



Global Security Program

**Ukraine's Future Relations with the
European Union: Policy Recommendations
for the New Ukrainian Government**

Key Policy Decisions to be Made From 2006 to 2008



EASTWEST INSTITUTE

Global Security Program Mission

The mission of the EWI's Global Security Program is to assist Europe, the United States, Russia, China and other international actors in reaching a new level of cooperation across borders and sectors to enhance the security of our societies and achieve a greater degree of regional and global stability and peace. Our primary focus is on the protection of people, economies and infrastructures through innovative public-private partnerships and dealing with the consequences of growing tensions between the processes of globalization on the one hand and national security concerns on the other.

Assistance to Ukraine-EU Integration Project on Future Relations

With the current key political documents that regulate EU-Ukraine relations – the Partnership and Cooperation Agreement (PCA, signed in 1994, in effect since 1998) and the EU-Ukraine Action Plan – expiring in 2008, the framework for further development of the bilateral contractual relations will dominate the EU-Ukraine agenda in the nearest future with consultations due to start in 2006.

In order to provide expert support to Ukraine's efforts towards developing a future strategy for European Union integration, in December 2005, an independent, not-for-profit, international institution **the EastWest Institute** (EWI) launched its **Assistance to Ukraine-EU Integration Project on Future Relations** with financial support from the Swedish International Development Cooperation Agency (Sida), the Charles Stewart Mott Foundation, and EWI Board of Directors. This Project focused on proposing ideas for a future roadmap for EU-Ukraine relations and negotiations as well as on developing recommendations for the post-PCA EU-Ukraine agreement based on the experience gained by the new EU member states from their negotiations and conclusions of their Association Agreements. For this purpose, the EastWest Institute has brought together **a joint EU-Ukraine multidisciplinary expert team**. In order to produce a consolidated position, the proposed recommendations were **internally** discussed in a series of Expert Meetings and consultations that were held from January-May 2006. Expert findings will be presented at the Conference "Ukraine and European Integration: Challenges and Opportunities" that will be held in Kyiv on July 6, 2006.



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***Key Policy Decisions to be Made From 2006
to 2008***

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TABLE OF CONTENTS

INTRODUCTION	4
EXECUTIVE SUMMARY	5
CHAPTER 1.	
UKRAINE'S ECONOMY AND EU INTEGRATION	11
BACKGROUND.....	11
RECOMMENDATIONS.....	15
CHAPTER 2.	
POLITICAL AND SECURITY ASPECTS OF EU-UKRAINE RELATIONS	17
BACKGROUND: RESULTS OF 2005-EARLY 2006.....	17
RECOMMENDATIONS FOR 2006-2007.....	18
Prospects for 2008 and beyond.....	20
CHAPTER 3.	
JUSTICE AND HOME AFFAIRS	21
BACKGROUND.....	21
RECOMMENDATIONS.....	22
CHAPTER 4.	
APPROXIMATION OF UKRAINIAN LAW TO THE EU LAW	25
BACKGROUND.....	25
RECOMMENDATIONS.....	28
CHAPTER 5.	
INSTITUTIONAL ELEMENTS AND ADMINISTRATIVE CAPACITY	31
BACKGROUND.....	31
RECOMMENDATIONS.....	35
NOTES	37
MEMBERS OF THE EXPERT TASK FORCE	39

INTRODUCTION

This report was prepared by the EU-Ukraine interdisciplinary Expert Task Force within the EastWest Institute's (*EWI*) *Assistance to EU-Ukraine Integration Project on Future Relations*.

This report is the product of four Expert Task Force Meetings and numerous consultations held from January – May 2006 with Ukrainian institutions, officials, and experts, as well as their counterparts in the European Union. The paper presents a set of policy recommendations for the Ukrainian leadership elected in March 2006.

The proposed recommendations may prove particularly timely as Ukraine prepares to lay a foundation for future contractual relations with the EU and to negotiate a new bilateral agreement, which will replace the EU-Ukraine Partnership and Cooperation Agreement in 2008. The authors of this report have tried to be both realistic and optimistic. Following the last enlargement round in May 2004, there has been heated discussion about the EU's 'absorption capacity', thus lessening the chances of speedy EU membership for Ukraine and other countries sharing European aspirations. However, the conclusions of the recent meeting of EU leaders in June 2006 demonstrated that the EU is still open for further EU enlargements provided the (potential) candidate countries meet the criteria as outlined in the European Treaty.

The main philosophy of this report is driven by the fact that European integration (with or without membership) is good for Ukraine and her people. It will help to modernise the economy, increase living standards, strengthen democracy and provide hope to the Ukrainian population. At the same time, European integration should not happen at the cost of Ukraine's relations with her other neighbours, in particular the Russian Federation. In fact, the report suggests specific areas where closer

Ukraine's cooperation with Russia (and other neighbours) would contribute to Ukraine's integration with the EU.

This report was prepared by both EU and Ukrainian experts, and thus reflects both the EU's and Ukraine's expectations about and perspectives of their future relations. This report focuses on recommendations for specific and pragmatic policy actions to be taken by the new government of Ukraine from 2006-2008 in the areas of economy, political and security cooperation, legal harmonisation, justice and home affairs as well as institutional structure and administrative capacity. Implementation of these recommended policies would position Ukraine very strongly in negotiating the future 'enhanced agreement' between the EU and Ukraine in 2008.

The EastWest Institute would like to express its immense gratitude to the Charles Stewart Mott Foundation, the Swedish Agency for International Development Cooperation (Sida) and its representative Mirja Peterson, as well as EWI Directors Maria Livanos Cattai, Francis Finley and Frank Neuman for their cooperation, valuable contributions and financial support of this project.

I would personally like to express my deep gratitude to the whole Expert Task Force assembled by the project and to my EWI colleagues *Olga Mykhailiuk* and *Elena Parfenova* for their hard work, enthusiasm, professionalism and commitment in the implementation of the project.



Vasil Hudak
Vice-President
EastWest Institute

EXECUTIVE SUMMARY

European integration is a complex, continuous and multidimensional process with different stages and forms of integration. Membership in the European Union is the highest form of such integration. The experience to date of the 'old' and 'new' member states of the European Union proves that European integration helps to prevent inter-state conflicts, promotes economic growth, strengthens democracy and provides a stimulus to the overall societal development.

Ukraine officially declared its European aspirations following independence from the Soviet Union. However, these official declarations were rarely followed by practical actions. The Orange Revolution brought radical change. Never before in recent history did this country's political changes attract such attention and more importantly support throughout the European Union. On the emotional wave that followed the Orange Revolution, many Europeans, for the first time, talked openly about the possibility of Ukraine's future integration into the European Union. While stating that far-reaching reforms must first be implemented, positive signals were sent from individual member states and EU institutions (in particular, from the European Parliament.)

However, the complex internal dynamics in Ukraine after the Orange Revolution combined with the 'period of reflection' within the EU after the European Constitutional Treaty was rejected in referenda in France and the Netherlands, had an important impact on EU-Ukraine relations. The issue of the EU's 'absorption capacity' has been raised by a number of EU politicians. Nevertheless, the European Union continues to enlarge: Bulgaria and Romania are to become EU members in 2007/ 2008, depending on the fulfilment of their obligations. Croatia and Turkey started accession talks on October 3, 2005. Next in line are the Western Balkan countries, starting from FYROM, which was granted candidate country status in December 2005.

Ukraine is the next in line. Despite different views among individual member states, the EU Council in June 2006 reiterated that **the European Union is open to any country that would fulfil Article 49 of the European Treaty¹ and would meet the conditions for membership.** It is now up to the people and leadership of Ukraine to demonstrate its ability to fulfil these criteria!

The new government of Ukraine that emerged from the March 2006 elections will have a historical opportunity to move Ukraine on an accelerated trajectory towards EU integration. The next two years (through mid-2008) will be crucial for determining the future framework and content of EU-Ukraine relations! **With the initial 10-year period of the current Partnership and Cooperation Agreement² as well as the 3-year Action Plan coming to an end in 2008, there is a unique opportunity for the Ukrainian government to raise the bar and negotiate agreements with the EU that will strengthen relations between Ukraine and the European Union and will provide impetus to the current government to accelerate reforms.** The new government should make clear its EU-related ambitions. These would be seen as empty declarations if not complemented by well-defined priority goals and implementation measures. It is therefore important to prioritise and implement those parts of the EU-Ukraine Action Plan (AP), which are in Ukraine's interest and will be beneficial for Ukrainian political, economic and social development. Successful implementation of the Action Plan will encourage the EU to look upon Ukraine as a potential member and is likely to lead to a deeper 'enhanced agreement' being signed in 2008 and a possible accession in the next decade. A strong start would be the best message that Ukraine could send to the EU.

The history of European integration shows that domestic changes at the member state level (for example, upcoming elections, good economic development and other successes) as well as external developments (positive and negative) often alter the situation and public attitude towards European integration and enlargement. In addition to external factors, continued and intensified political, economic, legislative and institutional reforms in Ukraine can and will pressure the EU to reconsider its relations with Ukraine. **Given that the ultimate goal of Ukraine's integration with the EU is to raise the welfare of the Ukrainian citizen**, domestic reforms driven by the country's leadership and the establishment and operation of common policy and cultural spaces are important stages of EU integration.

At this stage, the European Neighbourhood Policy (ENP) remains the cornerstone of EU's relations with Ukraine. The EU is ready to deepen relations with the country on the basis of **'an enhanced agreement'**³. However, some of the EU member states consider the inclusion of Ukraine's EU membership perspective in the new agreement to be an open question. This situation shows that a closer dialogue with targeted EU member states could improve bilateral relations between the EU and Ukraine. Overall, observers have noted that, while progress has been made, a lot of work remains in EU-Ukraine integration. Experience shows that a closer dialogue with EU member states can greatly improve the situation. In this context, Ukraine should not hesitate to formulate and present its own perception of this 'enhanced agreement'.

At the same time, it is important that the process of deepening Ukraine's integration with the EU does not damage Ukraine's relations with her other neighbours, in particular with the Russian Federation. In fact, better relations with her neighbours will increase Ukraine's chances for accelerated integration with the EU. The government of Ukraine needs to be innovative and pro-active in developing qualitatively new relations with its neighbours within the framework of a broader process of European integration.

In this context, **this report presents recommendations to the new Ukrainian**

government focusing on the crucial period of 2006-2008. These recommendations for specific policy-actions were prepared by the joint EU-Ukraine Expert Task Force within the EastWest Institute's Assistance to Ukraine-EU Integration Project on Future Relations. Based on the analysis of the latest developments in EU-Ukraine relations, the current situation and the relevant experience of new EU member states, this Report proposes specific recommendations as to the institutional structure and administrative capacity, legislative approximation, economic cooperation and reforms, political and security cooperation, as well as justice and home affairs.

The key recommendations are as follows:

- **The new government should consistently demonstrate its strong political will towards European integration and clearly articulate its EU policy. In this context, the government should consider drafting a new National Strategy for European Integration, which would define Ukraine's realistic goals and prioritise steps and measures Ukraine should take towards the phased implementation of this Strategy.**
- **The new government should at an early stage explicitly state Ukraine's ultimate objective of accession to the EU. It should concentrate in the short term on fulfilling the conditions for membership. The application for membership should be made when clear progress has been made.**
- **In 2006-2008, the new government should ensure the implementation of the EU-Ukraine Action Plan to utilise to the fullest extent the tools offered by the European Neighbourhood Policy, while sustaining and emphasizing the strategic goal of EU membership. It should develop a clear strategy and stay consistent in implementing**

further internal political and economic reforms as a precondition for upgrading relations with the EU.

- **In terms of political reform, the new government should concentrate on democratic institution-building, strengthening the rule of law, fighting corruption, implementing public administration, judicial and legal reforms, as well as facilitating the development of local government.**
- **Improving the economic well-being of Ukrainian citizens is the ultimate goal of Ukraine's integration with the EU. Trade liberalisation through agreements with the WTO and the EU (free trade agreement), tackling the insider economy and corruption, as well as improving the business environment are some of the key building blocks to achieve this goal.**
- **In parallel, the new government should realistically define, elaborate and present its position on 'an enhanced agreement' with the EU. Progress with domestic reforms and successful implementation of the EU-Ukraine Action Plan will strengthen Ukraine's position in the negotiations on its future relations with the EU.**
- **Following the evaluation of the current institutional arrangements for European integration, the new government should upgrade and strengthen (at all levels) the institutional coordination of its European integration policy. Towards this goal, the government should enhance the efficiency of the current coordinating structure, and ensure the highest level political support to its activities.**
- **Following Constitutional reform it is also critical that the government enhances overall coordination and cooperation with the Parliament.**

- **Taking into account the need to provide wider public support for Ukraine's European integration, a comprehensive internal communication strategy should be elaborated. In parallel, the government should launch a proactive and well-targeted external communication strategy, building support for Ukraine's European integration amongst EU member states and in Brussels.**

In terms of **economic development** and integration with the EU, Ukraine's government should:

- 1.1.** Pursue trade liberalisation with the aim of joining the WTO in 2006 and then proceed to negotiate a free trade agreement with the EU;
- 1.2.** Initiate a mid-term financial perspective in support of Ukraine's EU integration in order to ensure a smooth implementation and financial support of relevant reforms;
- 1.3.** Continue the fight against the 'insider' economy and corruption at all levels. The government should concentrate on building interest groups in business and the state which have an interest in openness and transparency. Greater powers should be given to the competition authority and state aid should be made more transparent;
- 1.4.** Implement measures to guarantee 'national' treatment to foreign investors and improve the quality of the business environment: high standards of corporate governance are essential to the modernisation of the economy;
- 1.5.** Take measures to increase energy efficiency in the economy and impose hard budget constraints in the sector. Maximise the value of transit facilities;
- 1.6.** Take measures to pursue privatisation.

In the area of **political and security cooperation** with the EU, it is proposed that the Ukraine government:

- 2.1.** Expand the evolving practice of joining the EU Common Foreign and Security Policy statements and conducting regular consultations with the EU on foreign policy planning;
- 2.2.** Closely coordinate positions and practical steps with the EU towards the final settlement of the Transnistrian conflict. Both sides should

increasingly place the issue of Transnistrian settlement within the broader context of Ukraine's (and Moldova's European integration);

2.3. Give special attention to dialogue and practical cooperation with the EU on energy security issues, including integrating Ukraine into the European energy strategy and ensuring diversification of energy supplies to both Ukraine and the EU;

2.4. Conduct an active regional policy; participating in and cooperating with regional and subregional organisations and initiatives could facilitate Ukraine's European integration. Foster closer co-operation and coordination with the EU in elaborating a multifaceted but coherent policy towards Belarus;

2.5. Promote further cross-border cooperation with the neighbouring EU member states as a vehicle of Ukraine's bottom-up integration with the EU;

2.6. Conclude negotiations on a visa facilitation agreement with the EU aimed at ensuring easier travel for broad categories of Ukrainian citizens to EU member states;

2.7. Seek ways to improve relations with Russia, while putting this relationship in the broader context of Ukraine's European integration. It is important to combine in a positive way the interests of Ukraine, the EU, and Russia. Potential areas for such 'trilateral' dialogue and cooperation could include energy security and combating illegal migration, trafficking and organised crime, including further development of modern border infrastructure along the entire perimeter of Ukraine's borders.

In order to further promote EU-Ukraine cooperation **in Justice and Home Affairs (JHA)**, the recommendations are as follows:

3.1. A separate JHA chapter covering migration and asylum issues, combating organised crime, as well as judicial and law-enforcement cooperation should be inserted into 'an enhanced agreement';

3.2. Ukraine and the European Union should conclude a bilateral agreement on facilitating visa regime and migration policy;

3.3. A trilateral political dialogue between Ukraine, the EU and other neighbouring countries (Russia, Belarus, and Moldova) should be launched regarding the common readmission space and other issues of common interest.

In the area of **legislative approximation** it is proposed to:

4.1. Conduct detailed screening of EU and Ukrainian legislation to itemise law harmonisation requirements as stipulated in the Ukraine-EU Action Plan. This should result in two lists of mandatory and recommended legislation to be adopted by Ukraine in order to establish a FTA and to integrate into the EU internal market;

4.2. Recommend that the Parliament of Ukraine establish a separate Section of Approximation of Ukrainian Law to the EU Law in the Main Department of Research and Expertise in the **Office of the Parliament** to advise on the compliance of the proposed drafts with EU Law;

4.3. Recommend that the Parliament of Ukraine reconsider its Rules of Procedure in order to establish procedures for checking all drafts for compliance with EU Law throughout the legislative process;

4.4. Establish separate divisions on legal harmonisation within European Integration Departments in the ministries to check the compliance of draft laws with EU law;

4.5. Make impact assessment studies of the economic, administrative, institutional, and financial implications for all major EU legislation to be adapted in Ukraine. In order to ensure a smooth implementation of the National Strategy for European Integration and legislative approximation these implications should be considered as part of the mid-term fiscal perspective;

4.6. Appoint officials responsible for the coordination and consolidation of translations in ministries in order to enhance the efficiency of the process of consolidating all translations of EU law.

In order to improve **institutional structure and administrative capacity** the Ukrainian government should seek to:

5.1. Establish a high-level political coordination body chaired by the prime minister and comprised of the key members of the government (based on the experience of new EU member states). The new coordinating body can build upon the restructuring of the existing government Committee on European and Euro-Atlantic Integration with the new body dealing with EU affairs exclusively and supported by the

Secretariat (Department for European Integration);

5.2. Task one government institution with the coordination of EU affairs. This should be led by the senior government minister responsible for EU integration.

5.3. Implement public administration reform in order to ensure its political independence and to increase its efficiency and professionalism. The reform should include restructuring, training and improved facilities (equipment). Systematic, large-scale and targeted training for civil servants of central and local authorities of Ukraine in EU member states with a view to gaining

knowledge and experience in operating EU policies and programmes is necessary. These changes will require additional budgetary resources;

5.4. Establish regular fora on European Affairs, at local and national levels, for political, business and civil society representatives to gain support and address the challenges that EU integration poses to Ukraine.

The recommendations above are justified and presented in more detail in the relevant chapters below.

Chapter 1.

Ukraine's Economy and EU Integration

Background

The current economic relationship between Ukraine and the European Union – trade and integration

Contractual economic relations between Ukraine and the EU are at present determined by the terms of the **Partnership and Cooperation Agreement (PCA), which entered into force in 1998**. The PCA establishes trade between the parties on a Most Favoured Nation basis (MFN), with the possibility of establishing a free trade area (FTA) when Ukraine has completed its accession to the World Trade Organisation (WTO). Ukraine also benefits from the EU's Generalised System of Preferences (GSP), although many agricultural products do not benefit from GSP.

Sectoral agreements have been made in textiles and steel. The textile agreement eliminates quantitative restrictions, while the steel agreement, though not eliminating quotas, does allow certain types of steel to enter the Union relatively freely.

The EU has already signed off on its bilateral agreement with Ukraine in the context of WTO entry. This will commit Ukraine to eliminating most controls on exports and to binding its tariffs. **Together with the conclusion of the agreement with the United States in March 2006, and subsequently with Australia, this makes Ukraine's entry into the WTO more likely this year**, but the problem of harmonisation of legislation of Ukraine in accordance with WTO rules and procedures is still outstanding and depends on the Parliament of Ukraine. Considering the experience of the events of summer 2005 when

discussion prior to voting on the laws related to WTO accession resembled a battlefield, and in the context of the general elections held on March 26, 2006, **it is difficult to predict whether the accession process can be concluded this year**, though recent progress leads one to be optimistic.

The granting of market economy status by the EU (and the USA) is above all a political boost for exporters. A positive decision could also have been expected in the current investigation against the Ukrainian producers of seamless pipes and tubes but hopes have not been realised. Proposed duties have reached 26% and are in practice prohibitive for exports estimated at \$100 mln. EU trade defence policies have also been applied to Ukrainian chemicals, fertilizers and grain. Such measures have a negative impact on Ukraine's major exporting sectors. In this context, Commissioner Mandelson's intention to reconsider the way the EU uses its trade defence mechanisms is a good message for Ukraine.

The current situation of trade relations between the EU and Ukraine is nevertheless far more liberal than a decade ago. Ukraine now trades with the Union on much the same basis as other countries, a far cry from the regime of autonomous measures, which prevailed before the trade articles of the PCA became binding. **As a result, trade has expanded and the EU now makes up around 35% of Ukraine's foreign trade.**

■ European Neighbourhood Policy (ENP) and the Action Plan (AP)

Economic relations have moved on to a different plane with the introduction of ENP and the agreement in February 2005 of the Action Plan between the EU and Ukraine.

The headlines of ENP promise greater trade liberalisation and a stake in the internal market of the Union through increased regulatory harmonisation. Participation in Community programmes and additional financial assistance through a new European Neighbourhood and Partnership Instrument (ENPI) are also promised.

ENP operates essentially as a bilateral policy – differentiation is the key expression. Bilateral relations are organised around Action Plans agreed between the Union and participating states in ENP. The Ukrainian AP has been agreed for a period of three years and will end at the same time as the initial phase of the PCA in 2008. **Thus the design of 'an enhanced agreement' to replace these existing arrangements is an urgent task.**

In the economic sphere, the AP emphasises actions to liberalise trade and improve the business environment. It underlines the objective of negotiating a FTA once WTO accession has been completed. The integration of Ukraine into the internal market of the Union is to be achieved by a high level of regulatory harmonisation, leading eventually to the negotiation of an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) in key sectors. Measures in the Action Plan are also designed to create a more predictable and stable business environment.

Although Ukraine has accepted ENP conditions and requirements, the government has stressed on many occasions that Ukraine is aiming for a different relationship with the EU. Ukraine is prepared to take additional commitments and to comply with EU standards and requirements, even if the EU remains unwilling to reconsider its position regarding Ukraine.

■ **WTO accession and the Free Trade Agreement**

The first priority of Ukraine's international economic policy must be membership of the WTO. This will not only ensure that Ukraine can be part of fair and open trading on world markets, strengthening the country's position against trade protectionism, but it will also open up the way to negotiate a free trade area with the Union and, more

importantly, will lead to 'an enhanced agreement' to follow on from the PCA and Action Plan.

A free trade agreement with the Union would be a significant boost to the Ukrainian economy, but the extent will depend on the range of products covered by the Agreement. In the past the Union has frequently excluded agriculture and some heavy industry from the agreement. Such actions now would of course reduce the value of the agreement to Ukraine. Nevertheless opening up the possibility of trade should encourage both domestic and foreign investment and help with the modernisation of the economy.

A liberalisation of Ukraine's trade regime vis a vis the EU and the rest of the world will encourage Ukrainian business to diversify exports and will also lead to a broader use of GSP. It will also stimulate trade in services.

The modernisation of Ukraine's economy. Typically, the basis for increased investment and thus higher sustained economic growth is a macro-economic policy predicated on long-term economic stability. Part of this policy should be the establishment of a mid-term financial framework for government expenditure, which would go some way to ensuring financial stability.

However, the government should not ignore the micro-economic aspect.

Ukraine's economy has suffered from an insider economy and the ensuing lack of competition. The result is an economy heavily dependent on a few low value-added sectors, with poor productivity and high sensitivity to small movements in prices and exchange rates and to external shocks.

An example of this sensitivity to external shocks was the reaction of Ukraine's industry to the sudden rise in gas prices – a sector that has been cosseted by low energy import prices. While Ukraine's economy is heavily dependent on cheap energy, it is one of the least efficient producers of energy because of an outdated

energy industry.

The modernisation of Ukraine's economy will rely on heavy investment in modern equipment, especially in the manufacturing and energy sectors. Much of this investment will come from foreign sources.

Foreign direct investment (FDI) has played a significant role in the modernisation of the economies of the new member states of the Union.

FDI brings not only capital into the country, but perhaps more importantly new management and technical skills as well as new technology and production methods. Through its requirement of high quality production from its suppliers, FDI leads to a modernisation of local business, which will now have to work to internationally acceptable quality standards. Foreign acquisitions in the banking sector, which are now progressing rapidly in Ukraine, also lead to more competitive credit offerings and will improve the supply of bank finance to small and medium size business.

The factors which attract FDI include the size of the market, the business regulatory environment, the absence of corruption and non-transparent business relations and the relative cost of production factors. In Ukraine a market exists, albeit with a low purchasing power, though this may accelerate rapidly in the coming years. The relative cost of production factors is very attractive to EU and American companies. In order to attract substantial FDI, Ukraine must overcome the widespread perception among foreign investors that the country suffers from an inconsistent regulatory environment and corruption.

The government has been trying to tackle these issues over the last 18 months with some success though there is a long way to go before the quality of the business environment reaches the levels of the new member states.

The need to improve the business regulatory environment is evident from business surveys carried out with domestic and foreign companies. Despite Ukraine's advantages in

terms of lower production costs and proximity to markets, a number of factors discourage foreign investors from investing in Ukraine. They include: the complexity of dealing with the national and regional public authorities; difficult and sometimes corrupt customs procedures; the low security of property rights; the lax enforcement of contracts; and the lack of mechanisms to protect minority shareholders.

The EBRD notes that, of all the countries in central and eastern Europe, Ukraine's Administration is one of the most difficult to deal with. Overall, Ukraine is classed by the EBRD in the lowest category in terms of compliance with international standards of corporate governance, together with Tajikistan and Belarus.

Another important aspect of the regulatory environment is the predictability of government actions. If government policy is continually changing, investors, domestic and foreign, cannot be sure of the profitability of their investment and they are liable to stay away. Part of the problem is that different authorities in Ukraine have not necessarily been saying the same thing and this has caused confusion. Recently there were several contradictory statements on the number of companies likely to be taken back into state ownership in order to be reprivatised. Another example was the sudden change in the law regarding Special Economic Zones, through which honest and serious companies, which had established plants in the Zones, suddenly found themselves in a completely different financial environment from the one they had been attracted to invest in.

The modernisation of Ukraine's economy has been held back by isolation from external competition and by the power of the 'insider economy'. The insider economy is especially well developed in Ukraine, where large financial industrial groups (FIGs) dominate industrial output. These groups maintain strong connections with government and other state institutions, allowing them to circumvent the normal operating rules of the market economy.

Many operators in Ukraine are thriving from the

economic rents they derive from the lack of a transparent and competitive environment. They make super-normal profits and have little incentive to change the system. This, together with investments in local facilities, often leads to public appreciation even though in the medium-term the public is being condemned to work in low quality jobs and have a very poor standard of living. The status quo seems less risky than change.

The existence of these negative factors has led foreign investors to shy away from investing in Ukraine. Between 1989 and 2004 cumulated foreign direct investment averaged \$3,700 per capita in Hungary, \$1,500 in Poland but only \$170 in Ukraine (source: EBRD). **The new government should continue to tackle the problems of the “insider economy” and corruption and introduce a realistic programme to simplify the legal business environment and to give more protection to investors. The decision to integrate with the European Union will also be an important step in the struggle to attract more foreign investment.**

There are however several hopeful signs. The government has done its best to reduce the scale of the insider economy over recent months, with some success. The World Bank reports that there has been a marked decrease in insider deals concerned with privatisation of state-owned firms and state contracts. The greatest success in this field was the privatisation at the end of 2005 of *Kryvorizhstal*, the largest steel plant in Ukraine for \$4.8bn. The government had previously sold this company for only \$800,000.

The other hopeful sign is that some of the FIGs are now beginning to transition to open, law-abiding companies, with international status. The most successful companies are beginning to realise that they will gain from the application of international standards of governance in Ukraine, as these will protect them from aggressive and shady companies. As these companies also begin to invest abroad, they will be compelled to abide by international standards of corporate governance.

Energy policy and relations with Russia

Ukraine today faces the danger of a serious external shock to its economy due to drastic price increases in Russian gas supplies.

The decisions taken by Russia were not entirely based on economics but were also based on political calculations. The solution to the short-term problem lies therefore also in the political/security sphere.

In the medium and longer term, economic policies which improve energy efficiency in Ukraine and impose hard budget constraints will be necessary as energy prices move towards world market prices.

On the domestic front Ukraine needs to improve its performance as an energy producer and as an energy transit country. There is considerable scope for improvement in the area of domestic gas extraction but it is in being a reliable and high quality transporter of energy that Ukraine will gain most. Higher returns from transit will help offset to some degree the rise in energy import prices.

Having experienced the first serious problems with Russian supplies and prices this January, the government of Ukraine has recently prepared a concept paper outlining the long-term development of the energy sector of Ukraine up to 2030. The document foresees a 5-fold decrease in energy dependency and a 3-fold increase in local energy production.

Reducing the inefficient consumption of energy of the economy will require the government to pursue policies which lead to full-cost recovery from consumers. This policy will need to be consistently pursued, while ensuring that domestic consumers are given time to adjust to higher prices.

Today the World Bank reports that Ukraine uses 22 times more energy to produce each unit of GDP than Germany. Reducing reliance on high levels of energy consumption is the most important longer-term challenge. It will only be met by hard budget constraints and considerable investment in industry.

EU Integration as a channel for modernisation

EU integration will help the modernisation of Ukraine's economy in a variety of ways:

- Deeper integration with the EU, and especially the negotiation of a new Treaty with clear obligations on both sides will reduce the perceived risk of investing in Ukraine. Better credit ratings will reduce the cost of borrowing and will therefore reduce the costs of operating in the country and of international loans.
- Implementation of the Action Plan will introduce a much improved business environment from a legal perspective; it will be difficult for Ukraine to roll this back.
- Integration leading to more liberal trading rules will allow domestic industry to develop further and attract FDI.
- Contractual relations with the EU will anchor reforms.
- The proposed European Neighbourhood and Partnership Instrument (ENPI) will provide a degree of financing for Ukrainian reforms. The Ukrainian authorities should carefully consider their priorities in the use of these funds.

The Action Plan is an ambitious programme of reform. Implementing the measures in the Action Plan would go a long way towards achieving the necessary reform objective of modernising the economy. If Ukraine makes good progress in Action Plan implementation, it could consider a very ambitious 'enhanced agreement' with the EU in 2008.

Ukraine should now concentrate on implementing the agreed Action Plan and preparing for 'an enhanced agreement' with the EU.

This 'enhanced agreement' could be an enhanced association agreement, going beyond the normal agreements by laying emphasis on integrating sectors of the economy with the

EU's internal market.

Recommendation

Ukraine's Gross Domestic Product per capita is only 14% of that of its neighbour Hungary and 21% of that of Poland. The main aim of any Ukrainian government must therefore be to ensure that the economy expands rapidly in an environment of macroeconomic stability.

Ukraine has lost a decade of opportunity since the collapse of communism. The inconsistencies in economic policy over this decade have led to Ukraine falling far behind its neighbours.

However trade liberalisation and modernisation of the economy leading to higher productivity and economic growth can produce significant improvements in the standard of living.

The government should:

- 1. Pursue trade liberalisation** with the aim of joining the WTO in 2006 and then proceed to negotiate **a free trade agreement with the EU;**
- 2. Continue the fight against the 'insider' economy and corruption** at all levels: the government should concentrate on building interest groups in business and the state which have an interest in openness and transparency. Greater powers should be given to the competition authority and state aid should be made more transparent;
- 3. Implement measures to guarantee 'national' treatment to foreign investors and improve the quality of the business environment.** High standards of corporate governance are essential to the modernisation of the economy;
- 4. Take measures to reduce the economy's dependence on energy** and impose hard budget constraints in the sector. Maximise the value of transit facilities;
- 5. Pursue EU integration** through implementation of the EU-Ukraine Action Plan, with the aim of integrating with the internal market of the Union in those areas of specific value to the Ukrainian economy.

Chapter 2.

Political and Security Aspects of EU-Ukraine Relations

When leaders of the EU and Ukraine met in Kyiv on December 1, 2005 for the EU-Ukraine Summit, they acknowledged 'the significant progress' achieved in the implementation of the EU-Ukraine Action Plan, which was signed on February 21, 2005.

Foreign and security policy is an area where cooperation between the EU and Ukraine has arguably advanced most over the past year. Political dialogue too has intensified considerably, yet disagreements remain as to the future of the EU-Ukraine relationship.

2006 and 2007 are likely to become the years that could set the foundation for the future of Ukraine's integration with the EU. These are the last two years of the implementation of the three-year EU-Ukraine Action Plan. These are also the years when deliberations are expected to take place on 'an enhanced agreement' to replace the Partnership and Co-operation Agreement in March 2008.

Background: Results of 2005-early 2006

In the words of the EU High Representative for the Common Foreign and Security Policy *Javier Solana* and Commissioner for External Relations *Benita Ferrero-Waldner*, Ukraine's Orange revolution has clearly demonstrated the nation's 'strategic choice in favour of democracy and reform.'

A year and a half after the Orange revolution, the results of democratic reform in Ukraine are mixed. The reform process has turned out to be much more difficult than many expected. The lack of a clear reform strategy, the failure to deliver on many 'Maidan' promises, the split of the 'Orange coalition' in the fall of 2005 and the subsequent in-fighting, as well as the weakness of democratic institutions and of the system of governance have all had an impact.

Despite these problems, and in terms of political change, Ukraine has become a different country. The Orange Revolution created a new political atmosphere, characterised by political pluralism and competition. The country has progressed significantly in implementing provisions of the EU-Ukraine Action Plan under political dialogue and reform, in particular those related to ensuring the freedom of the media, freedom of expression and guaranteeing democracy. Furthermore, the general elections on March 26, 2006 were recognised by the OSCE and the international community as 'free and fair'. Ukraine's achievement of this 'free and fair' designation was a key priority of the EU-Ukraine Action Plan. This new political atmosphere in Ukraine as well as the nation's increased adherence to European values has created a solid foundation for substantial progress in EU-Ukraine practical cooperation, in particular in the area of foreign and security policy.

On Kyiv's initiative and persistence, the EU has started to invite Ukraine to join its Common and Foreign Security Policy (CFSP) statements. As a result, within the OSCE, for example, Ukraine subscribed to about 90% of all the EU statements in 2005. Ukraine and the EU also launched regular consultations on foreign policy planning.

In 2005, the EU and Ukraine signed an agreement on cooperation in EU-led crisis management operations, and an agreement on procedures for the exchange of classified information. Ukraine continued its active participation in EU operations in the Western Balkans (Bosnia and Herzegovina, and fYROM), while the EU decided to assist Ukraine in destroying its stockpiles of Small Arms and Light Weapons (SALW).

Most significantly, Ukraine and the EU began to cooperate closely on the settlement of the "frozen" (or "protracted") conflicts, firstly in the solution of the Transnistrian conflict. The Ukrainian initiatives, announced in April 2005 and known

as the Yushchenko plan, instilled new dynamism in the settlement process by re-opening the stalled negotiations and expanding the political framework for negotiations by inviting the EU and the USA as observers (5+2 format). In line with this plan and consecutive agreements, on November 30, 2005 the EU opened its Border Assistance Mission (EUBAM) on the Ukrainian-Moldovan border. On March 1, 2006 Ukraine introduced new customs regulations for Transnistrian goods crossing the Ukrainian border.

Ukraine and the EU have also closed ranks in their positions on Belarus. Ukraine has been consistently supportive of the EU's statements criticizing the state of democracy and the conduct of presidential elections in Belarus on March 19, 2006. At the same time, official Kyiv has been warning against the international isolation of Belarus, and in 2005 even attempted to play a mediating role between the Belarusian authorities and Poland and the EU.

Ukraine's other regional initiatives have received, however, a less welcoming response from Brussels. The EU took a cautious and reserved approach both to the establishment of the Community of Democratic Choice (CDC) on December 2, 2005 in Kyiv and towards the transformation of GUAM into a regional organisation – the Organisation for Democracy and Economic Development - GUAM, which was announced at the GUAM Summit of Heads of State in Kyiv on May 23, 2006.

In terms of political dialogue, the dynamics in EU-Ukraine relations have proved more complicated. In the immediate aftermath of the Orange Revolution, the new Ukrainian government was seriously contemplating the possibility of submitting a formal application for EU membership later in the year. Hopes and expectations as to Ukraine's integration with the EU had never been higher. The new leadership clearly articulated European integration, ultimately aimed at attaining EU membership, as a strategic goal and a central element of Ukraine's new foreign policy. At the same time, European public opinion was displaying an unusually positive attitude towards Ukraine, as well as towards the possibility of Ukraine's future accession to the EU. The European Parliament adopted the resolution on "Results of Ukraine elections" (January 13, 2005), which called for the consideration of "other forms of association with Ukraine, giving a clear European perspective for the country...⁸⁵, possibly leading ultimately to the country's accession to the EU." In February, Ukraine agreed to the EU-proposed Action Plan within the framework of the European Neighbourhood Policy (ENP), while maintaining

reservations against the concept of the ENP. This Action Plan was negotiated by the European Commission in 2004, with the then Kuchma government. Following the Orange Revolution in February 2005, it was enhanced with 10 additional proposals recommended by *Javier Solana and Benita Ferrero-Waldner*. On April 22, 2005, the Ukrainian government adopted a detailed roadmap – "EU-Ukraine Action Plan: Implementation Measures in 2005." On April 27, 2006 a similar roadmap was also adopted for 2006.

Yet, the second half of 2005 has brought another twist in the dynamics of EU-Ukraine political dialogue. The failed referenda on the EU Constitution in France in May and in the Netherlands in June have resulted in one of the most serious crises in EU history. Its immediate consequence has been "enlargement fatigue" within the EU. The ministerial meeting between the EU Troika and Ukraine on March 3, 2006 revealed serious differences between Ukraine and EU positions on a new contractual arrangement and the future of bilateral relations. Although Ukraine's ability to meet democratic European standards (proven during the March 2006 elections) prompted the European Parliament to adopt another resolution calling the Commission to 'begin to negotiate an Association Agreement' with Ukraine, the difficulties in political dialogue between the EU and Ukraine persist.

Recommendations for 2006-2007

The next two years – 2006 and 2007 – provide Ukraine with an important opportunity both to further strengthen and consolidate the evolving foreign and security policy cooperation and coordination with the EU, as well as to engage the Union and its members in a political dialogue on the nature of a new contractual arrangement between Ukraine and the EU. It is, therefore, critical for Ukraine to take maximum advantage of the remaining time (the rest of 2006 and 2007) and make substantial progress in several areas.

In terms of **domestic reforms**, the government should:

1. Ensure full implementation of the EU-Ukraine Action Plan, while sustaining and emphasizing the long-term strategic goal of EU membership. As in 2005 and 2006, the new Ukrainian government should elaborate a detailed and specific roadmap for 2007;

2. Develop a clear strategy aimed at consolidating the democratic gains and stay firm and consistent in pursuing further reforms, focusing on institution-building, strengthening the rule of law, fighting corruption, implementing public administration, judicial and legal reforms, as well as facilitating local government development;

3. Consolidate political consensus and build broad public support to European and Euro-Atlantic integration by conducting a vigorous public information campaign.

In **foreign policy** (relations with the EU and EU member states), the government should:

4. Develop and launch a pro-active and well-targeted external communication strategy, aimed at building support for Ukraine's European integration amongst EU member states. Such a strategy could *inter alia* include: enhancing contacts with the European Parliament and strengthening bilateral relations with the EU member states including by developing regular and intense inter-parliamentary contacts between the Parliaments of Ukraine and EU member states, broadening links between NGOs and think-tanks, and promoting cultural exchanges;

5. Conduct an active regional policy; participation in and cooperation with those regional and subregional organisations and initiatives that could facilitate Ukraine's European integration. These include the Central European Initiative (CEI), Community of Democratic Choice (CDC), Organisation for Democracy and Economic Development - GUAM, the Visegrad Group, etc.;

6. Promote further cross-border cooperation with the neighbouring EU member states as a means to support Ukraine's bottom-up integration with the EU.

In terms of the **foreign and security policy cooperation with the EU** the government should:

7. Deepen the evolving cooperation and coordination with the EU by expanding the practice of joining EU CFSP statements and conducting regular consultations on foreign policy planning;

8. Closely coordinate positions and practical steps in the settlement of the Transnistrian conflict, which should remain a priority in EU-Ukraine relations. Particular attention should be paid to creating conditions for democratic elections in Transnistria. At the same time, the EU and Ukraine

should increasingly place the issue of Transnistrian settlement in a broader context of Ukraine's (and Moldova's) European integration;

9. Work closely with the EU to elaborate a multifaceted, but coherent policy towards Belarus. In the short term, priority should be placed on supporting civil society in Belarus, while maintaining channels of communication with mid-level government officials. In the long run though, the best way Ukraine (and probably the EU) could influence the developments in Belarus is by ensuring Ukraine's own success in the areas of democratic transformation and European integration;

10. Give special attention to dialogue and cooperation on energy security issues, including integrating Ukraine into the European energy strategy, introducing programmes that increase the energy efficiency of Ukraine's economy (see also *Chapter 1. Ukraine's Economy and European Integration*), and developing the infrastructure to diversify oil and gas supplies by completing the Odessa-Brody-Poland oil pipeline and exploring (in cooperation with the EU and USA) new routes to transport energy from Central Asia and the Caspian basin to the European market;

11. Expand significantly people-to-people contacts, by increasing (in particular youth) exchange programmes and twinning among other activities. The EU should allocate sufficient funds to promote such contacts;

12. Conclude negotiations on a visa facilitation agreement aimed at ensuring easier travel for broad categories of Ukrainian citizens to EU member states (for more detail on this, please see *Chapter 3. Justice and Home Affairs.*)

In addition to the above priority areas, the government should also:

13. Enhance further EU-Ukraine cooperation and consultations on crisis management and European Security and Defence Policy (ESDP) operations (in particular in Western Balkans), based on the progress achieved and the agreements signed;

14. Deepen cooperation in addressing new security threats, such as combating illegal migration, organised crime and all forms of trafficking;

15. Continue close cooperation in the field of non-proliferation, including nuclear non-proliferation and SALW.

In terms of **Ukraine's European integration and Ukrainian-Russian relations:**

Relations with Russia need to be improved. The Orange revolution has inter alia prompted a revision of the very foundation of Ukrainian-Russian relations and their transformation from relations between oligarchic groups and ruling establishments (often shadow and corrupt) into normal inter-state relations. For Ukraine to succeed in this as well as in its domestic reform, its relations with Russia should be subordinated to the strategic goal of European integration. What is also important is to combine in a positive way the interests of Ukraine, the EU, and Russia. Two potential areas/ sectors for such "trilateral" EU-Ukraine-Russia cooperation could be considered:

16. Establish an EU-Ukraine-Russia energy security dialogue, aimed *inter alia* at ensuring transparent and reliable energy supplies from Russia (as well as from Central Asia) to Ukraine and the EU; and

17. Join forces in combating illegal migration, trafficking and organised crime through the development of adequate border controls and infrastructure on Ukraine's borders with Russia (and Belarus), and conclusion of readmission agreements between the EU and Russia and the EU and Ukraine, but also between Ukraine and Russia. The EU should assist Ukraine with the development of modern border infrastructure not only on Ukraine's western borders, but also on its eastern borders.

Prospects for 2008 and beyond

Consultations on 'an enhanced agreement' are expected to start under the Finnish Presidency of the EU in the second half of 2006, with negotiations continued and ideally concluded in 2007. While Ukraine seeks an Association agreement, which would open a membership perspective for the country, the EU prefers the language of a new 'enhanced' agreement and is reluctant to go beyond the framework and concept of the ENP.

It is nevertheless in the interests of both sides to ensure that 'an enhanced agreement'

- furthers Ukraine's EU integration;
- promotes further democratic reform and EU standards/ *acquis* in Ukraine; and
- deeply engages the EU in supporting and facilitating reform in Ukraine.

While containing a strong economic and trade component (the establishment of EU-Ukraine free trade, with further progressive integration of Ukraine into the EU's common market), 'an enhanced agreement' should be comprehensive and should include chapters on political dialogue and cooperation, cooperation in foreign and security policy, energy security dialogue and cooperation, cooperation in justice and home affairs, etc.

Experience to-date has proved that only post-communist countries with not only the ambition, but also with a prospect of EU membership have been able to succeed in their transformations and make their changes irreversible. From this perspective and considering the current stage of Ukraine's transition, articulation of a membership perspective is indeed important for the country. The fact that the concepts of 'partnership and cooperation' and 'neighbourhood' have in reality precluded a more comprehensive and systemic engagement of the EU with Ukraine, including political commitment and adequate financial instruments, should be recognised.

It is therefore time for the EU and Ukraine to move ahead with a comprehensive strategy for Ukraine's EU integration, even if at this stage the notion of membership cannot be explicitly articulated. At the same time, it is critically important that 'an enhanced agreement' contains such language that makes it clear that association, including membership perspective, is not excluded in the future.⁴ Oleksandr Pavliuk (member of the Task Force) suggested that in view of the current attitudes within the EU towards further enlargement, the new Ukrainian Government should aim to conclude at this stage a short-term (2-5 years) agreement rather than another long-term contractual arrangement as was the case with the 10-year PCA. In his opinion this would leave options open for both Ukraine and the EU to negotiate a qualitatively new agreement, once this one has been implemented.

Finally, whatever the nature of 'an enhanced agreement' between Ukraine and the EU, it is vital for Ukraine to sustain the course and strategic direction of European integration, with an ultimate goal of EU membership. From today's perspective, this is likely to be a long-term process, and the Ukrainian elites and the general population need to understand and be ready for this. Nevertheless, European integration remains the necessary prerequisite for Ukraine's success and its transformation into a stable, democratic and prosperous European state.

Chapter 3.

Justice and Home Affairs

Background

The EU Action Plan On Justice And Home Affairs Concerning Ukraine outlines the following objectives:

- To develop the principles of rule of law, access to justice, independence of the judiciary and good governance (the EU's fundamental principles for an Area of Freedom, Security and Justice);
- to improve the management of migration issues;
- to use appropriate measures in the areas of border management, readmission, and visa regime.

These objectives seek to ensure that Ukraine's territory is not used for illegal immigration and transit of illegal migrants into the territory of the European Union. Although this Action Plan has been presented as being seemingly only to the benefit of Ukraine solely, it is quite clear that most of these objectives serve the interests of both sides.

This Action Plan ultimately aims to establish an overarching JHA cooperation covering the areas of combating terrorism, money laundering, and, especially, illegal migration via Ukraine to the EU. However, in the view of the recent developments in Ukraine the relevance of the Action Plan as it had been drafted and approved is now put into doubt.

In December 2001 the EU Action Plan on Justice and Home Affairs in Ukraine, which addressed Ukraine's proposals voiced at the 3rd joint meeting of Subcommittee 4, was agreed with the EU and approved at the 4th joint meeting

of the EU-Ukraine Cooperation Committee. In late February 2002 at the meeting with the Political Advisor of the Directorate General for External Relations of the European Commission at the Ministry of Justice, Ukraine handed over its proposals regarding the Scoreboard of Implementation of the Provisions of the EU Action Plan on Justice and Home Affairs in Ukraine.

Finally, on June 18, 2002 at the 4th joint meeting of Subcommittee 4 the Scoreboard of Implementation of the Provisions of the EU Action Plan on Justice and Home Affairs in Ukraine was endorsed in Brussels.

The JHA Action Plan provides for the following fields of co-operation:

- Immigration and Asylum;
- Border Management and Visa;
- Organised Crime, including:
 - Terrorism;
 - Judicial Co-operation;
 - Law Enforcement Co-operation; and
 - Strengthening the judiciary, the rule of law, and good governance.

Although the European Council had been expected to assess the performance of this Action Plan by late 2005, the results have not been made available yet. However, even given the lack of the Council's evaluation it becomes clear that the conditions in Ukraine and the EU in 2005 are totally different from those in 2001 when the Action Plan was drafted. Ukraine has made a significant step towards the democratic values underpinning the Area of Freedom, Security and Justice.

Despite the significant progress the Ukrainian people have recently made to protect their truly democratic choice, Ukraine has been offered the same simplified visa agreement as Russia

regardless of the following facts:

- a visa-free regime introduced by Ukraine for EU citizens;
- no registration needed for foreign citizens in Ukraine (in contrast to Russia);
- fewer illegal migrants in Ukraine (as compared to Russia);
- a lack of long and porous borders with Asian countries-donors of illegal migrants;
- readmission negotiations initiated in 2002 (much earlier than Russia's);
- Ukraine's readmission agreements with Poland, Slovakia, and Hungary signed and in effect.

Furthermore, it should be noted that continuing to maintain the same tough visa regime for Ukrainian nationals will not impede illegal migration significantly, inasmuch as most illegal migrants do not apply for visas at all and cross borders in between the check-points.

The EU proposed a draft readmission agreement, which is much tougher than the version proposed in the 'Kuchma' era. Generally, readmission is required if visas are cancelled (for example, 2004 Ukraine-Switzerland agreements). If Ukraine signs the proposed tough readmission agreement it will be unable to return illegal migrants to Russia (where they came from) as the Ukraine-Russia readmission agreement still is unsigned and the vast Eastern section of Ukraine's border is still rather poorly equipped and managed. To this end, Kyiv proposed to Brussels that a single readmission space covering Ukraine, Russia, and the EU be established. However, Brussels has left it to Ukraine to resolve this question with Russia.

At the same time, an EU-Russia readmission agreement was signed in May 2006. Russia managed to get a significant concession: it will start receiving third countries nationals only three years after the agreement has been ratified. In contrast to Russia, Ukraine's proposal for a visa-free regime with the EU was rejected in the

joint statement of the last EU-Ukraine Summit.

The proposed readmission agreement will also imply losses for the Ukrainian budget as Ukraine will have to build temporary detention points for illegal migrants to be kept 'in European conditions.' However, given the progress in EU-Ukraine relations, Ukraine cannot withdraw from the readmission agreement. Ukraine needs to start negotiating a visa-free regime with the EU as a long-term perspective. To this end, Ukraine should put together an Action Plan to ensure its implementation in order to bring Ukraine closer to a fully-fledged visa-free regime for all Ukrainian citizens. Further progress in this regard will heavily depend on the accession of the four *Visegrad* states (the Czech Republic, Slovakia, Poland, and Hungary) to Schengen *acquis* and their influence on the EU's external and neighbourhood policy. It is also noteworthy that the views on strategy of JHA co-operation of the EU and new member states may differ significantly.

Even a quick look at the issue suggests that the format proposed in the Action Plan needs revising to bring it to a more solid, preferably, international legal basis. Closer scrutiny shows that since both Ukraine and the EU benefit from JHA co-operation, they should also share commitments.

Recommendations

1. A separate JHA chapter should be inserted into 'an enhanced agreement' to replace the current PCA in 2008

Thus far, it appears appropriate to address the issue of transformation of some of the present Action Plan items into more rigid international obligations. At this point, given the JHA progress in 2005, the following proposals are made; some could be converted into reciprocal obligations under international law on the part of Ukraine and the EU:

1.1. In the field of Migration and Asylum:

1.1.1. To improve cooperation in the area of the readmission of Ukraine's own nationals, persons without nationality and third country nationals, with a view to concluding an EU-Ukraine

readmission agreement between Ukraine and the European Community;

1.1.2. To develop with the financial and organisational support of the EU, a system of efficient, comprehensive border management (i.e. border control and border surveillance) along all Ukrainian borders and to examine the possible participation of the Ukrainian State Border Service in a system of early prevention of illegal migration; such measures should cover all areas of the Ukrainian state border with particular attention to the Eastern section, a gateway to Europe for illegal migrants;

1.1.3. To support Ukraine in implementing its Action Programme aiming to maintain a state border regime and a border zone regime as well as to develop the State Border Service and the customs authorities for the period up to 2010;

1.1.4. To intensify and facilitate the present cross-border co-operation of Ukraine with the EU, candidate countries and third countries concerned;

1.1.5. To continue a dialogue on visa regime facilitation targeting at a minimum the EU-Russia arrangements of October 2005. The desired maximum, however, should include an adequately low fee for visa processing, uniform requirements to the Ukrainian applicants amongst all Schengen states and transparent eligibility criteria for multiple-entry visa for certain categories of visa applicants;

1.1.6. To continue dialogue to prevent illegal immigration into the European Union and Ukraine. Ukraine should also be allowed to join the EU migration programmes to cover readmission and other related costs.

1.2. In the field of Organised Crime:

1.2.1 To provide assistance to Ukraine's efforts in combating trafficking in human beings and smuggling illegal migrants, as well as assistance to develop activities and measures to prevent trafficking in human beings and to reintegrate victims of this trafficking.

1.3. In the field of the Judicial Cooperation:

1.3.1. To establish a network of contact points

for a rapid exchange of information on mutual legal assistance and judicial cooperation, the coordination of proceedings related to cross-border offences, the facilitation of evidence collection, and the provision of specialised assistance. Central contact points will be identified by Ukraine. Links will be established by the Ukrainian judicial authorities with their counterparts in the EU member states;

1.3.2. To elaborate a manual on judicial co-operation between EU member states and Ukraine and a statement of good practice in relation to such co-operation.

1.4. In the field of Law-Enforcement Co-operation:

1.4.1. To exchange technical, operational and strategic information between EU member states and Ukraine law enforcement agencies in accordance with their relevant provisions in the field of organised crime, taking into account the need to ensure that legislative and other measures are put in place so that the appropriate confidentiality and data protection requirements are met in data exchange (given that Ukraine is a signatory **of the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data 1981**, with ratification pending);

1.4.2. To identify Ukrainian national authorities at the operational level (contact points) in order to exchange information with EU member states' law enforcement authorities;

1.4.3. To promote the establishment of direct co-operation between law enforcement and prosecution authorities, including the establishment of joint investigative teams in relation to specific crimes;

1.4.4. To increase the exchange of liaison officers;

1.4.5. To develop cooperation between Europol and the relevant Ukrainian agencies in accordance with the EU Common Strategy on Ukraine, the Europol Convention, and applicable Council decisions.

2. Ukraine and the European Union

should conclude a bilateral agreement on facilitating visa regime and migration policy.

The present agreements covering a facilitated visa regime with some of the new EU member states should be replaced by bilateral treaties or a single treaty which may also be part of 'an enhanced agreement' to replace the current PCA.

3. A trilateral political dialogue between Ukraine, the EU and other neighbouring countries (the Russian Federation, the Republic of Belarus, and the Republic of Moldova) should be launched regarding the common readmission space, combating trafficking and cross-border crime as well as other issues of common interest.

The enforcement of that Treaty amending the PCA should be the basis for bilateral negotiations on a common readmission space, which will seek to conclude respective bilateral treaties between Ukraine and the third countries, following the Soderkoping Process for Newly Independent States. This is essential to prevent Ukraine from becoming an isolated settlement of illegal migrants. The EU's support for Ukraine's efforts to establish such a space will also be crucial. The EU could also act as a formal negotiating party on migration and asylum, thus converting them into the trilateral talks. Alternatively, the EU's support could send a clear signal to Ukrainian adversaries in the negotiations to meet the Ukrainian efforts half way.

Chapter 4.

Approximation of Ukrainian Law to EU Law

This Chapter focuses on:

- the planning, programming and prioritizing of approximation;
- the institutional framework of approximation;
- the necessary human, information, and financial resources.

In addition, this chapter also provides an overview of relevant experience of the new EU member states as the basis for practical recommendations for Ukraine. The goal of these recommendations is to increase the efficiency of legislative approximation.

Background

Why Ukraine should pay more attention to legislative approximation

The third Copenhagen membership criterion states that candidate-states must adapt their legal system to the *acquis communautaire* (the legal system of the EU). The Madrid membership criterion requires the creation of the administrative capacity to apply *acquis communautaire*. The mechanisms of Ukrainian public administration must be improved before national law can be brought into compliance with the third Copenhagen criterion. Therefore, analysis of the experience of the new EU Central and Eastern European (CEE) member states, which have successfully fulfilled all criteria for EU membership, will help Ukraine to determine ways and means to transform its public administration and to approximate its legislation.

Approximation of Ukrainian law to EU law would provide a number of benefits. It would: promote integration into the EU's internal market, fulfil obligations under the PCA and AP, encourage

foreign investment, improve Ukrainian law based on European experience, facilitate economic development through effective legal instruments, strengthen the stability of the institutions which guarantee democracy and the rule of law, and protect the human rights of the general population and the rights of national minorities.

Summary of CEE experience in legislative approximation (1991-2004)

Approximation in the former candidate states was planned under the National Programmes for the Adoption of the *Acquis Communautaire* (NPAA). NPAA implementation was monitored as follows: ministries responsible for the implementation of the separate chapters of NPAA regularly reported to coordinating bodies; the government reported to the Parliament on the progress of harmonisation; the European Commission monitored the harmonisation process through regular progress reports. Electronic databases significantly simplified this naturally complex process.

Public administration of the harmonisation process in the candidate states has four levels:

- an interdepartmental body at the level of ministers for strategic and political decision-making;
- an interdepartmental body at the level of heads of European Integration Departments in ministries for performing tactical and operational tasks;
- specialised structures ('a professional body') in the Office of the Prime Minister or in the Ministry of Justice to do this work;
- line ministries for sectoral legislative

approximation.

Ministries were independently responsible for the implementation of harmonisation in their field of responsibility. In order to fulfil this task, each ministry organised a special department to coordinate the ministry's work of changing national laws to meet EU standards. Both centralised and decentralised models of adapting national laws to EU standards exist. The centralised model of the institutional mechanism emerged in countries where the 'professional body' was subordinate directly to the prime minister (Slovakia, Czech Republic, Latvia, and Lithuania). In the course of preparations for EU membership these countries had to mobilise themselves for the rapid approximation of the huge range of *acquis communautaire*. **A strongly centralised model is more effective in formulating the government's negotiation position towards the EU and reaching consensus among the positions of different ministries.**

A decentralised model was adopted by the countries where branch ministries have more authority and autonomy in the field of approximation of the national law to the EU law. In this case, the 'professional body' was the Ministry of Justice (as in Hungary and Estonia). The decentralised model of legal transformation occurs: a) in the countries with high interdepartmental coordination that can reach consensus without top-down influence; b) in the countries where the transformations do not aim at membership. Such countries give priority to other national needs and interests that are protected by the branch ministries. In the decentralised model, the Ministry of Justice has less authority than the Secretariat of the government, which is subordinate to the prime minister in the centralised model. **Currently Ukraine has a decentralised model, as the process of approximation is coordinated by the Ministry of Justice; moreover, the prospect of EU membership is rather distant.**

At the parliamentary level, the approximation process was monitored by the European Integration Committees or by European law departments in the Office of the Parliament.

Practically all candidate states have developed national training programmes for European integration. The governments offer training to develop EU skills (for instance, languages of EU member states) and have established postgraduate studies in European integration and European law. Governmental officials responsible for harmonisation had internships in EU institutions.

Candidate states carefully considered the elements necessary for *acquis* implementation and participation in EU institutions. They planned the financial expenses associated with training programmes that improve the skills needed for European integration.

Translation of the EU legal acts was assigned to the appropriate department of the coordinating body for harmonisation. This department consolidated available translations, made terminological examination of the translated EU acts, developed rules for translations, and coordinated translation activity of the ministries.

Candidate states designed public communication strategies to bolster support for the referendum on membership in the EU. They disseminated information about the EU and actively pursued strategies to increase positive feelings about the European Union. Such information strategies proved effective because people of all the candidate states voted in favour of joining the EU. **Some states also successfully developed external information strategies to promote a positive image of the candidate state in the EU.**

The harmonisation process was financed by the state budget and EU assistance. NPAA chapters reported expenses related to the development of bills, the establishment of administrative and legal mechanisms for *acquis* application, personnel training, translations, and other technical and informational provisions for harmonisation. Financing of NPAA measures was based on the principle of available 'real resources.'

In many states, the financing of NPAA implementation has gradually become a regular part of the annual national budget. For the most precise calculation of financial needs given

limited resources, a methodology of harmonisation expense planning was developed for the authorities.

Approximation of Ukrainian law to the EU law

Ukraine has a sound legal basis for the harmonisation of Ukrainian law with the EU law:

- Partnership and Cooperation Agreement (PCA);
- EU-Ukraine Action Plan (AP);
- A Law on the National Programme of Approximation of Ukrainian Law to the EU law (National Approximation Programme);
- Annual action plans for the implementation of the National approximation programme;
- A Decree of the Cabinet of Ministers of Ukraine regarding the implementation of the EU-Ukraine Action Plan.

The Annual Action Plan for the Implementation of the National Approximation Programme determines some means of approximation. This includes institutional transformations, terms of their accomplishment, and expenses (including expenses related to the preparation of legal normative acts, training, institutional changes, comparative legal researches, translation of EU acts into Ukrainian, preparation of vocabulary of the EU law, the necessary equipment, etc.). This action includes elements, which are covered by the NPAA in candidate countries. Ukraine should ensure not only the development of normative legal acts, but also more importantly their approval by the Parliament and the monitoring of the implementation of the above-mentioned plans. **Political consensus and cooperation between the government and the Parliament are important for the adoption of the necessary legislation. Therefore the cabinet of ministers and the Parliament should conclude a political agreement on European integration.**

An institutional framework of approximation was dynamically developing with the mandate

and the status of state bodies that take responsibility for the approximation process constantly changing. The Coordinating Board on Legislative Approximation at the minister level was established to replace the Interdepartmental Coordinating Board on the approximation at the deputy-minister level.

The Ministry of Justice of Ukraine is the central state body responsible for coordinating the approximation of Ukrainian law to EU law. The Ministry of Justice checks draft legal acts for compliance with EU law, coordinates preparation of Annual Action Plans for the implementation of the National Approximation Programme, provides analytical, information and methodological support for the approximation and translates EU legal acts into Ukrainian. A similar practice was used in a few member states, which also chose a decentralised model of public administration of the approximation process. For instance, in Hungary and Estonia the ministries of justice coordinated approximation of the national law to EU law, and also prepared and monitored NPAA.

The Department of European Integration at the Ministry of Justice of Ukraine is expected to be established to replace the State Department for Legislative Approximation as a governmental body of public administration. In 2005, the State Department was established, using the European and Comparative Law Centre and the Department of International Law at the Ministry of Justice of Ukraine as its basis. The European and Comparative Law Centre had been created in 2003 on the basis of the Comparative Law Centre and the Centre for Translation of EU Legal Acts at the Ministry of Justice.

The main cause of the Ukrainian institutional framework's weaknesses is the political instability that results in frequent reorganisation of Ukraine's institutions. Many institutions have been in place for only a few years. Frequent reorganisations inhibit the effective functioning of the institutions and tend to increase the turnover of the most qualified staff (see also *Chapter 5. Institutional Elements and Administrative Capacity* for proposed solutions). **Stability of the institutional framework is vital for the successful implementation of legislative approximation. In addition the**

competence of each of the bodies responsible for harmonisation should be clearly stated to avoid duplication of functions.

Prioritising and an institutional framework that will be capable to approximate Ukraine's legal system with that of the EU should be improved. Effective legislative approximation also demands appropriate human, informational, and financial resources. The country does not yet have sufficient highly-qualified experts and access to the data needed to approximate all of its law to European law.

Some practical recommendations are proposed below.

Recommendations

1. To conduct detailed screening of EU and Ukrainian legislation, and to itemise the requirements for the legislative approximation as stipulated in the Ukraine-EU Action Plan. This should result in the lists of mandatory and recommended legislation to be adopted by Ukraine in order to establish a FTA and to integrate the country into the EU's internal market.

In the short run, legislative approximation in Ukraine should aim to adopt EU internal market legislation in order to help create an effective free trade area with the EU. At this stage, the top priority should be activities promoting the creation of the FTA and implementing the Ukraine-EU Action Plan.

The transformation requires detailed elaboration and a more accurate definition of the EU demands and priorities. Ukraine and the EU should conduct screening (on a smaller scale than with accession countries), and elaborate in detail the legislative changes which are required by the EU-Ukraine Action Plan. They should therefore establish lists of obligatory and recommended EU legislation to be implemented by Ukraine for the establishment of FTA and further integration into the internal market of the EU. The EU should determine criteria for measuring Ukraine's progress in putting approximation into practice. For more details of the changes needed in economic legislation,

see also *Chapter 1. Ukraine's Economy and EU Integration.*

After the implementation of the Action Plan, appropriate screening procedures should be specified in an 'enhanced agreement' establishing EU-Ukraine mutual commitments to deeper integration. The amount of further assistance through the European Neighbourhood and Partnership Instrument should depend on the level and pace of implementation of the actions defined by the screening.

2. That the Parliament of Ukraine establish a separate Section of EU law in the Main Department of Research and Expertise in the Office of the Parliament to advise on compliance of proposed draft laws with EU Law.

3. That the Parliament of Ukraine reconsider its Rules of Procedure in order to establish procedures for checking all draft laws for compliance with EU Law throughout the legislative process.

Normative acts developed in accordance with the annual Action Plans of the National Approximation Programme and aiming at approximation should be considered as a separate category. The certificate by the line Ministry and the experts' conclusion by the Ministry of Justice on compliance with the *acquis communautaire* should indicate which provisions of the bills comply with EU requirements. Thus during consideration in the Parliament it should be possible to see clearly which provisions of the bills are required in order to comply with EU law. This procedure should help ensure compliance of governmental bills with EU law.

To monitor the compliance of draft bills at the parliamentary level, a separate Section of EU Law in the Main Department of Research and Expertise in the Office of the Parliament should be established and the Parliament's Rules of Procedure should be amended accordingly. Anyone who can prepare and submit draft law to the Parliament must follow the new procedures.

4. To establish separate divisions on legislative approximation within

European Integration Departments in the ministries to check compliance of draft bills with EU law.

Separate departments are responsible for the ministry's implementation of the European integration objectives. It is also necessary to establish divisions within these departments that would be responsible for checking compliance of draft bills with EU law.

5. To make impact assessment studies of the economic, administrative, institutional, and financial implications for all major EU legislation to be adopted in Ukraine. In order to ensure a smooth implementation of the National Strategy for European Integration and legal approximation, these implications should be considered as part of medium-term fiscal planning.

The decree of the Cabinet of Ministers of Ukraine #243-p (of April 27, 2006, concerning the implementation of the EU-Ukraine Action Plan) lists actions targeting the implementation of the AP provisions, denotes the responsible public institutions, establishes terms, and provides information about technical assistance for the AP implementation. However, it is a unilateral document of Ukraine and does not account for the necessary personnel and financial resources needed to implement the Decree.

Appropriate financing is a prerequisite for Ukraine's successful European integration. Whereas in candidate countries, European integration was financed through a priority budget programme, in Ukraine it is financed through a "management and administration" programme led by the relevant ministries. This could lead to underfunding of integration tasks. The relevant authorities should: analyse the level of financing that has been allocated by the authorities for integration and approximation, improve the scheme of financing where necessary, and ensure that budgetary provision is made to cover the expenses likely to be incurred by line ministries in order to approximate Ukrainian law to the EU *acquis*.

Allocation of funds for the implementation of the approximation strategy must be precise and realistic, as Ukraine must rely on its own resources rather than on EU assistance. When

planning a budget for the approximation task, it is important to be realistic. Before passing an act, the authorities should assess the financial and economic impacts of its implementation. To this end, the Ministry of Justice and the Ministry of Finance should develop a general methodology for calculating expenses related to the implementation of the national approximation programme. Budgetary planning must include:

at the preparatory stage:

- a detailed list of line items for every stage (including personnel, technical, informational, and administrative costs);
- an estimate of the scope of work to be performed at every stage; and
- the expected amount funding for each expense line.

at the implementation stage, financial and economic expertise is needed that would cover two different areas:

- *micro level*, detailed cost estimates and expense analysis for project implementation;
- *macro level*, the economic, social and budgetary impact of the adopted law in a wider sense.

6. To appoint officials responsible for coordination and consolidation of translations in ministries in order to enhance the efficiency of the process of consolidating all translations of EU law. To improve the efficiency of collecting and consolidating all available official and unofficial translations, every ministry should assign a person to coordinate translations within the ministry, to collect the available translations, to develop terminology, and to professionally examine translations.

In order to provide access to the EU laws and EU data resources, Ukraine should: provide the key sources of EU law in Ukrainian; create a national database of European legislation; provide free access for participants of the approximation; and establish an electronic database of implementation of the approximation programme.

Chapter 5. Institutional Elements and Administrative Capacity

Background

The current Ukrainian institutional arrangements for EU integration – presented in Chart 1 below – have evolved over recent years. However, some observers have questioned their efficiency and contribution towards Ukraine's integration with the EU. Specifically, Ukraine has been criticised by the European Commission and some member states for poor coordination on EU affairs. There also appear to be structural problems in certain state institutions including the central administration and the Parliament. These problems reduce their efficiency and the efficiency of Ukraine's government to undertake the necessary reforms. As a result, the policy process in Ukraine seems to be too complex and non-transparent.

Furthermore, Ukraine's institutional weaknesses in the area of European integration can be exploited by the European Union's institutions and by member states. It is therefore very important for the new government to review the coordination system and to take action to improve it. These changes – necessitated by the institutional requirements of EU integration – need to be integrated with the general reform of the administration of the State.

This Chapter attempts to
 1) set out clearly the functions that these institutions must perform and
 2) review the institutional choices of certain of the new member states that successfully integrated into the EU.

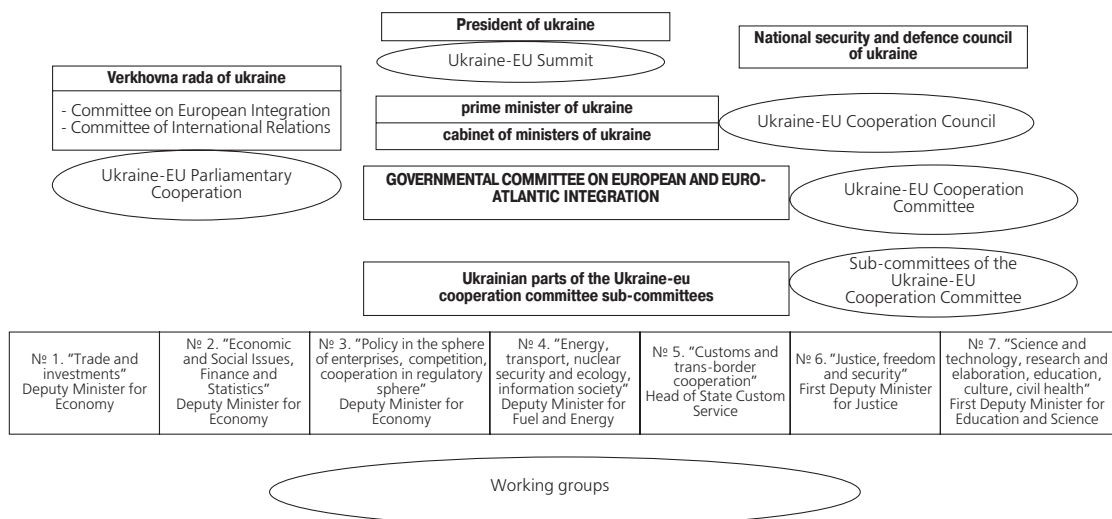


Chart 1. Ukraine's current coordination system for integration with the EU.

This system reflects the level of the present Ukraine-EU relations, which have been evolving within the PCA and AP framework.

Institutional functions and institutional change

The primary current objective of the government will be to conclude an 'enhanced agreement' to replace the current PCA which will bring Ukraine-EU relations to a qualitatively new level. While the EU advocates a free trade area as the major element of the 'enhanced agreement', Ukraine would like to see this 'enhanced agreement' as an Association Agreement with a clear possibility for membership.

Currently, the process of Ukraine's integration with the EU needs:

- improved performance by central and local authorities;
- wider involvement of business and labour organisations, social groups and other NGOs in the implementation of EU integration strategy; and
- sufficient financial support for EU-oriented political, economic, and social reforms.

As Ukrainian practice and the experience of Central and Eastern European (CEE) countries have shown, success will depend on the **commitment of the highest authorities of Ukraine to the idea of EU accession. The driving force of European integration is primarily the political will of Ukraine's leadership to implement the entire complex of EU-oriented internal reforms. In Ukraine a lack of political will on the part of key European integration officials has slowed Ukraine's progress towards EU membership.** As a result, public support for EU integration dropped from 56% in favour in 2000 to 47% in favour in 2004 (33% had no clear preference).

Appropriate and efficient institutions are critical for the integration of Ukraine with the European Union. Political will can easily be frustrated by existing institutions that are slow or unwilling to change, or by the problems of establishing new institutions to carry out tasks which were not necessary in the past.

The key role played by institutions was underlined in the accession of the ten new member states that joined the European Union in 2004. The institutional architecture which Ukraine designs

in order to integrate with the EU is therefore of the utmost importance. As far as possible, existing institutions, which have won credibility with the population, should be used. New institutions frequently take many years to gain the credibility needed to operate effectively. At the same time, certain existing organisations may prove to be an obstacle for the realisation of government policy and must be reformed or even abolished. This is, however, necessary even if European integration is not the ultimate objective.

Institutional structures are often very complex and difficult to understand by those not working in the structures. On the other hand, reform of institutions is very difficult to achieve from within, where the resistance to change is obviously greatest. Integration with the EU will force certain changes and enable government to break down these internal barriers to change.

In addition, the experience of new EU member states shows that there is no single set of options that lead to maximum efficiency. Each of the national systems is unique and reflects not only the specific tasks and challenges each state faces on its path to the European Union, but also national characteristics and traditions and evolution of the political power systems. One of the features of European integration is the lack of a central authority to determine the nature of the institutions to implement EU policy.

In the early stages of integration, the experience of the new member states would suggest that the process of EU integration should be centralised. This is partly determined by the weakness of line ministries in the early stages of the integration process. The failure of line ministries to deliver should be noted and corrected by the institution coordinating EU affairs.

While it remains for the new government to set the institutional structure to oversee the process of EU integration, the functions are clear:

They include the following:

- Develop EU policy together with other line ministries; this would include a new National Strategy for Integration, which would serve as the key strategic plan at least for the first years of EU integration;
- Manage annual programme implementation (including Action Plan measures), strict monitoring and detailed reporting to the cabinet of ministers;
- Design and coordination of the legal

harmonisation programme (see *Chapter 4. Approximation of Ukrainian Law to the EU Law*);

- Manage government relations on EU policy matters with the Parliament;
- Manage relations with EU institutions, providing:
 - Regular reporting on the implementation of the Action Plan;
 - Preparation of the Cooperation Committee and Council (the Cooperation Committee is the initial contact point for the European Commission on issues arising from the implementation of the Action Plan and PCA);
 - Coordination of the PCA sub-committees;
- Provide a central distribution point for EU-knowledge and related analytical techniques (e.g. impact assessment) for government ministries and agencies;
- Translate EU law into Ukrainian and Ukrainian law into English;
- Provide a central distribution point to disseminate information about EU affairs to the wider Ukrainian public;
- Coordinate EU assistance, including "twinning";
- Prepare proposals for 'an enhanced agreement' with the EU post-2008.

Key aspects of institutional design

In order to ensure the efficient performance of these functions and Ukraine's successful integration with the EU, the authors of this Report recommend that the following **institutional changes be made:**

- Consistent and visible support for the process from the president and the head of the government;
- Strong and efficient coordination in the government of EU integration affairs, with one main centre of coordination;
- Effective legal scrutiny of EU-related measures;
- Effective units in all the ministries and agencies tasked with EU integration to coordinate intra-

ministry EU affairs;

- A strong EU Committee, with the same rights and responsibilities as other Committees in the Parliament to ensure smooth management of EU business in Parliament;
- A proper evaluation of and provision for the financial and human resources needed.

Political will is of paramount importance for maintaining and deepening EU integration, therefore the highest levels of the government and the state should demonstrate this will. Support from the president and prime minister can be further strengthened by the establishment of a **National Council on EU Affairs**, which could be chaired by the president, would deal with general strategic foreign policy issues and would review progress in relations with the Union. Members of the Council would be senior ministers with portfolios affected by EU integration as well as distinguished citizens from different parts of society (the economy, the arts, etc.). Such a Council could have significant political impact and would provide forward momentum to the process. It should meet once or twice each year to discuss key issues of EU policy. It would however not be part of the coordination process.

At the government level, and based on the experience of the new EU member states (also outlined in *Chapter 4. Approximation of Ukrainian Law to the EU Law*), **a high-level political coordination body should be created**, chaired by the prime minister and composed of the key members of the government. The new coordinating body can build upon the restructuring of the existing Government Committee on European and Euro-Atlantic Integration, with the new body dealing with EU affairs exclusively and supported by the Secretariat (Department for European Integration.) This upgrade and restructuring should be based on the evaluation of the current institutional arrangements for European integration.

The efficiency of the Government Committee's work will depend largely on the **efficiency of the institutions or institution tasked with the overall coordination function** in the government. It is recommended that, at least in the initial phase of integration, this coordinating function should be performed by one government body. This institution should be headed by a senior government minister responsible for EU integration.

The functions of the proposed coordination institution should cover both policy-making and

coordination, seeking to ensure that all information, analysis and opinions are available to decision-makers. The Institution, together with the Committee Secretariat, will also be responsible for reporting to the Commission in Brussels, including collecting information from different ministries and agencies and ensuring that it is consistent and clear before getting it translated and sent to the Commission.

It should be noted that in many countries the pressure of current work is so great that the second form of coordination is substituted for proper policy coordination with the result that no real policy coordination takes place.

Policy coordination and what might be called process coordination are however closely interrelated, which is one of the main reasons that most of the new member states chose to organise their pre-accession relations with the EU through one central coordinating body. The new government of Ukraine will have to decide itself how to carry out these functions.

However, the importance of the government speaking to the EU with one voice should be emphasised. Spreading these functions across many different ministries or agencies may endanger such consistency and Ukraine may fail to deliver a clear message. This will slow Ukraine's integration considerably.

At the same time however a major effort should be made to bring other ministries and agencies into the integration effort. The knowledge and experience necessary to enable Ukraine to participate in the internal market of the Union is to be found in the line ministries rather than in the coordinating institutions. Staff in these line ministries need to be trained in EU affairs and they need to be tied in to the integration process. This should be part of the role of the EU units established in the line ministries.

Close coordination between the government and the Parliament will also be of the greatest importance as Ukraine harmonises some legislation with that of the Union. The problems getting some WTO legislation through the Parliament received widespread publicity at home and abroad. Draft legislation to adopt EU regulation may have a similar fate unless the government works closely with Parliament to give it early warning and considerably more information than has sometimes been available in the past. Major delays in adopting EU legislation arose in Poland because of poor relations between the government and the Parliament. This led to large numbers of draft laws having to be rushed through

the Parliament, which had little time to scrutinise the legislation, some of which was of poor quality. It is therefore important that the EU Committee of the Parliament is strengthened and has the same rights and privileges as other major committees.

The appropriate institutional structures are however not sufficient. They need efficient and motivated staff.

At present the number of staff available to work on EU affairs in Ukraine's administration is too limited, with the result that staff are over-stretched and have little time to consider policy and strategy but are consumed by day-to-day business.

As implementation of the Action Plan progresses and all the functions listed above must be performed simultaneously, the burden on existing staff will increase considerably. Full-time EU staff in the coordinating institution or institutions will be employed both in domestic coordination ensuring that Action Plan implementation is progressing according to the timetable agreed, and in working with the Brussels institutions to ensure that the latter receive adequate information to perform the monitoring of progress. Some increase in staff will be required in the key line ministries especially those involved in the Action Plan implementation. Staff at the Mission in Brussels and in Embassies in at least the main member states will also have to be reinforced at some stage in the integration process.

Many of these staff will require high levels of skills and adequate rewards. EU language skills are clearly an asset, certainly for officials in frequent contact with Brussels or national capitals. But for most, language skills will simply be a tool for exploiting their basic skills as lawyers, economists, or other specialists. Some education at a university in another European country will also be an important advantage as this will lead to a better understanding of the way in which partners in the EU think.

It was always a problem in the new member states to retain first-rate staff given competition from the private sector. This will no doubt be a problem in Ukraine too. Although it will clearly be impossible to prevent a large drain of resources from the public to the private sector, there are a number of steps that the government can take to retain staff. In some member states, officials were paid more if they had languages or specialist knowledge. Extensive travel budgets are another attraction.

One scheme that could be tried is to trade the

chance to study for a year at an EU university (M.A. or M.Sc.) in return for a commitment to work for the government for a set number of years. The Croatian government has run a very successful scheme of this sort since 1999.

Officials will also require regular high-quality training in Ukraine, and the government should provide and organise this. There are numerous highly qualified Ukrainian specialists in all areas of EU policy and activity who could provide this training. If necessary, their expertise could be complemented by that of foreign experts.

Key technical elements of EU integration policy

In the context of European integration, particular importance should be attached to:

- A new national strategy for EU integration;
- The process of prioritisation in the government;
- Appropriate consultation in the development of legislation and policy – green book, white papers, importance of NGOs (especially business organisations); and

The existing **National Strategy for European integration** is outdated and Ukraine requires a new strategy to reflect current aims and ambitions.

The development of a new National Strategy for EU integration would not only be important as a strategic roadmap but its writing would be a good exercise in policy coordination. It would also represent a significant document of intent for the EU-25.

Improvements in the **technical capacity** of ministries and other government agencies to develop policies and analyse their impacts are also necessary. Staff will require **training in analytical techniques** to improve their performance. One vital technique in EU integration is regulatory impact assessment (RIA), the objective of which is to give to decision-makers information on the probable consequences of their decisions. RIA, a normal component of good government in many EU countries, will not only help government and Parliament to make well-judged decisions and to prioritise actions and policies, but will also serve as a major source of information to groups in society directly affected by EU integration measures.

Consultation of interested parties with Ukraine's population is an essential element for EU integration. Much can be learnt from the

experience of the member states and the European institutions, which have used 'white and green papers' to gather opinions on policy initiatives. Direct consultations with representative organisations should also be promoted. This will help to ensure that EU integration measures do not cause unnecessary disturbance to Ukrainian society.

Recommendations

Based on the needs, functions and relevant experience outlined above, in the short and mid-term period we propose to focus the development of Ukraine's national coordination system on its qualitative improvement as well as on meeting its current obligations.

In particular,

1. A National Council for EU Affairs could be created, presided over by the president, with representatives selected from a cross-section of Ukrainian society;

2. The government should create a **high-level Government Committee on EU integration**. This should be presided over by the prime minister. The Committee should be served by a secretariat;

3. One government institution should be tasked with the **coordination of EU affairs**. This should be led by the senior member of the government responsible for EU affairs. This senior minister will coordinate the work on ENP, an 'enhanced agreement,' and other key EU policy issues. This person must be granted sufficient rights and powers in order to fulfil his/ her tasks properly. The government should disseminate information about **the coordination system on EU Affairs of Ukraine in EU member states** in order to advance the EU's understanding of the Ukrainian system;

4. It should encourage contacts between **the central and local authorities of Ukraine on the one hand and EU institutions and member states on the other** in order to promote their involvement in EU integration;

5. The government should reform the **administration in order to ensure its political independence and to increase its efficiency and professionalism**. The reform should include restructuring, training and improved facilities (equipment). Systematic, large-scale and targeted training for civil servants of Ukrainian central and local authorities in EU member states with a view to gaining knowledge

and experience in operating EU policies and programmes is necessary. These changes will require allocation of additional funds, which should be planned with a mid-term perspective.

6. Ensure the development of analytical techniques and skills in the ministries and agencies involved in European integration.

It is important that regulatory impact assessment should become an integral part of the operation of the government.

These techniques should be introduced to all ministries and agencies. It is best if a small group of specialists within the government undertake the exercise of spreading these techniques throughout the public service.

A good system of **language training for civil servants** who will be involved in cooperation with their EU counterparts should also be established.

7. Modify valid national strategic documents related to EU integration taking into account new conditions, realities and objectives, or preferably elaborate and implement **a new national strategy of integration of Ukraine with the EU;**

8. Launch, early on, a process of unilateral assessment of Ukraine's compliance with EU laws and regulation (*acquis communautaire*). This could be based on the negotiating chapters used in current accession negotiations.

One of the possible implementation mechanisms could be working groups that could be established under the sub-committees in the national system of coordination. These groups should consist of representatives of ministries and agencies responsible for the policies contained in these chapters.

The experience of the new EU member states demonstrates that the sooner the government starts the institutional preparation for accession negotiations, the more effectively it will protect and ensure national interests in the course of an extremely difficult dialogue with the European Commission.

Changing from a system that encourages chaotic responses to a system that rewards a well-thought-out and well-organised implementation

of European standards will send a strong signal to the European states that the on-going reforms indicate a long-term commitment by the government and Ukraine's people to EU integration rather than short-term changes dependant on the political will of the ruling elite.

9. Enhance cooperation with the Parliament in view of the Constitutional reform. Specifically, the government should recommend the Parliament enhance the standing of the EU Committee of Parliament.

Ensure personnel development and improvement of professional skills of representatives of the parliamentary secretariat and parliamentary committees in order to encourage an effective EU-oriented legislative process;

Start **an intensive dialogue on European affairs with the newly-elected Ukrainian parliamentarians** and encourage interparliamentary dialogue between political parties of Ukraine and political groups in the European Parliament.

10. The government should regularly consult with interested parties in society on European integration at an early stage in the formulation of policy or the drafting of legislation. This is important for two reasons:

- To improve the quality of the proposed legislation and to eliminate resistance which will otherwise arise in the Parliament. This will be more important in Ukraine because industrial and agricultural interests are more strongly represented in the Parliament.
- To give parties affected by EU measures reasonable warning of new regulation, enabling them to adapt early.

11. Establish **local information centres** in the regions with a view to promoting communication campaign to the people on the ground. To this end, the assistance and experience of new EU member states could be valuable. Establishing close contacts with the Directorate-General for Communication of the European Commission as well as enhanced involvement of the European Commission's Delegation to Ukraine on the ground should also be considered;

12. Establish **regular fora on European Affairs**, at local and national levels, for political, business and civil society representatives to gain their support and address the challenges that EU integration poses to Ukraine.

NOTES

EXECUTIVE SUMMARY

¹ Any European State which respects the principles set out in Article 6(1) [liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law] may apply to become a member of the Union.' – Consolidated Version of the Treaty on European Union, December 24, 2002.

² Technically the PCA will not expire, but after the first ten years the parties may decide not to renew it.

Chapter 2.

³ In this report 'an enhanced agreement' is the EU-Ukraine agreement, which will replace the current Partnership and Co-operation Agreement (PCA) in 2008. As the EU and Ukraine prepare for negotiations on this agreement in late 2006, they have demonstrated different visions of the future of their contractual relations: while Ukraine sees it as a new fundamental agreement based on the association and gradual integration principles, the EU would like to essentially focus on the economic component of such integration, namely, the establishment of a free trade area (FTA.)

⁴ *Oleksandr Pavliuk* (member of the Task Force) suggested that in view of the current attitudes within the EU towards further enlargement, the new Ukrainian Government should aim to conclude at this stage a short-term (2-5 years) agreement rather than another long-term contractual arrangement as was the case with the 10-year PCA. In his opinion this would leave options open for both Ukraine and the EU to negotiate a qualitatively new agreement, once this one has been implemented.

Members of the Expert Task Force

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The EastWest Institute

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