

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES  
POLICY DEPARTMENT



**The state of  
implementation of the  
associations and free  
trade agreements with  
Ukraine, Georgia and  
Moldova**

AFET



## STUDY

# 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

### ABSTRACT

Signing and ratifying Association Agreements with Georgia, Moldova, and Ukraine has proven to be an impressive affirmation of Brussels' soft power. The EU's overtures have persuaded elites and mobilised societies despite the fact that the Agreements come neither with a membership promise nor with the kind of financial assistance that has been given to the EU's new member states.

EU assistance has been effective in restoring macro-financial stability in all three countries. While costs of compliance with the DCFTA were calculated, level of investment associated with the necessary modernisation to make these economies competitive were neglected. The discrepancy between costs and benefits should prompt the EU to be more flexible.

Brussels' achievements remain fragile. Informal interests continue to play important roles in these countries and have the potential to thwart reforms. In the absence of strong, de-politicised institutions, the EU should work to support political consolidation—the alternative is further polarisation and political fragility—while at the same time insisting on adherence to democratic standards and strengthened institutional checks and balances.

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This paper was requested by the European Parliament's Committee on Foreign Affairs.

English-language manuscript was completed on 16 November 2017.

Printed in Belgium.

Authors: Iulian GROZA, Executive Director of the Institute for European Policies and Reforms (IPRE) in Chisinau and former Deputy Minister of Foreign Affairs and European Integration of the Republic of Moldova; Balazs JARABIK (coordinator), non-resident scholar at the Carnegie Endowment for International Peace, where his research focuses on Ukraine and Eastern Europe. Jana KOBZOVA, Policy Director at Rasmussen Global, a political consultancy, associate fellow at the European Council on Foreign Relations, London; Dr. Viktor KONSTANTYNOV, Associate Professor at the Institute of International Relations, Taras Shevchenko National University of Kyiv; Tsovinar KUIUMCHIAN, research assistant at Carnegie Europe and a student in European Social and Political Studies at University College London (UCL); Leonid LITRA, Senior Research Fellow at the New Europe Center in Kyiv and Associate Fellow at the Institute for Development and Social Initiatives 'Viitorul' in Chisinau, Moldova; Tornike SHARASHENIDZE, Full Professor and Head of the MA Program in International Relations at the Georgian Institute of Public Affairs (GIPA); Isaac WEBB, writer and editor based in Berkeley, California.

Official Responsible: Krzysztof BARTCZAK.

Editorial Assistant: Elina STERGATOU.

Feedback of all kind is welcome. Please write to: [krzysztof.bartczak@europarl.europa.eu](mailto:krzysztof.bartczak@europarl.europa.eu).

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This paper will be published on the European Parliament's online database, '[Think tank](#)'.

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ISBN: 978-92-846-2220-7 (pdf)

ISBN: 978-92-846-2219-1 (paper)

doi:10.2861/489093 (pdf)

doi:10.2861/655603 (paper)

Catalogue number: QA-05-17-170-EN-N (pdf)

Catalogue number: QA-05-17-170-EN-C (paper)

## Table of contents

1	Executive Summary	6
2	Introduction	7
2.1	Methodology	7
3	Ukraine	8
3.1	The Association Agreement and selected sectoral reforms	9
3.1.1	Overall reform framework	9
3.1.2	Strategies over actions	11
3.1.3	Power consolidation	11
3.1.4	The Verkhovna Rada as a reforms bottleneck	12
3.1.5	Overall reform review	13
3.1.6	Anti-corruption	17
3.1.7	Energy	19
3.1.8	Public procurement	20
3.1.9	Decentralisation	21
3.1.10	The judiciary	22
3.1.11	Media	23
3.1.12	Electoral reform	24
3.1.13	Privatisation	25
3.1.14	Security sector reform	26
3.2	Economic aspects of EU assistance	28
3.2.1	EU financial assistance	29
3.2.2	Assistance to SMEs	30
3.2.3	Ukraine's ability to repay loans	31
3.2.4	Local context for the EU's economic assistance	32
3.3	DCFTA implementation	33
3.3.1	Autonomous trade measures	34
3.3.2	Re-industrialisation	35
3.4	Institutional structures and cooperation mechanisms of the AA and DCFTA	35
3.5	Recommendations	37
3.5.1	The economy and economic assistance	38
3.5.2	Conditionality	38
3.5.3	DCFTA	38

3.5.4	Anti-Corruption	39
3.5.5	Decentralisation	39
3.5.6	Civil society	40
3.5.7	Electoral reform	40
3.5.8	Energy	40
3.5.9	Media	40
3.5.10	Security sector	40
<b>4</b>	<b>Moldova</b>	<b>41</b>
4.1	State of implementation of key reforms, including under the Association Agreement	41
4.1.1	Electoral reform	42
4.1.2	Anti-corruption	44
4.1.3	The judiciary	45
4.1.4	Media and civil society	46
4.1.5	Energy	47
4.1.6	Decentralisation	48
4.2	Economic aspects of EU assistance	48
4.2.1	Overview of EU assistance	48
4.2.2	Conditionality in action	50
4.2.3	Moldova's economy	50
4.2.4	Macro-financial assistance	51
4.2.5	Anti-fraud and control over EU assistance	53
4.3	DCFTA Implementation	54
4.3.1	Exports to the EU	54
4.3.2	Imports from the EU	55
4.3.3	The Russian factor	55
4.4	Institutional structures and cooperation mechanisms	56
4.4.1	EU-Moldova institutional cooperation frameworks and implementation tools	57
4.5	Recommendations	58
4.5.1	The electoral system	58
4.5.2	Anti-corruption	59
4.5.3	The judiciary	59
4.5.4	Media	59
4.5.5	Civil society	60
4.5.6	DCFTA	60

<b>5</b>	<b>Georgia</b>	<b>60</b>
5.1	State implementation of key reforms, including under the Association Agreement	61
5.1.1	The judiciary	62
5.1.2	Gender, non-discrimination, and minority rights	64
5.1.3	Electoral reforms	66
5.1.4	Media	67
5.1.5	Energy	67
5.1.6	Decentralisation	68
5.2	Economic aspects of EU assistance	69
5.3	DCFTA implementation	71
5.4	Institutional frameworks for coordination and implementation of the AA/DCFTA	73
5.5	Recommendations	73
5.5.1	Electoral reforms	74
5.5.2	Anti-corruption and judicial reforms	74
5.5.3	Anti-discrimination	74
5.5.4	Media	74
5.5.5	The DCFTA	75
5.5.6	Civil society	75
<b>6</b>	<b>Conclusions</b>	<b>75</b>
<b>7</b>	<b>Annexes</b>	<b>78</b>
7.1	Acronyms and abbreviations	78
7.2	List of sources	80

# 1 Executive Summary

In 2014, Ukraine, Georgia, and Moldova signed association and free trade agreements with the European Union, ushering in a new period of economic integration and political cooperation between Brussels and Kyiv, Tbilisi, and Chisinau. Despite significant pushback from certain domestic actors and Russia, which feared that its influence over the three countries might wane as their association with the EU waxed, the Association Agreements (AA), including the Deep and Comprehensive Free Trade Areas (DCFTA), have been significant foreign policy successes for Brussels. They have proven the strength of the European Union's (EU) soft power abroad.

Still, Ukraine, Georgia, and Moldova face significant challenges in implementing the provisions of the AA and DCFTA, and commitment to ensuring the continued success of these initiatives remains as important as ever. This report reflects on these challenges, analysing the extent to which these agendas have been implemented, and considers the political, economic, and social factors that threaten to derail important reforms.

Ukraine, the literal and figurative battleground for what it means to be 'European', is the main focus of this study. It also considers Moldova, which has made important advances in recent years but remains plagued by poor governance and oligarchic state capture, leaving parts of the government under Russian influence and sceptical of European promises. This study concludes with Georgia, which has implemented the reforms required by the AA and DCFTA most comprehensively and successfully—and which has become the poster child for the Eastern Partnership.

The state of implementation of the AA and DCFTA is evaluated based on four areas: implementation of the Association Agreement's provisions on sectoral reforms; economic aspects of EU assistance; the impact of the DCFTA; and the institutional structures and cooperative mechanisms that make up the foundation of the EU's relationships with Ukraine, Georgia, and Moldova.

Thematically, this report analyses several key elements of Brussels' policy. It emphasizes the importance of conditionality and consistency in keeping the governments in Kyiv, Tbilisi, and Chisinau honest and committed to implementing reforms. It also suggests that the EU may have oversold the long-term value of joining the DCFTA while ignoring the short-term costs to industry and failing to provide sufficient funds to support modernisation. It also questions the wisdom of the policy of austerity that the EU has chosen to pursue, most notably in Ukraine, where EU macro-financial assistance (MFA) is closely tied to the International Monetary Fund (IMF)'s efforts to bring about macroeconomic stability. Especially in Ukraine, where closer association with Moscow is no longer on the table in light of the Russian annexation of Crimea and intervention in eastern Ukraine, the success of the AA and DCFTA will ultimately be measured by the change in quality of life of the Ukrainian people.

Each section concludes with a list of recommendations that the authors hope will be useful to policymakers going forward. The stakes are too high and the window of opportunity too short to allow the implementation of the AA and DCFTA be derailed.

## 2 Introduction

The EU's Association Agreements with Ukraine, Moldova, and Georgia are individual, comprehensive treaties governing the political and economic relationships between Brussels and the three countries. Although adjusted to the specifics of each country's political and economic climate, the agreements share a set of common goals and implementation mechanisms. All three countries signed their respective AAs with the EU in 2014, with Georgia and Moldova being the first to have their agreements ratified by the EU member states. Ukraine's AA was provisionally applied since 1 January 2016 and came fully into force on 1 September 2017.

The AAs between the EU and Ukraine, Moldova, and Georgia ensure the commitment of the EU and the three Eastern Partnership countries to a long-term relationship based on the promotion of fundamental democratic principles, human rights and freedoms, and the rule of law. Political initiatives that have long been on the EU's agenda include support for constitutional, administrative, and judicial reforms, facilitating the import of local products into the EU, and improved mobility. The commencement of the visa-free regime for the citizens of the three countries was an important milestone in the implementation of the agreement. The fundamental premise of the AA is that it will allow the EU and Ukraine, Moldova, and Georgia to deepen their economic integration via the Deep and Comprehensive Free Trade Area (DCFTA) as well as promote political and security policy convergence.

The DCFTA has been set up as the core of the AAs with regards to economic modernisation and development. The main goal of this economic side of the agreement is to assist Ukraine, Moldova, and Georgia in bringing their economies into conformity with EU standards. This is being achieved through the elimination of almost all barriers and tariffs as part of a larger framework of legislative approximation, especially in the energy sector. The mechanism was expected to compensate for the short-term loss of import charges by the general boost that integration would give to the economy. In addition to EU support, these policies are being backed by the International Financial Institutions (IFIs).

Other instruments that will help implement the Agreements include a number of guiding provisions that ensure gradual approximation of the three countries' legislation to that of the EU and protecting vulnerable sectors from competitive shocks while simultaneously improving their ability to keep up with the EU's evolving laws. A careful monitoring process will help determine the time when further market opening and developments can take place. Finally, a Dispute Settlement Mechanism (DSM) is in place, following a similar model developed by the World Trade Organization (WTO).

### 2.1 Methodology

- We use a comparative analysis to interpret the results of DCFTA implementation in Ukraine, Moldova and Georgia, summarising the effects of trade measures and macro-finance assistance, analysing reforms connected to the AAs, and assessing Russia's aggression in Ukraine and its trade relations with Moldova and Georgia.
- We rely on locally collected data and primary and secondary sources for our analysis of the economic aspects of EU assistance, focusing in particular on the macro financial assistance given to the three countries and trade measures introduced to stimulate their economies.
- We map legislation related to the approximation process, using interviews made with key stakeholders in Brussels (EEAS, European Commission, Support Group for Ukraine) and with government officials and international organisations in Chisinau, Kyiv and Tbilisi to guide our analysis of the efficiency of the EU's micro-finance assistance, the effects of trade measures, and the implementation of key sectoral reforms.



### 3 Ukraine

The Association Agreement's entry into force has definitively changed the hitherto multi-vector nature of Ukraine's foreign policy, bringing Kyiv closer to the EU and other Western institutions than ever before. In the wake of the Euromaidan Revolution and subsequent Russian challenges to Ukraine's sovereignty, the era of geopolitical choice for Kyiv is over. Still, these dramatic events have made EU and NATO membership more distant than ever and the success of the AA will ultimately be measured by the country's social and economic progress.

Geopolitical considerations have heretofore overwhelmed the economic calculus for the Agreement. Though Ukraine's reform efforts are indeed 'unprecedented',<sup>1</sup> benefits from the Agreement and associated post-Maidan reforms have not yet 'trickled down' to ordinary citizens. Ukraine has incurred short- and medium-term costs related to the implementation of economic reforms, and suffered heavy financial losses due to its captured state and Russian aggression.

Critically, while the costs of compliance with the DCFTA were calculated before the Agreement was signed, the costs of investment, including those tied to the modernisation of certain industries, were less thoroughly considered. Ukraine differs from Georgia and Moldova; it is a country with fertile agricultural land, heavy industries, and rich deposits of metals, coal, oil, gas, and other natural resources. Because the AA is officially not connected to EU membership, Brussels does not intend to fully cover the cost to Ukraine opening its markets to the EU, as it did for the EU's Central European members during the integration process and after their accession through structural and cohesion funds.

Ukraine's economic downturn—a result of post-Maidan developments, Russia's aggression, two decades of delayed reforms, and the government's efforts to stabilise macro-financial situation—has led to serious dissatisfaction among the population. This was in some part inevitable given the scope of the challenge facing Kyiv. At the same time, the initial reforms that Ukraine undertook in 2014 have brought about macro-financial stability. Indeed, Kyiv managed to return to the Eurobond market in September 2017.

Expectations from Western assistance were too high and macro-economic assumptions too optimistic. The EU's Macroeconomic Finance Assistance (MFA), which is closely linked to the IMF's assistance package, prioritises austerity and privatisation. Although the package was crucial for macro-financial stabilisation, it has neither alleviated the precarious economic situation facing ordinary Ukrainians nor has it helped to establish a proper rule of law. In order to move away from its resource-oriented economic model and towards sustainable growth, Ukraine's production facilities and infrastructure—a substantial share of which is in the hands of the oligarchs—will require substantial modernisation, for which there is currently insufficient support.

Persistent accusations of corruption and the tense internal politics leading up to Ukraine's 2019 presidential and parliamentary elections are the biggest factors limiting the effectiveness of the current Western assistance package. Increasing assistance would require a significant de-politicisation of Ukraine's state institutions. Ukraine's business climate must improve and peace must be established in the country's east for foreign direct investment (FDI) to begin flowing in.

The government and its Western partners have enhanced reform-related communication, advertising Ukraine's modest economic rebound and emphasising the consequences of the war in Donbas and Russia's role in it. Politically, Kyiv has been prioritising patriotism at home and sanctions on Russia abroad. For patriotic-minded elites, further diversification from Russia is a key priority even though it reduces Ukraine's economic and energy transit potential, thus playing into Moscow's plan to circumvent Ukraine.

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<sup>1</sup> EU report: Ukraine carrying out unprecedented reforms, European Commission press release, 13 December 2016, [http://europa.eu/rapid/press-release\\_IP-16-4344\\_en.htm](http://europa.eu/rapid/press-release_IP-16-4344_en.htm).

Nevertheless, the EU's reaction to the Ukraine crisis in 2013-14 was unprecedented in the amount of technical and financial assistance it provided. Brussels' response was rapid and relevant: Ukraine is now the only non-EU member state to have a standalone structure within the European Commission—the Ukraine Support Group. What's more, the EU has deployed dozens of experts to Kyiv through the European Union Advisory Mission and over 400 technical assistance projects together with member states.<sup>2</sup> Key reforms to state functions—including decentralisation, anti-corruption, judicial, civilian security sector, and energy sector initiatives, as well as public administration, healthcare, and education reforms—were designed with the assistance of the EU. The biggest immediate benefit of the AA for Ukrainians, the visa-free regime with the EU, has also been achieved.

Going forward, the EU would do well to focus on supporting the institutionalisation of legal and regulatory safeguards and the de-politicisation of state institutions. Significant privatisation might deepen the entrenched power of the oligarchs and wealth inequality—and the systemic corruption that comes with both.<sup>3</sup> Given that the government's privatisation efforts have thus far brought negligible results and the business environment in the country remains poor, support for restructuring state-owned enterprises (and facilitating further investments) and re-industrialising parts of the country would be advised.

Finally, given that the full implementation of the AA/DCFTA will take 7-10 years in most sectors, the EU also needs to further improve the impact of its assistance by increasing its coordination, conditionality, and consistency.

## 3.1 The Association Agreement and selected sectoral reforms

### 3.1.1 Overall reform framework

The Agreement is rightly seen as a foundation for Ukraine's reforms.<sup>4</sup> It covers a range of sectors areas where reform and approximation to European standards is expected, including energy, transportation, environmental protection, industrial cooperation, social development and protection, equal rights, consumer protection, education, and cultural cooperation. In addition, the AA includes a political dialogue on reforms related to political association, democratic institutions, human rights and convergence in the field of foreign and security policy. Importantly, there is no binding and exhaustive list of rules and or guidance in the area of political reforms and democratisation, unlike in the DCFTA's sections on trade and economic development.

Nevertheless, as the embodiment of Ukraine's European aspirations, the Agreement has great symbolic value for society. It is also the most comprehensive reform program Ukraine has ever undertaken, bringing EU support and expertise to bear through numerous mechanisms and projects. Thus, the approximation is a unique opportunity to adjust governance to EU standards and push forward with reforms. Last but not least, for civil society the Agreement is associated with hopes of reducing 'oligarchs' grip on the country's politics, the state, and its resources<sup>5</sup> and making state authorities accountable to society.

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<sup>2</sup> Ukraine's on-going reform process. Progress and challenges since Euromaidan. European Parliament Briefing, July 2017, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608632/EPRS\\_BRI\(2017\)608632\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608632/EPRS_BRI(2017)608632_EN.pdf). For EU-supported projects, see: [https://eeas.europa.eu/delegations/ukraine/search/site\\_en/?f0\]=im\\_field\\_regions%3A232&f1\]=bundle%3Aeeas\\_project](https://eeas.europa.eu/delegations/ukraine/search/site_en/?f0]=im_field_regions%3A232&f1]=bundle%3Aeeas_project).

<sup>3</sup> D. Clark, Can Ukraine pave an economic path back to normality?, 15 September 2017, New Statesman, <https://www.newstatesman.com/politics/staggers/2017/09/can-ukraine-pave-economic-path-back-normality>. According to him, 'the shock therapy privatisations of the early post-communist years often took place before the necessary legal and regulatory safeguards had been put in place. This enabled networks of insiders, including some with criminal ties, to acquire assets on the cheap and grow staggeringly rich as they reflatd to their real market value'.

<sup>4</sup> Vimont, Pierre, Ukraine's Indispensable Economic Reforms, 29 April 2016, Carnegie Europe, <http://carnegieeurope.eu/2016/04/29/ukraine-s-indispensable-economic-reforms-pub-63490>.

<sup>5</sup> O. Khomei, A. Permakova, D. Sydorenko, B. Jarabik, A bittersweet victory: Ukraine's Association Agreement with the EU, New Eastern Europe, 10 July 2017, <http://neweasterneurope.eu/2017/07/10/a-bittersweet-victory-ukraine-s-association-agreement-with-the-eu/>

Prime Minister Volodymyr Groysman's government has made significant progress in several areas despite having only a slim parliamentary majority since it was appointed in April 2016.<sup>6</sup> A visa-free regime with the EU became reality in July 2017 and is seen as an important victory for the country. The government's claim that Ukraine has achieved more on the reform front in the past three years than it had since gaining its independence in 1991<sup>7</sup> has been confirmed by independent monitors. Since 2010, the country has improved its business environment more than any country in the Commonwealth of Independent States (CIS). The country's macroeconomic situation has stabilised recently, with the economy growing by 4.7 per cent in the fourth quarter of 2016 and by 2.2 per cent over the year.

However, Ukrainians' trust in their government remains low.<sup>8</sup> Government statistics and survey data from private companies also indicate that macro-financial stabilisation has yet to bring stability to households' budgets. Dissatisfaction is not connected to the reforms *per se*, but more to the current economic and social situation and to the legitimacy of the authorities. Obstacles to further reforms include on-going political tensions between the original post-Maidan coalition, monopolist oligarchs' continuing influence on economic development, capacity challenges of the government (and parliament) to meet EU standards in legislative work, coordination woes among ministries and government agencies responsible for EU agenda and parliamentary fractions' widespread connections to vested interests. This is why reforms in sectors controlled by various vested interest groups are constantly being challenged and progressing at a glacial pace.

Ukraine's attempts to de-oligarchise have come with heavy costs for the taxpayers. For example, the owners of the PrivatBank, the country's largest bank, missed the deadline to re-capitalise the bank after nationalisation saved it from potential chaos. Ihor Kolomoisky and Hennady Bogolyubov, PrivatBank's founders, had been given until 1 July 2017 to act after the Central Bank uncovered a EUR 5 billion hole in the bank's balance sheet in December 2016. The National Bank alleged that as much of 97 per cent of the lender's commercial loans were given to businesses linked to the two oligarchs. The costs of recapitalisation have now been shifted onto taxpayers.

While President Poroshenko is trying to balance various oligarchs' interests, he continues to be one of them, and has expanded his business interests<sup>9</sup> into agriculture, defence and energy sectors. Poroshenko's perceived conflict of interest—representing both the state and (informally) his own business empire<sup>10</sup>—has also contributed to low public's trust in the central government.

Moreover, the war in Donbas continues to be an obstacle to reform. The war veterans' rail blockade of the occupied territories in Donbas in January 2017 and the illegal appropriation of Ukrainian businesses by the so-called rebel republics have further depressed economic growth. The persistent threat from Russia and

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<sup>6</sup> Ukraine Reform Monitor, Carnegie Endowment for International Peace, April 2017, <http://carnegieendowment.org/2017/04/19/ukraine-reform-monitor-april-2017-pub-68700>.

<sup>7</sup> Reforms Progress Monitoring 2016, <http://reforms.in.ua/en/news/reforms-progress-monitoring-2016-past-2-years-ukraine-has-made-greater-progress-implementing>.

<sup>8</sup> Ukraine Poll: Continued Dissatisfaction with Government and Economic Situation, International Republic Institute, 31 October 2016, <http://www.iri.org/resource/ukraine-poll-continued-dissatisfaction-government-and-economic-situation>. Another poll conducted by Kyiv International Institute of Sociology in December 2016 showed mistrust among Ukrainians towards Verkhovna Rada (82 per cent), Government (72.8 per cent), President (69 per cent), Opposition (59 per cent), and law enforcement agencies (more than 40 per cent), leaving only Armed Forces on the positive side of trust/mistrust balance. See <http://www.kiis.com.ua/?lang=eng&cat=reports&id=678&page=4>.

<sup>9</sup> Poroshenko's empire - the business of being Ukraine's president, BNE Intellinews, 29 August 2016, <http://www.intellinews.com/long-read-poroshenko-s-empire-the-business-of-being-ukraine-s-president-103790/>.

<sup>10</sup> Rothschild Trust confirms Poroshenko blind trust deed for Roshen, Interfax-Ukraine, 7 April 2016, <http://en.interfax.com.ua/news/economic/336156.html>. Rothschild was also appointed as adviser to the Ukraine Ministry of Finance in the recent debt swap and eurobond selling. Reuters: Ukraine picks Rothschild as advisor, hopes for debt swap, UNIAN, 7 September 2017, <https://www.unian.info/economics/2121959-reuters-ukraine-picks-rothschild-as-advisor-hopes-for-debt-swap.html>.

the 2019 presidential elections provide Kyiv arguments against strict Western conditionality and have helped ensure material and rhetorical support from the EU and the U.S.

### 3.1.2 Strategies over actions

Ukraine has elaborated—independently or in collaboration with the EU—a large number of strategic programs and initiatives aimed at reform. Most notable are the EU-Ukraine initiatives: A European Agenda for Reform (July 2014), the Action Plan on the Implementation of the Association Agreement Between Ukraine and the European Union for the Years 2014-2017 (September 2014), the Strategy for Sustainable Development—‘Ukraine-2020’ (January 2015), the Ukraine’s Public Administration Reform Strategy for 2016-2020 (June 2016), and the Medium-Term Plan of Priority Actions for the Government until 2020 (December 2016). Together with the Association Agreement, these instruments establish implementation goals and priorities, and define the government agencies responsible for implementation.

The numerous reform-related strategies and initiatives make overall assessment difficult. The government pledged to provide monitoring in the form of a scorecard of the Agreement, and has been issuing reports on the implementation.<sup>11</sup> As leading experts point out, the government has improved its planning but remains weak at implementation due to state institutions’ limited capacity to execute reforms and the persistent influence of vested interests.<sup>12</sup> Despite the promise of the EuroMaidan Revolution, politics and policy-making have not fundamentally changed in Ukraine. While the oligarchs’ wealth has been reduced, their informal impact on policy-making remains strong.

The Government Office of European and Europe-Atlantic Integration (GOEEI) was established in August 2014 to coordinate and monitor the overall implementation of the AA/DCFTA as well as ensure expertise for legislative drafting and prepare documentation for meetings of the Joint Association Council. However, for now, there is no clarity about its proper functions vis-à-vis other state institutions, and re-organisation and staff turnover has weakened its institutional memory and capacity.

The EU has acknowledged Ukraine’s weak state capacity. A number of its technical assistance projects try to address the inadequate capacity of the beneficiary institutions—in particular their ability to take on external assistance. However, the complexity and lack of coordination of AA-related agendas, the turnover among senior and mid-level civil servants, and the strong dependence of the implementation process on Verkhovna Rada (Ukraine’s parliament) decisions remain serious issues over which the EU has limited influence.

### 3.1.3 Power consolidation

Despite the capacity challenge and informal oligarchic influence, hundreds of reform steps are currently in progress. Their pace has been decelerated by a ‘winner-takes-all’ approach among the ruling elites, and deep distrust and on-going political infighting among major political actors, including in the ruling coalition.

A protracted political conflict between the ruling coalition and opposition factions also contributes to the sluggish pace of reforms. The Verkhovna Rada has been functioning without a formalised ruling coalition for almost two years, in violation of the Constitution.<sup>13</sup> Although Ukraine is formally a presidential-parliamentary republic, the current fragmentation in the Rada has strengthened the role of the president.

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<sup>11</sup> Report on Implementation of the Association Agenda and the Association Agreement between the European Union and Ukraine (in English), Cabinet of Ministers of Ukraine, 2016, [http://www.kmu.gov.ua/kmu/control/en/publish/article?art\\_id=248402431&cat\\_id=248402399](http://www.kmu.gov.ua/kmu/control/en/publish/article?art_id=248402431&cat_id=248402399).

<sup>12</sup> V. Pekar, Why the reforms in Ukraine are so slow, New Eastern Europe, 29 July 2017, <http://neweasterneurope.eu/articles-and-commentary/2414-why-the-reforms-in-ukraine-are-so-slow>

<sup>13</sup> M. Minakov, T. Milovanov, Ukraine’s authoritarian signs, July 2016, <https://www.opendemocracy.net/od-russia/tymofiy-mylovanov-mykhailo-minakov/ukraine-s-authoritarian-signals>.

The head of state now controls law enforcement agencies, the security services, the army, the diplomatic corps, and the prosecutor's office.<sup>14</sup>

Poroshenko also controls the Constitutional Court and the Central Elections Committee (CEC), the majority of whose members should have been replaced by 2014. According to international monitors, both the Constitutional Court<sup>15</sup> and the CEC<sup>16</sup> have become paralysed, presenting a threat to Ukraine's democratic institutions overall and reducing institutional checks and balances on ruling elites.

### 3.1.4 The Verkhovna Rada as a reforms bottleneck

The adoption of crucial reform legislation has been often blocked or slowed down in the Verkhovna Rada. The average timeframe for adopting important laws related to European integration is around twelve months, and bills are often drafted or adopted without meeting EU standards. EU officials openly acknowledge that 'most of the reform areas are impacted by vested interests trying to slow progress down'.<sup>17</sup> At the same time, most important reforms have been approved thanks in part to pressure from the West.

Although vested interests certainly play an important role in the parliament, tensions in the post-Maidan government, insufficient coordination between the executive and legislative branches regarding AA implementation, and a lack of overall understanding of EU legal standards also contribute to slow pace of reforms. High level government posts, similarly to EU member states as well, are distributed among coalition partners. Ministries are managed in top-down fashion, while the culture of cooperation and coordination is traditionally weak.

The quality of lawmaking is affected by the quantity of bills. In two years after the Maidan there were almost 7 thousands draft bills and amendments submitted, out which 1,333 laws were adopted.<sup>18</sup> The parliament is lacking both financial and human resources to cope with the enormous volume of legislative work it faces.<sup>19</sup>

In order to address the capacity issue, the European Parliament enacted the Parliamentary Support and Capacity Building program,<sup>20</sup> which kicked off with a Needs Assessment Mission (NAM) led by Pat Cox, the former EP president.<sup>21</sup> A larger consensus-building process known as the Jean Monnet Dialogues was initiated as part of this program.<sup>22</sup>

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<sup>14</sup> M. Minakov, Reconstructing the power vertical: the authoritarian threat in Ukraine, 29 June 2017.

<https://www.opendemocracy.net/od-russia/mikhail-minakov/reconstructing-power-vertical-authoritarian-threat-in-ukraine>.

<sup>15</sup> Briefing Paper 86: The paralyzed guardian: towards and independent Constitutional Court of Ukraine, 28 June 2017, Democracy Reporting International, [http://democracy-reporting.org/dri\\_publications/the-paralysed-guardian-towards-an-independent-constitutional-court-of-ukraine-briefing-paper/?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=dri\\_newsletter&utm\\_term=2017-09-11](http://democracy-reporting.org/dri_publications/the-paralysed-guardian-towards-an-independent-constitutional-court-of-ukraine-briefing-paper/?utm_source=newsletter&utm_medium=email&utm_campaign=dri_newsletter&utm_term=2017-09-11).

<sup>16</sup> How to overcome the Paralysis of Ukraine's Central Election Commission?, 15 July 2016, Democracy Reporting International, <http://democracy-reporting.org/how-to-overcome-the-paralysis-of-ukraines-central-election-commission/>

<sup>17</sup> Peter Wagner, Head of the Support Group for Ukraine: A scaled-up fight against corruption is a top priority, Interfax-Ukraine, 2 August 2017, <http://en.interfax.com.ua/news/interview/439894.html>.

<sup>18</sup> G. Gressel, Keeping up appearances. How Europe is supporting Ukraine's transformation. European Council of Foreign Relations, ECFR, October 2016, [http://www.ecfr.eu/page/-/ukraine\\_audit\\_pdf.pdf](http://www.ecfr.eu/page/-/ukraine_audit_pdf.pdf).

<sup>19</sup> R. Petrov, P. Kalinichenko, The Europeanization of Third Country Judiciaries through the Application of the EU Acquis: The Cases of Russia and Ukraine, International & Comparative Law Quarterly, 2011, 60, 325-353.

<sup>20</sup> The framework for conducting Parliamentary Support and Capacity Building is the Memorandum of Understanding between the European Parliament and the Verkhovna Rada of Ukraine, signed on 3 July 2015. In addition, the Administrative Cooperation Agreement was signed by the two Secretary Generals in March 2016, what foresees that the EP would provide guidance, expertise and monitoring in several fields (human resources, communication, secretariat restructuring, drafting, research and library, etc.) through study visits and exchange of best practices.

<sup>21</sup> Report and Roadmap, On Internal Reform and Capacity Building for the Verkhovna Rada of Ukraine, European Parliament, September 2015-February 2016, <http://www.europarl.europa.eu/resources/library/media/20160229RES16408/20160229RES16408.pdf>.

<sup>22</sup> Ukraine: Consensus-building efforts lay groundwork for cross-party reform, National Democratic Institute, 4 January 2017, <https://www.ndi.org/our-stories/ukraine-consensus-building-efforts-lay-groundwork-cross-party-reform>.



What EU pressure hasn't yet been able to address is Ukraine's electoral system, which combines single-mandate districts and proportional representation, and has not been provided public financing for political parties or candidates. This distorted political competition is in favour of those with substantial campaign funding. Without a stronger middle class and a functional party system, financing for political parties and candidates mostly come from various oligarchic groups.<sup>23</sup>

Combined with the Rada's weak institutional capacity, parliamentary seats have become an important asset for both vested as well as personal interests. According to various estimates, only as many as 50 of the 423 current MPs (27 Crimea-related deputy seats are vacant) can be seen as reformers, scattered across various political fractions. The rest also represent so-called financial-political groups.<sup>24</sup> The Rada's vice speaker has named five key oligarchs influencing parliamentary decision-making: Rinat Akhmetov, Dmytro Firtash, Ihor Kolomoiskyi, Viktor Pinchuk, and Petro Poroshenko.<sup>25</sup> At the same time, post-Maidan development has allowed some new financial-political groups to emerge, managing to capitalise state weaknesses and, paradoxically enough, the strengths of civil society.<sup>26</sup> These various interests often clash around key reforms as well.

Although this setting makes consolidation around reform harder, it also ensures a competitive political life, and contributes to political check and balances and the democratic character of politics in Ukraine. Building consensus and shared understanding around key reforms might be build before the actual legislation enters the Rada, but such an educational effort has neither been prioritised by political parties nor civil society organisations engaged into reform work. Importantly, there is a coordination mechanism of the ruling coalition in the form of a "Strategic Council" composing 9 key political actors.<sup>27</sup>

Reforms to the Rada as envisaged in the Cox Report highlight the gap between commitment and implementation at the highest levels. Although the Rada decided that each Cox Report recommendation would be discussed and adopted as a separate law, it has failed to vote on even the most basic suggestions, including reducing the total number of parliamentary committees from 27 to 20. As these recommendations remain unimplemented,<sup>28</sup> deputies often neglect their committee duties and regularly violate existing parliamentary rules.<sup>29</sup>

### 3.1.5 Overall reform review

Ukraine must adapt its legislation to EU norms in sectors defined by the Agreement by 2025. In practice, this means passing and implementing around 350 legal acts. The process began immediately after the Agreement was signed in 2014,<sup>30</sup> and 50 per cent of the acts are expected to be adopted by the end of

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<sup>23</sup> S. Leschenko, 'Ukraine's Verkhovna Rada: an oligarchs' club or a real parliament?', Open Democracy, 2 June 2016, <https://www.opendemocracy.net/od-russia/sergii-leshchenko/ukraine-s-verkhovna-rada-oligarchs-club-or-real-parliament>.

<sup>24</sup> The Ranking of Ukrainian Parliamentary Members: Efforts In Implementing Reforms during the 5<sup>th</sup> Session, Vox Ukraine, 1 March 2017, <https://voxukraine.org/2017/03/01/the-ranking-of-ukrainian-parliament-en/>.

<sup>25</sup> Five oligarchs operate the Verkhovna Rada, 3 August 2016, <https://news.pn/en/politics/165454> (in Russian)

<sup>26</sup> B. Jarabik, M. Minakov, Ukraine's Hybrid State, Carnegie Endowment for International Peace, 22 April 2016, <http://carnegieendowment.org/2016/04/22/ukraine-s-hybrid-state-pub-63417>.

<sup>27</sup> According to a Hromadske TV report this include President Poroshenko, NSDC Head Turchynov, Speaker Parubiy, Prime Minister Groysman, former Prime Minister Yatsenyuk, presidential administration head Ihor Raynyn, his predecessor Borys Lozhkin, Prosecutor General Yuri Lutsenko and Interior Minister Arsen Avakov. See How Poroshenko passed the unpopular "Donbas Special Status" law, Hromadske International, 7 October 2017, <https://en.hromadske.ua/posts/how-poroshenko-passed-the-unpopular-donbas-special-status-law>.

<sup>28</sup> Report on Rada reform implementation (in Ukrainian), OPORA, 5 July 2017, <https://www.oporaua.org/novyny/44435-chim-dali-v-lis-tim-svoya-sorochka-blizhche-do-tila-yak-deputati-reformuyut-radu>.

<sup>29</sup> According to Order No 699 of 19 May 2015, by Head of Verkhovna Rada, committees have to publish records, transcripts and audio of their session five days after those occurred. Yet many committees are violating this norm, in July 2017 only 8 out of 27 committees complied with this demand. OPORA report, 2017, <https://rada.oporaua.org/novyny/novini/14006-lyshe-visim-komitativ-vchasno-oprylyudnyly-protokoly-zasidan-lypnya>.

<sup>30</sup> O. Khomei, A. Permakova, D. Sydorenko, B. Jarabik, A bittersweet victory: Ukraine's Association Agreement with the EU, New Eastern Europe, 10 July 2017, <http://neweasterneurope.eu/2017/07/10/a-bittersweet-victory-ukraine-s-association-agreement-with-the-eu/>

2017. However, implementation (including of many EU directives) has involved thousands of legal steps. For example, the new Action Plan of AA Implementation for 2017-2020 includes 2016 tasks.<sup>31</sup> A recently introduced EU Navigator<sup>32</sup> by a civic watchdog gives a solid overview of the complexity of implementation.

The government's reporting on the Agreement's implementation<sup>33</sup> is among the short-term priorities of the Association Agenda<sup>34</sup>, highlighting progress on reforms in the judicial, public procurement, energy, public administration, and law enforcement (particularly the patrol police, which has been the most visible institutional reform to date) sectors.

Because of the break-up of the original post-Maidan coalition, constitutional reform has not yet materialised. There is essentially no debate about how to amend the mixed presidential-parliamentary system, which creates overlapping authorities and responsibilities.<sup>35</sup> Instead of reforming the constitution, the president has been trying to consolidate his power.

Still, important reforms aimed at strengthening judicial independence and reorganising the court system have been initiated, with constitutional amendments and new legislation having been passed in June 2016.<sup>36</sup> Recently, there was a fierce open competition held for Supreme Court judgeships. After a long period of resistance, Poroshenko conceded to demands to create a special anti-corruption court on 4 October 2017.<sup>37</sup> At the same time the Rada – with the support of the Poroshenko Block, Popular Front and remnants of the former Party of the Regions – changed the judicial reform bill that would limit term of pretrial investigations of serious crime cases to six months. If the president signs the bill, this will be a serious blow to corruption investigations, what typically take more than a year to complete.<sup>38</sup>

Decentralisation-related constitutional amendments were put on hold following a grenade attack outside the Rada at the end of August 2015 following the adoption of the reform package in the first reading earlier in the day. The reform proved controversial not because of the decentralisation of central power but because of its connection to the Minsk Agreements. The constitutional amendments envisage a separate but undefined status for the Donetsk and Luhansk regions, which is unpopular among most Ukrainians and fiercely resisted in the Rada.

There has been progress on improving Ukraine's investment climate, with the law 'On Amendments to the Tax Code of Ukraine' being amended in December 2016. The government expects a 28 per cent increase in corporate income tax collection in 2017.<sup>39</sup> In another significant improvement, the automatic administration of the VAT has been running smoothly since summer 2017. Nevertheless, some critical steps such as reforms to the State Fiscal Service remain on the agenda.

Deregulation has also been slow, but recently picked up speed as the ministry of finance prepared to return to the bond market. The Action Plan for the Deregulation of Business Activities in Ukraine for the Years

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<sup>31</sup> Personal interview with Cezar Herma, EU funded 'Association 4 U' project, Kyiv, 2 October 2017

<sup>32</sup> AA Navigator, European Pravda, 2017, <http://navigator.euointegration.com.ua/tasks>.

<sup>33</sup> Cabinet of Ministers of Ukraine Report, 2016,

[http://www.kmu.gov.ua/kmu/control/en/publish/article?art\\_id=248402431&cat\\_id=248402399](http://www.kmu.gov.ua/kmu/control/en/publish/article?art_id=248402431&cat_id=248402399).

<sup>34</sup> The Association Agenda has the following short term priorities: Constitutional reform; Election reform; Preventing and combating corruption; Judicial reform; Public administration reform; Deregulation; Public procurement reform; Taxation reform including VAT refunds; External audit; Energy Sector Reform, [http://www.3dcftas.eu/system/tdf/au-agenda\\_0.pdf?file=1&type=node&id=77&force](http://www.3dcftas.eu/system/tdf/au-agenda_0.pdf?file=1&type=node&id=77&force).

<sup>35</sup> A Case of Constitutional Reform in Ukraine, Vox Ukraine, 13 April 2016, <https://voxukraine.org/2016/04/13/a-case-for-constitutional-reform-in-ukraine-en/>.

<sup>36</sup> Association Implementation Report on Ukraine, European Commission, High Representative for the Union in Foreign Affairs and Security Policy, 9 December 2016, [https://eeas.europa.eu/sites/eeas/files/ukraine\\_v2\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/ukraine_v2_0.pdf).

<sup>37</sup> Ukraine Activists Celebrate Anticorruption Court 'Victory', But Cry Foul Over New Judicial Reform Bill, RFE RL, 5 October 2017, <https://www.rferl.org/a/ukraine-corruption-court-victory-celebrated-judicial-reform-bill-worries/28775996.html>.

<sup>38</sup> Ukraine Reform Monitor, Carnegie Endowment for International Peace, October 2017, <http://carnegieendowment.org/2017/10/10/ukraine-reform-monitor-october-2017-pub-73330>

<sup>39</sup> Fiscal Service expects 28 per cent increase of tax revenues in Ukraine, UNIAN, 31 May 2017, <https://www.unian.info/economics/1952616-fiscal-service-expects-28-increase-in-tax-revenues.html>.

2016-2017, adopted in August 2016, contains 112 measures that make national regulations compliant with EU standards in sectors such as agriculture, telecommunication, infrastructure, construction, as well as reforms to state customs procedures, and sanitary and veterinary controls. Most of the legislation is under preparation or is in parliament already.<sup>40</sup>

Privatisation has shown no sign of progressing. With privatisation revenue amounting to a mere EUR 3 million in 2016 (down from EUR 30 million in 2014 and EUR 6 million in 2015),<sup>41</sup> the government plans to restart privatisation later and launch a corporate governance reform of a number of state-owned companies. Even though progress has been made in improving Ukraine's business environment, as well as its financial and energy sectors,<sup>42</sup> these steps are yet to translate into an improved ranking on the World Bank Doing Business Survey. Ukraine is currently ranked 80<sup>th</sup>, with all its neighbours performing significantly better.<sup>43</sup> Relatedly, FDI in Ukraine the first half of 2017 reached only EUR 700 million, a significant decline from the EUR 3.4 billion in FDI in 2016—a weak year in its own right.

The public administration reform recently entered into a pilot implementation phase after a number of legislative acts were adopted in late 2015 and 2016, including the law 'On Civil Service' and the subsequent Public Administration Reform Strategy for 2016-2020. The reform introduced professionally selected state secretaries and is about to bring Directorate Generals into line ministries. This will lead to the strengthening of evidence-based policy-making and increase focus on European integration by bringing 800 well-paid experts into the ministries.

As mandated by the IMF agreement, a pension reform was adopted in October 2017. The impetus to support the reform in the Rada was the combination of the IMF requirement and an interest in increasing pensions for political reasons.

Comprehensive healthcare and educational reforms also kicked off in 2017, after almost two years of preparation. However, the success of these bills might be limited by issues with their preparation and challenges in implementation. For example, following the passage of the education reform, Ukraine's western EU neighbours and Russia objected to a controversial section of the law that was proposed merely 30 minutes before the final voting. This paragraph specifies Ukrainian as the only language of instruction from the fifth grade onwards in state schools, while allowing for the possibility of teaching an unstipulated number of subjects in other 'languages of the EU', a category that does not include the country's second most used language, Russian.

In a resolution on October 12 the Parliamentary Assembly of Council of Europe (PACE) expressed concerns related to teaching in minority languages.<sup>44</sup> Ukraine's showed readiness for compromise toward EU member states. Kyiv has agreed to request and follow the Venice Commission's opinion and promised to Romania that students in minority schools would be educated in their native tongue while learn Ukrainian language, literature, history and geography.<sup>45</sup> A major challenge for regions with Russian speakers is capacity, as it is difficult to find teachers who are qualified to teach in both languages.

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<sup>40</sup> Reform Progress Monitoring 2016, National Reform Council, 7 February 2017, <http://www.president.gov.ua/en/news/zvit-nacionalnoyi-radi-reform-ukrayina-zrobila-bilshij-progr-39926>.

<sup>41</sup> M. Kozak, Ukraine is having problems with privatization, Financial Observer, 14 February 2017, <https://financialobserver.eu/cse-and-cis/ukraine/ukraine-is-having-problems-with-privatization/>.

<sup>42</sup> iMoRe №62. Deregulation gains momentum and pushes the reform index, Vox Ukraine, 27 June, 2017, <http://imorevox.org/releases-pdf/>

<sup>43</sup> Data for the latest survey was closed in June 2016, Doing Business Survey 2017, Ukraine, World Bank, <http://www.doingbusiness.org/-/media/wbg/doingbusiness/documents/profiles/country/ukr.pdf>.

<sup>44</sup> PACE Criticizes Ukraine Over New Law on Education, RFE RL, 13 October 2017, <https://www.rferl.org/a/ukraine-pace-criticizes-language-law/28790456.html>

<sup>45</sup> Romanian Minister: Ukraine will keep minority schools open, New York Times, 13 October 2017, [https://www.nytimes.com/aponline/2017/10/13/world/europe/ap-eu-romania-ukraine.html?utm\\_source=CGI+Daily+Russia+Brief&utm\\_campaign=38d41eb9fd-](https://www.nytimes.com/aponline/2017/10/13/world/europe/ap-eu-romania-ukraine.html?utm_source=CGI+Daily+Russia+Brief&utm_campaign=38d41eb9fd-)



Pressure from the West and civil society groups is often cited<sup>46</sup> as key factor pushing the government to continue reforms—particularly economic ones. Indeed, as Vox Ukraine's reform monitoring index noted, the peak of reform efforts coincided with negotiations with the IMF on a new programme.<sup>47</sup> Despite the successful eurobond auction, Kyiv is doing its best, within its current political constraints, to keep the IMF and the EU MFA program on track due to its shaky economic foundation.

Legal approximation remains a challenge: By the end of 2016, only 36 of 126 planned EU legal acts had actually been implemented, and only 23 of them fully. This is mostly due to the complexity of legal approximation and a lack of understanding and capacity in the government with regards to the EU-related agenda. In 2016, independent monitors viewed energy and public procurement as the most successful sectors, with environmental reform, one of the largest sectoral agenda, being seen as progressing slowest.<sup>48</sup> In 2017, approximation regarding public procurement and energy slowed down. Ecological reform also remains slow due to the high number of legal issues and a lack of technical capacity in the government and parliament. In 2017, sanitary and phytosanitary (SPS) and product safety approximation began to show progress,<sup>49</sup> which suggests the growing technical capacity of the cabinet of ministers. The government's recent legislative plan regarding EU approximation<sup>50</sup> includes 35 planned legal acts in the areas of trade, customs, SPS, intellectual property, and social policy.

According to a monitoring report from the German Advisory Group,<sup>51</sup> Ukraine is making good progress in implementing the DCFTA in the areas of market access, industrial product safety, food safety, customs, public procurement, protection of intellectual property rights, and competition policy. Public procurement reform (but not the approximation process) has been singled out as success story, saving the budget an estimated at around EUR 1 billion in less than a year of existence.<sup>52</sup>

At the same time, Ukraine has already breached the DCFTA twice: first by introducing a ban on exports of wood logs<sup>53</sup> and then by increasing export duties on scrap metal.<sup>54</sup> Both breaches could be seen as a result of the government's efforts to protect critical industries (the ban on logging is broadly supported by the Ukrainian population and seen as important to protecting the country's forests) as well as a result of pandering to vested interests (owners of major companies in these industries) by granting them preferential treatment and providing additional protective measures. The steel industry, a major employer and hard currency earner, has been under particular pressure, especially since the Donbas blockade started in early 2017. These measures are widely supported by the Ukrainian public, also making it difficult for Kyiv to lift.

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<sup>46</sup> Ukraine Reform Monitor, October 2017, <http://carnegieendowment.org/2017/10/10/ukraine-reform-monitor-october-2017-pub-73330>.

<sup>47</sup> 700 days of monitoring of reforms, Vox Ukraine, 17 February 2017, <https://voxukraine.org/2017/02/17/700-days-of-monitoring-reforms-in-ukraine-ministries-rating/>.

<sup>48</sup> Ukraine and the Association Agreement: Monitoring, UCEP, 2016, <http://ucep.org.ua/en/research/ukraine-and-the-association-agreement-implementation-monitoring-july-1-november-1-2016/>.

<sup>49</sup> Personal interview with Lyubov Akulenko, UCIP, 25 September 2017, Kiev, Ukraine.

<sup>50</sup> Cabinet of Ministers, 5 September 2017, [http://www.kmu.gov.ua/kmu/control/uk/publish/article?showHidden=1&art\\_id=250243214&cat\\_id=247677375&time=1504598899384](http://www.kmu.gov.ua/kmu/control/uk/publish/article?showHidden=1&art_id=250243214&cat_id=247677375&time=1504598899384).

<sup>51</sup> DCFTA implementation in Ukraine: Assessment after one year, German Advisory Group, May 2017, [http://www.beratergruppe-ukraine.de/wordpress/wp-content/uploads/2017/05/Newsletter\\_103\\_2017\\_German-Advisory-Group.pdf](http://www.beratergruppe-ukraine.de/wordpress/wp-content/uploads/2017/05/Newsletter_103_2017_German-Advisory-Group.pdf).

<sup>52</sup> Ukraine coffers save almost \$1bln using ProZorro, Interfax, 23 May 2017, <http://en.interfax.com.ua/news/economic/423302.html>.

<sup>53</sup> German Advisory Group in Ukraine, May 2017, [http://www.beratergruppe-ukraine.de/wordpress/wp-content/uploads/2017/05/Newsletter\\_103\\_2017\\_German-Advisory-Group.pdf](http://www.beratergruppe-ukraine.de/wordpress/wp-content/uploads/2017/05/Newsletter_103_2017_German-Advisory-Group.pdf).

<sup>54</sup> Increase the export tax on scrap metal from EUR 10 to EUR 30 was a serious disappointment for the EU even though out of USD289.5mn-worth of scrap metal exported in 2015 (before the scrap metal export tax increase), USD6.3m went to the EU, USD227.1m to Turkey.

### 3.1.6 Anti-corruption

The Association Agreement mentions fight against corruption several times, including in its general principles and in the Justice, Freedom and Security chapter. Having signed the AA, Ukraine is obliged to deliver on the anticorruption fight.

Corruption has been Ukraine's most important and most publicised challenge. Opinion polls show that almost 90 per cent of Ukrainians believe corruption to be a significant problem,<sup>55</sup> and it is continuous topic of Western criticism. A comprehensive survey showed the Ukrainian population was confused about the state of corruption, however: Many people believed it was getting worse, while ordinary citizens were also less inclined than in the past to give voluntary bribes.<sup>56</sup>

Since the Euromaidan Revolution, Ukraine has adopted an impressive package of anti-corruption laws<sup>57</sup> and created institutions such as the National Council on Anti-Corruption Policy, the National Anti-Corruption Bureau (NABU), the Special Anti-Corruption Prosecutor's Office (SAPO), the National Agency on Corruption Prevention (NACP). In October 2017, Poroshenko announced plans to create an independent anti-corruption court, seemingly succumbing to pressure from the EU, IMF, and Ukrainian civil society. Implementation of anti-corruption reforms continue to lag. However, despite dozens of politicians having been arrested, there have yet to be any corruption convictions.

The reform implementation requires time and sustained effort. Ukraine's financial-political groups<sup>58</sup> (i.e. oligarchs) play an outsized role in the country's politics and economy. The competition between them is one of the pillars of the country's democratic credentials. Their mobilisation and management capabilities helped protect the country after Russia annexed Crimea and intervened in eastern Ukraine. However, oligarchs' desire to protect their private interests has created obstacles to reforming the state.

Compared to these financial-political groups, the new anti-corruption agencies are newcomers to national politics. NABU is the most independent of these institutions because of its autonomous status, the transparency of its recruiting efforts (Western partners have aided in the hiring process), and its financial and technical independence (Western donors contribute directly to the bureau's budget). NABU has over 400 cases under investigation with 92 cases at the courts<sup>59</sup>, including violations of the rule of law by central and local administration officials (25 per cent), managers of state-controlled companies (23 per cent), judges (14 per cent), and high-ranking state officials (9 per cent).

Following the detention of several prominent politicians and officials on anticorruption charges levied by NABU, efforts to push back against independent anti-corruption institutions and anticorruption activists have intensified.<sup>60</sup>

Whereas the pressure on NABU is coming from a number of power groups that feel threatened by its activities, the pressure on civic activists seems to be coming primarily from the country's secret services.<sup>61</sup>

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<sup>55</sup> Opinion poll was conducted for the International Republican Institute by Rating Group Ukraine, in January-February 2016 across Ukraine ([http://www.iri.org/sites/default/files/wysiwyg/municipal\\_poll\\_2016\\_-\\_public\\_release.pdf](http://www.iri.org/sites/default/files/wysiwyg/municipal_poll_2016_-_public_release.pdf)).

<sup>56</sup> De Waal, Thomas, Fighting a Culture of Corruption in Ukraine, Carnegie Europe, 18 April 2016, <http://carnegieeurope.eu/2016/04/18/fighting-culture-of-corruption-in-ukraine-pub-63364>.

<sup>57</sup> On 14 October 2014 Verkhovna Rada adopted laws No 1699-VII On the outlines of national anti-corruption policy in Ukraine for 2014-2017, No 1698-VII On the National anti-corruption bureau of Ukraine, No 1700-VII On prevention of corruption, and No 1701-VII On the amendments to some legal acts of Ukraine to determine final beneficiaries. In recent years this corps of laws was further amended.

<sup>58</sup> B. Jarabik, M. Minakov, Ukraine's hybrid state, Carnegie Endowment for International Peace, 22 April 2016, <http://carnegieendowment.org/2016/04/22/ukraine-s-hybrid-state-pub-63417>.

<sup>59</sup> NABU website has up to date information about all cases, <https://nabu.gov.ua/en>.

<sup>60</sup> Combating corruption in Ukraine – awaiting the results, OSW Commentary, 12 July 2017,

<https://www.osw.waw.pl/en/publikacje/osw-commentary/2017-07-12/combating-corruption-ukraine-awaiting-results>.

<sup>61</sup> Ukraine accused of mounting reprisals against anti-corruption activists, Kharkiv Human Rights Protection Group, 22 August 2017, <http://khpg.org/en/index.php?id=1503358024>.

Obstructions come from within the government as well. NABU has not been receiving satisfactory financial support from the government<sup>62</sup> and continues to face challenges from the General Prosecutor's Office.<sup>63</sup> Its cooperation with courts is proving difficult as well, which jeopardises its ability to deliver results.

SAPO was initially embroiled in major controversy regarding the selection process for its special anti-corruption prosecutor.<sup>64</sup> Later, the main concern became its independence from the General Prosecutor's Office. In order to ensure its independent status, the law 'On the General Prosecutor's Office' was amended in February 2016.

The major achievement of NACP is associated with the inception of the electronic asset declaration system in August 2016.<sup>65</sup> For the first time in Ukrainian history, information on the assets of more than 100 000 politicians and officials became available to the public. Yet the sheer number of declarations also hinders NACP's capacity to analyse officials' assets and initiate investigations based on the data. NACP has also been unable to address senior Security Service of Ukraine (SBU) officials' failures to file asset declarations in the way established by law (they used an alternative procedure, claiming their assets to be a state secret).

Corruption exists in Ukraine because of a weak public service culture that is full of conflicts of interest and that offers impunity for the political elite. In response, ordinary Ukrainians have learned to be self-reliant, seeing the state more as a "predator"<sup>66</sup> than as a supplier of public goods. The public has a poor understanding of where corruption begins and ends, and still accepts that everyday bribery is a way to get things done.<sup>67</sup> Any shift towards a healthier, less corrupt Ukraine will be gradual, but such a movement is evident.

Still, public expectations are too high and both the EU and the government have a poor history of communicating to the public what they have done and plan to do to tackle corruption. As the aforementioned description suggests, major steps have been made to prevent corruption, though the state needs to do more to prosecute such cases. A failure to communicate well with the public carries the risk of ceding the anti-corruption agenda to populist politicians.

The politicisation of the anti-corruption fight is yet another challenge.<sup>68</sup> Draft laws 'On Amendments to the Tax Code of Ukraine to Ensure Openness to the Public Information on the Financing of the Activities of Public Associations and the Use of International Technical Assistance' and 'On Amendments to Some Legislative Acts on Ensuring Openness to Society Providing of Information on Financing of the Activities of Public Associations and the Use of International Technical Assistance' require anti-corruption organisations and their contractors to file asset e-declarations in the same way that state

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<sup>62</sup> Between Victory and Betrayal: How to Move Ukraine's Anticorruption Reforms Forward, Carnegie Endowment for International Peace, 26 July 2016, <http://carnegieendowment.org/2016/07/26/between-victory-and-betrayal-how-to-move-ukraine-s-anticorruption-reforms-forward-pub-64180>.

<sup>63</sup> S. Leshenko, Kyiv Versus Kyiv. President Poroshenko promised to tackle corruption. Halfway through his term, Ukraine's anti-corruption agencies are fighting each other, 20 December 2016, <http://foreignpolicy.com/2016/12/20/Kyiv-versus-Kyiv-poroshenko-ukraine-corruption-nabu/>.

<sup>64</sup> Anti Corruption Action Centre Anticorruption Conditionalities as Miracle Makers for Ukrainian Reformers, 11 July 2017, <https://antac.org.ua/en/analytics/anticorruption-conditionalities-as-miracle-makers-for-ukrainian-reformers/>.

<sup>65</sup> E-Declaration for public servants' assets: public scrutiny to curb corruption?, UNDP in Ukraine, 9 September 2016, <http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2016/09/09/e-declaration-for-public-servants-assets-public-scrutiny-to-curb-corruption.html>.

<sup>66</sup> J. Galbraith, The Predator State: How Conservatives Abandoned The Free Market and Why Liberals Should Too, Free Press, 2019, <http://www.predatorstate.com>. T. Kyselova, The Role of State in Ukrainian Business: Violent Bespredel and Profitable Partner, Kyiv-Mohyla Law and Politics Journal, 2015, <http://kmlpj.ukma.edu.ua/article/view/52658>.

<sup>67</sup> T. De Waal, Fighting a Culture of Corruption, in Ukraine, Carnegie Europe, 18 April 2016, <http://carnegieeurope.eu/2016/04/18/fighting-culture-of-corruption-in-ukraine-pub-63364>.

<sup>68</sup> O. Khomei, A. Permakova, D. Sydorenko, B. Jarabik, A bittersweet victory: Ukraine's Association Agreement with the EU, New Eastern Europe, 10 July 2017, <http://neweasterneurope.eu/2017/07/10/a-bittersweet-victory-ukraine-s-association-agreement-with-the-eu/>

employees and officials do. These amendments are largely seen as an attempt to put political pressure on NGOs and have been met with fierce opposition from local civil society and the EU.<sup>69</sup>

Indeed, given that corruption has been Ukraine's most talked-about political issue for years, the country's ruling elites consider anti-corruption NGOs to be de facto political players and, by extension, their direct opponents.<sup>70</sup> In light of criticism from civil society and Ukraine's Western partners, President Poroshenko submitted another draft law seeking to revoke the most onerous amendments to these bills. The draft also aims to introduce western NGO transparency standards—a move that would indeed improve the sector's transparency<sup>71</sup> but that should not be seen as related to civil servants' e-declarations.

### 3.1.7 Energy

The energy sector, which falls under Title V: Economic and Sector Cooperation of the AA, is one of the few sectors that continues to show signs of progress in legal approximation. In April 2015, the law 'On the Natural Gas Market' was adopted, in compliance with EU norms. In September 2016, the law was amended to further reduce regulation and facilitate the business activities of energy sector actors. The major challenge in the natural gas industry is the unbundling of the state-owned joint stock company Naftogaz Ukraine (the main player in Ukraine's market), which was approved by the government in July 2016. The process is being hampered by an ongoing arbitration case with Russian natural gas giant Gazprom in the Arbitration Institute of the Stockholm Chamber of Commerce.<sup>72</sup> The unbundling plan mandates the transfer of assets controlled by Ukrtransgaz (which is ultimately under Naftogaz's control) to a newly established independent transmission system operator within 30 days of the court's decision on the transit contract.

Lately, Naftogaz's management woes have called into question Kyiv's commitment to reforms. The supervisory board chairman resigned in September 2017 citing a lack of corporate governance reforms and saying that 'increasing political meddling had become the norm'.<sup>73</sup> Among the reasons for his resignation were the conflict between international board members and the government, resistance within the company to the unbundling, and a lack of trust between Naftogaz management and the Ukrainian government. At the same time according to the polls 60% of Ukrainians struggling to pay for their heating bills, another 35% hike till the end of the year is politically untenable for Kyiv. To bridge the difference between high expectations and financial reality, Ukraine announced to make a proposal to the IMF about a new pricing proposal what would keep prices for the winter at current level.<sup>74</sup>

Successes in gas sector reforms are partially attributable to Ukraine's security situation. Since Moscow's annexation of Crimea and intervention in Donbas, Ukraine has been keen to avoid buying natural gas directly from Russia, what the population did not oppose. A significant drop in Ukrainian industrial outputs led to a fall in gas consumption. In 2010, Ukraine consumed around 57.6 bcm of natural gas, but by 2015 that number had fallen to 33.8 bcm. The decrease in consumption of Russian gas, which was replaced by

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<sup>69</sup> Joint Statement of the Commissioner for Human Rights, the Ukrainian Helsinki Human Rights Union and the Kharkiv Human Rights Protection Group on Draft Laws No.6674 and No.6675, 13 July 2017, <https://helsinki.org.ua/en/appeals/joint-statement-of-the-commissioner-for-human-rights-the-ukrainian-helsinki-human-rights-union-and-the-kharkiv-human-rights-protection-group-on-draft-laws-no-6674-and-no-6675/>.

<sup>70</sup> Ukraine amends disclosure law to include NGOs, Financial Times, 28 March 2017, <https://www.ft.com/content/a4144300-13c1-11e7-80f4-13e067d5072c>.

<sup>71</sup> Karatnycky, Adrian, Watching the Watchdogs: Why Ukraine's NGOs Should Disclose Assets, Too, Atlantic Council, 29 March 2017, <http://www.atlanticcouncil.org/blogs/ukrainealert/watching-the-watchdogs-why-ukraine-s-ngos-should-disclose-assets-too>.

<sup>72</sup> Personal interview with Kristian Takac, associate of the EU funded project 'Support of Ukrainian Energy Regulatory Commission in the process of electricity market reform', Kyiv, 5 July 2017.

<sup>73</sup> Naftogaz resignations spark concern over Ukraine reforms, Financial Times, 21 September 2017, <https://www.ft.com/content/877126b2-9ea1-11e7-8cd4-932067fbf946>.

<sup>74</sup> Exclusive – Ukraine to propose new gas price formula to IMF as reforms stumble, Reuters, 6 October 2017, <http://uk.reuters.com/article/uk-ukraine-crisis-reforms-exclusive/exclusive-ukraine-to-propose-new-gas-price-formula-to-imf-as-reforms-stumble-idUKKBN1CB1UQ?il=0>

purchases from EU member states (mainly from Slovakia), served as an additional incentive to boost reform in the sector.<sup>75</sup> Naftogaz's deficit of less than EUR 10 billion (or 6.2 per cent of GDP) in 2014 was eliminated in 2016, and the company paid EUR 200 million in taxes (or 10 per cent of Ukraine's total budget revenue) in that year.<sup>76</sup> This was achieved through lower import volumes as consumption declined, higher transit revenue, and gas and heating tariff increases (by 285 and 67 per cent, respectively).<sup>77</sup>

Reform in the electricity sector was prompted by Ukraine's accession to Energy Community (EnCT) in 2011. The Association Agreement contains provisions that further strengthen the need to revise existing laws. The law 'On the Electricity Market' was adopted in April 2017, after 1 135 proposed amendments slowed its passage in parliament for more than a year. It is compliant with EU legislation, though the transition period set out in the law is relatively long (two years); it is expected to be fully implemented on 1 July 2019. Meanwhile, all necessary secondary legislation, including acts establishing and governing the new market model will have to be drafted and enacted. Progress has been made on the technical level as well: in June 2017, Ukraine signed an agreement with the European Network of Transmission System Operators (ENTSO-E) for future interconnection (synchronisation) with the European grid.

Another important element of the energy sector reform is legislation on energy efficiency. In June 2017, the Verkhovna Rada passed three laws, 'On the Creation of an Energy Efficiency Fund',<sup>78</sup> 'On energy Efficiency in Buildings', and 'On Commercial Metering of Utility Services', after two years of preparation. The legislation is designed to reduce gas consumption by around 30 per cent. Residential buildings currently consume more than half of Ukraine's gas, while around 60 per cent of the energy is wasted, amounting to around EUR 3 billion in annual losses. The EU confirmed its financial support for this project in the amount of EUR 100 million. The EU has also been the biggest supporter of EBRD energy efficiency funds for Ukraine.<sup>79</sup> By 2016, 120 000 families had benefitted from funding provided through a budget support program for the thermal renovation of residential buildings.

### 3.1.8 Public procurement

The reform effort has introduced a higher level of transparency on budget transactions and beneficiaries of procurements. In December 2015, the Verkhovna Rada adopted the law 'On Public Procurement', and a Public Procurement Reform Strategy (Roadmap) was adopted on 24 February 2016 to harmonise legislation with the EU *acquis*. The new law entered into force on 19 February 2016, facilitating the launch of the Pro-Zorro e-procurement system. While access to information on the use of budget funds was one of the EU's requirements, public procurement reform goes beyond what the Agreement requires and even beyond standards in a number of other EU countries. Disclosure of information on ownership and verification of public contracts was one of the IMF conditions, which are seen in Kyiv as powerful enablers of reform-related decision-making.<sup>80</sup>

In 2016, the number of unique suppliers in public procurement rose three times (to 33 700). This has led to a decrease in the number of agreements per supplier, thereby diminishing potential monopolies and

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<sup>75</sup>A. Åslund, Securing Ukraine's Energy Sector, April 2016, <http://nucc.no/wp-content/uploads/2016/08/Securing-Ukraines-Energy-Sector.pdf>.

<sup>76</sup> Naftogaz open letter: a year without gas imports from Russia, Naftogaz press release, 25 November 2016, <http://www.naftogaz.com/www/3/nakweben.nsf/0/371FE97DD813E51FC225807600517667?OpenDocument&year=2016&month=11&nt=News&>.

<sup>77</sup> IMF Second Review Under the Extended Fund Facility, 30 September 2016, <https://www.imf.org/external/pubs/ft/scr/2016/cr16319.pdf>.

<sup>78</sup> The concept of the Fund is available at the Ministry of Regional Development and Construction website since February 2017 [http://www.minregion.gov.ua/wp-content/uploads/2016/02/Concept\\_of\\_Energy\\_Efficiency\\_Fund.pdf](http://www.minregion.gov.ua/wp-content/uploads/2016/02/Concept_of_Energy_Efficiency_Fund.pdf).

<sup>79</sup> EU report: Ukraine carrying out unprecedented reforms, European Commission press release, 13 December 2016, [http://europa.eu/rapid/press-release\\_IP-16-4344\\_en.htm](http://europa.eu/rapid/press-release_IP-16-4344_en.htm).

<sup>80</sup> According to Lyubov Akulenko, executive director of Ukrainian Centre for European Policy, the very decision to launch ProZorro as an e-procurement platform was made by Ukrainian side and not required by any international partner, as there was no mandatory demand of such nature from the EU nor from IMF. Interview with Akulenko, Kyiv, Ukraine, 5 July 2017.



weakening links with contracting authorities. Compared to 2015, the average amount of purchases from single suppliers has decreased by 70 per cent.<sup>81</sup>

There have been attempts to roll back reform, however. Pro-Zorro is facing interference from courts, which have issued resolutions to block or prevent electronic auctions on the platform.<sup>82</sup> Military purchases are waived, and there is also vocal opposition in the Rada to drug procurement being transferred from the ministry of healthcare to international organisations, an IMF requirement.

### 3.1.9 Decentralisation

Cross-sectoral decentralisation (including fiscal decentralisation) involving education, health care, and other parts of governance, is considered to be another of Ukraine's successful reforms. Although incomplete, the reform has already brought significant change to Ukraine. After several decades of power being concentrated in the capital, new regional administrations now have more responsibility for local services. Many of these authorities have larger budgets than their predecessors and are using these funds to improve roads and schools.<sup>83</sup> The new local administrations have greater prospects for economic development and enjoy more respect from Kyiv and from their constituents.<sup>84</sup>

Overall political support for decentralisation is high, though there has been no cross-party consensus on the concept of the reform. Some opposition politicians allege that decentralisation is an underhanded effort by President Poroshenko to exert new power over the regions by appointing presidential prefects across the country. The reform has attracted significant Western assistance, with key donors (the EU, Germany, Denmark, Sweden and Poland, and the U.S.) working together.

The reform was launched in April 2014, when the government adopted the Concept of the Reforming of Territorial Self-Governance. The Concept was prepared with advisory support from the Council of Europe in order to take into account the most advanced self-governance practices in Europe. In June 2014, the Verkhovna Rada voted for the law 'On Cooperation of Territorial Communities' and in February 2015 the law 'On Voluntary Consolidation of Territorial Communities', paving the way for the agglomeration of territorial units in Ukraine. The initial assessment envisaged that instead of 11 520 territorial units there would be about 1 500 amalgamated territorial communities (ATC). As of August 2017, there were 413 ATCs, up to 200 were preparing for elections, and around 100 communities were in various stages of formation.<sup>85</sup> The Ministry of Regional Development aims to establish up to 700 ATCs by the end of 2017, or half of the originally planned number.

The decentralisation of power has led to new financial rules. Sixty per cent of local personal income tax, 100 per cent of state duties, and 100 per cent of the fees for administrative services are now paid into local budgets. In a radical change, local administrations have gained the right to levy a local property tax and a local excise tax on alcohol, tobacco, and fuel. They are also allowed to borrow larger sums than before from the central government and banks to finance their spending projects. In 2016, ATC budgets increased by 49 per cent to UAH 132 billion (EUR 4.2 billion). The 2017 budget foresees a 23 per cent increase in local budgets.<sup>86</sup>

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<sup>81</sup> Prozorro Anniversary: Overview of Public Procurement Reform Changes by Vox Ukraine, 25 April 2017, <https://voxukraine.org/2017/04/25/prozorro-anniversary-en/>.

<sup>82</sup> Transparency International Ukraine, Courts Against ProZorro Sale, <https://ti-ukraine.org/en/news/courts-against-prozorro-sale/>

<sup>83</sup> B. Jarabik, Y. Yesmukhanova, Ukraine's Slow Struggle for Decentralization, Carnegie Endowment for International Peace, 8 March 2017, <http://carnegieendowment.org/2017/03/08/ukraine-s-slow-struggle-for-decentralization-pub-68219>.

<sup>84</sup> Ukraine Poll: Local Outlook Improves as National Pessimism Remains High, IRI, 10 April 2017, <http://www.iri.org/resource/ukraine-poll-local-outlook-improves-national-pessimism-remains-high>

<sup>85</sup> Personal interview with Yulia Yemukhanova, DOBRE., 15 August 2017.

<sup>86</sup> B. Jarabik, Y. Yesmukhanova, Ukraine's Slow Struggle for Decentralization, Carnegie Endowment for International Peace, 8 March 2017, <http://carnegieendowment.org/2017/03/08/ukraine-s-slow-struggle-for-decentralization-pub-68219>.

The biggest obstacles to a smooth reform process are frozen constitutional amendments. The decentralisation process was included in the same constitutional package as clauses connected to the Minsk Agreement, leading to the false sense that providing a 'special status' for Donbas would enable federalisation. Until constitutional amendments are adopted, the legal foundation of the entire reform will remain incomplete. In 2016, the ministry of regional development proposed a draft law 'On the Administrative-Territorial Organization of Ukraine' to partially address issues that would have been defined by the constitutional amendments.<sup>87</sup>

Other challenges include the lack of information and clear understanding about what the decentralisation reforms will do, and resistance from regional and district authorities. Cuts to central subsidies may widen the already-large inequality gap between different regions. The number of ATCs is still very low in south eastern Ukraine, in most cases as a result of opposition from regional authorities rather than a lack of local initiative.<sup>88</sup> As the decentralisation process sits at the intersection of many different reforms (education, health care, taxation, etc.), it is important to ensure an appropriate level of cooperation between the different government institutions responsible for reform. While international donors have a special board established,<sup>89</sup> hundreds of state officials working on key aspects of reform lack sufficient coordination.

While the first year of reform saw relatively large budget subventions, which allowed ATCs to run infrastructure projects (like the renovation of schools and local medical facilities), funding decreased in the following years, becoming available only for immediate expenses like salaries for teachers or medical staff. This immediately resulted in a lower assessment of the positive results of the reform within ATCs.<sup>90</sup> Other major problems are the low numbers of activists on site and a lack of grassroots organising, a deficit of experienced managers and local civil servants, weak horizontal ties between ATCs (even at the level of information exchange and coordination), and the unpredictability of changes to legislation and government practices, which makes long-term planning almost impossible.

It is important not to forget about the preference for passivity and paternalism held by many Ukrainians, which plays a major role in slowing reform. Polls show that only 32 per cent of the population is ready to engage in local-level decision-making, and just 15 per cent believe that they can influence the situation in their own municipality.<sup>91</sup>

### 3.1.10 The judiciary

Reform of the judicial system is among the most needed and urgent changes in Ukraine: According to public opinion polls, courts are among the least trusted institutions in the country. In June 2016, the Verkhovna Rada adopted amendments to the Constitution of Ukraine and to the law 'On the Court System and the Status of Judges'. Those legislative steps simplified the court system (turning it into a three-tiered system instead of four-tiered one) thus shortening the time spent on resolving disputes. The main purpose of the reform was to ensure judges' independence. To this end, the right to nominate and dismiss judges has been transferred from the Verkhovna Rada to the Supreme Council of Justice, a new institution of professional self-governance in the judicial branch.<sup>92</sup>

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<sup>87</sup> The amendments are still discussed in the committees of Verkhovna Rada. The parliament website to the Law and amendments [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55812](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55812).

<sup>88</sup> Decentralization reform in Ukraine: prospects and challenges, Ilko Kucheriv Democratic Initiatives Foundation (DIF), 2016, [http://www.old.dif.org.ua/modules/pages/files/1449069764\\_3870.pdf](http://www.old.dif.org.ua/modules/pages/files/1449069764_3870.pdf).

<sup>89</sup> Donor board on Decentralization Reform in Ukraine, accessed on 9 November 2017, Cabinet of Ministers of Ukraine, [donors.decentralization.gov.ua/en/donor\\_board](http://donors.decentralization.gov.ua/en/donor_board).

<sup>90</sup> Among the residents of the amalgamated communities the share of those who felt the improvement on living conditions fell from 16 per cent to 11 per cent, and the percentage of those who felt the deterioration slightly increased from 9 per cent to 12 per cent (according to the poll by Ilko Kucheriv Democratic Initiatives Foundation (DIF), Public opinion about decentralization reform, 26 July 2017, [dif.org.ua/article/public-opinion-about-decentralization-reform](http://dif.org.ua/article/public-opinion-about-decentralization-reform)).

<sup>91</sup> DIF poll, July 2017, [dif.org.ua/article/public-opinion-about-decentralization-reform](http://dif.org.ua/article/public-opinion-about-decentralization-reform).

<sup>92</sup> Legal Alert: Constitutional Judicial Reform in Ukraine, Nobles, 7 June 2016, <https://www.nobles-law.com/single-post/2016/06/07/Legal-Alert-Constitutional-judicial-reform-in-ukraine>.

However, temporary provisions of this law have caused some concern, as they grant the president authority to appoint judges upon nomination of the Supreme Council of Justice. Thus, in a transitional period, the president will significantly increase his power. Another issue is the excess power the law grants to attorneys: They have the exclusive right to represent all entities in courts, which makes them the sole non-government institution with monopoly rights granted by the Constitution.<sup>93</sup>

The High Qualification Commission of Judges approved a rating of 320 candidates to be Supreme Court judges on 27 July 2017.<sup>94</sup> The selection procedure started in November 2016, when 1436 candidates registered for the competition. The whole Supreme Court is being formed through an open competition for the first time in Ukrainian history. Also for the first time, representatives of NGOs now have the power to present evidence and contest any candidate's selection through the Public Integrity Council.<sup>95</sup> While Ukraine's western partners praised the process and civil society involvement, they also raised concerns about the latest developments, as 30 out of the 120 candidates for the court have received negative reviews from the Public Integrity Council (meaning they have violated human rights, made politically-motivated rulings, or could not sufficiently explain the origin of their income).<sup>96</sup> As of September 2017, the appointment process was still ongoing and any of the 120 candidates could be nominated.

The law 'On the Constitutional Court of Ukraine'<sup>97</sup> came into force on 3 August 2017. It establishes a substantially new procedure for selecting candidates and introduces the instrument of constitutional complaint, which may be filed by an individual or company if they find any act of parliament to contradict the constitution. In cases where a complaint is upheld, the Constitutional Court (CC) will declare the law to be unconstitutional. Critics say the law increases not only the ability of citizens to defend their rights, but also the power of the president to politically influence the selection of constitutional judges.<sup>98</sup>

### 3.1.11 Media

According to Freedom House, Ukraine's media environment has significantly improved since the 2014 Euromaidan Revolution, and ongoing reforms continue to strengthen the legal and economic framework for journalists and outlets.<sup>99</sup> Ukrainians rely heavily on traditional media (television, radio, and print), with other electronic media having a relatively small audience.<sup>100</sup> At the same time, mass media remains mostly a privatised political tool controlled by the most influential oligarchs, including the president. Undue political interference with content as well as violence, harassment, and other abuse of journalists remain important challenges.<sup>101</sup> The war in Donbas has sparked heated discussions about how journalism should

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<sup>93</sup> Amendments to the Constitution of Ukraine passed: Ukraine takes a major step towards a European System of Justice, CMS Law-Now, 9 June 2016, <http://www.cms-lawnow.com/ealerts/2016/06/amendments-to-the-constitution-of-ukraine-passed-ukraine-takes-a-major-step-towards-a-european-system-of-justice>.

<sup>94</sup> The High Qualification Commission announced the names of winners of Supreme Court selection, Support to Justice Sector Reforms in Ukraine, 28 July 2017, <http://www.justicereformukraine.eu/the-high-qualification-commission-announced-the-names-of-the-winners-of-supreme-court-selection/>.

<sup>95</sup> 80% of the Old Judges are to be Selected to the New Supreme Court, 25% Have Dubious Reputation – Results of the Competition, Reanimation Package of Reforms, 28 July 2017, <http://rpr.org.ua/en/news/80-of-the-old-judges-are-to-be-selected-to-the-new-supreme-court-25-have-dubious-reputation-results-of-the-competition/>.

<sup>96</sup> US Embassy: Integrity concerns of Ukraine Supreme Court nominees remain, UNIAN, 31 July 2017, <https://www.unian.info/politics/2057401-us-embassy-integrity-concerns-of-ukraine-supreme-court-nominees-remain.html>.

<sup>97</sup> Verkhovna Rada's press release, 3 August 2017 <http://portal.rada.gov.ua/en/news/News/147607.html>.

<sup>98</sup> Poroshenko signs controversial law on appointment of Constitutional Court judges, NSNBC, 1 August 2017 <https://nsnbc.me/2017/08/01/poroshenko-signs-controversial-law-on-appointment-of-constitutional-court-judges/>.

<sup>99</sup> Freedom on the Net 2016. Ukraine Profile, Freedom House, <https://freedomhouse.org/report/freedom-net/2016/ukraine>.

<sup>100</sup> Mediasapiens, Survey of Russian Propaganda Influence on Public Opinion in Ukraine Findings, 13 December 2017, [osvita.mediasapiens.ua/detector\\_media\\_en/reports\\_eng/survey\\_of\\_russian\\_propaganda\\_influence\\_on\\_public\\_opinion\\_in\\_ukraine\\_findings/](https://osvita.mediasapiens.ua/detector_media_en/reports_eng/survey_of_russian_propaganda_influence_on_public_opinion_in_ukraine_findings/); Mediaset, Over 85% of Ukrainians Get Information from TV, 29 December 2016. [en.mediasat.info/2016/12/29/information-from-tv/](http://en.mediasat.info/2016/12/29/information-from-tv/).

<sup>101</sup> Freedom on the Net 2016, Ukraine Country Profile, Freedom House, 2016, <https://freedomhouse.org/report/freedom-net/2016/ukraine>.



look like during a crisis.<sup>102</sup> Continued violence against journalists, with the fatal car bombing of Pavel Sheremet in July 2016 being the most egregious example, and impunity for perpetrators calls Ukraine's media freedom into question.<sup>103</sup>

In April 2014, the Verkhovna Rada adopted the law 'On Public Television and Radio Broadcasting', (further amended in March 2015 and May 2016), aimed at turning the former First State TV Channel and Radio channel into a public broadcaster overseen by society and serving the country's need for free and objective information. Critics from civil society have pointed out how the creation of such a platform has been, in their words, 'sabotaged'.<sup>104</sup> While the reform is ongoing, the European Commission has expressed concerns that the 2018 draft budget envisages a 50 per cent reduction of the amount allotted to the public broadcaster foreseen by law.<sup>105</sup>

The Criminal Code of Ukraine has been amended to allow journalists to work without fear of threats or actual violence.<sup>106</sup> The law 'On the Reform of State-Owned and Municipal Media' entered into force in January 2016.

The National Expert Commission on the Protection of Public Morality, the state body often criticised for mishandling the media, has been dismissed.<sup>107</sup> Still, legislation regulating the media needs further improvements: The laws 'On Print Media' and 'On Television and Radio Broadcasting' should be revised or replaced to address the latest organisational and technical changes in the media sector (like new forms of signal transmission).<sup>108</sup>

There are two major risks to media reform. First, there is no political will to promote independent media outlets and broadcasters, as evidenced by the recent attempts to reduce funding for public broadcasting. Second, there is still no true market in the media sector in Ukraine. Most TV channels and many print media outlets remain unprofitable, relying on the state or oligarchs for financing.<sup>109</sup> Thus, the media remains a tool for political competition, necessary to exercise oligarchs' influence on society and the political system.<sup>110</sup>

### 3.1.12 Electoral reform

The Agreement foresaw political dialogue aimed at, among other things, strengthening respect for democratic principles, the rule of law and good governance, human rights and fundamental freedoms, and including the rights of persons belonging to national minorities; and contributing to consolidating domestic political reforms. Current legislation on national and local elections does not entirely correspond with European practices. According to recommendations made by the EU, OSCE, and other international partners, electoral legislation reform should involve moving to a proportional system with an open list of

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<sup>102</sup> Reforming Ukraine's media. Slow progress at risk, New Eastern Europe, 29 November 2016,

<http://www.neweasterneurope.eu/articles-and-commentary/2201-reforming-ukraine-s-media-slow-progress-at-risk>.

<sup>103</sup> Ognianova, Nina, Project Syndicate, 2 August 2017, <https://www.project-syndicate.org/commentary/pavel-sheremet-murder-press-freedom-ukraine-by-nina-ognianova-2017-08>.

<sup>104</sup> Progress in Public Service Broadcasting Reform in Ukraine, CEDEM, 2 June 2016, <http://cedem.org.ua/en/news/progress-in-public-service-broadcasting-reform/>.

<sup>105</sup> Commissioner Hahn 'Disappointed to learn that 2018 draft budget for #public broadcaster might be reduced to 50% of amount foreseen by law', official Twitter account of Commissioner Hahn, 21 September 2017, <https://twitter.com/JHahnEU/status/910776528417542144>.

<sup>106</sup> Report on implementation of the EU-Ukraine Association Agenda and the European Union-Ukraine Association Agreement, 2016, Cabinet of Ministers of Ukraine, [http://www.kmu.gov.ua/kmu/control/en/publish/article?art\\_id=248402431&cat\\_id=248402399](http://www.kmu.gov.ua/kmu/control/en/publish/article?art_id=248402431&cat_id=248402399).

<sup>107</sup> Poroshenko signed the law on liquidation of 'the Commission of National Morality', UNIAN, 3 March 2015, <https://www.unian.net/society/1051106-poroshenko-odobril-likvidatsiyu-natskomissii-po-zaschite-morali.html>

<sup>108</sup> V. Miskyi, O. Halushka, Roadmap of Reforms for Ukraine. Kyiv, RPR, September 2016, [rpr.org.ua/wp-content/uploads/2016/09/RPR-Roadmap-of-Reforms-for-Ukraine.pdf](http://rpr.org.ua/wp-content/uploads/2016/09/RPR-Roadmap-of-Reforms-for-Ukraine.pdf).

<sup>109</sup> Freedom in the World 2017, Ukraine Profile, Freedom House, <https://freedomhouse.org/report/freedom-world/2017/ukraine>

<sup>110</sup> A. White, Ukraine Journalists Fight for Standards Against War Propaganda and Media Bias, Ethical Journalism Network, 18 June 2017, [ethicaljournalismnetwork.org/ethical-bounce-ukraine-journalists-fight-standards-war-propaganda-media-bias](http://ethicaljournalismnetwork.org/ethical-bounce-ukraine-journalists-fight-standards-war-propaganda-media-bias).

party candidates.<sup>111</sup> The law on parliamentary elections was amended in 2013 and 2014. In July 2015, the law 'On Local Elections' was adopted, and it was used for the local elections in October and November 2015.

Yet these laws failed to address some of the key issues that were intended to be the heart of these reforms, such as the introduction of open party lists, optimising the Central Election Commission (CEC), deciding on the financing of territorial elections committees, and improving election software. The draft of a new elections code was registered in the Rada and the Parliamentary Committee on Legal Policy and Justice only in February 2017. Earlier, in April 2016, the speaker of parliament initiated a working group to promote electoral reform, launch a dialogue among politicians, experts, and international advisors, and identify concrete steps needed to implement the reform in practice. However, the group has heretofore not received official status from the speaker and therefore all its recommendations are non-binding and do not need to be reviewed by the various Rada factions. To date, the group has not been able to proceed to elaborating an effective draft law.<sup>112</sup> Therefore, the current system will most likely be used for the next presidential and parliamentary elections, set for May and October 2019, respectively.

Another important piece of legislation is the law 'On Financing of Political Parties', which introduces public funding of political parties and toughens transparency requirements.<sup>113</sup> As a result, all parties now must submit quarterly financial reports, including identifying donors and the size of contributions. These reports are publicly available on the website of the National Agency for the Prevention of Corruption. All parties must also undergo an annual audit. Public financing will be available for all parties that manage to gain 2 per cent of the vote nationwide. However, for these laws to have the full desired effect, other changes need to take place as well, such as a reform of the electoral system or the introduction of limits on political advertising. On a positive note, the local elections in 2015 demonstrated a hopeful shift towards gender equality in government. A gender quota for political parties of 30 per cent was introduced in the law 'On Local Elections' and many parties complied with this quota in their lists.<sup>114</sup>

The dysfunction of the CEC is a major risk to the success of Ukrainian elections. The mandate of 13 of its 15 members has expired, and no amount of pressure from Ukrainian CSOs and European partners<sup>115</sup> has helped to solve the situation. The appointment of new CEC members has stalled in talks between the president and opposition factions.<sup>116</sup>

### 3.1.13 Privatisation

Ukraine has failed to privatise any significant state-owned companies,<sup>117</sup> including the flagship attempt to privatise the Odessa Portside Plant.<sup>118</sup> Hampered by political uncertainty, economic challenges, a fragile

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<sup>111</sup> Ukraine local elections 25 October and 15 November 2015, OSCE/ODIHR Election Observation Mission Final Report, <http://www.osce.org/odihr/elections/ukraine/223641?download=true>.

<sup>112</sup> Electoral reform in Ukraine: Challenges and Prospects, European Platform for Democratic Elections, EPDE, June 2017, [http://www.epde.org/tl\\_files/EPDE/RESSOURCES/2017%20Ukraine%20electoral%20law/Challenges%20and%20Prospects%20f%20Electoral%20Reform%20in%20Ukraine\\_fin\\_EN.pdf](http://www.epde.org/tl_files/EPDE/RESSOURCES/2017%20Ukraine%20electoral%20law/Challenges%20and%20Prospects%20f%20Electoral%20Reform%20in%20Ukraine_fin_EN.pdf).

<sup>113</sup> Law 'On Financing of Political Parties', Verkhovna Rada, 8 October 2015, <http://zakon2.rada.gov.ua/laws/show/731-19>.

<sup>114</sup> Women's rights and gender equality in Ukraine, Ukrainian Helsinki Human Rights Union, 25 April 2016, <https://helsinki.org.ua/en/women-s-rights-and-gender-equality-in-ukraine/>.

<sup>115</sup> Parliamentary factions did not submit new candidates for members of the CEC to the President, – Administration of the President of Ukraine, OPORA, 12 July 2017, <https://www.oporua.org/en/news/44443-parliamentary-factions-did-not-submit-new-candidates-for-members-of-the-cec-to-the-president-administration-of-the-president-of-ukraine>.

<sup>116</sup> The CEC: 3 years in limbo, OPORA, 13 April 2017, <https://www.oporua.org/en/news/44257-the-cec-3-years-in-limbo>.

<sup>117</sup> Ukraine has over 3 400 state-owned companies. In 2016 Ukraine earned less than EUR 3 million (data for the period from January to October) for selling 112 state-owned and 245 municipal facilities.

M. Kozak, Ukraine is having problems with privatization, Central European Financial Observer, 14 February 2017, <http://financialobserver.eu/cse-and-cis/ukraine/ukraine-is-having-problems-with-privatization/>.

T. De Waal, Fighting the Culture of Corruption in Ukraine, Carnegie Europe, 18 April 2016, <http://carnegieeurope.eu/2016/04/18/fighting-culture-of-corruption-in-ukraine-pub-63364>

<sup>118</sup> Flagship Ukraine privatization flops as plant attracts no bids, Reuters, 7 December 2016, <http://www.reuters.com/article/us-ukraine-crisis-privatisation-idUSKBN13W1CH>.

business environment, and some market un-friendly state practices,<sup>119</sup> Ukraine is far from being a paradise for investors. State enterprises are known for being unprofitable and having poor management, making their prospects for privatisation very low. In this context, the government recently unveiled a new plan to sell almost 900 enterprises from 2017 to 2020, including Oschadbank, Privatbank, Centerenergo, Ukrghazbank, Turboatom, PJSC State Food, and the Grain Corporation of Ukraine, among others.<sup>120</sup>

In July 2017, the Cabinet of Ministers adopted and passed for approval to the National Council on Reforms a draft law 'On Privatization'. This law will substitute existing legislation (currently privatisation is regulated by seven different laws) and make the procedure more transparent and simple.<sup>121</sup> It is yet to be adopted by the Verkhovna Rada.

International investors were originally optimistic about the prospects of land reform, which according to the EBRD could unlock up to EUR 50 billion for agribusinesses.<sup>122</sup> This issue has been heavily politicised, however. In October 2016, the Verkhovna Rada extended the temporary moratorium on the sale of agricultural land, which has been in place since 2001, until 1 January 2018.<sup>123</sup> Although land reform is high on the list of IMF conditions, Kyiv has managed to convince the Fund to allow it to postpone the reform.<sup>124</sup> Many Ukrainians have concerns about land being sold on the cheap, especially amid nationwide economic hardship—and these concerns are being exploited by populist forces inside and outside parliament.<sup>125</sup> Land reform is seen as having high potential for corruption.

### 3.1.14 Security sector reform

In Title II, the Association Agreement foresees the intensification of the EU-Ukraine political dialogue and cooperation—and gradual convergence—in the areas of Common Security and Foreign Policy (CSFP) and Common Security and Defence Policy (CSDP). After the shock of the Russian annexation of Crimea and the war in Donbas, Ukraine's military has risen from the ashes.<sup>126</sup> The costs of war are high, however: 10 000 civilians and around 3 000 Ukrainian soldiers have been killed. The army has grown to 204 000 soldiers (not including the National Guard, with its 60 000 personnel), and the defence ministry's budget has grown to USD2.2 billion in 2016 (or 2.5 per cent of GDP),<sup>127</sup> while spending on military equipment is now four times higher than in 2014. Army personnel have undergone an unprecedented level of training by Western militaries.

Kyiv unveiled the Strategic Defence Bulletin,<sup>128</sup> the strategic reform plan for the armed forces, on 6 June 2016. Defence reform enjoys broad public support: 59 per cent of Ukrainians supported the reform and 63

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<sup>119</sup> Why Ukraine fails privatization each year? 112.UA, 26 June 2017, <http://112.international/article/why-ukraine-fails-privatization-each-year-18224.html>.

<sup>120</sup> Company Overview of State Food and Grain Corporation of Ukraine Public Joint-Stock Company, Bloomberg, 15 August 2017, <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=241578923>; Concorde capital, Ukraine, EBRD preparing Oschadbank privatization plan, media reports, 22 November 2016, <http://concorde.ua/en/research/daily/ukraine-ebrd-preparing-oschadbank-privatization-plan-media-reports-16025/>; Interlegal, Latest privatisation developments in Ukraine, 8 September 2016, <http://www.interlegal.com.ua/corporate/?p=2270>.

<sup>121</sup> Information and communication department of the secretariat of the CMU, PM at Dragon Capital Ukraine Invest: We rely on the adoption of new procedure for transparent privatization in September-October, 7 July 2017, [http://www.kmu.gov.ua/control/en/publish/article?art\\_id=250122248](http://www.kmu.gov.ua/control/en/publish/article?art_id=250122248).

<sup>122</sup> EBRD: Ukraine land reform to unlock \$40-50 billion for agribusiness lending, Reuters, 7 July 2017, <http://www.reuters.com/article/us-ukraine-ebrd-reform-idUSKBN19S1IX>.

<sup>123</sup> The Failures of the Ukrainian Government: a Moratorium on Land, Vox Ukraine, 13 October 2016, <https://voxukraine.org/2016/10/13/zemelnaya-reforma-en/>.

<sup>124</sup> IMF says Ukraine land reform will be key for next review, Reuters, 7 July 2017, <http://www.reuters.com/article/us-ukraine-imf-reform-idUSKBN19S1C5>.

<sup>125</sup> M. Kozak, Queuing for Ukrainian agricultural land. Central European Financial Observer, 9 January 2016, <http://financialobserver.eu/cse-and-cis/ukraine/queuing-for-ukrainian-agricultural-land/>.

<sup>126</sup> Ukraine Reform Monitor, April 2017, <http://carnegieendowment.org/2017/04/19/ukraine-reform-monitor-april-2017-pub-68700>.

<sup>127</sup> Defense Ministry budget for 2016 to amount for \$2,22 billion, Ministry of Defense, 12 January 2016, [http://www.mil.gov.ua/en/news/2016/01/12/defense-ministry-budget-for-2016-to-amount-for-\\$2-22-billion/](http://www.mil.gov.ua/en/news/2016/01/12/defense-ministry-budget-for-2016-to-amount-for-$2-22-billion/).

<sup>128</sup> President approved Strategic Defence Bulletin of Ukraine, President of Ukraine official website, 6 June 2016, <http://www.president.gov.ua/en/news/prezident-zatverdiv-strategichnij-oboronnij-byuleten-ukrayin-37309>.

per cent trusted the army in 2016.<sup>129</sup> Nevertheless, military reform has been hampered by bureaucratic and political resistance, a lack of civilian control, problems with information sharing and coordination, and poor decision-making and management.<sup>130</sup>

The European Union has dispatched the European Union Advisory Mission (EUAM), a comprehensive project to aid civilian security sector reform, to Ukraine. It was launched by an European Council decision in July 2014, preceding most other international projects. The mission was designed to support law enforcement and rule of law reform at a time when military assistance was vital to Ukraine's success. Due to its bureaucratic set up (as a Common Security and Defence Policy mission), the EUAM was not involved in the creation of the National Patrol Police. Moreover, a civic audit of March 2017 suggested EUAM was still 'looking for its niche'.<sup>131</sup> Officials in Brussels privately acknowledge its programs have had limited impact so far.<sup>132</sup> Broadening of the mission's mandate to include practical projects and trainings should improve the situation.

The EUAM seems to have recognised that security sector reform has stalled, as its latest efforts have focused on enhancing reforms related to communication.<sup>133</sup> Recently, it opened two regional offices—in Kharkiv in the east and in Lviv in the west. Its current law enforcement reform priorities are human resources management, public order, division of labour and responsibilities, criminal investigation, and community policing.

The patrol police have been the most visible reform inside and outside Ukraine. The law 'On National Police' was adopted only in July 2017, long after many functioning patrol police departments were established in dozens of Ukrainian cities. The vetting process for police personnel was completed in 2016: 14 per cent of all officers and 26 per cent of senior management were dismissed.<sup>134</sup> Even though thousands of candidates entered the patrol police through an advanced and fair recruitment system, the police force now suffers from a shortage of staff. Increased criminal rates, exploited by easy access to weapons, plague the reform's image.<sup>135</sup>

The main challenges facing the civilian security sector are the Prosecutor General's Office (PGO) and the Security Service of Ukraine (SBU), which both stand at the nexus of key reforms: anti-corruption, rule of law, and separation of powers.<sup>136</sup> The SBU has faced considerable criticism, first for having been infiltrated by Russia, and now for providing cover for illicit business interests, including being involved in the illegal cross-border trade in Donbas. The SBU has taken on more and more functions—such as financial investigations—that are normally outside the scope of security services. The most important reform in the security sector is the adoption of the law 'On National Security', which should bring more clarity to the mandates and responsibilities of law enforcement and military agencies.

Traditionally, the GPO has operated as a political pillar of Ukraine's leadership. Post-Maidan Ukraine's fourth general prosecutor, Yuriy Lutsenko, now faces the same accusations as his predecessors—sabotage and corruption—while showing political loyalty to the president. Even though there was an attempt to bring

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<sup>129</sup> Ukraine Reform Monitor, April 2017, <http://carnegieendowment.org/2017/04/19/ukraine-reform-monitor-april-2017-pub-68700>.

<sup>130</sup> Security Sector Reform in Ukraine, RAND Corporation, October 2016, <https://www.rand.org/news/press/2016/10/05.html>.

<sup>131</sup> 'Mission Accomplishable? Audit of the EU Efforts in Reforming Ukraine's Civilian Security Sector', Institute for World Policy, 23 March 2017, <http://iwpp.org.ua/eng/public/2241.html>.

<sup>132</sup> Interview with Ukraine Support Group representative, Brussels, 15 July 2017.

<sup>133</sup> EUAM encourages culture of coordinated, consistent and clear government communication, EUAM, 25 May 2017, <http://www.euam-ukraine.eu/news/latest-news/euam-encourages-culture-of-coordinated-consistent-and-clear-government-communication/>.

<sup>134</sup> Ukraine Reform Monitor, April 2017, <http://carnegieendowment.org/2017/04/19/ukraine-reform-monitor-april-2017-pub-68700>.

<sup>135</sup> Y. Lutsenko, Why crime rate in Ukraine increased. Report of the Prosecutor General Yuriy Lutsenko at the meeting of the Committee on Law Enforcement, 22 September 2016, <http://112.international/opinion/why-crime-rate-in-ukraine-increased-9686.html>.

<sup>136</sup> W. Pomeranz, O. Nesterenko, Breaking the Ukrainian Procuracy, Kennan Cable, January 2016, [https://www.wilsoncenter.org/sites/default/files/kennan\\_cable\\_no.14\\_breaking\\_the\\_ukrainian\\_procuracy.pdf](https://www.wilsoncenter.org/sites/default/files/kennan_cable_no.14_breaking_the_ukrainian_procuracy.pdf).

in new staff to his office, 74 per cent of the newly appointed staff had previous GPO experience. Investigations into the killings on the Maidan and in Odessa in 2014 are at a standstill. Correspondingly, only 11 per cent of Ukrainians trust the GPO.<sup>137</sup>

## 3.2 Economic aspects of EU assistance

In 2014, the EU allocated the single largest financial package ever to a non-EU member state, with the purpose of stabilise Ukraine's economy, strengthening the rule of law, and assisting Kyiv in the fight against corruption. The original indicative financial support reached EUR 11,2 billion combining bilateral allocation under the European Neighborhood Instrument, Neighborhood Investment Facility, Instrument Contributing to Stability and Peace, Common Foreign and Security Policy (grants), along with macro-finance assistance (loans) and contributions from international financial institutions (EIB, EBRD).<sup>138</sup>

Characterised by intense conditionality, the allocated funds reach Ukraine upon demonstration of reform progress. Due to a series of new legislative decisions and improved management of public procurement and the state budget, Ukraine has improved its reliability as a recipient of direct budget support. In addition to EUR 3.4 billion in macro-finance assistance<sup>139</sup>, EUR 200 million has been disbursed annually in the form of grants since 2014<sup>140</sup>. Despite achievements within the framework of the Agreement, EU assistance alone is unable to remedy the current obstacles facing Ukraine's economic modernisation—and partly depends on Ukraine's continuation of the IMF programme.

Ukraine's overall economic performance continues to be directly linked to the conflict in Donbas. Despite the war, Ukraine and Russia traded EUR 8.2 billion worth of goods in 2016, making Russia Ukraine's single largest trading partner. The numbers break down to EUR 4.8 billion in imports from Russia and EUR 3.2 billion in exports to Russia. The largest investor in Ukraine in 2016 was also Russia, at nearly EUR 1.3 billion<sup>141</sup>—most of it this came in the form of recapitalising Ukrainian banks, an indication of how little FDI Kyiv has been able to attract.

This has made Ukrainian activists uneasy, and there are increasing calls for a full-scale boycott of trade with Russia.<sup>142</sup> However, previous boycotts have already undermined the country's economic growth and the government reputation. Following the blockade of Donbas in early 2017, the separatists seized Ukrainian-owned businesses in the non-controlled areas, which has resulted in an estimated reduction of Ukraine's GDP by 0.7 per cent. In reaction to the illegal seizures, Kyiv suspended all trade-related transit across the contact line. This is likely to further reduce GDP in 2017.<sup>143</sup>

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<sup>137</sup> Ukraine Reform Monitor, April 2017, <http://carnegieendowment.org/2017/04/19/ukraine-reform-monitor-april-2017-pub-68700>.

<sup>138</sup> Ukraine's on-going reform process. Progress and challenges since Euromaidan, European Parliament Brief, July 2017, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608632/EPRS\\_BRI\(2017\)608632\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608632/EPRS_BRI(2017)608632_EN.pdf).

<sup>139</sup> Report from the Commission to the European Parliament, and the Council on the implementation of macro-finance assistance to third countries in 2016, COM/2017/0321, 16 June 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:321:FIN>.

<sup>140</sup> European Court of Auditors, Special report no 32/2016: EU assistance to Ukraine, 2016, [http://www.eca.europa.eu/Lists/ECADocuments/SR16\\_32/SR\\_UKRAINE\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR16_32/SR_UKRAINE_EN.pdf).

<sup>141</sup> Deadly trade, Kyiv Post, 23 March 2017, <https://www.kyivpost.com/ukraine-politics/deadly-trade.html>.

<sup>142</sup> Jump in Ukraine-Russia trade prompts activists to renew call for boycott, Kyiv Post, 3 July 2017, <https://www.kyivpost.com/business/jump-ukraine-russia-trade-prompts-activists-renew-call-boycott.html>.

<sup>143</sup> The effect of company seizures and trade suspensions in Donbas, German Advisory Group Ukraine, August 2017, [http://www.beratergruppe-ukraine.de/wordpress/wp-content/uploads/2017/08/Newsletter\\_106\\_2017\\_German-Advisory-Group.pdf](http://www.beratergruppe-ukraine.de/wordpress/wp-content/uploads/2017/08/Newsletter_106_2017_German-Advisory-Group.pdf).



### 3.2.1 EU financial assistance

In its audit, the European Court of Auditors highlighted the rapidity of the preparation of the 2014-20 overall EU package for Ukraine, which amounts to EUR 11.2 billion.<sup>144</sup> However, the Court also concluded that the EU's rapid response was accompanied by a lack of thorough analysis, planning, and calculations.

Like Georgia, Armenia, Jordan, Kyrgyz Republic, Moldova, and Tunisia, Ukraine benefits from the EU's Macro-Financial Assistance (MFA). The MFA is directly tied to Kyiv's implementation of the programme with the International Monetary Fund and is released in 'tranches', or instalments, upon the government's fulfilment of reform-related conditions.<sup>145</sup> Since 2014, the EU has mobilised EUR 3.4 billion through three packages of MFA for Ukraine, of which EUR 600 million is still available as of September 2017. Importantly, about EUR 665 million (or six per cent of all assistance) is being dispersed not through loans but as direct support. By comparison, Poland, which is similar to Ukraine in its size and structure (but is an EU member state), received as much as EUR 80 billion in EU (mostly regional, agricultural and rural development) funds from 2007 to 2013. A significant percentage of this money was directed to infrastructure projects.

The EU's MFA has, together with IMF support, helped Ukraine address its acute balance of payments crisis and proven to be an important tool for supporting reforms and stabilising the country's financial position. The list of conditions Ukraine has had to meet is substantial and reflects EU efforts to not just help address the country's macro-economic situation but also to promote reforms. Conditions include requirements such as the introduction of new anticorruption institutions and strengthening the independence of the energy market regulator.<sup>146</sup> As such, the MFA has been useful as a tool to promote implementation of a number of AA/DCFTA commitments.

The first tranche of the EU's third package of MFA was provided in July 2015, with Ukraine having met a number of specified conditions. However, no tranches were disbursed in 2016 due to the 'insufficient implementation of policy reforms' specified in the memorandum of understanding between the EU and Ukraine.<sup>147</sup> While Kyiv did well on conditions such as macro-economic stabilisation and the establishment of the National Anticorruption Bureau, others were not met. Conditions not met include the effective provision of social benefits and services to internally displaced persons (IDPs) and Ukraine's obligation to refrain from introducing new trade-restricting or trade-distorting measures, in line with Ukraine's WTO commitments (Kyiv has increased scrap metal export tariffs and extended its timber export ban).<sup>148</sup>

It seems that Kyiv's successful macroeconomic stabilisation efforts might have diluted the EU's MFA leverage to push for further reforms: 2016, the year when Ukraine did not meet all conditions, was also the year when Ukraine's macro-economic situation stabilised. This seems to have reduced the pressure on Kyiv to qualify for the next EU MFA tranche. Moreover, some of these requirements are politically or financially difficult to meet. For example, a condition that involves introducing a comprehensive system for social payments for IDPs would require financial assets that the government seems unwilling to redirect from other areas.

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<sup>144</sup> European Court of Auditors, 2016, [http://www.eca.europa.eu/Lists/ECADocuments/SR16\\_32/SR\\_UKRAINE\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR16_32/SR_UKRAINE_EN.pdf).

<sup>145</sup> Report from the Commission to the European Parliament and the Council on the implementation of macro-financial assistance to third countries in 2016, 16 June 2017, European Commission, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:321:FIN>.

<sup>146</sup> Memorandum of Understanding between the European Union and Ukraine on Macro-financial Assistance to Ukraine, 22 May 2015, [http://ec.europa.eu/economy\\_finance/international/neighbourhood\\_policy/doc/mou\\_eu\\_ukraine\\_en.pdf](http://ec.europa.eu/economy_finance/international/neighbourhood_policy/doc/mou_eu_ukraine_en.pdf).

<sup>147</sup> Report from the Commission to the European Parliament and the Council in the implementation of macro-financial assistance to third countries in 2016, 16 June 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017DC0321&from=EN>.

<sup>148</sup> EU Commission approves disbursement of EUR 600 million in assistance to Ukraine, European Commission – Press Release, 16 March 2017, [http://europa.eu/rapid/press-release\\_IP-17-643\\_en.htm](http://europa.eu/rapid/press-release_IP-17-643_en.htm).

Another MFA tranche was released in April 2017 despite the fact that not all conditions were fully met, under the assumption Ukraine will comply before the third and final tranche is released.<sup>149</sup> The Commission also stated that further steps need to be taken in energy sector reforms and in the fight against corruption.<sup>150</sup> The review of how far has Ukraine gone in implementing these requirements is to be undertaken in October 2017.

The IMF argues for an all or nothing approach,<sup>151</sup> while the EU prefers a proportional one.<sup>152</sup> According to the latter, the assistance that is disbursed is calculated proportionally to the conditions that have and have not been fulfilled. This approach rewards progress, ensures continuity, and creates predictability. However, as 2016 illustrated, the chances of MFA delivering its stated objectives are directly proportional to Ukraine's needs for external financing. As the country's macroeconomic situation stabilises (see below on Kyiv's ability to repay its loans), Kyiv's incentives to fulfil all necessary requirements for another tranche of EU MFA may be further reduced.

### 3.2.2 Assistance to SMEs

As of July 2017, there were 218 Ukrainian companies with the right to export to the EU, most of which produce food and animal by-products. Ukrainian exporters have taken advantage of only 26 of the 40 tariff quotas available to them.<sup>153</sup>

According to some calculations, small and medium-sized enterprises (SMEs) constitute 99 per cent of all Ukrainian enterprises and account for some 70 per cent of the marketplace, but low levels of awareness about the Agreement among SMEs and a chronic lack of investment present pressing challenges.<sup>154</sup> Public capital investments amounted to only 0.43 per cent of GDP in 2014 and 1.3 per cent in 2016, constituting the most serious barrier to SMEs benefitting from the DCFTA.

Only a small portion of direct EU assistance is dedicated to helping SMEs in Ukraine (the budget for 2016-20 is EUR 95 million).<sup>155</sup> However, the EU's pan-Eastern Partnership programme, EU4Business, provides billions of euros in loans, as well as capacity-building and training workshops delivered to SMEs through EBRD, EIB, and other implementing partners. The EU's emphasis is on agriculture, the sector the DCFTA has boosted the most and which accounts for nearly 40 per cent of Ukrainian exports. EU assistance mostly takes the form of trainings and capacity-building workshops designed to equip Ukrainian businessmen and farmers with necessary skills.<sup>156</sup>

In order to meet the EU's phytosanitary standards across a variety of product categories, Ukrainian farmers would have to purchase costly stainless-steel appliances (among numerous other things) and take on burdensome bureaucratic expenses. Indeed, the EU should focus on developing a mechanism that allow Ukrainian SMEs to receive credits that will help them meet EU standards of production and modernisation.

The formal implementation of EU standards offers no guarantee. Inconsistent customs procedures, bureaucratic delays, corruption, and arbitrary decision-making processes in Ukraine continue to seriously

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<sup>149</sup> European Commission - Press Release, 2017, [http://europa.eu/rapid/press-release\\_IP-17-643\\_en.htm](http://europa.eu/rapid/press-release_IP-17-643_en.htm). By March 2017, the Rada registered a bill to lift the timber export ban, however, no date for a vote has been specified yet.

<sup>150</sup> European Commission - Press Release, 2017, [http://europa.eu/rapid/press-release\\_IP-17-643\\_en.htm](http://europa.eu/rapid/press-release_IP-17-643_en.htm).

<sup>151</sup> David Lipton: Ukraine can't pause or go backwards, 28 April 2017,

<https://www.imf.org/~/media/Files/Countries/ResRep/UKR/ukraine-fdmd-interview-ukr-week-en-april-28-2017.ashx>.

<sup>152</sup> Personal interview with Stefan Schleuning, the team leader for financial co-operation in the Support Group for Ukraine, Brussels, August 15, 2017.

<sup>153</sup> O. Khomei, A. Permakova, D. Sydorenko, B. Jarabik, A bittersweet victory: Ukraine's Association Agreement with the EU, New Eastern Europe, 10 July 2017, <http://neweasterneurope.eu/2017/07/10/a-bittersweet-victory-ukraine-s-association-agreement-with-the-eu/>

<sup>154</sup> Economic connectivity in Ukraine, A regional focus, A survey of enterprises across Ukraine, CASE Ukraine, 2015, [http://www.case-ukraine.com.ua/wp-content/uploads/2016/08/Economic-Connectivity\\_eng\\_13\\_07-3.compressed.pdf](http://www.case-ukraine.com.ua/wp-content/uploads/2016/08/Economic-Connectivity_eng_13_07-3.compressed.pdf).

<sup>155</sup> EU in Ukraine, EU aid to Ukrainian SMEs: EU SURE at a glance, 9 May 2015, <https://euukrainecoop.com/2015/05/09/eusure/>.

<sup>156</sup> European Commission, EU-Ukraine trade factsheet, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/ukraine/>

hinder Ukrainian exports. As Ukrainian certificates are often not recognised in EU countries, companies have to go through an expensive and lengthy certification process abroad.<sup>157</sup>

### 3.2.3 Ukraine's ability to repay loans

Ukraine will have to repay over EUR 12 billion before the upcoming elections, and EUR 6 billion in 2019 alone.<sup>158</sup> In the next five years the aggregate payments for external liabilities are calculated for around EUR 38 billion, while next reserves of the National Bank stands at EUR 5 billion.<sup>159</sup> Nevertheless, S&P Global Ratings has positively evaluated Kyiv's ability to meet its short-term liabilities (EUR 2.3 billion in 2017 and EUR 3.5 billion in 2018) by drawing on its foreign currency reserves, official creditors' funds, and financing raised in the domestic and foreign markets.<sup>160</sup> In September 2017, Ukraine successfully placed a USD 3 billion in 15-year Eurobonds at 7.375 per cent per annum—a record amount for such a period,<sup>161</sup> even though the majority came in the form of a debt swap.

This recent Eurobond success reduces pressure on Ukraine's repayments to the IMF in 2019 and 2020 and could be used to prop up public spending in the run-up to the 2019 election cycle. The return is remarkable, as a year ago, Ukraine had a rather high chance of defaulting (17.8 per cent, according to Bloomberg).<sup>162</sup> However, given Ukraine's high level of gross external debt (which has grown from 12.3 per cent of GDP in 2006 to an estimated 89 per cent in 2017),<sup>163</sup> high debt service obligations (which in 2018 will amount to almost 6 per cent of GDP), very low FDI, and limited income from privatisation, the government will continue to rely on the IMF if it is strapped for cash. Still, the macro-economic forecast for 2017 looks good: thanks to an improved tax system, state revenues rose by 30 per cent year-on-year in the first half of 2017, outpacing growth in expenditures. For the first time in many years, the government had a balanced budget between January and June in 2017.

Importantly, the constant debt growth during the eight years preceding the Euromaidan Revolution indicates a more profound structural problem in the government's policies; it's not just the costs associated with Russian aggression that plague the country's economy. On the positive side, although debt remains high,<sup>164</sup> Ukraine's forex reserves grew to EUR 17 billion in 2017.<sup>165</sup> Capital flight has been significantly

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<sup>157</sup> O. Khomei, A. Permakova, D. Sydorenko, B. Jarabik, A bittersweet victory: Ukraine's Association Agreement with the EU, New Eastern Europe, 10 July 2017, <http://neweasterneurope.eu/2017/07/10/a-bittersweet-victory-ukraine-s-association-agreement-with-the-eu/>

<sup>158</sup> Does Ukraine threatens to default: why recruit loans and how to pay, The International Massmedia Agency, 2017, <https://intmassmedia.com/2017/02/07/does-ukraine-threatens-to-default-why-recruit-loans-and-how-to-pay/>.

<sup>159</sup> Amelin, Anatoliy, Ukraine's Financial Future: Between Default and Prosperity, 27 October 2017, Kennan Institute, [http://www.kennan-focusukraine.org/ukraines-financial-future-between-default-and-prosperity/?mkt\\_tok=eyJpIjoiWkdSaU5UY3hOVGszT1RRNSlslhQlOjUuTERDY3ZtXC9mNUxtaFR6NU1OZHpeIRiRXlyU2MzdMxRnhLWVFRVArNihUeDF1V2J1Vk1EZXI0SU1JK0V5NFhvZmFNSGF1XC81ZUU5aGxySUFhRWxMUUnV6SjNTQ20xRTI3S0xsd3JMdFI3REoxTHJRaWZobTIHeTEwZWtLOEdVln0%3D](http://www.kennan-focusukraine.org/ukraines-financial-future-between-default-and-prosperity/?mkt_tok=eyJpIjoiWkdSaU5UY3hOVGszT1RRNSlslhQlOjUuTERDY3ZtXC9mNUxtaFR6NU1OZHpeIRiRXlyU2MzdMxRnhLWVFRVArNihUeDF1V2J1Vk1EZXI0SU1JK0V5NFhvZmFNSGF1XC81ZUU5aGxySUFhRWxMUUnV6SjNTQ20xRTI3S0xsd3JMdFI3REoxTHJRaWZobTIHeTEwZWtLOEdVln0%3D).

<sup>160</sup> The Debt of Ukraine: How Many Billions Need to Return to Kyiv?, Z-News, 13 May 2017, <http://z-news.link/the-debt-of-ukraine-how-many-billions-need-to-return-to-kyiv/>.

<sup>161</sup> Ukraine places \$3bn in 15-year Eurobonds at 7.375%, bne IntelliNews, 19 September 2017, <http://www.intellinews.com/ukraine-places-3bn-in-15-year-eurobonds-at-7-375-129155/>.

<sup>162</sup> A Year After \$18 Billion Debt Deal, Ukraine Is Hardly Better Off, Bloomberg Markets, 29 August 2016, <https://www.bloomberg.com/news/articles/2016-08-29/a-year-after-18-billion-debt-deal-ukraine-is-hardly-better-off>.

<sup>163</sup> The World Bank calculates public and publicly guaranteed debt is projected to reach 89 per cent of GDP in 2017. Ukraine Economic Update, April 2017, <http://www.worldbank.org/en/country/ukraine/publication/economic-update-spring-2017>.

<sup>164</sup> How big is Ukraine's debt? Governments of Yatsenyuk and Groisman borrowed (printed) T-bills in the amount of 300 billion UAH, Ukrainska Pravda, 15 September 2016, <http://112.international/article/how-big-is-ukraines-debt-9523.html>.

<sup>165</sup> NBU says Ukraine's forex reserves 2 per cent up in June, Kyiv Post, 5 July 2017, <https://www.kyivpost.com/business/nbu-says-ukraines-forex-reserves-2-percent-june.html>.



reduced, according to calculations of *The Economist*.<sup>166</sup> Although the bank system has been cleaned up, non-performing loans make up more than half the system's portfolio.<sup>167</sup>

The country's macro-economic stabilisation—in a time of war, no less—has come with many costs. Real budget revenues in 2016 were only 91.9 per cent of those in 2013, with declines being recorded in the corporate profits tax (43 per cent) and budgetary revenue (33 per cent). Several sectors have particularly suffered from cuts, including environmental protection (41.9 per cent), healthcare (36.3 per cent), education (36.2 per cent), and state administration (30.6 per cent).<sup>168</sup> Given that Ukraine is entering a pre-election period and the government is unpopular, continuing austerity is unlikely to be a feasible policy option.

### 3.2.4 Local context for the EU's economic assistance

Ukraine's captured state has been a key limiting factor of Western financial assistance for years. USD 20 billion in IMF funding went untapped and six out of seven IMF programs failed between 1995 and 2010.<sup>169</sup> Ukrainian scholars have been warning for some time that President Poroshenko is gaining control of all branches of government, law-enforcement agencies, and the electoral commission, in addition to heavily influencing the media. Although some scholars argue that a *de facto* presidential system may be emerging<sup>170</sup>, competition between oligarchic groups remains a factor contributing to a political balance.

There is a risk that in the event of a successful power consolidation the EU's economic assistance might be used for partisan gains. In the eyes of the Ukrainian public, this could be read as the EU's 'unwavering support' for a particular group of politicians rather than actual policies.

These risks were recently highlighted in an academic study that concluded that in the past, the EU's approach could be characterised as partisan empowerment of pro-Western elites in Ukraine, irrespective of the fact that the receiving individuals behaved undemocratically.<sup>171</sup> The study suggests that 'instead of serving as an external check on rule-of-law abusing reformers, the EU empowers reformist yet unaccountable 'change agents' in a partisan way, thus creating incentives for the accumulation and abuse of power, especially after regime changes.' Coupled with Russia's support for elites pursuing an 'eastern vector' in foreign and economic policy, this has contributed to intense, polarised, and in the end violent political conflicts inside the country. In other words, while most European diplomats in Kyiv agree that today, there is no democratic alternative to the current administration, this also essentially empowers the ruling elite to be less accountable.

Another academic study<sup>172</sup> argues that the inefficiency of Western assistance is not connected simply to the absence of political will. Accordingly, informal ways of coercion and secrecy in market interactions persist despite anti-corruption efforts and attempts to increase transparency. These informal influencing methods can work either via clashes of state institutions (like the conflict between the General Prosecutor's

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<sup>166</sup> Money has fled Ukraine for decades, *The Economist*, 20 October 2016, <https://www.economist.com/blogs/freexchange/2016/10/thats-bad>.

<sup>167</sup> R. Shpek, Credit of Trust Has Dried Out, *Nova Vremja*, 12 August 2017, <http://biz.nv.ua/experts/shpek/uzhe-issjak-kredit-doverija-1648986.html>.

<sup>168</sup> Ukraine Reform Monitor, April 2017, <http://carnegieendowment.org/2017/04/19/ukraine-reform-monitor-april-2017-pub-68700>.

<sup>169</sup> \$20 billion untapped over 15 years clouds Ukraine – IMF Outlook, *Bloomberg*, 15 September 2016, <https://www.bloomberg.com/news/articles/2016-09-15/-20-billion-untapped-over-15-years-clouds-ukraine-s-imf-outlook>.

<sup>170</sup> Ukraine's authoritarian signals, *Open Democracy*, 5 July 2016, <https://www.opendemocracy.net/od-russia/tymofiy-mylovanov-mykhailo-minakov/ukraine-s-authoritarian-signals>.

<sup>171</sup> M. Mendelski, The EU's rule of law promotion in post-Soviet Europe: what explains the divergence between Baltic States and EaP countries? *Eastern Journal of European Studies*, Vol. 7 (2). December 2016, <http://anticorrrp.eu/wp-content/uploads/2016/12/Mendelski-2016bThe-EUs-rule-of-law-promotion-in-post-Soviet-Europe-what-explains-the-divergence-between-Baltic-States-and-EaP-countries.pdf>.

<sup>172</sup> Barnes, Andrew, Coercion and Financial Secrecy in Ukraine's Emerging Economy: What the IMF Approach Misses, *Ponars Eurasia*, June 2017, <http://www.ponarseurasia.org/memo/coercion-and-financial-secrecy-ukraines-emerging-economy-what-imf-approach-misses>.

Office and anti-corruption institutions) but also via informal business structures with some official 'cover' (such as the ongoing smuggling to and from the occupied territories in Donbas). Instead of trying to eliminate them, the study argues, there is a need to think more about how to redirect and reshape their activities.<sup>173</sup>

### 3.3 DCFTA implementation

The Deep and Comprehensive Free Trade Areas (DCFTA) are free trade areas established between the EU and Ukraine, Georgia, and Moldova. The DCFTA allows access to the EU's internal market via progressive removals of customs tariffs and quotas in selected sectors and grants EU investors in those sectors the same regulatory environment in the associated country as in the EU. As part of the AA, it provides a framework for economic development through the extensive harmonisation of laws, norms, and regulations in various trade-related sectors, creating the conditions for aligning key sectors of the economy to EU standards.

Ukraine is making good progress in implementing the DCFTA in the areas of market access, industrial product safety, food safety, customs, public procurement, protection of intellectual property rights, and competition policy.<sup>174</sup> Independent monitors highlighted sanitary and phytosanitary (SPS) and product safety as areas began showing progress in 2017,<sup>175</sup> indicating growing technical capacity of the cabinet of ministers. The government's recent legislative plan regarding EU approximation<sup>176</sup> includes 35 planned legal acts in the areas of trade, customs, SPS, intellectual property, and social policy. The complexity of implementation - including of many EU directives - should be highlighted. The new Action Plan of AA Implementation for 2017-2020 for examples includes 2016 tasks.<sup>177</sup>

Ukraine's share of exports to the EU increased from 25 per cent in 2012 to 37 per cent in 2016. Overall, Ukraine's exports to the EU increased by 2.06 per cent in 2016 to 13.1 billion EUR,<sup>178</sup> while EU imports declined. Ukraine's average market share in EU imports was 7.87 per cent lower in 2015-16 than it was in 2013.

Currently Ukraine exports 920 products to the EU. Out of these 641 have grown since 2014, while out of the 123 largest exports 76 had positive average growth. However, the value of the top 10 declining export products are more than 3 times those of the 10 fastest growing ones. Initial examination suggested that out of the 34 large under-performing sectors a tariff barrier remains only on 4 sectors.

These results contradict earlier optimistic predictions<sup>179</sup> that foresaw more substantial increases in GDP, social welfare, and exports. The current positive evaluation of the ability of Ukraine to benefit from the Agreement is based on the country's successful macro-economic stabilisation and modest growth. However, decline in industrial capacity brought by the war cannot be offset by the growth in agriculture and retail alone.<sup>180</sup>

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<sup>173</sup> Barnes, 2017, <http://www.ponarseurasia.org/memo/coercion-and-financial-secrecy-ukraines-emerging-economy-what-imf-approach-misses>.

<sup>174</sup> DCFTA implementation in Ukraine: Assessment after one year, German Advisory Group, May 2017, [http://www.beratergruppe-ukraine.de/wordpress/wp-content/uploads/2017/05/Newsletter\\_103\\_2017\\_German-Advisory-Group.pdf](http://www.beratergruppe-ukraine.de/wordpress/wp-content/uploads/2017/05/Newsletter_103_2017_German-Advisory-Group.pdf).

<sup>175</sup> Personal interview with Lyubov Akulenko, UCIP, 25 September 2017, Kiev, Ukraine.

<sup>176</sup> Cabinet of Ministers, 5 September 2017, [http://www.kmu.gov.ua/kmu/control/uk/publish/article?showHidden=1&art\\_id=250243214&cat\\_id=247677375&ctime=1504598899384](http://www.kmu.gov.ua/kmu/control/uk/publish/article?showHidden=1&art_id=250243214&cat_id=247677375&ctime=1504598899384).

<sup>177</sup> Personal interview with Cezar Herma, EU funded 'Association 4 U' project, Kyiv, 2 October 2017

<sup>178</sup> Hellyer, Mark, Identification of Underperforming Sectors under the DCFTA, 13 June, 2017, A4U project, <https://www.eu-ua.org/wp-content/uploads/2017/09/Identification-of-Underperforming-Sectors-under-the-DCFTA.pdf>.

<sup>179</sup> Trade Sustainability Impact Assessment in support of negotiations of a DCFTA between the EU and Georgia and the Republic of Moldova (with annexes), ECORYS, 27 October 2012, [http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc\\_150105.pdf](http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150105.pdf).

<sup>180</sup> Barnes, 2017, <https://www.opendemocracy.net/od-russia/tymofiy-mylovanov-mykhailo-minakov/ukraine-s-authoritarian-signals>.

Moreover, academic and economic studies now argue that the costs of complying with the new rules might be too high for Ukraine. This is not just because of the economic implications of the war in Donbas but also because unlike the EU's Central and Eastern European member states, Ukraine has no access to structural or cohesion funds to facilitate adoption the European *acquis* and compensate for the opening of its market. For instance, compared to Poland, which has a similarly-sized population, not only is Ukraine's political and economic reality vastly different than it was more than fifteen years ago for Poland, the level of financial support provided is also incomparable. Warsaw received from the EU around EUR 80 billion in this realm alone.<sup>181</sup> In terms of aid received per capita, Ukraine is also lagging behind its EaP peers Moldova and Georgia.<sup>182</sup>

The Dutch referendum on the AA/DCFTA with Ukraine in 2016 limited access to the EU's structural funds. While other financing mechanisms are available through the EU's Neighbourhood Policy under the 'more for more' principle and Ukraine needs to make a better use of these, none of the financial incentives comes near the figures provided to individual pre-accession countries in the 1990s and early 2000s. The bottom line, however, is that a substantial increase in EU financial support is difficult first and foremost because of the weak governance, lack of absorption capacity and widespread corruption in Ukraine.

### 3.3.1 Autonomous trade measures

Under the DCFTA, which was provisionally applied from 1 January 2016, Ukraine has benefited from a number of trade measures meant to enhance its access to EU markets, including the elimination of import tariffs. These were, based on the Commission's sustainability impact assessment, commissioned in 2007.<sup>183</sup> While the DCFTA has eliminated a number of tariffs and other barriers to trade, the EU has negotiated maintaining tariff rate quotas on certain products, including agricultural exports. For example, exports of sugar in 2015 were equal to the quota amount, with the import tariff above quota reaching 507 euros per ton for selected products. For such products, including wheat, poultry, oats, and processed tomatoes, exports were slightly higher than the DCFTA's quotas.<sup>184</sup>

Given the radically different conditions in Ukraine today than in 2007, there was a need to revise the trade measures offered to Ukraine. After the DCFTA was provisionally applied in 2016, the Commission submitted to the European Parliament and the Council a proposal to introduce additional autonomous trade measures that included additional duty-free tariff rate quotas for eight farming products for a period of three years.<sup>185</sup>

Following scrutiny and discussion in the European Parliament and the Council, the proposal was adopted<sup>186</sup>, but four out of eight products proposed by the Commission were finally granted lower quota levels.<sup>187</sup> Moreover, the European Parliament made the continued fight against corruption a condition for

<sup>181</sup> L. Bruszt, J. Langbein, Varieties of Dis-Embedded Liberalism. EU Integration Strategies in the Eastern Peripheries of Europe, MAXCAP Working Paper No 26, Free University Berlin, July 2016, [http://userpage.fu-berlin.de/kfgeu/maxcap/system/files/maxcap\\_wp\\_26.pdf](http://userpage.fu-berlin.de/kfgeu/maxcap/system/files/maxcap_wp_26.pdf).

<sup>182</sup> A. Adarov, P. Havlik, Benefits and Costs of DCFTA: Evaluation of the Impact on Georgia, Moldova and Ukraine, The Vienna Institute for International Economic Studies, 2016, <https://wiiw.ac.at/benefits-and-costs-of-dcfta-evaluation-of-the-impact-on-georgia-moldova-and-ukraine-dlp-4111.pdf>.

<sup>183</sup> Trade Sustainability Impact Assessment for the FTA between the EU and Ukraine within the Enhanced Agreement, 17 December 2007, [http://trade.ec.europa.eu/doclib/docs/2008/january/tradoc\\_137597.pdf](http://trade.ec.europa.eu/doclib/docs/2008/january/tradoc_137597.pdf).

<sup>184</sup> M. Emerson, V. Movchan, Depending EU-Ukraine relations, CEPS, 2016, <https://www.ceps.eu/system/files/Ukraine%20e-version%20with%20covers.pdf>.

<sup>185</sup> European Commission's Proposal for a regulation of the European Parliament and the Council on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concessions available under the Association Agreement, 29 September 2016, [http://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/commission\\_europeenne/com/2016/0631/COM\\_COM\(2016\)0631\\_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0631/COM_COM(2016)0631_EN.pdf).

<sup>186</sup> Regulation (EU) 2017/1566 of the European Parliament and of the Council of 13 September 2017, Official Journal of the European Union, 30 September 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017R1566&from=EN>

<sup>187</sup> European Parliament legislative resolution of 4 July 2017 on the proposal for a regulation of the European Parliament and of the Council on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concessions

granting Ukraine further preferential exports.<sup>188</sup> This suggests that while the EU's general approach has been that of opening up its markets to Ukraine as much as possible, when it comes to certain products, there is a limit for Brussels' good intentions and a strong obligation for Kyiv to do more to address its corruption problem.

There is a requirement in the DCFTA that the overall sizes of EU quotas are reconsidered every five years.<sup>189</sup> The Ukrainian side has repeatedly suggested that the revision take place earlier than in 2021, given the difference in conditions now as compared to 2007. However, for now, such a revision has yet to take place—the Commission argues that while some quotas could be indeed increased, Ukraine has yet to make full use of quotas allocated for other products.<sup>190</sup>

### 3.3.2 Re-industrialisation

Traditionally, Ukraine's industries have been located in the country's south and east and their production and supply links have heavily relied on Russia, with a number of enterprises following Soviet rather than EU standards: In 2013, the Russian market accounted for 24 per cent of all exports.<sup>191</sup> These chains have been severely disrupted by Moscow's embargoes in 2013, its aggression in Ukraine's east, and its suspension of the free trade agreement with Ukraine. As a result, the country's industrial production has fallen by more than 20 per cent and only returned to growth of 1.2 per cent year-on-year in August 2017.<sup>192</sup>

Reinvigorating Ukraine's industrial potential—and its modernisation—will take many years. The government has prepared a strategy for reintegrating Donbas, which was adopted in January 2017. However, substantial funds for the strategy are missing. In this respect, the DCFTA offers a tool that can further facilitate the integration of Ukraine's enterprises into regional, European, and global supply chains. Under DCFTA provisions, both sides will negotiate an Agreement on Conformity Assessment and Acceptance on Industrial Products (ACAA) and in the area of public procurement.

Importantly, talks began at the EU-Ukraine high-level industrial and regulatory dialogue that took place in Brussels in March 2017, with the objective being to align relevant regulatory and technical standards and reduce technical barriers to trade. The aim is to achieve a gradual inclusion of a larger number of industries into the cooperation program<sup>193</sup> while focusing development on south-eastern Ukraine, the most neglected and suffering part of the country. Unlike in Georgia, the DCFTA in Ukraine foresees strict verification procedures by the EU to check compliance with the relevant EU legislation.

## 3.4 Institutional structures and cooperation mechanisms of the AA and DCFTA

A number of mechanisms are established by the Association Agreement to ensure the smooth implementation of provisions of the agreement. The EU-Ukraine Summit serves as the highest platform of

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available under the Association Agreement,

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2017-0285#BKMD-16>.

<sup>188</sup> MEPs back further trade concessions to Ukraine, with exceptions, European Parliament, 1 June 2017,

<http://www.europarl.europa.eu/news/en/press-room/20170529IPR76233/meps-back-further-trade-concessions-to-ukraine-with-exceptions>.

<sup>189</sup> Article 29.4 of the Association Agreement stipulates the five year term to consult in order to consider accelerating and broadening the scope of the elimination of customs duties on trade. Official Journal of the European Union, Document 22014A0529(01), [http://eur-lex.europa.eu/legal-content/hu/TXT/?uri=uriserv:OJ.L\\_.2014.161.01.0003.01.ENG](http://eur-lex.europa.eu/legal-content/hu/TXT/?uri=uriserv:OJ.L_.2014.161.01.0003.01.ENG).

<sup>190</sup> Personal interviews with a Ukrainian diplomat in Brussels and several Commission officials, June-September 2017.

<sup>191</sup> A. Adarov, P. Havlik, Benefits and Costs of DCFTA: Evaluation of the Impact on Georgia, Moldova and Ukraine, The Vienna Institute for International Economic Studies, 2016, <https://wiiw.ac.at/benefits-and-costs-of-dcfta-evaluation-of-the-impact-on-georgia-moldova-and-ukraine-dlp-4111.pdf>.

<sup>192</sup> Ukraine Industrial Production 2000-2017, Trading Economics, accessed on 9 November 2017, <https://tradingeconomics.com/ukraine/industrial-production>.

<sup>193</sup> First EU-Ukraine high-level industrial and regulatory dialogue takes place, European Commission, 2 March 2017, [http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=9095&lang=en](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=9095&lang=en).

political dialogue. Three annual summits have taken place since 2015. At the ministerial level, the Association Council was created with the power to make binding decisions. The Association Council is assisted by the Association Committee, which is divided into Subcommittees responsible for implementing sector-level cooperation. A special Parliamentary Association Committee has been established so that members of European Parliament and the Verkhovna Rada have a platform for exchanging views and oversee the implementation of the Agreement. A Dispute Settlement Mechanism (DSM), inspired by the WTO dispute settlement mechanisms, was created in the event that one of the parties does not fulfil its AA obligations.<sup>194</sup> Moreover, Ukrainian parliamentarians regularly interact with Members of the European Parliament and their EaP peers within the framework for the Euronest Assembly. The EU-Ukraine Civil Society Platform foreseen by the Association Agreement has been established and there are numerous contacts between civil society, the government, and EU institutions.

The current legal and operational framework in Ukraine does not provide the kind of efficient system of cooperation that is needed to manage complex AA matters. Effective mechanisms to screen incoming legislation proposals for their compliance with the EU *acquis* are missing and as a result, this is often done *pro forma* only. As the European Parliament's Needs Assessment Mission to the Verkhovna Rada report concludes, 'improving the legislative system on approximation of Ukrainian legislation to EU law and strengthening the capacities of the key actors in this process, including the Rada and its European Integration Committee, will be essential not just for reforms implementation but also their monitoring and assessment'.<sup>195</sup> For example, Ukraine has yet to update its law 'On an All-State Programme of Adaptation of the Ukrainian Legislation to the EU Law' (which provides the legal basis for approximation) to include the priorities agreed upon in the AA/DCFTA.

Tasks and responsibilities for AA/DCFTA implementation coordination are broken down among several players with no overall final responsibility. These include the Deputy Prime Minister on European and Euro-Atlantic Integration, the Governmental Office on European and Euro-Atlantic Integration (GOEEI), and the Governmental Committee on European, Euro-Atlantic Integration, International Cooperation and Regional Development (GC-EEI). Competencies for other essential key players, such as the deputy ministers on European integration and departments responsible for European integration, are either missing or have been defined ad hoc with no specific coordination instructions or mechanism. This institutional setup creates inefficiencies and potential duplicities and should be streamlined.

The National Council for Reforms (NCR), which is embedded in the Presidential Administration, has been the key venue for discussion and reforms planning between representatives of the executive and legislative branches of government and civil society in 2014 and 2015. However, the number of its meetings has been significantly reduced, from 16 in 2015 to five in 2016 and one in 2017. The EBRD-supported Project Management Office has been transformed into Reforms Support Teams at various ministries. Coordination and oversight functions regarding the reforms have been taken on by the cabinet of ministers in connection with public administration reform. This development is part of the optimisation of reforms management, but it is also strengthening executive's grip over key reforms and resources. In October 2016, the cabinet of ministers established, with support from the EBRD, the Office of Reforms, an advisory body under the Prime Minister designed to ensure the consistency of reforms across ministries and to support public administration reform.<sup>196</sup>

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<sup>194</sup> EU-Ukraine Association Agreement 'Quick Guide to the Association Agreement', EEAS, [https://eeas.europa.eu/sites/eeas/files/071215\\_eu-ukraine\\_association\\_agreement.pdf](https://eeas.europa.eu/sites/eeas/files/071215_eu-ukraine_association_agreement.pdf)

<sup>195</sup> Report and Roadmap on Internal Reform and Capacity-Building for the Verkhovna Rada of Ukraine, European Parliament 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>

<sup>196</sup> [Cabiner of Ministers Resolution No 768, 11 November 2016, http://zakon3.rada.gov.ua/laws/show/768-2016-%D0%BF.](http://zakon3.rada.gov.ua/laws/show/768-2016-%D0%BF)



The government provides its own monitoring<sup>197</sup>, while the EU issued its own detailed progress report<sup>198</sup> in the end of 2016, echoing the government's key messages.

In 2014, President Poroshenko created an International Advisory Council on Reforms, which was in 2015 replaced by the International Advisory Council. However, the the Council's meetings have been infrequent and their conclusions are not public. According to one of the Advisory Council's members, the Group has only met once and there is no trace of the Council's recommendations to Ukraine's state institutions, including the National Reforms Council, as was envisaged by Poroshenko's 2014 decree.<sup>199</sup> The EU established the Brussels-based Ukraine Support Group in the European Commission, the Kyiv-based European Union Advisory Mission for Civilian Security Reform (EUAM), and, earlier, the Odessa-based EU Border Assistance Mission to Moldova and Ukraine (EUBAM), and supports the high-level international Strategic Advisory Group for Support of Ukrainian Reforms (SAGSUR).<sup>200</sup>

Sectoral donor coordination has been improved thanks to the EU's efforts. Reform efforts are partly financed by the Ukraine Stabilization and Sustainable Growth Multi-Donor Account, which has been managed by the EBRD since November 2014. Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Poland, Sweden, Switzerland, the United Kingdom and the United States are the contributors to the fund. The EU, together with bilateral EU donor organisations, has developed a support program for key sectoral reforms, including decentralisation (EUR 100 million), economic development (EUR 90 million), anti-corruption (EUR 15 million), public administration reform (EUR 104 million) and the rule of law (EUR 52.5 million plus EUR 29.5 million for Technical Cooperation Facility). Brussels was also, able to react to the humanitarian elements of the Donbas conflict: To date, EUR 399 million has been allocated for humanitarian and early recovery aid in Donbas.<sup>201</sup> Moreover, in 2017, the EU's Ukraine Support Group has chosen support for government-controlled areas of Donbas as one of its key priorities.

### 3.5 Recommendations

When it comes to Ukraine and the AA/DCFTA implementation, the challenge for the EU is to remain objective in its assessment of the progress—or lack of thereof—achieved to date while taking into account the complexity of the tasks at hand, the ongoing war in the east, and the legacy of Kyiv's 20 years of failed reform attempts. As a result, there is tension between EU conditionality and its understandable solidarity towards Ukraine. For its part, Kyiv faces the challenge of implementing an ambitious reforms agenda while deterring aggression from its biggest neighbour, and wrestling with its own old oligarchic system.

Because of the government's unpopularity, resistance to EU- and IMF-prescribed reforms, especially when it comes to austerity, will grow as 2019 approaches. Although serious social unrest is unlikely, the government will have to ease its austerity,<sup>202</sup> as the majority of Ukrainians already struggle to pay their utility bills.<sup>203</sup>

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<sup>197</sup> Reports on implementation on the EU-Ukraine Association Agreement, Cabinet of Ministers of Ukraine, 18 May 2017, [http://www.kmu.gov.ua/kmu/control/en/publish/article?art\\_id=248402431&cat\\_id=248402399](http://www.kmu.gov.ua/kmu/control/en/publish/article?art_id=248402431&cat_id=248402399).

<sup>198</sup> Association Implementation Report on Ukraine, 13 December 2016, [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/17061/Association%20Implementation%20Report%20on%20Ukraine](https://eeas.europa.eu/headquarters/headquarters-homepage_en/17061/Association%20Implementation%20Report%20on%20Ukraine).

<sup>199</sup> Personal interview with one of the International Advisory Council Members, Kyiv, 25 August 2017.

<sup>200</sup> Ukraine launches Reforms Support Teams, European Commission, 6 December 2016, [https://ec.europa.eu/neighbourhood-enlargement/news\\_corner/news/2016/10/20161017\\_en](https://ec.europa.eu/neighbourhood-enlargement/news_corner/news/2016/10/20161017_en).

<sup>201</sup> European Civil Protection and Humanitarian Aid Operations, Ukraine Factsheet, [http://ec.europa.eu/echo/where/europe-and-central-asia/ukraine\\_en](http://ec.europa.eu/echo/where/europe-and-central-asia/ukraine_en).

<sup>202</sup> Timothy Ash: Backtracking on utility hikes is blow to Ukraine's reform agenda, 27 August 2017, Kyiv Post, <https://www.kyivpost.com/article/opinion/op-ed/timothy-ash-backtracking-utility-hikes-blow-ukraines-reform-agenda.html>.

<sup>203</sup> Ragozin, Leonid, Ukraine Is Fighting Its Own Cold War, Bloomberg, 6 February 2017, <https://www.bloomberg.com/news/features/2017-02-06/ukraine-is-fighting-its-own-cold-war>.

Still, the potential for tension between the state and society remains due to the social and economic situation and low trust in the government. Kyiv is mitigating this by emphasising the war in Donbas and ongoing Russian aggression. Unrealistic public expectations and weak governance also hamper reforms.

### 3.5.1 The economy and economic assistance

Instead of a continuing its policy of shock therapy, Western institutions should let Kyiv stimulate the economy and boost consumer confidence, even if this comes at some macro-financial cost. Central and Eastern Europe's experience is that shock therapy administered before the necessary legal framework has been developed allows networks of insiders to grow rich and rule later. As Ukraine's property rights and regulatory framework remain weak, privatisation would inevitably resemble processes from the 1990s.

It is crucial to proceed with structural reforms in the short- to medium-terms, though the costs of reform need to be minimised and the benefits maximised. The EU should continue and expand its practice of developing larger-scale aid packages—consisting of grants and not just loans—to support sectoral reforms.

The EU should consider increasing development assistance (in form of grants) to Ukraine under the European Neighborhood Instruments in order to mitigate the costs of industrial modernisation and the stress caused by underwhelming economic performance and Russian aggression. More support should flow directly toward local recipients (government, businesses, civil society) with the necessary oversight on the ground, coordination and evaluation of the assistance's efficiency. Technical assistance projects and advisors are important, but should be under scrutiny given there are more such projects (around 400 by the EU and member states together) than Ukrainian companies exporting to the EU (218 at this stage).

Given Moscow's policies and internal developments in Ukraine, Kyiv will unlikely return to re-build ties with Russia. This essentially eliminates the previous geopolitical balancing act, but also increases the responsibility of the EU and dependence of Kyiv on the West.

Along with the focus on Ukraine's regulatory environment, the EU should increase support for relevant public infrastructure in selected sectors and in regions with the greatest potential to attract FDI and be integrated into global value chains.<sup>204</sup> Re-industrialisation and reconstruction efforts in Donbas may be the catalyst for a new assistance package, in exchange for reconciliation and moving the Minsk Agreements forward. Funding for SMEs should also increase.

### 3.5.2 Conditionality

The ongoing power consolidation is to a degree necessary for the continuation of reforms. But the EU should continue to insist that state institutions depoliticise and that Ukraine continue to decentralise. Public administration reform and judicial reform implementation will also be crucial in this regard. It should also work with parties across the political spectrum to reduce the potential for an authoritarian drift. Monitoring implementation should be added to the ongoing efforts to monitor legislation and approximation.

### 3.5.3 DCFTA

European institutions should take into account that harmonisation and implementation of EU standards is a difficult task and may not be always beneficial without a membership perspective.<sup>205</sup> Access to affordable finance is difficult in these countries and adjustments in uncompetitive economic sectors

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<sup>204</sup> Challenges of DCFTA: How Can Georgia, Moldova and Ukraine Succeed, Bertelsmann Stiftung, WIIW, 2017, [https://www.bertelsmann-stiftung.de/fileadmin/files/user\\_upload/EZ\\_Policy\\_Paper\\_DCFTA\\_2017\\_ENG.pdf](https://www.bertelsmann-stiftung.de/fileadmin/files/user_upload/EZ_Policy_Paper_DCFTA_2017_ENG.pdf).

<sup>205</sup> Challenges of DCFTA: How Can Georgia, Moldova and Ukraine Succeed, Bertelsmann Stiftung, WIIW, 2017, [https://www.bertelsmann-stiftung.de/fileadmin/files/user\\_upload/EZ\\_Policy\\_Paper\\_DCFTA\\_2017\\_ENG.pdf](https://www.bertelsmann-stiftung.de/fileadmin/files/user_upload/EZ_Policy_Paper_DCFTA_2017_ENG.pdf).

difficult. Therefore, Brussels should prioritise closing the gap between costs and benefits, instead of pushing for quick harmonisation.

Ukraine's government should establish and encourage business consultations to ascertain the causes of underperformance in various sectors<sup>206</sup> and develop policies that will prioritise reforms directly related to export-driven growth and attracting FDI. The EU should take into account the limited administrative and financial capacities of the government.

Barriers imposed on the agricultural sector should be relaxed, as this one of the few sectors where Ukraine is competitive in Europe.<sup>207</sup> It is important that technical and financial assistance - under the European Neighborhood Instruments including the Neighborhood Investment Facility as well as programs under EIB and EBRD - addresses sectors such as food and construction and encourages the processing of domestic raw materials in Ukraine before they are exported. This would stimulate versatile economic activity in the country.

Allowing Ukraine to export processed products was an important step in encouraging production in Ukraine, yet the size of those quotas was so small that 85 per cent of them were used in the first 5 months of 2016.<sup>208</sup> It is therefore important that Ukrainian producers are enabled by investment needed to process those raw materials domestically and then be granted enough quotas to export the produced goods to the EU, which would stimulate domestic production and employment. For its part, however, Kyiv needs to deliver on anticorruption reforms and address the persistent corruption in its customs services.

### 3.5.4 Anti-Corruption

The public's perceptions and behaviour will change slowly. A shift in attitudes will happen faster if assisted by educational initiatives and more media discussion of everyday corruption, especially in Ukraine's regions. The judiciary, the prosecutor's office, and the parliament in particular continue to function mostly loyal to top-down political (and connected vested) interests. Reform of these institutions should be a priority. The EU is a key player in moving this process forward and should be robust in applying conditionality. If a culture of corruption is allowed to survive and even flourish, this could discredit the reformist project as a whole in Ukraine and its Western supporters. The EU strategy should not rely only on the new agencies but rather on separation of powers, addressing conflict of interests and independence and integrity of state institutions. In the next programming period, the EU should prioritise the reform of the Prosecutor General's Office and institutional mechanisms for a more workable separation of powers, conflict of interest policy and institutional checks and balances. In this regard, a substantial overhaul of Ukraine's Constitution and the Electoral Code might be necessary.

### 3.5.5 Decentralisation

The EU also should further support initiatives such as U-Lead (currently funded to the tune of EUR 102 million) to help communities to establish horizontal networks of interaction. The aim is to work directly with communities to encourage them to cooperate with each other, as well as to establish regional or national institutions of a collective action to promote their political interests by pressuring the authorities and other political actors. Finally, including the strategic planning of ATC development in EU-funded projects will further assist in helping local civil societies and governments mature.

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<sup>206</sup> M. Hellyer, Identification of Underperforming Sectors under the DCFTA, 13 June, 2017, A4U project, <https://www.eu-ua.org/wp-content/uploads/2017/09/Identification-of-Underperforming-Sectors-under-the-DCFTA.pdf>.

<sup>207</sup> Challenges of DCFTA: How Can Georgia, Moldova and Ukraine Succeed, Bertelsmann Stiftung, WIIW, 2017, [https://www.bertelsmann-stiftung.de/fileadmin/files/user\\_upload/EZ\\_Policy\\_Paper\\_DCFTA\\_2017\\_ENG.pdf](https://www.bertelsmann-stiftung.de/fileadmin/files/user_upload/EZ_Policy_Paper_DCFTA_2017_ENG.pdf).

<sup>208</sup> I. Panaseyko, M. Guba, The Problems of the Non-Tariff Regulation of Foreign Trade Activities in the Conditions of Free Trade Zone between Ukraine and the EU, Business Inform, Vol.2(469), pp.50-54, 2017, [http://www.business-inform.net/export\\_pdf/business-inform-2017-2\\_0-pages-50\\_54.pdf](http://www.business-inform.net/export_pdf/business-inform-2017-2_0-pages-50_54.pdf).



Legislation-wise, a draft law is being prepared on the management of land beyond the boundaries of the settlements that are united in the amalgamated communities. This law will give the right to manage land to the territorial communities and will increase their economic opportunities. Additionally, a law on public service in local self-governance is now in the Rada. Changes to the law 'On Voluntary Amalgamation' should be prepared to allow amalgamation of cities with special oblast status with neighbouring villages, as current legislation limits such opportunities. Similarly, changes to the law 'On the City Development' that allow for the development of the amalgamated communities' general plan should be passed. Last but not least, the question of district boundaries and their authority have still not been resolved.

### 3.5.6 Civil society

Even though the Euromaidan was a largely non-partisan social uprising that relied on broad-based support for a European future, grassroots activism remains relatively weak in contemporary Ukraine. Civil society activities are limited to the major agglomerations. The feature of contemporary civil society has been observed by international donor organisations many times, though the problem remains unsolved. The development of civil society at the grassroots level is important to the overall success of the decentralisation process—the ultimate condition necessary to entrench the current reforms into Ukrainian society. The EU should encourage NGOs to become more transparent and accountable, as only a few of them currently have publicly-accessible annual reports.

### 3.5.7 Electoral reform

Current legislation fails to address some key issues that are at the forefront of the original reform efforts: open party lists, optimisation of the Central Election Commission (CEC), finance for territorial elections committees, and improved elections software. The draft of the new elections code has been registered in the Rada but is yet to be reviewed by MPs. This should be a key priority for the EU.

### 3.5.8 Energy

All primary legislation necessary for the proper functioning of the gas and electricity sector, as well as that which is necessary to promote energy efficiency, has been adopted, and the Energy Community deems the legislation to be in line with relevant EU legislation. The challenge ahead is the adoption and implementation of secondary legislation in both the gas and electricity sectors.

### 3.5.9 Media

A great deal of support to independent media is already being provided by a number of international donors, including the EU. Besides grants to a number of media NGOs, the EU should prioritise the completion of the public broadcaster service reform, which is a major prerequisite for the functioning of Ukraine's media market. As the 2019 elections approach, the role of the independent public broadcaster will become even more important.

### 3.5.10 Security sector

The Prosecutor General's Office and the Security Service present fundamental reform challenges. The most important reform step in the Ukrainian security sector is the adoption of new law 'On National Security', which is expected to be passed to Verkhovna Rada later in 2017. In general, the government should devote more attention to humanitarian aid, IDPs, and veterans' needs (the number of Anti Terrorist Operation veterans now totals more than 250 000 and their social needs are poorly addressed, raising risks of radicalisation). At present, there are no adequate mechanisms in place to address the loss or damage of housing and property as a consequence of the hostilities in Donbas.

## 4 Moldova

Since signing the Association Agreement (AA) with the European Union on 27 June 2014, Moldova has made progress on technical elements of implementation, though sensitive political reforms requiring political will have been delayed or only partly implemented. Political instability, a difficult economic situation exacerbated by a billion-dollar bank fraud (13 per cent of Moldova's GDP) and recessions in Moldova's key regional trading partners (Russia, Belarus, and Ukraine) have had a negative impact on both the country's trade performance and reform implementation.

With its 2016 Priority Reform Action Roadmap, Moldova demonstrated that it can implement reforms under pressure. Western assistance and partly the DCFTA helped to compensate for the losses in the eastern markets. The EU managed to bring, with quiet diplomacy, Transnistria under the umbrella of DCFTA.<sup>209</sup> However, the ruling elite's slow progress on key anti-corruption, judicial, and electoral reforms have often contradicted the spirit, if not necessarily the letter, of the Agreement.

After turmoil following the 2009 elections, it was said that it was too early to call Moldova, the smallest country in the Eastern Partnership, a success story. Internal political dynamics that led to a power grab by the country's wealthiest oligarch and a misuse of EU support designed for the pro-EU government, undermined Brussels' best policy intentions.

Alongside these political issues, Moldova's social and demographic challenges are mounting. The most recent census<sup>210</sup> put Moldova's population at 2.9 million—a drop from 3.38 million in 2004 and 4.3 million in 1989. There are now about as many people living in Moldova as there were in 1959.<sup>211</sup>

### 4.1 State of implementation of key reforms, including under the Association Agreement

The Agreement foresaw a wide range of core economic and governance reforms, as well as sector cooperation in 28 areas, including public administration, public finances, energy, transportation, environmental protection and direct action, industrial and small and medium enterprise cooperation, social policies, consumer protection, agriculture and rural development, cross-border and regional level cooperation, education, training, civil society cooperation, and youth and cultural cooperation.<sup>212</sup>

Macro-economic stabilisation, with the help of the IMF and the EU, stands out as one of the most important elements of the 2016 Priority Reform Action Roadmap. Reforms to public finance (for example the law 'On Public Finance and Fiscal Responsibility', and the law 'On Public Procurement'), as well as economic and banking governance, are also progressing, but slower than planned.

Progress on judicial, public administration, and anti-corruption initiatives has taken place mostly on paper but been slowly implemented due to weak government capacity, inconsistent policy-making, and state

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<sup>209</sup> Decision No 1/2015 of the EU-Republic of Moldova Association Council of 18 December 2015, EUR-Lex, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015D2445>

<sup>210</sup> Data was collected in 2014 but published only in April 2017 amid much controversy, including about the embezzlement of state funds. Population and Housing Census in the Republic of Moldova, May 12-25, 2014, National Bureau of Statistics of the Republic of Moldova, <http://www.statistica.md/pageview.php?l=en&idc=479>.

<sup>211</sup> The figure of 2.9 million people differs markedly from the more than 3.2 million people included on the Central Election Commission's voter register in August 2016.

<sup>212</sup> Council Decision (EU) 2016/839 of 23 May 2016 on the conclusion of 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, of the other part, EUR-Lex, 2014, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.141.01.0028.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.141.01.0028.01.ENG).

capture.<sup>213</sup> The EU decided to withhold, on October 2017, the EUR 28 million final tranche under the justice reform program citing Moldovan authorities insufficient commitment to reform the sector.<sup>214</sup>

Further reform efforts are needed to improve the rule of law and the business environment. Despite the government having adopted the 'SME Sector Development Strategy for 2012-2020', having a corresponding action plan for 2015-17, and having recently adopted the law on SME, access to finance remains difficult. Moldova's investment climate suffers from a monopolisation of economic interests in the hands of a small few.<sup>215</sup>

Despite signing the Association Agreement with the EU in 2014 and receiving the largest volume of EU assistance per capita in the region by 2015,<sup>216</sup> Moldova has been unable to build a functional system of governance. Frequent elections, fragmented politics, weak government capacity, and strong vested interests allow "informal institutions"<sup>217</sup> to rule. Accordingly, the EU Council conclusions of February 2016 highlighted Moldova's excessive politicisation of state institutions, systemic corruption, lack of judicial independence, poor financial sector governance, and insufficient investigations into the banking fraud as core challenges.<sup>218</sup>

Although government legitimacy remains low,<sup>219</sup> the number of Moldovans who believe the country is headed in the right direction jumped from a low of 10 per cent in September 2016 to 32 per cent in March 2017.<sup>220</sup> The EU is correct to focus on institutional reform, the de-politicisation of state institutions, and the reconstruction of institutional checks and balances, as these will bring necessary improvement to the business environment and help to restore the trust of the population.

#### 4.1.1 Electoral reform

In July 2017, Moldova moved from a proportional electoral system to a mixed one, amid much controversy. The driving force behind the change was the chairman of the ruling Democratic Party (PDM), Vlad Plahotniuc, Moldova's only oligarch and de facto ruler.<sup>221</sup>

Vlad Filat originally proposed changing the electoral system when he founded the Liberal Democratic Party (PLDM) in 2008. This initiative was reanimated in 2012, when Plahotniuc proposed changing the system to a two-round majoritarian one, though the proposal was later retracted.<sup>222</sup> Then, in April 2013, in an episode

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<sup>213</sup> C. Gherasimov, *Moldova: The captured state on Europe's edge*, Chatham House, 8 March 2017, <https://www.chathamhouse.org/expert/comment/moldova-captured-state-europe-s-edge>.

<sup>214</sup> EU withholds \$33 million loan to Moldova over justice reform hold-up, Reuters, 11 October 2017, <https://www.reuters.com/article/us-moldova-eu-loans/eu-withholds-33-million-loan-to-moldova-over-justice-reform-hold-up-idUSKBN1CG1Y2>

<sup>215</sup> Association Implementation Report on the Republic of Moldova, Joint staff working document, European Commission, High Representative of the Union for Foreign Affairs and Security Policy, 10 March 2017, [https://eeas.europa.eu/sites/eeas/files/association\\_implementation\\_report\\_on\\_the\\_republic\\_of\\_moldova\\_2017\\_03\\_10\\_final.pdf](https://eeas.europa.eu/sites/eeas/files/association_implementation_report_on_the_republic_of_moldova_2017_03_10_final.pdf)

<sup>216</sup> Since 2007, it has been allocated aid amounting to EUR 782 million through the European neighbourhood instruments. This represents annually nearly EUR 37 per inhabitant — the highest amount in all of the EU's eastern neighbours. EU assistance for strengthening the public administration in Moldova, Special report by the EU Court of Auditors, 2016, [http://www.eca.europa.eu/Lists/ECADocuments/SR16\\_13/SR\\_MOLDOVA\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR16_13/SR_MOLDOVA_EN.pdf).

<sup>217</sup> K. Longhurst, *Implementing the DCFTA in the context of state capture: assessing the position of Small and Medium Enterprises*, Eastern Journal of European Studies, Volume 7, Issue 2, December 2016, [http://ejas.uaic.ro/articles/EJES2016\\_0702\\_LON.pdf](http://ejas.uaic.ro/articles/EJES2016_0702_LON.pdf).

<sup>218</sup> EU Court of Auditors, 2016, [http://www.eca.europa.eu/Lists/ECADocuments/SR16\\_13/SR\\_MOLDOVA\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR16_13/SR_MOLDOVA_EN.pdf).

<sup>219</sup> The Moldovan government had 27 per cent favourable views compared to 70 per cent unfavourable according to a March 2017 poll. The IMF received 48 per cent favourable and 39 per cent unfavourable in the same poll. *Moldova: After 2016 Election, Poll Indicates Improved Confidence in Government*, International Republican Institute, March 2017, <http://www.iri.org/resource/moldova-after-2016-election-poll-indicates-improved-confidence-government>.

<sup>220</sup> *Moldova: After 2016 election, Poll Indicates Improved Confidence in Government*, International Republican Institute, March 2017.

<sup>221</sup> *Explaining Oligarchic Moldova*, Carnegie Europe, 4 May 2017, <http://carnegieeurope.eu/strategieurope/69856>.

<sup>222</sup> Draft Law amending the Electoral Code (retracted on 27 February 2012), <http://parlament.md/ProcesulLegislativ/Proiectedeactele legislative/tabid/61/LegislativId/1098/language/en-US/Default.aspx>.

that epitomised Moldova's fragmented politics, the ruling coalition consisting of the PLDM, PDM and Liberal Party (PL), without an *avis* from the Venice Commission, changed the electoral system from proportional one to a mixed one.<sup>223</sup> Two weeks later, on 3 May, 2013, the PLDM, in the midst of a longstanding dispute with the PDM, formed an on-again-off-again coalition with the Community Party (PRCM)<sup>224</sup> and changed the electoral system back to a proportional one.<sup>225</sup> The PDM launched yet another attempt to re-introduce a mixed electoral system in 2013-2014 but ultimately dropped the proposal after receiving a generally negative *avis* from the Venice Commission<sup>226</sup> and failing to drum up political support in the parliament.

The current mixed system was adopted on 20 July 2017, having been supported by 74 deputies from the PDM, President Dodon's Socialist Party (PSRM), and former Prime Minister Leanca's European People's Party of Moldova (PPEM). The PDM initially advocated moving to a uninominal system but later accepted the mixed system proposal, portraying it as a compromise necessary to receive support from the PSRM, which had originally opposed the reform.<sup>227</sup>

In the new mixed system, 51 uninominal constituencies will elect representatives in a one-round, 'winner takes all' election. The remaining 50 deputies will be elected proportionally via party lists. The next parliamentary elections, scheduled for November 2018, will be conducted according to the new system.

According to the system's critics, uninominal constituencies favours the PDM, which has the most financial, administrative, and media resources among the major parties. Accordingly, elections results might easily be 'ensured' in poverty stricken and paternalistic regions of Moldova.<sup>228</sup>

Public opinion was divided over the electoral reform. A PDM-commissioned poll conducted in July 2017<sup>229</sup> found that 59 per cent of Moldovans thought the electoral system should be changed. Thirty-five per cent of respondents supported the proportional system, while 30 per cent preferred a uninominal voting system, 24 per cent favoured a mixed system, and 11 per cent did not know or could not answer.

An assessment published by the European Commission for Democracy through Law (the so-called Venice Commission) concluded that, due to a 'lack of consensus on this polarising issue, such a fundamental change, while a sovereign prerogative of the country, is not advisable at this time'.<sup>230</sup> The Venice Commission has maintained its opposition to such a reform since 2014.<sup>231</sup> Despite the recommendation, parliament adopted the law, with some improvements in the 'technical-legal' area. The improvements refer to a series of issues such as the funding of electoral campaigns, reporting, participation of women, delineation of the uninominal constituencies, etc. Overall, the improvements taken into the consideration by parliament when amending the legislation addressed the Venice Commission recommendations in the

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<sup>223</sup> Law no 94 of 19 April 2013 amending the electoral Code by introducing the mixed electoral system, <http://lex.justice.md/md/347506/>.

<sup>224</sup> Being in opposition at the time PRCM was strongly against the changes since considered the new system disadvantageous.

<sup>225</sup> Law no 108 of 3 May 2013 amending the Electoral Code that canceled the law no 94 of 19 April 2013 and introduced back the proportional electoral system, <http://lex.justice.md/md/347864/>.

<sup>226</sup> Joint opinion on the draft electoral legislation of the Republic of Moldova, Venice Commission, OSCE/ODIHR, March 2014, [http://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)003-e](http://venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)003-e).

<sup>227</sup> Draft law amending the electoral code, adopted by parliament in the first reading on 5 May 2017, <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3653/language/ro-RO/Default.aspx>.

<sup>228</sup> Declaration of Moldovan CSOs adopted on 5 May 2017, 'The parliamentary majority is amending the electoral system by breaching the legislation and common sense, undermining the principles of democracy', [http://www.crijm.org/wp-content/uploads/2017/05/2017-05-05-Declar-CSOs-change-elect-syst\\_en.pdf](http://www.crijm.org/wp-content/uploads/2017/05/2017-05-05-Declar-CSOs-change-elect-syst_en.pdf).

<sup>229</sup> Socio-political barometer, IMAS, July 2017, [http://imas.md/pic/uploaded/Prezentare%20%5Bbsp%5D%20lulie%202017\\_English.pdf](http://imas.md/pic/uploaded/Prezentare%20%5Bbsp%5D%20lulie%202017_English.pdf).

<sup>230</sup> European Commission for Democracy Through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Venice Commission Opinion No. 884/2017, ODIHR Opinion-Nr.: ELE-MDA/308/2017, <http://www.osce.org/odihr/elections/moldova/324356?download=true>.

<sup>231</sup> European Commission for Democracy Through Law (Venice Commission), Opinion No. 749 / 2014, 24 March 2014, <http://rm.coe.int/168064c747>.

technical realm but had little impact on maintaining political pluralism and levelling the playing field for all actors.

Although the electoral system is not addressed expressly in the Association Agreement, the EU has been very vocal on the issue since it is related to democracy and good governance in Moldova. The EU has tied EUR 100 million in proposed macro-finance assistance (MFA) to Moldova to Chisinau's respect for 'effective democratic mechanisms, including a multi-party parliamentary system'.<sup>232</sup>

#### 4.1.2 Anti-corruption

Moldova has managed to make serious progress in passing anti-corruption legislation, a significant portion of which was adopted between 2011 and 2013 as part of the EU Visa Liberalisation Action Plan (VLAP). Chisinau has established a 'National Integrity Agency' and strengthened the independence of the National Anti-Corruption Centre. Going forward, the key challenge in fighting corruption is the integrity of the anti-corruption institutions and their ability to combat corruption at the highest level. The AA addresses the issue of fighting corruption and fraud, including through reforms aimed at strengthening the independence of institutions fighting corruption as well as corruption in public procurement and EU financing.<sup>233</sup> A detailed list of reform milestones is contained in the National Plan of Implementation of the Association Agreement,<sup>234</sup> which includes the reforms described below.

In 2016, Moldova's parliament passed a major law regulating the Prosecutor's Office,<sup>235</sup> signalling that Chisinau may be getting serious about fighting corruption. The law limits political influence on the appointment of the general prosecutor (who is selected by the Supreme Council of Prosecutors and appointed by the president), reduces the power of the Prosecutor's Office in non-criminal areas, transfers certain powers from the Prosecutor's Office to an independent authority, and reduces the hierarchical subordination of prosecutors. The Constitution was amended in November 2016 in order for the law to be passed.

Still, making sure that prosecutors are appointed based on their qualifications rather than their political connections remains one of the pressing reform issues for the PGO.<sup>236</sup> The current Prosecutor General, for example, was appointed on 8 December 2016, during former President Nicolae Timofti's last days in office in a selection process that drew serious criticism.<sup>237</sup>

The Anticorruption Prosecution Office (APO) was created to fight high-level corruption in accordance with the law adopted on 7 July 2016.<sup>238</sup> Although its head is subordinated to the prosecutor general, it has an independent budget and separate staff. Although the APO's stated purpose is to reduce high-level corruption, it has since its inception been dealing extensively with low-level, petty corruption.

The National Integrity Authority (NIA, formerly the National Integrity Commission), which is in charge of verifying asset and interest declarations, has been inactive for more than two years. As neither the director nor deputy director has been appointed, the NIA is incapable making decisions. There are serious concerns

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<sup>232</sup> Republic of Moldova: Council agrees to €100 million financial assistance, the European Council, 12 April 2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/04/12-moldova-financial-assistance/>.

<sup>233</sup> EU – Republic of Moldova Association Agreement, [http://www.gov.md/sites/default/files/document/attachments/7048451\\_en\\_acord\\_asociere.pdf](http://www.gov.md/sites/default/files/document/attachments/7048451_en_acord_asociere.pdf).

<sup>234</sup> National Plan of Implementation of the Association Agreement 7 October 2014, <http://www.mfa.gov.md/implementarea-aa/>.

<sup>235</sup> Law No. 3 of 25 February 2016 on Prosecution Service, <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=370165&lang=1>.

<sup>236</sup> V. Gribincea, Moldova: investigating high-level corruption – progress or illusion?, In: Implementation of the Association Agreement, EU-Moldova, Chisinau, 2017, <http://crjm.org/wp-content/uploads/2017/07/Implementation-of-the-Association-Agreement.pdf>.

<sup>237</sup> Eduard Harunjen appointed as candidate Prosecutor General of Moldova, Moldova.org, <http://www.moldova.org/en/eduard-harunjen-appointed-candidate-prosecutor-general-moldova/>; Declaration of Moldovan CSOs, 9 December 2017, [http://crjm.org/wp-content/uploads/2016/12/2016-12-09-Declaraton-Appointment-PG\\_en.pdf](http://crjm.org/wp-content/uploads/2016/12/2016-12-09-Declaraton-Appointment-PG_en.pdf).

<sup>238</sup> Law No 159 of 7 July 2017 on specialized prosecution services, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366052>.



about the selection process of the NIA's leadership and of the integrity inspectors<sup>239</sup> who are tasked with verifying the asset and interest declarations. Funding is another challenge: In 2017 the NIA was allocated less funds than in 2016. As a result, 110 000 asset declarations will have to be verified by about 30 integrity inspectors and 5 members of the NIA—a task that is clearly beyond the group's capacity. Positively, electronic declarations systems will be introduced beginning in 2018, though individuals will still have the choice to submit hard copy declarations.<sup>240</sup>

The PGO investigation of a billion-dollar fraud that hollowed out Moldova's banking sector in 2014 is another noteworthy development. By June 2017 about MDL 1 billion (EUR 50 million) had been returned, though there is no guarantee that the remaining funds will be recovered. Ilan Shor, the key suspect in the bank fraud, has been sentenced to 7.5 years of prison in June 2017, though he remains, very unusually for Moldova, under house arrest awaiting a verdict from the Court of Appeal. In the meantime, the results of the investigation have been quite modest, as the fraud involved a complex laundering mechanism. Ongoing tracing efforts have found accounts in other Moldovan banks (other than the three large banks directly tied to the case), and in China, Hong Kong, Switzerland and Latvia.<sup>241</sup> However, progress on criminal cases has been disappointing, as the EU-Moldova Parliamentary Association Committee noted at its fourth meeting on 22 May 2017.<sup>242</sup> The release of the second Kroll report (expected in November 2017) that the government commissioned is now the most expected development.

Another large corruption scandal is related to a more than USD20 billion money laundering scheme. According to investigative reports, Moldovan judges cleaned and certified fraudulent funds that ended up in various banks, including in the EU.<sup>243</sup> Judges and officials from the National Bank of Moldova that were involved in the 'Laundromat' scheme are being investigated and sent to courts. However, Russian authorities have not been cooperating with the investigation.

### 4.1.3 The judiciary

Moldova has managed to improve its legislation on the selection and promotion of judges. According to recent polls, Moldovans increasingly approve of the court system, with 14 per cent of respondents having a favourable view of the courts in September 2016 and 28 per cent in March 2017.<sup>244</sup> New legislation provides criteria for the selection of judges and establishes a 'Selection and Career Board' of judges that issues a reasoned decision on candidates and a performance evaluation for judges who seek promotion. Nevertheless, legal provisions on the selection and promotion of judges have been widely disregarded by the Superior Council of Magistracy (SCM), the main body that ensures the self-administration of the judicial system.<sup>245</sup>

The SCM does not make publicly available the reasoning behind its decisions. Chisinau recognises<sup>246</sup> that the reforms aimed to improve the judiciary system and particularly the SCM have been significantly delayed. The delays are mostly related to changes in the Constitution relating to the selection and

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<sup>239</sup> Prohnitichi, Elena, Reforming the National Integrity Commission: From Powerless Agency to Effective and Impartial Institution, In: Implementation of the Association Agreement EU-Moldova: Progress or Regress?, CRJM, July 2017, <http://crjm.org/wp-content/uploads/2017/07/Implementation-of-the-Association-Agreement.pdf>.

<sup>240</sup> Prohnitichi, Reforming the National Integrity Commission, 201.

<sup>241</sup> Informative note on the progress made in the Kroll investigation, National Bank of Moldova, 13 April 2017, <https://www.bnm.md/en/content/informative-note-progress-made-kroll-and-steptoe-johnson-investigation>.

<sup>242</sup> Statement of the Association Committee, Moldovan Parliament, 22 May 2017, <http://www.parliament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/3091/Page/0/language/ro-RO/Default.aspx>.

<sup>243</sup> The Russian Laundromat, RISE, 22 August 2014 <https://www.rise.md/english/the-russian-laundromat/>.

<sup>244</sup> Public Opinion Survey, Moldova, International Republican Institute, February-March 2017, [http://www.iri.org/sites/default/files/iri\\_moldova\\_poll\\_march\\_2017.pdf](http://www.iri.org/sites/default/files/iri_moldova_poll_march_2017.pdf).

<sup>245</sup> N. Hriptievshi, Independence and Accountability of Moldova's Judiciary under Threat, CRJM, July 2017, <http://crjm.org/wp-content/uploads/2017/07/Implementation-of-the-Association-Agreement.pdf>.

<sup>246</sup> Report on the implementation of the Justice Sector Reform Strategy 2011-2016, Ministry of Justice, 2016, <http://www.justice.gov.md/tabview.php?!=ro&idc=489>.

promotion of Supreme Court judges, the role and composition of the SCM, the amendment of legislation aimed at the consolidation of the functional capacities of the SCM and Judiciary Inspection, and the implementation of the Venice Commission recommendations on disciplining judges responsible for misconduct or illegality.

There is a worrying trend of criminal cases being brought against politicians, civic activists, and even a human rights lawyer and a judge. The practice of closed-door deliberations has expanded recently, with certain court hearings being conducted without public scrutiny—in violation of Moldovan legislation and the Constitution. The most illustrative case involves former PM Filat, who was sentenced to nine years in prison by a court that deliberated privately and did not publish his sentence.

The case of judge Dominica Manole, who annulled a decision by Central Electoral Commission to reject the initiation of a constitutional referendum, suggests the subordination of the justice system to political forces.<sup>247</sup> Her verdict was appealed to the Supreme Court, which upheld the Central Electoral Commission's decision. At the same time, the CEC filed a complaint against Manole's verdict at the SCM, arguing that it had been 'blatantly incompatible with the law' and 'deliberately generated a negative public reaction'. The acting general prosecutor requested that the SCM authorise an investigation into a potential abuse of power by Manole, who was subsequently fired. It is widely believed that her dismissal was politically motivated and intended to dissuade other judges from opposing the political elite.<sup>248</sup>

#### 4.1.4 Media and civil society

Moldova is committed to a series of reforms in the media sector as part of the Association Agreement, which prescribes harmonisation with EU legislation in this area. Media is central to achieving political objectives of the Agreement such as securing fundamental rights for Moldovans and strengthening the rule of law.

Some positive steps were made at the legislative level in 2015 and 2016: Media outlets are now required to disclose their ownership, and the number of broadcasting licenses allowed per person has been reduced from five to two.<sup>249</sup> These changes have not yet made media more transparent, however, as the legislation did not address off-shore beneficiaries. The worsening situation is reflected in the World Press Freedom Index 2017, in which Moldova has dropped 4 positions (from 76 to 80) since 2016.<sup>250</sup>

On a positive note, a legislative package that is currently under review in Parliament and is expected to be adopted by the end of 2017 will address issues such as media ownership, the financing of media, and advertising markets, and promises to de-politicise the Broadcasting Council and the Board of Public TV, Moldova's main media regulators.<sup>251</sup>

Up to 80 per cent<sup>252</sup> of media advertising is controlled by Casa Media Plus, which is owned by Plahotniuc, and NOVA TV, which is controlled by Dodon's affiliates. Prime TV, which is owned by Plahotniuc, and NTV Moldova, which is owned by Dodon's affiliates, are two of Moldova's largest TV stations but simply retransmit Russian content. Independent monitoring reports have noted a serious increase in the influence of Russian media on the Moldovan market in recent years.<sup>253</sup> In response, Democratic Party proposed in

<sup>247</sup> K. Calus, *The unfinished state. 25 years of independent Moldova*, OSW, Warsaw, 2016, [https://www.osw.waw.pl/sites/default/files/prace\\_59\\_ang\\_25\\_years\\_moldova\\_net.pdf](https://www.osw.waw.pl/sites/default/files/prace_59_ang_25_years_moldova_net.pdf).

<sup>248</sup> Declaration: Decision of Superior Council of Magistracy, - an act of selective justice, Transparency International Moldova, 5 July 2017, <http://www.transparency.md/2017/07/05/declaration-decision-of-superior-council-of-magistracy-an-act-of-selective-justice/>.

<sup>249</sup> I. Groza, *Alternative Progress Report*, IPRE, 24 March 2017, [http://ipre.md/wp-content/uploads/2017/03/Final\\_Shadow-Progress-Report\\_EU-Moldova-AA\\_IPRE\\_synthesis-and-reccomendations\\_24.03.2017.pdf](http://ipre.md/wp-content/uploads/2017/03/Final_Shadow-Progress-Report_EU-Moldova-AA_IPRE_synthesis-and-reccomendations_24.03.2017.pdf)

<sup>250</sup> World Press Freedom Index, Moldova, 2016, <https://rsf.org/en/ranking/2016>.

<sup>251</sup> V. Gotisan, *The Trials and Tribulations of the New Law on Broadcasting*, In: *Implementation of the Association Agreement EU-Moldova*, CRJM, July 2017, <http://crjm.org/wp-content/uploads/2017/07/Implementation-of-the-Association-Agreement.pdf>.

<sup>252</sup> AGB Nielsen Media Research, [http://www.agb.md/client\\_saleshou.html](http://www.agb.md/client_saleshou.html).

<sup>253</sup> P. Macovei, *The capture of the mass media in the Republic of Moldova*, API, 2017, [http://api.md/upload/files/Capturarea\\_mass-media\\_rom.pdf](http://api.md/upload/files/Capturarea_mass-media_rom.pdf).

June 2017 a draft law intended to fight external propaganda. The law aims to replace Russian news and analytical content with content produced in Moldova. Although the local media community has welcomed the initiative, there are concerns that foreign propaganda may simply be replaced by domestically-produced propaganda. Additionally, the Democratic Party's initiative has been criticised, as Plahotniuc's channel Prime TV simply retransmits Russian content.

In July 2017, the government also proposed a new draft law regulating NGOs.<sup>254</sup> Although the law was drafted with civil society participation, the Ministry of Justice added several provisions that refer to 'special provisions on the political activity of NGOs', including advocacy and public policy. Seventy-eight Moldovan NGOs issued 'Declaration'<sup>255</sup> on 11 July 2017, calling on the Ministry of Justice to remove last-minute adjustments to the draft law that limit financing NGOs can receive from outside Moldova. The law would prevent NGOs receiving foreign funding from the so-called 'two per cent law' that allows taxpayers to direct two per cent of their income to civil society organisations.<sup>256</sup> However, as a result of NGO and foreign pressure, the law has been taken off the agenda entirely.

#### 4.1.5 Energy

Approximating legislation on electricity and natural gas is an important step. However, key challenges in the energy sector—improving energy security through diversification, increasing competitiveness and energy efficiency<sup>257</sup>—still lie ahead.

Moldova joined the Energy Community already in 2010 and committed to align its legislation with the EU's Third Energy package. In this respect, new natural gas and electricity laws as well as a new law on renewable energy sources were adopted in 2016. However, the sector is still characterised by a lack of transparency and fair competition and continues to rely on Russia's gas deliveries. Moreover, a Damocles' sword in a form of an unsettled EUR 6 billion bill for Moscow's gas deliveries to Transnistria region is also a challenge for Moldova's energy sector. According to a local study, major economic constraints in the field of energy are linked to a relatively small demand on the Moldovan market as well as the population's struggle to pay gas consumption bills that would reflect real market prices.<sup>258</sup>

To further diversify natural gas supply sources and with loans from European financial institutions, Moldova has been working to expand the Ungheni-Chișinău pipeline, an interconnection with Romania, which is to be extended all the way to Chisinau (the extension should be ready for 2019). However, the country's energy regulator, ANRE, remains a major concern as viewed as not independent and seriously exposed to political influence, according to a review of the regulator by the Energy Community Secretariat completed in September 2016.<sup>259</sup> In line with the review's recommendations, a new Law on Energy, which strengthened the regulator's independence, was adopted by the Parliament on 21 July 2017. After some back-and-forth with the parliament, President Dodon eventually signed the law in October 2017.

Last but not least, a project to interconnect electricity networks between Moldova and Romania is under development to be submitted for the EU. Based on the agreement between the Moldovan and Romanian

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<sup>254</sup> Draft law on non-commercial organization, 11 July 2017,

[http://justice.gov.md/public/files/2017\\_07\\_11\\_proiect\\_lege\\_ONG\\_final.docx](http://justice.gov.md/public/files/2017_07_11_proiect_lege_ONG_final.docx).

<sup>255</sup> Declaration. The attempt to limit foreign funding of NGOs endangers the functioning of democracy in Moldova and cannot, under any circumstances, be accepted, 78 listed signatory organizations, 11 July 2017, <http://crjm.org/wp-content/uploads/2017/07/2017-07-11-Declaration-MJ-initiative-contrary-to-law.pdf>.

<sup>256</sup> Draft Law on NGOs Could Imperil Moldovan Democracy, Freedom House, 4 August 2017, <https://freedomhouse.org/blog/draft-law-ngos-could-imperil-moldovan-democracy>.

<sup>257</sup> In-Depth Review of the Energy Efficiency Policy of Moldova, Energy Charter Secretariat, 2015, [http://www.energycharter.org/fileadmin/DocumentsMedia/IDEER/IDEER-Moldova\\_2015\\_en.pdf](http://www.energycharter.org/fileadmin/DocumentsMedia/IDEER/IDEER-Moldova_2015_en.pdf).

<sup>258</sup> Interconnecting Moldova's gas market: the Iasi-Ungheni case, Expert Group, February 2016, [http://www.expert-grup.org/ro/biblioteca/item/download/1511\\_d3527cd3fb892d86a39ec496490692c0](http://www.expert-grup.org/ro/biblioteca/item/download/1511_d3527cd3fb892d86a39ec496490692c0).

<sup>259</sup> Energy Community review finds Moldova's energy regulator exposed to political influence, EU Neighbours East, 9 September 2016, <http://www.euneighbours.eu/en/east/stay-informed/news/energy-community-review-finds-moldovas-energy-regulator-exposed-political>.

governments, EUR 40 million would be requested from the EU out of the total project cost of EUR 300 million.

#### 4.1.6 Decentralisation

Regional development requires more robust policy attention that could come with the planned decentralisation reform. While there are already relatively solid policy foundations both for decentralisation and regional development, serious challenges in advancing local government reform and regional development still persist. Implementation of the reform was halted mostly due to the political instability.<sup>260</sup>

The strongest barrier to the reform (and an amalgamation of local communities what the reform anticipates similarly to Ukraine) stems not from the legal, administrative or functional complexities, but it is rather linked to opposition to the reform's political consequences, i.e. diminishing the number of local elected officials. The current 898 local councils provide political positions and leading community roles for 12 000 representatives, with most of them elected based on their party affiliation. An amalgamation would result in approximately 3 000 elected positions – a drastic decrease of political jobs and positions of influence that could be offered to local party elites.<sup>261</sup> 844 (or 94 per cent) local government is rural settlement comprising of 65.8 per cent of the total population.<sup>262</sup> At the same time local governments in 2016 were trusted by 52 per cent of citizens, a level of trust only second to the church.<sup>263</sup>

Decentralisation reform seems imminent, based on the fact that many rural communities are very small and local governments do not have sufficient human and financial resources to ensure quality services for citizens. Per capita administrative costs of such local governments are five times higher than those of cities. The heavily-criticised electoral reform, introducing single electoral districts, may open the door—after the parliamentary elections which are to be held in November 2018—to decentralisation, which would in the first stage entail a public administration reform and then territorial-administrative reform including amalgamation.

Another trigger for decentralisation should be the rural infrastructure what is in dire need of modernisation. According to the latest census data, 74.1 per cent of the population has access to cold running water, and 37.5 per cent to hot running water, while only one-third of households have central heating.<sup>264</sup>

## 4.2 Economic aspects of EU assistance

### 4.2.1 Overview of EU assistance

Since 2014, the EU has offered Moldova EUR 470 million<sup>265</sup> in technical assistance, project support, and direct budget support, including funds from the European Investment Bank (EIB) and the European Bank

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<sup>260</sup> OECD's SIGMA report, 2015, <http://www.sigmaweb.org/publications/Baseline-Measurement-Moldova-2015.pdf>

<sup>261</sup> European Union Joint Analysis, Programming in the Republic of Moldova until 2020, September 2016, [https://eeas.europa.eu/sites/eeas/files/joint\\_analysis\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/joint_analysis_0.pdf).

<sup>262</sup> Report on the Territorial administrative structure options for the Republic of Moldova, Joint Integrated Local Development Programme (JILD), Government of Moldova and UNDP, 2015, [http://webcache.googleusercontent.com/search?q=cache:t0OLAU7uBd8J:www.md.undp.org/content/dam/moldova/docs/Publications/JILD-Report%2520on%2520territorial%2520administrative%2520reform\\_24\\_03\\_2015.pdf%3Fdownload+&cd=1&hl=en&ct=clnk&gl=us&client=safari](http://webcache.googleusercontent.com/search?q=cache:t0OLAU7uBd8J:www.md.undp.org/content/dam/moldova/docs/Publications/JILD-Report%2520on%2520territorial%2520administrative%2520reform_24_03_2015.pdf%3Fdownload+&cd=1&hl=en&ct=clnk&gl=us&client=safari).

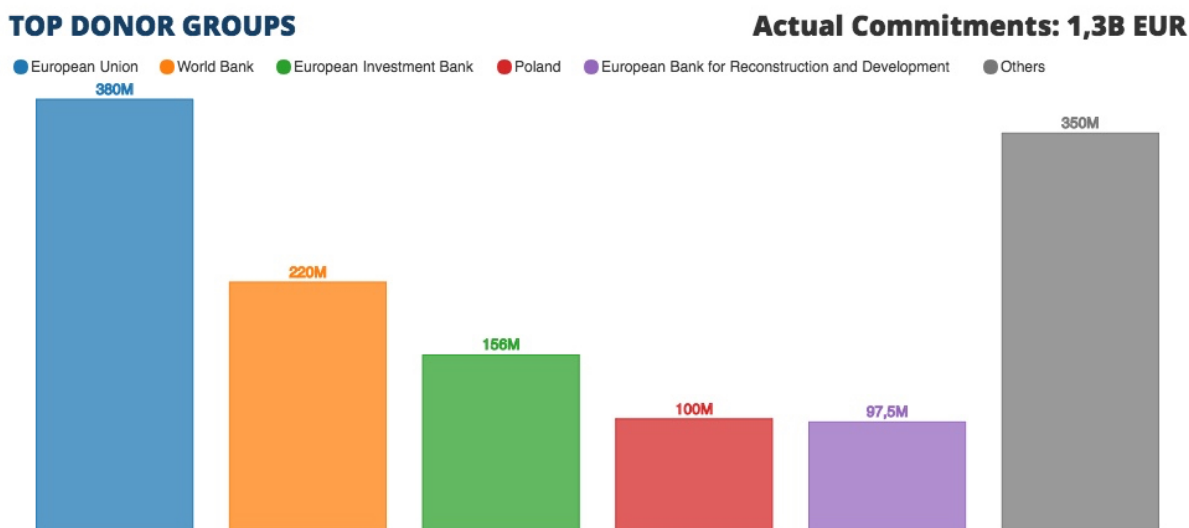
<sup>263</sup> Local Government Support Project in Moldova, Final Report, Chemonics, 2016, [http://www.chemonics.com/OurWork/OurProjects/Documents/Moldova\\_LGSP\\_FinalReport.pdf](http://www.chemonics.com/OurWork/OurProjects/Documents/Moldova_LGSP_FinalReport.pdf).

<sup>264</sup> Population and Housing Census in the Republic of Moldova, National Bureau of Statistics of the Republic of Moldova, May 12-25, 2014, <http://www.statistica.md/pageview.php?l=en&idc=479>.

<sup>265</sup> Database of international donors contribution, Government of the Republic of Moldova, <http://amp.gov.md/aim/viewNewAdvancedReport.do~viewFormat=html2~ampReportId=1033~widget=false~cached=true~startRow=100~endRow=199>

for Reconstruction and Development (EBRD). The majority of EIB- and EBRD - financed projects address issues such as energy and water supplies, waste management, and road and railroad infrastructure reconstruction.<sup>266</sup>

The EU has offered over EUR 310 million<sup>267</sup> in bilateral financial support programs in the areas of public administration reform, agriculture and rural development, police reform, and AA/DCFTA implementation.<sup>268</sup> According to the Aid Management Platform (AMP),<sup>269</sup> the EU had committed EUR 380 million by 2017 (see chart below).



Source: [amp.gov.md](http://amp.gov.md)

In 2014-16, the EU also provided more than EUR 9 million in assistance to civil society, and the European Commission is planning a civil society package worth over EUR 7.9 million for 2017-20.<sup>270</sup> Moldova also benefits from EU expert advice and counselling in the implementation of the AA/DCFTA, provided through the EU High-Level Policy Advice Mission (EUHLPAM)<sup>271</sup>, and has been able to improve its management of its border with Ukraine through the EU Border Assistance Mission (EUBAM).<sup>272</sup> EU assistance also supports the Confidence Building Measures Program (CBM) on Transnistria, which is implemented by the UNDP.<sup>273</sup>

Over EUR 62 million from the EU is being channelled via investment grants through the Neighbourhood Investment Facility (NIF). Since 2014, Moldova has also benefited from grants and concessional loans from the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD), with funds totalling more than EUR 312 million and EUR 188 million, respectively. The majority of the EIB/EBRD projects address things like water supply, waste management, and road and railroad infrastructure projects. The EIB also has unfolded special projects to support the development of agro-food

<sup>266</sup> National Bureau of Statistics, 2014, <http://www.statistica.md/pageview.php?l=en&idc=479>.

<sup>267</sup> EEAS, EU-Moldova Relations, Brussels, 15 February 2017,

[https://eeas.europa.eu/sites/eeas/files/association\\_implementation\\_report\\_on\\_the\\_republic\\_of\\_moldova\\_2017\\_03\\_10\\_final.pdf](https://eeas.europa.eu/sites/eeas/files/association_implementation_report_on_the_republic_of_moldova_2017_03_10_final.pdf)

<sup>268</sup> The ENI's Moldova forecasts (2014-2020) a total of EUR 746 million. The Single Support Framework (SSF) to Moldova foresees for 2014-2017 a total of EUR 410 million with the following indicative sectoral breakdown: public administration reform – 30 per cent; agriculture and rural development – 30 per cent, police reform and border management – 20 per cent, capacity and institutional building – 15 per cent and support to civil society – 5 per cent.

<sup>269</sup> Aid Management Platform, Government of the Republic of Moldova, <http://amp.gov.md/portal/?language=en>.

<sup>270</sup> I. Groza et al., Alternative Progress Report, IPRE, 24 March 2017, [http://ipre.md/wp-content/uploads/2017/03/Final\\_Shadow-Progress-Report\\_EU-Moldova-AA\\_IPRE\\_synthesis-and-reccomendations\\_24.03.2017.pdf](http://ipre.md/wp-content/uploads/2017/03/Final_Shadow-Progress-Report_EU-Moldova-AA_IPRE_synthesis-and-reccomendations_24.03.2017.pdf).

<sup>271</sup> Website of the EUHLPAM <http://www.eu-advisers.md/>.

<sup>272</sup> Website of EUBAM <http://eubam.org/>.

<sup>273</sup> EU-UNDP Confidence Building Measures, Increased opportunities and better living conditions across the Nistru/Dniester River 2014-2017, [http://www.md.undp.org/content/dam/moldova/docs/Project%20Documents/Pro\\_doc%20CBM4.pdf](http://www.md.undp.org/content/dam/moldova/docs/Project%20Documents/Pro_doc%20CBM4.pdf).



sectors such as Filière-du-vin and Fruit Garden Moldova. Additionally, a large percentage of EIB/EBRD funds go to the energy sector.

Finally, Moldova receives funds from the Eastern Partnership that support SMEs and energy, transportation, and environmental initiatives, as well as programs that improve access to finance and the overall business environment. The EU4Business<sup>274</sup> has allotted a total of EUR 200 million for bilateral and regional projects supporting Moldova's business environment, SME development, and access to finance and skills. What's more, Moldova is part of the Eastern Europe Energy Efficiency and Environment Partnership (E5P) and participates in Cross Border Cooperation (CBC) programs, such as the Black Sea Program, the Romania-Moldova-Ukraine CBC Program, and the INTERREG Danube Transnational Program.

## 4.2.2 Conditionality in action

In June 2015, the EU's direct budget support to Moldova was suspended due to the lack of progress in the investigation of the banking system fraud. However, after the IMF support program was agreed upon in November 2016, and progress was made on the implementation of the Priority Reform Action Roadmap, the EU resumed its direct budget support to Moldova in December 2016. Brussels transferred EUR 45.3 million to Chisinau for the implementation of four programs: Economic Stimulation of Rural Areas (ESRA), European Neighbourhood Program for Agriculture and Rural Development (ENPARD), Public Finance Policy Reform (PFPR), and Vocational Education and Training (VET).<sup>275</sup>

A new MFA Moldova decision, worth EUR 100 million (in grants and loans) from the EU, was adopted in 2017.<sup>276</sup> The European Commission is closely reviewing progress on the conditions for the next tranches. The EU announced on October 2017 that it withholding a EUR 28 million final tranche under the justice reform program, while Chisinau hopes to receive it in 2018.<sup>277</sup>

The tightening of EU conditionality is partly due to the findings and recommendations of a European Court of Auditors report of September 2016 that evaluated four areas of EU assistance (justice, public finance, public health, and water) totalling EUR 218.6 million for 2007-2013.<sup>278</sup> The auditors concluded that budget support had had a limited effect on strengthening public administration and made recommendations to the Commission focused on mitigating risks, better linking budget support to existing and future national strategies, applying stricter performance indicators, and responding quickly and proportionately in the event of non-compliance.<sup>279</sup>

## 4.2.3 Moldova's economy

Moldova is a lower middle-income country according to the World Bank, though it remains the poorest country in Europe.<sup>280</sup> Growth since the early 2000s has been steady at 5 per cent largely thanks to consumption and remittances. The macroeconomic framework is weakened by high public debt, low

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<sup>274</sup> EU4Business website <http://www.eu4business.eu/about>.

<sup>275</sup> The EU is resuming budget support assistance to the Republic of Moldova, Delegation of the European Union to the Republic of Moldova, the EEAS, 23 December 2016, [https://eeas.europa.eu/delegations/moldova/18141/eu-resuming-budget-support-assistance-republic-moldova\\_en](https://eeas.europa.eu/delegations/moldova/18141/eu-resuming-budget-support-assistance-republic-moldova_en).

<sup>276</sup> Report from the Commission to the European Parliament and the Council on the implementation of macro-financial assistance to third countries in 2016, European Commission Staff Working Document, 16 June 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017SC0233&from=EN>

<sup>277</sup> 'Moldova will not receive EU funding this year – PM', New York Times, 6 October 2017 [https://www.nytimes.com/reuters/2017/10/06/world/europe/06reuters-moldova-eu-loans.html?utm\\_source=CGI+Daily+Russia+Brief&utm\\_campaign=7819d0073c-EMAIL\\_CAMPAIGN\\_2017\\_08\\_02&utm\\_medium=email&utm\\_term=0\\_814a2b3260-7819d0073c-281717617&mc\\_cid=7819d0073c&mc\\_eid=df661d7ccf](https://www.nytimes.com/reuters/2017/10/06/world/europe/06reuters-moldova-eu-loans.html?utm_source=CGI+Daily+Russia+Brief&utm_campaign=7819d0073c-EMAIL_CAMPAIGN_2017_08_02&utm_medium=email&utm_term=0_814a2b3260-7819d0073c-281717617&mc_cid=7819d0073c&mc_eid=df661d7ccf).

<sup>278</sup> European Court of Audit Report, Strengthening the EU assistance to public administration in Moldova, September 2016, [http://www.eca.europa.eu/Lists/ECADocuments/SR16\\_13/SR\\_MOLDOVA\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR16_13/SR_MOLDOVA_EN.pdf).

<sup>279</sup> European Court of Audit Report, 2016.

<sup>280</sup> Moldova Overview, World Bank, <http://www.worldbank.org/en/country/moldova/overview>.

business confidence, low FDI, and a fragile financial sector. Weak state institutions, a polarised society, corruption, and an unreformed justice system are among the key obstacles for sustainable development.

The Moldovan economy is still recovering after the 2015 recession in which the economy shrunk by 0.5 per cent. The recession was largely the result of the bank fraud scandal, coupled with a drought and recessions in Chisinau's key regional trading partners (Belarus, Russia, and Ukraine), which negatively impacted exports and remittances.<sup>281</sup> Growth hit 4.1 per cent in 2016 thanks to IMF and EU MFA agreements, a strong recovery in the agricultural sector, and modest increases in private consumption.<sup>282</sup> The economy grew by 3.1 per cent in the first half of 2017, driven mainly by household demand.<sup>283</sup>

The deficit now stands at 7.6 per cent of GDP, a slight increase compared to 2016. This keeps Moldova quite dependent on external financial inflows: remittances now amount to 23.3 per cent of the country's GDP.<sup>284</sup> Against the backdrop of recession in 2015, exports and imports increased in the first half of 2017 by 14.6 per cent and 16.1 per cent, respectively.

A USD 178 million IMF program has had a positive impact on public finances. According to the most recent IMF review 'the program is broadly on track, enjoys strong country ownership, and is supported by the firm commitment of policymakers to sound economic management'.<sup>285</sup>

Fiscal stabilisation and bank reform, including the investigation and liquidation of the three banks (Banca de Economii, Unibank, and Banca Sociala) involved in the 2014 bank fraud are key governance tasks. Insolvency in three other banks (Victoriabank, MAIB, and Moldincombank) that have been under the supervision of the National Bank of Moldova since June 2015, is another problem to monitor closely. Chisinau must also work to strengthen its regulatory and supervision frameworks, push for greater shareholder transparency, and improve financial oversight of non-financial institutions (in particular the insurance sector).

#### 4.2.4 Macro-financial assistance

Since 2009, Moldova has benefited from one EU macro-financial assistance (MFA) program totalling EUR 90 million in grants, matching the IMF program (2010-2102) of USD 586 million. In January 2017, the European Commission announced the preparation of a new two-year MFA program worth 100 million EUR. The program was adopted in July 2017 and is linked to the government's respect of 'effective democratic mechanisms, including a multi-party parliamentary system'.<sup>286</sup>

The European Parliament and EU Council adopted a regulation to offer Moldova EUR 90 million in macro-financial assistance in October 2010<sup>287</sup> and a Memorandum of Understanding (MoU) was signed in

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<sup>281</sup> Report from the Commission to the European Parliament and the Council on the implementation of macro-financial assistance to third countries in 2016, European Commission Staff Working Document, 16 June 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017SC0233&from=EN>.

<sup>282</sup> Moldova Economic Growth Assessment Q2-2017, Expert Group, [http://www.expert-grup.org/media/k2/attachments/MEGA\\_XVIth\\_Edition\\_Mysteries\\_of\\_the\\_economic\\_growth\\_after\\_the\\_storm.pdf](http://www.expert-grup.org/media/k2/attachments/MEGA_XVIth_Edition_Mysteries_of_the_economic_growth_after_the_storm.pdf).

<sup>283</sup> Information on social-economic developments in the Republic of Moldova, Ministry of Economy and Infrastructure, 31 July 2017, [http://www.mec.gov.md/sites/default/files/document/attachments/expres\\_2017-06.docx](http://www.mec.gov.md/sites/default/files/document/attachments/expres_2017-06.docx).

<sup>284</sup> Ministry of Economy and Infrastructure, 2017.

<sup>285</sup> IMF Executive Board Completes the First Reviews under the Extended Credit Facility and Extended Fund Facility Arrangements for the Republic of Moldova, IMF, 1 May 2017, <https://www.imf.org/en/News/Articles/2017/05/01/pr17144-moldova-imf-executive-board-completes-the-first-reviews-under-the-ecf-and-eff-arrangements>.

<sup>286</sup> Report from the Commission to the European Parliament and the Council on the implementation of macro-financial assistance to third countries in 2016, European Commission Staff Working Document, 16 June 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017SC0233&from=EN>.

<sup>287</sup> Decision No 938/2010/EU of the European Parliament and of the Council of 20 October 2010 providing macro-financial assistance to the Republic of Moldova, adopted by the European Parliament on 4 July 2017 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010D0938>.

December 2010.<sup>288</sup> The assistance, amounting to 1.8 per cent of GDP in 2011, was released in three instalments, with the last EUR 30 million dispersed belatedly in April 2012 due to implementation delays.

According to the European Commission's own evaluation,<sup>289</sup> the assistance's gradual fiscal adjustment path made it effective. The impact of the grant was noticeable even amidst Moldova's impressive post-financial crisis recovery (GDP grew by 7 per cent in 2010 and 2011).<sup>290</sup> The funds helped stabilise the country's foreign currency reserves and strengthened the outputs of the IMF program for 2010-2012. Although funding conditions included public finance management reforms, financial sector reform, and regulatory convergence with the EU in public procurement and central bank governance, the banking fraud scandal meant that EU conditionality was all for naught.

Indeed, because of the banking scandal, MFA conditions had a limited medium- to long-term effect on the country's macroeconomic stability. The main reason was that the conditions focused more on the process and less on the outcome (i.e. the impact on institutions). The approval of second and third tranches has been tied to the adoption of certain laws and regulations, with no further implementation assessment envisaged. Importantly, the implementation is crucial to the new MFA proposal, tabled by the European Commission for 2017-18.

The European Parliament and the European Council adopted on 4 July 2017 a decision and joint statement providing a new EUR 100 million macro-financial assistance program for Moldova that includes EUR 40 million in grants and EUR 60 million in medium-term preferential loans.<sup>291</sup> The assistance complements the IMF program (which started in late 2016).<sup>292</sup> The new EU MFA has following objectives:

- support the restoration of a sustainable external financing situation for Moldova,
- contribution to the greater political and macroeconomic stability of the country,
- strengthening of economic and financial governance, including a thorough, result-oriented investigation into bank fraud, good energy governance and the political independence of the judiciary .

The joint statement emphasizes that 'respect for effective democratic mechanisms, including a multi-party parliamentary system and the rule of law, and guarantees for human rights are a precondition for receiving assistance.

Immediately after the adoption of the EU Decision on MFA for Moldova, on 11 July 2017 parliament and government adopted and submitted to EU institutions a new Road Map of Priority Reform Actions<sup>293</sup> to be implemented by the end of 2017. This was an attempt to confirm Moldova's commitment to following the reform agenda in the light of the upcoming EU MFA. The Road Map includes over 50 legislative priority actions in the areas of public administration, the judiciary, anti-corruption, fundamental rights and

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<sup>288</sup> Memorandum of Understanding between the European Commission and the Republic of Moldova on Macro-financial assistance for the Republic of Moldova (2010 – 2012).

[http://ec.europa.eu/economy\\_finance/international/neighbourhood\\_policy/doc/mou\\_moldova\\_201012\\_eu\\_en.pdf](http://ec.europa.eu/economy_finance/international/neighbourhood_policy/doc/mou_moldova_201012_eu_en.pdf).

<sup>289</sup> European Commission, Ex-post Evaluation of the EU's Macro Financial Assistance to Moldova (2010- 2012)

[http://ec.europa.eu/dgs/economy\\_finance/evaluation/pdf/mfa\\_moldova\\_evaluation\\_executive\\_summary\\_en.pdf](http://ec.europa.eu/dgs/economy_finance/evaluation/pdf/mfa_moldova_evaluation_executive_summary_en.pdf).

<sup>290</sup> Whilst development aid contributes a little over 6 per cent of GDP in Moldova it is considerably more important when considering its contribution to Moldova's capital (non-recurrent expenditure), amounting to over 70 per cent of non-recurrent public spending. Programming in the Republic of Moldova till 2020, European Union Joint Analysis, EEAS, 2016, [https://eeas.europa.eu/sites/eeas/files/joint\\_analysis\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/joint_analysis_0.pdf).

<sup>291</sup> Macro-finance assistance to the Republic of Moldova, European Parliament legislative resolution of July 4, 2017 on the proposal for a decision of the European Parliament and the Council providing macro-financial assistance to the Republic of Moldova, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0283+0+DOC+XML+V0//EN>.

<sup>292</sup> IMF Executive Board Approves USD178,7 million Arrangement under the Extended Fund Facility and the Extended Credit Facility for the Republic of Moldova, Press Release No 16/491, IMF, 7 November 2016, <https://www.imf.md/press/pressw/press-161107.html>.

<sup>293</sup> Road Map of Priority Action Reforms (Semester II 2017) endorsed by the Speaker of Parliament and Prim-minister of the Republic of Moldova <http://www.parlament.md/LinkClick.aspx?fileticket=gXrircIWwNE%3d&tabid=203&language=ro-RO>.

freedoms, economic development, the financial and banking sectors, etc. The Moldovan government expects that the EU will take the same approach it did after the adoption of the 2016 Road Map, which convinced Brussels to resume its direct budget support to Moldova.

Meanwhile the Moldovan parliament passed on 20 July 2017 the electoral reform that introduces a mixed electoral system. The vote was received with disappointment in the EU, as the changes ran counter to Venice Commission and OSCE/ODHIR recommendations. In a Joint Statement issued the following day, European Commission Vice President Federica Mogherini and Commissioner Johannes Hahn underlined that the new law will be assessed based on principles of MFA conditionality and Moldova's AA/DCFTA commitments.<sup>294</sup> Street protests have been held regularly since the adoption of the reform.

EU institutions have been closely assessing the new electoral reform, and a Commission report is expected to be submitted in early autumn to the EU Council and European Parliament so that a decision can be made about whether to start or suspend the MFA package. In the meantime, the European Commission is negotiating a Memorandum of Understanding with the Moldovan government - that will require structural reforms in the field of public sector governance, fight against corruption and money laundering, business climate and DCFTA implementation, financial sector governance and energy sector reforms - for the disbursement of the MFA tranches, as well as draft loan and grant agreements.

During a plenary debate at the European Parliament on 3 October 2017, EU Commissioner Christos Stylianides stressed that any payment linked to MFA will depend on the respect of political preconditions and on the joint statement.

Given the strong conditionality concerning reforms referred to in the joint statement by the European Parliament and the Council adopted on 4 July 2017, the next disbursements of the EUR 100 million MFA are expected to be delayed.

#### 4.2.5 Anti-fraud and control over EU assistance

In accordance with the AA/DCFTA, Moldova managed to improve its legal framework governing the misuse of EU funds. The Criminal Code was amended in 2016 in order to establish penalties for the fraudulent use of EU funds or for any action causing prejudice to EU financial interests. The Anticorruption Prosecution Office opened a number of criminal cases on the misuse of EU funds in 2017.<sup>295</sup>

A Protocol on assistance in customs matters concluded<sup>296</sup> between the European Anti-Fraud Office (OLAF) and the Moldovan Customs Service in June 2014 has reinforced EU-Moldova antifraud cooperation, which is spelled out in Article 423 of the AA/DCFTA. In October 2015,<sup>297</sup> the OLAF concluded a special Administrative Cooperation Arrangement (ACA) with the Moldovan National Anticorruption Centre that aims to strengthen EU-Moldova anti-fraud cooperation by exchanging data and appointing a Moldovan national liaison for operational cooperation.

In March 2017, the Moldovan Parliament adopted a package of laws aimed at improving asset recoveries in criminal cases, and established the Asset Recovery Agency as a unit within the National Anticorruption

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<sup>294</sup> Statement by the HR/VP Mogherini and Commissioner Hahn on the amendments to the electoral legislation in the Republic of Moldova, July 21, 2017 [https://eeas.europa.eu/headquarters/headquarters-homepage/30221/statement-hrvp-mogherini-and-commissioner-hahn-amendments-electoral-legislation-republic\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/30221/statement-hrvp-mogherini-and-commissioner-hahn-amendments-electoral-legislation-republic_en).

<sup>295</sup> Criminal cases were open on allegations of misuse of EU funds within the CBC RUR Waste Project during the years of 2011-2012, Anti-Corruption Center, 13 April 2017, <http://www.cna.md/libview.php?l=ro&idc=5&id=1541&t=/Mass-media/Comunicate-de-presa/Fostul-presedinte-al-raionului-Criuleni-a-fost-retinut-si-este-banuit-de-insusirea-a-circa-1-700-000-de-lei-in-cadrul-unor-proiecte-investitionale-europene>.

<sup>296</sup> Protocol III on Mutual Administrative Assistance in Customs Matters, Official Journal of the European Union, 30 August 2017, [https://ec.europa.eu/anti-fraud/sites/antifraud/files/docs/body/moldova\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/docs/body/moldova_en.pdf).

<sup>297</sup> State of Play – April 2017, OLAF, European Commission, [https://ec.europa.eu/anti-fraud/sites/antifraud/files/list\\_signed\\_acas\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/list_signed_acas_en.pdf).

Centre <sup>298</sup> In July 2017, the Director of the Asset Recovery Agency was appointed and it became operational.<sup>299</sup>

## 4.3 DCFTA Implementation

EU-Moldova trade relations are shaped by the DCFTA, which has been provisionally in force since 1 September 2014. The AA/DCFTA was provisionally extended to cover the entire country (including the Transnistrian region) on 1 January 2016 and has been fully in force since 1 July 2016. Moldova, similarly to Ukraine, has a transition period of 3 to 10 years for liberalisation of certain product categories.

While the process of adoption of the harmonized legislation is expected to take from five to ten years, Moldova is committed to approximate 20 directives.<sup>300</sup> To underline how complex this process is: till September 2017 there were reportedly 3402 EU standards adopted to the national law.<sup>301</sup> DCFTA related approximation is however assessed as lowest, at 40% rate, by independent monitors compare to the overall 63%, mainly due to the delays related to the implementation of the relevant normative framework.<sup>302</sup>

### 4.3.1 Exports to the EU

The EU has consolidated its position as Moldova's main trading partner.<sup>303</sup> Exports to the EU increased in 2016 to 63 per cent of all exports. Only slightly more than 20 per cent of Moldovan exports now go to CIS countries. Due to its intensive trade links with the EU, the trade with Russia has become much less significant, and the losses were largely compensated for. Importantly, intensification of trade with the EU has started already in 2004, Moldovan exports to the EU increased an average 10% per year since.<sup>304</sup>

Moscow introduced the first ban on Moldovan wine in 2016<sup>305</sup>, and introduced tariffs and non-tariff barriers in 2013, as a response to the Association Agreement what led to a 40% drop in Moldova's exports to Russia. Volume of trade stood at over \$768 million in 2016 and in the first half of 2017 Moldova's exports grew by 20 per cent (while import from Russia grew by 4 per cent) compare to 2016.<sup>306</sup> Russia's main attractions are its labor market for Moldovan guest workers (estimated for up to 400 thousands) and the price for its gas. Romania is the main EU destination for Moldovan exports (24.3 per cent), followed by Italy (8.9 per cent), Germany (6.8 per cent), UK (5.7 per cent), Bulgaria (3.5 per cent) and Poland (3.3 per cent). Moldova's main exports are agricultural products and beverages, textiles and textile articles, and machinery and appliances.

In the first year of DCFTA implementation (2015), the value of Moldovan exports to the EU decreased due to political instability, a less favourable national and regional economic situation created by the banking fraud, MDL devaluation and USD appreciation, a drought, and a decrease in international prices for some products. But the situation improved in 2016, when exports to the EU exceeded 2014 levels by 6.9 per cent.

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<sup>298</sup>Law No.48 of 30 March 2017, Parliament of the Republic of Moldova, <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=370165&lang=1>.

<sup>299</sup> Anti-Corruption Center, 2017.

<sup>300</sup> V. Movchan, V. Shportyuk, First result of DCFTA's with the EU: cases of Georgia, Moldova, and Ukraine, ETSG, July 2016, <http://www.etsg.org/ETSG2016/Papers/418.pdf>.

<sup>301</sup> Project to implement the Republic of Moldova's DCFTA boost jobs and trade opportunities with the EU, EU4Business, 23 August 2017, <http://www.eu4business.eu/news/project-implement-republic-moldovas-dcfta-boosts-jobs-and-trade-opportunities-eu>.

<sup>302</sup> Iulian Groza et al., Alternative Progress Report, 24 March 2017, [http://ipre.md/wp-content/uploads/2017/03/Final\\_Shadow-Progress-Report\\_EU-Moldova-AA\\_IPRE\\_synthesis-and-reccomendations\\_24.03.2017.pdf](http://ipre.md/wp-content/uploads/2017/03/Final_Shadow-Progress-Report_EU-Moldova-AA_IPRE_synthesis-and-reccomendations_24.03.2017.pdf).

<sup>303</sup> External trade activity of the Republic of Moldova in January-June 2017, National Bureau of Statistics of the Republic of Moldova, Statistica, 7 August 2017, <http://www.statistica.md/newsview.php?l=ro&id=5710&idc=168>.

<sup>304</sup> GET Moldova: DCFTA has a positive impact on Moldova's export to the EU, German Economic Team Moldova, 2 March 2017, [http://berlin-economics.com/wordpress/wp-content/uploads/WEB-English\\_Statements-for-the-press\\_2-March-2017\\_22-Feb](http://berlin-economics.com/wordpress/wp-content/uploads/WEB-English_Statements-for-the-press_2-March-2017_22-Feb).

<sup>305</sup> Moldova Reality Check, East Europe Studies Center, June 2013, [http://www.eesc.lt/uploads/news/id517/Moldova%20Reality%20Check%20April\\_June\\_2013.pdf](http://www.eesc.lt/uploads/news/id517/Moldova%20Reality%20Check%20April_June_2013.pdf)

<sup>306</sup> Russia is and will remain a strategically important trade partner for Moldova – Economic Minister, The Banks and Finance magazine, Profit, October 2017, [http://www.profit.md/articles-ro/number\\_10\\_2017/551121/](http://www.profit.md/articles-ro/number_10_2017/551121/).



The value of Moldovan agriculture exports grew by 25 per cent in 2016, which helped compensate for losses in exports to eastern markets. Sunflower seeds are Moldova's main agricultural export (25 per cent of all exports), followed by walnuts (15 per cent) and sunflower oil (10 per cent).<sup>307</sup> Wires, cables, and textile products are among the main non-agricultural exports.

Moldova's use of DCFTA export tariff quotas on agriculture products in 2016 is a generally positive trend. Two categories of products that are exempt from customs duties were exported in significant quantities in 2016: quotas of table grapes were filled to the full extent, while only 75 per cent of plum quotas were filled. In 2016, the tariff quotas for apples were not used at all.

At the same time, some products subject to the anti-circumvention mechanism<sup>308</sup> registered positive dynamics. Thus, in 2016, exports for processed cereals exceeded quotas by almost 7 times, and sugar by 1.8 times. Other categories of products also exceeded quotas, including barley (111 per cent) and corn (154 per cent).

The majority of Moldova's animal products are not eligible for export to EU markets because they do not meet the EU's sanitary and phytosanitary standards. The major challenge in this case remains the weak institutional capacity of Moldovan food safety authorities to implement new regulations and the lack of modern laboratories and test kits.

Exports to the EU of industrial products also trended positively in 2016, registering an over 68 per cent increase in terms of physical volume. Unfortunately, the value of exports diminished by 2.5 per cent.

### 4.3.2 Imports from the EU

Imports from the EU hit an all-time high in 2016, accounting for 49 per cent of all imports (even though imports from the EU fell by 2 per cent from 2015, mainly due to cheaper oil products and gas, as well as to restrictions imposed on the EU by Russia). Romania is the leading exporter to Moldova, accounting for 13 per cent of all imports from the EU. The key imports from the EU are machinery and appliances, mineral products, transport equipment, and chemical products.

Despite internal speculation and concerns from opponents of the AA/DCFTA in Moldova about EU agricultural products overtaking the market, the opposite has been true: Imports of agricultural products from the EU have trended negatively, shrinking by 15 per cent in 2016 compared to 2014.<sup>309</sup>

### 4.3.3 The Russian factor

Trade with Russia fell sharply after Russian authorities introduced bans on Moldovan agricultural products beginning in 2013,<sup>310</sup> officially for 'sanitary' reasons. By 2015, only 8 per cent (EUR 152 million) of Moldovan exports went to Russia. Moldovan imports from Russia also fell to 22.8 per cent.

Exports to Russia rose in 2016, accounting for 11.6 per cent of all exports, while imports from Russia fell to 13.3 per cent since 2013.<sup>311</sup> The increase in exports was largely due to the partial lifting of the ban on Moldovan wine and food products. The ban applied by the Russian Federation allowed certain Moldovan

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<sup>307</sup> V. Gumene, Evolution of the EU-Moldova Trade Flows after 2 years of DCFTA implementation, Expert Group, 2016, [http://www.expert-grup.org/media/k2/attachments/Evoluyia\\_fluxurilor\\_comerciale\\_RM-UE\\_dupl\\_2\\_ani\\_de\\_implementare\\_ZLSAC\\_EN.pdf](http://www.expert-grup.org/media/k2/attachments/Evoluyia_fluxurilor_comerciale_RM-UE_dupl_2_ani_de_implementare_ZLSAC_EN.pdf).

<sup>308</sup> Anti-circumvention mechanism is providing for export quotas with the possibility to exceed the maximum levels in the case of increased exports (such as better harvest or increase of the production potential of local businesses).

<sup>309</sup> Evaluation of the Moldova-EU trade flows after 2 years of DCFTA implementation, Expert Group, 11 April 2017, <http://www.expert-grup.org/en/biblioteca/item/1409-evolutia-fluxurilor-comerciale-rm-ue-dupa-2-ani-de-implementare-a-zlsac&category=194>.

<sup>310</sup> Russia punishes Moldova by banning its wines, Euractiv, 11 September 2013, <http://www.euractiv.com/section/europe-s-east/news/russia-punishes-moldova-by-banning-its-wines/>.

<sup>311</sup> External trade activity of the Republic of Moldova in January-June 2017, National Bureau of Statistics of the Republic of Moldova, Statistica, 7 August 2017, <http://www.statistica.md/newsview.php?l=ro&id=5710&idc=168>.

enterprises, predominantly based in Gagauzia, to export to Russia.<sup>312</sup> There is reason to believe that this selective ban was politically driven.

Lack of predictability in trade relations, including frequent cases of seizure at the Russian border, is an important factor that has contributed to reduced trade between Moldova and Russia.

#### 4.4 Institutional structures and cooperation mechanisms

The national mechanism for the coordination of the AA/DCFTA implementation is rather decentralised. The Government Committee for European integration (GCEI)<sup>313</sup> is in charge of the overall implementation and holds weekly meetings on the topic, usually after government sessions. The Ministry of Foreign Affairs and European Integration (MFAEI) takes care of daily coordination issues, policy planning, and monitoring. At the same time, the Ministry of Economy and Infrastructure (MEI) is tasked with coordination efforts, policy planning, and monitoring the activities of the national authorities addressing DCFTA issues, but remains under the general mandate of the MFAEI. The General Directorate for European Integration of the MFAEI coordinates general elements of AA/DCFTA implementation and the Directorate for Coordination of European Economic Policies and DCFTA works with the General Directorate for International Economic Cooperation of the MEI. There are also special units for European integration and international relations that are tasked with daily monitoring and coordination within all ministries in charge of AA/DCFTA implementation.

The State Chancellery of the Government oversees the overall coordination of EU assistance. It also has a broader mandate to monitor the implementation of national implementation programs and plans, and provides technical support to the MFAEI in this regard.

The legal approximation of the EU acquis is ensured by the Centre for Legal Harmonisation, which was created in 2007 as an administrative entity subordinated to the Ministry of Justice.<sup>314</sup> The Centre is tasked with: monitoring the process of harmonisation of national legislation; preparing Draft Annual Action Plans of the Government on Legal Harmonisation to the EU acquis (NPLA)<sup>315</sup>; coordinating the implementation NPLAs; checking the compatibility of draft laws and regulations with the EU acquis; and providing methodological support to the line ministries involved in the harmonisation process.

The government benefits from EU expert advice and counselling on the implementation of the AA/DCFTAs provided through the EU High-Level Policy Advice Mission (EUHLPAM).

In line with the Strategy for Public Administration Reform 2016-20,<sup>316</sup> on 7 July 2017, Parliament adopted a new law that separates political and administrative functions of the government. Only the ministers can be politically appointed, while deputy ministers will be replaced by state secretaries. There is no change foreseen regarding AA implementation, although the functions of the Centre for Legal Harmonisation are currently being reviewed.<sup>317</sup>

The Moldovan parliament does not have a special committee in charge of the reviewing the compatibility of draft laws with the EU acquis, as is required by the AA/DCFTA. These functions are currently shared by

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<sup>312</sup> Russian regulator approved export of fruits from number of producers of Moldova, RBC, 6 August 2015, <http://www.rbc.ru/rbcfreenews/55c357cd9a794739c1cfe373>.

<sup>313</sup> Government Decision No. 679 of 13 November 2009 on the Composition of the GCEI, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=332727>.

<sup>314</sup> Government Decision No. 190 of 21 February 2007 on the Centre of Legal Harmonization, [http://lex.justice.md/document\\_rom.php?id=A7BCC892:4DEEDE79](http://lex.justice.md/document_rom.php?id=A7BCC892:4DEEDE79).

<sup>315</sup> Government Decision No.38 of 1 February 2016 on National Plan of Legal Harmonization for 2016, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=362942>

<sup>316</sup> Strategy of the Public Administration Reform 2016-2020, [http://cancelaria.gov.md/sites/default/files/document/attachments/strategie\\_actualizata\\_par\\_strategy\\_2016-2020\\_30jun16.pdf](http://cancelaria.gov.md/sites/default/files/document/attachments/strategie_actualizata_par_strategy_2016-2020_30jun16.pdf).

<sup>317</sup> Moldova's Parliament has adopted a new law on Government on 7 July 2017, <http://parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/3219/Page/7/language/en-US/Default.aspx>.

the Committee on Foreign Affairs and European Integration and the Parliamentary Legal Standing Committee. The Secretariat of Parliament provides support to members of parliament in reviewing the compatibility of draft legislation with the EU *acquis*.

In order to strengthen the role of parliament in the implementation of the AA/DCFTA, regular joint meetings of parliament and the government have been initiated in particular since 2014. During the Joint meetings, the parliament and government review the state of play on the implementation of the AA/DCFTA and adopt special legislative programs on the implementation of Moldova's commitments as provided by the AA/DCFTA.

The legislative program for 2015-16 included 117 draft laws regarding the AA to be adopted. Only 50 per cent of those draft laws had been adopted by the end of 2016. The majority of the draft laws have been transferred into the new Annual Legislative Plan for the implementation of the AA/DCFTA, which will be voted on in 2017.<sup>318</sup>

#### 4.4.1 EU-Moldova institutional cooperation frameworks and implementation tools

Political dialogue and sectoral cooperation between the EU and Moldova is ensured by an institutional framework established by the AA/DCFTA. This includes the EU-Moldova Association Parliamentary Committee, the Association Council, the Association Committee, the Association Committee in a trade format, as well as sector sub-committees. Pursuant to article 442 of the AA/DCFTA, a EU-Moldova Civil Society Platform was established in May 2016.

EU-Moldova expert cooperation is further developed by additional bilateral formats such as ad-hoc human rights meetings and meetings conducted in the EU-Moldova Mobility Partnership framework. The EU-Moldova political and security dialogue is maintained by the EU-Moldova Political and Security Committee and EU-Moldova COEST (Working Party on Eastern Europe and Central Asia) meetings.

The Association Agenda, adopted in June 2014, was the main EU-Moldova bilateral tool for the implementation of the AA/DCFTA for 2014-2016. A new Association Agenda for 2017-19 is currently being finalised.<sup>319</sup>

The main internal instrument used to pursue the implementation of the AA/DCFTA is the so-called National Action Plan for the Implementation of the Association Agreement (NAPIAA). The first NAPIAA (for 2014-16) was adopted by the Moldovan government in October 2014<sup>320</sup> and updated in October 2015. It included over 1 780 implementation measures that corresponded to the five key sections of the AA/DCFTA.

The MFAEI has initiated a consultation process for the 2017-19 NAPIAA that also includes experts from Moldovan civil society. The structure of the new NAPIAA has improved,<sup>321</sup> clearly separating legislative and implementation measures, as well as establishing a set of performance indicators for the first time.

In order to ensure more efficient coordination, monitoring, and evaluation of NAPIAA implementation, a special online monitoring and reporting tool is currently being used by the government. The MFAEI is currently producing semester and annual progress reports<sup>322</sup> on the NAPIAA on the basis of regular reports

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<sup>318</sup> Annual Legislative Plan for the implementation of the EU-Moldova Association Agreement, <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3628/language/ro-RO/Default.aspx>.

<sup>319</sup> EU-Moldova Association Agenda 2017-2019, EUR-lex, 8 March 2017, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=JOIN:2017:0008:FIN>.

<sup>320</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354939>.

<sup>321</sup> Government Resolution No. 1472 of 30 December 2016 1472 on NAPIAA 2017-2019, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=369730>.

provided by the line ministries, the ministry of economy and infrastructure, and the Centre for Legal Harmonisation.

In March 2016, the government and parliament endorsed the Roadmap on Priority Action of Reforms,<sup>323</sup> acting on the EU Foreign Affairs Council's 'Conclusions on the Republic of Moldova', published in February 2016.<sup>324</sup> The report outlined a set of short-term benchmarks to further advance political dialogue between the EU and Moldova and to resume direct budget support to Moldova. Later, in July 2017, after the European Parliament adopted the decision on macro-financial assistance, the government of Moldova endorsed a new Roadmap on Priority Action of Reforms.<sup>325</sup>

## 4.5 Recommendations

The EU should consider providing increased financial and technical support to Moldova, but with strict conditionality. Like in Ukraine, assistance to the government should aim to facilitate and accelerate key institutional reforms such as the rule of law, decentralisation, anti-corruption, and public administration in order to de-politicise state institutions. Assistance should be provided to both public and private sectors in order to offset long term costs, particularly the costs of modernising light industry and manufacturing.

The EU can encourage attempts by President Dodon to normalise relations with Russia for the sake of diversifying exports but also strengthen sustainable economic development and regional security. This should not be seen through the lens of geopolitical competition or come at the expense of reforms. It is up to Moldova to determine its relations with third countries and organisations, but the EU expects compliance with the AA and DCFTA.

As far as MFA is concerned, Moldova will likely be a litmus test for the practical implementation of smart conditionality of EU assistance in the EaP region. The EU should strictly follow the smart conditionality approach—no reforms, no disbursements. MFA should be conditioned with concrete reform implementation measures involving not only to micro-economic indicators, but also conditions in the areas of good governance, rule of law, and democracy and human rights. The MFA should be dispersed in smaller tranches with more achievable conditions tied to each disbursement. The MFA payments should follow the 'strict but fair' principle.

As a broad-based recommendation, steps should be taken to fight discrimination, include national minorities, and improve the gender balance in the process of implementation.

### 4.5.1 The electoral system

Given the unlikelihood that the ruling parties and the Socialist Party will renounce or amend the new electoral system, a more realistic recommendation would be to support making elections in the uninominal constituencies into two rounds, which would allow citizens' interests to be better represented.

In addition, legislation on the financing of political parties should be reviewed in order to avoid the incomplete or unsatisfactory enforcement of restrictions on political contributions. Several changes should be introduced: Moldova should

- Significantly reduce financing thresholds in the form of donations to political parties by both legal entities and natural persons;
- Prevent the financing of political parties by legal entities or natural persons who benefit from public procurement contracts;

- Include an obligation that party donors provide the origin of their funds, including requiring that donated funds belong to the donor personally (no borrowed or otherwise obtained funds should be accepted from donors);
- Control political parties' assets, periodically auditing funds used by political parties for political campaigns and other initiatives; and
- Revise the state budgetary mechanisms used to finance political parties, clarifying the status of electoral blocks and independent candidates as beneficiaries of state support in their political activities.

#### 4.5.2 Anti-corruption

In the justice and anti-corruption sectors, the challenge is not in legislating but in implementing. Adopting strategies should not be taken as measure of success,<sup>326</sup> while de-politicising state institutions should be key. Merit-based selection processes must be implemented in the PGO, APO, NIA, and NAC. Selecting the NIA leadership should be accelerated to unblock its functioning. Funding for anti-corruption agencies should be approved automatically in order to reduce political influence on the decision-making process. E-declaration systems, like those implemented in Ukraine, should be considered to make reduce civil servants' workload and increase transparency.

A greater effort should be made to investigate the USD1 billion banking fraud that is now unfolding very slowly, with the 'Kroll 2' report to be presented in November 2017. Delays to the investigation and prosecution of wrongdoers reveals a lack of political will, or entanglement between the ruling political class and those who were involved in the fraud.

#### 4.5.3 The judiciary

Parliament should amend Law No. 178 on judges' disciplinary responsibility in order to provide more powers to the Judicial Inspection Body, which is tasked with investigating and bringing disciplinary cases against judges. Closed-door hearings should be limited only to cases highlighted in the legislation, i.e. when proceedings involve intimate details or other private issues that could pose a professional or personal risk (amendments to Law No. 122 of 2 June 2016, should be repealed). This is a political challenge: no matter the quality of the policy framework, ruling elites will not want to relinquish control over the judiciary.<sup>327</sup>

Furthermore, the Superior Council of Magistracy should adopt decisions based on evaluations carried out by the Selection and Career Board. Its decisions on the selection and promotion of judges should be accompanied by a justification for each judge. In addition, it should give up the practice of closed door deliberations in order to increase trust in court.

Additionally, the EU could design and implement a mechanism for constant monitoring, conditioning support for judicial reform on the fight against corruption. The mechanism could be developed based on the Cooperation and Verification Mechanism used in Romania and Bulgaria.

#### 4.5.4 Media

The focus should be on the adoption of the new Audio-Visual Code, which representatives from the EU, development partners, and members of civil society have been heavily involved in. The new code should prioritise the creation of a competitive media market with transparent ownership laws. Special attention should be paid to forbidding or strictly regulating media companies registered off shore. Furthermore, the consolidation of media in the hands of a small few remains one of the key issues in ensuring a balanced

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<sup>326</sup> European Union Joint Analysis, 2016, [https://eeas.europa.eu/sites/eeas/files/joint\\_analysis\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/joint_analysis_0.pdf).

<sup>327</sup> European Union Joint Analysis: Programming in the Republic of Moldova until 2020, 2016, [https://eeas.europa.eu/sites/eeas/files/joint\\_analysis\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/joint_analysis_0.pdf).



media environment. In this regard, upcoming EU assistance may be conditioned on, among other things, media ownership deconsolidation.

Attempts to limit foreign propaganda should be supported, yet they should not be directed against Russian language media *per se*. The OSCE's 2015 report on fighting propaganda<sup>328</sup> gives good guidance on this matter. International donors should prioritise investments into start-ups to ensure a level playing field, especially when it comes to quality reporting, objective news analysis, and investigations.

#### 4.5.5 Civil society

As in Ukraine, the EU should push back on efforts to limit civil society organisations' activities and access to funding. Despite the fact that the draft law pressuring and limiting civil society has been put on hold, there is no guarantee that similar attempts will not take place in the future. In order to fix the issue in a manner that will comply with principles of democracy and good governance, the Moldovan government should adopt the law on NGOs as it was prepared by NGOs and the ministry of justice working group.

#### 4.5.6 DCFTA

The EU should be more ambitious in providing support for the implementation of the DCFTA, in particular by focusing on the implementation of SPS measures to improve opportunities for animal product exports to the EU. The EU should also work to raise awareness among the public and the business community about the opportunities and advantages provided by the AA/DCFTA, and also support cross-sectoral and cross-border projects.

Furthermore, the EU should consider expanding additional multi-year zero export tariff quotas in order to support the modernisation of various sectors by providing permanent support to industries that are not ready to compete on the EU market. Agricultural and food products are the dominant export sectors and these are subject of significant EU non-tariff barriers.<sup>329</sup> Development and modernisation of post-harvest infrastructure would also offer Moldovan exporters the possibility to meet EU standards (packaging, marketing, distribution) easier.<sup>330</sup>

The EU and Moldova should negotiate a tailored Conformity Assessment Agreements for industrial products in order to boost export opportunities to the EU, particularly on high-value industrial products.

Going forward, Moldova should work to diversify its sources of energy and raw materials: Implementing the Third Energy Package and constructing electricity and gas connections with the EU through Romania will be key to diversifying the country's access to energy resources.

## 5 Georgia

When the EU abolished short-term visas for Georgian citizens in March 2017, Tbilisi achieved its most practicable European integration objective—a goal that has been the driving force behind its domestic reforms.

Georgia's democratic institutions have been consolidated, it has passed important anti-discrimination and human rights laws.<sup>331</sup> Still, serious questions persist about the independence of the judiciary and the

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<sup>328</sup> Propaganda and media freedom, Non-paper of the OSCE Office of the Representative on Freedom of the Media, Vienna, 2015, <http://www.osce.org/fom/203926?download=true>.

<sup>329</sup> Policy Brief: Challenges of DCFTAs: How can Georgia, Moldova and Ukraine succeed?, Bertelsmann Stiftung, 2017, [https://www.bertelsmann-stiftung.de/fileadmin/files/user\\_upload/EZ\\_Policy\\_Paper\\_DCFTA\\_2017\\_ENG.pdf](https://www.bertelsmann-stiftung.de/fileadmin/files/user_upload/EZ_Policy_Paper_DCFTA_2017_ENG.pdf).

<sup>330</sup> Trade Sector Briefs, DCFTA Project, 2015, <http://dcfta.md/uploads/0/images/large/trade-sector-briefs.pdf>

<sup>331</sup> Association Implementation Report on Georgia, Joint Staff Working Document, European Commission, High Representative of the Union for Foreign Affairs and Security Policy, November 25, 2016, [https://eeas.europa.eu/sites/eeas/files/1\\_en\\_jswd\\_georgia.pdf](https://eeas.europa.eu/sites/eeas/files/1_en_jswd_georgia.pdf).

prosecutor's office, as these institutions, and the political life in general, are under the heavy influence of former Prime Minister Bidzina Ivanishvili.

Georgia enjoyed trade privileges with the EU before DCTA entered into force. Compare to Moldova and Ukraine, Tbilisi embarked on unilateral liberalisation toward the entire world in form of pro-market reforms after the Rose Revolution in 2003. Therefore the DCFTA itself has not boosted substantially Georgian exports to the EU, but it has still stimulated agricultural production. The DCFTA benefits could be more tangible if relevant stakeholders were better informed of how to take advantage of it. This would make it more popular, too.

Georgia has shown solid technical progress in implementing the Agreement, especially in the energy and food safety sectors. Economic development is the key challenge, though the World Bank now classifies Georgia as an upper middle-income country.<sup>332</sup> Poverty, high inequality, and paternalistic attitudes have a negative impact on the democratic character of Georgian politics, as many of the country's regions are dominated by local barons who stifle political competition. Low rates of women's involvement in political life is another traditional challenge in a largely patriarchal society.

The EU accounts for a quarter of Georgia's overall trade.<sup>333</sup> The Russian market reopened to Georgia in 2013, five years after the Russo-Georgian War. Since then, Georgian exports to Russia, and, importantly, the inflow of Russian tourists to Georgia, have increased. Nevertheless, the authorities seem reluctant to get involved in any serious dialogue with Moscow, and the country's pro-EU credentials remain strong.<sup>334</sup>

Having implemented some of the most serious reforms in the EaP, having secured a peaceful political transition in 2012, and having normalised trade both with the EU and Russia, Georgia is certainly the 'success story' of the three countries.

## 5.1 State implementation of key reforms, including under the Association Agreement

Approximation is on-going as part of the Association Agenda. Between 2014 and 2017, Georgia adopted 6 laws, 24 bylaws, and 70 legislative amendments concerning EU legal acts.<sup>335</sup> The sanitary and phytosanitary standardisation programme is advancing according to plan. The implementation of adopted legal acts remains a key challenge, however, as the outreach of relevant governmental agencies is rather limited.<sup>336</sup> An efficient state system for food safety regulation remains to be developed. In the area of customs and trade facilitation, Georgia has agreed to use the EU Customs Blueprints as the foundation for its modernisation efforts.<sup>337</sup>

Thanks to the EU's MFA program, Georgia has made significant progress on poverty reduction, fighting inequality by reforming its social security system, including introducing a universal healthcare system and increasing pensions.

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<sup>332</sup> New country classifications by income level, World Bank The Data Blog, 7 January 2016, <https://blogs.worldbank.org/opendata/new-country-classifications-2016>

<sup>333</sup> Association Implementation Report on Georgia, 25 November 2016, [https://eeas.europa.eu/sites/eeas/files/1\\_en\\_jswd\\_georgia.pdf](https://eeas.europa.eu/sites/eeas/files/1_en_jswd_georgia.pdf)

<sup>334</sup> Poll: Georgians Support EU Membership, 4 April 2017, International Republican Institute, <http://www.iri.org/resource/poll-georgians-support-eu-membership-distrust-russia-favor-dialogue>.

<sup>335</sup> Implementation of the EU-Georgia Association Agreement and Association Agenda 2014-2017, Office of the State Minister of Georgia, July 2017, [http://www.eu-nato.gov.ge/sites/default/files/400%20CALI\\_New\\_Action%20Plan%20ENG%202107%20axali.pdf](http://www.eu-nato.gov.ge/sites/default/files/400%20CALI_New_Action%20Plan%20ENG%202107%20axali.pdf).

<sup>336</sup> Implementation of the EU-Georgia Association Agenda 2014-2016, Assessment by Civil Society, Open Society Georgia Foundation, March 2017, [https://www.osgf.ge/files/2017/Publications/Final\\_report\\_ENG.pdf](https://www.osgf.ge/files/2017/Publications/Final_report_ENG.pdf).

<sup>337</sup> Association Implementation Report on Georgia, 25 November 2016, [https://eeas.europa.eu/sites/eeas/files/1\\_en\\_jswd\\_georgia.pdf](https://eeas.europa.eu/sites/eeas/files/1_en_jswd_georgia.pdf).

Although Georgia has an impressive track record of fighting low-level corruption, several important legislative acts have not yet been implemented, including the 'Freedom of Information Law' and the new National Anti-Corruption Strategy and Action Plan, which were adopted along with monitoring and evaluation methodologies. Public officials' asset declarations (scheduled to begin in January 2017) was postponed and the country still lacks effective mechanisms to fight high-level corruption.<sup>338</sup>

Public administration reform has moved forward, with the adoption of the 'Law on Civil Service' having been adopted and several steps having been made to strengthen the independence of the civil service. However, according to civic monitors, a fully transparent and objective system for the selection, promotion, and dismissal of civil servants is yet to be established.

Environmental and youth policies are the weakest link in implementation. Georgia still has no state environmental or sustainable development policy that would ensure integration with economic sectors. Contaminated waste and water quality are significant challenges in rural areas. A framework document on the key competences of informal education was developed along with a state program on informal education and strategy for the development of youth activities. However, neither the action plan for the development strategy of youth activities nor the 'Law of Georgia on Support of Youth Activities' was adopted.

### 5.1.1 The judiciary

The judiciary is the most problematic area covered by the Association Agenda, while also being critical to the democratisation of the country in general. This is mostly because in Georgia, the judiciary and the prosecutor's office are being used as political tools, with only limited independence. The text of the Association Agenda does not take into account these local realities, leaving both the judiciary and the prosecutor's office largely unreformed and under the control of the ruling elites.

Still, the Agreement calls on Georgia to identify a proper constitutional basis for the Prosecutor's Office and ensure effective oversight; to build public confidence in the prosecutor's office and establish a truly professional prosecution service (including through adequate training) independent from political parties and other undue influences. The text also requires that criminal prosecutions are conducted in a transparent and impartial manner, free of political motivation, in order to avoid politically motivated prosecutions.<sup>339</sup>

However, there are legitimate reasons to assume that the prosecutor's office has been used as a tool of political influence in Georgia, both under former President Mikheil Saakashvili and today.<sup>340</sup> 2015 saw some positive steps in this regard, as a collegial body known as the Prosecutorial Council was established. The Council's main role was to ensure the independence, transparency and effectiveness of the system. However, the body's authority extends only to chief and deputy chief prosecutors, unlike other such councils. Other prosecutors remain under the authority of the chief prosecutor, who is under the authority of the minister of justice.<sup>341</sup>

The Prosecutorial Council convenes every six months to hear a report filed by the chief prosecutor on the activities of prosecutorial bodies. After that, the Prosecutorial Council develops recommendations and submits them to the chief prosecutor. However, according to the Council's official website, it has

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<sup>338</sup> Implementation of EU-Georgia Association Agenda, Civil Society Assessment, Open Society Georgia Foundation, 2017, [https://www.osgf.ge/files/2017/Publications/Final\\_report\\_ENG.pdf](https://www.osgf.ge/files/2017/Publications/Final_report_ENG.pdf)

<sup>339</sup> Association Agenda between the European Union and Georgia, 2014, the EEAS, [https://eeas.europa.eu/sites/eeas/files/associationagenda\\_2014\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/associationagenda_2014_en.pdf).

<sup>340</sup> State Department Concerned Over Criminal Charges Against Saakashvili, RFE RL, 30 July 2014, <https://www.rferl.org/a/state-department--saakashvili-questioning-investigations-prosecutor-georgia/25474887.html>.

<sup>341</sup> Implementation of EU-Georgia Association Agenda, Civil Society Assessment, Open Society Georgia Foundation, 2017, [https://www.osgf.ge/files/2017/Publications/Final\\_report\\_ENG.pdf](https://www.osgf.ge/files/2017/Publications/Final_report_ENG.pdf).

developed no recommendations for the chief prosecutor, even though this is required by the law. Moreover, the minister of justice has closed the Council meetings to the public.

The Council's membership is also problematic: eight out of fifteen members are elected by the Conference of Prosecutors, which brings together prosecutors and investigators. The law requires them to form initiative groups that nominate candidates for membership, but leaves the details of the nomination process undefined. The first Conference of Prosecutors and the election of the Council's members were organised without determining any procedures for the elections. Given that the decisions of the Conference of Prosecutors might be motivated by political considerations and members elected by them have a majority in the Prosecutorial Council, the independence of the entire body is under question. The civil society representatives on the Council do not have sufficient votes to influence the body's decisions. The Council also remains headed by the minister of justice. While this is in line with the Constitution, the Venice Commission has recommended that the minister's prominent role in the Prosecutorial Council be reduced, concluding that the amendments do not ensure the Council's neutrality.

Another major challenge is the lack of independence and neutrality of the judiciary as a whole. While the ruling elite under President Saakashvili undertook some landmark reforms that strengthened Georgia's state institutions and modernised public service, the judiciary was never reformed. Instead, it was mostly used as a political tool to target opponents and extract favours.

The AA calls on Georgia to continue taking steps in reforming the judiciary, the Criminal Code, and Criminal Procedure Code of Georgia. This includes strengthening judicial independence; increasing the efficiency, impartiality, and professionalism of the judiciary; and ensuring the right to a fair trial.<sup>342</sup>

Having won election in 2012 and ousting Saakashvili from power, the Georgian Dream coalition not only had a mandate to reform the judiciary but also substantial political motivation to overhaul the whole judicial system, given it did not trust the judges appointed by the previous administration. However, the new ruling elite instead became preoccupied with finding ways to control the judiciary, among other things, to use it as a tool to persecute former leaders.<sup>343</sup> As part of this attempt, probationary periods were introduced for judges despite opposition from the civil society<sup>344</sup>, which cautioned that probations would turn judges into obedient servants of the new ruling elite instead of making them truly independent.

Some positive steps have been taken, however: In 2013, the government de-politicised the composition of the High Council of Justice and introduced democratic rules for the election of the judges on the Council. The positive effect of the reform was challenged at the first Judicial Conference, when judges failed to make use of a newly amended democratic procedure in the process of electing their representatives to the Council.<sup>345</sup>

Concerns about reform were later confirmed when judges resisted other positive changes in the system: In 2014, the government introduced a package of legislative amendments that aimed at improving the system of selection and appointment of judges and introduced a system of random electronic distribution of cases. The judicial corps resisted, however, and the reform was put on hold. Although the draft law was amended and its effect drastically reduced, the Parliament nonetheless failed to adopt it. Resistance on part of the judicial corps ensured the continuance of the status quo.

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<sup>342</sup> Association Agenda between the European Union and Georgia, 2014, the EEAS, [https://eeas.europa.eu/sites/eeas/files/associationagenda\\_2014\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/associationagenda_2014_en.pdf).

<sup>343</sup> Human Rights Watch finds indications of political persecution in Georgia, Democracy & Freedom Watch, 29 January 2016, <http://dfwatch.net/human-rights-watch-finds-indications-of-political-persecution-in-georgia-39929>.

<sup>344</sup> Statement on the Appointment of Judges for a Probationary Period, Coalition for Independent and Transparent Judiciary, 30 September 2013, [http://coalition.ge/index.php?article\\_id=105&clang=1](http://coalition.ge/index.php?article_id=105&clang=1).

<sup>345</sup> Judicial Reform in Georgia and the Association Agreement, Open Society Foundation Georgia, July 2016, [http://www.osgf.ge/files/2016/EU%20publication/Angarishi\\_A4\\_Policy\\_Brief\\_Eng.pdf](http://www.osgf.ge/files/2016/EU%20publication/Angarishi_A4_Policy_Brief_Eng.pdf).

The starkest example of the lack of reform in the judiciary came in 2015 when the High Council of Justice appointed new judges. To the dismay of civil society and the general public,<sup>346</sup> the body reappointed judges that had been seen as serving the interests of the former ruling elite, including a judge that presided over the Gvirgvliani case that discredited the Georgian judiciary under Saakashvili and damaged Georgia's democratic reputation.<sup>347</sup> The authorities and judges rejected the criticism, claiming that those judges were 'victims of Saakashvili's regime and they deserved some understanding and sympathy'.<sup>348</sup> The only judge who dared to speak publicly about the problems in judiciary was soon illegally dismissed from his position by the High Council of Justice and later resigned as a judge.<sup>349</sup>

The independence and impartiality of the Georgian judiciary was subjected to even more scrutiny after the European Court of Human Rights (ECHR) suspended a decision made by the Supreme Court of Georgia on Rustavi2 in March, 2017. The case of Rustavi2, a TV station critical of the current administration, has remained in the spotlight for the last year due to allegations that the authorities tried to deprive the TV's owners of their rights. The trial in Georgia was accompanied by a number of scandals and stories about judges involved in the case being manipulated, blackmailed, or bribed.<sup>350</sup> The ruling Georgian Dream denied all accusations that the trial was politicised. However, absent ECHR involvement, ownership of the TV station would have been transferred to someone seen as more loyal to the current government.

The aforementioned cases all point to acute problems in Georgia's judiciary. While the main problems need to be addressed by the Georgian authorities, the Association Agenda could focus more on conditionality, allowing the judicial corps to be overhauled in order to prevent further abuse of the judiciary by the ruling elites.

## 5.1.2 Gender, non-discrimination, and minority rights

Georgia has passed legislative acts that guarantee equal treatment for men, women and minority groups. The low political participation of women and the protection of sexual minorities are important challenges going forward, however.

In accordance with the Association Agenda, Georgia needs to 'enhance gender equality and ensuring equal treatment between women and men in social, political and economic life'.<sup>351</sup> However, it does not prescribe any specific measures to ensure this happens. Georgia's Constitution guarantees equal treatment of all individuals. In 2010, parliament adopted the 'Gender Equality Law', guaranteeing the equality of men and women in political life.<sup>352</sup> Still, several serious problems remain. First, women's participation in political decision-making is almost insignificant. Women's account for just 15 per cent of the representatives in parliament—a number that is far below the global average (although progress has been observed over the last decade, as women accounted only for six per cent in the 2008 parliament and 11 per cent in the 2012 parliament).<sup>353</sup>

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<sup>346</sup> Judicial Council Stirs Controversy as it Reappoints Gvirgvliani Case Judge, Civil Georgia, 26 December 2015, <http://www.civil.ge/eng/article.php?id=28885>.

<sup>347</sup> Judicial Council Stirs Controversy as it Reappoints Gvirgvliani Case Judge, Civil Georgia, 26 December 2015, <http://www.civil.ge/eng/article.php?id=28885>.

<sup>348</sup> Ivanishvili on New PM, Controversial Judge Reappointment and His Role in Next Elections, Civil Georgia, 31 December 2015, <http://www.civil.ge/eng/print.php?id=28895>.

<sup>349</sup> The High Council of Justice dismissed Mamuka Akhvediani in violation of law, Coalition for Transparent and Independent Judiciary, Transparency International Georgia, 23 February 2016, <http://www.transparency.ge/en/post/general-announcement/high-council-justice-dismissed-mamuka-akhvediani-violation-law>.

<sup>350</sup> Democracy on the block: How the ECHR saved Georgia's free press, ECFR Commentary, 14 March 2017, [http://www.ecfr.eu/article/commentary\\_democracy\\_on\\_the\\_block\\_how\\_the\\_echr\\_saved\\_georgias\\_free\\_7245](http://www.ecfr.eu/article/commentary_democracy_on_the_block_how_the_echr_saved_georgias_free_7245).

<sup>351</sup> Association Agenda between the European Union and Georgia, 2014, the EEAS, [https://eeas.europa.eu/sites/eeas/files/associationagenda\\_2014\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/associationagenda_2014_en.pdf).

<sup>352</sup> The Law of Georgia on Gender Equality, 2010, <http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/GeorgiaAnnexIII.pdf>.

<sup>353</sup> Inter-Parliamentary Union and UN Women, 2014, [http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2014/wmmmap14\\_en%2.pdf](http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2014/wmmmap14_en%2.pdf).



While women legally enjoy the same rights as men and can be elected to the legislative bodies, there are obstacles that keep them from being elected. Firstly, women are often simply not put on the party lists. Georgia large remains a patriarchal society where social and political life is dominated by men. Under such circumstances, only affirmative action can bring desirable results. Thus far, no such legislative acts have been adopted, with one important exception: in 2011, a law made available more state funding for parties that nominate at least 20 per cent women on their party lists.<sup>354</sup> However, this measure proved to be ineffective because major political parties are not dependent on state funding.

On the positive note, public opinion polls demonstrate that there is increasing support for women's participation in political life. An NDI survey conducted after 2016 parliamentary elections found out that majority (52 per cent) considered a 15 per cent share of women in the parliament not enough and would like to see at least 50 women (33 per cent) in parliament. Only 39 per cent considered current participation levels sufficient. At the same time, the majority believes that women are as good at decision making as men.<sup>355</sup> This is in contrast to a NDI poll conducted after 2012 parliamentary elections, in which 46 per cent respondents said that the number of women parliamentarians was sufficient.<sup>356</sup> It is clear that the number of people supporting women's participation in political life is growing faster than the number of women parliamentarians.<sup>357</sup>

Formally, women's rights are guaranteed by the 'Law on the Elimination of All Forms of Discrimination'. The law was passed as a condition of the first phase of the Visa Liberalisation Action Plan with the EU. But it is also in line with the requirements of the Association Agenda, which mentions the 'adoption of a comprehensive National Human Rights Strategy and Action Plan; actively pursue in this strategy and action plan the specific recommendations of UN bodies, OSCE/ODIHR, the Council of Europe/European Commission against Racism and Intolerance (ECRI) and international human rights organisations notably in implementing anti-discrimination policies, protecting minorities and private life and ensuring the freedom of religion'.<sup>358</sup>

The adoption of the law should be considered an achievement given the fierce disinformation campaign led by anti-Western politicians and media sources (allegedly supported by Russia) that demonised the West as 'safe haven for sexual perverts' and declared that the law would be followed by the legalisation of same sex marriage. Moreover, the Georgian Orthodox Church, which remains the country's most influential institution, openly expressed its disagreement with the planned legislative changes. All of this pressed the authorities to water down the proposed legislation. The initial draft of the law envisaged the creation of a new independent body, the Equality Inspector, that would have a mandate to impose financial sanctions in response to discrimination. Partly in response to the pressure from conservative groups and the Church, this proposal was left out in the final version. Instead, the newly-created Equality Inspector was embedded in the Public Defender's Office (PDO) with a mandate to fight against discrimination, though its powers are rather restricted: the PDO is unable to enact legal decisions or impose financial sanctions in cases of discrimination. Moreover, although it was very involved in the initial drafting stages, civil society, including LGBTI organisations, were left out of the final drafting.<sup>359</sup>

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<sup>354</sup> Organic Law of Georgia on Political Union of Citizens, Article 30 (71), a [http://www.venice.coe.int/webforms/documents/?pdf=CDL\(2009\)060-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2009)060-e).

<sup>355</sup> Public attitudes in Georgia. Results of a November 2016 survey carried out for NDI by CRRC Georgia, National Democratic Institute, 2016, [https://www.ndi.org/sites/default/files/NDI\\_November%202016%20poll\\_Issues\\_ENG\\_vf.pdf](https://www.ndi.org/sites/default/files/NDI_November%202016%20poll_Issues_ENG_vf.pdf).

<sup>356</sup> Public Attitudes in Georgia: Results of a November 2012 Survey, National Democratic Institute, 12 December 2012, <https://www.ndi.org/node/23558>.

<sup>357</sup> Georgian Politics Without Women, Open Society Georgia Foundation, Policy Brief, May 2015, [http://www.osgf.ge/files/2015/Publication/EU-Georgia%20Association%20Angarishi\\_A4\\_3.pdf](http://www.osgf.ge/files/2015/Publication/EU-Georgia%20Association%20Angarishi_A4_3.pdf).

<sup>358</sup> Association Agenda between the European Union and Georgia, 2014, the EEAS, [https://eeas.europa.eu/sites/eeas/files/associationagenda\\_2014\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/associationagenda_2014_en.pdf).

<sup>359</sup> The Anti-discrimination system in Georgia in the context of the EU Visa Liberalization Action Plan, CRPE Policy Memo 60, April 2015, [http://www.osgf.ge/files/2015/Publication/Binder\\_CRPE\\_AntiDiscriminare\\_Georgia.pdf](http://www.osgf.ge/files/2015/Publication/Binder_CRPE_AntiDiscriminare_Georgia.pdf).

The Association Agenda does not consider these specific realities, especially the fact Georgia remains a largely conservative country. Fierce anti-Western disinformation makes the Georgian public opinion wary of any anti-discriminative measures. This local context makes it difficult and unpopular for the Georgian authorities to introduce full-fledged and effective anti-discriminative measures.

### 5.1.3 Electoral reforms

Ensuring the fairness and transparency of elections in Georgia is impossible without making long-awaited constitutional changes. The authorities have prepared a new draft of constitutional amendments that brings in the necessary changes. However, their enactment was postponed until the 2024 parliamentary elections.

The Association Agenda stresses that is critical to 'ensure the democratic conduct of elections, addressing any shortcomings in the legislative framework and election administration as identified by the Inter-Agency Task Force on Free and Fair Elections (IATF) and Organisation for Security and Cooperation in Europe (OSCE) / Office for Democratic Institutions and Human Rights (ODIHR)'.<sup>360</sup> While the AA offers relatively specific guidance on these issues, Georgian authorities lack the political will to implement necessary changes.

Georgian authorities carried out several important steps to ensuring that elections are conducted democratically. Namely, amendments were made to the Election Code that ensured direct elections for Mayors and Gamgebelis (heads of municipalities in smaller towns, which have mayoral authority), and introduced a 50 per cent plus one barrier for winning elections (before this amendment, the frontrunner did not need a majority to win, making the ruling party candidate well-positioned to win even without a run-off).

However, the Parliament has since undone some of these positive changes by reducing the number of self-governing cities from twelve to five (only Tbilisi, Kutaisi, Rustavi, Poti, and Batumi remain).<sup>361</sup> While not much has changed in substance, as the alternation simply resulted in these cities having Gamgebelis instead of Mayors, the move was seen as a political attempt at gerrymandering.

The most serious problem is the so-called parallel electoral system<sup>362</sup> that was introduced by the former ruling elite and has not been changed since. In the system, parliamentary elections are held both in single mandate districts and according to party lists (so-called majoritarian and proportional elections). The Georgian Dream coalition itself denounced this system as unfair in 2012 and promised to change it if elected. However; the 2016 parliamentary elections were held in the same way, and while amendments have now been passed, they are only going to be effective beginning in 2024. This decision was heavily criticised not only by the political opposition and civil society but also by the Venice Commission.<sup>363</sup>

The single mandate districts are particularly problematic, as 73 out of 150 parliamentarians are elected in this way (the remaining 77 are elected in a proportional system based on party lists). As a rule, the incumbent party wins in practically all districts. This is because in a poor country like Georgia with strong paternalistic attitudes, small towns and districts are run by local barons who seek good relations with the ruling authorities (in order to secure their business interests). These barons are easily persuaded to run for a ruling party because being MPs protects their business interests. Hardly anyone can challenge such barons in their local districts due to widespread poverty and the potential repercussions. Thus, even if the ruling party gets only 50 per cent in proportional elections (i.e. elections by party lists), it can still easily add another 73 MPs from single mandate districts. This is precisely what happened in the 2016 election, when

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<sup>360</sup> Association Agenda between the European Union and Georgia, 2014, the EEAS, [https://eeas.europa.eu/sites/eeas/files/associationagenda\\_2014\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/associationagenda_2014_en.pdf).

<sup>361</sup> Parliament reduces Number of Self-Governing Cities, Civil Georgia, 3 July 2017, <http://civil.ge/eng/article.php?id=30234>.

<sup>362</sup> Opposition Parties Reject Constitution Changes, Boycott Commission, Civil Georgia, 22 April 2017 <http://civil.ge/eng/article.php?id=30041>.

<sup>363</sup> Head of Venice Commission 'dissatisfied' with Georgia's constitutional changes, 30 June 2017, <http://oc-media.org/head-of-venice-commission-dissatisfied-with-georgias-constitutional-changes/>.

the ruling Georgian Dream party got about 48 per cent of votes in proportional elections but won 71 single mandate districts, therefore securing 115 seats in parliament and a constitutional majority.

#### 5.1.4 Media

Although authorities are trying to keep TV stations under their control, the media remains partly free.<sup>364</sup> The Association Agenda does not cover this sector in greater detail and only calls on Georgia to 'strengthen media pluralism, transparency and independence in line with Council of Europe recommendations'.<sup>365</sup>

Georgia qualifies as a 'partly free' country according to Freedom House, and this applies to freedom of media as well<sup>366</sup>. In 2014, Georgia scored 47 out of 100 in terms of freedom of press and in 2017 it scores 50 out of 100.<sup>367</sup> This progress is small but still reversible. Georgia ranks 64<sup>th</sup> on Reporters Without Borders' World Press Freedom Index, lagging behind its Eastern European peers but ahead of the Balkan states.<sup>368</sup>

The state of media freedom in Georgia was made worse by the above-mentioned Rustavi2 case though there have been other problems as well. Vasil Maglaperidze's selection as the new director general of the TV Georgian Public Broadcaster, which is funded by taxpayer money and is supposed to be a neutral and unbiased media source, raised concerns that the station remains under the control of the ruling elite, Maglaperidze is seen as being closely associated with Bidzina Ivanishvili, the founder and informal leader of Georgian Dream (Maglaperidze worked for GDS, a TV station belonging to the Ivanishvili family).<sup>369</sup> After this controversial move, the new leadership announced that all talk shows would be shut, raising further doubts that the station might simply turn into a tool of the new ruling elite.<sup>370</sup>

Another alarming development was the merger of three TV stations into a single group. What might otherwise be considered a normal business transaction was put into doubt because one of the TV station, the GDS (Georgian Dream Studio) belonged to the Ivanishvili family,<sup>371</sup> which is heavily involved in politics.

On the other hand, many Georgians have free access to the Internet, which allows for diverse online media to be disseminated, including that which is critical of the authorities. Still, access is relatively limited due to poverty: According to Freedom House, in 2016 internet penetration equalled to 45 per cent.<sup>372</sup>

#### 5.1.5 Energy

Georgia has made strides in implementing legislation and energy infrastructure reforms called for in the Association Agreement. Still, there are concerns that the implementation may be hampered by the presence of privileged energy giants and interest groups within the government.

According to the Association Agenda, the Parties will cooperate with the aim of 'completing negotiations concerning Georgia's formal accession to the Energy Community as a contracting Party in line with the Association Agreement; taking steps towards the integration of Georgia's energy market with that of the EU, and strengthening Georgia' energy security and regulatory convergence through the implementation of relevant EU legislation applicable to Georgia, in line with the AA 21 and Energy Community commitments and in accordance with the timeline agreed by Georgia in the framework of the Energy

<sup>364</sup> Freedom of Press 2017, Georgia, Freedom House, <https://freedomhouse.org/report/freedom-press/2017/georgia>.

<sup>365</sup> Association Agenda between the European Union and Georgia, 2014, the EEAS, [https://eeas.europa.eu/sites/eeas/files/associationagenda\\_2014\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/associationagenda_2014_en.pdf).

<sup>366</sup> Georgia: Court Wrongly Fires Rustavi-2 Executives, Freedom House, 6 November 2015, <https://freedomhouse.org/country/georgia>.

<sup>367</sup> Freedom of the Press 2017, Georgia, Freedom House, <https://freedomhouse.org/report/freedom-press/2017/georgia>.

<sup>368</sup> 2017 World Press Freedom Index, Reporters Without Borders, 2017, <https://rsf.org/en/ranking>.

<sup>369</sup> Georgia Public Broadcaster Selects New Director General, Tabula, 6 January 2017, <http://www.tabula.ge/en/story/116143-georgian-public-broadcaster-selects-new-director-general>.

<sup>370</sup> Georgian Public Broadcaster shuts down all talk-shows, OC Media, 6 February 2017, <http://oc-media.org/georgian-public-broadcaster-shuts-down-all-talk-shows/>.

<sup>371</sup> Maestro TV to merge with Imedi and GDS, DFWatch, 28 December 2016, <http://dfwatch.net/maestro-tv-to-merge-with-imeri-and-gds-47078>.

<sup>372</sup> Freedom on the Net 2016, Georgia, Freedom House, <https://freedomhouse.org/report/freedom-net/2016/georgia>.

Community Treaty; reinforcing Georgia's energy infrastructure network and interconnections, in particular: with regard to electricity, continuing the implementation of the 'Black Sea Regional Transmission Network' project, including by starting operations of the 400kV connection Georgia (Akhaltsikhe)—Turkey (Borchkha), strengthening interconnections with Azerbaijan and Armenia, and reinforcing Georgia's transmission grid; – with regard to natural gas, facilitating the implementation of the expansion of the South Caucasus gas pipeline on the Georgian territory; improving energy efficiency and developing the use of renewable energy sources in Georgia in line with the Association Agreement'.

Georgia has accomplished the necessary reforms to enter the Energy Community, even though it only joined in April 2017 (instead of September 2016, as stipulated in the Association Agreement).<sup>373</sup> A few important steps have been taken to strengthen energy security and bring Georgia's energy market closer to the EU. More concretely, 10 year plans have been prepared for the development of gas and electricity networks, even though implementation is behind schedule.<sup>374</sup> There are concerns that the necessary changes will be hampered even further due to the presence of RAO UES, SOCAR, and Energo-Pro on the Georgian Market, which all enjoy long-term concessions and privileges.<sup>375</sup>

For example, Energo-Pro alone controls 40 per cent of power market.<sup>376</sup> Moreover, since 2013, the government has focused on constructing hydro power plants and signed more than 100 Memoranda of Understanding with different investors under variable conditions. The process raises concerns about corruption, as no sanctions were applied to the investors that failed to meet the requirements. This raises legitimate concerns about an existence of a hydro plant lobby inside government that threatens to thwart competition and creates obstacles to the development of alternative energy sources.

On the other hand, Georgia has been doing well to reinforce its energy infrastructure network and build interconnections: large-scale projects are underway to rehabilitate and reconstruct Georgia's State ElectroSystem. Moreover, the government has been supportive of the implementation of the South Caucasus Pipeline Expansion and Trans-Anatolian Natural Gas Pipeline.<sup>377</sup>

All in all, Georgia is mostly in line with the Association Agenda requirements when it comes to cooperation in the energy field. However; there is a risk that the implementation could be delayed and hampered by large energy players and interest groups within the government that lobby for certain businesses and investors.

### 5.1.6 Decentralisation

The Association Agenda between 2014 and 2016 mentions implementation of the decentralisation strategy in compliance with the Council of Europe European Charter of Local Self Government under the political dialogue and reform (2.1. under Priorities of the Association Agenda).<sup>378</sup>

Despite the ruling elites' expression of support toward decentralisation, Georgia has the lowest degree of decentralisation in almost all dimensions, including political, administrative and fiscal.<sup>379</sup> This is connected

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<sup>373</sup> Georgia Ratifies Europe's Energy Community Accession Agreement, Civil Georgia, 26 April 2017, <http://www.civil.ge/eng/article.php?id=30055>.

<sup>374</sup> Civil Society Assessment, 2017, [http://www.osgf.ge/files/2017/Publications/Final\\_report\\_ENG.pdf](http://www.osgf.ge/files/2017/Publications/Final_report_ENG.pdf).

<sup>375</sup> Georgia's Energy Sector. Are We Prepared to Fulfil the AA Obligations?, Open Society Georgia Foundation, July 2016, [http://www.osgf.ge/files/2016/EU%20publication/Angarishi-A4\\_-Energy\\_ENG\\_\(2\).pdf](http://www.osgf.ge/files/2016/EU%20publication/Angarishi-A4_-Energy_ENG_(2).pdf).

<sup>376</sup> Three companies are carrying out the distribution of electric energy in Georgia: "Energo-Pro Georgia", "Telasi" and "Kakheti Energy Distribution, Ministry of Energy of Georgia, [http://www.energy.gov.ge/energy.php?id\\_pages=63&lang=eng](http://www.energy.gov.ge/energy.php?id_pages=63&lang=eng).

<sup>377</sup> Civil Society Assessment, Open Society Georgia Foundation, 2017, [http://www.osgf.ge/files/2017/Publications/Final\\_report\\_ENG.pdf](http://www.osgf.ge/files/2017/Publications/Final_report_ENG.pdf).

<sup>378</sup> Association Agenda between the European Union and Georgia, 2014, the EEAS, [https://eeas.europa.eu/sites/eeas/files/associationagenda\\_2014\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/associationagenda_2014_en.pdf).

<sup>379</sup> Delegated Social Services Systems in Armenia, Georgia and Ukraine, EU Neighbours East, 25 March 2017, <http://www.euneighbours.eu/en/east/stay-informed/publications/delegated-social-services-systems-armenia-georgia-and-ukraine>.

to President Saakashvili's era free-market reforms aiming at a small state and deregulation, however implemented with control and weakening political competition as political objectives.

The first Saakashvili government ratified the European Charter on Local Self-governance in 2004, and democratic mandate of local authorities was improved by direct elections of mayors in major cities and later on the Gamgebelis (heads of municipalities in smaller towns).

Since 2003, the government started restricting the rights of self-governance bodies by moving towards full centralization of water supply and waste disposal systems, and of legal services. Before 2006 Georgia has two subnational levels of administrative territorial division: village, community, settlement, and town (1 004 units in total) and region and towns under republican subordination (69 units). The lower level was abolished in 2006.<sup>380</sup>

In 2014 the Parliament approved the new Self-Government Code increasing the number of self-governing cities to five to twelve. In July 2017 it has reversed this decision. Municipalities – 14 new municipalities were formed as a result of the 2014 reforms - were re-organized into seven municipalities again (as previously).<sup>381</sup> The new bill, what the opposition dubbed as regress and 10 civil society organizations appealed to the president about it, also merged the Gamgeoba (local executive body) and Gamgebeli (head of municipality) into the Mayor position.

Political control over local governments was evident at the transition following the 2012 parliamentary elections. 50 mayors, 25 local assembly chairs have resigned and 1877 employees were dismissed between 1 October 2012 and 28 February 2013. As the Hammarberg Report noted, hiring of new employees based on party affiliation was reported in 18 municipalities, while competitions were held in 6 only. Those appointed on the basis of their political affiliation mostly included activists and supporters of the winning Georgian Dream coalition.<sup>382</sup>

Low qualification of civil servants and full dependence on vertical line of the power is another challenge. Reducing local governments' own tax revenues have been making these bodies fully dependent on Tbilisi.<sup>383</sup> Weak capacity also lead to low level trust in local administrative bodies while there is neither serious support towards the idea of local self-governance among citizens nor a serious, public or civic initiative toward the reform so far.

## 5.2 Economic aspects of EU assistance

The EU is Georgia's largest trading partner and provides over EUR 100 million to Georgia annually in technical and financial assistance.<sup>384</sup> The EU support for Georgia includes more than 100 technical assistance projects with the indicative financial allocation up to EUR 410 million including "more for more" funds. The EU support in 2014-2017 is aimed at judiciary, public administration as well as agriculture, rural development and civil society.<sup>385</sup>

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<sup>380</sup> Policy Paper – WG1 – Democracy, Human Rights, Good Governance, Stability, Decentralization – New Challenge for Georgia, Eastern Partnership Civil Society Forum, 2014,

[http://eapnationalplatform.ge/admin/editor/uploads/files/document/PP\\_short%20version\\_WG1\\_Decentralization\\_ENG.pdf](http://eapnationalplatform.ge/admin/editor/uploads/files/document/PP_short%20version_WG1_Decentralization_ENG.pdf).

<sup>381</sup> Parliament Reduces Number of Self-Governing Cities, Civil Georgia, 3 July 2015, <http://civil.ge/eng/article.php?id=30234>.

<sup>382</sup> Georgia in Transition, Report on the human rights dimension: background, steps taken and remaining challenges. Assessment and recommendations by Thomas Hammarberg in his capacity as EU Special Advisor on Constitutional and Legal Reform and Human Rights in Georgia, EEAS, September 2013,

[http://eeas.europa.eu/archives/delegations/georgia/documents/human\\_rights\\_2012/20130920\\_report\\_en.pdf](http://eeas.europa.eu/archives/delegations/georgia/documents/human_rights_2012/20130920_report_en.pdf).

<sup>383</sup> Policy Paper – WG1 – Democracy, Human Rights, Good Governance, Stability, Decentralization – New Challenge for Georgia, Eastern Partnership Civil Society Forum, 2014,

[http://eapnationalplatform.ge/admin/editor/uploads/files/document/PP\\_short%20version\\_WG1\\_Decentralization\\_ENG.pdf](http://eapnationalplatform.ge/admin/editor/uploads/files/document/PP_short%20version_WG1_Decentralization_ENG.pdf).

<sup>384</sup> European Union External Action (EEAS), EU-Georgia relations, factsheet, 2017

[https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/23634/EU-Georgia%20relations,%20factsheet](https://eeas.europa.eu/headquarters/headquarters-homepage_en/23634/EU-Georgia%20relations,%20factsheet).

<sup>385</sup> European Union External Action (EEAS), EU-Georgia relations, factsheet, 2017

[https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/23634/EU-Georgia%20relations,%20factsheet](https://eeas.europa.eu/headquarters/headquarters-homepage_en/23634/EU-Georgia%20relations,%20factsheet).



Previous EU assistance between 2007 and 2013 (when budget support amounted to 258 million EUR)<sup>386</sup> focused on human rights, the rule of law, and conflict resolution. However, as a recent evaluation suggested, the EU was not entirely successful in transforming of Georgia due to local 'strongman' politics (with the exception of agricultural and regional development reforms).<sup>387</sup> As in its current discourse on Ukraine, the EU suggested that the lack of political will hindered the implementation of reforms regarding transparency, accountability, and effectiveness of the judiciary and penitentiary systems.<sup>388</sup>

Georgia also benefits from EU macro-financial assistance. Namely, EUR 46 million in EU macro-financial assistance (MFA) funds have been allocated to Georgia, half of which comes in the form of grants. The first tranche of EUR 23 million was disbursed in 2015 and the second one was disbursed in May 2017. The Commission has proposed a further macro-financial assistance to Georgia, 45 million in total (35 million in loans and 10 million in grants) to cover part of its external financing needs for the period 2017-2020. This proposal is currently being discussed by the co-legislators.

The EU MFA and IMF assistance have been a significant help at a time when an economic slowdown in the regions and sharp currency depreciations in Georgia's major trading partners have led to reduced exports and reduced inflows of remittances.<sup>389</sup> Importantly, disbursement delays were not due to non-compliance with the AA-related reform agenda, but with disagreements between the IMF and Georgia.

Before entering the DCFTA, Georgian businesses enjoyed the privileges of the Generalised Scheme of Preferences, which facilitated exports to the EU. But EU-Georgian relations still gained new momentum after the 2012 elections when the new government started to focus more intensely on relations with the EU. The government also made agricultural development one of its priorities.

The EU has been boosting the potential and self-sufficiency of Georgian producers with a long-term goal of strengthening the economy in the country. Within the framework of the EU4Business initiative, EU-backed credit lines facilitated access to finance for hundreds of SMEs in Georgia.<sup>390</sup>

In 2016, the EU was Georgia's key trading partner, with a 31 per cent share in its total trade (27 per cent before the DCFTA entered into force), followed by Canada (15 per cent), Turkey (around 13 per cent), Russia (about 7 per cent), China (6 per cent) and Azerbaijan (over 5 per cent). Trade with Georgia accounts for 0.1 per cent of the EU's total trade. The main EU importers of Georgian goods are Bulgaria, Italy, and Germany.<sup>391</sup> As a direct result of the DCFTA, new Georgian exports to the EU are materialising, namely agricultural products including kiwis, blueberries, nuts, garlic, and wine. Exports of honey started in December 2016. The EU also supports the development of new businesses in Georgia, most recently through the introduction of credit lines.<sup>392</sup> The DCFTA does not apply in the breakaway regions of South Ossetia and Abkhazia. The territorial clause in the Agreement permits, however, that the DCFTA apply in these two regions once the conditions for its implementation are put in place.

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<sup>386</sup> Kaca, E., Georgia: A Bright Spark Struggling with the Homework in Learning from Past Experiences: Ways to Improve EU Aid on Reforms in the Eastern Partnership Report, The Polish Institute of International Affairs (PISM), 2014, [https://www.pism.pl/files/?id\\_plik=17080](https://www.pism.pl/files/?id_plik=17080).

<sup>387</sup> European Commission, European Neighborhood and Partnership Instrument: Georgia. Country Strategy Paper (2007-2013). [http://www.esiweb.org/pdf/georgia\\_EC-ENPI-Georgia-2007-2013.pdf](http://www.esiweb.org/pdf/georgia_EC-ENPI-Georgia-2007-2013.pdf).

<sup>388</sup> Evaluation of the European Union's co-operation with Georgia (2007-2013), European Commission, May 2015, [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial\\_assistance/phare/evaluation/2016/20160927-geo-cse-volume-1-to-3.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/phare/evaluation/2016/20160927-geo-cse-volume-1-to-3.pdf).

<sup>389</sup> Report from the Commission to the European Parliament and the Council on the implementation of macro-financial assistance to third countries in 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:321:FIN>.

<sup>390</sup> European Commission Evaluation, 2015.

<sup>391</sup> EU-Georgia relations, factsheet, EEAS, 28 March 2017, [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/23634/EU-Georgia%20relations,%20factsheet](https://eeas.europa.eu/headquarters/headquarters-homepage_en/23634/EU-Georgia%20relations,%20factsheet)

<sup>392</sup> European Union External Action (EEAS), EU-Georgia relations, factsheet, 2017 [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/23634/EU-Georgia%20relations,%20factsheet](https://eeas.europa.eu/headquarters/headquarters-homepage_en/23634/EU-Georgia%20relations,%20factsheet).

Georgia remains a middle-income country according to the World Bank, yet it is 138<sup>th</sup> in the world in terms of GDP per capita.<sup>393</sup> GDP growth rates are only slightly more impressive—3.1 per cent in 2016 and 2.8 per cent in 2015, or 90<sup>th</sup> in the world.

Agriculture accounts for less than 9 per cent of GDP while it contributes to almost 50 per cent of the country's employment.<sup>394</sup> SMEs share in GDP is low, compare to over 90% of all active enterprises and employing over 40% of the population, it has remained around 20 per cent for the last many years.<sup>395</sup> This figure calls for more drastic measures to be undertaken both by the Georgian government and its partners—including the EU.

Georgia performed and continues performing better than any other post-Soviet state. The evaluation of EU aid to Georgia between 2007 and 2013 concludes that despite numerous limitations facing the EU, it generally managed to promote European standards and practices, enhanced the potential of Georgia for further integration, and considerably reduced poverty in the country.

Over the last several years, the EU's approach has shifted from focusing on political affairs to emphasising a more holistic relationship. As a result, financial investment in Georgia have been much greater since 2014 and the country has made larger strides forward.

### 5.3 DCFTA implementation

Legal approximation related to the DCFTA implementation is largely according with the schedule of EU-Georgia Association Agenda when it comes to aspects related to trade in goods, particularly in national treatment and market access, technical barriers to trade, public procurement. Areas such as competition policy, intellectual property rights, customs services and food safety needs a bigger focus.<sup>396</sup>

According to state statistics, the DCFTA has not delivered its expected grow potential despite the fact that the authorities have undertaken a number of important steps to implement food safety measures and make the Georgian agriculture sector more competitive. This is mostly due to a lack of information and understanding on the part of Georgian farmers.

Importantly, Georgian exports to the EU grew sharply in 2013 (and before the DCFTA), as Tbilisi carried out liberal reforms previously. Exports to the EU have increased since 2014 while imports from the EU have remained at essentially the same level for the last few years.

#### EU share of Georgian imports/exports:<sup>397</sup>

2011	19.4 % / 28.9 %
2012	14.8 % / 30 %
2013	20.8 % / 27.5 %
2014	21.8 % /
2015	29.2 % / 28.5 %
2016	27 % / 30 %
2017 (January-June)	24 % / 28 %

Source: National Statistics Office of Georgia.

<sup>393</sup> The World Factbook, Georgia, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/gg.html>.

<sup>394</sup> Georgia Neighborhood SME Financing, European Investment Bank, February 2016,

[http://www.eib.org/attachments/efs/economic\\_report\\_neighbourhood\\_sme\\_financing\\_georgia\\_en.pdf](http://www.eib.org/attachments/efs/economic_report_neighbourhood_sme_financing_georgia_en.pdf).

<sup>395</sup> Georgia, Education, Training and Employment Developments 2016, European Training Foundation, 2017,

[https://www.etf.europa.eu/webatt.nsf/0/233AD94A2CEBED50C12580E60051DF39/\\$file/Georgia%202016.pdf](https://www.etf.europa.eu/webatt.nsf/0/233AD94A2CEBED50C12580E60051DF39/$file/Georgia%202016.pdf).

<sup>396</sup> DCFTA Implementation in Georgia, German Economic Team in cooperation with ISET Policy Institute, April 2017,

[http://www.get-georgia.de/wp-content/uploads/2017/05/PB\\_03\\_2017\\_en.pdf](http://www.get-georgia.de/wp-content/uploads/2017/05/PB_03_2017_en.pdf).

<sup>397</sup> External Trade, National Statistics Office of Georgia, 2017, [http://geostat.ge/index.php?action=page&p\\_id=134&lang=eng](http://geostat.ge/index.php?action=page&p_id=134&lang=eng).

Trade with the EU compared to trade with Russia over the same period reveal that imports to Russia have grown since 2013. This is mainly because Moscow lifted its trade embargo against Georgia in 2013, which it had imposed in 2006.

2011	1.67 % / 5.4 %
2012	1.9 % / 5.9 %
2013	6.5 % / 7.2 %
2014	9.6% / 6.6%
2015	7.3% / 8.5%
2016	9.7% / 9.2%
2017 (January-June)	15% / 9%

Source: National Statistics Office of Georgia<sup>398</sup>

Statistically, the volume of trade with the EU would have been larger (percentage-wise) had the embargo not been lifted. The inflow of tourists from Russia has also been growing substantially. In January-July 2017, more than 726 000 Russian tourists visited Georgia (a 35 per cent increase compared to the same period in 2016).

DCFTA implementation is directly linked to agricultural and rural development. According to the Association Agenda, Georgia and the EU will 'cooperate in facilitating the gradual adoption of marketing standards for agriculture products to support a higher food safety and the implementation of quality schemes; improving the competitiveness of agricultural production, by fostering economies of scale via market-oriented agriculture cooperatives, by developing advisory and 25 extension systems to increase production and augment exports; and by easing access to viable credit and financial resources for agriculture; modernising institutions responsible for agriculture development, including through participation of all relevant sector stakeholders in this process; the progressive convergence towards effective agricultural and rural development policies, on the basis of proven EU models'.<sup>399</sup>

Georgia has undertaken a number of steps to meet the goals outlined in the agenda, including legislation aimed at improving food safety. But the implementation of these acts remains a serious issue since the relevant governmental agencies' outreach is limited and farms and households suffer from lack of information related to food safety requirements.<sup>400</sup>

To encourage the development of cooperatives, meetings are held regularly to inform relevant audiences about certain requirements and benefits. Equipment has been distributed among newly created cooperatives. Information and Consultation centres have also opened in the regions. Preferential agriculture credits are provided to farmers, but so far only a small portion of farmers have benefitted.

The authorities are also doing quite well with institutional reforms, as the National Food Agency (NFA) started working on the Institutional Reform Plan (IRP) and the Strategy for Agricultural Development for 2015-2020 has been adopted. Overall, the Georgian authorities want to undertake most of the necessary steps to implement the agenda. The failure of Georgia to benefit from DCFTA is explained not by a lack of political will on the part of the government, but rather by problems related to conservative attitudes of Georgian farmers.

<sup>398</sup> External Trade, National Statistics Office of Georgia, 2017, [http://geostat.ge/index.php?action=page&p\\_id=134&lang=eng](http://geostat.ge/index.php?action=page&p_id=134&lang=eng).

<sup>399</sup> Association Agenda between the European Union and Georgia, 2014, the EEAS, [https://eeas.europa.eu/sites/eeas/files/associationagenda\\_2014\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/associationagenda_2014_en.pdf).

<sup>400</sup> Implementation of EU-Georgia Association Agreement, Assessment by Civil Society, Open Society Georgia Foundation, March 2017, [http://www.osgf.ge/files/2017/Publications/Final\\_report\\_ENG.pdf](http://www.osgf.ge/files/2017/Publications/Final_report_ENG.pdf).

## 5.4 Institutional frameworks for coordination and implementation of the AA/DCFTA

Georgia's EU Integration Commission, created in 2004 and reorganised in 2016, is in charge of AA/DCFTA implementation. The commission is chaired by the prime minister. In the event of the prime minister's absence, the commission is chaired either by the State Minister on European and Euro-Atlantic Integration or the Minister of Foreign Affairs. The prime minister also chairs the Association Council from the Georgian side.

The commission is the decision-making body that facilitates the EU integration process (including the implementation of AA/DCFTA), organising cooperation with the EU and its member states, preparing recommendations for the government, facilitating the harmonisation of Georgian legislation with the EU *acquis*, and discussing recommendations of the EU-Georgia Cooperation Council, Committee, and Subcommittees.<sup>401</sup>

The Office of the State Minister on European and Euro-Atlantic Integration is the primary body tasked with dealing with the commission and coordinating its activities. The EU Assistance Coordination Department (a unit within the Office of the State Minister on European and Euro-Atlantic Integration) is in charge of coordinating and preparing the implementation of EU assistance programs and projects as well as drafting international agreements and project proposals related to EU assistance.<sup>402</sup>

The Information Centre on NATO and the EU (the unit under the Office of the State Minister on European and Euro-Atlantic Integration) deals with raising public awareness on the EU.

The Georgian Parliament has a Committee on the EU Integration. It works on relevant legislation and oversees the activities of the relevant governmental bodies. It also works to consolidate public opinion on the EU integration process.

## 5.5 Recommendations

Georgia has been the undisputed exemplar in the Eastern Partnership, adopting a large number of laws and approximating Georgian legislation and institutional structures to EU standards and requirements even before the Agreement came into force. Ensuring the implementation of adopted legislation, strengthening the inclusivity and accountability of state institutions, and advancing redistributive policies aimed at fight poverty and inequality should be prioritised going forward.

The EU's assistance to Georgia has proven efficient in a number of areas such as access to loans for small SMEs and support for various reforms especially in the field of energy. However, to sustain these reforms, further steps need to be taken, preferably in a non-partisan manner. For many, the EU is still seen as having been too close to former President Mikheil Saakashvili.

Special attention should be paid to the judiciary and to agriculture: the former is critical for the functioning of Georgia's democracy and the latter is essential the country's further socio-economic advancement. When it comes to cross-cutting issues, the inclusion of national and other minorities and a wider spectrum of anti-discrimination measures should be prioritised in designing the EU's assistance programs in Georgia.

Civil society should be given more space to provide input to the EU-Georgia Association Agenda than is currently the case in order to ensure the Agenda is inclusive and reflects the needs of a wider variety of stakeholders.

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<sup>401</sup> Information on creation of Georgia's EU Integration Commission, Office of State Minister of Georgia on European and Atlantic Integration, <http://www.eu-nato.gov.ge/en/eu/gov-commission>.

<sup>402</sup> Information on EU Assistance Coordination Departments Functions, Office of State Minister of Georgia on European and Atlantic Integration, <http://www.eu-nato.gov.ge/en/eu/assistance/department>.

### 5.5.1 Electoral reforms

The EU should continue to monitor the implementation of the recently-adopted Constitutional changes, especially in regard to the introduction of the fully proportional election system, implementation of which was postponed until 2024 instead of the 2020 elections. These amendments entered into force after the parliament overrode the presidential veto on 13 October 2017.

The newly-adopted changes might help improve the election environment in the longer term, for example by lowering the threshold for entering the parliament from the current 5 per cent to 3 per cent. However, several recommendations of the Venice Commission<sup>403</sup> were ignored such as the votes cast for parties that fail to pass the threshold will be all given now to the winner of the elections. Moreover, electoral blocks are not allowed to be formed in the 2020 elections.

The ruling majority adopted these changes without reaching a consensus with the president or the opposition, which suggests that the risk of power abuse by the majority could further increase both when it comes to the next parliamentary elections but also when it comes to Georgia's governance in general.

### 5.5.2 Anti-corruption and judicial reforms

The EU-Georgia Association Agenda should entail more specific steps and changes required to make the chief prosecutor's office more independent and politically neutral. More concretely, this should include a more balanced composition of the Prosecutorial Council and a strengthening of the institutional independence of the prosecutor's office from the Ministry of Interior. The probationary period of judges should be modified in a way that reduces possibilities to use the mechanism as a means of influencing the judges, and a better mechanism for conducting judges' background checks should be introduced. The electronic distribution of cases should be launched fully at all court levels. Given the importance of an independent judiciary for Georgia's democracy, the EU should consider linking its macro-financial assistance to Tbilisi's concrete progress in this area.

### 5.5.3 Anti-discrimination

The introduction of effective anti-discrimination measures will continue to be a challenge in Georgia, given the influence of the Georgian Orthodox Church and the socially-conservative mind-set of society. The EU should take this local context into account and focus its assistance on strengthening institutions such as the Public Defender's Office—whose mandate is up for renewal at the end of this year—which should be further empowered to address discrimination cases. This includes the ability to impose fines and sanctions if discrimination is proven.

Another way of addressing the challenge is by requesting concrete steps from Georgia's government agencies that are recipients of EU funds, including possibly quotas for women in government. Representatives of NGOs representing minorities and vulnerable groups, including national minorities, LGBTI communities, and women, should be more involved in designing antidiscrimination projects and legislation and their inclusion should become mandatory for EU-funded initiatives in this area. Finally, Georgia should be encouraged and assisted to ratify the European Charter for Regional or Minority Languages.

### 5.5.4 Media

The independence of the broadcasting regulatory body and public service broadcasters should be strengthened and these requirements should be included in the Association Agenda, in line with the Council of Europe recommendations. More specifically, this includes greater financial independence for

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<sup>403</sup> Venice Commission about the Constitutional Amendments to the Georgian Constitution, Council of Europe's press release, 19 June 2017, <https://www.coe.int/en/web/tbilisi/-/the-venice-commission-about-the-constitutional-amendments-to-the-georgian-constitution>



the public broadcaster and a decrease in political interference in Georgia's media market. The EU, together with other donors and the government of Georgia, should also provide greater support to regional media and set up funds for investigative journalism. Although the government has already set up quite a comprehensive program to address Russian propaganda, the EU should insist that these counter measures do not affect Russian-language media as such, given their importance, especially for several national minorities in Georgia. Finally, the EU should consider providing support to expanding internet access outside Georgia's main cities to ensure citizens here have access to a greater variety of information.

### 5.5.5 The DCFTA

Reorientation of Georgia's economy towards the EU is ongoing, albeit at a slower pace than many would like. The Russian market will remain critical for certain sectors of the country's economy. The EU should encourage Georgian authorities to develop and implement a comprehensive public awareness campaign to ensure that farmers and other economic stakeholders are fully informed of benefits and costs of the DCFTA and of the tools available to manage necessary adjustments and their costs.

The pool of loans for SMEs should be expanded and complimented by a small fund for farmers to enhance their phytosanitary standards. In the field of energy, the EU should closely monitor the developments of Georgia's energy market and insist that the implementation of relevant AA measures continues swiftly, including in introducing greater transparency in relations between energy investors and relevant government agencies.

### 5.5.6 Civil society

The EU could improve its strategy of funds allocation in this particular sector, given that it is often one large NGO in Georgia that receives most of the funds dedicated to the non-governmental sector and then distributes them among other NGOs. While this would entail the increase of the EU Delegation's capacity on the ground, the investment is necessary in order to ensure that EU funds reach beyond the 'usual suspects' and assist those in greatest need. The EU should also insist more forcefully that Georgia's civil society is involved in the drafting stages of the Association Agenda.

## 6 Conclusions

Signing and ratifying Association Agreements with Georgia, Moldova, and Ukraine has proven to be an impressive affirmation of Brussels' soft power. The EU's overture has persuaded elites and mobilised societies within the Eastern Partnership countries, despite the fact that the Agreement comes neither with a membership promise nor with the kind of financial assistance that is given to the EU's Central European member states.

Ratifying the Association Agreement has had a profound effect on the multi-vector foreign policies in these countries, meaningfully aligning them with the EU and other Western institutions. There is strong public support for Western integration in Ukraine and Georgia. In Moldova, the Russian foreign policy vector continues to tempt the ruling class due to large-scale corruption and poor governance by pro-Western governments, though support for closer association with the EU remains strong.

Moldova is a reminder that associations with the EU will ultimately be measured by social and economic progress in a given country, not by the number of laws that are passed. Poverty and paternalism, particularly in rural areas, are the biggest enablers of state capture efforts by oligarchs, and EU aid should address these in a more structured way, focusing on de-politicisation, decentralisation, and strengthening state capacity through public administration reforms. Challenges in Moldova illustrate just how difficult European economic integration is to promote in rural areas.

Although it is too early to evaluate the effects of DCFTA, exports to the EU have risen in all three countries. Ukraine's share of exports to the EU increased from 25 per cent in 2012 to 37 per cent in 2016, though this

increase was chiefly due to the rupture of trade relations with Russia. The EU has consolidated its position as Moldova's main trading partner, with Moldovan exports to the EU increasing in 2016 to account for 63 per cent of the country's total. However, in the first year of DCFTA implementation (2015), the value of Moldovan exports to the EU decreased due to continued political instability and the banking fraud scandal. In Georgia, the DCFTA itself has not boosted exports to the EU substantially, but together with EU assistance it has still stimulated agricultural production. In each country, a lack of information about the AA/DCFTA and a lack of support for SMEs remain the biggest obstacles to making the agreements' benefits more tangible.

Beyond promoting economic and sectoral integration via the DCFTA, EU assistance has been especially effective in restoring macro-financial stability in all three countries as well as in promoting the main goals of the European Neighbourhood Policy (ENP)—including reducing poverty and promoting European values.

While the costs of compliance with the DCFTA were calculated in advance and were well-known, the investment costs associated with the agreements, such as the modernisation of industry, were not. Moreover, the quotas for each country's exports to the EU were allocated under vastly different economic conditions—all three countries have suffered since then from an economic crisis, and Ukraine has endured a costly war—and need to be updated. The EU is not planning to provide compensation for opening up trade, as it has with the Central and East European member states.

Furthermore, EU assistance to Ukraine is tied to the IMF's financial package, prioritising austerity and privatisation for the sake of macroeconomic stabilisation. Given the structure of Ukraine's economy, state enterprise restructurisation (and the facilitation of investors) as well as re-industrialisation may be a better way forward. This, however, will entail substantial additional costs, as well as greater efforts to increase state capacity and fight corruption and rent-seeking.

There has been technical and legislative progress with regards to AA implementation, especially in Georgia but also Ukraine and in Moldova. The key challenges are rule of law and judicial reforms and the lack of political will to depoliticise state institutions. Amidst extreme polarisation and regime-change efforts, controlling these institutions has been at the very heart of governance for the past decade. The EU's sometimes partisan approach has not challenged such a governance model. Accordingly, current consolidation efforts, which lean towards state capture and authoritarianism, should not come as a surprise. Efforts at media reform in the region should focus less on private ownership, as the situation in these three countries is not that different from the media landscape in some EU member states, and more media literacy programs.

The EU's achievements to date are fragile. Informal institutions continue to play important roles in these countries and have the potential to thwart reforms. Corruption, state capture claims, political polarisation and infighting, and using Russia's role in the regions as a mobilising factor for the West are part of the resistance to reforms. The EU's lack of consistency when it comes to its own conditionality plays a role as well and has further undercut the effectiveness of the EU's steps in the region.

Internal political dynamics led to a power grab by the wealthiest oligarchs in Ukraine and Moldova that continues to undermine Brussels' best policy intentions. The EU should be careful to avoid being seen as backing certain governments and/or political fractions, while encourage cooperation across sectoral and political lines (i.e. across coalition and opposition groups). Even though Georgia is also under the political influence of its own oligarch and suffers from deep polarisation, Tbilisi has been the site of some of the most serious reform efforts, a peaceful political transition in 2012, and normalised trade both with the EU and Russia, making it the 'success story' of the three countries.

Since the Agreement came into full force, the EU has already cut back its solidarity rhetoric towards Ukraine in order to put more emphasis on conditionality and reforms. As the past three years show, Russian

aggression alone has not proved to be a trigger for reforms; Western conditionality has. Greater political will is still missing in important sectors.

The AA/DCFTA and associated assistance prove to be key drivers of reform in these countries. Reform has been driven mainly, particularly in Ukraine, by direct support programs, where financial support is combined with technical advice and monitoring programs. Local dynamics, particularly the impact of informal institutions formed around vested interests, have proven to be strong in Moldova and Ukraine.

Although many sectors remain far from achieving approximation, the main emphasis for the EU is implementation, not simply legislation adoption, in all three countries. In some areas, approximation has been a strong framework for co-operation, while in other areas the key challenge is implementation. Problems and constraints stemming from insufficient political will and limited state capacity have set back all three countries. As a result, advances in policy frameworks and engagement have been more impressive than the concrete results resulting from the implementation of reform.

Last but not least, it is important to note that local political development will ultimately play a more important role in reform than EU pressure and conditionality. As the Georgian experience shows, reforms need political consolidation. Yet in the absence of strong, de-politicised institutions, such consolidation may trend towards the authoritarian. The EU should support political consolidation—the alternative is further polarisation and political fragility—but at the same time insist on adherence to democratic standards and strengthened institutional checks and balances.

## 7 Annexes

### 7.1 Acronyms and abbreviations

AA – Association Agreement  
ACAA – Agreement on Conformity Assessment and Acceptance  
ALDE – Alliance of Liberals and Democrats for Europe  
AMP – Aid Management Platform (Moldova)  
APO – Anticorruption Prosecution Office  
ATCs – amalgamated territorial communities (Ukraine)  
CBC – Cross Border Cooperation  
CBM – Confidence Building Measures Program  
CC – Constitutional Court of Ukraine  
CEE – Central and Eastern Europe  
CEC – Central Election Commission  
CSDP – Common Security and Defence Policy  
CIS – Commonwealth of Independent States  
CSOs – Chief Security Officers  
COEST – Working Party on Eastern Europe and Central Asia  
DCFTA – Deep and Comprehensive Free Trade Area  
DSM – Dispute Settling Mechanism  
EBRD – European Bank for Reconstruction and Development  
ECHR – European Court of Human Right  
ECRI – European Commission against Racism and Intolerance  
EIB – European Investment Bank  
EnCT – Energy Community  
ENPARD – European Neighbourhood Program for Agriculture and Rural Development  
ENTSO-E – European Network of Transmission System Operators  
EPP – European People’s Party  
E5P – Eastern Europe Energy Efficiency and Environment Partnership  
EUAM – European Union Advisory Mission (Ukraine)  
EUBAM – EU Border Assistance Mission to Moldova and Ukraine  
ESRA – Economic Stimulation of Rural Areas  
EUHLPAM – EU High-Level Policy Advice Mission  
FDI – Foreign Direct Investment  
GC-EEI – International Cooperation and Regional Development (Ukraine)  
GCEI – Government Committee for European Integration (Moldova)  
GDS – Georgian Dream Studio  
GOEEI – Governmental Office on European and Euro-Atlantic Integration (Ukraine)  
GPO – General Prosecutor Office  
IATF – Inter-Agency Task Force on Free and Fair Elections (Georgia)  
IDPs – Internally Displaced Persons  
IFIs – International Financial Institutions  
IRP – Institutional Reform Plan (Georgia)  
IMF – International Monetary Fund  
MEI – Ministry of Economy and Infrastructure (Moldova)  
MFA – macro-financial assistance  
MFAEI – Ministry of Foreign Affairs and European Integration (Moldova)  
MoU – Memorandum of Understanding  
NABU – National Anti-Corruption Bureau (Ukraine)  
NACP – National Agency on Corruption Prevention (Ukraine)  
NAPIAA – National Action Plan for the Implementation of the Association Agreement (Moldova)  
NATO – North Atlantic Treaty Organization  
NCR – National Council for Reforms (Ukraine)

NDI – National Democratic Institute  
NFA – National Food Agency  
NIA – National Integrity Authority, former National Integrity Commission (Moldova)  
NPLA – Draft Annual Action Plans of the Government on Legal Harmonization to the EU acquis (Moldova)  
ODHIR – Office for Democratic Institutions and Human Rights  
OLAF – European Anti-Fraud Office  
OSCE – Organization for Security and Co-operation in Europe  
PDM – Democratic Party (Moldova)  
PJSC – Public Joint-Stock Company  
PFPR – Public Finance Policy Reform (Moldova)  
PL – Liberal Party  
PLDM – Liberal Democratic Party of Moldova  
PPEM – European People’s Party of Moldova  
PRCM – Community Party of the Republic of Moldova  
SAGSUR – Strategic Advisory Group for Support of Ukrainian Reforms (Ukraine)  
SAPO – Special Anti-Corruption Prosecutor Office (Ukraine)  
SBU – Security Service of Ukraine  
SCM – Superior Council of Magistracy (Moldova)  
SMEs – Small and medium-sized enterprises  
TRQ – tariff-rate quotas  
VET – Vocational Education and Training  
VLAP – Visa Liberalization Action  
UNDP – United Nations Development Program  
USAID – United States Agency for International Development



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PHOTO CREDIT: iStock International, Inc.

ISBN 978-92-846-2219-1 (paper)

ISBN 978-92-846-2220-7 (pdf)

doi:10.2861/655603 (paper)

doi:10.2861/489093 (pdf)

