programme: apply now for and IB Diploma Programme with a focus on European studies](#), European External Action Service and the school's [website](#).

⁷³ [Erasmus+ for higher education in Moldova](#), European Commission, March 2018.

⁷⁴ [Facts and figures about EU-Moldova Relations](#), prepared for the 5th EaP summit, European External Action Service.

⁷⁵ [Moldova joins the Creative Europe programme](#), European Commission.

⁷⁶ Data on the participation of Moldova in the EU research programmes were received from the European Commission, DG Research and Innovation.

⁷⁷ The International Agreement was signed on 1 July 2014 with retroactive effect.

cooperation.⁷⁸ Moldova occupies a leading position among the EaP countries as regards participation in the two research programmes.

Moldova's current participation in H2020 is as follows (see also Annex V):⁷⁹

- *Total: Moldovan entities have participated 45 times in 36 signed grants of collaborative, MSCA, ERC and SME Instrument actions, receiving €3.7 million in direct EU contributions and €0.6 million in contributions from Moldovan beneficiaries;*
- *Non bottom up collaborative actions:⁸⁰ Moldovan applicants have been involved 214 times (25 times as coordinators) in 191 eligible proposals. Out of 84 high-quality proposals (above the threshold), 30 were shortlisted, leading to a success rate of 15.7 % (as compared to 15.4 % for associated third countries and 14.8 % overall). Moldovan entities have 36 participations (36 as beneficiaries) in 30 signed grants, receiving €2.5 million from the EU and €0.6 million from Moldovan beneficiaries;*
- *Marie Skłodowska-Curie Actions (MSCA): Moldovan applicants have been involved 87 times (nine as coordinators) in 54 eligible proposals. Out of 31 high-quality proposals (above the threshold), six were shortlisted. Moldovan entities have participated nine times (eight as beneficiaries) in MSCA actions (eight in the RISE, one in the ITN⁸¹). Moldovan beneficiaries have received €1.2 million in direct EU financing. Some 23 researchers of Moldovan nationality have participated in MSCA actions;*
- *European Research Council (ERC) grants: Moldovan entities have not participated in signed ERC grants. One Moldovan national has acquired an ERC grant;*
- *SME instrument: Moldovan applicants have been involved 50 times in 49 eligible proposals. Out of three high-quality proposals (above the threshold), none was shortlisted.*

Georgia

Erasmus+ programme.⁸² The budget for Erasmus+ encompasses direct support to Georgia only (e.g. international credit mobility or Jean Monnet) and cooperation projects that involve European and Georgian partners, but also other partner countries. In the latter case, it is not possible to divide the budget per partner organisation hence only the overall figure is provided. All projects involving Georgian organisations and beneficiaries have received €86.28 million (€32.94 million under ENI and €53.34 million under Heading 1). The budget is split between projects on higher education and youth.

The higher education projects:

- *Academic short-term mobility for students and professors: €13.27 million (ENI budget only); nearly 3 800 academic mobility opportunities supported between EU and Georgia (both-way exchanges);*
- *Erasmus Mundus Joint Master Degrees: €1.82 million from Heading 1 (relating to 40 scholarships for Georgians) + €0.55 million from ENI (relating to an additional 12 scholarships for Georgians);*
- *Capacity Building in Higher Education: €17.97 million (ENI budget); this translates into 19 projects involving – among others – Georgian organisations;*

⁷⁸ [Background Report. Peer Review of the Moldovan Research and Innovation system. Horizon 2020 Policy Support Facility](#), European Commission, 2016.

⁷⁹ Based on data received from the European Commission, DG Research and Innovation.

⁸⁰ Excluding projects under the ERC, MSCA and SME Instrument.

⁸¹ RISE - Marie Skłodowska-Curie Research and Innovation Staff Exchange, ITN - Europe as a Global Actor.

⁸² Based on data received from the European Commission, DG Neighbourhood.

- *Jean Monnet actions: €0.54 million (Heading 1 budget); 7 projects in Georgia on EU studies and policies;*
- *Strategic Partnerships: €0.98 million (Heading 1 budget); six projects concerning VET, adult learning and youth and involving Georgian partners in the supported consortia (lead organisation is an EU organisation).*

The youth projects:⁸³ a) volunteering, trainings, exchanges of young people and youth workers, policy debates: €50 million (Heading 1 budget) for 1 782 projects also involving Georgian beneficiaries; so far, 5 300 young people and youth workers from Georgia have participated in such projects; b) capacity building in the field of youth: €1.15 million (ENI budget; part of EU4Youth support),⁸⁴ 11 projects only benefitting Georgia.

Creative Europe programme.⁸⁵ The agreement on Georgia's participation in the programme was signed on 24 February 2015, entered into force on 19 March 2015 and took effect on 1 January 2016.⁸⁶ Georgia became the first neighbourhood country to join Creative Europe. The EU has covered 50 % of Georgia's participation fee totalling €0.222 million for the 2015-2020 period.

Georgia fully participates in the culture sub-programme and in the cross-sectorial strand (excluding the guarantee facility). It also partially participates in the MEDIA sub-programme, where its participation is limited to training, festivals, audience development and market-access activities.

By May 2018, 12 projects involving Georgian organisations had received funding amounting to €0.79 million. More precisely: two projects for cultural cooperation, two for literary translations, two for training, three for festivals, two for audience development, and one for film education. Among the Eastern Partnership countries participating in Creative Europe (Moldova, Ukraine and Armenia) Georgia has been the most active one.

In addition, the support provided by the recently restructured Creative Europe desk in Tbilisi should help increase chances of success for applications by Georgian partners in the context of the forthcoming Creative Europe calls.

Horizon 2020 programme. Georgia has been an associated H2020 member since 1 January 2016⁸⁷. Researchers and organisations from Georgia can participate in H2020 under the same conditions as those from EU Member States.⁸⁸ Georgia's current participation in H2020 is as follows (see also Annex VI):⁸⁹

- *Total: Georgian entities have participated 26 times in 21 signed grants of collaborative, MSCA, ERC and SME Instrument actions within the framework of Horizon 2020, receiving €2.2 million in direct EU contributions and €0.1 million in contributions from Georgian beneficiaries.*
- *Non-bottom-up collaborative actions:⁹⁰ Georgian applicants have been involved 172 times (11 times as coordinators) in 145 eligible proposals. Out of 60 high-quality proposals (above the threshold), 17 were shortlisted, leading to a success rate of 11.7 % (as compared to 15.2 % for*

⁸³ Based on data received from the European Commission, DG Neighbourhood.

⁸⁴ According to the EEAS, 'The EU has launched a programme under its EU4Youth Initiative, awarding grants to organisations proposing actions addressing youth employment and employability, skills development and active participation of young people in their societies in the Eastern Partnership countries'.

⁸⁵ Based on data received from the European Commission, DG Neighbourhood.

⁸⁶ [Exchange of letters](#) between the EU and Georgia on the agreement.

⁸⁷ The International Agreement was signed on 29 April 2016 with retroactive effect.

⁸⁸ [Facts and figures about EU-Georgia Relations](#), prepared for the 5th EaP summit, European External Action Service. and [The Eastern Partnership – a policy that delivers](#), Fact Sheet of 21 May 2015, European Commission.

⁸⁹ The data were received from the European Commission, DG Research and Innovation.

⁹⁰ Excluding projects under the ERC, the MSCA and the SME Instrument.

associated countries and 14.8% overall). Georgian entities have 21 participations (21 as beneficiaries) in 16 signed grants, receiving €1.6 million from the EU and €0.1 million from Georgian beneficiaries.

- *Marie Skłodowska Curie Actions (MSCA): Georgian applicants have been involved 63 times (six as coordinators) in 48 eligible proposals. Out of 26 high-quality proposals (above the threshold), five were shortlisted. Georgian entities have participated five times (three as beneficiaries) in MSCA actions (three in the RISE, two in the ITN). Georgian beneficiaries have received €0.6 million in direct EU financial contribution. Some 20 researchers of Georgian nationality have participated in the MSCA. Two successful MSCA IF⁹¹ fellows applied.*
- *European Research Council (ERC) grants: Georgian entities have not participated in signed ERC grants.*
- *SME instrument: Georgian applicants have been involved seven times in six eligible proposals, but none above the threshold.*

Ukraine

Erasmus+ programme. Ukraine is one of the largest Erasmus+ beneficiaries among the EaP countries. The country's higher education institutions participate in the programme as follows:⁹²

- *International credit mobility: in 2015-2017, 1 008 proposals involving Ukraine were submitted, out of which 643 were selected for financing. Some 5 271 staff members and students participated in the mobility to Europe, and 1 964 staff members and students participated in the mobility to Ukraine.*
- *Erasmus Mundus Joint Master Degrees: in 2014-2017, 149 scholarships were granted to Ukrainian citizens.*
- *Erasmus Mundus Doctoral fellowship: in 2014-2017, 10 fellowships were granted to Ukrainian citizens.*
- *Capacity building for HE: in 2015-2017, 355 proposals involving Ukraine were submitted, out of which 24 received financing (one coordinated by Ukraine), with 125 Ukrainian organisations participating.*
- *Jean Monnet Activities: in 2014-2017, 410 proposals from Ukraine were submitted, out of which 31 were selected for financing.*

In the 2008-2013 period, Ukraine was involved in 94 Tempus projects, including 33 projects financed from December 2013, supporting capacity building and modernisation of higher education institutions and systems.⁹³

Creative Europe programme. The [agreement](#) on Ukraine's participation in the programme was signed on 19 November 2015 and came into force on 1 January 2016. Ukraine can benefit from the 'culture' sub-programme, the cross sectorial strand of the programme, and partially from the media sub-programme (training, festivals, film education and market-access activities).⁹⁴ The partial access to the latter is related to the fact that media legislation is still not fully aligned with the EU audiovisual media services directive.⁹⁵

⁹¹ Marie Skłodowska-Curie Individual Fellowships.

⁹² [Erasmus+ for higher education in Georgia](#), European Commission, March 2018.

⁹³ [Erasmus+ to grant Ukrainians educational opportunities in 150 countries](#), European Commission.

⁹⁴ [Creative Europe](#), EU Neighbours East.

⁹⁵ [Creative Europe»: new opportunities for Ukrainian media industry](#), Council of Europe Office of Ukraine, news of 29 March 2017.

Horizon 2020 programme. Ukraine joined the H2020 as an associated country on 17 August 2015.⁹⁶ In recent years, Ukraine has undertaken reforms to better adjust its research system to the H2020 requirements. This includes, among other things, carrying out an international peer review of the national research and innovation system, whose conclusions were published in December 2016, and creating a National Coordination Centre in November 2016 ([SWD\(2017\) 376](#) final). Ukraine's current participation in the H2020 programmes is as follows (see also Annex VII):⁹⁷

- *Total: Ukrainian entities have participated 142 times in 107 signed grants of collaborative, MSCA, ERC and SME Instrument actions within the H2020, receiving €14.8 million of direct EU money and €3.2 million in money from Ukrainian beneficiaries.*
- *Non-bottom-up collaborative actions:⁹⁸ Ukrainian applicants have been involved 782 times (78 times as coordinators) in 608 eligible proposals. Out of 231 high-quality proposals (above the threshold), 59 were shortlisted, leading to a success rate of 9.7 % (as compared to 15.2 % for associated third countries and 14.8 % overall). Ukrainian entities have 84 participations (70 as beneficiaries) in 63 signed grants, receiving €7.3 million from the EU and €2.4 million from Ukrainian beneficiaries.*
- *Marie Skłodowska Curie Actions (MSCA): Ukrainian applicants have been involved 324 times (25 as coordinators) in 213 eligible proposals. Out of 132 high-quality proposals (above the threshold), 35 were shortlisted. Ukrainian entities have participated 50 times (31 as beneficiaries) in MSCA actions (one in Individual Fellowships (IF), 43 in the RISE, and four in the ITN and two in the COFUND programme). Ukrainian beneficiaries have received €5.9 million in the form of direct EU financial contributions. A total of 289 researchers of Ukrainian nationality have participated in MSCA actions. Eight successful MSCA IF fellows applied while established in Ukraine, corresponding to 0.2 % of all MSCA IF fellows.*
- *European Research Council (ERC) grants: Ukrainian entities have not participated in signed ERC grants. A total of five Ukrainian nationals have acquired an ERC grant.*
- *SME instrument: Ukrainian applicants have been involved 245 times in 234 eligible proposals. Out of 21 high-quality proposals (above the threshold), nine were shortlisted. There are eight Ukrainian participations in grants, receiving €1.6 million from the EU and €0.7 million from Ukrainian beneficiaries.*

The Euratom Research and Training Programme (2014-2018)⁹⁹ is being implemented in three areas: a) indirect actions for the fusion research and development programme; b) indirect actions

⁹⁶ [Agreement between the European Union and Ukraine on the participation of Ukraine in the Union programme Horizon 2020 - the Framework Programme for Research and Innovation \(2014-2020\)](#) was signed on 20 March 2015 and includes (in Annex I) the following explanation: 'Given that the EU does not recognise the illegal annexation of Autonomous Republic of Crimea and the City of Sevastopol, legal persons established in the Autonomous Republic of Crimea or the City of Sevastopol are not eligible to participate. Should the illegal annexation of the Autonomous Republic of Crimea and the City of Sevastopol end, this clause shall be revised.'

'Given that the EU does not recognise the illegal annexation of Autonomous Republic of Crimea and the City of Sevastopol, under the terms of the Horizon 2020 Association Agreement with Ukraine, legal persons established in the Autonomous Republic of Crimea or the city of Sevastopol are not eligible to participate. Should the illegal annexation of the Autonomous Republic of Crimea and the City of Sevastopol end, the Agreement will be revised accordingly. Ukraine is also associated to the Research and Training Programme of EURATOM (2014-2018), complementing Horizon 2020', [Countries Associated to Horizon 2020 Framework Programme \(2014-2020\)](#), European Commission.

⁹⁷ Data were received from the European Commission, DG Research and Innovation.

⁹⁸ Excluding projects under ERC, MSCA and SME Instrument.

⁹⁹ [Council Regulation \(EURATOM\) No 1314/2013 of 16 December 2013 on the Research and Training Programme of the European Atomic Energy Community \(2014-2018\) complementing the Horizon 2020 Framework Programme for Research and Innovation](#), O.J. L 347 of 20.12.2013 (hereinafter: Euroatom R&T programme).

for nuclear fission, safety and radiation protection; and c) direct actions and activities of the Joint European Centre.

Ukraine became associated to the Euratom R&D programme through an Association Agreement.¹⁰⁰ The first joint committee to assess the association is scheduled to meet on 4 July 2018 in Brussels.

Ukraine's current participation in the Euratom R&D programme is as follows:

- *Work programmes: targeted actions in nuclear research with Ukraine were included in the [Work Programme 2016-2017](#) to deepen cooperation in fission research (including radiological data and nuclear safety) and in fusion research, with the aim to consolidate Ukrainian participation in fusion research and in particular in the EUROfusion consortium. In the [Work Programme 2018](#), a targeted grant of €150 000 has been given to the UA NCP to better integrate Ukrainian research entities in EU nuclear research platforms, including to provide funding for training Ukrainian scientists on Euratom rules and actions.*
- *Fusion research: since 1 January 2017, Ukraine has been a party to the grant agreement of Euratom with the EUROfusion consortium and the European joint programme that implements fusion research. The beneficiary is the National Science Center Kharkov Institute of Physics and Technology, and there are also four Ukrainian third parties linked to the initiative. The estimated Euratom contribution to the Ukraine activities in the joint programme is €306 000. Ukraine is involved in seven of the 35 work packages of the joint programme and 22.7 ppy (manpower resources, person per year) will be engaged in it for the 2017-2018 period.¹⁰¹*
- *Fission: two entities from Ukraine have participated in two projects on fission research (respectively in the areas of reactor safety and waste management), with the total EC/Euratom contribution amounting to €143 312.*
- *Direct actions and activities of the Joint European Centre: a) nuclear material accountancy – collaboration workshop was organised in March 2017 on problems related to nuclear material accountancy when retrieving fuel containing material at the Chernobyl NPP and how to determine them; b) nuclear data – Ukraine participated in a proficiency test and in two research teams collaborations,¹⁰² and c) nuclear materials – a EU-funded workshop on 'Materials resistant to extreme conditions for future energy systems' was organised in June 2017, in Kyiv.*
- *Several Info Days on the Euratom R&T Programme have been organised in Ukraine.*

Copernicus programme.¹⁰³ On 25 May 2018, the EU and Ukraine's State Space Agency signed a cooperation agreement, which established their partnership with regard to Earth observation initiatives. The document was signed as part of the European Neighbourhood Policy and the Eastern Partnership. It will allow Ukraine to benefit from the EU's Copernicus Earth observation and

¹⁰⁰ Data on Ukraine's participation in the EU research the Euratom Research and Training Programme (2014-2018) were received from the European Commission (DG Research and Innovation).

¹⁰¹ The work packages in which Ukraine will be involved are: JET Campaigns, Medium-Size Tokamak Campaigns, preparation of efficient PFC operation for ITER and DEMO, Stellarator optimisation: theory development, modelling and engineering, diagnostic and control and education.

¹⁰² A research team from VD Glukhovskiy Scientific Research institute in Kyiv collaborated with JRC-Geel and U. Hasselt in a study to develop alkali-activated cements and concretes using high volumes of red mud. A research team from the Institute for Nuclear Research in Kyiv collaborated with JRC-Geel on underground measurements of rare decays in hafnium, europium and vanadium. Ukrainian scientists participated in the SCK-CEN Topical Day organised jointly with the JRC on October 25 under the headline 'From nuclear data to a reliable estimate of spent fuel decay heat'.

¹⁰³ Copernicus programme [website](#).

See also: Sidonia Mazur: [Copernicus – The EU's Earth observation and monitoring programme](#), Briefing, How the EU budget is spent, EPRS, European Parliament, October 2017.

monitoring programme. The programme benefits land, marine and atmosphere monitoring and provides support in the forecasting, management and mitigation of natural disasters.¹⁰⁴

1.8. Perceptions about the EU in Moldova, Georgia, Ukraine and other EaP countries

Following a first survey on perceptions of the EU from the spring of 2016, a second survey was conducted in six Eastern Partnership countries between March and May 2017.¹⁰⁵ Both surveys were carried out as part of a EU-financed project.¹⁰⁶

According to the 2017 survey, 44 % of respondents from six EaP countries had a positive image of the EU, 37 % were neutral and 13 % were negative. In the 2016 survey, 45 % EaP respondents expressed positive feelings, 32 % neutral and 13 % negative ones towards the EU. EaP respondents with higher levels of education were more positive about the EU than those with lower levels of education (54 % and 38 % respectively).

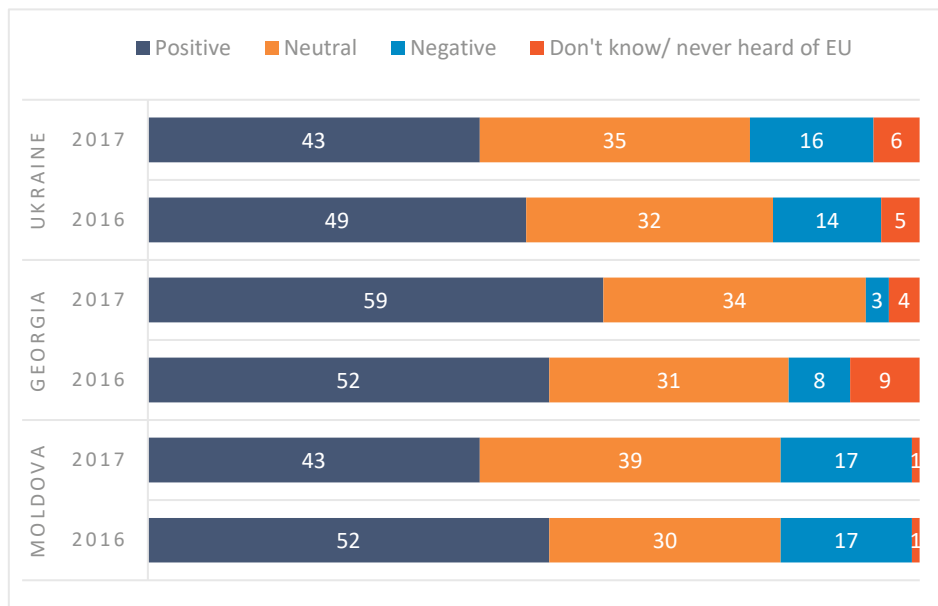
In 2017, Georgian respondents showed the most positive attitude – 59 % expressed positive feelings, up 7 % from 2016. In 2017, Moldova and Ukraine had the highest share of respondents expressing negative feelings toward the EU among the EaP countries (17 % and 16 % respectively). In 2017, in both countries, fewer than 50 % of respondents expressed positive feeling towards the EU and the decline was visible in comparison to 2016 (see Figure 2).

¹⁰⁴ [EU and Ukraine establish partnership on Earth observation](#), EU Neighbours project website.

¹⁰⁵ [Annual Survey Report: Regional Overview. 2nd Wave \(Spring 2017\)](#) and [Annual Survey Report: Regional Overview. 1st Wave \(Spring 2016\)](#), OPEN Neighbourhood – communicating for a stronger partnership: connecting with citizens across the Eastern Neighbourhood, EU Neighbours East.

¹⁰⁶ EU-funded project: *OPEN Neighbourhood – Communicating for a stronger partnership: connecting with citizens across the Eastern Neighbourhood* (EU Neighbours East).

Figure 2: What is your image of the EU (%)?



Source: [Annual Survey Report: Regional Overview. 2nd Wave \(Spring 2017\)](#) and [Annual Survey Report: Regional Overview. 1st Wave \(Spring 2016\)](#), EU Neighbours East.

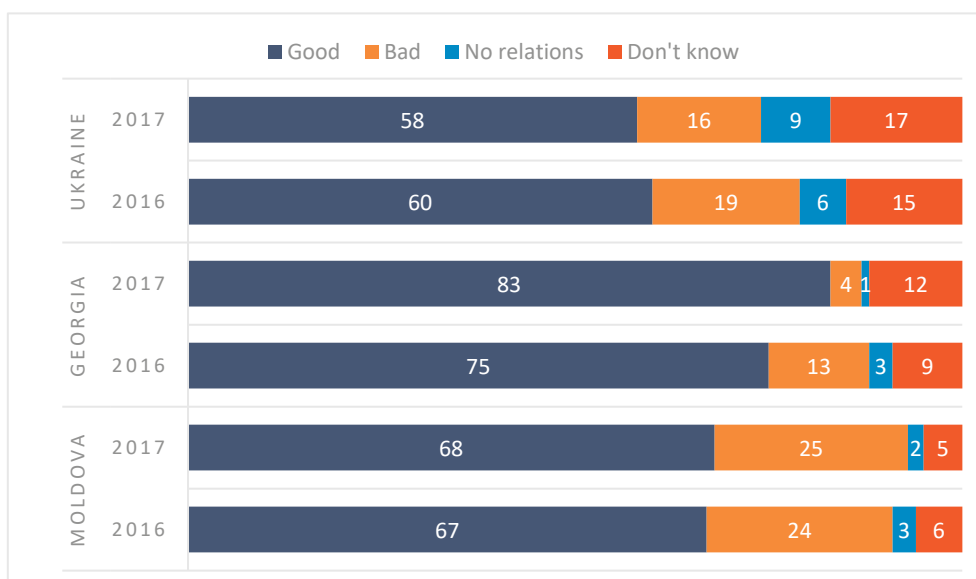
The majority of the EaP respondents trust the EU (57 % in 2017 and 56 % in 2016). They have a slightly lower level of trust for NATO (48 % in 2017 and 36 % in 2016), and the lowest for the Euroasian Economic Union (26 % in 2017 and 24 % in 2016). The EaP respondents also expressed a high level of trust for the United States (48 % in 2017) and the United Nations (44 % in 2016).

Both in 2017 and in 2016, the EaP respondents associated the EU with values, starting with human rights (77 % and 80 % respectively), followed by economic prosperity (75 % and 83 %), rule of law (74 % and 77 %), freedoms (individual, religion, speech and media) and democracy (all above 70 % in 2017 and in 2016). The list ended with the absence of corruption (58 % and 61 % respectively).

In 2017, 61 % of EaP respondents thought that relations between their country and the EU are good (63 % in 2016). However, 18 % of respondents still believed relations to be bad (20% in 2016).

In 2017, 83% of Georgian respondents, 68 % of Moldovan respondents and 58% of Ukrainian respondents expressed positive opinions on relations with the EU. In comparison to 2016, there was a rise in positive opinions in Moldova and Georgia, and a decline in Ukraine (see Figure 3).

Figure 3: How would you describe relations between the EU and your country (%)?



Source: [Annual Survey Report: Regional Overview. 2nd Wave \(Spring 2017\)](#) and [Annual Survey Report: Regional Overview. 1st Wave \(Spring 2016\)](#), EU Neighbours East.

More than half of the EaP respondents are aware of the financial support provided by the EU to their countries (53 % in 2017 and 62 % in 2016). In 2017, 79 % of respondents from Moldova (83 % in 2016), 58 % of respondents from Georgia (60 % in 2016) and 56 % of respondents from Ukraine (67 % in 2016) were aware of the EU financial support.

In 2017, the EU education programmes were the best recognised by the EaP countries' respondents (38 %), followed by economic reforms/business promotion (34 %), infrastructure development projects (29 %), cultural programmes (25 %) and health and medicine programmes (23 %).

1.9. Key findings

The implementation of the association agreements, including the DCFTAs, is progressing in all three associated countries. The EU welcomes particularly the increase in trade of goods between the EU and each of the associated countries.

The implementation of necessary reforms in Moldova, Georgia and Ukraine is also progressing, but in all three cases, all of the EU bodies responsible for monitoring and evaluating the implementation of the AAs recommend putting in stronger efforts. They also point to the need for stronger political to step up the pace of reforms.

Moldova: According to the latest reports of the EU coordinating and supervising bodies, Moldova has made progress in implementing both the agreement and needed reforms. The country's trade volumes with the EU have increased and it has made progress under its DCFTA. Yet, further reforms are needed, particularly in the judiciary, in the fight against corruption and in investigating the bank fraud from 2014. The strict conditionality of EU assistance to Moldova has also been underlined.

Georgia: According to the latest reports of the EU coordinating and supervising bodies, Georgia has made progress in implementing its AA and DCFTA. The reports have also highlighted the reforms – among which the constitutional and the public administration reform – that the country has carried out. However, they have also stressed the need for further efforts, especially in combating human rights violations and in strengthening efforts to empower women.

Ukraine: According to the latest reports of the EU coordinating and supervising bodies, Ukraine has made progress in implementing reforms, particularly structural ones, and trade relations with the EU have developed. However, the reports have also indicated the need for further reforms, especially in the fight against corruption. They have also pointed to the need to achieve progress in conflict resolution and to strengthen the implementation of the Minsk agreements.

All three association countries recognise the benefits of their participation in the EU programmes and do participate in them actively. This is particularly visible in Erasmus+ and Horizon 2020. What is more, Ukraine has also participated, for the first time, in the Euroatom Research and training (2014-2018) programme and has recently joined the Copernicus Earth observation programme.

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Annexes

Annex I – Twenty (updated) tangible deliverables to be achieved by 2020

Table 3: Twenty (updated) tangible deliverables to be achieved by 2020

Priorities	Deliverables
Priority area 1: <i>Economic development and market opportunities</i>	<ul style="list-style-type: none"> – <i>Regulatory environment and SMEs development</i> – <i>Gaps in access to finance and financial infrastructure</i> – <i>New job opportunities at the local and regional levels</i> – <i>Harmonisation of digital markets</i> – <i>Trade and DCFTA implementation</i>
Priority area 2: <i>Strengthening institutions and good governance</i>	<ul style="list-style-type: none"> – <i>Rule of law and anti-corruption mechanisms</i> – <i>Implementation of key judicial reforms</i> – <i>Implementation of public administration reform</i> – <i>Security</i>
Priority area 3: <i>Connectivity, energy efficiency, environment and climate change</i>	<ul style="list-style-type: none"> – <i>Extension of the TEN-T core networks</i> – <i>Energy supply</i> – <i>Energy efficiency, renewable energy and reduction of greenhouse gas emissions</i> – <i>Environment and adaptation to climate change</i>
Priority area 4: <i>Mobility and people-to-people contacts</i>	<ul style="list-style-type: none"> – <i>Visa liberalisation and mobility partnerships</i> – <i>Youth, education, skills development and culture</i> – <i>Eastern Partnership European School</i> – <i>Research and innovation</i>
<i>Cross-cutting (horizontal) priorities</i>	<ul style="list-style-type: none"> – <i>Structured engagement with civil society</i> – <i>Gender equality and non-discrimination</i> – <i>Strategic communication and plurality and independence of media</i>

Source: Joint staff working document (EC/HR-VP), *Eastern Partnership - 20 Deliverables for 2020. Focusing on key priorities and tangible results* ([SWD\(2017\) 300](#)).

Annex II – Indicative allocation of ENI funds to Moldova

Table 4: Indicative allocation of ENI funds to Moldova, 2017-2020

Sectors	Indicative allocation	Percentage of total allocations
1. Economic development and market opportunities, including sustainable and inclusive economic growth	€99.4 million – €121.8 million	35 %
2. Strengthening institutions and good governance, including the rule of law and security	€42.6 million – €52.2 million	15 %
3. Connectivity, energy efficiency, environment and climate change	€71 million - €87 million	25 %
4. Mobility and people-to-people contacts, including support for the continuous fulfilment of the Visa liberalisation action plan benchmarks and for education, training and research	€28.4 million - €34.8 million	10 %
Complementary support for capacity development and institution building	€14.2 million - €17.4 million	5 %
Complementary support for civil-society development	€14.2 million - €17.4 million	5 %
Complementary support for strategic communication	€14.2 million - €17.4 million	5 %

Source: [Programming of the European Neighbourhood Instrument \(ENI\) – 2017-2020. Single Support Framework for EU support to Moldova \(2017-2020\)](#).

Annex III – Indicative allocation of ENI funds to Georgia

Table 5: Indicative allocation of ENI funds to Georgia, 2017-2020

Sectors	Indicative allocation	Percentage of total allocations
1. Economic development and market opportunities, including smart, sustainable and inclusive growth	€148.4 million - € 181.2 million	40 %
2. Strengthening institutions and good governance, including consolidating the rule of law, addressing security	€74.2 million – € 90.6 million	20 %
3. Connectivity, energy efficiency, environment and climate change	€55.65 million – €67.95 million	15 %
4. Mobility and people-to-people contacts, including support for the continuous implementation of the visa liberalisation benchmarks and for vocational education and training	€37.1 million – €45.3 million	10 %
Complementary support for capacity development/institution building	€18.55 million – €22.65 million	5 %
Complementary support for civil-society development	€18.55 million – €22.65 million	5 %
Complementary support for strategic communication	€18.55 million – € 22.65million	5 %

Source: [Programming of the European Neighbourhood Instrument \(ENI\) – 2017-2020. Single Support Framework for EU support to Georgia \(2017-2020\)](#), European External Action Service.

Annex IV – Indicative allocation of ENI funds to Ukraine

Table 6: Indicative allocation of ENI funds to Ukraine, 2018-2020

Sectors	Indicative allocation	Total allocations (%)
1. Strengthening institutions and good governance, including the rule of law and security	€108.45 million – €132.55 million	25 %
2. Economic development and market opportunities, including private sector development and improvement of the business climate	€86.76 million – €106.04 million	20 %
3. Connectivity, energy efficiency, environment and climate change	€65.07 million – €79.53 million	15 %
4. Mobility and people-to-people contacts, including social inclusion	€86.76 million – €106.04 million	20 %
Complementary support for capacity development	€65.07 million – €79.53 million	15 %
Complementary support to civil society	€21.69 million – €26.51 million	5 %

Source: [Programming of the European Neighbourhood Instrument \(ENI\) - 2017-2020. Single Support Framework for EU support to Ukraine \(2018-2020\)](#).

Annex V –Moldova's (MD) participation in Horizon 2020

Table 7: Moldova's participation in Horizon 2020 per theme

MD – Horizon 2020	Number of participations	Number of projects	EU contribution (€ million)	Own contribution (€ million)
1.3 MSCA	9	6	1.17	0
1.4 Research infrastructures	6	6	0.57	0.1
2.2 ICT	2	1	0.04	0
2.4 Space	1	1	0.04	0
2.6 Inno in SME	4	1	0.01	0
3.1 Health	3	2	0.47	0
3.2 Food	2	2	0.1	0
3.5 Environment	8	7	0.33	0.48
3.6 Societies	4	4	0.2	0
3.7 Secure societies	1	1	0.1	0
4 Spreading excellence	1	1	0.51	0
5 SwafS	2	2	0.09	0
<i>Total</i>	<i>43</i>	<i>34</i>	<i>3.64</i>	<i>0.57</i>

Source: Data from the European Commission, DG Research and Innovation (as of 17 May 2018).

Table 8: Comparison of data on Moldova's participation in H2020 and FP7

Moldova (data on grants signed by 16 April 2018)	Horizon 2020	FP7
Total number of Moldovan (MD) participations	43	60
Total number of grants with MD participants	34	48
Total EU contribution to MD participants (€ million)	3.6	4
Total non-EU budget of MD participants (€ million)	0.6	1
Collaborative actions (all except under the ERC, the MSCA and the SME Instrument): Number of MD participations	34	42
Collaborative actions (all except under the ERC, the MSCA and the SME Instrument): Number of grants with MD participants	28	35
Collaborative actions (all except under the ERC, the MSCA and the SME Instrument): EU contribution to MD participants (€ million)	2.5	3.2
Collaborative actions (all except under the ERC, the MSCA and the SME Instrument): non-EU budget of MD beneficiaries (€ million)	0.6	1
Collaborative actions (all except under the ERC, the MSCA and the SME Instrument): Success rates of proposals with MD participants	15.8 %	
Marie Skłodowska Curie actions: number of MD participations	9	18
Marie Skłodowska Curie actions: EU contribution to MD beneficiaries (€ million)	1.2	0.8
Marie Skłodowska Curie actions: non-EU budget of MD beneficiaries (€ million)	0	
Marie Skłodowska Curie actions: number of researchers of MD nationality	23	127
ERC grants: number of MD participations	0	0
ERC grants: EU contribution to MD participants (€ million)	0	0
ERC grants: number of grantees of MD nationality	1	0
SME Instrument: number of MD participations	0	
SME Instrument: EU contribution to MD participants (€ million)	0	
SME Instrument: non-EU budget of MD participants (€ million)	0	

Source: Data from the European Commission, DG Research and Innovation (as of 17.05.2018).

Annex VI –Georgia's (GE) participation in Horizon 2020

Table 9: Georgia's participation in Horizon 2020 per theme

GE – Horizon 2020	Number of participations	Number of projects	EU contribution (€ million)	Own contribution (€ million)
1.2 FET	2	1	0.28	0
1.3 MSCA	5	5	0.61	0.03
1.4 Research Infrastructures	5	5	0.25	0.03
2.2 ICT	1	1	0.02	0
3.3 Energy	3	1	0.28	0
3.5 Environment	1	1	0.19	0.08
3.6 Societies	6	4	0.32	0
3.7 Secure Societies	2	2	0.23	0
5 SwafS	1	1	0.03	0
<i>Total</i>	<i>26</i>	<i>21</i>	<i>2.22</i>	<i>0.14</i>

Source: Data from the European Commission, DG Research and Innovation (as of 17.05.2018).

Table 10: Comparison of Moldova's participation in H2020 and FP7

GE (data for signed grants up to 16/4/2018)	Horizon 2020	FP7
Total number of GE participations	26	76
Total number of grants with GE participants	21	60
Total EU contribution to GE participants (€ million)	2.2	5.9
Total non EU budget of GE participants (€ million)	0.1	1
Collaborative projects: Number of GE participations	21	61
Collaborative projects: Number of grants with GE participants	16	48
Collaborative projects: EU contribution to GE participants (€ million)	1.6	4.7
Marie Skłodowska Curie actions: Number of GE participations	5	15
Marie Skłodowska Curie actions: Number of researchers of GE nationality	20	152
ERC grants: Number of GE participations	0	0
ERC grants: Number of grantees of GE nationality	0	1
SME Instrument: Number of GE participations	0	

Source: Data from the European Commission, DG Research and Innovation (as of 17.05.2018).

** Note: Any discrepancies that might appear with respect to other data sources are mainly due to: (i) The above data on participations do not include only beneficiaries, but also third parties & partner organizations, (ii) Dates of data extraction might be different*

Annex VII Participation of Ukraine (UA) in Horizon 2020 programme

Table 11: Ukraine's participation in Horizon 2020 per theme

UA Horizon 2020	Participations	Projects	EU contribution (million euros)	Own contribution (million euros)
1.3 MSCA	50	36	5.94	0.11
1.4 Research Infrastructures	6	6	0.14	0.01
2.2 ICT	3	3	1.45	0.61
2.3 NMBP	3	3	0.54	0.23
2.4 Space	4	2	0.36	0.06
3.1 Health	1	1	0.04	0
3.2 Food	6	6	0.35	0.02
3.3 Energy	14	12	1.25	0.04
3.4 Transport	13	8	1.09	0
3.5 Environment	15	15	1.55	1.47
3.6 Societies	10	7	0.91	0
3.7 Secure Societies	1	1	0.05	0
4 Spreading Excellence	1	1	0.15	0
5 SwafS	1	1	0.12	0
Cross theme	8	2	0.4	0.14
Euratom	6	3	0.45	0.67
Total	142	107	14.8	3.36

Source: Data from the European Commission, DG Research and Innovation (as of 17.05.2018).

Table 12: Comparison of Ukrainian participation in H2020 and FP7

UA (data for signed grants up to 16/4/2018)	Horizon 2020	FP7
Total number of UA participations	142	303
Total number of grants with UA participants	107	224
Total EU contribution to UA participants (€ million)	14.8	29.3
Total non EU budget of UA participants (€ million)	3.2	9
Collaborative projects: Number of UA participations	84	204
Collaborative projects: Number of grants with UA participants	63	145
Collaborative projects: EU contribution to UA participants (€ million)	7.3	23.2
Marie Skłodowska Curie actions: Number of UA participations	50	99
Marie Skłodowska Curie actions: Number of researchers of UA nationality	289	951
ERC grants: Number of UA participations	0	0
ERC grants: Number of grantees of UA nationality	5	7
SME Instrument: Number of UA participations	8	

Source: Data from the European Commission, DG Research and Innovation (as of 17 May 2018).

** Note: Any discrepancies that might appear with respect to other data sources are mainly due to the fact that: i) The above data on participations do not only include beneficiaries but also third parties & partner organisations; and ii) The dates on which the data extraction was done might be different.*

PART II. EXTERNAL BRIEFING PAPERS

Report on the implementation of the AA between the EU and the Republic of Moldova

This paper investigates the overall outcome of the implementation of the AA which was signed between the Republic of Moldova and the EU in 2014. The researchers focused on a quantitative and qualitative analysis of the reforms which have been implemented in Moldova in relation to the above-mentioned agreement. They also examine whether and how the implementation of reforms has influenced the current situation in the country in the fields of rule of law, democracy, good governance, freedoms and the economic situation (including trade relations). The influence of the AA's implementation in the Transnistria region is also analysed.

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Executive summary

Four years after Moldova signed the Association Agreement (AA) with the EU, the overall **outcome of the reforms conducted in this country should be assessed as unsatisfactory**. Although (mostly as a result of the AA's implementation) as a rule the legal and institutional base in Moldova has in practice improved the situation regarding the rule of law in many fields, good governance, justice (in particular) and democratic standards either have not recorded any substantial improvement, or have even regressed. **New regulations are often not properly implemented**, and certain reforms are openly imitated, mostly because they contradict with the interest of the ruling groups. **It should be stated that the general quantitative progress has not been accompanied by qualitative progress**.

Since 2015/2016 **Moldova has widely been perceived as a 'captured state'**, in which control over the state apparatus has been taken over by Vlad Plahotniuc, the country's richest oligarch and the leader of the ruling Democratic Party (PDM). **In relation to this monopolisation of power in the hands of Plahotniuc, a gradual degradation of the existing democratic mechanism can be observed, especially during the last two to three years**. Attempts have been made to limit the freedom of action and discredit representatives of civil society in the eyes of the wider public. **The arrest and sentencing of political opponents has become far more frequent than before 2014-2015**. The monopolisation of media in the hands of the ruling groups is rising, and new regulations aimed at weakening the independent news outlets are being adopted. Political pressure on the local authorities and the intimidation of their representatives by the authorities is common. The changes to the electoral system which were introduced in the second half of 2017 was almost certainly conducted in the interest of the ruling groups and in violation not only of international recommendations and standards but also of local regulations. In addition, **in recent times cases of serious limitation of the public right to participate in the decision-making process have been observed**.

When it comes to the economy and reforms conducted in this field, the situation is better, but still gives rise to certain reservations. **The implementation of the DCFTA has visibly boosted trade between Moldova and the EU**. Reforms in the financial sector are ongoing and have been evaluated quite positively by external partners. On the other hand, the investigation of bank fraud which took place in 2014 remains the government's main omission in the financial and banking sphere. **Additionally, the slow pace or absence of institutional reforms (such as justice reform, above all) is jeopardising the positive changes in the economy**, negatively affecting the investment climate, and visibly limits the potential for the development of local small and medium enterprises.

As far as recommendations, it is obvious that when it comes to the justice system and anticorruption, the reforms should be assessed not in terms of the adopted legal regulations but the actual situation in the field. 'Depoliticisation' of judiciary and anticorruption bodies requires transparent selection procedures, preferably with the participation of independent selectors and observers from extra-parliamentary and extra-governmental structures. Amendments to the Constitution (developed by the government in November 2017) that increase the formal independence of judges should be introduced as soon as possible. In relation to this, EU institution should consider developing a mechanism similar to the Cooperation and Verification Mechanism, which is currently in use in Romania and Bulgaria to monitor and facilitate reforms in the justice system. A permanent, minimal effective budget for anticorruption institutions should be provided at the legal level in order to prevent the freezing of their activities by annual budget cuts. Macro-financial assistance should be granted to Moldova, however, this assistance must be accompanied by a strong monitoring mechanism for qualitative results, not just quantitative ones. A double verification mechanism should be encouraged. The macro-financial assistance audit must also be

done by independent actors and the government must ensure transparency in the decision-making process regarding external financial assistance.

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LIST OF ACRONYMS AND ABBREVIATIONS

AA – Association Agreement

ANI - Autoritatea Națională de Integritate [English: National Integrity Authority]

ANRE - Agenția Națională pentru Reglementare în Energetică [English: National Agency for Energy Regulation]

CC – Curtea Constituțională [English: Constitutional Court]

CEC - Comisia Electorală Centrală [English: Central Electoral Commission]

CNA - Centrul Național Anticorupție [English: National Anticorruption Centre]

CoE - Council of Europe

CSJ - Curtea Supremă de Justiție [English: Supreme Court of Justice]

CSM - Consiliul Superior al Magistraturii [English: Superior Council of Magistracy]

DCFTA – Deep and Comprehensive Free Trade Agreement

EU – European Union

EUBAM - EU Border Assistance Mission to Moldova and Ukraine

JCET - Joint Combined Exchange Training

MFA – Ministry of Foreign Affairs

NAPIAA – National Action Plan for the Implementation of the AA

NBM - National Bank of Moldova

OHCHR - Office of the High Commissioner for Human Rights

PDM – Partidul Democrat din Moldova [English: Democratic Party of Moldova]

PSRM - Partidul Socialiștilor din Republica Moldova [English: Party of Socialist of the Republic of Moldova]

SME - Small and medium-sized enterprises

SPS – Sanitary and Phytosanitary Standards

VCo - European Commission for Democracy through Law (so called Venice Commission)

VLAP – Visa Liberalisation Action Plan

1. Methodology

The investigation of the overall outcome of the AA's implementation included in this report is based on the qualitative and quantitative analysis of information and data acquired from primary and secondary sources, such as official governmental reports, statistical offices (in both Moldova and abroad), interviews with government representatives in Chişinău (and additionally with the separatist authorities in Tiraspol, in the case of Transnistria), international organisations and representatives of the EU, among others.

With regard to the sectorial analysis (for example, the situation of civil society or human rights), the authors of this report also collected relevant data and opinions through interviews with representatives of the given circles. Valuable reports and analyses prepared by independent local (Moldovan) and international organisations (including think-tanks and other civil-society organisations) also served as important sources of information. All the data collected was carefully verified and analysed in a critical manner.

Each chapter of this report begins with a short analysis and assessment of the key changes regarding the legislation in the given field which has taken place since 2014 (i.e. from the year when the AA was signed). This part is followed by an evaluation of the practical situation on the ground, with best practices and severe problems highlighted and described in a more detailed way, and underpinned by case studies.

2. The outcome of the implementation of key reforms

2.1 Rule of law, democratic standards and good governance

2.1.1 The justice system

(In reference to Title II: Art. 4 and Title III: Art. 12 of AA)

The justice system remains one of the least reformed (in the light of the AA's provisions) sectors in Moldova. The Justice Sector Reform Strategy 2011-2016 (which was only adopted at the end of 2011) had not been fully implemented by the end of 2016 and was extended until 2017 ([Ministry of Justice of Moldova, 2017a](#)). At the same time the new Justice System Development Strategy 2018-2022 has not yet been accepted, and remains at the consultation level. The slow pace of reforms in this sector is reflected in the government reports and official statements ([Ministry of Justice of Moldova, 2017b](#)). In January 2018 Alexandru Tănase, the then minister of Justice, declared that "the reform strategy adopted in 2011 was, to a large extent, a failure" ([Radio Europa Liberă, 2018](#)). Due to the state of the reforms in October 2017, the EU announced that it would not transfer any further funds to the Moldovan state budget to support reforms in the justice sector ([Delegation of EU to Moldova, 2017](#)). The delays have been caused by a number of factors, the most important of which is the lack of political will (see the chapter on the bottlenecks on implementing the reforms). **As a result of these ineffective reforms, the level of disapproval by Moldovans toward their judiciary remains high.** Between 2014 and 2016 the number of respondents who stated that they either 'did not trust' the court system or 'did not trust it too much' rose from 70% to 90%¹. In the first part of 2017 the situation improved slightly (72%), but by the end of the year the perception of the justice system had rapidly deteriorated, as the level of distrust reached 80%. At the same time, at the start of 2018 76% of Moldovans considered judges to be corrupt ([Jurnal.md, 2018](#)). In 2018's Freedom House Nations in Transit Rapport, Moldova received only 5 scores in the 'Judicial Framework and Independence' category, which constituted a decline in comparison to a score of 4.5 in 2013 and 4.75 in 2015 and 2016 (where 1 is the most independent and 7 the least) ([Freedom House, 2018](#)).

Regardless of the delays, a series of important reforms in order to increase transparency in the judicial system have been initiated. In November 2017, the government re-proposed a series of amendments to the constitution that were foreseen to contribute to an increase in judiciary independence. These amendments had been previously registered in the Parliament in May 2016 but were ultimately not voted on and then finally cancelled due to expiration. Among others, the proposed regulations stipulates that judges of the courts of law will be appointed by the president at the suggestion of the Supreme Council of the Magistracy (CSM) and will hold office until retirement. The president will only be able to reject the candidature proposed by the CSM once. Currently judges are initially appointed for a probation period of five years. The proposed law also provides that judges may only be promoted and transferred with their consent. In December 2017, the CC of Moldova declared draft amendments to be constitutional, and in March 2018 they were positively assessed by the VCo. **However, as of now, the new regulations have not yet been adopted.** Thus far some other proposed changes have been adopted. Audio recordings of court hearings and random assignment of cases were introduced. Also, the number of court staff has been increased (each judge was granted a judicial assistant), and salaries in the judiciary have been increased. Additionally, a number of laws have been amended. For example, the new regulations have led to the creation of a 'Selection and Career Board' and created proper criteria for the selection of judges and the evaluation of those who seek promotion. **Despite these changes, the selection**

¹ Authors' own calculation based on the biannual Barometer of the Public Opinion, conducted by the Moldovan Institute for Public Policy. Available at <http://www.bop.ipp.md/ro/result/liniar>

and promotion of judges (and therefore their independence) still raise serious concerns.

Procedures are regularly disregarded, the candidates' integrity is questionable, and a selective approach is practiced. For instance, on 9 February 2016, Mihai Poalelungi, a judge widely considered to be loyal to Plahotniuc, was re-appointed president of the Supreme Court of Justice (CSJ) ([Timpul.md, 2016](#)). It is worth noting that Poalelungi was the only candidate for this office².

The activity of the Superior Council of Magistracy (CSM, an institution meant to ensure the self-administration of the judicial system) lacks transparency. Moreover, the number of court hearings conducted without public scrutiny (closed-door deliberations) has risen in recent years.

In general, the Moldovan judiciary remains highly corrupt and demonstrates a servile attitudes toward the ruling political and business groups. Much evidence proves that at present all the key justice institutions, such as the CSJ, the CSM, the National Anticorruption Centre (CNA) and the General Prosecutor's office remains to a great extent subordinate to the leader of the ruling PDM, the oligarch Vlad Plahotniuc ([Cațus and Konończuk, 2017](#)). **The politicisation of the judiciary is an instrument often used against Plahotniuc's political and business opponents.** Criminal cases are initiated on a regular basis against not only politicians and businessmen, but also civic activists, and even human rights defenders (*see chapter on Human rights and fundamental freedoms*). **The judiciary's political dependency is also the key reason for the lack of progress in the investigation related to the theft of US\$1 billion from the Moldovan banking system at the end of 2014.** The appointment procedure for judges and key officials remains an issue, especially in terms of the process's transparency and the candidates' integrity. **The government has been enforcing the obedience of the judiciary using corrupt practices, business and clan ties, as well as intimidation.** For example, in April 2016 an unfounded investigation was initiated against Judge Dominica Manole after she ruled in favour of the anti-Plahotniuc opposition with regard to the Central Electoral Commission's refusal to organise a constitutional referendum ([Transparency International, 2017](#)). As a result, Manole was dismissed on 4 June 2017, and on 6 February 2018 the Superior Council of Magistrates rejected Manole's request for reinstatement ([Realitatea.md, 2018](#)).

Also the CC remains highly politicised, and is widely perceived as being under the direct influence of the leader of the PDM, Vlad Plahotniuc. In March 2018 the above-mentioned Mihai Poalelungi was appointed a judge on the CC ([Livadari A., 2018](#)) and only 10 days later he was chosen as the new president of the court ([Point.md, 2018](#)). During recent times a number of decisions taken by this body have proven to be politically motivated. Some of them have virtually changed key elements of the Moldovan political system by omitting the classic legislative route and seriously disrupting the separation of powers. **The Government has so far made no attempts to increase the independence of the CC.**³ Contrary, this institution's role as a sort of extra-parliamentary instrument of legislation has visibly increased in the last few years, and remains very important, as proven by the latest developments. The CC's decision of October 2017 can serve as a case study, as it made it possible to suspend the President's rights in a situation where he refuses to appoint candidates approved by parliament to their respective ministries, or when he twice refuses to sign laws which have been adopted by parliament. According to the CC's ruling, until the contested acts have been signed, the role of the President shall be taken by the Prime Minister or the speaker of parliament (both allegedly trusted subordinates of Plahotniuc) ([Cațus K., 2018](#)). This legally strange solution has already been applied three times since October 2017⁴.

² Also, the appointment in December 2016 of a new prosecutor general, Eduard Harunjen (widely believed to be associated with Plahotniuc) raised the serious concern of the observers, and was condemned by Moldovan civil society, which declared that the process of appointment could have been staged.

³ However, in January 2018 Prime Minister Pavel Filip listed reform of the CC among the priorities of the government agenda for 2018 ([Democratic Party of Moldova, 2018](#)).

⁴ Previously, on 4 March 2016, the CC passed a ruling stating that the constitutional amendment of 2000, which changed the manner of the election of the president from a direct to an indirect election (the indirect election is held

2.1.2 Anticorruption

(In reference to Title II: Art. 4 and Title IV: Chapter 7: Art. 50, Title VI: Chapter 2: Art. 422, 424, 425, 426 of AA)

In the last few years Moldova has managed to improve its legal base in the area of anticorruption. Among the most significant and recent successes, one could mention the adoption of a law on the prevention and combating of money laundering and terrorism financing ([Law No. 308, 2017](#)) on 22 December 2017. Earlier, in March 2016, new important regulations regarding the Prosecutor's Office were adopted ([Law No. 3, 2016](#)). They were further supplemented in July 2016 with a Law on the specialised prosecutor offices, which created the Anticorruption Prosecution Office to fight high-level corruption ([Law No.159, 2016](#)). In November 2016 the Constitution was amended in order for the law to be implemented. In June 2016 the National Integrity Authority (ANI) – the organisation which, among others, verifies assets acquired during the exercise of a public office – was created ([Law No. 132, 2016](#)). On the legal level independence of the National Anticorruption Centre (CNA) has been strengthened. It should also be noted that the framework for Anticorruption measures was updated in March 2017, when the parliament adopted a new National Anticorruption Strategy for 2017–2020 (the previous strategy covered 2011–2016).

Unfortunately, despite the many declarations, the institutions that were designed to combat corruption (such as the CNA) remain highly politicized and are ineffective at containing high level abuses. What's more, these institutions are often used as a tool by the authorities to challenge their political and business competitors. **Between 2016 and 2017, a number of low and mid-level politicians and public servants were arrested on corruption charges. It seems highly probable that in many cases their arrests were part of political decisions and not evidence of improved effectiveness in the Anticorruption structures.** Additionally, according to the representatives of local NGOs and media, it is still common for the authorities to limit the access journalists and public activists have to information which might reveal corruption within the public administration. For example, journalists are often refused access to data concerning the property of public officials, which is justified by the law on the protection of personal data.

The independence of the Anticorruption Prosecutor office is highly doubtful as this institution is subordinated to the Prosecutor General Office, which allegedly remains under direct control of Vlad Plahotniuc. **The ANI, however, created in 2016, virtually did not fully function until February 2018**, when the parliament finally approved the organisation's structure ([Decision nr.9, 2018](#)). What's more, the budget of this organisation is insufficient (it was actually lower in 2017 than in 2016). Yet, on the positive note, it should be highlighted that **the ANI did manage to introduce an electronic declaration system in 2018.**

An investigation of the \$1 billion fraud that took place at the end of 2014 has been conducted rather ineffectively. Up to present, the **authorities have not managed to recover any funds transferred abroad** as a result of the fraud. The \$50 million that, according to government declarations, been returned comes from the liquidation of the three involved banks and their property ([Moldstreet, 2018](#)). The full version of the second Kroll report on the fraudulent schemes has never been published. In June 2017, Ilean Shor – the politician and businessman considered to be the main architect of the scheme – was sentenced to 7.5 years in prison, but as of May 2018 (so approximately a year ago) he remains under house arrest awaiting the Court of Appeal's final ruling. There is widespread belief that Shor has received special treatment due to his cooperation with Vlad

by the parliament), contradicted the constitution ([Popșoi M., 2016](#)). Thus, the court obliged the government to hold the next presidential election according to the new procedure. Moreover, the court's decision arbitrarily blocked the participation of one of the major candidates in the upcoming elections.

Plahotniuc. Specifically, Shor's testimonies were crucial to the conviction of Vlad Filat, Veaceslav Platon and other Plahotniucs opponents.

Insufficient progress in the fight against corruption has been reflected in recent public opinion polls. According to the most recent surveys available (February-March 2018) 96% of Moldovans consider corruption as a “very big” or “big issue” for their country. 30% of respondents consider parliament to be the institution “in which corruption is most present”, while 21% point to public servants such as doctors, teachers and policemen and 11% the judicial branch as the main sources of corruption ([IRI, 2018](#)). Yet, on a positive note, it should be said that perception of corruption among the above mentioned representatives of public service is changing in an optimistic direction. In March 2017, a slightly higher figure of 25% of Moldovans considered these representatives corrupt.

2.1.3 Party financing

(In reference to Art. 1c, Title II: Art. 4, Title IV: Chapter 7 of AA)

Between 2015 and 2017 a number of amendments were introduced to the Law on Political Parties, the Electoral Code and other regulations related to the functioning and financing of political parties in the Republic of Moldova. Among others, in March 2015 parliament passed an amendment enabling public funding of up to 0,2% of the state budget revenue to be granted annually to political parties⁵. Moldovan citizens were also provided with the right to donate an amount that equals up to 20 of their average monthly salaries to a party (40 average monthly salaries in the case of enterprises). Financing of political parties from abroad was banned. According to the Council of Europe Joint Opinion ([2017](#)) issued in October 2017, adopted amendments contributed among others to: “disclosure and reporting requirement on political parties and electoral contestants, supervision and sanctions available in case of violation of the rules.” **In general, all legal changes in this field were assessed by the Council of Europe (CoE) as a step in the right direction.** Indeed, the presidential elections at the end of 2016 showed that the electoral spending of political parties has become relatively more transparent. What’s more, in May 2018, parliament adopted a new regulation according to which parties in which women represent at least 40% of the electoral candidates (in uninominal constituencies) will receive additional money from the state budget. A further bonus will be provided to the party if their woman candidate is actually elected. Additional funding will also be provided for parties that promote people younger than 30 years old ([Parliament.md, 2018](#)).

At the same time, however, as in the case of all ongoing reforms in Moldova, the legal changes needs to be complemented with political will to enable their practical implementation. **Unfortunately, lack of this will seems to be very strong.**

Despite the changes in the legislative sphere, the party system in Moldova remains highly instrumentalised, moderately stable and does not enjoy the trust of citizens. According to available polls 76% of Moldovans have an unfavourable opinion of the political parties ([IRI, 2018](#)) and over 85% declare a lack of or small amount of trust toward this institution ([BOP, 2017](#)). The vast majority of Moldovan political parties (including the most important: the PDM and PSRM) are chieftain-style groupings steered without intraparty democracy. Such institutions tend to naturally serve as an instrument representing the political and business interests of their leaders and sponsors. Despite changes in the law regarding the financing of political parties, these organisations in Moldova are generally still dependent on financial support from business tycoons rather than

⁵ At the same time, it should be noted that the amendments lack the precision needed to be effective. For example, the regulation states that 50% of the allowances from the state budget are to be distributed to the parties “proportionally with the performance” in local general and parliamentary elections. It is not clear, however, whether this term refer to the number of parliamentary seats or the number of votes gained by each party.

public funding or membership fees. Also, in this context, representatives of NGOs and opposition parties point out that access to funding for different political actors remains unequal and an influx of illicit funding into politics still exists, just like the wide spread vote buying.

Additionally, the Central Electoral Committee (CEC) is not perceived as fully independent and is controlled to large extent by the ruling party leadership. Numerous cases of selective application of the law by the CEC have been reported in the last months. It should also be added that this institution cannot effectively execute its duties as a supervising body because it lacks proper human and financial resources. Only two employees in the Committee are assigned to handle the financial information filed by the parties and the other participants of the electoral process. Over a dozen of the posts at the CEC remain vacant (due to the unsatisfying working conditions offered by this institution). The inefficiency of the CEC has become even more urgent in light of the shift from a proportional to mixed election system introduced in 2017, as this reform upsurges the number of election actors fourfold, significantly increasing the burden of election reporting.

2.1.4 Local administration (decentralisation)

(In reference to Art. 1, Title I: Art. 2, Title IV: Chapter 1: Art. 21, 22, 23, Chapter 12: Art. 68, Chapter 20: Art. 107, 108 of AA)

Since 2014, the government in Chişinău has implemented significant changes to the legislation related to local administration, which aims to improve its efficiency and independence. Among others, at the very beginning of 2015, new regulations in the field of local public finances came into force⁶. Also, at the end of 2015 a National Council on Public Administration (chaired by prime minister) was created, in order to facilitate the implementation of local administration reforms ([Decision no. 716, 2015](#)). Later, in July 2016, the government approved a Public Administration Reform Strategy for 2016-2020, and in December 2016 the cabinet approved a 2016-2018 Action Plan to implement this strategy ([Decision no. 1351, 2016](#)). The document's aims (among others) to modernise public services, public finance management and improve administrative responsibility.

Unfortunately, despite those changes, local administration remains highly dependent on the central government, both politically and financially. Its efficiency (particularly in the rural areas) remains limited due to the lack of sufficient funding, corruption and quality of staff. One of the key problems which undermines the practical autonomy and independence of local administration is the very small size of the administrative units⁷. Almost 95% of all 898 local councils are located in rural areas inhabited by 66% of the population, which means that one council outside the cities covers only around 2000 people⁸. The per-capita administrative costs of such local governments are five times higher than those of the cities ([UNDP Moldova, 2015](#)) which makes them fully dependent on the central authorities.

The government lacks any motivation to change the situation (by means such as administrative reform), as the landscape of small but numerous councils brings immediate political benefits to the ruling political forces. Not only are they easier to control, but the situation also gives the central parties an opportunity to install their own representatives 'in the field', which is very important especially during nationwide

⁶ Local authorities can now retain 75% of the personal income tax collected at the local level. Also, they have also been granted the partial right to decide on the expenditure priorities.

⁷ Currently Moldova is divided into 32 *raions* and 5 *municipies*. 898 local councils operate throughout the country's territory.

⁸ Author's calculations based on the data from National Bureau of Statistics of the Republic of Moldova, Source: <http://www.statistica.md/pageview.php?!=ro&idc=479> [accessed 2 March 2018].

parliamentary or presidential elections, as they can work as both agitators and facilitators of the elections at the local level⁹. Additionally, public pressure for reform is low. According to the available polls, only 4.2% of Moldovans consider extension of the competences of local authorities a priority ([IPP, 2017, p.14](#)).

Representatives of local administration are often subjected to intimidation and threats from the central authorities. In 2018 21% of them declared that they had been physically and psychologically intimidated. About 15% responded that they had been threatened with losing their jobs. ([Promo-LEX, 2018a, p. 61](#)). One example of such practices is the case of the mayor of Taraclia, Serghei Filipov, who in April 2016 was sentenced by the appellate court for ‘abuse of power’ and causing ‘considerable damage to the public interest’. His offence reportedly consisted in illegally cutting down around a dozen trees in the city. The case was interpreted as clearly political and triggered protests (Pirkka Tapiola, the head of the EU delegation in Chişinău, and the ambassadors of the United States and several EU countries raised serious concern about the verdict). According to Filipov, the ruling was a punishment for his unwillingness to co-operate with representatives of the PDM ([Шупак М., 2016](#)). A similar case had already taken place in March 2018, when the mayor of Ghelăuza, Nicoleta Malai, was arrested by the CNA. She was accused of office abuse and passive corruption, but there is strong evidence proving that her arrest was just an instrument of intimidation and a punishment for refusing to cooperate with the PDM ([Independent, 2018](#)). In January 2018 a group of city councillors affiliated with Our Party (which is led by the mayor Renato Usatii, and has a majority on the council) began a hunger strike in response to what they claimed was political pressure and intimidation by the government ([Левченко М., 2017](#)).

In the last few months, certain controversial moves by the government with regard to local administration reform have been observed. In December 2017, Prime Minister Pavel Filip declared his intention to extend the format of the National Council for Public Administration Reform by taking over the powers of the Joint Commission for Decentralisation ([Publika.md, 2017a](#)). This declaration was widely criticised by the representatives of local authorities and some opposition parties, as in their opinion such a move would *de facto* ‘centralise the decentralisation’ process ([Ceapai A., 2018](#)).¹⁰ According to the legal advisor of the Congress of Local Authorities, Viorel Rusu, “the liquidation of the parity commission deprives the decentralisation process of a structure and a real mechanism for collaboration between local and central authorities.” ([Congress of Local Authorities, 2018](#)). In January 2018, public consultations regarding the prime minister’s proposed project were launched.

2.1.5 Reform of the government

(In reference to Art. 1, Title I: Art. 2, Title IV: Chapter 1: Art. 21, 22, 23 of AA)

In line with the Action Plan for 2016-2018 on the implementation of the Strategy of Public Administration Reform (2016-2020), on 7 June 2017 the Moldovan parliament approved the new Law on the Government ([Law on the Government, 2017](#)). This decision started the long-awaited reform of the central administration and implementation of the new regulations started quickly. Already in June the total number of ministries was reduced from 16 to 9. Simultaneously, the liquidation of deputy minister positions began. According to the reform, deputy ministers

⁹ Currently 12,000 people work in local administration, most of whom are politically affiliated. The reform would significantly reduce this number (to around 3000), while decreasing the influence of the parties in the regions. Such a reduction would also limit the number of political jobs which can be offered as rewards to the local elites to buy their loyalty.

¹⁰ The Commission created in 2010 to monitor the decentralization process is made up of both representatives of central and local administration ([Decision no. 608, 2010](#)), while the Council is composed of MPs and government representatives.

should be replaced with state secretaries. They, in turn, as a civil servants, and not political nominees, will not be relieved from their positions after the change of the government. Also, in order to limit the risk of abuse, ministries will no longer be managing state enterprises and companies with predominantly state capital. On 6 November 2017, the government adopted a decision on the creation of a new institution for dealing with state property: the Public Property Agency ([Decision nr. 902, 2017](#)).

Overall, the reform of the government is progressing and can be assessed positively. It should be noted, however, that public was consulted on the proposed new law for only 14 days, which is very short period of time for such important legislation. Also, the public was either not consulted at all or consulted very briefly on the number of minor regulations related to the reform. What's more, prior to the development of the new law, authorities did not conduct a functional analysis of the government, even though this action was proposed in the above mentioned strategy. In general, it seems that the main motivation for the reform was to reduce the cost of the central administration, but not to actually improve its effectiveness.

2.1.6 Electoral system¹¹

Upon the final reading on 20 July 2017, the Moldovan parliament approved the modification of the electoral system for parliamentary elections. According to the perspective shared by the representatives of Moldovan civil society and the opposition leaders, the aim of the new regulations was to favour the governing PDM and the Party of Socialists of the Republic of Moldova (PSRM) in the upcoming parliamentary elections scheduled for November 2018. The new regulations introduced a mixed electoral system in which 50 deputies would be elected in single-member districts using the 'first past the post' system, and the remaining 51 through a system of closed party lists ([Electoral Code, 2017](#)). The Electoral Code Amendment passed, in the face of regular public protests (which began after the announcement of the bill's draft in May 2017), objections by the political opposition and civil society, as well as the negative opinion of the OSCE and the European Commission for Democracy through Law (the so-called Venice Commission [VCo]) issued on 19 June 2017. In its opinion VCo stated that it would not recommend such a change to the legislation at this moment, for reasons including a "lack of consensus on this polarising issue" ([Venice Commission and OSCE, 2017](#)). Despite this opinion, the document also contained a number of detailed recommendations regarding the implementation of the new electoral system.

While drafting the bill, the parliament of Moldova decided to implement only some of the VCo's recommendations. Available studies show that the amended Electoral Code fully included only 12 (of 32) recommendations from the VCo ([Promo-LEX, 2018b](#)). 14 others were taken into account only partially, and the remaining 6 were not implemented in the law at all. Not only were the new amendments criticised, they did not meet the international standards. In addition, the implementation of the new regulation raised serious concerns, and confirmed that the reform was conducted in the interest of the PDM and PSRM parties.

The **process of creating the single-member districts envisaged by the amendment was non-transparent, faulty and highly politicised.** The rules for appointing the members of the National Commission for the Establishment of Permanent Uninominal Constituencies (created under the amended law) were unclear. Of the 20 members of this body (established on 6 September 2017), at least 13 were members or affiliates of the PDM ([Paşa V., 2018, p.12](#)).

¹¹ Although reform of the electoral system does not constitute a direct requirement of the AA, it is directly related to the principles of democracy and good governance which are explicitly included in the agreement. Its implementation – particularly in the way it was done in Moldova – should thus be analysed in the context of the outcome of the implementation of the AA, as it constitute a very important indicator of the reform process.

While defining the new constituencies (the final list was published on 30 October 2017), **the Commission rejected not only majority of the VCo's recommendations, but also violated 13 out of 31 provisions of the Moldovan Electoral Code.** Of the others, only 11 (of 46) constituencies met the requirement of Article 80 (paragraph 4a) of the Code which stipulates that the constituencies on the territory of the Republic of Moldova (excluding Transnistria) will contain between 55,000 and 60,000 voters with the right to vote. The Commission also failed to fulfil the requirement of Paragraph 4b of the same article, which states that "the deviation of the number of voters among uninominal constituencies must not exceed 10%". In reality, in 45 constituencies the number of voters is higher by more than 10% in comparison to the smallest constituency (in fact, the difference between the largest and smallest constituencies exceeds 90%) ([Government, 2017a](#)). Also, despite the fact that according to official data more than 805,000 Moldovan citizens live outside the country, only three constituencies have been created abroad (one for Europe, one for the CIS countries and Asia, and one for North and South America & the rest of the world.)

2.1.7 Freedom of media

(In reference to Art. 1, Title I: Art. 2, Title IV: Chapter 25: Art. 131 of AA)

Although the Moldovan parliament has still not managed to adopt the new Audio-visual Media Services Code, steps in this direction have been taken. On 20 April 2018 the parliament voted in the first reading of the draft of a code. This document will now be sent for feedback from international experts at the OSCE, the Council of Europe and the EU. Several other important regulations also await adoption¹². On a positive note, in recent years a number of key changes regarding media have already been introduced into the local legislation. However, this has not improved the situation in a visible way. **In fact, the condition of the media has deteriorated**, as demonstrated – among others – by the World Press Freedom Index, according to which Moldova has dropped 24 positions (from 56th to 80th) from 2014 to 2017.

Moldova's media scene remains largely monopolised by and subordinate to the country's major political and business groups¹³. Despite the adoption in 2015 of a new law on media ownership transparency (which requires owners to disclose their identities), and a reduction of the number of broadcasting licenses allowed per person (from five to two), the situation on the ground has not changed. Most of the important TV and radio channels remain under the control of Vlad Plahotniuc, the oligarch and leader of the ruling PDM. Until 2017 he was the official owner of four out of the five national TV stations as well as three radio stations ([Nani A., 2015](#))¹⁴. The new regulations forced him to formally cede two of his TV channels to his trusted aid and councillor, Oleg Cristal, but they obviously remained under his direct influence ([Пахольницкий Н., 2017a](#)). Plahotniuc also directly or indirectly controls a number of newspapers and news portals ([Gory H., 2018, p.3](#)). The media outlets subordinated to him represent around 70-80% of the whole media market in the Republic of Moldova ([Mold-street.com, 2015](#)). The second, much smaller but still influential media group remains concentrated in the hands of Igor Dodon and the PSRM. Despite the fact that the Moldovan Audio-visual Council has officially committed itself to limiting the monopolisation and concentration of the media, Dodon's group actually increased the number of TV stations under its control in 2016 and 2017 from two to four ([Gory H., 2018, p.4](#)). Moreover, 70% of the advertising market is concentrated in the hands of the two groups mentioned above, which

¹² Such as financing of media, advertising markets, and the de-politicisation of the Audio-visual Council.

¹³ Political subordination of media was clearly visible for example during the presidential campaign in 2016 when TV and radio stations were used as a PR instruments (ie. for slandering the opponents), and not the objective source of information on the candidates ([Rosca A., 2017](#)).

¹⁴ Some of the representatives of the NGOs monitoring the situation in the field of media freedom suggests that the actual number of TV stations controlled by the Plahotniuc have actually increased in recent years and reaches from 7 up to 8.

according to journalists cooperate with each other in order to eliminate independent sales firms ([Пахольницкий Н., 2018](#)).

Recently **several major negative developments in the field of media freedom** in Moldova have been observed. **On 30 March 2017 the Parliament of Moldova adopted an amendment to the Audio-visual Code** ([Law No. 50, 2017](#)). According to the new regulations, all TV and radio stations are obliged to broadcast not less than 8 hours of local content (produced by Moldovan companies) daily (between 6.00 am and midnight). The change of law was presented by the authorities as a way to limit the scale of foreign (i.e. Russian) propaganda in the Moldovan media space. At the same time, however, most of local experts we interviewed agreed that the new amendments have in fact limited the media's freedom in Moldova, and strengthened the media monopoly of the TV and radio conglomerate owned by Vlad Plahotniuc¹⁵. Smaller broadcasters often lack the financial resources to produce domestic content in the quantity required by the amended law. As a result they are either forced to buy content from local, bigger producers (i.e. from the media group belonging to Plahotniuc) or to provide their viewers with non-competitive, lower-quality content. The law came into force on 14 April 2017.

On 22 December 2017, the Moldovan parliament approved another amendment to the Audio-visual Code ([Law No. 257, 2017](#)) upon the final reading. These new regulations prohibit local broadcasters from transmitting any programme of an informational, analytical, military or political character which was not produced in the EU, USA, Canada, or in general in any country which has not ratified the European Convention on Trans-frontier Television. The official idea behind this new law was to "provide the state with information security" and – as in case of the amendment adopted in March 2017 – to protect Moldovan viewers from Russian propaganda. According to popular belief, the new amendment was introduced to limit anti-government propaganda (the Russian media present opposition towards the current government of Moldova), and strengthen the pro-European and anti-Russian image of Vlad Plahotniuc. The Moldovan parliament's decision was criticised by representatives of the EU and OSCE, among others.

Additionally, pressure on journalists remains an issue of concern in Moldova. Independent journalists regularly report cases of persecution, stalking or direct threats from unknown offenders, presumably linked to government circles ([Соловьев В., 2017](#)). Also, the Moldovan authorities have been trying to limit journalistic access to official sources. Media requests for access to sensitive public information are sometimes denied. Certain independent or openly anti-Plahotniuc media outlets (such as *Ziarul de Garda* or Jurnal TV) frequently face pressure and intimidation (such as threats of lawsuits) from official state institutions ([Anticoruptie.md, 2017](#)). Also, the number of foreign journalists (not only Russian journalists) who have been refused entry to Moldova is rising ([Media Azi, 2018](#)).

2.1.8 Civil society

(In reference to Title IV: Chapter 4: Art. 33, Chapter 20: Art. 107, Chapter 23: Art. 125, Chapter 25: Art. 130, Chapter 26: 134,135,136, Title V: Chapter 13: Art. 377, Title VII: Chapter 1: Art. 442, 443)

Overall, since 2014 some progress has been achieved in the area of cooperation with civil society. On the formal level, the actions planned in Chapter 26 of NAPIAA I (2014-2016) have been implemented, and those listed in NAPIAA II (2017-2019) are in the process of implementation. Among the most important issues, we should mention the adoption of new regulations aiming at increasing the level of transparency in the decision-making process ([Law No. 105, 2014](#)). Also, in June 2016 the Moldovan parliament voted in favour of a law allowing natural persons to donate 2% of their income taxes to NGOs, which is an important step towards the financial independence of

¹⁵ Based on interviews with representatives of *Asociatia Presei Independente, Centrul pentru Jurnalism Independent Moldova*, and several representatives of local journalism, among others.

that sector ([Interlic.md, 2016](#)). Additionally, in 2015 the first Joint EU-Moldova Civil Society Dialogue Forum was held in Chişinău ([Ministry of Economy and Infrastructure, 2015](#)), and in 2016 an EU-Moldova Civil Society Association Platform was created. In December 2017, a draft of the new Civil Society Development Strategy for 2018-2020 was registered in parliament by a group of deputies.

Unfortunately, despite a good legal base, the practical influence of civil society on the political decision-making process remains limited. Representatives of civil society regularly complain about problems gaining access to public information. Additionally, certain instruments developed over recent years have proven vulnerable to political crises. For example, the consultative National Participation Council did not operate for over two years, as its mandate expired in 2014 and was restored only in May 2017 ([Government, 2017b](#)).

Additionally, after several years of positive changes in Moldovan legislation regarding civil society, very negative tendencies became apparent in 2016, and particularly in 2017. Recently the government has undertaken a number of activities aimed at restricting the freedom of actions of NGOs and discrediting the whole third sector in the eyes of the wider public. Representatives of official state institutions (such as the Supreme Council of Magistrates, the Prosecutor General's Office, and the speaker of parliament) have started to openly accuse civil society of having specific political affiliations. For obvious reasons, organisations which have been monitoring and criticising certain activities of the government (such as the changes to the electoral code) have become the main target of this attack. At the same time, the media outlets considered to be close to the authorities (including those under the direct control of Vlad Plahotniuc) have initiated a massive campaign against the NGOs, the aim of which was to reduce public confidence in the third sector ([CRJM, 2018](#)). The insinuation that civil society (about 80-90% of which is financed from abroad) ([Neicovcen, Vidaicu and Cioaric, 2016](#)) consists of "agents of the opposition" ([Popşoi M., 2017](#)) or serves in the interest of external actors (such as Russia) has become widespread.

In June 2017, the Ministry of Justice unexpectedly introduced three additional articles into the draft NGO law which until that moment had generally been praised by observers, as it had been developed in close cooperation with civil society, as well as a representative of the OHCHR.¹⁶ According to the proposed regulations, all NGOs in Moldova that receive funding from outside the country and are involved in what the amendment defines as 'political activities' are required to disclose the origin of their funding, report specifically on expenses towards their 'political activities', and disclose the incomes of their staff and board members, among other stipulations ([Draft Law on the NGOs, 2017](#)). The changes also introduced severe penalties for non-compliance with these requirements. According to the government, the new amendments were meant to "regulate the involvement of NGOs in political activity". ([Publika.md, 2017b](#))

After heavy criticism from local NGOs and international organisations ([Amnesty International, 2017a](#)) the government finally decided to withdraw any attempts to implement the new law with its proposed amendments ([Privesc.eu, 2017](#)). At the end of January 2018 a new version of the draft law was presented to the public for consultation ([Maftei S., 2018](#)), and on 28 March the draft was adopted by the government. However, the final shape of the regulation after it reaches parliament remains unclear. At the same time, **the negative campaign against the third sector driven by the authorities is still ongoing.**

Moreover, the civil society sector in Moldova suffers from a large concentration of the NGOs in Chişinău and under-representation in the other regions. Larger organisations which have been active for longer have easier access to external financial sources, thanks to their knowhow and experience. This in turn leads to the concentration of funding within a limited group of

¹⁶ The amendments were made without prior consultation and contrary to the previous agreements within the Working Group that had worked on the draft NGO law.

organisations, a decrease in their efficiency (as they are usually implementing more projects than they can cope with) and hampers the further development of civil society.

2.1.9 Public participation in the decision making process

In recent years, several cases have been observed in which citizens' participation in the political decision-making process were restricted. A recent example is related to the amendments to the electoral code (adopted on 20 June 2017). In December 2017 an initiative group to organise a referendum on reversing the changes to the electoral system was created by a number of civic activists ([EurAsia Daily, 2017](#)). In January 2018 the Central Electoral Commission refused to register the initiative group due to formal irregularities ([Decision No. 1344, 2018](#)). In February representatives of civil society again applied for the registration of the initiative group, but on 12 March 2018 the Central Electoral Commission rejected their application for the second time, citing *inter alia* the constitutional court's opinion according to which only the parliament of Moldova can decide the electoral system of the country ([Чебан Е., 2018](#)). **This decision by the commission has effectively limited the citizens' constitutional right to organise a referendum.**

2.2 Human rights and fundamental freedoms

(In reference to Art.1, Title I: Art. 2, Title II: Art. 3,411, Title III: Art. 12)

The legal base in the field of the protection of human rights has improved during the period under analysis, although certain shortcomings in the process of its adoption were observed.

In June 2016, the government approved a new Action Plan for supporting the Roma Population in the Republic of Moldova for 2016-2020 (the previous one covered the period between 2011 and 2015). Additionally, in December 2016 the government adopted a Strategy for Inter-ethnic Relations for 2017-2017, which now serves as a reference point for numerous organisations and political forces in the country. In this context, it should also be mentioned that although the Republic of Moldova signed the European Charter for Regional Minority Languages in 2002, the document is still pending ratification.

In November 2017 a new, third Human Rights National Action Plan (2018-2022) was finally approved by the government, but it is still pending adoption by parliament. The previous plan expired in 2014, but in large part it has remained unimplemented. Also in 2017 draft amendments to the criminal code (related to the fight against hate crimes) were developed, but have not yet been adopted by the parliament. On the positive note, regulations humanising criminal policy have been introduced in October 2017. The activities laid out in the National Action Plan on Preventing and Combating Trafficking of Human Beings for 2014-2016 have in large part been implemented. The Criminal Code was amended to increase penalties for acts of torture, and eliminate the possibility of any limitation (such as amnesty) to the crime of torture. Moreover, a new national torture prevention mechanism has been established ([OHCHR, 2017](#)). In 2017 the implementation of the Law on Preventing and Combating Trafficking in Human Beings was put under parliament's supervision. Also, in the same year a draft National Strategy for THB Prevention (2018-2023) and the draft of an Action Plan for the period 2018-2020 were developed.

Despite the legal improvements in the period analysed, significant shortcomings with regard to human rights still persist. Hate speech, people trafficking, the harassment of LGBT people and inadequate conditions in prisons remain substantial problems. Additionally, certain negative tendencies can be observed in recent years, particularly with regard to freedom of assembly or the right to a fair trial. Widespread corruption, particularly in the judicial sector, remains one of the key issues which negatively influences the protection of human rights in Moldova. The bad situation in this sector is reflected, among other things, by the fact that between 2014 and 2016 alone the number of Moldovan citizens seeking asylum in other countries increased

almost threefold (from about 1500 to 4000) ([Ziarul National, 2018](#)). Also, the government's interest in the situation regarding human rights seems to be limited. For the last ten years the ombudsman has not been invited to present his report to a plenary meeting of the parliament (despite the legal obligation to do so). The same is true of the representative of the Equality Council.

2.2.1 Freedom of assembly

Freedom of assembly as a rule is respected, as has been proven by the series of public demonstrations which took place in Moldova in recent years. For example, in 2015, at least four mass anti-governmental demonstrations (with between 10,000 and 20,000 participants) were organised in Chişinău.¹⁷ **Yet, some negative trends can be observed in this area since 2016.** Organisers of the protests have highlighted recurring cases of limiting access to the demonstrations for people from outside the capital, by measures including the suspension of bus and train connections with Chişinău on protest days. **Leaders of the political opposition have also mentioned cases of intimidation of people willing to participate in the public demonstrations** (especially those who are employed in the public sector – like teachers or clerks – and can be threatened with the sack). For example, during the protest in Chişinău organised on 17 September 2017, the Moldovan police arrested (on dubious charges) the driver of a minivan which was transporting sound equipment for the demonstrators ([Батанова А., 2017](#)).

2.2.2 Situation of the LGBT community

The situation of the LGBT community in Moldova is improving, but still remains relatively poor. Although the rights of representatives of this group are protected at the legal level, hate speech against the LGBT community remains common, and emanates not only from the leaders of the Orthodox Church, but also from influential politicians (such as President Igor Dodon and members of the PSRM). Hate crimes are still generally unreported. The LGBT community also enjoys a formal right to assembly, but their parades always face aggressive counter-demonstrations. The government often pushes for the demonstrations to be held in less public places or break them up after just a few hundred metres' walk, as they are unable to provide security to the participants in such events. **In the last two years, with the support of the Orthodox Church ([Bloknot-Moldova.md, 2016](#)), the conservative opposition has made regular attempts to push through new regulations aimed at limiting the rights of the LGBT community.** In May 2016 the PSRM developed a new law aiming at 'banning gay propaganda' ([Actualitati.md, 2016](#)). A similar law was proposed by this party a year later in April 2017. Even though parliament refused to adopt the amendments in both cases, the fact that the largest opposition party has attempted to promote such laws raises serious concerns.

2.2.3 Right for fair trial

Unfair trials are still an issue in Moldova. Poorly grounded lawsuits are regularly filed against politicians, human right defenders or judges who openly oppose the current authorities. In such cases the court procedures are often nontransparent (especially when it comes to the evidence) and bear clear signs of political motivation. For example, at the end of August 2017 the former Communist MP Grigore Petrenco, now leader of the Our House Moldova party, left the country and requested political asylum in Germany ([Crime Moldova, 2017a](#)). Earlier, in June 2017, he and eight of his fellow political activists had received conditional prison sentences and been prohibited from attending public for an attempt to organise mass disturbances on 6 September 2015 ([Jurnal.md,](#)

¹⁷ The government refrained from any attempts to restrict the right to protest and limited itself to guaranteeing the security of official buildings. In the same year, the pro-European Dignity and Truth Movement and the pro-Russian opposition set up tent cities in front of the government and parliament buildings. Although these tent cities existed for several months, the authorities did not try to intervene.

2017). Their trial faced multiple delays and procedural infringements ([Amnesty International, 2017b](#)). In addition Petrenco's lawyer, Ana Ursachi, who had also defended other high-profile clients in politically sensitive cases, became a subject of a smear campaign in the pro-government media. Finally at the end of 2016, criminal proceedings were initiated against her on dubious premises ([Мельник Н., 2016](#)). As a result Ursachi was forced to leave the country and seek asylum in an EU state¹⁸. On 29 March 2018 a court in Chişinău issued a warrant for her arrest ([Батанова А., 2018](#)).

2.3.4 Tortures and ill-treatment

Cases of **torture and other forms of ill-treatment** continued to be reported, although according to official data a slow downward trend in the number of registered complaints can be observed in recent years ([Prosecutor's Office, 2017](#)). Most cases of ill-treatment are attributed to the police during arrest and the preliminary investigation period, and some are related to criminal investigators ([Promo-LEX, 2016](#)). **Despite the ongoing improvement of the situation, as a rule police officers responsible for the acts of violence are generally not punished or even prosecuted for their actions.** The Moldovan authorities have still failed to convict the perpetrators of the 7 April 2009 assaults (anti-governmental demonstrations which ended in massive arrests, numerous cases of torture and the deaths of four people). It is widely believed that their impunity results from their proximity to the ruling elites. A more recent example of ill-treatment which resulted in death occurred at the end of August 2017. Andrei Braguta was arrested for speeding and died in police custody after 10 days. The authorities claimed that his death was caused by pneumonia, or that he had been beaten up by two fellow cell mates, although it seems that Braguta had already been severely beaten when placed in the cell ([Crime Moldova, 2017b](#)). Moreover, it turned out the victim had suffered from psychological illness. As the whole case acquired a huge social resonance, an official investigation was initiated, and the prosecutor and judge who had issued the arrest warrant were dismissed ([Crime Moldova, 2018](#)). In March 2018 a lawsuit against the police officers and inmates was still in progress.

2.3.5 Human trafficking

Human trafficking remains a very important issue in Moldova. **Despite a noticeable development of the legal and institutional framework, the situation is improving only very slowly.** In the Trafficking in Persons Report prepared by the [U.S. State Department \(2017\)](#) and published in June 2017, Moldova has dropped to the Tier 2 Watchlist level, after being on Tier 2 for six years. As the report stated, "although convictions have increased, investigations and prosecutions of traffickers have decreased". The persistent corruption affecting law enforcement has impeded the prosecutions of cases of human trafficking, particularly when they involved officials. The report's authors have emphasised the fact that, despite several government officials and police officers having been investigated in recent years for complicity in trafficking, and that a number of diplomats and the head of the foreign ministry's consular affairs department have been investigated, arrested, or indicted for extorting or accepting bribes, none of the criminal investigations of public officials have been concluded, and most remain pending in court.

2.3 Situation of ethnic and language minorities

(In reference to Title II: Art. 3, Title IV: Chapter 1: Art. 21, 22, 23, Chapter 12: Art. 68, Chapter 20: Art. 107, 108 of AA)

The exercise of rights by ethnic and language minorities to which they are nominally entitled under the existing legislation remains an important concern. Major problems facing ethnic

¹⁸ Based on the conversation with Ana Ursachi.

minorities include: a) access to public services for persons who do not have command of the official language, b) language and cultural education, c) full use of the rights accorded to the Autonomous Territorial Unit of Gagauzia under the Law on the Special Legal Status of Gagauzia (*Gagauz Yeri*) of 1994.

The websites of numerous ministries and healthcare institutions are available only in the state language. **Organisations representing ethnic minorities also complain that communication with officers at most public institutions in any language other than the official one is highly problematic** ([Гнаткова, 2017](#); [Пахольницкий, 2017b](#)). In particular, courts refuse to accept complaints that were submitted in Russian. The UN Special Rapporteur on minority issues cited 10 cases of this kind of discrimination ([United Nations in Moldova, 2017, para. 34](#)). The severity of language-related discrimination in courts was highlighted by Ian Feldman, President of the Council for Preventing and Eliminating Discrimination and Ensuring Equality in a public debate in the Moldovan parliament ([Пахольницкий, 2017](#)).

The quality of education in ethnic-minority schools is another problem. To a large extent, this is due to the emigration of teachers and the shortage of new teaching staff. Textbooks used in Russian-speaking schools are direct translations of handbooks in Romanian, with numerous mistakes and errors which have not been rectified for years. Some minorities, such as Gagauz and Bulgarians, cannot pursue the entire curriculum in their own languages. The teaching of the official language in ethnic-minority schools is also a matter of debate. In fact, this is one of the foremost problems voiced by minorities' representatives ([McKinna A., 2018](#); [Institutul pentru Politici și Reforme Europene, 2018, p. 40-41](#); [United Nations in Moldova, 2017, para. 31](#)). As a result, members of those communities cannot hope to advance in professional life or participate in public life. Among positive developments, mention should be made of the pilot programme entitled 'The educational integration of students who speak other languages by expanding the number of study subjects studied in Romanian', running since 2011, under which selected courses are taught in the official language in 32 minority schools. The project was very well received by the minorities, but thus far its scope has not been extended to other schools. The 'National Programme to improve the quality of learning of Romanian language in educational institutions with languages of national minorities' adopted in 2015 runs on a very low budget, with only 1,700,000 Moldovan lei (about €84,000) allocated for 2016-2018 ([Institutul pentru Politici și Reforme Europene, 2018, p. 40](#)). Moreover, the curricula of history and civic education do not include the cultural diversity or multi-ethnicity of the country. Consequently, nations such as the Gagauz or the Bulgarians do not exist in the awareness of pupils from regions where these minorities are absent.

The legal system and the territorial-administrative structure of the Republic of Moldova do not fully provide for the existence of the Autonomous Territorial Unit of Gagauzia within the state framework. Numerous decisions taken by the central authority are actually in conflict with the competencies of the Autonomous Unit. Thus, Gagauzia cannot fully exercise the rights it obtained under the compromise of 1994. In 2015, a joint committee of the Moldovan Parliament and the Gagauzian People's Assembly (GPA) was established in order to harmonise laws and thus enable the autonomous status of Gagauzia to take full effect. The committee produced three legislative initiatives, which were then submitted to the national parliament. The first two were amendments to the Act on Legal and Administrative System of the Republic of Moldova and the Territorial Government Law, which were intended to provide for the existence of the Autonomous Unit as a separate, administrative-territorial entity with a higher status than the current units. So far, Gagauzia has functioned as a second-degree unit, and thus many of its authorities' decisions, taken within their scope of competence, have been overruled by national legislation. The third initiative, aimed at amending the Law on the Special Legal Status of Gagauzia (*Gagauz yeri*) of 1994, aims to ensure that all changes to the law may only be made in agreement with the GPA. All three key initiatives have already been rejected in the course of assessments by the legal committee of the

Moldovan parliament. As a result, the amendments voted by parliament had little to do with the initial proposals drafted by the joint committee ([Механизмы диалога..., 2017](#); [Васильева, Шоларь, 2017](#); [Васильева, 2017а](#); [Васильева 2017b](#)). Furthermore, it is worth noting that the courts tend to abrogate the decisions of the Gagauzian authorities, as for example was the case with the GPA Education Law (passed in 2016), a bill providing for more extensive teaching of the Gagauz language and the introduction of courses on national cultural heritage. In December 2017, the bill was revoked by a court in Ceadîr-Lunga which as its rationale cited Art. 111 of the Constitution. i.e. concerning the Autonomous Territorial Unit of Gagauzia. The government of Gagauzia appealed against the decision, arguing that it did not comply with the provisions of the Constitution ([Ивашкина, 2017](#)).

2.4 Foreign and security policy

(In reference to Title II: Art. 5, 7,8 of AA)

The government of Moldova has undertaken steps **aimed at increasing the combat capacity of the army** (in accordance with the EU's Common Security and Defence Policy) and **enabling the Republic of Moldova to be involved in EU-led civilian and military crisis management operations** (in reference to Art. 5 and Art. 7 of the AA). In November 2017, the **Republic of Moldova and the separatist region of Transnistria reached an agreement**, negotiated in the 5+2 format (with participation of the EU). The agreement is intended to foster trust and dialogue between the signatories, as well as eliminate obstacles which adversely affect the life of inhabitants on either bank of the Dniester. Another major step in favour of increased stability and security in the region was **reaching an agreement with Ukraine regarding joint controls on the Transnistrian section of the border** (both in reference to Art. 8 of the AA). In recent years, the foreign policy of the Republic of Moldova was geared chiefly towards establishing closer links with the EU and the US, and asserting its geopolitical loyalty to the West.

On 1 November 2017, the government of the Republic of Moldova approved the National Defence Strategy and, at the same time, the Action Plan for its implementation in 2017 -2021. The strategy stipulates modernisation of the army and an increase in defence spending, which is to reach no less than 0.5% GNP in 2020 (in recent years, it amounted to 0.41% GNP). The strategy also provides for further increase in such spending after 2020. Moreover, the government declared that Moldova is ready to take part in UN, EU and OSCE peacekeeping missions, as it is able to deploy one battalion-sized unit of the military or police. The battalions are to be formed thanks to cooperation with Romania ([Government 2017](#), [Девятков 2018](#)). Also, an **agreement between the Republic of Moldova and the EU on security procedures for the exchange of classified information has been signed on** 31 March 2017, and subsequently ratified by the parliament in November 2017.

The commitment to higher expenditure and participation in peacekeeping missions has also been included in the Individual Partnership Action Plan for the Republic of Moldova - NATO dated 13 September 2017 ([Decision 736, 2017](#)). At this point, cooperation with NATO has assumed a permanent and institutionalised form, a fact underscored by the adoption of the aforesaid plan and opening of a NATO liaison office in Chişinău ([NATO, 2017](#)). Since 2015, **Moldova has been a consistent participant in joint military exercises with NATO and EU partners, alongside Georgia and Ukraine**, such as Joint Effort 2015 in Bălţi, a Moldovan-US exercise in May 2016 (AP News 2017), or the annual Moldovan-Romanian-US Joint Combined Exchange Training (JCET) exercise ([Vlas C., 2017](#)). The exercises as well as collaboration with the US and Romania in the domain of logistics and information are first and foremost designed to modernise and enhance combat capability of the Moldovan army, by way of performing obligations arising under the AA (Art. 5.1; Art. 7).

In November 2017, the government of the Republic of Moldova concluded a series of agreements with the authorities of separatist Transnistria. 18 November 2017, saw the opening of a bridge on the Dniester, a part of the international M14 route, which had been closed since the war of 1992. The event had both symbolic significance and economic importance (particularly for Transnistria). In 27-28 November 2012, the 5+2 format talks resulted in agreements that the international community, including the EU, had insisted on. The agreements were concerned with the following: a) recognition of degrees conferred by the University of Transnistria in Moldova, b) rules governing the functioning of Romanian-language schools in Transnistria, c) resumption of telephone communications between the two sides, d) rules providing for the access of Moldovan farmers to farmland they own on the territory controlled by Transnistria, e) creation of new, symbol-neutral licence plates for cars registered in Transnistria, which would enable Transnistrian drivers to travel abroad (*Пакет пошел...*). As of now, the agreements pertaining to education ([Cojocari V., 2018](#)) and farmers' access to their land have actually taken effect. Implementation of the agreement on telephone communications is taking longer than planned, allegedly due to technical reasons. Putting the agreement on licence plates into practice proved the most problematic, but a positive breakthrough in the matter was announced on 14 April 2018 ([Cojocari V., 2018](#)), though at this juncture it is difficult to determine whether the agreement will actually take effect.

In this context it should be noted, that **EUBAM's mandate was extended** from 1 December 2017 until 30 November 2020.

The joint customs inspection and border control point on the Kuchurgan - Pervoimaisk border crossing (Transnistrian section of the border) began to operate on 31 May 2017, after many months of preparation. Thus, Moldova will be able to superintend the movement of goods and persons, previously hampered by the fact that a greater part of its eastern border was outside direct control of that state. Closer cooperation with Ukraine in terms of security, including prospective establishment of joint control points at all border crossings ([Балахнова, В., 2017](#)), was a major step towards achieving stability in the region. However, these undertakings were criticized by Russia and Transnistria, which allege that Chişinău and Kyiv impose an economic blockade on the separatist republic (*«Зачем запаливать фитиль...»*)¹⁹.

The most important objective of Moldova's foreign policy after 2014 (especially in the domain of rhetoric) is affirming its loyalty to the US and the EU. In 2017-2018, the principal instrument used for that end were manifestations of an assertive stance towards Russia. Acts of that kind include: a) a protest note to the ambassador of the Russian Federation to the Republic of Moldova, handed in by the latter's prime minister and chairman of the parliament – 9 March 2017; the protest denouncing "blatant harassment" to which high Moldovan officials were subjected by Russian border services; b) expulsion of five Russian diplomats without providing official rationale – 29 May 2017 ([Devyatkov A., 2017](#)); c) pronouncing Dmitry Rogozin, deputy prime minister of the Russian Federation and special envoy of the president for Transnistria as *persona non grata* – 2 August 2017 (*Молдова объявила...*); d) a ban on the dissemination of Russian informational content on the territory of Moldova.

The relationship between Moldova and Russia deteriorated substantially in the course of negotiations and conclusion of the AA. In 2013-2014, Russia introduced an embargo on Moldova's major exports: alcohol, fruit, as well as tinned fruit and vegetables ([Caţus K., 2014a](#)). Economic relations resumed in autumn 2016, during the brief thaw in mutual relations ([Стеркул Н., 2018, p. 5](#)). It appears that since 2017 the government of Moldova has employed anti-Russian rhetoric to bolster its standing in the eyes of the West (the US in particular) and to consolidate pro-Western

¹⁹ Such opinion was expressed by "Transnistrian MFA" officers in respond to our question.

voters. Framing its relations with Russia through only immediate, short-term political goals does not promote stability and an atmosphere of reciprocal trust in the region.

2.5 Economic aspects of the AA's implementation

The implementation of the DCFTA provisions is conditional upon how public policy provisions that do not have economic content are applied. These non-economic provisions create the necessary conditions for improving the overall economic environment. In the absence of an independent judiciary sector, of strong and politically neutral public institutions and agencies, and the lack of political will to adopt a national regulatory framework adapted to current international standards, the implementation of the DCFTA will suffer and the implementation of the roadmaps for different types of economic reforms will experience a slowdown. In the same context, appropriate conditions must be ensured to facilitate the comprehensive reform of the public administration as proposed in 2017 by the Government of the Republic of Moldova ([Government, 2017](#)) and appreciated by external partners ([EU4Business, 2017](#)).

2.5.1 DCFTA implementation

(In reference to Title IV, Chapter 2, annexes 2 and 3, Chapter 7, art. 47 – 51, Chapter 8, art. 52 – 57, Chapter 10, art. 62 – 64, Title V, Chapter 1, art. 143, Chapter 5, art. 194, Chapter 8, articles 268-276 of the AA)

In the electoral campaign for the presidential elections in November 2016, but also afterward, certain political forces in Moldova encouraged the idea of denouncing the AA and the DCFTA. The argument of these political forces²⁰ was the following: the economic part of the document creates disadvantages for domestic producers, and the internal market will be invaded by lower-quality European products. Attempts to denounce the economic part of the AA include elements of more discursive manipulation. Although the political elite does not know in detail what opportunities the DCFTA could create for Moldova, it deliberately manipulates a public which is less informed and unprepared for a qualitative change. Moreover, these same political forces did not assess the consequences that even a partial denouncement of the AA could have on the image of the country and the economy as a whole.

Moldova's general lines of priorities in the implementation process of the Deep Free Trade Agreement and DCFTA are the same as in the first 2014-2016 Association Agenda: increasing institutional and administrative capacities, supporting agriculture and rural development programmes, stimulating the business environment and trade, implementing sanitary and phytosanitary (SPS) measures, developing transport infrastructure, increasing energy independence, stimulating ecological projects and obtaining renewable energy, etc. Of course, all these priorities need to be sustained and implemented in a difficult political and economic context: the lack of political consensus on the direction of the country's development – (European integration versus Eurasian integration), as well as the need to sanction those who have been involved in embezzling financial resources in the Republic of Moldova's banking sector. Introducing this topic into the public debate prejudices European integration as a process, because it offers opportunities to support topics of false discussion and distracts public attention from procedures, standards, and concrete actions.

The economic part of the AA is a real challenge for stakeholders interested in and involved in the country's European approach. The business environment is the one that first feels the effects of legislative change and benefits from the content of new public policies.

²⁰ One of the stated objectives of the candidate of the Moldovan Socialists' Party in the presidential elections in 2016, Igor Dodon, was the denunciation of the Association Agreement between the Republic of Moldova and the European Union.

In order to regulate the relationship with the business environment and to sustain entrepreneurial activity, several legislative proposals and regulations that aim to reduce the pressure on the business environment have been discussed, although these are still not producing real changes for entrepreneurs. One discussion within the Ministry of Economy and Infrastructure in March 2018 ([The Ministry of Economy and Infrastructure, 2018](#)) focused on introducing measures into a draft law proposed by the Ministry of Justice which were aimed at reducing abuses by the authorities, and monitoring bodies ([Interlic, 2018](#))²¹, including customs, in the business environment.

Previously, a new law project by the Parliament of the Republic of Moldova ([October 2017](#)) for the decriminalisation of some economic activities was introduced into the Parliamentary debate in 2017. The public reaction was to criticise the provisions of the draft law, because it undermined the fight against corruption and the investigation of previously committed economic frauds²². After several critical reactions from civil society, as well as from economic experts, the bill was amended and sent back to parliament for approval and debate. The content of the document has been improved, and the expectations are that this bill will be debated and voted on before the end of this year.

Also, with reference to stimulating the business environment, it has been recommended to encourage the government to create more opportunities for small and medium enterprises to access external funds, similar to the PARE 1 + 1 programme. This programme was launched in the 2010 State Register of Legal Acts of the Republic of Moldova ([October 2010](#)) and was appreciated by Moldovan entrepreneurs. In March 2017, the European authorities announced that they would continue to support the initiatives developed within this programme. Through it, various projects to promote European entrepreneurship experiences have been developed, and more will be developed by the end of 2018. Communicating about similar opportunities for other areas will be useful. In Moldova, the PARE 1 + 1 programme is being implemented in partnership with the Organisation for the Development of the Small and Medium Enterprises Sector (ODSMES), and the experiences are being shared with other states in the ex-Soviet space.

Another important thing to be mentioned here in the context of the development of the business opportunities oriented towards the EU market is that 9,194 preferential certificates of origin were issued in the first three months of this year, of which 4,823 were issued under the Free Trade Agreement with the EU. This certificate entitles the owners to confirm the preferential origin of the exported goods without having to obtain the certificate of origin from the customs authority. The Customs Service informs that the rules of origin applicable in the DCFTA of the EU-Moldova AA are laid down in the "Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin", which replaced Protocol II to the EU-Moldova AA, following the EU-Moldova Customs Subcommittee Decision No. 1/2016 which entered into force on 1 December 2016. According to the Convention, the proof of origin of the goods is represented by the movement certificate EUR-1 goods or the origin declaration affixed to a commercial document ([Interlic, 2018](#)). The communication on these certificates must be a constant part of the dialogue on business opportunities with local entrepreneurs within the DCFTA.

In the same context, to encourage the export-import activities between the EU and Moldova, certain changes to customs legislation are required. On 11 April 2018, the Finance Ministry made public the project proposal for the new Customs Code ([Finance Ministry, 2018](#)). The project is accompanied by an informative note, which argues in detail which changes are being made in accordance with the

²¹ On 22 March 2018, Iuliana Dragalin, State Secretary at the Ministry of Economy and Infrastructure, declared at a meeting with the World Bank's economic and financial experts, Anselme Imbert and Julien Gebel, representatives of the French Embassy in Russia, that the following measures were already a reality: reducing the number of institutions with control functions from almost 70 to 13, eliminating over 60 percent of permits, and launching a one-stop shop for issuing permits, which will facilitate the development of the business environment.

²² Skype interview with an expert in the financial field, 3 April 2018.

European regulations, while at the same time specifying some important aspects of the internal and external trade. According to the note, the Ministry of Finance must assess until 1 January 2019 the compatibility of several articles and normative acts in the customs field with the European legislation.

Another challenge for business representatives is how to organise public procurement, and more specifically how the national procurement system works. Public procurements appear in several articles of the AA. (Chapter 8 – Public procurements, articles 268-276, AA).²³ Corruption in the field is a phenomenon that can be found on different stages, from planning to the contract implementation stage. According to the report of a Moldovan expert, Iurie Morcotilo, between 2008-2015 the corruption in public procurement cost Moldova up to three billion MDL or \$183.24 million ([Moldova.org, 2018](#)).

Some new regulations of the law on public procurement ([Law 131, 2015](#)) are being implemented, but there are still many more to be adopted, tested and improved in order to have a functional system in the field and to ensure the transparency. On 3 May 2018, the Committee of Economy, Budget and Finance, within the Parliament of the Republic of Moldova ([Parliament of the Republic of Moldova, 2018a](#)) announced the start of the public consultations on the draft law for amending and completing Law No. 131 of 03.07.2015 on public procurement. The draft law was published on Parliament's website on 25 April 2018 ([Parliament of the Republic of Moldova, 2018b](#)), but the public consultation procedure, which should be complementary to the legal procedure to modify the content of the law, is not clear.

The most important challenges in this area are related to the harmonisation of the national legal framework with EU rules, ensuring free and equal access to national markets for foreign investors, and reforming the institutions that are responsible for the organisation and monitoring of public procurement. The implementation period for the EU directives in this field is from 3 to 4 years.

The implementation of the AA and DCFTA's priorities, which are related to the stimulation of commercial activities as well as investments, cannot be facilitated in the circumstances of a conflict within a country's territory. One of the priorities of the AA's implementation agenda is to strengthen dialogue to explain the benefits of the AA and economic cooperation in different fields (Title IV, Chapter 2 of the AA) and ensure its application throughout the Republic of Moldova. Negotiations with Transnistria are difficult, and often affect the ability to negotiate the economic interests of the Republic of Moldova with other partners. According to the content of the Implementation Plan of the AA and DCFTA for the period 2017-2019, during a meeting of the working groups for the economy of March 28, 2017, the experts from Chişinău reconfirmed their willingness to provide the necessary assistance and expertise to economic agents from the left bank of the Dniester who wish to perform export operations to EU markets. The economic agents on the left bank of the Dniester currently benefit from a series of facilities granted by the Moldovan authorities, as well as a preferential trade regime in relation to the European Union's outlets. Measures to support the general social and economic stability in the region are included in Article 8 of the document published by the Ministry of Foreign Affairs and European Integration ([MFAEL, 2018](#)).

Exports from the Transnistrian region to the EU member states increased in the first half of 2018 ([State Customs Committee..., 2018](#)). Thus, exports to EU member states increased from \$37.4 million to \$82.3 million. The explanation for these positive trends is that the region is connected to

²³ The Agency for Solving Appeals related to Public Procurement procedures is functional, but its work cannot be said to be independent, as it is organised in the interests of political or economic groups. The staff who manage the activity of this public institution are politically nominated, and do not have a very honest reputation.

the opportunities offered by the DCFTA for Moldova and that Transnistria can benefit from it ([Newsmaker.md, 2018](#)).

Several challenges arising from this type of difficulty with reference to the border management system were resolved in 2017 ([Moldpres, 2017](#)) when joint control at the Moldovan-Ukrainian border was introduced²⁴. The common management of borders, as well as new regulations including modernisation of the legislative framework, methods of surveillance of trade flows and migration at the border, and co-operation with the EUBAM mission ([EUBAM, 2018](#)), have contributed in recent years to reducing the illicit migration of people and the smuggling of goods. A positive appreciation of the management of the country's eastern border has also contributed to facilitating import-export operations and increasing predictability for the country's economic sector.

Trade with the EU: imports and exports from and to the EU

(In reference to Title IV, Chapter 2, standards and norms included in the annexes 2 and 3, Title V, Chapter 4, art. 186 -189, Chapter 5, art. 194, art. 201, Chapter 6, art. 202, art. 210, annexes XXVII-B and XXVII-F of the AA)

From a commercial point of view, with the coming into force of the AA and the DCFTA, Moldova has registered several positive trends in its trade with EU member states. According to Eurostat, the EU has become the country's main trading partner and the largest investor in the Republic of Moldova's economy for the period of 2014-2016. As stated by the Octavian Catalin Albu ([2018](#)) - rapporteur of the European Economic and Social Committee meeting of the EU-Moldova Civil Society Platform - for the year 2016 about 66% of exports went to EU member countries, which accounted for 55% of the total trade. The National Bureau of Statistics of the Republic of Moldova ([NSB, 2018a](#)) confirms an appreciation of the dynamics of the main indicators referring to Moldova's trade with the EU. However, as far as imports are concerned, the balance has been detrimental to Moldova's economic interests, even for the first months of 2018 ([NSB, 2018b](#)).

These positive tendencies have partly been influenced by the complexity of the bilateral political relations between the Republic of Moldova and the Russian Federation. Moldovan producers have continued to discover new markets for products and services, and have begun to implement more European standards in the production process. The analysis of the structure of trade and trade balance must consider several factors that have influenced the Moldova/EU bilateral relationship, and precisely specify the reference period for the comparative analysis of trends²⁵. The authorities must continue to implement the measures included in Moldova's foreign trade development strategy ([Ministry of Economy and Infrastructure of the Republic of Moldova, 2014](#)) in line with the objectives assumed by the AA and the DCFTA (Title IV, Chapter 2, standards and norms included in annexes 2 and 3 of the AA).

The experts from Expert-Grup mentioned in their latest analysis that the public administration reform has influenced the institutional capacities of the entities responsible for the implementation of the DCFTA ([Expert-Grup, 2017a](#)). The government measures have put at risk the timely implementation of commitments under the given agreement, i.e. slowed down the implementation of measures included in the negotiated documents.

²⁴ On 7 February 2018, the Ukrainian government approved an agreement on the joint control of persons, means of transport, goods, and objects at the common border crossing points on the Moldovan-Ukrainian state border. The document is still to be ratified by the Ukrainian parliament.

²⁵ The majority of the macroeconomic indicators refer to 2016, the year that coincides with the launch of the new Plan for AA and DCFTA implementation (2016-18) and the election of a new government (January 2016), whose programme manifesto was organised in the form of six-month roadmaps (2016).

Sanitary and phytosanitary standards

(In reference to Title V, Section 2, art. 176 of AA)

As early as 2015, the Ministry of Economy of the Republic of Moldova (as the Ministry was known before the governmental reform) had several meetings and discussions with representatives from the Subcommittee on Sanitary and Phytosanitary Cooperation between the Republic of Moldova & the European Union ([Ministry of Economy of the Republic of Moldova, 2015](#)). The priority in this area for 2015 was the Harmonisation of National Legislation and Moldovan participation in the Rapid Alert System for Food and Feed, the continuation of the process of modernising laboratories, and access to the Community market for goods of animal origin. These are the priorities for the next five years in the SPS sphere. Thus the in-depth evaluation of the results can be facilitated over the next two years ([Lariusin and Butucel, 2016](#))²⁶.

In 2016, the Moldovan Institute of Standardisation ([ISM, 2016](#)) published a document entitled The Guide for Exporters – Quality Management on Trans-border Trade in the context of the signing of the AA and the DCFTA with the European Union. This document provides recommendations to businesses in developing countries and transitional economies that want to export their products to other markets. Also, it is mentioned in the latest report of the institution that Moldova adopted 5075 European standards as national standards in 2017 ([ISM, 2018](#)). Overall, Moldova has adopted approximately 14,488 ([ISM, 2017](#)) European standards as national standards. A further 411 international standards have been adopted and introduced as Moldovan national standards during the last year. Also, in this chapter, in the first quarter of 2017, actions in the communication enhancing strategy on the DCFTA implementation process were introduced to promote the transition from GOST standards to European and international standards. In effect, the empowered institutions have the duty to communicate what the latest legislative changes, norms, and production standards will be to the final beneficiaries.

The public institutions usually mention in the official reports that they cannot provide data on the effects of different public policies in the Transnistrian region. This is effectively one of the biggest vulnerabilities of the governing act, because equal and fair conditions for social and economic development cannot be ensured for all citizens of the Republic of Moldova. Monitoring outside the region, as allowed by the unrecognised Tiraspol regime, only partially allows the challenges coming from the region to be assessed, including the provision of standardisation certificates for products from the Transnistrian region.

2.5.2 The financial sector (including banking sector transparency)

(In reference to Title IV, Chapter 7, art. 47 – 51, Chapter 8, art. 50, art. 52 of AA)

The Republic of Moldova's financial and banking sector is undergoing major transformations. The trends that experts can observe and analyse are appreciated differently, depending on the objectives pursued, and the effects that legislative and institutional changes will have on the sector. The AA contains provisions related to the financial sector transparency, audit, accounting, and public finance management in several chapters (Chapter 2, Chapter 7, etc.). For December 2017, several legislative acts had to be voted or adapted to international norms and standards. Most of these goals have been reached ([Expert-Grup and ADEPT and CRJM, 2018, p.44](#)). **The investigation of bank fraud remains the government's main omission in the financial and banking sphere – a delay that could damage the state's external financial assistance, not only in this area but**

²⁶ While negotiating the content of the Association Agreement and the DCFTA, as part of the Action Plan of the Republic of Moldova on the implementation of the European Commission's recommendations for creating a Deep and Comprehensive Free Trade Zone between Moldova and the European Union, as well with the Food Safety Strategy for 2011-2015, by Government Decision No 51 of 16 January 2013, the National Agency of Food Safety was created.

also in reform to the justice sector or other important areas. During the last reunion of the fourth Association Council meeting between the EU and the Republic of Moldova (May 2018) the EU again highlighted the urgent need for progress in the effective investigation and prosecution of the major banking fraud that was exposed in 2014 ([European Council, 2018](#)).

Recovering damages and sanctioning those responsible for embezzlement, as well as elucidating the conditions under which the sum of over \$20 billion was laundered in the banking system of the Republic of Moldova has also become part of the basic conditionality for the granting of external financial assistance for the next period.

Transparency of financial-banking flows is conditioned by positive or negative trends in other sectoral reforms: justice, domestic affairs, anticorruption measures. In part, these results or trends are due to the qualitative changes approved in 2017 that took place in the National Bank of Moldova (NBM). The objective was to strengthen the monitoring and regulation competencies of the NBM in the field of monetary policies, as well as of its macroeconomic competencies as a whole.

The positive trends include the latest changes in the regulatory framework regulating this area, as well as the unblocking of operations on the financial and banking market, which created opportunities for increasing the interest of foreign investors in banking ([The European Profiles S.A., 30 December 2016](#)). **However, as far as the ‘theft of the one billion’ from the bank system is concerned, the negative elements have not yet been effectively tackled. Investigations are extremely slow, as the National Bank of Moldova appreciates (NBM, 2017a), and have had the effect of selectively sanctioning responsible persons and partially recovering the losses (NBM, 2017b)²⁷.** It was not until March 2018 that the National Bank of Moldova received the final report on the investigations carried out by Kroll and Steptoe & Johnson ([NBM, 2018a](#)). In the same month, March 2018, the documents collected by Kroll were sent to the competent authorities ([NBM, 2018b](#)).

2018 is an electoral year, which implies several attempts by the current government to influence pre-election arrangements by using administrative resources, public policies, or adopting laws required by its internal and/or external partners. Against this background, experts are concerned that it may be possible to impose additional political pressures on the financial sector, which require spending some budgetary resources in certain budget chapters above the initial calculations. This is a prospect that cannot be ruled out ([Expert-Grup, 2017b](#)). Social policies will be tailored to the political needs of the majority of the government, which implies additional pressure on fiscal policy, which was extremely fragile in 2017, although during the first quarter of 2018 it has been more stable. The fiscal pressure elements that the authorities will use already include several salary adjustments for certain budget categories, the launch of the ‘First Home’ programme²⁸, and other social benefits.

²⁷ According to the NBM reports, by 31 December 2017 the three banks had received cash in the total amount of 1,002,596,400 Moldovan lei.

²⁸ ‘First Home’ programme is a social programme that allows low-earning young people to invest in new homes. This programme helps to improve the country’s residential complex and offers opportunities for people with low incomes to buy a home. Its main features are lower interest rates, compared to bank loans and state-guarantees for half of the cost of the future home. However, in Moldova this programme comes with several elements that only encourage one category of beneficiaries – developers. In 2017 the real estate market in Moldova experienced a stagnation period, with prices going down. However, this trend has not allowed a real correlation of the promoted real estate prices with real market prices. The programme was launched prematurely and can be assessed as a form of housing subsidy, which will suffer a further decline in a few years. Real estate loans under the ‘First Home’ programme have the same interest rates as the usual mortgage loans granted by banks; only, the state guarantee for half of the purchase price is missing. Gradually, a risk will arise that the new loans to real estate developers will turn into bad loans, due to the inability to pay by the final beneficiaries – new homeowners. As a result, the developers will not be able to sell and repay their loans to banks. Thus the banking system will enter into a new potential crisis.

2.5.3 Competition

(In reference to the Title IV, Chapter 8, Title V, Section 2, art. 161, Chapter 10, Section 2, art. 339 – 342 of AA)

Competition is regulated in the Republic of Moldova by Law No. 183 on “Competition” ([Law No. 183, 2012](#)), last modified on 23 December 2017. The application of the legal provisions in the field of competition, as well as state aid and advertisement fall within the attributions of the Competition Council, directly responsible to the Parliament. Although competition is regulated separately, it also influences other areas, including public procurement, trade and cooperation in the energy field, through actions to prevent anti-competitive practices²⁹. The development of a stable, predictable and law-based competition environment contributes to an increase in the level of transparency in doing business. It also contributes to an increase in the accountability of institutions that organise procurement. On 20 July 2017, Law No. 169 for the approval of the National Competition and State Aid Program for 2017-2020 ([Competition Council, 2017](#)), which entered into force on 18 August 2017³⁰.

2.5.4 Protection of private property

In the AA there are several references to the need to respect and promote the right to private property. The protection of the right to private property is guaranteed by the Constitution. The specifications are very precise and clear in this respect.

However, guaranteeing this right has become part of the public debate on the quality of European integration processes in the context of discussions about the decriminalisation of certain economic crimes. More specifically, economic experts have argued that decriminalising securities-related offenses, especially stock-keeping registers, will further reduce the state’s ability to guarantee private ownership and investor rights. If the authorities do not find the will to promote good legal projects capable of guaranteeing the right to private ownership as a basic pillar of a healthy investment environment, then the interest in foreign investment will decline further.

²⁹ One example of the misunderstandings regarding how public procurement and the Law on Competition should function can be observed in the field of energy cooperation. The Moldovan authorities failed to ensure the necessary conditions to decrease their dependence on the supplies of electricity from Russia-owned producers in a transparent way. Each year, Moldovan authorities are negotiating new agreements for the supply of electricity. On 1 April 2017, Ukraine’s DTEK Trading ([Popsoi, M., 2017b](#)) and Moldova’s state-owned intermediary Energocom signed a one-year contract on the supply of electricity to Moldova. According to Moldovan media outlets, the Ukrainian company, DTEK, won the competition with the Inter RAO Kuchurgan Power Station, which is located in Transnistria and owned by a Russian company. The DTEK’s offer was \$50.2 per one megawatt. The Kuchurgan station (owned by a Russian company) proposed in the first round of talks a price of \$58.5 and then decreased it to \$54.4 ([Balkan Insight, 2017](#)). Already in June 2017, Moldova’s Ministry of Economy decided to modify an energy contract awarded through a public procurement tender to the Ukrainian company and introduced a new clause allowing the government to buy electricity from a Russian-owned plant. As it was explained, later Inter RAO offered a better price than the Ukrainian company. In reality, the Moldovan authorities have been trying to avoid a new “crisis” in the relations with Russia. The approach was criticised by European partners for creating conditions for unfair competition as a public institution, as the Ministry of Economy was involved in the tender and ultimately influenced the results. Based on the results of the public tender during the 2017 year, and the progress made in 2018, the Energy Community Secretariat has suggested amendments to the procurement guidelines: enhancing transparency and further developing the electronic platform as well as the system of penalties or guarantees for participation in public tenders with the aim of further avoiding any damages to the citizens interests ([Energy Community, 2018](#)).

³⁰ In the annual reports of the Competition Council, certain activities of the institution required within the context of implementation of the AA provisions are mentioned. Most of these activities refer to the necessary conditions for the development of a healthy business environment. The last published report is for 2016. The report on the activity of the Competition Council for 2017 has not yet been published

Regarding private property and the capacity of the state authorities to provide the necessary legislative and institutional protection in this respect, including by strengthening the skills of the competent bodies, **the measures promoted between 2016 and 2018 are not convincing.**

2.5.5 Regional and rural development

(In reference to Title IV, Chapter 20, art. 107 – 112, Title V, Chapter 10, art. 333 – 338, Section 2, Art. 339 of AA)

The priorities in the field of regional development are still of major importance for the Republic of Moldova. Agriculture is the basic component of the national economy. Further steps are needed to improve public policies for the development of the rural environment, the legislative basis for agricultural development and its adaptation to European realities in the field of agricultural policy. It is also important to recall that there is an extremely high interdependence between the development of the agricultural sector, the development of the rural environment, and the increase of knowledge of sanitary and phytosanitary production standards. Another major challenge in this area is the financial dependence of the regions on the central budget³¹. According to the Ministry of Finance ([Mold-street, 2017](#)), local budgets cover only 25.6% of the financial needs, i.e. 3 out of 12 months per year. Budget allocations for the year 2017 increased by 7.9% compared to the previous year. The figures show that regional and rural development remain a priority but the strategies developed have not been implemented effectively, and the interest of professionals in these areas is low.

According to the *Moldova 2030* Concept Note on the vision of the National Development Strategy, the development of agriculture, and therefore of the rural environment, remains extremely sensitive to external risk factors. These sensitivities contribute to a slowdown in the growth of agricultural production ([NSB, 2018c](#))³², and thus to achieving the objectives included in documents with national and international priorities in this field.

In this regard, the actions implemented by the authorities in cooperation with the support of local civil society are extremely useful for achieving positive trends.

In 2013 the Regional Development and National Strategy for Agricultural and Rural Development of the Republic of Moldova for the years 2014-2020 ([MAIA.gov, 2013a](#)) was conceptualized by the Ministry of Agriculture and Food Industry, with the support of the International Financial Corporation and the World Bank. The document provides for the harmonisation of the national legislation that concerns the agri-food sector with the EU legislation and the implementation of the recommendations of the European Commission for the establishment of the DCFTA between the Republic of Moldova and the EU and will cost approximately 11.4 billion Moldovan lei (approximately \$860 million) ([MAIA.gov, 2013b](#)). Daily realities imposed, however, a reassessment of priorities and the necessity to harmonise the document with other strategies in public debate.

In April 2018 several public debates were held on the content of the 2030 Strategy. On 18 April 2018, the working group in the field of infrastructure and regional and rural development, which was set up on 14 March 2018 ([Particip.gov, March 2018](#)), had a reunion with the aim of developing the

³¹ The Republic of Moldova is divided into six development regions: North, Center, South, Chişinău, Gagauzia and Transnistria. They have their own development strategies. There are several factors (political, social, geographic, including resource distribution) that contribute to their uneven development.

³² According to data from the National Bureau of Statistics for the main indicators in the field of agriculture, in 2017 there was a decrease in vegetable production, as well as in the number of animals compared to 2016. The causes are climatic in origin.

National Development Strategy "Moldova 2030". The aim of this public reunion was to trace, with civil society support, the country's regional development path until 2030³³.

Therefore, solely developing strategies, the legal framework for regulating the field *per se*, cannot contribute to achieving effective results. There is a need for a comprehensive approach to the field, which takes into account the governmental reform, the priorities of a decentralisation policy, adapted to real regional needs and taking over from European practices or models in this field.

2.5.6 Macro-financial assistance

(In reference to Title IV, Chapter 7, art. 50 of AA)

The messages sent by external partners have a great influence on the perceptions of the Moldovan beneficiaries. The government has been unable to make a positive change in this regard, although more strategies, roadmaps, and closer scrutiny have been implemented, and several draft laws have been required by external donors, including the International Monetary Fund and the European Union. The conditionality of external macro-financial assistance is a common element of most of the foreign assistance programmes granted to the Republic of Moldova after the November 2014 parliamentary elections, when details of the embezzlement of financial resources from three banks (Banca de Economii, Banca Sociala and Unibank) were made available to the public.

The Republic of Moldova requested macro-financial assistance from the European Union in August 2015 and repeated this request in March 2016. On 4 July 2017, the European Parliament underlined that a prerequisite for granting macro-financial assistance is that the beneficiary country respects genuine democratic mechanisms, including a multi-party parliamentary system, and the rule of law, and guarantees respect for human rights. This statement by the European Parliament was a direct result of Moldova's changes to its electoral code and the move to a mixed electoral system ([The European Parliament, 2017](#)).

On 13 September 2017, the European Parliament and the Council of the EU decided to grant Moldova a loan of up to €60 million with a maximum maturity of fifteen years, as well as a grant of up to €40 million. The package of documents on granting macro-financial assistance was signed by Moldova and the EU on 23 November 2017. This package of documents was accompanied by a series of conditionalities ([Ziarul de Garda, 2017](#)). The verification of compliance with these conditions was carried out by the European Commission in collaboration with experts from the International Monetary Fund.

On 3-6 April 2018, a delegation from the European Parliament's Committee on Budgets visited Moldova with the aim of assessing the effectiveness of European Union funds and the Moldovan government's progress in reforming the implementation processes. During the press conference following the visit, Siegfried Mureşan ([TV8, 2018](#)), the head of the EU Parliamentary delegation, said that European funding would only be unlocked after all the conditions imposed on Moldova in 2017 had been met. In his statement he stressed the need to fulfil all the recommendations of the Venice Commission regarding the Electoral Law, amended in summer 2017.

2.5.7 Anti-fraud and control over EU assistance

(In reference to Title IV, Chapter 7, art. 50 of AA)

The priorities for monitoring the distribution and capitalisation of the EU's external financial assistance to the Republic of Moldova require a responsible approach on the part of both partners. On the one hand, the EU's interest in monitoring and conditioning external financial assistance to

³³ The elaboration of the strategic document "Moldova 2030" started under the leadership of the State Chancellery, with the support of the UN Moldova and Swiss Cooperation in Moldova.

Moldova needs to be stimulated. On the other hand, measures need to be adopted and continuously implemented in order to improve the administrative capacity of supervisory authorities in line with EU standards; the exchange of information with EU financial supervisors should be encouraged in a fair manner, without internal political conditionality arising from the particular interests of various political forces in Chişinău. In this regard, it is necessary to ensure the conditions for the implementation of Art. 422 from the Implementation Plan of the AA and the DCFTA, and other complementary measures for the period 2017-19 ([MFAEI, 2018](#)).

Other measures refer to the continued harmonisation of national legislation with international law on preventing and combating money laundering and terrorist financing.

2.6 Energy cooperation and climate change

2.6.1 The Energy Community

(In reference to Title IV, Chapter 10, Article 63, Chapter 14, art. 76 – 79, Title V, Chapter 11, Art. 353, 354 of AA)

Thanks to the adoption of the Law on Electricity (May 2016), Law on Natural Gas (May 2016) and Law on Energy (September 2017) majority of the provisions from the 3rd Energy Package have been transposed into the primary legislation. At the same time, implementation of the secondary legislation to the Natural Gas and Electricity Laws causes problems. Shortcomings are observed also in process of the tariff setting by the ANRE. On the negative side, electricity procurement procedures still raise serious concerns, as proven by Energocom case (see footnote on p. 25). However positive developments regarding electrical and gas interconnection with Romania can be observed no significant successes have been achieved in this field as for now.

On 29 September 2017, at the meeting of the Central and South-Eastern European Energy Connectivity (CESEC) Initiative, which took place in Bucharest and brought together nine EU member states³⁴ and eight Energy Community Contracting Parties³⁵, the participants agreed on a joint approach to electricity markets, energy efficiency and renewable resources. The partners also worked on a list of priority projects: building an interconnected regional electricity market and devising measures to boost renewables and investment in energy efficiency (Chapter 10, Article 63, p. b of the AA). As a result, Moldova will have to continue working together with the partners on the projects that have been launched in the last years.

Thus, in the field the main energy priorities remain the integration of Moldova's energy market with the EU market, the implementation of the Third Energy Package, delayed until 2020 due to external policy pressure ([Publika, 2012](#)), respecting the content of the decision by the Ministerial Council of the Energy Community regarding the division of distribution and transportation services in the gas sector, as well as the implementation of the electricity interconnection roadmap between Moldova and Romania (the finalisation of works at the Iaşi-Ungheni gas pipeline) and access to the national gas distribution network; ensuring the necessary conditions for the public procurement of electricity; the elimination of intermediary offshore companies (acceptance and monitoring of supply contracts, without political intervention on the results of public procurement system); and the adoption and implementation of national legislation and regulations on renewable energy.

On 26 March 2018 ([InfoMarket, 2018](#)), the Law on the Promotion of Renewable Energy came into force; it aims to harmonise the legislation of the Republic of Moldova in the field of renewable energy with the EU acquis. As early as January 2018, the government of Moldova ([January 17, 2018](#))

³⁴ Austria, Bulgaria, Greece, Croatia, Hungary, Italy, Romania, Slovenia, Slovakia

³⁵ FYROM, Serbia, Ukraine, Albania, Bosnia and Herzegovina, Montenegro, Kosovo, Moldova

began working on developing rules for the organisation and conduct of auctions to obtain the right to produce electricity from renewable sources in order to promote loyal competition among large investors. In the same context, the new regulatory framework also defines National Agency for Energy Regulation (ANRE) role in determining the criteria which a renewable energy producer has to meet in order to be able to participate in these selection procedures. The process of developing and adopting the regulatory framework for the regulation of the renewable energy production process, as well as the conditions for actors interested in producing this type of energy, has taken a long time. As early as 2016, when the Law on the Promotion of Renewable Energy was voted by the Parliament, the former Minister of Economy Octavian Calmac ([Agora, 2016](#)) said that this law should bring clarity to potential investors about the criteria and conditionality to enter its market in order to recover any previously made investments.

Obtaining optimal results in the field of energy security and efficiency is conditioned not only by negotiating national interests in this area with external partners, such as the Russian Federation. Some of the necessary conditions for achieving energy efficiency and implementation of the most recent know-how in the field of renewable energy is to implement the necessary reforms in the field of public procurement³⁶, to improve the quality of management in the competent public institutions and political will – the last being the necessary precondition for reaching all the other elements.

2.6.2 Environmental legislation

(In reference to Title IV, Section 2, Chapter 13, Chapter 16, Chapter 17, art. 92 – 95, Title V, Chapter 13, art. 366 – 369, art. 375, Annexe XII of AA)

This subchapter refers to the elaboration and adoption of the normative framework necessary for the implementation of the official strategy in the environmental field ([Register of Legal Acts of the Republic of Moldova, April 24, 2014](#)), as well as the completion of the institutional reform as stipulated in the official documents. The environment is an area that can be used as a tool to condition European investments in compliance with the European directives and international treaties to which the Republic of Moldova is a party. Moreover, this public policy contains many references to the Implementation Plan for European integration objectives, and can only partially be treated in the 'Energy' or 'Sanitary and Phytosanitary Standards' chapters.

The best example of how environmental policy can affect national security is the strategy towards the Dniester River. The current approach is not efficient or responsible, and has implications for regional civil security. It also contravenes the content of several framework documents signed by the Republic of Moldova. The irresponsible use of the Dniester River's water resources affects citizens in the Republic of Moldova and Ukraine (Odessa region). On the basis of Art. 72 of the Implementation Plan for the AA and the DCFTA for the period 2017-19, the authorities carried out several official visits to Ukraine and held common meetings on the correct and efficient management of the Dniester River's water resources. Following several debates and public requests from representatives of Moldovan and Ukrainian civil society, the European Economic and Social Committee ([EESC, 2018](#)) has mentioned that the authorities have intensified communication to solve problems related to the improvement of the Dniester's situation and the completion of works at the Novodnistrovsk Hydro Power Plant³⁷. (National Environment Centre, 2018). Economic interests predominate over the interests of civil security, and the relevant meetings are often postponed, cancelled or are very formal in character. The latest discussion on the situation of the

³⁶ In order to avoid adjustments after the results were published and to ensure transparency and loyal competition.

³⁷ The measures that the Moldovan authorities should implement on a mandatory basis are also included in the recommendations of Moldovan civil society. These include not only suggestions for enhancing environmental policies, but also international treaties and European directives that are part of the AA and DCFTA implementation documents, such as the Espoo Convention.

Dniester River was postponed at the initiative of the Chişinău authorities, who failed to establish the nominal component of the Moldovan delegation ([Radio Free Europe, 2018](#)).

On the basis of the same AA and DCFTA Implementation Plan for the period 2017-19, several national and international meetings or committee debates on various legislative initiatives on environmental policies took place between 2017-2018. Some of the policy changes or normative amendments are in the process of being finalised, and national experts are cooperating with their colleagues from regional forums (the Eastern Partnership Civil Society Forum, Working Group 3) or international organisations to develop regulations for the implementation of several European directives³⁸.

³⁸ The Air Quality Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008, on ambient air quality and cleaner air for Europe.

3. Role and impact of EU institutions in implementation of the AA

Cooperation between the EU and Moldova on an institutional level is anchored and described in the AA and includes a number of bodies and formats such as: the **EU-Moldova Association Parliamentary Committee** (established in 2015, has held six meetings so far – last one took place in Chişinău on 5 April 2018), the **Association Council** (which has held four meetings – the last one took place in Brussels on 3 May 2018), the **Association Committee** and the **Association Committee in a trade format**. Several sectoral sub-committees should be noted as well. Moreover, on May 2016 the **EU-Moldova Civil Society Platform** (according to Art. 442 of AA) was created (three meetings have been held until now, the last one in March 2018). Additionally, the **EU-Moldova COEST** as well as the **EU-Moldova Political and Security Committee** serve as important formats to maintain dialogue between parties in the field of politics and security.

Along with the signing of the AA, EU has provided Moldova with additional funding for its implementation. Among others, reform of the justice system was supported with €60 million out of the 124 million needed. Additionally, cooperation with the EU ensures the transfer of experience and expertise through formats such as TALEX, Twinning, SIGMA, etc. What's more, the European Union High Level Policy Advice Mission to different central institutions and the European Border Assistance Mission to Moldova and Ukraine should be considered as some of the successful cooperation formats.

The EU also plays an important role when it comes to supporting dialogue between the right bank of Moldova and Transnistria. The EU Delegation to Republic of Moldova is a sponsor and coordinator of six projects in area of Confidence Building Measures (CBM), which serve the main purpose of creating an atmosphere of confidence and collaboration in region on a societal level (in reference to Title II: Art. 5, 7,8 of AA). Those projects are focused on local communities development, education, human rights, integration for disadvantaged youth and development of social services for children with disabilities (other projects funded from EU Confidence Building Measures Fund are realized by the UNDP, Frontex - European Border and Coast Guard Agency and the Moldovan Bureau of Reintegration). **The first results of these projects are already visible.** Our speaker – a representative of an organization realizing projects sponsored by EU Delegation grants – was convinced that their actions are visible and positive impact on the local communities of both banks of the Dniester can be seen. Our speaker was fully satisfied with the conditions of collaboration with EU Delegation. **Unfortunately, the EU Delegation does not present a comprehensive overview of CBM actions on its website or in other sources. Improvement of this would be important for enhancing EU soft power in Moldova and Transnistria.**

In general, EU institutions play a crucial, if not the most important, role in the implementation of the AA. Internal motivation for reform is rather weak because it is perceived by the authorities as a threat to their power and personal wealth. The fact that reforms are to some extent implemented (however with flaws) follows in the first place from the desire of the government to receive EU financial support, which is of high importance to Moldova's budget. At the same time, in order to keep a pro-European image, authorities needs to at least mimic reforms in order to gain verbal support from the EU. In addition, **internal pressure on the government for reforms is rather weak.**

4. Impact of the reforms on the Transnistrian region

Given the perspective of the Transnistrian region, the key component of the AA are the provisions concerning the DCFTA. It was agreed in late 2015 that the region would be fully integrated into the DCFTA as of January 2018. It was stipulated that Transnistria should liberalise import tariffs in trade with the EU during that time (and ultimately abolish those), ensure compliance with sanitary, veterinary and phytosanitary regulations and harmonise its tax system with international standards. **It is now apparent that implementation of those provisions is a tremendous challenge for the authorities of Transnistria and has an enormous impact on the region in economic, international (relations with Russia) and societal terms.**

The greatest challenge is the necessity of eliminating import tariffs on trade with the EU. At present, the income from the tariffs constitute ca. 5% of annual revenue in the regional budget³⁹. At the same time, the Transnistrian economy is in its most serious crisis since the establishment of the separatist republic. In 2014-2016, the budget deficit reached 15-20%, while in 2016, Transnistria ran out of its foreign-exchange reserves, which resulted in devaluation of Transnistrian currency. To rescue the budget, 30% of retirement pensions and salaries in the public sector were frozen (Calus K. 2014b, Calus K. 2016b). Under these circumstances, loss of revenue from import tariffs would be a painful blow to the budget.

In October 2017, **a number of regulations were adopted which formally abolished import tariffs on all goods from the EU, but a catalogue of exceptions was introduced at the same time.** Its aim was to protect local producers and safeguard the substantial fiscal revenue. High customs duties on textiles, footwear and non-white Portland cement were sustained. Lower duties, at 5% - 10%, would still apply to pork and poultry, dairy products and certain fruit i.a. apples, cherries, plums, strawberries (Deviatkov, 2017). The authorities of Transnistria will try to maintain protective tariffs on the aforesaid goods and produce for as long as possible. Tiraspol raises the argument that the Republic of Moldova also introduces protective periods in those sectors which are critical for the economy and the budget. Moreover, the regional so-called MFA claims that trade conditions which they proposed are much more convenient for EU producers than the conditions proposed by Moldova⁴⁰.

Still, the chief difficulty for the authorities of Transnistria is **developing mechanisms that would enable them to offset budget losses that will be incurred after import tariffs have been eliminated.** The suggested solution is the **introduction of the VAT (Giucci, Radeke 2015)**, which in any case is a requirement posited in the DCFTA provisions. **However, introduction of the tax would mainly affect the interests of the local monopolist in numerous industries, namely the Sheriff company.** There is still no doubt that both *Obnovlenie*, a party with the majority in the Supreme Council of Transnistria, and its president Vadim Krasnoselski, are directly associated with the company. The decision to introduce the VAT would thus mean relinquishing considerable profits that the local elite has hitherto enjoyed, which makes the matter even more complicated.

In this case, **the effect of the DCFTA on the region is counteracted by the actions undertaken by Russia with respect to the separatist republic.** Each year Russia has (directly) transferred \$90,000,000 – \$120,000,000 to Transnistria to cover budget deficits. No such support was received

³⁹ The revenue from import tariffs on EU trade amounts currently to approximately \$10,000,000 per annum (Deviatkov 2017), whereas total revenue for January-November 2017 was \$220,450,000, i.e. 3,549,200,000 Transnistrian ruble (Правительство Приднестровья 2017a). For instance, according to figures for 2014, the revenue from import tariffs accounted for 4.3% of the entire budget revenue (Giucci, Radeke 2015).

⁴⁰ An opinion expressed by "Transnistrian MFA" officers in response to the authors' question. Nonetheless, the import tariffs imposed by the Republic of Moldova are lower than those in Transnistria (Deviatkov, 2017).

in 2017. Moscow thus seeks to compel the ruling elite to greater efficiency of financial management and curtail Sheriff's exploitation of the local budget, aware that in the present circumstances Russian financial backing ends up largely in the hands of that company⁴¹. This means that inclusion of Transnistria into the DCFTA was convenient to Moscow, as it exerts additional pressure, thanks to which the local economy will be better regulated and thereby increase the effectiveness of financial support from Russia.

According to one of our interviewees, the authorities of Transnistria have tried to apply other measures to resolve problems caused by the abolishment of customs on EU-produced goods. Reportedly, **attempts have been made to block imports of particular commodities from the EU and replace them with goods originating from other countries**. According to the interviewee, this is possible thanks to cooperation between the customs agency and Sheriff. This cooperation allows the company to hold monopoly on importation of goods to Transnistria. Other transports (than those operated by Sheriff) are allegedly detained at the border under the pretence that necessary checks are taking more time, which discourages suppliers. As a result, Sheriff is able to control supplies of numerous goods. The example provided by the interviewee concerned baby nappies, whose price increased once the duties on EU products were lifted. This is due to the fact that from that moment onwards, nappies from the EU ceased to be imported to Transnistria⁴².

Representatives of SME in Transnistria perceive DCFTA as an opportunity for development.

This societal group is the most active section of the population. Growing frustration in the group owes to the fact that the Transnistrian economy is unable to take full advantage of the opportunities offered by the DCFTA, while economic development is hampered in order to maintain Sheriff's monopoly. Furthermore, our interviewees were convinced that closer business ties between Transnistria and the EU causes local entrepreneurs to change their views on the relations between citizens, the state and the governing elite, which is why they call for reforms⁴³. The implementation of the AA and DCFTA by Moldova and Ukraine are a chance for Transnistrian business to contribute to building relationships between the separatist republic and Chişinău. In Chiveri's opinion, it will be a "significant stimulating instrument to the entire conflict settlement process" (2016, p. 17).

In summary, the implementation of the DCFTA in Transnistria translates into social and international pressure on the authorities of the region. They will find it increasingly difficult to defer adaptation of the local tax system to international standards and uphold Sheriff's monopoly. Closer business ties means stronger bond between Transnistria, Moldova and the EU in the social dimension.

⁴¹ Social spending and pay in the public sector consume over 60% of Transnistrian budget ([Правительство Приднестровья, 2017b](#)) while inhabitants of the republic spend a substantial amount of their money on services and goods supplied by the monopolist, i.e. Sheriff. Consequently, Russian funds in fact subsidize that company (such picture of Russian policy towards Transnistria emerges from interviews with Vlad Kulminski, a Moldovan expert from the Institute for Strategic Initiatives and a Transnistrian journalist (anonymous)).

⁴² As stated by a Transnistrian journalist (anonymous respondent).

⁴³ As stated by Anatoliy Dirun, local expert from Tiraspol School of Political Studies and Natalia Scrutul, local journalist.

5. Bottlenecks implementing reforms

Despite the other factors, the lack of the authorities' political will and motivation seems to be the most important bottleneck for the whole process of implementing the AA in Moldova.

Both the capacity and motivation of the ruling elites in Moldova to implement reforms are conditioned to a great extent by the political and business interests of the rent-seeking ruling business and political groups. For that reason, reforms which do not directly challenge the interests of the above-mentioned groups are usually implemented quickly. Among others, educational reforms have been implemented with visible success in recent years mostly because they did not undermine the interests of the elites. At the same time, progress in combating corruption, decentralisation or the 'depoliticisation' of state institutions (such as the judiciary) is very limited, as those regulations are perceived as a threat by the authorities. The implementation of the Visa Liberalisation Action Plan (VLAP) can serve as another example here. Although the whole process was conducted swiftly, the government was reluctant to implement the anticorruption regulations required by the VLAP.

Since the end of 2015, the political scene in Moldova has been dominated by Vlad Plahotniuc, leader of the nominally pro-European PDM and the richest person in the country, who has successfully managed to subordinate parliament, government and the key state institutions. **The two main pillars of his power (which allow him to secure his political and business position) are his financial capabilities and his control of the administration of justice.** This second pillar is particularly important for Plahotniuc's system of governance, as it "allows the use of the combined 'carrot and stick' system to subordinate political decision-makers and business people. According to information available, public servants (at both the central and local levels), politicians and businessmen who are ready to co-operate with the Democratic Party of Moldova (which is controlled by Plahotniuc) will receive financial benefits or promises of impunity from the judiciary, fiscal inspections, etc. However, at the same time they are also aware of the fact that if they show disobedience, they will not only lose what they have gained, they will also have to face court proceedings (based on either real or fabricated evidence)." ([Cațus K., 2016a](#))

Plahotniuc, whose power and position depends directly on his control of the state apparatus and financial flows in Moldova, is not interested in the structural transformation of the country or in implementing any deep reforms; this includes the AA with the EU. This perspective is shared by Igor Dodon, the country's nominally opposition and pro-Russian President, who seems to cooperate with Plahotniuc in order to maintain the functioning clan-oligarchic system which operates in the country. In practice, this means preventing any groups which could threaten its existence from coming to power, and avoiding any real reforms that would undermine its political position and block the possible illegal income which both politicians receive.

The technical capacity of the state apparatus to implement reforms is another problem. Although the quality of civil servants (in particular middle-management) has improved over recent years (for reasons including the influx of well-trained specialists from civil society), any further rise in the skills of state bureaucrats is suppressed by a number of factors, such as the very low wages of the low- and middle-level public administration. Their paucity not only fails to motivate well-educated employees to remain at their positions, but also encourages corruption. Nepotism also remains a big problem, and the recruiting procedures are often untransparent. Additionally, higher-level positions in the civil service are usually highly politicised.

Yet this problem seems far less important than the lack of political will. Despite their limited technical capabilities and the quality of their staff, the Moldovan authorities have proved on

numerous occasions that they can be very efficient in implementing reforms – given the proper motivation. This is the case, for example, when the reforms offer them electoral support, or are unpopular but necessary (from the perspective of government interests). For example, the government succeeded in implementing a number of regulations required by the IMF in 2016, in order to sign a new financial agreement which was crucial to maintaining fiscal stability in Moldova.

Another bottleneck is the fact that the internal drivers of reforms in Moldova are generally very weak (be they media, civil society, or any other groups). The most powerful drivers of reform are the country's development partners, especially the European Union and to some extent the United States. Moreover (mostly because of the conscious strategy of the political class), ideological debates concerning nationhood, statehood and geopolitical affiliation remain a focus of Moldovan politics. The dominance of such issues in public debate polarises the population and distracts their attention from deep and necessary reforms. This in turn limits the public pressure on the authorities, and further weakens the internal drives for change.

6. Recommendations

General recommendations:

- Shift from institutional- to people-oriented reforms. Indicators of the reforms' implementation should to a greater extent be linked to the practical effects of the given reform for the population. Evaluation of the reforms should include not only their effect on the institution, but also their influence on the wider public. This in turn would increase the visibility of the reforms (and the implementation of the AA) among Moldova's citizens, and would create an incentive for politicians who are interested in gaining the electoral support.
- Promote consistent public debate, including constructive criticism, which takes the recommendations of civil society into account. The decision-making process must be conducted under conditions of maximum transparency, in order to stimulate the confidence of the citizens that the national economy can offer conditions for potential investments on a competitive basis.
- A more in-depth analysis of implementation of the AA and the DCFTA in Moldova highlights the poor preparation of the political elite, the personnel employed in various public institutions, and poor communication to the citizens of the objectives and interests pursued through their content documents. The lack of well-trained staff prepared to cope with any kind of professional challenges makes achievement of the recommendations virtually impossible to achieve.
- Macro-financial assistance should be granted to Moldova. However, this assistance must be accompanied by a strong monitoring mechanism for qualitative results, not just quantitative ones. A double verification mechanism should be encouraged. The macro-financial assistance audit must also be done by independent actors (a joint consortium of local think tanks, independent thinkers, and European officials). Government authorities in Chisinau must ensure transparency in the decision-making process regarding external financial assistance and access to the results of local interim reports

Sectoral recommendations:

- When it comes to the justice system and anticorruption, the reforms should be assessed not in terms of the adopted legal regulations but the actual situation in the field. 'Depoliticisation' of judiciary and anticorruption bodies requires transparent selection procedures, preferably with the participation of independent selectors and observers from extra-parliamentary and extra-governmental structures. Election of judiciary representatives via universal vote should also be considered.
- Adopt, as soon as possible, amendments to the Constitution (developed by the government in November 2017) increasing formal independence of judges.
- In order to monitor the state of judicial reform, EU institution should develop a mechanism similar to the Cooperation and Verification Mechanism which is in use in Romania and Bulgaria.
- Proper funding for anticorruption institutions should be provided. A minimal effective budget for those bodies should be fixed on the legal level in order to prevent the freezing of their activities through funding cuts.
- The dynamics of the reforms, as well as the adoption of public policies emerging from the AA and the DCFTA, can be achieved only by encouraging horizontal as well as vertical communication (between ministries, agencies, and other public institutions; from central to local authorities) of all decisions. Here, we particularly recommend the need to continue the decentralisation strategy and ensure the greater involvement of the local elite in participating in the decision-making process.
- Facilitate reforms aimed at reducing the number of local administration units (and local administration officials) and increasing their financial independence.

- Establish a Directorate of Financial Control in the CEC, as well as supporting an increase in financial resources for the CEC so that it can operate effectively.
- Support the genuine de-monopolisation of media by the adoption of a new audio-visual code and regulations regarding media ownership (including offshore companies); ensure the independence of the Audio-visual Council; provide stable financial support from external donors (such as the EU) for the independent media.
- Differentiate the requirements regarding the quantity of the domestic content from the size and coverage of the broadcaster, so that the smaller, local TV stations which often lack financial capabilities would not be hampered by the recent reform of the audio-visual code.
- Increase support for smaller, currently underfunded NGOs which can represent the interests of different social (and ethnic/linguistic) groups more effectively than big organisations. Facilitate access for external financial resources (ie. by reduction of conditionality) for those organisations. Promote NGOs from outside Chişinău.
- Create an effective mechanism which would ensure the fulfilment of the existing legal and institutional framework regarding ethnic minorities' rights. Language minorities can be provided access to public services at low costs. Harmonise national law with the regulations regarding the Gagauz Autonomy.
- Increase pressure regarding introduction of the VAT in Transnistria. This is a measure of key importance for the normalisation of functioning of the Transnistrian economy and subsequent development of SMEs.
- Implement cooperation programmes with representatives of SMEs in Transnistria (providing support in the domains of information and financing).
- The European Commission and European Parliament should discourage Moldovan authorities from deepening and using tensions with Russia for political purposes, as such actions are harming, not strengthening, regional stability.

7. Concluding remarks and outlook for the future

The oligarchisation of political and business life remains the key obstacle to the reform process in Moldova. Without undermining the monopoly of the ruling oligarchic group, it is effectively impossible to expect significant changes when it comes to the independence of the judiciary, improving the rule of law, or the democratisation of political life. It seems that the current pressure from the EU is insufficient. Moldova's Western partners should apply strong and very conditional support in order to encourage political reforms and support political, economic and media competition. The lack of firm enforcement of this conditionality has led to the current situation, in which the authorities in Chişinău are keener on violating civil liberties & the rule of law and undermining the foundation of the democratic system by tightening control over state institutions. It seems certain that without a fast and appropriate reaction, the present authorities in Chişinău will continue with their current actions aimed at the virtual dismantling of democratic mechanisms, checks and balances etc.

The political actors are still taking certain measures which affect the quality of the necessary economic policies and reforms. This is an effect of the lack of political and financial will on the one hand, and not knowing the provisions of the AA (particularly its economic part) on the other. In short, economic interest groups still dominate the quality and content of reforms promoted by government authorities, and public institutions cannot make independent decisions without being subjected to external pressures or influences. **Moreover, the recommendations in the economic field are dependent on the operation of the rule of law and democratic institutions, and cannot be achieved in the absence of a political will to change the quality of the political system.** In the absence of the rule of law they become useless, because they cannot function even if there is a perfect legislative framework.

It is also worth adding that politicians in Chişinău are eager to exploit the issues of identity as well as historical and linguistic divisions in order to manipulate the electorate and convince its representatives to vote for a given political force. This practice polarises society and contributes to the increase of tensions (including inter-ethnic). In the long-term perspective it seems that the Moldovan political elites should not only cease such activities but also create a coherent vision for Moldova's future development which would be capable of uniting the nation. This in turn would create a positive environment for the creation of the Moldovan civic identity, which is still clearly lacking both among the wider public and the better part of the political and administrative elites. The lack of such vision represents the major obstacle to the resolution of Transnistrian separatism and easing the still present tensions between the central authorities and Gagauzia. Without a clear vision for the country and without a strong civic identity for its citizens, it will be impossible for Moldova to consolidate its society, implant a sense of civic responsibility in its members, and in the end, to develop an effective political class or public administration.

ANNEXES

Table 1. Overall assessment of the fulfilment of selected AA provisions

<i>Article of AA</i>	Assessment
<u>Title II</u>	Overall assessment: <i>Limited progress with certain setbacks in some fields</i>
<i>Article 3</i>	<p>Positive developments have been observed in the field of political dialogue and security. In 2017, the intensity of contact between Chisinau and EU institutions was higher than the previous year. Chisinau's relations with the separatist region of Transnistria have improved, and in November 2017 major agreements were reached within the 5+2 format. Another major step in favour of the Agreement with Ukraine regarding joint controls on the Transnistrian section of the border has been signed. Also, the government recently undertook steps to increase the army's combat capacity. In the second half of 2017 the National Defence Strategy (with an Action Plan for its implementation in 2017-2021) and the Action Plan for the Moldova–NATO Partnership were adopted. On a negative note, the relationship between Moldova and Russia deteriorated substantially.</p>
<i>Article 4</i>	<p>Freedom of media has deteriorated during the period under consideration. A new legal basis has been partially adopted and further legal acts are being prepared. There is a problem with the practical implementation of existing legislation due to a lack of political will. Legislation contrary to AA provisions (effectively limiting access to information and undermining independent broadcasters) was adopted in 2017.</p> <p>The legal basis and general situation in the field of the protection of human rights has improved. In November 2017 a new, third Human Rights National Action Plan (2018-2022) was finally approved by the government, but it is still pending adoption by parliament. On the practical level, however, hate speech, people trafficking, the harassment of LGBT people and inadequate prison conditions remain substantial problems. Human rights are not treated as a priority by the Government in Chisinau. Moreover the Criminal Code still has not been amended with regulations regarding hate crimes, even though the NAPIAA II 2017-2019 deadline expired in June 2017. On a positive note, regulations humanising criminal policy were introduced in October 2017.</p> <p>The new draft law on NGOs proposed by the Ministry of Justice in June 2017 (regarding organisations involved in 'political activities') met with outrage from civil society and was eventually rejected. The attempt to adopt such a law constituted a very negative signal and further limited (the already small) trust of NGOs towards the government. At the end of January 2018 a new version of the draft law was presented to the public for consultation, and on 28 March the draft was adopted by the government.</p> <p>The citizens' rights to participate in the political decision-making process have recently been restricted to some extent, despite the existence of proper legal provisions. In 2018 a decision of the Central Electoral Commission effectively limited the citizens' constitutional right to organise a referendum.</p> <p>On 7 June 2017 the Moldovan parliament approved a new Law on the Government. The number of ministries was reduced, and the liquidation of some deputy ministers' positions has begun.</p>

	<p>Since 2014, the government in Chişinău has implemented significant changes to the legislation related to local administration, which aims to improve its efficiency and independence. Despite those changes, local administration remains highly dependent on the central government, both politically and financially. Its efficiency (particularly in the rural areas) remains limited due to the lack of sufficient funding, corruption and quality of staff. Additionally, between 2016-2018 local administration representatives were often subjected to intimidation and threats from the central authorities. The government lacks any motivation to change the situation (by means such as administrative reform).</p> <p>A number of amendments were introduced to the Law on Political Parties, the Electoral Code and other regulations related to the functioning and financing of political parties in Moldova. The implementation of the legal basis regarding political parties will be assessed as advanced, but with certain flaws. A tendency to favour ruling parties and undermine opposition groupings is visible.</p>
Article 5	<p>An agreement between Moldova and the EU on security procedures for the exchange of classified information was signed on 31 March 2017, and subsequently <u>ratified</u> by the parliament in November 2017.</p>
Article 6	<p>On 13 October 2010 Moldova signed the 1998 Rome Statute, and in April 2017 the Moldovan parliament voted in favour of the accession of the Republic of Moldova to the Agreement on the Privileges and Immunities of the International Criminal Court. As a result, in June 2017 Moldova became a full member of this organisation. However, the draft law to ensure effective cooperation with the International Criminal Court (as envisaged in NAPIAA II) has not been adopted.</p>
Article 7	<p>Most of the laws in the fields of conflict prevention and crisis management which were meant to have been adopted in 2017 according to NAPIAA II 2017-2019 have been delayed. This includes the law on the National Information Service, the law on counter intelligence activity and external information activity, and the amendments to the law on the status of intelligence and security officers. On a positive note in December 2017 the conception of Information Security of the Republic of Moldova was adopted.</p>
Article 8	<p>Relations between Chisinau and the separatist region of Transnistria have improved, and in November 2017 major agreements were reached within the 5+2 format. Another major step in favour of the Agreement with Ukraine regarding joint controls on the Transnistrian section of the border has been taken. EUBAM's mandate has been extended for three years, from 1 December 2017 to 30 November 2020.</p>
Article 9	<p>On a positive note, amendments to the government decision 'On the national system for controlling the export, re-export, import and transit of strategic goods in the Republic of Moldova' has been introduced as planned. At the same time, no new National Strategy on the Non-Proliferation of Weapons of Mass Destruction and the Mitigation of Chemical, Biological, Radiological and Nuclear Risks has been created, despite being scheduled in NAPIAA II. Only in December 2017 did the government create a working group on the development of this document, but as of May 2018 neither a Strategy nor an Action Plan for its implementation have been produced.</p>
Article 10	<p>Key actions envisaged in the NAPIAA 2014-2016 regarding small arms, light weapons and conventional arms export control have been addressed. Among other matters Moldova ratified the Arms Trade Treaty in May 2015. Actions provided in NAPIAA II 2017-2019 (legal acts and amendments to government decisions) have a deadline at the end of 2018 and 2019, but have not yet been implemented.</p>
Article 11	<p>The Additional Protocol to the Council of Europe's Convention of 21 October 2015 on the Prevention of Terrorism was ratified in December 2016. On 21 September 2017 a law on preventing and combating terrorism was adopted, and on 22 December 2017 a law on preventing and combating money laundering and terrorism financing was voted</p>

	through by parliament. The key legal bases included in NAPIAA II 2017-2019 on international cooperation in the fight against terrorism provided <u>have been introduced</u>.
<u>Title III</u>	Overall assessment: <i>Very limited progress. Serious delays regarding the reform of judiciary.</i>
Article 12	After a delay, in November 2017 the government proposed a series of amendments to the constitution which will increase the independence of judges. In December 2017 the Moldova CC declared the draft amendments to be constitutional, and in March 2018 they were positively assessed by VCo. However, as of now the new regulations <u>have not been yet adopted</u> . At the same time the new Justice System Development Strategy 2018-2022 <u>has not yet been accepted</u> , and remains at the consultation level. A project for a new law on the Constitutional Court <u>has been developed</u>, but its implementation stalled after the first reading in parliament. Due to the expiry of the deadline for the project's review, the legislative initiative was declared null and the promotion procedure was reinitiated. An amendment to the Constitution concerning the composition and criteria for the selection of judges of the Constitutional Court passed the first reading in the parliament in December 2017, but is <u>still pending adoption</u> . The capacities of the CSM and CSJ <u>have not been strengthened</u> . On a positive note the Code of Civil Procedure <u>was amended</u> in April 2018 in order to shorten the length of trials by simplifying the procedures. Also the National Integrity and Anti-Corruption Strategy 2017-2020 <u>was adopted</u> in March 2017.
Article 13	The new law on video surveillance <u>has not been adopted</u> . Other laws envisaged by NAPIAA II 2017-2019 are either <u>awaiting the adoption of prerequisite laws</u> or have <u>not yet been adopted</u> (the deadline for their implementation expires at the end of 2018 or in 2019). <u>Limited progress</u> has been made with regard to the promotion of public policies related to the protection of personal data.
Article 14	In July 2017 the government <u>approved a decision</u> on the establishment of integration centres for foreigners . A new cooperation plan with the European Agency for Border Police and Coast Guard (Frontex) <u>was signed</u> in March 2018. The legal framework regarding conditions for asylum seekers has been strengthened, and certain amendments have been adopted strengthening the regulatory framework regarding the documentation of foreigners.
Article 15	The key actions envisaged in NAPIAA 2014-2016 have been implemented. No new agreements on the readmission of persons residing illegally either with the EU member states or with third countries of persons residing without authorisation have been signed in 2017 (the only actions provided in NAPIAA 2017-2019).
Article 16	The National Strategy for Preventing and Combating Trafficking in Human Beings 2017-2022 <u>has not been approved</u>. A project for a new law on the protection of whistle-blowers was created, and in March 2018 was sent for examination in parliament. On a positive note a law on integrity <u>was adopted</u> on 25 May 2017. Also, the NIA has managed to introduce an electronic declaration system (starting in 2018).
Article 17	In December 2017 the National Anti-Drug Action Plan <u>was extended</u> to 2017-18. Also the Executive Committee of the National Anti-drug Commission <u>was established</u> at the end of 2017.
Article 18	The legal basis regarding terrorism prevention <u>has improved</u> . On 22 December 2017 a law on prevention and combating money laundering and financing of terrorism was adopted by parliament. On 21 September 2017 a law on preventing and combating terrorism was adopted, although at the same time no notable success in the investigation related to the embezzlement of US\$1 billion or the so-called 'Russian Laundromat' were reported. Quite the opposite; the authorities seem to be limiting access to the available reports and data (such as the so-called second Kroll report)

<u>Title IV</u>	Overall assessment: <i>Limited progress with noticeable positive developments.</i>
Chapter 1	Some progress regarding reform of the public administration has been made. On 7 June 2017 the Moldovan parliament approved the new Law on the Government. The total number of ministries was reduced from 16 to 9. Simultaneously, the liquidation of deputy minister positions began. On 6 November 2017, the government adopted a decision on the creation of a new institution for dealing with state property: the Public Property Agency. Also in line with NAPIAA II 2017-2019, in September 2017 government adopted a decision on the state's policy coordination mechanism in the fields of diaspora, migration and development. On a <u>negative note</u> , in December 2017 Prime Minister Pavel Filip declared his intention to extend the format of the National Council for Public Administration Reform by taking over the powers of the Joint Commission for Decentralisation. This declaration was widely criticised by the representatives of local authorities, as in their opinion such a move would <i>de facto</i> 'centralise the decentralisation' process.
Chapter 2	Certain amendments to the Law on Entrepreneurship and Enterprises have been adopted, while some of the new regulations and the law on state tax remain under review. The Remittance Attraction Program in PARE 1+1 for 2010-2018 is operating ; the draft law on quality control for fresh fruits and vegetables (related also to the sanitary and phytosanitary norms) was introduced to parliament in April 2018 and is currently under review.
Chapter 3	The law on accounting and the law on the audit of financial statements were adopted by parliament in December 2017. Also in December 2017, the Civil Code and the law on joint stock companies were amended in line with the provisions of Article 30.
Chapter 4	The Labour Code was amended several times during 2017 and 2018 (the latest changes were made in March 2018). The new regulations concern (among other matters) part-time work and workers' rights in cases of transfers of undertakings. On May 2018, parliament voted at the first reading a new bill on employment promotion, which includes measures to improve the country's labour market situation, prevent and reduce unemployment. In December 2016 the government approved the National Strategy on employment for the years 2017-2021. In May 2018 a plan for the implementation of this strategy was adopted. The concept of a Labour Market Observatory is being devised. In April 2017 the government approved a Strategy for Equality between Women and Men in the Republic of Moldova 2017-2021.
Chapter 6	On 30 June 2017, a law on official statistics was published in the official journal of the Republic of Moldova. The policies for the dissemination of statistical data have been updated. In July 2017 a system of Common Nomenclature of Territorial Units for Statistics (NUTS) was adopted by the government (in reference to Article 42 of the AA). Several study visits to the statistical offices and central banks of the European Union were conducted.
Chapter 7	Certain minor amendments to the Law on public finances and fiscal-fiscal responsibility were introduced in December 2017 and came into force on January 2018. A law on the audit of financial statements was adopted in December 2017 and will come into force on 1 January 2019. This Act partially transposes Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC repealing Council Directive 84/253/EEC (text with EEA relevance), published in the Official Journal of the European Union L 157/87 of 9 June 2006. Also, a draft Law on the State Financial Inspectorate has been developed and is currently under parliamentary examination. A law on the organisation and functioning of

	the Court of Accounts of the Republic of Moldova <u>has been adopted</u> in December 2017.
Chapter 8	There is still a need for serious improvement in legislation governing the tax area, including the system of functioning of public tax institutions.
Chapter 9	Laws regarding the operation of banks and non-banking financial companies <u>have been adopted</u>. Also, new regulations regarding banks administration were implemented. In December 2017 a law on prevention and combating money laundering and terrorism financing was voted through by parliament.
Chapter 10	Most of the significant actions planned in this chapter have their deadlines at the end of 2018 and in 2019.
Chapter 12	Agriculture and regional development: <u>the policies in the field are not effective</u>. In 2013 the Regional Development and National Strategy for Agricultural and Rural Development of the Republic of Moldova was adopted for the years 2014-2020, and is <u>in the process of implementation</u> .
Chapter 14	Thanks to the <u>adoption of the Laws on Electricity (May 2016), Natural Gas (May 2016) and Energy (September 2017), the majority of the provisions from the 3rd Energy Package have been transposed into primary legislation</u> . At the same time, the implementation of the secondary legislation to the natural gas and electricity laws is causing problems. Shortcomings have also been observed in the process of setting tariffs by the ANRE. Moreover, electricity procurement procedures still raise serious concerns, as proven by the Energocom case (see footnote on p. 25). There have been some developments regarding electrical and gas interconnection with Romania, but as for now without significant successes.
Chapter 17	The Paris Agreement <u>was ratified</u> in May 2017, but practical implementation is still being delayed. No National Monitoring and Reporting System for gas emissions has yet been created, and its project is <u>still at the consultative level</u> . In general, the government does not treat environmental policies with enough interest.
<u>Title V</u>	Overall assessment: <i>Moderate progress</i>.
Chapter 1 / Chapter 2	From a commercial point of view, with the entry into force of the AA and the DCFTA, Moldova has registered several positive trends in its trade with EU member states. According to Eurostat, the EU has become the country's main trading partner and the largest investor in Moldova's economy for the period of 2014-2016. However, with regard to imports, the balance has been detrimental to Moldova's economic interests, even for the first months of 2018. These positive tendencies have partly been influenced by the complexity of the bilateral political relations between the Republic of Moldova and the Russian Federation. Moldovan producers have continued to discover new markets for products and services, and have begun to implement more European standards in the production process.

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Implementation of the EU-Georgia Association Agreement: Good Governance and Fundamental Freedoms

With the aim to understand if and how Georgia is progressing in the implementation of the Association Agreement (AA), this paper explores the state of Georgia's development of good governance, the rule of law, justice and the independence of the judiciary, protection of human rights and fundamental freedoms, including the freedom of mass media, as well as progress within the economic sector. The study shows that the country faces systemic challenges with the implementation of the political part of the AA, whereas the implementation of the Deep and Comprehensive Free Trade Agreement (DCFTA) can claim some success.

The established form of governance has given birth to a functional but substantially hybrid state characterised by a top-down form of governance, personalisation of domestic politics and centralisation of power. What we have from the European Union's side towards the state-building process in Georgia is the accommodation of local cultures of governance, as the EU's rhetoric about Georgia being a frontrunner of the Eastern Partnership and a success story when it comes to the development of democracy is in sharp contrast with the actual reality. Bearing these conclusions in mind, the paper produces recommendations for the EU on how to frame its future policies towards Georgia in order to improve the implementation process.

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Executive summary

Since the 2000s, Georgia has been engaged in a complex state-building process, 'giving prime importance to military build-up while casting it in a broader peace-building rhetoric'. State-building reforms have been concentrated on the reconstruction of infrastructure, city rehabilitation projects, the privatization of state property, and a free trade agreements with neighbouring countries. The challenges of democracy, good governance, the rule of law, the judiciary and media freedom have been neglected or addressed superficially. In order to meet its security needs, Georgia has opted for the model of a strong state characterized by top-down governance and centralized (often personalized) power.¹

Over the years, the European Union's underlying policy towards the post-Soviet states, including Georgia, has been to support state-building processes by encouraging economic and political reforms and helping them to successfully transition to democracy. To this end, it signed the Association Agreement (AA), including the Deep and Comprehensive Free Trade Agreement (DCFTA) with Georgia and granted the country with visa free travel to the Schengen Area.² Since then, Georgia has been facing a challenging task in implementing the documents. With an aim to understand the degree of implementation of the Association Agreement both at the conceptual as well as technical level, this briefing paper analyzes the trajectory of the development of the Georgian democratic institutions and economic policy and outlines the challenges it faces. The principal aim of the study is to understand if and how Georgia is progressing in the implementation of the reforms and then to produce recommendations for the EU on how to frame its future policies towards Georgia in order to improve the implementation process.

Based on desk and field research, this briefing paper explores the state of Georgia in the development of good governance, the rule of law, justice and the independence of the judiciary, protection of human rights and fundamental freedoms, including the freedom of mass media, as well as progress in the economic sector.

Over the years, Georgia has tried to progress in establishing democratic institutions. The free and fair elections and successful transfer of power was largely considered a victory for Georgian democracy. The years of governance by the Georgian Dream has shown, however, that democratic elections do not always mean a successful transition towards democracy. The institutions are still weak. Informal governance, behind-the-scenes policy-making and weak checks and balances system remain a challenge. Parliament has lost its function to oversee the executive branch as the Georgian Dream has constitutional majority. The executive regularly dominates over parliament and the judicial branch, making the independence of the judiciary dubious. Moreover, the judiciary is under political influence and controlled by different interest groups. The Prosecutor's office remains the weakest part of the system. Moreover, the procedures of selection, appointment, evaluation, and promotion remain to be addressed.

The power of the president is limited by the constitution. All his interventions through veto, aimed to force the parliamentarians to make some legislative changes, have always been overridden. The Georgian democracy has further been challenged by the status and role of the Georgian Orthodox church in politics.

¹ Mikhelidze, N. "Juggling Security, Democracy and Development in the Caucasus", *Istituto Affari Internazionali*, IAI Working Papers, 2013, <http://www.iai.it/it/pubblicazioni/juggling-security-democracy-and-development-caucasus>.

² Mikhelidze, N. "EU Global Strategy, Resilience of the East European Societies and the Russian Challenge", in K. Kakachia, S. Meister and B. Fricke (Eds.) *Geopolitics and Security: A New Strategy for the South Caucasus*, Konrad Adenauer Stiftung, Georgian Institute of Politics and German Council on Foreign Relations (DGAP), 2018.

Problems persist around the human rights and fundamental freedoms. There is a wide implementation gap when it comes to protection and respect for ethnic, religious, and sexual minorities. Over the years, the government's attitude towards mass media has also remained alarming, as the ruling establishment has often tried to influence the editorial policy of the TV-channels.

However, positive developments can be observed in the penitentiary system, where cases of ill-treatment have decreased after the 2015-2016 Action Plan on the Fight against torture, inhuman, cruel and humiliating treatment or punishment was completed. In terms of implementation of the AA, some positive signs could also be noticed in Freedom and Security sector, where Georgia continued to implement its Migration Strategy and Action Plan as well as to establish the Unified Migration Analysis System. In December 2016 Georgia adopted a new Law on International Protection according to the recommendations issued in the process of implementation of Visa Liberalization Action Plan. Border management was further strengthened with Turkey and Azerbaijan.³

The study shows that Georgia faces systemic challenges with the implementation of the political part of the AA, while in case of the implementation of DCFTA it can claim some success. For example, Georgia continues to implement the reforms in combating corruption, which is essential for the success of the DCFTA. In particular, Georgia has been successful in fighting low- and mid-level corruption, making the country one of the easiest places in the world to invest. Moreover, the government continued to carry out some structural reforms aimed at improvement of the economic and business environment, especially through progressing with the approximation of its legislation in trade-related areas (mostly in the area of technical barriers to trade).⁴

Summing up, the established form of governance has given birth to a functional but essentially hybrid state characterized by a top-down form of governance, the personalization of domestic politics and centralization of power.⁵ What we have from the EU's side towards the state-building process in Georgia is the accommodation of local cultures of governance,⁶ as the EU's rhetoric about Georgia being a frontrunner of the EaP and a success story when it comes to the development of democracy, is in sharp contrast with the actual reality. Evidently, security concerns related to stability of the country has hampered the EU's policy to develop democracy in Georgia. The EU has opted for stabilization rather than serious democratic transformation. It has mostly accepted Georgia developing its own style of democracy.⁷

Thus what should be the EU's new principles, goals, and approaches towards the hybrid political system that have been consolidated in Georgia? The country is still committed to its way towards the European integration. This gives the EU enormous leverage, which it should use properly. Namely:

- At general level, EU should assess critically Georgia's transition towards democracy and speak more openly about the shortcomings the country is witnessing in this process.

³ "Association Implementation Report on Georgia", Joint staff working document, European Commission, Brussels, 9.11.2017 SWD(2017) 371 final,

http://www.3dcftas.eu/system/tdf/association_implementation_report_on_georgia.pdf?file=1&type=node&id=421&force=

⁴ Ibidem.

⁵ Mikhelidze, N. "Juggling Security, Democracy and Development in the Caucasus", *op. Cit.*

⁶ Mikhelidze, N. "National and European cultures of governance in Georgia and Abkhaz conflict resolution", *Peace Research Institute Oslo (PRIO)*, CORE working paper, August 2012,

http://www.iai.it/sites/default/files/2012_core-working-paper.pdf

⁷ Ibidem.

- It should abstain from the regular rhetoric about Georgia being a frontrunner of the EaP. For this purpose, the EU should also change its reference point for Georgia, when evaluating the development of democracy in the country.
- Enhanced conditionality is of essential importance, as manifested in clear offers and benefits in the fields of trade and economic relations and visa liberalization in exchange for the development of democracy. Therefore, the EU should improve its policy of conditionality. In concrete terms, only half of the available funds should be guaranteed for a given country, while the rest should be linked to performance in terms of the advancement of concrete political, judicial, economic and social reforms.⁸
- Thus, one of the instruments in the EU's hands when reacting to non-compliance should be aid restriction.⁹ In parallel, the EU should strengthen the "more for more" strategy for financial assistance.
- The EU should design a clear roadmap for democracy promotion in the framework of the Association Agreement accompanied by clear conditionality and monitoring mechanisms.
- The EU should also establish an effective monitoring system of financial aid use.
- For example, the EU's Macro-Financial Assistance (MFA) program to Georgia of EUR 45 million should be conditional not only on successful reviews under the IMF programme but also on the successful implementation of the DCFTA as well as the political part of the Association Agreement. True, the MFA program is of economic nature, but it is also true that if Georgia fails to implement the political part of the AA, it will negatively affect the macroeconomic stability of the country.

All these should be accompanied by the EU:

- calling for the Georgian authorities to apply a rule-of-law approach to human rights violations.
- calling for prioritization and acceleration of the institutional reforms and those related to good governance and fundamental freedoms.
- criticizing openly the shortcomings in the implementation of judicial reforms and calling for the strengthening the independent judiciary.
- calling for ending of behind-the-scenes policy and political interference in executive affairs.
- enhancing political and financial support for civil society organizations, including grassroots ones.
- promoting and financing the projects aimed at increasing awareness of the AA and DCFTA among the business community and more generally in the society.

⁸ Mikhelidze, N. "Juggling Security, Democracy and Development in the Caucasus", *op. Cit.*

⁹ *Ibidem.*

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LIST OF ABBREVIATIONS

AA	Association Agreement
ABL	Administrative Boundary Line
BSEC	Black Sea Economic Cooperation
CSO	Civil Society Organization
DCFTA	Deep and Comprehensive Free Trade Agreement
EaP	European Eastern Partnership
ECHR	European Court of Human Rights
EIDAS	Electric Identification and Trust Services for Electronic Transactions
ENP	European Neighbourhood Policy
EU	European Union
EUMM	European Union Monitoring Mission
EUSR	European Union's Special Representative
GAC	Georgian Accreditation Centre
GD	Georgian Dream
GEL	Georgian Lari
GFSM	General Fisheries Commission for the Mediterranean
GPB	Georgian Public Broadcasting
HCoJ	High Council of Justice
ICSID	International Centre for the Settlement of Investment Disputes
IDFI	Institute for Development of Freedom of Information
IFS	Instrument for Stability
ILO	International Labour Organization
IMF	International Monetary Fund
NATO	North Atlantic Treaty Organization
NDI	National Democratic Institute
NGO	Non Governmental Organization
PACE	Council of Europe Parliamentary Assembly
SPA	State Procurement Agency
SPS	Sanitary and Phytosanitary Standards
TSD	Trade and Sustainable Development

UNESCO	The United Nations Educational, Scientific and Cultural Organisation
UNM	United National Movement
US	United States
USD	United States Dollar

1. Introduction

1.1. General background

Since the 2000s, Georgia has been engaged in a complex state-building process, 'giving prime importance to military build-up while casting it in a broader peace-building rhetoric'.¹⁰ State-building reforms have been concentrated on the reconstruction of infrastructure, city rehabilitation projects, the privatization of state property, and a free trade agreements with neighbouring countries. The challenges of democracy, good governance, the rule of law, the judiciary and media freedom have been neglected or addressed superficially. In order to meet its security needs, Georgia has opted for the model of a strong state characterized by top-down governance and centralized (often personalized) power.¹¹

Over the years, the European Union's policy towards the post-Soviet states, including Georgia, has been to support state-building processes by encouraging economic and political reforms and helping them to successfully transition to democracy.¹² The overall aims of the European Neighbourhood Policy and the European Eastern Partnership (EaP) were to develop bilateral relations with Georgia and turn the country into a success story. To this end, it signed the Association Agreement (AA), including the Deep and Comprehensive Free Trade Agreement (DCFTA) with Georgia and granted the country with visa free travel to the Schengen Area. However, after more than a decade of engagement, deployment of the EU's normative power in Georgia has become context-dependent and led to mix results, especially after 2016 when the AA and DCFTA entered into force.

The Association Agreement between the European Union and Georgia is a comprehensive document covering almost all aspects of Georgia's relationship with the EU. It largely encompasses the political and economic dimensions within which the political objective is to improve democracy, rule of law, and respect for human rights; while the economic purpose is to modernize the local economy and financial sector through enhancing trade with the EU (and beyond) and re-design economic regulations in line with European best practices.

Since 2016, Georgia has been facing a challenging task in implementing the documents. With an aim to understand the degree of implementation of the Association Agreement both at the conceptual as well as technical level, this briefing paper analyses the trajectory of the development of the Georgian democratic institutions and economic policy and outlines the challenges it faces. In particular, the study focuses on several key dimensions that have been most problematic in the country's political development so far and exposes the critical aspects of the process of transition towards democracy.

The principal aim of the study is to understand if and how Georgia is progressing in the implementation of the reforms in the framework of EU-Georgia Association Agreement and then to produce recommendations for the EU on how to frame its policies towards Georgia in order to improve the implementation process.

1.2. Structure

The paper starts with an analysis of good governance in Georgia. In doing so, it looks at the role of informal governance in the country's political processes and decision-making within the country.

¹⁰ Mikhelidze, N. "Juggling Security, Democracy and Development in the Caucasus", *op. Cit.*

¹¹ *Ibidem.*

¹² Mikhelidze, N. "EU Global Strategy, Resilience of the East European Societies and the Russian Challenge", *op. Cit.*

Next, it tackles the state of the rule of law and, in particular, the constitutional reform recently adopted by the Georgian Parliament. In order to better understand the status of the rule of law in the country, the study then focuses on the justice sector and reforms in judiciary. Following this section, the paper deals with fundamental freedoms – namely, human rights and the freedom of mass media.

The second part of the paper concentrates on the economic dimension of EU-Georgia relations, with particular focus on the implementation of the DCFTA.

What follows is the EU policies towards Georgia and its attitude to the political processes within the state especially since 2016.

Finally, the paper offers number of recommendations to the EU, focusing on how to design its future policy towards Georgia and what kind of attitude (or approach) it should adopt in order to foster the successful implementation of the Association Agreement in the country.

1.3. Methodology

The study is based on desk and field research, and namely on the qualitative analyses of primary sources such as official documents, declarations, public speeches of different actors and decision makers, as well as on secondary information and data including scientific literature, articles, academic analyses, reports from nongovernmental organizations and documentations of news agencies. This report is also based on the fieldwork carried out in March 2018, which involved a series of interviews with Georgian authorities and policymakers as well as representatives of the Georgian civil society. Crosschecking interviews were conducted with the international diplomats in Georgia.

2. Democracy and good governance

Title II, Article 3, paragraph H of the EU-Georgia Association Agreement states that Georgia should be committed ‘to strengthen[ing] respect for democratic principles, the rule of law and good governance and to consolidate[ing] domestic political reforms’.¹³

In April 2018, Freedom House’s new report on Nations in Transition was released. The profile on Georgia discusses the setbacks for the country’s democratic development. To find a balance between consolidating power and advancing democracy remains a challenge. The reforms seem to be stalled.¹⁴

Indeed, the reactions of the Georgian authorities to the report demonstrates the level of democratic development in the country. Parliament Speaker Irakli Kobakhidze criticized the report saying it was “biased” against the Georgian government and was influenced by ‘pseudo-liberal forces [that] are challenging the government of Georgia’.¹⁵ Prime Minister Giorgi Kvirikashvili also slammed the report and advised Freedom House to ‘think over before publishing such biased information’.¹⁶

However, not only Freedom House but also the Eastern Partnership Index 2015-2016 stated that although Georgia is more democratic than most of the Eastern Partnership countries, the progress are stalled in numerous areas of democracy development. In some cases the report speaks even about regression.¹⁷

2.1. Informal governance

The Freedom House report pays particular attention to informal governance in Georgia, which remains the main challenge for good governance and democracy in the country.¹⁸ Former Prime Minister Bidzina Ivanishvili, with his financial resources, has remained able to control the state and influence the decision-making process. Formally, he does not hold any political position. Therefore, he is not accountable for his actions. It is not clear how much political power he actually has.¹⁹ Usually he exercises two types of influence: political, as no crucial decisions are made without him, and financial, whereby he funds some of the projects of key politicians and/or representatives of business community.²⁰ In view of weak opposition, it has become easier for him to capture the state institutions and the society. Moreover, Ivanishvili successfully coopted the old (soviet) Georgian

¹³ “EU-Georgia Association Agreement”, *Official Journal of the European Union*, Volume 57, 30 August 2014, https://eeas.europa.eu/sites/eeas/files/association_agreement.pdf.

¹⁴ “Nations in Transit 2018: Georgia Country Profile”, *Freedom House*, <https://freedomhouse.org/report/nationstransit/2018/georgia>.

¹⁵ “Parliament Speaker slams Freedom House Report, ‘Pseudo-Liberal’ NGOs”, *Civil Georgia*, Tbilisi, 3 April 2018, <http://www.civil.ge/eng/article.php?id=31019>.

¹⁶ Ibidem.

¹⁷ “Eastern Partnership Index 2015-2016: Charting Progress in European Integration, Democratic Reforms, and Sustainable Development”, *Eastern Partnership Civil Society Forum*, December 2017, http://www.eap-index.eu/sites/default/files/EaP_Index_2015-16_0.pdf.

¹⁸ Almost all interviewed persons agree that Bidzina Ivanishvili is influencing the decision-making process as all the key political and economic decision are taken by him.

¹⁹ Interview with a foreign diplomat in Georgia, Tbilisi, March 2018.

²⁰ Kononcczuk, W. Cenusa, D. and K. Kakachia, “Oligarchs in Ukraine, Moldova and Georgia as key obstacles to reforms”, *CEPS*, 24 May 2017, <http://www.3dcftas.eu/publications/other/oligarchs-ukraine-moldova-and-georgia-key-obstacles-reforms>.

intelligentsia by paying them monthly maintenances²¹ and a considerable part of Georgian society through his philanthropic activities.

After resignation, Ivanishvili has continued to meet regularly ministers and members of the parliament, calling such meetings “consultations”. He also argued that Prime Minister Irakli Garibashvili’s resignation came after such a “consultation”.²² Indeed informal governance was evident in the case of appointment and dismissal of Prime Minister I. Garibashvili as well as assignment of this post to current Prime Minister G. Kvirikashvili. There are also some other examples. Namely, the former head of Ivanishvili’s Security Service, V. Gomelauri, first became deputy minister at the Ministry of Internal Affairs and then the minister of the same ministry. Later, he was appointed as the head of the newly established State Security Service. Replacement of Zurab Alavidze, Regional Development and Infrastructure Minister, in March 2018 by Maia Tskitishvili, who served as head of the Georgian government’s administration, is another example of informal governance. Over the years, Tskitishvili held a number of managerial positions at Ivanishvili’s companies.²³

Ivanishvili has continued to support the Georgian Dream party, which he established, both politically and financially²⁴ in exchange for lobbying his interests. For example, the new construction project called “Panorama Tbilisi” (a real-estate development) overlooking Georgia’s capital demonstrates the true extent of Ivanishvili’s power.²⁵ The territory on which the project will be built belongs to a Historic Preservation Zone of the city; therefore, it needs to obtain certain state authorizations. Some experts argue that Panorama could put at risk Old Tbilisi’s tentative status as a UNESCO world heritage site. Despite the strict regulations about new developments in that part of Tbilisi, the project was still authorized by the local municipality. Moreover, the Ministry for Economic and Sustainable Development of Georgia granted Panorama with an status of “category five”, which is given to any crucial state infrastructure, such as hydroelectric dams, energy plants, military bases and pipelines.²⁶

Another example of misuse of the power by B. Ivanishvili is related to his hobby. He buys the oldest trees in Georgia, digs them out, and transports them to his residence on the Black Sea. All this happens without any state authorization and often through blocking the streets and using public resources. For example, during transportation of one such tree, it became necessary to block the highway between Kobuleti and Batumi for several hours causing also delays for trains.²⁷

In April 2018, Bidzina Ivanishvili announced his “official comeback” to the politics as a chairman of the Georgian Dream party. This move is yet another demonstration that he actually never left politics. Apparently, the reasons behind such a decision have been twofold: first, to strengthen the Georgian Dream party in view of the upcoming presidential election and to propose and support his own candidate for presidency; and second, to resolve the internal problems of the party as it has

²¹ Lebanidze, B. and Kakachia, K., “Informal governance and electorate perceptions in hybrid regimes: The 2016 parliamentary elections in Georgia”, *Demokratizatsiya: The Journal of Post-Soviet Democratization* 25:4, Fall 2017: 529-550.

²² Ibidem.

²³ “New Infrastructure Minister Appointed”, *Civil Georgia*, Tbilisi, 30 March 2018, <http://www.civil.ge/eng/article.php?id=30992>.

²⁴ One of the example of financial support was prior to the election 2016 when the Georgian Dream borrowed 1 million GEL from Ivanishvili’s bank.

²⁵ Zhvania, I. “Tbilisi’s Panorama project is urban boosterism at its worst”, *Opendemocracy*, 20 October 2016, <https://www.opendemocracy.net/od-russia/irakli-zhvania/tbilisi-panorama-project-urban-boosterism-at-its-worst>.

²⁶ Ibidem.

²⁷ Bordzikashvili, S. “Ivanishvili’s tree collecting hobby”, *Osservatorio Balcani e Caucaso*, 9 January 2017, <https://www.balcanicaucaso.org/eng/layout/set/print/content/view/print/182224>.

been at risk of falling apart. Yet it is also a demonstration that the country is in a crisis, as many of the citizens' problems remain unresolved and Ivanishvili seems to think that without his open involvement in the policy-making process, the situation will get out of control.

2.2. Hybrid democracy

Since 2012, the main objective of the ruling party has been to marginalize opposition (and later the President and the civil society organizations). It has done so by demonizing the United National Movement (UNM). This strategy worked, as the Georgian Dream managed to win all the elections at the national and as well at local level and now it is a party with the constitutional majority in the parliament. Consequently, Georgia is witnessing a one-dominant-party system, which exercises power at all levels of state governance, effectively undermining the checks and balances in the country. On the other hand, the UNM and especially its leader M. Saakashvili contributed to the unpopularity of the UNM. Internal conflict brought about a split of the UNM with core group leaving the party and forming a new one called "European Georgia". This latter as well as other opposition parties remain weak and this has been confirmed by the local elections in October 2017, where the GD won almost everywhere.

The parliamentary oversight of the executive branch does not exist as the ruling party has the constitutional majority. Indeed, the capacity of Georgian Dream to win super-majorities in all elections remains the major obstacle for the successful transition towards democracy. In view of absence of checks and balances, government activity reports are not seriously addressed by the parliament; moreover, government spending plans remain unchallenged; parliamentary committees and/or *ad hoc* investigative initiatives are mostly ineffective;²⁸ and last but not least, the recommendations of the civil society organizations are often ignored while the CSOs themselves are often demonized by some state officials. Though civil society has effective watchdog capacities, the impact of their activities on state and/or society remains marginal.

The governance is characterized by not only the political tensions between the parliamentary majority (the ruling party) and the President but also by a complete lack of respect towards institutions. The representatives of the Georgian Dream often forget that by attacking the President as a person, they are discrediting the Presidency as an institution. Over the years, President Margvelashvili vetoed number of legislative proposals and/or amendments aiming at increasing accountability of the laws. Before doing so, he usually held consultations with the third sector, international actors (including Venice Commission) and political groups. The ruling party overrode every veto almost without any further discussion or revision of the draft proposals.

In 2017, Georgia changed the constitution, concluding the transition from a mixed to a parliamentary system. Under the new constitution, the President will not be elected by the population but through an electoral college, while the parliament will be elected through a fully proportional electoral system.²⁹ Alongside weakening the president's power, the new draft abolished the National Security Council as well.

Alarming was not so much the outcome but rather the process within which the amendments were discussed. The Georgian Dream formally consulted the opposition parliamentary and non-parliamentary groups as well as civil society organizations; however, it largely ignored all the proposals that came from the interlocutors. It overrode the president's veto, thus refusing to take into consideration the critiques coming from the president and ignored the suggestions made by

²⁸ "The state of corruption: Armenia, Azerbaijan, Georgia, Moldova and Ukraine", *Transparency International*, 2015, http://files.transparency.org/content/download/1913/12662/file/2015_StateOfCorruption_AMAZGEMDUA_EN.pdf.

²⁹ "Key points of newly adopted constitution", *Civil Georgia*, 27 September 2017, <http://www.civil.ge/eng/article.php?id=30474>.

G. Margvelashvili together with twenty opposition parties. At that point, these latter boycotted the adoption of the constitutional changes in parliament. In this way, the constitutional changes turned to be a document of a one single ruling party, completely lacking any political consensus.³⁰

The Venice Commission gave a positive assessment of 'the evolution of Georgia's political system towards the parliamentary'³¹ one, however it also expressed criticism, hinting at the lack of consensus between the ruling party on one side and the opposition (parliamentarian and non-) and civil society on the other. The Venice Commission also criticized the decision of the Georgian Dream to postpone the implementation of the fully proportional electoral system until 2024.³²

About hybridity of democracy in Georgia speaks also government's decision to weaken the decentralization of the state. Despite the ruling elites' expression of support of decentralisation, Georgia has the lowest degree of decentralisation in almost all dimensions, including political, administrative and fiscal. In 2017, the parliament adopted a new self-governance code and reduced the number of self-governing cities from twelve to five, with an excuse to increase the efficiency of management. The decision was highly criticized by the CSOs. Around 150 civil society organizations signed a letter urging the government to maintain the self-governing status of the cities. President Margvelashvili vetoed the law, which the parliament then overrode.

Political control over local governments was already evident soon after the 2012 parliamentary elections. Number of mayors and local assembly chairs have resigned, and ordinary employees were dismissed in the first period of the Georgian Dream governance. As the Thomas Hammarberg's Report noted back in 2013, the hiring of new employees based on party affiliation was reported in 18 municipalities.³³

Another sign of hybrid democracy is the status and role of the Georgian Orthodox church in politics. While Georgia is a secular state, over the years the Georgian Orthodox Church has increased its influence over the state and over society. It is the most influential institution in the country, as it is one of the most trusted (even if according to the recent polls conducted by NDI the trust towards the church has started to decrease³⁴). In 2014, public financing for the church was increased to GEL 25 million (around €8 million) per year. Additionally, the discourse promoted by the Premier Minister G. Kvirikashvili has made the church an even stronger actor in Georgia's political life. In 2017, the Prime Minister argued that the Orthodox Church and the Georgian state were "interwoven" and although the state and the church are "independent" today, 'secularism in its classical sense is misplaced in Georgia'.³⁵

The church is actively involved in the legislative work of the parliament. For instance, it has been invited to the discussions on anti-discrimination law, which it then actively opposed because of the clauses prohibiting discrimination based on sexual orientation and gender identity. By inviting the church to such a discussion the government clearly legitimised the participation of the church in

³⁰ "Nations in Transit 2018: Georgia Country Profile", op. cit.

³¹ "Opinion on the draft revised constitution as adopted by the parliament of Georgia as the second reading on 23 June 2017", *Venice Commission*, 9 October 2017, <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD>.

³² Ibidem.

³³ Hammarberg, T. "Georgia in transition", Report on the human rights dimension: background, steps taken and remaining challenges, a report addressed to High Representative and Vice-President Catherine Ashton and Commissioner for Enlargement and European Neighbourhood Policy Stefan Füle, September 2013, http://gov.ge/files/38298_38298_595238_georgia_in_transition-hammarberg1.pdf.

³⁴ "Results of March 2018 Public Opinion Polls in Georgia", *NDI*, 30 April, <https://www.ndi.org/publications/results-march-2018-public-opinion-polls-georgia>.

³⁵ "CSOs: PM Kvirikashvili's church statements "irresponsible", *Civil Georgia*, Tbilisi, 26 July 2017, <https://old.civil.ge/eng/article.php?id=30295>.

the political process and indirectly contributed to the radicalization of the society, because this latter tends to side with the church when it comes to the issues related to minority rights.

3. Freedom, Security and Justice

3.1. Reform of Judiciary

3.1.1. Reform of the Prosecution Office

The EU-Georgia Association Agreements states that Georgia should be committed to ‘attach particular importance to further promoting the rule of law’.³⁶ Article 4 of Title II states that the country should make further progress on judicial and legal reform, so that the independence of the judiciary is guaranteed, strengthening its administrative capacity and guaranteeing impartiality and effectiveness of law enforcement bodies.³⁷

The justice system has always been the heel of Achilles of the Georgian political system. Since its independence, the Georgian government has pledged to carry out the full-fledged reforms in order to improve the judiciary by guaranteeing free trial through independent judges and prosecution services. To achieve this goal is now not only an electoral promise but, as stated above, also part of the commitment Georgia has taken in the framework of the Association Agreement.

Today, the most significant reforms, which have not yet been implemented, are to ensure the independence, impartiality, and professionalism of the judges as well the right to a fair trial. More serious problems exist in two areas: independent and effective investigation, and the status and rights of victims in criminal proceedings and politically motivated detentions.

Starting with the Prosecution Office, in 2015 legislative amendments to the Law on the Prosecutor’s Office were approved. In the 2016 Action Plan for the Implementation of the EU-Georgia Association Agreement the government underlined that the reforms were complete and there was no need to focus further attention on the Prosecutor’s Office.³⁸ It pledges that thanks to the reforms the independence and transparency of the Prosecutor’s Office has significantly been increased.³⁹ It also claimed that a more transparent and objective judicial selection process has been introduced, and with this law the Prime Minister no longer appoints the prosecutor general (though the ruling party still has the power to select the candidate).⁴⁰ Additionally, the disciplinary prosecution of judges has been delegated to the High Council of Justice of Georgia (HCoJ), while an independent body – the Prosecutorial Council – was established in Georgia for the first time. The Council aims at guaranteeing the independence and transparency of the system. However, the Venice Commission noted that the proposed legislative amendments do not ensure the Council’s political neutrality.⁴¹ Also, civil society organizations have claimed that even if the Prosecutorial Council has been created as an independent body, it operates under the supervision of the Ministry of Justice.

³⁶ “EU-Georgia Association Agreement”, op. Cit.

³⁷ Ibidem.

³⁸ “The 2016 National Action Plan for the Implementation of the EU-Georgia Association Agreement”, <http://www.eu-nato.gov.ge/en/eu/association-agreement>.

³⁹ “Implementation of the EU-Georgia Association Agreement and Association Agenda 2014-2017”, *Office of the State Minister Of Georgia*, July 2017.

⁴⁰ Emerson, M. and Kovziridze, T. “Deepening EU-Georgia Relations: What, Why and How?”, A Trilogy of Handbooks: Understanding the EU’s Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine, *Centre for European Policy Studies (CEPS)*, Brussels Reformatics, Tbilisi Rowman & Littlefield International, London, 2016, <https://www.ceps.eu/system/files/Georgia%20e-version%20with%20covers.pdf>.

⁴¹ “Joint Opinion on the Draft Amendments to the Law on the Prosecutor’s Office of Georgia”, European Commission for Democracy through Law (Venice Commission) Consultative Council of European Prosecutors (CCPE) OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) CDL-AD(2015)039.

Problems also emerge when it comes to the independence and impartiality of individual prosecutors while conducting criminal proceedings. The prosecution system remains extremely centralized and functions on a basis of subordination, where all prosecutors are subordinated to the Chief Prosecutor, while the appointment of the Chief Prosecutor remains politicized.⁴² Moreover, local CSOs argue that the Prosecution Service, which was supposed to be independent from any kind of influence, became a topic of partition between the interests of Ministry of Justice and a judge of the Tbilisi Court of Appeals.⁴³

3.1.2. Appointment/Selection procedures of judges and transparency of the system

The issues related to the appointment/selection procedures of judges remains another problem of the judicial system. The 34 Civil Society Organizations criticized the murky practices of appointment of Court/Chamber/Collegium Chairs by the HCoJ.⁴⁴ The election of such a compromised judge like Levan Murusidze in the Court of Appeal confirmed that the High Council of Justice failed to conduct the selection according to the criteria provided by the law; this also revealed that the decision was made based on certain hidden deals between the members of the council. 'In the absence of clear criteria or procedures set in the legislation for selecting the chairs, the appointment often follows the interests of the influential groups in the system', argues the statement of the CSOs.⁴⁵ All the proposals for changing the selection modalities have always met with resistance. For example, the provisions which followed the recommendations of the Venice Commission report 2014,⁴⁶ including the election of the court chairs by the judges of respective courts, was removed from the final draft of the legislation, likely because of the demands of this influential group.

The absence of selection criteria also created problems during the competition to select candidates for the vacant position of the Georgia-nominated judge to the European Court of Human Rights (ECHR). In 2017, the ECHR rejected three Georgia-nominated candidates, hinting on lack of qualifications and urging for a new call for applications.⁴⁷ The Coalition for Independent and Transparent Judiciary (the representative of which was a member of the commission) boycotted the selection process, arguing that in view of government's decision not to change the composition of the commission and the rules of selection one could not expect fair and objective decisions.⁴⁸ After

⁴² Natsvlishvili, A. and Tsimakuridze, E., "Reform of prosecutor's office in Georgia: Is the glass half full or half empty?" Policy Brief, *Open Society Georgia Foundation*, Tbilisi, October 2016, http://www.osgf.ge/files/2016/Publications/EU%20publication/Angarishi_A4__Judiciary_ENG_Cor.pdf.

⁴³ Interview with a representative of the civil society organization, Tbilisi, March 2018.

⁴⁴ HCoJ is in charge of overseeing the judiciary with the authority to appoint or dismiss judges, as well as to initiate disciplinary proceedings against judges. The institution consists of 15 members, with eight members elected by the Conference of Judges, five members elected by the Parliament and one member appointed by the President.

⁴⁵ "The coalition calls on the High Council of Justice not to appoint court chairs using opaque processes", *The Georgian Young Lawyers' Association*, May 2017, <https://www.gyla.ge/en/post/movutsodebt-iusticiis-umaghles-sabtchos-ar-danishnos-sasamartlos-tavmjdomareebi-gaumtchvirvale-procesit#sthash.WKG50mXd.dpbs>.

⁴⁶ "Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amendments to the organic law on general courts of Georgia, adopted by the Venice Commission at its 100th Plenary Session, Rome, 10-11 October 2014", *European Commission for Democracy through Law, Venice Commission*, Opinion N°773/2014, CDL-AD(2014)031, Or.Eng. Strasbourg, 14 October 2014, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)031-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)031-e).

⁴⁷ "Election of judges to the European Court of Human Rights", *Council of Europe*, Parliamentary Assembly, Progress report, Doc. 14231 Addendum 3, 25 January 2017, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23380&lang=en>.

⁴⁸ "The Coalition refuses to participate in the work of the Georgian state commission for selecting judicial candidates for European Court of Human Rights", Letter To the State Commission for Selecting Judicial Candidates from Georgia, to the European Court of Human Rights, *Coalition for an Independent and Transparent Judiciary*, 25 August 2017, http://coalition.ge/files/coalition_letter_aug_25_2017.pdf.

the second round of selection process, the commission proposed three candidatures (Lali Papiashvili, Star Sichinava, and Lado Chanturia), two of whom (Papiashvili and Sichinava) were highly criticized by the CSOs and opposition groups because of their controversial involvement in the Rustavi2 TV case. According to their opponents, both judges were under ruling party's influence.⁴⁹ Finally, the third candidate, Lado Chanturia, who served as Georgia's ambassador to Germany, was elected by the Council of Europe Parliamentary Assembly (PACE) as the Georgia-nominated judge to the European Court of Human Rights.

Alongside murky appointment/selection procedures, the lack of transparency remains another challenge for the system. The Judiciary became a closed system where criticism is highly unacceptable, especially if it comes from inside. Namely, one group of judges and the High Council of Justice are not tolerant towards the criticism expressed by other judges. This was the case when the Council of Justice dismissed Mamuka Akhvediani, chairman of the Tbilisi City Court, two months after he made some critical statements. This case demonstrated how criticism expressed by individual judges is unacceptable for many judges in the system and exposed further the clan rulership in the judiciary corps.⁵⁰

In January 2018 Georgian President Giorgi Margvelashvili has appointed Anna Dolidze, his parliamentary secretary, as a new member of the High Council of Justice for a four-year term. Anna Dolidze has always been considered as an independent lawyer famous for her sharp criticisms of the judicial system. It is telling that her appointment has been criticized by the members of the HCoJ as well as the chairman of the Parliament Irakli Kobakhidze (member of "Georgian Dream" party).

In the framework of the EU-Georgia Association Agreement, the Georgian government committed to elaborate a new Law on Freedom of Information and mechanisms to ensure access to public information. Not only has the government not yet elaborated the law, but, upon the initiative of the Ministry of Justice, the Parliament of Georgia is expected to make an amendment to the newly adopted constitution and worsen the constitutional standard of access to public information. A number of civil society organizations called on the Parliament not to approve the Justice Ministry's proposal restricting freedom of information.⁵¹

According to the 2016 report of the Institute for Development of Freedom of Information (IDFI), the Ministry of Justice, together with 12 of its subordinate bodies, is the most closed public institution in Georgia. Indeed, the Common Courts in Georgia have started to refuse to disclose their decisions on cases of high public interest, such as those of former state officials. While the legislation considers court decisions to be ordinary public information, and, moreover, the openness of court hearings is guaranteed by the Georgian Constitution, for example, it is impossible to receive full information and obtain court decisions on the cases against former President M. Saakashvili as well as other political opponents. In 2016, IDFI sent 346 freedom of information requests and none of these were provided with a response.⁵² Together with being illegal to refuse to disclose the information, this practice also strengthens the opposition parties' argument that the judicial proceedings against former state authorities are politically motivated.⁵³

⁴⁹ "Government re-submits list of candidates for vacant ECHR judge position", *Civil Georgia*, Tbilisi 31 August 2017, <http://civil.ge/eng/article.php?id=30406>.

⁵⁰ Interview with a representative of the NGO, Tbilisi, March 2018.

⁵¹ "Justice Ministry proposed constitutional amendments to worsen access to public information", *Open Society Georgia Foundation*, 13 December 2017, http://www.osgf.ge/index.php?lang_id=ENG&sec_id=15&info_id=5116.

⁵² "Access to public information in Georgia - 2016 Report", *Institute for Development of Freedom of Information*, 28 September 2016, <https://idfi.ge/en/2016-idfi-foi-report>.

⁵³ "Access to court decisions in Georgia: Analysis of the common court practice", *Institute for Development of Freedom of Information*, 27 December 2016,

According to IDFI's research on the transparency and independence of Georgia's Constitutional Court, since 2014 no audit has been carried out in the system. However, IDFI found out some worrying trends developing in the Constitutional court. Since 2012 the state funding of the Court is increasing progressively. In 2017 it received 70% more funding than it had in 2012. The biggest part of the budget is allocated for covering the salaries of the judges and employees of the system. Despite the decrease of the number of employees over the years, the cost of remuneration has increased significantly in the form of monthly salaries as well as bonus. Although the monthly salary of a member of the Constitutional Court is one of the highest in the Georgian public sector, the data of 2012-2017 shows that the judges were actively receiving additional bonuses without any clarification on what basis they were receiving extra remunerates. Absence of such clarifications raised doubts about the independence of the Constitutional Court as such practice could have something to do with "exchange favours" and/or corruption deals between the Chief of the Constitutional Court and judges or between the Court and different state branches. For example, the salary of Lali Papiashvili (the judge who was involved in the Rustavi2 case) was 60 600 GEL in 2012, and in 2016 the amount was doubled and brought to 122 428 GEL.⁵⁴

3.1.3. Politicised Justice

After the Georgian Dream came to power, approximately 90 members of the previous government have been investigated,⁵⁵ more than 30 members have been charged (including former President M. Saakashvili), and 14 have been arrested or put into pre-trial detention (including a former Prime Minister, Defence, and Interior Ministers and the mayor of the capital city Tbilisi). Yet no criminal charges have been brought against any United National Movement (UNM) party members who have changed party since 2012. In some cases, investigations stopped altogether after the politicians left the UNM and entered Georgian Dream party.⁵⁶ According to the Assembly of the Council of Europe, there have been 'procedural deficiencies ...toward defendants' rights' in the prosecutions of former state officials, giving impression of politically motivated and 'selective and revanchist justice'.⁵⁷ Similarly, during his visit to Georgia Pedro Agramunt, Rapporteur of the Parliamentary Assembly of the Council of Europe (PACE), declared that he had a feeling that detention of the former officials was 'part of a bitter campaign by the current authorities against their predecessors'.⁵⁸ Finally, the European Court of Human Rights found a violation of Article 5 § 3 and Article 18 concerning the pre-trial detention of the former Prime Minister of Georgia, Ivane Merabishvili.⁵⁹

<https://idfi.ge/en/access-to-court-decisions-in-georgia-analyses-of-general-courts-practices>.

⁵⁴ "Monitoring of Constitutional Court of Georgia", IDFI, 24 December 2017,

<https://monitoringofconstitutionalcourtofgeorgia.wordpress.com/2017/12/24/საკონსტიტუციო-სასამართლო-3/>.

⁵⁵ "Freedom in the World 2015: The Annual Survey of Political Rights and Civil Liberties", Freedom House, Rowman & Littlefield 2016.

⁵⁶ Emerson, M. and Kovziridze, T. "Deepening EU-Georgia Relations: What, Why and How?", op.Cit.

⁵⁷ "The functioning of democratic institutions in Georgia", Council of Europe, Parliamentary Assembly, Doc. 13588 Add. 30 September 2014,

<http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbm9vbnNveG1sL1hSZWYvWDJlURXLWV4dHluYXNwP2ZpbGVpZD0yMTE3OSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRClBVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkaWkiPTIxMTc5>.

⁵⁸ "PACE rapporteur in Georgia: 'don't use detention to settle political scores", Council of Europe, Parliamentary Assembly, 20 February 2015, <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5439&lang=2&cat=5>.

⁵⁹ "Press country profile", European Court of Human Rights, Press Unit, January 2018, https://www.echr.coe.int/Documents/CP_Georgia_ENG.pdf.

3.1.4. Rustavi2 TV Case

Impartiality of the judiciary has also been questioned in the case of the court disputes over the ownership of the Rustavi2 TV channel and with respect to the trial against five former defence ministry and general staff officials in the so-called “cable cases”. Starting with Rustavi2, the ownership of this TV channel is contentious. Since 2014, it had five UNM connected owners. Over the years some of them turned out to be supporters of the Georgian Dream party and with the change of ruling political elite in 2012 they have tried to regain the ownership of the TV channel.

In 2017 after several judicial processes, the Supreme Court ruled to transfer the ownership of Rustavi2 TV (a pro-opposition TV channel) to its former co-owners – known to be “Georgian Dream” supporter. A number of Civil Society Organizations as well as opposition parties condemned the decision, suggesting possible government interference in the judicial process (through exertion of pressure on the judges, namely the prosecution-launched criminal case against mother of the presiding judge) and calling the trial unfair.⁶⁰

In March 2017 the European Court of Human Rights requested the enforcement of the Supreme Court’s decision be suspended until it had considered the case.⁶¹ Beforehand, Freedom House had stated that the Georgian government was not pursuing establishment of higher standards in protecting the rule of law, democracy and the freedom of the media in Georgia.⁶² In addition, the delegation of the European Union pointed out that it was closely examining the court’s verdicts and its consequences but also continued the tradition of not commenting individual court decisions.⁶³

3.1.5. “Cables Case”

On the 28th of October, 2014, four serving officials and one former official from the Ministry of Defence and the general staff of the armed forces were arrested and charged with mispending 4.1 million GEL (around €1.4 million) in a tender of laying fibre-optic cable in 2013. According to the Prosecution Office, they manipulated a tender so that the private company Silknet, gained an unfair advantage. The officials and the general staff denied the charge. In May 2016, five were sentenced to seven years in prison. The procurement has been labelled “absolutely secret” without giving the advocates the possibility to meet freely with the detainees or receive the full information about the case.

The Ministry of Defence declared that the expenses such as these were usually monitored by NATO’s Building Integrity Program. In 2013, NATO’s experts not only gave a positive assessment to the anti-corruption reforms carried out by the ministry but also called on it to share its successful experience with other NATO partner countries. Furthermore, all the tenders were usually attended by the

⁶⁰ “Georgian NGOs’ address to the European Court of Human Rights To: the Honorable Ganna Yudkivska, President of 4th section of European Court of Human Rights”, *Transparency International*, http://www.transparency.ge/sites/default/files/post_attachments/ngos_address_to_the_european_court_7.pdf.

⁶¹ “Georgia 2017/2018”, The Amnesty International Report: The State of the World’s Human Rights, *Amnesty International*, 2018, Amnesty International Ltd Peter Benenson House, London WC1X 0DW United Kingdom, <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.

⁶² “Georgia: court wrongly fires Rustavi-2 executives”, *Freedom House*, 6 November 2015, <https://freedomhouse.org/article/georgia-court-wrongly-fires-rustavi-2-executives>.

⁶³ “Statement by the Delegation of the European Union to Georgia on the verdict issued by the Supreme Court on the Rustavi 2 case”, *European External Action Service*, 3 March 2017, https://eeas.europa.eu/delegations/kosovo/21886/statement-delegation-european-union-georgia-verdict-issued-supreme-court-rustavi-2-case_en.

representatives of civil society organizations in order to guarantee major transparency on the one hand and inclusion of the third sector in the selection process on another.⁶⁴

The Georgian Young Lawyers Association, which was representing one of the co-defendants, claimed that the whole judicial process was unfair and that the verdict was unjustified. The point was that the defendants had never had access to the funds, which were claimed to be used by them nor had they authority to sign for the services or to make the final decision, and so the money could not have been under their legal management. Moreover, allocation of this funds had been discussed and approved by the Deputy Defence Minister, the Finance Minister, and the Prime Minister. This means that the whole government was aware of what was purchased.⁶⁵ The Public Defender of Georgia claimed that the money was allocated from the Reserve Fund of the Government of Georgia on a directive of the Government itself, and so it was beyond authority of the Ministry of Defence and even more so to those five officials.⁶⁶

In January 2017, the President granted an amnesty to the five prisoners with the argument that the Prosecutors Office failed to substantiate the charges. A few days earlier the Tbilisi Court of Appeals had changed the quality of the charges and found them guilty of exceeding official powers. The seven years term was reduced to one year and six months. Without the pardon, they would have stayed two more months.

3.2. Freedom and Security

The Titles of the Association Agreement on Freedom and Security cover the protection of personal data, cooperation on migration and border management, combating organised crime and terrorism, tackling illicit drugs and legal cooperation.⁶⁷ Implementation of the Law on Personal Data Protection led to concern from civil society organizations. The law allows the Security Service of Georgia (an agency believed to be directly controlled by B. Ivanishvili⁶⁸) to conduct electronic surveillance with the approval of a judge and a specially appointed inspector. As the independence of the judiciary is not guaranteed in Georgia, reasonable doubts arise about the government's excessive interference in monitoring internet data without seeking an approval.

In the area of migration, Georgia continued to implement its Migration Strategy and Action Plan as well as to put in place the Unified Migration Analysis System. In December 2016 Georgia adopted a new Law on International Protection, following recommendations issued in the process of implementation of Visa Liberalization Action Plan.⁶⁹

Border management was further strengthened by rehabilitating border sectors with Turkey and Azerbaijan under the 2014-2018 Strategy of the State Border Management and the five-year Unification, Modernization and Standardization Plan of the Border Police.⁷⁰

⁶⁴ Officials from MoD, general staff arrested, *Civil Georgia*, Tbilisi, 28 October, 2014, <http://www.civil.ge/eng/article.php?id=27751>.

⁶⁵ "Irakli Alasania: The accused in the Cables Case had nothing to do with the money they are accused embezzling", *GRASS FactCheck*, 25 October 2016, <http://factcheck.ge/en/article/the-accused-in-the-cables-case-had-nothing-to-do-with-the-money-they-are-accused-of-embezzling/>.

⁶⁶ "The Situation of Human Rights in Georgia", *Public Defender (Ombudsman) of Georgia*, Annual Report of the Public Defender of Georgia, 2014, <http://www.ombudsman.ge/uploads/other/3/3510.pdf>.

⁶⁷ "EU-Georgia Association Agreement", op. Cit.

⁶⁸ Interviews with number of CSO representatives, March 2018, Tbilisi, Georgia.

⁶⁹ "Association Implementation Report on Georgia", Joint staff working document, European Commission, op. Cit.

⁷⁰ Ibidem.

As for the fight against organized crime and other illegal activities, in 2017 a new National Strategy on Combating Organized Crime of 2017-2020 and its Action Plan were adopted, in order to combat so called “thieves in law” and the transit of narcotic drugs and cybercrime. A new Action Plan for 2017-2018 was adopted to fight against trafficking and a new National Action Plan against illicit drugs. In respect of International Police cooperation, an Agreement on Operational and Strategic Cooperation between Georgia and the European Police Office (Europol) entered into force in 2017.⁷¹

⁷¹ Ibidem.

4. Fighting Corruption

Articles 2, 4 and 17 of the EU-Georgia Association Agreement calls for Georgia to continue its effective fight against corruption.⁷²

Over the years, Georgia has been successful in fighting low- and mid-level corruption. Anticorruption laws and increasing government transparency have led the country to become one of the easiest places in the world to invest and start a business as well as to obtain local licenses and permits without excessive bureaucracy.⁷³ Georgia continued to implement the Anti-Corruption Strategy and its Action Plan in line with the Association Agenda's commitments. Indeed, a revised National Anti-Corruption Strategy and a new Anti-Corruption Action Plan for 2017-2018 were adopted in September 2017. Georgia signed the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and is a member state to the International Centre for the Settlement of Investment Disputes (ICSID).

Georgian anti-corruption legislation is largely contained within the criminal code, which provides a strong mechanism for addressing corruption in the country;⁷⁴ however, enforcement of the law often remains ineffective because of the lack of independence of the judiciary. Therefore, companies sometimes do not have enough trust to solve the disputed cases through legal mechanisms. However, bribes and irregular payments in order to obtain favourable judicial decisions or public utilities are rather uncommon.

The low-level corruption within the police as well as in tax administration has almost been defeated. Consequently, tax collection rates have improved significantly and procedures for customs clearance have been simplified.⁷⁵ Also undocumented extra payments are rather rare.

While Georgia has been successful in fighting low- and mid-level corruption, elite corruption remains a problem. The survey of 2017 shows that the amount of people who perceive that corruption has deteriorated has grown.⁷⁶ In recent years, the CSOs have been hinting at mismanagement, nepotism and favouritism in public service. Extra bonuses paid in addition to salaries are a very common practice. Transparency International found a number of cases of the hiring of family members by government officials at the national as well as municipality level. The ruling party is often associated with these cases of nepotism and favouritism. For example, in 2017, Tbilisi City Council transferred a 1.900-square-meter plot of land for amount of 1 GEL (around 0.35 cent) to Ivanishvili's company as part of the deal on above mentioned "Panorama Tbilisi".⁷⁷

The Law of Georgia on the Conflict of Interests and Corruption in Public Service prohibits corruption among public servants and requires the disclosure of assets by public officials.⁷⁸ Transparency International continued to monitor asset declarations submitted by the public officials, finding some alarming signs of increased corruption. Namely, the organization found out that high ranking

⁷² "EU-Georgia Association Agreement", op. cit.

⁷³ "Georgia corruption report", *GAN Business Anti-Corruption Portal*, <https://www.business-anti-corruption.com/country-profiles/georgia/>.

⁷⁴ "Georgia Criminal Code", http://www.wipo.int/wipolex/en/text.jsp?file_id=209028.

⁷⁵ "Investment climate statements for 2017: Georgia", *Bureau of Economic and Business Affairs, U.S. Department of State*, <https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm#wrapper>.

⁷⁶ "Survey of public opinion in Georgia, February 22-March 8, 2017", *Center for Insights in Survey Research, International Republican Institute*, http://www.iri.org/sites/default/files/iri_poll_presentation_georgia_2017.03-general.pdf.

⁷⁷ "Tbilisi city hall supported to grant land to Ivanishvili-owned company", *Tabula*, 6 October 2017, <http://www.tabula.ge/en/story/124968-tbilisi-city-hall-supported-to-grant-land-to-ivanishvili-owned-company>.

⁷⁸ "Law of Georgia on the conflict of interests and corruption in public service", http://csb.gov.ge/uploads/Law_of_Georgia_on_Conflict_of_Interest_and_Corruption.pdf.

public officials constantly receive “gifts” from a family member or a close relative. Among them are: Prime Minister of Georgia Giorgi Kvirikashvili (received GEL 20.000 (around €7.000) in 2017 and USD 50.000 as a gift from his father), Sozar Subari, Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees (USD 12.400 to wife from her father), Davit Matikashvili, Deputy Chairman of Georgian Dream Faction (USD 120.000 from his father), some other members of Georgian Dream party, judges of Tbilisi Court of Appeals, some members of High Council of Justice, and number of representatives of regional municipalities. Some of the disclosures of assets show that sometimes a family's expenses significantly exceed the income of the public officials.⁷⁹

⁷⁹ “Gifts received by public officials need to be studied further”, *Transparency International*, 7 March 2018, <http://www.transparency.ge/en/blog/gifts-received-public-officials-need-be-studied-further>.

5. Respect for Human Rights

5.1. Fundamental Freedoms

In 2014, the Parliament of Georgia adopted the Law of Georgia on Elimination of all forms of Discrimination. Later on, the protocols N°15 and N°16 of the European Convention on Human Rights and Fundamental Freedoms were ratified. Furthermore, the government pledged that the 2015-2016 Action Plan on the Fight against torture, inhuman, cruel and humiliating treatment or punishment was successfully accomplished. Moreover, the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other cruel, Inhuman or Degrading Treatment or Punishment) entered into force in 2017. Consequently, police stations and detention centres have become equipped with surveillance systems in order to prevent ill-treatment. As a result, cases of ill-treatment in the penitentiary system have diminished. In 2016, the package of legislative amendments aimed at protecting children residing and working in the street was approved. A year before, the parliament adopted the Juvenile Justice Code.

For now, all of these agreements remain on paper, however, as the implementation of above named laws and convention have often fallen behind. Each year, the Public Defender address the parliament with recommendations how to improve the human rights situation in Georgia. Usually the parliament makes selective choices among the recommendations, in a way that avoids addressing the most critical ones.⁸⁰ More generally, the government's reaction towards the violation of human rights is passive. It tends to label such violations as provocations, the importance of which is often exaggerated by the NGOs. It draws such a picture that there is no racism, xenophobia, homophobia, nor any religious fanaticism in Georgia.

Recently a number of black students were attacked by a group of Georgian men in Tbilisi at a public football pitch. Demanding and shouting at them to 'leave [the] country [as they had no right to be in Georgia] because [they were] blacks'.⁸¹ Police advised them to forget the incident and try to forgive the aggressors. Later, even though the police launched the investigation and the victims provided video recording, none of the Georgian assaulters were arrested. Moreover, the investigation was launched under Article 126 (on physical violence), instead of Article 142 (on racial discrimination). Bearing in mind that this was not a unique incident and that people from Africa and Asia often are victims of xenophobia and racial discrimination in Georgia, the response of the Mayor of Tbilisi was even more inadequate by proposing a friendly football match between the students and their attackers. Chief of Parliament Irakli Kobakhidze has welcomed the initiative. The aim was clearly to forget the incident rather than addressing it with a serious investigation.

In general, the Georgian government lacks the civic culture to pay attention and to inquire whether this incident or other violations have a discriminatory character. Because discrimination is not only the fact that someone has been beaten on the basis of his/her race, sexual orientation, and/or religious beliefs, but because of their belonging to a minority, there was much more aggression against these students than there would have been in the case of a representative of a majority.

Ineffective investigations of hate crimes and frequent hate speech by politicians (especially those of Georgian Dream and Alliance of Patriots of Georgia) encourage impunity in the society and make the environment even more hostile towards minorities. The Orthodox Church is allied with the state when it comes to a nationalistic discourse placing the ethnic majority in the privileged position vis-a-vis the minority. 'Georgia has its attractiveness, but is it good for us, or not? Of course, we can't

⁸⁰ Interview with a representative of Public Defender's Office, Tbilisi, March 2018

⁸¹ "Footage shows black students attacked in Tbilisi", *OC Media*, 10 April 2018, <http://oc-media.org/footage-shoes-black-students-attacked-in-tbilisi/>.

restrict [foreigners] from coming here, but a guest should know his place, and a host should know his place', argued the Georgian Patriarch Ilia II.⁸² This nationalistic discourse, in turn, encouraged the far-right groups to undertake extreme and discriminatory actions. In 2016, the ultra-right organization Georgian March launched a campaign against immigrants, conducted an anti-immigration march under the slogan "Georgia for Georgians" and attacked Turkish and Arabian cafes in the centre of Tbilisi. The Ministry of Internal Affairs of Georgia categorized the case as hooliganism, consequently the Tbilisi City Court released aggressors from jail on bail.⁸³

Over the years, the structural problems with regard to freedom of religion have remained the same. Religious minorities continue to face challenges with the local authorities to construct religious buildings. Since 2013, the Latin Rite Catholics have waited for a construction permit for a catholic church on the land that it owned. After the resistance from the government (which in turn is influenced by the Georgian Orthodox church), the Catholic Church agreed to an alternative place. Generally, the majority of the society tends to be intolerant and disrespectful towards the religious practices of the minorities. An example of this was an incident where someone left a pig's head on the door of the school of the Muslim community.⁸⁴ The non-secular policy of the Georgian government and non-secular statements of the Prime Minister Giorgi Kvirikashvili make the society even more hostile towards religious minorities and pushes the latter towards further marginalization.

Georgia's Equality and Integration Strategy and its annual Action Plans aimed at integrating ethnic minorities are being implemented. However, integration of ethnic minorities in the Georgian society remains challenged. Little has been done in order to promote state language. School manuals are still full of stereotypical materials regarding ethnicity or religious belonging. Moreover, there is no media outlet informing them about the political, economic and social developments of the country. Also their participation in the TV debates is infrequent. National minorities largely remain outside the decision-making process at central as well as local governance level.

The situation concerning the rights of the LGBT community is alarming. They continue to experience persecution, violence and discrimination in every sphere of public life. The state authorities and/or parliamentarians of the ruling party and nationalist Alliance of Patriots of Georgia with their discriminatory statements strengthen already existing homophobic and transphobic feelings of the population. The pre-electoral campaigns of these parties have been full of homophobic rhetoric. Loyalist attitudes or inaction towards the violations of human rights of the sexual minorities further bolstered impunity and strengthened intolerant, stereotypical thinking of the society. Moreover, the representatives of the state agencies responsible for prevention of violence often attack and humiliate them by using hate speech. As a result, hate crimes against LGBT people increased and in 2016 ended up in a brutal murder of Zizi Shekiladze, a transgender woman.⁸⁵

In 2017, the new constitution defined marriage "as a union of a woman and a man," entrenching the definition that had existed for years in the civil code and strengthening further homophobic feelings

⁸² "Georgian Patriarch on foreigners in Georgia: They should know their place", *Tabula*, 28 September 2017, <http://www.tabula.ge/en/verbatim/124639-georgian-patriarch-on-foreigners-in-georgia-they-should-know-their-place>.

⁸³ "The Right to Non-Discrimination in practice for various groups in Georgia", 2016 Report by the Coalition for Equality, http://www.osgf.ge/files/2017/Publications/Diskriminacia_ENG_WEB.pdf.

⁸⁴ "The Report of the Public Defender of Georgia on the situation of protection of human rights and freedoms in Georgia", Public Defender (Ombudsman) of Georgia, 2016, <http://www.ombudsman.ge/uploads/other/4/4442.pdf>.

⁸⁵ "Georgian Transgender Woman Dies After Attack", *Radio Free Europe/Radio Liberty*, 23 November 2016, <https://www.rferl.org/a/georgia-transgender-woman-dies-after-attack/28135418.html>.

in the society. The Venice Commission urged Georgian Parliament to provide legal recognition of civil unions for same-sex couples.⁸⁶

In May 2017 Georgia ratified the Council of Europe (Istanbul) Convention on Preventing and Combating Violence against Women and Domestic Violence. On this regard, the first Crisis Centre dealing with the victims of domestic violence started functioning in 2016. Incidents of violence have increased and often the reactions of law-enforcement officials are inadequate. There were 15,910 phone calls to Georgia's 122 Emergency Rescue Service in 2015; police only started investigations into 949 cases.⁸⁷

Generally, discrimination against women (52% of Georgia's population)⁸⁸ remains rather diffused at the state and societal level. Women continue to have problems in pre-contractual and labour relations, especially during pregnancy. Usually only men are seen as suitable candidates for the managerial positions. Moreover, they largely remain out of the decision-making process. The share of female membership in the elected self-government bodies under the majoritarian system is around 7%, and of the 54 self-government units, only one elected mayor is a woman.⁸⁹

Last but not least, the violation of private life continues. The video recordings depicting sexual life of public figures has been continuously published through social networks and a number of websites; moreover, the victims have been blackmailed and/or threatened. Inadequate responses of the state agencies to these violations have encouraged further dissemination of the recordings. Furthermore, it has strengthened doubts about the involvement of the state authorities in these crimes. Although the Chief's Prosecutor investigated some suspected people, the person who released them has not yet been identified. Actually, the government took advantage and drafted legislative amendments, which permit the state officials to control the private life of citizens. This amendment, adopted in 2017, foresees the establishment of a legal entity of public law, the "Operative-Technical Agency of Georgia," to conduct covert investigative actions. The Agency remains subordinated and under the control of the State Security Service. Moreover, in 2016, the Constitutional Court ruled that legislation allowing state security services to have direct, unrestricted access to operators' networks to monitor communications was unconstitutional.⁹⁰

In general, the state struggles to eradicate soviet practices linked with the illegal collection of information from various public or private entities. For example, the Public Defender called the Prosecution Office to investigate the illegal activities of the so-called ODR (officers of active reserve) in the Tbilisi State University, which turned out to be full of personalities who falsely claimed to be students in order to be involved in the self-government of the university, and in such way, collect the information.⁹¹

This is the overall picture when it comes to human rights violation in Georgia. However there have been two other cases which made the Freedom House decline the democratic score for Georgia.⁹²

⁸⁶ "Georgia, Country Summary," Human Rights Watch, op. cit.

⁸⁷ "The Right to Non-Discrimination in practice for various groups in Georgia", 2016, op.cit.

⁸⁸ "The Report of the Public Defender of Georgia on the situation of protection of human rights and freedoms in Georgia", 2016, op.cit.

⁸⁹ "Report on the situation of the protection of human rights and freedoms in Georgia", op. cit.

⁹⁰ "Georgia, Country Summary," Human Rights Watch, January 2018, https://www.hrw.org/sites/default/files/georgia_3.pdf.

⁹¹ "Report on the situation of the protection of human rights and freedoms in Georgia", The Public Defender of Georgia, 10 December 2017, <http://www.ombudsman.ge/uploads/other/4/4957.pdf>.

⁹² "Nations in Transit: Georgia Country Profile", Freedom House, <https://freedomhouse.org/report/nations-transit/2018/georgia>.

Namely the case of Azeri journalist Afgan Mukhtarli and that of Turkish teacher and school manager, Mustafa Emre Çabuk.

5.2. Afgan Mukhtarli case

Azerbaijan, by turning increasingly authoritarian, made life difficult for the representatives of the civil society organizations and mass media. Some of them, in order to save life and to continue investigative work in their respective field of activities, immigrated to Georgia. This was also the story for Afgan Mukhtarli, an investigative journalist, collaborator of RadioFreeEurope/Radio Liberty and human rights activist. Mukhtarli's investigative work targeted the corruption schemes of the Azerbaijani government involving President Alyev and the defence minister. After closing down Radio Liberty, the Azerbaijan interrogated Afgan Mukhtarli, who decided to go to Georgia in exile with his wife and children. In May 2017, he was abducted by unknown men in Tbilisi, beaten and taken to Azerbaijan. At the time of the kidnapping of the journalist, he was investigating the business interests of President Aliyev in Georgia. Mukhtarli claimed it was Georgian policemen who captured him. Later he argued that the Georgian Prime Minister Giorgi Kvirikashvili was to blame for abduction. According to an unnamed source, Kvirikashvili was not aware of the abduction of Mukhtarli, as the operation had been agreed between some representative of Georgian security services and Azerbaijani authorities.⁹³

The Georgian government ruled out any connection of state authorities to the kidnapping of the journalist. Amnesty International, as well as the Council of Europe Commissioner for Human Rights, condemned what happened, demanded the release of Mukhtarli and called for a fair investigation. In addition, the Georgian President, opposition parties, representatives of local CSOs and the mass media criticised the government and demanded an investigation. The diplomatic corps, also led by the ambassadors of the Germany and Sweden, the political advisor of the US embassy, and other European representatives, urged the officials to discover the truth of what actually happened. The European Parliament has passed a resolution expressing "serious concern" on the case of Mukhtarli.⁹⁴ After the pressure from international partners, the Georgian government dismissed some high-ranking officials from the Ministry of Internal Affairs.

On the 12th January 2018, Afgan Mukhtarli was sentenced to six years of prison. The EU official made a statement arguing that 'the exercise of fundamental rights should be reviewed urgently by Azerbaijan',⁹⁵ while he kept silence about Georgia's responsibility in this story. According to an EU diplomat, the EU officials are actually aware of the involvement of Georgia's authorities in the abduction of the journalist, but somehow prefer not to speak about it openly.⁹⁶

5.3. Mustafa Emre Çabuk case

Now coming to Mustafa Emre Çabuk case: After the Turkish President Recep Tayyip Erdogan called on all governments worldwide to close Gülen schools because they would part of a terrorist network, in 2017 the Georgia's National Center for Education Quality Enhancement shut Demirel

⁹³ Interview with an unnamed source, Tbilisi, March 2018.

⁹⁴ European Parliament resolution on the case of Afgan Mukhtarli and the situation of media in Azerbaijan (2017/2722(RSP)), European Parliament, 13 June 2017, <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2017-0414&format=XML&language=EN>.

⁹⁵ "Statement by the spokesperson on the sentencing of journalist Afgan Mukhtarli in Azerbaijan", European Union External Action, 15 January 2018, Bruxelles, https://eeas.europa.eu/headquarters/headquarters-homepage/38227/statement-spokesperson-sentencing-journalist-afgan-mukhtarli-azerbaijan_en.

⁹⁶ Interview with an EU diplomat, March 2018.

College down and arrested its manager Emre Çabuk. The detention happened soon after a visit of Turkish Prime Minister Binali Yıldırım to Georgia. An extradition procedure against Çabuk was launched following the official request of Turkey. According to the Turkish prosecutor, he is accused of membership of the FETÖ terrorist organisation (recognised as such only by Turkey). On 25 May, the Tbilisi City Court sentenced Çabuk to three months imprisonment with pending extradition, while the Ministry of Internally Displaced Persons refused to grant him refugee status in Georgia.

Rebecca Harms, a European Parliament member, called on the Georgian government not to extradite Çabuk to Turkey. 'Considering the current constitutional crisis in Turkey, the disrespect of decisions of the Constitutional Court by local courts and the erosion of rule of law it is not acceptable to follow Turkey's extradition requests', Harms said in a letter to Giorgi Kvirikashvili, the Prime Minister of Georgia.⁹⁷ Around two weeks later, Çabuk was freed on bail by a Georgian court.

According to Georgian law, Georgia had the right to refuse extradition by the Law of Georgia on International Cooperation in Criminal Matters. However, the government turned into being a hostage of Turkish-Georgian business interests. When it came about choosing between the protections of human rights or safeguard bilateral relations with Ankara, the Georgian government opted for the latter. It is true that Turkey is the main trade partner for Georgia, and in view of the deteriorated relations with Russia, Tbilisi has to be committed to develop strategic partnerships with the neighbours, but this does not mean it should be redeemable and ready to give up on the principles like the protection of human rights.

⁹⁷ "EP's Harms calls on Georgia not to extradite Emre Çabuk to Turkey", Stockholm Center for Freedom SCF, 6 February 2018, <https://stockholmcf.org/eps-harms-calls-on-georgia-not-to-extradite-emre-cabuk-to-turkey/>.

6. Freedom of Mass Media

Freedom of mass media remains challenged. While during the Staakashvili government mass media was violently attacked by police and armed forces bursting directly into the TV stations, the new government uses other methods to limit editorial freedom: blackmailing the owners of TV stations (who often also run businesses: case of TV Pirveli), using judiciary against oppositional TV channels (case of Rustavi2), exercising control over the Georgian Public Broadcasting (GPB) station, and merging TV channels in order to create a pro-governmental voice (case of Maestro's inclusion into Imedi TV).

Two major television outlets – GDS (owned by B. Ivanishvili) and Maestro – were merged into Imedi TV, which had been returned to the family of deceased businessman B. Patarkatsishvili after it was forcibly and illegally taken away from its owner by the former President M. Saakashvili. Shortly thereafter, Imedi TV became a pro-governmental television station. By closing down Maestro TV (allegedly because of its bankruptcy which became a reason for dispute among the shareholders) and including it in Imedi, the current government sought to obtain an effective control over mass media. Mamuka Glonti, one of Maestro's shareholders, argued that Bidzina Ivanishvili could have been behind the entire process.⁹⁸ The civil society organization also released a statement hinting at political motivations behind the case.⁹⁹

In 2017, Vasil Maglaperidze, former general producer of the tv-show 20/30 of Ivanishvili's Tv GDS and the deputy director of Ivanishvili's Channel 9, was selected as the new director general of Georgian Public Broadcasting (GPB). Soon after his appointment, he closed down political talk-shows and brought journalists from Ivanishvili's TV station (GDS) into the GPB. Many socio-economic talks-shows have also been discontinued, including the programmes prepared by Radio Free Europe/Radio Liberty. Recently, studies revealed that the editorial policy of the Public Broadcaster and its critique of the government have become mitigated. The GPB adopted 'a soft position towards the government', thus creating a negative effect on the Georgian media environment. For example, during the local election campaign, most of the air time of the GPB was allocated to the Georgian Dream's Tbilisi Mayor Candidate, Kakha Kaladze.¹⁰⁰ Like the Georgian Public Broadcaster, Imedi TV also covered the Georgian Dream candidate for mayor positively, while the Rustavi2 covered the UNM candidate for mayor most frequently. More generally, the main news program Moambe avoids critical reporting towards the Government. 'The broadcaster almost never reveals corruption facts, rarely covers exclusive cases of human rights violations'.¹⁰¹ Indeed, 'it cannot be called a watchdog news program'.¹⁰²

In 2017, Georgian Public Broadcasting submitted legislative amendments to the parliament, which according to the CSOs challenges transparency of the TV-channel thus increasing risk of sham

⁹⁸ "Imedi TV unveils plans to buy Maestro TV's shares", Civil Georgia, Tbilisi, 27 December 2016, <http://www.civil.ge/eng/article.php?id=29726>.

⁹⁹ "Statement of NGOs on TV company Maestro", 5 February 2016, <http://www.transparency.ge/en/post/general-announcement/statement-ngos-tv-company-maestro?platform=hootsuite>.

¹⁰⁰ "Results of media monitoring for the 2017 local self-governance elections in Georgia", a report prepared and published with the assistance of the European Union (EU) and United Nations Development Programme (UNDP), 2017, www.mediamonitor.ge, http://mediamonitor.ge/uploads_script/accounts/MM_FINAL_REPORT_2017_ENG.pdf.

¹⁰¹ Ibidem.

¹⁰² Ibidem.

deals.¹⁰³ The same letter expresses the concern of the CSOs about the influence of personalities connected to the government and former Prime Minister B. Ivanishvili.¹⁰⁴

Indeed, the Public Broadcaster's method for conducting tenders has become alarming, especially after a tender from 2017 of 346 thousand GEL (around €115 thousand) for the purchase of a lighting system for the GPB was won by a company owned by Bidzina Ivanishvili's son Bera Ivanishvili. Another highly debated tender of the Public Broadcaster was a tender of 484 thousand GEL (160 thousand) for production of TV-fiction won by Goga Khaindrava, a friend and political supporter of Bidzina Ivanishvili.¹⁰⁵

The strengthening influence of Bidzina Ivanishvili in the Public Broadcaster raises doubts about impartiality of the editorial policy of the GPB and creates the risks of further polarization of the media environment.

Another area of concern is the handling of the ownership dispute of the remains of Rustavi2 (already discussed above). The TV channel has always been highly critical of the government, but then, as it is affiliated with the UNM, its objectivity is often questioned. However, the oppositional nature of the channel makes it one of the most watched TV in Georgia. A Georgian court decided to freeze all of Rustavi2's assets, which led to a financial crisis within the company. Subsequently, the Tbilisi City Court dismissed and replaced the company's director general, thus attempting to influence editorial policy of the TV station. Indeed, Amnesty International argued that the government has tried to deprive the opposition of its mouthpiece through its attempt to change the ownership of Rustavi2.¹⁰⁶

In 2018, the government tried to influence editorial policy of TVPirveli through blackmailing its owner. Together with the journalists of TV Pirveli, the owner of the TV channel first approached one of the prominent civil society organization in Georgia and later

some of the representatives of foreign embassies to ask for help.¹⁰⁷ According to an unnamed source, he has tried for eight months to settle the issue privately and directly with Bidzina Ivanishvili without any results. This lack of progress was why he then choose to make the issue public by approaching the representatives of the CSO.¹⁰⁸ All of them agreed to make a joint statement, condemning government's interference in the editorial policy of the channel. Nino Zhizhilashvili, a presenter of a popular talk show on TV Pirveli, declared that indeed there were some "signals" from the authorities to change content of the political talk shows.¹⁰⁹ Meanwhile, the government opted for private negotiation with the owner of the TV in order to avoid a public scandal. An agreement

¹⁰³ "CSOs concerned over GPB-Related Developments", *Civil Georgia*, 4 November 2017, <http://www.civil.ge/eng/article.php?id=30605>.

¹⁰⁴ "არასამთავრობო ორგანიზაციები საზოგადოებრივ მაუწყებელში მიმდინარე მოვლენების პარლამენტში განხილვას ითხოვენ [The NGOs call the parliament to discuss the ongoing events in the Public Broadcaster], Georgian Young Lawyers' Association, 2 November 2017, <https://www.gyla.ge/ge/post/arasamtavrobo-organizaciebi-sazogadoebriv-mautsyebelshi-mimdinare-movlenebis-parlamentshi-gankhilvas-itkhoven#sthash.qS0XbzIQ.7wjm3uMH.dpbs>.

¹⁰⁵ Ibidem.

¹⁰⁶ "Annual Report Georgia 2015/2016", *Amnesty International*, London, 2016, www.amnesty.org/en/countries/europe-and-central-asia/georgia/report-georgia/.

¹⁰⁷ Interview with an European diplomat, March 2018, Tbilisi, Georgia.

¹⁰⁸ Interview with a representative of business community, Tbilisi, March 2018.

¹⁰⁹ "წინა უჩილაშვილი: ხელისუფლებიდან ტვ პირველის სამომავლო შინაარსზე სიგნალები მოდიოდა [The government signalled the TV to change its editorial policy], *News.on.ge.*, 16 February 2018, <https://on.ge/>.

has been reached, and the owner of the TV channel declared there was no need to make a public statement about government's interference into the editorial policy of his channel.¹¹⁰

¹¹⁰ Interview with a CSO representative, Tbilisi, March 2018.

7. Deep and Comprehensive Free Trade Agreement (DCFTA) and economic, financial and sectoral development

Georgia continued to carry out some key structural reforms aimed at improvement of the economic and business environment and maximization of the benefits provided by the DCFTA. In order to facilitate this process, Georgia strengthened its relationships with international financing institutions. The country continued to maintain a high rank position in indicators of the business environment also because of improvements in the tax regime, business governance, and access to financing and innovative technologies. Programs are underway that focus on the modernization of financial infrastructure, the development of clusters and value chains, and the improvement of commercial justice.

By 2016, the EU was the largest trade partner of Georgia with 30% share in its overall trade (27% in total export and 31% imports).¹¹¹ In 2017 this trend continued. Within the context of approximation, Georgia's admission to the pan-Euro-Mediterranean Convention on Rules of Origin as well as the opening of the EU market to new animal-origin products from Georgia were important steps forward.

In April 2017, Georgia and the International Monetary Fund (IMF) negotiated a three-year (2017-2020) extended arrangement under the Extended Fund Facility to support economic reforms, also foreseen by the DCFTA. In September 2017, the European Commission offered a new Macro-Financial Assistance (MFA) program to Georgia of up to EUR 45 million (EUR 10 million in the form of grants and EUR 35 in loans).¹¹² This assistance is conditional and linked to the fulfilment of IMF requirements.¹¹³ Currently, Georgia is also engaged with accomplishing the tasks foreseen under the "Eastern Partnership - 20 Deliverables for 2020".

Despite the difficulties of implementing reforms within the framework of the DCFTA in certain economic areas such as veterinary measures, plant protection, food security, and technical barriers, Georgia has moved on with the approximation of its legislation in trade-related areas. Particularly in the area of technical barriers to trade, some improvement should be noted in the field of metrology, accreditation (the Georgian Accreditation Centre (GAC) became signatory to the European Accreditation Bilateral Agreement), and market surveillance.¹¹⁴

Some progress has also been made in improving sanitary and phytosanitary standards (SPS). Under the DCFTA, a SPS roadmap was adopted aimed at the implementation of the SPS Chapter of the DCFTA. In order to approximate sanitary and phytosanitary measures to European standards, number of issues in the Georgian legislation were reviewed and complied with 25 European legal

¹¹¹ "Association Implementation Report on Georgia", op. Cit.

¹¹² Ibidem.

¹¹³ "Decision of the European Parliament and of the Council: providing further macro-financial assistance to Georgia", *European Commission*, {SWD(2017) 321 final}, Brussels, 29.9.2017 COM(2017) 559 final 2017/0242 (COD), http://opac.oireachtas.ie/AWData/Library3/FINdoc/181017_140741.pdf.

¹¹⁴ "Association Implementation Report on Georgia", op. Cit.

acts.¹¹⁵ On food safety reform, much remains to be done in terms of traceability of unsafe food and fully informing the public when unsafe products are discovered on the market.¹¹⁶

As for Customs and trade facilitation, Georgia is in the process of adopting a new Customs Code. Moreover, it is implementing relevant reforms in order to accede to the EU's Convention on a common transit procedure and Convention on the simplification of formalities in trade in goods.¹¹⁷

As regards services, approximation to the EU law is proceeding gradually in four services sectors: postal and courier services, telecommunications, financial services, and international maritime transport.¹¹⁸

Georgia is progressing in the area of public procurement with an aim to reach an alignment of legislation by 2022. In 2016, the Government of Georgia approved the "Roadmap of implantation of obligations undertaken in compliance with the Association Agreement between EU and Georgia, (DCFTA) regarding amendments in scope with public procurement." In the same year, the State Procurement Agency (SPA) prepared amendments for the draft Law on State Procurements with an aim to adopt the changes in approximation to the basic standards regulating the award of contracts about public procurement defined in the article 144 of the AA.¹¹⁹

Instead, the challenges remain in the area of Trade and Sustainable Development (TSD), where the current system of labour inspections does not yet allow for effective implementation of the ILO (International Labour Organization) fundamental conventions on labour rights.

In maritime affairs, in 2017 an inter-agency working group was established in order to facilitate Georgia's alignment to the EU's integrated maritime policy. Amendments have been drafted for the Law on Maritime Space. Georgia continues to cooperate with the General Fisheries Commission for the Mediterranean (GFCM) and in 2016 signed the Bucharest Declaration towards enhanced cooperation on Black Sea Fisheries and Aquaculture.

In 2017, Georgia became a Contracting Party to the Energy Community, which provides a timeframe for the reforms to be implemented in the areas of the electricity and gas market and renewable energy. Georgia continues to promote the construction of new hydropower infrastructure; however, this faces mass protests from both the general population and environment protection activists, who often argue that the Government is carrying out the project without proper investigation on the environmental impact of the mass construction of hydropower plants.¹²⁰

Overall, as the 2nd Joint Association Implementation Report on Georgia released in November 2017 by the EU concludes, the 'commitments stemming from the Association Agreement, including its

¹¹⁵ "Report of the 2016 National Action Plan firstly for the Implementation of the Association Agreement between Georgia, the European Union, and the European Atomic Energy Community and their Member States; and secondly, for the Association Agenda between Georgia and the European Union", *Office of State Minister of Georgia*, February 2017,

<file:///C:/Users/Nona/Downloads/Report%20of%20the%202016%20Action%20Plan%20for%20the%20Implementation%20of%20the%20Association%20Agreement%20and%20the%20Association%20Agenda.pdf>.

¹¹⁶ "EU and Georgian civil society discuss the situation of small and medium-sized enterprises and food safety in Georgia", *EESC, European Economic and Social Committee*, 27/03/2018, https://www.eesc.europa.eu/en/news-media/news/eu-and-georgian-civil-society-discuss-situation-small-and-medium-sized-enterprises-and-food-safety-georgia?_cldee=c3Rlbi5yYW1zdGVkdEBldXJvcGFyY291dXJvcGEuZlU%3d&recipientid=contact-ecbdd7681dd8e211b296005056a05070-a8d3f87aad124962b93f6ed4c269ccaf&esid=cc4e4d1a-a548-e811-8113-005056a043ea&urlid=29.

¹¹⁷ "Association Implementation Report on Georgia", *op. Cit.*

¹¹⁸ *Ibidem.*

¹¹⁹ *Ibidem.*

¹²⁰ *Ibidem.*

Deep and Comprehensive Free Trade Area (DCFTA), have been implemented in line with agreed timelines'.¹²¹

¹²¹ "EU report: Georgia successfully delivering on its reform commitments", *European Union External Action*, Bruxelles, Press releases, 10 November 2017, https://eeas.europa.eu/headquarters/headquarters-homepage/35408/eu-report-georgia-successfully-delivering-its-reform-commitments_en.

8. The EU's Approach towards Georgia's State-building Process

Over the years, the EU's governance initiatives in Georgia were focused on the promotion of democracy, the rule of law and development.¹²² All the aspects included now in the EU-Georgia Association Agreement. Most of its assistance programmes have been carried out in the framework of the European Neighbourhood Policy and Eastern Partnership. The EU's Instrument for Stability (IfS) has also tried to complement the ENP and EaP with conflict resolution initiatives. Moreover, in terms of actions, the EU's Special Representative (EUSR) for the South Caucasus and the Crisis in Georgia has co-chaired the Geneva talks, and the EU Monitoring Mission (EUMM) has been active along the Administrative Boundary Line (ABL). The EU has tried to contribute to enhancement of regional cooperation through the Black Sea Economic Cooperation (BSEC) as well.¹²³

Today Georgia is an exemplary state within the Eastern Partnership initiative, European Union (EU) officials said during their visit in Georgia in 2017.¹²⁴ On the same line, Johannes Hahn, Commissioner for European Neighbourhood Policy and Enlargement Negotiations, argued that Georgia was an important partner for the EU and a frontrunner of the Eastern Partnership.¹²⁵ 'I cannot say that we share Freedom House concerns about the situation in the media and court in Georgia... The EU has its own views on the ongoing processes in Georgia and you know them well from our reports', János Herman, Ambassador of European Union in Georgia answered the questions of journalists about the Freedom House report.¹²⁶

This comment and more generally the EU's rhetoric about Georgia being a frontrunner of the EaP and a success story when it comes to the development of democracy is in sharp contrast with the actual reality. Indeed, the EU has been rather moderate in condemning the Georgian government's semi-authoritarian tendencies; it opted instead to focus attention on trade and economic cooperation regardless of local democratic development.¹²⁷ The EU appears to have become more prudent in its actions towards Georgia, and more reluctant to insist on democracy, less willing to get embroiled in local tensions, and less willing to take concrete steps that could trigger a breakthrough in the state-building process. Up until now, instead of real democracy promotion, what we have observed from the EU's position with regards to the state-building process in Georgia has been the accommodation of local forms of governance.¹²⁸ The EU accepts to some extent the local reality and justifies domestic governance methods and forms.

With these actions, the EU tries to create short-term stability at the expense of democracy development. Indeed, a general concern of local civil society is that the EU downplays values-based democracy promotion in favour of accommodating the local political establishment to meet its

¹²² Mikhelidze, N. "The South Caucasus in the European Union's Perspective: Not a Single Region", in Shireen T. Hunter (ed.), *The New Geopolitics of the South Caucasus. Prospects for Regional Cooperation and Conflict Resolution*, Lanham, Lexington Books, 2017.

¹²³ Mikhelidze, N. "National and European cultures of governance in Georgia and Abkhaz conflict resolution", *op. Cit.*

¹²⁴ "EU officials praise Georgia as frontrunner of Eastern Partnership", *Agenda.ge.*, 31 January 2017, <http://agenda.ge/news/73949/eng>.

¹²⁵ "Georgia joins Horizon 2020, the EU's Research and Innovation Programme", *European Commission*, Press Release, Brussels, 29 April 2016, http://europa.eu/rapid/press-release_IP-16-1630_en.htm.

¹²⁶ "János Herman: I cannot say that we share Freedom House concerns about the situation in the media and court in Georgia", *1TV channel*, 12 April 2018, <https://1tv.ge/en/news/janos-herman-cannot-say-share-freedom-house-concerns-situation-media-court-georgia/>.

¹²⁷ Mikhelidze, N. "National and European cultures of governance in Georgia and Abkhaz conflict resolution", *op. Cit.*

¹²⁸ Mikhelidze, N. "National and European cultures of governance in Georgia and Abkhaz conflict resolution", *op. Cit.*

short-term interests.¹²⁹ According to civil society representatives in Georgia, the EU tends not to apply a conditionality approach with official Tbilisi anymore.¹³⁰ Indeed, conditionality seems to have disappeared from EU-Georgia relations and to have been overshadowed by policies arranged behind the scenes.

All these in turn undermines Brussels' transformative power in Georgia and thus reduces the likelihood that the country's transition will evolve in a positive direction. Only the real and critical assessment of the country's political processes by the EU can drive reforms in Georgia. A semi-accommodation policy will no longer be enough. Therefore, it may be best to refrain from the regular rhetoric about Georgia being a frontrunner of the EaP, not because it is not true, but because it is easy to be frontrunner in the context of the EaP.

¹²⁹ Interviews with the civil society representatives, Tbilisi, March 2018.

¹³⁰ Ibidem.

9. Conclusions and Recommendations to the EU

Over the years, Georgia has tried to progress in establishing democratic institutions. The democratic elections and successful transfer of power was largely considered a victory for Georgian democracy. The years of governance by the Georgian Dream has demonstrated, however, that democratic elections do not always mean a successful transition towards democracy. The institutions are still weak and controlled by an oligarch. Informal governance and behind-the-scenes policy-making remain a major challenge to democracy, further exposing the dominance of personalization in Georgian politics. The basis of the state constructed by Ivanishvili is the weakened state institutions and coopted state, non-state actors, regulatory agencies and society. The advanced ability to co-opt makes the Georgian Dream government able to picture itself as less threatening than Saakashvili's one, which used violent methods in order to achieve its goals.¹³¹

Georgia has never been able to overcome being a one-party dominated state. The weakness of the opposition parties makes the Georgian Dream stronger, pushing the population to vote them and/or abstain and not participate in the election process at all. Therefore, the weak checks and balances system remains a challenge. The executive regularly dominates over parliament and the judicial branch, making the independence of the judiciary dubious. Moreover, the judiciary is under political influence and controlled by different interest groups. The Prosecutor's office remains the weakest part of the system. Moreover, the procedures of selection, appointment, evaluation, and promotion remain to be addressed. The power of the president is limited by the constitution. All his interventions through veto, aimed to force the parliamentarians to make some legislative changes, have always been overridden.

One of the main features in the exercise of power by the "Georgian Dream" has been the prosecution of many former state officials (now political opponents) under various charges linked to corruption, the misuse of power, violations of human rights, etc. Furthermore, a winner-takes-all logic could be observed in the dismissal of a huge number of the staff of the various ministries and state structures. Among the victims were those having no real decision-making power. The stated motivation was to employ new "reliable" officials at all levels of the state apparatus.¹³²

Difficulties persist in Georgia regarding decentralization (like the previous governments, the current one fails to implement real decentralization that strengthens democracy at regions and local levels) and the rule of law. In this field, one should mention the constitutional changes carried out by the Georgian parliament, which failed to gain approval from opposition parties and a number of civil society groups.

Problems persist around the human rights and fundamental freedoms. There is a wide implementation gap when it comes to protection and respect for ethnic, religious, and sexual minorities. Moreover, violent actions against minority groups are not always addressed and followed by law enforcement agencies. Over the years, the government's attitude towards mass media has also remained alarming, as the ruling establishment has often tried to influence the editorial policy of the TVchannels. The Rustavi2 case exposes the limits of the independence of the mass media as well as that of the judiciary.

As for the positive developments, in 2014, the Parliament of Georgia adopted the Law of Georgia on Elimination of all forms of Discrimination. Later on, the protocols N°15 and N°16 of the European Convention on Human Rights and Fundamental Freedoms were ratified. Furthermore, the 2015-2016 Action Plan on the Fight against torture, inhuman, cruel and humiliating treatment or

¹³¹ Lebanidze, B. "Popular oligarchy: Why the public still supports Georgian Dream", *Georgian Institute of Politics*, 31 July 2017, <http://gip.ge/popular-oligarchy-public-still-supports-georgian-dream/>.

¹³² Mikhelidze, N. "Juggling Security, Democracy and Development in the Caucasus", *op. Cit.*

punishment was accomplished. Moreover, the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other cruel, Inhuman or Degrading Treatment or Punishment) entered into force in 2017. As a result, cases of ill-treatment in the penitentiary system have diminished. In 2016, the package of legislative amendments aimed at protecting children residing and working in the street was approved. A year before, the parliament adopted the Juvenile Justice Code.

In terms of implementation of the AA, some positive signs could also be noticed in Freedom and Security sector, where Georgia continued to implement its Migration Strategy and Action Plan as well as to establish the Unified Migration Analysis System. In December 2016 Georgia adopted a new Law on International Protection according to the recommendations issued in the process of implementation of Visa Liberalization Action Plan. Border management was further strengthened with Turkey and Azerbaijan.¹³³

Georgia can claim some success with the implementation of DCFTA as well. The country continues to implement the reforms in combating corruption, which is essential for the success of the DCFTA. In particular, Georgia has been successful in fighting low- and mid-level corruption, making the country one of the easiest places in the world to invest. Moreover, the government continued to carry out some structural reforms aimed at improvement of the economic and business environment, especially through progressing with the approximation of its legislation in trade-related areas (mostly in the area of technical barriers to trade).¹³⁴

Today Georgia enjoys tariff-free trade for exports and imports with the EU. The growth of Georgia's exports to the EU has been modest so far, but it is also expected that the effects of the DCFTA are likely to come over the medium to long term. The success will also be determined by the effective implementation of the economic system reforms in order to make the system more efficient and transparent.

As it can be observed, Georgia faces systemic challenges with the implementation of the political part of the AA, while in case of the implementation of DCFTA it can claim some success. Problems persist in good governance, rule of law, human rights and fundamental freedom. The established form of governance has given birth to a functional but substantially hybrid state characterized by a top-down form of governance, the personalization of domestic politics, and the centralization of power.¹³⁵ The Georgian democracy has further been challenged by the status and role of the Georgian Orthodox church in politics. While Georgia is a secular state, over the years the Georgian Orthodox Church has increased its influence over the state and society.

What we have from the EU's side towards the state-building process in Georgia is the accommodation of local cultures of governance,¹³⁶ as the EU's rhetoric about Georgia being a frontrunner of the EaP and a success story when it comes to the development of democracy, is in sharp contrast with the actual reality.

Security concerns related to stability of the country has hampered the EU's policy to develop democracy in Georgia. The EU has opted for stabilization rather than serious democratic

¹³³ "Association Implementation Report on Georgia", Joint staff working document, European Commission, Brussels, 9.11.2017 SWD(2017) 371 final, http://www.3dcftas.eu/system/tdf/association_implementation_report_on_georgia.pdf?file=1&type=node&id=421&force=.

¹³⁴ Ibidem.

¹³⁵ Mikhelidze, N. "Juggling Security, Democracy and Development in the Caucasus", *op. Cit.*

¹³⁶ Mikhelidze, N. "National and European cultures of governance in Georgia and Abkhaz conflict resolution", *Peace Research Institute Oslo (PRIO)*, CORE working paper, August 2012, http://www.iai.it/sites/default/files/2012_core-working-paper.pdf

transformation. It has mostly accepted Georgia developing its own style of democracy.¹³⁷ In the long run, as argued by one of the EU-Strat paper, the risk is that 'Georgia will only pretend to implement the Association Agreement, which, with the EU turning a "blind eye" on such mimicking, would merely lead to the creation of yet another "Potemkin village" - so familiar in [that] part of Europe'.¹³⁸

Thus what should be the EU's new principles, goals, and approaches towards the hybrid political system that have been consolidated in Georgia? The country is still committed to its way towards the European integration. This gives the EU enormous leverage, which it should use properly. Namely:

- At general level, EU should assess critically Georgia's transition towards democracy and speak more openly about the shortcomings the country is witnessing in this process.
- It should abstain from the regular rhetoric about Georgia being a frontrunner of the EaP. For this purpose, the EU should also change its reference point for Georgia, when evaluating the development of democracy in the country.
- Enhanced conditionality is of essential importance, as manifested in clear offers and benefits in the fields of trade and economic relations and visa liberalization in exchange for the development of democracy. Therefore, the EU should improve its policy of conditionality. In concrete terms, only half of the available funds should be guaranteed for a given country, while the rest should be linked to performance in terms of the advancement of concrete political, judicial, economic and social reforms.¹³⁹
- Thus, one of the instruments in the EU's hands when reacting to non-compliance should be aid restriction.¹⁴⁰ In parallel, the EU should strengthen the "more for more" strategy for financial assistance.
- The EU should design a clear roadmap for democracy promotion in the framework of the Association Agreement accompanied by clear conditionality and monitoring mechanisms.
- The EU should also establish an effective monitoring system of financial aid use.
- For example, the EU's Macro-Financial Assistance (MFA) program to Georgia of EUR 45 million should be conditional not only on successful reviews under the IMF programme but also on the successful implementation of the DCFTA as well as the political part of the Association Agreement. True, the MFA program is of economic nature, but it is also true that if Georgia fails to implement the political part of the AA, it will negatively affect the macroeconomic stability of the country.

All these should be accompanied by the EU:

- calling for the Georgian authorities to apply a rule-of-law approach to human rights violations.
- calling for prioritization and acceleration of the institutional reforms and those related to good governance and fundamental freedoms.

¹³⁷ Ibidem.

¹³⁸ Wolczuk, K., Delcour, L., Dragneva, R., Maniokas, K., Zeruolis, D., "The Association Agreements as Dynamic Framework: Between Modernization and Integration", *EU-Strat*, Working Paper Series, N°6, September 2017, <http://eu-strat.eu/wp-content/uploads/2017/09/EU-STRAT-Working-Paper-No.-6.pdf>.

¹³⁹ Mikhelidze, N. "Juggling Security, Democracy and Development in the Caucasus", *op. Cit.*

¹⁴⁰ Ibidem.

- criticizing openly the shortcomings in the implementation of judicial reforms and calling for the strengthening the independent judiciary.
- calling for ending of behind-the-scenes policy and political interference in executive affairs.
- enhancing political and financial support for civil society organizations, including grassroots ones.
- promoting and financing the projects aimed at increasing awareness of the AA and DCFTA among the business community and more generally in the society.

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The implementation of the EU Ukraine Association Agreement

Addressing the law and politics of effective implementation and application of the association *acquis*

The EU-Ukraine Association Agreement is widely regarded as a key to achieving sustainable political association and economic integration between the European Union and Ukraine. The assessment of the progress – and the associated challenges – in the agreement's implementation are crucial. This study addresses the economic effects, as well as legal and political issues that underpin the implementation of the EU-Ukraine Association Agreement. It explores the current dynamics at play and assesses the achievements as well as shortcomings of both the legislative and political implementation processes in particular since the full enactment of the EU-Ukraine Association Agreement in September 2017.

AUTHOR

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Executive summary

Ukraine finds itself confronting an extremely challenging situation regarding domestic post-revolutionary stabilization and rising external pressures (Russia's annexation of Crimea and aggression in Ukraine's eastern region of Donbas). Consequently, the implementation of the EU-Ukraine Association Agreement and its ambitious transformation agenda for the country, came under pressure from a wide range of negative socio-political, economic, and legal factors.

This study addresses the economic effects, as well as legal and political issues, underpinning the implementation of the EU-Ukraine Association Agreement. It explores the current dynamics at play and assesses the achievements and shortcomings of both the legislative and political implementation processes since the full entry into force of the EU-Ukraine Association Agreement in September 2017.

The implementation of the EU-Ukraine AA, including the transposition of a vast corpus of EU law when advancing the association *acquis*, presents a considerable institutional challenge.

When it comes to the institutional framework of the implementation process, the biggest challenge for Ukraine now is not the formal model of coordination, but rather the institutional capacity of public authorities to implement the Association Agreement. This challenge is only one part of a bigger problem: Ukraine's inefficient public administration, now part of the country's comprehensive reform agenda.

With Ukraine's legislative approximation proceeding rather at a good (though not optimal) pace, the regulatory approximation – including first and foremost the practices of law application and law enforcement – present a real quagmire for the Ukrainian legal and political system.

Some of the most successful implementation progress in terms of legislative approximation has been noted mainly in two areas: technical barriers to trade (in terms of framework legislation) and energy efficiency of buildings, not least due to the high interest and involvement of domestic stakeholders – from central executive bodies to civil society.

The challenging law application and law enforcement situation in Ukraine is conditioned by both a rather ill-suited institutional capability and an uncondusive socio-legal culture. Instances and examples of sub-optimal law application and law enforcement practices vary from unaware to intentional misapplication of the law or from weak to abusive (politically motivated) law enforcement practices.

The overall problem with Ukraine's low law enforcement effectiveness is directly linked with the inception stages of policymaking and legislation. As a matter of fact, the policymaking cycle in Ukraine significantly differs from that of European participatory democracies: it lacks the essential instrument of public policy – public consultations and research-informed decision-making.

Along the aforementioned lines, the effective implementation of the EU-Ukraine association *acquis* would necessitate substantive rebooting of the entire national legislative development process 'from end to end'. This is an area for the EU's higher engagement in order to support the current effort by the European Parliament (*Pat Cox Roadmap*) with further expertise and best-practices sharing initiatives, including the inter-parliamentary dialogue on the matters at stake.

The Deep and Comprehensive Free Trade Area (DCFTA) under the EU-Ukraine Association Agreement provides a solid basis for Ukraine's economic development and modernization. Officially operational from 1 January 2016, the DCFTA between the EU and Ukraine has been *de facto* in force – for Ukrainian exporters – since April 2014, when the EU Council unilaterally reduced or abolished customs tariffs for Ukrainian goods for the first time under the so-called Autonomous Trade Preferences (ATPs) regime.

With Ukraine's trade flow reoriented more to the European market and with the EU becoming Ukraine's most important trade partner since 2016, some modest GDP growth of about 2% has been noted in the country. For the past four years, Ukraine's economy has not only stabilized but has also shown some signs of improvement.

Ukraine is reforming profoundly. However, not all of the reforms proceed at a sustained pace – and certainly not all of them have moved beyond the point of no return. The only example of a reform that could hardly be undone is decentralization. Some of the reforms, such as the anti-corruption or justice reform might be short-lived or not sustained in view of the upcoming 2019 parliamentary and presidential elections. External institutional and political support appears crucial here, with the society's trust to, and support of, public authorities remaining traditionally low.

Against the backdrop of rising populism and widespread and hostile foreign disinformation campaigns in Ukraine but also further afield in Europe, a successful EU-Ukraine AA implementation campaign should necessarily include a two-way policy communication component. The strengthening of the government's policy communication to the Ukrainian citizenry should proceed with a simultaneous reception of the popular feedback by the government, including in the context of think-tanks' or the EU-Ukraine Civil Society Platform's expert policy evaluations in the field of Ukraine's European integration.

The European Union and its Member States have provided substantial and comprehensive macro-financial, political and project-focused support in multiple dimensions of the EU-Ukraine Association Agreement implementation and Ukraine's domestic transformation: from unilateral DCFTA liberalization to crisis management, business deregulation to public administration, anti-corruption to justice and security sector reform, from e-governance to political dialogue. Thus, both the levels of financial and institutional involvement, including on the part of a number of EU Member States such as Denmark, Germany, or Estonia – to name a few, have remained considerably high notwithstanding the growing 'Ukraine fatigue'. In April 2018, the Commission announced a proposal for a new Macro-Financial Assistance Programme (MFA) for Ukraine worth up to EUR 1 billion to support economic stabilization and structural reforms. In May 2018, the MFA package was agreed by the European Parliament and the Council. With the new economic assistance for Ukraine in sight, the EU's pragmatic conditionality approach needs to be clearly communicated and enforced vis-à-vis Ukrainian authorities thus putting at work the newly pronounced 'contract' – deep reforms in exchange for financial support.

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1. Introduction

In the run-up to the November 2017 Eastern Partnership (EaP) summit, Ukraine's President Petro Poroshenko announced that Ukraine – one of the European Union's three eastern European associated countries – would seek even closer ties with the EU, not least by joining the EU's four unions: The Energy Union, the Digital Single Market, the Customs Union, and the Schengen Area. Supportive of the country's drive towards closer integration with the EU, the European Parliament welcomed this development, including in the context of the two other associated states, i.e., Moldova and Georgia, that pursued similar agendas. This resulted in the European Parliament's recommendation that the 'Eastern Partnership *plus*' (EaP+) relationship model be implemented with the three associated eastern European states.

Whereas such an ambitious political agenda would seem to bode well for the future, its feasibility essentially hinges upon the success of the implementation of the Association Agreements between the EU and Georgia, Moldova and Ukraine. Clearly, the envisaged 'four unions' will, of necessity, draw on the foundation laid down by the Association Agreements: any enhanced bilateral relationship between the EU and its associated eastern neighbours, (including Ukraine) will be firmly anchored in the AAs.

This is why the assessment of the progress – and the associated challenges – of the implementation are so important. The EU-Ukraine Association Agreement, which fully entered into force on 1 September 2017, is thus key to achieving sustainable political association and economic integration between the European Union and Ukraine.

Ukraine has found itself confronting an extremely challenging situation regarding domestic post-revolutionary stabilization and rising external pressures (Russia's annexation of Crimea and aggression in Ukraine's eastern region of Donbas). Consequently, the implementation of the EU-Ukraine Association Agreement and its ambitious transformation agenda for the country, came under pressure from many and various negative socio-political, economic, and legal factors. Given the prevalence of other persistent domestic, milieu-shaping factors – such as popular and political legal culture (low public trust and support of governmental institutions, high-level political corruption, and the excessive 'politics of law') – the process of implementation of the Association Agreement needs to be monitored and evaluated in a systematic way. This will help to ensure that substantial progress is made and that the resulting positive effects are maintained in a sustainable way. In view of rising populism in European and Ukrainian political discourses, as well as disruptive information campaigns conducted or sponsored by Russia, the communication of achievements and shortcomings in the Agreement implementation and Ukraine's ongoing reforms have been thrown into sharp focus. Indeed, the communication of developments has come to be almost as crucial as the policies themselves. Furthermore, the problem of the effective implementation of the EU-Ukraine Association Agreement is becoming all the more important presidential and parliamentary elections in Ukraine are scheduled for 2019. In practical terms, this puts the spotlight on the policy imperative to maintain positive implementation dynamics against all odds, as well as ensuring legal certainty for all the stakeholders.

This study addresses the economic effects, as well as legal and political issues, underpinning the implementation of the EU-Ukraine Association Agreement. It explores the current dynamics at play and assesses the achievements and shortcomings of both the legislative and political implementation processes since the full enactment of the EU-Ukraine Association Agreement in September 2017.

The following four policy domains informed the thematic focus of the study:

- ensuring the rule of law and good governance practices (including decentralization and public administration reforms, the development of democratic structures and

- practices build-up, the strengthening of media and civil society);
- enhancing justice, freedom and security (including security-sector reforms, protection of fundamental freedoms, constitutional justice and judicial reform, state and societal resilience);
 - pursuit of economic, financial and sectorial development, approximation and integration (including the evaluation of DCFTA implementation progress, financial, telecommunications, phytosanitary, environmental and energy sectorial adjustments);
 - assessing the role and performance of EU institutions and bodies (including the European Council, the EEAS, as well as the EU Delegation in Ukraine, the European Parliament and the inter-parliamentary cooperation network, the EU Member States) in monitoring, facilitating and evaluating the implementation of the EU-Ukraine Association Agreement.

This study complements the first report on 'The State of Implementation of the Associations and Free Trade Agreements with Ukraine, Georgia and Moldova' ([EP/EXPO/B/AFET/2017/05](#)) published in November 2017 as part of the European Parliament's Committee on International Affairs (AFET) own initiative to report on the implementation of the EU association agreements with Moldova ([2017/2281\(INI\)](#)), Georgia ([2017/2282\(INI\)](#)) and Ukraine ([2017/2283\(INI\)](#)).

1.1. Methodology

This study is framed by an interdisciplinary qualitative research strategy and deploys both primary data analysis (qualitative and quantitative), data production (elite and expert interviews), case law, and secondary literature analysis (scholarly works and featured policy analyses).

As the effectiveness and the outcomes of the EU-Ukraine Association Agreement implementation are a function of the political will of Ukraine's political elite and other factors, this study endeavours to address a range of problems associated with the 'politics of law' in Ukraine that most intrinsically and directly affects the association implementation process. population support, political-institutional and legal effectiveness, including the upholding of the rule of law, the analysis of the agreement's implementation progress focuses on both legislative process (adoption of the legislation and other institutional-normative acts), administrative implementation capabilities, actual outcomes production and their popular perception. That is to say, the study endeavours to address a range of problems associated with the 'politics of law' in Ukraine that most intrinsically and directly affects the association implementation process.

To this end, the study combines applied legal research techniques with relevant political analysis methods. It enquires into the questions of law (constitutionality, proportionality, effectiveness), as well as law enactment and application. It draws on doctrinal research and comparative legal research, particularly EU case law. The case study and process-tracing methods are used to enquire into the specificity of continuing processes of domestic reform, legislative and regulatory approximation, policy adjustment and alignment, as laid down by the EU-Ukraine Association Agreement. The fieldwork, conducted in the form of elite and expert interviews held in Ukraine (in the capital, Kiev and the western Ukrainian city of Lviv), was enriched by original, first-hand (otherwise unavailable) data. This had the advantage of providing a way to test the study's main assumptions thereby validating its preliminary findings. This was particularly important, given the backdrop of the variance in the assessments, data and narrative frames featured in this field of policy study.

Nine face-to-face (Lviv) and mediated (Skype, e-mail; as well as recorded live in Kyiv by Kateryna Pryshchepa) elite and expert interviews were conducted to guide author's analysis of key areas of

achievement and progress, as well as challenging future avenues, in effective and sustainable implementation of the association agreement (cf. *References* section for detail).

Aiming to support the qualitative analysis on the progress of the ongoing Ukrainian reforms and the implementation of the EU-Ukraine Association Agreement, this study also draws on original local *primary data and information* generated in the field, including, among others:

- [The Association Agreement Navigator](http://navigator.eurointegration.com.ua), an online instrument that provides up-to-date information on the progress in implementing the EU-Ukraine Association Agreement. This is run by the Ukrainian Centre for European Policy in cooperation with the Konrad Adenauer Stiftung and the Kingdom of the Netherlands (<http://navigator.eurointegration.com.ua>)
- [Eurointegratsiynyi Portal](https://www.eu-ua.org) [The EU-Ukraine Integration Web Portal], an online information and communication instrument run by the Ukraine's Government Office for European Integration in cooperation with the EU-funded Association4U Project (<https://www.eu-ua.org>)
- [Index for Monitoring Reforms \(iMoRe\)](http://www.imorevox.org), an analytical tool put in place by VoxUkraine. This seeks to provide a comprehensive expert assessment of reform efforts by Ukraine's authorities in five key areas, i.e., governance, public finance, monetary system, business environment and energy (www.imorevox.org)
- [Reforms Speedometer](http://www.eu.pravo.org.ua), a Centre of Policy and Legal Reform (PRAVO) analytical tool for expert assessment of Ukraine's progress in three key areas of justice reform, i.e., constitutional, judicial and public prosecution reforms (www.eu.pravo.org.ua)

Finally, this study compares the findings and evaluations of the progress in implementing the EU-Ukraine Association Agreement as provided in the official institutional reports by the Government Office for European and Euro-Atlantic Integration of Ukraine (2014-2017) and the EU (Commission 2016, 2017; European Parliament 2017), as well as expert implementation monitoring reports produced by the Ukrainian Centre for European Policy (2014 - June 2016; 1 July 2016 - 1 November 2016, 1 December 2016 - 1 November 2017).

2. Highs and lows in Ukraine's implementation of the EU-Ukraine Association Agreement

2.1. Measuring Progress: Monitoring & Evaluation

The EU-Ukraine Association Agreement (EU-Ukraine AA) conclusion process has run for 3,779 days, from its inception to its ratification. The final length of the Agreement's implementation process, however, is not so easy to calculate: rather than the ambitious seven-to-ten-year implementation period originally envisaged in the Agreement, it has proven to be a long and winding road, with identifiable milestones but with time horizons that stretch farther and farther into the future. Ukraine's to-do list is challenging, by any standards: over 2,000 specific tasks must be completed and more than 5,000 activities are to be undertaken before 2020 – all this without factoring in disruptive external factors such as Russia's continuing aggression in Ukraine or the effects of globalization processes.

In this context, a regular assessment of the progress in the implementation of the EU-UAA appears a necessary tool to ensure the pace, effectiveness and sustainability of this multi-layered and multi-stakeholder policy process.

Currently, the implementation process is the subject of regular governmental and non-governmental expert reports, both by Ukrainian institutions and the European Union experts (cf. [Table 1](#)). In total, since 2015 no fewer than thirteen reports have been compiled, notably by Ukraine's Government Office for European and Euro-Atlantic Integration (GOEEI) (7), 3 by the Ukrainian Centre for European Policy (UCEP), 2 by the European Commission and one by the European Parliament.

Table 1: Monitoring and Evaluation Reports on the EU-Ukraine Association Agreement implementation

<i>M&E Reporting</i>	Ukraine Governmental	Ukraine Non-Governmental	EU institutional
<i>Monitoring</i>	GOEEI Sep 2014 – Jan 2015, Jan – Oct 2015, 2015, Jan – May 2016, 2016, & 2017 Report on the Implementation of the Association Agreement Sep 2014-Apr 2015, Jan – Oct 2015, Jan – May 2016 Report on the Implementation of the Association Agreement and the EU-Ukraine Association Agreement	Ukrainian Centre for European Policy (UCEP) 2014-2016(I), 2016(II), & Dec 2016 – Nov 2017 Ukraine & the AA Implementation Monitoring	European Commission 2016 & 2017 Association Implementation Report
<i>Evaluation</i>			European Parliament 2017 GE/MD/UA AA Implementation Report

Source: author's own compilation.

There are also a number of local governmental reports on their progress in implementing the agreement (for instance, Lviv Regional State Administration's 2014 Implementation Report¹) as well as individual ministerial reports (for instance, 2016 Implementation Report by the Ministry of Infrastructure of Ukraine²).

On the EU's side, two joint Commission and EEAS reports were released in 2016 and 2017, with the European Parliament's own comparative evaluation study produced in November 2017 on the association agreements implementation process in Georgia, Moldova and Ukraine.

For the most part, these reports are exclusively monitoring studies. Few address policy evaluation concerns and where they do, they do so in a limited way. Whereas monitoring usually relies on *quantitative* analysis, typically presenting absolute and relative figures to measure progress in policy implementation, evaluation usually deploys *qualitative* analysis to assess the effects of such policies (e.g. positive/negative, short-lived/sustainable). It might indeed be too early for any meaningful policy feasibility studies, evaluation reports the useful, if complementary, purpose of keeping the implementation process on the right track – and help policymakers fine-tune it, where necessary.

2.2. Monitoring: legislative and regulatory approximation

The European Commission's 2016 and 2017 Association Implementation Reports are essentially monitoring reports, largely lacking in evaluative statements. Similarly, the reports presented by the Ukrainian Government are also focused on monitoring progress in the implementation of the Association Agreement for the last three years and, thus, present something akin to a balance sheet of implemented and pending tasks. For instance, Ukraine's GOEEI 2017 Implementation Report assessed the level of progress at around 41%, this being a percentage calculation setting the 399 implemented tasks against the 964 tasks that were due to be completed in 2017. In addition, this performance at the level of 41% is itself an aggregate figure, calculated on the basis of the task completion rates of individual institutional commitments by various bodies in 2017. These institutions include the Verkhovna Rada of Ukraine, which achieved a 30% completion rate, the Government of Ukraine, with a completion rate of 42% and various other central executive bodies, which collectively achieved a 50% completion rate.

Naturally, the contrast between the public perception of progress and the officially reported figure triggered a broad discussion on the extent to which these figures reflect reality and secondly, on how reliable these figures are.

It should also be noted in this regard that the deceptively low progress figure of 41% for the year of 2017 also includes more than one quarter of the 2016-scheduled (or pending) tasks. In effect, the equivalent 2016 figure was 34% and consequently, many pending tasks were carried over to the following year.³ This had the knock-on effect of artificially depressing the 2017 completion figures. When we strip out this distortion, however, we see that the adjusted 2017-only completion figure is a more robust-looking 63%.

¹ Виконання Плану заходів з імплементації Угоди про асоціацію України з ЄС у Львівській області у 2014 році [Implementation of the Action Plan on the Implementation of the Association Agreement between Ukraine and the EU in Lviv Oblast in 2014]. http://loda.gov.ua/upload/users_files/22/upload/VYkonannya%20Planu%20zahodiv%20z%20implementacii%20Ugody%20u%20L_vivs_kiy%20oblasti%20v%202014%20roci.pdf

² Щодо стану імплементації Угоди про асоціацію - Міністерство інфраструктури України [On the implementation of the Association Agreement - The Ministry of Infrastructure of Ukraine]. <https://mtu.gov.ua/content/shchodo-stanu-implimentacii-ugodi-pro-asociaciyu.html>

³ В уряді уточнили стан виконання асоціації: робота за 2016 рік виконана на 63% [The government clarifies the state of the Association implementation: 2016 work performed by 63%]. *Європейська правда*, 26.02.2018. <https://www.eurointegration.com.ua/news/2018/02/26/7078064/>

At the same time, the completion figures do not look so healthy in the calculations of the Ukrainian Centre for European Policy (UCEP), which noted only 11.6% of Ukraine's tasks and obligations under the Association Agreement agenda in 2017 as fulfilled. Thus, from 1 December, 2016 to 1 November, 2017, Ukraine committed itself to implementing 86 discrete legislative changes, of which it completed only 10. This corresponds to a completion rate of 11% (cf. *Annex 1*)⁴. Nor does the picture look brighter if we take account of completion rates in a wider time-frame: since the start of the EU-Ukraine Association Agreement's provisional application in November 2014, only 113 tasks – out of 862 foreseen under the Titles IV and V (including Annexes) – had been completed by end 2017, as shown by the 'AA Navigator'⁵, a UCEP-run non-governmental expert monitoring tool (cf. *Annex 2*). This corresponds to a completion rate of 13% for the period from late 2014 to early 2018⁶. If this implementation pace (40 tasks annually) were to be maintained for the years to come, the experts estimate a 10-year delay⁷ in Ukraine's full implementation of its commitments under the association agreement, running the risk of pushing the final year of the Agreement all the way to 2035 rather than the 2025 deadline originally envisaged.

Thus, delays in the implementation schedule are fraught with serious dangers both for maintaining the pace of EU-Ukraine's gradual rapprochement, as well as for the longevity of the process.

Lagging behind the implementation schedule, Ukraine's government launched its own implementation monitoring tool – 'Puls Ugody' ['Agreement's Puls'] – only on the date when the EU-Ukraine Association Agreement entered into force, i.e. on 1 September 2017⁸. Unlike in Georgia (AA.ge, www.aa.ge) or Moldova (*Monitorizare*, <https://monitorizare.gov.md>), in Ukraine the official governmental Association Agreement implementation monitoring tool is not open to the public, which cannot but undermine the transparency of the process.

2.3. Evaluation: tacking stock of effective implementation

Joining the public discussions on Ukraine's progress in implementing of the EU-Ukraine Association Agreement and the logic of its measurement, Ukraine's Foreign Minister Pavlo Klimkin argued in favour of qualitative assessment of the process and the focusing on the content and meaning, as opposed to the form, of Ukraine's European integration, with its obsession with formalistic bureaucratic numbers and indicators⁹. In essence, the minister is asking how it can be possible to assess real progress from a raw percentage figure; the completed tasks represented by the figure of 41% may include crucial steps or entirely banal administrative changes. Equally, the steps represented by the 59% of tasks which remain to be completed may well be of an entirely secondary

⁴ Український центр європейської політики. (2017). *Україна та Угода про Асоціацію: Моніторинг виконання з 1 грудня 2016 року до 1 листопада 2017 року [Ukraine and Association Agreement: Monitoring of implementation from December 1, 2016 to November 1, 2017]*. Київ: UCEP. Here p.9.

⁵ AA Navigator, <http://navigator.eurointegration.com.ua/tasks>. Cf. also: Акуленко, Любов, і Дмитро Науменко. (2016). *Угода про асоціацію між Україною та ЄС: Розроблення прикладного інструменту моніторингу і та оцінювання прогресу імплементації норм європейського законодавства [Association Agreement between Ukraine and the EU: Development of an applied monitoring tool and assessment of progress in the implementation of European legislation]*. *Стратегічна Панорама*, 1/2016: 96-97.

⁶ Український центр європейської політики. (2018). 13% успіху: чому урядова оцінка виконання асоціації виявилася завищеною [13% of success: why the government's assessment of the association implementation was overestimated]. *Європейська правда*, 2.03.2018. <http://www.eurointegration.com.ua/articles/2018/03/2/7078265/>

⁷ Ibid.

⁸ Сидоренко, Сергій. (2017). Асоціація без нагляду: чому Україна відстає від Молдови та Грузії у моніторингу Угоди з ЄС [Association without supervision: why Ukraine lags behind Moldova and Georgia in monitoring the agreement with the EU]. *Європейська правда*, 15.11.2017. <https://www.eurointegration.com.ua/articles/2017/11/15/7073698/>

⁹ Клімкін, Павло. (2018). Порахувати євроінтеграцію: що не так із відсотками виконання Угоди про асоціацію [To count Eurointegration: what is wrong with the percentage of implementation of the Association Agreement]. *Європейська правда*, 6.03.2018. <http://www.eurointegration.com.ua/experts/2018/03/6/7078403/>

importance. The minister’s essential test is one that is solidly based on what the changes mean for real policy and practice. In launching this discussion, Foreign Minister Klimkin is apparently not seeking to criticise the work of those who assembled the figures that feature in the governmental, non-governmental and international organizations’ reports. Rather, he is setting the terms of a *new* debate based on the crucial – but largely absent – evaluation mechanisms of the EU-Ukraine AA implementation.

By far, the efforts in policy and implementation process evaluation resulted in baseline policy studies, with the identification of the successful and failing sectors and policy areas¹⁰:

Table 2: The EU-Ukraine Association Agreement Implementation Progress across Policy Sectors

<i>Implementation progress of key policy sectors</i>	‘Successes’	‘Challengers’	‘Failures’
<i>Progress assessment</i>	<i>good chances to be fully implemented</i>	<i>first signs of progress noted but support is needed</i>	<i>sectors to be pushed</i>
<i>Policy sectors</i>	<ol style="list-style-type: none"> 1. Technical barriers to trade (TBT) 2. Public procurement 3. Energy sector, <i>by the sub-sectors of:</i> <ul style="list-style-type: none"> • Gas • Electricity • Energy efficiency 4. Environment, <i>by the sub-sectors of:</i> <ul style="list-style-type: none"> • Water quality • Environmental management (in part of access to information) 	<ol style="list-style-type: none"> 1. Sanitary and phytosanitary measures (SPS) 2. Taxation 3. Company law 4. Consumer rights protection 5. Social policy 6. Public health 	<ol style="list-style-type: none"> 1. Customs 2. Energy sector, <i>by sub-sectors of:</i> <ul style="list-style-type: none"> • Nuclear energy • Hydrocarbons production • Oil 3. Environmental, <i>all other sub-sectors</i> 4. Transport 5. Intellectual property

Source: Adapted from Akulenko et al. 2018.

So what is a ‘successful’ policy or sector? These sectors are those where there has been at least 50% progress in legislative and regulatory approximation or at a minimum, where framework laws were adopted and complemented with the first attempts at implementation. Those sectors that were deemed to be ‘failing’ were those where little to no progress could be seen and where the attempts at regulatory approximation was blocked or had been suspended for a long period for various reasons. This situation has led to demands for urgent corrective action to be taken by the Ukrainian authorities. Those policy sectors which fall between the two extremes of success and failure are represented as ‘challenging’ implementation; in these cases, although some good progress has been noted, sustained engagement will be required to maintain the pace of the process of legislative approximation.

In line with the non-governmental expert findings presented above, the EU’s 2017 Joint Association Implementation Report on Ukraine (SWD(2017) 376 final), released on 14 November 2017, noted progress in the areas of environment and energy policy, sanitary and phytosanitary measures, as well as food safety and consumer rights protection, with public procurement sector already

¹⁰ Akulenko, Liubov, Dmytro Naumenko, Elena Stepanenko, Evgeniy Kovtun. (2018). Three years of the way: an independent assessment of the implementation of the Association Agreement. *BlogActiv.eu*, 15 March 2018. <http://ukraineoffice.blogactiv.eu/2018/03/15/three-years-of-the-way-an-independent-assessment-of-the-implementation-of-the-association-agreement/>

traditionally enjoying the status of the most successful flagship reform of the current government¹¹. An enhanced effort by the Ukrainian authorities will be required for them to catch up with the delayed implementation process in the areas of customs regulation, taxation, and transportation, however¹².

It has been more than twenty years since Ukraine embarked on its path of post-Soviet statebuilding. This time has been marked by inertia in many areas and rampant progress in others. This is not to justify underperformance in certain areas of the EU-Ukraine approximation and Ukraine's overall reform programme but it is useful to remind ourselves of the context. Writing in 2016, in their first Joint Association Implementation Report on Ukraine (SWD(2016) 446 final), the Commission and HR/VP acknowledged that, in 2015-2016, 'Ukraine [had] undertaken intense and unprecedented reforms across a number of sectors of the economy and society, while its democratic institutions [had] been further revitalized'¹³. The report listed a number of strategies and new laws adopted by the country, as well as its growing institution- and capacity-building initiatives promoting Ukraine's European integration. The Commission concludes that 'many important reforms are ripe to move from the legislative and institutional phase to effective implementation, which will benefit Ukraine's citizens and contribute further to its political association and economic integration with the EU'¹⁴. In this regard, one of the biggest 'challenge[s] for the EU is to remain objective in its assessment of the progress – or lack thereof – achieved to date' while taking into account a number of process-shaping scope conditions, as noted in the European Parliament's 2017 implementation report¹⁵. In view of the estimated seven- to ten-year track towards full implementation of the Association Agreement, the EU sees it as crucial to maintain its ability to fine-tune the process and boost its impact. To this end, it seeks to increase its implementation evaluation capacities, its overall support coordination, including in the application of conditionality, thereby ensuring consistency.

This confirms a politically informed rationale for shifting the focus from formal institution-building and legislative-approximation processes to effective implementation practices, including the regulatory convergence as well as the application and enforcement laws more generally. In this context, the implementation monitoring tools currently in use, need to be complemented with regular and systematic implementation evaluation mechanisms in order to enhance the effectiveness and sustainability effects of the process. This needs to happen both at the governmental and especially non-governmental levels.

The European Union is intensifying its work on monitoring the implementation of the Association Agreement by Ukraine. So far, little attention has been paid to the evaluation of the progress achieved. For Ukraine, the year 2017 will be remembered as the year in which the main structural obstacles in the country's European integration path were set to one side, and the Association Agreement implementation roadmap was adopted. The government approved a government action plan, a monitoring tool and a communication strategy for Ukraine's European integration and association agenda implementation.

Given that these important steps have been taken, it is time now to complement the effort by undertaking evaluative assessments of the policy and practices of regulatory approximation. In the

¹¹ European Commission. (2017). Association Implementation Report on Ukraine. *Brussels*, 14.11.2017 (SWD(2017)376final). https://eeas.europa.eu/sites/eeas/files/association_implementation_report_on_ukraine.pdf. Here p.12-14.

¹² *Ibid.*, p.9, 13.

¹³ European Commission. (2016). Association Implementation Report on Ukraine. *Brussels*, 9.12.2016 (SWD(2016)446final). https://eeas.europa.eu/sites/eeas/files/ukraine_v2_0.pdf. Here p.2.

¹⁴ *Ibid.*, p.14

¹⁵ European Parliament. (2017). The State of Implementation of the Associations and free trade agreements with Ukraine, Georgia, and Moldova. *Strasbourg*, November 2017 (EXPO_STU(2017)603836_EN). [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603836/EXPO_STU\(2017\)603836_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603836/EXPO_STU(2017)603836_EN.pdf). Here p.37.

EU system, 'two obvious candidates', i.e. the Court of Auditors and the European Parliament Committee on Foreign Affairs, would be best-positioned for this undertaking¹⁶. In Ukraine, the government needs to conduct open and regular evaluative assessments of the implementation progress and challenges. In addition, it would be appropriate to assess in the same terms the practices of EU law and the application of the association *acquis*. Here, a whole new area opens up for the involvement of the EU's institutions, such as the CJEU, and agencies (for instance, EASA, ACER, EFSA, or EUIPO), thus facilitating the practical 'stake in EU law and market', which is a major aim of the EU-Ukraine Association Agreement.

¹⁶ E-mail Interview with Pierre Vimont. *Brussels*, 28.04.2018.

3. Implementing the Association Agreement: Ukraine's post-revolutionary socio-political, legal and institutional frameworks

The resilience of the Ukrainian state and its society loom large in the post-Euromaidan and foreign-aggression context. Trust and legitimacy are key yardsticks for state authorities which will determine the sustainability of the regime and policy changes in Ukraine. After all, the perception and legitimation of public power – part of the society's political culture – inform the society's very trust and support of it, thus providing a solid basis for a social contract. The consolidation and sustainability of this new social contract, which is currently taking shape in post-revolutionary Ukraine, appears absolutely necessary. These are times of profound reform that challenge domestic welfare and resilience, in the short term – as might be expected of any process of deep societal transformation. The rule of law plays an important role here as it normally serves as a safeguard against the abuse of power – certainly a risk for a reforming country. Thus, the social-legal culture codetermines the patterns of state and societal resilience not least with regard to the establishment of a long-term legal certainty.

In turn, constitutional and institutional frameworks of the EU-Ukraine AA implementation are innately embedded in both popular legal and political culture. An effective implementation of the EU-Ukraine association *acquis* will therefore be less feasible and less sustainable where people's own belief in the public authorities, the system of justice, is lacking.

3.1. Socio-legal and political culture

Ukraine's contemporary system of formal societal institutions – both legal and political – have been powerfully shaped by the legacy of the relatively short but deeply-intrusive Soviet rule¹⁷. This implies a deep-rooted feeling of legal uncertainty, a preference for informal arrangements (including corruption), a mistrust of state institutions, low levels of support for public policies, and, as a result, an ambivalent culture of legal obedience. These are just a few of the typological features of the mental map of the so-called 'homo post-Sovieticus'¹⁸. The other side of this coin is the high levels of trust vested by Ukrainians in their civil society organization and religious institutions – and the resulting focused pursuit of societal values and principled stances of governmentality through effective self-organization and 'mass mobilization'¹⁹. Ukraine's three revolutions bear testimony to this trend²⁰. It was indeed the defence of the society-innate²¹ and intrinsically constitutive²² European values²³ – as symbolized by the project of Ukraine's European integration through the conclusion of the EU-Ukraine Association Agreement – that led to the outbreak of the 'Revolution

¹⁷ Gatskova, Kseniia, and Maxim Gatskov. (2015). Political Culture in Ukraine. *IOS Policy Issues*, 9 (November 2015), p.4-5; Hale, Henry E. (2011). Formal constitutions in informal politics: Institutions and democratization in post-Soviet Eurasia. *World Politics*, 63(4), 581-617.

¹⁸ Ganev, Venelin I. (2017). The spectre of Homo post-Sovieticus. *New Eastern Europe*, 19.10.2017. <http://neweasterneurope.eu/2017/10/19/spectre-homo-post-sovieticus/>

¹⁹ Onuch, Olga. (2014). *Mapping Mass Mobilization: Understanding Revolutionary Moments in Argentina and Ukraine*. New York: Palgrave Macmillan.

²⁰ Cf. The 3R Project (Three Ukrainian Revolutions) carried out at the College of Europe, Natolin campus. <https://www.coleurope.eu/page-ref/3r-project>

²¹ Zelinska, Olga. (2015). Who Were the Protestors and What Did They Want? Contentious Politics of Local Maidans across Ukraine, 2013–2014. *Demokratizatsiya: The Journal of Post-Soviet Democratization*, 23(4): 379-400.

²² Tyushka, Andriy. (2014). A liberationist constitution? Maidan's revolutionary agenda and challenges for constitutional reform in Ukraine. *European View*, 13(1): 21-28.

²³ Buhbe, Matthes. (Ed.). (2017). How Ukrainians Perceive European Values: Main Results of an Empirical Survey. *FES Study*, 13731 (September 2017). <http://library.fes.de/pdf-files/id-moe/13731.pdf>

of Dignity', or the 'Euromaidan Revolution' in late 2013. Matters came to a head when the Ukrainian authorities failed to sign the long-awaited agreement with the EU. A high congruence of Ukrainian and EU citizens' values as regards democracy, equality, human rights, etc. (cf. *Annex 4*)²⁴, indicates that, in the dimension of identity and self-perception, Ukrainians feel themselves to be Europeans²⁵. The practice of these values may occasionally fall below what might be expected, however, as evidenced by Ukrainians' tolerance of the abuse of law or power and the corrupt practices of others, most notably, by the political elite. This is partly common for young people – or the so-called 'Generation Z' (people aged between 14 and 29) – as well²⁶. Although they name corruption and war as their two biggest fears (37% and 36%, respectively), only one-third of young Ukrainians believe, for example, that bribery can never be justified²⁷. In addition, the young generation of Ukrainians – often considered as 'agents of change' by default – is uninterested in politics and has a traditionally low level of trust of state institutions²⁸. This wariness extends also to the European Union, which only 29% of young people in Ukraine profess to trust²⁹. This is certainly an area for the EU's prompt reaction and a more serious engagement with the young people in Ukraine in order to (re)build trust.

Among Ukraine's own societal and state institutions, the greatest confidence (trust) among citizens is enjoyed, according to the *Razumkov Centre* 2017 poll, by volunteer organizations (66.7%), the church (64.4%), and the Armed Forces of Ukraine (57.3%) together with volunteer battalions (53.9%), followed by the National Guard Ukraine (52.6%), State Service for Emergencies (50.5%), civil society organizations (48.0%), State Border Guard Service (46.4%), and the Ukrainian mass media (48.3%)³⁰. In contrast to these high figures, only 24.8% of Ukrainians claim to trust the President, significantly outnumbered by the 68.2% who do not, or indeed, the 19.8% who profess trust the Government (as against the 73.1% who do not). The figures for the Parliament are even less rosy, with no more than 13.8% expressing trust in the Verkhovna Rada, as against the 80.7% who say the Legislature does not enjoy their trust. The 'state apparatus' (public officials) enjoy attract the trust of only 11.2% Ukrainians; the corresponding negative figure is a stunning 80.7%)³¹. Understandably, this pitiful state of citizens' confidence has a knock-on effect when it comes to support for unpopular reforms. For instance, the attitude of society towards the anti-corruption tranche of the reform of the judicial system remains unsurprisingly down-beat. It is guided by the general negative impression that the

²⁴ Ibid., p.13.

²⁵ Gradually, 'Europe' has become a normative model in the mediated discourse of Ukrainian political elites as well, cf.: Orlova, Dariya. (2017). 'Europe' as a Normative Model in the Mediated Discourse of Ukrainian Political Elites. *Europe-Asia Studies*, 69(2): 222-241.

²⁶ Ukrainian 'Generation Z': Attitudes and Values. *2017 Nationwide Opinion Poll Results*, ed. by K. Zarembo. Kyiv: NEC & FES.

²⁷ Ukrainian 'Generation Z': Attitudes and Values. *2017 Nationwide Opinion Poll Results*, ed. by K. Zarembo. Kyiv: NEC & FES. Here p.7. Importantly, in light of such a high/rising threshold of tolerance to corruption among the young in Ukraine, the **EU Anti-Corruption Initiative's** (EUACI, <https://euaci.eu>) recently launched in Kyiv the '**CorruptionPark**' (<https://www.facebook.com/CorruptionPark>), a 3D interactive civic education tool on top-level corruption in the country, cf.: У Києві відкриється "Парк корупції". Служба зовнішньої діяльності ЄС, 30.04.2018. https://eeas.europa.eu/headquarters/headquarters-homepage/43743/node/43743_uk

²⁸ New Europe Center. (2018). No 'YouthQuake' for Ukraine? Youth's Attitude towards Politics and Democracy. *Medium*, 04.02.2018. https://medium.com/@NEC_Ukraine/no-youthquake-for-ukraine-youth-s-attitude-towards-politics-and-democracy-849260186d27

²⁹ Ukrainian 'Generation Z': Attitudes and Values. *2017 Nationwide Opinion Poll Results*, ed. by K. Zarembo. Kyiv: NEC & FES. Here p.8.

³⁰ Центр Разумкова. (2017). Ставлення громадян України до суспільних інститутів, електоральні орієнтації [Attitudes of Ukrainian citizens to public institutions and their electoral orientation]. *Результати соціологічного дослідження проведеного соціологічною службою Центру Разумкова з 21 по 26 квітня 2017 року*, 18.05.2017. <http://razumkov.org.ua/uploads/socio/Press0417.pdf>

³¹ Ibid.

administration of justice in Ukraine makes upon its citizenry³², with no more than 1.3% of the population expressing full confidence in Ukrainian courts – and nearly half of the population (47.3%) completely distrusting them³³. The low levels of trust in the state institutions have seen churches – which continue to enjoy the highest level of the population’s trust – step into the void left by public institutions and undertake ‘social activism’ and civic education activities. These include addressing matters relating to corruption, which they do as ‘trusted leaders who promote the consolidation of the emerging civil society’ in post-Maidan Ukraine³⁴. Against such a backdrop, it has become absolutely necessary for the Ukrainian Parliament as an institution, including the political parties of Ukraine in particular, to hugely invest an effort in cultivating a ‘stability culture’ in both political-economic and socio-legal terms – as their European partners do at both national and EU-level³⁵. This effort is required to gain (or gain a-new) the population’s trust and support, which is sorely needed not only to sustain the domestic reforms in the country but appears also quintessential in the context of applying the vast amount of new legislation to be adopted in the framework of the EU-Ukraine Association Agreement implementation.

Thus, this crucial moment of Ukraine’s political reform opens up at the same time possibilities for developing a new political culture that would clearly and firmly dissociate state-society relations in a post-revolutionary Ukraine from the lasting legacy of ‘homo post-Sovieticus’, with the removal of Soviet-style bureaucracy being the first important step to resolutely make³⁶. This is not an easy or fast undertaking, given Ukraine’s reputation as an ‘immobile state’ when it comes to bringing about positive reforms³⁷.

Symbiotically, these changes in political culture need to be supported by the simultaneous transformation of Ukraine’s socio-legal culture and ideology, which have also been significantly shaped by the legacy of Soviet rule and now informs both the public attitudes towards the very institution of law and the institutional practices in applying law in Ukraine. The country’s rule of law compliance ‘remains poor however the evaluation scale is drawn and whatever resources external donors commit to foster the rule of law in the country’, which is not least because of the ‘deficiencies in the elite and popular demand for law, or societal attitudes to law and its “rule”’³⁸. Whereas, a large majority (73%), regard law as an expression of justice³⁹, only a minority of Ukrainians value unconditional obedience to the law. A culture of obedience to laws, especially as regards ‘complicated’ or ‘troublesome’ laws and laws that ‘some people feel unfair’, displays rather low

³² Валюшко, Іван. (2017). Тимчасова гарантія безкорупційної України [A provisional guarantee of a corruption-free Ukraine]. *Дзеркало Тижня*, 17.11.2017 (ZN No1168-1169, 18 листопада — 24 листопада 2017 р.). <https://dt.ua/internal/timchasova-garantiya-bezkorupciynoyi-ukrayini-260583.html>

³³ Op. cit., note 30.

³⁴ Cherenkov, Mykhailo. (2018). The Church’s social activism in post-Maidan Ukraine. *New Eastern Europe*, 17 April 2018. <http://neweasterneurope.eu/2018/04/17/church-without-walls-churchs-social-activism-post-maidan-ukraine/>. Cf. also: Філарет прочитав у Європарламенті проповідь про корупцію і популізм. *Deutsche Welle* Українською, 03.05.2018. <http://www.dw.com/uk/філарет-прочитав-у-європарламенті-проповідь-про-корупцію-і-популізм/a-43633722>

³⁵ De Simone, E., Gaeta, G. L., & Sapio, A. (2018). What Drives Political Parties’ Commitment to the ‘Stability Culture’? An Empirical Analysis Based on the Electoral Manifestos Issued in EU Member States. *JCMS: Journal of Common Market Studies*, 56(3): 539-558.

³⁶ Halling, Steffen, and Susan Stewart. (2014). Ukraine in Crisis: Challenges of Developing a New Political Culture. *SWP Comments*, 18 (April 2014).

³⁷ Kuzio, Taras. (2011). Political culture and democracy: Ukraine as an immobile state. *East European Politics and Societies*, 25(1): 88-113.

³⁸ Burlyuk, Olga. (2015). The Introduction and Consolidation of the Rule of Law in Ukraine: Domestic Hindrances at the Level of the Demand for Law. *Hague Journal on the Rule of Law*, 7(1): 1-25. Here p.1.

³⁹ Miller, William L. (2014). ‘Dimensions of Popular Legal Culture in Contemporary Europe’. In William B. Simmons, (ed.), *East European Faces of Law and Society: Values and Practices* (pp.1-50). Leiden: Brill Nijhoff. Here p.3.

public support of Ukrainians (47%) for the obedience⁴⁰. The regulatory content of law also makes a difference for Ukrainians, with 78% of them supporting the idea of having very detailed laws, rather than general sets of principles for the court to decide on. With a clear majority of 64%, Ukrainians also put a mandate on courts to apply the letter of the law, rather than trusting courts with the power to decide what is fair and reasonable by applying general legal principles:

‘Support for courts to “apply the letter of the law” rather than deciding for themselves what is “fair and reasonable” follows the same cross-national pattern – though at a significantly lower level: there is only a clear majority preference for applying the “letter of the law” in Ukraine. Whether that reflects the Imperial tradition or simply the very low opinion of the public about Ukrainian judges, is not immediately clear’⁴¹

Paradoxically enough, however, a large majority of Ukrainians (69%) ‘opt for more reliance on their much-criticized law and courts’, rather than informal methods of mediation⁴².

Significantly, the majority of Ukrainians feels that it is ‘acceptable for the government to suspend the usual rights of citizens and step outside the law’ in order to combat widespread corruption (57%), organized crime (60%) and the threat of terrorism (62%)⁴³.

At the same time, the general perception of law in action shows that only 10% believe that ‘the government and people respect the law and generally obey it more than in the rest of Europe’, whereas, conversely, the Ukrainian public perceptions that ‘the level of crime and corruption in this country is greater than the average across Europe’ peak to 91%⁴⁴. Furthermore, the public perception of ‘legal-insiders’ shows the highest positive attitude towards lawyers (59%), with prosecutors viewed positively by only 43% of the population, followed by judges (33%) and police (27%) as least-favourably treated law enforcement agencies in Ukraine by around 2014⁴⁵. These are some of the most disturbing – and, in fact, system-determining – popular beliefs that directly inform the culture of the operation of law enforcement in the country. This is indeed a troublesome area, where the government’s reform input as well as a civic education campaign, would be necessary to prepare the ground for the implementation of the EU-Ukraine Association Agreement in the long-run.

In legal terms, the implementation of the EU-Ukraine Association Agreement is first of all associated with a vast number of new legal principles and pieces of legislation to be adopted (cf. *Annex 2*). In this context, too many changes to the law present a matter of concern for a large majority (74%) of Ukrainians⁴⁶, not least because 51% of such a legislative change in the country used to be associated with the factor of ‘special interests’ channelling, rather than reflecting the voice of ‘ordinary people’ in the country (19%)⁴⁷. This inevitably bears direct consequences for the persisting state of ‘denial of social and personal values of the law’⁴⁸ among the majority of the Ukrainian population, thus directly undermining the very subjective possibility of legal certainty (not to mention the objective reasons – corruption and the abuse of both power and law – for the fragility of the state of legal certainty in Ukraine).

In the context of the EU-Ukraine Association Agreement implementation – as well as the exercise of the ‘stake in the EU law’ and association *acquis* development – Ukrainians’ attitudes towards

⁴⁰ Ibid., p.15.

⁴¹ Ibid., p.8.

⁴² Ibid., p.14.

⁴³ Ibid., p.18.

⁴⁴ Ibid., p.24.

⁴⁵ Ibid., p.39.

⁴⁶ Ibid., p.26.

⁴⁷ Ibid., p.27.

⁴⁸ Machusky, Volodymyr. (2016). Ukrainians’ legal culture and civil society. *Ukrainian Law Blog*, 1 June 2016. <http://ukrainianlaw.blogspot.com/2015/01/ukrainians-legal-culture-and-civil.html>

supranational law (mainly, the decisions of the European Court of Human Rights or the adoption of 'EU standards') are overwhelmingly positive. Thus, 92% of Ukrainians:

feel that their country 'has a lot to learn from other countries and European or International organizations' about 'writing, implementing and enforcing the law' or about the way both 'ordinary people and political leaders respect the law'. Superficially, such feelings might be classed as perceptions rather than attitudes; but, in reality, they are prescriptions for reform, and quite properly classed as 'attitudes'⁴⁹.

This only confirms that the socio-culture in Ukraine features a set of ambivalent public attitudes towards domestic legal system and laws in particular, whereas manifesting more trust to the international legal standards and mechanisms. Such a high level of popular support is a good start for implementing the EU-Ukraine AA and the developing association *acquis* that substantially draws on the main principles of the European Union's legal order and its normative-regulative framework. Symbolically, the EU-Ukraine Association Agreement implementation is associated with Ukraine's long-overdue transformation of its post-Soviet legal ideology⁵⁰.

Altogether, the implementation of the EU-Ukraine AA and the on-going reforms in the country – especially the constitutional, justice and law enforcement reform – need to be seen inseparably as a symbiotic and deeply transformative way to re-boot the very foundations of state-societal relations, including the necessary lifting of public trust in state institutions and the consolidation of the state of the rule of law in post-Maidan Ukraine. In other words, the EU-Ukraine Association Agreement implementation resembles a process of genuine civilizational transformation, rather than further 'mechanical' changes to the legislation.

3.2. Constitutional legal framework

The implementation of the EU-Ukraine AA, including the transposing of a vast corpus of EU law when advancing the association *acquis*, presents a considerable institutional challenge. But it may be also constrained by the country's constitution and related practice as the place (and, consequently, the way of application) of norms originating from international law in the national legal system of Ukraine semi-equals that of the national legislation (Art. 9 of the Constitution of Ukraine) in spite of the customary doctrinal assertion of primacy of Ukraine's international legal obligations and norms⁵¹. This creates difficulties for the application of such sources of law (including in the light of the *direct applicability* doctrine)⁵².

The notion of the EU-Ukraine 'association law' is best understood as a compound normative and regulatory corpus. It is formed by the primary association law (the EU-Ukraine Association Agreement itself, including its Annexes and Protocols, as well possible future declarations and amendments) and the secondary association law (the burgeoning association legislation, including decisions of the association bodies made in the wake of the application and implementation of the Agreement)⁵³.

⁴⁹ Op. cit., note 39, p.19.

⁵⁰ Войтанович, Олександр. (2014). Трансформація правової ідеології України в контексті підписання Угоди про Асоціацію з ЄС [Transformation of the legal ideology of Ukraine in the context of the signing of the Association Agreement with the EU]. *Юридична Україна*, 10/2014: 20-26; Сіденко, Володимир Р. (2016). Імплементация Угоди про Асоціацію України з ЄС крізь призму розвитку неформальних суспільних інститутів [Implementation of the Agreement on the Association of Ukraine with the EU through the prism of the development of informal social institutions]. *Стратегічна Панорама*, 1/2016: 37-39.

⁵¹ Petrov, Roman. (2016). Implementation of Association Agreements Between the EU and Ukraine, Moldova and Georgia: Legal and Constitutional Challenges. In *Political and Legal Perspectives of the EU Eastern Partnership Policy*, ed. by T. Kerikmäe and A. Chochia (pp. 153-165). Cham.: Springer.

⁵² Tyushka, Andriy. (2017). *Association-cum-Integration: The EU-Ukraine Association Agreement and 'Association Law' as an Institution of Ukraine's European Integration*. *Croatian Yearbook of European Law & Policy*, 13(13): 87-132.

⁵³ *Ibid.*, p.97-105.

This specific body of law features a multi-layered structure, thus enjoying a particular position in the hierarchy of norms within Ukrainian and the EU's legal orders. Whereas the incorporation of international law in the form of international treaties (agreements) doesn't require a transposition act in the European Union, in Ukraine's case it is necessary to pass legislation (law on ratification) that 'translates' the international agreement in question into Ukrainian law. In both cases, however, concluded international agreements enjoy 'supra-legislative' status, thus prevailing over both anterior and posterior legislative and non-legislative acts of the European Union or Ukraine's legislative acts, respectively⁵⁴. At the same time, the international agreements cannot have priority over the Ukrainian Constitution or the EU founding treaties. It follows that 'the provisions of the EU-Ukraine Association Agreement prevail over the potentially conflicting provisions of the EU's legislative and non-legislative acts, as well as over those of Ukraine's national legislation'⁵⁵. In the event of a collision of norms forming part of primary association law, on the one hand, with the EU's supra-constitutional norms or Ukraine's national constitutional provisions, on the other hand, each of the latter two will be given priority. In the hierarchy of law within the EU legal system, EU-Ukraine secondary association law shares the same position as the EU's institutional acts. In the Ukrainian legal system, the positioning is even more complicated, 'not least due to the so far absent precedents of this sort in practice, as well as the general characteristics of the dualist legal system which is not based on precedents; secondary association law, adopted in the wake of the EU-Ukraine Association Agreement's implementation, should enjoy the same level as the agreement itself'⁵⁶. Therefore, the distinction between two levels of the EU-Ukraine association law has intrinsic practical repercussions for the (direct) application and (effective) implementation of the EU-Ukraine Association Agreement in the EU and in Ukraine.

3.3. Institutional and administrative capacity

When it comes to the institutional framework of the implementation process, the biggest challenge for Ukraine is not the formal model of coordination; it is, however related to the institutional capacity of public authorities to implement the Association Agreement. This challenge is only one part of a bigger problem: Ukraine's inefficient public administration, now part of the country's comprehensive reform agenda.

3.3.1. Institutional coordination model

EU-Ukraine cooperation matters have traditionally suffered from a lack of Ukrainian institutional investment and political leadership in the sphere – even in the aftermath of the country's 2004 pro-European 'Orange Revolution'. 'Implementation without leadership' and 'Implementation without coordination'⁵⁷ had featured as lasting 'models' of state policy on the EU-Ukraine Action Plan and,

⁵⁴ This 'middle' positioning of the EU-Ukraine Association Agreement in both the European and the Ukrainian legal systems has substantial repercussions for resolving potential collisions between several legal sources. For instance, Council Decisions (EU) 2017/1247 and 2017/1248 of 11 July 2017, that each prevent the normally expectable **direct effect** of some of the Association Agreement's provisions, may present a crucial test case in this regard. Shall it eventually come to the practical collision of these two sources of law, 'the so-called "**mezzanine principle**" (as anchored in Art 216(2) TFEU), which places the EU's international agreements between the primary and the secondary (institutional) laws, will be applied to resolve the collision of norms', cf.: E-mail Interview with Waldemar Hummer. *Innsbruck*, 5.04.2018. Cf. on a not-so-straightforward implications of the aforementioned Council Decisions with the EU-Ukraine AA provisions and the CJEU's case law, cf.: Tyushka, op. cit., note 52, pp.99-100; Van der Loo, Guillaume. (2016). *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A new Legal Instrument for EU Integration without Membership*. Leiden and Boston: Brill Nijhoff. Here pp.193-203.

⁵⁵ Op. cit., note 52, p.99.

⁵⁶ Ibid.

⁵⁷ Wolczuk, Kataryna. (2009). Implementation without Coordination: The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy. *Europe-Asia Studies*, 61(2): 187-211. Here: pp.199-202 and 202-205.

later on, the Association Agenda implementation. The fusion of the two 'models' had also profiled the government's attitude towards European affairs under V. Yanukovich's presidential term – notwithstanding then-progressing negotiations on the conclusion of the EU-Ukraine Association Agreement, which, after all, wasn't signed at the Eastern Partnership Vilnius Summit in late 2013, as originally envisaged.

Shortly after the 2013/14 Euromaidan Revolution and the eventual signing of the EU-Ukraine Association Agreement in March and June 2014, Ukraine introduced a centralized ('Cabinet-based') institutional coordination model to govern and oversee the process of the country's European integration and the EU-Ukraine AA implementation (cf. *Annex 5*)⁵⁸. Established on 13 August 2014 by the CMU Decree No.346⁵⁹, the *Government's Bureau for European Integration*, which is structurally embedded within the Secretariat of the Cabinet of Ministers of Ukraine, was rebranded on 4 October 2017 by the CMU Decree No.759⁶⁰ into the *Government Office for European and Euro-Atlantic Integration* (GOEEI)⁶¹. The GOEEI coordinates the activities of the Ukrainian executive authorities in developing and undertaking measures aimed at implementing the Association Agreement between Ukraine and the EU; it also directs and controls political and military dialogue and practical cooperation with NATO and the member states of the North Atlantic Alliance.

Experience has taught us that the intended three-year track of Ukraine's implementation of the Association Agreement with the European Union faces one significant 'bottleneck', or 'weak spot': the *Verkhovna Rada* or Ukrainian Parliament. For a variety of reasons, including the absence of special procedures in this regard⁶², many important pieces of EU integration-related legislation have been stuck in the quagmire for years. As a result, by the end of 2017, Ukraine has not even fulfilled one-quarter of its obligations.

It seems therefore necessary to get the Parliament fully involved in the process of Ukraine's Association Agreement and reforms implementation.

Whereas being more active in the field concerned, the *Cabinet of Ministers*, too, should boost its role in the implementation process. This applies to the area of the government's legislative initiative in the field of European integration-related law-making. According to the First Deputy Speaker of the Ukrainian parliament Iryna Herashchenko⁶³, 'more than 80% of the laws, that the parliament needs to consider in the context of the Association Agreement implementation, are not submitted by the government', which comes as rather a surprise, given the widespread international practices in the implementation of EU association agreements with third countries. In addition, the draft legislation

⁵⁸ Tyushka, Andriy. (2015). *Empowered to Deliver: The Institutional Model and Implementation Arrangements under the EU-Ukraine Association Agreement*. *Romanian Journal of European Affairs*, 15(5): 5-22. Cf. also: Sekarev, Alexei, Gert Antsu, and Klaudijus Maniokas. (2016). *European Integration Co-ordination Arrangements in AA/DCFTA Implementing Countries: Georgia, Moldova, Ukraine*. *ECEAP Policy Brief*, 23 (February 2016).

⁵⁹ Decree of the Cabinet of Ministers of Ukraine no. 346-2014-п of 13 August 2014. <http://zakon5.rada.gov.ua/laws/show/346-2014-п>

⁶⁰ Decree of the Cabinet of Ministers of Ukraine no. 759-2017-п of 4 October 2017. <http://zakon5.rada.gov.ua/laws/show/759-2017-п>

⁶¹ Урядовий офіс координації європейської та євроатлантичної інтеграції [Government Office for European and Euro-Atlantic Integration]. <https://eu-ua.org/uryadovyy-ofis-koordinaciyi-yevropeyskoyi-ta-yevroatlantychnoyi-integraciyi>

⁶² VoxUkraine. (2018). Реформувати реформаторів: чому український парламент потребує 'ремонту' [Reform the reformers: Why Ukrainian Parliament necessitates a 'repair']. *Інтерв'ю із заступницею голови Комітету ВРУ з питань європейської інтеграції Марією Іоновою*, 10.04.2018. <https://voxukraine.org/uk/reformuvati-reformatoriv-chomu-ukrayinskij-parlament-potrebuye-remontu-interv-yu-z-mariyeyu-ionovoyu/>.

⁶³ Ірина Геращенко: «Для повноцінної імплементації Угоди про асоціацію України з ЄС Верховна Рада і Уряд мають приділяти більше уваги роботі над законопроектами у цьому напрямку» [Irina Gerashchenko: "For the full implementation of the Association Agreement between Ukraine and the EU, the Verkhovna Rada and the Government should pay more attention to work on draft laws in this direction"]. *Інформаційне управління Апарату Верховної Ради України*, 23.02.2018. <http://rada.gov.ua/news/Novyny/154905.html>

on Ukraine's European integration is habitually submitted to the Verkhovna Rada without an expert check on its compliance with EU law.

Thus, a constructive dialogue and effective coordination between the parliament and the government in the first place is crucial in determining the success of the effective implementation of the EU-Ukraine Association Agreement. This is true at the early stage of legislative initiation and but also very much the case with further legislative development.

Finally, the effective implementation of the EU-Ukraine AA and the related newly adopted Ukrainian legislation hinges upon the capabilities – and qualities – of public administration and services. Being located at the bottom of the institutional coordination model for the EU-Ukraine AA implementation, a competent and effective bureaucracy is absolutely necessary to further the goals of the EU-Ukraine association. According to World Bank's *Worldwide Governance Indicators (WGI)*, Ukraine's public service features as the second least-effective bureaucracy in Europe⁶⁴. (Only Moldova scores worse.) Ukraine's first attempt to start its civil service reform was implemented at the end of 2015, when the new Law 'On Civil Service'⁶⁵ was adopted. This state effort was soon complemented by the Government's adoption of the 2016-2020 Strategy of Public Administration Reform in June 2016⁶⁶. In April 2018, the EU launched the *EU4PAR* project in Ukraine – a four-year initiative that aims to support the building of an accountable, effective and efficient public administration in Ukraine⁶⁷, a highly significant development for the advancement of the overall project.

Whereas the overall institutional coordination model was effectively set in motion a couple of years ago, the effectiveness of EU-Ukraine AA implementation and even the salience of European integration in everyday politics and the contacts with citizens now hinges upon the re-launching of the public administration in Ukraine. This should not be equated with mere institutional innovations (such as the introduction of the post Director General or new administrative units, such as CNAPs, i.e. new Administrative Service Centres). What is required is profound systemic changes in Ukrainian bureaucracy.

3.3.2. Association Agreement Implementation Roadmap (2017/18)

During its meeting on 25 October 2017, the Cabinet of Ministers of Ukraine adopted the Action Plan on EU-Ukraine Association Agreement Implementation and Monitoring (*Association Agreement Implementation Roadmap*), a strategic policy document of huge practical and symbolic value. This emboldened Ukraine's Vice Prime Minister for European and Euro-Atlantic Integration, Ivanna Klymush-Tsintsadze, to call this development a 'point of no return' that confirms 'Ukraine's main strategic development vector'⁶⁸. This strategic policy document, approved jointly with the Ukrainian Parliament on 28 February 2018⁶⁹, encompasses the intensive legislative agenda (a package of 57 European integration-oriented draft laws were identified as urgent for parliamentary consideration

⁶⁴ The World Bank. *The Worldwide Governance Indicators (WGI)*, accessed 15 April 2018. <http://info.worldbank.org/governance/wqi/index.aspx#home>

⁶⁵ Law of Ukraine "On Civil Service" № 889-VIII of 10.12.2015. <http://zakon4.rada.gov.ua/laws/show/889-viii>.

⁶⁶ Кабінет Міністрів України. (2016). Стратегія реформування державного управління України на 2016-2020 роки [Strategy of reforming the state administration of Ukraine for 2016-2020 years]. *Розпорядження КМУ від 24 червня 2016 р. № 474-р*. <http://zakon2.rada.gov.ua/laws/show/ru/474-2016-p#n9>

⁶⁷ EUDEL Ukraine. (2018). Call for Applications of Experts on Public Administration Reform. *Київ*, 12.04.2018. https://eeas.europa.eu/delegations/ukraine/42822/call-applications-experts-public-administration-reform_en

⁶⁸ Іванна Климпуш-Цинцадзе. (2017). Точка неповернення: Україна затвердила план свого зближення з ЄС [The Point of No Return: Ukraine has approved a plan for its rapprochement with the EU]. *Європейська правда*, 26 жовтня 2017. <http://www.eurointegration.com.ua/articles/2017/10/26/7072791>.

⁶⁹ Кабінет Міністрів України. (2018). Уряд і Парламент схвалили Дорожню карту виконання Угоди про асоціацію з ЄС [The Government and Parliament approved the Roadmap for the implementation of the Association Agreement with the EU]. *Кабінет Міністрів України*, 28.02.2018. <https://www.kmu.gov.ua/ua/news/uryad-i-parlament-shvalili-dorozhnyu-kartu-vikonannya-ugodi-pro-asociaciyu-z-yes>

within the next two years⁷⁰, with some of them being already under consideration in parliamentary committees) as well as introducing five policy innovations, three of which are of direct importance for the agreement's effective implementation. Firstly, it set out the monitoring mechanism for regular quarterly progress checks of the EU-Ukraine Association Agreement implementation. Secondly, the Roadmap defined the timeline and scope (418 legislative acts on trade and trade-related matters, as well as economic and sectoral cooperation) of the EU *acquis* translation into Ukrainian in 2017-2018. Thirdly, the Ukrainian Government finally adopted the Association Agreement communication strategy that will enhance the visibility of the implementation process and communicate the benefits for Ukrainian citizens, business, and other stakeholders.

By 26 March 2018, just one month after the adoption of the Roadmap, the Verkhovna Rada adopted in total 3 bills and passed further 7 as a basis⁷¹, thus targeting the first ten pieces of legislation out of the 57 programmed in the Roadmap. This is extremely important for the adoption of further national implementational law and non-legislative acts which enhance the practices of everyday policy implementation.

For the year 2018, in total 35 draft laws, spanning fifteen policy areas have been identified by the Cabinet of Ministers of Ukraine as urgent pieces of legislation that need to be considered by the Parliament⁷². This list of draft legislation covers the areas of regulation in technical barriers to trade; sanitary and phytosanitary measures; customs reform; intellectual property; deregulation; company activities, corporate governance, accounting and auditing; establishment of business, e-commerce and trade in services; taxation; statistics; competition; energy; environment; social policy; public health, and cross-border cooperation.

Six of the government-programmed 35 legislative acts for 2018 may present a real challenge⁷³ for the Verkhovna Rada, including the laws regulating the technical barriers to trade; food safety (organic foods); customs reform; economic competition; public health (organ transplantation); and transportation, which is now the least approximated sector of the EU-Ukraine association.

Importantly, the government's increased implementation monitoring effort shall be unequivocally complemented by systematic and holistic policy evaluation mechanisms.

3.3.3. Domestic policymaking cycle, legislative development and the quality of legislation

The overall problem with Ukraine's low law enforcement effectiveness is directly informed by the inception stages of policymaking and legislation. As a matter of fact, the *policymaking cycle* in

⁷⁰ Кабінет Міністрів України. (2018). Дорожня карта законодавчого забезпечення виконання Угоди про асоціацію між Україною та ЄС [Roadmap of the legislative provision of the Association Agreement between Ukraine and the EU]. Кабінет Міністрів України, 28.02.2018. <https://www.kmu.gov.ua/ua/diyalnist/yevropejska-integraciya/nablizhennya-zakonodavstva-ukrayini-do-prava-yes/dorozhnya-karta-zakonodavchogo-zabezpechennya-vikonannya-ugodi-pro-asociaciyu-mizh-ukrayinoyu-ta-yes>.

⁷¹ Парламент ухвалив 10 законопроектів з "євроінтеграційної" Дорожньої карти... [Parliament has approved 10 bills on the "Euro-integration" Roadmap...]. Євроінтеграційний портал, 26.03.2018. <https://eu-ua.org/novyny/parlament-uhvalyv-10-zakonoproektiv-z-yevrointegraciyanoi-dorozhnoyi-karty-vice-premyer>

⁷² Кабінет Міністрів України. (2018). Законопроекти у сфері європейської інтеграції України, які потребують невідкладного розгляду Верховною Радою України [Bills on European Integration of Ukraine, which require urgent consideration by the Verkhovna Rada of Ukraine]. <https://www.kmu.gov.ua/ua/diyalnist/yevropejska-integraciya/nablizhennya-zakonodavstva-ukrayini-do-prava-yes/zakonoproekti-u-sferi-yevropejskoyi-integraciyi-ukrayini-yaki-potrebuyut-nevidkladnogo-rozglyadu-verhovnoyu-radoyu-ukrayini>

⁷³ Любов Акуленко, Світлана Майструк. (2018). Топ-6 євроінтеграційних завдань для Ради: проблемні місця у виконанні Угоди [Top 6 European Integration Tasks for the Council: Problems in the implementation of the Agreement]. Європейська правда, 26.02.2018. <https://www.eurointegration.com.ua/articles/2018/02/26/7078012/>.

Ukraine significantly differs from that of European participatory democracies: it lacks the essential instrument of public policy – public consultations and research-informed decision-making.

It would be just a little exaggeration to contend none of the Ukrainian governments has ever conducted a due public consultation or analytical enquiry (including the one that can be outsourced to domestic and foreign think tanks – a common practice in democracies) before actual decision-making on a policy. The 2013/14 Revolution of Dignity has created favourable condition to correct this policymaking style – and engage in public consultations on at least strategic policy directions, a long overdue endeavour⁷⁴. Launching of the governmental 'White Books' (or 'White Papers') on key policy areas shall vividly stimulate the discussions on public policy with the public and other stakeholders. In addition to that, an expert-analytical support, as a systemic element in Ukraine's evolving policymaking cycle⁷⁵, will be needed to enhance the quality of legislation and regulation in general and on the matters of Ukraine's European integration in particular.

Regrettably, the draft law 'On Public Consultation'⁷⁶ no.7453 of 27.12.2017 was not tabled for parliamentary voting, as earlier expected, and – after a failed deliberation within the specialized parliamentary Committee on 21 March 2018 – is now again pending refinement. Once and if adopted, the bill will oblige officials (both people's deputies and the Cabinet of Ministers as well as central executive bodies of Ukraine) to consult with citizens before making decisions. Allegedly, the draft law was blocked because of 'additional workload'⁷⁷ it would create for the Ukrainian parliamentarians.

On the other hand, the domestic peculiarities of the legislative process and the quality of legislation in Ukraine a such provide a special concern in the context of EU-Ukraine legislative approximation, which in fact means vast pieces of new legislation. This has quite direct repercussions for the intensity and the quality of legislation in Ukraine. For the last three years, the Ukrainian parliament's apparatus registered a little more than (*sic!*) 6217 legislative initiatives, which in terms of a daily distribution would result into about 6 pieces of new legislation registered with the parliament every working day – thus giving all reasons to assume that 'the Verkhovna Rada is being spammed'⁷⁸. Partly, the intensive schedule of legislative approximation under the EU-Ukraine AA has to be seen responsible for that; but for the most part, such a 'legislative spamming' has proven to be a long-standing 'tradition' of the parliamentary abuse of legislative initiative in Ukraine⁷⁹. By contrast, the governmental legislative initiative appears to be underused. This comes across as particularly troublesome in the context of the ongoing legislation on the EU-Ukraine association, where both the Cabinet of Ministers' legislation initiation and legislation expert-check for EU law-conformity would be crucial⁸⁰. The deputy head of the parliamentary European integration Committee, Mariia

⁷⁴ Sushko, Oleksandr. (2015). Reforming Ukraine: Policymaking after Euromaidan. *PONARS Eurasia Policy Memo, no. 409* (December 2015); Ukraine Calling: 'We Need to Change the Decision Making Process in Ukraine' - Serhiy Kvit. *Hromadske Radio*, 25.11.2017. <https://hromadskeradio.org/en/programs/ukraine-calling/we-need-to-change-the-decision-making-process-in-ukraine-serhiy-kvit>

⁷⁵ Експертно-аналітичний супровід законотворчого процесу в європейському Союзі [Expert and analytical support to the lawmaking process in the European Union]. *Часопис ПАРЛАМЕНТ*, 1/2016: 6-26.

⁷⁶ Draft Law on Public Consultation No.7453 of 27.12.2017. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63237

⁷⁷ Тимошук, Віктор. (2018). Чому депутати і президент проти відкритості [Why are deputies and the president against openness]? *Українська правда*, 06.04.2018. <https://www.pravda.com.ua/columns/2018/04/6/7176871/>

⁷⁸ Надельнюк, Олександр. (2018). Заспамлена Рада: Чому український парламент чемпіон світу по кількості законопроектів [A Spammed Verkhovna Rada: Why the Ukrainian Parliament is the world champion on the number of bills]. *Українська правда*, 22.03.2018. <https://www.pravda.com.ua/articles/2018/03/22/7175396/>

⁷⁹ Афанасьєва, М. (2016). Зловживання правом на правотворчість [Abuse of the right to law-making]. *Юридичний вісник*, 2016/2: 26-34.

⁸⁰ Євроінтеграційні закони: Геращенко обурена "профанацією" [Eurointegration laws: Gerashchenko is outraged by "profanation"]. *Новини Укрінформ*, 23.02.2018. <https://www.ukrinform.ua/rubric-politics/2409175-evrointegracijni-zakoni-gerashchenko-oburena-profanacieu.html>.

Ionova, even suggested that all bills aimed at implementing the Association Agreement and harmonization of the Ukrainian legislation with the EU *acquis* 'should be developed solely by the Government and submitted to the Parliament for consideration and adoption', which 'is also confirmed by the experience of the EU member states' to be a usual legislative practice⁸¹.

Potentially, such measures should help avoid adopting bills of poor quality in the first place and adopting bills whose norms would collide with the EU law⁸². Finally, the 'filtering' of the new draft legislation on the EU-Ukraine association at the stage of initiation (be it by the Government or the President of Ukraine) should help reduce the term for its consideration (currently, two years, on average) to at least one year⁸³. This presents itself as a worthwhile effort given that in 2018 alone, the Ukrainian Parliament needs to adopt 22 pieces of legislation foreseen under the EU-Ukraine AA implementation schedule.

Last but not least importantly, a rather poor legislative development translates i.a. into 'the questionable quality of the normative and regulatory content of the Ukrainian legislation'⁸⁴. Whereas 'laws without teeth'⁸⁵ is a common parlance in the legal discourse on Ukrainian legislation, this problem features in a new light in the context of *effective* implementation of the EU-Ukraine Association Agreement. Both the quality of the normative and regulatory content of the legislation and the need for consistent practices of its application make the changes in the legislative process some of the most pressing ones. Currently, 'there is much talk about the necessity of consistent judicial practice; however, nearly 90% in heterogeneity of this practice are to be associated with the lacking stability of law, that is legal certainty, and the legislative stipulations that are oftentimes are far from being unambiguous'⁸⁶.

Along the aforementioned lines, the effective implementation of the EU-Ukraine association *acquis* would necessitate substantive rebooting of the entire national legislative development process 'from end to end'⁸⁷. This is an area for the EU's higher engagement in order to support the current effort by the European Parliament ('*Pat Cox Roadmap*'⁸⁸) with further expertise and best-practices sharing initiatives, including the inter-parliamentary dialogue on the matters at stake.

⁸¹ Mariia Ionova, *Facebook* post, 28.02.2018. Mariia Ionova is Deputy Head (and Acting Head) of the Parliamentary Committee on European Integration in the Verkhovna Rada of Ukraine.

⁸² Відповідність законів асоціації з ЄС: Раді пропонують внести зміни до Регламенту [Conformity of the legislation with the association *acquis*: The Verkhovna Rada is proposing to amend its Rules of Procedure]. *Новини Укрінформ*, 13.02.2018. <https://www.ukrinform.ua/rubric-polytics/2402160-vidpovidnist-zakoniv-asociacii-z-es-radi-proponuut-vnesti-zmini-do-reglamentu.html>

⁸³ Рада цьогоріч має ухвалити 22 євроінтеграційні закони – експерт [This year, the council will have to adopt 22 euro-integration laws - an expert]. *Ukrinform*, 13.02.2018. <https://www.ukrinform.ua/rubric-polytics/2402066-rada-cogoric-mae-uhvaliti-22-evrointegracijni-zakoni-ekspert.html>

⁸⁴ Interview with Oksana Holovko-Havrysheva. *Lviv*, 25.02.2018.

⁸⁵ Markovskaya, A., Pridemore, W. A., & Nakajima, C. (2003). Laws without teeth: An overview of the problems associated with corruption in Ukraine. *Crime, Law and Social Change*, 39(2): 193-213.

⁸⁶ Interview with Valentyna Shchepotkina. *Kyiv*, 27.03.2018 (recorded by K. Pryshchepa).

⁸⁷ Заславський, Олександр, Олександр Хоруженко. (2017). *Концепція законодавчого процесу «від початку до кінця» [The concept of the legislative process "from start to finish"]* (Policy Paper). Київ: Лабораторія законодавчих ініціатив.

⁸⁸ European Parliament. (2016). Report and Roadmap on internal reform and capacity-building for the Verkhovna Rada of Ukraine. *European Parliament's Needs Assessment Mission to the Verkhovna Rada of Ukraine led by Pat Cox, President of the European Parliament 2002-2004* (September 2015 – February 2016). <http://www.europarl.europa.eu/resources/library/media/20160229RES16408/20160229RES16408.pdf>. Cf also: Švedas, Gintaras. (2016). Legislative Development Process. *EuropeAid/134175/L/ACT/UA No 2013/328-160 Project 'Support to Justice Sector Reforms in Ukraine'* (May-November 2016).

3.3.4. Political communication, populism and disinformation

The rise of populism across the countries in the region but also further afield, as, for instance, in the Middle East or across the Atlantic Ocean, i.e. in Latin or North America, complicates smooth operation of strategic communication between states and citizens nearly everywhere. In Ukraine, inasmuch as in many European countries⁸⁹, this disturbing factor is even further amplified by the state-sponsored disinformation and propaganda but also very narrative warfare campaigns originating from the Kremlin⁹⁰. Together with the temporarily annexed Crimea peninsula, Russia's fourth-year lasting hybrid military incursion into Ukraine's eastern region of Donbas and its more widespread political and economic warfare on a whole-of-government and a whole-of-society scale, evidently disturb strategic communications and the very search for transitional justice in a post-revolutionary Ukraine. Contested – and oftentimes externally-distorted – narratives and the 'vacuum of main message' be it on Ukraine's domestic regime change or foreign policy orientation easily become the arena of competition for political elite or counter-elite representatives that 'use sensational language' and 'claim they represent the people' – i.e. populists⁹¹. The situation with the protests in Ukraine following the deportation, in February 2018, of opposition leader '[Mikheil] Saakashvili, the populist megastar'⁹², to Poland clearly illustrates the case. Another example of Ukrainian politicians 'learning to embrace populism'⁹³ can be the controversial 'Buy Ukrainian' draft bill no.7206, adopted by the Ukrainian Parliament in the first reading on 7 December 2017⁹⁴, which clearly violates fair competition and equal access to public procurement tenders, as stipulated in the EU-Ukraine AA. It has to be emphasized in this regard that a recourse to populist-style discourses is not a rarely or individually occurring phenomenon, but a much more frequent (everyday) business in Ukraine's public and political discourses, as the newly launched *VoxUkraine's* ranking of Ukrainian populists and public opinion manipulators suggests⁹⁵. In view of the upcoming presidential (31 March 2019) and later on parliamentary elections in Ukraine in 2019, this factor will expectedly become more pronounced, thus inhibiting state-society feedback and communication.

It is noteworthy that on 25 April 2018, Ukraine's Government approved an action plan for 2018 on the implementation of the *Communication Strategy in the field of European integration for 2018-2021*, developed by the State Committee for Television and Radio Broadcasting⁹⁶. The main objective of

⁸⁹ European Parliament. (2018). Russia - the influence of propaganda on EU countries. *European Parliament Debates*, Strasbourg, 17.01.2018. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20180117+ITEM-016+DOC+XML+V0//EN&language=EN>. Cf. also the EP's earlier report on hostile foreign disinformation activities against the EU and its member states (aka *Fotyga Report*): European Parliament. (2016). Report on EU strategic communication to counteract propaganda against it by third parties (2016/2030(INI)). *EP AFET*, Strasbourg, 14.10.2016. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0290+0+DOC+XML+V0//EN>

⁹⁰ Rogers, James, and Andriy Tyushka. (2017). 'Hacking' into the West: Russia's 'anti-hegemonic' drive and the strategic narrative offensive. *Defence Strategic Communications*, 2 (Spring 2017): 35-60.

⁹¹ Ukraine Calling. They Claim They Represent THE PEOPLE – Olga Onuch on Ukraine's populists. *Hromadske Radio*, 16.02.2018. <https://hromadskeradio.org/programs/ukraine-calling/onuch>

⁹² Ibid.

⁹³ Півторак, Олексій, Олена Воронова. (2018). "Купуй українське": вітчизняні політики вчатья популізму ["Buy Ukrainian": domestic politicians learn populism]. *Економічна правда*, 01.02.2018. <https://www.epravda.com.ua/columns/2018/02/1/633604/>

⁹⁴ Draft Law 'Buy Ukrainian, pay Ukrainians' No. 7206 of 17.10.2017. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62736

⁹⁵ VoxUkraine. (2018). Теорія брехні. Перший рейтинг популістів і брехунів в українській політиці від VoxUkraine [The theory of lies. The first rating of populists and liars in Ukrainian politics from VoxUkraine]. <https://voxukraine.org/longreads/lie-theory/index-ua.html>

⁹⁶ Кабінет Міністрів України. (2018). Про затвердження плану заходів на 2018 рік з реалізації Стратегії комунікації у сфері європейської інтеграції на 2018—2021 роки [On Approval of the Action Plan for 2018 on the Implementation of the Strategy of Communication in the Sphere of European Integration for 2018-2021]. *Розпорядження КМУ від 25 квітня 2018 р. No 272-р*. <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-plan>

the action plan is to increase the level of support of Ukrainian citizens for state policy in the field of European integration, including the integration-oriented reforms. Subsequently, the plan provides for the holding of a series of information campaigns on Ukraine's European integration matters to build citizens' awareness of business, educational and scientific policy preferences and opportunities, as well as to support the cultural development. This is certainly an important step in promoting reforms related to Ukraine's European integration, not least in the context of EU-Ukraine association *acquis* implementation.

Moreover, this is quite a novel step in Ukraine's public institutions' communication policy vis-à-vis the citizenry: up to now, such an instrument was essentially missing; the problematic access to public data and its transparency⁹⁷ had been other reasons for a sub-optimal state of affairs in strategic communications in Ukraine since the country regained its independence. Admittedly, the situation with open access data in Ukraine is improving as the law 'On access to public information' no.2939-17 of 13.01.2011, with amendments of 09.04.2015, obliges all Ukrainian public authorities to publish their data in open access on the data.gov.ua web portal. For instance, in 2017, Ukraine's economy received USD 700 million from the use of open data released by state authorities. The experts estimate that, if the government increases its efforts in opening data, then in 2025, such savings could increase to USD 1.4 billion, or 0.92% of GDP⁹⁸.

In overall, a successful EU-Ukraine AA implementation campaign necessarily should include a two-way communication policy component. The strengthening of the government's policy communication to the Ukrainian citizenry shall proceed with a simultaneous reception of the popular feedback by the government, including in the context of think-tanks' or the EU-Ukraine Civil Society Platform's expert policy evaluations in the field of Ukraine's European integration⁹⁹. The EU supports the effort of the Ukrainian state authorities in boosting its communicative power vis-à-vis both domestic audiences but also external partners (including the EU itself!). In support of the reforms communication activities (which are no less important than the reforms themselves), the European Union Advisory Mission to Ukraine (EUAM) held in 2017 a series of trainings in strategic communications for Ukraine's public officers from various state institutions (in total 604 persons), as shown on *Figure 1* below:

⁹⁷ Ситуація зі збором даних в Україні критична [The situation with data collection in Ukraine is critical]. *Інтерв'ю з Романом Кульчинським*, *TEXTY.org.ua*, Київ, 2018, think twice UA. http://thinktwiceua.org/wp-content/uploads/Interview_Kulchynskiy_Final.pdf

⁹⁸ Некрасов, Всеволод. (2018). Мільярд доларів за дату: як Україна перетворює відкриті дані на гроші [Billion dollars in exchange for data: how Ukraine turns open data into money]. *Економічна правда*, 25.04.2018. <https://www.epravda.com.ua/publications/2018/04/25/636355/>

⁹⁹ EU-Ukraine Civil Society Platform. (2018). Joint Declaration following the 6th meeting of the EU-Ukraine Civil Society Platform. *Brussels*, 12 April 2018. <https://drive.google.com/file/d/11fkmbm-e7Nn2IPVgubQ4vNMIWdDA7-ze/view>

Figure 1: EUAM StratCom Trainings for Ukrainian public officials in 2017



Source: EUAM Ukraine (@EUAM_Ukraine) *Twitter* post, 22.02.2018

Furthermore, in March 2018, the EU Delegation in Ukraine launched an all-Ukrainian communication campaign 'Moving Forward Together', designed 'to increase awareness with Ukrainian audiences about the benefits and opportunities of EU-Ukraine cooperation'¹⁰⁰. Symptomatically, whereas the EU has pledged over EUR 12 billion for Ukraine in the last three years, 77% of Ukrainians were largely unaware of EU programs and activities in Ukraine as of the end-2017¹⁰¹. Thus, the newly launched campaign will seek to communicate positive aspects of EU-Ukraine association in general and the actual developments in individual projects (such as *EU4Business*, *EU4Energy*, *EU4Youth*, or *Horizon 2020*, etc.), thus furthering the EU-Ukraine gradual rapprochement and integration objectives, as set out in the EU-Ukraine AA. Both better communication of benefits from the EU-Ukraine cooperation – against the backdrop of Ukraine's partial loss of territory and that of a traditional trade partner (Russia) – as well as the rationale and progress of the ongoing reforms shall help consolidate societal resilience and pro-European policy support in view of the upcoming 2019 elections. Moreover, Ukraine's boosted communication with European partners on both strategic foreign policy goals and domestic reforms will help consolidate the European elites and EU decision-makers' consensus on the European Union's Ukraine policy in a mid-term to long-term perspective.

3.3.5. Law application and law enforcement

With Ukraine's legislative approximation proceeding rather on a good (though not ideal) pace, 'the regulatory approximation – including first and foremost the practices of law application and law enforcement – present a real quagmire for Ukrainian legal and political system'¹⁰². The challenging law application and law enforcement situation in Ukraine is conditioned by both a rather ill-suited institutional capability and the uncondusive socio-legal culture, as discussed earlier in the report. Instances and examples of sub-optimal law application and law enforcement practices vary from

¹⁰⁰ Delegation of the European Union to Ukraine. (2018). EU Delegation Launches All-Ukrainian "Moving Forward Together" Communication Campaign. *European External Action Service – The Delegation of the European Union to Ukraine*, Kyiv, 12.03.2018. https://eeas.europa.eu/delegations/ukraine/41139/node/41139_en

¹⁰¹ Ibid.

¹⁰² Interview with Oksana Holovko-Havrysheva. *Lviv*, 25.02.2018.

unaware to intentional misapplication of the law or from weak to abusive (politically motivated) law enforcement practices. Rather often than not, such opportunities present themselves 'due to the low quality of legislation and regulation in Ukraine'¹⁰³.

An example, for instance, can be Ukraine's draft law 'On packaging and packaging waste' (no.4028-n registered on 5.02.2016)¹⁰⁴, developed to transpose the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste. Aimed at harmonizing Ukrainian legislation in the field of handling packaging and its waste with the legislation of the European Union, including by way of establishing the legal basis for the introduction of a system for separate collection, integrated recycling and utilization of packaging waste in Ukraine, the tabled draft bill generally complies with the formal requirements of the EU Directive. However, it contains stipulations which 'may in fact lead to the evasion of packaging producers from fulfilling their obligation to assemble, reprocess and utilize it'¹⁰⁵. The expert analysis of the legislation proposed reveals that, for instance, 'Article 8 of the draft law no.4028-n defines a five-year plan for recycling and packaging waste management, which, in turn, may imply that the 'producer of goods in packaging' would be required to dispose of 35% of packaging waste from paper and cardboard (including 30% recycling) in the first year of this law being in effect. However, the proposed draft law does not contain a clear mechanism for monitoring and checking the information provided about the volumes used by the packaging manufacturer'¹⁰⁶. Consequently, if only the information provided by producers is used in such calculations, then a significant number of them may take advantage of this opportunity to provide 'underestimated' indicators, thus undermining the very goal and rationale of the bill and the EU Directive it draws on. The quality of the EU-Ukraine association *acquis* transposing legislation should therefore aim more at creating effective regulatory mechanisms than simply 'literally' repeating the norms of European law in question.

Yet another aspect of challenging application of law in Ukraine, especially as regards the EU-Ukraine association *acquis* that immensely draws on the principles and norms of EU law, is the EU law-conform interpretation of the approximated legislation. Both the linguistic (i.e. translation of EU *acquis* into Ukrainian language¹⁰⁷) and the institutional capability-borne (i.e. a knowledgeable application of EU-originated norms and principles) components are to be taken into consideration for EU's support in enhancing the law application and law enforcement practices in Ukraine.

¹⁰³ Ibid.

¹⁰⁴ Draft Law 'On Packaging and Packaging Waste' No. 4028 of 05.02.2016. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58083

¹⁰⁵ Ткаченко, Руслан. (2016). Як позбутися відходів упаковки? Чому прийняти нормативи ЄС недостатньо [How to get rid of packaging waste? Why accept EU norms is not enough]. *Європейська правда*, 27.04.2016. <https://www.eurointegration.com.ua/experts/2016/04/27/7048074/>

¹⁰⁶ Ibid.

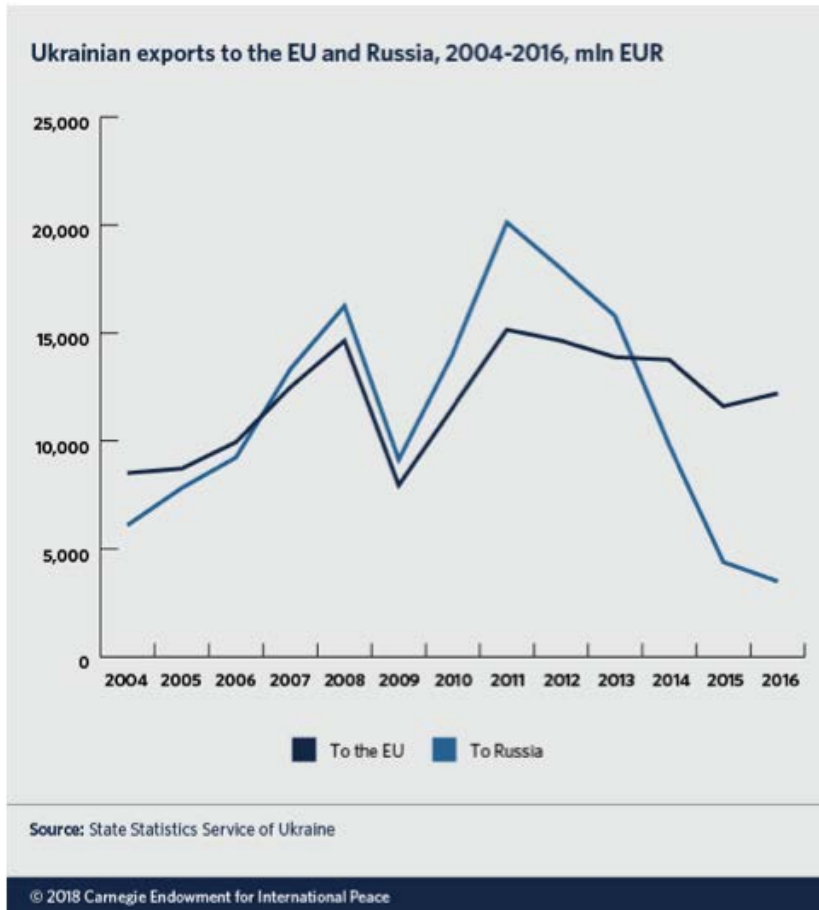
¹⁰⁷ Following the Resolution of the Cabinet of Ministers of Ukraine dated May 31, 2017, No 512, the government has launched a comprehensive campaign in translation of the EU *acquis communautaire*, cf.: Кабінет Міністрів України. (2017). Переклади актів *acquis* ЄС. <https://www.kmu.gov.ua/ua/diyalnist/yevropejska-integraciya/perekladi-aktiv-acquis-yes>. The first 15 officially approved and published translations of the acts of the EU *acquis* related to the fulfillment of Ukraine's obligations in the field of European integration were carried out under the aegis of the EU-funded project 'Support for the implementation of the Agreement on an Association between Ukraine and the EU' (*Association4U*), cf. for the list of normative acts: Переклади актів Європейського Союзу *acquis communautaire*. *Євроінтеграційний портал*, 20.12.2017. <https://www.eu-ua.org/pereklady-aktiv-acquis-communautaire-yes/>.

4. DCFTA implementation

The deep and comprehensive free trade area, which pursuant to Article 25 EU-Ukraine AA has to be established over a transitional period of a maximum of 10 years, starting from the entry into force of the Association Agreement's DCFTA component, i.e. 1 January 2016, will eventually result in the elimination of customs duties, fees and other charges, export subsidies and equivalent measures, other technical barriers to trade, as well as non-tariff measures. A 'standstill' clause, as stipulated in Article 30 EU-Ukraine AA, will prevent any deliberation on the part of either the European Union or Ukraine as regards introducing any new customs duty or increasing an existing one, even if this is the case for a party's trade with non-DCFTA partners.

4.1. Ukraine's recent economic development and EU-Ukraine trade dynamics

Figure 2: Ukrainian exports to the EU and Russia, 2004-2016



For the past four years, Ukraine's economy has not only stabilized but has also shown some signs of improvement. Since the start of Russian aggression in Crimea and Ukraine's east, the country lost not only part of its sovereign territory, but also control over its coal and iron, as well as its heavy industries region, Donbas. In addition, Ukraine has lost a traditionally important trading partner, Russia (cf. *Figure 2*). These losses were most striking in the first two years of the EU-Ukraine AA implementation, 2014-2015, adding to the already serious challenges of macro-economic stabilisation and transformation. As a result, the year 2015 marked the steepest fall in Ukraine's GDP.

Source: Popescu 2018¹⁰⁸

With Ukraine's trade flow reoriented more to the European market and with the EU becoming Ukraine's most important trade partner since 2016, some modest GDP growth of about 2% has been noted in the country. This progress was maintained in the following years. According to the Cabinet

¹⁰⁸ Popescu, Nicu. (2018). Why Georgia's Lessons for Russia Don't Apply in Ukraine. *Carnegie Moscow*, 13.02.2018. <http://carnegie.ru/commentary/75483>

of Ministers, the budget forecast for the year 2018 is 3% of positive economic growth, with Ukraine being regarded as 'well positioned to achieve more than 5% of GDP growth in 2019'¹⁰⁹.

Thus, whereas economic growth has recovered after its deepest crisis in 2015, it seems to have settled at a growth rate of only 2-3% only. This is paradoxical in that it may be cast either as an achievement or as a failure: given that that the country is currently at war, including a trade war, with its traditional trading partner, Russia, a figure of 3% growth is encouraging; on the other hand, Ukrainian citizens who had high expectations of economic development following the 2013-14 Revolution of Dignity will see these figures as a cruel disappointment. It also needs to be assessed against the background of the overall changes in the structure of Ukraine's economy due to the war and foreign policy changes. With agricultural raw materials or raw materials from mining featuring as the main exports, the need is to convert the current economic growth and moderate financial stabilization into a revival of Ukraine's industrial sector and creative industries.

The Deep and Comprehensive Free Trade Area (DCFTA) under the EU-Ukraine Association Agreement provides a solid basis for Ukraine's economic development and modernization. Officially operational from 1 January 2016, the DCFTA between the EU and Ukraine has been *de facto* in force – for Ukrainian exporters – since April 2014, when the EU Council reduced or abolished customs tariffs for Ukrainian goods unilaterally under the so-called Autonomous Trade Preferences (ATPs) regime. With the entry into force of the DCFTA part of the EU-Ukraine Association Agreement in January 2016, the ATPs have been replaced by the treaty provisions on free trade. Thus, the key change that has taken place since January 2016 is a reduction in Ukraine's import duties on goods exported from the European Union.

In contrast to the negative indicators of Ukraine's foreign trade balance, trade with the European Union (both exports and imports) in 2016 – the first year of DCFTA operation – showed positive developments. This was the year where the European Union finally established itself as Ukraine's main trading partner. The export of goods to the European Union grew by 2.4% over the relevant period and grew to 37.3% of total exports¹¹⁰. Imports grew at an even higher pace – 7.9% – and reached 43.8% of Ukrainian imports¹¹¹. Thus, taking into account imports, total trade between Ukraine and the EU has increased by 8.1 percent in 2016.

This trend continued in 2017. Ukrainian exports to the EU increased by 30.4% and reached a record high of USD17.5 billion, the highest figure since 2012, predating the occupation of Ukrainian territory¹¹². In the structure of exports from Ukraine to the EU, about a third (32.2%) is composed of agricultural products and food industry output, followed by products in the metallurgical sector (21.4%), machine building (15.3%), mineral products (13%), and wood and paper mass (5.4%)¹¹³.

In the first quarter of 2018, EU-Ukraine bilateral trade further increased by 27%¹¹⁴, a source of satisfaction for both partners, as Ukraine's Deputy Economy and Trade Minister and Trade

¹⁰⁹ Офіс реформ Кабінету Міністрів України представив звіт "Reforms in Ukraine: Progress in 2017 & Priorities for 2018". <http://fsr.org.ua/promo/ofis-reform-kabinetu-ministriv-ukrayiny-predstavyyv-zvit-reforms-ukraine-progress-2017>

¹¹⁰ At the same time, Ukrainian exports to Russia decreased by 28.5%, represented only 9.9% of the total exports.

¹¹¹ Delegation of the European Union to Ukraine, 2017. Latest statistics: Ukraine's trade with the EU boosted by the first full year of the Association Agreement. 22.02.2017. https://eeas.europa.eu/delegations/ukraine/21194/latest-statistics-ukraines-trade-eu-boosted-first-full-year-association-agreement_en

¹¹² Мовчан, Вероніка. (2018). Експорт спростовує міфи: що показала торгівля України з ЄС у 2017 році [Export refutes the myths: that showed Ukraine's trade with the EU in 2017]. *Європейська правда*, 13.03.2018. <https://www.eurointegration.com.ua/articles/2018/03/13/7078607/>

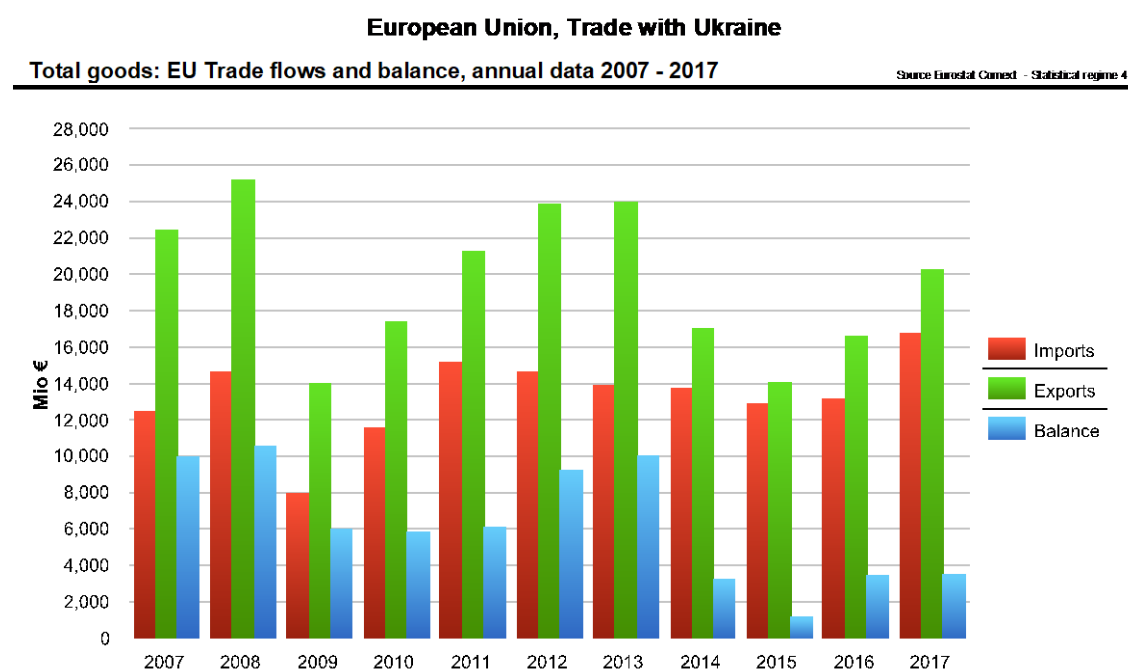
¹¹³ Nataliya Mykolska, Facebook post, 20.10.2017. Nataliya Mykolska is Ukraine's Deputy Economy and Trade Minister.

¹¹⁴ Державна служба статистики України. Зовнішня торгівля України товарами у січні-лютому 2018 року (136/0/08.2вн-18, 16.04.2018) [State Statistics Service of Ukraine – Foreign trade of Ukraine goods in January-February 2018]. https://drive.google.com/file/d/1CvuHuPuYNPxh161KYof1QjuRzPpFW8_1/view.

Representative, Natalia Mykolska, confirmed after meeting with European Commissioner for Trade, Cecilia Malmström, on 23 April 2018¹¹⁵. In January-February 2018, the volume of export in goods from Ukrainian producers to EU countries exceeded the volume of imports, as evidenced by data from the State Statistics Service of Ukraine (*UkrStat*)¹¹⁶. Thus, Ukraine's trade balance with the EU has been positive for the first time and amounts to USD15.7 million.

Exports in the agro-industrial sector feature most prominently in Ukraine's trade with the European Union. In the first two months of 2018, Ukraine's agriculture exports to the EU have increased by almost 30 percent, according to the Ministry of Agrarian Policy of Ukraine (*Minagroprom*)¹¹⁷. With Ukraine's agricultural export revenue of USD2.8 billion (quite a salient share in Ukraine's USD3.7 billion overall trade turnover!), the EU accounts for 36.5 percent of Ukrainian agricultural exports, or USD1.025 billion¹¹⁸.

Figure 3: EU-Ukraine trade in goods, 2007-2017



Source: European Commission 2018¹¹⁹.

In turn, Ukraine accounts for 0.9 per cent of EU's total trade, but the annual growth rate in 2016-2017 made up 22 per cent for the EU's export to Ukraine and 27.2 per cent – for the European Union's imports from the country (except for the goods originating in Crimea and Sevastopol, whose import is banned by the EU in line with its non-recognition policy of Russia's annexation of the Crimea

¹¹⁵ Україна і ЄС задоволені зростанням двосторонньої торгівлі [Ukraine and the EU are satisfied with the growth of bilateral trade]. *Новини Укрінформ*, 23.04.2018. <https://www.ukrinform.ua/rubric-economy/2447137-ukraina-i-es-zadovoleni-zrostannam-dvostoronnoi-torgivli.html>

¹¹⁶ Op. cit., note 114.

¹¹⁷ Ministry of Agrarian Policy and Food of Ukraine (*MinAPiP*). За 2 місяці 2018 року український аграрний експорт сягнув майже \$3 млрд, – Ольга Трофімцева [In the 2 months of 2018, Ukrainian agrarian exports reached almost \$ 3 billion, – Olga Trofimtseva]. <http://minagro.gov.ua/uk/node/25618>

¹¹⁸ Ibid.

¹¹⁹ European Commission. (2018). European Union, Trade in Goods with Ukraine. *European Commission – Directorate-General for Trade (Units A4/G2)*, 16.04.2018. http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113459.pdf

peninsula)¹²⁰. In addition, the dynamics of total trade is increasingly positive: in January-August 2017 it increased by 27.1 per cent compared to the analogue period of the year 2016 (cf. *Figure 3* above).

Thus, bilateral EU-Ukraine trade has increased significantly in the period from early 2016 to early 2018. The EU has becoming Ukraine's no. 1 trade partner, replacing Russia. Ukraine's trade balance is currently improving, showing a modest surplus with the EU. This is expected to have a further stabilizing effect on Ukraine's economic growth and financial sustainability.

4.2. (Mutual) market access

The EU-Ukraine Association Agreement gives Ukraine a 'stake in the EU internal market'. While there is free trade in goods, the trade in services, and other market freedoms operate under special – constrained – regimes. And even for the implementation of the free trade in goods under the EU-Ukraine DCFTA, a number of market access and operation rules need to be observed. These include, along with some very business-friendly possibilities for exploring market opportunities, a number of tariff rates, technological standards, and non-tariff barriers to trade. These may be characterized as the EU itself seeking a balanced approach¹²¹. The EU-Ukraine Association Agreement also provides for the possibility of early review of the tariffs and tariff rate quotas, and the EU's unilateral practice of the past two years of increasing the quota for some products shows that the EU's internal market access is good for Ukraine. This increase in the bilateral trade is a result of the mutually eliminated customs duties and tariffs since the early 2016. This data indicating a progressive opening of the markets also suggests that the goal of the Association Agreement – the liberalization of free trade between the EU and Ukraine – is being successfully achieved, in spite of external (Russian military-political aggression and trade wars with Ukraine) and domestic disturbances (war-torn Donbas regions).

4.2.1. Ukraine's export promotion office and the deregulation reform

As Ukraine's exports to the EU have increased, it has become apparent that the benefits of this increase are not evenly shared across the business community. At the first stage of the DCFTA implementation in 2016, big businesses – rather than small and medium enterprises (SMEs) – proportionately showed a greater benefit from free trade with the EU. According to the survey, 23% of small businesses, 27% of medium-sized enterprises and 43% of large companies noted profits¹²². This points to the ability of larger businesses to seize the opportunities offered under the new regime. It also points to the need to support SMEs in exploring and exploiting the full potential of the EU-Ukraine DCFTA, including though state-run information and consultancy campaigns. According to the 'Dilova Dumka' poll¹²³, those supporting exclusively Western (European) economic integration increased from 14% in 1998 to 61% in 2017. Comparing this with the share of those who consider economic cooperation with Russia and the CIS countries as the priority, we see a precipitous fall from 42% in 1998 to 9% in 2017¹²⁴. In view of such a clear business re-orientation

¹²⁰ Ibid.

¹²¹ Hettne, Jörgen. (2017). Standards, Barriers to Trade and EU Internal Market Rules: Need for a Renewed Approach? *Legal Issues of Economic Integration* 44(4): 409–420.

¹²² Мовчан, Вероніка. (2016). Малий вперед. Що дав Україні перший рік вільної торгівлі з ЄС [A small way forward. What gave Ukraine the first year of free trade with the EU]. *Європеїська правда*, 28.12.2016. <http://www.euointegration.com.ua/articles/2016/12/28/7059528>

¹²³ 'Dilova Dumka' ['Business Thought'] poll has been regularly conducted by the Institute of Economic Research and Policy Consulting (IER) since 1998.

¹²⁴ Кузяків, Оксана. (2018). 20 років економічної інтеграції очима бізнесу [20 years of economic integration with the eyes of business]. *Дзеркало Тижня*, 02.03.2018. <https://dt.ua/macrolevel/20-rokiv-ekonomichnoyi-integraciyi-ochima-biznesu-270960.html>

from Russia to the European Union, there's a need to raise Ukrainian business awareness of the benefits of DCFTA, access to the EU's internal market and the related rules of operation.

Since 2015, the European Union's DCFTA Facilities for SMEs¹²⁵, operational in the context of all three new-generation AA/DCFTAs of the EU concluded with Ukraine, Georgia and Moldova, have been providing support to the associated countries' SMEs in exploring the market opportunities and tackling the challenges related to their national markets opening to the EU businesses.

In Ukraine, information and consultancy activity with regard to DCFTA implementation and EU internal market access is undertaken by a number of public and non-governmental bodies. These include the Export Promotion Centres at the regional branches of the Chamber of Commerce and Industry (CCI), such as, for instance, the 'Export-UA' Export Centre of Donetsk CCI¹²⁶; the Regional Business Support Centres, which are (being created with the support of the *EU4Business* EU program (15 planned in total; 2 already operating in Kyiv and Lviv); the Exporters' Support Centre at the Ukrainian Ministry of Foreign Affairs, created with the support of the EU Delegation in Ukraine¹²⁷; as well as the Export Promotion Office¹²⁸, created in autumn 2016 at the Ministry for Economic Development and Trade (MERT) with the support of Western NIS Enterprise Fund (WNISEF) and the 'Support Fund for Reforms in Ukraine' NGO. Under the Ukraine's Ministry of Agrarian Policy, the Centre for Supporting Agricultural Exports to the EU Countries¹²⁹ is fully operational.

Launched in late 2016 as a team project and non-governmental initiative, the *Export Promotion Office (EPO)*¹³⁰ – now a consulting body under the Ministry of Economic Development and Trade of Ukraine – facilitates access to foreign markets and attracts international attention to the opportunities offered by Ukrainian producers. In March 2018, the Government decided to establish before the end of the year, 'Ukraine's Export Promotion Office' on the basis of the existing EPO¹³¹. The established state agency will continue the work of the Export Promotion Office and constitutes a logical step to implementing systemic state support for Ukrainian exporters in accessing foreign markets, including the EU's internal market. This initiative appears even more important in the light of Ukraine's on-going dialogue with the European Parliament regarding the deepening of economic integration between the EU and Ukraine, as well as further increasing Ukraine's exports to the European Union's internal market¹³².

On the other hand, a significant progress in the business environment reform for the last two years has enabled entrepreneurship development in Ukraine. The improvement of the regulatory

¹²⁵ European Commission - Fact Sheet: The DCFTA Facilities for SMEs. Brussels, 21 May 2015. http://europa.eu/rapid/press-release_MEMO-15-5013_en.htm. The DCFTA Facility for SMEs will receive approximately €200 million of grants from the EU budget. This contribution is expected to unlock at least €2 billion of new investments by SMEs in the three countries, to be financed largely by new loans supported by the Facility.

¹²⁶ 'Export-UA' Export Centre Donetsk Chamber of Commerce and Industry. <http://export-ua.com/>

¹²⁷ It provides an opportunity for Ukrainian companies to contact the trade and economic department of the EU Delegation to Ukraine for advice and assistance.

¹²⁸ Офіс з просування експорту [Export Promotion Office, EPO]. <https://epo.org.ua>

¹²⁹ Центр підтримки експорту при Міністерстві аграрної політики та продовольства України [Export Support Center under the Ministry of Agrarian Policy and Food of Ukraine]. <http://www.agritrade-ukraine.com>

¹³⁰ Офіс з просування експорту [Export Promotion Office, EPO]. <https://epo.org.ua>.

¹³¹ Мінекономрозвитку. (2018). Уряд прийняв рішення про створення Державної установи "Офіс з просування експорту України [The Government has made a decision to establish the State Agency for the Promotion of Ukraine's Export Promotion Office]. Прес-служба Мінекономрозвитку, 28.03.2018. <http://www.me.gov.ua/News/Detail?lang=uk-UA&id=a0288493-c21b-4586-9be1-6fb42e8ef33d&title=UriadPriiniavRishenniaProStvorenniaDerzhavnoiUstanoviofisZProsvuvanniaEksportuUkraini>

¹³² Діалог з Європарламентом щодо розширення доступу українських компаній до ЄС триває [The Dialogue with the European Parliament on expanding the access of Ukrainian companies to the EU continues]. *Євроінтеграційний портал*, 21.03.2018. <https://eu-ua.org/novyny/dialog-z-yeuroparlamentom-shchodo-rozshyrennya-dostupu-ukrayinskykh-kompaniy-do-yes-tryvaye>

framework in the country, especially as regards the licencing practices, is also part of Ukraine's commitments under the EU-Ukraine Association Agreement (Art. 104 EU-Ukraine AA). The Deregulation Concept, developed by the Ministry for Economic Development and Trade of Ukraine, estimated in 2015 that, due to the unfavourable regulatory environment, Ukraine annually loses up to USD 30 billion. Ukraine's usually low rankings in the international ease of *Doing Business* index or *Index of Economic Freedom* confirmed the need for urgent and far-fetching reforms in this area. First, the Strategy for Sustainable Development 'Ukraine-2020', then the law on deregulation and the setup of the Better Regulation Delivery Office (BRDO) boosted the governmental effort in 2015. Remarkably, as of 2016, the level of regulatory quality was the only indicator of good governance that had improved since 2006: according to World Bank's *Worldwide Governance Indicators (WGI)*, Ukraine's regulatory quality improved by 0.09 points and scored -0.58 in 2016 – on the scale from -2.5 to +2.5 (cf. also *Annex 7*)¹³³.

4.2.2. Customs duties, technical barriers to trade (TBTs), and autonomous trade preferences (ATPs)

Articles 29 and 31 of the EU-Ukraine Association Agreement provide for the elimination of customs duties on import of goods originating of the other Party and any customs duties on export, respectively. Thereby, Ukraine shall have a transition period for the reduction of export duties as set out in the Annex I-D of the Association Agreement.

As early as April 2014, the EU abolished most of the duties for the newly associated country, under its Autonomous Trade Preferences (ATPs) for Ukraine¹³⁴. Without customs duties, it is now possible to trade with the EU in live animals, fish, cheese, nuts, most fruits, vegetables and oilseeds, confectionery, light industry goods, mechanical engineering products, among others. The EU abolished 82.2% of all customs duties on agricultural goods, 83.4% on food products, and 94.7% on industrial products. This resulted in a drop in the average tariff for Ukrainian exports to the EU from 7.6% to 0.5%. The annual value of this unilateral support measure for Ukraine was estimated by the European Commission at nearly EUR 500 million in tariff reductions, of which almost EUR 400 million accrued to the agricultural sector¹³⁵.

An important provision in this regard is that the unilateral measure did *not* require Ukraine to reduce or lift its customs duties for imports from the EU. It was not entirely without conditions however. Regarding legislative and regulatory approximation of customs regulations (Annex XV of the EU-Ukraine AA), Ukraine committed itself to bring its legislation into correspondence with the main four EU Regulations and two conventions in the relevant fields. Ukraine undertook to make these changes within three years of the Agreement entering into force¹³⁶. Secondly, Ukraine also made commitments of a general nature, as stipulated in Chapter 5 'Customs and Trade Facilitation' of the EU-Ukraine AA, to enhance the ongoing legal harmonization in the customs area with the improvement of business, policymaking (e.g., according to the EU's Customs Blueprints – a collection of best practice) as well as adopting law enforcement practices. Art. 76 of the EU-Ukraine AA stipulates, in particular, for achieving the stability and comprehensiveness of customs legislation.

¹³³ The World Bank. *The Worldwide Governance Indicators (WGI)*, accessed 15 April 2018. <http://info.worldbank.org/governance/wgi/index.aspx#home>

¹³⁴ European Commission. (2014). European Commission proposes temporary tariff cuts for Ukrainian exports to the EU. *Brussels, 11 March 2014*. http://europa.eu/rapid/press-release_IP-14-250_en.htm

¹³⁵ Ibid.

¹³⁶ Customs regulations: Overview of Ukraine's progress in implementation of Association Agreement with the EU. *BlogActiv.eu*, 28.02.2018. <https://ukraineoffice.blogactiv.eu/2018/02/28/customs-regulations-overview-of-ukraines-progress-in-implementation-of-association-agreement-with-eu/>

These commitments have not been honoured. The comprehensive changes to the Customs Code of Ukraine, which are necessary to implement the Union Customs Code (UCC)¹³⁷, have not, in the event, been adopted.

In this context, the still pending comprehensive changes to the Customs Code of Ukraine, which are necessary to implement the Union Customs Code (UCC)¹³⁸, do not allow to speak of successful implementation of Ukraine's commitments herein. The first draft law on the necessary amendments to Ukraine's Customs Code (No. 4777 of 3 June 2016) lapsed. The Ukrainian Government made a second attempt to pass the changes when it registered another draft law on the same matter (No. 7473 from 29 December 2017). Both laws are similar in their essential provisions and they comply with the UCC, as required¹³⁹.

The practices of Ukrainian customs valuation and control also need to be further improved. A precondition for foreign investment in Ukraine, the ongoing reform of the Ukrainian customs and state fiscal services also receives coordinated support from the EU Advisory Mission to Ukraine (EUAM), which has united the effort of international donors present and active in this field in Ukraine.

4.2.3. Tariff rate quotas (TRQs) and autonomous trade preferences (ATPs)

In addition to gradually lifting customs duties, or tariffs, in trade between the EU and Ukraine, the so-called tariff-rate quotas (TRQs) are part of the free trade arrangements within the EU-Ukraine AA framework¹⁴⁰. The TRQs are allocated for a specific volume of goods in each relevant goods category which can be exported from Ukraine to the European Union duty-free (i.e. under the EU's zero import duty policy). Where the volume of goods exceeds the quota, goods are levied at the higher level that was in force before the EU-Ukraine AA. TRQs do not impose any quantitative limits on Ukrainian exports to the EU and thus are non-discriminatory and do not obstruct the free trade regime, a crucial point that is often misinterpreted in public and policy discourses.

According to the Annex I-A (Appendix A) of the EU-Ukraine AA, there are 36 categories of goods to which the EU applies TRQs, in particular¹⁴¹:

- a range of products of animal origin: meat (beef, pork, sheep, poultry), eggs, milk, dairy and honey;
- products of vegetable origin: grains (wheat, barley, oats, maize), mushrooms, garlic, etc.;
- several types of ready-made food and other processed products, such as: sugar (and sugar products), grape and apple juice, sweetcorn, processed tomatoes, ethanol, cigarettes, among others.

The take-up of the tariff quotas is very uneven. Of the 36 product categories falling under the EU's TRQs in 2014, the tariff quotas for only six categories were fully utilized¹⁴², representing 17% of the total. In 2015, the equivalent figure was 9 TRQs, representing 25% of the total. This left 11 categories of goods only partially utilized, and 16 TRQs not used at all. There were many reasons for this, from

¹³⁷ Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0952>

¹³⁸ Ibid.

¹³⁹ Op. cit., note 136.

¹⁴⁰ The Annex I-A (Appendix A) of the EU-Ukraine AA lists the 36 groups of 'sensitive' products that are subject to the European Union's import TRQs. The Annex I-A (Appendix B) of the EU-Ukraine AA lists 3 groups of 'sensitive' products that are subject to Ukraine's import TRQs.

¹⁴¹ Movchan, Veronika, Iryna Kosse, Ricardo Giucci. (2015). EU Tariff Rate Quotas on Imports from Ukraine. *Policy Briefing Series* [PB/06/2015], Berlin/Kyiv, June 2015: Institute for Economic Research and Policy Consulting & German Advisory Group. https://www.beratergruppe-ukraine.de/wordpress/wp-content/uploads/2014/06/PB_06_2015_en.pdf

¹⁴² Ibid.

Ukraine's insufficient domestic production or export to other destinations, missing trade partners or a low demand in the EU (high business competition), to health safety standards and sanitary and phytosanitary (SPS) measures not being successfully met. As regards this last category, the TRQ take-up reflects Ukraine's actual progress in approximating its legislative and regulatory framework on sanitary and phytosanitary (SPS) measures with that of the European Union. Recognising the evolving state of affairs, the EU revises the TRQs and autonomously decides on their extension or lifting. Thus, the EU's TRQs currently in place under the EU-Ukraine DCFTA are subject to 'flexibilization' and gradual expansion in the wake of autonomous trade measures (ATPs) undertaken by the European Union¹⁴³. For instance, in 2016, 26 EU TRQs were fully utilized by Ukrainian exporters, this being approximately 70% of the total allocated¹⁴⁴. Among the most-intensively utilized EU import TRQs were: honey, grape and apple juices, processed tomatoes, sugar, barley groats, flour, poultry, wheat, corn and barley¹⁴⁵. This up-surge TRQ utilization can be explained by both the entry into force of the DCFTA part of the EU-Ukraine Association Agreement on 1 January 2016 and gathering momentum of the Ukraine business community's response to the opening of the EU internal market.

Initiated by the European Commission in September 2016, the EU's unilateral supportive measure – i.e. the introduction as of July 2017¹⁴⁶ (effective from end-September 2017, with the duration for at least three years) of the autonomous trade preferences (ATPs) that increase the EU's import TRQs on certain categories goods from Ukraine¹⁴⁷ – further contributes to the intensification of the bilateral trade. The most significant increase in the size of a TRQ occurred in cereals, corn, oats and barley, jumping by more than 100%. Altogether, these ATPs on the EU's side could, according to Ukraine's *Minagroprom* 2016 estimates, allow Ukraine to boost its volume of exports to the EU to a value of almost USD200m.¹⁴⁸

By 17 April 2018, Ukrainian exporters had already exhausted six TRQs for this year, notably those for honey, malt and wheat gluten, processed tomatoes, grape and apple juice, as well as wheat and corn. Similarly, Ukraine has taken up the 2018 second-quarter quota for exports of poultry meat to the EU, and the 2018 half-year quota for butter exports. Remarkably, Ukraine has fully utilized some of the mid-2017 additionally allocated TRQs, including those for honey, processed tomatoes, wheat and corn. Also, as of April 2018, the volumes of duty-free Ukrainian exports of cereals and flour to

¹⁴³ For the actual size and the goods-specific list of currently effective EU's import TRQs under the EU-Ukraine DCFTA, cf.: European Commission, Taxation and Customs Union. DATABASE: QUOTA – Tariff Quota Consultation: Ukraine. http://ec.europa.eu/taxation_customs/dds2/taric/quota_consultation.jsp?Lang=en&Year=2016&Status=&Offset=0&MaxSize=1000&Critical=&Origin=UA&Code=&Expand=true

¹⁴⁴ <https://eu-ua.org/eksport-yes/uhoda-pro-asotsiatsiiu-novi-mozhlyvosti-dlia-biznesu>

¹⁴⁵ It has to be noted that the administration of tariff rate quotas (TRQs) is carried out according to two principles – the 'first come, first served' principle and the system of import licenses.

¹⁴⁶ EU agrees to allow in more exports Ukraine exports for three years. *Reuters*, 17.07.2017. <http://www.reuters.com/article/us-ukraine-eu-idUSKBN1A20WC>

¹⁴⁷ The **TRQ review** based on the results of only nine months of the EU-Ukraine DCFTA operation (i.e. January – September 2016), as initiated by the European Commission in September 2016, is certainly a precedent for the European Union. Usually, such TRQ revisions occur after two to three years of the (DC)FTA operation. Moreover, in late 2016, the EU had every reason to refuse Ukraine's requests regarding the review of TRQs. First of all, because of Ukraine's violation of the Association Agreement (for example, as regards Kyiv's prohibition of exports of timber). After the European Commission officially came up with such initiative in late September 2016, they were approved by the European Parliament and the EU Council in July 2017. Cf.: Юрий Панченко. (2016). Неможливе можливо: на які торговельні поступки Україні пішов ЄС [Impossible is possible: what trade concessions the EU made for Ukraine]. *Європейська правда*, 30.09.2016. <http://www.eurointegration.com.ua/articles/2016/09/30/7055231/>

¹⁴⁸ Угода про асоціацію з ЄС — інструмент проведення життєво необхідних реформ [The Association Agreement with the EU is an instrument for carrying out vital reforms]. *Газета "Все про бухгалтерський облік"*, 12.12.2016. <http://vobu.ua/ukr/analytics/interviews/item/uhoda-pro-asotsiatsiiu-z-ies-instrument-provedennia-zhyttievo-neobkhidnykh-reform>

the EU have been exhausted nearly 95%¹⁴⁹. Thus, in addition to six main TRQs, a further four were taken up in their entirety. This points to both the intensification and the extensification of Ukraine's exports to the European Union, particularly in the sector of agricultural produce¹⁵⁰.

4.3. Cross-border cooperation (CBC) and regional development

Ukraine directly borders four EU member states, which ipso facto renders the cross-border regional cooperation a salient issue for both Ukraine and the European Union.

The field of cross-border cooperation (CBC), which had been an area of the EU-Ukraine constructive mutual engagement even before the entry into force of the Association Agreement¹⁵¹, shows a steady progress and growing expansion of activities also after the full enactment of the EU-Ukraine AA. While presenting 'an area with a notable trend of accomplishments, the cross-border cooperation (CBC) theme – a modest but not insignificant part of the EU-Ukraine Association Agreement – was regrettably not even warranted a mention in the Ukraine government's most recent report on the Association Agreement implementation'¹⁵². Critically, the whole area of CBC and regional development cooperation is set out in four Articles (Articles 446 to 449) of the Chapter 27 of the EU-Ukraine AA. These stipulations, unfortunately, 'do not entail any benchmarks or policy guidelines that, for example, can be detected in the EU Association Agreements with Georgia and Moldova'¹⁵³. Nor was the Ukraine's regional development strategy or the country's substantive legislation on cross-border cooperation¹⁵⁴, which emerged from the multiple stakeholders' efforts throughout the past years, in a position to find its place in the text of the Association Agreement and, to larger extent, the governmental reports on its implementation.

This notwithstanding, the EU-Ukraine CBC allowed to boost, especially over the past years, the institutional capability of Ukraine's local government authorities in the sphere of cross-border cooperation and domestic regional development¹⁵⁵ and economic benefits first and foremost for Ukraine's western¹⁵⁶ borderland regional development¹⁵⁷. The ongoing decentralization reforms in both the administrative and budgetary areas of state governance have opened new opportunities for Ukrainian regions as such, and local self-governments in particular, to not only get featured

¹⁴⁹ Україна закрила 6 квот на безмитний експорт до ЄС [Ukraine closed 6 quotas on duty-free exports to the EU]. http://ucab.ua/ua/pres_sluzhba/novosti/ukraina_zakrila_6_kvot_na_bezmitniy_eksport_do_es

¹⁵⁰ In January-February 2018, agricultural exports from Ukraine to the EU grew by 28.1%, or by \$ 224.7 million, as compared to the same period last year, reaching \$ 1.025 billion according to the Ministry of Agrarian Policy of Ukraine. Cf.: Op. cit., note 117.

¹⁵¹ АОМС «Єврорегіон Карпати-Україна». (2018). *10 Років Спільно для Розвитку Карпат: Звіт про Діяльність за 2008-2017 роки [10 Years Together for the Carpathian Development: Activity Report for 2008-2017]*. Львів: АОМС «Єврорегіон Карпати-Україна» & FRESHPR.

¹⁵² Interview with Halyna Lytvyn. Lviv, 25.02.2018.

¹⁵³ Ibid.

¹⁵⁴ Євроінтеграційний Портал. (2017). Транскордонне та регіональне співробітництво [Cross-border and regional cooperation]. *Євроінтеграційний Портал*, 25.09.2017. <https://eu-ua.org/yevrointehratsia/transkordonne-ta-rehionalne-spivrobitnytstvo>

¹⁵⁵ Tsisinska, Oksana, and Anna Maksymenko. (2015). Efficiency of Executive Authorities Activity in the Sphere of Cross-Border Cooperation: Current State and the Ways of Improvement (at the Example of Ukraine). *EuroTimes*, 20: 59-77.

¹⁵⁶ Primarily, **cross-border cooperation (CBC)** between the EU and Ukraine is centered on the Western regions of Ukraine that are adjacent to the EU's eastern borderland territories of a number of its member states (Poland, Slovakia, Hungary, and Romania). In 2018, however, the EU allocated additional funds for regional development projects in **Ukraine's eastern regions of Donbas** – to help rebuilding the regional dynamics.

¹⁵⁷ Стадницький, Юрій. (2017). Економічний розвиток прикордонних із ЄС територій України в умовах дії Угоди про асоціацію Україна-ЄС [Economic development of the border areas of the EU territories of Ukraine under the terms of the EU-Ukraine Association Agreement]. *Економічний часопис Східноєвропейського національного університету імені Лесі Українки*, 2/2017: 24-31.

higher on the domestic actors' scene, but as well to become more salient actors on their own, including in the domain of international – cross-border – cooperation. This presents itself as an important step in advancing the EU's macro-regional strategy for the Carpathians region, a united ecosystem of four EU member states and Ukraine. Given that EU's macro-regional strategizing is becoming an incrementally salient theme for the EU's internal regional development and integration in the sense of a 'Europe of macro-regions'¹⁵⁸, further developments in the EU-Ukraine CBC should definitely enjoy more attention and support from the Ukrainian government. In March 2018, the European Union allocated for 2018 EUR 32.5 million funds for regional development projects in Ukraine¹⁵⁹. In addition to that, the support for decentralization and energy efficiency in Ukraine present the key areas for the EU's project funding up to 2020, thus enjoying the biggest attention and financial investment of EUR 174.3 million allocated for the support of self-government, decentralization and regional development, with further EUR 125.8 million for the support of projects on energy efficiency¹⁶⁰.

At the same time, some less positive dynamics in the EU-Ukraine CBC area has also been noted lately. Regrettably, such negative dynamics is connected to the ineffective use (in fact, the lack of use)¹⁶¹, by some of Ukraine's central executive bodies (first and foremost – the State Fiscal Service and the Ministry of Finances of Ukraine), of the already allocated European Union's funds within several CBC Programmes (PL-BY-UA, RO-UA-MD, HU-SK-RO-UA 2007-2013). Both the politically blocked utilization of the funds allocated by the EU under the mentioned CBC Programmes or the inefficient distribution of such funds, first and foremost by the Ukraine's SFS, are to be thought of as the challenging factors¹⁶² in this context. Not least against this backdrop, in February 2018, the European Union suspended its funding (EUR 29.2 million) of the 2014-launched modernization projects of six Ukrainian border checkpoints at its western borders near Slovakia, Hungary, Poland and Romania¹⁶³. This move was rather expected since for the past three years, Ukraine has not fulfilled its obligations on the project in time and has paid off the curtailment of cooperation with the EU in one of the country's most pro-European sectors. The failure to use the allocated funds (just as the failure to implement these crucial CBC projects) will inevitably strike at the image of Ukraine in Europe, which presents itself as a troublesome development in view of the EU's most recent allocation of new macro-financial assistance (MFA) package to the country.

4.4. Legislative and regulatory approximation

One of the core objectives of the EU-Ukraine association is Ukraine's 'gradual integration in the EU Internal Market' to be pursued, first and foremost, through a 'progressive approximation of its legislation to that of the Union' (Article 1 para.2(d) EU-Ukraine AA). An indeed overarching and long-term strategic policy imperative per se, Ukraine's commitment to approximate its legislation to the EU internal market *acquis* is '[a]t the heart of the Association Agreement, especially of the DCFTA'¹⁶⁴.

¹⁵⁸ Gänzle, Stefan, and Kristine Kern. (Eds.). (2016). *A 'Macro-regional' Europe in the Making. Theoretical Approaches and Empirical Evidence*. Basingstoke & New York: Palgrave Macmillan. Here p.3.

¹⁵⁹ Hennadiy Zubko, *Facebook* post, 04.03.2018. Hennadiy Zubko is Ukraine's Deputy Prime Minister for Regional Development, Construction and Housing.

¹⁶⁰ *Ibid.*

¹⁶¹ Oksana Yurynets, *Facebook* post, 14.03.2018. Oksana Yurynets is Head of the Parliamentary Sub-Committee on Regional and Cross-Border Cooperation between Ukraine and the European Union; she also is a Member of the EU-Ukraine Parliamentary Association Committee.

¹⁶² *Ibid.*

¹⁶³ Vasina, Olena. (2018). Exclusive: EU scraps border projects as 'Ukraine fatigue' grows. *Reuters*, 20.02.2018. <https://www.reuters.com/article/us-ukraine-eu-grants-exclusive/exclusive-eu-scraps-border-projects-as-ukraine-fatigue-grows-idUSKCN1G41GT>

¹⁶⁴ Van der Loo, Guillaume. (2014). The EU-Ukraine Deep and Comprehensive Free Trade Area: A Coherent Mechanism for Legislative Approximation? In Peter Van Elsuwege and Roman Petrov (eds.), *Legislative Approximation and Application of*

The procedural side of this policy effort has proven to be no less challenging than its very substantial component¹⁶⁵. The scope of the EU *acquis* that needs to be transposed into the Ukrainian legal system, i.e. the EU-Ukraine association *acquis*, varies from sector to sector, with the field of agriculture necessitating the legislative approximation with 44 EU normative acts, industrial standards and regulation envisaging further 32 EU normative acts to be approximated to, for instance, postal services sector that foresees Ukraine's approximation with the EU's one normative act¹⁶⁶. Significantly, the number of EU acts necessitating approximation in the Ukrainian legislation is growing, thus reflecting the legislative dynamics in the European Union – and Ukraine needs to dynamically overhaul with the recent developments in addition to its grappling with the pending approximation tasks. As of 23 April 2018, 551 EU normative acts necessitated approximation on the Ukraine's side, out of which Ukraine delivered on implementing 74 EU acts, whereas 17 further EU acts were only partially implemented and 108 pending their implementation; it has to be noted that out of the 551 EU normative acts, 352 acts were not even attempted at being implemented (for their most part, these are the acts whose approximation is envisaged for the current and next years, but 8 of those are pending implementation for 2017)¹⁶⁷. In contrast to the critically poor performance for 2014-2015, some first signs of positive dynamics were already noted in 2016 and 2017. The year 2018 presents itself as a crucial for the levelling up of the implementation pace, including in the context of catching up with the legislative approximation commitments (acts and tasks) pending from the year 2017 (Cf. *Annex 1* and *Annex 2*). It would be indeed naïve to assume that such an intensive and extensive legislative approximation agenda could proceed flawlessly in the situation of Ukraine's fundamental reforming and coping with the multifaceted (including military and economic) aggression from its biggest neighbour and once biggest trade partner, Russia. As the DCFTA became operational a year ago, however, the necessity to speed up the process of legislative and regulatory approximation in Ukraine is dictated by the conditions of enabling a proper functioning of the market and economic operators both the Ukrainian and European ones.

4.4.1. Food safety and HACCP

Ukraine's main export to the European Union has proven to be, in the last two years, the agricultural products, as discussed above. The introduction of a system of quality and safety of food products control in Ukraine has been conditioned by both Ukraine's intensive export development in this direction and the respective legislative approximation mandate under the EU-Ukraine AA. EU and international demands for Ukraine's regulatory change in the area of food safety have been saliently featured on the agenda for over the decade now since when it first became pronounced in the EU-Ukraine Action Plan of 2005¹⁶⁸. The first signs of positive dynamics in this sector already in late 2015 were associated with the entry into force of the food safety law¹⁶⁹. Further important progress has been noted more recently as Ukraine introduced, in early April 2018, a European-style food safety control system, i.e. HACCP (Hazard Analysis and Critical Control Points) and adopted the bill on safety and hygiene of feed for farm animals (law no.2264 of 21.12.2017, to be effective from January 2020). On 19 April 2018, the Verkhovna Rada also adopted, in the first reading, the Draft Law 'On Basic

EU Law in the Eastern Neighbourhood of the European Union: Towards a Common Regulatory Space? (pp. 63-88). London and New York: Routledge. Here p.63.

¹⁶⁵ Tyushka, Andriy. (2015). Association through approximation: Procedural law and politics of legislative and regulatory approximation in the EU-Ukraine Association Agreement. *Baltic Journal of European Studies*, 5(1): 56-72.

¹⁶⁶ *Ibid.*, pp.60-61.

¹⁶⁷ *AA Navigator* (data as of: 23.04.2018), <http://navigator.eurointegration.com.ua/eu-acts>.

¹⁶⁸ Langbein, Julia. (2015). *Transnationalization and Regulatory Change in the EU's Eastern Neighbourhood: Ukraine between Brussels and Moscow*. London and New York: Routledge. Here p.124-147.

¹⁶⁹ Baranovych, Mariia, and Yevgeniya Ocheretko. (2017). Harmonization of Ukrainian Food Safety Legislation with EU Law. *European Food & Feed Law Review*, 1: 37-42.

Principles and Requirements for Organic Production, Circulation and Marking of Organic Products' (No. 5448-д)¹⁷⁰.

A combined business, expert and government effort in advancing this very area of the EU-Ukraine DCFTA, including via the approximation of Ukraine's sanitary and phytosanitary standards (SPS) to those of the EU, has brought notable results, as the so-called 'butter phenomenon' showcases in particular. Whereas having started exporting butter to the EU with the DCFTA's entry into force in January 2016, Ukraine succeeded already within 11 months of 2017 in occupying some 27% of the EU market in this sector, thus enjoying the second position among the top-3 exporters of this product to the Union (with New Zealand remaining the leader here)¹⁷¹.

According to the 2017-amended Law of Ukraine 'On Basic Principles and Requirements for the Safety and Quality of Food Products'¹⁷², effective from 4 April 2018, the HACCP shall be gradually introduced, as follows: in 2017 for all dairies, slaughterhouses and other enterprises, which produce food products with unprocessed ingredients of animal origin; in 2018 for juice and candy makers; and in 2019 for owners of all small businesses that produce food.

4.4.2. Industrial standards and ACAA

The harmonization of the Ukrainian technical regulation system with the European Union norms is one of the crucial conditions for the free circulation of Ukrainian goods in the EU's internal market, as stipulated in Articles 55 to 58 of the EU-Ukraine AA. This implies introducing both the framework and the horizontal sectoral legislation in Ukraine (as stipulated in Annex III to Chapter 3 Section IV of the EU-Ukraine AA), the set-up of the European-style institutional regulation mechanisms as well as the implementation of best EU practices in standardization and regulation¹⁷³. In view of the aforementioned general problem with the quality of legislation in the country (i.e. the lacking precision of the regulatory content of norms), the approximation in this area is one of the most challenging, especially as regards sectoral harmonization. A slow and ambivalent progress herein does not allow experts to qualify even the most recent advancements as a sign of a clear success and a 'substantial progress'¹⁷⁴.

As aforementioned, in 2016, Ukraine and the EU decided to launch a High-Level EU-Ukraine Dialogue on horizontal issues and individual sectors of industry. The first inaugural Dialogue meeting took place on 1-2 March 2017 in Brussels, and the second followed on 27 March 2018 in Kyiv.

On 27 March 2018, the Ukrainian Parliament also passed, in the first reading, the draft bill no. 6235 'On Amendments to Certain Legislative Acts of Ukraine on Technical Regulations and Conformity Assessment' which seeks to improve the national legislation on technical regulations and conformity assessment to the maximum possible extent with the standards and norms of the European Union. Being part of the Roadmap for legislative implementation for 2018, this bill also is

¹⁷⁰ Євроінтеграційний портал. (2018). Рада підтримала у першому читанні євроінтеграційний законопроект щодо органічної продукції [The Rada supported in the first reading the European integration bill on organic products]. *Євроінтеграційний портал*, 19.04.2018. <https://eu-ua.org/novyny/rada-pidtrymala-u-pershomu-chytanni-yevrointegraciynnyu-zakonoproekt-shchodo-organichnoyi>

¹⁷¹ Акуленко, Любов. (2018). Битва за продовольчий ринок ЄС: феномен вершкового масла та Угода про асоціацію [The battle for the EU food market: the 'butter phenomenon' and the Association Agreement]. *Бизнес.Цензор.НЕТ*, 01.02.2018. <https://biz.censor.net.ua/columns/3047511/bitva-za-prodovolchiji-riнок-s-fenomen-vershkovogo-masla-ta-ugoda-pro-asotsiatsiyu>

¹⁷² The Law of Ukraine 'On Basic Principles and Requirements for the Safety and Quality of Food Products' № 771/97-ВР of 23.12.1997 (with amendments № 2042-VIII of 18.05.2017). <http://zakon2.rada.gov.ua/laws/show/771/97-вр>

¹⁷³ Віткін, Леонід М. (2016). Реформування системи технічного регулювання: Здобутки та плани на майбутнє [Reforming the Technical Regulation System: Achievements and Future Plans]. *Стратегічна Панорама*, 1/2006: 98-104.

¹⁷⁴ Taras Kachka, Facebook post, 27.03.2018. Taras Kachka is a Representative on Entrepreneurship at the State Fiscal Service of Ukraine and Head of 'Ukraine Crisis Media Center'; he also is the co-author of the text of the EU-Ukraine AA.

a prerequisite in the preparatory process for the signing with the EU of the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA)¹⁷⁵. The ACAA will significantly reduce the non-tariff barriers for Ukrainian industrial goods exports to the EU's internal market, thus its importance in the DCFTA implementation is difficult to overestimate.

4.4.3. Transport and infrastructure

The EU-Ukraine AA stipulates in Chapter 7 'Transport' Title V 'Economic and Sectoral Cooperation' that Ukraine and the EU are to broaden and strengthen their cooperation in the field of transport. Transport, a crucial element of connectivity, has saliently featured on the list of the '20 key deliverables for 2020' for the Eastern Partnership¹⁷⁶ and the latter one's summit Declaration of November 2017¹⁷⁷.

Ukraine's transport and infrastructure sectors are some of the most lagging areas of the legislative approximation as scheduled by the EU-Ukraine AA. This has been explicitly emphasized by the expert community¹⁷⁸ and the European Commission's own 2017 joint Association Implementation Report on Ukraine¹⁷⁹. Herein, a range of legislative acts are pending their adoption, including the draft laws on the road, rail and internal maritime transport, as well as the transportation of dangerous goods (registration No 7386, 7316, 2475a, 7387). At the same time, the much-criticized¹⁸⁰ draft law on the safety of operation of motor vehicles (No 7317) needs reconsideration. Remarkably, the Cabinet of Ministers of Ukraine did not put any of the transport and infrastructure-related draft laws on the list of normative acts that are pending urgent consideration by the Parliament in 2018¹⁸¹. Partially, the slow legislative progress in the transport and infrastructure sector can be explained by the specifics of the sector per se¹⁸² – including such salient factors as concerns about safety and the bigger overall duration of the project cycle for projects under implementation. On 30 May 2018, the

¹⁷⁵ Євроінтеграційний портал. (2018). Рада ухвалила у першому читанні законопроект, необхідний для підписання угоди АСІА [The council passed the first reading bill needed to sign the ACAA]. *Євроінтеграційний портал*, 20.03.2018. <https://eu-ua.org/novyny/rada-uhvalyla-u-pershomu-chytanni-zakonoproekt-neobhidnyy-dlya-pidpysannya-ugody-assa>

¹⁷⁶ EEAS. (2017). EU revises the 20 key deliverables for 2020 for the Eastern Partnership. *Brussels*, 13.06.2017. https://eeas.europa.eu/headquarters/headquarters-homepage/28117/eu-revises-20-key-deliverables-2020-eastern-partnership_en

¹⁷⁷ Eastern Partnership Summit - Joint declaration. *Brussels*, 24.11.2017. <http://www.consilium.europa.eu/media/31758/final-statement-st14821en17.pdf>. Here pp. 8, 16.

¹⁷⁸ Любов Акуленко, Світлана Майструк. (2018). Топ-6 євроінтеграційних завдань для Ради: проблемні місця у виконанні Угоди [Top 6 European Integration Tasks for the Council: Problems in the implementation of the Agreement]. *Європейська правда*, 26.02.2018. <https://www.eurointegration.com.ua/articles/2018/02/26/7078012/>.

¹⁷⁹ European Commission. (2017). Association Implementation Report on Ukraine. *Brussels*, 14.11.2017 (SWD(2017)376final). https://eeas.europa.eu/sites/eeas/files/association_implementation_report_on_ukraine.pdf. Here pp.9, 13.

¹⁸⁰ Любов Акуленко, Світлана Майструк. (2018). Перевірки авто по-новому: чи запрацює в Україні європейська система техогляду [Checking the car in a new way: will the European system of technical inspection work in Ukraine?]. *Європейська правда*, 16.01.2018. <https://www.eurointegration.com.ua/articles/2018/01/16/7076098/>

¹⁸¹ Кабінет Міністрів України. (2018). Законопроекти у сфері європейської інтеграції України, які потребують невідкладного розгляду Верховною Радою України [Bills on European Integration of Ukraine, which require urgent consideration by the Verkhovna Rada of Ukraine]. <https://www.kmu.gov.ua/ua/diyalnist/yevropejska-integraciya/nablizhennya-zakonodavstva-ukrayini-do-prava-yes/zakonoproekti-u-sferi-yevropejskoyi-integraciyi-ukrayini-yaki-potrebuyut-nevidkladnogo-rozglyadu-verhovnoyu-radoyu-ukrayini>

¹⁸² Довгань, Віктор. (2018). Поспішай надійно: що не так з оцінкою успіхів євроінтеграції у транспортній сфері [Hurry reliably: what's wrong with the assessment of the success of European integration in the transport sector]. *Європейська правда*, 13.03.2018. <https://www.eurointegration.com.ua/experts/2018/03/13/7078676/>

Cabinet of Ministers eventually adopted the National Transport Strategy of Ukraine till 2030 titled 'Drive Ukraine 2030'¹⁸³.

The EU has been active in the field since 2016 with the project activity aiming to assist the harmonization of legislation in the transport area as well as national regulation in terms of updating the implementation and monitoring of the National Transport Strategy of Ukraine¹⁸⁴. This EU-funded project shall end on 11 January 2019.

4.4.4. Aviation, 'Open Skies' and CAA

The Joint Declaration adopted in November 2017 by the Eastern Partnership summit participants devoted some of the prominent attention to the issues of enhancing connectivity between the EU and Eastern Partnership countries in general, and Ukraine in particular, including in the common aviation area. With regard to Ukraine, the Declaration recalled 'the importance of concluding the Common Aviation Area (CAA) Agreement with Ukraine at the earliest possible date'¹⁸⁵. In the fulfilment of Ukraine's commitments within the framework of the Association Agreement and the 2013-initialled Common Aviation Area Agreement¹⁸⁶, the Cabinet of Ministers of Ukraine adopted the Resolution of 8 February 2017 'On Approval of the Action Plan for the Preparation of Implementation of the Common Aviation Area between Ukraine with the European Union and its Member States'¹⁸⁷. The CAA has been lately a salient theme in both public (the arrival of low-cost airlines) and policy (connectivity and regulatory approximation) discourses in Ukraine. Essentially, the CAA is 'a free trade area for aviation, particularly in issues of flight safety, passenger protection, liability of air carriers for transportation, environmental protection, free market competition and state aid'¹⁸⁸. It therefore that signing of the Agreement and Ukraine's incorporation into the national legislation of 64 EU Regulations and Directives on aviation¹⁸⁹ presents itself a pressing matter. Ukraine expects the CAA to be eventually signed with the European Union in the early 2019, after the UK's departure from the EU¹⁹⁰. Given that the 'Open Skies' connectivity, i.e. the operating Common Aviation Area between the EU and Ukraine, presupposes the unification of a number of safety and operation related regulations, including the very air transport markets of the European Union and Ukraine, the country's integration into the European common aviation space can be

¹⁸³ Міністерство інфраструктури України. (2018). Уряд схвалив Національну транспортну стратегію до 2030 року [The Government approved the National Transport Strategy by 2030]. *Прес-реліз Міністерства інфраструктури України*, 30.05.2018. <https://mtu.gov.ua/news/29858.html>.

¹⁸⁴ Ministry of Infrastructure of Ukraine. (n/d). Project "Support to the Implementation of the Association Agreement and of the National Strategy in the Transport Sector in Ukraine". Ministry of Infrastructure of Ukraine.

¹⁸⁵ Eastern Partnership Summit - Joint declaration. *Brussels*, 24.11.2017. <http://www.consilium.europa.eu/media/31758/final-statement-st14821en17.pdf>. Here p.8.

¹⁸⁶ In April 2017, the Ministry of Infrastructure of Ukraine declared to be launching the implementation of the CAA Agreement unilaterally, without waiting for solution of the 'Gibraltar problem', which is the official reason of delay in signing of the agreement.

¹⁸⁷ Кабінет Міністрів України. (2017). 'Про затвердження Плану заходів з підготовки до запровадження спільного авіаційного простору України з Європейським Союзом та його державами-членами' [On Approval of the Action Plan for the Preparation of the Implementation of the Common Aviation Area of Ukraine with the European Union and its Member States]. *Розпорядження Кабінету Міністрів України від 8 лютого 2017 р. № 88-р*. <http://zakon3.rada.gov.ua/laws/show/88-2017-p>

¹⁸⁸ Kosse, Iryna, and Kateryna Kulchytska. (2017). *Aviation Vector of Eastern Partnership: Approximation of National Legislations to the EU Laws: Evaluation of the Progress in Ukraine, Moldova, and Georgia*. Kyiv: 'Europe without Barriers' CSO & 'Etna-1' Publishing. Here p.3.

¹⁸⁹ *Ibid.*, p.8.

¹⁹⁰ Губар, Олена. (2018). "Відкрити" небо: Україна розраховує на значне розширення авіасполучення з ЄС [To "Open" sky: Ukraine expects a significant expansion of air connections with the EU]. *Deutsche Welle Українською*, 06.04.2018. <http://www.dw.com/uk/відкрити-небо-україна-розраховує-на-значне-розширення-авіасполучення-з-єс/a-43268196>

facilitated beyond the EU's top-political level. Herein, a role for the European Aviation Safety Agency (EASA)¹⁹¹ could be thought of, especially as regards the expertise and best-practices sharing.

4.4.5. Environment

In the EU-Ukraine Association Agreement, Chapter 6 'Environment' of the Title 'Economic and Sectoral Cooperation' sets out that Ukraine and the European Union shall develop and strengthen cooperation on environmental issues thus contributing to the long-term goals of sustainable development and the green economy. Annex XXX to the EU-Ukraine AA stipulates that Ukraine has to adapt its legislation to 26 EU Directives and 3 EU Regulations in areas such as: environmental management and integration of environmental policy into other sectoral policies; air quality; waste management and resources; water quality and water management, including the marine environment; conservation; industrial pollution and man-made threats; climate change and ozone layer protection; and genetically modified organisms.

Implementing the foreseen EU Directives, the Verkhovna Rada adopted, in 2016-2017, several laws including the law on the introduction of integrated approaches in the management of water resources (no.1641), the law on the assessment of the impact of certain public and private projects on the environment (no.2059), the amendments to the law on drinking water and drinking water supply (no.2047), the law on the implementation of European environmental norms on the protection of the environment of rare species of animals and plants (no.1829), and some other legislative acts¹⁹². More recently, on 20 March 2018, the Ukrainian Parliament passed the Law of Ukraine 'On strategic environmental assessment' (no.2354)¹⁹³, which shall take effect on 1 January 2020.

On 8 November 2017, the Cabinet of Ministers of Ukraine approved the 'National Strategy for Waste Management in Ukraine for the period up to 2030'¹⁹⁴, a framework document on the national principles of waste management policy.

All this 'technical' progress in legislative approximation notwithstanding, Ukraine's legislation – especially (but not exclusively) in the environmental policy area – lacks the necessary precision of the regulatory content¹⁹⁵, as earlier noted in the text. Whereas most of the EU's Directives and Regulations on the environmental policy are formulated very specific, 'with the establishment of parameters and criteria of quality of environmental components, specific responsibilities of specific subjects', Ukrainian legislation in this domain, only 'establishes general requirements, defines the principles, goals, but does not determine the ways of their achievement'¹⁹⁶. Thus, a commonplace parlance of 'laws without teeth' seems to be fitting well in describing the qualitative side of the country's legislative approximation in the environmental policy area.

¹⁹¹ Coman-Kund, Florin. (2012). Assessing the role of EU agencies in the enlargement process: the case of the European Aviation Safety Agency. *Croatian Yearbook of European Law & Policy*, 8(8): 335-368.

¹⁹² Євроінтеграційний Портал. (2017). Навколишнє Середовище [Environment]. *Євроінтеграційний Портал*, 27.09.2017. <https://eu-ua.org/yevrointehratsiia/navkolyshnie-seredovyshche>

¹⁹³ Law of Ukraine 'On Strategic Environmental Assessment' № 2354-VIII of 20.03.2018. <http://zakon5.rada.gov.ua/laws/show/2354-viii>

¹⁹⁴ Кабінет Міністрів України. (2017). Національна стратегія управління відходами в Україні до 2030 року [National Strategy for Waste Management in Ukraine until 2030]. *Розпорядження Кабінету Міністрів Україн від 08.11.2017 № 820-р*. <http://zakon3.rada.gov.ua/laws/show/820-2017-p>

¹⁹⁵ Ткаченко, Руслан. (2016). Як позбутися відходів упаковки? Чому прийняти нормативи ЄС недостатньо [How to get rid of packaging waste? Why accept EU norms is not enough]. *Європейська правда*, 27.04.2016. <https://www.eurointegration.com.ua/experts/2016/04/27/7048074/>

¹⁹⁶ Ladychenko, Viktor, and Liudmyla Golovko. (2017). Implementation of European Environmental Policy in Ukraine: Problems and Prospects. *European Journal of Sustainable Development*, 6(3): 333-339. Here p.338.

5. The Association Agreement implementation and good governance reforms in Ukraine

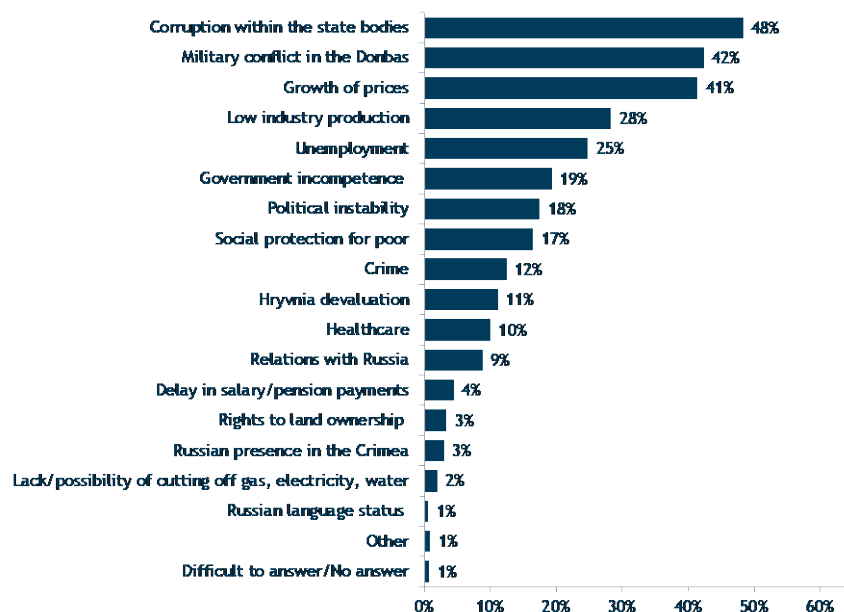
5.1. Overall reform framework

The EU-Ukraine Association Agreement is a framework strategic document that defines the reform agenda in Ukraine for the next ten years for it applies to almost every sphere of social, economic and political life in the country. Notably, the implementation of the Association Agreement forms the basis of the reform program of the Cabinet of Ministers of Ukraine. Among the government's priorities for 2018¹⁹⁷ are the continuation of the reform of public administration, public enterprise management and privatization, land reform, business climate improvement, logistics infrastructure development, energy sector reform, innovation development, anti-corruption and rule of law.

For the Ukrainian public, the top-level corruption and military conflict in Donbas present the biggest concerns (cf. [Figure 4](#)), thus putting the anti-corruption and security and defence reforms on the top-list for state performance in the next year or so.

Figure 4: IRI 2018 Public Opinion Poll on salient issues for Ukraine

Which of the following are the three most important issues for Ukraine?



Source: IRI Survey 2018, p.28¹⁹⁸

Some two years ago, the creation of the National Anti-Corruption Bureau of Ukraine (NABU) or the public procurement system reform, including the *ProZorro* platform, would be a usual example of a successful reform in the country. At present, decentralization – oftentimes called a ‘reform number

¹⁹⁷ Офіс реформ Кабінету Міністрів України представив звіт “Reforms in Ukraine: Progress in 2017 & Priorities for 2018”. <http://fsr.org.ua/promo/ofis-reform-kabinetu-ministriv-ukrayiny-predstavyyv-zvit-reforms-ukraine-progress-2017>

¹⁹⁸ IRI. (2018). Public Opinion Survey of Residents of Ukraine (November 15 – December 14, 2017). *Survey conducted by GfK Ukraine & IRI Center for Insights in Survey Research*, 30.01.2018. http://www.iri.org/sites/default/files/2018-1-30_ukraine_poll_presentation.pdf

one' – appears perhaps as a more suitable example. Only a few will call this reform completed. The unification of communities and the transfer of self-government powers and finance to them are, of course, important steps, but only the first ones. Further steps include real consolidation and local agency, not least in order to prepare the amalgamated territorial units for 2020 local elections cycle.

One of the flagship reforms of the current government, public procurement reform, has been guided by the Roadmap (Public Procurement Reform Strategy) adopted on 24 February 2016 to fight corrupt practices and unfair competition and thus harmonize Ukraine's public procurement legislation and practices with those of the European Union. The system of public procurement was considered one of the main sources of corruption and wastefulness in Ukraine up to the Euromaidan Revolution. The public procurement reform started immediately in the wake of the Revolution, in 2014, and included a number of legislative and institutional changes, as well as the technical modernization and commissioning of the new e-Procurement system – *ProZorro*. This reform is distinguished by the fact that it was initiated, developed and implemented by activists from business and civil society, which managed to create a broad coalition of support among politicians, the international community and other stakeholders for the legitimate implementation of the reform at the national level. The reform set five goals, most of which were achieved. Symbolically, the public procurement reform in Ukraine has become a noticeable development in the international arena and has been endorsed by the EBRD as a reform model for other countries¹⁹⁹.

In April 2018, the Ministry of Health of Ukraine announced the ad-hoc launch of *eHealth*, an electronic healthcare system. *eHealth* might become one of the most effective tools to overcome corruption in Ukraine's health care system, and most importantly, increase the efficiency of provision of medical services. The launch of the system is however not flawless. In the first place, this is connected with the Medical Information System (MIC) in Ukraine, where one of the main problems is the lack of universalization and standardization²⁰⁰.

The latest (September 2017) edition of the *Index of Reforms Perception*²⁰¹, coordinated by the National Reforms Council of Ukraine, shows that the public perception of the progress of reforms remains largely low, with the reform of Ukraine's security and defence sector being the only area that enjoys positive reform perception balance (63% of Ukrainians believe that there are some changes whereas 37% don't). The reform of the judicial system is not believed to be making any change now by 83% of the Ukrainians, in average 70% of Ukrainians do not see any changes in the tax reform, agricultural reform, public administration or constitutional reform (Cf. also [Annex 6](#)).

In terms of changes in the trust to public institutions, the *Index of Reforms Perception* shows that Ukrainian education institutions and the army enjoy the biggest level of trust among over the half of population. Traditionally, the Ukrainian parliament enjoys the lowest popular trust amounting to some 10%. Thereby, positive dynamics is noted in the increase of popular trust to the new patrol police, president, the national bank, fiscal service and the Cabinet of Ministers.

The judicial system in Ukraine remains largely ineffective, corrupt and politically dependent. The unreformed judicial system is a stumbling block to many other reforms – even progressive legislation does not change anything when the laws are still not being applied properly. Ukraine ranks 77th among 113 countries in the global *WJP's Rule of Law Index 2017-2018*²⁰², largely due to

¹⁹⁹ VoxUkraine – Провідник реформ: шість досягнень й сім невдач України з часів перемоги Майдану [A Guide to reforms: six achievements and seven failures of Ukraine since the victory of the Maidan] https://voxukraine.org/longreads/three-years-of-reforms/index-ua.html?utm_source=longreads&utm_medium=more#form

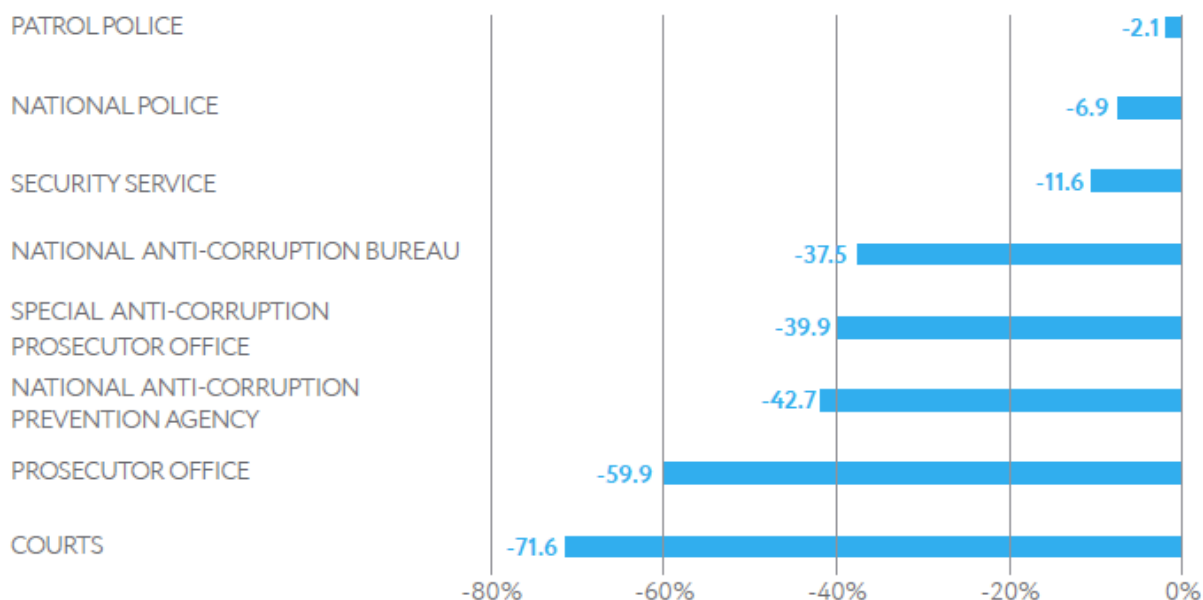
²⁰⁰ Бадіков, Тимофій. (2018). На заваді реформ: проблеми eHealth в Україні [The obstacle to reform: eHealth issues in Ukraine]. *Українська правда*, 27.03.2018. <https://blogs.pravda.com.ua/authors/badikov/5aba36184fb0e/>

²⁰¹ Національна Рада реформ. (2017). Моніторинг сприйняття реформ у суспільстві [Monitoring perceptions of reforms in society]. <http://reforms.in.ua/sites/default/files/upload/2017.09.pdf>

²⁰² *WJP Rule of Law Index 2017-2018*. <http://data.worldjusticeproject.org/#groups/UKR>

ineffective enforcement and widespread corruption, in particular in civil and criminal proceedings. Not surprisingly, Ukrainians do not trust the judicial system deeply. From among the law enforcement institutions, Ukrainian courts are not trusted by 71.6% of the population, with the national police and the patrol police having improved their standings to 6.9% and 2.1% of popular distrust, respectively (cf. *Figure 5*)²⁰³:

Figure 5: The state of public distrust to law enforcement institutions in Ukraine, 2017



Source: VoxUkraine 2017²⁰⁴

The reform of the judicial system is one of the most difficult and time-consuming undertakings. Judges cannot be quickly replaced by new ones, like police officers, because judging requires much more knowledge and training. An effective system of checks and balances should be implemented without jeopardizing the independence of the judiciary.

The European Union's support to justice reform in Ukraine occurred under the EU Project 'PRAVO-Justice' which ran till the end of 2017²⁰⁵. In particular, the activity of the National Judicial Reform Council has been receiving significant expert and activity support from the EU-funded project.

Ukraine's reforming fundamentally – across a number of specific and overarching dimensions. Out of all these dimensions, the real Ukrainian 'reform saga' revolves around 4D's: decentralization, de-bureaucratization, deregulation and 'de-oligarchization'. Whereas in the realm of reregulation an unequivocally significant progress is recorded, decentralization showcases significant but not politically uncontroversial progress, with de-bureaucratization proceeding at a slower pace. 'De-oligarchization' manifests cosmetic and legislative changes, with limited implementation of the much-needed reform.

²⁰³ VoxUkraine. Судова система та правоохоронна діяльність [Judicial System and Law Enforcement]. https://voxukraine.org/longreads/three-years-of-reforms/index-ua.html?utm_source=longreads&utm_medium=more#form

²⁰⁴ Ibid.

²⁰⁵ The EU Project "PRAVO-Justice". <http://www.justicereformukraine.eu/about-us/project-description/>

Ukraine's drive towards de-bureaucratization and the public administration reform is crucial in the aspect of consolidating food governance in Ukraine as well as in the context of boosting the institutional capacity for effective implementation of the EU-Ukraine Association Agreement. Ukraine's current reform agenda of its civil service focuses on the three main elements: the involvement of new competent people in the civil service; minimizing political influence on the appointment; and transforming processes within the government to make them effective and transparent. Thus, in addition to the institutional restructuring component, the quality of public services is another key aspect of the reform. The EU engages actively in both areas. In March 2018, the EU-funded *EGOV4UKRAINE* project signed an agreement with *Soft Xpansion Ukraine* and the State Agency for Electronic Government of Ukraine on the development of an information system for the Centres for the Provision of Administrative Services in Ukraine²⁰⁶. The development of the information system is implemented as part of the *U-LEAD Europe* Program, co-funded by the European Union and its member states Denmark, Estonia, Germany, Poland and Sweden.

For more than six months by early 2018, an epic with the abolition of e-declaration for the third sector had been lasting. Ukraine has not abolished the duty of public anti-corruption activists to declare their wealth and incomes, as it had committed itself beforehand. On 22 March 2018, the Verkhovna Rada did not find enough votes to put on the agenda any of the bills that would cancel or postpone this obligation. This failure of the Ukrainian authorities to live up to the commitments they made raised serious concerns in the European Union and has been harshly criticized by Commissioner Hahn²⁰⁷.

In addition to changing its system of law enforcement, Ukraine is undertaking comprehensive reform of its armed forces, necessitated by conflict in the east of the country²⁰⁸. Reforming of the security and defence sector in Ukraine in times of the country's sovereignty-undermining foreign hybrid aggression presents itself of course as a challenging thus not impossible task²⁰⁹.

It is difficult to make evaluative assessments of the reform progress and moreover – reforms impact, as 'all the ongoing reforms, including the judicial reform, are future-oriented'²¹⁰. The pace of reforms, as presented through the *iMoRe* Index of Monitoring Reforms below, can however facilitate general idea of the public effort and activities undertaken over the period of time from 2015 (cf. *Figure 6*):

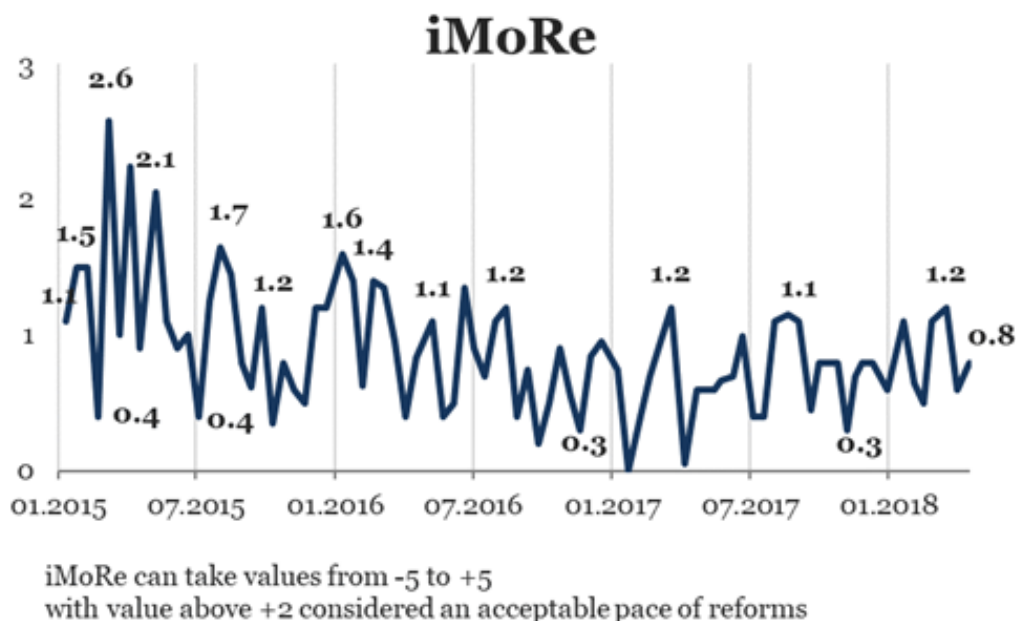
²⁰⁶ Підписано угоду про початок розробки інформаційної системи для ЦНАПів в Україні [An agreement was signed on the development of an information system for the CNAPs in Ukraine]. *Ініціатива 'Децентралізація влади'*, 21.03.2018. <http://decentralization.gov.ua/news/8530>

²⁰⁷ Statement by Commissioner Hahn on the extension of e-declaration obligations to civil society in Ukraine. *European Commission*, 28.03.2018. https://ec.europa.eu/commission/commissioners/2014-2019/hahn/announcements/statement-commissioner-hahn-extension-e-declaration-obligations-civil-society-ukraine_en

²⁰⁸ Akimenko, Valeriy. (2018). Ukraine's Toughest Fight: The Challenge of Military Reform. *Carnegie Endowment for International Peace*, 22.02.2018. <http://carnegieendowment.org/2018/02/22/ukraine-s-toughest-fight-challenge-of-military-reform-pub-75609>

²⁰⁹ Ланчинскас, Кястутіс. (2017). Як реформувати безпековий сектор за часів війни: відповідь місії ЄС на критику [How to reform the security sector during the war: the response of the EU mission to criticism]. *Європейська правда*, 28.03.2017. <http://www.eurointegration.com.ua/experts/2017/03/28/7063700/>

²¹⁰ Гудима, Дмитро. (2018). Реформи, які нині відбуваються в суспільстві, в тому числі судова, орієнтовані на майбутнє [The reforms that are taking place in society, including the judiciary, are oriented towards the future]. *Юридична Газета*, 19.03.2018. <http://jur-gazeta.com/interview/reformi-yaki-nini-vidbuvayutsya-v-suspilstvi-v-tomu-chisli-sudova-orientovani-na-maybutne.html>

Figure 6: The Index of Monitoring Reforms (*iMoRe*) Dynamics by 8 April 2018

Source: VoxUkraine's *iMoRe* index (<http://imorevox.org>)

Importantly, the pace of reforms is of lesser significance than the reforms consistency. The latter one determines the sustainability of the ongoing transformation in Ukraine. The 2018 edition of the biannual *Bertelsmann Transformation Index (BTI)*, established that out of 129 countries, Ukraine, with its 6.54 points on the 1-10 scale, ranks 36th in overall transformation status; it also maintains the rank of being 36th (6.90 points) in terms of political transformation, whereas the economic transformation status puts it on 43rd place (6.18 points) and the governance index – on 49th place (5.41 points) among the world's 129 nations²¹¹. When compared to the EU's other two newly associated Eastern European countries, i.e. Georgia and Moldova, in the period of 2016-2017, Ukraine scored better in the status of democracy and market economy than its two neighbours, just as it performed better in good governance matters than Moldova – but worse than Georgia in the same period of time (cf. *Annex 8*)²¹².

The December 2017, in effect, opened the pre-election race in Ukraine. Although the parliamentary and presidential elections will be held in 2019, the tension is felt now. The expected rise of populism will be very difficult to counteract, even with the support of the EU, the United States and the IMF together. Thus, a more investment in strategic and policy communications in Ukraine, as well as vis-à-vis its European partners is necessary.

The European Union engages comprehensively in the support of reforms in Ukraine. Most recently, an unprecedented package of new macro-financial assistance and attractive investment perspectives were offered by the EU in return for Ukraine's consolidated action to reform itself.

²¹¹ *Bertelsmann Transformation Index (BTI) 2018*. Bertelsmann Stiftung, April 2018. <https://www.bti-project.org/en/home>.

²¹² *Ibid.*

Commissioner Hahn's (2018)²¹³ article in the *EuroPravda* Ukrainian newspaper on the 'reforms for investment', outlined the main 'stipulations' of such a new contract between the EU and Ukraine.

5.1.1. Constitutional reform

Constitutional reform in Ukraine is a lasting matter of all Ukrainian society²¹⁴. Constitutional reform was one of the salient demands of the 2013/14 Revolution of Dignity²¹⁵. As a member of the Council of Europe, Ukraine has obligations concerning protection of human rights, respect to the rule of law and democracy. It follows the Council of Europe's requirements for constitutional reform process²¹⁶.

On 2 June 2016, Parliament approved the Law of Ukraine 'On Amendments to the Constitution of Ukraine (on Justice)²¹⁷ which, in particular, expanded the access of citizens and legal entities to the Constitutional Court of Ukraine through the introduction of a constitutional complaint institute. As a result of this constitutional reform of justice, as of 30 September 2016, legal entities and individuals in Ukraine were given the constitutional possibility to exercise the right to submit a constitutional complaint. With this institute of individual access to constitutional justice, individuals were given the right to raise before the Constitutional Court the issue of the recognition of an unconstitutional law (its separate provisions) that was used in the decision of the court of general jurisdiction over this person and, in the future, to reconsider this judgment.

As of early April 2018, Ukrainians have already filed 584 constitutional complaints²¹⁸. The imposition of such a new authority on the Constitutional Court is both a serious challenge and an opportunity to raise their own public authority, as institutions, and to overcome the crisis of constitutional justice²¹⁹.

5.1.2. Decentralization

The decentralization reform, oftentimes called 'reform number one'²²⁰, aims at giving the local authorities more financial autonomy and greater responsibility for the daily problems of their communities. In Ukraine, the process of decentralization was started in 2014 with the adoption of the Concept of the Reform of Local Self-Government and Territorial Organization of Power (April 2014), and the Laws 'On Cooperation of Territorial Communities' (June 2014), 'On Voluntary Association of Territorial Communities' (February 2015) and amendments to the Budget and Tax Codes – on financial decentralization. Having begun in 2014 and being not complete now, the

²¹³ Ган, Йоганнес. (2018). Реформи заради інвестицій: стаття єврокомісара про новий контракт ЄС та України [Reforms for the sake of investment: article by the European Commissioner on a new contract between the EU and Ukraine]. *Європейська правда*, 25.04.2018. <https://www.eurointegration.com.ua/articles/2018/04/25/7080922/>

²¹⁴ Cf., e.g.: Skrypniuk, O. (2015). Constitutional Process and Constitutional Reform in Ukraine: Achievements, Problems and Perspectives of Development. *Law of Ukraine*, 7: 183-191.

²¹⁵ Tyushka, Andriy. (2014). A liberationist constitution? Maidan's revolutionary agenda and challenges for constitutional reform in Ukraine. *European View*, 13(1): 21-28.

²¹⁶ European Commission for Democracy through Law (Venice Commission). (2015). Opinion on the Proposed Amendments to the Constitution of Ukraine regarding the Judiciary as Approved by the Constitutional Commission on 4 September 2015, CDL-AD(2015)027, 26.10.2015.

²¹⁷ Law of Ukraine 'On Amending the Constitution (Regarding Justice)' No.1401-VIII of 2.06.2016. <http://zakon3.rada.gov.ua/laws/show/1401-19>.

²¹⁸ Конституційний Суд України. Конституційні скарги, що надійшли до Конституційного Суду України за станом на 19 квітня 2018 року [Constitutional complaints submitted to the Constitutional Court of Ukraine as of April 19, 2018]. <http://www.ccu.gov.ua/novyna/konstytuciyni-skargy-shcho-nadiyshly-do-konstytuciynogo-sudu-ukrayiny-za-stanom-na-19-kvitnya>

²¹⁹ Кириченко, Ю., Б. Бондаренко. (2018). Аналітичний звіт щодо запровадження інституту конституційної скарги [Analytical report on the introduction of a constitutional complaint institute]. К.: ФОП Москаленко О.М. Here p.9.

²²⁰ Мельничук, Анатолій, та Павло Остапенко. (2016). Децентралізація влади: Реформа №1 [Decentralization of Power: A Number One Reform]. Київ: ЦОП Глобус.

reform has already brought significant change to Ukraine. As of now, over 700 amalgamated communities, *hromadas*, have formed²²¹.

However, the process is not yet complete and there are still hindrances to the successful accomplishment of the decentralization reform, not least because of the competing visions on the role of state in the post-revolutionary and conflict-torn Ukraine: 'Whereas civil society regards decentralization as a means of reducing the influence of what it perceives as a captured state on Ukrainian public life, the central authorities regard it as an unnecessary weakening of their powers'²²². In addition to that, the process of administrative-political and financial decentralization remains unpopular in Ukraine's parliament²²³.

In 2015-2017, the voluntary amalgamation of territorial communities brought positive result. Next, the improvement of the mechanisms in the formation and exercise of local (sub-regional) authority looms high on the agenda. The speeding-up of the amalgamation processes appears necessary as well in view of the upcoming general elections in 2019 and local elections in 2020. To promote the process, 17 draft laws are planned for consideration in 2018, that focus on the facilitation of *hromadas*-forming procedures, provision of financial and administrative incentives for this process, as well as bring it to the higher regional (*rayons*) level²²⁴. Another question to address is clear legislative regulation of when and how the process of voluntary amalgamation of territorial communities becomes a compulsory one.

The European Union strengthens its support to local and regional authorities in Ukraine²²⁵. In March 2018, five partnership projects between Ukraine and EU regions and cities were inaugurated²²⁶. The partnership projects will focus on developing economic development plans, training local government officials, education, health and culture, as well as supporting rural, small and medium-sized enterprises, and developing tourism.

5.1.3. Justice

Judicial reform is one of the most anticipated in Ukraine – especially among the population. Given that the court begins with trust, one of the main goals of the judicial reform is to restore public trust in the judiciary.

On 2 June 2016, the Parliament of Ukraine finally adopted important amendments to the Constitution of Ukraine in the sphere of justice and jurisprudence, which had been proposed by the President of Ukraine. The amendments aim at implementing a major judicial reform in the country, which shall include purging its courts from corrupt judges appointed under previous governments. In 2016-17, a number of legislative acts aimed at institutional and personnel updating of the judicial system were adopted, and a contest was held in the newly created Supreme Court of Ukraine. The

²²¹ Ініціатива "Децентралізація": Громади [The "Decentralization" initiative: Hromadas]. <http://decentralization.gov.ua/gromada>

²²² Balázs Jarábik, Yulia Yesmukhanova. (2017). Ukraine's Slow Struggle for Decentralization. *Carnegie Endowment for International Peace*, 8.03.2017. <http://carnegieendowment.org/2017/03/08/ukraine-s-slow-struggle-for-decentralization-pub-68219>

²²³ Лукеря, Іван. (2017) Парламент: тут похована децентралізація [The Parliament: Decentralization is buried here]. *Українська правда*, 07.02.2017. <https://www.pravda.com.ua/columns/2017/02/7/7134379/>

²²⁴ Сидоренко, Сергій. (2018). 'Доведеться створити нову карту України': посланець Меркель та Зубко розкрили плани адмінреформи [One will have to create a new map of Ukraine': Merkel's representative and Minister Zubko revealed the plans for administrative reform]. *Європейська правда*, 05.02.2018. <http://www.eurointegration.com.ua/interview/2018/02/5/7077057/>

²²⁵ Dressler, Matteo, and Stina Lundström. (2017). European Union Support to Decentralisation Reform in Ukraine: a Peacebuilding Endeavour? *WOSCAP Report* (26 April 2017).

²²⁶ ЄС і місцеві органи влади України започаткували п'ять проєктів [The EU and local authorities in Ukraine have launched five projects]. *Ukrinform*, 08.03.2018. <https://www.ukrinform.ua/rubric-regions/2418443-es-i-miscevi-organi-vladi-ukraini-zapocatkuvali-pat-proektiv.html>

institutional system of Ukraine's judiciary became simplified and more straightforward, with the three instances of the judicial system replacing the previous four-instanced one. The introduction of a very comprehensive e-declaration system and new professional eligibility checks, around one thousand judges resigned voluntarily, thus freeing space for a substantial renewal of the long-suffering judiciary. However, as many as 2.400 posts – mostly in the general courts – that became vacated in various ways have not been filled in by now²²⁷. In the result of such a mass exodus, by the end of 2016, for instance, 'in 2019 courts across Ukraine, there was only half the required number of judges working; [i]n some courts, only 20 per cent of the required number of judges was still in place; [i]n seven courts, there were no judges left at all'²²⁸. This inevitably resulted in hundreds of cases becoming pending before the courts.

However, here as in no other domain, it takes time to make any changes work²²⁹. Therefore, 2018 will not become the year of implementation of all key ideas of judicial reform, but this year, significant changes in the justice system are expected: the full operation of the new Supreme Court, the Supreme Court on Intellectual Property, the formation of the High Anti-corruption Court. On 15 December 2017, new procedural codes came into force – the laws necessary to start the work of the new Supreme Court. The all too frequent changes into the laws, including the new Criminal Procedure Code that has been in force for slightly over five years now still perplex the legal certainty in the country: 'in the past five years, the Code was amended hundreds of times, including in October 2017 (in conjunction with the introduction of the new Supreme Court) and in March 2018 (as regarded Art 132 of the Code), with the later one being retracted one week after the amendments entered into force'²³⁰.

In addition, the new High Council of Justice will be established no later than 30 April 2019, prior to which its functions will be performed by the old High Council of Justice. Thus, the old HCJ, whose activities raised the most concerns, will function for another year and a half from now. The appointment of judges for an indefinite period will also be decided by the new High Council of Justice, and not by the Verkhovna Rada, as it has been the case before. Without the consent of the High Council of Justice, a judge cannot be held liable, which might allow to relieve the political pressure on judges.

Whereas slowly progressing, with the full-reform timeline set up to 2020²³¹, the judicial reform is still hampered by many factors, in particular the lack of political will to create an independent judiciary and no readiness to implement judicial changes in practice in full and unconditionally.

5.1.4. Law enforcement

Ukraine's system of law enforcement bodies is undergoing a long overdue transformation from the inherited Soviet system of internal affairs, aimed at protecting the state's security, to the European-style law enforcement agencies, which should focus on providing services to the population and respect for human rights.

²²⁷ Interview with a Member of the High Qualification Commission of Judges of Ukraine (HQCJ). *Kyiv*, 11.02.2018 (recorded by K. Pryshchepa).

²²⁸ Pryshchepa, Kateryna. (2018). Will the long-awaited justice prevail in Ukraine? *New Eastern Europe*, 26.04.2018. <http://neweasterneurope.eu/2018/04/26/will-long-awaited-justice-prevail-ukraine/>.

²²⁹ Кириченко, Юлія. (2018). Чому в Україні гальмується судова реформа? [Why is the judicial reform slowed down in Ukraine?] *Слово і Діло*, 22.02.2018. <https://www.slovoidilo.ua/2018/02/21/pogljad/pravo/chomu-ukrayini-halmuyetsya-sudova-reforma>

²³⁰ Interview with Valentyna Shchepotkina. *Kyiv*, 27.03.2018 (recorded by K. Pryshchepa).

²³¹ Реанімаційний Пакет Реформ. (2016). ПЛАН-ГРАФІК СУДОВОЇ РЕФОРМИ [Judicial reform timeline]. *Реанімаційний Пакет Реформ*, 16.12.2016. <http://rpr.org.ua/news/plan-hrafik-sudovoji-reformy/>

5.1.4.1. Police

The reform of national police, including the patrol police, was one of the first reforms launched. Whereas having produced some positive outcome, as of today, however, the changes taking place in the police are rather non-systemic due to the lack of a systematic vision of reform, and the process of change is often oriented towards the interests of the ministry itself, and not to the needs of society. On 21 December 2017, in the Verkhovna Rada of Ukraine, the draft Law 'On the Disciplinary Statute of the National Police of Ukraine' (No. 4670) was considered, which was being prepared for consideration one and a half years as a necessary and important step in reforming the police. At present, the procedure for bringing disciplinary liability to the National Police is regulated by the Disciplinary Statute of the Internal Affairs Institutions in 2006. It contains outdated provisions, which in practice often serve as the basis for the unofficial pressure from the leaders on their floor. This statute leaves an ordinary police officer defenceless, since it does not contain legal safeguards against the abuse of their power and, on the other hand, the protection of policemen, too²³².

The Decree of the Cabinet of Ministers of Ukraine of 15 November 2017 approved the Strategy for the Development of the System of the Ministry of Internal Affairs of Ukraine by 2020. Most of the provisions of the new document in the field of state policy concern the National Police, the smallest part – the State Migration Service and service centres of the Ministry of Internal Affairs of Ukraine. Other agencies whose activities are guided and directed through the Ministry of Internal Affairs are almost not mentioned in the document.

Most of the provisions of the new state policy document do not contain concrete results and evaluation criteria, which could further assess the status of the execution of the document.

5.1.4.2. Public procuracy

On 7 December 2017, the Verkhovna Rada of Ukraine adopted a Law (No. 7160), which abolished the provisions of the Law of Ukraine 'On Prosecutor's Office', which, in turn, was reducing the number of prosecutors to 10,000 as from 1 January 2018. Starting from 2015, the Law on the Prosecutor's Office required a gradual reduction of the number of prosecutors. As of October 2017, their number was 11,313 – and even with that number Ukraine remains the 'leader' in Europe in terms of the number of prosecutors.

This new decision of the Parliament runs counter to the processes of reforming the justice system in Ukraine, since the changes to the Constitution of 2 June 2016 have essentially reduced the functions and powers of the prosecutor's office. It is ultimately deprived of the function of general oversight, representation of citizens' interests in courts, and subsequently deprived of opportunities to oversee places of non-freedom. Despite these constitutional innovations, the leadership of the General Prosecutor's Office and the parliamentary majority did not want to reduce the number of prosecutors.

Furthermore, on 29 November 2017, the five-year term provided for in the Criminal Procedure Code of Ukraine expired, during which the prosecutor's office exercised powers to investigate crimes suspected by the DBR, Ukraine's new State Bureau of Investigation. At present, investigating prosecutors have the power to finish investigating criminal proceedings they have initiated, but not more than two years. At the same time, prosecutors' investigations are not entitled to investigate new criminal proceedings, that is, those whose information was submitted to the register of pre-trial investigations after 20 November 2017. Thus, the situation has arisen when the SBI has not yet

²³² Банчук, Олександр. (2017). Дисциплінарний статут Нацполіції: поліцейські – не люди? [Disciplinary statute of the National Police: Aren't Policemen people, too?] *Українська Правда*, 22.03.2017. <https://www.prawda.com.ua/columns/2017/03/22/7138717/>

begun its work, and according to the rules of jurisdiction, nobody else has the authority to investigate these crimes.

5.1.4.3. State Bureau of Investigations

An important reform in the field of law enforcement is the formation of the State Investigation Bureau (SBI, or DBR) which shall become the chief oversight institution for all law enforcement offices, top-level officials and judges. The State Bureau of Investigations is a pre-trial investigation agency authorized to investigate crimes committed by politicians, people's deputies, civil servants, judges, prosecutors, police officers and other officials of the law enforcement agencies.

On 22 November 2017, the President of Ukraine appointed the Director of the DBR, who was elected by the Competition Commission.

On 13 December 2017, the Cabinet of Ministers approved the organizational structure of the State Bureau of Investigations (DBR)²³³, which consists of 15 departments and 4 independent departments of the central apparatus, 7 territorial departments, the Academy of the State Bureau of Investigations, as well as the Research Institute of the State Bureau of Investigations.

On 20 December 2017, the newly appointed DBR Director presented the program of activities of the new body for the next five years²³⁴. The program identifies the priorities of the activities of the Bureau, the necessary measures to start a full-fledged work, the procedure for implementing the provisions of the law on cooperation with the public, the timetable for the implementation of these tasks, as well as the criteria for evaluating their implementation.

5.1.5. Anti-corruption

Since 2014, it has become a common parlance to argue that Ukraine is fighting two wars – that is a war against Russia and Russia-backed 'separatists' in the country's eastern regions and a war against corruption. Idiosyncratically, Ukraine's future as an independent and sovereign democracy 'will depend as much on winning its internal war on corruption and fixing its broken government as on keeping Russia contained in the east'²³⁵. Corrupt practices will anything but channel effective and sustainable implementation of the Association Agreement, too, as they are incompatible with the rule of law. The disregard for the rule of law, including in the process of fighting corruption, is one of the most serious enemies of Ukraine's European integration and the EU-Ukraine AA implementation. The EU provides a comprehensive support to Ukraine in its fight against corruption – from institutional capability-building to civic education on the matters of top-level corruption. The EU Anti-Corruption Initiative (EUACI) is the biggest EU support programme in the area of anti-corruption in Ukraine so far. It is implemented by the Danish Development Agency (DANIDA). The initiative with a duration of three years has a budget of EUR15.84 million (EUR14.5 million provided by the European Union and EUR1.34 million by the Danish MFA). The other two components of the

²³³ Кабінет Міністрів України. (2017). Структура Державного бюро розслідувань [The Structure of the State Bureau of Investigations]. *Кабінет Міністрів України*, 13.12.2017. <https://www.kmu.gov.ua/ua/uryad-ta-organi-vladi/derzhavne-byuro-rozsliduvan/pro-derzhavne-byuro-rozsliduvan/struktura>

²³⁴ Кабінет Міністрів України. (2017). Стратегічна програма діяльності Державного бюро розслідувань [Strategic program of activities of the State Bureau of Investigations]. *Кабінет Міністрів України*, 20.12.2017. <https://www.kmu.gov.ua/ua/uryad-ta-organi-vladi/derzhavne-byuro-rozsliduvan/pro-derzhavne-byuro-rozsliduvan/strategichna-programa-diyalnosti-derzhavnogo-byuro-rozsliduvan>

²³⁵ Haring, Melinda, and Maxim Eristavi. (2018). Can Ukraine Win Its War on Corruption? *Foreign Affairs*, 15.02.2018. <https://www.foreignaffairs.com/articles/ukraine/2018-02-15/can-ukraine-win-its-war-corruption>

initiative are the support of the newly created anticorruption agencies and providing the international expertise to the anticorruption parliamentary committee²³⁶.

In Ukraine, a system of state bodies has emerged that fight against corruption. They are split into three groups: bodies which ensure implementation of the state anti-corruption policy; bodies which ensure investigation of criminal corruption offence; and other authorities engaged in the fight against corruption. The first group consists of The National Agency on Corruption Prevention (also known as the National Agency for Prevention Corruption or NAPC), the Ministry of Justice of Ukraine, the Verkhovna Rada of Ukraine and the Profile Committee of the Verkhovna Rada of Ukraine, The National Council on Anti-Corruption Policy. The second group consists of the National Anti-Corruption Bureau of Ukraine (the NABU), The State Bureau of Investigations (SBI), The National Police of Ukraine, and the Specialized Anti-Corruption Prosecutor's Office. Finally, the third group consist of the Security Service of Ukraine²³⁷, and the National Agency for the tracing of assets derived from corruption and other crimes. The High Anti-Corruption Court is currently at its inception stage.

5.1.5.1. National Anti-Corruption Bureau of Ukraine

The National Anti-Corruption Bureau of Ukraine (NABU) is a brand-new body in Ukrainian law enforcement system, created after the Revolution of Dignity of 2014 with the purpose of eradicating governmental corruption in order to enable the formation and development of a successful society and efficient state. It authorized to investigate criminal corruption offences committed by the top-ranked officials, judges, heads of big state enterprises, senior officers of the Armed Forces and others.

The National Anti-Corruption Bureau (NABU), a new and, as a matter of fact 'the first genuinely Ukrainian law-enforcement agency'²³⁸, started its investigations of high-level corruption cases already in December 2015. Of the 107 cases brought by NABU to the court, only 19 convictions were issued²³⁹. In the second half of 2017, of 29 criminal proceedings that were filed to the court, 27 indictments and 2 cases with a petition for release from criminal liability resulted from the court action.

In November 2017, the Prosecutor General's Office of Ukraine (GPO) and the Security Service of Ukraine interfered with an undercover special operation of the National Anti-Corruption Bureau aimed at identifying members of an organized criminal group in the State Migration Service of Ukraine²⁴⁰. The ultimate goal of such actions could be to block further investigations as of top-corrupt officials. This situation became possible due to the fact that NABU has no authority for

²³⁶ EU officials support the establishment of the anticorruption court in Ukraine. *European External Action Service*, 14.06.2017. https://eeas.europa.eu/delegations/ukraine/28156/eu-officials-support-establishment-anticorruption-court-ukraine_en

²³⁷ One of the tasks of the Security Service of Ukraine (SBU) since its establishment has been the fight against corruption, which is performed by the Service's so-called **"K" department**. With the launch of the country's new state authorities such as the National Anti-Corruption Bureau (NABU) and the State Bureau of Investigations (DBR), whose direct function is the conduct of anti-corruption measures, the SBU's functions in this domain are incrementally becoming both obsolete and jurisdictionally conflicting. Both internal and international authorities, including the EUDEL Ukraine, voiced their concerns about the rationale of further fulfilment by the SBU of tasks in the area of fighting corruption and economic crime, cf.: Власенко, Вікторія. (2018). Євросоюз – Києву: СБУ має займатися нацбезпекою, а не боротьбою з корупцією. *Deutsche Welle Українською*, 14.06.2018. <http://www.dw.com/uk/євросоюз-києву-сбу-має-займатися-нацбезпекою-а-не-боротьбою-з-корупцією/a-44226593>.

²³⁸ Interview with Taras Lopushansky. *Lviv*, 26.02.2018.

²³⁹ Зі 107 справ які НАБУ скерувало до суду було винесено лише 19 обвинувальних вироків [Of the 107 cases brought by NABU to the court, only 19 convictions were issued]. *Гал-інфо*, 09.02.2018. <https://galinfo.com.ua/news/zi-107-sprav-yaki-nabu-skeruvalo-do-sudu-bulo-vyneseno-lyshe-19-obvynuvalnyh-vyrokiv-280765.html>

²⁴⁰ NABU. (2017). Undercover operation conducted by the NABU and the SAPO was failed due to the lack of the right of autonomous wiretapping. *NABU official website*, 30.11.2017. <https://nabu.gov.ua/en/novyny/undercover-operation-conducted-nabu-and-sapo-was-failed-due-lack-right-autonomous-wiretapping>

autonomous wiretapping and conducts wiretapping on the basis of the Security Service of Ukraine only.

For the last 2 years, since detectives of the National Anti-Corruption Bureau of Ukraine (NABU) started pre-trial investigations, UAH253.3 million were refunded to the State budget, embezzlement of about UAH2 billion was prevented. Over UAH674 million are in the process of confiscation. In 2017, owing to the work of the NABU detectives UAH177.4 million were refunded to the State budget, including UAH103.9 million for the second half of the year. In total NABU provided for repayment of more than UAH253 million, with part of the sum being returned to the accounts of the State Enterprises, and another part – confiscated due to the court decisions. For example, 51.7 million UAH was refunded to the accounts of PJSC 'Ukrnafta' due to the NABU efforts in 2017.

However, there seems to be unfolding also a non-material effect of NABU's fight against corruption – not least because the agency is 'fighting main two "enemies" in the country, i.e. the top-level corrupt practices per se and the so far prevalent idea of "corruption immunity"²⁴¹.

5.1.5.2. High Anti-Corruption Court

As of 31 December 2017, verdicts for 107 cases lodged by NABU were pending in courts, only a quarter of decisions were taken. Moreover, among these decisions, there is currently only one guilty verdict, under which a person was sentenced to imprisonment. The remaining decisions on cases from the NABU and the SAPO are mostly based on plea bargain agreements with minor participants in corruption schemes, concluded by the investigation in exchange for testimony and/or compensation for damage, caused to the state²⁴². Thus, the urgency in the establishment of the specialized Anti-Corruption Court in Ukraine has been long overdue.

Out of four registered draft laws in the Parliament, on 1 March 2018, the Verkhovna Rada of Ukraine upheld the presidential bill No. 7440 'On the High Anti-Corruption Court' in its first reading. The consultations with the IMF and the Venice Commission followed. 13 of the 14 recommendations of the Venice Commission got actually agreed before the draft law was considered in the second reading. The VRU began to consider the bill at its second reading on 23 May 2018 and had to address 1927 amendments suggested. On 7 June 2018, the Verkhovna Rada of Ukraine adopted the Law 'On the High Anti-Corruption Court', with amendments, by a constitutional majority (315 people's deputies supported the adoption of the bill)²⁴³. Signed by the President Poroshenko on 11 June, the law came into force on 14 June 2018. Some of the most heated debates revolved around the provisions on the Council of International Experts and its functions, including its veto rights, in the appointment of judges of this Court. The compromise formula found was that 'the veto of the Council of International Experts in the appointment of judges can be overcome by a majority of the votes of the Joint Commission, which includes the members of the Higher Qualification Commission of Judges and the Council of International Experts – but with the condition that no less than half of the members of the Council of International Experts make up this majority'²⁴⁴. Accordingly, the independence of the High Anti-Corruption Court would be determined by the 'independence of at least four members of the Council of International Experts', and, furthermore, any party or institution that controls the three members of the Council of International Experts 'will receive a guaranteed veto right'²⁴⁵.

²⁴¹ Interview with Taras Lopushansky. *Lviv*, 26.02.2018.

²⁴² *Ibid.*

²⁴³ Проект Закону України про Вищий антикорупційний суд [Draft Law of Ukraine on the High Anti-Corruption Court] No.7440 of 22.12.2017. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63218

²⁴⁴ Mustafa Nayyem, *Facebook* post, 07.06.2018. Mustafa Nayyem is a Member of Parliament of Ukraine.

²⁴⁵ *Ibid.*

It should be emphasized that the jurisdiction of the High Anti-Corruption Court of Ukraine will extend over the matters of top-level corruption only, and thus the Court will only process cases brought by NABU and SAPO. It would be naïve to assume that the Court will become fully operational right away and that most, or all, of the 600 cases currently pending in the NABU will get immediately settled²⁴⁶. The chances are high however that it will become partially operational soon, especially as only the first 35 anti-corruption judges need to be appointed to this end and given that the political will was demonstrated to adopt the necessary laws on procedure in order to set-up the High Anti-Corruption Court of Ukraine.

²⁴⁶ Красносільська, Анастасія. (2018). Антикоруційний суд: за що проголосував парламент [The Anti-Corruption court: What did the Parliament vote for?]. *Дзекрало Тижня*, 09.06.2018. <https://dt.ua/article/print/internal/antikorupciyniy-sud-za-scho-progolosuvav-parlament-280181.html>

6. Conclusions and recommendations

When assessing the implementation of the EU-Ukraine Association Agreement, it is of utmost importance to complement the effort of monitoring ‘technical’ progress in scheduled legislative approximation with the ex-post evaluation of the EU-Ukraine association *acquis* application.

Both monitoring and evaluation assessments of the implementation progress up to date should not neglect Ukraine’s persisting domestic and the changing international scope conditions, that is the overall association and reform implementation framework. In addition to state institutional capabilities, the complexity and scope of the tasks faced, to no lesser extent, present a salient cumulative factor that affects both the pace and the sustainability of the AA/DCFTA implementation, including Ukraine’s simultaneously pursued transformative agenda. Externally-driven, Russia’s annexation of the Crimea peninsula and the sponsored military conflict in Ukraine’s east have meanwhile undermined Ukraine’s domestic stability, cused its territorial sovereignty and led to the reorientation of its foreign economic activity from Russia to the European Union. Domestically, the protracted legacy of popular legal and political culture, including high levels of corruption, inefficient and unaccountable bureaucracy, low trust in public institutions and legal certainty, have, too, contributed to the failure of past reform attempts – and will certainly affect the effectiveness and sustainability of the ongoing reform and the AA/DCFTA implementation. This complex situation creates challenges for the EU’s principled pursuit of conditionality versus solidarity vis-à-vis Ukraine – but it also creates opportunities for the European Union and Ukraine to jointly and more substantially engage in (re)shaping these framework conditions. Making Ukraine’s transformation and European integration process sustainable, if not irreversible, should become the main overarching priority for decision-makers in Brussels and Kyiv in 2018-19.

The pursuit of a more pragmatic and prioritized approach towards both the ongoing reforms in Ukraine and the EU-Ukraine Association Agreement implementation should be preferred by Brussels and Kyiv over the so far followed enthusiastic approach, with its excessive expectations on both sides. Remaining not only objective, but also consistent and determined in their individual and joint efforts in the context of Ukraine’s transformation and European integration will continue to present a challenge for the European Union and Ukraine ahead of the upcoming 2019 elections in the country. An understandable shock in itself, the upcoming electoral cycle is also associated with the increase of domestic populism and externally-driven disinformation, thus strengthening multi-level strategic communications and avoiding populism shall help mitigate the challenges of miscommunication and mismanagement. Avoiding legislative populism, that is to say the adoption of populist bills that would run contrary to the EU-Ukraine AA provisions or Ukraine’s taken reform path (such as the late-2017 ‘Buy Ukrainian’ draft law), presents yet another area where the engagement of the Ukrainian government and civil society but also the EU partners need to be early identified and pursued in a concerted manner.

6.1. Addressing the law and politics of effective implementation

An effective implementation of the EU-Ukraine Association Agreement and the growing body of association *acquis* will therefore necessitate the prioritization and conduct of a number of horizontal and sectoral measures and activities, as follows:

6.1.1. DCFTA, and legislative and regulatory approximation

As the trade dynamics between the European Union and Ukraine steadily intensifies, the harmonization of market rules and regulations needs to catch up, too. However, the myth of an urgent and mass adoption of the European integration legislation in 2018 should be reasonably assessed against the backdrop of Kyiv’s own limited state capabilities, external disturbances,

including first and foremost Russia's continued aggression in Ukraine, as well as the implications for further implementation of the (hastily) adopted bills.

Whereas the process of scheduled legislative and regulatory approximation indeed needs to be sped up and improved in terms of legislation quality, some further practical steps can be taken to maintain the positive trade dynamics. For instance, the European Parliament and the Ukrainian Government should maintain the dialogue on further tariff quotas elimination, Ukraine's export promotion and broadening the access for Ukrainian companies to the EU internal market. Allowing and further encouraging processed products exports from Ukraine to the EU shall contribute to the increase of production and re-industrialization in Ukraine. Following Ukraine's access to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin, a swift completion of all FTAs with pan-Euro-Mediterranean Convention (PEMC) participating countries need to be prioritized by the Ukrainian government. Better protection of intellectual property rights from their fixation to commercialisation should be streamlined in the Ukrainian government's efforts in 2018.

In order to improve control over the movement of goods and accelerate customs clearance, as well as to ensure an effective risk analysis and thus counteract the violation of customs legislation, the introduction of the New Customs Transit System (NCTS) in Ukraine would be advisable. This should not only boost Ukraine's potential as a transit country but also ensure greater interoperability of customs data systems between Ukraine and the European Union and the wider EEA. The support for measures in fighting corrupt practices in the Ukrainian customs service needs to be intensified as well.

Preventive measures need to be taken in the area of regulation of non-tariff barriers to trade, with its possibilities for non-conform or inconsistent law application practices, including the cases of direct (trade-related) or indirect (not trade-related) discrimination. Efforts need to be made herein to increase the level of competence of public officials as well as of private companies that deal with technical regulations in order to improve the free trade operation and law enforcement practices. The EU's support to Ukrainian public officials training and socialization (especially, as regards the customs office or national regulatory agencies personnel) as well as consultancy for Ukrainian and European businesses on the opportunities and practicalities of mutual market access needs to be furthered in this context.

6.1.2. Economic assistance and conditionality

While recovering, Ukraine's economy has been under a double-shock from internal structural reforms and external reorientation. A number of international donors, including the EU, EIB and EBRD, IMF and individual national funding schemes, have been actively providing economic and technical assistance. Still, a USD4.5-billion financing gap for 2018 and 2019 was identified by the IMF. The European Union's newly agreed third package of macro-financial assistance (MFA) of a further EUR1 billion in loans will help cover Ukraine's financing needs over a period of two and a half years. This exceptional form of EU's financial aid complements the Union's assistance to Ukraine provided under the European Neighbourhood Instrument. While maintaining solidarity with Ukraine on its state-building and transformation path in times of austerity and military conflict with a big neighbouring power, it remains crucial to pragmatically pursue the conditional approach, including by withholding further disbursements, as it was the case with the cancellation of a EUR600 million instalment in January 2018 due to incomplete compliance with the conditions set. Importantly, the crucial conditions – such as Ukraine's respect of democratic mechanisms, human rights, and the rule of law, as well as financial conditions and progress in the fighting and prevention of corruption – will need to be clearly stated in a financial aid document (such as a memorandum of understanding between the European Commission and the Ukrainian government) and regularly monitored. Fighting corruption is a matter that most frequently comes to the fore of attention in the discussions on conditionality. The delays in the establishment of the High Anti-Corruption Court, the failure of lifting the duty of anti-corruption activists to submit e-declarations, as well as the lack

of an automatic checking system for electronic declarations continue to be a matter of concern for the European Union. Whereas supporting Ukraine's national anti-corruption institutions, such as the National Anti-Corruption Bureau, the EU should fully use the leverage of conditionality when disbursing the agreed MFA package in order to push for anti-corruption measures, thus helping render the Ukrainian state and society more resilient in the long term.

Coordination of the international community's economic and technical assistance to Ukraine, including the EU's and EU Member States' programmes and initiatives, presents itself as a reasonable further step in identifying the gap areas in structural reform support and the overall improved redistribution of loans and grants, including the direct funding of SMEs. The support of activities which promote the improvement of Ukraine's investment climate and opportunities should become a focus of coordinated action as well. Simultaneously, the Ukrainian government shall take additional actions in advancing the deregulation agenda, fighting against shadow economy and its fiscal, economic and social consequences ('de-shadowing' of economy).

6.1.3. Good governance

Good governance standards and practices shall be promoted and pursued more intensively. The European Union should prioritize here the support of Ukrainian public administration reform, including through sharing of best practices at various levels of governance, and the transition to electronic governance, e-governance, in the country. The gradual digitalization of the public sphere in Ukraine will not only enhance the quality of public services (such as eHealth system, e-Justice, tax declaration, business operation and other crucial services), but also contribute to the transformative change of Ukrainian bureaucracy and the fighting of bureaucracy-related corruption practices.

In the context of effective implementation of the EU-Ukraine AA, both Kyiv and Brussels need to put more emphasis on reforming Ukraine's public administration – in terms of enhancing institutional and expert capabilities. Inter-institutional coordination, expertise in EU law and policy matters, but also performance and accountability should profile the joint effort.

Provided the respective legislation and institutional mechanisms are put in place, the digitalization of governance in Ukraine might further contribute to the consolidation of democracy in the country – not least in the context of introducing e-democracy tools (such as online voting).

6.1.4. Institutional capability

In view of enhancing the EU law-conform interpretation and application of the association *acquis*, the support of training and socialization activities for Ukrainian judges and law-enforcement agencies should intensify. Given that the EU-internally applicable preliminary reference procedures are missing in the EU-Ukraine association law, establishing an inter-judicial dialogue between the Ukrainian judiciary, the EU's Court of Justice and EU Member States' national courts presents itself as an additional opportunity to ensure consistent application of the growing EU-Ukraine association *acquis*.

In the context of the 2017 adopted governmental implementation roadmap, the effectiveness of the EU-Ukraine Association Agreement implementation will benefit from a more active contribution by the joint association bodies in terms of prioritizing the annual agenda, overseeing the DCFTA implementation, and prompt intervention at the corresponding (civil, parliamentary or inter-governmental) levels in case of any inconsistencies. The visibility of the association bodies established and operational under the EU-Ukraine Association Agreement should be increased as well.

6.1.5. Legislative and policymaking practices

As the legislative approximation agenda remains an area of underachievement (as the shifts in implementation schedule indicate) and the policymaking agenda is overburdened already, it appears necessary to strengthen both the quality and speed of policymaking and legislative cycles

not least in order to render the policy and legislative outputs more sustainable in the long term but also to regain the popular confidence and support for the new legislative and regulatory measures.

The changes to the legislative rules of procedure in the Ukrainian Parliament are necessary as to introduce a binding obligation of a law initiating subject to provide an expert conclusion on the conformity of proposed legislation with EU *acquis*. The Ukrainian Government shall undertake such responsibility of examining the draft bills on European integration, submitted for consideration to the Verkhovna Rada, for their compliance with the EU law. This should help regulate the quantity and quality of draft legislation. This responsibility might be undertaken by the GOEEI or the Ministry of Justice, as it was the case before 2010.

In addition, the governmental legislative initiative as regards the matters of Ukraine's European integration agenda should be exercised more prominently – including in terms of actual prioritization of the related legislation. In view of the 57 draft bills ambitiously scheduled for adoption in 2018-19 (with 22 of them planned for 2018), the governmental prioritization, in cooperation with the parliament, of European integration bills will make the legislative process more predictable thus helping avoid the dangers of legislative spamming and populism.

Currently, it takes approximately two years for the new legislation, as scheduled for approximation by the EU-Ukraine AA, to be developed and adopted. Prioritization, institutional leadership and deliberation of respective parliamentary committees with all stakeholders might help reduce this term to one year, which would substantially help overhaul the legislative approximation schedule under the EU-Ukraine AA. In this context, the role of the Verkhovna Rada Committee on European Integration should be strengthened both within the Parliament, parliamentary-governmental relations, and in the government oversight area.

Furthermore, evidence-based policymaking (including the reliance on external – think-tank – research and expertise), public discussion and the overall inter-agency coordination will contribute to a more sustainable legislation and legal certainty.

Ensuring that the list of legislation that needs to be approximated remains up to date is another challenge that should be jointly addressed by the EU and Ukrainian authorities, not least in the form of expert, executive (EU institutions and agencies), and judicial dialogues.

6.1.6. Civil society engagement and civic education

Engaging more with Ukrainian civil society, including first and foremost the support of grassroots activism (along with the continued support of the established and agglomerated CSOs) and political participation of the young, presents itself as a necessary step to increase the sustainability of the country's current transformative course and its European integration path – especially ahead of the upcoming elections. Several lines of effort shall be considered in this regard.

First of all, in order to rebuild confidence in both public institutions and Ukraine's European future, small but feasible steps in improving Ukrainian people's welfare in times of conflict and austerity as well as boosting both professional and political engagement opportunities for the youth present themselves as a meaningful area of the EU's and Ukrainian authorities' strategic engagement. Intensifying the people-to-people contacts between Ukrainian and European public, youth, and professionals (especially at the level of local government) is another line of effort to be further pursued. Second, the communication of the progress and the overall rationale and benefits of Ukraine's European integration shall be intensified. Some good prospects for this line of effort are presented by the recently adopted Ukrainian government's communication strategy and the joint public information campaign launched by the GOEEI and the EU Delegation in Ukraine. Along with this and thirdly, a broad civic education campaign will need to be launched on the matters of 'living European values' in all areas from law enforcement to good governance to anti-corruption or non-discrimination. Finally, in an effort to provide for an effective civil society oversight of the overall EU-Ukraine AA implementation process and the operation of the programmes and projects of EU-level

and international technical assistance in particular, the organized civil society organizations should be given a more sufficient level of access to the negotiations on the launch of such projects and their ex-post assessment. Transparency and accountability of such CSOs should evidently be encouraged.

6.1.7. Information and communication

As the populism grows in Ukraine and the EU, and both partners find themselves in the epicentre of Russia's disinformation campaign, their strategic communications – at all levels – need to be regularly maintained. Both the EU-Ukraine Association institutions and the EU Delegation in Ukraine shall become the nodal points for communication activities.

In addition, the strategic communications between the Ukrainian state and society need to be enhanced. Given that everyday political communication had largely been absent from the government-society relations practice in Ukraine, its recent introduction (not least via the GOEEI communications) should not be subject, in the long term, to external support but present a case of a daily governmental business (routine), with respective responsibilities and funding allocation from the state budget. Herein, a more active and comprehensive opening of the access to public data belongs, too, to the home-tasks of the Ukrainian government.

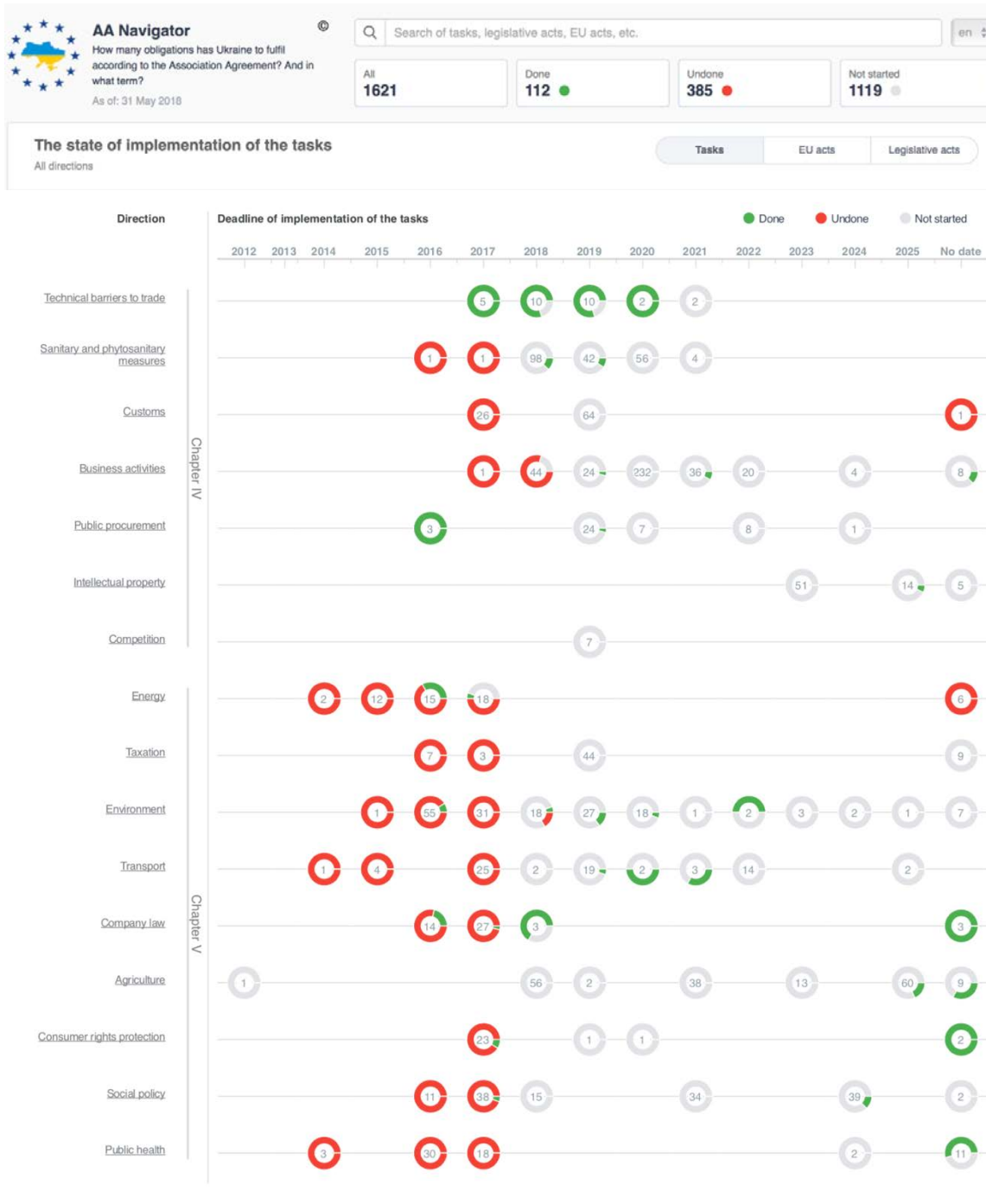
Both the introduction of new legislative norms and regulatory standards as well as the ongoing deep – and thus unpopular – reforms will benefit from the regularized and policy-focused governmental communication on legislative intention and content as well as policy rationale, effects, and actual outcomes.

6.1.8. Monitoring and evaluation

The Ukrainian Government made a commitment to invest in open-access data policy. Whereas the state institutions are slowly opening their data to the public, the access to systematic, holistic and up-to-date data still presents a challenge. The announced governmental monitoring mechanism for the EU-Ukraine AA implementation still has not been put online and thus opened for the public. Given this, the evaluation of the progress in implementing the Association Agreement proves to be troublesome. Both the European Union, Ukrainian civil society and the expert community will benefit from the publication of the online governmental monitoring system of the EU-Ukraine AA implementation.

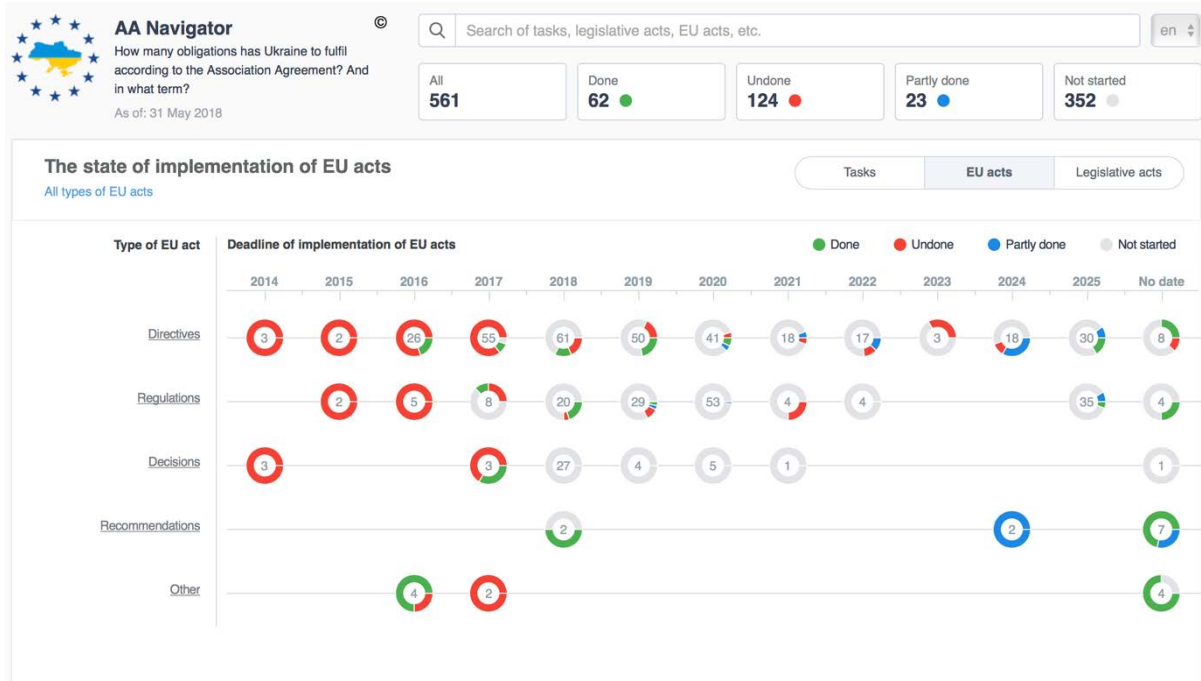
7. Annexes

7.1. Annex 1. The state of implementation of the tasks under the EU-Ukraine Association Agreement



Source: AA Navigator (data as of: 30.05.2018), <http://navigator.eurointegration.com.ua/tasks>

7.2. Annex 2. The state of implementation of the EU *acquis* under the EU-Ukraine Association Agreement



Source: AA Navigator (data as of: 30.05.2018), <http://navigator.euointegration.com.ua/eu-acts>

7.3. Annex 3. Four dimensions of the EU-Ukraine association and integration

<i>EU's extended structure</i>	<i>Structure pillars</i>	<i>Normative and regulatory content</i>	
Democracy structure	Respect for 'EU's values' and principles as AA/DCFTA's 'essential clause' <i>EU values</i> as defined in the EU's legal order <i>EU values and principles</i> to be shared	Democratic principles (Art 2 EU-UA AA) Principles of free market economy (Art 3 EU-UA AA)	human rights and fundamental freedoms, rule of law, principle of sovereignty and territorial integrity, inviolability of borders and independence, containing proliferation of WMD, etc. rule of law, good governance, fight against corruption, different forms of organized crime and terrorism, promotion of sustainable development & effective multilateralism
Security structure	CSDP (Art 4-13 EU-UA AA) JHA/(A)FSJ (Art 14-24 EU-UA AA)	political association; CSDP-alignment; European common aviation area (ECAA) agreements people's mobility / visa-free regime treatment of and mobility of workers: Art 17-18 EU-UA AA (! non-discrimination of certain categories of Ukrainian citizens) ← Art 77(3) TFEU (free movement and settlement) legal cooperation / approximation in civil and criminal matters: Art 24 EU-UA AA ≈ Art 81 and 82 TFEU	
Energy structure	Art 337(2) EU-UA AA → <u>direct link</u> to Energy Community Treaty Trade-related energy Energy security	(common) <i>lex specialis</i> regulatory framework 'energy goods' and energy supply regulations (Art 268-280 EU-UA AA) Commitment to energy security enhancement (Preamble (para 19, 20) EU-UA AA)	
Economic structure	Free movement of goods Free movement of services Free movement of capital Free movement of persons? <i>Special regimes:</i>	free trade in goods: Art 27 EU-UA AA ('elimination of customs duties, fees & other charges') ≈ Art 30 TFEU ('prohibition of customs duties'), incl Art 34 TFEU (imports) & Art 35 TFEU (exports) <i>standstill clause</i> : Art 30 EU-UA AA ≈ Art 37(2) TFEU MEQR & discrimination prohibition: Art 34-35 [sec.3] EU-UA AA (elimination of non-tariff measures and national treatment) ≈ Art 30 TFEU, incl Art 34 TFEU (imports) and Art 35 TFEU (exports) freedom of right of establishment: Art 85(1) EU-UA AA (! progressive reciprocal liberalization of establishment) ≈ Art 49 para 2 TFEU non-discrimination [as per Art 10 TFEU]: Art 94(1) EU-UA AA ('national treatment', again with MFN clause) ≈ Art 10 TFEU ban on restrictions on FMCapital: Art 144 EU-UA AA [but exception as per Art 145 EU-UA AA] ≈ Art 64 TFEU <i>step-backward measures</i> : Art 146 EU-UA AA (safeguard measures) ≈ Art 64(3) TFEU <i>no, but:</i> Competition State aid Public procurement Macro-economic cooperation	non-discrimination on grounds of professional qualifications: Art 106 EU-UA AA (mutual recognition) ≈ (?) Art 10 TFEU visa-free regime modalities rules of fair competition: Art 253 EU-UA AA → <u>direct link</u> to Art 101, 102 and 106 TFEU approximation of laws and enforcement practice: Art 256 EU-UA AA [! with reference to specific EU regulations] ≈ Art 114-118 TFEU (approximation of laws) incompatibility of state aid with free trade: Art 262(1) EU-UA AA ≈ Art 107(2) TFEU • (<i>sic!</i>) <i>interpretation of Art 262(1) EU-UA AA: Art 264 EU-UA AA → direct link to Art 106, 107 and 93 TFEU</i> Art 148-156 [ch.8] EU-UA AA shared principles: Art 343-345 [ch.2] EU-UA AA ≈ Art 119 TFEU (! same guiding principles, incl. <i>open market economy</i> , on economic and monetary policies)

Source: Author's own compilation, adapted from: Tyushka 2016.

7.4. Annex 4. Most important values for EU citizens and Ukrainians

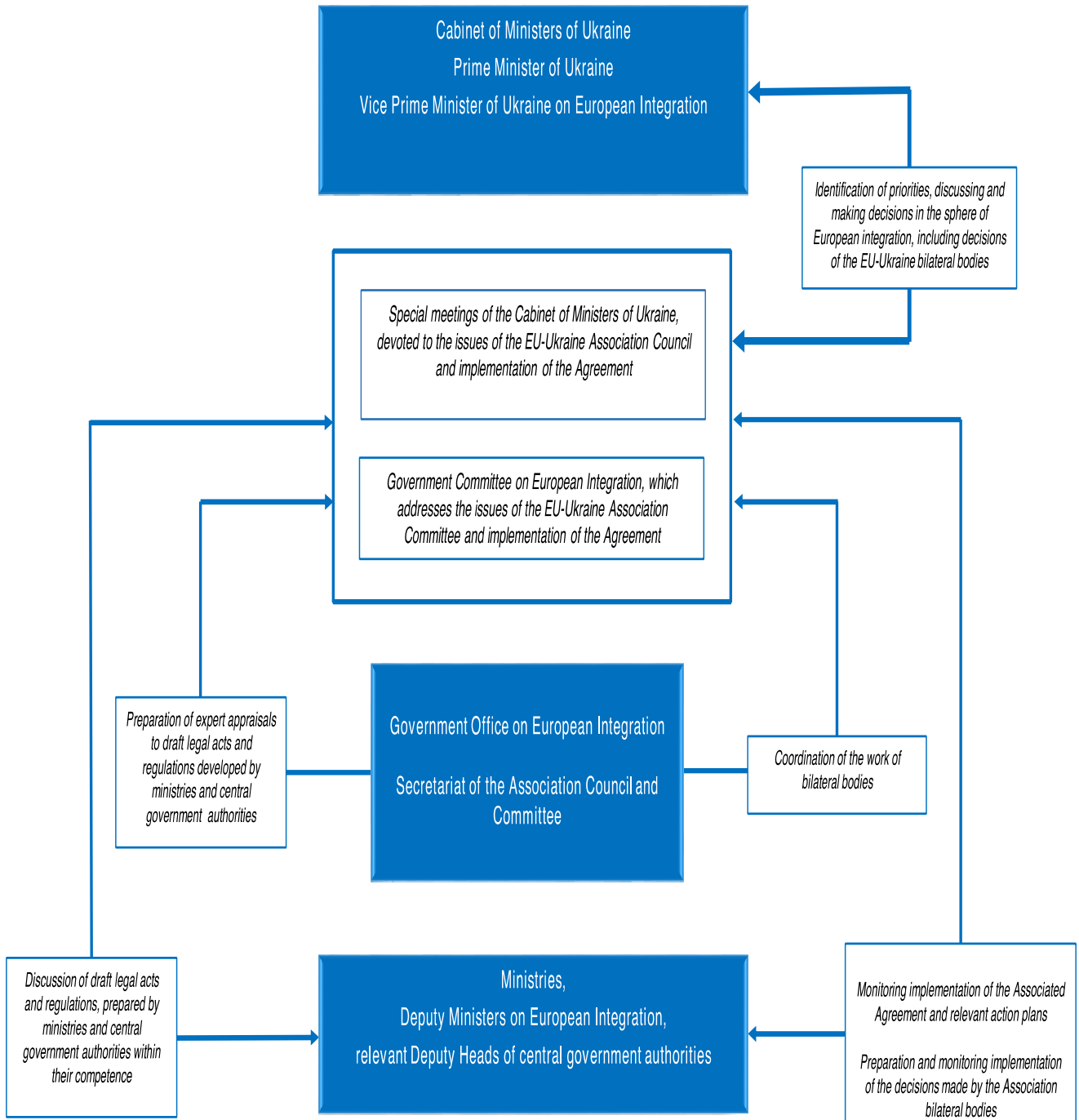
Table 3: Distribution of respondents' answers to the question: »Please indicate which of the following values are the most important values for ...?« (respondents could specify no more than three answers)

Most important values are ... (%)	Personal View	Ukrainians	Europeans
Peace	56.6	61.2	22.4
Respect for human life	42.7	29.2	19.4
Human rights	33.3	23.2	28.1
Individual freedom	28.2	19.2	19.4
Self-realization	20.8	12.3	12.3
Solidarity (support for others)	16.1	16.4	8.1
Democracy	14.5	27.4	34.7
Equality	13.1	12.4	11.0
Rule of law	11.7	18.2	28.9
Freedom of religion	10.6	10.7	11.6
Tolerance	9.0	10.2	13.3
Respect for other cultures	5.4	6.2	11.8
None of the above	1.1	0.9	1.0
Difficult to say	3.2	6.5	15.3

Source: Buhbe 2017: 13.

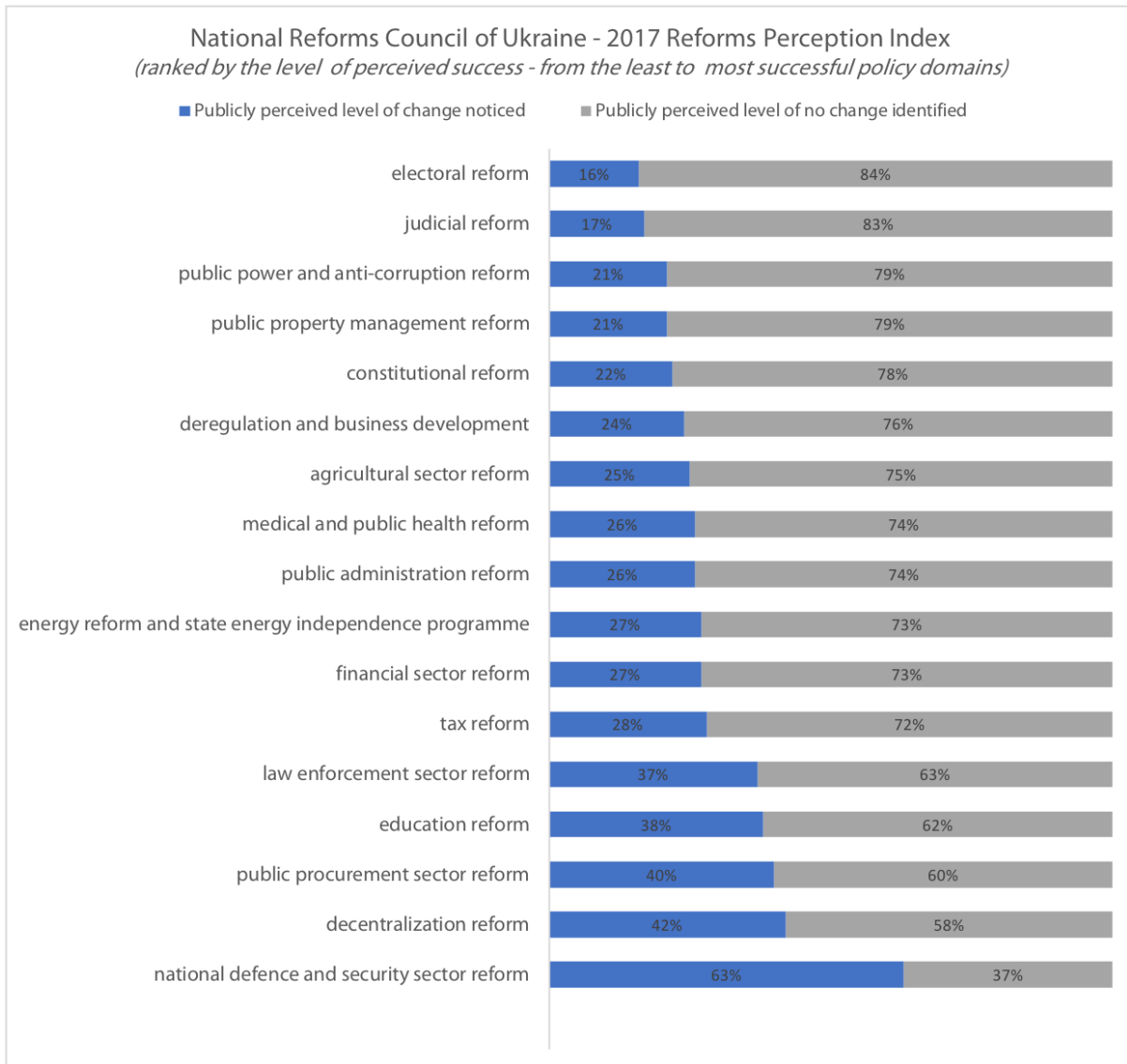
7.5. Annex 5. Ukraine's institutional coordination mechanism for European integration

Coordination Mechanism for European Integration Policy



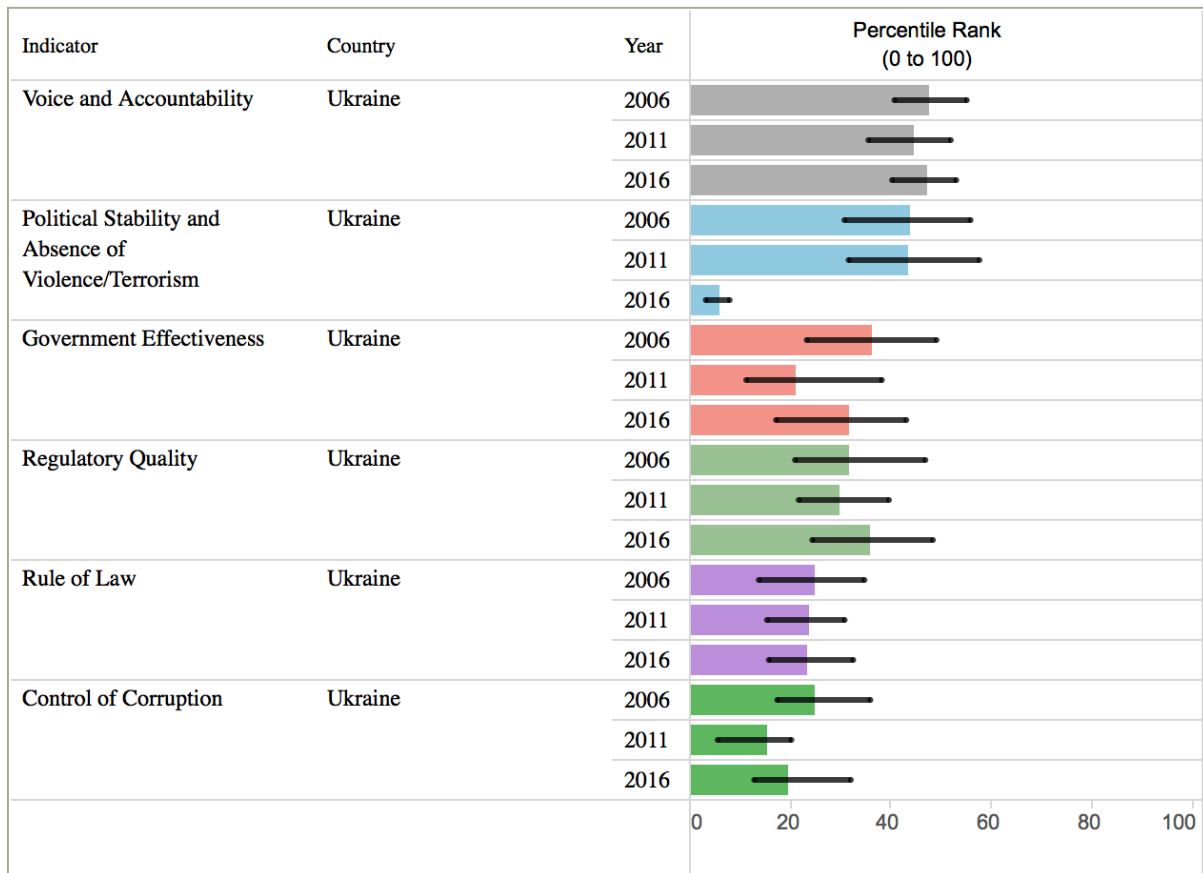
Source: GOEI Report on the EU-Ukraine AA Implementation, 2015: 27.

7.6. Annex 6. NRC's 2017 Reforms Perception Index



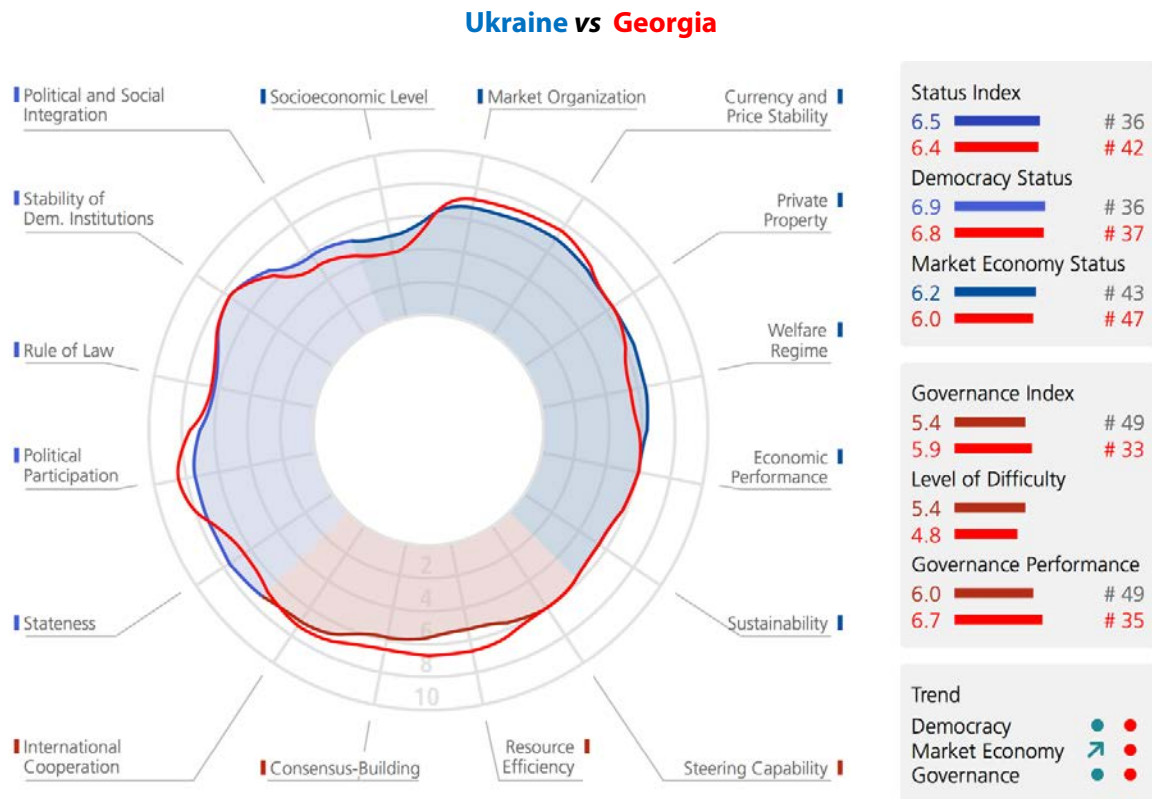
Source: Author's own compilation based on data from National Reforms Council (2017)

7.7. Annex 7. Worldwide Governance Indicators: Ukraine, 2006-2016



Source: World Bank's *Worldwide Governance Indicators* (WGI) 2018.

7.8. Annex 8. Bertelsmann Transformation Index 2018: Ukraine vs Georgia and Moldova



Source: Bertelsmann Transformation Index (BTI) 2018.

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The first part of this assessment, an opening analysis prepared within the European Parliamentary Research Service, presents the most recent opinions of the EU monitoring and supervising bodies on the implementation of the three association agreements (AAs). It also presents the participation of the three associated countries in selected EU programmes.

The second part contains three briefing papers prepared by external experts, who evaluate the implementation of the AAs with Moldova, Georgia and Ukraine in detail. These papers present the successes and shortcomings of the implementation as well as the reforms undertaken. The analyses are accompanied by recommendations on how to improve the implementation processes.

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