



Council of the
European Union

**Brussels, 17 June 2022
(OR. en)**

10321/22

**ELARG 46
COEST 465**

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	17 June 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 407 final
Subject:	COMMUNICATION FROM THE COMMISSION Commission Opinion on Ukraine's application for membership of the European Union

Delegations will find attached document COM(2022) 407 final.

Encl.: COM(2022) 407 final



Brussels, 17.6.2022
COM(2022) 407 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL**

Commission Opinion on Ukraine's application for membership of the European Union

A. INTRODUCTION

The aspiration to belong to the European Union has for many years been an important priority for Ukraine, its governments and citizens. It has been an underlying motive for democratic changes over the past decade and a driver of a number of key reforms founded on European values. The decision in late 2013, of the then-President not to sign, the EU-Ukraine Association Agreement, which symbolised for many Ukrainians a path towards the European Union, led to large-scale protests against the authorities. Subsequently, the Russian Federation moved against Ukraine, not accepting the independent choice of the Ukrainian people. While losing control over part of its territory and suffering human and economic losses because of the conflict in the eastern part of the country, Ukraine continued throughout the years as a resilient democracy moving closer to the European Union and gradually aligning with the *acquis*.

a) Application for membership

On 28 February 2022, five days after Russia launched its full-scale unprovoked and unjustified aggression, Ukraine presented its application for membership of the European Union. On 7 March 2022 the Council of the European Union requested the Commission to submit its Opinion on this application. EU Heads of State and Government endorsed this decision at the informal leaders meeting in Versailles¹.

Article 49 of the Treaty on European Union states that *‘Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national parliaments shall be notified of this application. The applicant state shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.’*

Article 2 states that *‘the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’*

This is the legal framework within which the Commission submits the present Opinion.

In June 1993 in Copenhagen the European Council concluded that:

"Accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions required.

Membership requires:

- *that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;*
- *the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union;*
- *the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union".*

¹ [20220311-versailles-declaration-en.pdf \(europa.eu\)](https://european-council.europa.eu/media/20220311-versailles-declaration-en.pdf)

In December 1995, in Madrid, the European Council referred to the need *'to create the conditions for the gradual, harmonious integration of [the applicant] countries, particularly through the development of the market economy, the adjustment of their administrative structures and the creation of a stable economic and monetary environment'*.

In December 2006, the European Council agreed that *'the enlargement strategy based on consolidation, conditionality and communication, combined with the EU's capacity to integrate new members, forms the basis for a renewed consensus on enlargement'*.

In this Opinion, the Commission assesses Ukraine's application on the basis of its capacity to meet the criteria set by the European Council in Copenhagen in 1993, as well as in Madrid in 1995, notably regarding the country's administrative capacity. The Opinion also takes into account Ukraine's efforts in implementing its obligations under the Association Agreement (AA) and Deep and Comprehensive Free Trade Area (DCFTA), which entered into force on 1 September 2017. The Commission will assess the impact of Ukraine's accession on the EU policy areas at a later stage.

This Opinion has been prepared following a methodology similar to that used in previous Commission Opinions. Ukraine received questionnaires on 8 April 2022 on the political and economic criteria and on 13 April on the EU *acquis* chapters and provided its replies on 17 April and on 9 May respectively. This Opinion is a structural assessment against established criteria and builds on knowledge and experience gained through many years of close cooperation of the EU with Ukraine.

b) Relations between the European Union and Ukraine

Eight years after the illegal annexation of Crimea and the destabilisation of eastern Ukraine in 2014, on 24 February 2022 Russia launched a large-scale military invasion against the whole country. More than seven million people have fled to other countries, particularly to EU Member States and the Republic of Moldova, and there are almost eight million of internally displaced persons within Ukraine. The EU adopted several packages of unprecedented sanctions against Russia². It has also stepped up significantly its political, financial, humanitarian and military support. European citizens have displayed unprecedented solidarity through countless private initiatives. During the war, the Ukrainian government has shown a remarkable level of institutional strength, determination and ability to function. It mobilised itself to respond quickly to the EU questionnaire on its membership application.

The beginning of the EU-Ukraine relations dates back to the period following the proclamation of Ukraine's independence in 1991. In June 1994 the EU signed a Partnership and Cooperation Agreement with Ukraine, which entered into force in March 1998. Political and economic cooperation was enhanced in 2004 when Ukraine became EU priority partner within the European Neighbourhood Policy and further strengthened with the launch of the Eastern Partnership Initiative in 2009.

Integration with the European Union has been an important foreign and internal policy dimension of Ukraine for many years. The *Orange Revolution* in 2004 against electoral fraud and corruption was also about the orientation towards the West and integration with the EU. Following the parliamentary elections in March 2006, the EU decided to start consultations with a view to negotiate a new enhanced agreement with Ukraine. Negotiations started in March 2007. The draft Association Agreement was initialled in March 2012. The *Revolution*

² EU sanctions map - <https://www.sanctionsmap.eu/#/main>

of Dignity, in 2014 was triggered by the refusal by the then President of Ukraine to sign the Association Agreement/Deep and Comprehensive Free Trade Area (AA/DCFTA).

In the aftermath of the *Revolution of Dignity*, Russia illegally annexed Crimea and backed illegal armed groups in east Ukraine. The EU and the international community condemned these grave breaches of international law, and subsequently the EU imposed sanctions against the Russian Federation.

Ukraine's new government, in place after the *Revolution of Dignity*, signed the political part of the AA in March 2014. The economic part of AA/DCFTA was signed after the presidential election in May 2014. Major parts of the agreement have been provisionally applied since 2014. In September 2017, the AA/DCFTA fully entered into force.

The AA/DCFTA provides the foundations for political association and economic integration between the European Union and Ukraine. In its preamble, the EU acknowledged the European aspirations of Ukraine and welcomed its European choice including its commitment to building a deep and sustainable democracy and a market economy. Currently, the agreement is the key bilateral legal instrument serving as basis for deepening political ties, stronger economic linkages, promotion of common values and enhanced cooperation in areas of mutual interest. Based on the AA/DCFTA, Ukraine has carried out number of challenging reforms and successfully aligned its legislation with the EU in many areas.

The EU-Ukraine Civil Society Platform (CSP) is one of the bodies set up under the Association Agreement between the European Union and Ukraine. It enables civil society organisations on both sides to monitor the implementation process and prepare recommendations to the relevant authorities.

In 2019, a constitutional amendment supported by 335 out of 450 Members of the Ukrainian Parliament defined as the state's strategic course the "full membership of Ukraine in the European Union and the North Atlantic Treaty Organization".

Ukraine is a contracting Party to the Energy Community Treaty and the Agreement on the Common Aviation Area, which assist in approximating Ukrainian legislation to the EU *acquis*. Ukraine is part of the extended TEN-T network.

Citizens of Ukraine enjoy visa-free travel to the Schengen area as of 11 June 2017. An agreement on readmission between the European Union and Ukraine is in force since 2007.

Since 1997, the EU and Ukraine have been meeting at high level. In total, twenty-three EU-Ukraine Summits at presidential level have taken place up to date. Relations have developed, with increased engagement and momentum since then. The new EU-Ukraine dialogues on the Green Deal and cyber security launched in 2021 are good examples of expanding cooperation in areas of joint strategic interest. The EU together with many other international partners joined a Ukraine established International Crimea Platform in 2021 as a consultative coordination format with the aim of peacefully ending Russia's illegal annexation of the peninsula.

Ukraine is a full member of the United Nations, the Council of Europe and a participating state of the Organisation for Security and Cooperation in Europe (OSCE).

The EU has provided significant **financial assistance** to Ukraine, which over the years 2014 to 2021 amounted to EUR 1.7 billion in grants under the European Neighbourhood Instrument, EUR 5.6 billion under five macro-financial assistance programmes in the form of loans, EUR 194 million in humanitarian aid and EUR 355 million from foreign policy

instruments. The EU provides its support to Ukraine for policy development and comprehensive reforms, with strong involvement from EU Member States in a Team Europe spirit. For the current multi-annual programming, the Commission has increased its focus on flagship investments and priorities under an Economic and Investment Plan (EIP)³, which seeks to unlock up to EUR 6.5 billion in public and private investments for the country and will provide a basis for future reconstruction. The approach developed under the EIP will serve as a good basis for any future reconstruction plans.

Since the Russian invasion, the EU has stepped up its support, mobilising around EUR 4.1 billion for Ukraine's overall economic, social and financial resilience in the form of emergency macro-financial assistance, budget support, emergency assistance, crisis response and humanitarian aid. This also includes military assistance measures to support Ukraine under the European Peace Facility, amounting to EUR 2 billion that will be used to reimburse EU Member States for their in-kind military support to Ukraine.

Before and during Russia's war of aggression, the EU has worked hand in hand with financial institutions to support Ukraine. Since 2014, the European Investment Bank and the European Bank for Reconstruction and Development have mobilised EUR 9.5 billion in loans to Ukraine. Of this EIB has disbursed EUR 668 million to the Ukrainian budget in recent weeks. The EU is also working in close cooperation with the World Bank and the International Monetary Fund, which have been key partners in the Ukrainian efforts since 2014.

As of 2014, with the establishment of the Support Group for Ukraine, the EU transformed its assistance programmes. It moved away from individual projects into larger coherent support packages for key reforms and building of state institutions. This important shift will be very relevant in the post war rebuilding and reforming of Ukraine.

Since 2016 Ukraine has progressively extended its **participation in EU programmes**, which has been partly co-financed by the EU. In particular, Ukraine participates in Horizon 2020 and Horizon Europe, Euratom Research and Training Programme, COSME, Creative Europe and EU4 Youth programmes. Organisations and individuals from Ukraine can also benefit from certain actions of the Erasmus+ and European Solidarity Corps Programme. In some other programmes such as, the European Maritime and Fisheries Fund. Ukraine is participating in several Interreg programmes and is a member of the EU macro-regional Strategy for the Danube region.

Ukraine has concluded working arrangements, cooperation agreements or memoranda of understandings with a number of EU agencies such the European Border and Coast Guard Agency (Frontex), the European Union Agency for Law Enforcement Training (CEPOL), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the European Union Agency for Criminal Justice Cooperation (EUROJUST), the European Police Office (Europol), the European Anti-Fraud Office (OLAF), the European Union Aviation Safety Agency (EASA), the European Maritime Safety Agency (EMSA), the European Union Agency for Railways (ERA), the European Training Foundation (ETF), the European Medicines Agency (EMA), the European Agency for Safety and Health at Work (EU-OSHA), the European Centre for Disease Prevention and Control (ECDC) and others. Ukraine is participating, without voting rights, in the Office of the Body of European Regulators for Electronic Communications (BEREC). Procedural arrangements for Ukraine joining the LIFE programme have been completed.

³ SWD(2021) 186 final

Ukraine is a participant in the Eastern Partnership (EaP). The EaP is based on the principle of inclusivity and differentiation. Russia's war in Ukraine has shown that multilateral cooperation and cohesion is now more important than ever, as is strengthening the resilience of the region. A focus on bilateral relations will also be important going forward, to allow Ukraine to implement key reforms, including in the field of governance, justice and rule of law.

B. CRITERIA FOR MEMBERSHIP

1. POLITICAL CRITERIA

This assessment is based on the Copenhagen criteria relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

1.1 Democracy

As established by its **Constitution**, Ukraine is a parliamentary-presidential democracy in which the legislative powers are exercised by the Parliamentary Assembly (*Verkhovna Rada*) and the executive powers by the Government, while the President retains important executive powers.

The Constitution provides for the fundamental principles of a democratic state, including the rule of law, free elections and the protection of human rights. Primacy of international law is explicitly determined by the Constitution rendering the international treaties in force as binding and an integral part of the national legislation of Ukraine.

The only body that may interpret the Constitution and determine whether legislation conforms to it is the **Constitutional Court of Ukraine (CCU)**, which is still in urgent need of reform in line with the recommendations of the Venice Commission. Central to such reform is the introduction of a credible and transparent selection procedure for appointments of judges to the CCU, including an integrity check. Relevant legislation is pending in the Parliament.

Under its Constitution, the **President** of Ukraine is the head of State, directly elected by the citizens for a five-year term of office. Foreign policy is formally the responsibility of the President, who is also the Army Supreme Commander-in-Chief. The President has the right to choose the ministers of defence and foreign affairs and appoint local governors. **The executive power** is exercised by the Government, consisting of a Prime Minister, a First Deputy Prime Minister, three Deputy Prime Ministers and 18 ministers. The government has overall adequate capacities for policy planning. During the war, the Ukrainian government has shown institutional resilience and ability to function and remained a reliable international partner.

The **Parliament**, named *Verkhovna Rada*, is the legislative body of Ukraine, which exercises effective democratic control over the executive branch. The Parliament plays a key role in appointing and dismissing the Government, and heads and members of a number of other public institutions. It is composed of 450 deputies elected for a five-year term. There remain 26 vacant seats in the *Verkhovna Rada*, elections for those seats not having been held in the Autonomous Republic of Crimea and the City of Sevastopol (Crimea) illegally annexed by the Russian Federation and in the parts of Donetsk and Luhansk oblasts beyond the government's control. The Parliament endorsed the President's decision to introduce martial

law due to the full-scale Russian military aggression in February 2022, but legislative work continues during this period.

Political developments in Ukraine and recommendations by relevant international organisations have led to repeated changes in the **electoral system** used for parliamentary elections. A new Electoral Code, which regulates all types of elections, was adopted in 2019, to bring the law overall in line with relevant international standards. The Code introduced *inter alia* an open-list proportional representation system, enfranchised internally displaced persons, and strengthened gender quotas. It was first tested during the local elections in 2020 revealing the need for some further amendments related to the transparency of campaign financing, on balanced and impartial media coverage, and certain aspects of the procedures of handling of electoral complaints and appeals. The law on national referenda was adopted in January 2021 and the work on the law on local referenda is underway. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) assessed the most recent two-round presidential elections and early parliamentary elections in 2019 as competitive and both overall in respect of fundamental rights and freedoms. Some recommendations were issued which are being followed-up.

The use of urgent procedures to pass legislation, including in areas relevant to the EU *acquis*, is relatively limited. Comprehensive impact assessments of proposed legislation and legislative oversight of the executive, including monitoring the implementation of legislation, need to be strengthened.

Public funding of political parties was introduced in 2016 as an instrument to strengthen their financial and institutional capabilities. Full restoration of financial reporting obligations of political parties, suspended during COVID-19 pandemic, is pending Parliament's approval. After the beginning of the full-scale Russian military aggression in February 2022, the Ukrainian authorities decided to ban 11 political parties considered to be promoting Russian interests.

Ukraine has a vibrant **civil society** that plays an active role in the promotion and oversight of reforms. The expertise of Ukrainian civil society organisations on key sector reforms makes them a valuable partner for the government and an important actor for local service provision. The legal framework ensures protection of freedom of association, expression and peaceful assembly. Measures have been taken to support the registration of civil society organisations, and simplify rules on reporting and taxation. While there is a very open civic space, there has been pressure and threats against civic activists from local vested interests, in some cases leading to violence. The authorities condemn such attacks and investigations have been stepped up, however, additional efforts are needed to ensure that there is no impunity for such crimes.

1.2. Public administration reform

Ukraine has progressed in improving its public administration since 2014. The legal framework for a modern public administration is mostly in place. However, it is not yet fully implemented.

Ukraine has a well-developed **strategic framework for public administration reform** (PAR) and has prepared and implemented PAR strategies, following the standards of the European principles of public administration, since 2016. Achieving further progress will require more intensive engagement at the highest political level. Further efforts by Ukraine

are needed to ensure adequate administrative capacity to implement and enforce legislation, especially regarding inspection.

Effective and efficient **public service delivery** has been a distinct policy imperative since 2014. Since 2019, the government introduced measures *inter alia* to: simplify and monitor service delivery; eliminate duplication of front offices; and improve feedback. Furthermore, it has drafted a law on streamlining the administrative fee, put in place the conditions for e-services (web-portals, putting administrative services online, and interoperability); and define by law the specificities of delivering public (electronic) services. Ukraine has an advanced **e-government**, where its citizens have an easy access to public services through online platform and application on the mobile phone that has grown in less than two years to 14 million users. Digital governance has increased the efficiency and the transparency of the government, and facilitated the government-citizen dialogue.

Ukraine has improved significantly **Public Financial management** (PFM) since its first PFM strategy in 2013. The 2022-2025 PFM Strategy and Action Plan were adopted in December 2021. This new strategy is in line with the Public Expenditure and Financial Accountability (PEFA) methodology, EU and international standards. The Government introduced medium-term budget planning in 2018. The three-year budget declaration for 2022-2024 was approved for the first time in 2021 and applied to the 2022 budget. The 2020 budget was executed according to the indicators proposed by the Budget Law. Ukraine has continued to increase budget transparency since 2017. The legislature and supreme audit institution, together, provide more than adequate oversight during the budget process. Budget documents provide a good overview on budget revenues and expenditure. Progress was made in enhancing domestic revenues mobilisation in both tax and customs areas in line with the commitments of the Association Agreement. Oversight of the off-budget accounts and the use of international standards in the Accounting Chamber of Ukraine needs further improvement.

With respect to **multi-level governance**, Ukraine's **decentralisation** has advanced since 2014. This is one of the most impactful and successful reforms implemented in the country. It has become a crucial enabler of the social and economic development. A key aspect of the reform was a merger (amalgamation) of over 10 000 small and dispersed local entities into 1 470 larger municipalities (*'hromadas'*) with increased administrative and economic capacity to manage their responsibilities more effectively. A country-wide network of local "one-stop-shop" administrative service centres provides quality services to citizens and businesses. The reform was underpinned by fiscal decentralisation (including 64% share of personal income tax currently allocated to municipalities) with the aim of securing stable resources necessary for the exercise of the new tasks of local self-government. Municipalities also benefited from transfer of property and gained opportunities to regulate land trade on their territory. Sectorial decentralisation advanced in health and education.

With respect to **Public Service and Human Resources Management**, a new law on civil service entered into force in 2016. The law lays the foundation for a modern civil service. Building a professional and merit-based civil service would require a refinement of both the legal framework and operational practice, however. A reform of the civil service remuneration system needs to be finalised to allow retaining qualified professionals and to attract new talent. Right before the war broke out, Ukraine was on the verge of adopting a key law on administrative procedures. The institutional architecture of the state administration is comprehensively regulated, but its organisational design and steering mechanisms should be improved to ensure effective, results-oriented and efficient governance.

Policy development and coordination has reached a good level in a number of ministries while in others this needs to be improved. The regulatory framework for policy development

needs to be updated, in order to improve analytical capacity and to make planning documents more realistic, especially by better aligning with available budgets. The mechanism for public and inter-ministerial consultations needs to be further improved.

Accountability management has improved across the board, for instance by introducing performance indicators in all ministries. The legal framework does not always establish coherent accountability lines and governance arrangements between supervisory and subordinated bodies. The autonomy granted to non-ministerial bodies does not focus on holding agencies accountable for results.

1.3. Rule of law

Since the *Revolution of Dignity* in 2014, Ukraine undertook two rounds of judicial and anti-corruption reforms (in 2014-2016 and in 2020-21) to align the judicial system with the principles of the rule of law, to strengthen judicial independence and accountability and to set up independent anti-corruption bodies. These reforms also had the aim of making the system more efficient and transparent. This need for reforms arose against the background of insufficient independence of the judiciary from the executive and legislative branches, low accountability, high levels of corruption and strong influence of oligarchic interests.

a) Judiciary

Ukraine has embarked on the reform of the justice sector and the relevant **strategic approach** is in place.

The High Judicial Council is the main body responsible for the self-government of the judiciary. The constitutional and legislative framework guarantees the **independence of the judiciary** and its impartiality. Codes of ethics for judges and prosecutors are in place, as well as an integrated case management system with automated allocation of cases. The appointment of judges and prosecutors is in principle based on merit and objective criteria, following public competitions. However, attempts of undue internal and external interference on the judiciary remain an issue of concern.

The first round of justice reforms culminating in constitutional amendments in 2016 succeeded in streamlining the court system from a four to a three-tier one. It also imposed new examinations and integrity checks for all sitting judges, which led to the resignation of more than one quarter of the judicial corps, about 2000 judges. The judiciary is currently seriously understaffed, given that the body responsible for selection procedures was dissolved at the end of 2019. New **Supreme Court** members were nominated in a transparent manner, however some judges with questionable integrity were also appointed. Judicial appointments were opened to the entire legal profession and a more transparent judicial selection system was introduced. An important addition to the judicial system was the establishment in 2019 of the High Anti-Corruption Court, facilitated by a strong engagement of Ukrainian civil society and the international community.

At present, the judiciary continues to be regarded as one of the least trusted and credible institutions. At the time the war erupted, Ukraine was on the verge of finalising the implementation of a fundamental judicial reform (2020-2022) that would lead to systemic changes, if fully implemented. The key aspects of the new reforms are embedded in a new comprehensive **Strategy for the Development of the Justice System and Constitutional Judiciary** for 2021-2023.

Regarding the **efficiency** of the justice system the picture is mixed, with a positive trend in civil and commercial proceedings and a negative trend in administrative proceedings. The biggest issue is the backlog of overall 578.750 cases (in 2018), which is particularly a

problem with regard to the Supreme Court (currently backlog of 24.000 cases). The disposition time in civil and commercial litigious cases decreased to 122 days in 2020, compared to 129 days in 2018 which corresponds to a standard level of efficiency. The clearance rate increased to 98 % (97 % in 2018)

The 2018 overall budget was 632.1 million (0.56 % of GDP). Although 78 % of courts budget is spent on salaries and compensations, very limited funds were allocated to investment needs (0.2 %) and training (0.004 %). Ukraine has 13 judges and 21 prosecutors per 100 000 inhabitants, compared with a European average of 21 judges and 12 prosecutors per 100 000 inhabitants⁴.

New legislation introducing **integrity and professional ethics checks** for the key judicial governance bodies (the High Council of Justice, whose main responsibilities include appointments and dismissals of judges, and the High Qualification Commission of Judges which conducts the selection procedures for new judges) was adopted in July 2021, fully in line with Venice Commission recommendations. The bodies tasked with doing the integrity checks had been established and started their work. After a suspension of works as of 24 February 2022, with the war ongoing, the integrity check of current HCJ members was finalised on 7 May 2022; out of 21 HCJ members, only three remain. These reforms have the potential not only to build an independent and accountable judiciary, but also to reduce the influence of vested interests who used the current judicial governance system to undermine the rule of law in Ukraine.

To deal with the systemic problem of non-enforcement of domestic court decisions, in 2020, the Government adopted a Strategy on the resolution of non-enforcement of court decisions where a state entity or state owned enterprise is a debtor. In 2021, the Parliament adopted the draft law reforming the enforcement of court decisions in first reading.

At the end of 2019, an ambitious reform of the **prosecution service** was launched. Its core element was the vetting of all 11 700 prosecutors at the central, regional and local level based on professionalism and integrity criteria. 30% of prosecutors failed the attestation and had to leave the service. Some 2000 court cases challenging the outcome of the individual attestation were opened and court proceedings in most of these cases are pending. In 2021, the Prosecutor General successfully piloted a new procedure for a transparent and merit-based selection of management-level prosecutors. In 2022, work has started on turning this interim procedure into a permanent one, and on improving the disciplinary system for prosecutors.

b) Fight against corruption

Preventing and combatting corruption has been particularly high on the Ukrainian reform agenda since the *Revolution of Dignity*. Increased transparency and preventive measures have brought tangible results in reducing the space for corruption across various sectors. Nevertheless, many challenges persist. Corruption remains a serious challenge that requires continued attention as it imposes significant costs on the state budget, businesses and the population, discourages domestic and foreign investment and undermines the rule of law.

The country is a party to all key international anti-corruption conventions, including the United Nations Convention against Corruption (UNCAC). A number of recommendations from relevant international anti-corruption monitoring mechanisms, including GRECO, remain outstanding. All forms of corruption are criminalized, including illicit enrichment, and the laws regulate conflict of interests, protecting whistle-blowers and ensuring transparent public party financing. Following an inclusive drafting process, a new **national anti-**

⁴ As reported by the Council of Europe European Commission for the Efficiency of Justice.

corruption strategy with a focus on relevant sectors was elaborated, although its final adoption by the *Verkhovna Rada* is still pending. Integrity plans and code of ethics are in place in key parts of the public administration and judiciary with their enforcement being gradually ensured through internal control units and respective disciplinary bodies.

Ukraine successfully pursued major reforms to prevent corruption and protect the state budget, particularly in relation to public procurement, public service delivery, energy, banking and the health sector. Studies have assessed the actual saving of these measures in the order of six percent of GDP annually. Transparent and comprehensive electronic systems for asset declarations for public officials was put into operation in 2016. It allows for automatic verifications and public access to the declarations filed. Similarly, a new international award-winning electronic system for public procurement Pro-Zorro (and its spin off Pro-Zorro Sale) were introduced to boost transparency in previously opaque procurement processes. Annually, according to reliable sources, these systems have produced real savings of one percent of GDP and will continue to do so.

After 2014, the Ukrainian civil society and the international community played a key enabling role in the establishment of **specialised anti-corruption institutions**, namely the National Anti-Corruption Bureau (NABU), the Specialised Anti-Corruption Prosecution Office (SAPO), the National Agency for Prevention of Corruption (NAPC), the Asset Recovery and Management Agency (ARMA) and the High Anti-Corruption Court (HACC). These institutions have comprehensive mandates in line with international standards and operate increasingly independently, with required resources largely in place, while inter-agency coordination could be improved. Some of these agencies started successful operations earlier (e.g. NABU, HAAC) than others (eg. SAPO, NAPC). The independence of all anti-corruption institutions remains crucial. Their heads should be selected in transparent and competence based competitions where also the integrity of potential candidates is being checked. It is particularly important to urgently complete the appointment of a new head of SAPO through certifying the identified winner of the competition and carry out the selection and appointment of the NABU director.

On the preventive side, NAPC is mandated with conflicts of interest, verification of declared assets, auditing the spending of political parties and whistle-blowers protection. As regards the law enforcement side, NABU is among the most trusted institutions and has increasingly developed its institutional capacities and a pro-active attitude to address allegations of corruption involving high-level officials. A modern e-case management system has been deployed by NABU, SAPO and HACC for facilitating investigations and adjudication of high-level corruption cases. The establishment of HACC in 2019 through a transparent, merit based recruitment of judges and staff has greatly facilitated the work of the anti-corruption institutions and led to an overall more effective adjudication of corruption cases.

While Ukraine has made notable achievements in the preventive side of addressing corruption, the repressive side needs to be considerably strengthened. The number of high-level officials brought to justice for corruption remains limited. Investigations of corruption sometimes lack impartiality and law enforcement agencies experience political interferences.

As regards **track record** of high level corruption cases, a total of 72 verdicts have been issued by the HACC since 2019, out of which 39 are final convictions, including against members of parliament, judges, prosecutors, members of local councils and heads of state-owned enterprises.

A so-called “Anti-Oligarch law” was signed into law in November 2021, with the strategic objective to limit the excessive influence of oligarchs, by reducing their role in Ukraine’s economic, political, and public life. Implementation of relevant legislation is key.

c) Organised crime

A major reform of the police was conducted in 2019. It was aimed at increasing public trust in the police and strengthening their ability to deal with organised crime. Specialised police units were put in place to deal with terrorism, cybercrime and drugs. The Ministry of Interior acts as a national coordinator on organised crime. The police, however, continues to suffer from low level of equipment and expertise to conduct complex financial investigations. Police reform has to be continued, including the introduction of a truly professional management system.

Ukraine ratified the United Nations Convention against Transnational Organized Crime, as well as its protocols on Trafficking in Persons and on Smuggling of Migrants. The country's **anti-money laundering** legislation partially reflects the Financial Action Task Force (FATF) standards and relevant international legislation but there are still outstanding recommendations from the Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), which is why Ukraine has been reporting to MONEYVAL under an enhanced follow-up procedure. Further reforms are needed to improve Ukraine’s compliance with FATF standards, in particular those related to virtual assets, ultimate beneficial ownership, and supervision of non-banking businesses and professions. Investigation and prosecution of major money-laundering schemes should progress. Putting in place a comprehensive framework for the fight against financial crime and money laundering, and ensuring its effective implementation, are crucial to address the significant risks they pose. An Asset Recovery and Management Agency (ARMA) is in place, however, the Agency does not have a permanent Head since the end of 2019. Legislation related to the management of seized assets should be improved and a relevant national strategy on asset recovery adopted.

On the national level, Ukraine has approved a Strategy on Combating Organised Crime in 2020; the Action Plan for the Strategy is under development and further approval. A government regulation on Serious and Organised Crime Threat Assessments (SOCTA) was adopted in 2022 and Regional Organized Crime Threat Assessment Task Forces (ROCTAFs) were launched nation-wide.

Ukraine has a working arrangement in place with European Union Agency for Law Enforcement Training (CEPOL), an operational and strategic agreement with European Union's law enforcement Agency (Europol) and a Memorandum of Understanding with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Ukraine is an active participant in the European Multidisciplinary Platform Against Criminal Threats (EMPACT) and a member of Interpol. It participates in Joint Investigation Teams facilitated by EUROJUST.

The country is located at an important crossroad of smuggling illegal goods to the EU, including arms and drugs. Illegal logging has been wide-spread and despite efforts made in recent years, illegal trade in timber persists. Ukraine is also a source, transit and destination country for trafficking in human beings. The number of completed criminal investigations related to crimes committed by organised groups and criminal organizations slowly increased in recent years but remains still relatively low (2021 –499 cases; 2020 – 377 cases; 2019 – 293 cases), particularly related to allegations of trafficking in human beings (2021 – 45 cases; 2020 – 57 cases; 2019 – 10 cases).

Overall, reform of the law enforcement environment has to be continued on the basis of an overarching strategic plan.

1.4. Fundamental rights

a) International framework

Ukraine has ratified the main international human rights instruments and its domestic legal and institutional framework regulating **fundamental rights** broadly follows European and international standards. The country has not ratified the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

b) Legal and institutional setup

The legal and institutional framework regulating fundamental rights is in place and laws generally follow European and international standards. However implementation should be improved and the capacity of the institutions in charge of protection and enforcement of human rights as well as the implementation of existing strategies and action plans remain limited. This sometimes impedes the effective enforcement of human rights.

In 2021, Ukraine adopted a new **National Human Rights Strategy 2021-2023** and an **Action Plan** to strengthen efforts to align structures and procedures of its public administration with the international framework.

The Ombudsperson institution – the Ukrainian Parliament Commissioner for Human Rights – is designated as the National Human Rights Institution and accredited with “A” status by Global Alliance of National Human Rights Institutions as largely complying with the Paris Principles.

c) Key fundamental rights issues

The country has 501 judgements of the European Court of Human Rights under enhanced supervision procedure pending their enforcement. The majority of the cases are repetitive and relate to violations of the right to an effective remedy, length of criminal proceedings, ill-treatment including poor detention conditions, length of pre-trial detention and right to liberty and security.

Ukrainian citizens benefit from **freedom of expression** and there is a vibrant public civic space. **Media freedom** has also improved significantly in recent years, especially thanks to online media. Media controlled by oligarchs have disproportionate influence, notably in the segment of television. Ukraine has found an overall good balance between the preservation of media freedom and measures against pervasive Russian hybrid and massive disinformation attacks, being multiplied by some local media outlets.

The Ukrainian Constitution guarantees protection against **discrimination**, and the Criminal Code and several criminal laws contain stand-alone provisions on **hate crimes**. However, sexual orientation and gender identity are not acknowledged as protected grounds in anti-discrimination legislation. Legislation required in order to align with the EU *acquis* is identified in the National Human Rights Strategy 2021-2023, but remains to be implemented.

Ukraine is gradually progressing on its **gender equality** agenda, with increased political representation of women (20.5% of parliamentarians elected in 2019 are women) although the gender pay-gap persists with women overall earning 23% less than men on average in 2019. Ukraine has not ratified the Istanbul Convention, while gender-based violence remains an issue. There is increasing tolerance and acceptance of lesbian, gay, bisexual, transgender,

intersex or queer (**LGBTIQ**) persons in the Ukrainian society and law enforcement is supportive in protecting LGBTIQ events.

Ukraine has undertaken various legal initiatives to improve the **rights of the child** and ratified the UN Convention on the Rights of the Child as well as acceded to the three Optional Protocols to the Convention. It also endorsed the Paris Commitments to protect children from unlawful recruitment or use by armed groups. At the same time, Ukraine has one of the highest rates of child institutionalisation in the world (ca. 1.5% of all children), which is a serious concern and needs to be tackled as a matter of urgency. Likewise, the support for persons with disabilities (approx. 6% of the population) remains under-resourced and a de-institutionalisation process needs to be implemented to transition towards community based care of persons with disabilities.

The rights of persons belonging to **minorities** are constitutionally guaranteed in Ukraine. The respect for rights of persons belonging to national minorities in the field of education and language and their representation in elected bodies in all levels of public life needs to be ensured by fully implementing the recommendations of the Council of Europe's Venice Commission on the education law, implementing those on the State language law and taking into account the last monitoring cycle of the Framework Convention on National Minorities. While Ukraine has taken steps to implement the recommendations of the Venice Commission, it needs to finalise its reform of the legal framework for national minorities and to adopt effective implementation mechanisms.

Previous shortcomings in investigating and prosecuting of **torture and ill-treatment** by law enforcement officials are being addressed by the creation of the Department for Procedural Oversight of Criminal Cases of Torture and Other Serious Violations by Law Enforcement at the Prosecutor-General's Office in October 2019. The judiciary in Ukraine is under-staffed, which prevents trials from concluding within a reasonable time and leads to a lack of effective remedy for victims of serious crimes. Also the penitentiary system is under-resourced and conditions in places of deprivation of liberty are poor.

2. ECONOMIC CRITERIA

This assessment is based on the Copenhagen criteria related to the existence of a functioning market economy and the capacity to cope with the competitive pressure and market forces within the Union.⁵

2.1. Functioning market economy

GDP *per capita* in Ukraine represented 29.8% of the EU average in 2020. The government has a satisfactory record in carrying out broadly sound macroeconomic policies, against the backdrop of successful mid-term cooperation with international partners and strong resilience since the Russia war of aggression (and it is noteworthy how the government has continued to ensure macroeconomic stability also during the war). However, economic and policy developments have been held back by a somewhat uneven implementation of structural reforms, often reflecting lack of political consensus and regular interference from vested interests, which have delayed reforms, e.g. aiming to improve the business environment, strengthening the accountability of public finances or legislation on environment and climate action.

⁵ It should be borne in mind that the high degree of uncertainty related to the ongoing war and its evolving impact affect the predictive power of this assessment, which is largely based on available (pre-war) data.

Indeed, the authorities of Ukraine have demonstrated strong commitment to pursue stability-oriented macroeconomic policies since the *Maidan revolution*. The government has followed an ambitious fiscal consolidation that halved public deficit to around 2% of GDP on average since 2015 and managed to contain the adverse effect of the COVID-19-driven recession on the public finances. Supported by strong nominal GDP growth, the sustainability of public debt improved notably, as the debt ratio declined by more than 30 percentage points to below 50% of GDP in 2021. The National Bank of Ukraine introduced in 2016 and subsequently successfully managed its inflation-targeting framework, thereby preserving the stability of the flexible exchange rate regime and improving confidence in the national currency. However, the war context raises new challenges in relation to inflation, which had been reduced markedly over the last five years to 2.7% in 2020 before reaching 9.4% in 2021. Chronically low levels of domestic and foreign investment account for the rather subdued real economic growth of around 3% per year in the four years before the pandemic and the subsequently persistent relative gap to the standards of living in the EU.

Persistent major weaknesses in the business environment are the main cause for the lack of investment. In 2019, Ukraine ranked 85th in the global competitiveness index of the World Economic Forum, primarily due to weak institutions, the high prevalence of market dominance and an ineffective anti-monopoly policy. Nevertheless, the cancellation of almost one fifth of the regulatory acts under review in the period 2016-2020 led to some progress with deregulation. Despite a moderate regulatory burden and no significant legal barriers to market entry, corruption is widespread and, combined with a still not fully reformed court system, results in a low degree of contract enforcement, which discourages entrepreneurship and cross-border business relations. Despite much uncertainty in estimates and improvements in last years, the share of the informal economy remains significant and could reach as much as one third of economic activity in Ukraine.

With more than 3 500 state-owned enterprises (SOEs) at central government level, accounting for one tenth of output and about 18% of employment, the State footprint in Ukraine is considerable, while SOEs are also recipients of State aid. The SOEs corporate governance reform has progressed well in view of aligning it with international standards to ensure independent, professional and transparent profit-oriented management. In this context, Privatbank was nationalised in 2016 as a result of massive fraud. However, the average return on equity in SOEs remained at 0.3% in 2019⁶, in comparison to 8% in the private sector. The rather successful privatisation of small property and production assets, notably through electronic auctions, still needs to become a catalyst for large-scale privatisation.

Financial sector stability has been strengthened by the regulatory and supervisory reform since the 2014-2016 banking crisis, supported by a sizable reduction in non-performing loans from 58% in 2017 to 30% in 2021 and the recapitalisation of banks to comfortable levels. With a market share of close to 50% over the last five years, the four state-owned banks dominate the banking sector. Yet, financial intermediation is still low, with bank loans to the private sector amounting to only 19% of GDP in 2021. Capital markets and non-bank financial intermediation are in a very early stage of development and do not offer viable financing options to companies. Following Russia's war of aggression, the National Bank of Ukraine took appropriate steps to safeguard banks' liquidity and the confidence in the system.

⁶ Excluding highly profitable Naftogaz (the largest SOE in Ukraine, with a national monopoly in the oil and gas business).

An inherited unreformed legislation that lacks flexibility has been hindering the functioning of the labour market. About 3 million people, or almost 20% of all employed, were in informal employment in 2021. The unemployment rate remained relatively low at around 9% in the last years and the economic cycle has had no major impact on it. The economic activity rate was well above some regional peers and remained relatively unchanged at around 62% (56% for women) since 2014, in the context of significant labour emigration. Indeed, according to 2019 estimates, around 2.5 million Ukrainians, or almost 15% of total employment, were living and working abroad. This labour emigration drove the sizable flows of remittances, which persistently exceeded the flows of foreign direct investment almost four times.

2.2. Ability to cope with the competitive pressure and market forces within the EU

A well-developed educational system accounted for a literacy rate of close to 100% and a rather satisfactory average 2018 PISA assessment where Ukraine scored at rank 40 out of 78 countries. Despite the sizable government spending in the sector (5.7% of GDP in 2021) and a ratio of gross enrolment in tertiary education of above 80%, the *curricula* and overall quality could be better aligned with labour market needs. Expenditure on research and development, which is mostly concentrated in the public sector and had been declining over the last ten years to below 0.5% in 2020, remained insufficient to heighten human capital in a sustainable way.

Already prior to the significant damage inflicted by the Russian war of aggression, the state of the physical infrastructure in Ukraine reflected a persistently low level of general capital accumulation, with the investment ratio averaging around 17% of GDP since the *Maidan revolution*. The destruction caused by the war is immense and amounts to hundreds of billions of Euro. After the war, it will be critical not just to restore what existed, but also to ‘build back better’ with a clear link to the broad reform agenda on Ukraine’s European path, in order to enable Ukraine’s green and digital transition. Road length and electricity production *per capita* represented, respectively, 48% and 57% of the EU average in 2020. The degree of wear of the electricity distribution networks was estimated at close to 50%. Despite the noticeable growth of the ICT sector in the last years, most companies use only basic digital tools and technologies.

At a moderate level of diversification, the structure of the Ukrainian economy had changed little since 2014 and remained concentrated in sectors with low added value. The share of manufacturing in GDP declined from 12.2% in 2014 to 10.3% in 2021. Trade (13.8% of GDP), agriculture (10.8% of GDP) and mining (6.7% of GDP) were the other three most important sectors in 2021. At the same time, the sectors of trade, agriculture and industry accounted for almost 60% of employment, thereby suggesting a lower labour productivity relative to the other parts of the economy.

The overall openness of the economy has been shrinking over the last years, with foreign trade in goods and services as a share of GDP contracting by almost a quarter since 2015 to 82.6 % of GDP in 2021. Yet, economic integration with the EU progressed further thanks to the implementation of the AA/DCFTA. Ukrainian exports to the EU had broadened in scope since 2015, also in terms of the number of exporting firms (14 238 exporting companies in 2021, i.e. 22% more than in 2015). The share of exports to the EU, which consisted mostly of agricultural products, metals and minerals, increased from 28% in 2015 to 36% in 2021. The share of imports from the EU, which comprised primarily machines, chemicals and minerals, also strengthened from 36% in 2015 to 41% in 2021. As a WTO member since 2008, Ukraine has a relatively open trade policy.

3. ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP

The ability of Ukraine to assume the obligations of membership has been evaluated based on the following indicators:

- The commitments in the Association Agreement and the Deep and Comprehensive Free Trade Area and their implementation;
- The level of adoption, implementation and enforcement of the *acquis* outside the AA/DCFTA.

The **EU-Ukraine Association Agreement**, including a **Deep and Comprehensive Free Trade Area (AA/DFCTA)**, belongs to a new generation of association agreements between the EU and partner countries. 21 of its annexes/appendixes contain lists of specific pieces of the *acquis* with detailed timetable of implementation varying from 2-10 years. The Agreement captures thus a substantial part of the EU *acquis*. Strong commitment by Ukraine to the implementation of the AA/DCFTA has led to enhanced bilateral cooperation and gradual economic integration with the European Union across a wide range of sectors. The dynamic nature of the Agreement has been exploited through the update of annexes, to cover also more recent EU *acquis* than initially included in the Agreement. The following annexes have been recently updated: Annex XXVII on energy, Annex XXI on public procurement, Annex V on sanitary and phytosanitary measures and Annex XVII on services in 3 sectors: telecommunication, postal and courier services, and international maritime transport services. Preliminary agreement has been reached on Annex XXXI on climate action, Annex XV on approximation of customs legislation and Annex XLIV on financial cooperation with anti-fraud provisions.

In 2020, the EU and Ukraine launched the Comprehensive Review of the Achievements of the Agreement's Objectives under the Article 481 of the AA in order to take full advantage of the potential of the AA/DCFTA.

The EU-Ukraine Association Agreement provides a comprehensive institutional set-up for bilateral dialogue and monitoring of the process of gradual approximation and implementation of Ukraine's legislation with the EU *acquis*. This encompasses annual Summit meetings at the highest political level, Association Council, Association Committee and Association Committee in Trade Configuration, dedicated Sub-Committees in five areas, as well as six dedicated Cluster Sub-committees covering almost all chapters of the EU *acquis*. The steps that Ukrainian government has taken in implementing the Agreement also confirms its ability to implement the relevant EU *acquis* including putting in place an adequate inter-institutional coordination framework. A post of Deputy Prime Minister for EU and Euro-Atlantic Integration was created in 2016, combined with a reformed Government Office for the Coordination of European and Euro-Atlantic Integration within the Cabinet of Ministers. Deputy Ministers responsible for European-integration issues have been appointed across successive governments in all ministries.

Ukraine's implementation of the EU *acquis* is documented in the EU's annual 'Association Implementation Reports' annually since 2016⁷. Ukraine is also issuing its own report.

EU Member States are closely involved in the implementation of the AA/DCFTA through the Association Council and the Association Committee. Common Positions are adopted for the

⁷ SWD(2020) 329 final

Association Council and a detailed Annotated Agenda is agreed for the Association Committee. The EU-Ukraine Parliamentary Association Committee involves the European Parliament and the Ukrainian Parliament into the implementation of the agreement. Civil society is also monitoring the implementation through the EU – Ukrainian Civil Society Platform.

Following the adoption of the revised enlargement methodology⁸ for the purpose of the EU's Enlargement policy, the EU *acquis* is structured around six thematic clusters. The *acquis* in these clusters is substantially covered by the AA/DFCTA. Ukraine has gradually approximated with the EU *acquis* included in the AA/DCFTA and has an overall satisfactory track record of implementation, though progress is uneven and delays in meeting the ambitious times lines in the AA/DCFTA have been frequent. Pending a fully-fledged analysis of all chapters to be carried out at a later stage in the process, the analysis provides examples of chapters in the clusters in which Ukraine has achieved particularly good results and highlights areas where there has been a limited approximation to the *acquis*.

The **Fundamentals cluster** includes the chapters of the EU *acquis* on *Judiciary & fundamental rights, Justice, freedom and security, Public procurement, Statistics, and Financial control*. This cluster has been mainly assessed under the Political and Economic criteria sections.

The **Internal market** cluster includes the chapters of the EU *acquis* on *Free movement of goods, Free movement for workers, Right of establishment and freedom to provide services, Free movement of capital, Company law, Intellectual property law, Competition policy, Financial services, Consumer and health protection*. In this cluster particularly good results were reached, for example, in the area of *free movement of goods*. Ukraine made good progress in alignment of the EU *acquis* on Technical Barriers to Trade aiming to comply with EU standards on product safety. This allowed to start preparations for a future Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) in three sectors for which a pre-assessment is ongoing.

Good results were also achieved in the area of *competition*. Ukraine has in place a law on competition, which contains a standard set of rules comparable to most antitrust acts in the EU. Moreover, during the last years the Ukrainian competition control authority has significantly improved its case-handling practices aiming to align with the EU laws and practices on competition. The current State Aids law provides a basis to control State Aid but needs to be further aligned.

There are other areas in the cluster where the approximation to the EU *acquis* is still limited; this applies, for example, to the area on *Intellectual Property Rights (IPR)*. A number of new laws were adopted in 2019 and 2020: on trademarks and designs, on patents, on Geographic Indicators and on IPR border measures. More efforts are needed notably on implementation and enforcement.

The **Competitiveness and inclusive growth** cluster includes the chapters of the EU *acquis* on *Information society and media, Taxation, Economic and monetary policy, Social policy and employment, Enterprise and industrial policy, Science and research, Education and culture, Customs union*. In this cluster particularly good results were reached, for example, in the area of *information society and media* where Ukraine carried out an in-depth sectoral reform and

⁸ COM (2020) 57 final

approximation with the EU Digital Single Market *acquis*. Ukraine has adopted the laws on electronic communications and telecommunications regulator, and has been enforcing those laws as of the beginning of 2022. The alignment with EU audio-visual media legislation remains to be completed, particularly as regards the role of media regulator, transparency of media ownership, and equal market conditions.

Good results were also achieved in the area of *customs*. Ukraine has adopted the necessary legislation to comply with the requirements and join the conventions on the Common Transit Procedure and on the simplification of formalities in trade in goods, and to implement the Authorised Economic Operators Programme, unlocking advantages in customs clearance procedures and facilitation of trade in goods. Negotiations on the update of the Annex XV related to the implementation of the legislation of the new Union Customs Code were successfully finalised. Ukraine's association to Horizon Europe and the Euratom Research and Training Programme is a successful instrument for integration with the EU's practices in the field of *research and innovation*.

There are other areas in the cluster where the approximation to the *acquis* is still limited, for example in the area on *social policy and employment*.

The cluster on the **Green agenda and sustainable connectivity** includes the chapters of the *acquis* on *Transport policy, Energy, Trans-European networks, and Environment and climate change*. In this cluster particularly good results were reached in the area of *energy* as regards the set-up of its electricity and gas markets, including the unbundling and certification of the gas- and electricity transmission network operators. Ukraine has also carried out structural transformation of its electricity and gas market design, based on the EU rules. Ukraine's membership in the Energy Community has given a boost to the process of approximation of legislation. Energy Efficiency framework legislation is covering substantial parts of the EU *acquis*. The good work in this area allowed Ukraine to be connected to the EU's electricity grid in March 2022 and to agree on a gradual increase of electricity exports under clear technical conditions to be fulfilled. Ukraine has a huge potential for producing renewable energy and develop a clean hydrogen economy. All these would help reducing energy dependence on Russian fossil fuels in line with REPowerEU plan and mitigating liquidity issues in the energy sector. The High Level Working Group on energy market will further accelerate needed reforms while ensuring regional security of supply, and paving the way for future electricity and renewable hydrogen trade, as well as rebuilding the energy system under the REPowerUkraine initiative. For this cluster, the strategic high level dialogue with Ukraine on the *European Green Deal*⁹ and the Ukrainian green transition, which was launched in 2021 has demonstrated high level interest and dedication to the green agenda on the side of the Ukrainian government. This is necessary to enable the country's green transition and to reach its new climate targets in line with the objectives of the Paris Agreement. The dialogue has also shown that considerable efforts are needed to ensure legislative alignment for instance with the EU climate and environmental *acquis*, as well as to secure the adequate administrative, financial and organisational capacities to implement and enforce it.

There are other areas in the cluster where the approximation to the *acquis* is still limited, for example, in the area on *transport*, where only around a third of the relevant EU *acquis* has been implemented. Significant results have been achieved only in some areas of essential importance for the reform of the transport sector, such as through the adoption of legislation on inland waterways and on multimodal transport. Since 2018, the Transport Dialogue helps

⁹ COM(2019) 640 final

deepen connectivity and supporting approximation. The implementation of the EU-Ukraine Common Area Aviation Agreement signed in October 2021 will lead to the progressive harmonisation of Ukrainian legislation with EU aviation rules and standards.

The cluster **Resources, agriculture and cohesion** includes the chapters of the EU *acquis* on *Agriculture and rural development, Food safety, veterinary and phytosanitary policy, Fisheries, Regional policy and coordination of structural instruments, and Financial and budgetary provisions*. In this cluster particularly good results were reached, for example, in the area of Food safety, veterinary and phytosanitary policy. The sanitary and phytosanitary sector stands out as the single most comprehensive and complex area in the AA/DCFTA. Ukraine has a particular high alignment rate of legislation in the area of food safety, animal and plant health. Responsibilities deriving from the updated legislation are clearly shared between the public and the private sectors to ensure products of appropriate safety are put on the market, both domestically – thereby improving the confidence of Ukrainian consumers in Ukrainian products – but also for exports, including to the EU. Ukraine is working in close cooperation with regional *fisheries* management organisations to align its relevant legislation to the EU *acquis* and international standards. The country has started to implement some key mechanisms for *regional policy*.

The approximation to the EU *acquis* in the area of *Agriculture and rural development* is limited.

The cluster **external relations** includes *External relations and Foreign, security and defence policy*. Ukraine has an overall good record of alignment with the EU *Common Foreign and Security Policy* positions. The alignment rate with relevant High Representative statements on behalf of the EU and Council Decisions was 79% in 2021 (2020: 81%; 2019: 63%; 2018: 46%, 2017: 80%). Ukraine was an active contributor to EUNAVFOR ATALANTA between November 2010 and November 2011 (provision of a naval officer) and in January-February 2014 (provision of a frigate). Ukraine has also contributed to the EU Battle Groups on various occasions between 2011 and 2020 and was preparing to participate in the EUFOR Althea mission which was eventually not possible due to Russia's war against Ukraine. There is scope to further enhance cooperation in the area of Common Security and Defence Policy (CSDP) and to achieve increased convergence with the Common Foreign and Security Policy (CFSP) including on EU positions. Ukraine has still to fulfil its commitment under Article 8 of the Association Agreement to ratify the Rome Statute of the International Criminal Court.

4. CONCLUSIONS AND RECOMMENDATIONS

Ukraine is a vital parliamentary-presidential democracy with competitive elections at national and local level, based on a comprehensive constitutional, legislative and institutional framework which overall corresponds to European and international standards. The legal framework for a modern public administration is in place but is not yet fully implemented. Ukraine has undertaken a successful decentralisation reform, including fiscal decentralisation. Judicial independence has been strengthened and independent anti-corruption bodies have been set up, including a well-functioning High Anti-Corruption Court. The independence of all anti-corruption institutions remains crucial. Accountability and efficiency of the judiciary need to be strengthened and shortcomings in the functioning of law enforcement institutions addressed, in particular in fighting corruption, which remains a serious challenge across the country. The legal and institutional framework ensuring the respect for fundamental rights is

in place and overall complied with but implementation should be further improved. An active and empowered civil society is a defining feature of Ukrainian democracy. The resilience of Ukrainian institutions has been on full display since the Russian invasion, with the government continuing to function at all levels. Overall, as regards the **political criteria**, Ukraine is well advanced in reaching the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

Concerning the **economic criteria**, Ukraine has continued its strong macro-economic record, demonstrating a noteworthy resilience with macroeconomic and financial stability ensured also after Russia's invasion in February 2022. This reflects not only a very strong political determination, but also relatively well-functioning institutions. At the same time, ambitious structural reforms to remove corruption, reduce the State footprint and the persistent influence of oligarchs, strengthen private property rights and enhance labour market flexibility need to continue in Ukraine to improve the functioning of its market economy. The capacity of the country to cope with the competitive pressure in the EU will depend crucially on how post-war investments in Ukraine are designed and sequenced in order to upgrade its physical capital, improve educational outcomes and spur innovation.

As regards the **capacity to fulfil the obligations of membership**, Ukraine has worked since 2016 on the implementation of the EU-Ukraine Association Agreement, including a Deep and Comprehensive Free Trade Area (AA/DFCTA). These agreements already capture an unprecedented amount of the EU *acquis*. Ukraine has gradually approximated to substantial elements of the EU *acquis* across many chapters. It has an overall satisfactory track record of implementation, while in some sectors the country is more advanced than in others.

Ukraine is a European State which has given ample proof of its adherence to the values on which the European Union is founded. The Commission therefore recommends to the Council that Ukraine should be given **the perspective to become a member** of the European Union.

Ukraine has demonstrated the resilience of its institutions guaranteeing democracy, rule of law, human rights and respect for and protection of minorities.

The Commission, therefore, recommends that Ukraine be granted **candidate status**, on the understanding that the following steps are taken:

- enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine, including a pre-selection process based on evaluation of their integrity and professional skills, in line with Venice Commission recommendations;
- finalise the integrity vetting of the candidates for the High Council of Justice members by the Ethics Council and the selection of candidate to establish the High Qualification Commission of Judges of Ukraine;
- further strengthen the fight against corruption, in particular at high level, through proactive and efficient investigations, and a credible track record of prosecutions and convictions; complete the appointment of a new head of the Specialised Anti-Corruption Prosecutor's Office through certifying the identified winner of the competition and launch and complete

the selection process and appointment for a new Director of the National Anti-Corruption Bureau of Ukraine;

- ensure that anti-money laundering legislation is in compliance with the standards of the Financial Action Task Force (FATF); adopt an overarching strategic plan for the reform of the entire law enforcement sector as part of Ukraine's security environment;
- implement the Anti-Oligarch law to limit the excessive influence of oligarchs in economic, political, and public life; this should be done in a legally sound manner, taking into account the forthcoming opinion of the Venice Commission on the relevant legislation;
- tackle the influence of vested interests by adopting a media law that aligns Ukraine's legislation with the EU audio-visual media services directive and empowers the independent media regulator;
- finalise the reform of the legal framework for national minorities currently under preparation as recommended by the Venice Commission, and adopt immediate and effective implementation mechanisms

The Commission will monitor Ukraine's progress in fulfilling these steps and report on them, together with a **detailed assessment** of the country, by the end of 2022.

The accession process remains based on **established criteria and conditions**. This allows any country in the process to progress based on own merits but also means that steps towards the EU can be reversed if the underlying conditions are not met anymore.