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# Ukraine's path to accession negotiations with the European Union: reforms undertaken over the last ten years and challenges to rise to

10 years ago, European Union representatives were still far from enthusiastic about Ukraine. Indeed, [the Association Agreement](#) signed by President Poroshenko in 2014 which came into force three years later<sup>[1]</sup>, although far-reaching, lacked a clear political objective<sup>[2]</sup>. Russia's massive invasion of Ukraine has considerably accelerated the [relaunch of the enlargement policy](#). Indeed, after Ukraine applied for membership on the fourth day after the Russian invasion, the Union took a positive decision with extraordinary speed and granted Ukraine candidate status in June 2022. On 14 February 2023, the European Council gave the green light to the opening of accession negotiations with Ukraine which [started on 25 June 2024](#). The situation was unprecedented, and the EU seems to have accepted the geopolitical challenges and responded quickly. For Ukraine, approaching the gates of the European Union is a concrete expression of the will of the people who defended the European path during the Revolution of Dignity – otherwise known as [EuroMaidan](#), in 2014, and which is defending European values on the front line.

European integration is proving to be a matter of national security for Ukraine, since from 2019, "the European identity of the Ukrainian people and the irreversibility of Ukraine's European and Euro-Atlantic path" are enshrined in the Constitution of Ukraine, following amendments made on the basis of the "strategic path of the State to acquire full membership of the European Union and NATO". Prior to this, Ukraine's National Security

Law of June 2018 had already defined 'Ukraine's integration into the European political, economic, security and legal space and membership of the European Union' as one of the State's fundamental national interests.

And so, Ukraine has already started working towards its rapprochement with the EU with the implementation of this text. Given its scale and ambition, the lessons learned from Ukraine's implementation of the association agreement can help to effectively organise the accession negotiation process.

## THE TRADE PRIORITIES OF THE ASSOCIATION AGREEMENT

The agreement is an essential document in terms of relations between the European Union and Ukraine, since it defines areas of cooperation and envisages the approximation of Ukrainian legislation with the *acquis communautaire*. Signed 10 years ago it pursues a dual objective: to pave the way for political association and economic integration between Ukraine and the Union (a deep and comprehensive free trade area) and to speed up Ukraine's modernisation. This idea has worked to a certain extent.

### 1. Ukraine's initial progress in implementing the agreement (2014-2022)

While the fact that Ukraine has considerably deepened its political dialogue with the EU,

[1] Some articles of the agreement (which cover matters of EU competence) were provisionally applied from 1 November 2014, and others from 1 January 2016. As a result, Ukraine began implementing certain provisions before 2017

[2] This agreement was not met with much enthusiasm, see. [the Dutch consultative vote held in 2016](#).

with the adoption of European production standards and by abandoning obsolete Soviet standards, the implementation of the agreement has highlighted Ukraine's weak institutional capacity. Consequently, an unintended effect of the agreement has been its contribution to Ukraine's institution-building. In fact, by providing technical assistance to strengthen the government's capacity to bring national legislation into line with the *acquis communautaire*, some of its institutional mechanisms have improved.

Gradually, as the agreement has been implemented, the results have been mixed. Indeed the action plan consisting of around 2000 tasks is too dissociated from institutional reforms or sectoral reform plans. In practice, only a few sectors are exceptions: customs, energy, the environment, public procurement, and sanitary and phytosanitary measures. The lack of alignment in the other sectors covered by the agreement makes it difficult to carry out a proper impact assessment of the adoption of EU regulations and thus effective policy planning, as illustrated by [this study](#) written by the Konrad Adenauer Foundation and the Ukrainian Centre for European Policy.

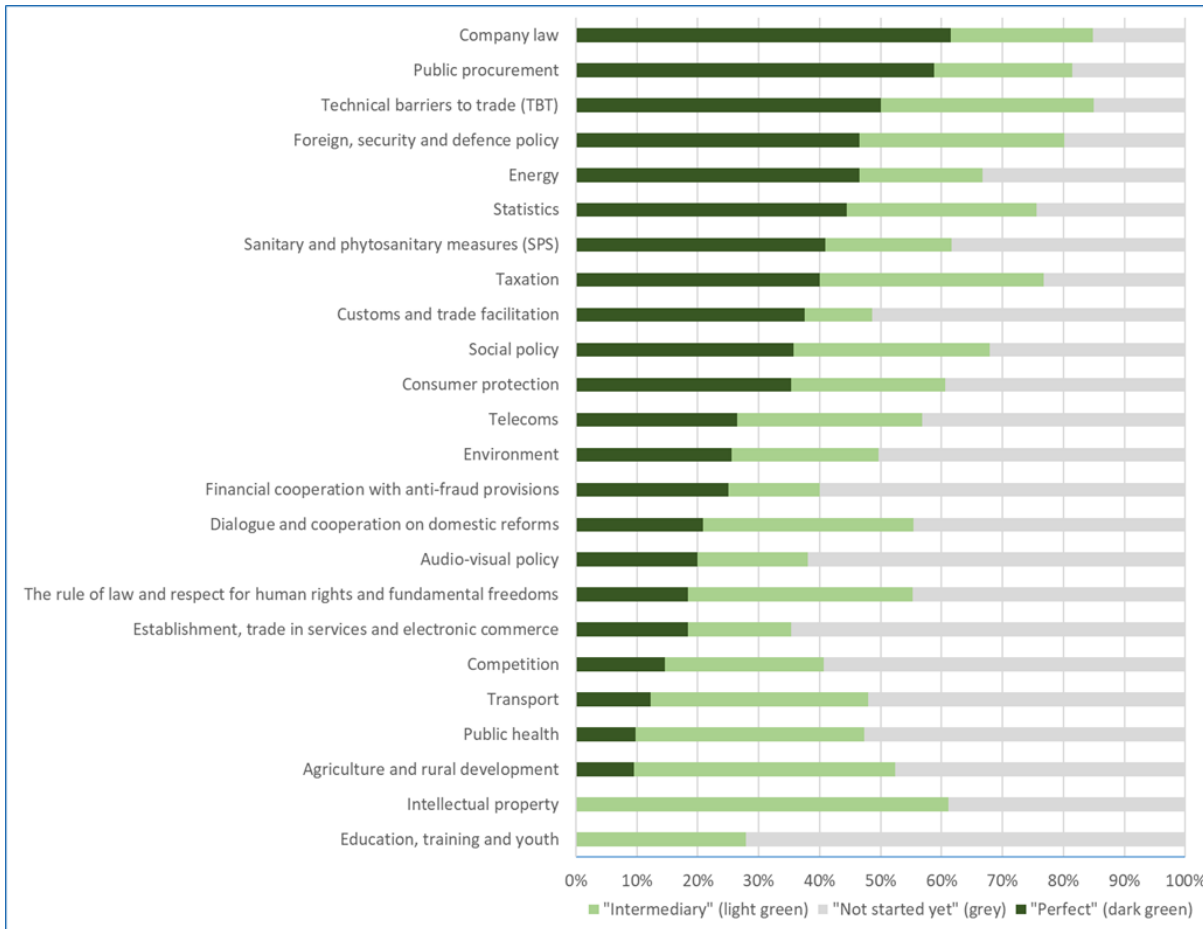
Moreover, the agreement does not motivate the completion of the planned comprehensive reforms, since no prospect of EU membership is envisaged. While the agreement includes among its objectives 'to establish conditions for enhanced economic and trade relations leading to Ukraine's gradual integration into the EU internal market', in reality this objective is difficult to achieve without financial support for costly reforms or a better understanding of what integration means. Against this backdrop, progress in the adoption

of European legislation has been observed in sectors in which harmonisation (corporate law in particular) is considered to be beneficial. In other areas, such as intellectual property law, the reforms appear to be less urgent and do not receive the same level of attention in both their preparation and implementation. The [Deep and Comprehensive Free-Trade Area \(DCFTA\)](#) therefore constitutes a higher priority than the political part of the agreement and its institutional reforms.

According to monitoring by the Ukrainian Centre for European Policy in 2022, [Ukraine fully met 30.4% of all commitments under the agreement](#). Taking into account ongoing commitments, overall implementation has reached 55%. The table below shows the cumulative progress in meeting the commitments in all the sectors covered by the agreement from 2014 to 2022.

The most advanced sectors have benefited from incentives. For example, public procurement reform was encouraged by the Ukrainian Deputy Minister for Economic Development and Trade even before the agreement came into force. Alignment with EU standards in the area of trade barriers has been boosted by the prospect of the signing of the *Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA)*, allowing Ukrainian industrial products to be traded on the EU market. Ukrainian agricultural companies therefore have an interest in adopting EU sanitary and phytosanitary standards so that their products can be exported to the European market. Another example is the reforms in the energy sector that have been carried out to overcome the unpredictability of Russian supplies and switch to imports from the European Union[3].

[3] Vlad Vernyhora, "A Place of Ukraine in a More Cohesive European Union: Synergising the Two Different Integrations", Kyiv, 2019, p. 16.



## 2. European integration in a time of war

The UCEP 2014-2022 monitoring report shows that the Russian invasion, which began in February 2022, has slowed implementation of the agreement; it then totalled 6% only. State resources have been redirected to military purposes and the conduct of other reforms become secondary. By the end of 2023, war damage will have risen to 152 billion dollars, according to [UN estimations](#). In addition, the Russian blockade of Ukrainian seaports has made it impossible to export Ukrainian agricultural products. [The Black Sea Grain Initiative](#), supported by the UN and Turkey, has increased exports of agricultural products to third countries. Since its implementation in August 2022, Ukraine has managed to export around 50% of all cereals and oilseeds, helping to stabilise the global food market. Unfortunately, the initiative was short-lived, with Russia withdrawing from it in July 2023.

The EU-Ukraine solidarity corridors have been another alternative export route. This option has also made it

possible to export non-agricultural products (metals, iron ore, chemicals). The measures taken by the EU to suspend all customs duties, quotas and trade defence measures on Ukrainian exports and [the agreement on the road transport of merchandise](#), have served as a lifeline for Ukraine's economy. By July 2023, Ukraine had [exported around 40 million tonnes of agricultural products](#) via solidarity corridors, representing over 50% of Ukrainian cereal and oilseed exports. However, unilateral measures taken by individual Member States to restrict Ukrainian imports and blockades on the Polish border have resulted in considerable losses. Exports passing through blocked checkpoints [fell by 40 %](#) and losses to the State budget rose to €210 million due to lost revenue from customs payments.

For Ukraine, it is essential to maintain uninterrupted exports and to preserve the implementation of trade liberalisation measures to keeping the economy afloat in this time of war. In addition, the EU could ensure gradual integration into the single market and this would attract investments and support the Ukrainian economy. Indeed,

even before the sceptics of the enlargement towards Ukraine raised these difficulties (Article 2 TEU), the [European Court of Auditors](#) stated that from 2016 to 2020, the main obstacles to foreign investment in Ukraine are widespread corruption, lack of confidence in the judicial system, and the establishment of market monopolies and 'state capture' by oligarchs.

## A SNAPSHOT OF FUTURE ACCESSION NEGOTIATIONS: THE CASE OF THE 'FUNDAMENTALS'

The "fundamentals" are both the greatest challenge for Ukraine and the most important achievement on the road to the Union. Since negotiations are opening and closing on this section, it should be the focus of the utmost attention of all stakeholders. The reforms required - namely governance reform, judicial reform, reform of law enforcement agencies and anti-corruption reform - influence the country's success in implementing other reforms.

As mentioned above, the percentage of reforms implemented in this sector under the agreement remains low. However, these reforms which are based more on international standards are implemented in all countries according to the legal system and the specificities of the legislation. As far as Ukraine is concerned, after the European trajectory adopted in 2014 significant steps were taken to implement the institutional reforms, such as for example the [reform of the civil service](#), which only became systemic after the Revolution of Dignity and the signing of the agreement.

### 1. Reform of the Civil Service

The reform of the civil service represents a real launch pad towards the Union, but there are still difficulties that could affect the progress of European integration. The aim of the reform is to put in place an effective system for coordinating policies. This stage will also be an influential instrument in an effective and structured process of bringing Ukrainian legislation into line with the *acquis communautaire*. The interaction of institutions and civil servants at different levels needs to be provided for to improve the infrastructure for European integration,

to improve strategic planning and the drafting of policy documents and to set up the political directorates in the ministries. Finally, it seems vital to enrich the legislation and practices of public authorities in terms of public communication on policy development and decision-making.

#### a. A strategy for reform within the ministries

The creation of directorates within ministries and the introduction of reform specialists is an important step in influencing both the change in approach to policy-making and the effectiveness of the European integration process. The aim of these units is to create policy development centres within ministries. Partial progress has been made in this direction, leading to the creation of strategic planning and European integration directorates.

In July 2023, only four ministries had a system of directorates, but the staff seems too small. There is a major imbalance in the civil service when it comes to the operation of the units needed to develop policies and implement European integration tasks. This situation also threatens the ability and capacity to form negotiating teams in each of the negotiating chapters of the *acquis communautaire*, which risks undermining the capacity to conduct these accession negotiations.

Directorates should be created in each ministry to enable the establishment of an effective system of European integration and the rapprochement of Ukrainian legislation with that of the Union.

#### b. Civil servants capable of taking part in reforms

The capacity of the civil service and its level of involvement in the process of European integration are essential to the proper functioning of governance. First of all, legislation on the civil service seems to be of sufficient quality and policy in this area is being developed and implemented effectively by the National Civil Service Agency (NACS). However, there are still a number of problems. For example, on 8 May 2023, the NACS presented [a report](#) on the ability to transpose European law into Ukrainian legislation. The results of the survey showed that in 12 of the 128 policy areas included in the negotiation chapters, there are no

public authorities playing a leading role in sectoral policy-making. In 27 policy areas, more than one body identified its role as being a leading authority, indicating an overlap of powers. These results are mainly linked to the absence of a clear list of areas of public action in the legislation and the lack of demarcation of competences in terms of policy implementation. This is the second major factor in the process of reforming public administration.

Currently due to the war, this is an acute problem for Ukraine. In addition, the changes in state priorities triggered by the Russian invasion have reduced the system's ability to reform. Despite these challenges, the public administration system seems to be evolving fairly effectively. It is therefore imperative not to stop. Continuation should be a priority for the State, as it is both a framework for analysis and policy development concerning the process of European integration and a criterion enabling the European Union to assess Ukraine's state of readiness for accession.

## 2. The fight to counter corruption

Another example of the positive impact of EU-Ukraine relations has been the anti-corruption reform implemented since 2014. Over the past 10 years, Ukraine has created an anti-corruption system with two levels of action: prevention and prosecution of corruption.

Ukraine has established an infrastructure that includes, among others, the National Agency for the Prevention of Corruption, the National Anti-Corruption Bureau, the Anti-Corruption Prosecutor's Office, the Anti-Corruption High Court, anti-corruption commissioners in state and local government bodies, numerous legal entities and the Ukrainian National Agency for Tracing, Tracking and Managing Assets Derived from Corruption and Other Crimes.

At the same time, legislation<sup>[4]</sup> has been adopted which regulates: electronic and public declaration of officials' interests; resolution of conflicts of interest; public and defence procurement; open data standards; transparency of public funds; funding of political parties; protection of whistleblowers; the adoption of the national anti-corruption programme and the anti-corruption

programmes of national and local authorities and legal entities, as well as monitoring their implementation; the detection of corruption schemes and the legal liability of perpetrators, including senior officials; and the seizure and confiscation of misappropriated assets and the civil forfeiture of unjustified assets.

Ukraine therefore seems capable of significantly improving the situation in the fight against corruption over the next few years in order to pursue political and economic reforms, and also to develop and strengthen partnerships between the State, communities and non-governmental organisations. It should therefore continue to enlist the support of its international partners, in particular, [that of the European Union](#).

There is one cloud on the horizon: the reform of the [Office of Economic Security](#). In operation since 2021, this state body has not yet demonstrated the expected effectiveness, transparency or zero tolerance in terms of corruption. Recognising the scale of the problem, Parliament is working to resolve several of the issues mentioned in the [latest European Commission Report](#). It is crucial that the reform covers the system as a whole. We therefore expect the overall strategy to contribute to achieving this result.

## 3. Issues of influence

The implementation of de-oligarchisation measures remains a priority, as the [conclusions of the Venice Commission of June 2023 bear witness](#). While the invasion has initiated the de-oligarchisation of Ukraine, it would be unwise to halt progress in this direction. It is therefore essential to introduce comprehensive measures and effective enforcement mechanisms to develop quality legislation and practice in this area to prevent the oligarchs challenged today being replaced by new ones tomorrow.

As a result, the regulation of lobbying has quickly proved complex to develop. The National Agency for the Prevention of Corruption has begun drafting a bill to regulate lobbying in Ukraine. However, the first draft raises a number of questions, particularly with regard to the list of legal subjects covered by its application. Representatives of organised civil society were able to take part in the working group responsible for finalising the bill, and the

<sup>[4]</sup> See notably [the joint opinion](#) of the Council of Europe (Venice Commission) and the OSCE (Office for Democratic Institutions and Human Rights) dated 22 October 2015, on certain legislative advances in the fight against corruption.

text was signed [by President Zelensky](#), in March 2024, and is due to be accompanied by a [Transparency Register](#). While the law provides for the creation of a lobbying trade, these remunerated activities will have to be declared, but do not concern non-profit-making structures.

The establishment of sustainable and transparent anti-corruption practices is essential to ensure a significant improvement in the quality of the authorities' work in investigating corruption offences.

#### 4. Reform of the judicial system

Reform of the judicial system gathered pace after the Revolution of Dignity in 2014. This is because the judiciary was used as a repressive mechanism against citizens during the demonstrations. For example, judicial reform launched in 2016 and 2019 has addressed some of the problems within the judiciary, by strengthening its independence and accountability. This was achieved by limiting the influence of political bodies on the judiciary and by expanding the powers of judicial governance bodies. However, shortcomings in the design of the judicial reform, a lack of political will, problems with the integrity and independence of the bodies responsible for implementing the legislative changes and various other factors have meant that not all the stated objectives of the reform have been achieved. As a result, the relevance of judicial reform has risen significantly.

The first measures mainly aim to get rid of judges who have discredited the judicial system and, as a result, to depoliticise it<sup>[5]</sup>. This will be followed by an assessment of the qualifications of the judges and a review of the procedures relating to the disciplinary liability of judges. Improvements to procedural texts are envisaged. The difficulty of this reform lies in the resistance of certain judges. The reform process that had been started was interrupted, prior to the invasion, by the blocking of two judicial government bodies, the [High Council of Justice](#) and the [High Commission for the Qualification of Judges](#). The granting of candidate status to Ukraine and the [7 criteria](#) presented by the European Commission have provided the impetus and motivation needed to resume reform.

One of the major challenges is the lack of a separately functioning mechanism to challenge the disciplinary responsibility of judges. The European Commission has stressed the need to rapidly create a disciplinary inspection service. Since August 2021, the Council for the Judiciary has not examined disciplinary complaints against judges due to the absence of a disciplinary inspection service. As a result, [more than 11 000 complaints](#) have accumulated, and their examination only resumed in November 2023. Competitive recruitment for this inspectorate is underway.

This piecemeal approach to change does not appear encouraging for Ukraine's path towards European integration. It is extremely important to develop and adopt a systematic, comprehensive document on judicial reform, aimed primarily at achieving qualitative changes and implementing reform to make the changes required by the accession process easier to understand.

#### 5. Police powers, internal security and public order

Reforms to the law enforcement agencies have also been carried out in previous years, but not [in a systematic manner](#). As with judicial reform, the 7 criteria proposed have enabled the development of a reform strategy of Ukraine's law enforcement agencies.

The European Commission's key recommendation in this area - the adoption of the Comprehensive Strategic Plan for the Reform of Law Enforcement Agencies in the Security and Defence Sector - has been implemented in Ukraine. On 11 May 2023, the President of Ukraine approved this by Decree No. 273/2023, which comes [under the coordination](#) of the EU military assistance mission (EUMAM) in support of Ukraine. This is a good thing, because the Plan is about strengthening the institutional capacity of law enforcement agencies and reforming criminal procedure.

However, its development under peacetime conditions does not meet the current challenges linked to military justice<sup>[6]</sup>. Furthermore, the plan does not cover the reform of law enforcement agencies such as the National Anti-Corruption Bureau of Ukraine and the Specialised Anti-Corruption Prosecutor's Office. However, its provisions are general and should also apply to these agencies. The plan is more of a framework document setting out

<sup>[5]</sup> The struggle between President Zelensky and Olexandre Toupitski, president of the Constitutional Court and accused of corruption, was a major Ukrainian news story until the eve of the Russian aggression and led the Ukrainian president to dismiss him, thereby surpassing by far his constitutional prerogatives.

<sup>[6]</sup> This involves both prosecuting war crimes and combating collusion and the deterioration of wartime criminality.

reform guidelines and key ideas, and its implementation will depend entirely on the quality of the action plan developed, its implementation, and the success of that implementation, but it does not appear to have taken account of the advances made possible by the agreement.

### HOW CAN THE EU CONTRIBUTE TO THE EFFECTIVE IMPLEMENTATION OF REFORMS?

The methodology for drawing up benchmarks for fundamental reforms should be improved. In particular, this could be achieved by drawing on the experience of implementing the seven stages proposed by the European Commission. The benchmarks for each of the reforms should be detailed and precise, without over-generalising. In this way, the most effective implementation can be achieved, and monitoring their implementation will become easier, allowing any inconsistencies to be detected quickly.

Undoubtedly, a change in approach requires a more active involvement of organised civil society in the process. Think-tank experts could strengthen the process by providing in-depth expertise in each of the sectors that need to be reformed as part of European integration. This approach should facilitate considerably the implementation of the tasks for each party to the process. In effect, the European Commission will be able to set out more simply the process of monitoring Ukraine's fulfilment of its commitments; the Ukrainian government will have a clearer understanding

of the steps to be taken to achieve the desired outcome; civil society will be able to monitor implementation more effectively, respond to challenges, provide expert support to the government in areas necessary for European integration and expose any flaws.

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Ukraine is facing Russian aggression, trying to keep its economy afloat and continues to pursue its path to join the European Union. The latter can play a significant role in helping Ukraine to succeed in this overall task. This could include safeguarding current measures to liberalise trade and logistics, gradually subordinating Ukraine to the EU's single market in those sectors where this is possible and making the accession negotiation process as effective as possible to avoid misunderstandings.

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