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Status of the A4U Project and the AA/DCFTA Implementation in December 2018

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I. Brief on the Status of the A4U Project as of December 2018

The Event on 14 December 2018

The Overall Objective of the event is having a large community of supporters, promoters and friends established, developed and maintained around the Association Agreement between the EU and Ukraine and the aims of the European integration in the country. The Ukrainian A4U COMMUNITY (indeed: EU / AA Community) will be open for participation for everybody who is able and ready to behave, work and influence others in the directions of the European values and tasks.

The **Purpose** of the event is to serve as a stimulus **to formulation of the A4U COMMUNITY in Ukraine**. The planned event will be strongly interactive, results oriented, promotional and motivational and friendly and relaxed. The agenda, the way of organisation and the promotional items to be received by the participants will all serve the mentioned aims.

The event will also provide possibilities to note the end of the 2018 year, greet the coming year and – with the provided services, trainings and motivational tools – to acknowledge and thank for the work of the A4U fellows and their supervisors, who were ready to work and remain with the A4U with no regard to the rather low remunerations and other design flaws.

I. Overall Value of A4U

The A4U project is the first comprehensive assistance project significantly contributing to Ukraine government's capacity to implement the Association Agreement with the EU in a new, unique way.

The project is proven to be unique in terms of applied methods – contracting and training Ukrainian capacity for the government – as well as its result **to build and consolidate government capacity to implement the AA/DCFTA by the fellowship program, in the area of communication, legal approximation, policy and strategy making and implementation, assessment & monitoring of AA implementation, translation and training provision.**

The project has been a prelude and provided extensive technical and financial support also to development of the public administration reform (PAR) regarding capacity building activities of the CoG and executive authorities. This has been based on the principle that **there is no implementation of the AA/DCFTA without a well functioning public administration.**

II. Specific Data and Achievements Approximation:

- A4U Fellows at different governmental institutions involved in analysis or drafting of **more than 1100 EU and Ukrainian legal acts.**

Translation:

- The system of EU law translation for Ukrainian government **created from scratch** under A4U Project, including recruitment of all translators (A4U Translation Fellows)
- The A4U Translation **Fellows translated above 20 000 pages** of legal and Association Agreement implementation related documents (from English into Ukrainian and vice versa)

Capacity and Expertise Building:

- The Association4U project engaged a **total 329 Fellows** during 2016-2018.
- A total of 135 fellows, of which 70 junior, 38, senior and 27 Associates are currently providing support to UA government in fulfilling the AA/DCFTA commitments. The overall figure decreased significantly recently. The fellows are mostly placed at priority ministries: **46 fellows work for GOCEEI, 10 fellows for SCMU, 12 for OVPM**, 3 for MEDT, 1 for Min. of Energy, 1 for Min. Just, 3 for Min. Agriculture, 14 for Min of Ecology, 10 for Min. Culture, 3 for Min. Information Policy, 5 for MFA, and 5 for Min. Infrastructure.
- Out of a total amount of **64.500 working days allocated** in the project TORS the current balance of utilized days is 26,661 man days for Junior Fellows, 9,943 for Associate Fellows and 15,742 for Senior Fellows (based on Nov. 2018 Statistics).
- The A4U provided from the end of 2016 to 05 Dec 2018 **262 training events attended by in total 3401 participants**. Trainings are targeted at Fellows (induction training) and Civil Servants.
- **More than 70 short term experts** amended knowledge and expertise of the key experts of the project in more than 30 different specific subjects, fulfilling so far **nearly 2700 person-days** in Ukraine. Their schedule, ToRs and availability have been regularly offered to be used to main partners of the A4U project. They have had important role in preparation of different analyses, development documents, manuals, studies and comments as well as in training.
- A4U **provided training on PAR to the SCMU ‘Drivers for Change Program’** this included RSPs and DGs, trainings and outreach were also provided to universities, NAPA, Diplomatic Academy, and Kyiv Municipality.
- The A4U project fellows provided **Information and communication on various aspects** of AA/DCFTA for GOCEEI, including communication strategy, social media campaigning, contests, media events related AA/DCFTA, for example Information campaigns & info products, providing better understanding of costs & benefits of the EU-UA Association Agreement.
- Recently fellows were crucial in the development of the second year of the Creative Europe Conference hosted by the Ministry of Culture.
- **The A4U Project and its Fellowship Program proved to be a stepping stone for future career in the Civil Service, in the private sector/NGO and in other EU projects. In 2018 up to 15 fellows became Civil Servants in 2018; about 10 went abroad for further studies, 15 went to the private sector or UA NGOs, 5-10 left for other projects.**
- Capacity was developed to deliver standardized learning **with modern training and development methods**. A4U developed the following **5 learning lines (LLs) on: i.) EU**

Integration/Association Agreement/Deep and Comprehensive Free Trade Area; ii.) Public Sector Management; iii) Evidence-based Public Policy Making; iv.) Professional skills development; and v.) Strategic (AA/DCFTA) communication. Each of the learning lines can be provided on demand and on a regular basis. The LLs on AA/DCFTA and Evidence Based Public Policy Making (EBPPM) are the basis for **Massive Online Open Course (MOOCs)**: these are web-based trainings accessible from any region of UA. We use the experience accumulated during the project, the MOOCs ensure that Civil Servants and trainers are addressed properly and have free access to these training.

- **Improved HRM capacity:** The A4U project has in the previous 2 years **developed a complete body of knowledge on modern HRM tools supporting professional selection and recruitment of future civil servants and public leaders. The A4U Fellowship Program could be best seen as the basis for future sustainable development of professionals** supporting modernization and EUI of the Ukrainian public administration.

Impact on Implementation:

Most Important governmental decisions were developed, and documents approved with the A4U project direct assistance such as:

- Governmental Action Plan for AA implementation (2017-2020)
- Plan for translation of EU legal acts for 2017-2018
- Governmental Resolution N447 on the Planning, Monitoring and Evaluation of the AA
- Implementation, including the ‘Pulse of the Agreement’, which is a new IT tool to measure and visualise the implementation of the AA.

Monitoring:

- **AA Implementation Reports for 2016 & 2017 were developed with the overwhelming support of the A4U project experts and fellows.**
- In 2018 the A4U project was instrumental in **refining both the methodology and the data analysis & presentation of the AA Implementation Report** together with a large- scale training of the line ministries on the related topics.

Communication and Outreach:

- **The government continues to rely strongly on the A4U project’s communication and outreach capacity what is also highly valued by GOCEEI, OVPM as well as other UA/EU institutions.**
- **Key Messages on the AA/DCFTA based on EU Directives were developed by the A4U project for 10 Line Ministries** including guidelines what is in each Directive and what is important for each target audience.
- Key EU documents including the Report on Implementation of the EU-UA Association Agreement are relayed **on EUI web-portal** and mentions the government **communication**

campaign “European Integration: Power of Opportunities” developed by A4U project.

- The A4U team assisted GOCEEI in improving the EUI related documentation system, among others, through the preparation of an MIS on a dedicated web site.
- 2 waves of Ukraine wide competition under the patronage of the Vice Prime Minister of Ukraine Mrs. Klympush for regional journalists on the best material about EUI ended up in impressive 320 materials from regional journalists.
- 4 pilot projects brought Helpdesks Content & IT solutions, both enabling Ukrainian small and medium enterprises to get qualified consulting services from the Ministries, were developed for government institutions with the Ministry of Economic Development & Trade leading in this joint activity.

Policy Influence:

- **Coordination:** Re-focus GOCEEI toward more pro-active coordination of line ministries as well as on preparation and monitoring of policy issues within the AA implementation.
- **Advancing PAR to strengthen AA implementation: large volume of theoretical and practical work has been implemented** in the form of overall analysis of PAR processes, analyzing institutional frameworks, concentrating PAR capacities toward AA/DCFTA implementation by reviewing of draft documents and practical advice (**more than 70 relevant publications plus info docs**). Several meetings were held with Ukrainian high-ranking civil servants devoted to the pace and implications of introduction of the Directorates General (DGs), recruitment of new managerial staff and on the efficiency of public administration, especially its European cooperation related structures. Available regulations on newly created DGs were analysed and their assessment presented to Ukrainian partners.
- **Widening knowledge & expertise about DCFTA: key studies were developed by A4U project on DCFTA** including removing technical barriers to trade and improving Ukraine` quality infrastructure; remaining tariffs limiting UA exports; accession of Ukraine to PEM; and regarding creative industries.
- **Strategic advice: was provided by A4U to focus government external communication on what Ukraine offers;** actively communicate Ukraine`s weaknesses as well to mitigate Western criticism; re-focus government toward the regions; assisting industrial dialogue with analysis and advice.

05 December 2018

II. Memo on AA/DCFTA Related Key Developments

Date: 11 December 2018

Conditions of Implementation: Changes in beneficiary

The overall AA/DCFTA implementation environment in which the A4U Project operates has constantly been changing. On August 23, 2016, the GoU approved a new structure of the SCMU, which established the new Government Office for European and Euro-Atlantic integration (GOEEI).

Introduction of the new position of Vice-Prime-Minister for European and Euro-Atlantic Integration (VPM for EEAI) was aimed at strengthening and prioritization of the EUI process. According to the Civil Service law the EUI Deputy Minister posts have turned to political positions and almost all the EUI Deputy Ministers have been replaced.

Coordination: Communication as a Priority Instead of Policy Cohesion

The GoU set up a new Governmental Committee on European, Euro-Atlantic integration, International cooperation and Regional development (GC). The VPM for EEAI has launched regular weekly meetings with EUI Deputy Ministers and EUI unit staff for discussion the issues of AA implementation (but such decisions are lacking the formal power of the decisions of the GC or GoU). Coordination has been not consistent though. The VPM and her team has focused (and appreciated) more communication than policy related work and implementation cohesion.

Capacity

Previously, the Head of the GOEI (Deputy Minister & GOEI' Director) had a special position in the system and reportedly good cooperation and influence on the EUI Deputy Ministers and Heads of EUI units. GOEI has become subordinated to the VPM and the Minister of the CMU.

GOEEI experience huge outflow of personnel what has become the greatest challenge for the A4U Project.

Considering this context, PAR and reform support concept build on the model of the A4U fellowship have been a key assistance toward government capacity development. A4U has been engaged into preparation of new state secretaries (Workshop "Agenda of the State Secretary" organized by the National Agency of Ukraine on Civil Service and All-Ukrainian Training Centre for Civil Servants and Local Government Officials in close cooperation and support of the EUD and A4U Project on March 18, 2017; The conference "Current State and Prospects of Public Administration Reform in Ukraine" on April 27, 2017 with participation of Prime Minister of Ukraine Volodymyr Groysman; the Workshop "Reform of the ministries" organized by the SCMU on April 28, 2017; strategic session "Reform of the Ministries: Launch of Functional Reviews" on June 1, 2017, etc) and other aspects of PAR.

Monitoring of AA Implementation

Thanks to the A4U efforts the GoU has now a comprehensive monitoring system what allows to monitor various segments of the implementation (policy work at CabMin as well as legislative processes at Rada) what allows to identify bottleneck. This system also led to develop the roadmaps to successfully address implementation hurdles.

Policy Related Developments

- **“Roadmaps”** to prioritize the implementation as well as the public administration reform allowing to pay professionals in civil service better have been successful steps in AA (policy related) implementation.
- **Trade:** 300 new items exported to the EU, including not only agricultural and food products (where Ukraine has traditionally had a comparative advantage) but also, for instance, car components.
- Sectors where AA/DCFTA implementation goes well are competition, state aid, public procurement, technical barriers to trade, energy, environment, statistics. Those lagging behind are transportation, customs, taxation, intellectual property. Particularly there is a difference between the reform of customs in GE and MD/UA (where is a major source of corruption).
- **Visa free:** the newly granted possibility of visa-free travel to the Schengen area since June 2017) has contributed to the outflow of labor from Ukraine and brought down the unemployment rate. Via inflows of remittances, workers who have gone abroad also contribute to strengthening Ukraine’s current account position.
- **Reforms:** reform of public procurement and the improved food quality feature among other key benefits of the AA with the EU.
- **Economic & Energy Policy:** a dedicated ‘U-turn’ in Ukraine economic policy has taken since the signing of the AA in April 2014 including progress in corporate governance and the transparency of state-owned companies as well as increased compliance of Ukraine’s energy sector with the EU legislation, including the obligations resulting from the country’s membership in the EU Energy Community. The National Bank of Ukraine (NBU) is now operating independently from political influence, forcing the government to be more fiscally disciplined.
- **Costs of AA/Integration:** several independent studies (European Parliament, Vienna Institute) now show that the costs associated with the AA implementation are substantial and largely front-loaded on Ukraine, whereas the potential benefits are less certain and more long-term in nature.
- **Public Opinion:** Although more than 750 reform-oriented legislative acts have been adopted over the past four years, 76% of Ukrainians do not think that reforms have considerably progressed, according to opinion polls. Inflows of foreign direct investment have remained disappointingly low. Fighting corruption remained weak: according to the latest [Corruption Perception Index of Transparency International](#) Ukraine is now ranked 130th in the world, only slightly up from the 140th place it held in 2013.

Communication

GoU continues to rely strongly on the A4U project's communication and outreach capacity what is also highly valued by GOCEEI, OVPM as well as other UA/EU institutions. Key Messages on the AA/DCFTA based on EU Directives were developed by the A4U project for 10 Line Ministries including guidelines what is in each Directive and what is important for each target audience. Key EU documents including the Report on Implementation of the EU-UA Association Agreement are relayed on EUI web-portal and mentions the government communication campaign "European Integration: Power of Opportunities" developed by A4U project.

III. Monitoring Memo on the EU-Ukraine Relations in the Context of AA/DCFTA Implementation

Date: July 2018 – December 2018

Highlights

In this period Ukraine's relations with the European Union have been rich, diverse and have brought some positive results. First of all, during the monitoring period, Kyiv and Brussels held the 20th EU-Ukraine summit in July 2018 as well as the 5th Association Council in December 2018.

The Summit delivered a joint statement, highlighting Ukraine's European aspirations and what is equally important for Kyiv, *de facto* recognized Russia as the aggressor in Ukraine. At the same time the summit also underlined areas in which Ukraine underperformed, especially the fight against corruption and sectors such as customs. Despite much hope on the Ukrainian side, the summit did not elaborate on the so-called Four Unions concept put forward by Ukraine to the extent Kyiv has hoped for. Rather, it focused on the implementation of the Association Agreement.

The most discussed event in EU-Ukraine relations was the new Macro-Financial Assistance Program worth €1 billion. The program was welcomed by Ukraine especially as its conditions were not difficult to meet (the last tranche worth of EUR 600m of the previous MFA program was not dispersed). In the end the first tranche was dispersed in December ahead of the 5th Association Council and the IMF approval of the new stand-by agreement. Some diplomats from EU-member states regret that the EU did not want to set serious conditions, in apparent effort to boost the standing government before the 2019 elections seasons. The EU pledged assistance to Ukraine has increased to EUR 12,8 billion.

The 3rd Association Report¹ (prepared by DG NEAR and EEAS) on November 2018 recognizing progress after the adoption of the Roadmap for AA implementation related to decentralisation, intellectual property rights, environment, company law, food safety and energy. Additional progress has been reported in the implementation of certain sectoral commitments under the AA, in particular related to sanitary and phytosanitary issues, competition, trade remedies, transparency, public procurement, technical barriers to trade, environment, climate action, energy (including energy efficiency), financial services, intellectual property rights, accounting and auditing.

During the 2nd Association Exchange Forum, among the less or no progressing sectors EU officials named transportation, customs, taxation, intellectual property. Particularly there is a difference between the reform of customs in Georgia as well as Moldova and Ukraine where it remains a major source of corruption.

¹ https://cdn3-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/aZnrBQ70ZJtiXaRXV69qTtPI-d-gbCzZxpirQUpU6EY/mtime:1541749617/sites/eeas/files/2018_association_implementation_report_on_ukraine.pdf

The 2nd Report under the Visa Suspension Mechanism² (prepared by Home Affairs) recommended to urgently repeal the amendments extending the scope of asset declarations to civil society and ensure that civil society can play its role without undue interference; to ensure the independence, effectiveness and sustainability of the anti-corruption institutional framework; re-establish the independence and credibility of the Specialised Anti-Corruption Prosecution, and establish a fully functioning system for the verification of asset declarations. The report also mentions cybercriminals with Ukrainian nationality, notably Russian-speaking ones, are increasingly involved in highly sophisticated operations within the digital underground.

The President Poroshenko's proposed amendments to Ukraine's Constitution, cement the country pro-Western integration. Even though have been broadly seen as part of his electoral campaign, it clearly showed there will be a sustained support for EUI, no matter of the elections result. The Verkhovna Rada supported the proposal in the first reading with 311 votes.

Last but not least, the EU has prolonged sanctions on Russia. The incident at the Kerch Strait, when Russia opened fire on Ukrainian military ships, cemented the status quo regarding sanctions and raised voices of increasing the support to Ukraine. At the same time Ukraine adopting martial law as a reaction on the incident raise the risk of postponing the elections, a red line for the West.

Political Dialog and Sanctions on Russia

President Poroshenko's proposal to amend the country's Constitution to specifically include Ukraine's aspirations to membership in the EU and NATO, was one of the major political developments. Even though the constitutional amendments, passed in the first reading with 311 votes, have symbolic meaning mostly, it is clearly suggesting that there should be no change expected after the elections, no matter of the winner, when it comes to European Integration (EUI) policies.

The president submitted a bill containing amendments to Art. 85, 102, 116 and the Preamble. Adopted in the first reading and cleared by the Constitutional Court, the Cabinet will be mandated to implement a course towards full membership in the EU and NATO, while the president will have to guarantee that the provisions are implemented. The second vote is set to take place in early 2019, just before the presidential elections scheduled for March 31, 2019, meaning in a very politically sensitive environment.

The constitutional change has little practical value. If adopted, Ukraine will declaratively and legislatively proclaim its aim to join the EU and NATO. In practice, however, if (the unlikely case) euro-skeptics would come to power after the election, these amendments will be ignored, just like many other amendments to the Constitution.

In July 2018, the policy of EU sanctions against Russia was prolonged for another 6 months, and in December for another 6 months. The EU extended economic sanctions in the banking, finance and energy sectors until 31 July 2019. At the summit on 13 December, after the Kerch Strait incident, EU leaders agreed to adopt measures to strengthen support of Ukraine, "in particular" in

² https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181219_com-2018-856-report_en.pdf

favor of the affected regions. This formulation leaves the possibility for other measures, including new sanctions, although the EU has so far refrained from mentioning them.

However, Kyiv hope that there will be more sanctions after the military incident at the Kerch Straight did not materialize, mostly because the EU worried about the martial law, president Poroshenko has initiated as a reaction to the incident.

Several Russian banks—Sberbank, VTB, Vneshekonombank, Prominvestbank, and Denizbank, a Turkish subsidiary of Sberbank—and GazpromNeft’ and Rosneft’ have gone to court to get sanctions against them dropped. The court dismissed their appeal, which means that the EU can sufficiently substantiate its position in adopting the sanctions. The court’s decision reads: “The declared objective of the disputed acts is to raise the price for Russia’s actions, which undermine the territorial integrity, sovereignty and independence of Ukraine, and also support a peaceful settlement of the crisis.”

The joint statement of the 5th Association Council³ reaffirmed the parties' continuous commitment to political association and economic integration between the European Union and Ukraine based on the common values of democracy, rule of law and human rights. The Association Council recognised the progress made in the implementation of the Association Agreement despite the challenges Ukraine faces. It welcomed the role of the Government in implementing and monitoring the Association Agreement and the adoption of the Government – Verkhovna Rada Roadmap, and underlined the importance of communicating the results.

The European Parliament has been much more supportive toward Ukraine. The Sakharov Peace Price was awarded to Oleg Sentsov, a Ukrainian political prisoner in Russia. On 12 December 2018 an EP resolution⁴ acknowledged Ukraine’s positive reform track, while condemning Russia’s aggression in the Kerch Strait and the construction of Nord Stream 2.

Energy Dialog and Nord Stream II

The energy dialog with the EU has significantly increased since the Nord Stream II pipeline project is scheduled to be finalized toward the summer 2019. In this respect, the European Commission, backed by Germany, initiated trilateral consultations regarding the transit of Russian gas through Ukraine after 2019, when the current contract ends. Among others, the negotiations of the new transit contract have to consider minimum annual transit volumes, the rate, and possible guaranties, while other details can be agreed upon directly by the companies involved.

Over and above the technical aspects of the negotiations, Ukraine expects, first of all, confirmation of its strategic role as a transit country for gas supplies to the EU. The first round of trilateral consultations took place in Berlin on July 17. The parties agreed to draw up a roadmap at the next meetings regarding gas transit. Based on statements by his spokesperson Dmitry Peskov, Putin assured Chancellor Merkel that transit through Ukraine would continue after 2020. Nevertheless,

³https://ceas.europa.eu/delegations/ukraine_en/55625/Joint%20press%20statement%20following%20the%205th%20Association%20Council%20meeting%20between%20the%20EU%20and%20Ukraine

⁴ <http://www.europarl.europa.eu/news/en/press-room/20181205IPR20940/meps-commend-ukraine-s-reform-efforts-and-denounce-russian-aggression>

Gazprom officials did not attend the trilateral expert consultations on September 12. As a result, the Ukrainian position as reflected by FM Pavlo Klimkin is that if NSII is built, Russia will definitively stop shipping gas across Ukrainian territory. Kyiv's view is shared by the US, as National Security Adviser John Bolton also stated that Russia would not ship gas through Ukraine, even if it promised to do so.

There continue to be two ways to stop NSII. The first is to amend the EU's gas directive, which would mean that all pipelines supplying the Union, including foreign ones, are subject to EU law. That is how South Stream was stopped in 2014, as it became commercially unfeasible. Discussions regarding amendments to the EU gas directive are ongoing, but according to deputy Ukrainian FM Lana Zerkal, the final decision will depend on Germany, the Netherlands, Belgium and Austria, which are the countries that will directly benefit from NSII and with whom Ukraine is now working.

According to high-ranking officials in Ukraine, Kyiv does not think the EU will be able to stop NSII as the EU is under strong influence from Germany. Kyiv bets on US sanctions against the companies involved in its construction. Still, US sanctions may not be best option for Ukraine. Yes, Uniper, a German company, has declared that it would withdraw from the project if Washington imposed sanctions. But US sanctions on German and other European partners also present risks. The EU might retaliate in various ways, which could affect the common sanction policy against Russia, which is also crucial for Ukraine. In the meantime, Russia has taken a new step to cover the risks of the project. Apparently, while meeting the German chancellor in Meseberg on August 18, the Russian president told Angela Merkel that Russia was ready to fully assume funding of NSII in the event of sanctions.

Other possible barriers to the project were a lawsuit brought by environmentalists to Germany's Constitutional Court and Denmark's position. In the first case, the Court rejected the suit, which was a popular decision in Germany: opinion polls show that two thirds of Germans support the pipeline. In the case of Denmark, the country did not immediately grant permission for NSII construction to go ahead and the Russian reaction was prompt. Kremlin presented an alternative route that according to Russians does not require additional permits and avoids Denmark's territorial waters. At this point, Russia has already started work on laying the NSII pipeline in the Gulf of Finland.

At the same time Ukraine integration into the EU energy market has essentially halted, as Naftogaz seems less willing to proceed with the unbundling process as prescribed in Third Energy Package Ukraine has committed to. The 5th Association Council also stressed the urgency of completing the unbundling of the respective transmission system operators in the gas and electricity sectors, in line with the EU acquis.

Kyiv argues that it cannot finish the unbundling process because of its current transit contract what ends in 2019. Ukraine can change its contract in 2020, but until then it cannot modify any provisions. One way to sort this problem is to apply EU legislation on external pipelines, which would force Russia to comply with EU law. Meanwhile, Russia went to the WTO to prove that the EU regulation, meaning the Third Energy Package, is discriminatory. The WTO found no basis for claiming that the EU would discriminate against Russian gas suppliers or Russian natural gas in the Third Energy Package.

AA/DCFTA and Reforms

The most important bilateral event, the EU-Ukraine summit, took place in Brussels. This year's summit was a special one, as it was the 20th summit. It was the last scheduled summit before presidential elections in Ukraine. Compared to last year, when the EU and Ukraine did not manage to agree on a joint statement, this year there was a joint statement, agreeing on a shorter but quite ambitious document - what was essentially a pre-election concession to Ukraine.

The EU-Ukraine summit focused on reforms like decentralization, fighting corruption, rule of law, economy, and energy. The leaders also discussed the Minsk Agreements, their implementation, and EU support for Ukraine. The joint statement covered a wide range of issues, but among them a few stood out. First of all, Ukraine's European aspirations were recognized. Secondly, the EU condemned the violation of Ukraine's territorial integrity and sovereignty and effectively acknowledged that Russia was the aggressor: "...acts of aggression by Russian armed forces..." During the previous summit, it was the wording on Russia's aggression and Ukraine's European aspirations that resulted in no joint statement. This year also affirmed Ukraine's role as a strategic gas transit country. Significantly, the Netherlands (and Germany) did not oppose the formulation "European aspirations" in the statement, while Hungary insisted on an insertion regarding Ukraine's new education law (what the Association Council statement also included).

Ukraine's reforms related to EU integration and advocated by the EU have entered the technical phase and the pace is slow and the implementation image is plagued by corruption scandals as well. First of all, the German newspaper *Süddeutsche Zeitung* published an investigation that concluded that Ukraine's annual losses due to corruption at customs are at least \$4.8bn. The investigation further claimed that corrupt schemes are managed not only by customs, but also involve the police, border guards, prosecutors' offices, and the SBU. Another research calculated this to \$8,6bn.⁵

Scandals related to law enforcement agencies continued when the Prosecutor General's Office was backed by the Pechersk Court in an attempt to gain access to the phones of investigative TV journalist Nataliya Sedletska and *Novoye Vremia's* Kristina Berdysnykh. The EU issued a statement of disapproval and asked for this investigation to be curtailed, while an EU diplomat called the investigation "shameful," saying it was meant to silence Sedletska and other journalists who uncover corruption among high-ranking officials. The European Court for Human Rights reacted promptly, agreeing to apply an exclusive procedure for "urgent temporary measures" by forbidding Ukrainian authorities any access to the mobile operator's data regarding Sedletska's phone.

On the positive side, the Cabinet and legislature have renewed their roadmap of 50 "eurointegration" bills, of which 20 will be a priority for the current session of the Rada. Some positive steps were made regarding the setting up of the automatic verification of e-declarations. A taskforce has been established and a schedule prepared. UNDP contracted a company that meets the technical conditions of the National Agency for the Prevention of Corruption (NAPC) in order to launch automated verification. There is a legal hitch, however: the NAPC does not have automatic access to the necessary registers. A bill that will allow automatic verification has languished in the legislature for more than a year and the launch of automatic verification depends on votes of the MPs who are apparently not in a hurry.

⁵ <https://www.kyivpost.com/ukraine-politics/cost-of-corruption-ukraine-loses-8-6-billion-annually-to-poor-management-graft-study-finds.html>

The 3rd Association Report⁶ (prepared by DG NEAR and EEAS) on November 2018 recognizing progress after the adoption of the Roadmap for AA implementation related to decentralisation, intellectual property rights, environment, company law, food safety and energy. Additional progress has been reported in the implementation of certain sectoral commitments under the AA, in particular related to sanitary and phytosanitary issues, competition, trade remedies, transparency, public procurement, technical barriers to trade, environment, climate action, energy (including energy efficiency), financial services, intellectual property rights, accounting and auditing.

During the 2nd Association Exchange Forum, among the less or no progressing sectors EU officials named transportation, customs, taxation, intellectual property. Particularly there is a difference between the reform of customs in Georgia as well as Moldova and Ukraine where it remains a major source of corruption. The other area what is frequently mentioned is transportation: here, Ukraine has not managed to adopt a single one of the bills that have been languishing in the Verkhovna Rada for a long time. Both Ukrainian officials and EU sources point out that transport is highly dominated by several players who manage to block reform and lobby their interests.

The 2nd Report under the Visa Suspension Mechanism⁷ (prepared by Home Affairs) recommended to urgently repeal the amendments extending the scope of asset declarations to civil society and ensure that civil society can play its role without undue interference; to ensure the independence, effectiveness and sustainability of the anti-corruption institutional framework; re-establish the independence and credibility of the Specialised Anti-Corruption Prosecution, and establish a fully functioning system for the verification of asset declarations. The report also mentions cybercriminals with Ukrainian nationality, notably Russian-speaking ones, are increasingly involved in highly sophisticated operations within the digital underground.

The European Parliament resolution on Ukraine on 12 December 2018⁸ stressed that Ukraine has reformed in areas such as energy, health, pensions, education, public administration and decentralisation, and also when it comes to defence and security, banking and macro-economic stabilisation. These reforms, however, have unfortunately been accompanied by drastic price increases, cuts in social benefits and a deterioration in access to social welfare systems. The resolution further underlines that Ukraine should prioritise the fight against corruption, address the problems with oligarch power and continue with decentralisation reforms. MEPs regret that the existing judicial system still remains ineffective, corrupt and politically dependent, yet support the ongoing efforts to address this issue. Judges and prosecutors have to be selected in a more transparent and highly reliable manner.

Further Sectoral integration

After commencement of the Association agreement and visa-free regime Poroshenko at the end of 2017 has declared a new goal – sectoral integration in the EU. It was about the desire to join the digital and energy markets, the customs Union and the Schengen area. Although Ukraine insisted

⁶ [https://cdn3-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/aZnrBQ70ZJtiXaRXV69qTtPI-d-](https://cdn3-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/aZnrBQ70ZJtiXaRXV69qTtPI-d-gbCzXzpirQU6EY/mtime:1541749617/sites/eeas/files/2018_association_implementation_report_on_ukraine.pdf)

[gbCzXzpirQU6EY/mtime:1541749617/sites/eeas/files/2018_association_implementation_report_on_ukraine.pdf](https://cdn3-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/aZnrBQ70ZJtiXaRXV69qTtPI-d-gbCzXzpirQU6EY/mtime:1541749617/sites/eeas/files/2018_association_implementation_report_on_ukraine.pdf)

⁷ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181219_com-2018-856-report_en.pdf

⁸ <http://www.europarl.europa.eu/news/en/press-room/20181205IPR20940/meps-commend-ukraine-s-reform-efforts-and-denounce-russian-aggression>

on discussing the so-called Four Unions, President Poroshenko's initiative what was proposed during the Eastern Partnership summit in 2017, the EU did not engage with Ukraine on this issue. There was relatively positive feedback from the EU on the energy union and the digital union, but a negative response to association with Schengen and a customs union at the summit, what Brussels consider neither feasible for Ukraine nor from the EU viewpoint. Moreover, Brussels made it clear it wanted Kyiv to focus on the implementation of the Association Agreement first and on fulfilling many commitments from the past that still languish.

The statement Association Council does not speak about integration, and about the "deepening cooperation" in a number of sectors. In particular, recognizes the desire of Ukraine to integrate into the energy Union of the EU, but only "the end of reform." It seeks to create independent operators of the gas transportation system and electricity. The Council reaffirmed Ukraine's role as strategic gas transit country, but the "Nord stream-2" is not mentioned.

Macro Financial Assistance

Lengthy talks about a new EU Macro-Financial Assistance (MFA) program worth €1 billion finally yielded results in September, when EC Vice-President Valdis Dombrovskis signed the Memorandum on the MFA with officials from Ukraine's Ministry of Finance and the National Bank. Although the Memorandum concerns the European Commission and the Cabinet, President Poroshenko insisted that the signing ceremony take place in his presence and noted that the new MFA was made possible due to his efforts, as it was he who agreed with the EC president on the new program.

The conditions in the new MFA are the very good for Ukraine and much better than the previous program. The money is being provided as a form of loan for 15 years on the model of EURIBOR +0.2%, which means virtually interest-free. The general conditions require Ukraine to have an agreement with the IMF. The MFA is divided into two tranches, each worth €500mn.

The EU has also reduced its conditions. As a Ukrainian official put it, the EU set "more realistic" conditions. For instance, the new MFA does not contain requirement to lift the moratorium on the export of unprocessed wood. For now, the EU-Ukraine dispute over unprocessed wood will be settled by a special arbitration panel. The conditions for the tranches vary. First installment is an easy task for Ukraine, while the second contains requirements that, according to EU sources, in order to be able to deliver the first tranche by the end of the year and then the second tranche ideally before presidential elections. However, the latter seems quite unlikely, since there should be at least three months between the tranches.

For the first tranche, the key condition is to put in place all the necessary elements for automatic verification of e-declarations and institute changes in the governance of the state-owned enterprises. Ukraine also has to put at least 200 small state-owned assets for sale through the ProZorro tender system. As of end of September, Ukraine had already met many of the conditions for the first tranche and will probably get it.

For the second tranche Ukraine will have to adopt long-delayed reforms to tax and customs administration. This means clear deliverables to ensure tax compliance, tax audit, customs and cross-border cooperation and enforcement, and staff integrity. Also, automatic verification of e-declarations, the factual verification of at least 1,000 high-ranking officials, and the High Anti-Corruption Court all need to be working. The verification of declarations of high-ranking officials

is something the EU expects as a priority. Other commitments involve sector reforms, state-owned enterprises, and social policy.

A number of EU diplomats in Kyiv are unhappy that the EU has intentionally put forward conditions that are easy to fulfill. Despite this, the EU has gained an additional instrument to influence Kyiv and put pressure on Ukraine to deliver, even if all the country's politicians seem to already be in campaign mode. The first tranche of EUR 500m was dispersed early December 2018.⁹

Trade - and Smuggling

Trade might appear to be the least exciting aspect of EU-Ukraine relations, but it is actually full of developments and challenges. Above all, trade is a source of very good news, as it is on the rise. The 5th Association Council stressed the positive effects that brought the Association agreement for more than a year. This, in particular, the growth of trade – according Groisman, 42 percent of Ukrainian exports go to the EU.

The first half of 2018 saw trade with the EU rise 19.2% over the same period of 2017. It was worth \$9.79bn and 42.1% of overall trade. With EU countries, Ukraine exports most to: Poland at \$1.64bn, up 30.8%; Italy at \$1,47bn, up 24,8%; Germany at \$0.93bn, up 28.3%; and Hungary at \$0.83bn, up 39.3%. Exports to Russia for the same period were down 5.4% to \$1.82bn or slightly more than exports to Poland. Certain experts estimate that by the end of 2018, Poland will take the lead from Russia and will become Ukraine's main export partner.

The news was not all good, as in some EU countries exports declined. Exports to Latvia were down 15.1% to \$0.057bn, Spain was down 11.1% to \$0.62bn, and exports to the Netherlands slipped 1.9% to \$0.76bn. The imports from EU, on the other hand, topped \$10bn or up 12.4% in 2018, while total exports were \$23.2bn, up 12.7%, and imports were \$25.9bn, up 14.5%. By comparison, outside the EU and Russia, Ukraine exported the most to: Turkey at \$1.41bn, up by 12.1%; India at \$1.24bn, up 9.1%; and China at \$1.0bn, up 5.6%.

In terms of goods, Ukraine's exports are quite diverse. For 2018 Ukraine has already used 100% of the available EU quotas for honey, malt and wheat gluten, processed tomatoes, grape and apple juice, wheat, corn, and butter. Significant tariff quotas were used by Ukraine to starch (85.0%), processed starch (99.4%), poultry meat (75.0%), eggs and albumin (53.7%), and garlic (61.2%). There were few categories of tariff quotas that have not been used at all: 2,000 t of sugar syrups, 500 t of mushrooms, 250 t of processed oil products, and so on.

Another area that reflects the interests of certain groups is unprocessed timber. In July 2018, MPs made a new attempt to strengthen the moratorium on exports of unprocessed wood by adding a ban on the export of firewood to a bill criminalizing the smuggling of wood. In the end, the bill was vetoed by the president, who said that he supported the criminalization of wood smuggling, but he was against the “lobbyist bills” being pushed by individual MPs. In fact, it was Radical Party leader Oleh Liashko who introduced changes to the bill. As the Rada was unable to overcome the presidential veto, the bill did not pass, and the Association Agreement was not breached one more time.

⁹ http://europa.eu/rapid/press-release_IP-18-6600_en.htm

The Association Council’s statement calls to remove “irritants” in the trade between Ukraine and the EU, such as the moratorium on the export of unprocessed timber. But in general there is much less criticism than in the Association Implementation Report (from November 2018) or even the European Parliament resolution from December 2018.

Demand from companies in the EU for illicit timber from Ukraine is fueling the illegal trade, an investigation report¹⁰ has found. Earth Sight – a UK-registered non-profit organization – published an extensive report on 15 July 2018 into Ukraine's illegal logging trade. According to the report, illicit timber from Ukraine is fueling European markets. It alleges that EU companies aren't carrying out due diligence in compliance with EU timber regulations and that forestry officials in Ukraine have taken bribes, in order to supply major European countries with illegally-harvested wood.

In 2015 the Ukrainian Parliament bill to introduce a [10-year moratorium](#) on the export of round timber, which came into full force in 2017. The moratorium on the export of wood, as it directly violates the EU-Ukraine Deep and Comprehensive Free Trade Agreement (DCFTA) was among the reasons Ukraine did not receive the third tranche of EU macro-financial assistance worth EUR 600 million.

Some of the report allegations – for example that the EU is under pressure from European companies pressed the GoU over the moratorium – is not substantiated in the report. On the contrary, Ukraine’s timber moratorium was taken by the EU as a [matter of principle](#) since the [ban is discriminatory and in violation](#) with the DCFTA provisions. Overall, this issue was put into the context of Ukraine’s (political) [will to liberalize](#) (aka reform).

The EU was about to drop the timber from its list of requirements (conditionality) toward the new MFA given the resistance toward lifting the moratorium in the VRU has not been possible to overcome. It also works to settle the issue via arbitration mechanism under the AA/DCFTA. In addition, the EU is more careful ahead of the 2019 elections and the timber case fits into populists’ narrative that the EU is interested in Ukraine’s resources (raw materials and human resources). After the release of the report, President Poroshenko [vetoed to law](#) intended to increase criminal liability on logging, the president's office argued with the violation of DCFTA as a justification.

¹⁰ <https://www.earthsight.org.uk/complicitincorruption>