

The European Union's ENPI Programme for Ukraine

Support for the implementation of the EU-Ukraine Association Agreement / A4U Project

Project Identification No.:

EuropeAid/137074/DH/SER/UA

Contract N: 2015/370-128

A4U Guidelines N10

Handbook for Association4U Fellows re Policy Development & Coordination

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October 2018



This project is funded by
the European Union



A project implemented by Consortium led by
GFA Consulting Group GmbH



Funded by
the European Union

Handbook for A4U Fellows

Principles of good policy making and coordination, assessment of their implementation and recommendations for improvement based on SIGMA reports and A4U recommendations

This Handbook summarises the policy development related principles of public administration (by SIGMA), the key findings of the SIGMA baseline measurement report 2018 and A4U recommendations developed in 2016-2018. It was possible to put all these documents into one consolidated Handbook because the key messages are consistent. The SIGMA principles are by their nature quite abstract while the A4U recommendations are more operational and focused on the Association Agreement implementation.

Content:

- **SIGMA Report - principles, findings and recommendations**
- **Key A4U recommendations for improving the policy making system in relation to the AA**
- **Updated A4U recommendations for GOCEEI on improving AA-implementation coordination reflecting previous A4U recommendations and establishment the DGs in line ministries**
- **Outline of a comprehensive policy making reform (A4U draft)**

LIST OF ABBREVIATIONS AND ACRONYMS

APIAA Action Plan for Implementation of the Association Agreement

BRDO Better Regulation Delivery Office

CEB central executive body

CEBSS central executive body of special status

CIO chief information officer

CMU Cabinet of Ministers of Ukraine

CoG centre of government

CS civil service

EEAI European and Euro-Atlantic Integration

EI European integration

eIDAS EU Electronic Identification, Authentication and Trust Services

EIF European Interoperability Framework

EPP resolution of the CMU on Ensuring Public Participation

EU European Union

FDBP Future Directions of Budget Policy

GAP Government Action Program

GDP gross domestic product

GOEEAI Government Office for European and Euro-Atlantic Integration

GPAP Government Priority Action Plan

HRM human resource management

HRMIS Human Resource Management Information System

ICT information and communications technology

IT information technology

LAP Law on Administrative Procedures

LCEB Law on Central Executive Bodies

LCMU Law on the Cabinet of Ministers of Ukraine

LCS Law on Civil Service

LPC Law on the Prevention of Corruption

LPSRP Law on the Principles of State Regulatory Policy in the Sphere of Economic Activity

MoEDT Ministry of Economic Development and Trade

MoF Ministry of Finance

MoJ Ministry of Justice

MoRDCHCS Ministry of Regional Development, Construction, Housing and Communal Services

MP member of parliament

MSP Ministry of Social Policy

MTGPAP Medium-Term Government Priority Action Plan

NACP National Agency on Corruption Prevention

NAUCS National Agency of Ukraine for the Civil Service

OGP Open Government Partnership

PAR public administration reform

PARS Strategy of Public Administration Reform

PFM public financial management

PFMRS Strategy for Public Finance Management System Reform

PSHRM Public Service and Human Resource Management

RIA Regulatory Impact Assessment

RoP rules of procedure

SAI Supreme Audit Institution

SAS State Archive Service

SCMU Secretariat of the Cabinet of Ministers of Ukraine

SCS senior civil service

SCSC Senior Civil Service Commission

SDS Sustainable Development Strategy

SMEs small and medium-sized enterprises

SOE state-owned enterprise

SRS State Regulatory Service

STP State Target Program

ToC Table of Conformance

VAT value-added tax

SIGMA principles, findings and recommendations

POLICY DEVELOPMENT AND CO-ORDINATION

1. STATE OF PLAY AND MAIN DEVELOPMENTS: JANUARY 2016 – MAY 2018

1.1. State of play

The legal framework for policy development and co-ordination is in place, and the critical functions for an effective policy-making system, including co-ordination of the European integration (EI) process, have been assigned to institutions in the centre of government (CoG). However, overlaps exist between the mandates of the CoG bodies regarding co-ordination of policy planning and monitoring the Government's performance.

Central government policy planning is primarily annual, and the links between policy and fiscal plans are limited. The central planning documents do not establish clear outcome-level objectives for the Government. As a result, the reports mainly provide information on the implementation of individual activities. The requirements for developing sector strategies have not been established.

The responsibility of line ministries for legislative drafting is limited as the majority of adopted laws have been initiated by individual members of parliament (MPs). Individual MPs are submitting draft laws directly to the Parliament on behalf of line ministries in order to bypass the consultation and decision-making procedures of the Cabinet of Ministers of Ukraine (CMU). The requirements for evidence-based policy making and for consultations with non-governmental stakeholders are not complied with in practice. Therefore the quality of policy analysis supporting proposals is weak.

Legislation is available online and in consolidated format from multiple sources provided by the State, but complete availability of secondary legislation is not ensured. The clarity and stability of the legal framework are negatively affected by frequent amendments to legislation.

1.2. Main developments

The CMU adopted the most recent Medium-Term Government Priority Action Programme on 3 April 2017⁶¹.

The Association Agreement between the European Union (EU) and Ukraine (signed on 21 March 2014) entered into force on 1 September 2017. The Action Plan for Implementation of the Association Agreement (APIAA) covering the period 2017-2022 was adopted by the CMU on 25 October 2017⁶².

In 2017, separate directorates for Strategic Planning and EI were established in 10 out of 18 ministries.

2. ANALYSIS

This analysis covers 12 Principles for the policy development and co-ordination area grouped under 4 key requirements. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators⁶⁴, and an assessment of the state of play for each Principle. For each key requirement, short- and medium-term recommendations are presented.

Key requirement: Centre-of-government institutions fulfil all functions critical to a well-organised, consistent and competent policy-making system.

Analysis of Principles

Principle 1: Centre-of-government institutions fulfil all functions critical to a well-organised, consistent and competent policy-making system.

The legal framework for the functioning of CoG institutions in Ukraine is established in the Constitution of Ukraine, the Law on the Cabinet of Ministers of Ukraine (LCMU), the Rules of Procedure of the Cabinet of Ministers of Ukraine (RoP of the CMU) and the statutes of the Secretariat of the CMU (SCMU), the Ministry of Finance (MoF), the Ministry of Justice (MoJ) and the Government Office for European and Euro-Atlantic Integration (GOEEAI). These legal acts assign the critical functions defined in the Principles of Public Administration to CoG bodies. The SCMU is responsible for: 1) preparing the CMU sessions) co-ordinating the policy content of proposals and ensuring their coherence with the Government's priorities) leading the preparation of the Government's annual work plan) monitoring its performance) communicating with the public; and) managing the relationship between the CMU and the President, as well as with the Parliament. The MoJ is responsible for ensuring the legal conformity of proposals, while the MoF is tasked with ensuring that policies are affordable. All proposals have to be consulted also with the Ministry of Economic Development and Trade (MoEDT) before they are submitted to the CMU, due to its role as the state-level co-ordinator of economic development and its mandate to co-ordinate strategic planning. The State Regulatory Service (SRS) scrutinises the Regulatory Impact Assessment (RIA) conducted for legal acts affecting the business sector. Once proposals have been submitted to the CMU for approval, the SCMU has the mandate to conduct a final review, including legal and financial scrutiny, as well as checking the sufficiency of the impact assessment. The GOEEAI co-ordinates the EI process, including checking the alignment of draft legal acts with the acquis.

Until April 2018, the SCMU did not have the right to submit any draft proposals to the CMU for decision. This limited its mandate to leading preparation of the Government's annual work plan, the Government Priority Action Plan (GPAP). The draft plan was prepared by the SCMU and then submitted to the CMU for adoption by the MoEDT. With amendments to the LCMU⁸⁴ and to the RoP of the CMU⁸⁵, the Minister in charge of the SCMU obtained the

right to submit draft proposals to the CMU. As a result, the SCMU now has a full mandate for co-ordinating preparation of the GPAP.

However, there is still an overlap in the mandates of the Directorate for Policy Co-ordination and Strategic Planning of the SCMU and the MoEDT in monitoring GPAP implementation. According to Article 131 of the RoP of the CMU, the MoEDT is responsible for co-ordinating preparation of the report, but the Statute of the Directorate for Policy Co-ordination and Strategic Planning of the SCMU assigns that responsibility to the Directorate. In practice, the SCMU Directorate prepared the report for 2017, and it was formally submitted to the CMU for approval through the MoEDT. To ensure uniform practice, guidelines and templates have been developed for preparing the GPAP, for monitoring government performance and for preparing regular reports⁸⁷. Separate guidelines have also been adopted for developing policy proposals, legal drafting⁸⁹ and public consultation⁹⁰. As requirements for developing sector strategies have not been established, however, there are no guidelines to support this process.

CoG bodies co-operate and co-ordinate their opinions during the preparation of the GPAP. The Directorate for Policy Co-ordination and Strategic Planning of the SCMU together with the GOEEAI discuss the proposed commitments first with the line ministries and then share the draft plan for comments with the MoF, the MoEDT and the MoJ before finalising its contents.

The SCMU units review policy proposals submitted to the CMU for decision in a co-ordinated manner. Opinions from the Legal Department and the GOEEAI are consolidated under the leadership of the relevant sectoral department into one expert opinion and submitted to the Government Committee, together with the policy proposal.

As full authority for monitoring the implementation of the GPAP has not been assigned to one single CoG institution and there are no guidelines for the development of sector strategies, the value of the indicator measuring the fulfilment of critical functions by CoG institutions is 4.

Summary for Principle 1.

The critical CoG functions are all established, and their fulfilment is supported by detailed regulations and guidelines, except for the development of sector strategies. However, the SCMU does not have full authority to monitor GPAP implementation. The CoG bodies co-ordinate their opinions during the preparation of the GPAP and the SCMU departments prepare consolidated opinions on the policy proposals submitted to the CMU for decision.

[Principle 2: Clear horizontal procedures for governing the national European integration process are established and enforced under the co-ordination of the responsible body.](#)

The GOEEAI is the key institution assigned the critical functions related to EI in Ukraine. Its statute foresees responsibility for overall daily co-ordination of EI, planning of EI-related actions, monitoring country preparations for the EI process and co-ordinating alignment of national legislation with the EU acquis, as well as co-ordinating the planning and overall monitoring of EU assistance. The function for co-ordinating accession negotiations has not been assigned, as Ukraine is not an EU candidate country.

Regulations and methodological guidelines support the line ministries and central executive bodies in the EI process. The RoP of the CMU contain basic instructions on how to ensure alignment between the proposed Ukrainian legislation and the EU acquis⁹⁹. The instructions are supported by methodological guidelines developed by the GOEEAI¹⁰⁰. The CMU has also adopted detailed regulations that stipulate the processes for EI planning, for monitoring the implementation of plans and for translating the acquis¹⁰³. Currently, no guidelines exist on how to provide inputs to the planning and monitoring of EU assistance and on how to participate, manage and co-ordinate EI-related negotiations.

The Governmental Committee on European, Euro-Atlantic Integration, International Cooperation and Regional Development (EI Committee) acts as a subsidiary working body of the CMU, discussing the items on the agenda of the upcoming CMU session in the field of EI. According to the RoP of the CMU, it hears reports on the status of Association Agreement implementation, proposals regarding APIAA updates and any other proposals from the GOEEAI¹⁰⁵. The RoP of the CMU thereby mandates the EI Committee as a political-level co-ordination body for EI. However, it is not performing all of its designated tasks as, according to agendas made available for this assessment, it did not discuss the APIAA prior to its adoption or the report on implementation of the APIAA in 2017. Sectoral meetings take place to co-ordinate implementation of the Association Agreement in the 24 areas covered by the Agreement, but a horizontal administrative-level co-ordination mechanism has not been set up.

The GOEEAI is in charge of preparing the APIAA and monitoring its implementation. The first APIAA was adopted in 2014 for a period of three years, and the most recent APIAA, covering the period to 2022, was adopted in October 2017¹⁰⁷. Annual reports are prepared on the implementation of the Plan. The GOEEAI consistently provides opinions on draft legal acts dealing with transposition of the acquis before the legal acts are submitted to the CMU for decision.

As the administrative-level co-ordination mechanism for EI has not been established and political-level co-ordination is not fully functional, the value of the indicator measuring the fulfilment of EI functions by the CoG institutions is 3.

Summary for Principle 2.

All critical functions related to the EI process have been assigned to the GOEEAI and are performed in practice, except the co-ordination of accession negotiations, as that is currently not relevant for Ukraine. The EI Committee is not fulfilling its overall political-level co-ordination function, however, and administrative-level co-ordination mechanisms have not been established.

Key recommendations

Short-term (1–2 years)

- 1) The mandates of the SCMU and the MoEDT should be clarified so that one CoG body, preferably the SCMU as the co-ordinator of GPAP preparation, is assigned responsibility for monitoring implementation of the plan.

2) The EI committee should become fully functional as the political-level co-ordination body by consistently discussing EI-related plans and reports on their implementation. The horizontal administrative-level EI co-ordination mechanism should be established and operationalised.

Medium-term (3–5 years)

3) The guidelines for planning and monitoring EU assistance should be developed to better support the administration in the next stages of the EI process.

Key requirement: Policy planning is harmonised, aligned with the government's financial circumstances and ensures that the government is able to achieve its objectives.

Principle 3: Harmonised medium-term policy planning is in place, with clear whole-of-government objectives, and is aligned with the financial circumstances of the government; sector policies meet the government objectives and are consistent with the medium-term budgetary framework.

The legal framework for policy planning is established in the Budget Code of Ukraine and the RoP of the CMU. The RoP foresees adoption of the Government Action Programme (GAP), which stipulates the priority tasks of the Government for the duration of its tenure, as well as the annual GPAP for the implementation of the GAP. In addition, the five-year and annual legislative plans are to be prepared by the MoJ on the basis of the GAP, EI-related obligations and proposals from central executive bodies. The APIAA contains all activities related to EU accession. The Budget Code establishes the obligation to prepare the budget for the upcoming year and an indicative budget plan for the subsequent two years. The indicative budget plan should be based on the GAP. The processes for preparing and adopting the planning documents have also been established. The Parliament adopts the annual budget as well as the GAP. The CMU adopts the legislative plans as well as the APIAA. In practice, the requirements for medium-term budget planning have not been implemented consistently, and the main fiscal plan is the annual budget. As a pilot project, the CMU adopted the Future Directions of Budget Policy (FDBP) for 2018-2020, but its medium-term spending projections were only indicative. Also, the CMU has not fulfilled the requirement to adopt a five-year legislative plan.

In addition to the planning documents established by the legal framework, the President has adopted the Sustainable Development Strategy: Ukraine 2020 (SDS 2020) and the CMU has adopted the Medium-Term Government Priority Action Plan until 2020 (MTGPAP). The SDS 2020 defines the overall priorities for defence policy as well as for socio-economic, organisational, political and legal development of the state. The MTGPAP stipulates five main objectives of the Government and priority actions for achieving them. The document is more detailed than the GAP, but the priority tasks of the GAP are also reflected in the MTGPAP. However, the status of the SDS 2020 and the MTGPAP has not been defined by legislation.

The main hierarchy for government planning documents is in place. According to the legal framework, the GAP is the basis for the FDBP and subsequently the annual budget and the GPAP. In practice, the MTGPAP, developed on the basis of the SDS 2020 and the GAP, further specifies the medium-term objectives of the Government. The legislative plan contains the commitments of both the domestic MTGPAP and the GPAP, as well as of the EI plan.

The Directorate for Policy Co-ordination and Strategic Planning within the SCMU is responsible for the policy-planning function, but up to April 2018 the SCMU did not have the legal mandate to submit proposals to the CMU for approval. In practice, therefore, the

Directorate prepared only the drafts of the MTGPAP and the GPAP (including the draft GPAP for 2018), while the MoEDT formally submitted the Plans to the CMU for approval. Both the MoEDT and the SCMU are mandated to provide quality control for the development of strategic plans. However, the requirements and process for developing sector strategies have not been established. The procedure and content-related requirements have been established for State Target Programs (STPs). The aim of the STPs is to facilitate the implementation of state policy in priority areas through concentrating financial, logistical and other resources, as well as industrial, scientific and technical potential. The STPs must state the objective of the programme, the proposed activities for its achievement and the desired outcomes, and must include information about the costs of planned activities together with their sources of funding. As such, their focus and content-related requirements are similar to those of sector strategies, but the CMU has vetoed the adoption of STPs that require additional funds from the state budget. Nevertheless, some STPs have been adopted. As a result, procedural and content-related requirements have been established for STPs, which are rarely developed in practice, but such requirements do not exist for sector strategies, which continue to be adopted. Guidance is provided on how to submit input to the GPAP and for preparing the medium-term fiscal plan, but not on developing sector strategies or reporting on implementation of the GPAP. Of the draft laws from the 2017 GPAP, 33% also appear in the 2018 plan. In addition, nearly half of the planned sector strategies were carried forward from the 2017 plan. The legislative commitments from the sector strategies are not included in the GPAP. The sample strategies analysed for the assessment foresee the development of three draft laws in 2018, but none of them appears in the GPAP for the year. In addition, the strategies do not contain estimates for the sources of funding needed for their implementation. It is therefore not possible to ensure that the funding needed for implementing the activities from sector strategies aligns with the spending foreseen by the FDBP.

Although the FDBP for 2018-2020 establishes priorities for policy sectors, it does not contain outcome level indicators to monitor their achievement, nor does it enumerate the indicative costs of specific activities or objectives. However, the priorities of the FDBP for 2018-2020 are coherent with the five priority objectives of the MTGPAP, and GPAP activities are structured according to the five pillars of the MTGPAP¹³⁸.

Due to shortcomings in the legal framework; limited guidance on policy planning; a lack of financial information in sector strategies; a high share of commitments carried forward from one year to the next; and limited alignment among planning documents, the value of the indicator measuring the quality of policy planning is 1.

Summary for Principle 3.

The hierarchy of main Government planning documents is in place, but the legal framework does not establish the status of the SDS 2020 and the MTGPAP. The mandate for checking the quality of sector strategies has been given to both the SCMU and the MoEDT, but the requirements for developing these documents have not been established. The strategies analysed for this assessment do not contain cost estimates for their implementation. A high share of planned commitments is carried forward from one year to the next.

Principle 4: A harmonised medium-term planning system is in place for all processes relevant to European integration and is integrated into domestic policy planning.

The Decision of the CMU on Issues of Planning, Monitoring and Evaluation of the Effectiveness of the Implementation of the Association Agreement between the European Union and its Member States, of the One Part, and Ukraine, of the Other Part, establishes the status of the EI-related planning document as well as the rules and requirements for its development. APIAA is the medium-term planning document containing EI-related commitments stemming from the Association Agreement or from decisions of the bilateral bodies established according to the Agreement. The GOEEAI is responsible for preparing the APIAA and for monitoring its implementation. Before the Plan is adopted by the CMU, the draft plan or any proposals for amendments should be discussed at the EI Committee of the CMU. The legal framework does not stipulate any co-ordination during the APIAA preparation process with the other SCMU directorates dealing with preparation of the MTGPAP and the GPAP, or with the MoF; according to representatives of the GOEEAI, such co-operation does not take place in practice. The first APIAA was adopted on 17 September 2014 for the period 2014-2017. It was amended in 2016 and 2017, and the sections on Trade and Trade-related Issues and on Economic and Development Co-operation were moved into separate plans. The most recent APIAA (covering 2017-2022) was adopted on 25 October 2017 and contains commitments from all sections of the Association Agreement. All APIAAs stipulate deadlines and the institutions responsible for implementing the commitments, which are structured according to the sections of the Association Agreement. The APIAA does not, however, include cost estimates or sources of funding to implement the planned activities.

Alignment between the APIAA and the GPAP on the basis of draft laws planned for development in 2018 is limited, as only 60% of the APIAA's legislative initiatives are included in the GPAP for 2018. From the 2014 APIAA, 38% of the commitments were carried forward to the 2017 Plan. The implementation rate of EI-related legislative commitments in 2017 could not be calculated, however, because the 2014 APIAA did not specify the exact titles of the legal acts to be adopted. Therefore it was not possible to determine whether a particular EI-related legislative activity had been implemented. The most recent APIAA, adopted in October 2017, is more specific and provides the titles of the legal acts to be adopted. The Report on the Implementation of the Association Agreement between Ukraine and the EU in 2017 does not specify the implementation rate of planned legislative activities, but it concludes that overall progress on implementation in 2017 was 41%.

The value of the indicator measuring the quality of policy planning for EI is 2 because the EI plans are not costed; a considerable share of commitments was carried forward from the previous APIAA to the current one; alignment between the APIAA and the GPAP is limited; and it was not possible to calculate the implementation rate of activities due to the vague formulation of commitments.

Summary for Principle 4.

The status of the APIAA and the process for developing it is established in the legal framework. However, there is no co-ordination between the GOEEAI and the other CoG

bodies during the preparation of the Plan, and only 60% of legislative commitments from the APIAA are included in the GPAP. The APIAA sets deadlines for EI-related commitments, but it does not contain any cost estimates or information on sources of funding. Overall progress in implementing the Association Agreement in 2017 was low (41%), and 38% of commitments from the previous APIAA were carried forward to the 2017 Plan.

Principle 5: Regular monitoring of the government's performance enables public scrutiny and supports the government in achieving its objectives.

The legal framework stipulates the requirement to report regularly on the implementation of key horizontal central-planning documents: the budget¹⁴⁹, the GAP and the GPAP¹⁵⁰, the legislative plan and the APIAA. There is no general requirement to report on the implementation of sector strategies.

The RoP establishes the general requirement to publish reports on the implementation of Government decisions online. In practice, the most recent report on implementation of the budget and the report on the APIAA are publicly available, but the report on execution of the GPAP¹ and the legislative plan are not available. As there is no explicit legal obligation to report on sector strategies, there is no consistent practice of doing so, but the reports which have been prepared are publicly available¹⁵⁸.

The requirement to report separately on the GPAP and the legislative plan creates parallel reporting requirements for line ministries because the content of the plans overlaps. According to the RoP, the MoEDT is to co-ordinate preparation of the report on the GPAP but, on the basis of its statute, that is the responsibility of the SCMU's Directorate for Co-ordination of State Policies and Strategic Planning. In practice, the report is prepared by the SCMU and submitted to the CMU by the MoEDT. The MoJ is responsible for compiling the report on the legislative plan.

The reports on implementation of the GPAP, the legislative plan and the APIAA focus on the description of outputs achieved. The report on implementation of the legislative plan provides a detailed tabular overview of progress in the development of each individual planned legal act. Reports on the GPAP and the APIAA provide a narrative overview of the actions that were implemented, but they do not mention which of the planned activities were not implemented and for what reason. Even though the MTGPAP contains outcome-level indicators for monitoring progress in each of its five pillars, these indicators are not consistently used in the annual reports. The report on implementation of the GPAP in 2017 contains selective information on the key performance indicators from the pillars on economic growth and effective governance¹⁵⁹, but none on indicators from the other MTGPAP pillars on human capital development, rule of law and the fight against corruption, or security and defence.

An incomplete set of sample reports on sector strategies was provided for assessment (four out of the five required) due to inconsistent reporting on strategies, and only three of the reports included information on outputs. None of them included information on achieved outcomes. A separate monitoring mechanism exists for reporting on the implementation of state target programmes. Line ministries report to the MoEDT, which submits the consolidated report to the CMU. The report for 2017 covers the implementation of 13 state target programmes and provides an overview of spending and the outputs.

Due to the limited quality of the reports and their inconsistent public availability, the value of the indicator measuring the quality of government monitoring and reporting is 3.

Summary for Principle 5.

The legal framework establishes the requirement for regular reporting on key horizontal planning documents, but not for sector strategies. By default, all reports have to be publicly available online, but the most recent reports on implementation of the GPAP and the legislative plan have not been published. The reports focus on outputs and do not provide an overview of achieved outcomes.

Key recommendations

Short-term (1–2 years)

- 1) The status and roles of the SDS and the MTGPAP should be clarified in the legal framework.
- 2) Preparation of the GPAP and the legislative plan as well as monitoring their implementation should be streamlined to minimise the burden on the CoG bodies, as well as line ministries and other central executive bodies.
- 3) The SCMU Directorate for Policy Co-ordination and Strategic Planning and the GOEEAI should establish mechanisms to ensure coherence of the GPAP with the APIAA. The GOEEAI should make sure that all activities in the APIAA which require additional funds for their implementation are costed and their sources of funding are known.
- 4) The CMU should establish the requirements for developing sector strategies as well as for monitoring their implementation and should adopt guidelines supporting implementation of the requirements. The CMU should assign one CoG body, preferably the SCMU, the full mandate for co-ordinating the preparation of sector strategies.
- 5) The CMU should consistently publish annual reports on implementation of the GPAP.

Medium-term (3–5 years)

- 6) The CoG bodies should ensure that all central plans have clear objectives and relevant performance indicators, which are consistently used for reporting on their achievement.

Key requirement: Government decisions and legislation are transparent, legally compliant and accessible to the public; the work of the government is scrutinised by the parliament.

Analysis of Principles

Principle 6: Government decisions are prepared in a transparent manner and based on the administration's professional judgement; the legal conformity of the decisions is ensured.

The RoP of the CMU establishes the legal framework for the Government session procedures. The SCMU is responsible for preparing the sessions and for communicating the decisions of the CMU to the relevant institutions and the general public. In addition, the SCMU has the authority to ensure that the policy proposals submitted for decision are coherent with the Government's priorities and policies, as well as to check if the established procedures have been complied with (including consultation procedures). The MoJ is responsible for the legal scrutiny of proposals during the interministerial consultation, but the SCMU also has the mandate to analyse the conformity of draft legal acts with the existing framework. A similar overlap exists in assessing the sufficiency of the financial estimates, for which both the SCMU and the MoF have the mandate. In addition, it is mandatory to consult the MoEDT on all proposals before submitting them to the CMU. The specific mandate of the MoEDT is limited to co-ordinating strategic planning, which is also one of the functions of the Directorate for Co-ordination of State Policies and Strategic Planning of the SCMU. The GOEEAI of the SCMU is responsible for examining the conformity of draft proposals with Ukraine's commitments in the sphere of EI. The RIAs prepared for legal acts affecting the business sector have to be submitted to the SRS for opinion according to the Law on Principles of Regulatory Policy in Economic Activity.

The SCMU has the mandate to return proposals that do not comply with the established procedural requirements. However, it is not authorised to return proposals on its own initiative in case of substantial shortcomings or when it is evident that the differences between the opinions of relevant authorities have not been dealt with during the interministerial consultation. In such matters, only the Government Committee is authorised to make the decision on the need to return the draft to the proposing body for further improvement. The decision regarding the return of proposals due to substantial shortcomings cannot be taken at the administrative level. Two out of the five sample draft laws assessed by SIGMA were returned to the proposing body after discussions at the Committee level. The analysis of samples confirms that the review of legal conformity was performed on all proposals. The packages were complete and all submission procedures had been followed. This was confirmed by the SCMU in its review. According to the explanatory notes, the implementation of all five draft laws would not require any additional funds and this was not contested by the MoF or the SCMU in their opinions. However, the draft Law on Amendments to Certain Legislative Acts of Ukraine on Conducting Forensic Psychiatric Examinations in Administrative Proceedings foresees new responsibilities for judicial experts. The draft Law on Amendments to Laws Ensuring Sustainable Development and Increase in the Number of Working Places in Mountainous and High-Mountainous Living Areas creates

additional state guarantees for the development of mountainous regions, and the draft Law on Amendments to Certain Laws of Ukraine on Specific Issues of the Ministry of Internal Affairs and National Police stipulates additional tasks for the police in investigating crimes related to computer systems. The review of financial affordability of draft proposals is therefore ineffective. In addition, the expert opinions provided by the SCMU did not assess the coherence of the proposals with the priorities of the Government.

The ability of the SCMU to ensure the quality of policy proposals is also limited by the practice of line ministries submitting their draft laws directly to the Parliament through individual MPs, circumventing the Government's decision-making process. Examples of this practice from 2017 include the Law on Audit of Financial Reporting and Auditing Activities¹⁷⁸, the Law on the Basics of Cybersecurity of Ukraine¹⁷⁹ and the Law on Energy Efficiency of Buildings¹⁸⁰. A SIGMA-commissioned survey of business representatives also indicates problems with the quality control of draft legislation, as only 33% of businesses agreed with the statement "laws and regulations affecting my company are clearly written, not contradictory and do not change too frequently"¹⁸¹.

The RoP do not stipulate a deadline for submitting proposals to the Cabinet session agenda, so the timeliness of ministry submissions of regular agenda items to the Government session could not be assessed. Instead, the RoP require that the SCMU scrutinises submitted proposals within 15 days so that, as a rule, the Cabinet is able to consider the draft within a month of its submission¹⁸². Three of the five sample proposals assessed were approved by the CMU within a month of their submission to the SCMU. Government committees decided to return the other two proposals to the sponsoring ministry for adjustments, but in these cases even the Committee-level discussions took place more than a month after the initial submission.

Paragraph 19 (3) of the RoP of the SCMU also allows the submission of materials to the agenda of the Cabinet session during the meeting, including urgent legislative drafts. However, according to information obtained during interviews, the current Prime Minister has stopped this practice. Agendas of Cabinet meetings are published online before the start of the session. The SCMU is responsible for keeping the minutes of the meetings and for circulating them in electronic format to the members of the CMU, the President of Ukraine, the Parliament and other public bodies, according to the list approved by the State Secretary of the CMU. The decisions of the CMU are published online and the SCMU publishes news items on key decisions through the press centre.

The perception of businesses regarding the clarity and stability of government policy making is low. No deadlines are set for submitting items to the CMU agenda. The SCMU is not authorised to return items in case of substantial shortcomings, it does not check the coherence of submitted proposals with the Government's priorities and the review of financial affordability is ineffective. In light of these issues, the value of the indicator measuring the transparency and legal compliance of Government decision making is 3.

Summary for Principle 6.

The procedures for submitting proposals to the Government sessions and for their review by CoG bodies have been established in the RoP of the CMU. However, the review of financial affordability conducted by the MoF and the SCMU is inconsistent and the SCMU does not assess the coherence of proposals with the Government's priorities. The

effectiveness of SCMU scrutiny is limited because it is not mandated to return items in the case of substantial shortcomings and because line ministries submit draft laws directly to the Parliament through individual MPs. The RoP broadly defines the time limit for SCMU review but not the specific deadline for submitting proposals to the CMU agenda. The agendas and decisions of the CMU are published online.

Principle 7: The parliament scrutinises government policy making.

The Law on the CMU, the Law on the RoP of the Parliament¹⁸⁸ and the RoP of the CMU establish the procedures for co-ordinating Government decision making with the Parliament, as well as for parliamentary scrutiny of the CMU.

According to the RoP of the Parliament, laws are generally considered in three readings, but they can also be adopted after the first or the second reading if the Parliament decides that “the draft law requires no exceptions and no substantive remarks were made by the deputies, the legislative research and expertise bodies of the Parliament or other entities authorised to engage in legislative drafting”. The President of the Republic or the Parliament can decide that a draft is to be considered as a priority draft law, in which case extraordinary deviations from the usual review procedures are allowed and all procedural deadlines can be shortened by up to 50%.

In 2017, all nine drafts considered as priority drafts were initiated by the President or by individual MPs, not by the CMU. However, 56% of the draft laws initiated by the CMU were adopted after just one reading instead of the general requirement of three readings. For the purposes of this assessment these drafts have been considered as adopted in extraordinary proceedings. In practice, the CMU initiates only a minority of draft laws, as 56% of all drafts were initiated by individual MPs in 2017 and 14% by the President. The practice of adopting draft laws after just one reading is common for all drafts, regardless of the initiator.

Individual MPs, parliamentary factions and committees have the right to ask oral and written questions of the Prime Minister and ministers during the weekly ‘Question Hour’¹⁹⁴. All members of the CMU are required to attend and they usually comply with the obligation, according to information obtained from the administration of the Parliament (no statistics are kept). The Question Hour is also publicly broadcast. The same legal drafting rules apply to the CMU as to the Parliament¹⁹⁵. All draft laws submitted to the Parliament have to be accompanied by an explanatory note that summarises the results of the consultation procedures and the rationale behind the proposal. On the basis of the sample draft laws analysed for this assessment¹⁹⁷, it appears that this requirement is followed in practice. All draft laws initiated by individual MPs have to be submitted to the CMU for its opinion, through the Budget Committee. The CMU is explicitly required to provide an assessment of the budget impacts and of compliance with the laws governing budget relations. In practice, however, the Parliament does not consistently share draft laws for CMU opinion. This was not done for any of the samples analysed for this assessment.

The RoP of the Parliament foresees regular meetings of the Conciliation Commission of the Parliamentary Factions that decides on the agenda of the upcoming plenary session²⁰⁰. According to information from the SCMU and the administration of the Parliament, representatives of the CMU and the President’s Administration also participate in meetings of the Conciliation Commission, and this is the main format for regular discussions on the

upcoming agenda. The CMU does not share information with the Parliament regarding its legislative initiatives on an annual basis. The GAP is adopted by the Parliament, but the GPAP or the Legislative Plan are not submitted to the Parliament for information.

The majority of draft laws submitted to the Parliament by the CMU do not originate from the GPAP or the Legislative Plan. In 2017 only 24% of the CMU drafts were listed as commitments in the Plans.

The timeliness of processing CMU drafts by the Parliament is low as only 75% of the drafts submitted in 2016 were processed within a year²⁰². According to the RoP of the CMU, ministers or their deputies are required to represent the CMU in the plenary and committee sessions when draft laws regulating their responsibility areas are being discussed²⁰³. Exact statistics on the participation of CMU representatives in the Parliament discussions are not available, but the administration of the Parliament confirmed that ministers or their deputies are present when issues under their responsibility are being discussed.

The CMU is required to report to the Parliament annually on implementation of the GAP and the budget. The Parliament can also organise a special hearing to discuss any matters regarding implementation of the GAP²⁰⁴. In practice, these hearings do take place and are used to discuss implementation of policies.

Based on the factors outlined above, the value of the indicator measuring parliamentary scrutiny of government policy making is 3.

Summary for Principle 7.

The legal framework for parliamentary scrutiny is in place. In practice, however, 56% of drafts initiated by the CMU were adopted extraordinarily after just one reading. The CMU is the initiator of only about 30% of all draft laws, as individual MPs (56%) and the President (14%) initiate the rest. The Parliament is not consistent in sharing drafts for the opinion of the CMU, and the CMU does not share its legislative plans with the Parliament on an annual basis. Only 24% of the draft laws submitted to the Parliament by the CMU originate from the annual plans of the CMU, and the timeliness of the Parliament in processing the Government's drafts is poor.

Key recommendations

Short-term (1–2 years)

- 1) The mandates of CoG bodies regarding the scrutiny of policy proposals should be clarified to avoid overlaps. The SCMU should start fulfilling its current mandate by checking the coherence of draft legislation and other policy proposals with the priorities of the Government.
- 2) A clear deadline should be established for submitting proposals to the agenda of the CMU, preferably not more than two weeks prior to the session. The SCMU should be granted the mandate for returning proposals to line ministries and executive authorities in cases of substantial shortcomings.
- 3) The Parliament should ensure that all draft laws initiated by individual MPs are submitted to the CMU for opinion. 4) Line ministries should stop the practice of submitting draft laws

to the Parliament through individual MPs in order to avoid the governmental decision-making process.

Medium-term (3–5 years)

5) The share of draft laws adopted by the Parliament after just one reading should be gradually reduced.

Policy development

Key requirement: Inclusive, evidence-based policy and legislative development enables the achievement of intended policy objectives.

Analysis of Principles

Principle 8: The organisational structure, procedures and staff allocation of the ministries ensure that developed policies and legislation are implementable and meet government objectives.

There are currently 18 ministries in Ukraine, and their areas of responsibility are established by the individual statutes adopted with CMU resolutions. The legal framework places the ultimate responsibility for policy development on ministries. According to the Law on Central Executive Authorities, ministries ensure the formation and implementation of state policy in one or several areas, while other central executive bodies implement state policies. This division of functions is followed in practice, as confirmed by analysis of the legislative plan for 2017, which stipulates that agencies subordinate to line ministries do not carry the sole responsibility for drafting laws. Only the central executive authorities, which are directly subordinate to the CMU, have a mandate for legislative drafting.

However, the responsibility of ministries for policy development is diminished by the practice whereby ministries submit draft laws directly to the Parliament through individual MPs in order to bypass the consultation and decision-making procedures of the Government.

The mandates and functions of ministerial departments have been established by the statutes adopted by the respective ministers. Separate departments have been established according to the policy areas for which the ministry is responsible, along with legal departments, budget departments and units dealing with the administrative affairs of the ministry. In 2017, separate directorates for Strategic Planning and EI were established in ten ministries²¹⁰. According to the model statute for these directorates adopted by the CMU, they are responsible for improving the strategic planning of ministries' activities as well as for co-ordinating the work of other structural subdivisions to ensure their accordance with the priorities of the Government listed in the key central planning documents. Recruitment of staff in these directorates was ongoing during the assessment period, and the new structures are not yet fully functional.

Deputy ministers are in charge of policy development and legislative drafting in ministries. They can represent the legislative initiatives of the CMU in the Parliament. Departments and directorates within the ministries are subordinate to deputy ministers, according to their areas of responsibility. In addition, all draft acts have to be signed by the deputy minister before being submitted to the minister for final approval. The internal regulations of

ministries refer to the general requirements for the policy-development process established by other legal acts, including the requirement for public consultation. In addition, the regulations stipulate the requirement to consult all affected departments within the ministry and the legal department as the final authority; working groups can also be established for drafting legal acts. Not all ministries have adopted such regulations, however, so internal policy-development procedures have not been comprehensively established across all ministries.

According to information obtained through interviews, legal departments are consulted consistently, but this is not the case for budget departments. This is evident from analysis of the policy proposal provided by the MoEDT (the draft Export Strategy of Ukraine), which contained the opinions of all the departments consulted except that of the Department of Financial Work and Economic Provision of the Ministry (which is responsible for the budget of the Ministry). The policy proposals provided for assessment by the Ministry of Ecology and Natural Resources, the Ministry of Agrarian Policy and Food and the Ministry of Social Policy did not include any materials from the internal consultation procedures. It was therefore impossible to analyse the policy-development processes in practice, even for the ministries that have adopted internal regulations.

The share of civil servants dealing with policy development in three of the four sample ministries was above 60%, but was only 40% in one of the sample ministries. Staff dealing with functions not related to policy development work on the administrative affairs of the ministry. Departments dealing solely with implementation of policies are not part of the ministerial structures in three out of the four sample ministries analysed. Only the structure of the Ministry of Ecology and Natural Resources included the department dealing with environmental permits and licensing, as well as the department dealing with implementation of environmental projects.

As the internal policy development procedures within ministries have not been consistently prescribed and it was not possible to assess the internal policy development process in practice due to the incomplete samples provided for assessment, the value of the indicator measuring the adequacy of the organisation and procedures for supporting the development of implementable policies is 3.

Summary for Principle 8.

Ministries have the ultimate responsibility for policy development according to the legal framework. However, their responsibility is diminished by the practice whereby ministries submit draft laws to the Parliament through individual MPs. Deputy ministers are in charge of policy development in their ministries, but the internal procedures for legislative drafting have not been established in every ministry.

[Principle 9: The European integration procedures and institutional set-up form an integral part of the policy-development process and ensure systematic and timely transposition of the European Union acquis.](#)

The GOEEAI is responsible for planning, co-ordinating and monitoring the acquis alignment process, as well as for ensuring conformity with national legislation. The requirements for preparing EI-related policy proposals, as well as related interministerial and public

consultations, are defined in the RoP of the CMU. These requirements are the same as for domestic proposals; the only exception is the Table of Conformance (ToC), which must be attached to all EI-related proposals. In four of the five samples provided for this assessment, this requirement had been followed in practice.

As one of the SCMU departments, the GOEEAI reviews the EI-related proposals after the inter-ministerial consultation process, but only when the draft has been submitted to the CMU for decision. However, the SCMU does not have the mandate to return proposals due to substantial shortcomings. Only the Government EI Committee can return proposals to sponsoring bodies. The absence of administrative-level co-ordination between the line ministries and the SCMU during acquis alignment limits the effectiveness of the co-ordination process. Any need to improve EI-related proposals must first be addressed at the political level, even if there is no conflict between the opinions of the GOEEAI and the body that submitted the draft. The legal framework establishes the process for organising the translation of the acquis²²⁶. The executive bodies that are expected to approximate specific legislation are obliged to submit proposals to the GOEEAI for the translation of EU legal acts. The proposals should be in line with the planning of EI commitments and are combined into an indicative plan for translation. The GOEEAI must submit the indicative plan for adoption to the CMU by 30 January of each year. The GOEEAI manages the translation process and implementation of the plan.

In practice, only the translations of three of the five most recent EU legal acts (planned for transposition in 2018) had been finalised by the time of this assessment. As a result, no points are awarded for the sub-indicator measuring the translation of the acquis into the national language.

The share of the acquis alignment commitments carried forward and the implementation rate of legislative commitments for acquis alignment in 2017 could not be calculated. It was not possible to identify the commitments related to acquis alignment from the 2014-2017 APIAA because the planned legislative activities did not refer to the EU acquis that were planned for transposition. However, the commitments in the most recent APIAA (adopted in October 2017 and covering the period 2017-2022) do refer to the relevant EU acquis.

As the APIAA did not contain the information required to calculate the implementation rate of acquis alignment or the backlog, and since translation of the parts of the acquis which are to be transposed has not been finalised, the value of the indicator measuring the Government's capacity for aligning national legislation with the EU acquis is 1.

Summary for Principle 9

The GOEEAI is in charge of planning and co-ordinating the acquis alignment process. However, it is consulted only when proposals are submitted to the CMU for decision, and it can return drafts to the sponsoring body for improvement only with the approval of the Government EI Committee. The ToC is mandatory for all drafts dealing with transposition of the acquis and this requirement is usually followed, but not for all drafts analysed for assessment. The timely translation of the EU acquis is not ensured. As the previous APIAA did not specify commitments related to acquis alignment, the implementation rate could not be calculated.

Principle 10: The policy-making and legal-drafting process is evidence-based, and impact assessment is consistently used across ministries.

The RoP of the CMU establish the requirements for a broad impact assessment. The explanatory note accompanying all draft legal acts must contain a problem analysis, the objectives of the draft act, the reasons for its adoption, an overview of the opinions of stakeholders and an assessment of the regulatory impacts (financial, economic and regional), as well as effects on the labour market²²⁹. In addition to the general requirement for impact assessment, the Law on the Principles of State Regulatory Policy in the Sphere of Economic Activity (LPSRP) stipulates the obligation for RIAs of all regulations affecting businesses.

However, the two impact assessment processes foreseen by the RoP of the CMU and the LPSRP are established in parallel; they are not linked in the legal framework or in practice. The ministries and other central executive authorities that prepare regulations with business impacts are required to prepare RIAs and explanatory notes – with largely overlapping contents. The SRS conducts quality control on the RIAs²³¹, and the SCMU is responsible for assessing the quality of analysis in the explanatory notes²³². RIAs are shared with the SRS for opinion (together with the draft regulation), but as the RoP of the CMU do not refer to RIAs, they are not attached to the draft proposals during the consultation procedures or when they are submitted to the CMU for approval. The explanatory notes refer only to the results of the SRS consultation. As a result, despite the overlapping requirements for preparation of the analysis accompanying draft regulations, the CMU is not provided with the full packages of supporting materials for decision making.

The SRS has developed a methodology for assessing the impacts of regulatory acts, which contains methods and guidance on how to assess impacts on businesses and the state budget, and the MoF has prepared a methodology for costing policy proposals. Both methodologies provide guidance on assessing budget impacts, but they are not completely aligned with one another. For example, the SRS guidelines foresee the assessment of budget impacts for five years, while the current MoF methodology requires a two-year projection. In addition, the available guidelines do not contain practical examples for assessing impacts in all areas required by the legal framework. The quality of analysis in the explanatory notes of the sample draft laws is poor, as they do not define the problems the law is designed to deal with or its objectives. There is no comparison of viable alternatives, and introduction of the proposed law is presented as the only option. Budgetary impacts are not assessed for any of the proposed laws although, on the basis of the proposed measures, these are likely to occur²³⁶. Explanatory notes either confirm that the implementation of the laws will not require any additional resources or predict positive fiscal impacts in the future, without providing any specific calculations or estimates. The cost estimates calculated for the RIAs are not used in the explanatory notes. No information is provided on how the laws are to be implemented or how the effects of the proposed laws will be monitored and evaluated. RIAs were prepared for two of the draft laws analysed, due to their impacts on businesses. Compared with the explanatory notes, the RIAs contain a better definition of the problem and a broad description of the objective. However, the RIAs do not provide sufficient insight into justification for the proposal and the relevant impacts of its implementation.

Despite shortcomings in the budgetary impact assessment, the MoF did not provide negative opinions on any of the draft laws²³⁹. According to the RoP of the CMU, this qualifies as an approval. A review of the SCMU expert opinions on the draft laws provided for this assessment reveals that other shortcomings regarding the quality of analyses in the explanatory notes also were not raised before approval of the drafts by the CMU. The SRS provided a negative opinion on one of the drafts it received for review, but this did not stop further processing of the draft.

Due to the poor quality of the impact assessments and deficiencies in quality assurance, the value of the indicator measuring evidence-based policy making is 1.

Summary for Principle 10

The legal framework establishes the general requirement to analyse the effects of draft legal acts and a separate requirement for RIAs on all regulations affecting businesses. The two analytical processes are not aligned, however. This creates additional burdens for the proposing ministries and central executive authorities without providing added value to the decision makers. The quality of policy analysis is poor. Set requirements are not consistently followed and central quality assurance is not functional.

[Principle 11: Policies and legislation are designed in an inclusive manner that enables the active participation of society and allows for co-ordination of different perspectives within the government.](#)

The requirements for public consultation are established in the RoP of the CMU, the resolution of the CMU on Ensuring Public Participation (EPP) and the LPSRP for consultations on regulatory acts affecting businesses. According to the RoP of the CMU, public discussions must be held for all draft acts that have social importance and concern citizens' rights and duties, provide benefits or advantages to particular business entities, and delegate functions of executive bodies or local governments to nonstate organisations. Public consultation is mandatory for legal acts, including secondary legislation, regulating certain matters such as the rights and freedoms of citizens, environmental and administrative services, and reports on budgets²⁴⁴. However, a clear and comprehensive requirement for conducting public consultations on all draft laws and bylaws has not been established. All executive bodies are obligated to publish their annual consultation plans on their websites to inform stakeholders in advance. In addition, according to the LPSRP, consultation on all drafts affecting businesses must be announced up to five days in advance.

The executive bodies are required to publish drafts for consultation on their website as well as on the website of the Government's portal. The general minimum duration for written public consultation established by the EPP is 15 days²⁴⁸. All acts affecting businesses must be publicly available for comments and suggestions for at least one month, but not more than three months²⁴⁹. Other forms of consultation in addition to written online consultations are also foreseen by the regulations. These other forms include sending the draft act directly to the affected stakeholders²⁵⁰ and organising public discussions and discussions at the Public Council (a temporary advisory body established under the executive authority for consultation purposes)²⁵¹.

The explanatory notes must be published along with the draft acts, and RIAs must be published for all regulations affecting businesses²⁵². In addition, the EPP stipulates the obligation to publish the summary of each proposal and an overview of its consequences for different social groups and interested parties along with the draft regulation²⁵³. Results of the public discussions must be described in the explanatory note, including an overview of the comments received and how they were taken into account – or, if not, how the effects have been minimised²⁵⁴. In addition, the EPP requires that executive bodies prepare a report on the public discussion²⁵⁵ that contains the proposals received as well as feedback on them, and that the report be publicly available on both the ministry's website and the Government's civil society portal. Executive bodies publish consultation plans online, including the title of the draft, the indicative time planned for the consultation and the name and phone number of the contact person. Of the four ministries for which SIGMA analysed consultation plans for 2018, three also provided the e-mail address of the contact person.

In practice, however, online public consultations are not held consistently. Only two of the four sample ministries analysed for this assessment published at least half of their draft laws for consultation in 2017. In several cases, the explanatory notes simply concluded that public discussions were not necessary, even though the legal acts would have impacts on the environment or on the rights and freedoms of citizens²⁶⁰. The consultation practices on five draft laws²⁶¹ were analysed for this assessment, on the basis of information provided by the administration and the materials available online. For one of the draft laws, there was no consultation at all with non-governmental stakeholders, and for another of the draft laws, consultation was limited to discussions by the Public Council. Stakeholders were informed in advance of the consultation procedures for three of the draft laws. The minimum deadline of 15 days for written public consultation was respected for three draft laws. Explanatory notes were published for consultation alongside three drafts as well as RIA reports together with the two drafts for which they were prepared. According to the explanatory notes, comments were provided on two draft laws during the public consultation, but there were no details on the content of these comments or on any feedback on them. As a result, the materials submitted to the CMU for decision did not include information on the actual outcomes of the public consultations. A report on consultation outcomes was prepared for only one of the sample drafts provided²⁶⁶. As a part of its expert opinion, the SCMU is required to check whether public discussions were held. Only one of the expert opinions provided for this assessment covered the public consultation process; the other two did not refer to the public consultation process even though both of the drafts did not meet the requirements for written public consultation or provide any explanation about it.

The RoP of the CMU sets out the requirements for interministerial consultation. The minimum length of time to provide an opinion is not stipulated, so it is up to the proposing body to establish a deadline for responses within the maximum time limits foreseen by the RoP. The maximum time limits range from one day for proposals dealing with emergencies, up to one month, depending on when the proposal has to be submitted for CMU decision. All affected bodies must be consulted, and the obligation to consult the MoJ, the MoF and the MoEDT is specifically mentioned. All other bodies, including the MoF and the MoEDT, can approve the draft without responding, but the opinion of the MoJ is mandatory for submitting the draft to the CMU. The SCMU, including the GOEEAI, is consulted only when the proposal is submitted for approval at the CMU. The RoP does not mention the role of the SRS, which is required to provide an opinion on the RIAs.

The proposing body is required to inform the Government about the outcomes of the interministerial consultation process in the explanatory note and in separate tables providing detailed information about the opinions of consulted executive bodies (including any unsettled differences of opinion)²⁷⁴. There is no administrative-level co-ordination mechanism for solving any remaining discrepancies. The state secretaries of ministries meet weekly to informally discuss the agenda of the upcoming session of the CMU, but they do not have the mandate for conflict resolution. Therefore, all differences of opinions are dealt with at the political level by the Government Committees.

Analysis of the sample draft laws indicates that interministerial consultation takes place consistently, including consultations with the CoG bodies. Drafts submitted to the CMU for decision are accompanied by a table containing an overview of the comments received and how they were addressed by the sponsoring ministry.

Interministerial consultation is a regular practice, but the minimum duration for the interministerial consultation process has not been defined and the administrative-level conflict resolution mechanism is not established. In light of these issues, the value of the indicator measuring interministerial consultation on public policy is 3.

Summary for Principle 11.

The mechanism for public consultation processes is established in the legal framework, but not comprehensively for all draft legal acts and practice is inconsistent. Outcomes of the consultation process are usually not described in the materials submitted to the CMU or made publicly available. Interministerial consultation is performed consistently, but its effectiveness is limited by the absence of administrative-level conflict resolution. Furthermore, the minimum duration for interministerial consultation has not been established.

Principle 12: Legislation is consistent in structure, style and language; legal drafting requirements are applied consistently across ministries; legislation is made publicly available.

Both the MoJ and the SCMU perform the task of scrutinising legal quality, and their roles are defined by the RoP. Their roles partially overlap, as they both analyse issues such as constitutionality and alignment with the existing legal framework. Guidelines for legal drafting have been developed by the MoJ and the Parliament, and they are available online. The guidelines provide consistent instructions for legal drafting.

Training on legal drafting is not centrally organised, and the MoJ and SCMU staff responsible for legal scrutiny are not involved in designing or delivering such training. Thus, it cannot be ensured that training on legal drafting addresses the most relevant shortcomings in draft legal proposals.

The Parliament adopted 14 new laws on the proposal of the Government in 2016, and amendments to 6 (43%) were initiated by the Government or the President within one year of adoption. This high share of amendments to new laws indicates serious problems with the quality of legal drafting. This, in turn, has a negative impact on the consistency and clarity of the legal framework. According to a survey commissioned by SIGMA, only 33% of Ukrainian businesses consider government policy making clear and stable.

The legal framework establishes the procedures for publishing legislation. According to the general requirement, all legal acts have to be made publicly available within 15 days of their adoption. The MoJ is responsible for keeping the registry of all legal acts²⁸³. Legal acts must be submitted for state registration within five working days of their adoption and published within 15 days of being received by the MoJ. The procedures for publishing legal acts of the Parliament and the President are also established. In practice, legal acts are published in parallel on several online locations, as well as in consolidated format. The online publication of secondary legislation is not entirely consistent, however. The regulation governing the state registry of legal acts explicitly requires the registration of regulations that affect socio-economic, political and personal rights, freedoms and lawful interests of citizens or that have an “inter-agency character”. As a result, the MoJ has not, for example, registered regulations establishing the sanitary requirements for farms and for different areas of production²⁸⁸, and these regulations are not publicly available online. According to a survey of businesses commissioned by SIGMA, only 39% of respondents believe that information on the laws and regulations affecting their business is easy to obtain from the authorities²⁸⁹.

Due to the high share of new laws amended within a year of their adoption and the low perception of legal clarity and stability among businesses, the value of the indicator measuring predictability and consistency of legislation is 3.

As the availability of secondary legislation through central registries is incomplete and the perceived availability of laws by businesses is low, the value of the indicator measuring accessibility of legislation is 3.

Summary for Principle 12

The mechanism for ensuring the quality of legislation is in place but does not function properly, as laws are subject to frequent amendments. Several sources ensure online availability of legislation, but the publication of secondary legislation is still incomplete. Perceptions of businesses on the clarity and stability of the legal framework and on the availability of laws are negative.

Key recommendations

Short-term (1–2 years)

- 1) The procedures for interministerial consultation should be amended so that draft legislation dealing with acquis transposition is submitted to the GOEEAI for opinion prior to being submitted to the CMU for decision.
- 2) The CMU should streamline the procedures and available guidelines for impact assessment so that line ministries are not required to prepare separate, overlapping supporting documents. The SCMU should ensure that all documents containing analysis substantiating the proposals are submitted to the CMU together with the draft legal act, and that the quality of analysis is reviewed before proposals are submitted for decision.
- 3) A clear and comprehensive legal obligation to carry out public consultations for all draft primary and secondary legislation should be established, and the SCMU should ensure that public consultation is carried out consistently and results of the process are described in the documents accompanying draft proposals.
- 4) A top administrative-level co-ordination body should be given the formal mandate as the forum for solving differences of opinion among line ministries, as well as between line ministries and the SCMU, before drafts are submitted for discussion at the political level (Government Committees or the CMU).
- 5) The MoJ and the SCMU should enhance scrutiny of legal drafting to increase the quality of legal acts and decrease the need for frequent amendments.
- 6) All secondary normative acts should be registered in the state registry for legal acts and subsequently be published online in consolidated format.

Medium-term (3–5 years)

- 7) The internal policy development procedures for line ministries should be prescribed in order to support functionalisation of the new directorates for strategic planning and EI.

Key recommendations for improving the policy making system in relation to the AA

1. Full integration of AA related tasks into the Government/ministries planning system and planning documents.
2. Integration of the monitoring of AA related tasks into the overall Government monitoring system however with proper “flags” to ensure a specific EI view of progress.
3. Identification of AA related tasks which require policy to be developed, discussed and adopted. To develop such policy will be included in the annual work plan and will be an obligation for the ministry.
4. Identification of AA related tasks which require ex ante impact assessment (full or partial)
5. Introduction of different coordination mechanisms for policy and technical issues. To develop such assessment will be included in the annual work plan and will be an obligation for the ministry.
6.
 - a. GOEAI makes the first level coordination by sharing information and arranging ad hoc meetings to discuss any technical issues coming up
 - b. The VPM chaired regular meetings of deputy ministers will be the fora for discussing the horizontal technical issues (planning, deadlines, typical conflicts etc.) – these meetings can be less frequently organised in the new system
 - c. For policy proposals (identified in advance) and other proposals with policy choice involved also GOEAI makes the first level of coordination by arranging meetings for the senior level of officials of the main interested stakeholders to discuss in depth the proposal and settling disputes – this process is applicable both for proposals to be adopted by the government and for those to be adopted by the ministries themselves
 - d. If there are remaining issues after the GOEAI meeting, the VPM invites higher level officials for a coordination meeting to settle the dispute
 - e. Policy proposals and other proposals with policy choice to be approved by the Government are to be discussed by the Committee in charge of EI (the mandate of this committee is preferably cleaned of other tasks) and recommendation is made for the Government.

7. Introduction of specific rules for preparation of AA related proposals for the Government sessions at Secretariat of CMU to eliminate overlaps of reviews made by GOEAI and other departments.
8. Linking the AA related policy making and legislation to the medium-term budget planning (to be introduced regardless the AA) to enable to consider at least the medium term fiscal impact when deciding on policy choices and to ensure proper funding of implementation.
9. Establishment of a “fast track” at Verhovna Rada for proposals related to AA implementation (more widely Euro-Atlantic Integration) to ensure that these proposals are put on the agenda within a reasonable period (2-3 weeks) and voted upon within 8 weeks.
10. To invite the EU Integration Committee of the VR to appoint experts (not MPs) to participate in drafting of AA related policies and key legislation to ensure the better preparation of the Committee.
11. To establish capacities at the Secretariat of CMU (or under its control) for providing methodological support for policy making and impact assessment to the ministries upon request or upon identified need.

Updated recommendations for GOCEEI on improving AA-implementation coordination reflecting previous A4U recommendations and establishment the DGs in line ministries II.

1. Our understanding is, that concerning the coordination mechanisms the following key “structures” should be taken into account (apart from the bilateral bodies):
 - a. Current - The Government Committee on Euro-Euro Atlantic Integration (GC- EEAI), that meets regularly – chaired by the DPM
 - b. Current - The working meetings of the deputy ministers in charge of EEAI (Deputy ministers’ meeting) – chaired by the DPM
 - c. Suggested - The regular (linked to the GC-EEAI sessions) meetings of Directors of Strategic Planning-EUI DGs/Heads of EI departments (Directors’ meeting)
 - d. Suggested - Regular individual meetings with the Directors/Heads of EI Depts of ministries that have significant role in the AA implementation.

Below we summarised/outlined our recommendations. Most of them are detailed in documents had been sent to GOCEEI earlier.

Although the most logical way of establishing the functions of these structures would be to start with the GC-EEAI and align the others accordingly, improvement is achievable even if the GC-EEAI set-up remains unchanged for a while.

2. A key measure recommended by A4U is to **‘individualise’ and raise the position of the GC-EEAI in the decision making process, clearly distinguish¹ it from other GCs and granting it specific competences concentrating all European policy issues.**

That can be implemented either in the form of a separate law covering all institutional and procedural issues of the EI related policy and decision making, but that would require a long political process.

The other, “minimalistic” solution could be the amendment of the Rules of Procedures of the CMU (RoP). It seems to be more realistic, taken into account and reflected the ongoing efforts for drafting a modernised RoP.

The amended RoP would say that **in case of a policy or legal proposal with significant EI implication(s) the GC-EEAI should discuss it even that proposal has already been considered by the (other) GC** responsible for the main subject of the proposal. GC-EEAI should always be the last GC to discuss the

¹ It is not suggested to change the concept of “equality” of CMU Committees, just the sequence of steps in the decision making process.

proposal before it is submitted to the CMU session. Such an arrangement would enable the GC-EEAI to come to a position knowing already the position of the other GC(s) and articulate both positions in front of the PM/CMU session if needed.

As consequence of this step – together with the proposed changes later in this document - the position and role of GOCEEI as central and main coordination body in the preparations and monitoring of the GC-EEAI works and outputs would rise without the necessity to introduce new/separate regulations.

3. **The informal position of the GC-EEAI could be improved by other means too. Bringing this body closer to the Prime Minister (PM) would be very effective. That could be achieved by a changed legislation permitting the PM to chair the GC-EEAI in case of having strategic/comprehensive issues on the table or just allowing the PM's participation.**

If such change is not feasible, even some gestures could improve the informal position of the GC-EEAI like the appearance of the PM at certain GC-EEAI meetings.

A possibility for the chairperson of the GC-EEAI to insist on the presence of ministers (no substitution is accepted) in case of very important or controversial topics could also increase the GC-EEAI's position.

4. **GC-EEAI is currently responsible both for EI and regional development related issues. A more focused scope, the EI issues exclusively could also improve the effectiveness.** Meaning, to transfer the regional development associated (mainly technical) issues to other GC and let the GC-EEAI focus solely on EI related policies and legal drafts.
5. The current process of preparing the GC-EEAI and CMU meetings discussing EI/AA related issues is not entirely clear because the responsibilities of different SMCU units are not separated.
 - a. According to the current rules, the critical opinion on a draft policy/legal act to be discussed by the GC-EEAI is prepared by the relevant DG/department in the SCMU. The role of GOCEEI is reduced to the assessment of the compliance with EU law/commitments of the Association Agreement.

This 'multi-stage-level' preparation formula, which is accompanied by many unnecessary administrative activities, involves participation in convening and organising one committee meeting of several bodies. Those are: a) GOCEEI, b) OVPM, c) sectoral department in the SCMU, d) department responsible for the organisation of meetings of all GCs and e) informal State Secretaries (StS) meeting with participation of SCMU directors during which the agenda of the GC is established. The agenda determined in this current way is most

probably more a result of the interests of individual ministries than the expression of analytical reflection made by the responsible body (GOCEEI).

Our recommendation is, that **GOCEEI should be the primary coordinator/partner of the ministries and it should be responsible for the necessary preparation of the EI/AA related agenda points of the GC-EEAI and CMU meetings (regarding content, not administratively), including to propose the agenda points.**

- b. In case of discrepancies between EU legislation (AA commitment) and a proposal on the table, a complicated procedure has to be engaged by the VPM calling on a given ministry to make the necessary modifications. The complexity of the process that follows is primarily due to the necessity to re-pass almost all phases of the proceedings, which are accompanied by a sequence of actions and formal activities (signatures, minutes, additional letters reflecting minutes of the meeting, etc) that could indeed be reduced to a necessary minimum. We understand that in reality it usually happens swiftly, however **the RoP would instead recognise the fact, by changing the formal process. That should institutionalise GOCEEI key role in the reconciliation process.** In this option, the essential institutional change conditioning the effectiveness of such a procedure would require the 'natural' subordination of the GOCEEI directly to the VPM instead of the SCMU management.
6. For improving the effectiveness of the AA implementation, GOCEEI's way of operation needs improvement as well. In this regard, a **more structured, in-depth communication with the ministries is key. That would enable GOCEEI to effectively influence the content of the AA-related policies and legal drafts developed by the ministries.** For that purpose a following steps are suggested:
 - Regular "plenary" meetings with Directors/Heads of Departments responsible for EI issues – for general planning, monitoring and coordination,
 - Regular "one on one" meetings with Directors/Heads of Departments responsible for EI issues of key ministries, with the participation of the Director relevant for the subject matter if needed – for ministry-specific planning, monitoring and intervention,
 - Expert level contact between GOCEEI expert and ministry expert on complicated issues – for monitoring of progress, identifying problems, providing support.
 7. The regular "plenary" Directors' meetings, to be held in synchrony with the GC-EEAI meetings, might have three following functions:

- a. preceding the deliberations in the GC-EEAI meeting, to operate as an administrative level coordination and dispute resolution forum,
 - b. provide the Directors with regular and updated information on the current state of play of UA-EU relations, on decisions of the GC-EEAI and the CMU as well as the bilateral bodies and give guidance on the follow-up actions,
 - c. to discuss planning, reporting, monitoring and other procedural issues.
8. By having introduced the above-suggested ways of communication **the monitoring of the AA implementation could be shifted to a real management tool, aiming the early identification of problems and enabling swift intervention on the appropriate level.** The internal processes of GOCEEI should be aligned with that requirement.
9. Parallel with that, the support functions of GOCEEI need to be also strengthened. The ministries should feel that GOCEEI is ready and capable to help them live up to their responsibilities. Support functions like: source of knowledge, contact channel to EUD/EC, guidance on content and process, dispute resolution.
10. The Deputy ministers' meeting chaired by the VPM might have somewhat similar functions that of the Directors' meeting. However, the earlier should focused on the politically sensitive issues and can, endorse or in exceptional cases overwrite the outcome of the Directors' meeting.

These steps together would be helpful in transforming the GC-EEAI into a core strategic body enlarging its scope of responsibilities including the settlement of political inter-ministerial disputes that is a core task of its European equivalents. At the same time GOCEEI could strengthen its role as the key managing institution of the AA implementation.

It is worth to mention that the different logic of structure of ministries (DG in the pilot ministries, department in others for EI) creates communication and procedural difficulties and should not exist for long.

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Funded by
the European Union



Implemented by a Consortium led by
GFA Consulting Group

Outline of a Comprehensive Reform of Policy Planning, Making and Coordination in Ukraine

Draft

Discussion Paper by Tibor Draskovics, STE of the A4U EU Project.

It reflects views of the STE only and not the official position of the Project, let alone the EUD.

The purpose of this document

The goal of this document, the “Outline” is to present the outline of an improved policy planning and policy making system suitable for Ukraine and to identify measures/actions needed for implementation. It forms the blueprint for comprehensive reform that will have significant impacts on the operation of the CMU. It is meant to support the already ongoing change process.

There has been a different analysis of the issues associated with the current situation made by external and internal actors. The recommendations in this Outline are built on a shared understanding of these reports and international best practices and recommendations. The Outline, therefore, focusses on the changes suggested to be made, it does not provide a complete theoretical description of the ideal policy system, however, due to their importance, some elements of the broader planning system are also highlighted. The term “policy” is used in this document in a rather general sense (see: Annex.), incorporating among others the different plans and strategies currently used or is suggested for use in Ukraine.

To make a significant impact, the reform should address all key elements of the policy-making system: the processes, procedures, the institutions and the capacities needed. This improved system cannot be established at once. This proposed reform is closely linked to the overall Public Administration Reform and is aligned with its adopted Strategy. When implemented, the change could significantly increase both the efficiency and the effectiveness of the Ukrainian public administration without requiring significant additional resources.

Because of the complex and sensitive nature of this reform, a detailed implementation plan – with proper sequencing – should be developed to be the compass. All necessary measures should be then submitted in the appropriate form to the relevant bodies of the CMU. The implementation would require some legislative steps (changing existing legislation and introducing new ones), the introduction of methodologies to be used in the new processes and extensive training provided to the civil servants involved in these processes. All these will be needed for sustainability of the results.

Why policy making needs improvement?

The performance of the CMU and also the country is very much dependent on:

- The correct identification of issues critical for economic and social development,
- The way how CMU policies address those issues,
- How the resources are allocated to different policies,
- How these policies are implemented.

The analysis indicates that Ukraine is struggling with significant weaknesses in all these areas. These are limiting the ability of the CMU to put the country on a sustainable growth path and makes the EU integration process less effective.

To overcome these weaknesses a well-designed and medium-term reform of the policy system led by the Prime Minister is needed. Furthermore, significant improvement can be achieved in the short term by introducing some rather simple measures. There are several initiatives managed by the SCMU (and supported by the EU) going on right now. The recommendations set out in this Outline attempt to consolidate these workstreams.

What are the benefits of an improved policy system?

Through an enhanced policy system Ukraine could better utilise its limited resources and could more effectively achieve its objectives, the including EU Integration and the implementation of the Association Agreement in particular. For the CMU it would mean improved performance, which will be valued by voters as well as the external partners. The improved policy system – through its transparency and broad consultation processes – could also increase the legitimacy of the CMU and result in the more effective implementation of its policies.

Although there is no *acquis* in this area, the policy performance of Ukraine will be measured by the EU since it is key to the successful implementation of the AA. The first SIGMA assessment will take place soon.

The key success factors

Primarily and decisively the political will, strong leadership, expressed through the continuous support of the Prime Minister, will decide the future of reform in this area. This support is particularly important in the initial period when the direction and the key requirements are set.

Well defined processes and strong institutions, the SCMU² in particular, – underpinned by proper legislation - can make sure that the reform will be sustainable in the medium and long term. The institutions have to be politically empowered and supported, to enable them to enforce the procedures effectively. Exceptions from the processes, if required by time pressure or any other reason, should be approved by the PM strictly according to previously established rules.

Key elements of the reform

The reform - in line with the findings of the assessments - intends to enable the CMU to identify its objectives better, to improve the quality its policies for achieving the goals and increase the effectiveness of the decision making within the CMU.

Therefore measures are suggested in five areas of intervention:

1. Introduction of a fully integrated policy and fiscal planning system,
2. Development of the institutional framework
3. Improved policy formulation processes
4. Monitoring, evaluation and reporting processes,
5. Improving the effectiveness of CMU sessions.

² SMCU is a very complex institution with a number of functions. In this document that is referred as the central planning/policy making and coordination institution of the CMU regardless which internal unit/units are responsible for those functions.

1. Fully integrated policy and fiscal planning

1.1 Multiyear CMU Policy and Fiscal Priorities

The fundament of successful governance is setting clear – at least medium if not long term - priorities/objectives and making sure that all elements of the CMU operations are in line and for these objectives. Medium-term fiscal objectives are by definition part of the mentioned priorities and at the same time set the limitations for all other priorities/objectives. To set realistic, achievable objectives and to ensure that the fiscal objectives are also met, an integrated approach is therefore needed.

For the future, it is necessary therefore that the Government Program and the Medium-Term Action Plan, which set out the main objectives and priorities of CMU for its term and the proposal of the Fiscal Strategy/Medium-term Expenditure Framework (MTEF) were developed, discussed and approved in the same process, led by the Prime Minister.

The primary stakeholders in this process are:

- a) The Prime Minister's political cabinet representing the political view and addressing the legitimate political agenda of the CMU,
- b) The SCMU responsible for leading/coordinating the formulation process of the CMU Priorities,
- c) The Ministry of Finance responsible for the Fiscal Strategy and public finance management,
- d) GOEAI³ representing the specific requirements of EU integration process/AA implementation and with an oversight of the resources provided by the EU.

The primary inputs for this process are:

- a) The Prime Minister's expose, the Coalition Agreement and other political documents addressing the priorities,
- b) Financial-economic forecasts,
- c) Previously adopted CMU strategies (being implemented or waiting for implementation)⁴,
- d) The requirements/commitments of the EU integration/AA implementation process.
- e) Conclusions of the consultations with NGOs and other external stakeholders.

The process itself should be an iterative one, based on extensive analysis, and managed by the SCMU and the Ministry of Finance jointly with the involvement of relevant ministers, completed in a few months after a new CMU is established but kept under review on an annual basis. This process should integrate the top-down approach with the bottom-up initiatives of the Ministries but with the priorities in focus.

Following the decision on Action Plan (adopted by the CMU) a multiannual implementation plan should be developed with funding needs and sources identified, together with timelines and responsible institutions/officials. Indicators for enabling proper monitoring and evaluation would also be needed.

The key outputs of this process are:

- a) The Medium-Term Action Plan
- b) The (multi-annual) Implementation of the Action Plan
- c) The Fiscal Strategy/Medium-term Expenditure Framework

³ Although the GOEAI is part of the SMU due to its specific functions needs to be mentioned separately.

⁴ It is important to stress that the establishment of a new Government should not mean that everything starts from zero. On the contrary, the main point of policy planning is to introduce longer the term view of key issues. Thus the previously adopted strategies/policies should represent certain constraint for a new Government, although it always should have the right to make corrections after considering the upsides and downsides of such changes.

The above-described process in its entire complexity is to be followed only when a new CMU is established.

The longer term international commitments, the AA, first of all, do not change with the change of Government. Thus the tasks derived from those commitments need to be incorporated into the medium term and annual action plans⁵. Since these tasks are “given”, should enjoy a priority nature when the objectives and resources are harmonised. The incorporation of the AA tasks into the main Actions Plans makes possible and also necessary to properly coordinate them with all other proposed activities. For monitoring purposes, the AA related tasks should be “flagged”.

1. 2 The Medium-Term Plan of the ministries

The ministries and other CMU organisations (later in this document the term “Ministries” would include the ministries and all other CMU organisations having a role in the policy planning/making process) would be required to develop their Medium-Term Institutional Plans (Institutional Plans). These plans should include:

- a) Strategies/Policies/proposed regulations the Ministry is responsible for developing for implementing the Action Plan,
- b) Policies and budget programs covering all public functions (mandate) of the ministry,
- c) Measures planned for institutional development of the ministry.

The content of the Institutional Plans have to be in line with the existing overarching policies (strategies) and other policy documents and has to stay within limits set out by the MTEF.

Similar to the CMU level, the Institutional Plans should cover all the AA related tasks.

The Institutional Plans will be developed under the direction of the State Secretary, supported by the Directorate General responsible for planning/coordination/budgeting and EUI. The opinion of the SCMU and GOEAI is to be obtained before the Minister approves it.

1. 3 Annual Policy and Budget Planning

In all subsequent years (after the establishment of the new CMU) a validity check and update of the Action Plan should be made based on the analysis of results achieved in the implementation of the planned measures and the changing environment. This review process would be based on systematic monitoring and reporting on activities of Ministries. As a result, an Annual Implementation Plan for the Action Plan is to be developed. The Institutional Plans need to be updated accordingly.

The Fiscal Strategy and the Budget proposal should reflect these plans and the requirements of the macroeconomic environment.

In contrast to the current planning approach, this would be a *focused* and *unified* process. Focused, because the Action Plan sets the direction for it. Unified because designing the policies and the budget will be made together at the level of the CMU, driven by joint instructions issued by the SCMU and MoF (discussed and agreed by the Strategic Council) and managed according to a single planning calendar (no different steps and deadlines set out for Ministries anymore in order to meet the separate planning and budgeting instructions). The unified system requires that the policy planning system and the program budget system will use the same structure and classification. Based on that the Ministries would be able to submit their contribution to the

⁵ There is still room for more detailed implementation plan(s) for the AA.

budget planning by providing the relevant extract of their updated Medium-Term Plan and the template of new funding initiatives serving the purpose of both policy planning and the budget planning at the same time. The key outputs of the unified annual planning process are:

- a) The Annual Implementation Plan for the Action Plan,
- b) The Budget Memorandum and the Budget Proposal,
- c) The Annual Work Plan of the Ministries and
- d) The Annual Work Plan of the CMU.

The Annual Implementation Plan could also be part of the Budget Memorandum.

This approach is fully in line with the new program budgeting system, and it would ensure that it works more efficiently and effectively.

1.4 The Annual CMU Work Plan

The primary purpose of the Annual CMU Work Plan (AGWP) is to serve as a management tool. To achieve this, the AGWP will become a more focused document listing only policy proposals, draft legislation and other materials that need to be submitted to the CMU for review and approval. It will include:

- a) The actions/measures to be taken to implement the Action Plan,
- b) The steps/measures to be taken to implement the AA,
- c) Other issues/submissions scheduled for the agenda of the CMU.

The list of items mentioned would be broken down by month of the CMU session planned for adopting the proposal.

After adoption of the AGWP by the CMU, the list of items on the AGWP which are related to proposals for adopting a legislation by the Verkhovna Rada (VR) should be sent to the VR (in the form of the “Legislative Plan”) so that it can plan its activities accordingly.

To increase the transparency of the work of the CMU and help the external stakeholders to be prepared for the consultations, the publication of the AGWP (except the elements qualified as confidential) is suggested.

1.5 Strategies and other elements of the planning system

The strategies

Strategies (regardless the title of the document) are summarising the objectives and the planned course of actions of the CMU for a broad, interconnected policy area (sectorial or in exceptional cases large sub-sectorial, and cross-sectorial as well as multi-sectorial) for five years or longer.

These documents, therefore, have a significant planning element and also could be the base of specific legislative or other actions. The development process of strategies follows mainly the process described below for policy formulation with individual differences as indicated. Regularly updated action plans should support strategies. The development of a new strategy or a comprehensive review of an existing one is a significant step of the CMU. Therefore it is to be decided by the CMU itself based on the proposal of the relevant Ministry and the SMCU.

The strategy is the backbone of all activities of the public administration in the given policy area. Thus its content should be taken account during its lifetime when other plans or policies are developed to ensure the consistency and coherence of Government actions.

There are an enormous number of documents in force (at least formally) adopted by the CMU or even by the VR which may fall into the category of “strategy”. For the sake of clarity, an inventory and systematic review of them are necessary to determine which of those are obsolete, which need an update and which are in line with the priorities of the Government and the circumstances and should be implemented. This stocktaking and review process is a fundamental element of the policy reform and should be led by the SMCU.

The other plans

In most countries, there are several other types of documents expressing plans and policies of the government or of the country that have a particular purpose/nature and are not entirely part of the of the planning system. That is also the case in Ukraine.

The long-term vision, national development plan (if exists) is the most important of those. Such a plan could set the direction of all other plans and policies for decades and could represent an obligation for all governments. Thus such a plan needs very careful, long preparation and a broad consensus.

There might be other plans with specific purposes. The key point is to clarify the role of such plans in the hierarchy of planning documents and the coordination requirements linked to them. The general rule is that too many uncoordinated plans although developed with the best intention hinder the effective governance.

1. 6 IT support

Ideally, the policy and budget planning system are backed by an IT system – covering all ministries -, linked to the MoF’s system, which can be the platform both for planning and monitoring & reporting.

2. Development of the institutional framework

Individual institutional and organisational arrangements will need to be in place if the new system is to function effectively both at the level of the CMU and at the Ministries.

2. 1 Central level – the SMCU

The SMCU is the very centre of the government, the primary vehicle for ensuring effective governance. Although the SMCU has a broad range of functions, there are some critical to the policy reform.

It is very promising that in the recent months some significant changes (the establishment of the unit for strategic planning and policy coordination) were made to adjust the mandate and organisation of the SMCU to the needs of the improved public administration

The main elements of the full mandate required for SMCU about policy planning, policy making and coordination are as follows:

- a) Strategic planning – developing the proposal for the Action Plan and a detailed implementation plan with monitoring and reporting for it.
- b) Operational planning – developing the Annual Implementation Plan and the AGWP.

- c) Participation in developing the MTEF, the Fiscal Strategy and budget formulation to make sure that priorities and other CMU decisions, strategies, in particular, are accurately reflected.
- d) Providing methodological support to the Ministries by developing and updating methodologies for planning and policy making and also for policy impact assessment. Also enforcing the use of those methods.
- e) Developing selected policies/strategies or coordinating their development (this will be the exception; most policies will be prepared by the relevant ministry).
- f) Coordinating and supporting the policy making activities of the ministries (as described in the Policy Formulation and dispute resolution section below).

The internal structure and capacities of the SCMU should adequately reflect the main functions, listed above and also the others. The key issue is that the functions linked to the policy content (planning and policy making) should be separated from those that are ensuring the legal conformity and other formalities of CMU decisions.

Regarding policy planning, an active unit, capable of managing the longer term planning, to represent the “top down” approach is very much needed. A different unit is necessary to work with the ministries on a daily basis to support their policy making activities (“the bottom up approach) and ensuring proper coordination. These following functions would be delivered by sector teams, capable to fully understand the CMU priorities and have a sound knowledge of the area.

To meet all that requirements, sufficient analytical capacity is needed for the SCMU. The SCMU staff should deliver most of it but also they need to have access to other capacities within the CMU, donor support and financial resources to purchase special capacity from the market if necessary.

The particular tasks of SCMU would also require a staff with specialized skills and experience, being generalists and experts in the precise field at the same time. To recruit such professionals, it is suggested to enable SCMU by legislation to identify and transfer civil servants from Ministries to SCMU for working on particular tasks (projects) or for certain period (up to a few years)

The fundamental importance and the unique nature of the European Integration process and within that the implementation of the AA should be reflected in the SMCU internal structure. A unit, GOEAI at the moment, is very much needed. Such a unit can only effectively contribute if it has the right mandate and the cooperation with other SMCU units and the ministries is ensured. The suggested principle is that GOEAI has to carry out the SMCU policy planning and policy making functions about the AA and should be the “knowledge centre” of the whole public administration on EU-related issues.

In practical terms, GOEAI should be responsible and mandated to do the planning, to coordinate the ministries activities and to ensure the quality of documents submitted to the CMU for approval regarding the tasks identified as directly EI/AA related in the Action Plan and in the Annual plans. For such tasks, GOEAI is to ensure the implementation of the CMU priorities and the requirements of the EI process and the AA commitments. Regarding the non-directly EI/AA related tasks GOEAI works for the other planning and policy making unit of the SMCU by providing an opinion.

Since high-quality policy making should be evidence based, the improvement of the statistical system is also needed.

2. 2 Central level - the permanent coordination forum

The introduction of the state secretaries has just established the opportunity for a major step. The weekly meeting of the State Secretaries – chaired by the State Secretary of SCMU – in advance of the CMU session to discuss the policy proposals, draft legislation and also information documents submitted for the next CMU session(s), for final clearance of all but political disputes and pending issues. The consent achieved at these meetings verifies that the submission

- was prepared according to the relevant procedures,
- it is in line with the CMU Program,
- with other policies and laws,
- with the budget in particular.

Only the agreed upon submissions can be forwarded for political clearance to the respective CMU Committee and after that to the CMU session. Hence this regular meeting is meant to be the forum for final coordination and non-political dispute resolution.

This regular meeting will not have any staff or designated administration. The SCMU will give technical support.

It is also suggested that the Director Generals of the DGs for planning/EI meet regularly to discuss and coordinate the early on identified AA related policy issues and management matters relating to the AA implementation. The secretariat function to this meeting will be carried out by GOEAI, and the meeting itself chaired either by the GOEAI Director or the VPM for EI. In case a policy proposal or a draft legislation is cleared by this session could by almost automatically cleared be the meeting of the state secretaries.

2. 3 Central level – Permanent Working Group of MoF and SCMU

If the concept of fully integrated policy and fiscal planning is accepted, the key element of the implementation is the smooth, daily cooperation of SCMU and MoF. The practical solution for this could be a Permanent Working Group (the “Strategic Committee”) which would be tasked with

- Coordinating the medium term planning documents,
- Evaluating and updating the planning system, proposing changes,
- producing the joint planning instructions for ministries and with ensuring the consistency of the CMU Priorities and the Fiscal Strategy and their implementation annually.

From the SMCU side, GOEAI should also be represented in this Working Group to ensure that the EI/AA requirements and commitments are fully taken account.

2. 4 Ministries’ level – improved capacity for planning and coordination

The improved policy system can work only if parallel measures are introduced on every level/area of the public administration. In the ministries the capacities will need to be improved in three main areas:

- a) Policy making capabilities in all DGs/departments responsible for policy making(supported methodologically by the planning/budgeting/EI DG)
- b) Planning/budgeting skills: a dedicated Directorate General (reporting directly to the State Secretary) to be established in all Ministries (as already planned) That is responsible for planning (including financial

planning). This DG would steer and coordinate the internal policy planning process within the respective ministry and serve as the “interface” of the ministry about CoG managed planning processes, including the budget planning⁶. This unit would be responsible for ensuring that plans/policies from different sectors within the Ministry are consistent with each other and in line with the MTEF/Annual Budget. It would also monitor implementation. Therefore, this unit could become a critical instrument for the Minister/State Secretary for managing the ministry’s activities.

The critical planning related outputs of that DG are as follows:

- Contribution to the Government Program/Medium Term Action Plan
- Contribution to the three year and Annual Implementation Plan
- Contribution to the MTEF
- Contribution to the annual budget
- Development of the Institutional Plan
- Monitoring and reporting on all those plans

Also, these DG would provide support for policy formulation within the Ministry by providing advice on costing/assessing the financial impact of proposed policies and on other methodological issues.

- c) Coordination capabilities/responsibilities. The overall coordination responsibility lays with the State Secretary who will be supported by the DG planning/budgeting/EI. This DG will ensure that all plans/policies are fully coordinated internally and externally, the relevant procedures are followed and disputes resolved. Concerning the content of the policies, the relevant policy DG should process all comments/opinions collected both from other DGs within the Ministry and from external stakeholders.

3. Policy formulation

The outcome (in other words: the result) of any CMU policy depends significantly on the basis on which that particular policy was formulated. The primary objective of improved policy formulation is to ensure the quality of the policy proposals coming forward, thus enabling the CMU to make appropriate decisions. The best systematic assurance of quality is a well-regulated process with all the necessary checks built into it. Although rules are requiring/enabling it, such a process does exist only sporadically in Ukraine at the moment. The current methods of drafting legislation cannot be considered sufficient or a substitute for policy formulation.

The policy formulation process can produce high-quality policies only if adequate capacity is available and the process is strictly followed. In the new system Ministries remain responsible for developing and implementing most policies also in the future, but will be driven by the Action Plan, constrained by the MTEF, supported by SCMU and other CoG institutions providing them with guidance and quality assurance.

The policy process to be adopted theoretically should encompass all steps listed below. However, in reality, not all steps will apply to all policies, and also the sophistication of certain levels can vary depending on the nature and complexity of the given issue. That is the principle of proportionality that is to be applied with care and judgement.

All steps made in this policy making process should be based on thorough analysis of facts, evidence and good practices used elsewhere.

⁶ The execution of the budget should remain in the Finance Department.

The main steps of the policy process are as follows:

3.1 The identification of a problem/issue which requires a policy response

There are many different (social, economic, environmental, etc. and also political) reasons which can make a problem for a CMU response. A checklist could be established to provide guidance on identifying such issues/problems.

If there are a proper planning process in place the high-level planning documents identifying the issues to be dealt with, at least in a broad sense. In the case of the AA implementation, the general issues are also given by the commitments made by the country.

3.2 Decision on starting the formulation of a policy

Such a decision would be required to initiate the drafting process, even if a relevant issue has been identified. That is necessary because policy development is resource intensive. In most cases, this decision would arise as a result of as part of the policy planning system (thus no additional resolution would be needed) and only newly emerged issues/problems would require an ad hoc response. The decision should take into account the significance, the complexity of the issue/problem and the urgency of a policy response. It will also include the procedure to be used to take the matter forward (who will be responsible, and who will they work with) and the allocation of the necessary resources. In the case of suggested policies to be adopted by the CMU, the policy initiative (the document suggesting the approval of starting the formulation process) should be consulted with SCMU. Without SCMU's support, the formulation process cannot be started. When a national, complex policy, strategies, in particular, are in question it is up to the CMU to decide on starting the development process.

3.3 Definition of policy objectives and elaboration of policy options

Based on the issue/problem identified the next step would be to define clear objective(s) to be achieved and these should be quantified whenever possible. The objective is the desired change in real life, the solution of the problem that is planned. Having the objectives defined and information collected about the nature of the issue then the policy options that are available to address it should be developed. Depending on the nature of the problem and the objectives defined some potential policy options might be identified. Each policy objective might have more than one route – these are the options - to its achievement, each with different implications regarding risk, the result, the resources required, whether legislation is necessary and what other instruments might be used to achieve it. The costs and benefits, an estimated outcome of each option can then be estimated and presented in a comparable way for each option.

3.4 Selecting the preferred option(s)

Using a cost/benefit analysis and the impact assessment of the options and checking them against financial and other constraints the “optimal” option (or for some complex issues more than one option) can be selected for further development. A checklist could be developed to help the decision-making process for what is a crucial political management decision.

3.5 Elaboration of the selected option(s)

At this point, further work is required to firm up on and further quantify the impact of the favoured option. It is necessary to further develop details of the policy, including more precise estimates of costs, a full policy impact assessment, detailed implementation and monitoring plans, and where legislation is required, drafts of the laws and a Regulatory Impact Assessment.

3.6 Coordination and consultation

Policy issues in most cases are more complex than a single civil servant or a small unit focusing on a particular policy area can handle properly. Not all the information needed is available for them, and there are a broad range of implications to be worked through, interests to be aware of and expert advice to be sought. Therefore the involvement of other departments of the respective institution (intra-ministerial), other CMU organizations (inter-ministerial) and other stakeholders outside the CMU is essential. External stakeholders may include a broad range of different organisations: NGOs, think tanks, interest groups, academia, trade unions, etc. It is important to note that their involvement by definition requires a far more transparent and lengthier process than is currently the case.

The adopted policy process should define the minimum requirements for consultation and coordination depending on the nature of the issue and the step within the formulation process. As a general rule for complex problems a two-round consultation would be needed: before the preferred option(s) is selected and also before the final decision is made. The objective is not to achieve consensus at any cost, but to explore and consider all implications and to ensure that the proposal is consistent with

- a) the Action Plan,
- b) the MTEF/Annual Budget
- c) other CMU strategies/ policies/decisions,
- d) legal/Constitutional requirements and
- e) AA commitments, EU legislation.

The accuracy of costing and impact assessments can be verified through this consultation and coordination stage as well as the availability of the human, institutional and financial resources for implementation.

The consultation/coordination process always has to be a dialogue, not just gathering opinions (see: dispute resolution). If no agreement is reached, then the disagreement may be escalated to higher levels of the decision-making process.

3.7 Decision on the proposed policy

The approval of a policy is always a political decision to be made by the CMU or in case less comprehensive or simple issues by a Ministry or an official. The key is to provide the decision maker with sufficient and relevant information. Templates and checklist would support to achieve this. In the case of legal acts policy paper is to

be submitted to the decision maker to cover key issues and after this is adopted could the piece of legislation be drafted.

In the case of laws the final decision is made by VR, and therefore processes/rules will be needed to ensure that the substance of the requirements set out for policy formulation are met when amendments suggested by members of parliament are considered.

3. 8 Quality checks built into the process

To ensure the quality and consistency of the proposed policy, some checks are suggested at various points in the process. Depending on the complexity and nature of the problem and the instrument recommended to apply, not all of them can or should be used for all policies (proportionality). As a general rule, the first checks should be within the Ministry (different management approvals, intra-ministerial coordination) that has the primary responsibility for the given policy.

Outside the proponent Ministry, the consultation/coordination process has to make sure that the relevant stakeholders – within and outside the public administration - have the opportunity to influence the policy in the formulation.

The horizontal coordination – gathering opinions of other ministries (inter-ministerial consultation) are to make sure that all implications of the suggested policy are identified and evaluated as well as possible clashes with other adopted policies or policies being formulated. Ideally, the ministries that are deeply affected by the proposed policy are directly involved in the formulation process thus their views have been already incorporated into the draft.

The vertical coordination – to make sure that the proposed policy is in line with the overall direction of the CMU and higher level planning and policy documents. It is the role of the SMCU to ensure that proposed policies are consistent with them. The tools the SMCU should use for checking the consistency:

- The respective sector team of the SMCU would follow the entire formulation process, support the responsible institution, facilitate the coordination process and escalate any problems to senior levels for resolution if necessary. The depths of such involvement depends on the issue, the capacity of the Ministry in question but at least the monitoring is needed.

For complex and significant policies the SMCU should comment the proposed policy also at its early stage of formulation, at the point of selection of the preferred option(s) at the latest. The SMCU may support the proposal or make some recommendations for improvement. In exceptional cases, SMCU may suggest discontinuing the formulation process (if the issue was not identified correctly or it is clear that the policy would not be implementable) or recommend that it starts again (if none of the options developed appears to be acceptable). If the responsible minister does not want to comply with such recommendations, then the Deputy Prime Minister (DPM) or the Prime Minister would ultimately decide. The SMCU should exercise this authority in consultation with other CoG institutions, MoF in particular.

- At the final stage of the approval process – before the proposal is put on the CMU's Agenda - the last check is to be made by the weekly meeting of State Secretaries. For these meetings, SMCU present an opinion and suggests the clearance of the proposal of other appropriate action.

Concerning the directly EI/AA related policies the first checkpoint is the DG planning/budgeting/EI. When it comes to vertical coordination, GOEAI steps in on behalf of the SMCU with the involvement of other SMCU units if needed. In some cases, coordination with the EC is required or recommended.

Consultation outside the public administration – is to make sure that the potential impact of the proposed policy on different stakeholders (businesses, trade unions, NGOs, other civil society organisations etc.), social-economic sectors is identified and considered. That is important not just for political purposes, to demonstrate transparency, increase legitimacy, but for very practical reasons too. Those who might be (negatively) affected can see the impacts much better than the public administration, and that would enable the CMU to calculate with those consequences in advance and adjust the policy for higher effectiveness.

3. 9 Planning the Implementation of policies, associated laws and decisions

Implementation planning is integral to the whole policy process described above. Thus, only implementable policies with sufficient financial resources, administrative and other capacities and realistic timescales would be proposed and approved. To ensure that, implementation arrangement would be part of every policy proposal (or associated legal proposal) and decision. That will identify how implementation will be monitored and impact measured allocate responsibilities and financial resources for implementation. In the case of laws, the draft of the secondary legislation should be developed together with the draft law and completed soon after the law itself is adopted.

3. 10 Instruments supporting financial discipline within the policy formulation process

The short, medium and in some cases the long-term fiscal impact of any proposal together with the implementation costs should be accurately calculated during the policy formulation process described above. That would be the primary responsibility of the proponent, with the MoF and the SCMU providing methodological support and quality control.

In the case of policy proposals having an impact on the current year's budget MoF would ensure that it is consistent with the MTEF (the baseline) and with the Annual Budget and issue an opinion on the matter, together with any recommendations. That opinion would be presented – attached to the proposed policy/legislation to the CMU and in the case of proposed laws to the VR. The CMU will then be in a position to refrain from approving any proposal without secured financing or to allocate the funds needed, parallel with mitigating measure to ensure that the deficit will not be increased. Similar rules would be developed for amendments suggested by Deputies of the VR during the Parliamentary process.

In the case of policy proposals having an impact on the next years' budget a similar MoF opinion is also to be obtained and presented. Since the CMU by the time of the submission is not aware of the fiscal constraints of the years to come, it will consider the policy proposal conceptually and approve it in principle. During the budget planning process all such “in principal decisions” should be presented to the CMU supported by the recommendations of a working group of CoG institutions. The recommendations will be based on checking all the new funding needs against the CMU program, the Action Plan and the MTEF.

The new funding initiatives will be submitted by using a standard template to present for the decision makers all the relevant information, in particular

- a) The readiness of the in principle approved policy for implementation,
- b) The already passed relevant legislation,
- c) Proposal for financing the new initiative from savings suggested by the ministry or reallocation of resources among programs.

The Ministries will be required to rank their policy initiatives.

All steps made in this policy making process should be based on thorough analysis of facts, evidence and good practices used elsewhere.

4. Monitoring, reporting and evaluation

A system for monitoring, reporting and evaluation should be established to enable the CMU to have valid information and take necessary actions in cases when its policies, decisions or adopted legislation have not been fully implemented or if the planned policy objectives/outcomes have not been achieved. These are to be supported by indicators defined regarding the outcome and implementation plans approved as part of the proposed policy.

The monitoring and reporting system would be instituted on several levels:

- Monitoring and reporting on the CMU priorities and overall performance to ensure that promises made by the Prime Minister and the CMU are on track;
- Monitoring and reporting on the implementation of the Annual CMU Work Plan to ensure that all planned initiatives and proposals will be submitted to the CMU for decision as scheduled;
- Monitoring and reporting on the CMU decisions (conclusions) and pace of their implementation;
- Monitoring and reporting on adopted policies and legislation to ensure that proposed measures and activities are being carried out leading to effective implementation.

Although the levels mentioned above of monitoring are mainly output focussed that should not be limited to “ticking the box” but should assess the content of the policies developed too.

The monitoring and reporting system should be considered as a management tool, an enabler for timely intervention not just picturing the state of play retrospectively.

Both the planning and the monitoring system should provide different views of the tasks (and their accomplishment) to monitor the progress on some filtered ones, like the AA commitments.

Also, outcomes of policies that are expected to have significant impacts on the economy and society should be evaluated at specified intervals (ex-post impact assessment). The conclusions of the evaluation process would be used in the next planning cycle and if necessary additional measures/policy adjustments would be proposed.

The monitoring and reporting system would be designed so as to feed relevant information into the assessment of the implementation of CMU priorities, ministry commitments and policy objectives. The system will ensure that the CMU receives regular progress reports in the agreed reporting intervals. The institutional network responsible for monitoring and reporting system will include the SCMU and line ministries, as well as other relevant state administration bodies.

Effective monitoring, reporting and evaluation will contribute to improved accountability, both at the political and administrative level.

5. Supporting the new policy process by improving the efficiency of the CMU sessions

5.1 Reducing the workload of the CMU sessions

The CMU sessions currently overburdened by too many agenda items of different importance and this limits the CMUs capability to focus on strategic issues and to discuss policy proposals in detail. The sessions of the CMU should become the final forum for agreeing on policy, monitoring its implementation and ensuring coordination and conflict resolution. Therefore, they should be structured for supporting this, to avoid the submission of ad hoc (unplanned issues and proposals) and to support high-quality debate on policy proposals which in turn will encourage the submission of high-quality proposals.

A significant reason for the overloaded sessions may be that too many decisions are required by law or by tradition to be approved in full formal CMU sessions. A comprehensive review of these requirements and eliminating those – by changing the respective legislation – which can be handled in a different reasonable way might result in smaller number of agenda items. The practice used in some countries might also be considered: the authorization of the Prime Minister (within the limits of the Constitution) to make certain decisions on behalf of the CMU between sessions, subject to the next session being notified of these decisions and given the opportunity to discuss them.

Even a relatively high number of agenda items can be handled faster and more efficiently by a proper structuring of the agenda with different chapters for different types of points (the Rules of Procedure of the CMU has similar arrangements). For example:

- Chapter A could consist items requiring formal approval only (technical decisions, appointments, etc.) – these might be approved as a “package”.
- Chapter B could consist items which have been fully cleared through at the earlier stages of the decision-making process, and no controversial issues remain. – “package” adoption can also be applied to these. However, in both cases of package voting, any member of the CMU might be given the right to ask for a separate discussion.
- Chapter C could consist proposals that require detailed discussion due to their importance or because some disagreements have to be settled. This chapter could be further configured by distinguishing policies and legal acts.

The directly EI/AA related issues should be correctly flagged to enable the CMU to recognise them quickly.

(This method is used by many Governments in the EU and by the European Council itself.)

5.2 Prevention of ad hoc decisions

Ad hoc issues introduced onto the agenda for decision at short notice not only disrupt the efficient business of the CMU but bypass the policy development, planning and coordination system and therefore lead to less well-considered decisions. Improved control over annual and shorter term planning should reduce the need for such decisions. The preparation process of the AGWP as suggested will identify if an item unnecessarily being proposed for CMU approval and also if some important issues are missing. It can also allow the work of the CMU to be distributed as evenly as possible over the year. The AGWP would be reviewed quarterly SCMU, based on the information the SCMU has to continuously collect regarding the progress of developing planned policies and on the new or changed issues (arising from for example from new economic or social developments, decisions made by the CMU or the VR). The Ministries would also have the authority to request a change in deadlines, if necessary. The PM would approve the results of the review and the claims.

It is proposed that a preliminary agenda of each CMU session is drafted two weeks in advance based on the AGWP and recent available information. Only items which are well enough prepared and cleared by the relevant CoG institutions/meetings can be placed on the final agenda sent for PM’s approval.

Also, a clear and strict protocol should be established for approving a request for a non-planned submission and a similar process for submissions which for whatever reason were not prepared according to the rules. These procedures should be enforced by SCMU vigorously, with the solid support of the PM. They would be empowered to refuse any submission if it is not compliant with the rules.

Consistent enforcement of the deadlines set by the Rules of Procedures for submitting the proposals might also be of some help.

5.3 Advising the Prime Minister (Deputy Prime Minister/s) for the sessions

To help the PM to be prepared fully for the CMU session, SCMU would produce a briefing paper on every agenda item in a standard format. That would focus on the objective of the agenda item, the major social-economic implications, the foreseen impact and the link with CMU Priorities and with the MTEF/Annual Budget. Any unresolved issues would be presented together with a suggested position for the PM. In cases of particular political importance, this briefing would be prepared in conjunction with the political cabinet of the PM. Input from GOEAI or MoF is to be collected if appropriate.

In addition to the briefing material, a regular preparatory meeting (before the CMU session) for the PM with the Minister of SMCU, Head of Cabinet of the PM, MoF and chief communication officer could also be considered.

5.4 Pre-session dispute resolution

The objective of the multi-level process set out in this Outline is to uncover and analyse all implications of a proposal, clarify all issues early on and to make sure that all non-political decisions are made at the administrative level, where the most relevant information is available. It does not, however, mean that an agreement must or will be achieved. The major steps envisaged in the dispute resolution are as follows:

- a) At the end of the opinion gathering/consultation phase proponents should try to reconcile all positions by bilateral or multilateral negotiations and where this is not possible give feedback on the reason for this to the parties whose opinions have not been incorporated, giving them an opportunity to respond.
- b) In case of serious disagreements and if there are some (often conflicting) non-accepted opinions the SCMU (in case of directly EI/AA related issues GOEAI) would facilitate the reconciliation of these positions through convening meetings and or making new proposals,
- c) Before a policy/legislative proposal is submitted to the CMU session, the regular meeting of State Secretaries – being the final coordination and non-political dispute resolution forum - would review it. The unresolved policy or political issues (conflicting options or major disputed elements of the proposed policy) would be forwarded for discussion and if a possible resolution by the relevant CMU Committee.
- d) In exceptional – mainly politically sensitive - cases the DPM or the PM himself may wish to call meetings on a particular policy to clarify different positions and try to build a consensus.

Annexes - Types of policy documents

Strategy:

- medium term (5+ years) policy document accepted by the CMU;
- developed to set out broad aspects of the CMU's policy in a particular policy area.

Program:

- medium term (5+ years) policy document accepted by the Cabinet of Ministers;
- developed to provide for the implementation of the strategy (wholly or partly) in a particular policy area, with the primary stress of budgetary issues.

Plan:

- short-term (up to 3 years) policy document accepted either by the respective minister or by the CMU;
- developed to identify the sequence of activities for the implementation of strategy or program.

A policy proposal for the CMU:

- policy document accepted by the Cabinet of Ministers;
- developed to receive a political decision on a particular issue, where there are several possible alternative solutions, or before the development of broad draft normative acts.

A policy proposal for the Minister:

- policy document to be approved by the Minister
- developed to receive a political decision on a particular issue before the development of draft normative acts.

Institutional (medium term) plans of ministries:

- medium-term (3 years) management planning document accepted either by the Cabinet of Minister or respective minister;
- links policy planning with annual and medium-term budget
- sets out development needs and appropriate actions of the institutions.

Information:

- used for reporting on the progress of implementation of the policy document and final results of implementation;
- Used to inform CMU on problems in some policy area and to get a mandate to develop policy.

National platform, stand:

- tool for identifying the national position in international negotiations, in the AA related bodies in particular.

Special types:

- Planning documents initiated by the CMU or international organisations with defined structure;
- Medium Term Action Plan of the CMU and its Implementation Plan
- MTEF.