

INTEGRATION WITHIN THE ASSOCIATION: IMPLEMENTATION DYNAMICS OF THE EU- UKRAINE AGREEMENT

The fourth edition, updated

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ANALYTICAL REPORT

The fourth edition, updated

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Abbreviations

AA	Association Agreement
ACAA	Agreement on conformity assessment and acceptance of industrial products
BIPM	International Bureau of Weights and Measures
DCFTA	deep and comprehensive free trade area
EA	European co-operation for Accreditation
EaP	Eastern Partnership
EASA	European Union Aviation Safety Agency
EGDI	E-Government Development Index
ILAC	International Laboratory Accreditation Cooperation
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation a
NCTS	new computerized transit system
OIML	International Organization of Legal Metrology
PCA	Partnership and Cooperation Agreement
WTO	World Trade Organization

INTEGRATION DIMENSION WITHIN THE ASSOCIATION: CONCLUSIONS AND RECOMMENDATIONS

Dmytro Shulga, Veronika Movchan

The story of the Agreement between Ukraine and the EU

The first framework agreement between the EU (then the European Communities) and Ukraine was the Partnership and Cooperation Agreement (hereinafter - PCA), signed in 1994, provisionally applied since 1996 and entered into force in 1998. The PCA was concluded for an initial period of 10 years (with the possibility of further annual automatic renewal for one year unless terminated by the parties).

The PCA provided a framework for political dialogue (it is on this basis that the annual EU-Ukraine summits began to be held in the late 1990s) and the “most favoured nation” trade regime with the prospect of establishing a free trade area, with preconditions of Ukraine’s progress on economic reforms and accession to the GATT / WTO. The PCA also determined that another important condition for strengthening economic links between Ukraine and the EU was an approximation of legislation.¹ In the 1990s, the EU concluded similar agreements with most other post-Soviet states, including Russia.²

In the early 2000s, even before the Eastern Enlargement, discussions began on the future EU policies towards the new neighbours. In 2003, the European Commission proposed the idea of the **European Neighborhood Policy** (hereinafter - ENP), which was finally shaped and formally approved in 2004. Although the ENP did not provide a membership perspective for new European neighbours, it brought the perspective of moving beyond cooperation to a significant degree of integration, including through the stake in the EU’s Internal Market.³ The essence of the EU proposal to countries such as Ukraine was formulated by Romano Prodi, the President of the European Commission: “everything but institutions”, that is, everything but membership.⁴

The specific content of this proposal, however, needed to be specified. Bilateral Action Plans agreed between the EU and partner countries became the key instruments of the ENP.

¹ Article 51 (1) PCA: ‘Ukraine shall endeavor to ensure that its legislation will be gradually made compatible with that of the Community’. Further in the text it was mentioned that the approximation of laws shall extend to a number of specific areas: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:-21998A0219\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:-21998A0219(02))

² More on PCA see the Commentary on PCA implementation issued by the EU’s TACIS programme office: https://web.archive.org/web/20061120204532/http://www.delukr.ec.europa.eu/en/Data/what_is-ukr.pdf

³ European Neighbourhood Policy Strategy Paper, COM (2004) 373 final, 12.5.2004, p.8: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2004_communication_from_the_commission_-_european_neighbourhood_policy_-_strategy_paper.pdf

⁴ https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_02_619

Negotiations on the EU- Ukraine Action Plan were held during 2004. As a result, the document, set out jointly, identified priorities for political, economic, and sectoral reforms in Ukraine, mostly her 'homework', without any significant reciprocal commitments from the EU other than technical and financial support. The Action Plan was not a legally binding document: it was endorsed as a recommendation by the joint bodies of the PCA.

However, in response to the democratic, peaceful **Orange Revolution** that took place in Kyiv at the end of 2004, in early 2005, the EU, together with the endorsement of the Action Plan, proposed ten additional points for Ukraine. The key ones were promises to initiate early consultations on an 'enhanced agreement' to replace the PCA and an early start of negotiations on establishing a free trade area once Ukraine has joined the WTO.⁵

Negotiations on a '**new enhanced agreement**' between the EU and Ukraine to replace the PCA began in 2007. In 2008, the parties agreed on the name of the future document: the Association Agreement (hereinafter - AA); and within this framework, the parties began negotiations on establishing a 'deep and comprehensive' free trade area (hereinafter - DCFTA). It was agreed that the AA would be based on the principles of "political association and economic integration".

In 2008, the EU proposed (and in 2009 officially launched) the **Eastern Partnership** initiative (hereinafter - EaP), the Eastern dimension of the ENP aimed at 'creating the conditions for accelerating political association and economic integration'.⁶ Thus, within the EaP, the other five post-Soviet countries were offered what was already the subject of bilateral negotiations between Ukraine and the EU - the conclusion of an association agreement, including the DCFTA.

In 2010, Ukraine joined the **Energy Community Treaty**, which unites the EU and its neighbours (initially only the Western Balkan countries - potential EU candidates). The Energy Community aims to create an integrated pan-European energy market by extending EU energy market rules beyond the EU.⁷ Thus, Ukraine has for the first time acceded to a legally binding agreement with the EU providing for market integration in a critical sector of the economy.

Negotiations on the AA between Ukraine and the EU were completed by the end of 2011, and the entire text of the Agreement was initialled in 2012. However, by that time, the EU had doubts about signing the Agreement when President Viktor Yanukovich began an offensive on democratic freedoms and the rule of law. V. Yanukovich, in turn, was undergoing increasing pressure from Russia to refuse the AA with the EU and to agree to join a customs union with Russia.

Finally, in late 2013, Viktor Yanukovich refused to sign the AA with the EU, which sparked internal protests ('**Euromaidan**') in Kyiv. After the attempts to suppress them by force, in early 2014, the protests escalated to the Revolution of Dignity, which overthrew the Yanukovich regime and restored the democratic constitutional order with the cost of a hundred casualties. Thus, the AA became a symbol of Ukraine's European democratic choice.

In 2014, the European Parliament and the Verkhovna Rada signed and ratified the EU-Ukraine Association Agreement. As a result, some AA provisions were provisionally applied since 1

⁵ Other points included i.a. measures to intensify negotiations regarding visa facilitation, to treat Ukraine as a priority country for the extension of Trans-European Networks etc.: https://ec.europa.eu/commission/presscorner/detail/en/MEMO_05_57

⁶ Joint Declaration of the Prague Eastern Partnership Summit, 7 May 2009: https://www.consilium.europa.eu/media/31797/2009_eap_declaration.pdf

⁷ <https://www.energy-community.org/aboutus/whoweare.html>

November 2014, and DCFTA provisions - since 1 January 2016. Following the completion of the lengthy ratification process by all EU Member States, on 1 September 2017, the AA between the EU and Ukraine fully entered into force (and the PCA finally expired).

Quid pro quo of the Association Agreement

The AA is a legally binding bilateral international agreement between the EU and Ukraine. It is a rather large volume: 486 articles, grouped in 7 titles, and 44 annexes and three protocols, which form an integral part of the AA.

The aims of the AA can be summarised as follows:⁸

- Promoting peace and stability;
- Respect for common values (as they constitute essential elements of the AA);⁹
- Enhanced cooperation and Ukraine's association with EU policies in various areas;¹⁰
- Ukraine's gradual integration in the EU Internal Market by setting up a DCFTA.

In the whole text of the AA, the DCFTA provisions contain the most specific obligations of the Parties. They provide for three major types of arrangements:

- **Tariff liberalisation** - reciprocal market opening through the progressive removal of customs duties (asymmetric, privileged for Ukraine from the side of the EU);¹¹
- **Sectoral integration** - abolishing barriers for Ukrainian business operation on the EU market (and vice versa) on the condition of Ukraine's alignment with the EU norms and standards in those sectors/areas;
- **Ensuring fair competition between EU and Ukrainian firms on the common market** - by gradually bringing Ukraine in line with the EU rules and standards in consumer rights, intellectual property rights, labour rights, environmental protection, state aid and competition.¹²

Thus, the main essence of the deal (*quid pro quo*) in the AA is a unilateral regulatory approximation in exchange for economic integration. ***Ukraine is obliged to adopt and implement the acquis - EU legislative norms, rules and technical standards. In return for this, Ukraine will gradually become part of the EU Internal Market.*** In general, except for the

⁸ Given the complex structure and wording of Article 1 (and of the whole text of the AA), only the key content is presented here, in a somewhat simplified form, without undue details which may be of interest to professional lawyers.

⁹ Article 2 defines that respect for democratic principles, human rights and fundamental freedoms, the principles of the rule of law, sovereignty and territorial integrity, inviolability of borders and independence, as well as countering the proliferation of weapons of mass destruction constitute essential elements of this Agreement. According to Article 478, in case of violation by a party of any of the essential elements of this Agreement, the other party may suspend the effect of the AA provisions on DCFTA.

¹⁰ The AA covers a lot of areas and topics, and the political dialogue between the parties on these issues can be very productive. For example, further progress on the visa dialogue and taking gradual steps towards a visa-free regime have been mentioned as commitments of both parties in Article 19 of the AA.

¹¹ In practice, it took place even before the provisional application of the AA, with unilateral introduction of the EU's autonomous trade preferences for Ukraine in 2014.

¹² «EU-Ukraine Deep and Comprehensive Free Trade Area: Economic benefits and opportunities» - explainer of the European Commission: http://trade.ec.europa.eu/doclib/docs/2015/december/tradoc_154128.pdf

European Economic Area and candidate countries, the EU has never opened up the Internal Market to participation by a 3rd country to such a degree.¹³

The AA is concluded for an unlimited period¹⁴. But the timeframes envisaged in the AA annexes for removal of the customs duties and implementation of EU legislative norms in Ukraine are limited to a maximum of 10 years since the AA's entry into force. According to the AA¹⁵, any reference to the date of the AA entry into force shall be understood as the date from which the AA is provisionally applied. As mentioned above, some AA provisions were provisionally applied since 1 November 2014, and DCFTA provisions - since 1 January 2016. It means that all AA provisions (those for which specific implementation deadlines are mentioned in the text) shall be implemented by 31 December 2025.

The EU's commitments on Ukraine's sectoral integration, which specify the areas for which the AA provides for additional decisions on Ukraine's integration, are presented in Table 1. In total, we are talking about 15 spheres (sectors). Adopting these decisions should allow the Ukrainian business to operate in the EU market without additional permits, certificates, or licenses.

The adopted EU decisions on Ukraine's integration into various sectors of the EU common market are the key performance indicators (KPIs) of the economic part of the AA. That does not deny the self-sufficient value of fulfilling obligations for the internal development of Ukraine itself. But, from the point of view of economic integration, such decisions are of crucial importance.

It should be noted that the AA does not contain a definition of the time when the EU should take appropriate additional decisions on the sectoral integration of Ukraine. However, the UA includes clear deadlines for Ukraine to fulfil its "task" in the relevant sectors. Therefore, it is logical to expect EU decisions to be taken soon after confirmation of such implementation. As can be seen from Table 1, Ukraine must complete its commitments for all 15 sectors no later than the end of 2023.

¹³ See the EU's explainer 'The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: What's it all about?': http://eeas.europa.eu/archives/delegations/ukraine/documents/virtual_library/vademecum_en.pdf - pp. 8, 11, 13.

¹⁴ Article 481 AA

¹⁵ Article 486 (5)

Table 1: Sectoral integration of Ukraine into the EU internal market under the AA provisions

№	Sphere	Market	AA provisions	Method of integration to the EU market as foreseen in the AA	Timeframe for implementing Ukraine's obligations as in the AA, from the date of entry into force/start of the AA provisional application
1	Technical barriers	Industrial products	Article 57 AA, Annex III	Conclusion of the Agreement on Conformity Assessment and Acceptance of Industrial Goods (ACAA)	Two years * (until 31.12.2017)
2	Sanitary and phytosanitary measures	Agro-food goods	Articles 64, 66 AA, Annexes IV, V, IX	Decision-making on recognition of equivalence in different sectors of agro-food products **	2021 ***
3	Customs procedures	All goods	St. 76.1 (c), 76.4 (b) AA, Annex XV	Joining the common transit system	One year (until 31.12.2016)
			St. 76.1 (k), 80 (i) AA	Mutual recognition of authorised economic operators (AEO)	Three years (until 31.12.2018)
4	Services	Financial	St. 4 (3) of Annex XVII, Appendix XVII-2	Granting the internal market treatment	Six years (until 31.12.2021)
5		Tele-communications	St. 4 (3) of Annex XVII, Appendix XVII-3	Granting the internal market treatment	Four years (until 31.12.2019)
6		Postal and courier	St. 4 (3) of Annex XVII, Appendix XVII-4	Granting the internal market treatment	Two years (until 31.12.2017)
7	Transport services	Automotive	Article 136 AA, Annex XXXII (1)	Possibility of concluding a special agreement in the field of road transport ****	Seven years (until 30.10.2021)
8		Railway	Article 136 AA, Annex XXXII (2)	Possibility of concluding a special agreement in the field of railway transport ****	Eight years (until 30.10.2022)
9		Inland water	Article 136 AA, Annex XXXII (5)	Possibility of concluding a special agreement in the field of inland water transport ****	Five years (until October 30, 2019)
10		International maritime	St. 4 (3) of Annex XVII, Appendix XVII-	Granting the internal market treatment	Six years (until 31.12.2021)

No	Sphere	Market	AA provisions	Method of integration to the EU market as foreseen in the AA	Timeframe for implementing Ukraine's obligations as in the AA, from the date of entry into force/start of the AA provisional application
			5, Annex XXXII (4)		
11		Aviation	Article 137 AA	Decisions under a separate Common Aviation Area Agreement (CAA)	Not specified*****
12	Government Procurement	Public procurement market	Article 154 v, Annex XXI	Opening access to the market in the amount determined by the provisions of the AA	Gradually, in five stages, within six months - eight years (until 31.12.2023)
13	Energy	Natural gas market	Annex XXVII	Not clearly defined in AA *****	to 31.12.2019
14		Electricity market	Annex XXVII	Not clearly defined in AA *****	2021
15	Education	Labor market	St. 432.b AA, Annex XLII	Mutual recognition of qualifications and competencies	Not specified

* For fulfilling the obligations in the scope sufficient for the conclusion of the ACAA. For fulfilling it in the scope enough for extension of the ACAA coverage to all 27 sectors listed in the AA - 5 years

** Also, there is an option of approval of individual producers for exports to the EU without waiting for decisions on the equivalence of the whole relevant sector. In practice, Ukrainian producers are actively using this option

*** According to the Comprehensive Strategy for the Implementation of the AA Chapter on Sanitary and Phytosanitary Measures (Chapter 4 of the Title IV of the AA) that was approved by the AA joint bodies at the end of 2019 and became the content of Annex V to the AA

**** The AA text does not put implementation of regulatory approximation obligations as a precondition for the possible conclusion of this agreement

***** The EU-Ukraine Common Aviation Area (CAA) Agreement was initialled at the end of 2013 but has not yet been signed due to a dispute between the UK and Spain about the mention of Gibraltar Airport in the text of this agreement

***** Even the updated Annex XXVII does not contain a clear perspective for gaining internal market treatment. However, its implementation may lead to de facto integration of Ukraine into the EU gas market when transportation of gas from Russia to the EU through the territory of Ukraine is regulated by EU law (and, possibly, with the point of gas delivery shifted to the Eastern border of Ukraine)

***** Even the updated Annex XXVII does not contain a clear perspective for gaining internal market treatment. However, its implementation may lead to de facto integration of Ukraine into the EU electric energy market, with Ukraine joining the European ENTSO-E network

The current progress in sectoral integration

As seen in Table 1, as of June 2021, Ukraine should have met its obligations in 7 of the 15 spheres. That refers to technical barriers, customs procedures, telecommunications, postal and courier services, inland water transport, the natural gas market and the first three stages of public procurement. In addition, by the end of 2021, commitments on sanitary and phytosanitary measures, financial services, road transport, international maritime transport and the electricity market were to be met.

Thus, as of mid-2021, one could already expect the formation of preconditions for the adoption of EU decisions on Ukraine's integration into its internal market, which relate to:

- Conclusion of the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA);
- Recognition of the equivalence of certification systems at least for one type of agro-good products;
- Integration into the European Common Transit System;
- Mutual recognition of autonomous economic operators;
- The "internal market treatment" for postal and courier services;
- The "internal market treatment" for telecommunication services;
- The beginning of consultations on the possibility of concluding a special agreement in the field of inland water transport; and
- The third stage of opening the public procurement market.

However, not everything went as planned. In many areas, Ukraine has been lagging in the implementation process. At the same time, where Ukraine has made significant progress, there is no verification and official confirmation of the implementation by the EU. That creates risks because the partners evaluate the same events differently, and therefore their next steps are based on different assumptions.

To date, actual progress in economic integration into the EU market has been made in only two areas. First, a decision was made to recognise the equivalence of seed certification systems. Secondly, Ukraine has been de facto integrating into the EU gas market through the establishment of a separate independent operator of Ukraine's gas transmission system, agreements on cooperation between Ukraine's gas transmission network operators and neighbouring EU member states, and the signing of a gas transportation agreement between Naftogaz and Gazprom based on EU rules.

Ukraine also gained partial access to the public procurement market under the WTO Agreement on Government Procurement, but this took place outside the AA.

Sectoral integration trends in 2020 - 2021

In 2019, Ukraine held democratic presidential and parliamentary elections, which significantly renewed the political system. A new president took office in May and a new parliament in late August. Despite frequent changes in the government team over the past two years, issues of European integration, including the modernization of the Association Agreement, remain high on the agenda.

By separate areas, the dynamics for 2020 - the first half of 2021 is as follows:¹⁶

Technical barriers to trade: In October 2020, a preliminary EU expert assessment mission was launched to evaluate the state of harmonisation of Ukrainian legislation with the EU *acquis* as part of the overall assessment of Ukraine's readiness to conclude an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). The results of this assessment mission, presented in May 2021, indicate a high level of legislative harmonisation, which, however, is not entirely sufficient and requires further work. During the second half of 2021, an assessment of the implementation of legislation and the effectiveness of the quality infrastructure is expected to begin.

Sanitary and phytosanitary measures: At the end of 2020, the EU recognised the equivalence of the control and certification system of cereal seeds in Ukraine, the first achievement of integration within the AA. While legal harmonisation progresses steadily, the Ukrainian producers of animal products actively used the possibility of individual verification of production for export to the EU.

Customs: Since the legislative breakthrough in 2019, when the long-awaited new legislation was finally adopted in line with Ukraine's AA obligations, the main task is its implementation. Ukraine has started granting an authorised economic operator (AEO) status, and one company has already received it. However, the incomplete secondary legislation limits the benefits of using this status. Mutual recognition can be obtained after the AEO system has been in place in the country for some time. The application of the computer system NCTS, which ensures the implementation of the common transit system, is also underway. As of June 2021, this system operates in the national mode in parallel with the standard one, and in about one and a half years, Ukraine is expected to join the pan-European system.

Financial services: At the beginning of 2020, the Strategy for the Development of the Financial Sector of Ukraine until 2025 was approved. It, in particular, provides for the implementation of the critical provisions of EU legislation required to obtain an internal market regime with the EU. However, this perspective remains unclear, given the changes in EU regulation that have taken place since the conclusion of the AA negotiations. Therefore, an important task is to update Annex XVII to the AA and create an institutional mechanism that would allow the implementation of the functions of European Supervisory Authorities in Ukraine, which is a necessary prerequisite, according to the new EU regulations, for obtaining an "internal market".

Telecommunications: In 2020, thanks to the EU expert mission, the "road map" for Ukraine's integration into the EU Digital Single Market, developed by Ukraine in 2018, was updated. The measures envisaged by the map form the basis for further development of digital regulation in Ukraine following EU recommendations. Furthermore, in early 2021, Ukraine and the EU adopted a work plan in electronic trust services to be implemented over the next two years.

Postal and courier services: Ukraine has not yet adopted a law to implement Directive 97/67 / EC provisions. The bill, which is currently before the parliament, needs to be finalised, as it does not fully comply with the said Directive.

Transport: The Common Aviation Area Agreement, initialled in 2013, remains unsigned, despite the completion of the Brexit procedure. In 2020, the law on water transport was finally adopted, which partially embeds the provisions of all six EU directives relating to this mode of transportation. However, no breakthrough has occurred in other transport sectors: several draft key laws on rail, sea and road transport are still pending in parliament.

¹⁶ For a more detailed analysis by individual sectors, see relevant thematic sections of this publication.

Public Procurement: In 2020, a new version of the Law on Public Procurement came into force, approximating Ukrainian legislation to EU directives according to the requirements of the second (out of five) stage of the AA Indicative Schedule in public procurement. At the same time, the EU and Ukraine have not yet agreed on the formal completion of the first stage. In addition, in 2020, a bill, which introduces localisation requirements for selected public procurement and thus does not correspond to the content of Ukraine's obligations under the AA, was registered in the Verkhovna Rada.

Energy: As already mentioned, Ukraine has achieved a significant level of integration in the EU natural gas market. Based on 2020 results, the Energy Community assessed the implementation status of European legislation in the gas market in Ukraine as "almost complete" (84%). At the same time, the European Green Deal also includes changes in EU legislation on the gas market, which creates new challenges for Ukraine. Joining the ENTSO-E network is the main European integration task that remained on the agenda in the electricity market. In May 2021, the President signed a law allowing Ukrenergo to be certified as a European-style OSP, bringing Ukraine one step closer to the integration goal, but much remains to be done.

Education: To obtain mutual recognition of qualifications and competencies, Ukraine has committed itself to implementing the Recommendations of the European Parliament and the Council on the establishment of a European qualifications system based on the principle of lifelong learning. In June 2020, the government approved a new version of the National Qualifications Framework in line with European qualifications. However, a significant part of the tasks related to creating a qualification system, particularly the adoption of the necessary legislation, is delayed.

Prospects for integration in 2021 and beyond

Thus, Ukraine has been fulfilling its obligations, although with delays. As a result, the question of EU decisions on Ukraine's integration into the EU internal market in the relevant sectors, as provided by the AA, will increasingly arise.

However, given the existing preconditions, in 2021, we can expect only one decision related to the economic integration - the signing of the Common Aviation Area Agreement.

At the same time, given the continued active implementation of Ukraine's commitments and the presence of political will on the part of the EU, by 2023, we can expect progress in sectoral integration within the AA on:

- Mutual access to public procurement markets, with at least several stages of the Indicative Plan completed;
- Ukraine's accession to the pan-European common transit system;
- Connection to the ENTSO-E network;
- Conclusion of the Agreement on mutual recognition of electronic trust services between Ukraine and the EU;
- Conclusion of the ACAA Agreement;
- Further recognition of the equivalence of certification systems for agricultural products; and
- Mutual recognition of authorised economic operators.

As mentioned above, according to the AA, Ukraine must implement its obligations no later than the end of 2023, and in general, all provisions of the AA, which set deadlines, must be

implemented no later than December 31, 2025. In other words, most of the provisions of the AA must be fulfilled by the end of the term of President V. Zelensky and the new European Commission (2019 - 2024).

At the same time, amendments are already being made to the provisions of the AA, but only to the Annexes (this does not require ratification by EU member states). Since 2018, there have been several cases of replacement or amendments to the Annexes to the AA¹⁷, which concerned: clarification of the schedule in Annex I (tariff schedule) (2018); changes in thresholds in Annex XXI (public procurement) (2018); updating commitments and strengthening monitoring in Annex XXVII (energy) (2019); changes in tariff quotas for poultry meat in Annex I-A (tariff schedule) (2019); inclusion of the text of the Comprehensive SPS Harmonization Strategy in Annex V (2019); replacement of Protocol I after Ukraine accedes to the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin (2019).

The need to update the Annexes to the AA is evident because EU legislation has evolved significantly since the AA negotiations between Ukraine and the EU (2011). Therefore, at the meeting of the Association Council in December 2018, the Parties agreed to begin work on updating the Annexes to the Association Agreement to take into account the new legal realities of the EU.¹⁸ Annex XXVII on energy was the first to be updated in 2019. Proposals for updating the content of Annex XVII-3 on telecommunications services have been developed. There is also a need to update Annex XVII-2 on financial services and most other annexes to the AA.

The revision of Annex I-A to poultry tariff quotas has set a precedent to encourage a significant correction (further liberalization) of all other existing DCFTA tariff quotas. Since the AA negotiations, there have also been substantial changes in the economy of Ukraine that require the AA update, especially in the tariff component of the DCFTA.¹⁹

The potential for developing and strengthening the role of AA is inherent in it. The AA stipulates that after five years from the date of its entry into force, the Parties must carry out a "comprehensive review of the achievement of its objectives."²⁰ As noted above, the "date of entry into force of the AA" should be read as "the date from which its provisional application takes place." Thus, for many AA provisions (including in energy and transport), a "comprehensive review of the achievement of AA objectives" should be conducted after November 1, 2019, and for the DCFTA provisions - after January 1, 2021.

Therefore, the decision of the Association Council, which took place on February 11, 2021, is absolutely logical. The released communication²¹ stated the intention of both parties to conduct a comprehensive review of the Association Agreement under Article 481 of the AA before the next Ukraine-EU summit in summer 2021, as well as to begin consultations on possible further liberalization of trade in goods under the DCFTA.

Accordingly, AA Parties should consider not only revising (further liberalizing) tariff provisions but also strengthening bilateral commitments on sectoral integration. It is essential to enhance the EU's commitments related to regular verification of Ukraine's progress, especially in sectors where further integration involves a separate EU decision based on Ukraine's assessment of its harmonization and effective implementation.

¹⁷ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29>

¹⁸ <https://bit.ly/2s3mW9I>

¹⁹ <https://biz.liga.net/ekonomika/prodovolstvie/opinion/prorvatsya-cherez-kvoty-ukrainskaya-kuryatina-probivaet-put-v-es>

²⁰ According to Article 481 AA

²¹ <https://www.kmu.gov.ua/news/spilna-zayava-za-rezultatami-7-go-zasidannya-radi-asociaciyi-mizh-ukrayinoyu-ta-yes>

The EU should decide on its readiness to conclude agreements with Ukraine in the road, rail and inland waterway transport. The AA allows for the possibility of concluding such special agreements in the future to ensure coordinated development and progressive liberalization of transportation between the Parties.²² However, according to the text of the AA, this is an opportunity, not a commitment. The relevant issues remain the subject of bilateral negotiations between Ukraine and (neighboring) EU member states for the time being.

Analyzing the opportunities for deepening economic integration within the UA, we should not forget about global changes in EU policy, which will also determine relations with Ukraine. At the end of 2019, the EU announced a policy of the European Green Deal (hereinafter - the EGD), with the strategic goal of making Europe climate-neutral by 2050. The EGD covers most of the issues of sectoral cooperation between Ukraine and the EU, where Ukraine's economic integration into the EU market is envisaged, particularly energy, transport, technical regulation and sanitary and phytosanitary measures, public procurement and financial services. Without considering the EGD, effective modernization of the AA and the achievement of sectoral integration are impossible.²³

Bilateral cooperation between Ukraine and EU member states, primarily Ukraine's neighbours, can also significantly contribute to achieving the goals of the AA.²⁴ Thus, the development of bilateral cooperation between the customs services of Ukraine and EU member states, mainly through the conclusion of bilateral agreements on the exchange of information, can significantly contribute to the effective reform of customs in Ukraine. The conclusion of agreements between Ukraine and neighbouring EU member states on joint border control could substantially facilitate the movement of goods and people, subject to the political support of this process by the European Commission, using the potential flexibility of the Schengen acquis. Agreements on cooperation between the operators of gas transmission networks of Ukraine and neighbouring EU member states and the construction of new interconnectors as projects of common interest of the EU will ensure the free movement of gas in both directions within the single European market.

“Political association” - the need for specification

As mentioned above, the AA is an agreement on ‘political association and economic integration’. While ‘economic integration’ is a well-established notion, the term ‘*political association*’ is not explained in any way in the AA text. It remains unknown to EU law (in which the term ‘association’ exists, while ‘political association’ can be found only in the AA and other EU documents with Ukraine, Moldova and Georgia, and in the Eastern Partnership documents), and it has not been interpreted in academic literature.

In practice, one can see in the text of the AA that the provisions on economic integration within the DCFTA are the most specific, while *issues such as combating corruption or the rule of law are mentioned only in general terms*. Paradoxically, these issues remain unspecified in the AA, though they are of priority importance in the EU’s political dialogue with Ukraine, when the business climate assessment, the prospects for attracting investment and the ultimate success of economic development depend on the progress in those areas.

²² Article 136 AA

²³ In this publication, we consider the synchronization of European Green Deal and UA. See the relevant section

²⁴ In this context, we should not forget that the AA is an agreement between Ukraine and not only the EU but also its member states.

That can be explained by the fact that the EU has virtually no legislation on fighting corruption and the rule of law of its own to which Ukraine could approximate. Therefore, the relevant articles of Title II “Political Dialogue and Reform, Political Association, Cooperation and Convergence in the field of Foreign and Security Policy” and Title III “Justice, Freedom and Security” of the AA contain only general wording.²⁵ There are no annexes to these Titles of the AA that could include a list of EU legislation for Ukraine to approximate.

At the same time, it should be remembered that several policy principles are identified in the text of the AA as the ‘essential elements’ of the agreement, the respect for which is necessary for having the DCFTA in effect:

- respect for democratic principles, human rights and fundamental freedoms;
- respect for the principles of the rule of law;
- respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence;
- countering the proliferation of weapons of mass destruction.²⁶

If a party violates any of the essential elements of this Agreement, the other party may suspend the effect of the AA provisions on DCFTA.²⁷

What is more, the language of the ‘political’ AA provisions resembles the wording of the first - political - Copenhagen criterion for EU membership: ‘Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities’. In other words, implementation of the political part of the AA (‘political association’) should bring Ukraine closer to meeting the first EU membership criterion that needs to be completed before the start of accession negotiations.

To address the apparent need to set policy priorities and indicators in the rule of law and the fight against corruption in Ukraine, the EU has used several tools, the key ones of which have been in recent years: the Association Agenda,²⁸ Visa Liberalization Action Plan,²⁹ financial assistance agreements.³⁰ In particular, the entire institutional structure of the anti-

²⁵ Article 6 AA ‘Dialogue and cooperation on domestic reform’: ‘The Parties shall cooperate in order to ensure that their internal policies are based on principles common to the Parties, in particular stability and effectiveness of democratic institutions and the rule of law, and on respect for human rights and fundamental freedoms, in particular as referred to in Article 14 of this Agreement.’

Article 14 AA ‘The rule of law and respect for human rights and fundamental freedoms’: ‘In their cooperation on justice, freedom and security, the Parties shall attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation will, in particular, aim at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption. Respect for human rights and fundamental freedoms will guide all cooperation on justice, freedom and security.’

²⁶ Article 2 AA

²⁷ Article 478 AA

²⁸ The bilateral political document that defines the priorities for cooperation (mostly “home job” Ukraine) almost for all the range of topics covered by the UA, even before it enters it into effect. First procedure daytime Association (AA) was adopted in 2009 year, when he replaced the plan Ukraine - EU Action; in 2015 the PDA was updated. Compared to the UA, the PSA’s commitments in the political part were more broad and detailed : for example, 5 of the 10 short - term priorities of the PDA-2015 concerned political issues. On the day that CACs are morally outdated, so and not gained serious political weight remained rather bureaucratic document

²⁹ Not being legally binding document, the plan of action and of visa liberalization (VLAP) had great political significance because of involving an attractive promise prospects for visa-free regime. By requirements VLAP included questions of struggle with corruption, which appeared among and with the most difficult visa-free criteria. Interesting was the method of monitoring implementation of VAT L : it conducted regular expert mission to the EU, which made assessment of the state of implementation and formulating recommendations following steps. Thus , they clarified, detailed, expanded the initial requirements. After receiving the visa-free regime in 2017 , Ukraine is under post-Monitor , the ynhom EU to preserve the state of compliance with visa-free criteria, in particular in the field of struggle with corruption

³⁰ Agreement on macro-financial assistance and budgetary support on the part of the EU (and so on and takozh memorandums of cooperation with the IMF) have on several dozen indicators, many of which relate to the fight with corruption and strengthening the rule of law. Terms of the agreements on financial assistance - it is rather one-sided demands on the part of the EU as a donor, but no

corruption policy in Ukraine was built during 2014-2019 precisely due to the need to meet the criteria for the visa-free regime and the conditions for receiving financial assistance from the EU and the IMF.

For its part, the Ukrainian government in 2018 proposed the EU deepen sectoral cooperation in matters of justice, freedom and security by agreeing on a new Agenda in this areas,³¹ and in November 2019, proposed to place this initiative in a new Annex to Title III "Justice, Freedom and Security".³² After all, today, the AA between Ukraine and the EU does not contain an Annex to this title.³³ In contrast, the AAs between the EU and Moldova and between the EU and Georgia include annexes to the relevant titles.³⁴

However, the proposal for a new Annex to the Agreement did not support the European Commission, given the need for its harmonization and ratification by member states, which could be a lengthy and unpredictable process. In addition, there is an urgent need to focus on the practical steps of implementing reforms instead of spending time creating a new legal framework. Obviously, the logic of Brussels is that the "homework" is known to the Ukrainian leadership. If it has the political will, then the existing legal framework is sufficient to implement appropriate reforms.

However, the prospect of long-term harmonization and ratification of the new Annex to the Agreement should not be seen as a problem. After all, it is likely that reviewing existing annexes will also be a slow process. Also, ratification of the Annex, which does not contain economic or financial commitments from the EU, but only the obligation to cooperate at the level of law enforcement agencies and the corresponding obligations of Ukraine to carry out reforms in the field of justice, freedom and security, is unlikely to be problematic for member states. And in the specific Ukrainian context, the more institutional framework for directing reforms, the better.

One way or another, the Ukrainian government accepted the position of the European Commission. Then for some time in 2020, the Parties discussed the content of the new Agenda in the field of justice, freedom and security.

However, a significant change in the context was the decision of the Constitutional Court of October 27, 2020, on the unconstitutionality of specific provisions of the Law of Ukraine "On Prevention of Corruption" and the Criminal Code of Ukraine³⁵. This decision overturned much of the previous achievements of anti-corruption reforms and caused a political and legal crisis. Therefore, responding to a request from President V. Zelensky, the embassies of the G7 countries formulated their advice on practical and sustainable ways to solve this problem.

This G7 advice (of which the EU is a part) was formulated in a "roadmap" of priorities for judicial and anti-corruption reforms in Ukraine,³⁶ submitted to the Office of the President in

bilateral agreement. They mainly relate to such indicators as the adoption of legislation or the adoption of institutional decisions. In particular, it is thanks to the conditions for providing EU macro-financial assistance in 2019 that the Anti-Corruption Court began its work

³¹ <https://www.ukrinform.ua/rubric-polytics/2687558-ukraina-ta-es-so-novogo-u-sferi-usticii-svobod-ta-bezpeki.html>

³² <https://minjust.gov.ua/news/ministry/ukraina-proponue-es-dopovnit-ugodu-p-r-o-asotsiatsieyu-dodatkom-pro-reformi-yustitsii>

³³ The Title III AA contains 11 Articles: 'The rule of law and respect for human rights and fundamental freedoms' (Article 14); 'Protection of personal data' (Article 15); 'Cooperation on migration, asylum and border management' (Article 16); 'Treatment of workers' (Article 17); 'Mobility of workers' (Article 18); 'Movement of persons' (Article 19); 'Money laundering and terrorism financing' (Article 20); 'Cooperation in the fight against illicit drugs, and on precursors and psychotropic substances' (Article 21); 'Fight against crime and corruption' (Article 22); 'Cooperation in fighting terrorism' (Article 23); 'Legal cooperation' (Article 24)

³⁴ However, the content of these Annexes is limited to the protection of personal data.

³⁵ https://ccu.gov.ua/sites/default/files/docs/13_p_2020.pdf

³⁶ <https://docs.google.com/document/d/e/2PACX-1vRKC1mbwXaFSBLHgrYGdsg74nlv8JYk4FvEWw0cSOgl1ATc08CRRvzc8mATq3-9YQ/pub>

late 2020 and published in late January 2021. This roadmap included a list of urgent steps and expected results (benchmarks) in reforming the judiciary and anti-corruption policy during December 2020 - May 2021. As of June 2021, most of these priorities remain unfulfilled.

Today, this informal roadmap remains the most concrete guiding document provided by Ukraine's international partners on the expected reforms in these areas. It is essential that this document is supported by the EU and its member states and by the United States, which only increases its political weight. However, it will be lost if the G7, particularly the EU, does not refer in its public communications to this document, which remains relevant despite the expired deadlines.

The existence of such a list of short-term political priorities does not eliminate the need for an authoritative, comprehensive measurement of the progress of these critical reforms. Currently, the situation assessments are fundamentally different: public opinion polls about the perception of corruption or trust to courts show very negative results, while the Ukrainian government evaluated that as in June 2021, 89% of the AA tasks for the area "Political dialogue, national security and defence" and 85% for the area "Justice, freedom, security, human rights" were completed.³⁷

Although, as mentioned above, the EU does not have its legislation in anti-corruption and the judiciary, it has developed practical tools to measure member states' progress in these areas. These EU instruments can and should be used to assess Ukraine's progress in implementing these reforms. In particular, a regular assessment of the state of Ukraine's judicial system would be best conducted according to the EU Justice Scoreboard methodology³⁸ and periodic evaluation of the state of the fight against corruption in Ukraine - according to the methodology of the EU Anti-Corruption Report.³⁹ That should occur regardless of whether its application will continue within the EU.

Methodologically, these measurement tools are better than those that the EU applies currently (reports on the AA implementation⁴⁰ and post-monitoring reports on visa liberalization⁴¹ focused on evaluating legislation and institutions) and those that the well-known international indexes offer.⁴² These tools for measuring progress make it possible to assess the effectiveness of reforms most comprehensively and objectively, understand the causes of problems, and plan further actions.

Using the best tools for measuring progress available in the EU is essential to assess the final efficiency of aid the EU in carrying out reforms in Ukraine and define priorities and indicators for future assistance. After all, a significant part of technical assistance and budget support to Ukraine from the EU (and member states) is provided to strengthen the rule of law and the fight against corruption.

Thus, the priorities and indicators of critical reforms ("homework") for the implementation of the "political part" of the UA are already actually defined in the "roadmap" of the G7 on the priorities of judicial and anti-corruption reforms in Ukraine. Fulfilling the "road map" priorities

³⁷ <https://pulse.kmu.gov.ua/ua/a/year/all>

³⁸ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en

³⁹ https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en

⁴⁰ https://eeas.europa.eu/headquarters/headquarters-homepage/72011/association-implementation-report-ukraine-2019_en

⁴¹ https://ec.europa.eu/commission/presscorner/detail/en/IP_18_6819

⁴² The rationale for applying the EU Anti-Corruption Report to the Western Balkans is set out in the European Stability Initiative article "Measuring corruption: The case for deep analysis and a simple proposal", which shows how the EU Anti-Corruption Report methodology is better than the Corruption Perceptions Index: https://www.esiweb.org/index.php?lang=en&id=156&document_ID=162

for Ukraine is the best way to strengthen trust in institutions, which will open space for both legal cooperation and general prospects for deepening integration with the EU.

Therefore, in the field of the political association, we recommend that Ukraine ensure the implementation of the G7 roadmap on the priorities of judicial and anti-corruption reforms in Ukraine, including reform of judicial governance bodies and procedures, selection of judges of the Constitutional Court, and independence of anti-corruption institutions.

For the EU, the key recommendations are:

- To define the "roadmap" of the G7 on the priorities of judicial and anti-corruption reforms in Ukraine as an operational tool for the implementation of the UA in terms of the political association;
- To apply the EU Justice Scoreboard (or Dashboard, as in the case of the Western Balkans) to measure Ukraine's progress in judicial reform regularly;
- To apply the EU Anti-Corruption Report methodology (or a similar EU methodology) to regularly measure Ukraine's progress in the fight against corruption.

1. ACAA: INTEGRATING UKRAINE INTO THE EU'S INDUSTRIAL PRODUCTS MARKET

Veronika Movchan⁴³

Benefits

In the field of trade in industrial goods, in addition to import duties, the zeroing of which is provided for in the Association Agreement (AA), non-tariff restrictions play a vital role. The *Agreement on Conformity Assessment and Acceptance of Industrial Products* (ACAA) is aimed at reducing them.

ACAA belongs to agreements on mutual recognition of conformity assessment (MRA - Mutual Recognition Agreement). Classic MRAs are concluded mainly between economically developed and institutionally stable countries with a high level of mutual trust. For example, the EU has MRAs with the US, Canada, Japan, New Zealand, Australia, Switzerland and Israel.⁴⁴

The European Union has proposed to sign the ACAA agreements to several developing partners, including Ukraine, Moldova, Georgia and several Mediterranean countries. However, the possibility of concluding an ACAA between the EU and these countries are determined by the peculiarity of this type of MRA, the prerequisite for which is the complete harmonization of partner country legislation with EU standards in the area covered by the ACAA, as well as appropriate harmonization of national quality assessment infrastructure. That makes the process of signing the ACAA much longer and more costly and expands the range of countries that could potentially conclude MRAs.

Today the EU has only a single ACAA agreement - with Israel, and it applies to pharmaceutical products. Ukraine may be the first middle-income country to conclude an ACAA Agreement with the EU. That will positively impact Ukraine's image, and thus on the possibility of entering third-country markets and completing new MRAs.⁴⁵

In addition to image benefits, the conclusion of the ACAA Agreement will bring several economic benefits. The Agreement will help reduce trade costs and thus stimulate trade in

⁴³ Then preparing this section, the materials of the section "ACAA Agreement: Ukraine's integration into the EU industrial goods market" by Dmytro Lutsenko, published in the third edition of "Integration within the Association", were partially used.

⁴⁴ https://ec.europa.eu/growth/single-market/goods/international-aspects/mutual-recognition-agreements_en

⁴⁵ See Veronika Movchan, Garry Poluschkin and David Saha «The forthcoming ACAA between the EU and Ukraine: What to expect» Policy Study PS 02/2021. https://www.german-economic-team.com/ukraine/wp-content/uploads/sites/7/GET_UKR_PS_02_2021.pdf

goods covered by the Agreement. As the signing of the ACAA leads to a lower barrier to market entry, it can be expected that the ACAA will provide an impetus for the entry into the EU market of Ukrainian producers and exporters who have not previously worked in this market, as well as create opportunities for new products. Accelerating the introduction of new, in particular innovative, products to the EU and Ukrainian markets is another important consequence of ACAA, as the signing of the Agreement allows mutual recognition of conformity assessments, thus eliminating the need for additional conformity assessment in the new market, which requires time and effort. The ACAA will also facilitate and reduce the cost of importing investment goods from the EU, which in turn will help increase investment and accelerate the country's economic development as a whole. At the same time, an important prerequisite for this is the improvement of the investment climate in the country.

Commitments

The conclusion of the ACAA Agreement is provided for in Article 57 of the Association Agreement.⁴⁶ Under this article, the ACAA Agreement will gradually extend to 27 categories of industrial (non-food) products in accordance with Annex III, although it may initially cover one or more selected categories. Once the ACAA Agreement has included all the sectors listed in Annex III, the partners have undertaken to consider extending it to other categories of industrial products.

In accordance with the provisions of the Association Agreement for the conclusion of the ACAA Agreement Ukraine has:⁴⁷

- bring its legislation, both horizontal (framework) and vertical (sectoral), in full compliance with European legislation;
- to adopt as national European harmonized standards for relevant products;
- to bring in line with European requirements all its national quality infrastructure (national standardization body, national accreditation body, metrological institutions, conformity assessment bodies) and the infrastructure of state market surveillance (market surveillance bodies and procedures);
- abolish all regulatory regimes (most of which have existed since Soviet and post-Soviet times) that contradict, duplicate and / or are additional to European requirements for the relevant products (primarily, sanitary norms and rules and regulations in the field of labor protection) .

Procedurally, the ACAA will be concluded as a Protocol to the Association Agreement, which requires a decision of the EU-Ukraine Association bodies (the Trade Committee and the Association Council). In fact, the Agreement will consist of two parts - a framework agreement, which will recognize the equivalence of conformity assessment, accreditation, etc., as well as annexes that contain lists of product categories to which the ACAA will apply.

⁴⁶ https://zakon.rada.gov.ua/laws/show/984_011#Text

⁴⁷ See Dmytro Lutsenko "ACAA Agreement: Ukraine's *Integration into the EU Industrial Goods Market*", *Integration within the Association: Dynamics of Implementation of the Agreement between Ukraine and the EU*, third edition.

Institutional framework

In 2015, the Cabinet of Ministers of Ukraine approved the Strategy and Action Plan for reforming the technical regulation system until 2020,⁴⁸ which still remain in force and continue to determine the directions of current state policy in the field of technical regulation. The main task of the Strategy is to create a new system of technical regulation that would promote Ukraine's integration into the world economy by removing technical barriers to trade. This document provides for the development of technical regulations and other regulations in full compliance with the relevant EU directives and regulations.

The central executive body (CEB) responsible for formulating and coordinating technical regulation policy and preparing for the conclusion of the ACAA Agreement is the Ministry of Economy. This ministry also acts as a regulator in the field of sectoral legislation, namely developing technical regulations. Other CEBs perform regulatory or supervisory functions.

In 2015, the National Standardization Body was established - it became the State Enterprise "Ukrainian Research and Training Center for Standardization, Certification and Quality" (UkrNDNC),⁴⁹ who is responsible for the organization and coordination of standardization activities, including the establishment of technical committees on standardization, adoption and repeal of standards, and represents Ukraine in international standardization organizations. UkrNDNC is a member of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). It also has the status of a companion standardization body of CEN⁵⁰ and CENELEC⁵¹. As of the end of 2020, 157 technical standardization committees operated under the auspices of the UkrNDNC, which include representatives of all stakeholders.⁵²

The National Accreditation Agency of Ukraine (NAAU), an independent accreditation body, was established in 2002. NAAU is an associate member of the European Co-operation for Accreditation (EA) and a current member of the International Laboratory Accreditation Cooperation (ILAC). NAAU has signed a number of bilateral agreements with EA, which recognizes and accepts the equivalence of existing accreditation systems, as well as the reliability of conformity assessment results provided by conformity assessment bodies.⁵³ It should be noted that in March 2021 NAAU lost the status of a signatory of bilateral agreements with EA and ILAC on product inspection and certification,⁵⁴ which creates a challenge for the conclusion of the ACAA.

The new national metrology system was developed based on the norms and practices of the International Organization of Legal Metrology (OIML). In 2018 Ukraine became a member of BIPM,⁵⁵ and in 2020 joined the OIML.⁵⁶

⁴⁸ <https://zakon.rada.gov.ua/laws/show/844-2015-%D1%80#Text>

⁴⁹ <http://uas.org.ua/ua/>

⁵⁰ <https://standards.cen.eu/dyn/www/f?p=CENWEB:60:::NO:::>

⁵¹ <https://www.cenelec.eu/dyn/www/f?p=web:161>

⁵² <http://uas.org.ua/wp-content/uploads/2021/03/shhorichniy-zvit.pdf>

⁵³ www.european-accreditation.org/the-mla

⁵⁴ <https://european-accreditation.org/ea-members/directory-of-ea-members-and-mla-signatories/#UKRAINE>

⁵⁵ www.european-accreditation.org/the-mla

⁵⁶ <https://zakon.rada.gov.ua/laws/show/998-IX#Text>

The State Service for Food Safety and Consumer Protection (Derzhprodspozhyvsluzhba), established in 2016, is a key, but not the only, responsible body in the field of market surveillance. For example, among the three product categories defined for the first ACAA Agreement, the State Food and Consumer Service is responsible for EMC and low-voltage equipment, while the State Labor Service is responsible for machine safety.

Market analysis

It is envisaged that the first ACAA Agreement will cover three product categories (and, accordingly, the Directives): machine safety, low-voltage equipment and electromagnetic compatibility (EMC).

According to estimates by the German Economic Group in Ukraine, made together with the Institute for Economic Research and Policy Consulting.⁵⁷ In 2020, Ukraine's trade with the EU in goods subject to these Directives amounted to about \$ 5.5 billion, but was distributed very unevenly. In 2020, exports of goods belonging to the first "wave" of the ACAA to EU countries amounted to 823 million US dollars or 5% of Ukraine's exports to the EU.⁵⁸ It should be noted that during 2017 - 2020, exports of these goods to the EU increased by 89%, and the share of the EU reached 43% in 2020 compared to 29% in 2017. Other important markets for these products are the CIS countries, especially Russia and Belarus, and China.

The value of the ACAA Agreement will be much higher for imports. In 2020, Ukraine imported from the EU these goods worth 4.4 billion US dollars, which is about 20% of total imports from the EU. In contrast to exports, the EU's value in total imports of products covered by the ACAA remained stable during 2017-2020, fluctuating around 40% of the total. China is the second largest source of imports of these goods.

Calculations show that the ad valorem equivalent of trade costs associated with the double conformity assessment (in the Ukrainian market and in the EU market) is 4.9% of the value of exports and 2.4% of the value of imports. Calculations are made only for three categories of goods, which are identified as priorities for the conclusion of ACAA. As these goods are also covered by other directives provided for in Annex III, the actual costs are likely to be higher. At the same time, it should be understood that these costs are the price of entering the market, and not a fixed tax such as import duties. Accordingly, they are relatively higher for small businesses and lower for large ones. Elimination of these costs will not only promote the development of current trade, but also stimulate the entry of new companies into the EU markets, primarily SMEs.

Dynamics of implementation

The conclusion of the ACAA Agreement between the EU and Ukraine has a long history. Back in 2005, Ukraine and the EU signed an Action Plan to prepare for the ACAA Agreement, long before negotiations on a future Association Agreement began. Ukraine's preparation for and accession to the WTO has also stimulated reform of Ukraine's technical regulation system, although the Association Agreement has probably given the most systematic impetus to change.

⁵⁷ Veronika Movchan, Garry Poluschkin and David Saha «The forthcoming ACAA between the EU and Ukraine: What to expect» Policy Study PS 02/2021. https://www.german-economic-team.com/ukraine/wp-content/uploads/sites/7/GET_UKR_PS_02_2021.pdf

⁵⁸ It should be noted that here we consider exports without re-exports, in particular without products that enter Ukraine as toll raw materials and then exported back to the country of origin, in particular to the EU. If we also take into account these exports, the corresponding figures will increase to \$ 2.4 billion. US or 13% of total exports to the EU in 2020.

During the last decade, new or adapted to European standards previous versions of the horizontal legislation of Ukraine in the field of technical regulation have been adopted: Law "On state market supervision and control of non-food products"⁵⁹ (since 2010, as amended in 2020); Law "On General Safety of Non-Food Products"⁶⁰ (since 2010, as amended in 2020); Law "On liability for damage caused by a defect in products"⁶¹ (since 2011); Law "On Standardization"⁶² (from 2014, as amended from 2020); Law "On Metrology and Metrological Activity"⁶³ (from 2014, as amended in 2021); Law "On Technical Regulations and Conformity Assessment"⁶⁴ (from 2015, as amended in 2019); and the Law "On Accreditation of Conformity Assessment Bodies"⁶⁵ (2001, as amended in 2021).

The adaptation of sectoral legislation has also continued. As of October 2020, 77 technical regulations have been adopted, based on EU directives, in particular, technical regulations have been adopted and implemented for 25 of the 27 product categories provided for in the Association Agreement.⁶⁶

In particular, the harmonization of technical regulations provided for the first "wave" of ACAA - on the safety of machines,⁶⁷ low voltage equipment (latest edition 2020)⁶⁸ and EMC.⁶⁹ In all three cases, the latest versions of the technical regulations were adopted in 2020.

In May 2021, the report of the previous EU expert mission to assess Ukraine's readiness to start negotiations on ACAA was presented. The task of this assessment phase was to analyze the compliance of Ukrainian legislation - both horizontal and vertical - with the EU *acquis*. Although the report itself has not yet been made public, according to the Cabinet of Ministers,⁷⁰ EU experts have praised the level of harmonization of legislation, although some provisions of both laws and regulations are not identical to European ones and need further harmonization. Experts also recommended improving correlation tables and translation quality. At the same time, the mission's experts recommended expanding the scope of the first "wave" of the ACAA, in particular by including energy labeling and ecodesign, to provide greater economic benefits from the ACAA,

It is expected that the recommendations of experts on bringing Ukrainian legislation in full compliance with the *EU acquis* will be implemented in parallel with the second phase of assessing Ukraine's readiness for ACAA, namely the study of the functioning of the quality infrastructure.

Although Ukraine has made significant progress in reforming and developing the country's quality infrastructure, challenges related to technical equipment and staff training remain stable.⁷¹ Other challenges include the quality and consistency of the translation of standards. The expert mission's

⁵⁹ <http://zakon3.rada.gov.ua/laws/show/2735-17>

⁶⁰ <http://zakon3.rada.gov.ua/laws/show/2736-17>

⁶¹ <http://zakon5.rada.gov.ua/laws/show/3390-17>

⁶² <http://zakon3.rada.gov.ua/laws/show/1315-18>

⁶³ <http://zakon3.rada.gov.ua/laws/show/1314-18>

⁶⁴ <http://zakon3.rada.gov.ua/laws/show/124-19>

⁶⁵ <http://zakon2.rada.gov.ua/laws/show/2407-14>

⁶⁶ <https://www.me.gov.ua/Documents/Download?id=f2165d4a-a2bb-4499-8927-a0487f5c46a9>.

⁶⁷ <https://zakon.rada.gov.ua/laws/show/62-2013-%D0%BF#Text>

⁶⁸ <https://zakon.rada.gov.ua/laws/show/1067-2015-%D0%BF#Text>

⁶⁹ <https://zakon.rada.gov.ua/laws/show/1077-2015-%D0%BF#Text>

⁷⁰ <https://www.kmu.gov.ua/news/poperednya-ocinochna-misiya-yes-predstava-zvit-shchodo-gotovnosti-ukrayini-do-ukladannya-promislovogo-bezvizu>

⁷¹ Veronika Movchan, Garry Poluschkin and David Saha «The forthcoming ACAA between the EU and Ukraine: What to expect» Policy Study PS 02/2021. https://www.german-economic-team.com/ukraine/wp-content/uploads/sites/7/GET_UKR_PS_02_2021.pdf

findings address the quality of the translation of ACAA-related legislation, but the same can be said for the translation of standards.

Functional status of the on assessment of conformity that are key to the ACAA Agreement, is very different.⁷² All the bodies that carry out the assessment of conformity to technical regulations, accredited N A AU, but the loss NAAU signatory status of bilateral agreements with EA and ILAC on inspection and certification raises the question of recognition of accreditation. In some Ukrainian authorities are agreements on cooperation and / or of recognition of the authorities of other countries, particularly from the EU. However, there are still issues of integrity in the issuance of certificates by individual bodies.

There may also be questions to market surveillance authorities, which are the newest and, according to market participants, the weakest⁷³ element of quality infrastructure in Ukraine. It still needs significant investment in its technical and institutional capacity to bring it into line with EU procedures.

The new EU regulation on market surveillance, introduced in July 2021, poses an additional challenge, as Ukraine will have to implement it, albeit with some delay. The new regulation aims to strengthen the exchange of information and cooperation between Member States in order to quickly identify inconsistencies. The system is based on the Union Compliance Network (UPCN), which was launched in January 2021. Ukraine is likely to eventually join UPCN as part of the ACAA.

Recommendations

For Ukraine:

- to ensure rapid implementation of the recommendations of the EU expert mission on full harmonization of the legislation of Ukraine necessary for the signing of the first ACAA Agreement with the norms of the EU acquis;
- clarify the tables of compliance with the legislation in accordance with the recommendations of the expert mission;
- provide an official English translation of all legislation relating to the ACAA, and keep this translation up to date as these regulations are amended;
- work with stakeholders to ensure the consistency of translations of technical terms used in areas related to ACAA;
- to restore the status of NAAU as a signatory of bilateral agreements with EA and ILAC on product inspection and certification;
- together with stakeholders to continue professional training and development of competencies of staff involved in the quality infrastructure, in particular to provide lifelong learning opportunities;

⁷² See Dmytro Lutsenko "ACAA Agreement: Ukraine's *Integration into the EU Industrial Goods Market*", *Integration within the Association: Dynamics of Implementation of the Agreement between Ukraine and the EU*, third edition

⁷³ Results of the focus group held in 2019 within the project 3dcftas.eu (<https://3dcftas.eu/ua/publications/focus-group-2-technical-barriers-to-trade>)

- to promote the involvement of private capital in the field of conformity assessment to increase competition and quality of services.

For the EU:

- to ensure regular verification of the process of implementation by Ukraine of the recommendations of expert missions,
- provide technical and financial support for the reform and development of technical regulation, in particular the country's preparation for the signing of the ACAA.

2. RECOGNITION OF EQUIVALENCE: UKRAINE'S INTEGRATION INTO THE EU FOOD MARKET

Veronika Movchan, Yevhen Anhel

Benefits

The purpose of agreements in the field of sanitary and phytosanitary measures (SPS) is to reduce restrictions on the path of trade between Ukraine and the EU while ensuring necessary level of protection of life and health of people, herbs and plants. The tool for achieving the goal is, first of all, recognition of equivalence of SPS of Ukraine and the EU, which will simplify border control procedures and reduce their number. The condition of recognition of equivalence is bringing Ukraine its legislation and practices of its implementation into EU norms and practices.

Harmonization of legislation in the field of SPS is perhaps the most ambitious part of the Association Agreement. The harmonization strategy adopted by Ukraine includes more than two hundred EU regulations and directives, which are comparable to the total number of regulations that contain all other annexes to the Agreement.

It is important that not only exporters to the EU, but also producers who supply to the domestic market must be observed in order to recognize the equivalent of SPS in a particular industry or for a certain group of goods of European norms and related procedures. This significantly affects how much this reform is for the country.

On the one hand, a radical reform of the food safety system will have long-term positive consequences for the health and productivity of the population, as well as the quality of life in general. In the short and medium term, the reform will stimulate exports, as harmonization of internal safety requirements will simplify, and in some cases – will open access to the EU market, as well as create preconditions for better access to third countries markets, because access to the market the EU serves as a certain marker of the reliability of internal control procedures. Export growth has obvious positive results, such as GDP growth, revenue growth, labor demand growth, foreign currency inflow, etc.

On the other hand, the transition to EU norms by all market participants is a long and expensive process. The experience of other countries of Central and Eastern Europe, which have already come this way, shows that the transition will be accompanied by an increase in concentration and specialization of producers. However, it should be borne in mind that the reform of food safety began long before the signing of the Association Agreement, and therefore part of the path and part of the challenges are behind.

Commitments

The original text of Association Agreement and the relevant annexes did not contain a list of normative acts for harmonization. Instead, it had to be determined by the country itself within three months after the start of the Agreement – within the framework of the Comprehensive Strategy of Implementation of Chapter IV “Sanitary and Phytosanitary Measures” of the AA – and submit for approval to the relevant EU authorities. After passing the approval procedures, this Strategy should be approved by the Subcommittee on Management of SPS of the Association Committee in the trade composition and become Appendix V to the text of the Agreement, which took place at the end of 2019.

According to the Comprehensive SPS implementation strategy, legislative changes should affect a wide range of issues, such as principles and general requirements for food and feed safety; labeling and posting information on food products; hygiene rules; food impurities and packaging materials; issues related to identification, registration, maintenance, health and diseases of animals; issues related to plant health, variety protection, registration of protection and fertilizers, seeds, GMOs, as well as regionalization/zoning and compartmentalization.

In fact, Ukraine agreed to conduct a full revision of the rules and regulations in the field of food safety and related areas. Although these reforms are logical to continue the state policy of Ukraine, the commitment to which the country has undertaken within the framework of WTO membership, current reforms are much deeper.

Institutional framework

The National Economic Strategy of Ukraine until 2030, approved in March 2021, determines the development of agricultural sector as one of the strategic directions.⁷⁴ At the same time, effective SPS policy is an important prerequisite for the production and export of healthy and safe agricultural and food products, which is reflected in the relevant strategic goals and objectives. However, reforms in the sector are determined primarily by the Comprehensive Strategy for Implementation of SPS,⁷⁵ which is the main reference point for all national program documents.

Over the past two years, Ukraine has demonstrated the instability of the system of institutions that ensure the formation and implementation of public policy in the sector. In September 2019, the new government reorganized the Ministry of Agrarian Policy and Food profile for the sector, joining it to the Ministry of Economy. However, in December 2020, the Ministry of Agrarian Policy was restored. At the same time, the Ministry of Economic Development, Trade and Agriculture (from May 2021 – Ministry of Economy⁷⁶) maintains a number of tasks for the development of the agricultural sector. As a result, today the issue of SPS belongs to the competence of three ministries: the Ministry of Economy, the Ministry of Agrarian Policy and the Ministry of Health.

Fulfilling obligations within the Association Agreement, Ukraine reorganized executive bodies of SPS system. In 2016, the State Service of Ukraine for Food Safety and Consumer Protection (State Service of Ukraine for Food Safety and Consumer Protection) was

⁷⁴ See Resolution of the Cabinet of Ministers of Ukraine of 03.03.2021 No. 179 “On approval of the National Economic Strategy for the period up to 2030”, <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-nacionalnoyi-eko-a179>.

⁷⁵ <https://zakon.rada.gov.ua/laws/show/228-2016-%D1%80>

⁷⁶ <https://www.kmu.gov.ua/npas/pro-perejmenuvannya-ministerstva-roz-a504>

launched. The new body combined functions of food safety, sanitary and veterinary control, consumer protection. The State Service of Ukraine for Food Safety and Consumer Protection was subordinated to the Ministry of Agrarian Policy to the reorganization of 2019. However, after the restoration of the agrarian ministry, the service remains subordinate to the Ministry of Economy.

It should be noted that in 2020 there were proposals of the Ministry of Health on reorganization of the State Service of Ukraine for Food Safety and Consumer Protection. However, the proposed changes caused concern for business, public and other stakeholders, as they could erase Ukraine's fulfillment of its commitments in the field of food safety and jeopardize Ukrainian exports. In 2019 – 2020, the State Service of Ukraine for Food Safety and Consumer Protection also remained without a full-fledged head of the department for a long time.

Market Analysis

Agriculture and food industry play a significant role in the economy of Ukraine, providing work for about 20% of the employed population⁷⁷ and creating about 14% of gross added value, including almost 10% - in agriculture. Over the last decade, Ukraine has gradually increased yields, but it still remains lower than those of European countries, in particular neighboring Poland.

Development of the sector is still constrained by the moratorium on the sale of agricultural land, which has been in force since 2001. However, the land reform, launched in 2019, provides for a phased launch of the land market from July 1, 2021.⁷⁸

There are significant structural differences in the role of small and medium-sized enterprises (SMEs) in agriculture and food industry of Ukraine. In agriculture, the lion's share of sales is accounted for by SMEs - 87% in 2019. At the same time, the share of small business itself has gradually increased within the SME group. If in 2010, its subjects accounted for 28% of sold products, then in 2019 – 41%.⁷⁹ At the same time, in the food industry, the main part of the products sold - 56% - is accounted for by large enterprises, whose role has increased over the last decade.

Despite the attention paid to the protection of agriculture in the EU, its role in the economy of member countries is moderate. In 2019, agriculture accounted for about 1.6% of GDP⁸⁰ while the food industry creates about 2.1% of GDP.⁸¹ The agro-industrial sector accounts for 6.5% of those employed in the EU economy.⁸²

⁷⁷ According to Ukrstat (State Statistics Committee of Ukraine). The share of the employed population is estimated on the basis of information on employment of the population by types of economic activity and the accounting number of full-time employees by types of economic activity in industry in 2019

⁷⁸ See <https://zakon.rada.gov.ua/laws/show/552-20>.

⁷⁹ It should be borne in mind that a significant part of small and medium-sized subjects may be part of insufficiently transparent organizational structures of Ukrainian agricultural holdings, which causes an overstatement of the SME sector.

⁸⁰ See <https://data.worldbank.org/indicator/NV.AGR.TOTL.ZS?locations=UA-EU>

⁸¹ See https://www.fooddrinkeurope.eu/uploads/publications_documents/FoodDrinkEurope_-_Data__Trends_2019.pdf

⁸² 4.4% in agriculture (see <https://data.worldbank.org/indicator/SL.AGR.EMPL.ZS?locations=EU>) and 2.1% in the production of food and beverages (see https://www.fooddrinkeurope.eu/uploads/publications_documents/FoodDrinkEurope_-_Data__Trends_2019.pdf and <https://www.statista.com/topics/4095/employment-in-europe/>)

Export of Ukrainian agricultural and food products to the EU in 2020 amounted to USD 6.5 billion or more than a third (35%) of total exports, while in 2013 – before the signing of Association Agreement – its share was 25%.⁸³

This dynamics is also important for the EU. According to Eurostat, in July 2019 Ukraine outstripped China and became the third largest exporter of agricultural products in the EU among non-community countries.⁸⁴

The ahead of the growth rate of agricultural exports to the EU are associated with a relatively greater effect of the abolition of import duties, which were on average higher than duties on industrial goods, and with the reduction of non-tariff barriers, including in the field of food safety and related to them goods.

The Ukrainian state authorities were able to confirm their ability to exercise control, and producers – to comply with safety requirements for a large proportion of goods of animal origin, the requirements for which are traditionally considered the most difficult. If in 2013 Ukraine had verified enterprises in 11 out of 29 controlled categories, in 2019 the number of categories increased to 19, primarily due to the expansion of the list of industries that allow the supply of livestock products intended for human consumption. Today, by the number of allowed categories, Ukraine is ahead of⁸⁵ Turkey (17 categories), Bosnia and Herzegovina (11), Montenegro (7), Georgia (5) and Moldova (5).⁸⁶

Compliance with the safety requirements of livestock products has also become an actual prerequisite for Ukraine's use of many duty-free tariff quotas stipulated by the Association Agreement for a number of sensitive to European producers of goods, including for certain goods of animal origin, such as honey, meat, dairy products. An interesting case is the supply of butter. Immediately after obtaining a permit for export, Ukraine was able to take leading positions among exporters from outside the EU. Ukraine has also become important suppliers of snails (7% of total imports to the EU), 28 Ukrainian enterprises have been verified to export these products to the EU.

The role of agricultural and food products in the structure of EU exports to Ukraine is less than in the structure of Ukrainian exports. In 2020, imports from the EU amounted to 3.3 billion US dollars, or only 14% of the total EU imports to Ukraine. However, the EU products are dominated by ready-made foods, which make up almost two-thirds of the volume (59%), while in Ukrainian exports they provide only 15%.⁸⁷

The development of trade in agricultural and food products confirms that the Association Agreement has expanded the presence of Ukrainian business in the EU market. At the same time, the level of access to new opportunities is still different for different stakeholder groups. First of all, big business could take advantage of the potential of the Agreement, which had sufficient opportunities for rapid implementation of food safety measures, etc. A good example is the company Myronivskiy Hliboproduct (MHP), which entered the EU market before signing the Association Agreement. In recent years, the company has become one of the largest exporters of chicken meat in the EU, and has opened its own production facilities there. In contrast, access to the European market is more difficult for small farmers and producers, for whom compliance with SPS requirements and finding partners is less trivial.

⁸³ According to Ukrstat (State Statistics Committee of Ukraine).

⁸⁴ See https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/trade/documents/monitoring-agri-food-trade_july2019_en.pdf

⁸⁵ Among the European countries that have free trade agreements with the EU.

⁸⁶ See https://webgate.ec.europa.eu/sanco/traces/output/non_eu_listsPerCountry_en.htm.

⁸⁷ According to Ukrstat (State Statistics Committee of Ukraine).

EU countries remain the main importers of agricultural products to Ukraine, and in 2019 their share for the first time exceeded 50%.⁸⁸ The event of European players will promote competition in the Ukrainian market. For example, in parallel with the rapid growth of exports of Ukrainian chicken meat, imports of the European one also increased.⁸⁹ Ukraine has become the third largest consumer of chicken from the EU. At the same time, harmonized certificates for the export of chicken meat from the EU became valid only in 2020.

Dynamics of implementation

Approval of Comprehensive Strategy for Implementation of SPS took place only in November 2019 at the fourth meeting of the Subcommittee on Management of SPS. Despite this, Ukraine has actually fulfilled its obligations since 2014, when the first amendments to the legislation on food products were introduced (in particular, the principles of NASSR (Hazard Analysis and Critical Control Points) were laid). At the beginning of 2016, Ukraine adopted the Comprehensive Strategy at the level of the Government's order and made appropriate measures to the Action Plan on the implementation of Association Agreement from 2017. Thus, the fulfillment of obligations took place without making the necessary changes to Annex V, which were finalized and agreed with the EU only at the end of 2018.⁹⁰

According to the schedule of the Strategy, the most measures were envisaged for 2017-2019. In 2017, the law “On Safety and Food Hygiene” was adopted.⁹¹ Ukraine approved the requirements for honey, rules for identifying pigs, cattle and sheep. In 2019, the law on information for consumers regarding food products came into force.⁹² Veterinary certificates for import of EU products to Ukraine were also approved.

According to the assessment of the European Commission, it was in 2017 – 2019 that there was a noticeable acceleration in the preparation and adoption of the necessary legislative acts on SPS.⁹³ Although this process began to slow down in 2019,⁹⁴ Ukraine fulfilled 55% of its obligations as of January 2021.⁹⁵ Already in 2021, an important European integration law “On veterinary medicine” was adopted. The Verkhovna Rada should also consider bills “On Plant Protection”, “On Requirements for Objects and Materials in Contact with Food Products”.

Despite certain institutional fluctuations and uneven speed of implementation, Ukraine continues to progress in fulfilling its obligations. This helps to reduce “gray zones” and increase confidence in the Ukrainian SPS system. As of April 2021, Ukraine has EU authorized plans to monitor veterinary medicines and pollutants residues for eight out of twelve broad product categories, namely beef, pork, poultry and rabbits, aquaculture

⁸⁸ See <http://www.iae.org.ua/presscentre/archnews/2751-2019-roku-import-ahroproduktysiyi-z-yes-do-ukrayiny-vpershe-perevshchyyv-50-mykola-puhachov.html>.

⁸⁹ See <https://circabc.europa.eu/sd/a/cdd4ea97-73c6-4dce-9b01-ec4fdf4027f9/24.08.2017-Poultry.pptfinal.pdf>.

⁹⁰ See https://www.ecoi.net/en/file/local/1455671/1226_1546250670_2018-association-implementation-report-on-ukraine.pdf.

⁹¹ See <https://zakon.rada.gov.ua/laws/show/2264-19>.

⁹² See <https://zakon.rada.gov.ua/laws/show/2639-19>.

⁹³ See https://www.ecoi.net/en/file/local/1455671/1226_1546250670_2018-association-implementation-report-on-ukraine.pdf and https://eeas.europa.eu/sites/default/files/swd_2019_433_f1_joint_staff_working_paper_en_v4_p1_1056243.pdf

⁹⁴ See https://eeas.europa.eu/sites/default/files/2020_ukraine_association_implementation_report_final.pdf

⁹⁵ See <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-nacionalnoyi-eko-a179>.

(excluding crustaceans), milk, eggs and honey.⁹⁶ More than 350 Ukrainian enterprises that produce products of animal origin have obtained permits for export to the EU.

At the end of 2020, the EU recognized the equivalence of the grain seed control and certification system in Ukraine, which expands export opportunities. It is important that this first recognition of equivalence confirms the possibility of deeper integration of Ukraine into the market of agricultural products of the EU due to the elimination of non-tariff barriers to trade.

Recommendations

Stakeholders should focus on Ukraine's further implementation of SPS reform, which has already crossed the equator. For the Ukrainian Government it is necessary to:

- Ensure the further implementation of the Comprehensive Strategy for the implementation of SPS;
- Ensure the stability of the state policy and the sustainability of institutions in the field of SPS, which is important for maintaining the level of trust in Ukraine as a partner;
- Maintain a dialogue with Ukrainian business on the implementation of SPS;
- Support small and medium-sized businesses in the implementation of SPS and not create obstacles for large businesses.

For business it is important to:

- Continue to support the implementation of the Comprehensive Strategy of SPS;
- Maintain the stability of public policy and sustainability of institutions;
- Comply with the standards of business integrity in compliance with the requirements of SPS in international markets.

From the European Union it is important for Ukraine to obtain:

- Continuous technical and financial support to finalize the reform;
- Recognition of equivalence of the system of control and certification of other products according to the readiness of the legislative and institutional framework in Ukraine.

⁹⁶ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021D0653&from=EN>.

3. TRADE FACILITATION BETWEEN UKRAINE AND THE EU

Andrii Butin

Benefits

Implementing the customs-related provisions of the Association Agreement between Ukraine and the European Union (AA) will play a major role in integrating Ukraine economically into the EU's internal market. The result should be considerable streamlining of customs procedures, reduced costs for companies engaged in international trade, and a gradual increase in trade turnover between Ukraine and the EU.

Among others, the AA provides for:

- establishing the institution of “authorised economic operators” in Ukraine (AEOs) and their recognition by the EU (Art. 76,1 (k) and Art. 80 (i) AA);
- establishing the single administrative document (SAD) in Ukraine and its recognition by the EU, and Ukraine's joining the EU's common transit system NCTS (Art. 76, 1 (c), Art. 76, 4 (b) and Annex XV to the AA).

gradual alignment of Ukrainian customs legislation with EU customs legislation, in particular the provisions of the EU Customs Code.

Establishing the AEO will help reduce the number of customs procedures and the time for going through customs clearance for reliable companies, which will increase the competitiveness of Ukrainian businesses on foreign markets. One of the key advantages will be the recognition by both Ukraine and the EU of companies that have the status of AEOs. For the private sector, this means, first of all, savings in time, money and organizational resources, the transparency and predictability of procedures, and better potential business opportunities.

Establishing the SAD means instituting customs declarations in line with EU declarations and can be used for any import or export clearance procedure as well as for the procedure of the common transit for trade in goods between Ukraine and all other signatories of the **Convention on a Common transit**⁹⁷ and the **Convention on the simplification of formalities in trade in goods**⁹⁸ (hereinafter, Conventions) regardless of the type and source of such goods.

⁹⁷ <https://eur-lex.europa.eu/eli/convention/1987/415/2017-12-05>

⁹⁸ <https://eur-lex.europa.eu/eli/convention/1987/267/oj>

Ukraine's participation in the EU common transit system (NCTS) will enable businesses operators to use a single customs declaration and a single guarantee to move goods from the country of departure to the country of destination without delay across the borders of the Contracting Parties to the Convention on a Common transit procedure. It will bring a series of advantages, principal among which will be a significant acceleration and reduction in the cost of the movement of goods for all participants—exporters, transporters and importers, – and the removal of the requirement to declare export goods at the EU border: for exports, this will be done in Ukraine.

The implementation by Ukraine of these and other AA provisions in the area of customs, among other things, includes automation of certain procedures, introduction of post-clearance audit, improvement of risk-oriented control systems, common transit procedure etc. The implementation of all these measures in a complex will allow to make customs procedures more fair and transparent, reduce corruption risks, the volumes of smuggling and 'grey imports'.⁹⁹

Commitments

AA provisions on customs cooperation in Annex XV commit Ukraine to:

- introduce best practice from EU customs legislation to Ukrainian law, including the EU Customs Code, and establish the prerequisites for mutual recognition of AEOs within three years of the AA coming into effect;
- implement the provisions of the Conventions within a year of the AA coming into effect.

AEO status, which is granted to enterprises, offers a specific list of benefits and procedural short-cuts when going through customs clearance. This is the highest level of trust on the part of Customs towards a company. To gain this status, a company needs to meet specific criteria.¹⁰⁰

Formally, the AEO institute has been introduced in Ukraine by the Customs Code since 2012. But these norms did not work and contained significant inconsistencies with international practice. Therefore, in order to introduce the AEO institute in Ukraine, it was necessary to adopt a law that would amend the Customs Code of Ukraine accordingly..

In order for Ukraine to join the single EU transit system and introduce a single administrative document, it was necessary to adopt legislation on the introduction in the country of certain types of customs declarations, similar to those used in the EU for the common transit procedure. In addition, it was necessary to develop and implement an appropriate information and telecommunication system based on European technologies.

⁹⁹ Import of goods at a deliberately understated customs value or import of goods using the existing legal grounds for import into the territory of Ukraine with subsequent evasion of customs duties and sale of these goods in significant quantities.

¹⁰⁰ According to Article 12 of the Customs Code (<https://zakon.rada.gov.ua/laws/show/4495-17>) AEOs must meet the following criteria:

- compliance with the requirements of the customs and tax legislation of Ukraine, as well as the absence of facts of criminal prosecution;
- proper system of accounting, commercial and transport documentation;
- stable financial condition;
- ensuring practical standards of competence or professional qualification of the responsible official of the enterprise;
- compliance with safety and reliability standards.

Ukraine is also required to bring its legislation into line with the requirements of the Modernized Community Customs Code (ICC) (Regulation 450/2008 / EC) included in Annex XV, which establishes general rules and procedures applicable to goods imported into or exported from customs territory of the EU. Ukraine is not obliged to implement all the provisions of the ISS, but Annex XV defines provisions that are not subject to approximation or are subject to harmonization on the basis of the principle of "best effort"¹⁰¹. First of all, the necessary changes concern the already mentioned AEO implementations, EAD implementation, NCTS accession and protection of intellectual property rights.

Institutional framework

An important decision for the formation of the institutional framework in the field of customs policy was the adoption in December 2018 of the disposal of the government reform EMI bodies that exercise state tax and customs policy¹⁰² and the establishment of the State Customs Service of Ukraine as a separate central body of executive power.

In March 2019 Resolution number 227 the government approved the provision of State Customs Service of Ukraine and 2 October 2019 - the structure of local authorities Customs Service.¹⁰³ At the present process of organizing new Ukrainian customs still ongoing. Its key element is the creation of a single legal entity with regional divisions.

A systematic approach and a comprehensive vision for reforming the customs sector was also set out in the order of the Cabinet of Ministers of Ukraine dated May 13, 2020,¹⁰⁴ which replaced similar provisions of the previous government order of July 5, 2019, which approved the conceptual directions of reforming the system of bodies implementing state tax and customs policy. It should be noted that this document is the most systematic document on customs reform. Not only government officials, but also experts and representatives of business associations joined its development.

In June 2019 Cabinet of Ministers of Ukraine also adopted Resolution number 444, which was approved Plan of measures on implementation of the provisions of the WTO Agreement on simplification of procedures of trade.

Market analysis

According to a survey of more than a thousand Ukrainian exporting and importing companies conducted by the IER in 2020 as part of the Public Initiative "For Fair and Transparent Customs", which is financially supported by the EU, in 2020, the average time spent on a single transaction was 8.9 hours for exports and 16 hours for imports. Average costs of a single export transaction constituted 4186 UAH, import - 8429 UAH. Although the business as a whole praised the work of customs, 68% would like the duration of customs

¹⁰¹ The principle of "best effort" is usually found in commercial contracts and obliges a certain party to make every effort to meet these conditions. The principle of "best effort" is stricter than the obligation of "reasonable effort".

¹⁰² Resolution of the Cabinet of Ministers of Ukraine of 12.27.2018, the number 1101 "On approval of the conceptual directions of reforming the system of bodies implementing state tax and customs policy"

¹⁰³ Resolution of the Cabinet of Ministers of Ukraine on 2 October 2019 r. Number 858 "On establishment of territorial bodies of the State Customs Service» <https://www.kmu.gov.ua/ua/npas/pro-utvorenniya-teritorialnih-organiv-derzhavnoyi-m858021019mitnoyi-sluzhbi>

¹⁰⁴ Order of the Cabinet of Ministers of Ukraine № 569 of May 13, 2020 "Some issues of implementation of conceptual directions of reforming the system of bodies implementing state customs policy", which replaced similar provisions of the previous government order of July 5, 2019 № 542

clearance to be reduced, and 66% want to see more automation and less participation of people in customs procedures.

According to Inform and that the Ministry of Economy, in 2021, the exports to the EU market carried out more than 14 of thousands of companies.¹⁰⁵ The simplification of procedures of trade have a positive impact on all subjects of foreign economic activity, as cheaper procedures impact on the whole chain of supply, starting from the vendor and ending with the buyer.

One can expect that the relatively greater benefit from total simplify and reduce the cost of procedures moving goods across borders (e.g., by introducing a single administrative document and accession to the common transit system EU) will have just a small business because of its cost (weighted for size) is relatively larger.

From the introduction of AEO, on the contrary, more benefits will be relatively large and well-established companies that can meet the criteria for obtaining the status of AEO and, therefore, use the advantages provided by this status. At the same time, in the future, medium and small enterprises that carry out regular homogeneous foreign trade operations and are interested in the predictability of customs procedures will also be able to use the status of AEO.

Dynamics of implementation

The provisions of the Association Agreement and the Agreement of the WTO to simplify the procedures for trade¹⁰⁶ identify sufficiently clear steps needed to improve customs procedures.

During 2019-2020, the government intensified activities aimed at introducing the institution of authorized economic operator (AEO) in Ukraine. This became possible after the adoption by the Parliament in October 2019 of the Law of Ukraine "On Amendments to the Customs Code of Ukraine on Certain Issues of Functioning of Authorized Economic Operators" № 141 of October 2, 2019.¹⁰⁷ During 2020, the government's activities focused on the preparation and adoption of bylaws that should ensure the practical implementation of AEO in Ukraine. On July 29, 2020, the government adopted Resolution № 665 "Some issues of functioning of authorized economic operators", which allowed to launch the mechanisms of the AEO institute. But the process of developing and adopting other necessary by-laws continues, as not all components of this mechanism have been regulated.

At the same time, the already approved documents allowed the interested companies in the second half of 2020 to start preparing documents for obtaining the status of AEO. As of the beginning of April 2021, according to the official web portal of the State Customs Service,¹⁰⁸ first AEO certificate has already been issued to JT International Ukraine PJSC. Another application for AEO status is also under consideration.

As of the beginning of April 2021, the required bylaws have not been approved in full. At present, it is not possible to take full advantage of all the benefits of AEO status. Thus, regulations have not been approved that should determine the specifics of customs formalities during the simplified declaration, release at the location, as well as requirements

¹⁰⁵ <https://bit.ly/3gH0IFo>

¹⁰⁶ Ukraine joined the WTO Agreement on Trade Facilitation in 2015, the http://zakon.rada.gov.ua/laws/show/9_8_1_053

¹⁰⁷ <https://zakon.rada.gov.ua/laws/show/141-20#Text>

¹⁰⁸ <https://customs.gov.ua/deiaki-pitannia-funktsionuvannia-avtorizovanikh-ekonomichnikh-operatoriv>

for the characteristics of special type seals required for "self-application of special type seals." Relevant draft acts were published on the website of the Ministry of Finance in December 2020, but have not yet been approved.

Therefore, at present the company will not be able to take full advantage of the simplifications provided by the status of AEO. At the same time, it is clear that the status was obtained with the prospect of several years.

There are also questions about the practical application of such a special advantage as the priority of customs formalities for goods, commercial vehicles. It is unclear how such priority will be determined. The mode of use of a specially defined lane at the checkpoint for AEO transport also remains uncertain. Therefore, the relevant authorities will have to make additional efforts to address these gaps in the current legislation in order for the full functioning of the AEO.

With regard to Ukraine's accession to the single transit system, the relevant Law of Ukraine № 78 "On the regime of joint transit and introduction of the national electronic transit system" was adopted by the Verkhovna Rada of Ukraine on September 12, 2019.¹⁰⁹ In addition, in order to fill the relevant regulatory framework on August 5, 2020, the government approved¹¹⁰ new requirements for customs declarations, which will regulate the use of so-called separate type declarations (T1UA), which will operate within the NCTS system. The test mode of operation of the general transit system is currently underway.

In particular, on April 8, 2021, the first T1UA declaration in the mode of joint transit with the use of the national electronic transit system (NCTS) was issued in Ukraine. Epicenter K LLC became the first entity to which goods were moved in the mode of joint transit using NCTS. Currently, the NCTS operates in Ukraine on a national scale, which is a necessary step in preparation for Ukraine's accession to the Convention on the Procedure of Joint Transit and International Application of the NCTS.

It is expected that Ukraine will be able to join the pan-European system in 2022-2023. By this time, it is necessary to complete the adoption of the necessary bylaws. It is also required that the relevant information and telecommunication system based on European technologies be used for at least one year within the territory of Ukraine. Only then will Ukraine be able to receive a formal invitation to accede to the Single Transit Convention.¹¹¹

Thus, during 2019-2020, Ukraine has largely fulfilled its obligations to approximate legislation in the field of customs by adopting laws on AEO, the introduction of EAD and accession to the NCTS.

For the reform of Ukrainian customs and the effective fight against smuggling and "gray imports", it is important to develop cooperation with the customs of EU member states on the exchange of information. This exchange takes place on the basis of bilateral agreements between countries, as the NCTS system does not cover all trade between the participating countries: in parallel, there may be other supply (transit) systems that are not covered by NCTS; in addition, deliveries from Ukraine's neighboring countries will also not be covered

¹⁰⁹ See: <https://zakon.rada.gov.ua/laws/show/78-IX#Text>

¹¹⁰ Resolution of the Cabinet of Ministers of Ukraine of August 5, 2020 № 681 "Some issues related to the use of customs declarations of certain types" <https://zakon.rada.gov.ua/laws/show/681-2020-%D0%BF#Text>

¹¹¹ Legislative implementation of the provisions of the Convention does not mean automatic accession to it. Accession to the Convention shall take place only at the invitation of the Joint Committee of the Convention. The Convention does not establish an official list of requirements that a candidate country must meet in order to receive an invitation. However, in practice, this invitation is given to the fact the case, if a country can prove its ability to fulfill the conditions of the Convention throughout the year using a common transit procedure in unilateral order. Upon receipt of such an invitation, Ukraine must ratify the Convention. See more "The state and prospects of accession of Ukraine to the Convention on a common transit procedure, as it provides for obligations that are contained in the Agreement on Association between Ukraine and the EU," Ukrainian Center for European Policy and Ernst End Young: <https://bit.ly/36yRgrY>

by the NCTS system. Currently, Ukraine has only a few existing bilateral agreements on the exchange of customs information.

Recommendations

For Ukraine:

- to continue the adoption of bylaws necessary for the full implementation of the institution of authorized economic operator (AEO) and simplification of transit procedures in Ukraine;
- complete preparations for joining the common European transit system;
- intensify work with neighboring countries on concluding bilateral agreements on the exchange of customs information;
- intensify efforts to implement the UA in the customs sphere and simplify trade procedures. At the same time, these efforts should be combined with civil society institutions, in particular business associations, which can really help to bring about change;
- to provide systemic mechanisms of governmental and public control over the activities of a new separate state body - the State Customs Service.

For the EU:

- to promote the establishment of a new State Customs Service of Ukraine, in particular through the implementation of technical assistance projects aimed at equipping customs, staff training and public control over customs activities;
- to promote the conclusion of bilateral agreements on the exchange of customs information between Ukraine and neighboring EU member states;
- to join Ukraine to the single EU transit system and to recognize Ukrainian authorized economic operators (AEOs) in case of proper implementation of the new legislation of Ukraine.

4. INTEGRATION INTO THE EU FINANCIAL SERVICES MARKET

Vitaliy Kravchuk

Benefits

Annex XVII to the Agreement on Association (AA) provides the opportunity to provide a full treatment of the internal market for trade in financial services. This mode provides the same conditions of Ukrainian companies and companies of member countries of the EU on the market of the EU and Ukraine, total freedom over a ting services of Ukrainian companies on the market of the EU and vice versa. For financial market it should have been would mean spreading in Ukraine regime "passport", according to which banks, insurance companies and other financial institutions under the supervision of the regulator of one of the EU countries can work on throughout the EU. That is, Ukraine companies could be run in all EU countries and vice versa.

In the case of expanding Ukraine's access to the EU financial services market, the initial effect may be limited, given that Ukrainian financial companies have not yet been very active in using the available options for entering the EU market. Barriers to entry into the EU market for providers of traditional banking and insurance services, including the dominance of large players in the EU market, the high cost of real estate and labor, and expensive capital, will also not change dramatically. However, in the long run, a relatively cheap and professional workforce may become a competitive advantage for financial technology startups to enter the EU market. Ukrainian banks can also compete for servicing the daughters of Ukrainian business groups abroad and servicing Ukrainian migrants.

Expanded EU access to the Ukrainian financial services market is also likely to have limited consequences. EU banks and insurance companies already have a significant presence in the Ukrainian market, and if necessary, enter the Ukrainian market without any problems. Financial sector enterprises with Ukrainian owners have also been competing with foreign market participants for a long time. However, lowering barriers to entry can increase competition in the market and reduce the share of the largest players. Annex XVII to the UA assumes that the mode of the internal market provided after the fact as to the request of Ukraine the EU will conduct a comprehensive assessment of the state regulation in the field and come to the conclusion that by UA prerequisites have been met.

By providing the regime of internal market rules for trade in services between Ukraine and the EU are not too different from the rules of trade services with TPE t lma countries: trade is free for certain exceptions provided for in Annex XVI to AA. These exceptions do not differ significantly from similar exceptions provided for in the GATS Agreement within the WTO.

However, the EU's transition to more centralized supervision of banks and other financial service providers has made it difficult to implement existing EU rules in Ukraine. EU-level financial services regulators, such as the European Banking Authority, have no legal basis to operate outside the EU. For example, in the EFTA countries (Norway, Iceland and Liechtenstein), which have implemented EU financial services legislation, the powers of EU regulators are formally vested in the EFTA Surveillance Authority, and EU regulators have an advisory role. Thus, the implementation of the internal market regime for Ukraine may require the creation of additional institutional mechanisms to perform the functions of EU financial services regulators.

Commitments

In order to obtain the internal market regime, it is necessary to approximate the legislation of Ukraine to the legislation of the EU in the field of financial services and to ensure the proper capacity of supervisory authorities and supervisory mechanisms. The list of legal acts of the EU in the field of financial services, which Ukraine committed to introduce in their legislation identified in Annex XVII-2 to AA. The amount of commitments is significant: Ukraine has committed to implement the main acts of EU legislation governing the work of banks, insurance companies, capital market operators; circulation of securities; making payments; prevention of money laundering and free movement of capital.

As a result of the reform of financial sector regulation, a significant part of the EU legislation mentioned in the AA has been repealed and replaced by new ones (often with an increase in the regulatory burden on market participants). In this case, Art. 3 Add and tissues XVII to UA provides for consultations between the EU and Ukraine on the update of the Annex. Ukraine and the EU for several years discussing the renewal of Annex XVII to the UA, but a final decision yet that is not accepted. However, plans to implement the Association Agreement in Ukraine are already focused on meeting the latest EU rules In the area of banking regulation as Ukraine, so and the EU implement the recommendations of the Basel Committee on banking issue supervision at.¹¹² Thus, the EU and Ukraine have implemented the basic principles of banking supervision and the basic capital requirements for banks (Basel I). However, the EU has introduced the latest standards for bank regulation (the so - called Basel III), adopted in response to the great financial crisis of 2007 - 2009 years, while as in Ukraine their implementation continues.

Regulation of the work of insurance companies of Ukraine is determined by the Law on Insurance¹¹³, which was adopted in 1996. If 2000's regulation of insurance companies Ukraine not too much the rules of the EU, from 2016 insurance company EU working on new rules , defined by Directive 2009/138 / EC, known as Solvency II. In particular, it was sculptor and or revoked list of admissible assets for investment established new requirements for capital requirements to control risks of insurance companies increased transparency of supervision by page and headquarters of the companies. These changes have not yet been made to the legislation of Ukraine.

The legislation of the EU in the field of market capital meets the highest of market capital in the economies of member countries, in comparison with Ukraine, and also was substantially updated for years after approval of the text of the AA. The most significant change includes directives and regulations MiFID II / MiFIR concerning the markets of financial instruments.

¹¹² Brings together central banks and bank regulators in 28 (mostly developed) countries and territories. See more <https://www.bis.org/bcbs/index.htm?m=3%7C14>

¹¹³ <https://zakon.rada.gov.ua/laws/show/85/96-%D0%B2%D1%80#Text>

They increased requirements to protect retail client extended the requirement to transparency to market participants, in particular regarding the disclosure of data of OTC transactions, upgraded requirements for regulated markets. As part of the implementation of the European Green Course, further changes to EU legislation are planned, in particular the introduction of disclosure requirements for environmental impact and the availability of "green" investments

Institutional framework

After the signing of the AA, financial market regulators and the Verkhovna Rada began to fulfill Ukraine's obligations to approximate domestic legislation to EU legislation in the field of financial services. In particular, part of the EU legislation on banking supervision and consumer protection has been implemented. It took place in the framework of the Integrated Program for the Development of the financial sector to the 2020 year, adopted in 2015 year. However, plans to reform the financial sector have been quite ambitious, and much of the work is still ahead. The entry into force of some new requirements for the regulation of banks has been postponed due to the COVID-19 epidemic.

In September 2019, the Verkhovna Rada adopted the Law on Amendments to Certain Legislative Acts of Ukraine Concerning the Improvement of Functions on State Regulation of Financial Services Markets. From July 1, 2020, it assigns responsibilities for the regulation of financial services to the National Bank (NBU) and the National Commission on Securities and Stock Market (NSSMC). Natskomfinposlug, which was previously responsible for regulating non-bank financial services other than capital markets, has ceased operations. Consolidation of financial services regulation has simplified the fulfillment of obligations under the AA.

The strategy for the development of Ukraine's financial sector until 2025 was finally approved in early 2020 and provides for the implementation of the remaining basic provisions of EU legislation required to obtain the internal market regime. The strategy was updated in March 2021.

Market analysis

The role of the financial sector in Ukraine's economy declined during the 2014-2015 crisis due to the closure of more than half of banks and the reduction in the number of financial institutions. Accordingly, the share of financial services in gross value added (GVA) decreased sharply from 5.2% in 2013 to 3.2% in 2017. After the crisis, the financial sector resumed growth and in 2019 the GVA of financial services in Ukraine amounted to 4.1% of GDP or 4 billion euros (115 billion UAH). By comparison, the GVA of the financial services of Croatia and Cyprus together amount to 4.1 billion euros.

Revenues to the budget from banks, insurance companies and other financial institutions have historically been relatively small, due to the fact that banks showed minimal profits and most financial services are not subject to VAT. However, one of the consequences of reforming the banking system was that banks reported higher profits and, consequently, paid more corporate income tax. Banks also pay significant amounts of personal income tax, accrued on interest on deposits. Therefore, in 2019, according to the State Tax Service, banks and other financial market participants paid 4.4% of tax revenues to the consolidated budget.

The financial sector survived the COVID-19 epidemic without significant losses. Banks and insurance companies remained profitable. After the transfer of regulation of insurance companies and other financial institutions, in addition to capital market participants, to the NBU in July 2020, a number of companies ceased operations. The NBU has also begun work to ensure the transparency of the ownership structure of non-bank financial institutions.

Banks and insurance companies are the largest components of the financial sector in Ukraine. In 2019, commercial banks and the NBU accounted for 49.6% of the value added of the financial sector, insurance companies - 23.5%, and other financial institutions and capital market participants - 26.9%.¹¹⁴

Box 1: History of Privatbank

Until the end of 2016, Privatbank was the largest private bank in Ukraine and belonged to Igor Kolomoisky and Gennady Bogolyubov. According to the NBU, Privatbank used the funds raised from depositors mainly to issue loans to affiliated companies belonging to Igor Kolomoisky's Privat Group. These loans were often subject to overvalued, illiquid or non-existent collateral.

After the negotiations between the NBU, the Ministry of Finance and the owners of Privatbank on the recovery of the bank's financial condition came to a standstill, the owners of Privatbank appealed to the state to nationalize the bank. On December 18, 2016, the Deposit Guarantee Fund of Individuals declared Privatbank insolvent and on December 21, 2016, it sold the bank to the state for one hryvnia. The former owners promised to restructure the loans provided by the bank by July 1, 2017, but did not do so. In total, to protect the interests of 20 million depositors and maintain financial stability in general, the state in 2016-2017 spent more than 155 billion UAH (approximately 5 billion euros, or 5% of Ukraine's GDP) to cover the bank's losses.

The lawsuits of the NBU and the already state-owned Privatbank against the former owners of the bank are currently being considered in the courts of Ukraine, Switzerland, England and the United States to reimburse the costs incurred by the state. At the same time, the former owners of the bank received several decisions of Ukrainian courts declaring certain aspects of the nationalization of Privatbank illegal. These decisions were appealed by Privatbank and, accordingly, did not come into force.

Currently, the leading role in the banking sector of Ukraine (as of February 2021, 52% of net assets of the banking sector) is occupied by state-owned banks - Privatbank, Oschadbank, Ukreximbank and Ukrgasbank. Among non-state banks, the largest market share is occupied by banks from EU countries. Only one bank with Ukrainian private owners is among the top ten in terms of net assets (now in seventh place). Russian banks are gradually reducing their presence in the Ukrainian market and have announced plans to sell their Ukrainian subsidiaries.

Among the largest insurance companies in Ukraine are also several "daughters" of insurance companies from EU countries (UNIQA, PZU), but the market share of insurance companies with Ukrainian owners is higher compared to the banking sector. Other financial institutions are predominantly Ukrainian.

As of today, according to Annex XVI to the UA, Ukrainian banks and insurance companies can enter the EU market through subsidiaries and branches, but cannot provide services

¹¹⁴ Amount 99% due to rounding

cross-border, with certain exceptions (insurance of sea and air transport, goods in transit). The opening of subsidiaries and affiliates requires a prudential inspection of the parent company (following the same procedure as other investors). Today, only the Ukrainian Privatbank owns 47% of AS Privatbank in Latvia and has a branch in Cyprus. In 2017, plans to sell the Latvian subsidiary of Privatbank were announced, but no buyers have been found so far. Other Ukrainian banks do not have branches or subsidiaries in the EU.

Dynamics of implementation

Among the regulators of financial services, the NBU has a relatively greater freedom of action to regulate the work of banks. Accordingly, a significant proportion of the norms of the EU in the banking sphere can be implemented decisions NBU without making changes to the laws of Ukraine. For example, the National Bank in 2015 ordered¹¹⁵ banks to form capital buffers from 2020 and in 2018 the NBU introduced a liquidity coverage ratio (LCR).¹¹⁶ Entry into force of the new law on currency and foreign exchange transactions in February 2019 allowed the NBU to start implementing obligations UA with the liberalization of movement of capital. In general, the introduction of UA in the banking sector takes place according to schedule.

Implementation of EU norms for the insurance market requires changes to the relevant Law, because the basic requirements for the solvency of insurance companies are defined at the legislative level. Bill № 1797-1,¹¹⁷ which implements the provisions of the directive Solvency II on the solvency of insurance companies was adopted in the first reading in 2016 year but the newly elected Verkhovna Rada withdrew it from consideration.

In the field of capital markets, at the end of 2017, amendments were made to the relevant Law on Securities and Stock Market and a number of other laws to implement part of Ukraine's obligations under the AA. In pursuance of the updated legislation in 2018, the NSSMC made the necessary changes to its regulations. In July 2020, the Verkhovna Rada passed a law amending some legislative acts of Ukraine to simplify investment and introduce new financial instruments. It contains provisions implementing EU law, including the relevant MiFID II / MiFIR Markets Directive.

In general, significant progress has been made in recent years in the area of financial services with regard to the implementation of EU norms, although this has been hampered by the slow consideration of the relevant draft laws by the Verkhovna Rada. Also, the delay in the decision of the Verkhovna Rada to conduct or refuse to redistribute the powers of financial services regulators (which is not part of the obligations under the AA) hindered the development of institutional capacity of regulators to implement the AA until 2020.

Recommendations

Ukraine and the EU should specify the prospects for future integration of financial services markets. The profile Annex XVII on integration in individual services markets is being updated. This should be used not only to update the list of EU legislation and the timing of

¹¹⁵ <http://zakon.rada.gov.ua/go/v0312500-15>

¹¹⁶ <http://zakon.rada.gov.ua/go/v0013500-18>

¹¹⁷ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53904

its implementation, but also to update the prospects for integration for Ukraine. In fact, you should choose one of two possible options:

- create for Ukraine *solution similar to the countries of the European Association of Free Trade (EFTA)* , to which the EU developed a mechanism for implementing legislation of the EU in the European Economic Area. Formally, the function of the European supervisory authorities have been put on the supervisory body EFTA and regulators involved to audits and prepare projects making Supervisory Authority. Such an institutional mechanism may be common to several EU partner countries to make it more effective;
- find *a compromise solution* , which increased would integrate the markets of financial services and reduce the regulatory burden associated with the full implementation of EU legislation. For example, Ukraine can implement all EU rules, except the most difficult to implement market participants , in exchange for a simplified procedure for Ukrainian companies to enter the EU market .

5. UKRAINE'S INTEGRATION INTO THE EU DIGITAL SINGLE MARKET

Anastasia Kropova

Benefits

In May 2015, the European Commission presented a Strategy for the Digital Single Market (EDR), which aims to improve access to online products and services, create conditions for the development of digital networks and services, and grow the European digital economy.¹¹⁸ It is estimated that the introduction of the Digital Single Market will increase EU GDP by € 415 billion annually.¹¹⁹

ECR includes the following areas: e-health, e-transport, e-government, e-commerce, telecommunications, artificial intelligence development, 5G, cybersecurity, cloud computing, Big Data, Internet of Things, 3D printing, IT.¹²⁰

The Government of Ukraine has identified Ukraine's integration into the ECR as one of the priorities of sectoral integration into the EU. At the EU-Ukraine summit on October 6, 2020, the importance of the digital sector in the framework of economic integration was reiterated.¹²¹ In part, Ukraine's integration into the ECR is covered by the Association Agreement,¹²² but the "road map" for Ukraine's integration into the EU Digital Single Market, developed by Ukraine in 2018,¹²³ includes a wider range of issues, including roaming. In 2019, Ukraine began consultations with the European Commission on what the content of the "road map" falls under Annex XVII-3, and what goes beyond it. The first phase of the evaluation of the draft roadmap was completed in mid-2019 - the relevant directorates of the European Commission identified acts of EU law, which proposed to be included in the

¹¹⁸ <https://www.eesc.europa.eu/en/policies/policy-areas/digital-change-and-information-society>

¹¹⁹ <https://www.businesseurope.eu/policies/digital-economy/eu-digital-single-market>

¹²⁰ [https://www.europarl.europa.eu/factsheets/en/sheet/43/the-ubiquitous-digital-single-market#:~:text=On%206%20May%202015%2C%20the_services%20to%20flourish%3B%20\(3\)](https://www.europarl.europa.eu/factsheets/en/sheet/43/the-ubiquitous-digital-single-market#:~:text=On%206%20May%202015%2C%20the_services%20to%20flourish%3B%20(3))

¹²¹ <https://thedigital.gov.ua/news/pidsumki-samitu-ukraina-es-ukraina-nablizhaetsya-do-edinogo-tsifrovogo-rinku-es>

¹²² Annex XVII-3 provides for the approximation of legislation in the field of electronic communications, e-commerce, radio frequency resource, electronic identification and institutional capacity of the Regulator in the field of telecommunications

¹²³ The EU Roadmap for Integration into the EU Digital Single Market was developed in 2018 and updated to take into account the recommendations of the European Commission in 2020, but was not approved by either the Cabinet of Ministers or the Verkhovna Rada of Ukraine. <https://www.kmu.gov.ua/news/mincifra-predstala-onovlenu-dorozhnyu-kartu-integraciyi-do-yedinogo-cifrovogo-rinku-yes>

updated Annex. The next step was the on-site assessment by the EU Expert Mission in 2019-2020 of the implementation of the UA in the field of telecommunications.

Ukraine's accession to the ECR will help expand mutual access to online markets, implement common EU rules, standards and procedures for electronic contracts, electronic payments and settlements, digital content distribution, copyright registration, cross-border digital services and consumer protection.

As a result of integration into the ECR, Ukraine will receive such benefits as increased economic productivity, reduced transaction costs and trade costs, implementation of European best practices to improve quality, transparency and efficiency in the provision of public digital services and e-government, promoting development in Ukraine, innovative products and services, modern digital infrastructure and technologies and increasing consumer welfare.¹²⁴ It is expected that accession to the ECR will give an additional increase in Ukraine's real GDP to 5%.¹²⁵

Commitments

In the structure of the Association Agreement, the topic of the digital market is presented as follows:

- Subsection 3 of Part 5 of Chapter 6 of Section IV - liberalization of trade in computer services;
- Subsection 5 of Part 5 of Chapter 6 of Section IV and Annex XVII - Ukraine's integration into the EU internal market for telecommunications services;
- Part 6 of Chapter 6 of Section IV - cooperation in the development of electronic commerce;
- Chapter 14 of Section V - cooperation in the field of information society (access to information and communication technologies);
- Chapter 15 of Section V and Annex XXXVII - Approximation of Audiovisual Policy.

When concluding the AA, Ukraine's obligations to gradually bring its current laws and future legislation in the telecommunications sector into line with the EU *acquis* were set out in Annex XVII. In the field of electronic communications, Ukraine has undertaken to adopt: Framework Directive 2002/21 / EC, Directive 2002/20 / EC, Directive 2002/19 / EC, Directive 2002/22 / EC. In the field of information society: E-Commerce Directive 2000/31 / EC, Directive 1999/93 / EC. In the field of audiovisual services: Directive on audiovisual media services.

However, after the UA was signed, the EU began to radically revise its legislation. The updated EU legislation provides for a number of new directives and regulations covering various areas, including the Electronic Communications Code, Regulation (EU) № 910/2014, Directive (EU) 2016/680, Regulation (EU) 2015/2120 and Decision 676/2002 / EU, Directive (EU) 2018/1808, Regulation (EU) 2016/679, Regulation (EU) 2018/1807, Directive (EU) 2016/943.

¹²⁴ https://eu-ua.kmu.gov.ua/sites/default/files/inline/files/dig_ukraine_eu_15.12.2020- 2.pdf

¹²⁵ <https://thedigital.gov.ua/news/pidsumki-samitu-ukraina-es-ukraina-nablizhaetsya-do-edinogo-tsifrovogo-rinku-es>

It is also worth noting that some areas related to the ECR, such as roaming, are currently not even included in the Association Agreement.¹²⁶

As already mentioned, in 2018 the European Union approved a plan for sectoral integration of Ukraine, which provides for Ukraine's accession to the ECR. In this regard, Ukraine in 2018 developed a State Map of Ukraine's integration into the EU Digital Single Market, which provides for the implementation of 75 acts of EU law (25 basic and 50 implementing), which must be implemented by 2023,¹²⁷ and the introduction of new e-government services is planned to be completed by 2024. To date, Ukraine has partially implemented the provisions of seven directives.

Therefore, the text of the Agreement needs to be supplemented with new provisions on Ukraine's integration into the EU Digital Single Market and Ukraine's obligations to approximate its legislation to EU legislation.

Institutional framework

Ukraine aspires to join the ECR and is making efforts to do so. In March 2021, the Cabinet of Ministers of Ukraine adopted the Concept for the Development of Digital Competences, which provides for the creation of a system of legal regulation of the digital market in Ukraine.¹²⁸

The Ministry of Digital Transformation in Ukraine, which was established in 2019 by reorganization of the State Agency for e-Government.¹²⁹ In 2020, the Intersectoral Council for Digital Development, Digital Transformations and Digitization was also established to study the problematic issues of implementing state policy in the areas of digital development, digital transformations and digitalization.¹³⁰

But in reality, there are many more public bodies that deal with ECR issues, as the introduction of the digital economy and the creation of a digital society are somehow intertwined with the different activities of many ministries and agencies. The State Committee for Television and Radio Broadcasting of Ukraine is responsible for audiovisual services, e-commerce - under the responsibility of the Ministry of Economy. The National Security and Defense Council of Ukraine is responsible for cybersecurity. The State Service of Ukraine for Personal Data Protection is responsible for the protection of personal data, the National Health Service of Ukraine is responsible for the implementation of e-health, the Ministry of Digital Transformation and the State Agency for e-Government - e-government, the Ministry of Digital Transformation - for 5G, the Ministry of Infrastructure - for e-transport. The National Commission for State Regulation of Communications and Informatization (NCCIR) deals with state regulation of communications and informatization. Regulation of special communication and protection of state information and telecommunication systems and resources is carried out by the State Service of Special Communication and Protection of Information.

Ukraine also pays special attention to cybersecurity. On March 4, 2021, the National Cyber Security Coordination Center of the National Security and Defense Council of Ukraine

¹²⁶ https://www.europarl.europa.eu/doceo/document/A-9-2020-0219_EN.html

¹²⁷ <https://www.kmu.gov.ua/news/mincifra-predstava-onovlenu-dorozhnyu-kartu-integraciyi-do-yedinogo-cifrovogo-rinku-yes>

¹²⁸ <https://zakon.rada.gov.ua/laws/show/167-2021-%D1%80#Text>

¹²⁹ <https://zakon.rada.gov.ua/laws/show/856-2019-%D0%BF#n24>

¹³⁰ http://search.ligazakon.ua/l_doc2.nsf/link1/KP200595.html

approved the draft Cyber Security Strategy of Ukraine for 2021-2025, in which some provisions were borrowed from a similar strategy developed by the EU. The main goal of the Strategy is to create conditions for the safe functioning of cyberspace, its use in the interests of the individual, society and the state.¹³¹ Although Ukraine has not fully ratified the Council of Europe Convention on Cybercrime, in particular by not agreeing to the application of the Digital Evidence Section of the Convention, in 2020 the Cyber Police Department of Ukraine introduced a digital evidence collection mechanism supported by Council of Europe representatives.¹³²

Market analysis

The most important and developed areas of the ECR are telecommunications services, e-commerce and IT.

The share of telecommunications services in the structure of Ukraine's GDP in 2020 was 1.75%. In the structure of revenues from the provision of telecommunications services, the largest share in 2020 was made up of mobile communications - 63.7% and fixed access to the Internet - 18.8%.¹³³ There are 14 companies in Ukraine that provide mobile telecommunications services and 6 licensed operators: Vodafone, Kyivstar, Telesystems of Ukraine, Intertelecom, lifecell, TriMob (owned by Ukrtelecom).

According to EVO, the e-commerce market in Ukraine in 2020 amounted to 107 billion UAH, which in the structure of GDP is 2.55% and 41% more than in 2019, and the number of online payments increased by 50%. This rapid growth is due to the COVID-19 pandemic. It is expected that in 2021 the e-commerce market will amount to 137 billion UAH, which is 28% more than in 2020.¹³⁴ International and Ukrainian e-platforms (e-Bay, Taobao, Amazon, Rozetka, etc.) are popular.

In 2020, the IT sector generated 3.2% of the country's GDP, and exports amounted to 5.03 billion US dollars, which is 20.4% more than in 2019. In general, the export of computer services in 2020 accounted for 8.3% of total exports of Ukraine. Today, about 183 thousand people work in the IT sphere.¹³⁵ The main customers of computer and information services in Ukrainian IT companies are traditionally the United States and EU countries.¹³⁶

In the UN e-Government Development Index EGDI 2020, Ukraine ranked 69th out of 193 countries, rising 13 places compared to the 2018 ranking.¹³⁷ In the Network Readiness Index for 2020, Ukraine ranked 64th out of 121 countries in the world, improving its rating by 3 positions over the year.¹³⁸ Index Digital Competitiveness 2020 - 58 th place from 63 th countries in two steps higher than 2019.¹³⁹

¹³¹ <https://www.rnbo.gov.ua/ua/Diialnist/4838.html>

¹³² <https://open4business.com.ua/council-of-europe-ready-to-cooperate-with-ukraine-for-implementation-of-budapest-convention-on-cybercrime/>

¹³³ https://nkrzi.gov.ua/images/upload/142/9626/Zvit_NKRZI_za_2020.pdf

¹³⁴ <https://ain.ua/2020/12/25/pidsumky-2020-evo/>

¹³⁵ <https://thepage.ua/news/skolko-zarabotal-it-sektor-v-2020-godu>

¹³⁶ <https://eba.com.ua/industriya-narostyla-eksport-poslug-na-17-5/>

¹³⁷ <https://publicadministration.un.org/egovkb/Data-Center>

¹³⁸ <https://networkreadinessindex.org/countries/ukraine/>

¹³⁹ https://www.imd.org/globalassets/wcc/docs/release-2020/digital/digital_2020.pdf

In the EU, value added from telecommunications amounted to 136.9 billion euros (2019). The largest operators are Telenor, Deutsche Telekom AG, Telefonica, TIM, Orange, Vodafone.¹⁴⁰ Germany (\$ 5.7 billion), France (\$ 4.3 billion), and Italy (\$ 2.8 billion) are the EU countries with the highest revenues from telecommunications.¹⁴¹

In 2020, the e-commerce market in the EU amounted to 717 billion euros, which is 15.5% more than in 2019, of which 70% of purchases were retail. Most online purchases are made in Germany (15.1%), France (10%), and Sweden (9.7%). American and European e-platforms are popular (Amazon, Staples, Apple, Otto, Tesco, Groupe Casino, Shop Direct Group, Home Retail Group, Zalando, John Lewis, etc.).¹⁴²

About 8 million people work in the EU ICT sector (mostly in Germany and France), which accounted for 3.9% of all employment in the EU.¹⁴³ The value added of the ICT sector in the EU was € 479 billion in 2018, or 3.7% of GDP.¹⁴⁴

Subject to Ukraine's integration into the ECR, Ukrainian companies will be able to freely provide services in the EU as well as European companies in Ukraine. In addition, Ukrainian companies will receive simplified export and import procedures from the EU and joint development of digital trade infrastructure.¹⁴⁵

Dynamics of implementation

Ukraine is currently in dialogue with the EU on the preparation of an Agreement on Mutual Recognition of Electronic Trust Services between Ukraine and the EU, which will ensure the mutual recognition of their electronic means of identification by individuals and legal entities. On January 20, 2021, Ukraine and the EU adopted a work plan in the field of electronic trust services, which is planned to be implemented over the next two years.¹⁴⁶ As a result of signing this Agreement, Ukrainians will be able to carry out cross-border transactions using a qualified electronic signature (QES) from their own computer or smartphone.¹⁴⁷

Ukraine's approach to the ECR involves providing access to high-speed Internet. In August 2020, a discussion took place, as a result of which the document was sent for revision.¹⁴⁸

As of 2020, Ukraine has fulfilled 65% of its commitments related to the digital market. Thus, a system of control over compliance with the legislation in the field of electronic trust services and conditions for their operation and development was created. Legislation in the field of information services was regulated by law in accordance with EU law. Markets for goods

¹⁴⁰ <https://etno.eu/downloads/reports/etno%20state%20of%20digital%20communications%20report%202020.pdf>

¹⁴¹ <https://www.statista.com/statistics/460420/digital-media-revenue-european-countries-digital-market-outlook/>

¹⁴² <https://ecommercenews.eu/e-commerce-in-europe/#:~:text=The%20e-commerce%20market%20in%20Europe,-Data%20from%202014&text=E-commerce%20sales%20in%20Europe%20grew,total%20European%20online%20retail%20turnover>

¹⁴³ [https://ec.europa.eu/eurostat/statistics-explained/index.php/ICT_specialists_in_employment#:~:text=The%20number%20of%20ICT%20specialists,6.9%20%25\)%20for%20total%20employment.&Text=In%202019%202082.1%20%25%20of%20men,EU%20against%2017.9%20%25%20of%20women](https://ec.europa.eu/eurostat/statistics-explained/index.php/ICT_specialists_in_employment#:~:text=The%20number%20of%20ICT%20specialists,6.9%20%25)%20for%20total%20employment.&Text=In%202019%202082.1%20%25%20of%20men,EU%20against%2017.9%20%25%20of%20women)

¹⁴⁴ https://ec.europa.eu/eurostat/statistics-explained/index.php/ICT_sector_-_value_added,_employment_and_R%26D#The_size_of_the_ICT_sector_as_measured_by_value_added

¹⁴⁵ <https://thedigital.gov.ua/news/ekonomichni-perevagi-vid-integratsii-v-ediniy-tsifroviy-rinok-es-nazvani-realnitsifri?fbclid=IwAR1qWy5YftzjWPe2I5C9CunOqPXih5>

¹⁴⁶ <https://www.kmu.gov.ua/news/lyudmila-rabchinska-ukrayina-ta-yes-spivpracyuvatimut-zadlya-vzayemnogo-viznannya-elektronnih-dovirchih-poslug>

¹⁴⁷ <https://eu-ua.kmu.gov.ua/novyny/ukrayina-ta-yes-spivpracyuvatimut-zadlya-vzayemnogo-vyznannya-elektronnyh-dovirchih-poslug>

¹⁴⁸ <https://thedigital.gov.ua/regulations/povidomlennya-pro-provedennya-publichnogo-gromadskogo-obgovorennya-proyektu-nacionalnoyi-strategiyi-rozvitku-shirokosmugovogo-dostupu-do-internetuxfCclid-GWofPQxb0InFgCbJEuxg4>

and services in the electronic communications sector that are subject to ex-ante regulatory procedures have been identified,¹⁴⁹ and their analysis for the existence of significant market influence. A general authorization procedure was also created and restrictions on the issuance of individual licenses were determined, and a provision on porting a subscriber number was adopted. International and European standards for working with electronic trust services have been adopted.¹⁵⁰

However, Ukraine has not established mechanisms to counter the use of illegal devices for unauthorized access to services. The single European emergency number 112 was not accepted. In addition, the rights and obligations of users and providers of universal telecommunications services in accordance with EU law and the technological compatibility (interoperability) of electronic signatures, including cross-border ones were not regulated.

Also in Ukraine, a number of ECR components need improvement, including electronic identification, payment systems, electronic payments and settlements, protection of intellectual property rights on the Internet, cybersecurity, protection of personal data, e-commerce.

In the summer of 2020, as a result of the work of the EU expert mission, the report "On-site assessment of commitments on telecommunications services under the Association Agreement between Ukraine and the EU" was published, as a result of which the "road map" was updated. This became the basis for the development of legal regulation in the digital sphere.¹⁵¹

On January 12, 2021, the President of Ukraine signed the law "3014" On Electronic Communications", which enters into force on January 1, 2022. With the signing of this law, Ukraine adopts a number of European standards in the field of electronic communications.¹⁵²

In February 2021, at a meeting with the President of Ukraine, the need to update the Ukraine-EU Agreement was discussed, including those provisions relating to the digital market.¹⁵³ An update of Annex XVII, which concerns Ukraine's integration into the Digital Single Market, is scheduled for December 2021.¹⁵⁴

Recommendations

For the government:

- to negotiate with the EU in order to supplement the Agreement with new provisions on Ukraine's integration into the EU Single Digital Market and the relevant new obligations of Ukraine to harmonize legislation;
- to implement into Ukrainian legislation directives that have never been adopted;

¹⁴⁹ Ex-ante regulation is a principle of ex-ante regulation, which provides for the assessment of future market development taking into account its state at the time of analysis (National Commission for Communications Regulation, Decision "On approval of the draft Procedure for market analysis of traffic services and telecommunications operators with a significant market advantage" from 18.08.2011 N 412)

¹⁵⁰ <https://pulse.kmu.gov.ua/ua/streams/science-technology-and-innovations/2019-substream3-30>

¹⁵¹ <https://komit.rada.gov.ua/uploads/documents/30626.pdf>

¹⁵² <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=68059&pf35401=540076>

¹⁵³ <https://www.president.gov.ua/news/prezident-ukrayina-avtoritetnij-i-vidpovidalnij-chlen-mizhna-66621>

¹⁵⁴ <https://www.kmu.gov.ua/storage/app/uploads/public/606/c9f/2be/606c9f2be56d1025204381.doc>

- fully implement the Council of Europe Convention on Cybercrime;
- review the regulatory environment for digital commerce;
- to approve (by the decision of the Cabinet of Ministers) the national plan for the development of broadband communication.

For business:

- - prepare new infrastructure and cover most of Ukraine with broadband Internet.

For the EU:

- - to supplement the Agreement with new provisions that will help approximate Ukrainian legislation to EU legislation and promote Ukraine's accession to the Digital Single Market;
- sign an Agreement on mutual recognition of electronic trust services between Ukraine and the EU.

6. INTEGRATION OF UKRAINE TO THE EU MARKET OF POSTAL AND CARRIER SERVICES

Iryna Kosse¹⁵⁵

Benefits

The Association Agreement with the EU provides for the integration of the postal and courier services sector into the EU internal market on the basis of legislative approximation. Pursuant to Annex XVII, the Trade Association Committee may grant a reciprocal "internal market regime" for postal services once the EU assessment confirms the implementation of EU law in Ukraine.

The internal market regime means the absence of any restrictions on the freedom of establishment of EU or Ukrainian legal entities on the territory of any of them. The same regime should apply to legal entities of one party as to legal entities of the other party, ie in fact companies receive the right to provide services in the territory of the other party.¹⁵⁶ In practice, this means that licensing in this area is abolished for the postal sector, except for the licensing of universal services.¹⁵⁷

This creates new opportunities for the development of this sector, the importance of which in today's world is constantly growing both through the development of online sales and through social distancing measures related to the COVID-19 pandemic.

Commitments

According to the Agreement, Ukraine must implement the provisions of Directive 97/67 / EC on common rules for the development of the internal market of Community postal services and the improvement of the quality of services.¹⁵⁸ This Directive lays down rules on the conditions governing the provision of postal services; provision of universal postal services (UPPZ); their financing on conditions that guarantee the continuity of services; tariff principles and transparency of accounts for UPPZ; quality standards for UPPZ and

¹⁵⁵ Anastasia Kropova helped update the section

¹⁵⁶ Art. 4 of Annex XVII

¹⁵⁷ Annex XVI-A, paragraph 1 (3), and Annex XVI-B, paragraph 7. Universal postal service is a service whose quality standard and prices are regulated by the state

¹⁵⁸ As amended by Directives №2002 / 6 / EC and №2008 / 6 / EC

implementation of the system of observance of the specified standards; harmonization of technical standards; independence of the national regulatory authority.

Directive 97/67 / EC stipulates that the minimum set of universal postal services must include postal items up to 2 kg, parcels weighing up to 10 kg and services for sending registered and uninsured items.¹⁵⁹ Such a service should be available in all settlements in the country and provided at affordable prices for all consumers. If the provision of universal services constitutes an unfair financial burden for a particular operator, the state may establish a compensation fund from which to finance universal services.

Institutional framework

The formation and implementation of state policy in the field of postal services is provided by the Ministry of Infrastructure. The body of state regulation in the field of postal services is the National Commission for State Regulation of Communications and Informatization (NCCIR). It is a body of licensing, state supervision (control), permitting and regulatory body. The NCCIR reports to the President of Ukraine and reports to the Verkhovna Rada of Ukraine. The NCCIR maintains a single register of postal operators, formulates pricing policy and regulates tariffs for universal postal services. Tariffs for subscription and delivery of periodicals are set by the Ministry of Infrastructure in agreement with the Ministry of Economy.

Postal services in Ukraine are provided in accordance with national legislation (the Law "On Postal Services" and the Rules for the provision of postal services¹⁶⁰), taking into account the provisions of the acts of the Universal Postal Union, the binding nature of which was approved by the Verkhovna Rada.

The national operator entrusted with the functions of providing universal postal services is the Ukrainian State Postal Enterprise Ukrposhta, which is managed by the Ministry of Infrastructure. Ukrposhta also provides services for the distribution of subscription periodicals, payment and delivery of pensions and cash benefits. Special postal services are provided by the State Courier Service and the State Special Communications Enterprise, which also provides international postal services "EMS".

Market analysis

The market of postal services is important for Ukraine, which, given its favorable geographical location, can get a promising market for transit of postal items for the countries of the European Union.

The volume of postal and courier services in Ukraine in 2019 amounted to UAH 6.6 billion or 0.2% of GDP, which is 8% more than in the previous year. Of these, international shipments amounted to UAH 2.6 billion.¹⁶¹ In 2019, 372.2 thousand people officially worked in the sector "Warehousing, postal and courier activities".¹⁶²

¹⁵⁹ <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31997L0067>

¹⁶⁰ Resolution of the Cabinet of Ministers of Ukraine of March 5, 2009 № 270

¹⁶¹ http://www.ukrstat.gov.ua/operativ/operativ2019/zv/dnp/dnp_u/dnp0419_u.htm

¹⁶² https://ukrstat.org/uk/druk/publicat/kat_u/2020/zb/10/zb_trans_19.pdf

As of April 2021, 123 postal operators were registered in Ukraine, which is 21% more than a year ago.¹⁶³ The government's "road map" for the implementation of the provisions of EU directives in the field of postal services refers to more than 300 non-state postal operators and enterprises providing services in the segment of cost-effective postal items, referring to expert assessments.¹⁶⁴ In total, they have about 15,000 branches across the country.

Ukraine's largest postal operator is Ukrposhta. Other major postal and courier operators are Nova Poshta, Meest Express, Delivery and Justin.

Ukraine, like every country in the world that is a member of the Universal Postal Union, has its own designated provider of universal public postal services and an established level of quality, which provides appropriate services to all users throughout Ukraine at rates regulated by the state. In Ukraine, universal postal services are provided by Ukrposhta, which has more than 11,000 branches and provides coverage of 100% of settlements in Ukraine. In 2020, Ukrposhta took 30th place (out of 170 countries) in the ranking of the Universal Postal Union according to the Postal Development Index, rising by 7 positions compared to 2019.

As part of a joint project with the European Investment Bank "Logistics Network (Modernization and Digitization of Ukrposhta)", the company received a loan of 30 million euros to modernize the logistics network, which involves the construction of three new sorting centers and 20 depots of IT infrastructure. The agreement was signed on October 6, 2020.

Express delivery services are mainly provided by Nova Poshta, which has a network of 6,000 branches across the country and has delivered 212 million units. shipments in 2019, which is 22% more than in 2018.¹⁶⁵

In recent years, there has been a steady decline in written correspondence in the market and an increase in e-commerce, financial services and international logistics. The market for international postal and express items in 2018 was 1 billion euros or 42 million items. Basically, this is the ordering of goods by Ukrainians from Chinese, American and European online stores. In 2018, 28 companies operated in the market of international parcels: 20 express carriers and 8 postal operators. In this market in 2018, the volume of Ukrposhta was 75%, LLC JV Rosan (a company from the Meest group) - 9%, Nova Poshta International - 7%.

In April 2019 the Ministry of Infrastructure and NCCR decided to define "Ukrposhta" post operator of sending shipments "EMS" ("Express Mail Service" - the international service ekspresdostavky mail). This decision allowed to improve Ukraine's position in the world ranking of the quality of EMS delivery service, where Ukraine rose by 53 steps and now ranks 92nd out of 198 postal administrations in the world.

There are 26 companies in the EU (data on the UK and Germany are missing) identified by universal postal service providers and 17,885 other companies providing postal services (in 2019). According to the European Parliament, in 2018 the EU postal services market employed 1.7 million people. The EU postal market, including express delivery services, is € 79 billion or 0.57% of total GDP. A significant part of this market (42%) is letter delivery. The largest companies are Deutsche Post (Germany), Royal Mail (UK), La Poste (France), DHL (Germany), PostNL (Netherlands), An Post (Ireland).

¹⁶³ Unified State Register of Postal Operators https://nkrzi.gov.ua/images/upload/430/3973/Poshtovyi_reiestr_13.04.2021.xls

¹⁶⁴ <https://zakon.rada.gov.ua/laws/show/104-2018-%D1%80>

¹⁶⁵ <https://ua.interfax.com.ua/news/economic/637224.html>

Ukrainian companies do not yet operate directly in the European market. They sign cooperation agreements with European operators, under which each party provides postal services in its country. In 2017, Nova Poshta signed an agreement with DPDgroup on the delivery of parcels to Europe. Ukrposhta has concluded an agreement between the postal services of Ukraine and Lithuania on the exchange of international grouped postal items "Consignment", which facilitates the access of foreign businesses to the Ukrainian market, and consumers have an additional opportunity to receive products from abroad. Similar agreements have been concluded with postal operators in Slovakia, Germany and the Czech Republic.

In 2021, Ukrposhta also expanded the list of services that can be obtained through the digital application "Action": postal transfers, domestic postage with a payment of more than UAH 5,000 and international parcels.

It should be understood that integration with the European market of postal services means not only access of Ukrainian companies to the EU market, but also freer access of European companies to the domestic market of Ukraine, therefore, increasing competition in it for Ukrainian companies.

Dynamics of implementation

The provisions of Directive 97/67 / EC should have been implemented in Ukraine from the beginning of 2019 (it took 2 years), but this has not yet happened. Since 2015, the Ministry of Infrastructure has been drafting a new law on postal services, which would introduce Directive 97/67 / EC. The next stage of discussions on the draft law "On Postal Services" began in late 2018, when the Ministry of Infrastructure posted on its website a call: "Of course, such innovations are not to the liking of some postal operators, and we recognize the right of everyone its position on the draft Law, even if such position does not reflect the essence of the draft Law ".¹⁶⁶

The main changes introduced by the bill are the distinction between postal services and related services (for example, transportation of goods). Therefore, companies that deliver large household appliances will not be considered postal operators. The bill also defines which services are universal. The new law includes universal services of postal items weighing up to 2 kg, parcels weighing up to 10 kg, parcels weighing up to 7 kg, as well as registered and declared postal items.¹⁶⁷

The Ministry of Infrastructure believes that companies that will provide universal services should keep separate records of income and expenses for each universal postal service and separately for other activities. This will regulate the liability of postal operators for non-performance or improper performance of their duties. According to Volodymyr Dovhan, former Deputy Minister of Infrastructure for European Integration, "operators are currently not responsible for the quality of services provided and compliance with the law."

However, the bill was criticized by postal operators. Market operators believed that the new version of the law returns the licensing of postal operators and establishes regular reporting. They also fear that the regulator (NCCIR) will have access to information on beneficiaries, owners and managers and that it is the NCCIR that will determine what a quality postal service is. In addition, postal operators and the Ministry of Infrastructure differ in their

¹⁶⁶ <https://mtu.gov.ua/news/30336.html>

¹⁶⁷ According to the current legislation, universal services include services for sending postcards, letters, parcels, items for the blind - simple and registered, parcels without declared value weighing up to 10 kg

interpretation of the rule of law as to whether an operator providing universal postal services will have the exclusive right to provide such services and whether it will be a monopolist in the market.

The bill passed several rounds of discussions with market players, the proposals of postal operators were largely taken into account. On November 12, 2020, the bill was submitted for review and is currently being processed by the committee, as the draft law still does not fully take into account the requirements of Directive 97/67 / EC and needs further regulation.¹⁶⁸ Thus, Ukraine has not yet amended the Law of Ukraine "On Postal Services", as required by the Association Agreement.

Recommendations

For Ukraine:

- - adopt a new version of the law on postal services, which would implement the provisions of Directive 97/67 / EC;
- - after the adoption of a new version of the law "On Postal Services" to develop and adopt relevant regulations for the implementation of its rules;
- - notify the Trade Association Committee of the implementation of EU postal services law.

For the EU:

- - assess Ukraine's implementation of EU rules on postal services;
- - the Trade Association Committee to consider granting a reciprocal "internal market regime" for postal services.

¹⁶⁸ <https://itd.rada.gov.ua/billInfo/Bills/pubFile/422097>

7. UKRAINE'S INTEGRATION INTO THE EU ROAD TRANSPORT MARKET

Vitalii Kravchuk

Benefits of implementation of Association Agreement

The Association Agreement between Ukraine and the EU (AA) does not provide for the expansion of mutual access to the market of motor transport services, including cargo. Chapter 7 of Section V of the AA (Art. 367-370 UA) provides for the development of sectoral cooperation in the transport sector. Cooperation is aimed at bringing Ukraine's transport sector closer to EU standards and removing barriers to the movement of goods and passengers between Ukraine and the EU. Within the framework of sectoral cooperation, Ukraine undertook to implement the basic requirements of the EU transport legislation, in particular on road transport.

At the same time, Article 136 of the AA provides for the possibility of concluding a special agreement in the field of road transport, which will regulate international road transportation at the EU level and potentially replace annual negotiations on quotas of permits for transportation with EU Member States.

However, the possible liberalization of road transport between Ukraine and the EU will probably provoke resistance from EU carriers. The road transport market in the EU was one of the last, where a single market was formed between the EU countries. The market remains friction between carriers from the EU-15 and carriers from new EU members, which increased their market share after the liberalization of road transport in the EU market. Therefore, a special agreement will not necessarily be comprehensive and can solve only a part of the issues related to the road transport market, for example, on transit. According to the AA, bilateral agreements continue to operate in a part not regulated by a special agreement. Art. 136 AA also obliges the AA parties (Ukraine, EU and EU member states) not to worsen the mutual conditions of access to the road transport market that existed at the time of the entry into force of the AA.

Today, international road transport between Ukraine and the EU is further regulated by a network of bilateral and multilateral agreements between Ukraine and the EU countries. Ukraine has concluded agreements on road transportation with all EU countries except

island Malta and Ireland.¹⁶⁹ Bilateral agreements¹⁷⁰, as a rule, provide that Ukraine and the other side of the agreement each year agree on quotas for the volume of transportation. Such quotas limit the amount of transportation¹⁷¹ that carriers of one party of the agreement may carry out on the territory of the other party.

Commitments

A condition for expanding access to the EU road transport market in case of concluding an appropriate special agreement between Ukraine and the EU is likely to be the approximation of Ukraine's sectoral legislation to the EU rules. The scope of such approximation will be determined in a special agreement, but the base is likely to take the existing obligations under the sectoral cooperation defined in Annex XXXII to AA. In particular, in the field of motor transport, Ukraine has pledged to comply with the rules on traffic safety (including speed limiters, maximum weight and technical inspections of vehicles), training and evaluation of driver qualifications, admission to work and working hours of drivers, tachographs.

Regulation of motor transport in Ukraine and the EU is quite close, since Ukraine and the EU (and/or EU countries) are parties to a number of agreements in the field of motor transport¹⁷² and implemented their requirements in national legislation. Also, the vast majority of the EU and EU regulations in the field of motor transport, including social guarantees for drivers, applies to all carriers operating in the EU, both local and third countries based. Therefore, Ukrainian carriers operating in the EU, already comply with the rules of both Ukrainian legislation and EU legislation (during the stay of trucks in the EU). However, in the legislation of Ukraine and the EU there are a number of differences that will most likely need to be eliminated before the liberalization of road transport between Ukraine and the EU.

Institutional framework

The work of road transport in Ukraine is regulated by the profile Law of Ukraine on road transport¹⁷³. Article 6 of the Law defines the distribution of powers between public authorities in the field of motor transport. The Ministry of Infrastructure¹⁷⁴ determines the priority directions for the development of motor transport, forms the principles of state policy in this area and adopts mandatory regulatory acts. Most of the functions of state control in respect

¹⁶⁹ However, such an agreement was concluded with Cyprus.

¹⁷⁰ Ukraine and almost all EU countries are parties to a multilateral agreement within the framework of the European Committee of Transport Ministers (ECTM/now International Transport Forum), which allows transportation between all participants with certain exceptions. However, most of the transportation takes place within the framework of bilateral agreements due to the limited volume of the ECTM permit quota for Ukraine: in 2021 3944 trucks of Ukrainian carriers can operate in the EU countries within the ECTM system.

¹⁷¹ As a rule, the number of trips of carriers of one country through the territory of another is limited in bilateral agreements. For example, Ukraine and Poland at the request of the Polish side set for 2021 a quota of 160 thousand permits for freight trucking. Each permit entitles one flight of freight haulers of one country through the territory of another country in the forward and reverse direction, of which 60 thousand allow travel only for the purpose of transit.

¹⁷² In particular, the Geneva Agreement of 1958 on the adoption of uniform technical regulations for wheeled vehicles (as amended 1995) https://zakon.rada.gov.ua/go/995_343, the European Agreement on the International Road Transport of Dangerous Goods (ADR), https://zakon.rada.gov.ua/go/994_217, European agreement on the work of crews of vehicles performing international road transport (EUTR) https://zakon.rada.gov.ua/go/994_016

¹⁷³ Law No. 2344-III of April 5, 2001 <https://zakon.rada.gov.ua/go/2344-14> yu

¹⁷⁴ As the central executive body that provides for the formation and implementation of state policy in the field of road transport

of motor transport are entrusted to the State Service for Transport Safety (Ukrtransbezpeka)¹⁷⁵.

Ukrtransbezpeka, among other functions, controls the implementation by carriers of the laws of Ukraine and regulatory requirements, conducts dimensional and weight control on the roads and is the licensing body for road transport of dangerous goods and international road transport (transportation of ordinary goods inside country does not require a license) and issues other permits. Ukrtransbezpeka also conducts a technical investigation of accidents on road transport, maintains their records and analysis of the causes, develops proposals to prevent accidents. Ukrtransbezpeka in international road transport on the territory of Ukraine controls compliance with the legislation of Ukraine and international agreements. In particular, Ukrtransbezpeka can monitor the technical, sanitary and ecological condition of vehicles, check the documents for the cargo and compliance with the requirements for the working time of drivers. Similar powers at checkpoints across the state border have the State Customs Service.

The Cabinet of Ministers conducts general regulation of the state policy regarding road transport. In 2018, the Government approved the National Transport Strategy of Ukraine until 2030.¹⁷⁶ Among other tasks, the strategy provides for partial reorientation of freight transportation from road to rail and water, increased weight control over road transport, the introduction of a new approach to licensing of road transport on the basis of EU rules (in particular, introduction of requirements for business reputation, financial capacity, professional competence of personnel). It is also planned to further develop the road network, increase the share of paved roads.

The action plan for¹⁷⁷ the implementation of the National Transport Strategy of Ukraine for the period up to 2030¹⁷⁸ provides for the fulfillment of most of the AA's obligations in the field of motor transport in 2021 and 2022. The implementation of these plans will depend on the availability of votes in support of the necessary changes in the relevant laws on road transport and traffic.

Market Analysis

The transport, warehousing, postal and courier industry in 2019¹⁷⁹ formed 246 billion UAH of added value or 7.7% of the total volume in the economy of Ukraine. Freight trucking cost about 14% of the added value by factor costs in the transport and warehousing sector.

Transport plays a key role in the functioning of production chains, domestic and foreign trade. Road freight traffic in 2019 accounted for 78% of cargo (in tonnes), transported by transport (except pipeline), and 26% of the volume of traffic (in t*km). This difference is explained by the fact that road transport is the main carrier of the “last kilometer” and, accordingly, goods by road on average were transported at much shorter distances than other modes of transport. However, road transport plays an important role in international trade.

According to Eurostat, truckers provided transportation of goods worth 26.5 billion euros in

¹⁷⁵ As the central executive body, ensuring the implementation of the state policy on safety on land transport

¹⁷⁶ Approved by the Order of the Cabinet of Ministers of Ukraine No. 430-r as of May 30, 2018

¹⁷⁷ <https://zakon.rada.gov.ua/go/321-2021-r>

¹⁷⁸ <https://zakon.rada.gov.ua/go/430-2018-r>

¹⁷⁹ Transport indicators in 2020 were significantly affected by the COVID-19 epidemic, and some figures for 2020 have not yet been published or are preliminary. Therefore, this section uses the 2019 metrics.

trade between Ukraine and the EU or slightly less than 60% of the total turnover in 2019. Such a high share was achieved due to the fact that motor transport transported much more expensive goods (per unit weight) than by sea or rail. In trade between Ukraine and the EU, haulers (both Ukraine and other countries) transported 12.2 million tons of goods or 15% of the total volume in 2019. For comparison, 35.6 million tons were transported by sea, and 24.9 million tons of goods by rail.

Volume of international road cargo transportation was restrained by lower than demand from Ukrainian carriers, quotas for transportation established by individual EU countries, first of all by Poland. The number of allowed trips of Ukrainian carriers through the territory of Poland decreased from 200 thousand in 2017-2018 to 160 thousand¹⁸⁰ in 2019-2021. At the same time, the demand for freight trucking between Ukraine and the EU has increased. As a result, in 2021 there are restrictions on the number of transportations per month by one truck to/through the territory of Poland, the Netherlands, Spain, France, Hungary, Austria, Denmark, Italy, Romania, Finland.

At the same time, bilateral agreements on road freight transportation with the EU countries, as a rule, do not set any requirements regarding the structure of ownership of carriers. That is, the entry into the market of freight road transport in the EU or Ukraine due to the establishment of subsidiaries may occur without restrictions. For example, a Ukrainian carrier may register a hauler in Poland and subject to compliance with the licensing conditions and payment of taxes and fees in Poland, such carrier will be able to carry out transportation in the EU under the Community license and in third countries, in particular in Ukraine, under the quota Poland. Similarly, any Ukrainian natural or legal entity, regardless of ownership structure (except those controlled by the Russian Federation), and internal trucking of goods (except dangerous ones) can still be carried out without a license.

The EU trucking market was one of the last that was liberalized. Liberalization took place in the late 1980s and in the 1990s¹⁸¹. By this time, there are restrictions on “cabotage” that is, on transportation within one member of the EU by carriers from another EU country. Prior to this, road transportation between the EU countries took place on the basis of bilateral agreements similar to those currently operating between Ukraine and the EU countries. After the EU enlargement to the east, carriers from the new EU member states gained access to the EU market and began to actively use it.

Most of all from access to the EU market won Polish carriers. In 2015, Polish carriers occupied 30% of the cabotage market and 29% of cross-trade (international transportation by carriers of third countries) in the EU¹⁸². This caused complaints about unequal competition conditions from some carriers that have lost market share. In 2020, the regulation of the motor transport sector in the EU was updated, which, according to representatives of new EU members, is aimed at reducing their market share.¹⁸³

Dynamics of implementation

After the entry into force of AA, plans for the implementation of EU legislation provided for the fulfillment of obligations in the sphere of motor transport, but progress in their

¹⁸⁰ Initial volume. Ukraine and Poland also periodically agreed on small amounts of additional permits for transportation. Also transportation through the territory of Poland was possible with the multilateral permissions of ECTM

¹⁸¹ <https://www.oecd.org/environment/envtrade/2387068.pdf>

¹⁸² <https://ec.europa.eu/transport/sites/default/files/mobility-package-overview-of-the-eu-road-transport-market-in-2015.pdf>

¹⁸³ <https://warsawinstitute.org/mobility-package-future-european-transport/>

implementation was limited.

As mentioned above, a significant part of the EU legislation on motor transport was implemented in Ukraine at the time of the entry into force of the AA within the framework of existing international obligations. However, there are significant differences in the field of transport safety, driver training and others.

Some provisions of EU legislation may be implemented by by-laws. In March 2021, the Procedure for Confirmation of Professional Competence of Drivers of Vehicles for Providing Passenger and Cargo Transportation Services¹⁸⁴, which takes into account the provisions of the relevant EU Directive (2003/59/EC on Confirmation of Driver Competence) came into force.

However, most of the necessary changes require changes to the laws of Ukraine. Accordingly, the government and people's deputies on the initiative of the Ministry of Infrastructure several times introduced bills aimed at fulfilling the rest of Ukraine's obligations in the sphere of transport. However, all such bills¹⁸⁵ have not yet been supported by the Verkhovna Rada. Now the Verkhovna Rada is considering a government bill 4560 on regulating access to the road transport market in accordance with the EU rules and bill 1193-1 on the implementation of EU rules on the transportation of dangerous goods. In February 2021, the bill 1193-1 was sent to the second first reading.

In April 2021, the Ministry of Infrastructure for the fifth time released for public discussion a modified version of the¹⁸⁶ draft Law on Amendments to Certain Legislative Acts of Ukraine in the field of safety of operation of wheeled vehicles in accordance with the requirements of the Association Agreement. The previous four versions were rejected by the State Regulatory Service in 2018-2021. The project provides for changes in the order of technical inspection of vehicles, in particular, the restoration of mandatory technical inspection of private cars, and establishes a mechanism of responsibility for violation of requirements for installation of tachographs and speed limiters. Strengthening control over the operation of vehicles is not very popular, which makes it difficult to adopt the relevant norms by the Verkhovna Rada or even approve the relevant bill by the executive branch of power.

Recommendations

Ukraine should fulfill its obligations regarding motor transport within the framework of the AA, especially for greater safety on the roads of Ukraine, since haulers mostly already fulfill these rules when working in the EU. This can also simplify the government's efforts to start negotiations on a special agreement on road transportation between Ukraine and the EU.

Quotas for the number of trips between Ukraine and the EU countries are less than at the date of entry into force of the AA probably violate the obligations¹⁸⁷ of the EU countries on the non-deterioration of the conditions of road transport before the conclusion of the relevant agreement. The issue of compliance with the AA should be raised in bilateral relations and in the course of

¹⁸⁴ <https://zakon.rada.gov.ua/go/z0198-21>

¹⁸⁵ The Verkhovna Rada of the VIII convocation in 2015-2019, among others, did not adopt bills 3713, 4374, 4644, 4683, 7386, 7387 among others. Bills 3713, 4374 (on the transportation of dangerous goods) were introduced by the government of Yatseniuk in 2015-2016 and according to the government fulfilled most of the obligations to the EU in the sphere of transport. They were withdrawn after the change of the government, similar in content to the bills 4644 and 4683 were re-introduced by the government of Hroisman, and the modified versions 7386, 7387 by a group of people's deputies. Another version of the bill on the transportation of dangerous goods is under consideration by the Verkhovna Rada of the current convocation

¹⁸⁶ <https://mtu.gov.ua/news/32726.html>

¹⁸⁷ At least, the spirit is broken, if not the letter of such an obligation. Formally, it can be argued that the conditions of international road transport remain unchanged, and only the quota of permits agreed by both parties to the agreement decreases.

the industry dialogue with the EU.

To achieve progress on the liberalization of road transport from the EU, interested parties (Ukrainian carriers, government, exporters) should involve the support of other parties interested in expanding trade between Ukraine and the EU, such as exporters of EU products to Ukraine and buyers of Ukrainian products in the EU. Also support the liberalization of road transport can representatives of those countries that are adversely affected by restrictions on transit trips of neighboring countries of Ukraine.

8. UKRAINE'S INTEGRATION INTO THE EU RAIL TRANSPORTATION MARKET

Anastasiya Kropova

The benefits of integration with the EU

According to the Association Agreement, Ukraine undertook to liberalize the rail transportation market and bring its legislation in the field of rail transportation in line with the European one.

Ukraine's integration into the EU rail transport market will bring a number of benefits. In particular, this will contribute to ensuring compatibility of the EU and Ukraine transport system, elimination of administrative and technical obstacles, modernization of infrastructure and equipment, increase safety of transportation, development of regional transport network of the Eastern Partnership, combined with TEN-T.¹⁸⁸ All this, in turn, will stimulate economic development and mobility.

The Association Agreement after Ukraine fulfills its obligations provides for the conclusion of an additional agreement in the sphere of railway transport, which will provide mutual access to the rail transportation market of both parties.¹⁸⁹

Another option for Ukraine's integration into the European rail transport market would be to expand the membership of the Treaty on the European Transport Community Treaty (TCT), which the EU has created together with six countries of the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Northern Macedonia, Montenegro and Serbia) in 2017-2019.¹⁹⁰ TCT aims to gradually integrate the transport markets of the Western Balkans into the European transport market through the relevant acquis in the field of technical standards, compatibility, safety, traffic management, social policy, public procurement and environmental protection.

Commitments

According to the Association Agreement, Ukraine should bring its legislation in the field of rail transport to the norms defined in the EU, which covers market and infrastructure access (railways throughput, distribution between infrastructure management and transport

¹⁸⁸ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=66737

¹⁸⁹ https://zakon.rada.gov.ua/laws/show/984_011#n1070

¹⁹⁰ www.transport-community.org

operations, obtaining licenses on the activities of railway enterprises) and technical conditions and safety (certification of workers and transport, safety of railways).¹⁹¹

Annex XXXII of the Association Agreement provides for the implementation by Ukraine of seven directives and four EU regulations in the field of rail transport:

- Council Directive 91/440/EEC of July 29, 1991 (development of railways).
- Council Directive 95/18/EEC dated 19 June 1995 (licensing of railway companies).
- Directive 2001/14/EU of the European Parliament and of the Council of February 26, 2001 (requirements for railway infrastructure capacity).
- Directive 2004/49/ EU of the European Parliament and of the Council of April 29, 2004 (safety on railways).
- Directive 2007/59/EU of the European Parliament and of the Council of 23 October 2007 (certification of workers and railway infrastructure).
- Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 (interoperability of railway infrastructure).
- Council Directive 92/106/EEC of December 7, 1992 (joint rules on combined cargo transportation).
- Regulation (EU) No. 913/2010 of the European Parliament and of the Council of September 22, 2010 (competitive freight).
- Regulation (EEC) No. 1192/69 of the Council of 26 June 1969 (standardization of financial statements of railway companies).
- Regulation (EU) No. 1370/2007 of the European Parliament and of the Council of 23 October 2007 (public passenger transportation).
- Regulation of Council (EU) No. 1371/2007 of the European Parliament and of the Council of 23 October 2007 (rights and obligations of passengers).¹⁹²

The Ministry of Infrastructure is responsible for implementation of Directive 92/106/EEC in Ukraine, Council Directive 91/440/EEC, Council Directive 95/18/EEC, Directive 2001/14/EU, Directive 2004/49/ EU, Directive 2008/57/EC, Regulation (EU) No. 1370/2007, Council Regulation (EU) No. 1371/2007 – Joint Stock Company "Ukrainian Railways".

Institutional framework

The Ministry of Infrastructure is responsible for rail transport in Ukraine. The main mission of the Ministry is the formation and implementation of state policy in the areas of railway and other modes of transport in Ukraine.

The largest enterprise in the industry is "Ukrzaliznytsia", subordinated to the Ministry of Infrastructure, which deals with centralized management on domestic and interstate communications and regulates the economic activity of railways. The scope of

¹⁹¹ https://www.civic-synergy.org.ua/wp-content/uploads/2020/03/Web_Dopovid_Transportna_2020.pdf

¹⁹² https://zakon.rada.gov.ua/laws/show/984_011#Text

“Ukrzaliznytsia” includes Donetsk, Lviv, Odesa, South, South-West and Prydniprovskaya Railways, and enterprises that provide transportation of goods and passengers (34 branches in total).

“Ukrzaliznytsya” is a state-owned enterprise that is a monopolist in the field of rail and passenger traffic in Ukraine. It includes tracks, railway stations, locomotives and passenger cars. Private companies in Ukraine in the field of rail transportation can only own freight cars and provide services in the field of rail transportation in accordance with the agreement concluded with "Ukrzaliznytsia".

In 2019, a bill was developed on the National Commission for the State Regulation of Transport, but it has not yet been adopted. The bill provides that the Commission will carry out state regulation, monitoring and control in the field of transport, form tariffs for services of natural monopolies, issue licenses for the right to implement activities in the field of railway transport and verify the implementation of licensing conditions, etc.¹⁹³

In 2018, the Cabinet of Ministers of Ukraine adopted the National Transport Strategy of Ukraine until 2030 “Drive Ukraine 2030”, which determines the development of the transport industry for the coming years and, in particular, provides for deepening integration with the EU.¹⁹⁴ In 2021, the Government approved the updated Action Plan for the implementation of the National Transport Strategy.¹⁹⁵ In particular, in the field of railway transport, within the framework of the strategy, it is envisaged to create free competition (rolling stock and locomotives both in state and private ownership), cooperation of "Ukrzaliznytsia" with Kriukov Carriage Plant and "General Electric", "Bombardier", "Greenbrier", an increase in the average speed of trains, the replacement of tracks on the track of the European standard on the connections Kyiv-Odesa, Kyiv-Lviv, Kyiv-Kharkiv and Kyiv-Dnipro.¹⁹⁶

Market Analysis

The railway network in Ukraine is 19.8 thousand km (excluding the temporarily occupied territories), of which 47% of the routes are electrified. In terms of cargo transportation Ukraine ranks fourth in Eurasia, giving way to China, Russia and India, but ahead of some EU countries.

Ukrainian Railways provide 40 international railway crossings, as well as serve 18 Ukrainian seaports of the Black Sea-Azov Basin. In addition, the territory of Ukraine are three railway transport corridors - No.3, 5 and 9. Ukrainian ports of Izmail and Reni interact with Pan-European Corridor No. 7, which passes the Danube.¹⁹⁷

Rail transport accounts for 82% of all freight and 36% of all passenger traffic. In 2020, the railway transport in Ukraine transported 305.4 million tons of cargo, which is only 2% less than 2019. The vast majority of transported goods were iron and manganese ores, building materials, coal, agricultural products. In 2020, 106.9 million passengers used railway transport, which is 62% less than 2019.¹⁹⁸

¹⁹³ <https://mtu.gov.ua/news/31479.html>

¹⁹⁴ <https://www.kmu.gov.ua/npas/pro-shvalennya-nacionalnoyi-transportnoyi-strategiyi-ukrayini-na-period-do-2030-roku>

¹⁹⁵ <https://mtu.gov.ua/news/32733.html>

¹⁹⁶ <https://mtu.gov.ua/files/projects/str.html>

¹⁹⁷ <https://mtu.gov.ua/content/informaciya-pro-ukrainski-zalznici.html>

¹⁹⁸ <http://www.ukrstat.gov.ua/>

Inventory fleet of passenger cars is 4.3 thousand units, including a working park – 3.1 thousand units. In addition, also in Ukraine there are 10 high-speed electric trains “Hyundai”, 2 high-speed electric trains “Tarpan”, 2 interregional trains locomotive traction. The fleet of freight cars is 83.5 thousand units, of which 57.7 thousand units are workers. But the bandwidth of some areas and directions is in a critical situation.¹⁹⁹ Worn rolling stock of “Ukrzaliznytsia” is partly compensated by the purchase of wagons by private owners, but in 2018-2019 there was a lack of locomotive traction. In 2020, due to the decrease in the volume of passenger traffic caused by the pandemic, the traction and infrastructure capacity of “Ukrzaliznytsia” was directed to freight transportation, which allowed to temporarily correct the situation²⁰⁰.

Ukraine runs ten container trains that connect Ukraine or pass Ukraine in the direction of international transport corridors, which include EU countries. Also, Ukraine passes one train of combined transport “Viking”, which connects the Baltic States with Bulgaria, Romania, Moldova, Georgia and Azerbaijan.²⁰¹

State Border Service and “Ukrzaliznytsia” are engaged in the arrangement of railway checkpoints on the border with the EU countries to improve the movement of passengers and cargo. In particular, in 2020 they reported plans to update 35 border checkpoints until 2022.²⁰²

In the EU in 2019, about 400 million tons of cargo were transported by rail. Of these, national rail freight was 49% of all transportations, international - 40%, transit - 11%.²⁰³

In the EU, the number of passengers who used rail transport in 2019 amounted to 416 million people. The largest number of passengers in the EU was transported to Germany, France, Great Britain, Belgium, Spain, etc.²⁰⁴

The largest companies in the EU engaged in rail freight and passenger transportation are: Eurostar (UK), SNCF (France), Deutsche Bahn, FlixTrain (Germany), Trenitalia, Italo (Italy), Renfe (Spain).²⁰⁵

Dynamics of implementation

According to the Pulse of the Agreement, as of the beginning of 2021, Ukraine has fulfilled 16% of its obligations in the sphere of rail transport.²⁰⁶

The corporatization of “Ukrzaliznytsia” was started in accordance with the EU legislation on ensuring the independent status of railway enterprises. In particular, the independent status of “Ukrzaliznytsia” was ensured in the field of management, administration and internal control over financial issues, and the Supervisory Board of “Ukrzaliznytsia” was established. To complete the process of reforming “Ukrzaliznytsya” and creating a competitive

¹⁹⁹ <https://mtu.gov.ua/content/informaciya-pro-ukrainski-zalznici.html>

²⁰⁰ <https://www.railinsider.com.ua/40586/>

²⁰¹ https://www.uz.gov.ua/cargo_transportation/intermodal_transportation/container/

²⁰² <https://eu-ua.kmu.gov.ua/novyny/z-2022-roku-na-kordoni-ukrayiny-zapracyuyut-onovleni-punkty-propusku-tvaryn>

²⁰³ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Railway_freight_transport_statistics#Downturn_for_EU_transport_performance_in_2019

²⁰⁴ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Railway_passenger_transport_statistics_-_quarterly_and_annual_data#Rail_passenger_transport_performance_continued_to_increase_in_2019

²⁰⁵ <https://www.comparabus.com/en/train/railway-companies#eurostar>

²⁰⁶ <https://pulse.kmu.gov.ua/ua/streams/transport>

transportation market, it is necessary to adopt the Law on railway transport, as well as to separate the vertical UZ Cargo and UZ Infra.²⁰⁷

In 2018, the Cabinet of Ministers of Ukraine approved candidates for members of the Supervisory Board of “Ukrzaliznytsya”, reorganized the previous practice of the Board. The new provision provides that the composition of the Supervisory Board is formed on a competitive basis, and independent directors will also be included in the work of the Board.²⁰⁸ The main purpose of the Supervisory Board is to approve the strategy of “Ukrzaliznytsia” and ensure the effectiveness of its activities²⁰⁹

In 2019, the Committee on Transport and Infrastructure of the Verkhovna Rada developed a draft Law on Railway Transport of Ukraine, but it was never adopted. According to the conclusion of the Committee on Ukraine's Integration with the European Union, this bill does not fully take into account the provisions of Directives 2004/49, 91/440, 2008/57, 2007/59, 95/18.²¹⁰ It should also be noted that this is the fourth draft law: the first two were government 2015 and 2018, which were withdrawn for revision, and in 2019 two draft laws were proposed at once, but only bill 1196-1 was put forward for consideration, but it was also not adopted.²¹¹

The Ministry of Infrastructure has implemented Directive 2001/14/EC and Directive 2004/49/EU relating to rail transport security management. The deadline for implementation of directives and regulations in the field of rail transport is October 31, 2022.²¹²

In 2019, the implementation of the Twinning project “Support to the Ministry of Infrastructure in the Implementation of Conditions for the Application of the European Model of the Rail Transport Services Market in Ukraine” was completed. The main objective of the project was to improve the efficiency of public administration in the context of rail transport reform and competition development in accordance with the Association Agreement. In particular, within the framework of the project the audit of the railway stations was conducted, the project experts provided technical and regulatory support for the improvement of procedures and methods of state supervision and monitoring of safety in the field of railway transport, provided recommendations on improvement of normative legal acts in Ukraine in the field of rail transport.²¹³

Resolution of the Cabinet of Ministers of Ukraine of 04.12.2019 No. 1043²¹⁴ began an experimental project on the admission of private locomotives on separate routes of the railway, which will contribute to increased competition in the market of freight rail transportation.

One of the technical difficulties on the way of Ukraine's integration into the EU rail transport market is that Ukraine uses the Soviet track width system, which is 1,520 mm, while the EU most commonly uses a track width of 1,435 mm. In 2018, the Resolution of the Cabinet of Ministers of Ukraine “On Approval of Conformity Assessment Modules in the Sphere of Railway Transport” was adopted, which provides for the implementation of Directive

²⁰⁷ https://lb.ua/society/2021/01/15/475294_skladi_ukrzalizinitsi_stvorili.html

²⁰⁸ <https://www.kmu.gov.ua/npas/249717580>

²⁰⁹ <https://www.epravda.com.ua/news/2018/06/20/637981/>

²¹⁰ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=66737

²¹¹ https://cfts.org.ua/blogs/noviy_zakon_pro_zalizinichniy_transport_pyat_rokiv_ochikuvan_560

²¹² <https://pulse.kmu.gov.ua/>

²¹³ <https://mtu.gov.ua/content/mizhnarodna-tehnichna-dopomoga-es-u-sferi-transportu.html>

²¹⁴ <https://www.kmu.gov.ua/diyalnist/reformi/ekonomichne-zrostannya/reforma-infrastrukturi>

2008/57/EC on the operational compatibility of railway systems, which is quite important in the context of the compatibility of European and Ukrainian tracks.²¹⁵

Recommendations

For Ukraine:

- to finalize the bill “On railway transport of Ukraine”;
- to renew and modernize the fixed assets of the railway;
- to improve technical and operational capabilities of railway infrastructure facilities;
- to complete the reform process of "Ukrzaliznytsia";
- to create a transparent mechanism for tariff setting.

For the EU:

- to continue to provide technical assistance in the field of harmonization of legislation, in particular, in the finalization of the draft law “On railway transport of Ukraine” in accordance with the provisions of the EU acquis;
- to continue to provide financial support for infrastructure development;
- to study the possibility of Ukraine's accession to the Treaty on the European Transport Community.

²¹⁵ <https://zakon.rada.gov.ua/laws/show/797-2018-%D0%BF#Text>

9. UKRAINE'S INTEGRATION INTO THE EU INLAND WATERWAY TRANSPORT

Anastasiya Kropova

Benefits of implementation of Association Agreement

River transport is one of the most environmentally friendly and relatively cheap compared to other modes of transport, the potential of which Ukraine uses the least.

The Ukraine-EU Association Agreement (Section V, Chapter 7 of Article 367) provides for cooperation between Ukraine and the European Union in the field of transport, including the river one, and Annex XXXII specifies six directives that need to be implemented.²¹⁶ Harmonization of legislation will allow Ukraine to join investment projects of the Trans-European Transport Network (TEN-T)²¹⁷, which, in turn, will increase the volume of cargo and passenger transportation. Ukraine will also be able to more effectively use its transit potential. Renewal of infrastructure should also help deepen cooperation with the EU and export goods through river transport, as the territory of Ukraine and the EU combines the Danube River.

Also, the Association Agreement provides for the possibility of concluding between the parties a special agreement in the field of inland waterway transport regarding the conditions of mutual access to the market (Section IV, subsection 7, article 136) for “ensuring coordinated development and progressive liberalization of transportation between Parties in accordance with their mutual commercial needs”. Deepening integration will create economic advantages, as well as enhance safety and environmental friendliness of transportation.

Commitments

The agreement provides for the implementation of six EU directives:

- Council Directive 96/75/EC of 19.11.1996, which deals with the functioning of the transport market and provides for chartering and pricing on the national and international market of inland waterway transport.

²¹⁶ https://zakon.rada.gov.ua/laws/show/984_011#Text

²¹⁷ <https://ua.interfax.com.ua/news/blog/696636.html>

- Council Directive No. 87/540/EEC of 09.11.1987, which defines the issues of access to the transportation market, as well as provisions relating to the professional competence of employees, which will help to regulate mutual recognition of diplomas and certificates.
- Directive 2006/87/EC of 12.12.2006 (as amended), which refers to the safety of transportation.
- Council Directive No. 96/50/ES on harmonization of conditions for obtaining national certificates of captains for transportation of passengers and cargo by inland water transport.
- Directive No. 2008/68/ES on domestic transportation of dangerous goods.
- Directive 2005/44/ES of the European Parliament and of the Council of 07.09.2005 on the provision of river information services, which provides for the exchange of information on navigation.²¹⁸

The agreement does not provide for any obligations regarding coaching transportation²¹⁹, but determines the conditions of their transportation in accordance with the conditions specified in the contract. According to the Agreement, Ukraine had to bring its legislation closer within five years from the date of entry into force of the Agreement.

Institutional framework

Responsible body in Ukraine for inland water transport is the Ministry of Infrastructure. In 2017, the State Service of Sea and River Transport of Ukraine was also established, whose activity is to implement the state policy in the field of sea and summer transport, navigation on inland waterways.²²⁰

In 2018, the Cabinet of Ministers of Ukraine adopted the National Transport Strategy for the period until 2030, where certain provisions relate to inland water transport, in particular the development of water infrastructure.²²¹

In 2018, the Ministry of Infrastructure and the relevant ministries from 13 countries signed a memorandum within the framework of the European Strategy for the Danube Region, which concerns the implementation of the Master Plan for Recovery and Maintenance of the Danube Fairway and its navigable tributaries. In the future, Ukraine's implementation of its duties under this Plan, which provides for the combination of inland waterway transport with air, rail and road in order to achieve complete synergy of the transport complex of the Danube region, can lead to simplification of navigation on Reiney.²²²

Also, in the period from November 2021 to November 2022, Ukraine will chairmen of the European Union Strategy for the Danube region. The Strategy itself provides for cooperation

²¹⁸ https://mtu.gov.ua/projects/40/#_ftn2

²¹⁹ Coaster transportation means transportation of Ukrainian and foreign goods by loading them to a sea (river) vessel at one point in the customs territory of Ukraine and transportation to another point in the territory of Ukraine, where they are unloaded (https://protocol.ua/ru/mitniy_kodeks_ukraini_stattya_97/)

²²⁰ <https://zakon.rada.gov.ua/laws/show/1095-2017-%D0%BF#Text>

²²¹ <https://zakon.rada.gov.ua/laws/show/430-2018-%D1%80#Text>

²²² <https://mtu.gov.ua/content/strategiya-es-dlya-dunayskogo-regionu.html>

in the areas of shipping and environmental protection. This will contribute to the restoration of navigation on the Danube River and the implementation of projects initiated by Ukraine.²²³

In 2020, within the framework of the project for the restoration of the international waterway E-40 it was planned to carry out dredging of the Pripjat River, but as a result only repair dredging was carried out through statements of ecologists about the possible spread of radiation as a result of raising the contaminated sediment.²²⁴ It should be noted that the investment value of this project and possible environmental consequences do not cover the economic benefits of this project.²²⁵

Ukraine is also actively working to ensure that in 2021 the Dnieper and Southern Bug rivers are included into the trans-European transport network TEN-T, which will contribute to the infrastructure development of inland waterways of these rivers.²²⁶

Market Analysis

The length of inland waterways of Ukraine, which are suitable for use, is 6.2 thousand km. The main navigable rivers are the Dnieper - 1 205 km, the Desna - 520 km, the Prypyat - 60 km, the Danube - 160 km and the Southern Bug - 155 km.²²⁷ In 2019, 16 river ports and terminals operated in Ukraine, the capacity of which is 60 million tons per year, and by 2030 it is planned to increase the capacity to 80 million tons per year.²²⁸ At the same time, three ports located on the Danube River are sea: Reni, Izmail and Ust-Dunaysk.²²⁹ The number of people employed in 2019 in water transport amounted to 2.8 thousand people.²³⁰

In 2020, Ukraine exported river transport services in the amount of 25.5 million USD.²³¹ Import data for 2020 is not published due to confidentiality, but in 2019 imports amounted to 5.3 million USD.²³² In total, in 2020, river transport transported 2.52 million tons of cargo, which is 11.7% less than last year. At the same time, 1.69 million tons were transported on domestic traffic, and 826.8 thousand tons – overseas.

In 2019, 0.2% of all cargoes were transported by inland water transport.²³³ Also in 2019, 589.9 thousand passengers were transported by river transport, and this figure was 0.01% of all passenger transportation by all modes of transport in 2019.²³⁴

²²³ <https://www.kmu.gov.ua/news/ukrayina-bude-golovuvati-u-strategiyi-yevropejskogo-soyuzu-dlya-dunajskogo-regionu>

²²⁴ <https://www.ukrinform.ua/rubric-economy/3087339-u-ricci-pripat-ne-vedut-roboti-z-dnopogliblenna-minprirodi.html>

²²⁵ <http://www.ier.com.ua/ua/publications/articles?pid=6409>

²²⁶ <https://www.ukrinform.ua/rubric-economy/3196095-dnipro-ta-pivdennij-bug-mozut-vkluciti-do-transevropejskoi-transportnoi-merezi.html>

²²⁷ <https://mtu.gov.ua/projects/40/>

²²⁸ <https://mtu.gov.ua/content/informaciya-pro-vodniy-transport-ukraini.html>

²²⁹ https://cfts.org.ua/blogs/rozvitok_vnutrishnikh_vodnikh_shlyakhiv_doroga_do_evrointegratsi_251

²³⁰ https://ukrstat.org/uk/druk/publicat/kat_u/2020/zb/10/zb_trans_19.pdf

²³¹ http://www.ukrstat.gov.ua/operativ/operativ2020/zd/ztp_kv/ztp_kv_u/ztp_kv_2020_ue.xls

²³² http://www.ukrstat.gov.ua/operativ/operativ2008/zd/dseip/dseip2007_u.htm

²³³ http://www.ukrstat.gov.ua/operativ/operativ2020/tr/pv_rich/xls/pv_rich3k_20_ue.xlsx

²³⁴ http://www.ukrstat.gov.ua/operativ/operativ2018/tr/tr_rik/tr_rik_u/kp_pas_vt_u.htm

During the three months of 2021, cargo transportation by the Dnieper amounted to 1.8 tons, which is 66% more for the same period last year. The River Information Service of Ukraine provides that freight transportation by the Dnieper will grow.²³⁵

According to Eurostat, EU waterways that are suitable for use are about 26559 km. Most shipping rivers are located in the Netherlands and Germany. In 2019, 523 million tons of cargo were transported by waterways, which is 2.9% more than in 2018.²³⁶ In 2019, 1.79 million people were transported, which is 9.9% more than 2018. Most of these transportations were river walks, cruises and excursions, in particular, 19 new river routes were created on the Rhine, the Danube and the Duero rivers.²³⁷

In the EU there are a number of regional organizations engaged in the regulation of inland water transport and the participant of which Ukraine does not act: the European Committee for the development of standards in the field of internal navigation, AQUAPOL, etc.²³⁸

Dynamics of implementation

It was assumed that Ukraine will gradually update the legislation from December 2015 and finish in July 2017, and these changes will affect the conditions of access to the domestic market, standards put forward to ships, creation of a logistics network, etc.²³⁹ But Ukraine didn't fulfill its obligations in time.

In 2017, a bill was developed regarding the requirements for the professional competence of the carrier and the mutual recognition of the relevant qualification documents, this law was adopted by the Verkhovna Rada of Ukraine and relates to Directive 87/540/EEC. But the European standard of higher education in the field of inland water transport has not been fully implemented.

In 2018, Directive 2016/1629, Regulation (EU) 2016/1628 were implemented in the legislation of Ukraine, relating to the technical requirements for domestic navigation vessels. In 2019, the Verkhovna Rada of Ukraine adopted the Law on Pricing on Inland Water Transport, which provides for the adoption of Council Directive No. 96/75/EC.²⁴⁰

Only in December 2020 the Verkhovna Rada of Ukraine adopted the Law "On Inland Water Transport", which came into force on January 1, 2021.²⁴¹ This law concerns the field of inland waterway transport,²⁴² in particular, it concerns technical requirements for inland waterways vessels (IWW), certification, recognition of diplomas, river information service and transportation of dangerous goods.²⁴³ In addition, the Law provides for admission of vessels under a foreign flag.²⁴⁴ In addition, the bill initiates the creation of the State Fund for the Development of Inland Waterways, which will contribute to ensuring the proper technical

²³⁵ <https://maritimebusinessnews.com.ua/2021/04/19/185822/>

²³⁶ <https://ec.europa.eu/eurostat/web/transport/data/database>

²³⁷ <http://www.inlandnavigation.eu/what-we-do/facts-figures/>

²³⁸ https://unece.org/DAM/trans/doc/2019/sc3/ECE-TRANS-SC3-2019-inf_04r.pdf

²³⁹ https://ec.europa.eu/transport/modes/road/studies/doc/2015-07-24-icf-eu_ukraine-roadfl-finalreport.pdf

²⁴⁰ <https://pulse.kmu.gov.ua/ua/current-progress>

²⁴¹ <https://zakon.rada.gov.ua/laws/show/1054-20#Text>

²⁴² <https://eu-ua.kmu.gov.ua/yevrointehratsiia/transport>

²⁴³ https://cfts.org.ua/blogs/rozvitok_vnutrishnikh_vodnikh_shlyakhiv_doroga_do_evrointegratsi_251

²⁴⁴ <https://mind.ua/news/20210293-rada-prijnyala-v-pershomu-chitanni-zakonoproekt-pro-dopusk-do-richkovih-perevezhen-inozemnih-suden>

condition of navigable locks on the Dnieper.²⁴⁵ Thus, with the adoption of this Law, Ukraine implemented in its legislation the norms of all six EU directives relating to inland waterway transport, but Directive 87/540/ES, 2005/44/ES, 2016/1629/ES are not fully taken into account.²⁴⁶

Vessels of the Ukrainian Danube shipping company freely float Danube under flags of Ukraine. In order to obtain the right to swim in the internal waters of the EU, Ukrainian vessels must obtain permission from the country, into the inland waters of which it is planned to enter. This permit provides for compliance of the vessel with the technical requirements determined by Regulation (EU) 2016/1629, and each country can independently implement additional requirements for the vessel depending on the navigation zone (for the EU is characterized by division into two zones). Thus, Belgium and France independently determine the technical requirements, especially for river-sea vessels.²⁴⁷

In order to float the internal waters of the EU, the carrier of goods or passengers must be registered in accordance with the legislation of the state which it represents; to obtain the right to carry out international transport of goods or passengers; to use for transport operations a vessel that registered in the country of origin, or if such registration has not been carried out, these operations are carried out in accordance with certificates indicating that this vessel is part of the country's fleet. It should also be noted that these provisions do not relate to navigation carried out by the Rhine River, since the rules of navigation by the Rhine are determined independently by the countries where the river flows, both for third countries and for the EU member states.

Regulations of the Council No. 3921/91, introduced the freedom of these transportations. Accordingly, the procedure for carrying out coachery transportation is regulated by the national legislation of each of the EU member states.²⁴⁸ Implementation of EU directives and infrastructure renewal, especially the renewal of Ukrainian vessels in accordance with EU technical requirements, will help Ukraine simplify the customs crossing of EU borders by internal waters.

With the creation of a legislative framework in the field of inland waterway transport, Ukraine will be able to simplify the rules of access to the European European shipping market and take full part in the work on the development of standards.

Recommendations

For the Government:

- to update the river infrastructure, which will allow to increase cargo transportation by river transport and reduce the cost of them;
- to fully implement a bill relating to the introduction of higher education standards in the field of inland waterway transport;
- to fully implement the EU directive in the field of inland waterway transport into legislation;
- to join organizations dealing with the regulation of waterways in Europe.

²⁴⁵ <https://www.epravda.com.ua/news/2020/04/24/659791/>

²⁴⁶ <https://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=67954&pf35401=522583>

²⁴⁷ https://unece.org/fileadmin/DAM/trans/doc/2020/sc3wp3/ECE-TRANS-SC3-WP3-2020-inf_02r.pdf

²⁴⁸ http://publications.europa.eu/resource/cellar/f277232a-699e-11e3-8e4e-01aa75ed71a1.0006.01/DOC_1

For business:

- for companies - to increase competitiveness to be prepared for the entry of vessels with foreign flags, to convert vessels in accordance with EU technical standards;
- for river ports – to develop cargo and passenger transportation.

For universities:

- to carry out training of river transport personnel in accordance with the practices used by EU universities.

For the EU:

- to study possibility of gradual liberalization of transportations within the framework of a special agreement on mutual access to the market of services of inland water transport.

10. UKRAINE'S INTEGRATION INTO THE EU MARITIME SERVICES MARKET

Artem Remizov

The benefits of integration with the EU

According to the Association Agreement, Ukraine has the opportunity to almost fully integrate into the EU market in one type of transport services, namely maritime transport, covering international sea transport and trade between ports (but excludes cabotage).²⁴⁹

If Ukraine fulfills the necessary conditions, the Agreement will provide vessels under the flag of Ukraine or those in the management of a service provider from Ukraine, the most favourable regime for access to ports, the use of infrastructure and port services, the use of marine support services²⁵⁰, as well as related rates and fees, customs services, allocation of parking spaces and loading and unloading services.

After Ukraine has access to the “internal market treatment regime” of the EU, Ukrainian citizens will be able to establish on the territory of the EU legal entities that provide services in the field of maritime transport, and Ukrainian legal entities will apply the same regime as for EU legal entities, and vice versa. The same applies to the freedom to provide services in the EU and Ukraine. Also, Ukraine and the EU undertake to effectively apply the principle of unlimited access to international maritime markets and trade on a commercial and non-discriminatory basis.

In general, Ukraine's implementation of maritime transport commitments will improve the safety of Ukrainian navigation (both for crews and passengers and for the environment), streamline the organizational structure on state safety supervision shipping in accordance with EU legislation and international conventions, ensure intermodality and operational compatibility of transport systems, which as a result will contribute to trade liberalization, improving mutual access to the EU and Ukraine markets, as well as access to international maritime transport.

²⁴⁹ The provisions of the Agreement do not apply to domestic maritime transportations between the ports of Ukraine or between the ports of individual EU Member States (except for the movement of equipment, for example empty containers, which are not transported as cargo for a fee).

²⁵⁰ These include: sea loading and unloading services, warehousing and storage services, customs clearance services, container stations and depots, maritime agency services, freight forwarding (maritime) services, ship rental services with crew, maintenance and repair of ships, towing services and support services for maritime transport.

It is worth paying attention to the prospect of introducing the national segment of the “Single European Sea Window” (EMSW, and its component SafeSeanet) – a system of exchange of information on the movement of ships and activities of economic entities in the field of maritime shipping. Joining this system in Ukrainian ports will simplify administrative procedures, improve the safety of navigation and ports, make the movement of ships and transportation more effective, as well as contribute to the protection of the environment.

In case of appropriate regulatory and legal approach, Ukrainian sea vessels and their rescue equipment should be equipped with the necessary medical facilities and equipment, and passengers will be able to count on guaranteed compensation in case of damage caused to their health or property. Also, minimum European requirements for their working hours and other social conditions will be introduced for seafarers, and qualification documents of captains and crew members of domestic voyage vessels will be recognized by the EU, which will facilitate the bureaucratic burden and eliminate opportunities for corruption .

Commitments

In order to access the EU internal market, Ukraine must fulfill 27 obligations to bring its legislation closer to the European one (12 commitments are fixed in Annex XVII to Section 4 “Trade and Trade-Related Issues”, 15 in Appendix XXXII to Section 5 “Economic and sectoral cooperation “) in a period of three to seven years from the date of entry into force of the Agreement. In general, Ukraine undertook to implement 20 Directives and 7 EU Regulations.

It is worth noting that most of them are sufficiently technical in nature, and their implementation is a time-consuming process that requires appropriate professional and financial resources. According to the results of monitoring, the EU should confirm that Ukraine has effectively implemented the norms of Community law, after which the Association Committee in the trade composition can provide a mutual regime of the domestic market for services in the field of maritime transport.

To do this, Ukraine should bring its legislation into compliance with:

- Safety of navigation (general rules and standards for organizations for inspection and inspection of vessels, compliance with the requirements of the state of the flag, state control of the port, implementation of the Code of Safety Management, regulation of liability of carriers in case of sea accidents, monitoring of movement of vessels and informing);
- technical and operational rules (rules and standards of safety of passenger vessels, functioning of regular transportation by ro-ro ferries and high-speed passenger ships, safe loading and unloading of bulk carriers, requirements for oil single-hull vessels, port equipment with Reception of waste from ships and cargo balances, prohibition of tin compounds on ships, registration formalities for ships, safety of seaports functioning);
- requirements for qualification and social protection of seafarers (minimum level of training, formation of a mechanism for mutual recognition by Ukraine and the EU of qualification documents of captains and crew members, raising the level of social protection of seafarers and organization of their working time and time rest).

Since the Agreement provides for amendments to it in order to ensure further liberalization, there is also an urgent need to update Appendixes XVII and XXXII in order to reflect changes

in EU legislation. Thus, the Directive of the European Parliament and the Council 2000/59/ES of November 27, 2000 on port equipment for receiving waste from ships and cargo balances was replaced by Directive 2019/883 of April 17, 2019, which also amended Directive 2010/65/ES. Another example is the abolition of the Rada Directive 1999/35/ES dated April 29, 1999 on the system of mandatory inspection for the safe operation of regular transportation by ferries and high-speed passenger ships and its replacement by Directive 2017/2110, which simultaneously amended the Directive 2009/16. Also, the Regulation of the European Parliament and Rada 417/2002 on speeding up the introduction of requirements for double hull or equivalent construction for oil single-body vessels was replaced by the relevant Regulation 530/2012. Translations of the above-mentioned documents have already been approved by the Government Office for Coordination of European and Euro-Atlantic Integration.

According to representatives of the Ukrainian government, the EU Commission in 2021 initiates its own monitoring mechanism for Appendix XVII, while the Ministry of Infrastructure conducts a comprehensive analysis (“mapping”) of the existing obligations and changes that must be made in the relevant part Appendix relating to maritime transport (Annex XVII-5).²⁵¹ In view of this, it is also worth mentioning consultations with the business community on updating the Agreement initiated and conducted by the Government Office during July-December 2020.

Institutional framework

Formation and implementation of state policy in the field of maritime transport services provided by the Ministry of Infrastructure. Also, since 2018, the State Service of Sea and River Transport of Ukraine (Maritime Administration) has been functioning, the main tasks of which are the implementation of state policy in the spheres of sea and river transport, trade navigation, navigation on inland waterways, ensuring navigation and hydrographic navigation, as well as provision and implementation of state supervision (control) of safety on sea and river transport. The Maritime Administration is the only Central executive body, whose activities are directed and coordinated by the Cabinet of Ministers through the Minister of Infrastructure.

In 2013, the Law of Ukraine “On seaports of Ukraine” came into force, one of the fundamental documents from which the reform of the industry began, including the establishment of the State Enterprise “Ukrainian Sea Ports Authority”. At the moment, the law needs to be amended, in particular, with regard to coordination of functions of state supervision over safety of navigation.

Speaking about program documents, in 2017, the Cabinet of Ministers approved the Strategy for Implementation of the EU Directives and Regulations in the Field of International Maritime and Inland Water Transport (“Road Map”) and approved an action plan for the implementation of EU law acts in this area.²⁵² Also, in 2018, the Government approved the comprehensive National Transport Strategy of Ukraine for the period up to 2030 (“Drive Ukraine 2030”, NTS).²⁵³

²⁵¹ Transcript of the meeting of the Verkhovna Rada Committee on Ukraine's integration into the EU, 10.02.2021, <http://comeuroint.rada.gov.ua/uploads/documents/29720.doc>.

²⁵² <https://zakon.rada.gov.ua/laws/show/747-2017-%D1%80#Text>

²⁵³ <https://www.kmu.gov.ua/npas/pro-shvalennya-nacionalnoyi-transportnoyi-strategiyi-ukrayini-na-period-do-2030-roku>

In 2019, the Action Plan for 2019-2021 for the implementation of the NTS was adopted, and in April 2021 it was updated and now provides for the implementation of 184 tasks by 2023,²⁵⁴ among which there are also those that are aimed at the development of maritime transport and the fulfillment of the relevant obligations under the Agreement. For example, the plan provides for the implementation of Directives 2017/2397/ES and Directives 2000/59/ES (although the latter is invalid and was replaced by Directive 2019/883). Also, the plan aims to implement internal state procedures for the entry into force of the Convention of the International Labour Organization 2006 on Labour in Maritime Shipping and the International Convention on Control of Ship Ballast Waters and Sludge Management of 2004, which directly relate to European integration obligations of Ukraine.

Interestingly, the Action Plan does not include the implementation of other EU Directives and Regulations in the field of maritime transport, while recently published a government draft law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Protection of Ports, Seaports and Ships”, which is sent to on implementation of Directive 2005/65/ES and Regulation No. 725/2004²⁵⁵, refers to the above-mentioned EU Acts Implementation Strategy. That is, the last document has not lost its relevance, although after it were approved already two action plans for the implementation of NTS.

Market Analysis

According to the State Service of Statistics of Ukraine, as of 2019, the maritime transport industry of Ukraine consisted of about 2000 industry entities.²⁵⁶ The market share of Ukrainian companies in these services is 73% (EU – 23%, China – 3%, Russia – 0.5%).²⁵⁷ Also, according to the Ministry of Infrastructure, 38 state-owned enterprises are involved in the industry and 100,000 sailors-citizens of Ukraine are registered.²⁵⁸ In general, according to the State Enterprise “Ukrpromzovnisheksperyza” in the maritime industry (ship design, shipbuilding and ship repair, shipping, sea and river ports), 48 thousand people were employed, which is almost half less than in 2010.²⁵⁹ Moreover, according to the government, 1 workplace in the industry stimulates the creation of 4-5 jobs in related industries.²⁶⁰

In the freight market of Ukraine as of the end of 2020, the share of sea transport compared to other modes of transport amounted to about 0.12% (road - 80%, rail - 19.8%, river - 0.25%, aviation - 0.01%).²⁶¹ At the same time, starting from 2016, an increase in the volume of cargo transshipment in the seaports of Ukraine has been recorded. Thus, 2019 was a record year for the last 8 years, demonstrating a figure of 160 million tons of processed

²⁵⁴ <https://zakon.rada.gov.ua/laws/file/text/89/f504910n16.doc>

²⁵⁵ <https://mtu.gov.ua/news/32767.html>

²⁵⁶This number corresponds to the total number of enterprises with the following KVED-s: “cargo sea transport”

“passenger sea transport”, “auxiliary services of water transport”, “provision of water vehicles for rent”. Data of the State Service of Statistics of Ukraine: http://www.ukrstat.gov.ua/operativ/operativ2018/fin/pssg/pssg_u/ksg_ek_2010_2019_ue.xlsx.

²⁵⁷ Kosse I., Kravchuk V. Documented dataset of ownership structure: ownership structure for services sectors with FDI. - Report of IER on the sub-contract # CEP-2019-134 for USAID project “Impact Assessment of a Potential Future Free Trade Agreement (FTA) between Ukraine and Turkey”, 2020, <http://www.ier.com.ua/ua/publications/reports?pid=6589>.

²⁵⁸ In total, certified sailors in Ukraine, there are more than 200 thousand.

²⁵⁹ Review of the maritime industry of Ukraine 2021 – SE “Ukrpromzovnisheksperyza”, Kyiv, 2021 <https://maritimeukraine.com/wp-content/uploads/2021/03/%D0%9E%D0%B3%D0%BB%D1%8F%D0%B4-%D0%BC%D0%BE%D1%80%D1%81%D1%8C%D0%BA%D0%BE%D1%97-%D0%B3%D0%B0%D0%BB%D1%83%D0%B7%D1%96-%D0%A3%D0%BA%D1%80%D0%B0%D1%97%D0%BD%D0%B8-2021%D1%80.x18783.pdf>.

²⁶⁰ <https://mtu.gov.ua/content/informaciya-pro-vodniy-transport-ukraini.html>

²⁶¹ Data of the State Service of statistics of Ukraine.

cargo. In 2020, despite the crisis, this figure reached almost the same level (158.86 million tons).²⁶² For comparison, in terms of transshipment of sea cargo, Ukraine is ahead of neighboring Poland (187 million tons for 2019), and Turkey processes them three times more (478 million tons). It is worth noting that the load of Ukrainian ports at the moment is about 50%, so Ukraine has the potential to increase the volume of sea traffic through its ports.

Today, the port system of Ukraine has 18 seaports, 13 of which are located on the continental territory of Ukraine and 5 ports – in the temporarily occupied territory of the Autonomous Republic of Crimea. In 2019, 33.7% of the cargo were processed at sea port Pivdennyi, 20.9% - in Mykolayiv, 16.4% - in the Black Sea and 15.8% - in the Odessa ports. It is important that in 2020 concession agreements were signed for the first time in the maritime industry in the ports of “Olvia” (Mykolayiv city) and Kherson with the volume of investments of 3.7 billion UAH for their further modernization and development.

It is also worth noting that container handling in the ports of Ukraine reached 1.05 million TEU, which is the largest among the ports in the Black Sea region, with the total volume of container transshipment in the region is approximately 3 million TEU. At the same time, the share of Ukrainian maritime shipping companies in the transportation of goods that handle Ukrainian seaports decreased from 4% in 2010 to 1% in 2019.²⁶³

By sea transport in 2020, one third less passengers were transported than in 2019 (52.6 and 79.4 thousand people respectively), although in 2018 this number increased by 150% compared to 2017 (from 28.6 thousand to 71.9 thousand people).²⁶⁴ Due to Russia's annexation of the Crimea, transportation of passengers by sea has decreased by 84 (compared to 2010). However, one of the main reasons for the decrease in the volume of cargo and passengers transportation by Ukrainian shipping companies, according to the report of SE “Ukrpromzovnisheksperyta”, is the poor state of their fleet (66% of the total fleet of ships are more than 30 years old).²⁶⁵

Speaking about the EU maritime transport sector, in 2018 685 thousand workers were employed in this area (4/5 of which works in the sea), and if we take related industries, then we can talk about more than 2 million jobs.²⁶⁶ In the freight market (including domestic), the share of maritime transport is approximately 20% of all goods. Moreover, maritime communication is very important for long-distance freight transportation – almost two-thirds of all goods are transported to or from seaports outside the EU.²⁶⁷ In 2019, the EU seaports processed 3.6 billion cargoes, the largest share of which fell on the ports of the Netherlands (16.9% or more than 600 million tons), Italy (14.2%) and Spain (13.9%).²⁶⁸ Also, in the same year in the seaports of the EU, 418.8 million passengers descended ashore.²⁶⁹

Given the positive dynamics of the growth of the capacity of ports in Ukraine and the importance of maritime transport for the EU economy, Ukraine's accession to the single

²⁶² Ministry of Infrastructure, <https://mtu.gov.ua/news/32525.html> .

²⁶³ Review of the maritime industry of Ukraine 2021

²⁶⁴ Data of the State Service of Statistics of Ukraine: http://www.ukrstat.gov.ua/operativ/operativ2021/tr/tr_rik/kppvt_95_20_ue.xlsx.

²⁶⁵ Review of the Maritime Industry of Ukraine 2021, 52 C.

²⁶⁶ The Economic Value of the EU Shipping Industry, 2020. - Oxford Economics study for the European Community Shipowners' Association, 2020, <https://www.ecsa.eu/news/download-2020-update-economic-value-eu-shipping-industry-oxford-economics>.

²⁶⁷ Energy, transport and environment statistics. 2020 edition. - European Commission, Brussels and Luxembourg, 2020, <https://ec.europa.eu/eurostat/web/products-statistical-books/-/ks-dk-20-001>.

²⁶⁸ Eurostat: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Maritime_freight_and_vessels_statistics#Seaborne_freight_handled_in_European_ports.

²⁶⁹ Eurostat: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Maritime_passenger_statistics.

market of international maritime transport services of the EU will allow it to realize its potential of the transit country. In particular, with the development of multimodal transport (the use of maritime transport in conjunction with rail and/or river transport), Ukraine has a chance to become one of the important transport hubs in Europe. The reorientation of European carriers to the Ukrainian market will contribute to filling the state budget, the flow of investments, and will give a powerful impetus to the development of other types of infrastructure. Ukrainian business will be able to use EU infrastructure for its own expansion, and industry workers (sailors) will be additionally protected.

Dynamics of implementation

Although in the last year the government managed to achieve relative progress in the transport sector, increasing the total percentage of the Ukrainian side's fulfillment of its obligations from 19% in 2019 to 34% in 2020, this area remains one of the most problematic of about 40% of the obligations, the fulfillment of which is overdue.²⁷⁰

In general, with the exception of a few spheres, regulatory approximation and implementation of relevant norms in the field of maritime transport are at an early stage or have not started at all. Most of the acts have not yet been adopted and are at the stage of development and/or interagency approval. These include bills on the management of safety of maritime transportations, state control of the port of standards for safety of vessels, prevention of pollution. For example, only recently (October 2020 - April 2021) the Ministry of Infrastructure presented the following developed projects;

- Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding the Protection of Ports, Seaports and Ships” on Ensuring the Protection of Ports, Seaports and Ships in Ukraine (Implementation of Directive 2005/65/ES and Regulation No. 725/2004);²⁷¹
- Order of the Ministry of Infrastructure “On Approval of Requirements for the Stability of Ro-ro Passenger Ships” (implementation of Directive 2003/25/ES);
- Order of the Ministry of Infrastructure “On Amendments to the Rules for the Provision of Services in Seaports of Ukraine” regarding the rules of safe loading and unloading of bulk cargoes in seaports of Ukraine (Directive 2001/96/ES);
- Order of the Ministry of Infrastructure “On Approval of Amendments to the Regulations on working hours and leisure time of floating warehouse of sea and river transport of Ukraine” (Directive 1999/63/ES and 1999/95/ES);
- Order prohibiting acceleration of introduction of requirements for double hull or equivalent construction for oil single-body vessels (Regulations 417/2002 and 530/2012);
- Order of the Ministry of Infrastructure “On Approval of Rules for Registration of Transactions with Harmful Substances on Ships, Sea and River Ports and Terminals” (Directive 2000/59, Regulation 782/2003).

²⁷⁰ According to the data of the system “Pulse Agreement” :<https://pulse.kmu.gov.ua/ua/current-progress>.

²⁷¹ It was adopted as a basis in the parliament on 05.03.2021.

Also, according to the statements of officials, the Ministry of Infrastructure is working on the provision of navigation safety management system on sea and river transport.

The achievements in the field of international maritime transport include the creation of an information system for monitoring the surface situation and movement of sea vessels (Directive 2002/59/ES). Ukraine also joined some international conventions, in particular in 2017 to the International Convention on Control of Harmful Anti-Steering Systems on Ships, and in 2018 – to the Protocol 1988 to the International Convention on Cargo Mark 1966, with appropriate amendments to it. However, in Ukraine, the 2006 International Labour Organization Convention on Labour in Maritime Shipping and the International Convention on Control of Ship Ballast Waters and Sealments of 2004, and the Protocol of 2002 to the Athens Convention on carriage by sea of passengers and their luggage in 1974, a member of which it already is. According to representatives of the government, the Ministry of Infrastructure is preparing the necessary ratification documents for joining the first two conventions this year.²⁷²

Recommendations

For the government and the parliament of Ukraine:

- In terms of planning and coordination of the implementation of the Agreement:
 - o to update the Strategy for implementing the provisions of the European Union Directives and Regulations in the field of international maritime and inland waterway transport (the “road map”) and the relevant action plan;
 - o to ensure transparent and open selection to the monitoring committee of implementation of the National Transport Strategy of Ukraine until 2030;
 - o to continue to involve EU technical assistance in the form of consultations.
- To adopt the necessary laws and regulations for the implementation of EU directives and regulations, which Ukraine pledged to implement, but has not yet implemented (or partially implemented)
- In terms of reforms in the sphere of public-private partnership:
 - o To ensure a transparent process of further transfer to the concession of seaports in order to attract new investments.

For business:

- To join the work of the monitoring committee of implementation of the National Transport Strategy of Ukraine.
- To prepare for future changes in legislation and NPA, especially in terms of safety of navigation and work of seafarers.

For the EU:

- To monitor the implementation of the Agreement in the relevant area and provide, based on its results, specific recommendations to the Ukrainian side to speed up the granting of the most favored regime;

²⁷² Transcript of the meeting of the Verkhovna Rada Committee on Ukraine's integration into the EU, 10.02.2021.

- To join the update of the government strategy for implementing the provisions of the EU Directives and Regulations and the relevant action plan.

11. INTEGRATION INTO THE EU COMMON AVIATION AREA

Iryna Kosse²⁷³

Benefits

The European Common Aviation Area (CAA) is a common market for aviation services created by EU countries to liberalize the market on the basis of common safety standards. In addition to EU members, third countries can join this common market by signing bilateral agreements with the EU. Agreements on CAA have already been signed with Moldova and Georgia, negotiations are underway with Azerbaijan. Similar agreements (Euro-Mediterranean aviation agreements) have been signed with Morocco, Jordan and Israel.

The CAP agreement between Ukraine and the EU was initialed on 28 November 2013, but has not yet been signed due to a territorial dispute between Spain and the United Kingdom over Gibraltar airport.²⁷⁴ On April 8, 2021, the European Commission approved draft CAP agreements with Ukraine, Armenia, Qatar and Tunisia. Following the signing of the Agreement, it is to be ratified by Ukraine and the EU institutions, as well as by the 27 EU Member States.²⁷⁵

The most significant and tangible effect of the signing of the CAA Agreement will be the mutual "opening" of the sky for Ukrainian and European carriers. It will no longer be necessary to conclude bilateral agreements between countries, determine the number of possible flights per week, carriers, etc. Passengers and airports will benefit from increased flights between Ukrainian and EU cities, as well as increased competition between airlines. Politically, Ukraine will strengthen its position as a European player by gaining access (at least as an observer) to the decision-making process of European aviation authorities.

Commitments

According to the Agreement, Ukraine must incorporate into its legislation the requirements and standards of the EU in the field of civil aviation, which relate to market access, air traffic

²⁷³ Anastasia Kropova helped update the section.

²⁷⁴ Experts suggest two ways to solve the problem: 1) Spain and the United Kingdom should sign a protocol on Gibraltar, and Ukraine and the EU - to make appropriate wording in the CAP Agreement on its territorial application; 2) after the withdrawal of the United Kingdom from the EU, the wording with which Spain agrees is included in the CAP Agreement. In any case, these amendments to the CAP Agreement must be agreed with the 27 EU Member States

²⁷⁵ <https://www.dw.com/uk/yevrokomisiiia-skhvalyla-proiekt-rishennia-shchodo-vidkrytoho-neba-z-ukrainoiu/a-57136755>

management, flight safety, the environment and other issues. Such incorporation will take place in two stages, and therefore there are two transitional periods.

After signing the Agreement on CAA²⁷⁶ first transition period will begin. It will allow Ukrainian and EU airlines to fly between any point in the EU and any point in Ukraine; Ukraine will be involved as an observer in the work of the committee responsible for allocating slots at EU airports. At the same time, legislative harmonization and implementation of EU requirements and standards will continue in Ukraine, the successful completion of which will allow the start of the second transition period.

During the second transition period, the EU recognizes crew certificates issued to Ukraine; groundhandling service providers will be able to operate in the territory of the other Party; Ukraine will be involved as an observer in the work of the committee, which determines which airlines are prohibited from operating within the EU.

Once Ukraine organizes its airspace in line with EU requirements, the Agreement will be fully operational. EU airlines will be able to fly between Ukrainian cities; Ukrainian airlines can fly between EU cities, provided that the flight is part of a service that serves a point in Ukraine (the Agreement is asymmetric).²⁷⁷ The EU will begin to recognize certificates issued to Ukraine for air traffic management and air navigation services.

The agreement provides for the establishment of a Joint Committee to interpret EU legislation in the field of civil aviation, control the organization of air traffic, monitor the implementation of the Agreement, amend the Agreement. The Joint Committee shall be responsible for the application of this Agreement and shall ensure its proper implementation. The Joint Committee will consist of representatives of Ukraine and the EU, its decisions are binding. The Joint Committee has broad rights and powers, but the Agreement does not prescribe either the mechanism for its establishment or the number of members.

The CAA Agreement does not contain implementation schedules, the transition to the next implementation period of the Agreement takes place after the decision of the Joint Committee, which assesses the degree of implementation.

In addition, Ukraine will participate in the work of several other institutions as an observer: EASA (European Aviation Safety Agency)²⁷⁸ and the Single European Sky Committee. Ukraine will be accountable to EASA for aircraft certification.

Institutional framework

The development of the Ukrainian air market is determined by the state policy in the field of air transportation. The main document regulating the use of Ukrainian airspace, as well as the use of certain areas of air transportation, is the Air Code of Ukraine, the last changes to which were made in July 2020.²⁷⁹ Certain aspects of public policy are regulated by orders of the Ministry of Infrastructure, the Ministry of Defense (on defense issues) and the State Aviation Service.

Ukraine's aviation development strategy is defined in the Strategic Plan for Air Transport Development until 2020, which provided for the signing of the CAP Agreement,

²⁷⁶ And its registration with ICAO (International Civil Aviation Organization) and the United Nations Secretariat

²⁷⁷ There is a separate provision in Annex II: "European Union air carriers are also allowed to operate air services between points in Ukraine, regardless of whether these services start or end within the EU."

²⁷⁸ Ukraine now has the status of a pan-European partner of EASA

²⁷⁹ <https://zakon.rada.gov.ua/laws/show/3393-17#Text>

consultations with EU countries on amendments to existing bilateral air services agreements to remove existing restrictions, support Ukraine's participation in EASA as an observer, adoption of the State Program on Flight Safety in accordance with ICAO standards, implementation of the Single European Sky Implementation Plan in accordance with the recommendations of Eurocontrol, harmonization of Ukrainian legislation with European.

Some aspects of the aviation strategy are detailed in the State Target Program for the Development of Airports until 2023, the Strategy for the Development of the Air Navigation System of Ukraine for 2016-2025, etc. In 2020, the government approved the "Concept of the state target scientific and technical program for the development of the aviation industry for 2021 - 2030."²⁸⁰ Also in 2020, the State Aviation Service joined the work of the interdepartmental group on coordination of climate change, which was established by the European Commission.²⁸¹

The main body that monitors the development and implementation of state policy in the field of air transportation is the Ministry of Infrastructure. It establishes the main areas of activity for the State Aviation Service, which implements the state policy of using the airspace of Ukraine. These institutions are quite effective, although there are comments on the effectiveness of state aviation supervision. Thus, in March-May 2019, the National Agency for the Prevention of Corruption (NAPC) conducted a scheduled inspection of the State Aviation Service and found signs of corruption offenses by the head of the State Aviation Service and state inspectors. The State Aviation Service appealed the results of the inspection in court, but the court did not satisfy the claim.²⁸² It should be noted that insufficient security oversight by civil aviation authorities may lead to the inclusion of countries and airlines in the so-called "EU Aviation Safety List". and a ban on flying to the European Union, as has happened with Moldova.

Market analysis

Ukraine's air transportation services are estimated to account for about 1% of GDP, with 16.2 thousand employees in this sector (2019). Exports of air transport services in 2020 amounted to 796 million dollars. US dollars, and imports - twice less, about 313.9 million dollars. USA. Due to the COVID-19 pandemic, exports decreased by 43.9% compared to 2019.²⁸³

There are 21 airlines in the market that transport passengers, and 22 airlines carrying mail and cargo. In 2020, 19 airports and airfields in Ukraine served 8.7 million passengers (64.4% less than in 2019). In 2020, passenger and freight traffic was provided by 26 domestic airlines (in 2019 there were 29), which carried 4.8 million passengers, which is 65% less than in 2019. This is the lowest figure for Ukrainian airlines from 2006 to 2007. In addition, there are 78 entities of commercial services and airport services in Ukraine, 42 developers and 26 manufacturers of aircraft, 252 organizations have a certificate for the provision of agency services for the sale of passenger and 48 organizations for the sale of air cargo.

According to the European Commission, the EU air transport sector accounts for 2.1% of EU GDP and provides employment for 4.7-5.5 million workers. The domestic European

²⁸⁰ <https://zakon.rada.gov.ua/laws/show/1412-2020-%D1%80#Text>

²⁸¹ <https://avia.gov.ua/wp-content/uploads/2021/02/SAAU-report-of-2020.pdf>

²⁸² <https://www.ukrinform.ua/rubric-society/2404779-derzaviasluzba-vs-nazk-sud-viznav-zakonnou-perevirku-antikorupcijnikiv.html>

²⁸³ http://www.ukrstat.gov.ua/operativ/operativ2020/zd/ztp_kv/ztp_kv_u/ztp_kv_2020_ue.xls

market consists of more than 100 scheduled airlines, 400 airports and 60 providers of ground aviation services. In 2019, 1.1 billion passengers used air transport in the EU.

At present, Ukraine has concluded 26 intergovernmental agreements on scheduled air services with EU countries. Such agreements determine the number and frequency of flights on routes between countries, connections and the number of air carriers that can serve such flights. Thus, bilateral agreements may restrict Ukraine's air flights with EU countries and "prevent" them from operating on low-cost carrier flights. For example, the Irish Ryanair, which entered the Ukrainian market in October 2018, has no flights from Ukraine to France and Spain, but have already appeared in Italy. For Ukraine, the arrival of Ryanair meant recognition of the attractiveness of the Ukrainian market for low-cost carriers and the possibility of cheap travel to Europe. In October 2018, the company started with 15 destinations from Kyiv and Lviv, and now flies from five Ukrainian cities and in 2019 opened 21 new routes. Of course, the COVID-19 pandemic has made adjustments, and many of these areas were closed in 2020.

During 2020, 31 foreign companies from 34 countries flew to Ukraine (in 2019 there were 40 of these companies from 38 countries), which carried 3.3 million passengers (64.7% less than in 2019). Unfortunately, the State Aviation Service does not provide statistics on individual countries operating air services to Ukraine, but reports on some aspects of air traffic liberalization. Thus, in 2018, the frequency of scheduled flights to Hungary, Germany and France was increased and restrictions on the frequency of flights to Austria were completely lifted. In 2019, 4 new airlines operated: the Austrian airline Laudamotion, the French Aigle Azur (operated until September 2019), the Israeli Israir Airlines and the Norwegian Scandinavian Airlines System. In total, 29 new routes were opened in 2019. In 2020, international scheduled flights were operated on 30 new routes, 6 of which were operated by Ukrainian companies.

But, of course, the biggest market opening will take place if the CAA Agreement is signed. It will no longer be necessary to conclude bilateral agreements between countries, determine the number of possible flights per week, carriers, etc. European airlines will be able to fly to Ukrainian cities without restrictions, as well as use Ukrainian airports for transit to Asia or Australia. However, there are also significant risks for Ukrainian carriers: the lack of free slots at European airports will make it difficult for them to open new routes in the EU, and they may be overtaken by more powerful European airlines on flights between Europe and Ukraine.

The development of freight traffic will depend not only on the implementation of the provisions of the Agreement, but also on investments in new cargo capacity. The cargo terminals of the largest Ukrainian airport, Boryspil, are overloaded, and there is no cargo terminal at all at Lviv Airport. Therefore, with the increase in freight traffic, airports near large cities, such as the airfield in Bila Tserkva, may receive additional impetus to development. This will require the installation of navigation equipment to be able to receive aircraft at night and in bad weather, and to open an international checkpoint to accept foreign cargo.

In July 2020, the Ministry of Infrastructure noted that in the fall of 2020 it is planned to begin construction of a new cargo terminal at Boryspil Airport. Construction was planned to be completed by the end of 2021, but all infrastructure projects at the airport were suspended due to lack of financial plan for 2020 and quarantine.

In 2020, the volume of cargo and mail was 88.3 thousand tons (in 2019 this figure was 92.6 thousand tons).

Dynamics of implementation

Ukraine has already started to implement the relevant norms and standards of the EU in its legislation, ie it has started to implement the provisions of the CAA Agreement even before its signing. The requirements of the CAA on the rights of passengers, the division of aviation into state, civil and general aviation ("small aircraft"), aviation security, environmental protection, etc. were taken into account in the wording of the Air Code in 2011.

Starting in 2017, based on an agreement between the State Aviation Service and the European Commission a project on the convergence of the certification system is being implemented, some Aviation Rules of Ukraine have been developed, in accordance with EU Regulations, staff training was provided. The agreement on the convergence of certification systems between the State Aviation Service and the European Commission provided that joint work on achieving convergence of certification systems in the areas of primary airworthiness, airworthiness maintenance and maintenance of aircraft and its components would continue for five years. In 2017, the State Program of Civil Aviation Safety was adopted, and a number of licensing conditions and rules were approved.

In 2019, the European Commission launched the SAFER-U project (Development of Ukraine's aviation legislation through approximation to EU legislation), which aims to improve Ukrainian flight safety rules in the field of flight operations of civil aircraft. The project will run from 2019 to 2022, and its budget is 2.5 million euros.

One of the main innovations of the CAA Agreement is Ukraine's accountability to EASA for aircraft certification. Ukraine should provide mechanisms for inspections and audits on standardization by EASA. However, the certificates, licenses and other technical documentation themselves must be issued by the national authorities of Ukraine. In 2018, UkSATSE underwent an EASA audit and received the certificate required to maneuver aircraft upon arrival at Uzhhorod Airport, but the relevant mechanism for regular EASA inspections has not yet been developed.

On September 24, 2020, the Agreement between the Cabinet of Ministers of Ukraine and the Government of Slovakia on the use of a certain part of the Slovak airspace in connection with the provision of air traffic services was signed, and on March 17, 2021 this Agreement was approved.

The issue of opening the market of ground handling services is still unresolved. Developed in February 2017 and finalized in November 2018, the draft Aviation Rules "Access to the market of groundhandling services at the airport" was not considered by the Verkhovna Rada, in 2021 it was finalized by the relevant Committee and is now awaiting consideration. Meanwhile, the groundhandling market at airports remains monopolized by individual companies. For example, in November 2018, the AMCU found a violation of antitrust laws by Kyiv Airport (Zhulyany) and Master-Avia LLC, which entered into a general agreement on ground handling and ousted other companies from this market. In 2017, Boryspil Airport was fined UAH 13 million for abusing its monopoly position in the airport's specialized services market in terms of airport ground handling. In 2020, Boryspil Airport paid UAH 12.8 million in fines to the state budget of Ukraine for a fine imposed by the Antimonopoly Committee of Ukraine for violating the legislation on protection of economic competition.

Thus, work on harmonization of Ukrainian and European legislation in the field of air transportation is underway. However, it is difficult to assess the degree of harmonization, as such monitoring is not carried out. The Government's priority action plans constantly postpone the harmonization of Ukrainian aviation standards with international norms for the period after the adoption of the Law of Ukraine "On Amendments to the Air Code of Ukraine to Improve Legislative Regulation in the Field of Unmanned Civil Aviation".

Recommendations

Ukraine has done much to harmonize its aviation legislation with that of Europe and to mutually "open" Ukrainian and European airspace. However, there is still a lot of work to be done. To speed up the signing of the CAA Agreement and increase market readiness, Ukraine and the EU should do the following:

Recommendations for Ukraine and the EU:

- - sign the CAA Agreement.

Recommendations for public authorities of Ukraine:

- - to regulate the issues of inspections and audits on standardization by EASA;
- - ensure free access to the market for groundhandling services in full compliance with EU Directive 96/97;
- - to continue active work on the incorporation into EU legislation of EU regulations and directives in the field of aviation.

Recommendations for Ukrainian companies-market participants:

- - Ukrainian airlines should increase their competitiveness in order to be ready for European airlines to enter the Ukrainian market;
- - Ukrainian ground handling companies at airports should take an active position, defend their rights, including in the Antimonopoly Committee;
- - airports need to develop freight and postal services.

12. RECIPROCAL OPENNING OF PUBLIC PROCUREMENT MARKETS OF UKRAINE AND THE EU

Olexandra Betliy

Benefits

The Association Agreement between Ukraine and the EU (Chapter 8 of Section IV and Annex XXI) provides for “ensuring mutual access to public procurement markets based on the principle of national treatment at the national, regional and local levels for state contracts and concession agreements in traditional sectors of the economy, as well as in public utilities. ”

This means benefits for Ukrainian companies that gain access to the EU public procurement market by about 14% of total EU GDP or more than 1.9 trillion euros. At the same time, competition in the public procurement market in Ukraine through participation in the procurement of EU companies contributes to more efficient spending of budget funds, as well as encourages domestic companies to be more competitive.

In contrast to the goods market, where market opening is asymmetric in favor of Ukraine, the Association Agreement provides for symmetrical mutual access to the market between the two parties after Ukraine has fulfilled its obligations to bring its legislation in line with EU norms.

Annex XXI to the Agreement provides an “Indicative Schedule for Institutional Reforms, Legislative Approximation and Market Access,” which provides for five phases of legislative change and mutual opening of market access from 1 January 2016 to 2024. The implementation of each stage should be evaluated by the EU-Ukraine Association Committee in terms of trade and, if positive, will mean the opening of a certain segment of EU and Ukrainian public procurement under contracts whose value exceeds the thresholds set out in the same Annex.

According to Art. 154 (4) UA after passing all stages of the indicative schedule Ukraine and the EU will consider the possibility of mutual deepening of access to procurement markets.

Commitments

The Association Agreement directly links access to the EU public procurement market with Ukraine's progress in approximating its legislation to EU public procurement rules.

In particular, Ukraine should designate a central executive body responsible for public procurement policy and a separate impartial and independent appellate body to review decisions made by contracting authorities in the procurement process. The principles of non-discrimination, equal treatment, transparency and proportionality must be ensured in procurement. Ukraine needs to approximate its legislation to the requirements of the EU Directives governing public procurement, but these directives should not be fully or promptly implemented. Annexes XXI-B to XXI-N divide these directives into several types of elements: "basic", "mandatory", "optional" (i.e. provisions that are not mandatory but are recommended for approximation) and those , "Which do not fall under the scope of legislative adaptation."

In May 2018, the EU-Ukraine Association Committee decided to update Annex XXI,²⁸⁴ to take into account the new EU Public Procurement Directives adopted in 2014.²⁸⁵ At the same time, the threshold values for the application of public procurement rules were slightly increased (Table 2).

Table 2. Thresholds for the application of public procurement rules

Types of contracts	Threshold value	Updated threshold
For state contracts for the supply of goods and services to central government agencies, as well as the development of requirements for tenders conducted by these government agencies	133,000 euros	135,000 euros
For state contracts for the supply of goods and services not covered by the above paragraph	206,000 euros	209,000 euros
For state contracts for works and for state concessions	5,150,000 euros	5,225,000 euros
For works contracts for other institutions, enterprises or organizations (in the utilities and infrastructure sectors)	5,150,000 euros	5,225,000 euros
For contracts for the supply of goods and services to other institutions, enterprises or organizations (in the utilities and infrastructure sectors)	412,000 euros	418,000 euros
For government contracts for the provision of services for social and other specific services	-	750,000 euros
For contracts for the provision of services for social and other specific services in other institutions, enterprises or organizations (in the utilities and infrastructure sectors)	-	1,000,000 euros

²⁸⁴ http://zakon.rada.gov.ua/laws/show/994_001-18#n2

²⁸⁵ These are Directive 2014/23 / EU on the conclusion of concession agreements, Directive 2014/24 / EU on public procurement and Directive 2014/25 / EU on procurement by organizations operating in the water, energy, transport and postal services sectors. These new acts replaced Directives 2004/17 / EC and 2004/18 / EC

Institutional framework

The government began public procurement reform to combat corruption in this area, as well as in the framework of fiscal consolidation before the entry into force of Chapter 8 of the Agreement. Even before the signing of the Association Agreement, the legislation of Ukraine did not contain restrictions on the participation of foreign participants in public procurement, and large tenders were announced with the translation of documentation into English. In April 2014, the parliament adopted a new Law on Public Procurement. The main provisions of which have been harmonized with EU norms. However, higher transparency and greater opportunities for competition as a result of the new law were still insufficient to combat corruption.

Therefore, in 2015, a pilot project on e-procurement was introduced and the law "On Public Procurement" was adopted. Already in 2016, the Law on Public Procurement was fully implemented. Accordingly, all budget and government agencies began to procure more than a certain amount (UAH 200,000 for procurement of goods and services and UAH 1.5 million for procurement of works) on the basis of the electronic system ProZorro.

The Ministry of Economy (Ministry of Economy) is designated by law as the authorized body in the field of public procurement, while the Antimonopoly Committee of Ukraine (AMCU) is the body for appealing against complaints of violations of public procurement legislation.

In September 2019, an updated version of the law "On Public Procurement" was adopted, designed to harmonize Ukrainian legislation with the updated EU Directives, regulate sub-threshold procurement, increase procurement efficiency, set standards for combating unscrupulous bidders and improve appeals. The law came into force in April 2020.

Market analysis

The introduction of new legislation in the field of public procurement in 2016 helped increase competition and transparency, as well as reduce fraud and corruption. In particular, according to the Center for Procurement Improvement (Kyiv School of Economics), the number of purchases from one supplier decreased, while the number of suppliers increased.²⁸⁶ Importantly, small and medium-sized enterprises' access to procurement has been simplified and their participation in procurement has increased.

According to the electronic procurement system, in 2017 there were about 27 thousand customers and about 1 million procurement procedures with an expected value of over UAH 778 billion, of which 869,344 procurements worth about UAH 500 billion were successfully completed.

In 2020, the organizers of the procurement announced 3.7 million purchases, of which 3.5 million were successfully completed (of which 2.4 million purchases of goods). The expected value of the latter was UAH 748 billion, and the value of the concluded contracts was UAH 686 billion. The number of customers increased to about 38,000. The number of business representatives who took part in the procurement amounted to about 236 thousand.

²⁸⁶ http://cep.kse.org.ua/assets/img/articles/Prozorro_report_ua.pdf

According to Prozorro, in 2020 the e-procurement system saved the state budget UAH 43.5 billion. This has resulted in a lowering of the tender threshold, increased savings in large auctions and opportunities for businesses to correct mistakes.²⁸⁷

Ukraine does not restrict EU companies' access to the public procurement market, as it provides non-discriminatory access to all companies. The translation of the documentation into English is required for all tenders in excess of € 133,000 for goods and services and € 5.15 million for works. At the same time, the share of completed tenders that passed the open bidding procedure with publication in English remains less than 1%.

The share of foreign companies, including from the EU, in the public procurement market of Ukraine remained low: as of June 2020, the share of non-residents was less than 1% of the total number of registered participants and 0.1% of the total number of received contracts.²⁸⁸ This may be due to various technical difficulties in securing documents for concluding agreements with the Ukrainian side, which relate, in particular, to the identification of a non-resident. Therefore, (small) European companies are still inclined to participate in procurement in Ukraine through a subsidiary of a Ukrainian legal entity or Ukrainian partners.

Dynamics of implementation

Most of the provisions of the Law on Public Procurement, which was adopted in 2015, complied with the EU Directives in the field of public procurement. To adapt other provisions, in February 2016 the Cabinet of Ministers adopted a Strategy for Reforming the Public Procurement System, which is a "road map" for implementing changes in public procurement.

The provisions and approvals of the roadmap adopted by law correspond to the first stage of the Indicative Schedule of Institutional Reforms, which is set out in Annex XXI-A to Chapter 8 of Section IV of the Association Agreement. But formal recognition is delayed.

In May 2018, the EU-Ukraine Association Committee issued a positive opinion on trade regarding the road map adopted in 2016. In November 2019, the Association Committee agreed that the completion of the first phase should take place in early 2020, after which it will be formally approved. However, at the next meeting of the Committee, held in December 2020, the issue of formal approval of the completion of the first phase remained on the agenda, and the relevant decision was not made.

The Roadmap identified the expected further changes in the regulation of public procurement: in particular, amendments to the legislation to harmonize it with the updated EU Directives, improve the scope of legal regulation and eliminate inconsistencies between the legislation and the technical work of the ProZorro system.

Amendments to the law on public procurement, in line with the obligations under the "road map", were adopted in September 2019 and entered into force on April 19, 2020. In fact, Ukraine has received a new version of the law, which approximates the legislation to European directives and regulates problematic issues faced by both customers and bidders (in particular, the fight against unscrupulous suppliers of substandard goods / services; prevention of artificial delay or disruption of tenders; restrictions on the use of non-price criteria, which is widely used in EU countries, etc.).

²⁸⁷ Correcting errors within 24 hours allowed the buyer to determine the winner of the company with the best price offer

²⁸⁸ <https://e-tender.ua/news/taras-shimko-ukrayinskij-biznes-maye-velikij-potencial-v-jev-671>

The adoption of this law means that Ukraine will pass the second stage of the indicative plan. The law regulated pre-threshold procurement, lowered the threshold for tenders to UAH 50,000 and introduced simplified procurement for tenders from this amount to the threshold. Pre-threshold purchases of UAH 50,000 were called "simplified purchases" and are now regulated by law. Therefore, such purchases will need to be made through ProZorro. ProZorro reporting on all purchases has been introduced. The new law also allowed for the correction of errors, introduced the definition of abnormally low prices, provided for the possibility of electronic catalogs, provided a definition of authorized persons for procurement and improved appeal mechanisms.

A special approach was chosen to reform public procurement of drugs and medicines, which have traditionally been characterized by high levels of corruption. In 2015, a law was passed that transferred centralized procurement of medicines to international organizations (At the end of 2019, deputies extended this approach until 2022). Such procurements are made on behalf of Ukraine by the United Nations Development Program, the UNICEF Children's Fund and the British procurement agency Crown Agents.²⁸⁹ At the same time, in 2019, a new state-owned enterprise, Medical Procurement of Ukraine, operated in a pilot mode, responsible for purchasing drugs to fight AIDS, tuberculosis and malaria. In November 2020, the SOE received the status of a centralized procurement body (CPB).

Previously, this status was granted to the State Institution "Professional Procurement", to conduct tenders and purchases under framework agreements for goods and services other than maintenance. In 2021, the Cabinet of Ministers designated Ukrainian Special Systems as a centralized procurement organization in the field of digitalization. The establishment of CPBs is intended to increase the professionalization of procurement, promote economies of scale, standardize procurement and increase transparency. CPBs are responsible for filling electronic catalogs of goods on ProZorro.Market, as well as for checking qualifications and documents.

Prozorro.Market is actually an online store where customers can buy small batches of the same type of goods.²⁹⁰ Its work started in 2019 in a pilot mode for procurement up to UAH 50,000, and in September 2020 the CMU decided on its full-fledged operation, which allows it to be used for procurement up to UAH 200,000. The use of this tool is intended to facilitate procurement, increase competition and save the customer.

In the summer of 2020, the law "On Defense Procurement" was adopted which is harmonized with the provisions of Directive 2009/81 / EC. The law came into force in January 2021. For the first time, this law introduces clear and transparent regulation of defense procurement, which brings them closer to the practices of NATO members. Numerous legal acts have been adopted to implement the Law. At the same time, there are still significant delays in the implementation of the new Law, in particular due to the creation of a new Ministry of Strategic Industries and a somewhat later transfer of defense procurement from the Ministry of Economy to the new Ministry.

While all the decisions taken in the field of procurement brought Ukraine closer to fulfilling its obligations under the Association Agreement, in 2020 MPs returned to the idea of introducing protectionism in public procurement. In the bill №3739 deputies provided for the obligation to purchase a certain list of engineering products only if it has a clearly defined in the law the degree of localization of products. The draft law was adopted in the first reading in July 2020, which provoked reservations from the EU, as the document does not make exceptions either for products manufactured from EU countries or for members of the WTO

²⁸⁹ Report of the Accounting Chamber: <https://goo.gl/2MKB64>

²⁹⁰ <https://prozorro.gov.ua/news/internet-magazin-dlya-derzhzakupivel-vse-sho-potribno-znati-pro-prozorro-market>

Procurement Agreement. The inconsistency of the provisions of this draft law with the Association Agreement in terms of harmonization of legislation with the Directives in the field of procurement is clearly stated in the opinion of the Committee on Ukraine's Integration with the European Union. However, the text of the bill submitted for the second reading in February 2021 became even more general and left in place an article on a clearly defined level of localization for engineering goods: the level of localization is proposed to be gradually increased from 10% in 2021 to 40% in 2027. 10 years). At the same time, the conditions of localization are also mandatory for projects for which procurement is carried out with the financial support of MFIs, and the Cabinet of Ministers is proposed to instruct to hold appropriate negotiations with the EU. The adoption of this bill will not comply with Ukraine's international obligations, as this bill contradicts not only the Association Agreement but also the GPA.

Mutual market access under the GPA

It seems that Ukraine itself has not initiated a formal evaluation of the implementation of the first stage for a long time. A possible reason could be Ukraine's desire to receive a positive assessment for passing several stages of the Indicative Schedule at once. But the main reason is most likely that Ukraine has already gained access to the EU public procurement market under the WTO Agreement on Government Procurement (GPA).

On May 18, 2016, Ukraine acquired the status of a full party to the GPA. Under this agreement, the EU has set the same thresholds for access to its market for the application of public procurement rules, as well as those currently in force under the updated Annex XXI of the Association Agreement. Yes, GPA project data in Ukraine show that Ukrainian companies have already started entering the EU public procurement markets.

Mutual access to the GPA procurement market does not require additional changes in the procurement rules of both parties. This significantly distinguishes the GPA from the UA, which requires Ukraine to gradually do its homework on harmonizing public procurement legislation, and provides for the gradual granting of access to the EU procurement market to Ukraine only after a positive assessment of this homework.

At the same time, it should be noted that under the GPA, the EU does not provide access to all types of public procurement, as provided for in full completion of all stages of the Indicative Schedule in the Association Agreement. In particular, we are talking about procurement in the utilities sector and the purchase of certain services and goods, government concessions.

Thus, in fact, most of the provisions of the AA in the field of public procurement have already been implemented by both parties. Given the access to the EU market obtained under the GPA, Ukraine does not have as many external incentives to fully comply with its AA harmonization obligations as expected when signing the AA.

At the same time, Ukraine has embarked on an even deeper, asymmetric opening of its market to the EU. Under national law, companies from EU member states already have full access to the Ukrainian public procurement market (although its practical use is hampered by various technical barriers that may still make it more convenient for EU businesses to participate in procurement through Ukrainian subsidiaries).

Recommendations

For Ukraine and the EU:

- find a technical solution to ensure the interconnection of the Ukrainian electronic procurement system ProZorro and the European information system in the field of TED procurement;
- complete the formal recognition of the implementation of the first stage of the Indicative Plan for Adaptation of Legislation in the Field of Public Procurement.

For Ukraine:

- continue to implement the Public Procurement Reform Strategy ("road map") to remove those practical barriers that remain in the procurement market for EU member states;
- to initiate a formal assessment of Ukraine's progress in fulfilling its obligations under Chapter 8 of Section IV of the Association Agreement and on its basis to seek decisions of the EU-Ukraine Association Committee on trade on Ukraine's stages of the Indicative Plan for Approximation of Public Procurement Legislation;
- to abandon the idea of introducing the condition of localization of production in public procurement.

For the EU:

- to conduct a formal assessment of Ukraine's progress in fulfilling its obligations under Chapter 8 of Section IV of the Association Agreement;
- in accordance with Art. 154 (4) UA to determine the prospect of providing access to the procurement market below the GPA thresholds - similar to the single procurement market within the European Economic Area (EEA).

ANNEX XXI-A TO CHAPTER 8 OF SECTION IV OF THE ASSOCIATION AGREEMENT

Indicative timetable for institutional reforms, legislative alignment and market access

Stage		Indicative period	Market access provided to the European Union by Ukraine	Market access provided to Ukraine by the European Union	
1	Implementation of Articles 150 (2) and 151 Implementation of institutional reform under Article 150 (2)	6 months from the date of entry into force of the <u>Agreement</u>	Contracts for the supply of goods to central authorities	Contracts for the supply of goods to central authorities	
2	Approximation and implementation of the basic elements of Directive 2014/24 / EC and Directive 89/665 / EEC	3 years from the date of entry into force of the <u>Agreement</u>	Contracts for the supply of goods for state, regional and local authorities and public law organizations	Contracts for the supply of goods for state, regional and local authorities and public law organizations	Annexes XXI-B and XXI-C
3	Approximation and implementation of the basic elements of Directive № 2014/25 / EC and Directive № 92/13 / EEC	4 years from the date of entry into force of the <u>Agreement</u>	Contracts for the supply of goods for all customers of the utilities and infrastructure sectors	Contracts for the supply of goods for all customers	Annexes XXI-D and XXI-E
4	Approximation and implementation of other elements of Directive № 2014/24 / EC and Directive № 2014/23 / EU	6 years from the date of entry into force of the <u>Agreement</u>	Contracts for the provision of services and works and concession agreements of all customers	Contracts for the provision of services and works and concession agreements of all customers	Annexes XXI-F, XXI-G, and XXI-H
5	Approximation and implementation of other elements of Directive № 2014/25 / EU	8 years from the date of entry into force of the <u>Agreement</u>	Contracts for the provision of services and works for all customers of the utilities and infrastructure sectors	Contracts for the provision of services and works for all customers of utilities and c	Annexes XXI-I and XXI-J

13. UKRAINE'S INTEGRATION INTO THE EU GAS MARKET

Roman Nitsovych, Alyona Korogod

Benefits

Ukraine took a step towards integration with the EU in the field of energy before signing the Association Agreement, gaining in 2011 membership in the Energy Community - an international organization that includes the EU and neighboring countries, which aims to create an integrated energy market by extending EU energy legislation beyond its limits.

As a member of the Energy Community, Ukraine has committed itself to implementing the provisions of the EU's Third Energy Package and a number of network codes. According to the Association Agreement (Article 278), the provisions of the Energy Community Treaty take precedence over the provisions of the AA. The updated Annex XXVII to the AA separately lists the acts of legislation that Ukraine must implement on the basis of the Treaty, and separately - other acts of EU legislation in the field of energy.

It should be noted that even fully harmonizing its legislation with EU law in the field of energy, Ukraine does not have the prospect of obtaining an EU internal market regime in this area in the case of fulfilling its "homework". The corresponding provision is missing in Annex XXVII even in an updated form (unlike Annex XVII, which provides such a perspective for some services markets).

However, the nature of the application of network codes, which according to the updated Annex XXVII to the AA should become part of the "internal legal regime of Ukraine without changes in structure and text", as well as the introduced mechanisms of consultation, monitoring and reporting may lead to de facto application of the internal regime. EU energy market.

The key event of the beginning of 2020 was the unbundling of Naftogaz on January 1. The Ukrainian gas transportation system has been transferred to the management of the GTS of Ukraine Operator LLC (OGTSU) established at the end of 2019, which is managed by the Ministry of Finance through JSC MSU. The OGTSU received preliminary certification in the Energy Community and began working with European operators and companies, offering new services.

During 2020 - 2021 in Ukraine there were significant structural changes in the gas market. Ukraine has fulfilled most of its obligations under the Association Agreement and membership in the Energy Community to liberalize the market. Such changes have created a stable legal framework and provided additional guarantees to investors. They have greatly simplified the activities of EU companies in the Ukrainian market, which means increased

supply, increased foreign direct investment and increased production. They also opened up prospects for Ukrainian companies to enter the EU market.

Commitments

Within the framework of the UA and the Energy Community, Ukraine has undertaken to implement all key requirements of European legislation in the field of gas market, namely:

- opening the market to competition, the right of all consumers to choose a gas supplier;
- separation of gas transportation, storage and distribution functions from the supply function (unbundling of the GTS and storage operator, as well as gas distribution network operators);
- providing free and non-discriminatory third party access to networks;
- balanced tariff policy for gas transportation, transparent and non-discriminatory principles of capacity allocation and congestion management in gas transmission systems;
- introduction of gas supply security policy with regular monitoring;
- monitoring the activities of gas market players for compliance with quality standards and competition;
- targeted social protection of vulnerable consumers;
- transparent and non-discriminatory licensing of hydrocarbon exploration and production activities;
- creation of an independent national market regulator .

Institutional framework

In recent years, the state policy in the gas market has been adjusted in accordance with Ukraine's international obligations. Thus, the implementation of the principles of the EU's Third Energy Package is enshrined in a number of public policy documents. Ukraine's energy strategy, approved by the government in 2017, envisages building the gas market according to the principles of the EU's Third Energy Package until 2020 - by fully implementing EU energy legislation, reforming vertically integrated companies and creating conditions for Ukraine's energy system integration with the EU.

The main institutions in this area are: the Government of Ukraine and directly the Ministry of Energy; independent regulator - the National Commission for State Regulation of Energy and Utilities (NCREP); and the Antimonopoly Committee of Ukraine (AMCU), a body that protects economic competition, including in the energy markets.

In 2016, the law on the National Commission for Regulation of Economic Competition was adopted, which contains provisions to ensure the independence of this body. Despite this, the activities of the NERC were quite problematic for a long time and improved only in June 2018 with the election of part of the new commission. The decision of the Constitutional Court of Ukraine to declare unconstitutional certain provisions of the law on the National Commission for Regulation of Economic Competition, in particular the independent status

of the Regulator, was an additional shock. At the end of 2019, amendments to the relevant law brought the status of the Regulator (at the level of CEBs with a special status, ie in the structure of the CMU) in line with the Constitution. Also in November 2020, the CCU received a submission from a group of deputies regarding the constitutionality of presidential decrees in 2018-2019 on the appointment of members of the NCRECP.

Market analysis

The structural changes of 2019-2020 have given their practical results. The European Federation of Energy Traders EFET in its annual Gas Hub Development Study points to the progress of the Ukrainian gas market as a hub. Compared to 2018, Ukraine's assessment for 2020 has more than doubled due to the creation of a transparent system of market functioning, the creation of virtual connection points at borders, simplification of bureaucratic procedures related to gas trade. At the same time, the disadvantages of the Ukrainian market are excessive concentration and lack of its own market index, which would allow the long-term market segment to develop.

In early 2020, OGTSU launched a new product - short-haul. European companies have been able to book gas transit capacity through Ukraine at a lower rate, as well as use it in conjunction with the "customs warehouse" service (storage of gas in storage facilities without customs clearance procedures). On March 1, 2020, a "virtual reverse" (backhaul) worked with the Slovak GTS operator through the connection point "Velke Kapushany" - "Uzhgorod" with a limited capacity of 10 million cubic meters. m per day.

OGTSU also had the opportunity to buy natural gas on the stock exchange for its own purposes. This is an important point for the internal balancing of the system in the daily balancing mode. Relevant amendments to the Law on Public Procurement were adopted by the Verkhovna Rada on December 2, 2020.

Unbundling also affected household consumers, as it concerned the unbundling of not only transportation services but also gas distribution services. However, in terms of distribution, it took place mainly legally rather than functionally. The group of companies under the RGK brand, which accounts for about 70% of gas distribution, continued to control gas supplies to the population, creating a number of subsidiaries operating in the market under the guise of suppliers (gas companies) independent of GDN operators. According to the National Commission for Regulation of Economic Competition, in 2020 the share of gas supplies by the RGC group to the population was 71%, by the Naftogaz of Ukraine group - only 4%.

The vast majority of suppliers did not offer long-term products for household consumers, which in some cases caused sharp monthly price fluctuations for the population. Against the background of the politically sensitive issue of gas prices, the government has set a maximum gas price for the population for the period from February 1 to March 31, 2021, actually returning state regulation. At the same time, the government has obliged supply companies to offer consumers a basic annual product from May 1, 2021.

The disadvantage of the gas retail market is the lack of common consumer databases through which suppliers could provide their commercial offers to consumers who remain unaware of the benefits of the new market model.

It is worth noting that suppliers also have limited access to gas resources in the wholesale segment. About 70% of all gas in Ukraine is extracted by the state company Ukrgazvydobuvannia, which is part of Naftogaz. Naftogaz, in turn, has "exclusive" access to this resource, voluntarily trading only 15% of the volume through the exchange and setting policies for the remaining 85% at its own discretion. In November 2020, the Secretariat of

the Energy Community recommended that Ukraine oblige Ukrgezvydobuvannya to sell part of its gas on the stock exchange (gas release program).

The supply of gas to district heating companies also remains a weak link in the Ukrainian market, for which the government has extended the mechanism of imposing special obligations (PSO) until the end of May 2021. As of the beginning of May 2021, DH's debts to Naftogaz, which supplied them with natural gas for heat production, amounted to about UAH 67 billion. After the termination of the PSO regime for heat producers due to the decision of the Verkhovna Rada, it is planned to restructure part of the debts of teplokomunenergo, the other part, which was formed as a result of state actions, is proposed to be written off. The largest heat suppliers, which are licensed by the NERC, are transferred to local authorities.

Dynamics of implementation

The Law "On the Natural Gas Market" adopted in 2015 and by-laws (at the level of CMU and NCRECP regulations) transposed the main requirements of Directive 2009/73 / EC, Regulation (EC) № 715/2009 and Directive 2004/67 / EU. In addition, during 2017-2020, a series of amendments were made to the GTS Code, the Gas Distribution Networks Code, the Gas Storage Code, as well as to the Rules for Security of Natural Gas Supply and the National Action Plan for Responding to Gas Supply Crisis, in particular to avoid discriminatory approaches. to provide access to networks, introduce daily market balancing, address capacity allocation issues and prevent supply crises. Another block of changes was adopted in terms of methodology and actual tariffs for gas storage and transportation services in early October 2019.

From March 1, 2019, the long-awaited transition from monthly to daily market balancing took place - a regime under which Ukrtransgaz balances supply and demand in the gas market in Ukraine on a daily basis. This step means bringing the market closer to working in the same way as the EU market, which is more comfortable for European companies and much more transparent.

Also there have been some steps to simplify provided Mr. I permits for exploration, development and production of hydrocarbons according to Directive 94/22 / EC (by making changes to the Code of minerals, other legislative and regulatory legal acts). In autumn 2018 , the Law "On Ensuring Transparency in Extractive Industries" was adopted .

Thus, despite the delay in transposing certain acts (in particular, EU Regulation 347/2013 on projects of common interest, as well as certain network codes), for the most part Ukrainian legislation no longer has significant differences with the gas acquis: transposition of the main requirements of the Third EU Energy Package to the national legislation took place in 2019 - 2020.

On September 18, 2019, the government approved an updated unbundling plan based on the ISO model. In October 2019, the law on unbundling was adopted, which allowed the transfer of relevant property rights to the GTS and the independent management of the GTS operator. The legal separation of the GTS operator from Naftogaz took place on January 1, 2020.

From August 1, 2020, the retail gas market was deregulated in terms of gas supply to household consumers. The provisions of the resolution on imposing special obligations on gas suppliers to household consumers (PSO regime), which set a fixed price at which suppliers sell gas to the public, have expired. In fact, the gas market for household consumers has started operating in Ukraine. The NERC simplified the supplier change

procedure, which allowed households to freely change suppliers remotely, with a minimum package of documents and a maximum of 21 days. In the third quarter of 2020, 76 thousand consumers changed their gas supplier, and in the fourth quarter the number of such consumers amounted to 528 thousand. The transition to market pricing is an important aspect in the liberalization of the gas market in Ukraine: after the end of the JI for the population, the level of deregulated market increased from 40% to 80%.

As part of the new model of the gas market, the institution of a "last resort" supplier was introduced, which automatically ensures the supply of gas to household consumers in the event of a loss of a supplier. The Government has identified Naftogaz Ukrainy Gas Supply Company LLC (part of the Naftogaz Group) as the winner of the relevant tender.

An important part of income in the energy market is the transit of gas from Russia to Ukraine's western neighbors. From January 1, 2020, new transit contracts came into force: 1) between Naftogaz and Russia's Gazprom, 2) between Naftogaz and OGSTU, which are concluded according to European rules. According to the contract, Gazprom booked the capacity of the Ukrainian GTS until the end of 2024. In addition to transit from Russia, there is a demand for Ukrainian GTS among European traders. For example, in January 2021, the demand for the reservation of guaranteed capacity in the direction from Ukraine to Poland exceeded the supply.

During 2020, the National Commission for Regulation of Economic Competition has made significant changes to the rules in the gas market. The regulator revised the methodology for calculating natural gas for technological needs for GDN operators, updated the distribution tariffs in accordance with the new methodology, and monitored compliance with licensing conditions by suppliers. Instead, the NERCEP postponed the introduction of the neutrality fee provided for in Commission Regulation (EU) №312 / 2014.

According to the results of 2020, the Energy Community assessed the status of implementation of European legislation in the gas market in Ukraine as "almost complete" (84%).

Gas market and European green exchange rate

The European Green Course has also provoked changes in EU gas market legislation. In the coming decades, the EU plans to increase hydrogen use and develop other low-carbon technologies. In the fourth quarter of 2021, the EU plans to approve a package of legislative initiatives on the decarbonisation of hydrogen and gas markets (revision of Directive 2009/73 / EC and Regulation (EC) №715 / 2009).

By increasing hydrogen consumption, the EU plans to develop legislative mechanisms for infrastructure development. One of the options for solving the problem of transportation and use of hydrogen is the use and modernization of existing gas transmission infrastructure. The Ukrainian GTS has a good potential to develop together with European countries in this direction. Therefore, it is important to monitor changes in EU legislation on hydrogen and natural gas markets and implement it in time in Ukraine.

Recommendations

For Ukraine:

- accelerate the implementation of the requirements of Regulation (EU) № 1227/2011 on the integrity and transparency of the wholesale energy market (REMIT). On this basis, it is important for the NERC to implement market monitoring monitoring tools;
- strengthen the development of transparent gas exchange trade, in particular short-term standardized products. This would allow the formation of Ukrainian indicative gas prices, increase liquidity and saturate the market with more traders;
- to bring the resources of JSC "Ukrgezvydobuvannya" to the market (gas release program), which will stabilize price fluctuations and potentially protect household consumers from sharp jumps in natural gas prices. The key will be to determine long-term products and conditions for the release of such volumes of gas for free bidding;
- strengthen control over the retail market in terms of consumer protection. The introduction of annual gas products has to some extent protected household consumers from significant price fluctuations, given the level of energy poverty in Ukraine. However, it is necessary to prescribe in more detail the conditions of annual gas products in order to protect consumers and suppliers from manipulation of large market players and introduce other products (quarterly, semi-annual tariffs), along with prompt response to obstacles to supplier change;
- develop an effective system of protection for vulnerable consumers, as required by the Law on the Natural Gas Market, in order to prevent situations of return to state price regulation. The current conditions for subsidizing household consumers are too general, which leads to excessive spending from the state budget. The formation of a more structured methodology for calculating vulnerable consumers, which can be formed with the help of open subscriber bases, can improve the situation;
- strengthen the requirements for the separation of distribution and supply functions in the retail market, open information about the state of distribution networks. Insufficient separation of GDN operators and suppliers poses a threat to the proper functioning of the gas market, and frequent changes in tariff rates for distribution raise many questions about the objectivity of calculations of gas use for technological needs;
- as the European Green Agenda (revision of Directive 2009/73 / EC and Regulation (EC) №715 / 2009 on the decarbonisation of hydrogen and gas markets) focuses on working with the EU on the use of gas infrastructure for synthetic and renewable gases, the development of hydrogen technologies ;
- to continue the reform of corporate governance of state-owned companies in accordance with OECD standards (including in view of the situation with the change of the Chairman of the Board of Naftogaz) through the adoption of legislation to improve corporate governance of state-owned legal entities, development of ownership policy and implementation of other recommendations .

For the EU:

- to promote the improvement of the regulatory environment in Ukraine, in particular by supporting the independence and institutional capacity of the NERC, providing technical assistance in the implementation of REMIT and network codes, promoting the development of exchange trade in gas (in particular, trade in short-term standardized products);
- to strengthen policies and programs for the development of gas infrastructure in the eastern EU member states, which would help to better integrate the gas market of Ukraine with the European one;
- to study the fulfillment of Russia's commitments to Gazprom in 2018, provided in the framework of the European Commission's antitrust case, as well as Russia's policy on the European gas market in general in the context of continuing the implementation of the Nord Stream-2 project. In particular, it is expedient to support Ukraine's efforts to unblock gas exports from Central Asia and from independent producers in Russia and to support the reduction of Gazprom's export monopoly in general.

14. UKRAINE'S INTEGRATION INTO THE EU ELECTRICITY MARKET

Roman Nitsovych, Alona Korohod

Benefits of implementation of Association Agreement

Ukraine's path to integration with the EU in the energy sector, in particular the electricity sector, began in 2011, after joining the Energy Community²⁹¹, which unites the EU countries and neighboring countries to create an integrated pan-European energy market and spread energy legislation of the EU.

In the framework of such cooperation, Ukraine has undertaken to implement the provisions of the EU Third Energy Package and a number of network codes into national legislation. In 2020, Ukraine continued to fulfill the conditions of integration into the energy market of the EU in the electricity sector defined by Chapter 1 of Section V “Economic and Sectoral Cooperation” of the Association Agreement²⁹², as well as the updated Annex XXVII²⁹³, which contains a list of legislation that Ukraine should implement on the basis of the Treaty.

A separate integration project is the synchronization of the UPS of Ukraine with the European Network of Transmission System Operators (ENTSO-E), which is to be completed in 2023.

Ukraine's cooperation in the energy sector, in particular electricity, is aimed at improving energy security, competitiveness and stable operation of the energy system, which in turn contributes to economic growth, strengthening energy independence and progress towards market integration.

However, as long as Ukraine is taking steps in fulfilling the terms of the Third Energy²⁹⁴Package, the EU in 2019 proposed a Clean Energy for All Europeans package to²⁹⁵ facilitate the transition from fossil fuels to cleaner energy and fulfilling its obligations Paris Agreement on reducing greenhouse gas emissions. It should be noted that the EU Member States should implement the provisions of this energy package already in 2021 in order to contribute to the overall goal of the EU, in particular:

²⁹¹ https://zakon.rada.gov.ua/laws/show/994_a27#Text

²⁹² https://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf

²⁹³ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32019D0466>

²⁹⁴ Entered into force in September 2009

²⁹⁵ https://ec.europa.eu/energy/topics/energy-strategy/clean-energy-all-europeans_en

- to reach a share of renewable renewable products in the amount of 32% by 2030;
- to increase energy efficiency by at least 32.5% by 2030;
- to acquire the status of climate and neutral Europe by 2050;
- to create a modern EU electricity market with convenient conditions for the integration of RES, the independence of the consumer and the use of IT technologies.

For Ukraine, a new wave of energy sector reform is also relevant, since the gradual implementation of the recommendations of the “fourth” energy package can be an impetus for creating a freer and less monopolized energy market in Ukraine.

Commitments

Within the framework of the Association Agreement and the Energy Community, Ukraine undertook to introduce into national legislation the key requirements of the EU's electric power acts, in particular:

- opening of the domestic market, to enable consumers to choose suppliers, and suppliers to freely provide services;
- separation of transmission system operators and distribution systems and supply systems within the framework of vertically integrated enterprises;
- tightening of provisions on consumer rights protection;
- strengthening and detailing the functions and powers of regulatory bodies;
- certification of the transmission system operator;
- ensuring integrity and transparency in the wholesale electricity market;
- establishment of fair tariffs for electricity transmission services.

In addition, Ukraine needs to “keep pace with the times” and comply with the new initiatives of the European Union, in particular, take into account the provisions and recommendations of the 4th Energy Package and join the European Green Course.

Institutional framework

State policy in the electricity sector is subject to adjustments in accordance with the international obligations of Ukraine. Thus, implementation of the principles of the Third Energy Package of the EU is included in the current strategic documents of the state policy²⁹⁶. According to the Energy Strategy of Ukraine²⁹⁷, which was approved in 2017, the implementation of the Third Energy Package was envisaged by 2020, which would create a full-fledged electricity market in accordance with the EU energy legislation, as well as to

²⁹⁶ Energy Strategy of Ukraine until 2035, National Economic Strategy for the period up to 2030, Plan of Priority Actions of the Government for 2021, Plan of bills of the Verkhovna Rada for 2021, proposals to the Project of the medium-term plan of action of the government for 2021-2023, Action Plan for implementation Association Agreements

²⁹⁷ <http://mpe.kmu.gov.ua/minugol/doccatalog/document?id=245213112>

implement a significant part of measures to integrate the United Energy System (UPS) of Ukraine into the ENTSO-E energy system.

Among the main institutions for the implementation of the state policy in the electricity sector of Ukraine can be distinguished: the Cabinet of Ministers of Ukraine (CMU) and directly the Ministry of Energy of Ukraine (Ministry of Energy), which are key subjects of management and policy development in the energy sector, National Commission for State Regulation of Energy and Utilities (NCRECP) as an independent regulator and the Antimonopoly Committee of Ukraine (AMCU) as a body that provides protection of economic competition, in particular, in the energy market.

In addition, it is necessary to distinguish organizations which are entrusted with the realization of property rights of the state in the electricity sector²⁹⁸:

- Ministry of Energy and the State Property Fund (SPF) – organizations-owners of state-owned enterprises in power generation;
- Ministry of Finance, from February 2019 – shareholder of NEC “Ukrenerho”²⁹⁹ (as a result of differentiation of transmission activities from electricity production and supply activities);
- SPF – owner organization in the segment of electricity supply and distribution;
- CMU is the owner of legal entities of the wholesale electricity market.

It should be noted that on January 20, 2021 the government adopted an order³⁰⁰ according to which the Ministry of Energy should be transferred powers to manage corporate rights “Ukrenerho” and “Operator of Market”, and the Ministry of Economy - “Ukrinterenerho”. However, notable steps in the implementation of this order are not visible, only in April consultations were held³⁰¹ with the European Commission and the Secretariat of the Energy Community on the settlement of issues of transfer of corporate rights and differentiation of activities on production, transfer, distribution and supply of electrical energy.

Market Analysis

The electricity market is strategically important for the economy, as its effective functioning is a prerequisite for stable operation of all other sectors of the economy, meeting the needs of the population and structural changes. Especially it became noticeable during the COVID-19 pandemic³⁰², when the importance of uninterrupted power supply became the key to maintaining economic and social ties.

To a large extent, the pandemic had an impact on electricity consumption, stable power supply, balanced operation of the energy market and in Ukraine. In 2020, electricity consumption decreased by 2.1% compared to 2019³⁰³, and by more than 5% in the first

²⁹⁸ OECD (2020), Reform of state-owned enterprises in the electricity sector of Ukraine, <http://www.oecd.org/corporate/soe-reform-electricity-sector-ukraine.htm>

²⁹⁹ <https://ua.energy/zagalni-novyiny/organom-upravlinnya-ukrenergo-stalo-ministerstvo-finansiv-ukrayin/>

³⁰⁰ <https://zakon.rada.gov.ua/laws/show/50-2021-%D1%80#Text>

³⁰¹ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245531715&cat_id=35109

³⁰² <https://www.powermag.com/power-coverage-of-the-coronavirus-disease-covid-19/>

³⁰³ <https://ua.energy/zagalni-novyiny/u-2020-rotsi-vnaslidok-karantynnyh-zahodiv-spozhyvannya-elektroenergiyi-skorotylos-na-2/>

months of quarantine³⁰⁴, but in order to ensure the smooth operation of the power system and stable power supply, the government was prohibited from stopping or stopping the provision of services for the distribution and supply of electricity to households³⁰⁵.

In general, over 12 months of 2020, the volume of electricity production in Ukraine amounted to 148854.0 million kWh, which is 3.3% less than the previous year³⁰⁶. It should be noted that in 2020 the total volume of electricity exports³⁰⁷ in Ukraine exceeded imports by 2.1 times. Import was mainly from the EU countries, but also from Russia (53.4 million kWh), but was carried out only until April, and then was limited by NCRECP decisions³⁰⁸. Since the beginning of February 2021, imports of electricity from Russia resumed³⁰⁹, but at the end of May, NCRECP resolution³¹⁰ again limited the capacity for imports of electricity from Russia and Belarus, to 0 MW by October 1, 2021. Thus, the manual, non-systematic nature of such regulation is traced³¹¹, which follows from giving NCRECP appropriate temporary powers.

In 2019, in accordance with the terms of the EU Third Energy Package, Ukraine reformed its electricity market by moving from a regulated single buyer model to a competitive liberalized model. Only 2.5 years were spent on market reform, although the process of liberalization is longer in terms of EU experience³¹². Since such reform was carried out in a hurry, there are structural problems on the market that remain unresolved³¹³, and this in turn delays further transformations. The EU has already expressed their position on this issue. February 11, 2021, the European Parliament, in its resolution,³¹⁴ called on the Ukrainian government to complete the reform of the electricity market.

Generation system. Electricity in Ukraine produces several types of power plants: nuclear, thermal, hydro- and those that operate on renewable energy sources. As of April 2021, the³¹⁵ installed capacity of the UPS of Ukraine amounted to 55179.10 MW, and most of the generation accounted for by TPPs and NPPs.

However, during the period from 2015-2020, the share of RES in the total electricity generation has increased significantly³¹⁶, which is caused by the action of the “green” tariff as a mechanism for stimulating investment in alternative energy. However, since February 2020 the RES sector has been in a state of deep crisis due to debts of the state enterprise “Guaranteed Buyer” to RES producers, which slows the development of the sector. And despite the fact that in July 2020 the Law No. 810-IX was signed³¹⁷, which was supposed to be the first step towards resolving problematic issues, as of June 1, “Guaranteed Buyer” paid off with RE-producers³¹⁸ for 2020 only 66%, and in 2021 the level of payment for none

³⁰⁴ <https://www.ukrinform.ua/rubric-economy/2900722-spozivanna-elektroenergii-v-ukraini-pid-cas-karantinu-vpalo-na-5.html>

³⁰⁵ http://mpe.kmu.gov.ua/minugol/control/publish/article?art_id=245506244

³⁰⁶ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245509526&cat_id=245183225

³⁰⁷ <https://ua.energy/zagalni-novyny/eksport-elektroenergiyi-v-2020-rotsi-perevshhyv-import-v-2-1-razy/>

³⁰⁸ Resolution of NCRECP No.766 from 8.04.2020 and No.2492 from 16.12.2020

³⁰⁹ <https://www.epravda.com.ua/news/2021/02/1/670565/>

³¹⁰ <https://www.nerc.gov.ua/?news=11579>

³¹¹ <https://zakon.rada.gov.ua/laws/show/1396-20#Text>

³¹² https://ec.europa.eu/energy/content/liberalisation-energy-market-electricity-and-gas_en

³¹³ <https://ua-energy.org/uk/posts/rynok-elektroenerhii-z-dvokh-shkod-korysti-ne-bude>

³¹⁴ https://www.europarl.europa.eu/doceo/document/TA-9-2021-0050_EN.html

³¹⁵ <https://ua.energy/vstanovlena-potuzhnist-energosityemy-ukrayiny/>

³¹⁶ <https://saee.gov.ua/uk/news/3620>

³¹⁷ <https://zakon.rada.gov.ua/laws/show/810-20#Text>

³¹⁸ <https://www.gpee.com.ua/main/news?id=342>

of the months has not reached 100%. The situation with non-fulfillment of obligations does not satisfy investors: the Ministry of Justice has already received about ten trigger notices of intent to file claims in international arbitration³¹⁹.

Despite the fact that since 2019 any business entity could become a market participant, the number of active participants in the production of electricity remains limited, which by itself makes competition impossible. More than a third of the generation accounts for state-owned enterprises³²⁰:

- about 53% of the country's electricity is produced by Enerhoatom operating four NPPs;
- 7 -10% of electricity – hydropower station of PJSC “Ukrhydroenerho”;
- About 8% generate TPP PJSC “Centrenerho”, operating on coal.

In addition, a quarter of electricity is produced by DTEK Enerho private player with an installed capacity of more than 18,448 MW³²¹.

Transmission system. Today, NEC “Ukrenerho” is the operator of the UPS of Ukraine, in particular, backbone networks (110-750 kV voltage), and is responsible for the transmission of electricity from generating plants to distribution power grids. With the launch of the new electricity market, the company's functions have expanded somewhat and include not only transmission and dispatching, but also management of the balancing market and auxiliary services market, settlement administrator and administrator of commercial accounting, as well as distribution of capacities of interstate power lines for import/export of electricity³²².

In fact, now the property of the transfer system belongs to the state, but on behalf of the state it was transferred to the management of the NEC “Ukrenerho”, which, in turn, was left a monopolist in the context of market reform. With this, there were problems in completing the connection to the ENTSO-E network, since according to the Law “On Electricity Market”, Ukrenergo certification had to be carried out according to the OU model (ownership unbundling), which makes it impossible to leave ownership of the network by the state and simultaneously “Ukrenerho” to be a system operator of the European standard. However, this issue is already on the way to resolve, since in May the law was signed³²³, which will ensure the possibility of certification of Personnel certification body, and in early June NCRECP adopted a preliminary³²⁴ decision on certification of Ukrenergo.

As noted above, a separate task is to synchronize the UPS of Ukraine with ENTSO-E. Ukrenergo has already taken significant steps in the approximation of such integration³²⁵ and optimistically evaluates the completion of the process in due time – by 2023.

The system of distribution and supply. As already mentioned, preparing for the introduction of a new market model, the Law of Ukraine “On the Electricity Market” was adopted, providing for the formation and strengthening of competition in the wholesale and retail

³¹⁹ <https://ua-energy.org/uk/posts/miniust-otrymav-10-povidomlen-pro-namiry-investoriv-vde-sudytsia-v-mizhnarodnomu-arbitrazhi>

³²⁰ OECD (2020), Reform of state-owned enterprises in the electricity sector of Ukraine, <http://www.oecd.org/corporate/soe-reform-electricity-sector-ukraine.htm>

³²¹ <https://energo.dtek.com/business/generation/>

³²² <https://ua.energy/peredacha-i-dyspetcheryzatsiya/>

³²³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70977

³²⁴ <https://www.nerc.gov.ua/?id=61827>

³²⁵ <https://ua.energy/zagalni-novyny/ukrenergo-vykonalo-zaplanovani-na-2020-rik-klyuchovi-zahody-z-integratsiyi-energosityemy-ukrayiny-do-entso-e/>

electricity markets. On January 1, 2019, the retail electricity market started its operation on the territory of Ukraine, and from July 1, the model of the wholesale electricity market was changed, which was accompanied by the separation of the types of activities for the distribution and supply of electricity to existing vertically integrated energy supply companies (power companies)³²⁶.

Today, distribution system operators (DSO) are responsible for the transmission of electricity from Ukrenerho to end users, and suppliers buy electricity from manufacturers and sell it to end users. As of March 2021, according to NCRECP³²⁷, there were 33 DSOs and 883 electric suppliers in Ukraine.

DSOs are responsible for safe, reliable and efficient operation, maintenance and development of electrical networks. Until August, 2020, the “expens+” tariff setting system was used for the DSO, which did not allow to modernize the grid sufficiently. Therefore, on August 26, 2020, in order to stimulate investments in the modernization of networks and improve their performance, NCRECP approved³²⁸ the incentive tariff setting methodology (RAB-regulation). This method provides for the profit rate of 16.74% on the new asset base and the profit rate of 3% on the old asset base, which will be valid for the first 3 years. Since January 1, 2021, the DSO had the opportunity, if desired, to switch to RAB-regulation, but not all used it (7 DSOs still used the “expense+” technique)³²⁹.

Also, it is worth mentioning the segmentation of the retail market by the type of suppliers. According to the Law “On Electricity Market”³³⁰, providers of universal services (PUP) supply electricity to household and small non-household consumers under regulated conditions³³¹. Other consumers receive electricity from suppliers at free prices (SFP). It should be noted that from January 1, 2021 budget organizations and non-domestic consumers with contractual capacity from 50 to 150 kW lost the right to receive universal services and were able to choose a SFP³³².

Consumers. The new electricity market has made its own adjustments not only to the work of energy companies, but also influenced the consumer sector. In order to facilitate adaptation to the new market model and a sharp increase in electricity prices for domestic consumers, the Ukrainian government supported the reduction of tariffs (primarily for households) through the mechanism of imposing special duties (PSO). In fact, the mechanism of the PSO provides for the imposition of special duties by the state on market participants, in particular, “Enerhoatom” and “Ukrhidroenerho”, which should provide cheap electricity to the population by selling it to the “Guaranteed Buyer” almost at cost (the turn, sells electricity PUP for the needs of the population).

³²⁶ Before the launch of the new market, the functions of distribution network operators and suppliers were combined in some companies – regional power companies

³²⁷

https://www.nerc.gov.ua/data/filearch/litsenziini_reestry/Reestr%20subektiv%20gospodaruvannya%20yaki%20reguluutsya%20NEURC.pdf

³²⁸ <https://www.nerc.gov.ua/?news=10442>

³²⁹ <https://ua-energy.org/uk/posts/rab-rehuliuvannia>

³³⁰ <https://zakon.rada.gov.ua/laws/show/2019-19#Text>

³³¹ <https://www.nerc.gov.ua/?id=31833>

³³² <https://ua.interfax.com.ua/news/press-release/701558.html>

An important document in the regulation of the PSO is the Regulation on³³³the PSO, which has³³⁴ been repeatedly amended. At the beginning of the year, the Cabinet canceled the reduced electricity tariff in the amount of 0.9 UAH/kWh, which operated for the population for the first 100 kWh of consumption per month, and accordingly, a fixed price of 1.68 UAH/kWh was set³³⁵. According to the latest version, the PSO regime, which operates on the electricity market for domestic consumers from July 1, 2019, has no end date (earlier the deadline was limited on June 30, 2021)³³⁶, and, in accordance with the decision of NCRECP³³⁷, must be concluded by June 15 direct bilateral contracts for the purchase and sale of electricity between PPP and gene companies (“Enerhoatom” and “Ukrhidroenerho”).

However, despite frequent changes to balance the interests of market participants and household consumers, according to experts, the functioning of the PSO mechanism in Ukraine is imperfect³³⁸. From such a model suffer, first of all, state general companies, which suffered losses based on the results of the action of the PSO³³⁹. Currently in Ukraine there is a commodity model of the PSO and despite recommendations³⁴⁰ to change the model of the PSO to the financial one, such transition has not yet occurred. Meanwhile, other market participants – in particular, dishonest traders and suppliers – benefit from the opportunity to sell electricity at high discounts on other market segments, which adversely affects competition.

Thus, the media actively discuss the topic of manipulation³⁴¹ in the electricity market. The NCRECP notes that 52 reports from the market operator are investigating “a day ahead” and an intra-day market about atypical behavior of market participants³⁴², and on June 2 a resolution was adopted³⁴³ to eliminate such manipulations.

Electricity Sector and European Green Course

Over the year of the European Green Course (EFC), a number of strategic documents have been published³⁴⁴, including the EFC Investment Plan, EU Energy System Integration Strategy, EU Marine Renewable Energy Strategy, EU Council Conclusions on climate and energy diplomacy, which emphasizes the importance of using RES as the basis of the electricity sector. Moreover, the European Commission plans for 2021 include³⁴⁵ revision of Directive 2018/2001/EC on stimulation of energy use from RES and Directive 2003/96/EC

³³³ <https://zakon.rada.gov.ua/laws/show/483-2019-%D0%BF/card4#Future>

³³⁴ From the date of adoption of the Regulation (05.09.2019) 12 times amended and changed the revision; 8 times over the last 12 months (as of June 2021)

³³⁵ <https://ua-energy.org/uk/posts/fiksovana-tsina-na-elektroenerhii-dlia-pobutovykh-spozhyvachiv-diiatyme-lyshe-do-1-travnia>

³³⁶ <https://ua-energy.org/uk/posts/kabmin-prybrav-z-postanovy-kintsevu-datu-dii-rezhymu-pso-na-rynku-elektroenerhii>

³³⁷ <https://zakon.rada.gov.ua/laws/show/483-2019-%D0%BF#Text>

³³⁸ <https://dixigroup.org/comment/ukrainska-model-pso-istotno-vykryvliuie-rynok-elektroenerhii/>

³³⁹ <https://statewatch.org.ua/publications/v-enerhoatomi-poiasnily-prychyny-4-8-mlrd-hrn-chystykh-zbytkiv-za-2020-rik/>

³⁴⁰ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245438749&cat_id=35109

³⁴¹ <https://jur-gazeta.com/publications/practice/energetichne-pravo/manipulyaciyi-cinovimi-zayavkami-ta-obsyagami-elektroenergiyi-na-rynku-yak-z-cim-borotysya.html>

³⁴² <https://expro.com.ua/novini/nkrekp-rozglyada-52-povdomlennya-vd-operatora-rynku-pro-netipovu-povednku-na-rdn-ta-vdr>

³⁴³ <https://www.nerc.gov.ua/?id=50747>

³⁴⁴ <https://ua-energy.org/uk/posts/green-deal-documets>

³⁴⁵ https://ua-energy.org/green_deal/green_deal_calendar.pdf

on restructuring the Community System on Energy and Electricity Taxation (Energy Taxation Directive).

Today, Ukraine also has a number of strategic documents and their projects: National Plan for Energy and Climate until 2030 (project), National Action Plan for Energy Efficiency until 2030 (project), Energy Strategy of Ukraine until 2035, National Economic Strategy on period until 2030, the second National Defined Contribution of Ukraine (project). However, they need synchronization and coordination to meet the purpose of decarbonization and encourage the use of RES.

Ukraine recognized the integration into the energy sector of the EU as a priority direction of foreign and domestic policy³⁴⁶, in particular, the updated Annex XXVII to the Association Agreement, and the implementation of the EHC was an impetus to the development of the energy sector³⁴⁷. The Ukrainian government is actively interested in the EFC. Thus, on August 13, 2020, the European Commission transferred a position document on Ukraine's participation in the EFC, launched a high-level dialogue with the EU³⁴⁸, and on January 19, 2021 the first meeting of the Interagency Working Group on Coordination of Overcoming the Consequences of Climate Change in under this initiative³⁴⁹.

In addition, in order to comply with EU standards and promote market relationships between sectors, the Ukrainian government makes certain changes to laws and regulations. Thus, currently under consideration the government there is a bill on the development of high-performance cogeneration³⁵⁰, which aims to harmonize the legislation of Ukraine with the principles and provisions of EU legislation, in particular Directives 2004/8/EU and 2012/27/EC. In addition, as part of the promotion of “green” growth, since July 2019 Ukraine exempted from excise duty qualified cogeneration plants and enterprises engaged in the production of energy from renewable sources³⁵¹. However, in June 2021, a government bill was registered³⁵², which proposed the introduction of an excise tax of 3.2% on electricity from renewable energy. According to the Ministry of Energy,³⁵³ it is possible to balance the sector financially, but such an initiative has already caused criticism in³⁵⁴ view of the guarantees of stability of legislation recorded in 2020 and calls not to deepen the crisis of investor confidence³⁵⁵.

Also, according to the plan of legislative work of the government³⁵⁶, in 2021 it is envisaged:

- amendments to the Law “On Alternative Energy Sources” on the development of electricity production from biomethane – in order to promote the development of the biomethane market in Ukraine;

³⁴⁶ <https://zakon.rada.gov.ua/laws/show/392/2020#n2>

³⁴⁷ <https://ukraine-eu.mfa.gov.ua/posolstvo/galuzeve-spivrobotnictvo/klimat-yevropejska-zelena-ugoda>

³⁴⁸ <https://www.kmu.gov.ua/news/olga-stefanishina-ukrayina-pershoyu-oficijno-zapochatkovuye-dialog-z-yes-shchodo-zaluchennya-do-yevropejskogo-zelenogo-kursu>

³⁴⁹ <https://www.kmu.gov.ua/news/premyer-ministr-ukrayina-ye-nevidyemnoyu-chastinoyu-realizaciyi-cilej-yevropejskogo-zelenogo-kursu>

³⁵⁰ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70722

³⁵¹ <http://od.sfs.gov.ua/media-ark/news-ark/print-382963.html>

³⁵² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72106

³⁵³ <http://reform.energy/news/aktsiz-na-zelenuyu-elektroenergiyu-prizvan-finansovo-sbalansirovat-sektor-vie-zamministra-energetiki-17700>

³⁵⁴ <https://ua-energy.org/uk/posts/investory-vde-zasterihaiut-vid-fiskalnoho-tysku-na-haluz>

³⁵⁵ <https://ua-energy.org/uk/posts/kryza-doviry-investoriv-vde-do-uriadu-tilky-pohlybliuetsia-nitsovych>

³⁵⁶ <https://zakon.rada.gov.ua/laws/show/1165-20#Text>

- elaboration of the draft Law on improving the conditions for supporting the production of electricity from alternative energy sources by generating installations of consumers – in order to improve the conditions for the development of small dispersed VEN-generation.

Currently, with the filing of the government bills were registered on the development of biomethane production³⁵⁷ and mentioned amendments to the Tax Code³⁵⁸ on the excise tax on electricity from renewable energy. In addition, three bills, by different authors on the development of energy storage systems, have been introduced to the parliament.³⁵⁹³⁶⁰³⁶¹ It should also be noted that another change in the PSO model is expected, which the Ministry of Energy discusses with representatives of the general companies³⁶², as well as the PUP and DSO³⁶³. Thus, despite the loud statements of the Ukrainian government about the importance of “green” energy transition and the desire to join the EFC³⁶⁴, there are no significant strategic steps.

Dynamics of implementation

In 2020, Ukraine continued to fulfill the conditions of integration into the EU energy market in the electricity sector defined by Chapter 1 of Section V “Economic and Sectoral Cooperation” of the Association Agreement³⁶⁵, as well as Annex XXVII³⁶⁶. However, the global nature of the events of the crisis COVID-19 has left its imprint on the power industry.

Much attention of the government was focused on overcoming the effects of COVID-19 and ensuring the stability of the energy sector, so the measures for the implementation of the AA were pushed to the “second plan”, as evidenced by the progress of the tasks in 2020, which is only 37%, which is 1.5 times less progress in 2019³⁶⁷.

However, on the agenda was one of the main European integration tasks³⁶⁸ in the field of electricity – joining ENTSO-E network. On May 12, 2021 the President signed a law on which it is allowed to certify the NEC “Ukrenerho” as Personnel certification body of the European standard under model ISO (independent system operator), and owned by the state to leave the network³⁶⁹. Already on June 2, NCRECP adopted a³⁷⁰ preliminary decision on certification of NEC “Ukrenerho”, which is only the first stage of the procedure, which should confirm compliance of the Ukrainian Personnel certification body with the

³⁵⁷ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71839

³⁵⁸ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72106

³⁵⁹ https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71781

³⁶⁰ https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71870

³⁶¹ https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71977

³⁶² http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245532521&cat_id=35109,
http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245534936&cat_id=35109

³⁶³ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245547592&cat_id=35109

³⁶⁴ <https://ua-energy.org/uk/posts/dialoh-pro-priednannia-ukrainy-do-green-deal-pochnut-u-kvitni-stefanishyna>

³⁶⁵ https://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf

³⁶⁶ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32019D0466>

³⁶⁷ <http://pulse.eu-ua.org/ua/streams/energy-sector-and-energy-security>

³⁶⁸ <https://www.kmu.gov.ua/news/premyer-ministr-promislovij-bezviz-ta-priednannya-do-entso-e-konkretni-kroki-dlya-podalshoyi-yevrointegraciyi-ukrayini>

³⁶⁹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70977

³⁷⁰ <https://www.nerc.gov.ua/?id=61827>

requirements of the Third Energy Package of the EU. The final decision should be made after the fulfillment of a number of conditions and the conclusion of the Energy Community Secretariat on compliance of the NEC “Ukrenerho” with the requirements of European legislation³⁷¹.

Analyzing the provisions of the EU acquis, which Ukraine pledged to implement within the framework of the Energy Community Treaty³⁷², it should be noted that as of March 2021 only two acts of EU law are fully implemented in the legislation of Ukraine, namely:

- Directive 2005/89/ES on measures to ensure the reliability of electricity supply and investment in infrastructure, but **replaced by** the EU with Regulation 2019/941 on risk readiness in the electricity sector

It is implemented at the level of by-laws:

- o in the Resolution of the NCRECP of 14.03.2018 No. 309 “On Approval of the Code of Transmission System”³⁷³;
- o Order of the Ministry of Energy of 27.08.2018 No. 448 “On Approval of the Rules on the Safety of Electricity Supply”³⁷⁴.
- Commission Regulation 543/2013 on the provision and publication of data on electricity markets and amendments to Annex I to Regulation (EU) No.714/2009

It is implemented at the level of by-laws - in resolutions of NCRECP:

- o “On Approval of the Procedure for the Collection and Transmission of Data on the Functioning of the Electricity Market for Publication on the ENTSO-E Transparency Platform” No. 459 of June 19, 2018³⁷⁵;
- o “On Approval of the Instruction on Submission and Publication of Data on the Electricity Market” dated July 15, 2020 No. 1388376.

It is also worth noting the acts of EU law, implemented only partially and the full term of implementation is missed:

- Regulation (EU) No. 714/2009 dated 13 July 2009 on the conditions of access to the network for cross-border electricity flows, which in the EU was replaced by Regulations 2019/943 on the domestic electricity market.

Partially implemented in the NCRECP Resolutions:

- “On Approval of the Methodology for Determining the Available Bandwidth of Interstate Crossings (Interstate Electric Networks of Ukraine)” of 23.08.2018, No. 893³⁷⁷;
- “On Approval of the Rules for Management of Restrictions and Procedure for Distribution of Bandwidth of Interstate Crossings” of 03.04.2020, No. 763³⁷⁸.

³⁷¹ <https://ua-energy.org/uk/posts/nkrekp-ukhvalyla-poperednie-rishennia-pro-sertyfikatsiiu-ukrenerho>

³⁷² <https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/xxvii-do-glavi-1.pdf>

³⁷³ <https://www.nerc.gov.ua/?id=31909>

³⁷⁴ <https://zakon.rada.gov.ua/laws/show/z1076-18#Text>

³⁷⁵ <https://zakon.rada.gov.ua/laws/show/v0459874-18#Text>

³⁷⁶ <https://www.nerc.gov.ua/?id=53049>

³⁷⁷ <https://zakon.rada.gov.ua/laws/show/v0893874-18#Text>

³⁷⁸ <https://zakon.rada.gov.ua/laws/show/v0763874-20#Text>

In addition, in order to implement Regulation No. 714/2009, the NCRECP on October 8, 2020 developed a draft Law “On Amendments to the Law of Ukraine “On Electricity Market” (regarding payment for electricity transmission services during export operations and services dispatching (operational and technological) management in the import and/or export of electricity)”³⁷⁹.

- Regulation (EU) 1227/2011 of 25 October 2011 on Integrity and Transparency in the Wholesale Energy Market (REMIT)

In order to implement the NCRECP on February 18, the draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Prevention of Abuse in Wholesale Energy Markets” was published³⁸⁰. In addition, the Verkhovna Rada of Ukraine registered bills No. 5322³⁸¹, No. 5322-1³⁸², No. 4503³⁸³ and No. 4503-1³⁸⁴, aimed at appropriate changes. Also, the Regulator informed about the “road map”³⁸⁵ of the REMIT implementation, which will be presented in June 2021³⁸⁶.

In addition to the existing legislative initiatives aimed at implementing the EU's acts in the national regulation of the electricity sector, a number of acts of EU law remain unimplemented at the level of by-laws.

Recommendations

For Ukraine

- To speed up work on the implementation of EU legislation, in particular:
 - Regulation (EU) 1227/2011 on ensuring integrity and transparency in the wholesale electricity market (REMIT) – through the adoption of a framework bill and acts of NCRECP;
 - Regulation of the Commission No. 838/2010, which regulates the issue of fees for the transmission of electricity for export and compensation mechanism between Personnel certification bodies of related systems;
 - Regulations on the establishment of network codes – through the improvement of NCRECP acts.
- To implement measures envisaged by the process of synchronization of the UPS of Ukraine with the European Continental Energy Network (ENTSO-E);
- Eliminate the shortcomings of the existing PSO mechanism (in terms of electricity supply to the population) due to the transition to the financial model and the gradual reduction of regulated prices to a market reasonable level

³⁷⁹ <https://www.nerc.gov.ua/?id=54957>

³⁸⁰ <https://www.nerc.gov.ua/?news=11264>

³⁸¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71559

³⁸² https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71711

³⁸³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70681

³⁸⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70782

³⁸⁵ https://www.nerc.gov.ua/index.php/map_6/data/file%3C/body%3E%3C/html%3E?news=11582

³⁸⁶ https://elektrovesti.net/75732_nkrekp-v-pershiy-polovini-chervnya-prezentue-dorozhnyu-kartu-zaprovadzheniya-reglamentu-prozorosti-remit-na-rinkakh-gazu-ta-elektroenergii

- To improve the rules of the market in order to eliminate gaps that allow manipulation and other dishonest behavior of individual market players.
- To ensure stable development of RES sector and restore investor confidence, in particular by:
 - coordination of the objectives of RES of all strategic documents and projects of such documents (National Plan for Energy and Climate, Energy Strategy of Ukraine for the period up to 2035, National Economic Strategy for the period until 2030, the second National Defined Contribution of Ukraine);
 - solution of the problem of debt with producers of electricity from renewable energy at the “green” tariff – both short-term instruments (borrowing) and long-term solutions (revision of sources of financing for services “HarPok”, first of all settlement of debt of “Ukrenerho” reduction of regulated prices for the population to the market level, transition from commodity to financial model of PSO, etc.³⁸⁷);
 - prevention of steps that may serve as a prerequisite for investors' claims to international arbitrations and deepening crisis (in particular, the introduction of electricity excise duty from renewable energy, which contradicts the guarantees of stability of legislation, the obligations of the Association Agreement and the aspirations to join European Green Course).

For the EU

- To carry out continuous monitoring and verification of Ukraine's compliance with “homework”, which is determined by the EU requirements in the electricity sector for the purpose of further integration of the market;
- To promote improvement of regulatory environment, in particular through support of independence and institutional capacity of the NCRECP, provision of technical assistance in implementation of REMIT and network codes, promotion of trade in organized electricity markets;
- To support Ukraine's commitment to join the European Green Course by introducing targeted financial instruments and structured dialogue on:
 - joining the new EU RES financing mechanism, where Ukraine can act as a host state³⁸⁸;
 - support in the transformation of coal regions and development of low-carbon power generation systems.

³⁸⁷ https://dixigroup.org/wp-content/uploads/2020/11/dixi_res_positionpaper_final.pdf

³⁸⁸ For more information, see DiXi Group's research on the New EU RES funding mechanism: <https://dixigroup.org/wp-content/uploads/2021/04/2-dixi-vde-finance.pdf>

15. MUTUAL RECOGNITION OF ACADEMIC AND PROFESSIONAL QUALIFICATIONS BY UKRAINE AND THE EU

Oleksandra Betlii

The benefits of integration with the EU

The Association Agreement between Ukraine and the EU (Chapter 23 of Section V) provides for promoting the rapprochement between Ukraine and the EU in the field of education. In particular, the parties undertook to cooperate in the field of higher and vocational education and training to “create national mechanisms to improve transparency and recognition of qualifications and competencies, using, whenever possible, the EU experience” (Article 432.b). One of the results of the implementation of reforms in education is the mutual recognition of academic and professional qualifications, diplomas and certificates of education.³⁸⁹

If the EU countries recognize the qualifications³⁹⁰ and competencies obtained in Ukraine, the mobility of Ukrainians who will receive more opportunities for employment in qualified workplaces in the EU will increase. At the same time, those who remain in Ukraine should benefit from changes, as encouragement to continuous education will improve the quality of employment in general and social integration of employees and students.

It can also make Ukrainian educational institutions more competitive due to the modernization and recognition of qualifications obtained in these institutions in Ukraine, in the EU member states. This can contribute to the influx of students from third countries.

Business will also benefit from changes as they will contribute to improving the quality of education and adequate workforce qualifications, while now there is a significant skill gap (skills mismatch).

Ukraine's recognition of the qualifications obtained in the EU will make our labor market more accessible to both foreigners and our labor migrants. Thus, Ukrainian migrant workers often work in the EU and acquire qualifications in areas where they do not have formal education (in particular, in construction). Recognition of their qualifications obtained at work

³⁸⁹ <https://eu-ua.kmu.gov.ua/yevrointehratsiia/osvita>

³⁹⁰ Qualification” - is the official result of evaluation and confirmation of knowledge, acquired by a person as a result of the decision of the competent authority that the results of training meet the existing standards

without formal education would allow them to improve their competitive position in the labor market in Ukraine and would contribute to increasing their employment opportunities.

Commitments

In the field of recognition of qualifications in Annex XLII it is determined that Ukraine undertook to comply with the Recommendations of the European Parliament and of the Council of April 23, 2008 on the establishment of a European qualification system for the opportunity to receive lifelong education (No. 2008/C 111/01).³⁹¹ These recommendations were originally written for EU Member States to “create a common system that will be addressed as a means of comparing different qualification systems and their levels, both for general and higher education, and for vocational education and advanced training.” The text of the Recommendations defines the list of measures that Ukraine is obliged to take for recognition of qualifications by the EU Member States.

Recommendations provide for the harmonization of the national qualifications framework with European qualification standards. In particular, it is necessary to characterize in an understandable form their qualification levels in accordance with the levels specified in Appendix II, and in case of expediency to develop qualification norms in accordance with national laws and norms.

The recommendations also include guidance that new qualification certificates, diplomas and documents valid for all EU countries (within Europass) should provide clear explanations on the relationship between the levels of national qualification systems and the European Qualification Standards. To monitor the existence of a clear and transparent link between the qualification norms of Ukraine and the EU should be specially established for this national center.

Ukraine should also promote recognition of informal and unofficial education and provide lifelong education. It is necessary to expand the possibilities of continuous learning and adapt education to the needs of the labor market.

At the same time, the deadlines for implementation of the measures envisaged in the Recommendations have long passed, and for Ukraine the new schedule has not been defined. Today, appropriate measures are implemented taking into account the terms stipulated in the Action Plan for Implementation of the Association Agreement adopted by the Cabinet of Ministers.³⁹²

Institutional framework

The formation of an integral national system of qualifications is still ongoing. Over the past years, numerous legislative and regulatory acts have been adopted, including the new Law “On Education”, the³⁹³ new version of the National Qualifications Framework, regulation of evaluation of the results of informal training, adoption of educational and professional standards.

³⁹¹ https://zakon.rada.gov.ua/laws/show/994_988#Text. These Recommendations are based on the Directive on Changes in Directive 2005/36/EC on recognition of professional qualifications, see <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:255:0022:0142:en:PDF>

³⁹² <https://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF#Text>

³⁹³ <https://zakon.rada.gov.ua/laws/show/2145-19#Text>

The Ministry of Education and Science (MES) and the Ministry of Economy traditionally took care of the reform of education in general and the implementation of the national qualification system. Since the end of 2019, the National Qualifications Agency (NAC) began its work, which gave a significant impetus to the development and adoption of important changes in the field of qualifications.³⁹⁴ According to the Charter of the NAC, its role in the formation of the qualification system is governing.

At the same time, according to Yuriy Balaniuk, head of the National Agency of Qualifications, Ukraine still lacks consistency between legislative documents regulating the issues of training in the education system and the assignment of professional qualifications outside this area.³⁹⁵ There is no effective mechanism for recognizing informal education. The issue of launching professional qualification centers, which could effectively assess the qualifications of citizens, especially those obtained in informal education, is particularly acute. Although there is already a successful experience of the State Employment Center to confirm the results of informal education in the specialty of the cook.³⁹⁶

Market Analysis

Ukraine receives relatively high ratings according to the assessment of educational standards and education of the population. According to the index of human capital made by the World Economic Forum (WEF), Ukraine ranked 24th out of 130 countries in 2017.³⁹⁷ According to the new index of human capital, which the World Bank began to count, Ukraine in 2020 was 53 out of 174 countries³⁹⁸, although in 2018 it ranked 50th. The value of the index itself for Ukraine has not changed since 2010.³⁹⁹

The level of Ukraine in the UNDP Human Development Index (HDI) is slightly lower: in 2019 Ukraine ranked 74th place, which is higher than in previous years, due to the change in the methodology for calculating the index.⁴⁰⁰

However, relatively good places in the ratings of human capital and development do not really mean that Ukraine will continue to take such places. Yes, the results of the PISA score in 2018 were not very flattering⁴⁰¹: Ukrainian students showed worse results in reading, mathematics and science disciplines than the average of OECD students and neighboring Poland. 36% of Ukrainian students did not reach level 2 on a scale PISA, which is a very negative result, especially given the increase in the importance of mathematics in many professions of the future.

According to the Ministry of Education and Science, 70% of Ukrainians have higher education, and the level of coverage by higher education of the population of the corresponding age (for study) reaches almost 83%.⁴⁰² The network of universities in Ukraine is dense: “6.7 universities and 8 colleges, technical schools and schools account for 1 million

³⁹⁴ NAC Report for 2020: <https://drive.google.com/file/d/16wz7uz2fW7mQeUjxwolKJ36y0N2p8GA3/view>

³⁹⁵ <https://www.pravda.com.ua/columns/2020/10/2/7268603/>

³⁹⁶ https://youtu.be/zjTgMnSPX_8?t=12424

³⁹⁷ <https://www.weforum.org/reports/the-global-human-capital-report-2017>

³⁹⁸ <https://openknowledge.worldbank.org/handle/10986/34432>

³⁹⁹ <https://datacatalog.worldbank.org/dataset/human-capital-index>

⁴⁰⁰ <http://hdr.undp.org/sites/default/files/hdr2020.pdf>

⁴⁰¹ http://pisa.testportal.gov.ua/wp-content/uploads/2020/07/National_report_short_PISA_2018.pdf

⁴⁰² <https://mon.gov.ua/storage/app/media/rizne/2020/09/25/rozvitku-vishchoi-osviti-v-ukraini-02-10-2020.pdf>

population". The prestige of higher education is accompanied by a decrease in interest in professional and vocational education. Accordingly, the number of universities, institutes and academies is growing (up to 281 in the 2019/2020 academic year, of which 209 are state ownership), while the number of technical schools, colleges is decreasing. At the same time, due to dissatisfaction with the quality of higher education in Ukraine and thanks to incentives introduced by other states, especially Poland, more and more young people are going to study abroad. The material base of vocational and vocational education institutions is often worn out, and the curriculum is obsolete, which does not allow to provide students with modern and necessary competencies.

Important for Ukraine is the problem of breaking skills (skills mismatch). Business surveys show that one of the obstacles to development is the lack of a qualified workforce that has the necessary skills and knowledge.⁴⁰³ Accordingly, informal education in the form of various online courses or short-term (live) courses becomes important. However, the system of recognition of informally acquired skills has not yet been established.

So far, Ukraine pays little attention to the education of adults, which already needs changes. That the majority of the unemployed registered in Public employment service, have the higher education testifies to it also. In addition, migrant workers who return to Ukraine after years of work abroad, sometimes need both advanced training and recognition of informally acquired skills and competencies.

Dynamics of implementation

Initially, the National Qualifications Framework, a systematic and structured description of qualification levels, was approved by the Cabinet of Ministers of Ukraine in 2011⁴⁰⁴. However, it did not correspond to the European frame because of the different number of levels. In order to implement the provisions of the Association Agreement in 2016, the Action Plan for Implementation of the National Qualifications Framework for 2016-2020 was approved,⁴⁰⁵ but the implementation of many measures envisaged in the Action Plan is delayed.

In December 2018, the Cabinet of Ministers of Ukraine adopted an important decision to establish a National Qualifications Agency (NQA) authorized to implement the state policy in the field of qualifications. NQA started its work at the end of 2019⁴⁰⁶ and became an important player in the field of implementation of the national qualification system. The Agency is negotiating, in particular with the EU, on harmonization of the national qualifications framework and recognition of qualifications in the EU member states.

In 2019, the National Frame was revised due to the previously adopted law "On Education". However, the number of qualification levels was still different from the European one.

In June 2020, the government adopted a newer version of the National Qualifications Framework to take into account changes in legislation in the field of higher education (in particular, the law now does not define the levels of qualifications, but defines the requirement for its compliance with the European) and to harmonize the National framework

⁴⁰³ https://www.oecd.org/eurasia/competitiveness-programme/eastern-partners/Skills_Gap_Assessment_Ukraine_ENG.pdf , https://drive.google.com/file/d/1GyR0eCiaqxXzQ4SV5qJ6N_fbFsw6XC-o/view , <https://kse.ua/wp-content/uploads/2019/03/Mariia-Chebanova25.pdf.pdf>

⁴⁰⁴ <https://zakon.rada.gov.ua/laws/show/1341-2011-%D0%BF#n12>

⁴⁰⁵ <https://zakon.rada.gov.ua/laws/show/1077-2016-%D1%80#Text>

⁴⁰⁶ <https://zakon.rada.gov.ua/laws/show/1029-2018-%D0%BF#Text>

with the European qualification standards. In particular, now the Framework contains 8 levels of qualifications, as well as the European one. This is an important step, since it is the National Qualifications Framework that is the basis for the recognition of Ukrainian qualifications abroad and the cornerstone of the national qualification system. At the same time, for its certification it is necessary to begin to implement it, which requires an extremely large range of activities.

Within the framework of the steps to develop the national qualification system, a number of standards of higher and vocational education have already been adopted⁴⁰⁷, which have been developed taking into account the European experience. Work is also underway to develop and adopt professional standards.

The working group, in which the NQA and the Ministry of Economy have the leading role, is working on changes in the content and functions of the Classifier of professions (it will be deprived of regulatory function). This Classifier must be consistent with the international standard classification of professions ISCO-08.

At the same time, measures to implement lifelong learning, accreditation of qualification centers and recognition of informal education are lagging behind. In April 2020, the government approved an action plan for 2020-2027 to implement the Concept of State Policy Implementation in P(T)O⁴⁰⁸, which, among other things, provides for the adoption of regulation on qualification centers. Such centers will be responsible for awarding qualifications on the basis of informal training and issuing certificates of professional qualifications. In the first half of 2020, the NQA and the MES developed a draft of a standard provision on qualification centers⁴⁰⁹ and a draft resolution on their accreditation⁴¹⁰, which as of the end of May 2021 were not approved. Also, a resolution on the introduction of the Register of Qualifications has not been adopted yet, although the relevant project was developed in June 2020.⁴¹¹

In the summer of 2020, people's deputies submitted two alternative law "On the national system of qualifications"⁴¹², both of which received the conclusion of the Main Scientific and Expert Department about the need to refine them. In autumn, deputies submitted two alternative bills on the relevant topic⁴¹³. As of May 2021, none of them were taken to the hall (although about twenty times included in the agenda).

Today, Ukraine cannot fulfill one of the recommendations of the European Parliament, namely, the use of the unified European Qualifications and Competence Transparency Scheme (Europass)⁴¹⁴. This Scheme is only available to citizens of EU Member States. That is why the NQA and the European side began negotiations to find a mutually beneficial solution to this problem.

Ukraine in 2015 significantly simplified the recognition of diplomas received in particular in the EU member states, but so far it does not recognize European qualifications. In 2020, the

⁴⁰⁷ <https://mon.gov.ua/ua/osvita/profesijno-tehnichna-osvita/derzhavni-standarti-navchalni-plani-ta-programi>

⁴⁰⁸ <https://zakon.rada.gov.ua/laws/show/508-2020-%D1%80#Text>

⁴⁰⁹ <https://mon.gov.ua/ua/news/mon-proponuye-dlya-gromadskogo-obgovorenniya-proyekt-tipovogo-polozhennya-pro-kvalifikacijni-centr>

⁴¹⁰ <https://mon.gov.ua/ua/news/mon-proponuye-dlya-gromadskogo-obgovorenniya-proyekt-postanovi-kmu-pro-zatverdzhennya-polozhennya-pro-akreditaciyu-kvalifikacijnih-centriv>

⁴¹¹ <https://mon.gov.ua/ua/news/mon-proponuye-dlya-gromadskogo-obgovorenniya-proyekt-postanovi-kabinetu-ministriv-ukrayini-pro-zatverdzhennya-polozhennya-pro-reyestr-kvalifikacij>

⁴¹² Projects of law No. 3859 from 16.07.2020 and No. 3859-1 of 03.08.2020.

⁴¹³ No. 4147 from 23.09.2020 and No. 4147-1 from 09.10.2020.

⁴¹⁴ <https://europa.eu/europass/en/create-europass-cv>

draft resolution “On Approval of the Procedure for Recognition of Professional Qualifications Obtained in Other Countries in Ukraine” was published for public discussion, but it was never approved.⁴¹⁵

Recommendations

For Ukraine and the EU:

- To develop approaches to the use of the Eurorass Scheme by Ukrainian citizens.
- To agree and adopt an action plan that will allow Ukraine and the EU to gain mutual recognition of qualifications, with clear deadlines and mutual obligations on consultations and assessment of progress.

For Ukraine:

- To adopt a clear plan of measures for the implementation of the national qualification system.
- To continue to implement the reforms envisaged in terms of measures to implement the Association Agreement in the field of education. It is about recognition of results of informal training, modernization of higher and vocational education, introduction of effective continuous training. It is important to coordinate legislation in these areas.
- To adopt regulation for the activities of accredited qualification centers, which will be responsible for the recognition of the results of informal education and confirmation of professional qualifications.⁴¹⁶ At the same time, it is necessary to adopt clear and transparent rules for assigning professional qualifications that will meet European standards.
- To engage business for dialogue on development and definition of qualifications, their recognition, development of professional standards, forecasting the need for labor for the future. To complete revision of the catalog of professions and adoption of the relevant resolution.

For the EU:

- To extend the opportunity to use Eurorass Schemes by Ukrainians after the start of recognition of qualifications received in Ukraine;
- To conduct an official assessment of the adopted National Qualifications Framework, the available national qualification system and other measures envisaged in Chapter 23 of Section V of the Association Agreement to determine their compliance with European practices. In case of compliance, to provide certification, otherwise – recommendations for correcting gaps.

⁴¹⁵ <https://mon.gov.ua/ua/news/mon-proponuye-dlya-gromadskogo-obgovorennya-proyekt-postanovi-kmu-pro-zatverdzhennya-poryadku-viznannya-v-ukrayini-profesijnih-kvalifikacij-zdobutih-v-inshih-krayinah>

⁴¹⁶ A number of resolutions have already been developed by the National Qualifications Agency: <https://drive.google.com/file/d/16wz7uz2fW7mQeUjxwolKJ36y0N2p8GA3/view>

16. SYNCHRONIZATION OF UKRAINE WITH THE EUROPEAN GREEN DEAL

Nataliya Andrushevych

Benefits of synchronization of Ukraine with the European Green Deal

The European Green Deal (EGD) is a program of actions of the European Commission, centered on an ambitious plan for transition to climate neutral Europe by 2050. EGD covers climate change, energy, energy efficiency, green agriculture, industrial policy, zero pollution, transport, biodiversity, finance. EGD is an action plan of the EU, but Ukraine announced its intention to join the EGD and is already taking practical steps in this direction.

The global dimension of the European Green Course, the spread of its action on neighboring countries, in particular through the goal that concerns not only the EU, but the entire European continent, and Ukraine's willingness to be part of this pan-European process, bear the main political benefit – Ukraine becomes part of the European geopolitical space. Ambitiousness of climate goals of Ukraine is one of the criteria and conditions of such affiliation.

Among the main benefits for the government can be called strengthening integration into the European space through new initiatives within the framework of the EGD; attracting significant amounts of “green” financing; access to instruments of financial and technical support of the EU and “greening” the policy of the Eastern partnership.

Economic benefits are related to transformation in the European Union itself. Changing markets associated with decarbonization, greening industry, transport, agriculture, the emergence of niches for environmental goods and services, means the emergence of new opportunities for Ukraine.

The main economic benefits for Ukrainian business are the integration of production into new industrial processes in the EU; participation in green alliances; new opportunities for environmental goods and services from Ukraine; the emergence of new markets, in particular the development of infrastructure for electric transport; hydrogen technologies, new environmental technologies in industry and agriculture; digital technologies.

Synchronization of Ukraine with the EGD will bring benefits to the population of Ukraine, in particular due to the improvement of environmental quality of life and increase of the level of socio-economic development.

Ukraine's participation in the EGD will contribute to synchronization of policy and legislation in the relevant areas; implementation of joint initiatives of Ukraine and the EU on EGD, which

are mutually beneficial for both parties to achieve the objectives of the EGD; will contribute to strengthening the European integration course of Ukraine and implementation of a number of provisions Association Agreement between Ukraine and the EU.

Commitments

All areas included in the European Green Course are somehow reflected in the Association Agreement in the relevant sections. The advantage of the EGD is that creating new political and legal framework for the development of a particular sector, the EU is based on the previously adopted legislation and policies. Therefore, the obligations of the Association Agreement in the spheres of the EGD are relevant and should be effectively implemented if Ukraine wants to take advantage of the EGD for integration into the common EU market.

Climate change is a central element of the EGD and tasks in all other spheres are aimed at achieving the climate goal set as climate neutral Europe by 2050.

Ukraine in the National Economic Strategy until 2030 and in the project of the second National Defined Contribution (NDC) consolidated the achievement of climate neutrality by 2060. However, such an ambitious goal should be accompanied by concrete practical steps today. Therefore, it is especially important to fulfill Ukraine's obligations enshrined in the Association Agreement between Ukraine and the EU regarding the approximation of climate change legislation (Annex XXX), as well as updating the Appendix XXI, which concerns climate policy.

Other areas of the EGD, which will ensure the integration of Ukraine's markets into the relevant EU markets, are reflected in the following sections of the Association Agreement:

Integration of the Ukrainian Energy System into the EU – Chapter 1 “Energy Cooperation, Including Nuclear Energy” Section V “Economic and Sectoral Cooperation”, Annex XXVII;

Decarbonization of industry and trade in environmental goods and services – Chapter IV “Trade and trade related issues”, in particular provisions on the ACCA agreement (Article 56-57 and Annex III to the Agreement); Chapter 6 “Environment” Section V “Economic and sectoral cooperation”; Annex XXX to the Agreement;

Implementation of circular economy – Annex XXX (approximation of Ukrainian legislation to the EU legislation in the field of waste management);

Development of Digitalization – Chapter 6 “Establishment of entrepreneurial activity, trade in services and e-trade” Section IV “Trade and trade related issues”, Annex XVII; Chapter 14 “Information society” and Chapter 15 “Policy on issues audiovisual industry” Section V “Economic and sectoral cooperation”, Appendix XXVII;

Sustainable mobility – Subdivision 7 “Transport Services”; Chapter 7 “Transport” Section V “Economic and sectoral cooperation”; Annex XXII and XXXIII;

Implementation of sustainable agricultural practices and compliance with environmental standards – Chapter 17 “Agriculture and rural development” Section V “Economic and sectoral cooperation”; Section IV “Trade and trade related issues”, Annex XXXVIII;

Finance - Chapter 6 “Establishment of entrepreneurial activity, trade in services and electronic trade” Section IV “Trade and trade related issues”; Chapter 12 “Financial services” Section V “Economic and sectoral cooperation”, Annex XVII.

These provisions of the Agreement are particularly relevant if Ukraine wants to take advantage of the EGD to integrate into the common EU market.

Thus, the proper implementation of the Association Agreement will strengthen the prospects of Ukraine in the context of the EGD both for the synchronization of policy and legislation, and for the implementation of specific initiatives.

In addition, there may be a reverse impact – implementation of the EGD will affect the content and implementation of the Association Agreement, especially in the process of its renewal. For example, changes in EU legislation on ecodesign should be reflected in Section IV “Trade and Trade Issues”; reform of waste legislation – update of the list of environmental and climate change directives (Appendix XXX); change of legislative base for chemicals – the need to consolidate the REACH Regulation Implementation Agreement; review of measures to counteract pollution from large industrial plants – update of Appendix XXX, etc.

Institutional framework

In addition to the work carried out for the implementation of the Association Agreement, it is possible to note a separate direction of actions on synchronization of Ukraine's policy with the European Green Course. Here we can highlight the policy at the level of the dialogue between Ukraine and the EU and the inclusion of the EGD issues in a number of sectoral reforms.

EGD Structural Dialogue between Ukraine and the EU

Proactive position of Ukraine played a role in ensuring the dialogue at the highest level: from the statements of officials regarding Ukraine's accession to the EGD to the position document, which the Ukrainian side prepared and handed over to the EU.

In the position document, Ukraine proposes the EU to start a dialogue with the EU on possible options for involving the Ukrainian side in the development and implementation of policies within the EGD, taking into account Ukraine's readiness to join the goal of climate neutral Europe. The document proposes bilateral bodies to develop a Roadmap of Ukraine's participation in the EGD and includes a minimum list of sectoral areas of cooperation, which may be the subject of common interest of both parties.

Following the meeting of the Association Council in February 2021, a number of priority areas of cooperation with the EU on EGD issues were identified, in particular, energy efficiency, transformation of coal regions, hydrogen energy development, industrial alliances and climate governance architecture.⁴¹⁷

Strategic planning of Ukraine in the context of EGD

Some issues of the EGD have become part of strategic and current planning. In particular, the adopted National Economic Strategy for the period up to 2030 and the Government's Priority Action Plan for 2021 clearly contain the tasks of integrating individual components of the EGD into political dialogue and sectoral policies.

⁴¹⁷ Joint statement on the results of the 7th meeting of the EU-Ukraine Association Council. February 11, 2021// <https://www.kmu.gov.ua/news/spilna-zayava-za-rezultatami-7-go-zasidannya-radi-asociaciyi-mizh-ukrayinoyu-ta-yes>

The Government's priority action plan for 2021 defines Ukraine's participation in the European Green Course initiative as one of the steps in the sphere of European integration. Among other things, it is planned to include the EGD issues in the joint final document based on the results of the meeting of the Association Council (December 2021), consultations with the EU, and establishment of a structural dialogue. The result of such activities should be “the formation of key directions of interaction with the EU on decarbonization of the economy, reduction of emissions, environmental protection and counteraction to climate change”.

The National Economic Strategy for the period up to 2030 among the guidelines of Ukraine's economic policy is based on two important principles of the EGD: decarbonization and development of the digital economy as one of the drivers of economic growth in Ukraine.

The strategy recognizes the fact that the Ukrainian industry is resource-inefficient due to the low level of waste disposal, with a high level of coal and energy intensity, which reduces the competitiveness of Ukrainian products in the global market and jeopardizes exports to one of the main markets Sales – the EU. Therefore, the strategy, on the one hand, sets the task of increasing competitiveness through modernization, implementation of resource and energy efficient technologies and innovations, and on the other hand, has the task of “forming an individual approach in the application of the adjustment mechanism to Ukraine carbon on the border (Carbon Border Adjustment Measure, CBAM) as a state that has committed itself to political association and economic integration with the EU within the framework of the EU-Ukraine Association Agreement”⁴¹⁸. The national economic strategy of the EGD issue puts in the context of helping Ukrainian business to overcome the challenges associated with the implementation of the EGD. The strategy clearly traces the consideration of business interests in the context of threats to the EGD.

Sectoral integration of the EGD

As for the sectoral integration of the EGD, the most specific steps and plans for 2021 are traced in the energy and energy efficiency sector: activities towards the transformation of the coal regions; the program and action plan for thermal modernization of buildings, including the requirements for buildings with almost zero level of energy consumption; updating of technical regulations to comply with the requirements for ecodesign; development of an integrated plan to combat climate change and energy development; support the production of electricity from renewables and solid biological fuels. Much attention is paid to the work on the development of hydrogen energy. The Priority Action Plan provides for the development and submission of the Draft Hydrogen Energy Development Strategy of Ukraine by the Cabinet of Ministers, the Roadmap for the production and use of hydrogen in Ukraine has already been developed and published, and Naftogaz and Energoatom have agreed on cooperation on the use of existing and creation of new capacities for production and storage of hydrogen.

An important direction in the context of the EGD is the work on the second National Defined Contribution of Ukraine (NDC), which Ukraine must approve and submit in accordance with the requirements of the Paris Agreement. As of April 2021, the Ministry of Environment and Natural Resources of Ukraine announced the project of the second NDC.

In practical terms, we can note such an opportunity for business as an attachment to the so-called “green alliances”. Such alliances include business, associations, state institutions,

⁴¹⁸ Resolution of the Cabinet of Ministers of March 3, 2021 No.179 "On approval of the National Economic Strategy for the period up to 2030". // <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-nacionalnoyi-eko-a179>

politicians, experts, representatives of civil society. Ukraine is actively promoting the issue of joining Ukrainian business to raw materials, hydrogen and battery alliances.

At the governmental level, there are also discussions on the formation of the international fund of “green” transformation of Ukraine together with international partners and financial organizations.⁴¹⁹

Parliamentary participation in the promotion of EGD in Ukraine

The issues of the EGD are also in the focus of the parliament's work, in particular, in 2020 hearings were held on the issue of the EGD by the European Integration Committee and the Committee on Environmental Policy.

Recommendations of the⁴²⁰ Committee hearings “European Green Course”, which took place on September 11, 2020, apart from the need to adopt laws on various issues covered by the EGD, emphasize the need for a dialogue between Ukraine and the EU, in particular on the development and adoption of Roadmap, as well as the mechanism of carbon import adjustment (CBAM).

In December 2020, the Committee on Environmental Policy and Nature Management of the Verkhovna Rada of Ukraine held committee hearings on Ukraine's participation in the European Green Course⁴²¹ and recommendations were adopted according to their results in March 2021. The main idea in the direction of synchronization with the EGD is to develop its own “Green Course of Ukraine”, in particular, in the form of a national program based on the second NDC, as well as an action plan for Ukraine's participation in the EGD. Much attention in the recommendations is paid to the mechanism of carbon adjustment of imports, in particular in the context of intensifying work on minimizing the impact of CBAM on Ukrainian exporters.

Institutional support of the process

Ukraine is coordinated by Vice Prime Minister for European Integration Olga Stefanishyna, from the European Commission – Katarina Maternova, Head of the European Commission for Support of Ukraine.

Resolution of the Cabinet of Ministers of Ukraine of 24 January 2020 established an interagency working group (CBA) on coordination of climate change consequences in the framework of the European Commission “European Green Course” initiative and approval of the provisions on this group. CBA is a temporary consultative and advisory body of the Cabinet of Ministers of Ukraine, established “in order to ensure concerted actions of central and local executive authorities to determine the mechanisms of implementation of the state policy on the implementation of the goals of sustainable development of Ukraine, creating conditions for ensuring Competitiveness of Ukrainian producers and enterprises during the implementation of the European Commission's initiative “European Green Course”,

⁴¹⁹ <https://greendeal.org.ua/vicze-premer-stefanishina-my-obsuzhdaem-formirovanie-mezhdunarodnogo-fonda-zelenoj-transformaczii-ukrainy/>

⁴²⁰ http://comeuroint.rada.gov.ua/news/activity/activity_hearings/activity_hearings_committe

⁴²¹ http://komekolog.rada.gov.ua/documents/sluhannja/kom_sluhannja/75388.html

biodiversity conservation, protection of health, welfare of citizens from risks and consequences of climate change”.⁴²²

Resolution of the Cabinet of Ministers of Ukraine of March 24, 2021 established a working group to approve the approach to applying the carbon adjustment mechanism to Ukraine at the border for consultations with the European Commission.⁴²³ The Working Group should facilitate coordination of the authorities to develop a consolidated position of the Ukrainian side for consultations with the European Commission on CBAM, as well as prepare proposals for the application of carbon import adjustment mechanism to Ukraine.

Target indicators in the spheres of EGDs of Ukraine and the EU

The European Green Course includes tasks and targets for each thematic area: climate change, energy and energy efficiency, industrial policy, green agriculture, transport, zero pollution, biodiversity, green transition financing. For most spheres, Ukraine has relevant tasks in its strategic documents and in the Association Agreement. However, for a number of spheres, current priorities differ from the EGD objectives. For example, if the energy, industrial policy and transport sectors of the EU are clearly aimed at decarbonization, infrastructure projects, industrial capacity reconstruction and energy independence are priority in Ukraine.

Comparison of targets in the EGD of Ukraine and the EU on issues that are most promising in the context of access to EU markets often indicate common vectors of movement, but different starting opportunities in the EU and Ukraine.⁴²⁴ For example:

Organic production: Comparative analysis according to the target indicator “share of agricultural land under organic production” indicates the movement of Ukraine and the EU in one direction – the increase in the volume of such lands. At the same time, the EU's ambition level is much higher than in Ukraine (25% and 3% respectively). Ukraine's backlog can hardly be overcome in the medium term.

Hydrogen production: Comparative analysis of the measured indicator on the installed capacity of “green” hydrogen electrolyzers indicates that both Ukraine and the EU have almost identical starting indicators (0 in Ukraine and 1GW in the EU) and plan to move in one direction (Ukraine plans to reach 10GW installed capacity by 2030, while the EU is 40 GW). The ambitions of the EU and Ukraine are significant, given the virtually absence of industrial facilities for hydrogen production and proven technologies of its large-scale storage/transportation at the moment. It should also be taken into account that the EU sees the development of hydrogen energy in terms of its own consumption (substitution of fossil fuels), and Ukraine is more for export than domestic use.

Development of electric transport: Comparative analysis of the measured indicator on the share of sales of new electric transport in general sales indicates high ambitions of the EU and Ukraine on this issue. Currently, the share of new electric transport in the EU reaches 3.5%. In general, the sale of electric vehicles in Ukraine is much higher than the figure

⁴²² Resolution of the Cabinet of Ministers of Ukraine of January 24, 2020 No. 33 “On Establishment of an Interagency Working Group on Coordination of Overcoming the Consequences of Climate Change within the framework of the European Commission “European Green Course” Initiative// <https://zakon.rada.gov.ua/laws/show/33-2020-%D0%BF#Text>

⁴²³ Resolution of the Cabinet of Ministers of Ukraine dated March 24, 2021 No. 265 “On Establishment of a Working Group for Approval of Approach to Application of Carbon Adjustment Mechanism to Ukraine at the Border for Consultations with the European Commission”// <https://www.kmu.gov.ua/npas/pro-utvorennya-robocoyi-grupi-dlya-a265>

⁴²⁴ For more information, see “Mapping the Strategic Goals of Ukraine and the EU in the Context of the European Green Course: Development Vectors and Flagship Initiatives”. Analytical document. – Resource and Analytical Center “Society and Environment” (2021).

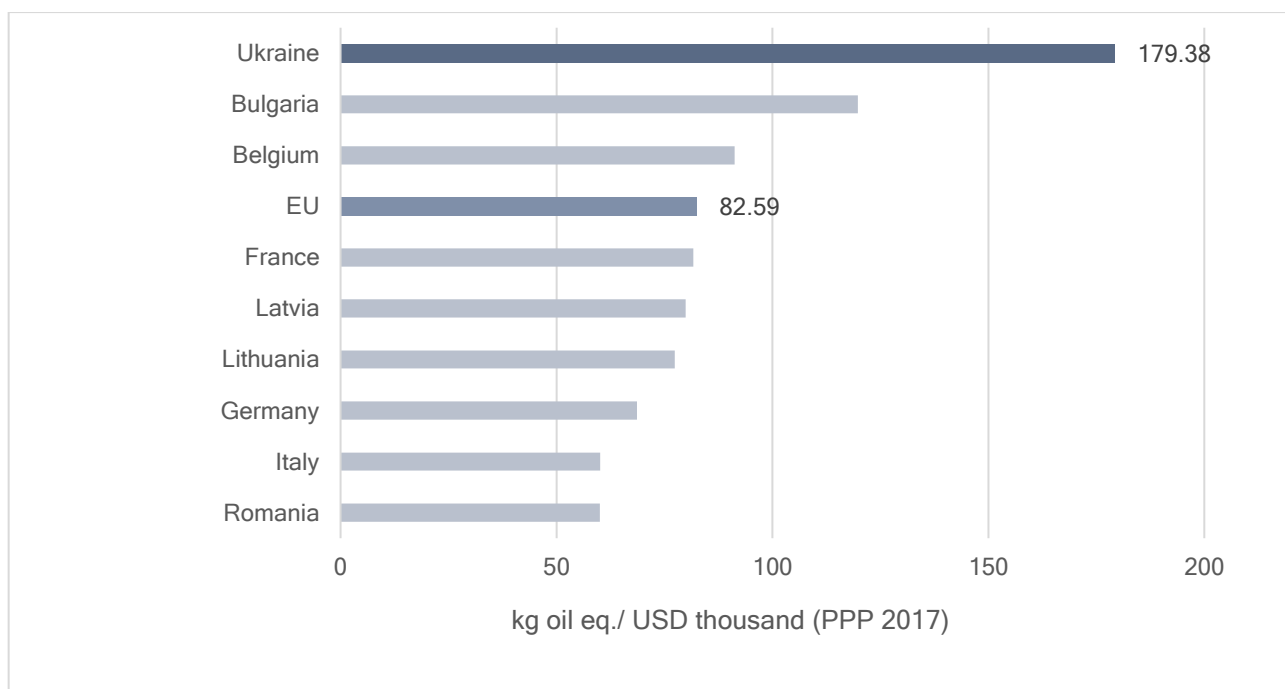
envisaged by the State Environmental Policy Strategy until 2030 (0.1% for 2020 and 0.5% for 2025), but it was achieved through the purchase of used electric vehicles, which are not taken into account for comparison with EU data. The project of the second NDC sets a very ambitious goal (15%).

Development of renewable energy sources: Comparative analysis of the measured indicator on the share of renewable energy in the final energy consumption indicates a significant gap between current indicators in Ukraine and the EU. Moreover, the European Union has set more ambitious goals – 32% of renewable energy in the final energy consumption by 2030, when there is only 17% in Ukraine.

Market Analysis

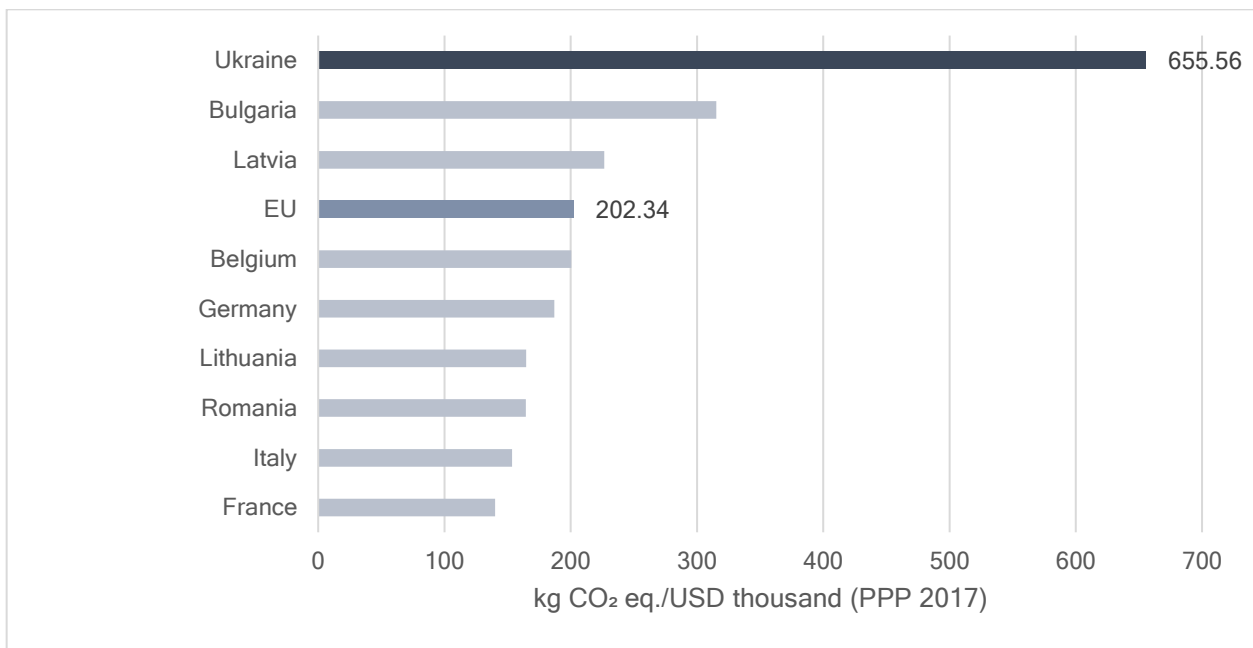
Ukraine has a significant potential for expanding its market in the context of decarbonization of various sectors of the economy and the production of environmental goods and the provision of environmental services. Ukraine's economy is characterized by a high level of energy and carbon intensity (see. Graphs 1 and 2). Therefore, synchronization with EGD politicians towards decarbonization will have a positive impact on green growth in Ukraine.

Chart 1: Energy intensity of GDP



Source: World Development Indicators, Eurostat

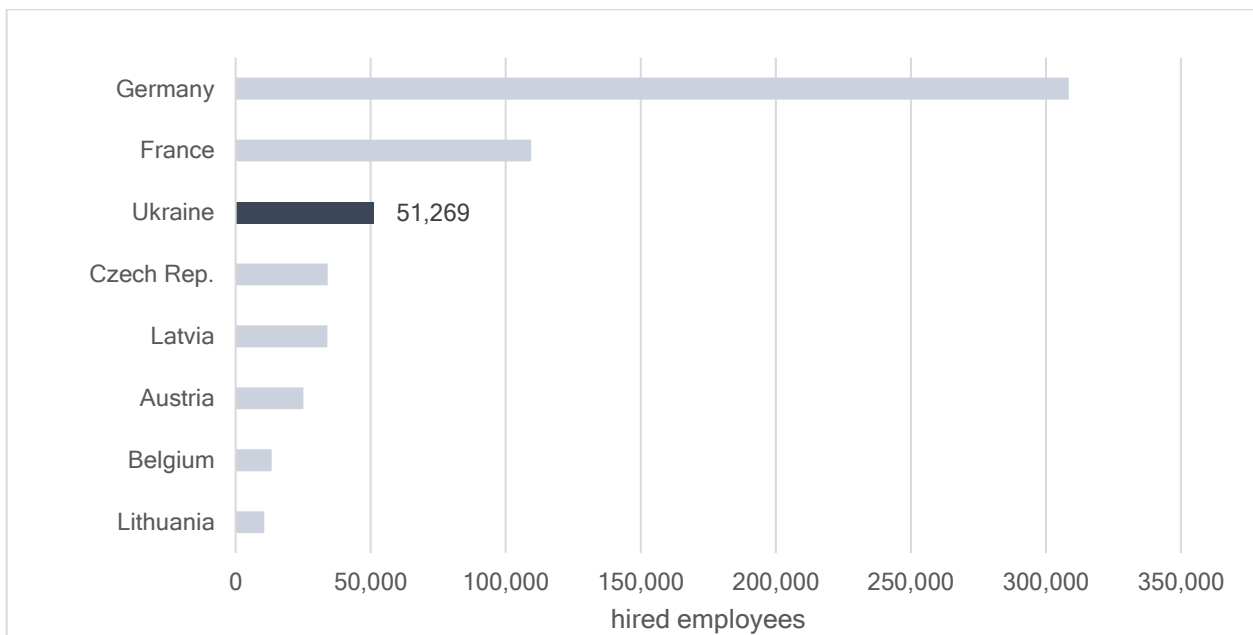
Chart 2: Energy intensity of GDP



Source: World Development Indicators, UNFCCC (2021)

The development of “green” sectors of the economy will also help increase the number of “green” jobs. Positive dynamics regarding this trend can be seen in the renewable energy sector, which in recent years has developed very dynamically in Ukraine (see Schedule 16.3).

Chart 3: Jobs in RES sector



Source: IRENA (2021)

The implementation of the EGD and the EU's efforts to overcome the effects of climate change are primarily the response of politicians to the request of EU citizens. The issue of climate change is not a priority for Ukrainian citizens. According to results of sociological

poll of Institute of Gorshenin⁴²⁵, only 22.9% of respondents among environmental problems which most of all disturb them in Ukraine, called global warming, climate change.

Dynamics of implementation

In the context of EGD implementation, the European Union discusses the issue of carbon import adjustment mechanism most of all. The main initiator of these discussions is a business that is afraid of losing its markets. It is not yet known in what form the CBAM will be adopted. It is likely that it will be linked to the European greenhouse gas emission trading system. However, Ukraine only at the beginning of introduction of such a system of trade. According to Ukrainian officials, the implementation of CBAM in Ukraine should be commensurate with the economic and financial capabilities of Ukrainian business. As for CBAM, a special working group was created, which should develop Ukraine's vision and engage in a dialogue with the EU on the introduction of CBAM.

Another controversial issue is the development of the second National Defined Contribution of Ukraine, the project of which the Ministry of Environment and Natural Resources promulgated in April 2021. Currently, its discussion and coordination with the central executive authorities continues. The ambition of the proposed contribution is a good signal for the EU about Ukraine's readiness to join the EGD's core goal and reduce its greenhouse gas emissions. Nevertheless, the position of business on this issue is extremely categorical – they appealed to the Prime Minister with an appeal not to hurry with such proposals.⁴²⁶ However, the reluctance to transform and modernize will only prevent Ukrainian business from entering new markets and attracting green investments.

The issue of financing the green transition is one of the most problematic. Ukraine does not pay attention to “greening” of its budget and creating conditions for attracting green investments. Discussions on carbon pricing, including raising carbon tax rates and creating a decarbonization fund, remain only at the level of discussions.

Recommendations

For the Government and Parliament of Ukraine:

- Conduct a dialogue with the EU on formulating priorities (flagship initiatives) for the EGD Road Map for Ukraine.
- Develop a comprehensive climate policy of Ukraine, including carbon pricing.
- Ensure dialogue and work with business to understand the latest benefits of ambitious climate policy.
- Carry out systematic synchronization of national policy and legislation with the objectives of the EGD.
- Ensure proper funding for the green transition.

⁴²⁵ http://fes.kiev.ua/n/cms/fileadmin/upload2/Ekologichni_trendi_v_Ukrajini_14.04_16.23_.pdf

⁴²⁶ https://ubta.com.ua/files/090421_Zvernennia_UBTA_ta_TsEV_do_PM.pdf

- Carry out informational and educational activities to ensure public understanding and support the society of green transition of Ukraine.

For business:

- To use opportunities for integration into the new industrial processes of production in the EU, in particular through green alliances.
- To ensure eco-modernization, as access to the EU markets will depend on the compliance of goods and services with climate and environmental requirements of the EU.

For the EU:

- To consider the issue of Ukraine's participation in the EGD through the formation of a Roadmap with specific flagship initiatives as a necessary condition for achieving climate neutral Europe by 2050.
- To ensure renewal of the Association Agreement taking into account the requirements of the EGD, especially in terms of decarbonization and climate change.
- To promote Ukrainian business in joining green production processes in the EU, in particular to participate in green alliances.