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Accompanying the

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT AND THE COUNCIL
Taking stock of the European Neighbourhood Policy (ENP)**

Implementation of the European Neighbourhood Policy in 2009
Progress Report Ukraine

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1. BACKGROUND AND OVERALL ASSESSMENT

Ukraine and the EU first established contractual relations in 1994 through a Partnership and Cooperation Agreement which entered into force in 1998. On that basis, the EU-Ukraine Action Plan was approved in February 2005.

In the course of 2009 intensive negotiations were conducted to develop an instrument to help prepare for and facilitate the entry into force of the EU-Ukraine Association Agreement, including a deep and comprehensive free trade area (DCFTA). The instrument, called the Association Agenda, was endorsed by the Cooperation Council in June and adopted by exchange of letters in November 2009, thereby fulfilling a commitment made by both sides.

EU-Ukraine meetings took place at the level of the EU-Ukraine Summit, the Cooperation Council, the Cooperation Committee and seven subcommittees.

This document reports on progress made on the implementation of the EU-Ukraine Action Plan and Association Agenda, respectively, between 1 January and 31 December 2009, although developments outside this period are also taken into consideration when deemed relevant. It is not a general review of the political and economic situation in Ukraine. In addition, for information on regional and multilateral sector processes, please refer to the sectoral report.

As regards the EU-Ukraine Association Agreement, in the course of 2009 further substantial progress was made in negotiations on economic and sector cooperation issues. Negotiations on the DCFTA part of the Agreement continued with the aim of concluding them as soon as possible.

While the gas dispute in January 2009 temporarily disrupted gas supplies to the EU via Ukraine, a number of significant achievements took place in the course of the year in the energy sphere. In March 2009 the EU and Ukraine jointly hosted a high-level investment conference on the modernisation of Ukraine's gas transit system. This was accompanied by a Joint Declaration setting out a number of key reforms commitments in the sector. In July 2009 the European Commission and a number of International Financial Institutions issued a joint statement of intent regarding support to gas sector reform in Ukraine and purchases of gas from Russia. In December 2009 approval was given for Ukraine's accession to the Energy Community Treaty pending adoption of a gas law in accordance with the EU *acquis*.

The negotiations on the EU-Ukraine Agreement on a Common Aviation Area advanced. The dialogue on developing relevant conditions to establish a visa free regime as a long term perspective also progressed well. The EU-Ukraine administrative arrangement on closer cooperation in the field of civil protection was successfully used to help Ukraine address the flu pandemic.

Ukraine cooperated constructively on Transnistria settlement efforts, continued to support the work of the EU Border Assistance Mission (EUBAM) and agreed with the extension of the mission for a second time. Cooperation on CFSP matters also continued as did Ukraine's alignment with most EU CFSP Declarations. A Memorandum of Understanding for the Establishment of a Dialogue on Regional Policy and Development of Regional Cooperation and a Strategic Co-operation Agreement between Ukraine and Europol were signed in July and December 2009 respectively. Negotiations on a Memorandum of Understanding between

the Ministry of Health and the European Monitoring Centre for Drugs and Drug Addiction were concluded in 2009 and the document subsequently signed in January 2010.

Just after the reporting period, in January and February 2010, Presidential elections were conducted in Ukraine. These met most OSCE and Council of Europe (CoE) standards for democratic elections and underlined the further significant progress which has taken place in Ukraine's democratic development.

Overall in the course of 2009 the implementation of key political and economic reforms was hampered by the continuing constitutional crisis resulting from unclear separation of powers between the President, Prime Minister and Parliament and by the beginning of electioneering in the second half of the year.

As in 2008, no progress was made on the issue of constitutional reform, which therefore remains a high priority. No or only limited progress was made with respect to judicial reform and anti-corruption measures. Further efforts are needed to fulfil several Council of Europe related commitments and to improve legislation in line with Council of Europe recommendations.

Ukraine's economic situation continued to deteriorate in 2009 in the wake of the economic and financial global downturn. In the course of the year Ukraine was able to benefit from a comprehensive economic stabilisation programme agreed with the IMF under a stand-by arrangement with the IMF totalling USD 16.5 billion (EUR 11.5 billion). However, towards the end of 2009 this agreement went off track amid election preparations and a final tranche of USD 3.8 billion (EUR 2.7 billion) was not disbursed. The recently elected Government has made the release of the fourth tranche a priority and an IMF delegation visited Kyiv in March 2010. While the economic outlook is improving, immediate challenges remain, in particular as regards bringing social and pension expenditure under control. The business climate continued to be negatively affected by *inter alia* unequal treatment of companies and bureaucratic obstacles to business and investment which promotes and consolidates corruption.

During 2010, to fulfil its Association Agenda commitments, it is in the interest of Ukraine to make further efforts with regard to constitutional reform; reform of the gas sector; reform of the public administration; the taking of effective measures against corruption notably through judicial reform as well as measures to improve the business and investment climate. At the same time there remains an urgent need for Ukraine to adopt a law on public procurement which complies with international standards and the *acquis*.

The Ukrainian authorities and civil society representatives participated actively in the multilateral framework of the Eastern Partnership, in particular through open dialogue and their contribution to the working programmes for the four thematic platforms. Together with the bilateral elements of the Eastern Partnership, this contributed to the overall strengthening of EU-Ukraine relations and reinforcement of the follow-up on the priorities of the Action Plan and the Association Agenda. Ukraine hosted the first meeting of the Eastern Partnership Integrated Border Management panel in Odessa in October 2009.

2. POLITICAL DIALOGUE AND REFORM

The EU and Ukraine maintained regular political dialogue during the year, notably at the EU-Ukraine Summit, the Cooperation Council and the Cooperation Committee. In addition,

political dialogue meetings took place between the Ukrainian government and the EU Political and Security Committee, the Council Working Group on Eastern Europe and Central Asia and EU Foreign Ministers and EU Political Directors. The EU-Ukraine Parliamentary Cooperation Committee met in both Brussels and Kyiv. The latter included a visit to Crimea.

Democracy and rule of law

In July 2009 a series of amendments to the legislation on **presidential elections** were adopted by the *Verkhovna Rada*. In October the CoE Venice Commission and OSCE/ODIHR issued a Joint Opinion on these amendments. While noting certain positive changes, overall it expressed serious concerns describing the changes as marking a “backward step”. Among the issues highlighted by the report were amendments that make it more difficult to challenge the election results, provisions related to the composition of electoral commissions and those concerning the rules of changing the voters’ lists on Election Day. In October, the Constitutional Court of Ukraine ruled several of the amendments to the election legislation unconstitutional.

In addition, controversial changes were made to the electoral framework between the two rounds of the Presidential elections concerning the representation of parties on electoral commissions. The practice of amending the electoral framework in the middle of the electoral process was criticised by the International Election Observation Mission.

Nevertheless, according to the preliminary conclusions of the International Election Observation Mission, the presidential elections were largely conducted in accordance with OSCE and Council of Europe commitments and consolidated progress achieved since 2004.

While work continued on the preparation of a draft concept of **public administration reform** and on draft laws on the civil service and the reform of the state administration none of these documents was adopted. A concept on the reform of local self-government was approved in July 2009. The concept seeks to create conditions for sustainable development of territorial communities and to increase local participation in decision-making.

With regard to **judicial reform and rule of law**, progress was limited. A draft Code of Criminal Procedure passed its first reading at the *Verkhovna Rada*. A new Code of Criminal Procedure was one of the conditions for Ukraine’s accession to the Council of Europe in 1995, originally to be enacted within a year from accession. The reforms enacted by the draft code should also enable Ukraine to ratify and implement the 2nd Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters. A draft law on reform of the Prosecutor’s Office was passed by the *Rada* in April 2009 and has now been referred to the Venice Commission for a view as to its compatibility with international standards. A law “on Amendments to Certain Legislative Acts of Ukraine on the introduction of automated workflow systems in Administrative Courts” was adopted by the *Rada* in June 2009. The law contains measures designed to ensure impartial allocation of cases to judges and thereby to reduce corruption.

In June 2009 a package of **anti-corruption laws** was adopted to give domestic legislative force to the Council of Europe’s Criminal Law Convention on Corruption and the UN Convention against Corruption. In November these were referred to the Constitutional Court, which has yet to rule on their constitutionality. In the meantime the *Rada* voted to postpone the entry into force of these measures from January to April 2010, and President Yushchenko signed this into law. In December 2009, the Government adopted 14 Resolutions covering a wide-range of anti-corruption measures. The same day, the President vetoed an important bill

adopted by the *Rada* in November on money laundering. The draft law contains a number of measures needed for Ukraine to comply with the recommendations of the Financial Action Task Force on Money Laundering. A Law on procurement of goods, works and services for public funds was approved in 11 February 2010. It is a condition, *inter alia*, of EU sector budget support to Ukraine that any law adopted on this issue should be consistent with EU norms and standards. In 2009, Ukraine's position deteriorated in terms of perceived corruption in comparison with other countries.

Human rights and fundamental freedoms

Improvements took place as regards pre-trial detention administered by the Ministry of the Interior, in particular through the operation of Civil Society Councils on **Human Rights** (which have an advisory role and operate at national level and regional levels). The Ministry of Interior's Department on Human Rights Monitoring undertook monitoring of respect for human rights in the police force as well as conducting educational activities in this regard. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited Ukraine in September 2009 to carry out its 5th periodic report. A National Preventive Mechanism has yet to be established in spite of the September 2007 deadline, which was set upon ratification by Ukraine of the Optional Protocol to the UN Convention against Torture in 2006. Human rights and international organisations continue to report on complaints of torture and ill-treatment in penitentiary and detention facilities.

A number of cases of violations of the **rights of refugees and asylum-seekers** were reported, including instances of forced deportation and denial of access to asylum seekers by UNHCR representatives.

As regards respect of the rights of persons belonging to **national minorities**, reports on incidents of anti-Semitism continue which include among others vandalising of the Holocaust Memorial in Mykolayiv and synagogues in Kremenchuk and Kolomyia. Other national minorities continue to be the object of discrimination and racism including in particular the Roma and Crimean Tatar communities. In November 2009, several articles of the criminal code were amended to include reference to racial motivation as an aggravating factor for crimes. Further efforts are needed to increase awareness and to counter racial discrimination. No progress was reported towards the adoption of comprehensive anti-discrimination legislation, as recommended by UN and Council of Europe monitoring bodies. Continuous efforts should be taken to ensure respect of the rights of persons belonging to national minorities in line with the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

Significant improvements in the area of respect for freedom of expression have taken place in recent years, although progress has slowed recently. During the Presidential election campaign, as a result of a pluralistic media environment, voters were offered a variety of information concerning candidates and their political programmes. However, the media continued to be subject to heavy financial pressure and economic interests, in particular during the electoral campaign. While the European Convention on Trans-frontier Television entered into force in July 2009, its implementation is still in its initial stage. No effective steps were taken to establish a public service broadcaster in line with international standards.

In June 2009 the *Verkhovna Rada* adopted at first reading a draft law touching on **freedom of assembly** ("Order of organising and conducting peaceful events"), which included provisions restricting rallies. The draft law was criticised by the Venice Commission. In its Opinion

issued in December 2009, the Venice Commission noted “several substantial shortcomings” in the draft law, including as regards the lack of clear standards to guide official decision-making. The Venice Commission also stressed that freedom of assembly should enjoy constitutional protection and not be restricted by subsidiary legislation. In May 2009, the city authorities in Mykolayiv banned the holding of a Rainbow Spring Festival to mark the International Day against Homophobia.

A **gender equality** commission was established in December 2009. It addresses anti-discrimination issues and investigates complaints filed by citizens. A draft law on equal rights remains to be adopted. In June 2009, the Ministry of Education and Science issued a Decree providing for regular gender equality lessons in Ukrainian schools. No progress can be reported in preventing and addressing domestic violence either in legal or administrative terms. Women’s participation in the labour market is high although a substantial gender pay gap remains.

Progress was made on **children’s rights** with the adoption by the *Verkhovna Rada* in March 2009 of a National Plan of Action for Children to Implement the UN Convention on the Rights of the Child 2010 – 2016 and in October of an implementing programme by the Cabinet of Ministers. Progress was also made in the area of adoption and fostering; in efforts to reduce HIV mother to child transmission rates and in expanding the Baby-friendly Hospitals Initiative. Laws on probation in the context of efforts to develop a restorative juvenile justice system have been drafted but have yet to be considered by the *Rada*.

No progress can be reported on **trade union rights and core labour standards**. The January 2009 Committee of Social Rights of the Council of Europe which reviewed the implementation of the European Social Charter in Ukraine underlined the inadequacy of the level of minimum old-age pensions.

As regards **international instruments**, Ukraine has extended an open invitation to Special Procedures. Ukraine has ratified the International Convention on the Rights of Persons with Disabilities and its Optional Protocol, and it has signed the Optional Protocol to the International Convention on Economic, Social and Cultural Rights. It has not acceded to the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on Migrant Workers and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data have yet to be ratified.

Regional and international issues, cooperation on foreign and security policy, WMD non-proliferation and disarmament, conflict prevention and crisis management

Ukraine continued to cooperate actively with the EU on regional and international issues, and aligned with most EU **CFSP declarations** open for alignment. The possibility of Ukraine's participation in EU naval operation Atalanta was explored, building on the positive experience of its participation in EU operations in the Balkans.

Ukraine cooperated constructively with the EU on all questions related to the **Transnistria** settlement efforts. It took part in informal meetings of the so-called “5+2” format. Together with the Republic of Moldova (hereafter referred to as Moldova), Ukraine continued to implement its customs regime based on the Joint Declaration of the Ukrainian and Moldovan Prime Ministers of December 2005.

No progress was made as regards the ratification of the Rome Statute of the **International Criminal Court**.

EU Border Assistance Mission to Moldova and Ukraine (EUBAM)

Ukraine continued to be fully committed to, and to participate constructively in, the work of **EU Border Assistance Mission to Ukraine and Moldova (EUBAM)**. With EUBAM support, the professional capacities of the Ukrainian customs and border guard services continued to be enhanced, as was inter-agency cooperation within Ukraine and between Ukraine and Moldova. In December 2009, following constructive bilateral talks as well as talks between Ukraine and the Transnistrian *de facto* authorities, an important advance was achieved in starting the demarcation of the central (Transnistrian) segment of the Ukrainian-Moldovan State border. By agreement between the European Commission, Ukraine and Moldova, the EUBAM mission was extended in November 2009 for a second time.

3. ECONOMIC AND SOCIAL REFORM

Macroeconomic framework and functioning market economy

Since the onset of the global crisis, Ukraine's economic situation has deteriorated dramatically. In 2008, Ukraine's real GDP growth already decelerated to 2.1%. Over the first three quarters of 2009, real GDP is estimated to have contracted by around 17.8% year-on-year, while industrial output decreased by 28.4% in the same period. High consumer price inflation eroded real wages and led to a fall in purchasing power. Consequently, private consumption is estimated to have declined by 13%. The latest projections point to a 15.1% drop in real GDP in 2009 and only a shallow recovery for 2010.

The fall in real GDP was driven by a reduction in external and domestic demand. Foreign demand for key exporting industries fell due to the deepening global crisis. The fall in domestic demand occurred on the back of reduced domestic credit, resulting from a curtailed capability of the domestic financial system to access external financing. Commodity prices fell sharply, affecting some of its key exporting industries such as steel. At the same time, imports became more expensive as Russia is phasing out its gas subsidies.

The financial sector in Ukraine came under strain as both state-owned and private commercial banks had to be recapitalised at significant cost to the tax payer. As a consequence of falling depositor confidence, Ukrainian banks faced large losses on their loan portfolio. The National Bank of Ukraine reported that the share of non-performing loans increased to 5.4% by July 2009, practically double the figure for January 2009. Since the second half of 2009, signs of recovery in the banking sector have been visible and indicators on industrial activity have suggested a return to growth.

With respect to fiscal policy, the budget deficit increased from 3.2% of GDP in 2008 to 8.6% of GDP in 2009. The budgetary consolidation that had been expected to start in 2009 in line with donor requirements became more uncertain in the run-up to presidential elections. Public debt strongly increased in 2009, with the net public debt rising to some 23% of GDP. Public debt stock is not expected to go beyond internationally acceptable levels.

The Ukrainian authorities and IMF negotiated a 24-month Stand-By Arrangement (SBA) for USD 16.4 billion (EUR 11.5 billion). This was approved in November 2008. By July 2009, USD 10.6 billion (EUR 7.4 billion) was paid out. However, since November 2009, the SBA

has been at a standstill as Ukrainian authorities failed to reach an agreement with the IMF on a number of policy benchmarks. After the Presidential elections, the new Government signalled its intention to reactivate the standby agreement and an IMF delegation visited Kyiv in March 2010.

The European Commission adopted a EUR 610 million Macro-Financial Assistance (MFA) package for Ukraine in October 2009. The MFA - subject to the IMF's SBA being on track and a number of further structural policy conditions - is expected to meet Ukraine's general balance-of-payments needs and could cover the external financing needs of Ukraine's state budget.

As a consequence of crisis-related adjustments, Ukraine's current account has improved; for 2009, a current account deficit of 1.5% of GDP was reported. However, capital flight out of the *hryvna*, reversal of capital inflows and a reduction in foreign direct investment put pressure on reserves, which could only be kept at an appropriate level with international assistance.

Employment and social policy

Official **unemployment** rose to 9% in the 3rd quarter of 2009. Measures aiming at reducing the impact of the crisis on vulnerable people, pensioners and families with children were taken. The State Employment Centres continued to work actively to address the mismatch between skills and jobs but additional sustained efforts are needed to modernise employment policy and administrative structures. These should also address the reduction of the informal sector (estimated at 39% of GDP in the first half of 2009) by promoting open and decent working conditions. Further actions in the field of employment promotion will be undertaken in the period 2010-2012 particularly in view of job opportunities to be created by the EURO 2012 Football Championship. The economic crisis also impacted negatively on the regularity of the payment of wages: by October 2009, the wage arrears were estimated around UAH 1,679 million (EUR 145 million).

As regards social protection and the fight against **poverty**, the Cabinet of Ministers adopted, in February 2009, an action plan to implement its poverty reduction strategy. Household income and real wages declined over the reporting period as a consequence of the economic turmoil. In October 2009, the President signed a Law on subsistence minimum and minimum wage which aims to increase social standards by about 12% by the end of 2009 as compared to the provisions of the 2009 budget law and nearly 30% higher than envisaged in the September 2009 version of the draft budget 2010.

It also foresees an increase of 11% of the minimum monthly wage from 669 UAH to the new level of 744 UAH (around EUR 67). The average pension was also increased during the reporting period from 898 UAH (EUR 77) to 946 UAH (EUR 82). The fiscal sustainability of these measures and their impact on macroeconomic stability needs to be urgently ensured. As regards **social dialogue**, no progress can be reported on the adoption of the long-awaited amended draft Labour Code and the International Labour Organisation (ILO) voiced concerns about the non-conformity of certain provisions with its basic standards, in particular as regards the right to strike. The draft law on social dialogue is still under parliamentary examination and bipartite social dialogue still needs to be strengthened. The implementation of the Decent Work country programme continued: projects over the reporting period included those on social dialogue, gender and access to employment of persons with disabilities.

Further efforts are needed to ensure the sustainability of the new **pension system**. In October 2009, the Cabinet of Ministers approved the concept for pension reform for the years 2010-2017. However, a preliminary comprehensive analysis of the pension and tax systems has still not been issued.

The regular **agricultural** dialogue held two sessions in June - at Ministerial level - and in November 2009. Those sessions allowed to continue the exchange of best practices and policy views to help Ukraine in implementing necessary reforms after their accession to the WTO and their process of approximation to EU policies and standards. Supporting measures to agriculture, bio-fuels, statistical evaluation in agriculture, quality and organic policies and rural development strategies were at the centre of the discussions.

4. TRADE-RELATED ISSUES, MARKET AND REGULATORY REFORM

During the reporting period, bilateral **trade** between Ukraine and the EU was adversely affected by the economic crisis. Ukraine's exports to the EU decreased by 45.9% compared to 2008 while EU exports to Ukraine dropped by 44.6 %. The decision by the State Committee for Veterinary Medicine of Ukraine to issue an order in May 2009 foreseeing mandatory inspections of all enterprises exporting products of animal origin to Ukraine was a matter of concern. In December 2009 a new order annulling the effects of this order was adopted. In March 2009 the Government issued a Resolution according to which automobiles and refrigerators were made subject to a 13% import surcharge. This measure remained in force until September 2009. Concerning its bilateral commitments and requirements resulting from WTO rules, during the reporting period Ukraine did not fulfil its obligations as regards the adoption or amendment of various pieces of legislation, in areas such as market surveillance, general safety of products, and safety and quality of food products (see the following sections). Moreover, Ukraine did not comply with its WTO obligations as regards the adoption and publication of import duties for 2010. The Customs authorities currently apply WTO-bound rates even in the absence of the necessary amendments to the law on customs tariff.

During the reporting period, five rounds of negotiations for an EU-Ukraine Deep and Comprehensive Free Trade Area (DCFTA) took place.

Limited progress occurred in the implementation of commitments in the area of **customs**. Measures were taken to address customs problems reported by express carriers and humanitarian aid agencies. Work continued on a comprehensive customs modernization strategy. There are currently no major delays at border crossing points, partly due to improved border infrastructure and better cross-border cooperation, but also due to a decrease in trade flows. In November 2009, the *Verkhovna Rada* adopted legislation on border control, introducing the rules to be applied at the Ukrainian border crossings. The State Customs Service of Ukraine (SCSU) continued to improve the use of risk management. Customs ethics remain a matter of concern. A customs code of ethics was prepared, and a proposal detailing a disciplinary statute for the SCSU is currently before the *Verkhovna Rada*. A number of other measures was introduced to improve customs powers in the area of the protection of intellectual property rights. Some amendments to customs legislation were presented to the *Verkhovna Rada* to harmonize the national legislation with the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, to which Ukraine has not yet formally acceded. Work is under way on concepts of E-customs and E-declarations. Ukraine still does not fully respect WTO rules on customs valuation. Problems also persist in classification and cumbersome, restrictive and often ungrounded control procedures which are

not based on risk analysis. The formal adoption of the updated version of the Harmonised System for the classification of goods (HS system) has been delayed.

On **free movement of goods and technical regulations**, progress remained very limited. A draft law on market surveillance, registered in Parliament in early 2008, is being revised by the Ministry of Economy. Meanwhile, in July 2009, two draft laws on general product safety and on product liability were registered in the Parliament but they have little in common with the corresponding EU legislation. The adoption of some technical regulations in the priority sectors continued in 2009. No progress was achieved towards the institutional reform of the Ukrainian infrastructure for quality. The State Committee on Technical Regulation and Consumer Policy (DSSU) is presently the authority responsible for designation of the conformity assessment bodies. So far, accreditation remains the only quality infrastructure function separated from the DSSU. In November 2009, the National Accreditation Agency of Ukraine (NAAU) signed the Agreement on Mutual Acceptance of Personnel Certification Certificates with Signatories of the European Accreditation Multilateral Agreement, a first important step towards the international recognition of NAAU.

In the area of **establishment and company law**, a law on joint stocks companies entered into force in April 2009. In December 2009 the Government adopted a law on simplifying business conditions in Ukraine. It aims in particular at facilitating the establishment and development of companies by easing the issuance of permits and reducing the quantitative requirements for the statutory capital of limited liability companies (*see also paragraph on enterprise policy*). Further efforts are needed to promote corporate governance. The investment climate in Ukraine is assessed negatively by investors and international organisations, as having one of the most burdensome regulatory systems in Eastern Europe. The **business climate** remains unstable, and corruption remains a major issue (*see also chapter 2*).

Ukraine pursued efforts towards gradual approximation with EU **sanitary and phytosanitary** (SPS) standards. The twinning project in this area launched in 2009 will support these efforts. In June 2009, the Parliament adopted a Law on the monitoring of residues of veterinary medicinal products and contaminants in live animals, products of animal origin and feed and food. This law will contribute to improved implementation of Ukraine's residue monitoring programme. In June, Parliament also adopted a law on animal identification and registration and Ukraine continued to register animals effectively. Ukraine also adopted several pieces of implementing legislation. In June 2009, the European Commission's Food and Veterinary Office (FVO) carried out an inspection visit regarding poultry meat and eggs. In September 2009 the FVO evaluated the controls in the area of dairy products, following up an earlier mission of 2008. In October the FVO held an inspection mission on controls regarding the production of fresh meat and meat products. These missions contribute to supporting Ukraine in addressing deficiencies and to prepare for the implementation of the future Deep and Comprehensive Free Trade Area. In November 2009, the European Commission relaxed, in view of progress made by Ukraine, import control measures regarding sunflower oil. In 2009 the European Union and Ukraine held expert meetings aiming to combat rabies, which are present on the entire Ukrainian territory.

As regards **financial services**, the global financial and economic crisis undermined Ukrainian banks' capitalisation and profitability. In July 2009, amendments to legislation were made to facilitate the financial rehabilitation of banks. Further efforts are needed to ensure the National Bank of Ukraine's independence and to increase the quality of the supervisory systems. Furthermore, a Law on anti-crisis measures came into force in November 2009,

further to changes to several other laws, including those on the National Bank of Ukraine and on banks and banking. This law provides temporary conditions to enable banks and their customers to deal with the effects of global financial crisis until January 2011. The measures introduced by the law concern formation of banks' reserves, requirements to banks' statutory funds and rules for offset of debts. The Law entitles the commercial banks to carry out restructuring of credits given to natural persons. Further progress is needed to restore normality in the banking system. In November 2009, the NBU established a Working Group for the Development of a "Green Book on Enhancing the Effectiveness of Regulation and Supervision of Financial Sector of Ukraine". In the area of security markets, the Government adopted a Concept for Development of the Domestic Market of Government Securities of Ukraine 2009-2013. Draft laws on financial services and on insurance have not yet been adopted. The supervision of non-bank financial institutions, notably the insurance companies, remains problematic. The State Commission for Regulation of the Financial Services Market issued a number of regulations on the insurance sector in 2009. The EU funded project on 'strengthening of Ukrainian financial services sector' supported the drafting of a strategy for the development of the financial sector which was submitted to the Government.

No progress can be reported in the field of **audit and accounting**.

Further efforts are needed to ensure **free movement of capital** in particular as regards the repatriation of profits abroad, the purchase and transfer of currency by Ukrainian debtors to non-residents. As noted last year, notwithstanding possible justifications under the safeguard clause, measures taken by Ukraine in the context of the financial crisis may have an impact on the standstill provision concerning foreign exchange rules.

Other key areas

Concerning the implementation of the commitments in the area of **taxation**, in October 2009 an action plan for the improvement of tax administration was approved by a resolution of the Cabinet of Ministers. The action plan foresees a series of gradual changes to the operations of the control and revision authorities, the improvement of the transnational taxation system, the VAT administration, as well as improvement of tax administration for large taxpayers. A Strategy for the Reform of the Tax System was approved by a resolution of the Cabinet of Ministers in December 2009 and provides for the completion of tax reform in Ukraine by 2018, in particular through the adoption of a unified Tax Code, the simplification of the tax system, the introduction of a single social contribution tax, and harmonisation of national tax legislation with that of the EU.

The issue of VAT refunds remained a systemic problem during the reporting period. According to statistics provided by the Presidential Secretariat, outstanding VAT refunds grew from 12.8bn UAH (1.2bn EUR) to 21.8bn UAH (2bn EUR) in 2009 (+68%), while VAT refund arrears (refunds for which deadline has passed) grew from 2.97bn UAH (0.27bn EUR) to 5.4bn UAH (0.5bn EUR) over January-November 2009 the same period (+82.5%).

A draft law amending certain elements of the law on unfair **competition** was adopted in December 2009. It introduced specific rules to prevent distribution of misleading information. A draft law amending the Economic Code, aiming to eliminate duplication of competition provisions, has been proposed to the Ministry of Justice but has not yet been finalised. As a follow-up to the OECD competition review of 2008, the Anti-Monopoly Committee (AMC) organised stakeholder consultations and prepared an action plan for the implementation of its recommendations. In January 2009, the AMC also introduced three block exemptions in

connection with the specialisation of production. The Inter-ministerial Working Group on State Aid stopped its work after the adoption of the concept for reform of the state aid system. The AMC drafted an action plan on the concept for implementation of state aid that envisages setting up another Interministerial Working Group to implement the three stages of the state aid reform in Ukraine. For the time being, the Ministry of Finance (assigned together with the Ministry of Economy and AMC to prepare the action plan) opposes the establishment of such a Working Group, referring to the absence of a legal basis for preparing a state aid inventory. Therefore, the Concept of the state aid law is not even discussed. It should also be noted that the concept of the state aid law and the concept of the state aid reform are two separate documents required by the Cabinet of Ministers Procedure.

No progress can be reported on **intellectual property rights (IPR)**. The adoption of the revised Copyright law and the new laws on Industrial Property Rights is still pending and the National Coordination Council in charge of enforcement activities has not yet been established. In addition, payment of royalties to right-holders is not ensured. Ukraine also needs to align its legislation on data exclusivity regime. Leading pharmaceutical firms complained during the reporting period about breaches of IPR obligations in the field of patents and in tendering procedures for pharmaceutical products. While *ex officio* actions were introduced during the reporting period, pirated and counterfeited goods remain widespread. Further efforts are urgently needed to enforce deterrent measures against IP crimes, if the Association agenda objectives are to be met.

While the Parliament worked, over the reporting period, on two draft proposals on **public procurement** legislation, particular attention should be paid to ensuring that draft Ukrainian legislation is in line with European and international standards in particular as regards appeal mechanisms, transparency and non-discrimination principles. In December 2009, the Cabinet of Ministers introduced changes to the Regulation on public procurement of goods, works and services for public funds. These are now procured from domestic producers only, thus excluding official representatives of producers, their dealers, distributors and official representatives of non-resident producers from the bids. If endorsed and effectively implemented, this new legislation will create a serious barrier to trade and undermine the business climate.

While the State **Statistics** Committee and the State Customs Service signed in August 2009 a Joint action plan to implement recommendations regarding upgrading the quality rate of statistical information in Ukraine, no progress can be reported as regards the adoption of an action plan to tackle the high level of discrepancies in trade statistics.

Ukraine made some progress in **enterprise policy**. In February 2009, a Small and Medium Sized Enterprise (SME) dialogue was initiated between the European Commission and the Ministry of Economy as well as the State Committee for Regulatory Policy and Entrepreneurship (SCURPE). The second meeting took place in November 2009. The focus of the dialogue is on Ukraine's progress in implementing the European Charter for Small Enterprises and the move towards cooperation based on the European Small Business Act, adopted in December 2008. So far, the implementation of the Charter has been limited. There is no SME development strategy as such. It is also essential to define the competences of SCURPE and the Ministry of Economy on broader SME policy issues. In December 2009, the Parliament adopted a law with a view to simplifying business conditions in Ukraine (*see section on Establishment and Company Law*). Ukraine does not have an integrated system of e-government for enterprises. Measures such as on-line registration are being implemented in isolation rather than as part of an overall plan for e-government.

On **public internal financial control**, the Central Control and Revision Service (CCRS) adopted a Development Strategy for the period 2010-15 in March 2009. As consolidation of a draft public internal financial control law was postponed due to prevailing political circumstances, the CCRS adopted an action plan for enhancing quality control and revision and a corresponding order to start developing internal audit. In January 2010 a draft Government decree was adopted to provide a clear distinction between inspection and internal audit. In addition, the CCRS adopted a Code of Ethics in August as well as a series of draft secondary rules relating to internal control and internal audit based on INTOSAI standards.

With regard to **external audit**, SIGMA provided a technical assessment for a twinning project to improve the audit functions of the Accounting Chamber in 2009. Cooperation between Ministries and state agencies to prevent fraud and serious irregularities needs ongoing attention.

5. COOPERATION ON JUSTICE, FREEDOM AND SECURITY

In the area of **border management**, reform of the State Border Guard Service continued in line with the targets of the 2015 plan for upgrading legislation, infrastructure and personnel training. Legislation allowing for biometric control of foreign nationals in the processing of visa applications was passed by the Parliament in November 2009. The draft Law on State Border Control, based on the Schengen Border Code, was not adopted in 2009 and is now due for adoption during the current legislative session. Local Border Traffic Agreements with Poland, Slovakia and Hungary are in place. FRONTEX developed an action plan for 2010-2012 to streamline cooperation and prioritize expertise in preparation for Ukraine's co-hosting of the European Football Championship in 2012 which is still under discussion. As regards **border demarcation** with Belarus, progress was made through bilateral discussions between Ukraine and Belarus which led to the ratification by the Belarusian parliament in April 2010 of the Belarus-Ukraine 1997 State Border Agreement. An effective implementation of that treaty will represent an important step paving the way for final agreement regarding border demarcation. Discussions on border demarcation continued with the Border Commission of the Russian Federation. Cooperation between the State Border Guard service and the Customs service needs to be significantly enhanced in order to improve information exchange at all operational levels. (Aspects of border demarcation with Moldova are reported in the section on EUBAM).

Ukraine has not yet fully fulfilled the commitments in the Action Plan or the Association Agenda related to **migration**. During 2009 there were certain violations of rights of refugees and asylum-seekers in breach of obligations under international human rights and refugee law, in particular the 1951 Geneva Convention on the Status of Refugees, notably with regards to deportation of migrants to countries despite risks of ill-treatment. Issues of the economic and social rights of asylum seekers and their access to the appropriate procedure remain to be addressed.

In June 2009, a decree to create the State Migration Service was adopted. This was vetoed by a Presidential decree in August 2009. As a result, there is no longer any entity competent to take binding decisions in asylum matters. This led to the suspension of more than 600 cases of asylum applications, leaving migrants with undetermined status and an inability to access social services.

Conditions in Migrant Custody Centres and Temporary Holding Facilities in Ukraine remain uneven and overcrowding is frequently reported. The responsibility of Ukraine in

safeguarding proper conditions for the detained irregular migrants, including provision of adequate food, clothing and legal aid is not properly fulfilled. The issue of unaccompanied minors remains unaddressed, including the legislative changes to secure special status for such migrants, provide separate holding facilities and ensure timely appointment of legal representatives.

There are some indications that migrants are facing problems communicating with the state authorities due to the lack of interpretation services.

Asylum-seekers – including those with visas - face problems with access to the territory and access to the asylum and the substantive refugee status determination (RSD) procedures at some border crossing points. Although the national law on refugees calls for the completion of the RSD procedure within six months, most cases result in a final decision, inclusive of the appeal period, after two or three years. The Regional Protection Programme for Ukraine, Moldova and Belarus will be continued in 2010.

A **visa** dialogue is ongoing with the EU, to develop conditions for the establishment of a visa free regime as a long-term perspective. In the course of 2009, the Visa Dialogue was pursued through expert analysis and on-site visits on the basis of four blocks (document security; illegal migration and borders; public security and external relations). At the EU-Ukraine Summit it was agreed that the dialogue would “focus on sequenced priorities of action and recommendations to the Ukrainian authorities”. 40% of Schengen visas are now delivered free of charge under the Visa Facilitation Agreement. The Readmission Agreement was implemented for a second year.

With regard to the fight against **organised crime**, Ukraine continues to implement its obligations under the 2003 United Nations Convention on Trans-national Organised Crime in the context of regional cooperation in the area of trafficking of persons and smuggling of migrants. As was the case in 2008, signature and ratification of its Third Protocol on the Illicit Manufacturing and Trafficking of Firearms, their Parts, Components and Ammunition still remains outstanding. Ukraine’s capacity to tackle organised crime suffers from institutional fragmentation with several agencies sharing areas of investigative competence. The development of a national strategy and action plan, determining and delineating institutional competences and cooperation between all state agencies is needed.

In the area of **trafficking in human beings**, the Ministry of Family, Youth and Sport is responsible for coordinating national policy including prevention measures. National protection measures were piloted in three regions providing witness protection, health training and social assistance. The Ministry continued cooperation with civil society and international organisations to tackle trafficking while the Ministry of the Interior funded a television-based awareness campaign. Germany, Spain and Poland remain the main EU destination countries for trafficking networks alongside Russia, Turkey, Israel, Lebanon and the United Arab Emirates. Ukraine cooperated closely with EU Member States and Interpol on personnel and technical information exchanges. The 2005 Council of Europe Convention on Action against Trafficking in Human Beings remains un-ratified pending the adoption of a new law by Parliament. A Strategic Agreement with Europol was signed in December 2009. Further attention is needed to combat trafficking and to develop prevention, protection and rehabilitation measures in an integrated manner in cooperation with civil society.

With regard to the fight against **drugs**, Ukraine plays an important role in lessening the opium trade to the EU and actively participates in regional cooperation in this field. A Memorandum of Understanding on technical cooperation between the Ministry of Health and the European

Monitoring Centre for Drugs and Drug Addiction was prepared for signature and signed in January 2010. Reductions in demand would be assisted through structured cooperation with civil society groups as part of an integrated approach to tackling this issue. Ukraine continues implementation of the 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances and is a member of the United Nations Commission on Narcotic Drugs.

With regard to the fight against **money laundering** and economic crimes, a new law was presented to Parliament after the reporting period, in March 2010, which intends to incorporate the 49 FATF Recommendations as well as the essential elements of the Third EU Directive on Money Laundering. The draft deals with outstanding issues on the regulation of non-financial bodies and the arrest and freezing of suspect assets. It also incorporates the main elements of the CoE Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism. If adopted, the law will clear the way to Ukraine's ratification of the Convention. The draft would bring Ukrainian legislation in line with the Convention by introducing criminal responsibility for illegal money laundering and financing of terrorism. In March 2009, Moneyval adopted a Third Round Mutual Evaluation Report on Ukraine's regime highlighting shortcomings in the criminalization of terrorism financing and coordination between the State Committee for Financing Monitoring and other law enforcement agencies on anti-corruption. Ukraine invested in the training of some 500 judges, prosecutors and legal staff. It also published and distributed free manuals to universities and third level institutions on this issue. Serious efforts in the prosecution of money laundering cases have yet to be made.

In the area of **police and judicial cooperation**, in 2009, EUBAM with the cooperation of Frontex, OLAF and SECI (Southeast European Cooperation Initiative) supported the Nikoniy Joint Border Control Operation to improve cooperation between the Ukrainian and Moldovan police forces on fighting cross-border crime and irregular migration. Draft legislation on personal data protection presented to Parliament and the President in 2008 still remains to be adopted. Transposing the 1981 Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data and of its 2001 Additional Protocol into national law would enable the ratification of these instruments. Failure to do so would impede further development of cooperation with Europol and Eurojust in the area of document security. In the area of the civil judicial cooperation, Ukraine worked on the implementation of the Hague Conventions on family law issues (e.g. the 1980 Hague Child Abduction Convention) while continuing the preparatory process for the accession to the Hague Inter-country Adoption Convention.

6. TRANSPORT, ENERGY, ENVIRONMENT, THE INFORMATION SOCIETY, RESEARCH AND DEVELOPMENT

Since November 2009, a draft comprehensive **transport** sector development strategy up to 2020 has been in consultation with other ministries, state bodies and with the public. The draft strategy envisages that the Ministry will elaborate and submit to the Cabinet of Ministers shorter-term strategy implementation programmes until 2015. The approval and implementation of a national transport strategy is a pre-condition for a EUR 65 million EU budget support programme in the transport sector.

As regards infrastructure investments, Ukraine signed a loan agreement with the World Bank, in April 2009, for a project on roads and safety improvements (EUR 370 million), and a

railway modernisation project (EUR 653 million) is still in the pipeline. EBRD has provided loans for financing public transport projects in Kyiv and Odessa. A draft law on Public-Private Partnerships was adopted at first reading in November 2009.

In the road sector, alignment with international standards continued and a draft “regulation on working time and rest period of vehicle drivers” is under consultation. In 2009, a multi-annual Road Safety programme up to 2012 (replacing one that had elapsed in 2007) was drafted. The draft was consulted with other ministries and rejected by the Ministries of Finance and Economy. It is currently under revision. As regards passenger transport, Ukraine has still not adhered to the Interbus Agreement.

A railway reform programme for the period 2010-2015 was approved in December 2009. It foresees three phases: separation of the government's regulatory function from the operational function of the national state-owned railway company; transformation of the same into a joint-stock company; and division of different market segments.

Negotiations on a comprehensive aviation agreement between the EU and Ukraine progressed with two rounds of negotiation in 2009 and should be finalised in 2010. To fulfil the commitments of the Association Agenda, Ukraine should continue its efforts to improve its safety oversight system and the implementation of relevant safety standards. A working arrangement with the European Aviation Safety Agency was signed at the end of the reporting period, following measures taken by the aviation authorities to strengthen their regulatory and oversight capacity and to ensure compliance with international safety standards. No progress was made in the adoption of primary legislation. To integrate more closely with the EU in the aviation sector the adoption of a new framework aviation code should be accelerated.

The Ministry of Transport and Communications is currently elaborating a national maritime safety concept, which should be approved in 2010. The subsequent development of a detailed implementation plan is expected to take until 2012. Regulatory alignment with international standards progresses slowly; the Ukrainian flag was still on the 2008 black list of the Paris Memorandum of Understanding on Port State Control.

In 2009, Ukraine and the EU stepped up **energy** cooperation. Ukraine is an important transit country but also an energy producer and a significant energy user. In December 2009, the EU-Ukraine Summit adopted a fourth progress report on the implementation of the Memorandum of Understanding on Energy cooperation.

As observed in last year's report (SEC (2009) 515), relations in the energy field were tested in January 2009, following a conflict between the Russian Federation and Ukraine concerning gas. As a result of this dispute Russian transit supplies to Europe via Ukraine were temporarily cut off, resulting in emergency situations in several EU Member States and some neighbouring states. The European Commission facilitated the resolution of the gas crisis *inter alia* by dispatching a team to Russia and Ukraine to monitor gas transit flows.

In March 2009, a joint EU-Ukraine conference on the modernisation of the Ukrainian gas transit network was held in Brussels with the participation of the European Investment Bank (EIB), the EBRD and the World Bank. During the conference Ukraine tabled a master plan on the modernisation of its gas transit system. The joint conference Declaration welcomed, *inter alia*, Ukraine's plan to develop by the end of 2009 a gas sector reform programme (approved by the Government in October 2009, see below) on the basis of EU legislation to be implemented during 2010/2011 according to commitments in the context of the future EU-Ukraine Association

Agreement and Ukraine's accession to the Energy Community Treaty. Following the Conference, a Technical Coordination Unit (TCU) was established within Naftogaz, the Ukrainian gas company, with the participation of the European Commission and International Financial Institutions (IFIs). In preparing for Ukrainian gas transit to the EU during the winter of 2009/2010, the European Commission facilitated discussions between Ukraine, the EIB, EBRD, the World Bank and the International Monetary Fund (IMF) on financing the purchase of gas and further reform of the Ukrainian gas sector. In July 2009 the European Commission and the four IFIs issued a "Joint Statement of Intent regarding support to gas sector reform in Ukraine and the purchase of gas from Russia", which could trigger significant additional assistance provided specific energy sector reforms are undertaken.

In October 2009, the Government approved a Concept on the Development, Modernisation and Re-equipment of the Gas Transportation System 2009-2015. Also in October, the Government approved a draft gas law and submitted it to Parliament in accordance with the agreements reached in the course of negotiations regarding Ukraine's accession to the Energy Community Treaty. In September 2009, the Government adopted a resolution to join the Extractive Industry Transparency Initiative, which aims at transparency of hydrocarbons revenues.

Ukraine continued efforts to enhance domestic production including off-shore hydrocarbons in the Black Sea. It also continued work to find new energy suppliers and supply routes including from the Caspian region and North Africa. Ukraine further contributed to the development of the Boyarka Natural Gas Metrology Centre, established with EU assistance.

In July 2009, energy companies from Ukraine, Azerbaijan, Georgia, Lithuania and Poland completed a study on the Euro-Asian Oil Transportation Corridor Project. In December 2009 the Government adopted a concept to establish minimum oil stocks. However, to date there was no substantial progress towards the finalisation of the draft oil stocks law.

In October 2009, Ukraine and the European Commission concluded negotiations on the country's accession to the Energy Community Treaty and in December the Energy Community Ministerial approved Ukraine's accession which will be effective subject to the adoption by Ukraine of a gas law complying with the EU *acquis* and subsequent ratification. Complete compliance with EU legislation relevant for the Energy Community will need to be ensured by the deadlines indicated in the Protocol of Accession.

In October 2009, a draft law on the principles of the electricity market was submitted to Parliament. Since 2007, Parliament has been examining draft laws on state regulation in the energy sector and on the national energy regulating commission. The law's objective is to strengthen the energy regulator's independence. In October 2009, the Government approved, for submission to Parliament, a draft law on payment for natural gas used for heating needs. In November 2009, the Government approved an Instruction "About changes to the comprehensive action plan on the financial stabilisation of energy sector enterprises", which postpones previously planned energy prices increase for the households and other categories of consumers. Energy tariffs do not yet cover costs.

Ukraine continued to study the conditions under which it could join, together with Moldova, the interconnected electricity networks of continental Europe (ENTSO-e, European Network of Transmission System Operators for Electricity, the successor of UCTE). It further prepared the construction of new internal electricity transmission lines.

Ukraine started work, with EU assistance, on a Master Plan for the development of the Ukrainian coal mining sector. Substantial complementary efforts are required in this sector to achieve Ukraine's reform objectives including the improvement of safety in mines.

In April 2009, Ukraine amended several laws promoting energy saving as well as the use of renewable energy sources and bio-fuels. In addition, a law on the efficient use of energy resources is currently before Parliament and an energy efficiency action plan was prepared. Ukraine needs to increase efforts to reach its objective of achieving 15% energy savings by 2015. The Government tasked the National Agency of Ukraine for the Efficient Use of Energy Resources to prepare proposals for the participation of Ukraine in the EU Intelligent Energy Europe Programme.

Regarding nuclear energy, the EU-Ukraine-International Atomic Energy Agency project on the evaluation of the safety of Ukraine's nuclear power plants further progressed and is nearing its completion. In 2009, Ukraine continued the upgrading of its nuclear power plants and developed a Comprehensive Programme on Nuclear Safety Improvements. Ukraine estimated the costs for programme implementation at approximately EUR 1 bn and requested international assistance including through Euratom loans. In 2009, Ukraine pursued, with Euratom loans, the modernisation of the Khmelnytsky-2 Rivne-4 nuclear reactors. The Nuclear Regulatory Authority was further strengthened. Ukraine further advanced the Chernobyl decommissioning work and inaugurated the completed project on the industrial complex for solid radioactive waste management. Ukraine completed the design phase for the interim spent fuel storage facility and decisions on starting the construction phase are in preparation. The design phase of the project to construct a new safe confinement progressed and is near to completion. Ukraine continued to work on a draft nuclear waste strategy.

The EU, Ukraine and bilateral donors launched, an Eastern Europe Energy Efficiency and Environment Partnership in Stockholm in November 2009. A multi-donor support fund is to be created with initial funding of approximately EUR 90 million. The partnership will initially focus on Ukraine and at a later stage on other EaP countries.

In the field of **climate change**, Ukraine submitted its Fifth National Communication to the UN Framework Convention on Climate Change in December 2009. It includes a greenhouse gas inventory for 2007. The inter-agency commission (chaired by the Vice-Prime Minister) on reduction of greenhouse gas emissions continued to meet regularly. Mitigation measures were identified for the energy, transport, industry, housing, agriculture and forestry sectors.

Legislation was adopted on Joint Implementation (JI) projects, green investments, procedures to prepare greenhouse gas inventories and on educational and health projects to reduce greenhouse gas emissions. Legislation is under preparation on emission trading.

Ukraine also took steps to prepare and approve new JI projects, ten of which were registered at UN level, bringing the overall number of registered projects to 18. Ukraine associated itself with the Copenhagen Accord and provided information on the targets that it will implement. The European Commission continued to support Ukraine in implementing the Kyoto Protocol.

In February 2010 the Prime minister signed a draft national **environment** strategy up to 2020, which now needs to be approved by the Parliament. Some steps were taken to prepare a national environment action plan. Nonetheless, the legislative framework requires further development, in particular to align with the strategy and with regard to implementing

legislation. Presidential Decrees were adopted on the safety of water resources and the quality of drinking water as well as on national parks and nature reserves. New laws on landscape and on integrated coastal zone management as well as amendments to the environment and ambient air laws and to the water code are under preparation.

A State programme on Forest Sector Development 2010 – 2015 and a concept on a State Programme for Water Sector Development until 2020 were adopted. Amendments to the State Programme 2006 – 2020 on Drinking Water are under preparation. Ukraine, together with the other Danube countries, adopted the first Danube river basin management plan, several sub-basin flood action plans and a Ministerial Declaration committing to establishing a Danube Climate Change Adaptation Strategy and phosphates ban for the period 2012 – 2015. It also continued to take steps together with Moldova and Romania to prepare for the implementation of cross-border river basin management in the Danube Delta sub-basin. Continued attention is required to implement existing strategies and plans and to further enhance monitoring and enforcement.

Further strengthening of administrative capacity at all levels of the country continues to be a major challenge. Coordination between authorities was enhanced to prepare for the implementation of EU-funded environment sector budget support, but further improvements are still needed. Access to information and communication issues also requires attention. Some steps were taken with regard to integration of environmental considerations into other policy sectors such as energy and transport.

Ukraine made no significant progress regarding the UNECE protocols¹ whose ratification is still pending. Moreover, the implementation of several agreements already ratified requires particular attention. The European Commission launched projects to assist Ukraine in the implementation of the Espoo, Aarhus, Danube and Ramsar Conventions.

After the preparation of an Aarhus action plan and subsequent contacts by Ukraine, the Convention's Compliance Committee decided in April 2009 that a conditional caution should not become effective. However, the Committee underlined that Ukraine is not yet fully in compliance and therefore reserved the right to make further recommendations. The Ministry for Environmental protection established an inter-ministerial working group in May, which is considering analyses and legislative proposals to enhance the implementation of the Convention. Discussions continued between the European Commission and Ukraine on a revised Charter and Founding Agreement to re-establish the Regional Environmental Centre (REC) in Ukraine even if in December 2009 the process stalled.

As regards the Bystre Deep Water Canal, in March 2009 Ukraine submitted a report on the implementation of the Convention on Phases I and II of the project, in April a written statement, and in August a report to the Espoo Convention. An independent review of Ukraine's legal, administrative and other measures was also completed. The Espoo Convention's Implementation Committee meeting of September 2009 decided that the continuation of works under Phase I was contrary to the earlier requirements of the Committee. The continuation of works on Phase II represented a further breach, because an

¹ the Protocol on Strategic Environmental Assessment to the UNECE Convention on Environmental Impact Assessment in a Transboundary Context and the following protocols of the UNECE Convention on Long-Range Transboundary Air Pollution: Protocol on Persistent Organic Pollutants; Protocol on Heavy Metals; Protocol on Further Reduction of Sulphur Emissions; Protocol concerning the Control of Emissions of Volatile Organic Compounds or their Trans-boundary Fluxes.

environmental impact assessment (EIA) procedure was ongoing. The Committee concluded that Ukraine remains in breach of the obligations under the Espoo Convention with respect to both phases of the Project. The Committee decided that its conclusions regarding the case, including a “final decision” in January 2010 should be addressed at the next session of the Meeting of the Parties (MOP). Procedures and consultation with the public in the context of environmental assessments therefore continue to require attention.

Ukraine participated in the Danube - Black Sea Task Force within which a loan agreement for Mykolayiv water supply and wastewater treatment project was signed in February 2010 with the EIB. A national policy dialogue continued under the EU Water Initiative. Ukraine also participated in the International Commission for the Protection of the Danube River and in the Commission on the Protection of the Black Sea against Pollution. Ukraine continued to support the objective of the European Union to accede to the Convention on the Protection of the Black Sea against Pollution.

Cooperation and information exchange took place between the European Commission and Ukraine on multilateral conventions, environment strategy, water, forestry, waste management, environmental data, nature protection and air quality. Other topics, such as environmental communication issues and nature protection were identified for possible closer cooperation.

Ukraine and the EU continued close cooperation in the field of **civil protection**. The Community Civil Protection Mechanism was mobilised in November 2009 to assist Ukraine in the flu pandemic as well as in March 2010 regarding a potential tailing dam collapse in Kalush. A strategy was prepared and adopted on natural risk reduction and early recovery. New civil protection code is being prepared. A joint 112 emergency system was designed but not yet put into operation. Significant new equipment was purchased. Ukraine participated in the December 2009 launch event of the Eastern Partnership flagship initiative on prevention on, preparedness of and response to man-made and natural hazards.

As regards the **information society**, two main draft laws on electronic communications were prepared, covering the main aspects of regulation (market analysis, SMP determination, licensing, universal service, etc). The National Commission for Communications Regulation took several important decisions that are currently being implemented, such as the approval of the List of Telecommunications Markets susceptible to price regulation, the price cap for publicly available telecoms services, and the establishment of the dispute resolution procedure for telecoms operators. The issuance of a further Third Generation mobile communications (3G) licence was postponed to 2010. The relevant spectrum was freed up by the military and allocated to civilian use.

Regarding **audiovisual** policy, the ratification of the European Convention on Transfrontier Television by Ukraine entered into force in July 2009. The Ukrainian authorities are currently drafting an action plan for its implementation. In June 2009, the Ukrainian Parliament considered, but rejected, the draft law on public service broadcasting.

In the area of **research**, Ukraine continued to increase its involvement in the 7th Framework Programme (FP7), with higher levels of applications and projects selected for funding. Some 104 Ukrainian research organisations were successful in FP7, as of November 2009, receiving some EUR 8 million of EU funding, particularly within the Marie Curie calls for proposals and the Environment, Transport, and Socio-economic sciences and the Humanities Themes.

The FP7 BILAT-Ukraine project continued implementation with the aim of strengthening S&T cooperation between the EU and Ukraine in particular through a stronger participation of

Ukraine in FP7 and other programmes and initiatives. In September 2009, two BILAT-Ukraine workshops took place in Kyiv: one contributed to the identification of concrete sub-topics of S&T cooperation between the EU and Ukraine and the other resulted in identifying opportunities, future trends and obstacles in scientific mobility.

The bilateral S&T Cooperation Agreement is being renewed for a further five years, and the first Joint Committee meeting under the Agreement is being planned for spring 2010.

In July 2009 Ukraine formally expressed its interest to discuss the terms and conditions of its possible association to FP7. A technical meeting to discuss this was held in October 2009, which led both sides to conclude that an association needs to be well prepared, in particular through increased training, information dissemination and capacity building measures, to ensure that the Ukrainian research community may fully reap the benefits offered by FP7 association. The current work in Ukraine in nominating an increased number of FP7 contact points is a positive step in this regard.

7. PEOPLE-TO-PEOPLE CONTACTS, EDUCATION AND HEALTH

The direction of **higher education** reform in Ukraine is determined by the need to ensure convergence with EU standards and implementation of the principles of the Bologna Process.

Advances took place in the implementation of a third-cycle for doctoral programmes under the Bologna Process and the European Credit Transfer System for the first and second cycles as of the academic year 2009-10. A Higher Education Reforms Expert Group was established in August 2009 with EU support with involvement of Ministry of Education and Science of Ukraine and the National Tempus Office convening its first meeting in October. The Bologna Process Diploma Supplement, providing for greater transparency on higher education qualifications was (and is still being) gradually introduced in Ukrainian universities and higher education institutions during the course of 2009.

University autonomy also advanced with the granting of the status of self-governing academic institutions and research centres to five Ukrainian universities. However, a number of major challenges still remain including improving equal and transparent access to higher education, reforming curricula to take account of labour market needs, strengthening partnerships with enterprises and industry, developing mechanisms for recognition of prior learning and establishing a national quality assurance agency. In pursuing greater internationalization of higher education, greater attention should be paid to the professional development of academic and administrative staff as well as to the need to promote the active involvement of students in decision-making processes, particularly in the areas of mobility and curricular content.

In the area of **vocational training**, a draft law on a national qualifications framework prepared in close cooperation with the Confederation of Employers was presented to Parliament in October. It proposes alignment to the European Qualification Framework (EQF), establishment of a national qualifications agency and measures to empower the social partners in this area. The participation of enterprises in the definition of training content in order to maximize the employment prospects of trainees remains a key policy challenge. In July 2009, the Ministry of Economy established an inter-agency working group to improve education and training planning towards economic and labour-market needs, benefiting from EU experience on job demand analysis and skills forecasting.

Ukraine continued to benefit substantially from its active participation in Tempus, with a total of 11 projects selected under the second Call for Proposals for Tempus IV. A total of 29 Ukrainian students and eight scholars benefited from Erasmus Mundus Masters Courses scholarships during the academic year 2009-10. Student and academic mobility to the EU continued to develop through the award of 98 individual mobility grants under Erasmus Mundus, for the academic year 2009-10. One additional Ukrainian university was selected under the Jean Monnet Programme in 2009, raising to five the total number of universities benefitting from the programme. As yet, there are no funded Jean Monnet Chairs or Centres of Excellence. Ukrainian young people, youth workers and youth organisations continued to benefit from the opportunities offered by the Youth in Action programme in youth exchanges, voluntary service actions and youth activities in non-formal education. The Europe Day Conference organised in Ternopil in May 2009 by the EU Delegation had a specific session on youth.

In the area of **culture**, Ukraine ratified the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, after the reporting period in January 2010. Ratification will now enable Ukrainian cultural organisations to participate in the Call for Proposals of the ENP Special Action under the Culture Programme in 2010. In the context of its commitment to implementing the above Convention, the Ministry of Culture organised a forum of national cultures in October 2009 to highlight the contribution of ethnic minorities to future cultural development. To advance its regional cooperation in the framework of the Eastern Partnership and the Kyiv Initiative, Ukraine is encouraged to ratify the 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society.

Ukraine pursued **health** sector reform, which continued to aim at quality improvement, financial sustainability and better access to health services. Ukraine further developed a basic health law, which is under consideration in Parliament. Ukraine took various measures, following the outbreak, in October 2009, of severe respiratory diseases and influenza A (H1N1) in the country. Measures included additional budget allocations, enhanced surveillance, quarantine, vaccination, school closures and travel advice. In June 2009, in the context of the influenza A epidemic, the European Commission proposed to Ukraine to establish communication channels for the exchange of epidemiological information in the case of health crisis situations. The EU provided assistance to address the challenges including through the Civil Protection Mechanism and bilateral assistance. The European Centre for Disease Prevention and Control, in close cooperation with WHO also provided support to Ukraine. Ukraine continued the fight against HIV/AIDS and tuberculosis. It adopted, in February and April 2009, a National HIV/AIDS prevention, support and treatment programme covering 2009–2013 as well as a related action plan. Ukraine participated in the European Commission's HIV/AIDS Think Tank and a Ukrainian NGO participated in the European Commission's HIV/AIDS Civil Society Forum. In September 2009, with a view to implementing the Framework Convention on Tobacco Control, Ukraine adopted a programme aiming at the reduction of the harmful influence of tobacco on the population's health. In October 2009, Ukraine participated in the newly established EU enlarged health information committee.

8. FINANCIAL COOPERATION – 2009 KEY FACTS AND FIGURES

The European Neighbourhood and Partnership Instrument (ENPI) envelope for Ukraine under the National Indicative Programme (NIP) 2007-2010 is EUR 494 million. The programme is geared towards supporting the achievement of key policy objectives as outlined in the EU-

Ukraine Action Plan, replaced by the Association Agenda in November 2009, and pursues three priorities: (1) Support to democratic development and good governance, including public administration, public finance management and rule of law; (2) Support for regulatory reform and administrative capacity building, including the promotion of mutual trade and (3) Support for infrastructure development in areas like energy, transport and border management.

The implementation of the measures covered by the 2007 and 2008 Annual Action Programmes, is underway. In general terms, implementation is proceeding in line with the multi-annual programming, with a stronger focus on priorities 2 and 3, concentrating the bulk of sector budget support operations, and of the Twinning instrument. Launching of sector budget support operations is slower than initially expected, mainly due to a long preparatory phase and the process of intergovernmental consultation in Ukraine.

In 2009, the European Commission continued to support Ukraine with programmed assistance of EUR 116 million. The 2009 Annual Action Programme focused on 2 priorities: mainly regulatory reform (EUR 51 million) and infrastructure development (EUR 65 million). It included two sector budget support operations covering transport and the environment.

Additionally, ten twinning projects on a varied number of sectors, such as debt management, energy regulation, WTO SPS standards, training in the judiciary to name a few, were notified/launched for the sum of EUR 11 million.¹

An indicative financial envelope of EUR 470.1 million will be available to support co-operation activities in Ukraine in the period 2011-2013, based on a European Commission decision of March 2010.

In addition to the bilateral allocation, Ukraine also benefited from cooperation activities financed under the ENPI multi-country and regional programmes, as well as horizontal thematic programmes, such as the European Instrument for Democracy and Human Rights (EIDHR) and Thematic Programme on Environment and Sustainable Management of Natural Resources including Energy (ENRTP). Ukraine also participates in four ENPI Cross Border Cooperation (CBC) programmes (Black Sea Basin; Romania/Ukraine/Moldova; Hungary-Slovakia-Romania-Ukraine; and Poland-Belarus-Ukraine) with the overall allocation of EUR 401.163 million for programmes in the period 2007-13. The main priorities of these are economic and social development, including improvement of competitiveness; environmental protection and emergency preparedness; people-to-people cooperation and increased efficiency in border management.

Under the Neighbourhood Investment Facility (NIF), two projects in Ukraine were approved in 2009 for a total amount of EUR 13.6 million in technical assistance, leveraging EUR 1.15 billion in loans from European Finance Institutions in the energy sector. Ukraine also benefits from three NIF regional projects in the energy sector and support to the private sector, amounting to EUR 19.4 million in total.

Ukraine is one of the main direct beneficiaries of the Instrument for Nuclear Safety Cooperation (direct funding in 2009 amounted to EUR 29.7 million plus EUR 16.7 million transferred to Ukraine following a modification of the Annual Programme 2008). Additionally, Macro-Financial Assistance for a maximum amount of EUR 610 million in loans has been proposed by the European Commission.

In 2009, the EU Delegation to Ukraine ensured the coordination of assistance activities and confirmed the EU's role as the lead donor in both financial and technical terms due to the sector coverage ensured. Strong coordination with EU Member States was also pursued and an ENP donor coordination matrix was compiled and updated. The principle of division of labour was applied, more generally at EU level and particularly in the development and implementation of a Joint Cooperation Initiative in Crimea.