

JOINT EVALUATION REPORT EU-UKRAINE ACTION PLAN

I. CONTEXT

The EU-Ukraine Action Plan, complemented by EU Council conclusions which underlined the EU's commitment to support Ukraine, was endorsed in February 2005 for a period of three years. It served as a day-to-day tool for guiding and monitoring EU-Ukraine cooperation and as an instrument to move forward the reform process in Ukraine. It became a point of reference for meetings under the Partnership and Cooperation Agreement (PCA). In March 2007, the EU and Ukraine opened negotiations on a New Enhanced Agreement (NEA) which is to go beyond the Partnership and Cooperation Agreement and the Joint Action Plan wherever possible.

Against this background, the EU and Ukraine have agreed on the following points:

- Good progress has been achieved in the implementation of the EU-Ukraine Action Plan. In view of ongoing NEA negotiations, the Action Plan will be maintained and should serve as a tool for EU-Ukraine cooperation for maximum one more year.
- Both sides will carry out a short, informal joint evaluation of the implementation of the Action Plan which will also refer to additional specific measures for 2008.
- End of 2008/beginning of 2009 both sides will develop a new joint tool ("guideline", "action plan", "roadmap" or other, - name to be decided), which is to take account of the issues which will have been agreed at that stage in the NEA negotiations and which is to prepare the entry into force of the NEA.

In line with this agreement, this joint evaluation report provides a short overview of the implementation of the EU Ukraine Action Plan since the entry into force, taking also into account the Council conclusions of February 2005. This document does therefore not represent a comprehensive, detailed assessment. Such assessments have regularly been issued by the two sides. The objective of this evaluation is to take briefly stock of the developments in main areas covered by the Action Plan over the last three years, highlighting selected priorities of the Action Plan. In addition, the report will refer to a number of specific additional measures to be carried out in 2008.

II. KEY FINDINGS IN SELECTED AREAS OF COOPERATION

Political dialogue and reform

Political dialogue: Since the adoption of the EU-Ukraine Action Plan, the wide-ranging political dialogue between the EU and Ukraine has been further intensified. Regular consultations are held at the meetings of the EU-Ukraine summits, the EU-Ukraine Cooperation Council, EU-Ukraine Ministerial Troika meetings and Troika meetings between the EU Political and Security Committee and Ukraine. There are also constant

informal exchanges of views between the Ukrainian Foreign Ministry and the EU, including with the EU Special Representatives and the Secretariat.

Democracy and the rule of law: The March 2006 parliamentary elections and the 30 September 2007 pre-term parliamentary elections in Ukraine were observed by International Observer Missions under the leadership of the OSCE/ODIHR. For both elections it was concluded that the elections were conducted largely or mostly in line with OSCE and Council of Europe commitments and other international standards for democratic elections. The international observers found that the elections took place in an open and competitive environment.

Constitutional reform to establish the necessary check and balances between the main state institutions remains a key priority for Ukraine. The Council of Europe's Venice Commission has given recommendations concerning the roles of the President, the Government, the Verkhovna Rada and the Constitutional Court.

The reform of the judiciary, through an inclusive reform aimed at ensuring its independence, impartiality and effectiveness, remains a top priority for Ukraine. The proper functioning and independence of the Constitutional Court need to be ensured.

An important step in the fight against corruption was taken with Ukraine's membership in the Council of Europe's Group of States against Corruption (GRECO) in January 2006. The UN Convention on Anti-Corruption remains to be ratified. Fighting corruption remains a top priority for the government.

Human rights and fundamental freedoms: The situation regarding respect of human rights and fundamental freedoms has considerably improved over the last three years. The citizens of Ukraine enjoy wide-ranging pluralism in both electronic and print media. The transformation of the state television and radio companies into public broadcasters remain high on the agenda for Ukraine. Further measures, for example regarding the ill treatment of prisoners, remain a priority for the government.

The Rome Statute of the International Criminal Court remains to be ratified by Ukraine.

CFSP and security issues: Co-operation on CFSP matters has significantly increased in scope and in substance. Ukraine has aligned itself with most of EU foreign policy declarations. Ukraine took part in the EU Police Mission in the former Yugoslav Republic of Macedonia (EUPOL PROXIMA) and the EU Police Mission in Bosnia-Herzegovina (EUPM). The EU-Ukraine Agreement on the security procedures for the exchange of classified information entered into force in February 2007. The EU and Ukraine have further strengthened their cooperation on regional issues, in particular the Transnistria settlement and the Black Sea region, including on the Southern Caucasus. The positive results of the Meeting of Foreign Ministers of the European Union and the countries of the Black Sea region on 14 February 2008 in Kyiv highlighted the potential contributions that the parties can make to fostering regional cooperation.

The EU and Ukraine committed to continue consultations on the possible EU use of Ukraine's long haul air transport capacities. The matter was discussed on a number of occasions since the launch of the EU – Ukraine Action Plan. However, no practical progress has been achieved so far. The Ukrainian side repeats its readiness and expects

further steps to be taken by the EU in order to provide for the early launch of such consultations.

Supported by the **EU Border Assistance Mission to Moldova and Ukraine** (EUBAM), Ukraine has developed co-operation with Moldova on border questions, covering the entire Ukraine-Moldova border, including effective information exchange on the flow of goods and people across their common border. The purpose of the EUBAM is to enhance the capacities of the Ukrainian and Moldovan services on this border and thereby provide a valuable contribution to the settlement of the Transnistria conflict. Recently, Ukraine has reached arrangements to finalise the demarcation of the Ukraine – Moldova border, including its Transnistrian segment, and encourages the EU to provide relevant technical assistance.

Assistance in the area of **control of exports of WMD related dual use items** continues to be provided to the Ukrainian authorities.

Economic and social reform and development

Macro-economic developments: Following a slow down of economic growth in 2005, the last two years have seen robust economic growth (in 2007: 7.3%), supported by strong domestic demand fuelled by rapid credit expansion and wage growth. Inflation accelerated throughout 2007, reaching 16.6% (year-on-year) in December 2007, driven by food prices and services (notably energy). State intervention in the economy through direct subsidies and tax breaks should be disciplined and progressively reduced. Open and transparent privatisation procedures should be based on a formal mid-term privatisation strategy. International surveys on the ease of doing business have not shown tangible improvements in Ukraine over the last three years, which therefore remains a priority for the country, i.a. through a wide-ranging tax reform, risk-based and less burdensome administrative controls, and the simplification of the licensing system.

Social developments: While the overall unemployment rate has decreased to 6.8%, Ukraine still faces major challenges such as a shortage of qualified workers, a lack of quality jobs and the large share of the informal economy. The adoption of a new modern Labour code is a priority for the government and social dialogue needs to become more effective.

Trade, market and regulatory reform

Trade trends: Total trade between the EU and Ukraine has progressively increased over the three years. Growth in EU exports has slightly exceeded growth in EU imports from Ukraine. The EC-Ukraine steel and textiles agreements were successfully implemented over the period and contributed to an increase of trade in these product groups (both agreements will end with Ukraine's formal accession to the WTO). In line with the EU Council conclusions of February 2005, the EU granted Market Economy Status to Ukraine in December 2005. The feasibility study on the free trade area, mentioned in the same conclusions, was presented in February 2006. Following the introduction of grain export limitations in 2006 and similar export restrictions in other areas, Ukraine has

agreed that for the future such limitations would be temporary; should be introduced only when it was really needed, in a fully justified and transparent manner, taking into account Ukraine's legal obligations; and should be implemented in a non-discriminatory manner.

WTO: Regarding Ukraine's participation in the multilateral trade framework, Ukraine has been strongly engaged to promote its accession process to the WTO. For example, various law packages necessary to fulfil Ukraine's bilateral and multilateral WTO commitments were approved. This work led to the finalisation of the accession process in February 2008, with the adoption of the WTO Working Party Report by the WTO General Council on 5 February. After ratification, Ukraine will focus on the faithful implementation of multilateral commitments. The adoption of the WTO Working Party Report opened the door for the start of negotiations on 18 February on the deep and comprehensive Free Trade Area to form a core element of the New Enhanced Agreement.

Selected key issues:

Further steps towards improving the **business and investment climate** in Ukraine, including a transparent and predictable legal and administrative framework as well as an independent judiciary, are essential.

As regards **financial services**, progress has been achieved through the adoption of WTO-related banking and insurance legislation, but further steps are needed, including the adoption of rules on the introduction of disclosure rules regarding the ownership of banks and a unified approach to the drafting of the new Law "On Insurance", which would ensure closer conformity with relevant European and International rules and commitments.

On **customs**, progress has been made regarding the adoption of international customs standards, legislative approximation with the EU, upgrading the capacity of the customs service, and improving relations with economic operators. There have also been positive developments in facilitation and speeding up of customs procedures, including measures to implement the concept of a "single window" at the borders. Further measures, to modernise customs procedures and fight corruption, are being envisaged. On **technical standards**, Ukraine negotiated and started to implement the Agreement of Conformity Assessment and Acceptance of Industrial Products (ACAA). While many legislative and normative changes have been introduced, the priority now is to focus on structural reforms of Ukraine's quality control system. On **sanitary and phytosanitary** issues, cooperation has strengthened due to a number of missions to Ukraine by the EU's Food and Veterinary office in 2006 and 2007. The EU took note of the Ukrainian side's proposal to start discussions on a veterinary agreement, and suggested that this could be envisaged at an appropriate time in the framework of the NEA. Regarding the establishment of a modern **company law framework**, a new law on Joint Stock Company still needs to be adopted. A new tax code, which is supposed to replace and consolidate more than 200 regulations in force, has so far not been adopted and remains a priority for Ukraine. In this context, the timely reimbursement of VAT refunds for exporters and generally economic operators in Ukraine remains an important area where action is required for improving the business climate for investors. Following the entry into force of new EU legislation on registration, evaluation, authorization and restrictions

of chemicals (REACH), the two sides will continue exchanging views on the implementation of this legislation and in particular its relevance for Ukraine.

A regular dialogue on **agriculture and rural development** between the EU and Ukraine has led to increased cooperation in this area. Consultations on the negotiations of an Agreement on geographical indications have started. On **intellectual property rights**, EU and Ukraine established a regular dialogue and progress has been made in upgrading relevant legislation; further measures regarding implementation and enforcement of the rules will need to be taken. As regards **public procurement**, changes in the legislative and administrative set-up in Ukraine have overall reduced transparency and hampered the efficiency of the public procurement system in Ukraine. A first **Euro Info Correspondence Centre** was opened in Kyiv on 1st November 2005 with EC support. Discrepancies in trade **statistics** have continuously been the subject of discussions between the relevant authorities of Ukraine and the EC and further consultations are envisaged.

Co-operation on Justice, Freedom and Security (JFS)

Ukraine introduced unilaterally visa-free treatment for nationals of EU Member States and, following the enlargement of the EU in 2007, extended this treatment to the new EU Member States. The EU and Ukraine negotiated and concluded visa facilitation and readmission agreements, which entered into force on 1 January 2008. The visa agreement aims at facilitating access of Ukrainian citizens to EU visas, including the waiving of visa and visa fee requirements for certain categories. The EU side undertook to ensure that the visa facilitation agreement is fully implemented, in a consistent manner. This is a priority for the EU. Both sides also underlined the need to fully implement the readmission agreement.

Ukraine is now in the process of negotiating and concluding bilateral agreements with its neighbours on small border traffic. Together with the visa facilitation agreement, these agreements should address some of the direct effects of these countries' entry into Schengen.

A new JFS Action Plan was endorsed in June 2007 and constitutes the basis for EU-Ukraine cooperation in this area. In order to ensure progress, the Action Plan is accompanied by a Scoreboard, to monitor implementation of objectives set out in the Action Plan, which is updated at regular meetings between Ukraine and the Commission.

Frontex and Ukraine concluded a working arrangement as a step towards their operational cooperation on border management issues. Concluding a strategic cooperation agreement between Ukraine and Europol, aimed at enhancing the common fight against organised crime, remains a priority. Subject to Ukraine's ratification and implementation of the Council of Europe 1981 data protection convention, the resumption of negotiations on such an agreement is considered a priority. Ratification and implementation of this convention would also contribute to enhancing the contacts between Ukraine and Eurojust, which remains a priority for both sides. Ukraine has made considerable progress in anti-money laundering by adopting national legislation aimed at aligning with the EU Third Directive on Money Laundering and the FATF recommendations. Ukraine ratified the 2nd Optional Protocol to the International

Covenant on Civil and Political Rights, which provides for the abolition of the death penalty. The EU and Ukraine have continued their dialogue on migration and mobility issues. Ukraine has taken steps to continue the process of legal approximation to the EU standards in the field of asylum and interpersonal protection.

The EU and Ukraine cooperated closely on the reform of the State Border Guard Service based on the Service's development concept up to 2015, aimed at making the Service "Schengen-compatible". As of January 2008, conscripts are no longer recruited for border guarding. A new recruitment system has been introduced, and a reform of the career development system has been initiated.

Work also started on improving infrastructure and procedures within the area of readmission, aimed at meeting EU standards.

Energy, transport, the information society and the environment

Energy: In 2005 the EU and Ukraine concluded a Memorandum of Understanding on energy cooperation. Objectives are to increase Ukraine's supply security and its transit role and to integrate Ukraine into the EU's internal energy market. Steps in this regard include the adoption of a new energy strategy-2030, the commitment to use the Odessa-Brody oil pipeline in the South-North direction and participation in the ongoing study to extend it to Plock (Poland) and the start of preparations to establish security oil stocks. Ukraine obtained observer status in the Energy Community Treaty (EcT) in 2006, and in 2007 its application for full membership was formally welcomed by a meeting of Energy Ministers from EcT member-countries. Some progress was also made towards an analysis of Ukraine's possible interconnection with the Union for the Coordination of Transmission of Electricity (UCTE). Significant funding was secured from International Financing Institutions (IFIs) for the implementation of priority projects enhancing energy security and hydrocarbons transit. Ukraine adopted legislation aiming at promoting energy efficiency and the use of renewable energy sources as well as a programme to develop biofuel production. A roadmap of energy efficiency, renewable energies and measures to tackle climate change has been finalised. Ukraine continued restructuring the coal sector, but more needs to be done including to improve the safety of mines.

Ukraine pursued the upgrading of its nuclear power plants in the context of an updated "Integrated Upgrade Package". The Commission and Ukraine agreed to launch a joint project, with involvement of the International Atomic Energy Agency, on the evaluation of the nuclear safety of Ukraine's nuclear power plants. The contracts for Interim Spent Fuel Storage Facility (ISF-2) and for New Safe Confinement for the Chernobyl unit 4 (NSC) were signed in September 2007.

Transport: the EU and Ukraine are now engaged in detailed discussion on how to develop transport cooperation in view of the "High Level Group's report on the extension of Trans-European Transport Networks to neighbouring countries". The development of transport infrastructure will be a key element of preparations for hosting the Euro 2012 football championships. Adherence to the Interbus Agreement remains a priority for Ukraine. In the aviation sector, negotiations on a comprehensive EU-Ukraine aviation agreement started in December 2007.

The Ukrainian Parliament ratified the Ukraine – EU Cooperation Agreement on Civil Global Navigation Satellite System (GNSS) signed at the 2005 Ukraine – EU Summit on 10 January 2007. The Ukraine side encouraged the EU side to ratify the Agreement without delay as its entry into force remains a key priority.

Environment: Key issues relate to air quality, water quality, waste management and nature protection. On climate change the EU and Ukraine have closely cooperated in the framework of a dedicated working group. On civil protection, a co-operation agreement was signed in May 2007 between Ukraine and the Community Civil Protection Mechanism. This Mechanism was mobilised in November 2007 to prepare a first assessment of the environmental damage and needs for pollution remediation efforts following an oil spill in the Kerch Strait. Ukraine has committed itself to comply with the multilateral environmental agreements (Espoo Convention and Aarhus Convention, Bern Convention and Ramsar Convention) when undertaking further steps regarding construction of the Bystre Deep Water Channel. Both sides attach importance to the provisions of the multilateral environmental agreements to which they are a Party, in particular the Espoo Convention.

Information society: Ukraine adopted a national concept for the development of telecommunications until 2010 and the implementation has started with a new radio frequency plan. Furthermore, a law has been adopted on the “Principles of Information Society Development 2007-2015”. It remains important that the functioning of the National Commission for Communications Regulation (NCCR) will be restored in order to ensure fair competition in the electronic communications markets.

People-to-people contacts

Research: Both sides cooperated to enhance structured dialogue in this field, i.a. through information days, mapping of scientific excellence related to the EU's 7th Framework Programme (FP), various thematic workshops and the inclusion of particular topics of mutual interest in the 7th FP work programmes. Ukrainian science policy has now been oriented towards attaining associate membership status in the Research Framework Programme.

On January 25, 2008 the Agreement between Ukraine and the European Space Agency (ESA) on space cooperation in peaceful purposes was signed.

Education and youth: Ukraine continues with reforms which will enable the country to contribute to the creation of the European Higher Education Area. Both sides have agreed on the importance of Tempus as a support instrument in this reform, and of promoting also the possibilities offered for cooperation activities and mobility of teachers, students and young people under the Erasmus Mundus, Erasmus Mundus External Cooperation Window, the Youth in Action programmes, and the Jean Monnet Action for teaching projects in European integration studies. Operationally, the timely establishment of an independent National Tempus Office in Ukraine is vital to promote cooperation between Ukraine and the EU member countries.

Health: Public health reforms continued in order to address such issues as inefficiencies, inequalities in access, maternal health, child mortality, the financing of the health care

system, HIV/AIDS and tuberculosis. In order to combat the rapid spread of HIV/AIDS, a national programme 2004-2008 is being implemented and a new HIV/AIDS prevention and treatment plan 2009–2013 has been developed. The fight against HIV/AIDS remains a priority for the government.

Culture: Ratification of the UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions remains a priority.

Audio-visual policy: Ratification of the Council of Europe Convention on Transfrontier Television remains a priority

Assistance

Over the last three years, EC assistance to Ukraine has been increasingly geared towards supporting the achievement of key policy objectives as outlined in the EU-Ukraine Action Plan, which in turn supports the reform programme. EC financial assistance to Ukraine has increased over the period 2005 – 2006 (TACIS National Action Programmes) from €88 million in 2005 to €100 million in 2006.

With the entry into force of the European Neighbourhood and Partnership Instrument (ENPI) in 2007, financial allocations further increased to €120 million. In addition, Ukraine was allocated €22 million under the Governance Facility. The ENPI NAP 2008 will amount to €22 million. Priority areas for cooperation are energy and trade, as well as support to the readmission agreement. Both Sides agreed that Ukraine should take the leading role in the donor coordination mechanism in accordance with the Paris Declaration on aid effectiveness.

Policy development and reforms envisaged in the Action Plan are encouraged through demand driven and tailor-made assistance, such as Twinning and TAIEX.

Regional co-operation addresses issues related to transport, energy, environment, and integrated border management with a particular emphasis on the EUBAM operations on the Ukraine – Moldova borders, in complementarity with national programmes. Cooperation with the neighbouring countries is supported through cross border cooperation, which includes border infrastructure and management support and local/regional development. The thematic programme on Migration and Asylum complements country based and regional cooperation in that sensitive area. Support to civil society in the fields of human rights and democratisation is also provided through a dedicated thematic instrument (EIDHR). Further extensive support in the area of nuclear safety, provided since the early nineties, is planned. In the education sector, assistance is provided through Tempus and other programmes above described. The EU's 7th Framework Programme in the field of research is open to Ukrainian scientific institutions.

III. CONCLUSIONS

Over the three years of implementation of the EU Ukraine Action Plan, good progress has been made in numerous areas of cooperation. Major achievements have been

democratic parliamentary elections, the launch of negotiations on a new Enhanced Agreement, including a Free Trade Area as a core element, the finalisation and entry into force of agreements on visa facilitation and readmission, the launch and positive cooperation with the EU Border Assistance Mission (EUBAM), the close cooperation on energy issues and of most recently the finalisation of Ukraine's long accession process to the WTO. There has been also remarkable progress in other areas such as climate change, transport and education and research.

On the other hand, the political instability over the reporting period has affected the pace of reforms and many difficult but essential institutional and structural changes, including constitutional reforms and basic economic reforms, still have still to be tackled.

The EU and Ukraine have agreed to develop by the end of 2008 a new joint tool ("guideline", "action plan", "roadmap" or other, - name to be decided), which is to take account of the issues which will have been agreed by then in the NEA negotiations and which will prepare the entry into force of the NEA. This new tool should be agreed by February 2009.

The Ukraine Action Plan will remain in place and will be maintained as a tool for EU-Ukraine cooperation for maximum one more. Both sides will focus on implementing the outstanding issues of the Action Plan, including priorities identified in this joint report.

In addition, both sides have agreed to carry out some specific measures in 2008, which will include the following issues:

- Continue the negotiations on the NEA including on its deep and comprehensive free trade area, with the objective to conclude negotiations successfully in 2009. Prepare a second joint progress report for the Summit in fall 2008 and seek to reach by then an overall understanding on scope, main objective, principles and the broad lines of the institutional framework.
- Cooperate closely to fully implement the visa facilitation and readmission agreements.
- Based on the successful implementation of the visa facilitation and readmission agreements, and taking into account that the possibility of a visa-free travel regime is referred to in the preamble of the visa facilitation agreement as a long-term perspective, both sides may envisage a dialogue on this matter.
- Continue consultations on the possible EU use of Ukraine's long-haul aviation capacities.
- Continue working on the Joint Stock Company Law, the Procurement Law and the Tax Code.
- Elaborate possible ways of cooperation on REACH.
- Finalise negotiations on the Common Aviation Area Agreement.
- Further elaborate and start implementing a national transport strategy, including priorities for transport infrastructure development, covering all transport modes, coherent with the EU's White Paper on transport and the High Level Group's report on the extension of Trans-European Transport Networks.

- Conclude a framework agreement which enables Ukraine's participation in European Community programmes and cooperate closely to implement it through specific working arrangements.
- Building on the recent EU-Ukraine study on reform of the operation of the system of gas transit in Ukraine, intensify co-operation to encourage investment in rehabilitation and upgrading of infrastructure network for hydrocarbon transit, including through increased transparency, and organise a pledging conference to help mobilise the necessary financing.
- To continue and intensify cooperation with the aim of using the Odessa-Brody oil pipeline in the South-North direction and of extending it to Plock (Poland).
- Intensify cooperation aimed at Ukraine's accession to the Energy Community Treaty.
- Launch exploratory talks on the Regional Environmental Centre (REC) in Ukraine.
- Speed up the ratification of the Ukraine – EU Cooperation Agreement on Civil Global Navigation Satellite System (GNSS) by the EU side.
- Promote the conclusion of the Ukraine – Europol and Ukraine – Eurojust agreements.
- Continue consultations regarding the reintroduction of joint customs and border control at the borders of Ukraine with neighbouring EU Member States within the limits of the Schengen *acquis*.
- Promote the conclusion of bilateral agreements between Ukraine and neighbouring EU Member States on small border traffic.
- Consider measures in the sphere of employment and the treatment of migrant workers to ensure, in accordance with the PCA, that such treatment does not discriminate on grounds of nationality.
- Work closely together in reforming the public administration system in Ukraine on the basis of an assessment by SIGMA.
- Use, where appropriate, existing forms of cooperation to facilitate the Ukrainian side's preparations for co-hosting the 2012 European football championships.
- Take appropriate steps to make an independent National Tempus Office in Ukraine fully operational in time for the new phase of the Tempus programme.
- Ratify the UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions and the Council of Europe Convention on Trans-frontier Television.
- Discuss in the context of the Steering Committee on the EU-Ukraine Science & Technology Agreement, in the first half of 2008, i.a. the steps that would need to be taken for Ukraine to attain associate membership status in the Research Framework Programme.