

*Evaluation of the European Commission's
Cooperation with Ukraine*

Final Report

Volume 1: Main report

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Evaluation for the European Commission





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**Evaluation of the European Commission's
Co-operation with Ukraine**

**FINAL REPORT
VOLUME 1 : MAIN REPORT**

December 2010

This evaluation was carried out by ADE



The evaluation was managed by the Joint Evaluation Unit (EuropeAid, DG DEV and DG RELEX).

The author accepts sole responsibility for this report, drawn up on behalf of the European Commission. The report does not necessarily reflect the views of the Commission.

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Acronyms

AAP	Annual Action Programme
ACAA	Agreement on Conformity Assessment and Acceptance of Industrial Goods
AIDCO	EuropeAid Co-operation Office
BS	Budget Support
BYuT	The Bloc of Yulia Tymoshenko (Ukraine)
CBC	Cross-Border Cooperation
CEN	European Committee for Standardisation
CFAA	Country Financial Accountability Assessment
CFSP	Common Foreign & Security Policy
CIDA	Canadian International Development Agency
CIS	Commonwealth of Independent States
COM	Communication from the Commission
Commission	European Commission (formally the Commission of the European Communities)
CPI	Corruption Perception Index
CMA	Centre for Migrant Advice
CPU	Communist Party of Ukraine
CRIS	Common RELEX Information System
CSO	Civil Society Organisation
CSP	Country Strategy Paper
DAC	Development Assistance Committee of the OECD
DCFTA	Deep and Comprehensive Free Trade Area
DCI	Development Cooperation Instrument
DCITA	Directorate for Coordination of International Technical Assistance
DDH	Democracy and Human Rights (Budget Line)
DFID	Department For International Development (UK)
DG	Directorate General of the European Commission
DOTS	Directly Observed Treatment, Short-course
DSSU	State Committee for Technical Regulations and Consumer Protection
EAMR	External Assistance Management Report
EBRD	European Bank for Reconstruction and Development

EC¹	European Commission
ECE	Eastern and Central European Countries
ECHR	European Convention on Human Rights
EECCA	Environment Strategy for the Countries of Eastern Europe, Caucasus and Central Asia
EIB	European Investment Bank
EIDHR	European Instrument for Democracy and Human Rights
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EQ	Evaluation Question
ESDP	European Security and Defence Policy
EU	European Union
EU MS	European Union Member States
EUBAM	European Union Border Assistance Mission
FA	Financing Agreement
FDI	Foreign Direct Investment
FTA	Free Trade Area
GBS	General Budget Support
GDP	Gross Domestic Product
GEF	Global Environmental Facility
GNI	Gross National Income
GOT	Interstate standards applied in the former Soviet Union
GoU	Government of Ukraine
HDI	Human Development Index
HQ	Headquarter
HRW	Human Rights Watch
IAEA	International Atomic Energy Agency
IfS	Instrument For Stability
IHF	International Helsinki Federation for Human Rights
ILO	International Labour Organisation
IMF	International Monetary Fund
IOM	International Organisation for Migration
IPR	Intellectual Property Rights
IRRS	Integrated Regulatory Review Service

¹ EC is the acronym of both the European Community and the European Commission. In this report it is exclusively used as the acronym of the European Commission.

IST	Information Society Technology
IT	Information Technology
JC	Judgement Criteria
JEU	Joint Evaluation Unit of DG RELEX, AIDCO and DEV
JFS	Justice, Freedom and Security
JHA	Justice and Home Affairs
JMG	Joint Monitoring Group
JSC	Joint Stock Company
KRU	Control and Revision Committee of Ukraine
MAC	Migration Accommodation Centre
MDGs	Millennium Development Goals
MIGR	Migration Budget Line
MoE	Ministry of Economy
MoEP	Ministry of Environmental Protection
MoF	Ministry of Finance
MoFE	Ministry of Fuel and Energy
MoFYS	Ministry of Family, Youth and Sport
MoLSP	Ministry of Labour and Social Policy
MOP	Meeting of the Parties
MoU	Memorandum of Understanding
MS	(EU) Member State
NATO	North-Atlantic Treaty Organisation
NBU	National Bank of Ukraine
NCU	National Coordinating Unit
NERC	National Electricity Regulatory Commission
NGO	Non Governmental Organisation
NIP	National Indicative Programme
NIS	New Independent States
NP	Neighbourhood Programmes
NPP	Nuclear Power Plant
NSCI	Nuclear Safety Co-operation Instrument
NSI	Nuclear Safety Instrument
ODA	Official Development Aid
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development

OSA	On-Site Assistance
OSCE	Organisation for Security and Cooperation in Europe
OU	Our Ukraine (Political party)
OU-PSD	Our Ukraine-People’s Self-Defence (Political party)
OVI	Objectively Verifiable Indicator
PCA	Partnership and Cooperation Agreement
PCM	Project Cycle Management
PEFA	Public Expenditure and Financial Accountability
PFM	Public Finance Management
PoR	Party of the Regions ((Political party)
QSG	Quality Support Group (European Commission)
RELEX	DG for External Relations of the European Commission
RELEX family	EuropeAid, DG Development, DG External Relations, DG Trade
RG	Reference Group
RIP	Regional Indicative Programme
ROM	Result-Oriented Monitoring (EuropeAid)
RSP	Regional Strategy Paper
SBS	Sector Budget Support
SCSU	State Customs Service of Ukraine
SBGS	State Border Guard Service of Ukraine
SCURPE	State Committee of Ukraine for Regulatory Policy and Entrepreneurship
SHF	Special Holding Facility
SIDA	Swedish International Development Agency
SIP	Shelter Implementation Plan (Chernobyl)
SME	Small and Medium-sized Enterprise
SNCRU	State National Regulatory Committee of Ukraine
SPS	Sanitary and Phytosanitary
SPSP	Sector Policy Support Programme
SPU	Socialist Party of Ukraine (Political party)
SSTC NRS	State Scientific and Technical Centre for Nuclear and Radiation Safety
SWAP	Sector-wide approach
TA	Technical assistance
TAC	Technical Advisory Committee
TACIS	Technical Assistance to the Commonwealth of Independent States
TAIEX	Technical Assistance and Information Exchange

TAP	Technical and Administrative Provisions
TBT	Technical Trade Barriers
TEN	Trans-European Network
THF	Temporary Holding Facility
TOE	Tonnes of Oil Equivalent
ToR	Terms of Reference
TREN	DG Energy and Transport
UAH	Hryvnya (Ukrainian currency)
UCTE	Union for the Coordination of Transmission of Electricity
UK	United Kingdom
UEPLAC	Ukraine-EU Policy and Legal Advice Centre
UGTS	Ukraine’s Gas Transit System
UN	United Nations
UNDP	United Nations Development Programme
UNEP	UN Environment Programme
UNFCCC	UN Framework Convention on Climate Change
UNHCR	Office of the UN High Commissioner for Refugees
US	United States
USAID	United States Agency for International Development
US\$	US dollar
WB	The World Bank
WEM	Wholesale Electricity Market
WTO	World Trade Organisation

Executive Summary

Subject

This evaluation assesses the European Commission's (EC) cooperation with Ukraine over the period 2002-2009. It aims at providing an overall independent assessment of the entire EC cooperation strategy and support for the country and to provide key lessons for improving current and future EC strategies and programmes.

Methodology

The evaluation applied the methodology recommended by the Joint Evaluation Unit of the EC. First, the assessment was structured in ten Evaluation Questions embodying 35 associated Judgement Criteria and 180 related Indicators. Second, it applied a three-phase approach consisting of desk, field and synthesis work. Third, the study was based on a sample of 20 interventions covering all the main sectors of the EC's cooperation programme with Ukraine. And fourth, it used a combination of different information sources and tools, including documents and interviews with stakeholders of the EC cooperation with Ukraine at EC Headquarters, the EU Delegation to Ukraine, national authorities, implementing partners, final beneficiaries, civil society, and other donors.

Context

National context

The main characteristics of the Ukrainian context are the following:

- Ukraine is a country with large economic potential due to its range of natural resources, its large domestic market, a well educated population, and a strategic location between Europe, Russia and Asia. With a *per capita* GNI of US\$3,210 in 2008, Ukraine belongs to the group of lower-middle-income countries.
- A combination of emigration and of low fertility and life expectancy rates has resulted in a drop of Ukraine's population by more than 5 million since independence to 46.0 million as of January 2010.
- The evaluation period, which covers the second mandate of President Leonid Kuchma (1999-2005) and President Viktor Yushchenko's mandate (2006-2009), has been characterised by permanent political instability which has seriously hampered the capacity of the GoU to implement reforms.
- Nevertheless between 2000 and 2007 Ukraine enjoyed solid annual growth averaging more than 7% in real terms. But from the fourth quarter of 2008 it was severely hit by the world economic and financial crises which in 2009 led to a contraction of GDP by 15%.
- From 2001 onwards Ukraine recorded a sharp reduction in poverty, the percentage of the population with an average *per capita* income below the subsistence threshold decreasing from 39.9% in 2001 to 8.1% in 2008.

International cooperation

The EC is the largest provider of ODA to Ukraine. Over the years 2005-2008 it contributed to 21.8% of total donor commitments. Some EU Member States, notably Germany, Sweden, France, the United Kingdom and Austria are also significant contributors, thus bringing total EU commitments to 40% of total donor commitments. The United States comes second to the EC with commitments representing 15.8% of the total over the period 2005-2008.

EC cooperation with Ukraine

The EC cooperation with Ukraine is framed by a Partnership and Cooperation Agreement (PCA) which entered into force in 1998, and the EU-Ukraine Action Plan adopted in 2005. The PCA established an institutional framework for EU-Ukraine policy dialogue.

The Association Agreement currently under negotiation, together with a Deep and Comprehensive Free Trade Area, will significantly deepen Ukraine's political association and economic integration with the EU.

Until end-2006 EC assistance to Ukraine was provided under TACIS (Technical Assistance to the Commonwealth of Independent States) programme. From 1 January 2007 onwards, as part of the reform of EC assistance instruments, TACIS was replaced by a new cooperation instrument, the European Neighbourhood and Partnership Instrument (ENPI), which is much more flexible and policy-driven.

From 1 January 2002 to 30 September 2009 the EC committed €832.8 million to its cooperation with Ukraine. Four sectors together accounted for more than 85% of commitments.

Support to the energy sector accounted for 47.6% of total commitments. Excluding contributions to the Chernobyl Shelter Fund and the Fuel Gap assistance, the energy sector remains the main beneficiary of the Commission's support with total commitments of €266.7 million (32.0% of the total) during the period. The three other major sectors were legal, administrative and institutional reforms (14.5%); border management and migration (12.7%); and economic development (12.6%).

Impacts of the EC cooperation

The largest impacts were achieved by those EC cooperation activities aimed at stimulating economic growth and trade. Progress in the approximation of the legal framework governing economic activity to that of the EU and the development and implementation of an effective competition policy have had a positive contribution to the economic recovery enjoyed by Ukraine between 2000 and 2008; accession of Ukraine to WTO, progress in the harmonisation of standards and SPS regulations, and more effective border management supported the development of trade; significant progress was achieved towards sustainable, secure and efficient supply of energy as well as enhanced nuclear safety.

Positive developments were achieved in respect of democracy and good governance, notably a more effective and efficient functioning of justice and strengthened cooperation between CSOs and government bodies at central and local levels. Regarding social issues, EC assistance contributed to the development of a more coherent social assistance system. However effectiveness of the EC cooperation in these domains has suffered from the inability of the Government to have its reform projects adopted and implemented.

Conclusions

The conclusions of the evaluation relate to (i) the relevance of the cooperation strategy; (ii) the outcomes and impacts of interventions; (iii) the efficiency of implementation and financing modalities; and (iv) the policy dialogue.

Relevance

1. The Commission's cooperation with Ukraine underpins institutional, legal and economic reforms which facilitate further rapprochement of Ukraine with the EU for the benefit of both parties.
2. The Government of Ukraine is closely involved in the programming of the EC cooperation and CSOs have been increasingly associated, but the Commission is perceived as exerting a strong lead in this process.
3. Although the social protection system is in dire need of reform, social issues have not been addressed in a comprehensive manner and have been downgraded in the EC cooperation priorities.

Outcomes and impacts

4. Significant results have been achieved by the EC support to the delivery of social assistance, to reforms of the legal and regulatory framework governing economic activity and trade, to the development and modernisation of the energy sector, to improved nuclear safety, and to a more effective fight against illicit cross-border activities.
5. In the absence of structural reforms the expected impacts of EC interventions in the areas of justice, health and local development did not fully materialise.
6. The Commission supported the development of Civil Society Organisations without paying sufficient attention to sustainability.
7. EC interventions in the field of environment were not comprehensive enough to have a sustainable impact on environmental governance, but a breakthrough has recently been achieved through the policy dialogue.
8. Although it was prepared for by projects aimed at enhancing the human and physical capacity of Ukrainian authorities to address migration issues, the entry into force of the EU-Ukraine Readmission Agreement aroused concerns from human rights CSOs.

Efficiency and implementation modalities

9. The Commission made flexible use of the TACIS instrument and managed the projects in such a manner that they delivered their expected outputs, but few attempts were made to assess the project outcomes and impacts.
10. The Commission implemented a large number of small projects and resorted only on one occasion to a sector-wide approach.
11. To date budget support has not delivered its potential benefits, but both the Commission and the Government are on a learning curve as regards implementation of this cooperation tool.
12. Donor coordination is mainly restricted to exchange of information and has not prevented overlaps between projects.

Policy dialogue

13. In the complex political situation that prevailed in Ukraine in the second half of the period under review, the policy dialogue did not succeed in promoting, in such sectors

as justice, healthcare or local development, the structural reforms that the EC cooperation was meant to support.

14. Negotiations on the Association Agreement and on the Deep and Comprehensive Free Trade Area have given a new impetus to the policy dialogue between the Commission and the Government of Ukraine and contributed to develop relations between the EC DGs and their Ukrainian counterparts.

Recommendations

Three groups of general Recommendations emerge from the conclusions of the evaluation. They aim at (i) strengthening achievement of the expected outcomes of ongoing and planned interventions; (ii) improving the balance between support to economic development and support to social development; (iii) improving the efficiency of interventions.

Strengthen achievement of the expected outcomes

1. Strengthen the link between cooperation and policy dialogue (Recommendation related to conclusions 13 and 14).
2. Enter into an in-depth policy dialogue with the Government on Public Finance Management (C11).
3. Monitor the outcomes and impacts of EC interventions (C9).

Improve the balance between support to economic development and support to social development

4. Devote more attention to the social dimension of development and address social issues in a comprehensive manner (C3).

Improve the efficiency of interventions

5. Improve the design and management of budget support programmes (C11).
6. When implementing projects give priority to twinning and sector-wide approaches with the explicit objective of promoting reforms up to the point of implementation (C3, C5, C10).
7. Strengthen donor coordination (C12).

Should the recommendations be prioritised, we would single out the three following ones:

- **Improve the design and management of budget support programmes**

because budget support is likely to become the main cooperation modality of the EC with the GoU whereas the first attempt to make use of this cooperation tool has demonstrated serious weaknesses in the design of the programme and in its implementation.

- **Enter into an in-depth policy dialogue with the Government on Public Finance Management**

because improving the quality of PFM has a direct impact on the efficiency of the cooperation resources provided as budget support and because conducting a policy dialogue with the GoU on PFM issues is the only means available to the Commission, when providing budget support, to fulfil its accountability obligations towards European citizens.

- **Strengthen the link between cooperation and policy dialogue**

because negotiations of an Association Agreement and of a Deep and Comprehensive Free Trade Area has very significantly enhanced the quality of the policy dialogue between the EU and the GoU, thus creating conditions for closer complementarity between policy dialogue and cooperation.

Map



1. Objectives and scope

The *Evaluation of the European Commission's co-operation with Ukraine* was commissioned by the Joint Evaluation Unit of the European Commission (EC) EuropeAid Cooperation Office (AIDCO) and the Directorates-General (DGs) for External Relations (RELEX) and Development (DEV), hereafter referred to as the Joint Evaluation Unit (JEU). The evaluation has been closely followed and validated by a Reference Group (RG) consisting of members of the EC DGs RELEX and AIDCO chaired by the Joint Evaluation Unit.

This Final Report takes account of comments made by the Reference Group and by participants in the Seminar held in Kiev on the 28 October 2010.

1.1 Objectives and scope of the evaluation

The Terms of Reference (ToR) for this evaluation specify two main objectives:

- to provide the relevant external Co-operation Services of the EC and the wider public with an overall independent assessment of the EC's past and current cooperation relations with Ukraine; *and*
- to identify key lessons with a view to improving the current and future strategies and programmes of the EC.

The ToR state that the evaluation should cover the EC co-operation strategies with Ukraine and their implementation during the period 2002-2009. It is thereby understood that for the period 2002-2009 the evaluation will assess the implementation of the EC cooperation, focusing on relevance, efficiency, effectiveness, impact and sustainability; while for the period 2007-2013 it will review the *intended* effects.

1.2 Structure of the report

This Final Report is structured in six chapters, following the sequence required in the Terms of Reference:

- Chapter 1 provides a brief overview of the evaluation objectives and scope;
- Chapter 2 presents the context and subject of the evaluation, including the framework of the cooperation and inventory of funds channelled;
- Chapter 3 presents the main features of the methodology applied and the challenges and limits of the evaluation;
- Chapter 4 provides the answers to the ten Evaluation Questions (EQs) – for each question a self-standing summary box with the answer is offered;
- Chapter 5 presents the Conclusions of the evaluation based on the answers to the EQs in chapter 4; *and*
- Chapter 6 presents the Recommendations of the evaluation based on the conclusions in chapter 5.

2. Context

The present chapter presents a brief overview of (i) the national political, economical and social background; (ii) the EC cooperation framework with Ukraine; (iii) its intervention logic; and (iv) the inventory of EC funding in the country over the period 2002-2009.

2.1 National background²

2.1.1 Political background

The evaluation period, which covers both the second mandate of President Leonid Kuchma (1999-2005) and President Viktor Yushchenko's mandate (2006-2009), has been characterised by permanent political instability.

Mr Kuchma's second term in office was marred by accusations of wrong-doing and an increasingly hostile confrontation with the opposition united behind Viktor Yushchenko, a former prime minister, whose electoral block, "Our Ukraine", won almost 25% of the vote in the March 2002 parliamentary election.

Presidential elections were held in November 2004. They brought into confrontation mainly Viktor Yanukovich, supported by President Kuchma, and the opposition leader, Viktor Yushchenko. Although exit polls showed a clear victory for Mr Yushchenko, the official results proclaimed victory of Mr Yanukovich. This decision prompted days of street protests on a scale unprecedented in Ukraine. This was the beginning of the so-called "Orange Revolution" that also sparked the defection of many state officials, military personnel and the government-controlled media. The Supreme Court finally ruled the official election results invalid and scheduled a repeat run-off vote for 26 December 2004, in which Mr Yushchenko comfortably beat Mr Yanukovich.

Mr Yushchenko's inauguration as Ukraine's new president on 23 January 2005 promised a change in Ukrainian politics in favour of greater transparency and commitment to the rule of law as well as implementation of long-awaited reforms aimed at bringing Ukraine closer to European standards. His cabinet, which was headed by Ms Yulia Tymoshenko, a prominent figure of the Orange Revolution, included a number of proven reformists and outspoken critics of the previous regime.

However, the new governing team rapidly lost momentum, primarily because of its own internal divisions. In early January 2006 the cabinet was ousted by an *ad hoc* coalition uniting Ms Tymoshenko's party and the opposition to President Yushchenko. Mr Yanukovich's Party of the Regions (PoR) was the main beneficiary of the elections held in March 2006, which however did not produce a clear majority.

² See Annexe 4 for more details

The months of political uncertainty that followed the inconclusive election reflected deep discord among the "orange" parties in the new parliament. By late June 2006 an "orange" coalition was finally formed, but proved extremely short-lived. Eventually the different parties represented in the parliament signed a "declaration of national unity" which paved the way for Mr Yanukovich's appointment as prime minister on 4 August 2006.

New parliamentary elections were held on 30 September 2007 in which Mr Yanukovich's Party of Regions emerged again as the largest party in parliament. It however did not secure enough seats to build a majority with its ally of the Communist Party of Ukraine. On the contrary, Ms Tymoshenko was approved in December 2007 as prime minister by an extremely narrow majority.

During most of 2008 and 2009 the government struggled to contain political crises resulting from the different agendas of the coalition partners, but above all from the rivalry between the President, Mr Yushchenko, and the Prime Minister, Ms Tymoshenko. Contentious issues included in particular amendments to the Ukrainian Constitution, especially the distribution of power between Executive and Legislative. The coalition government collapsed in September 2008, but was re-formed in December after an attempt by President Mr Yushchenko to dissolve the Parliament and call new elections failed.

New presidential elections held in early 2010 brought to power Mr Viktor Yanukovich. Ms Tymoshenko, who had been Mr Yanukovich's main rival in the presidential election, was compelled to step down from the premiership after a number of her supporters in parliament switched sides. In March 2010, President Yanukovich appointed his long-standing ally Mykola Azarov to succeed her.

2.1.2 Economic background

Ukraine is a country with great economic potential due to its range of natural resources (very fertile land, large coal reserves, some oil and gas), its large domestic market, a well-educated population, and its strategic location between Europe, Russia and Asia. With a *per capita* GNI (Atlas method) of US\$3,210 in 2008 Ukraine belongs to the group of lower-middle-income countries.

Between 2000 and 2007 Ukraine's economy recovered from the collapse it had experienced after the break-up of the Soviet Union. It enjoyed a solid annual growth averaging more than 7% in real terms. This recovery was made possible by favourable conditions in Ukraine's major trade partners, a high price for steel as Ukraine's major export product, an increase in demand from Asia for Ukrainian chemicals, some macroeconomic reform and stabilisation achievements, and significant idle industrial capacity that could be reactivated to jump-start the economy. Real GDP growth relied primarily on strong household consumption which was helped by the government's generous wage and benefits policies, which in turn sustained consumer confidence.

Table 1: Ukraine - key macroeconomic indicators 2000 - 2009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009 ^f
Real GDP (% variation)	5.9%	9.2%	5.2%	0.6%	12.1%	2.7%	7.3%	7.9%	2.1%	-15.0%
Unemployment (% labour force, ILO definition)	11.7%	11.3%	10.1%	9.1%	8.6%	7.2%	6.8%	6.4%	6.4%	8.8%
Consumer prices (% variation)	28.2%	12.0%	0.8%	5.2%	9.0%	13.5%	9.1%	12.8%	25.2%	15.9%
Balance of the Central Government budget (% GDP)	-1.3%	-1.6%	0.5%	-0.9%	-4.4%	-2.3%	-1.4%	-2.0%	-3.2%	n.d.
Balance of current accounts (in % GDP)	4.7%	3.7%	7.5%	5.8%	10.6%	2.9%	-1.5%	-3.7%	-7.2%	-1.5%

Source: 2000 to 2008: IMF, Article IV Reviews ; 2009: Central Statistical Office and National Bank of Ukraine

Until November 2008 the macro-policy framework was based *de facto* on attachment of Ukraine's currency, the hryvnya (UAH), to the US Dollar with the burden of adjustment to external shocks falling on fiscal policy. Significant terms of trade improvement and private sector capital inflows led to a demand boom which bolstered fiscal revenues. But this development also resulted in inflationary pressure, especially in 2008 when inflation rose to 25% owing to higher food and energy prices. In other words, between late 2007 and early 2008 the economy was showing increasing signs of overheating, and - financed by large foreign borrowing and FDI - the current account balance slipped into a deficit amounting to 7.2% of GDP in 2008 after several years of surplus since 2004. The Government tried to counter this trend by cutting non-discretionary spending, and by letting the UAH appreciate by 10% relative to the US\$. In general, however, the National Bank of Ukraine (NBU) has developed a solid reputation through its smooth introduction of a new currency in the mid-1990s, and remains one of the country's more respected and better-led institutions. Over the past few years the NBU's policies have aimed at limiting inflation, lower interest rates and improved currency stability, while at the same time boosting Ukraine's foreign-currency reserves.

The global financial crisis which started to loom in 2007 dearly exposed the deficiencies of Ukraine's economy, in particular the heavy concentration of its production and exports on primary industries that are the most severely hit when final demand recedes on the domestic and foreign markets. This sparked a severe economic crisis aggravated by the unsustainable debts accumulated by the private sector and by problems in the banking sector. In 2009 GDP contracted by 15% and the State budget deficit deteriorated. However, imports having decreased even more strongly than exports, the current account deficit diminished to 1.5% of GDP.

2.2.3 Social background

Between 1991 and 1993 the decline in population caused by higher death rates and emigration was offset by large net immigration from other former Soviet republics, in particular by the arrival of about 250,000 Crimean Tatars from Central Asia where they had been exiled during the Second World War. But since 1995 the trend has been towards net emigration, particularly to the US, Canada and Israel. Ukrainians are also migrating to work in other European countries, where wages are higher. In combination with lower fertility rates and life expectancy, Ukraine's population dropped by more than 5 million since independence to 46.0 million in January 2010.

From 2001 onwards Ukraine recorded a sharp reduction in poverty as a result of increased employment, real wage growth at an average annual rate of about 15%³, and significant increases in pensions and other social transfers. According to the State Statistical Office the percentage of the population with average *per capita* income below the subsistence threshold decreased from 39.9% in 2001 to 8.1% in 2008. It is very likely that the severe economic recession of 2009 reversed this trend, but updated figures are not currently available to assess the magnitude of this phenomenon.

Ukraine ranked 76th in the UNDP's 2007-08 Human Development Index, but 110th in terms of life expectancy (average of 67.7 years, with almost 50% of adult mortality attributable to infections), owing to the precipitous drop in health and living standards experienced since the end of the Soviet period. The situation with infant mortality is somewhat better, although the rate of infant mortality is still significantly higher than the EU average as also is the mortality rate for children under five years of age. The most important deficiencies of the health sector are poor-quality services and a lack of access for many on lower incomes since patients are unofficially required to pay for services, at least in part. Structural problems inherited from the Soviet period also persist. An excessive number of hospital beds (9 per 1000 people) and medical personnel means that resources continue to be misallocated. Insufficient attention is paid to primary care: fewer than 0.5% of physicians are general practitioners.

On independence Ukraine had a functional educational system, including near-universal literacy and high general enrolment. Overall education indicators continue to compare favourably with those of other countries with similar income levels: an enrolment ratio at secondary schools of 89% (2005), and more than 500 students per 10,000 population in higher education (2006), a rise of almost 40% over the past decade, reflecting in part the emergence of private educational institutions. However there is a need for educational reform since there remain problems of quality of education resulting from a low degree of scholarly research as well as from outdated equipment and technical facilities. With a declining student-age population, the teacher-student ratio in many areas is high, such that most of the education budget is spent on salaries and not enough on physical infrastructure, teaching aids or stipends. As the salaries of personnel employed in education are still extremely low, the number of skilled and qualified professionals working in the sector has fallen.

³ However, according to the IMF, in 2007 the average wage still remained in real terms 40% below its level in 1991

2.2 EC cooperation framework⁴

2.2.1 The Partnership and Cooperation Agreement and the institutional framework of the EU-Ukraine policy dialogue

During the period 2002-2009 covered by the evaluation, EU relations with Ukraine were based on the Partnership and Cooperation Agreement (PCA) which entered into force in 1998 for an initial ten-year period, after which it is automatically renewed with the consent of the parties. At the Paris Summit in September 2008 the two Parties agreed that the new agreement under negotiation to follow the PCA would be an Association Agreement. The EU-Ukraine Association Agreement will significantly deepen Ukraine's political association and economic integration with the EU.

The PCA highlights respect for shared fundamental values as an essential element of the EU-Ukraine relationship. It provides a framework for political dialogue; sets the principal common objectives in terms of promotion of trade and investment, harmonious economic relations, sustainable development, and economic, social, financial, civil scientific technological and cultural cooperation; and commits the EU to supporting Ukraine's efforts to consolidate its democracy and develop its economy. The provisions governing goods, services, labour, and capital introduce extensive legally-binding commitments with considerable implications for Ukraine's domestic legislation.

The PCA established an institutional framework for the EU-Ukraine policy dialogue. The main structures involved are:

- Bilateral Summit meetings (annual) between the President of Ukraine and the EU Presidency together with the President of the Commission and the EU's High Representative;
- Cooperation Councils (annual) at ministerial/commissioner level (EU-Presidency, European Commission, High Representative, Government of Ukraine);
- Cooperation Committee (senior civil servant level, chaired alternately by the European Commission and Ukrainian sides);
- Sub-Committees (expert level; supporting the work of the Cooperation Committee); currently seven sub-committees are operational:

The EU's Political and Security Committee meets with the Ukrainian side under each Presidency. Finally, a considerable number of specific Council working groups meet with Ukraine twice per year, including groups covering Terrorism, Disarmament, OSCE and UN matters, and the Council Working Group on Eastern Europe and Central Asia.

A Parliamentary Cooperation Committee, composed of Members of the European Parliament and the Ukrainian Verkhovna Rada, meets on an annual basis.

⁴ See Annex 5 for details

2.2.2 The European Neighbourhood Policy

The European Neighbourhood Policy (ENP) applies to the EU's immediate neighbours by land or sea. Among former Members of the Soviet Union, it applies to Ukraine and to Armenia, Azerbaijan, Belarus, Georgia, and Moldova. It was developed in 2004 with the objective of strengthening the prosperity, stability and security of all concerned.

The EU offers its neighbours a privileged relationship, building on a mutual commitment to common values (democracy and human rights, rule of law, good governance, market economy principles and sustainable development). The ENP goes beyond existing relationships to offer partner countries a deeper political relationship and economic integration.

The central element of the European Neighbourhood Policy is the bilateral ENP Action Plans agreed between the EU and each partner. These set out an agenda of political and economic reform with short and medium-term priorities. The joint EU-Ukraine Action Plan was endorsed by the EU-Ukraine Cooperation Council on 21 February 2005.

2.2.3 Cooperation instruments

Until 31 December 2006, EC assistance to the countries of the European Neighbourhood Policy (ENP) was provided under various geographical programmes, in particular - as regards cooperation with Ukraine and other members of the Former Soviet Union - the TACIS (Technical Assistance to the Commonwealth of Independent States) programme.

From 1 January 2007 onwards, as part of the reform of EC assistance instruments, TACIS was replaced by a new cooperation instrument, the European Neighbourhood and Partnership Instrument (ENPI), which is much more flexible and policy-driven. It is designed to target sustainable development and approximation to EU policies and standards, supporting the agreed priorities in the ENP Action Plans. For the period 2007-2010 the National Indicative Programme for Ukraine proposes an allocation to the ENPI of a budget of €494.0 million. Compared to the previous period, this represents a very significant increase in the financial resources allocated by the Commission to its cooperation with Ukraine.

In addition to bilateral cooperation the ENPI supports cross-border contacts and cooperation between local and regional actors and civil society. Ukraine is party to four cross-border programmes, namely Poland-Belarus-Ukraine; Hungary-Slovakia-Romania-Ukraine; Romania-Ukraine-Republic of Moldova; and the Black Sea Programme.

New forms of technical assistance have been extended to ENP partners. Legislative approximation, regulatory convergence and institution-building are being supported through mechanisms which proved successful in transition countries that are now EU Member States, that is targeted expert assistance (Technical Assistance and Information Exchange - TAIEX), long-term twinning arrangements with EU Member States' administrations – national, regional or local – and participation in relevant Community programmes and agencies.

Besides ENPI the Commission's co-operation with Ukraine may make use of thematic instruments such as the European Initiative for Democracy and Human Rights (EIDHR), the Nuclear Safety Co-operation Instrument (NSCI), the programme on Migration and Asylum or the Instrument for Stability (IfS).

Another new instrument is the Governance Facility, endowed indicatively with €50 million annually, which provides additional support to the partner country or countries that have made most progress in implementing the governance priorities agreed in their Action Plans. Ukraine received the Governance Facility allocation in 2007 and 2008.

2.2.4 Programming and focal cooperation areas

Cooperation priorities are identified, jointly with the governments of the countries concerned and other relevant actors, in Country Strategy Papers (CSPs) covering five to seven years. National Indicative Programmes (NIPs) specify for shorter periods the Commission's indicative financial allocation to the implementation of the strategy and its distribution between the focal areas of cooperation. Finally, Annual Action Programmes (AAPs) detail the activities that will be implemented from each annual budget allocation and are the basis for a signed financing agreement with the government of the partner country. Similarly Regional Programmes give rise to Regional Strategy Papers (RSPs) and Regional Indicative Programmes (RIPs).

The period 2002-2009 covered by the evaluation encompasses two CSPs, the first relative to the years 2002-2006 and the second to the years 2007-2013.

The CSP 2002-2006 identifies three focal areas of cooperation:

- Support for Institutional, Legal and Administrative Reform
- Support to the Private Sector and Assistance for Economic Development
- Support in Addressing the Social Consequences of Transition

In its turn the CSP 2007-2013 identifies the three following focal areas:

- Support for Democratic Development and Good Governance
- Support for Regulatory Reform and Administrative Capacity Building
- Support for Infrastructure Development

The table overleaf details the cooperation focal areas of the two CSPs.

Table 2: Focal areas of the EC cooperation with Ukraine

	Focal areas of intervention
CSP 2002-2006	<ol style="list-style-type: none"> 1. Support for Institutional, Legal and Administrative Reform <ol style="list-style-type: none"> 1.1 Legal, judicial and administrative reform 1.2 Border management 1.3 Civil society, training and education 2. Support for the Private Sector and Assistance for Economic Development <ol style="list-style-type: none"> 2.1 Business, trade and investment promotion 2.2 Fuel gap (2002) 3. Support in Addressing the Social Consequences of Transition <ol style="list-style-type: none"> 3.1 Social reform
CSP 2007-2013	<ol style="list-style-type: none"> 1. Support for Democratic Development and Good Governance <ol style="list-style-type: none"> 1.1 Public administration reform and public finance management 1.2 Rule of law and judicial system 1.3 Human rights, civil society development and local government 1.4 Education, science and people-to-people contacts/exchanges 2. Support for Regulatory Reform and Administrative Capacity Building <ol style="list-style-type: none"> 2.1 Promoting mutual trade, improving the investment climate and strengthening social reform 2.2 Sector-specific regulatory aspects 3. Support for Infrastructure Development <ol style="list-style-type: none"> 3.1 (non nuclear) Energy 3.2 Transport 3.3 Environment 3.4 Border management and migration including re-admission related issues

2.3 Intervention logic

This section provides a brief overview of the intervention logic of the EC cooperation with Ukraine during the evaluation period⁵. The intervention logic is indeed fundamental to this evaluation, delineating the set of objectives against which the EC interventions are assessed.

The intervention logic of the Commission cooperation strategy in Ukraine was reconstructed *ex post* on the basis of the two CSPs covering the evaluation period: the 2002-2006 CSP (including the 2002-2003 NIP and the 2004-2006 NIP) and the most recent 2007-2013 CSP (including the 2007-2010 NIP). For each of these CSPs, an intervention logic was reconstructed setting out what was identified in the CSPs as:

- the overall objectives of the EC-Ukraine cooperation,
- the intermediate objectives intended to be achieved through the support provided under this cooperation,
- the specific objectives intended to be achieved by the interventions supported,
- the operational objectives of each of these interventions, *and*
- the modalities/activities proposed to be undertaken by each of the interventions.

The diagrams, once reconstructed for each of the two periods 2002-2006 and 2007-2013, were combined showing the common threads as well as the individual features of each programming period. Finally the diagram so obtained was presented in the form of a flow chart, presented below as an Expected Impact Diagram (Fig 1). The continuity or otherwise of activities, expected outputs, results, intermediate impacts and global impacts, are distinguished as follows:

- the black coloured font is used for any activities, outputs, results etc. which are shared by the 2002-2006 and 2007-2013 CSPs;
- the blue coloured font is used for activities, results etc. that are specific to the 2002-2006 CSP;
- the red coloured font is used for activities, results etc. that are specific to the 2007-2013 CSP.

The figure also shows the main areas of the intervention logic which are covered by the ten Evaluation Questions.

⁵ See Annex 2 for more details.

Activities



Outputs

Capacity of administration enhanced at central and

Results

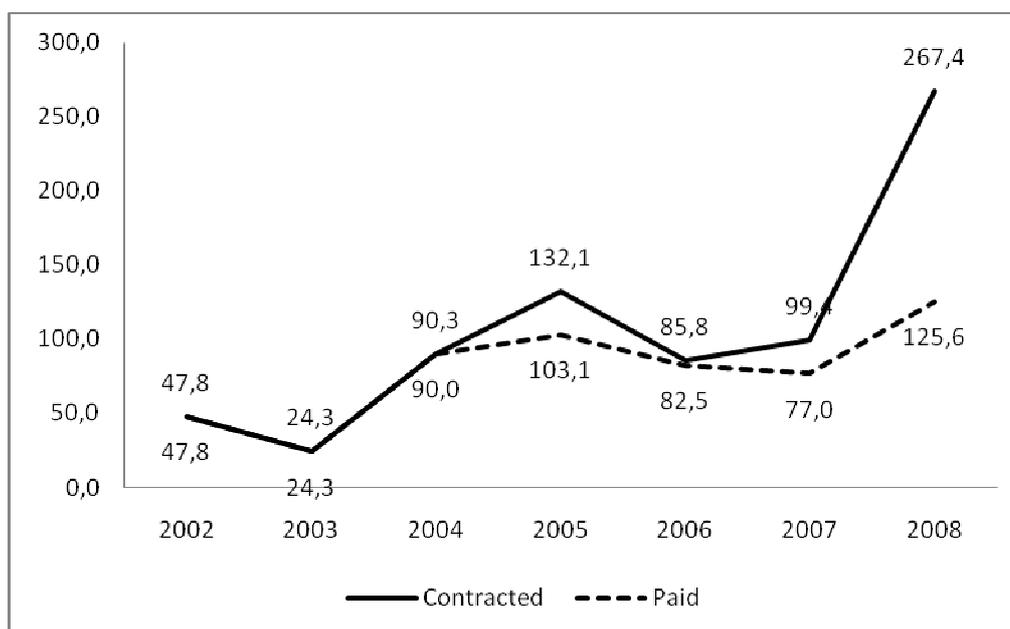
*Intermediate
Impacts*

*Global
Impact*

2.4 EC funding – Inventory

From 1 January 2002 to 30 September 2009, cooperation with Ukraine gave rise to 692 contracts with a total commitment of €832.8 million. Payments over the same period amounted to €556.4 million.

Graph 1: EC cooperation with Ukraine - Commitments 2002-2008 and disbursements as of end-September 2009



The CRIS database allows distribution of the contracts between 12 sectors. Four sectors together accounted for more than 85% of commitments.

Support to the energy sector accounted for €396.07 million or 47.6% of total commitments between January 2001 and September 2009. This figure is, however, somewhat skewed by a few very large contributions to the Chernobyl Shelter Fund and the Fuel Gap assistance, which taken together account for close to €130 million. But even excluding these commitments, the energy sector remains the main beneficiary of the Commission's support with total commitments of €266.7 million that is 32.0% of the total.

The three other large sectors are legal, administrative and institutional reforms (€120.4 million committed, 14.5%); border management and migrations (€106.1 million, 12.7%); and economic development (€104.9 million, 12.6%).

**Table 3: Commitments and disbursements per sector
January 2002 to September 2009**

	Contracted		Paid	
	Million €	%	Million €	%
Energy	396.07	47.6%	231.10	41.5%
Legal, administrative, institutional reform	120.37	14.5%	77.33	13.9%
Border Management and migrations	106.06	12.7%	95.74	17.2%
Economic Development	104.86	12.6%	70.22	12.6%
Social consequences of transition	40.37	4.9%	36.68	6.6%
Education	15.12	1.8%	10.29	1.9%
Transport	11.77	1.4%	7.71	1.4%
Civil society	10.76	1.3%	10.09	1.8%
Environment	10.26	1.2%	6.35	1.1%
Media	4.64	0.6%	4.04	0.7%
Miscellaneous	12.51	1.5%	6.80	1.2%
Total	832.79	100.0%	556.35	100.0%

Source : CRIS

Since the inception of the ENPI in 2007 the Commission has had the option of providing some of its aid in the form of budget support. Over the period 2007-09 more than 70% of total annual allocations was devoted to budget support. In September 2008 a Financing Agreement was signed between the Commission and the GoU for the provision to Ukraine of €82 million budget support (plus €5 million of technical assistance) in support of implementation of the GoU strategy in the energy sector. In December 2009 Financing Agreements were signed for two more sectoral budget support (SBS) programmes, namely:

- a SBS supporting the removal of technical barriers to trade (€39 million to be disbursed in four tranches plus €6 million of technical assistance);
- a SBS in support of Ukraine's strategy in the area of energy efficiency and renewable energy sources (€63 million to be disbursed over a three-year period plus €7 million of technical assistance).

Twinning is increasingly becoming the main instrument to “support legislative approximation to meet EU norms and standards” in Ukraine as provided by the EU-Ukraine Action Plan and the EU-Ukraine PCA. In this context twinning provides a comprehensive and ambitious framework for work with Ukraine, identifying key areas of reform. Twinning projects act as a catalyst in setting the country’s public administration reform in motion, bringing together specialists from EU Member States and Ukraine’s administrations to promote effective adoption of Community legislation. As of end September 2009, four projects had been completed and ten were being implemented. 13 more Twinning projects were at different stages of preparation, contracting or implementation, but fall outside the scope of this evaluation.

Budget Support and other financing mechanisms and cooperation modalities allowed by the ENPI should gain in importance in the coming years. But over the period 2002-2009 covered by the evaluation, as demonstrated by Table 4 below, most of the Commission's interventions were implemented in the framework of the TACIS Regulation.

Table 4: Distribution of contracts, commitments and disbursements by instrument January 2002 to September 2009

	Number of contracts	Commitments		Disbursements	
		Million €	%	Million €	%
TACIS	569	635.09	76.3%	483.30	86.9%
ENPI	26	103.34	12.4%	27.18	4.9%
NSI	14	66.58	8.0%	29.06	5.2%
EIDHR / DDH	71	12.92	1.6%	10.46	1.9%
MIGR	5	4.25	0.5%	3.89	0.7%
DCI Thematic instruments	5	4.64	0.6%	1.22	0.2%
MAP	2	5.97	0.7%	1.24	0.2%
TOTAL	692	832.79	100.0%	556.35	100.0%

Source: CRIS

2.5 Other donors' cooperation

The OECD/DAC database only provides data on the flow of Official Development Aid to Ukraine from 2005 to 2008.

These data show that the EC is the largest provider of ODA to Ukraine. Over the period 2005-2008 it contributed 21.8% of total donor commitments. Some EU Member States, notably Germany, Sweden, France, the United Kingdom and Austria are also significant contributors, bringing total EU commitments (EC + EU Member States) to 40% of total donor commitments.

The United States came second to the EC with commitments representing 15.8% of the total over the period 2005-2008.

**Table 5: Donors ODA commitments to Ukraine 2005-2008
 In million US\$**

	2005	2006	2007	2008	Total
European Commission	102.1	133.4	102.7	242.3	580.5
United States	99.4	130.2	91.1	98.9	419.7
Germany	53.2	58.7	69.1	77.1	258.1
Sweden	10.6	18.4	22.1	21.5	72.6
Canada	18.6	15.8	16.0	18.7	69.1
France	10.0	14.3	6.5	25.0	55.9
Switzerland	13.5	9.2	6.0	6.6	35.3
United Kingdom	10.8	12.0	7.8	3.2	33.7
Austria	7.3	5.1	5.3	8.7	26.4
Japan	2.5	6.6	5.7	8.4	23.3
Denmark	1.6	2.2	4.6	5.7	14.0
Others	79.4	73.9	79.3	99.5	332.1
Total bilateral donors	408.9	479.8	416.2	615.7	1,920.6
Multilateral donors	138.3	170.4	142.3	290.1	741.1
Total ODA	547.3	650.2	558.4	905.8	2,661.7

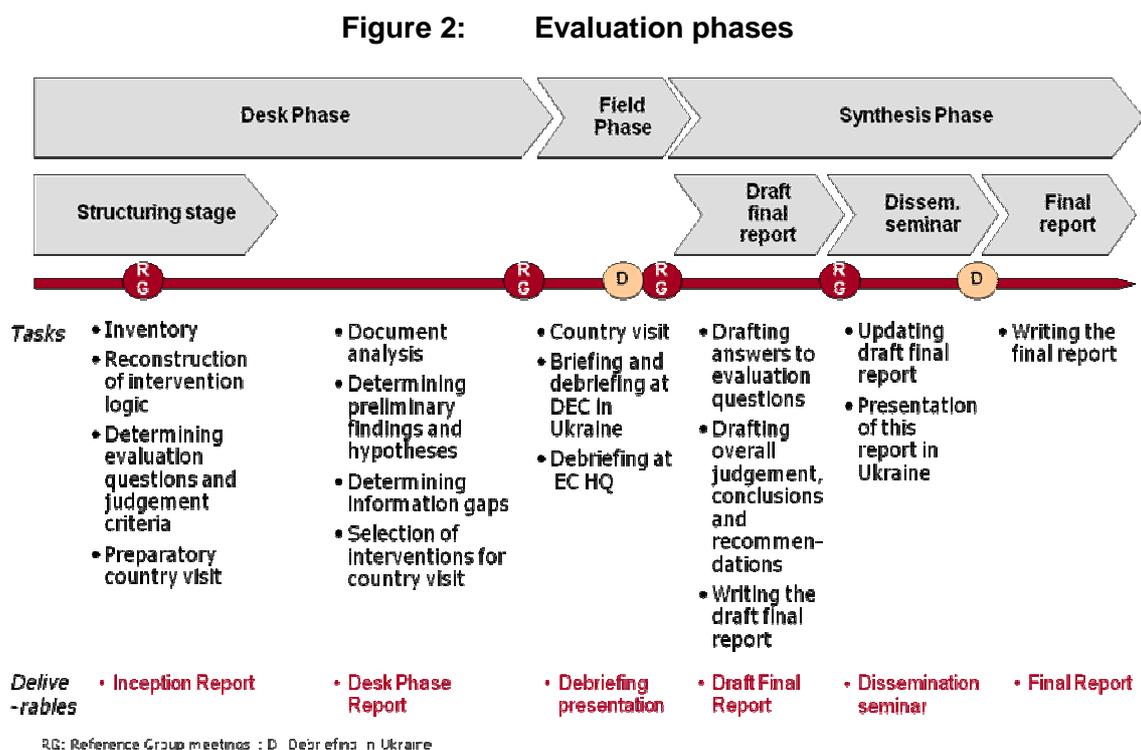
Source : OECD/DAC

3. Methodology

This section presents the main features of the methodological approach to the evaluation, in particular (i) the evaluation process; (ii) the data collection method; and (iii) the challenges and limits of this exercise.

3.1 Evaluation process

The evaluation was based on a structured process consisting of a sequence of distinct and well-defined phases. The figure below provides an overview of this process, specifying for each phase the activities carried out and the deliverables produced. It also specifies the meetings with the Reference Group (RG) and with the EC Delegation in Ukraine.



3.2 Data collection

Data collection and analysis followed a structured process, also shown in the figure above. During the Structuring stage information on the national context and EC cooperation was collected and studied, including data on EC funding in the country. During the Desk study stage, documentary sources available on a desk basis were collected and reviewed by the evaluation team, and interviews were undertaken with EC Headquarters staff. During the Field phase, the team complemented the collection of documentary evidence and undertook visits to selected projects and a large number of interviews with a range of

stakeholders. Information was hence triangulated as far as possible through collection from a range of sources.

Three main categories of information have been collected and analysed:

- Contextual information on the situation of the country and its evolution, and on the cooperation policy of the European Commission. This information is necessary for an understanding of the main issues addressed, or that should have been addressed, during the Commission's support, and for an overview of the evolution of the situation of the country in relation to these issues so as to form a first idea of the possible contribution of the Commission's support to the observed trends.
- General information on the European Commission's cooperation with Ukraine including an analysis of the Commission's strategy and programming documents, alignment with the GoU's policies, inventory of Commission funding, and so forth.
- Information on the interventions selected for the desk study. A set of interventions (*provided below*) was identified and selected at the beginning of this evaluation for analysis during the Desk and Field Phases.

The data collection and analysis were based on a structured framework consisting of 10 Evaluation Questions and 35 associated Judgment Criteria and 181 related Indicators (*see Annex 3*), in accordance with the methodological framework defined at the beginning of the evaluation. The findings of this evaluation are presented by Evaluation Question at the level of the Judgment Criteria (*see Chapter 4*), based on data collected at the level of the Indicators, in a so-called "Data Collection Grid" (*provided in Annex 8*).

The bibliography for this evaluation presents the list of documents that provided information for this evaluation (*see Annex 12*). A list of persons interviewed is provided in Annex 11.

The selection of interventions for desk and field study was the following:

Table 6: Selection of interventions

Decision	Contract year	Intervention name	Nature	Amount
TACIS/2000/000-522	2002	Audit Public finance at Kiev	Services	1,942,920
TACIS/2001/000-556	2003	Legal and institutional basis for protection of competition (Antimonopoly Committee)	Services	2,158,922
TACIS/2002/000-613	2004	Effective state budget management	Services	2,733,522
TACIS/2002/000-613	2005	Reinforcing the State Border Guard Service of Ukraine's Human Resources Management System - HUREMAS	Action Grants	3,977,996
TACIS/2003/005-620	2004	Capacity Building of Migration Management: Ukraine	Grant	3,625,930
TACIS/2003/005-620	2005	Support to Taxation Reform	Services	1,546,846
TACIS/2003/005-620	2005	Development of integrated social services for exposed families and children in Ukraine	Services	1,597,875
TACIS/2004/016-777	2005	Consumer society and citizen networks	Action Grants	3,000,000
TACIS/2004/016-777	2006	Support to Good Governance: Project Against Corruption in Ukraine	Action Grants	1,500,000
TACIS/2004/016-777	2006	Support Ukraine Progressive Integration to Electricity TENS	Services	2,691,834
TACIS/2004/016-777	2007	Institutional Strengthening of the Energy Regulatory Commission	Services	1,100,000
TACIS/2004/016-777	2007	Support to the Development of Business Capacity of Ukrainian SMEs – International Dimension	Services	2,065,300
TACIS/2005/017-093	2008	Transparency and efficiency of the judicial system of Ukraine	Action Grants	5,400,000
TACIS/2005/017-093	2008	Promotion of European Standards in the Ukrainian Media Environment	Action Grants	1,088,026
TACIS/2005/017-093	2008	Coal Sector Policy Support Programme	Services	8,939,000
TACIS/2006/018-038	2008	Implementation of Ukraine's commitments under WTO and ENP frameworks in the rural sector (Sector Wide Approach)	Services	4,740,000
TACIS/2006/018-038	2008	Harmonisation of Competition and Public Procurement systems in Ukraine with EU standards	Services	4,399,730
TACIS/2006/018-038	2008	Support to Sustainable Regional Development	Services	5,994,975
ENPI/2007/019-549	2008	EBRD-01 Technical Assistance Support for Ukrainian Municipalities	Action Grants	5,000,000
ENPI/2007/018-788	2008	Support to the implementation of Ukraine's Energy strategy	Budget Support	82,000,000

This selection provides wide coverage of the EC contributions in the country in accordance with the most relevant criteria for the evaluation in terms of the size and status of projects, the financial instruments used, and the sectors and periods covered.

3.3 Limits of the analysis

The limits of the analysis are closely related to the quantity and the quality of the information. Two remarks are appropriate in this regard:

- Cooperation between the Commission and Ukraine is part of a broader relationship which involves an active policy dialogue through the structures established by the Partnership and Cooperation Agreement. Interviews with Commission staff members revealed in particular that, along with the contribution of technical assistance projects, the reform process in Ukraine also benefited from exchanges between the Ukrainian administration and the Commission Services. These exchanges addressed broad policy issues (e.g. the comments of the Commission Services on a draft strategy paper on environment) as well as more technical subjects (e.g. advice of the EU Food and Veterinary Office and of DG Health and Consumers on SPS regulations). But, unlike the projects which are documented in the progress and completion reports of the contractors and in monitoring reports, the contribution of the policy dialogue is not reported on in a systematic manner.
- Evaluation Question 9 addresses budget support. The first budget support programme ever implemented by the Commission in Ukraine was launched in September 2008. To date only the fixed tranche has been disbursed and the Joint Monitoring Group established to monitor the fulfilment of the programme conditions has held only two meetings. The information base for assessing the appropriateness of this financing modality and its effectiveness is therefore still very thin.

4. Answers to the Evaluation Questions

The answers to the ten Evaluation Questions are presented in this chapter. Three levels of presentation have been provided by the evaluation team:

- i. a synthesised answer to each Evaluation Question (EQ) in the summary boxes, followed by
- ii. detailed findings and analysis on which each answer is based, with indications of the Judgment Criteria (JC) on which they are based; *and*
- iii. the facts on which the findings are based, which however are presented in the Data Collection Grid in Annex 8 rather than in this chapter.

The table below provides an overview of the set of Evaluation Questions.

Table 7: Overview of the Evaluation Questions

EQ 1	Relevance
EQ 2	Democracy and the Rule of Law
EQ 3	Social Protection and Assistance
EQ 4	Economic Reform and Development
EQ 5	Trade and Foreign Direct Investments
EQ 6	Environment
EQ 7	Energy
EQ 8	Border Management
EQ 9	Budget Support
EQ 10	Efficiency

Details on the Evaluation Questions as such and their Judgment Criteria and Indicators are presented in Annex 3 along with the justification for and coverage of each question. They were defined at the beginning of the evaluation during the Structuring stage. They cover the main sectors or themes of EC cooperation (based on the reconstructed intervention logic) and the main EC criteria for the evaluative questioning, namely relevance, efficiency, effectiveness, impact, sustainability, coherence and EC value-added. Together with the intervention logic they constitute the backbone of the whole evaluation.

4.1 Relevance

EQ1: *To what extent has the Commission cooperation strategy with Ukraine been consistent with and supportive of (i) the needs of the country and its population; (ii) the objectives and priorities agreed by both partners in the Partnership and Cooperation Agreement (PCA) and the EU-Ukraine Action Plan; (iii) the overall objectives of the European Neighbourhood policy?*

EQ 1 on Relevance – Answer Summary Box

The sequential character of the EC cooperation programming process, the analysis of the political, economic and social situation on the basis of which the EC response strategy is formulated, and the involvement of the GoU and CSOs in the programming process, together ensure that the needs of the country and of its population are duly taken into consideration.

But a key criterion for assessing the relevance of the Commission's cooperation with Ukraine is its consistency with the objectives that both parties have identified as reflecting their common interest. In fact the focal areas of intervention identified in the CSPs and NIPs have been consistent with the objectives and priorities agreed in the PCA and the EU-Ukraine Action Plan, as well as with the principles, objectives and methods of the European Neighbourhood Policy.

The search for mutual benefit, which underlies the cooperation between the EU/EC and Ukraine, may be a source of tension with the Government and with CSOs, which consider that in some instances EU interests tend to prevail.

4.1.1 The Commission's cooperation interventions are based on a diagnosis of the needs of the country and its population and address these needs (JC 1.1)

Programming of the EC cooperation activities in Ukraine is a sequential process in which the successive steps are the Country Strategy Papers (CSPs), the National Indicative Programmes (NIPs), the Annual Action Plans (AAPs) and the Action Fiches.

CSPs cover a period of five to six years. They present an analysis of the political situation in Ukraine; of the economic and social situation; of the progress of reforms in the main sectors; and of the sustainability of current policies. They further outline the policy agenda of the Government. On this basis CSPs indicate the main challenges faced by the country and propose a response strategy.

NIPs cover a shorter period of two to four years. While being consistent with the priorities identified in the CSP, they allow the Commission to adjust its cooperation to developments in the political, economic and social situation in Ukraine. Priorities identified in the CSP are reflected in the NIPs in terms of areas of cooperation and domains of intervention, to which indicative financial envelopes are allocated. For each domain of intervention, overall and specific objectives as well as expected results are specified.

AAPs present an update of the analysis of the political, economic and social situation as reported in the CSP, and propose a list of interventions to be implemented within the annual financial envelope allocated to cooperation with Ukraine.

CSPs and NIPs are elaborated in close cooperation with the GoU. The Delegation's partner for this task is the National Coordinating Unit (NCU) within the Ministry of Economy. The NCU acknowledges that the quality of cooperation with the EC has improved over time. According to the NCU three important milestones in this respect have been the formulation by the EU of the European Neighbourhood Policy; the implementation of this policy from 2007, with replacement of the TACIS instrument by ENPI; and the start of negotiations on the Association Agreement and the Free Trade Area. The NCU assesses positively the move of EC cooperation towards budget support and sector-wide approaches. It welcomes the increasing financial volume of EC aid to Ukraine although it also observes that Ukraine receives less aid *per capita* than other ENP countries. On the negative side the NCU considers that it is not sufficiently informed of the possibilities offered by the financing instruments managed by EC Headquarters, and that insufficient resources have been allocated to investment. The NCU also considers that the EC takes the lead in the design of the cooperation strategy whereas in its view the Commission, as a signatory of the Paris Declaration, should leave the lead to the GoU.

It must be noted that during the period covered by the evaluation the partner on the Government side on cooperation issues with the EU Member States and other bilateral donors was a different body, the Directorate for Coordination of International Technical Assistance (DCITA). This did not create the best conditions for leadership by the GoU on aid coordination. However since April 2010 the NCU has been merged with DCITA.

Since 2007-2008 the Delegation has undertaken to involve CSOs more closely in the identification and assessment of its cooperation activities. CSOs mention in particular, as positive examples in this regard, the conference "European Commission and Civil Society: experience gained and new opportunities in Ukraine" held by the Delegation in 2008, and the invitation made to CSOs to contribute to the mid-term review of the CSP 2007-2013 and to the identification of priorities for the NIP 2011-2013. But whereas CSOs would like to be involved in the whole programming process, while they are consulted at a preliminary stage of CSP, NIP and AAP formulation they have no say in the finalisation stage.

The sequential character of the EC cooperation programming process, the analysis of the political, economic and social situation on the basis of which the EC response strategy is formulated, and the involvement of the GoU and CSOs in the programming process, together ensure that the needs of the country and its population are duly taken into consideration. But some CSOs consider that the EC unduly presses the GoU to implement policies that serve EU interests at the expense of policies more strongly oriented to satisfying the needs of the population.

Action Fiches are elaborated in close cooperation with the direct beneficiaries of these interventions. Indeed the ROM reports of the projects included in our sample confirm that they meet the needs of the beneficiaries; the average mark given by the monitors to the

quality of project design, that is 2.93, is satisfactory⁶. Of 18 projects for which ROM reports were available, only two were given a mark slightly below 2.5, and in both cases this relatively low mark was due to reasons other than how far the projects met needs of the beneficiary, which on the contrary was assessed quite positively.

The Judgement Criterion is validated. The needs of the country and its population are taken into consideration through an analysis of the political, economic and social situation and through the involvement of the Government and of Civil Society in the cooperation programming process.

4.1.2 The Commission’s cooperation interventions are consistent with the objectives and priorities agreed by both parties in the PCA and the EU-Ukraine Action Plan (JC1.2)

The European Council Strategy on Ukraine adopted by the European Council in 1999 stressed that the EU and Ukraine have a common interest in achieving the objectives set for their cooperation. In the same spirit the CSP 2002-2006 underlined that “as Ukraine’s immediate neighbour, the EU has a particular interest in a politically, economically and socially stable Ukraine” and the CSP 2007-2013 characterised the relation between Ukraine and the EU as a “mutually beneficial partnership.” This means that, although the needs of the country and its population are an important element to be taken into consideration, a key criterion for assessing the relevance of the Commission’s cooperation with Ukraine is its consistency with the objectives that both parties have identified as reflecting their common interest. Such objectives are formulated in documents jointly adopted by the two parties, in particular the Partnership and Cooperation Agreement, signed in 1994 and entering into force in 1999, and the EU-Ukraine Action Plan adopted in 2005.

CSPs explicitly refer to the PCA and the EU-Ukraine Action Plan. The CSP 2002-2006 states that “the EU’s cooperation objectives with Ukraine are to foster respect of democratic principles and human rights as well as transition towards a market economy. They are based on the Partnership and Cooperation Agreement (PCA) and the EU’s Common Strategy, which form part of a proximity policy, reflecting the political and strategic importance of Ukraine to the EU”. Similarly the CSP 2007-2013 states that “EC assistance over the period covered by this strategy will aim at supporting Ukraine’s ambitious reform agenda on the basis of the policy objectives defined in the Partnership and Cooperation Agreement (PCA) of April 1998 and the EU-Ukraine Action Plan of February 2005.”

In both CSPs the formulation of the Commission’s response strategy lists objectives that are those of the PCA and of the EU-Ukraine Action Plan, namely:

- Political dialogue and reform : strengthening democracy, good governance and the rule of law; human rights and fundamental freedoms; fight against crime and corruption and development of the civil society including in the social and economic sphere.

⁶ ROM reports assess the projects with marks ranging from A (very good) to D (unsatisfactory). In order to average these marks, we have replaced them by figures: 4 for A; 3 for B; 2 for C and 1 for D.

- Cooperation in justice, freedom and security: the EU Action Plan on Justice and Home Affairs with Ukraine of December 2001, updated in 2007, defines the broad areas of cooperation with Ukraine in these areas.
- Supporting Ukrainian compliance with the PCA and the WTO, through support for developing appropriate legislation and for its effective implementation.
- Economic and social reform and development: further progression on the establishment of a fully functioning market economy; strengthening social reform and encouraging approximation to EU social standards; reducing regional imbalances; promotion of sustainable development
- Support for the social reform process to create stronger acceptance of the need for further economic reform and to reduce poverty and alleviate the social impact of transition.
- Trade, market and regulatory reform: customs legislation and procedures, technical regulations, standards and conformity assessment, sanitary and phytosanitary issues, establishment and company law, financial services and markets, taxation, competition and consumer protection policy, development of the legislative and administrative framework for SMEs, intellectual and industrial property rights, public procurement and statistics.
- Transport, energy, information society and environment: Strengthening administrative capacity for the formulation and implementation of sectoral strategies and policies converging towards relevant EU policies and legislation is a general priority in these sectors.

However significant changes may be noted over time in the priority areas of the EC cooperation or in its approach to some issues. This concerns social issues in particular. Under the heading “Support in addressing the social consequences of transition” social issues were one of the three priority areas identified in the CSP 2002-2006. They were removed from the cooperation priority areas in the CSP 2007-2013 and are currently addressed in the framework of local development projects. Indeed in the years 2000 the poverty issue became gradually less acute for the strong economic recovery enjoyed by Ukraine between 2000 and 2008 made possible a sharp reduction in poverty levels. Nevertheless the Ukrainian social protection system remains in dire need of reform⁷.

Another significant change affected the EC support for economic development which over time has remained a priority area of the EC cooperation. In the CSP 2002-2006 this issue was characterised as “support to private sector and economic development” and involved direct assistance to enterprises and for the development of such sectors as banking and insurance. In the NIP 2007-2010 the EC approach to this issue moved towards the establishment of a positive regulatory environment with a focus on the promotion of mutual trade and improvement of the investment climate. Finally in the NIP 2011-2013 this priority area is defined as “Facilitation of the entry into force of the EU-Ukraine Association Agreement including a Deep and Comprehensive Free Trade Area (DCFTA).”

These changes in the priority settings of the cooperation strategy may be interpreted as indications that the EC cooperation with Ukraine primarily aims at promoting EU

⁷ See § 4.3

interests. They rather confirm that the EC-EU cooperation with Ukraine, as pointed out above, is based on the principle of mutual interest.

The Judgement Criterion is validated. The EC cooperation strategy with Ukraine is consistent with the objectives and priorities jointly agreed by both parties as reflecting their mutual interest.

4.1.3 The Commission's cooperation interventions are consistent with the objectives of the European Neighbourhood Policy (JC1.3)

The three main features of the European Neighbourhood Policy (ENP) are:

- Its objective : sharing the benefits of the EU's 2004 enlargement with neighbouring countries in strengthening stability, security and well-being for all concerned.
- Its method: defining together with partner countries a set of priorities, fulfilment of which will bring them closer to the European Union. These priorities are incorporated in a jointly-agreed Action Plan, covering a number of key areas for specific action: political dialogue and reform; trade and measures preparing partners for gradually getting closer to the EU's Internal Market; justice and home affairs; energy, transport, information society, environment and research and innovation; and social policy and people-to-people contacts.
- Its underlying principles: the privileged relationship with neighbours building on mutual commitment to common values principally within the fields of the rule of law, good governance, the respect for human rights, including minority rights, the promotion of good neighbourly relations, and the principles of market economy and sustainable development.

The key policy documents that framed the cooperation between the EC and Ukraine from the start of the period under review, the European Council Strategy on Ukraine and the PCA, anticipated the ENP objective to a large extent. The European Council Strategy in particular underlined that “the enlargement of the Union will further enhance economic dynamism and political stability in the region, thus increasing the possibilities for cooperation with Ukraine” and set as an objective of the EU cooperation “to facilitate Ukraine's further rapprochement with the EU.” In the same manner, the CSP 2002-2006 insisted on the proximity between Ukraine and the EU as a structuring factor of the EC/EU cooperation with this country.

The European Council Strategy on Ukraine and the PCA stress that the partnership between the European Union is based on shared values of democracy, rule of law, respect for human rights and good governance, that are all promoted by the ENP.

As for the method, in February 2005 Ukraine was one of the first countries of the EU neighbourhood for which an Action Plan was concluded with the EU. An Action Plan for Justice and Home Affairs had indeed already been adopted in 2001, which was updated and completed in June 2007 as the Action Plan for Justice, Freedom and Security.

The Judgment Criterion is validated. The EC cooperation with Ukraine is consistent with the objective, method and principle of the Neighbourhood Policy.

4.2 Democracy and the Rule of Law

EQ2: To what extent have the Commission's interventions contributed to strengthening democracy and the rule of law?

EQ 2 on Democracy and the Rule of Law – Answer Summary Box

Democracy and the rule of law are basic principles underpinning the relations between the EU and Ukraine and hence a major area of the EC cooperation with Ukraine. EC interventions in this area targeted in particular the Judiciary, Civil Society Organisations and their involvement in the policy-making process and the media.

During the period under review the Commission provided continuous assistance aimed at enhancing the capacity of the various components of the judicial system. All the main institutions of the system and all related professions have been involved in the EC projects, which contributed to more effective and efficient functioning of the judiciary. But beyond these improvements the Commission's interventions were also intended to accompany and support a comprehensive reform of the Ukrainian judiciary, which in the event did not take place. In consequence the independence of the judiciary has not been achieved and the population's distrust of the judicial system has been further aggravated.

The European Commission supported the development of CSOs, and their involvement in policy decision-making and implementation, through a series of small projects mainly targeting the provision of social services. Two larger projects effectively contributed respectively to strengthening cooperation between local authorities and CSOs for the delivery of social services, and to cooperation between CSOs and the relevant State Committee in the implementation of a consumer policy. But for most CSOs, including those that have benefited from the Commission's support, financial sustainability remains a major problem.

Since 2005 media freedom has made significant progress in Ukraine. The EC interventions in the sector, which assisted in the development of a legal and regulatory framework in line with European standards, supported the development of independent media, and implemented capacity-building activities aimed at enhancing the professionalism of journalists, have made a positive contribution to this development.

Democracy and human rights are a major area of the EU cooperation with Ukraine. In its general principles the Partnership and Cooperation Agreement states that "Respect for the democratic principles and human rights (...) underpin the internal and external policies of the Parties and constitute an essential element of partnership and of this Agreement". The PCA established a Sub-Committee on Justice, Freedom and Security through which policy dialogue is conducted on these issues between the Government of Ukraine and the EU.

The importance given by the EU to its cooperation with Ukraine in the field of democracy and human rights was reflected in the adoption in 2001 of a Justice and Home Affairs (JHA) Action Plan, up-dated in 2007 as Justice, Freedom and Security (JFS) Action Plan. This Action Plan provides a framework for the Commission's support to Ukraine's efforts to consolidate democracy and protect human rights and fundamental freedoms.

4.2.1 The Commission’s interventions contributed to enhance the independence of the judiciary and to strengthen its administrative capacity (JC 2.1)

The NIP 2002-2003 pointed out that “the judiciary is the weakest pillar of power” and concluded from this assessment that the Commission should provide assistance for the implementation of comprehensive judicial reform and should provide its support on a scale sufficient to achieve a major impact.

In fact, during the period 2002-2009 under review the European Commission provided continuous assistance for reform of the judiciary and for enhancing the capacity of the various components of the judicial system. The Commission’s cooperation in this field has been closely coordinated with the Council of Europe, which implemented several of the Commission’s projects and made contributions to their financing.

Besides smaller and more narrowly focused projects, such as for instance a EIDHR-funded project aimed at improving access to justice for the rural population, the Commission’s support was provided through four large TACIS projects addressing the legal framework governing the judiciary system, the recruitment and training of judges, judiciary case management, the reform of court administration, and the efficiency of the judicial system.

In addition a two-year twinning project linking the Ukrainian Academy of Judges and the Austrian Ministry of Justice was launched in July 2009. This project should enhance the sustainability of previous measures aimed at improving the professional qualification of judges.

The European Commission’s support for the reform and strengthening of the judiciary in Ukraine has been characterised by its comprehensiveness and its continuity. All main institutions of the sector – the Ministry of Justice, High Council of Justice, State Court Administration, High Administration Court, High Commercial Court, Academy of Judges, State Enforcement Service - along with all related professions including heads of courts, judges, prosecutors, lawyers and advocates, court personnel, administrative and training staff of judges, State enforcement officers, have been involved. In addition to technical assistance these projects included the supply of equipment for a more efficient and transparent judicial system.

Interviews with stakeholders and ROM reports deliver a positive assessment of the projects with respect to their relevance, the quality of the outputs delivered by the implementation agencies, and the effectiveness and efficiency of their implementation. Noticeable achievements have been the establishment of a system of mediation in commercial and administrative matters and the enhancement of the training system for judges. Equipment has been provided for the modernisation of court administration and case management and for providing access of the public to court-related information. A long-term computerisation strategy for the judiciary has been elaborated, criteria for measurement of the workload of judges have been established, and a system of random case assignment has been created. The contribution of the projects to inter-agency cooperation is also mentioned as a significant contribution of the Commission’s interventions.

To the extent that the projects concentrated on the delivery of results and services for proper functioning of justice, on building up the capacity of targeted groups and their exposure to the best European practices, the sustainability of their achievements has not

seriously been impaired by the failure of the Government to reform the judicial system. But that said, the projects were also meant to contribute to an in-depth reform of the judicial system and to support its implementation. This reform however did not take place.

In 2005 the Council of Europe noted in its Action Plan for cooperation with Ukraine that “until recently Ukraine has adhered to a double standard, proclaiming a superficial adherence to the principle of the rule of law, but not ensuring that new laws are fully in compliance with rule of law principles, implemented or enforced”.

The “Orange Revolution” of November 2004 and the accession of Viktor Yushchenko to the Presidency in January 2005 had raised hopes that a comprehensive reform would complete the transformation of the Ukrainian judicial system into a western-style judiciary based on European values and the rule of law. In May 2006 the presidential decree “Concept for improvement of the judicial system and ensuring fair trial in Ukraine in line with European Standards” lent credence to this perspective. This policy paper committed the Government to implementing reforms aimed at ensuring accessibility of justice; fair trial proceedings; the professionalism, independence and impartiality of judges; legal certainty, consistency and openness of court decisions; and the efficiency of judicial protection.

In the following months two draft laws, respectively addressing the judiciary and the status of judges, were prepared. These draft laws, which should have made a major contribution to the projected reform of the judicial system, were submitted for comments to the Venice Commission of the Council of Europe. In March 2007 the Venice Commission, while considering that the two draft laws represented “a clear improvement as compared to the present situation and previous drafts”, concluded that they would “require a number of further improvements in order to guarantee an independent and efficient judiciary”. The Venice Commission provided extensive comments and recommendations aimed at ensuring that the new laws are in line with European standards.

The draft laws on the judiciary and the status of judges were in fact amended and merged into one single “Law on the judicial system and the status of judges of Ukraine”. However, because building consensus between the parties involved in the reform of the judiciary proved extremely difficult in the climate of political wrangling that prevailed in Ukraine, it was only in July 2009, six months before the new presidential election, that the amended and consolidated draft law was eventually finalised and once again submitted for advice to the Venice Commission. In its opinion, released in March 2010, the Venice Commission welcomed that “most of the changes which have been made [to the two draft draws it had examined in 2006] are positive and should be regarded as improvements in the text” but also pinpointed residual problems, particularly regarding the appointment and removal of judges and the system of judicial self-government, as well as inconsistencies between the law and the Constitution. It warned the newly elected government against hasty adoption of the law.

Public prosecution is another problematic area of the Ukrainian judicial system, which had on several occasions attracted severe criticism from the Venice Commission. But here again attempts to reform the system fell short. In 2009 a draft law on the office of the prosecutor, prepared by the Parliament, was submitted for advice to the Venice Commission, which stated that it “does not intend to reform the present functioning of the

prosecution service in Ukraine which was inherited from the Soviet “prokuratura” system. It is rather an attempt to preserve the status quo and to put an end to reform efforts undertaken on the basis of the 1996 Constitution of Ukraine.” It recommended withdrawal of the draft.

Since the expected reform of the judiciary did not take place, the Ukrainian judicial system remains plagued with serious flaws. In 2008 the Centre for Judicial Studies, a specialised CSO, conducted - with the support of the main professional organisations of the sector - a monitoring of judicial independence in Ukraine on the basis of questionnaires sent to 2,300 judges, prosecutors and bar lawyers. The survey revealed that only one-fifth of the respondents considered that they have sufficient powers to uphold the authority of judges and respect for the court, and to be able to exert influence over these processes. Still more worryingly, only 11% of the judges surveyed considered that their level of pay enables them to be independent. The survey also underlined that non-enforcement, or enforcement after considerable delay, of court rulings remains one of the main reasons for the public’s lack of faith in the court system and in the State as a whole. Indeed the public image of the judiciary is negative and has continued to deteriorate over the last five years. Opinion polls carried out since 2005 show that the percentage of the population which does not trust the judiciary has increased from under 40% in 2005 to over 60% in 2009.

The Judgement criterion is partially validated. EC interventions contributed to enhancing the administrative capacity of the judiciary and hence its efficiency, but in the absence of a structural reform of the sector, true independence of the judiciary has not been achieved.

4.2.2 The Commission’s interventions contributed to fostering the development of civil society and the involvement of citizens in the decision-making process (JC 2.2)

The Constitution and the laws of Ukraine provide for freedom of association. Registration requirements for organisations are extensive, but there are no reports that the government has used them to disband existing legitimate organisations or prevent new ones from being formed. In its 2009 survey of transition countries, Freedom House gives Ukraine a 2.75 mark with respect to civil society freedom on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. This mark compares favourably with Moldova (3.75), Russia (5.75) and Belarus (6.25).

At the end of 2008 more than 50,000 CSOs were registered, with nearly 1,800 maintaining national status. However, not all registered CSOs actually operate. Most are trade unions, charitable and religious organisations, and groups involved in ethnic, cultural, youth, professional, and human rights activities. Thematic nationwide networks function in areas such as human rights, democratisation, environment, disabilities, public policy, regional development, and the fight against HIV/AIDS.

While high professional competence is observed in the oldest organisations, which benefited from intensive donor training in a variety of areas, few organisations have well-trained professional staff capable of ensuring efficient management and fund-raising.

Financial sustainability is for many CSOs a major problem and access to public funds is very limited. Nevertheless, USAID in its 2008 NGO sustainability report noted that,

although the majority of NGOs remain largely dependent on international donor funding, they are increasingly diversifying their funding sources. NGOs actively solicit support from local businesses, apply for grant programmes offered by all levels of government, expand volunteer involvement, and seek funding from corporate and private foundations. The private sector offers more funding to charitable causes directly or through corporate and private foundations, which are increasing in number and in levels of funding.

The Council of Ministers Resolution on “Public Involvement in Development and Implementation of Public Policies” of 2004 commits executive agencies to initiating public consultations on draft regulations affecting individual rights and freedoms, regional and national public programmes, and consolidated reports on budget expenditures. Basic institutional mechanisms are in place and various advisory bodies have been established. Public councils exist in 77 national executive agencies and all oblast administrations. Many of these councils were criticised for being passive and government-controlled, but some are quite successful. The council to the Ministry of Internal Affairs, formed of representatives of human rights NGOs, developed a system for preventing human rights abuse in the Ukrainian penitentiary system. NGOs successfully lobbied for creation of a special human rights department within the ministry, and many of the new department’s employees are human rights activists. The citizens council at the Ministry of Environment initiated parliamentary hearings on nuclear energy policy that raised important safety issues. NGOs also report positive cooperation with the State Security Service on anti-corruption work.

In May 2008 the Cabinet of Ministers of Ukraine, following a Council of Europe recommendation, adopted an action plan to implement a concept for government support for civil society development. Civil society provided significant inputs in drafting and promoting the concept and action plan. The Ministry of Justice posted the draft Law on Public Associations on its website for public comments and the Cabinet of Ministers submitted the draft to Parliament in November 2008. The draft law has however not yet been adopted by the Verkhovna Rada.

The NIP 2007-2010 underlined that top-down measures in support of democracy and human rights “should be accompanied by a bottom-up approach promoting citizens’ rights and public participation in the political, economic and social spheres leading to stronger participation by citizens in public life and in control of institutional bodies and law enforcement agencies and services, including at local level.” This was achieved in particular through the support given by the Commission to the development of CSOs.

During the period 2002-2009 under review, the EC supported the development of CSOs and the strengthening of their capacities through more than 40 projects financed under TACIS and EIDHR, with a total combined budget of €10 million. While addressing a variety of issues, the EC support concentrated on local CSOs active in the provision of social services, notably in the health sector, or in defence of the rights of marginalised groups such as, for instance, disabled persons. But the sustainability of these project achievements was not addressed.

The project “Strengthening Civil Society in Ukraine” implemented in 2005/2007 in the oblasts of Donetsk, Chernivtsi, Kherson, Rivne, and Sumy aimed at raising the capacities of socially-oriented CSOs and at promoting collaboration between them and local authorities. This project contributed to the development of Social Partnership Centres (SPCs) as support and information structures for CSOs and local authorities. As

demonstrated by an increasing number of CSO projects co-financed by local authorities, the project succeeded in improving cooperation between local authorities and CSOs in the delivery of social services. Nevertheless monitors noted that here again sustainability of these results is not secured for SPCs, and the CSOs involved in the project remain highly dependent on financial support from international donors.

Another large project, titled “Consumer Society and Citizens Networks”, was implemented during the period 2006/2009, UNDP being the implementation agency. This project aimed at promoting access of citizens to information on product safety, consumer rights protection, and the results of independent testing, as well as promoting wide public discussion of challenges facing the consumer society in Ukraine. It initiated a nationwide consumer awareness campaign including a public campaign on food safety and nutrition; held monthly seminars for journalists; and published and disseminated brochures and leaflets on various consumer rights issues. It has been supported by the active involvement of local CSOs and other relevant institutions, and contributed to the preparation and signing of the “Cooperation strategy of the State Committee for Technical Regulation and Consumer Policy (DSSU) with CSOs on consumer rights and interests for 2008-2015”. In addition the project gave rise to the establishment of a Consumer Information Centre in Kiev. But here again the monitors stressed in their reports that the lack of sustainable financing and of support to consumer CSOs from the Government put at risk the survival of the CSOs involved in the project. They also questioned the viability of the Consumer Information Centre in the absence of further financial support from the Commission or other donors.

The Judgment Criterion is partially validated. Commission’s interventions effectively contributed to involvement of CSOs in decision-making processes, but the sustainability of the institutions established for that purpose and of the CSOs themselves is not ensured.

4.2.3 The Commission’s interventions contributed to the development of pluralistic media (JC 2.3)

In its 2009 survey of transition countries, Freedom House gave Ukraine a 2.50 mark with respect to media freedom on a scale of 1 to 7, with 1 representing the highest level of independence and 7 the lowest. This mark compares very favourably with Moldova (5.75), Russia (6.25) and Belarus (6.75), and suggests significant progress since 2005 when the degree of independence of the media in Ukraine was given a 5.0 mark.

In fact, since 2005 and the Orange Revolution the government has abstained from direct political interference in the media, which have consequently grown more pluralistic, offering a broad range of opinions to the public. With hundreds of State and private television and radio stations and numerous print outlets, Ukraine’s media sector is very diverse. The government does not restrict access to foreign outlets or to the internet, which is used by an estimated 15% of the population. The Ukrainian Parliament ratified the Convention on Trans-frontier Television (CTTV) which came into force on 1 July 2009. The Convention is intended to bring Ukraine closer to European standards relating to the re-broadcasting of foreign channels.

The EC has made a contribution to these positive developments. Through three projects with a budget of over €1 million each, the Commission assisted in the development of a legal and regulatory framework ensuring freedom of the media against interference by the authorities and protective of journalists' rights; it assisted in the introduction of digital broadcasting as a basis for the development of small independent media operating at local level; and it implemented capacity-building activities aimed at enhancing the professionalism and ethic of journalists. Typically, the project "Promotion of European standards in Ukrainian media environment", which has just been completed, combined expert analysis and assistance on developing media legislation in line with European norms and standards, including promotion of a code of ethics for journalists; organisation of training events for media in Kiev and in all oblasts' capital cities; and support for dialogue and cooperation between the media, civil society and the State administration at central and regional levels.

Stakeholders positively assess the concreteness of the Commission project objectives, the quality of the outputs they delivered and their contribution to the favourable developments observed in the sector.

The media sector however faces new challenges. The major national media outlets, in particular the television channels, are owned by a handful of businessmen with political interests. The owners or their representatives have the decisive word in the adjustment of editorial and personnel policy. As for local media, they are frequently under the control of local governments. Journalists who investigate wrongdoing at local level still face physical intimidation, and local police and prosecutors do not energetically pursue such cases. Observers also note an increasing tendency to fill the airwaves and print with paid-for information disguised as news and favouring certain politicians or causes. This phenomenon - referred to as *dzhynsa* - weakens the public credibility of journalists.

The Judgment Criterion is validated. The Commission interventions have made an effective contribution to the development of pluralistic media.

4.3 Social Protection and Assistance

EQ3: To what extent have the Commission's interventions contributed to establishing an integrated, comprehensive and effective social protection and assistance system?

EQ 3 on Social protection and assistance – Answer Summary Box

Although social issues are no longer a priority area of the EC cooperation with Ukraine as defined in the CSP 2007-2013, during the period under review the Commission devoted a significant volume of resources to interventions targeting the health sector, social assistance and other social issues.

In the health sector, projects that had a purely technical character effectively complemented other donor interventions, contributing to the reversal of the trend towards increasing prevalence of tuberculosis and to significant although still insufficient progress in the fight against HIV/AIDS. But EC interventions that aimed at promoting reforms in the health system, and in particular at modifying the sector's financing mechanism, met with strong resistance and failed to bring about changes in a system which is very inefficient and inequitable. Other sectors of social protection have not been addressed.

The Commission was more successful in its support for the reform of social assistance. It addressed the lack of coherence and efficiency of the social assistance system through the introduction of an integrated approach to assistance for vulnerable families and children. This approach, which was introduced on a pilot basis, is strongly supported by the Ministry of Family, Youth and Sport, and is currently extended to new Oblasts. More recently the Commission has undertaken to equip the Ministries involved in the design and implementation of social assistance with an information system and with analytical tools for the formulation of more effective and efficient policy measures on a rational basis, and to monitor the outcomes of this assistance.

Besides these large interventions a number of smaller projects, most frequently implemented by NGOs, addressed the needs of various vulnerable groups.

The CSP 2002-2006, as the previous CSPs, identified support for addressing the social consequences of transition as a priority area of the Commission's cooperation with Ukraine. But social issues were not retained as a priority area in the CSP 2007-2013, and the EU-Ukraine Action Plan adopted in December 2005, despite mentioning social issues as a matter of strengthened policy dialogue and cooperation, does not list any precise Government commitments in this area. Nevertheless, during the period 2002-2009 covered by the evaluation a number of projects targeting social issues were implemented by the Commission.

In this sub-chapter social assistance is understood as the provision of social services to specific vulnerable groups (single mothers, orphans, disabled persons, etc.) as opposed to social protection, which consists in the provision of social services and allowances (healthcare, pensions, unemployment benefits, etc) to the whole population.

4.3.1 The Commission's interventions contributed to the development of an integrated social protection system covering in particular health risks and providing pensions to the elderly (JC 3.1)

Up to now the Ukrainian healthcare system has basically remained what it was in Soviet times. The State budget and the budgets of regional and local governments are theoretically the sole source of financing of the healthcare system. This system however no longer works satisfactorily; it delivers poor results and lacks equity.

There is no incentive for better quality of healthcare services or more efficient use of resources. Financial allocations to healthcare facilities are determined in relation to capacity indicators (number of in-patient beds, size of staff) and not in relation to the services provided to the population. In consequence managers of healthcare facilities are not interested in introducing changes which, while allowing more efficient use of resources, might result in a reduction in the volume of funds allocated to their institutions.

Although salaries in the health sector are low, the share of wages represents more than 75% of total healthcare spending, a percentage significantly higher than in most countries. This leaves limited resources for maintenance and upgrade of healthcare facilities.

While healthcare services are theoretically delivered free of charge, formal and informal out-of-pocket payments have become the rule. According to WHO, total healthcare spending accounted for 6.9% of GDP in 2007. 57.6% of these expenses were financed from public budgets and the remaining 42.4% from out-of-pocket payments by the patients. Less than 1% of the population has subscribed to a health insurance scheme.

Reform of the healthcare system and in particular introduction of a mandatory health insurance system has been actively debated over the last ten years, but no agreement was reached on the principles of reform.

Health indicators reflect the weaknesses of the healthcare system. In 2008 life expectancy at birth stood at 68 years and healthy life expectancy at birth at 60 years, as against 74 years and 67 years respectively in the WHO European region database. Particularly worrying is the development of HIV/AIDS and, until recently, of tuberculosis. According to WHO, the incidence of tuberculosis doubled between 1995 and 2005 while HIV incidence rose tenfold, making Ukraine the country most affected by both diseases in Eastern Europe.

During the period 2002-2009 under review, the European Commission implemented in the health sector six large projects each with a budget exceeding €1.0 million.

Four of these projects addressed the prevention and control of tuberculosis and HIV/AIDS. To the extent that these projects had a purely technical character and did not raise institutional issues, they were quite successful. In particular the project aimed at the development of the DOTS approach to tuberculosis detection and treatment delivered spectacular results: whereas only 15% of the population was covered by DOTS in 2002, the coverage rate reached 100% in 2006 and the tuberculosis prevalence rate, which had been on an increasing trend during the 1990s, started to decrease from a maximum of 135 cases per 100,000 inhabitants in 2003 to 102 in 2007. As far as HIV/AIDS is concerned, results - although less impressive - have been positive: the number of new HIV infection cases has continued to grow but at lower annual growth rates, from a peak at 16.9% in 2006 to

5.7% in 2009. These results cannot however be exclusively attributed to the EC projects for other donors, in particular the Global Fund, have been active in this sector.

Two other projects addressed institutional issues. In particular, the project “Health Financing and Management in Ukraine” implemented in 2004-2006 piloted in two rayons a new mechanism for the financing of healthcare facilities. Instead of allocating to healthcare facilities line-itemised resources, the volume of which is determined by capacity indicators, the mechanism promoted by the project relied on a block contract between each hospital and a specialised rayon administrative department acting as healthcare service purchaser. The volume of outpatient and inpatient care to be provided for the year determined the amount of funds made available to each healthcare facility. This proposal met such strong resistance from the medical personnel and from circles within the rayon administration that its implementation was cancelled.

Another problematic area in the field of social protection is the pension system.

A reform of the pension system was enacted in 2004. It is based on three pillars. The first tier is a Pay-as-You-Go system with benefits based on personal contributions to the system instead of the average wage and number of years worked. The pensions of the beneficiaries of the previous pension system were recalculated under the new system, and most benefits were slightly increased. The second tier is a fully-funded pension investment fund run by the government. The third tier is a system of licensed private pension funds. An old-age pension is guaranteed to every male over 60 and every female over 55 if they have worked for at least five years.

As a consequence of several increases of the minimum pension (including a 177% increase in 2004), the cost of pensions jumped from 9.2% of GDP in 2003 to 15.3% of GDP in 2005, a level which is according to the IMF amongst the highest in the world and which implies heavy transfers from the State budget to the Pension Fund. This situation is financially all the more unsustainable as stagnation of the labour force and aging of the population reduce the ratio between the number of contributors and the number of pensioners. From 1.1 in 2007 this ratio could fall to 0.72 in 2050.

The Blue Ribbon Analysis and Advisory Centre, a think-tank established by UNDP and financially supported by the Commission, made several contributions to the debate on the measures that could be implemented to secure the medium and long term sustainability of the pension system.

The Judgment Criterion is not validated. EC interventions in the health sector, while delivering positive results, did not succeed at making the health system more efficient and equitable. The EC hardly intervened on the pension issue.

4.3.2 The Commission’s interventions contributed to the design and implementation of a national strategy on employment (JC 3.2)

Between 2001 and 2008, employment increased by 1 million from 19.97 million jobs to 20.97 million. Since the labour force remained stable, this employment increase led to a reduction of 1 million of the number of unemployed from 2.4 million in 2001 to 1.4 million in 2008, and the unemployment rate measured by the ILO definition fell from 10.9% in 2001 to 6.4% in 2008. From the mid-2000s enterprises were confronted with a

shortage of qualified workers. But the severe recession suffered by Ukraine from the last quarter of 2008 resulted in the loss of 780,000 jobs and an increase in the unemployment rate to 8.8% in 2009.

There exists an Unemployment Insurance Fund financed through contributions paid by employers and employees and managed by a tripartite Board: State, entrepreneur associations, and trade unions. Unemployment benefits depend on the length of the employment period before the employee loses his or her job. They are paid for up to 360 days in a two-year period. The qualifying conditions for receiving unemployment benefit are being registered at an employment office, being able and willing to work, and having an income not exceeding the minimum wage. In 2008, the average unemployment allowance represented 94% of the minimum wage.

The State Employment Service, with its 645 offices throughout the country, pays the unemployment benefits, assists unemployed persons in their search of a job, publicises vacant jobs, and provides professional training and retraining to job seekers. But in 2009 only 35.4% of unemployed persons were registered at the State Employment Service.

The European Commission engages with Ukraine in a policy dialogue on employment within the framework of the annual meetings of the Sub-Committee on Economic and Social Issues, Finance and Statistics. The Ukrainian government presents to their European partners the main orientations of the employment policy and comments on statistics such as the unemployment rate and average wages. But evaluators did not find any evidence of EC cooperation activities targeting employment issues during the period covered by the evaluation.

The Judgment Criterion is not validated. The EC cooperation did not address the employment policy.

4.3.3 The Commission's contributions supported the provision of social assistance to the most vulnerable groups of the population (JC 3.3)

In Ukraine social assistance benefits are delivered under five main programmes: (i) social privileges; (ii) Chernobyl benefits; (iii) housing and utility allowances; (iv) family benefits which in turn include 11 types of benefit; and (v) social assistance for low income families. Some social benefits are paid in cash or in kind, others, for example housing and utility allowances, are in the form of direct transfers to service providers for the provision of services at a price lower than their production cost. Social benefits are financed by the State budget and local government budgets and amount to about 5% of GDP. To obtain social benefits, persons in need have to file a written application to the relevant local executive authority or the local government.

According to the World Bank, which supports the implementation of a Social Assistance Modernisation Plan, improvements to the system should aim at (i) strengthening information on living standards and monitoring of poverty levels; (ii) achieving greater coherence of the system; (iii) improving the targeting of benefits; and (iv) simplifying procedures for delivery and improving the efficiency of the system's administration.

The EC implemented in 2005-2007 a project "Development of integrated social services for exposed families and children", which aimed precisely at improving the coherence and

efficiency of social assistance provision through the development, and implementation on a pilot basis, of innovative models of integrated social services. Based on the lessons learned from the pilots, the project enabled the Ministry of Family, Youth and Sport (MoFYS) to make recommendations for improving the existing legislation with a view of facilitating implementation of a basic package of social services. Firm proposals for the planning and financing of integrated social services were developed, which demonstrated that the new approach is less costly than the previous one while being more effective. A Training Centre was established, trainers were trained and manuals were developed to strengthen the capacity of the staff of Social Centres to implement the new approach to the delivery of social services. A public awareness campaign was conducted to promote foster care over institutional care.

This project is unanimously assessed as particularly successful. Family Support and Early Prevention services were developed in 35 rayons and city administrations, foster care in 19 rayons, and a full range of Integrated Social Services delivered in two rayons through a “single window” organisation. Family social workers were introduced in a number of villages. The project took an active part in drawing up the new Law on Social Services for Families which was approved in November 2006, and in drafting of the Deinstitutionalisation Strategy and of a series of by-laws and regulations. Performance indicators for the project prove the effectiveness of the approach it is promoting. The model piloted by the project is replicated in new oblasts with the assistance of other donors, although MoFYS, which is strongly supportive of the new approach, considers that its extension to other oblasts is much too slow.

The two-and-a-half year project “Support to the development of a mid-term strategy for improving the system of social benefits”, launched in July 2008, addresses another weakness of the social assistance system, namely the lack of reliable information for designing social policy. The project contributes to the development at the Centre for Social Prospective Studies, a research institute under the aegis of the Ministry of Labour and Social Policy (MoLSP), of a Data Collection and Analysis Centre designed to collect, process and analyse information at macro and micro level on the living conditions of the Ukrainian population. In parallel, the project supports the Ministry in developing advanced models and methodologies for projecting budget allocations for social protection, based on statistics on the part of the population eligible for different types of social benefits. Finally, the project supports the Ministry in developing possible scenarios for modernisation of the social assistance system with a focus on optimisation and increased efficiency of existing budget resources. MoLSP is the main beneficiary of the project, but the Ministry of Family, Youth and Sport and the Ministry of Finance are closely associated with its implementation through their participation in the project Steering Committee and working groups. It is worth noting that two donors active in the field of social protection and assistance, the World Bank and the Swedish International Development Agency, also participate in the project Steering Committee and working groups. MoLSP is confident that, thanks to the tools developed with assistance from the project, it will by the end of 2010 be able to develop a financially sustainable strategy for the development of a system of social protection more effectively meeting the needs of vulnerable groups in the population.

Besides these two large projects, the EC implemented during the period under review a large number of smaller projects, most frequently implemented by CSOs which targeted specific vulnerable groups such as Roma children, people suffering from HIV/AIDS,

people with intellectual disabilities, homeless, street children, women victims of trafficking, and other such groups.

Finally, the EC project “Strengthening Civil Society in Ukraine” mentioned above⁸ contributed in those rayons where it was implemented to improving cooperation between local authorities and CSOs in the delivery of social services.

The Judgement Criterion is validated. The model of integrated social services successfully piloted by the Commission has been adopted by the Government and is being extended. The Commission is currently equipping the Government with tools for designing and implementing an effective and affordable social assistance policy.

4.4 Economic reform and development

EQ4: To what extent have the Commission’s interventions in support of economic reforms contributed to economic growth, poverty reduction and alleviation of regional imbalances?

EQ 4 on Economic reform and development – Answer Summary Box

The European Commission effectively contributed to improving the quality and effectiveness of public finance management through a series of projects addressing external control of public expenditure, the taxation system, cash and debt management, and internal control.

The positive assessment by a OECD peer review of Ukrainian competition law and policy, and of its implementation by the Antimonopoly Committee of Ukraine, may be attributed to a large extent to the lasting assistance provided to ACMU by the European Commission.

The UEPLAC project assisted the Ukrainian government in the approximation of its legal and regulatory framework to that of the EU, notably as regards the legal environment of economic activity. The adoption in 2008 of a Law on Joint-Stock Companies is considered by all stakeholders to have been an important step forward, as also will be the new law on public procurement adopted in June 2010 if its compliance with international standards is confirmed. But uneven enforcement of the legal framework, contradictions between items of legislation, bureaucratic administrative practices and, corruption - along with political instability - still result in a very low ranking for Ukraine in international surveys of business climate.

The Commission’s cooperation also contributed to the modernisation of the insurance and banking sectors, to the development of SMEs, and to the financing of their development. These interventions probably made a contribution to the strong development of the private sector which took place in Ukraine between 2000 and 2008.

EC interventions in support of local and regional development contributed, in the villages, cities and regions where they were implemented, to enhancing the management capacity of local administrations, to upgrading public equipment and consequently to improving the quality of public services. But to be replicated and deliver their full impact these interventions would have required a reform of intergovernmental relations, which did not take place.

⁸⁸ See above § 4.2.2

4.4.1 The Commission's cooperation contributed to the implementation of a macroeconomic policy conducive to strong and sustainable economic growth (JC 4.1)

Consolidating progress in macroeconomic stabilisation and growth policies is a stated objective of the EU-Ukraine Action Plan.

As noted above in the chapter devoted to the national background⁹, the Ukrainian economy enjoyed between 2002 and 2007 rapid economic growth with average annual growth of GDP exceeding 5% in real terms. The priority given to exchange rate management was insufficient to allow the monetary policy to prevent temporary inflation surges, notably in 2007-2008. The budget deficit remained manageable, but observers pointed out that the government has increasingly relied on borrowing from abroad for its financing. This period of rapid economic growth was suddenly interrupted by the world financial and economic crisis, which severely hit the Ukrainian economy from the second half of 2008. In 2009 GDP contracted by 15%, the State budget ran into heavy deficit and the exchange rate of the Hryvnia against the Euro fell by more than 60% between January 2008 and December 2009. By early 2010 the economy seemed to be stabilising.

The European Commission, along with other donors, relies on the IMF to ensure permanent monitoring of Ukraine's macroeconomic situation and policies and to provide advice and recommendations on these issues. Nevertheless, under the aegis of the Sub-Committee on Economic and Social Issues, Finance and Statistics the Government of Ukraine reports to its European partners on the main orientations of its fiscal and monetary policies, including structural reforms and their outcomes in terms of economic growth, inflation, exchange rate developments, and balance of payments. During these discussions the Ukrainian party may request support from the Commission for the formulation and implementation of reforms and for development of the relevant administration's capacity. Such requests may give rise to missions to Ukraine by experts from the Commission Services or specialised bodies, and to the implementation of cooperation projects.

For instance in 2005 SIGMA (Support for Improvement of Governance and Management), a joint initiative of the OECD and the European Commission, carried out - at the request of the Government and under financing from the British and Swedish aid agencies - an assessment of Ukraine's public administration. This report analysed in particular the public finance management system, public internal financial control, external audit and public procurement, and made recommendations for improving the transparency and effectiveness public finance management.

Commission-funded projects actively supported reform of the Ukrainian public finance management system in four key areas:

- External Audit, through a project implemented between 2002 and 2006, which aimed at developing the capacities of the Court of Accounts, strengthening its independence, and enlarging the scope of its activities to include analysis of the efficiency of public expenditure (value-for-money assessments);

⁹ See above § 2.1.2

- Budget execution, through a project implemented in 2005 and 2006 to enhance the effectiveness of cash and debt management by the State Treasury;
- Taxation reform, through a project implemented between 2005 and 2008 to assist Ukraine in establishing a transparent tax system through modernisation and transformation of the State Tax Administration (STA) into a key institution of public administration up to European standards.;
- Public internal finance control, through a two-year twinning project implemented in 2008 and 2009, which linked the Control and Revision Committee of Ukraine (KRU), the State body in charge of internal control of public expenditure, with the Swedish National Financial Management Authority.

All of these projects were in response to a request from the Ukrainian side. They effectively contributed to developing the capacities of the partner administrations and to the implementation of more transparent and effective management procedures in the sphere of public finance. To that extent they created favourable conditions for the implementation by the Government of its 2008-2012 Public Finance Modernisation Plan.

In addition to the Commission projects targeting public finance management, a 18-month twinning project linking the National Bank of Ukraine with the Bundesbank of Germany and the National Bank of Poland was launched in January 2010 with the objective of furthering the approximation of NBU status and practice to EU central banking standards.

Finally, in July 2010 the European Council and the European Parliament decided to make available to Ukraine macro-financial assistance in the form of a loan facility with a maximum principal amount of EUR 500 million¹⁰ and a maximum average maturity of 15 years. This assistance, closely coordinated with the IFIs, is intended to contribute to covering Ukraine's general balance-of-payments needs and the external financing needs of the State budget identified by the International Monetary Fund (IMF). It will support the authorities' stabilisation programme with a view to ensuring sustainable fiscal and external accounts, and will thus help Ukraine address the consequences of the global financial crisis. Its implementation is contingent on the signature between the GoU and the EC of a Memorandum of Understanding, which had however not yet been finalised at the time of completion of this evaluation report.

Besides these interventions directly targeting public finance management and macro-economic issues, Commission interventions in other areas, such as for instance its contribution to Ukraine's WTO accession¹¹ or its proactive role in mobilising IFIs to finance rehabilitation and modernisation of the Ukrainian gas transit system¹², have a significant contribution to improving the macroeconomic situation and to reducing the State budget deficit.

The Judgment Criterion is validated. EC interventions effectively contributed to enhancing the Government's capacity in key areas of Public Finance Management.

¹⁰ This loan is complemented by a previous macro-financial package of up to €110 million granted by the Council in 2002 but which had not yet been implemented, thus bringing the overall financial support to €610 million.

¹¹ See below § 4.5.1

¹² See below § 4.7.3

4.4.2 The Commission's cooperation contributed to the establishment of a fully functioning market economy (JC 4.2)

Under the heading “economic and social reforms and development”, the EU-Ukraine Action Plan lists three objectives aimed at creating favourable conditions for the development of the private sector:

- continued progress in establishment of a fully-functioning market economy, including price formation, control of State aid, and a legal environment that ensures fair competition between economic operators;
- further advances in gradual approximation of the basic legislative and regulatory framework to that of the EU, and ensure its effective implementation;
- improve the investment climate, including measures to ensure transparency, predictability and simplification of regulation and its application.

The EC cooperation made an important contribution to the first of these objectives through its sustained support to the Antimonopoly Committee of Ukraine (AMCU).

Three successive projects have been implemented in support of AMCU. The first - legal and institutional basis for protection of competition – was implemented from July 2003 to March 2007. It supported the development of legislation on economic competition compatible with the requirements of the PCA and WTO, contributed to enhancing the skills of AMCU, provided equipment to the Committee, and assisted in raising public awareness of the Government's competition policy. From end-2007 the achievements of this first project were consolidated through a twinning project linking AMCU with the institutions in charge of implementing competition policy in France and Hungary. A strong sense of ownership of the projects by AMCU management, along with the status of AMCU as an independent authority which protected it to some extent from the instability suffered by other public institutions, contributed to the effectiveness of these projects and to the sustainability of their outcomes. A peer review of competition law and policy carried out in 2008 by the OECD, while pointing out some weaknesses, concluded that “Ukraine has a comprehensive and well-designed competition law enforced by an effectively managed and well-regarded agency”.

A third project in support of both AMCU and the Ministry of Finance - harmonisation of competition and public procurement systems in Ukraine with EU standards – with duration of 2½ years was launched in January 2009. Beyond its contribution to further development of AMCU as an effective competition authority, this project puts the focus on two important issues in the field of the competence of AMCU: public procurement and State aid. Public procurement has for a long time been a problematic issue. While the initial law on public procurement, adopted in 2000, fell short of best practice in transparency and accountability, amendments made to this law in 2005-2006 worsened the situation, restricting the access of companies to public contracts and increasing the risk of corruption. Recommendations by SIGMA, the World Bank or the European-Ukrainian Policy and Legal Centre (UEPLAC) were not taken into consideration. In March 2008 the Cabinet of Ministers approved temporary regulations which unblocked the system but did not remedy its weaknesses. Eventually, in June 2010, a new law on public procurement was voted by Parliament. Subject to detailed analysis by experts, this law could well be in line with European standards. As for State aid, AMCU had in 2007 initiated amendments to the

law “On protection of economic competition” in order to define the legal concept of State aid and to introduce minimal control over anti-competitive State aid schemes, but Parliament rejected these proposals.

As regards the second objective – gradual approximation of basic legislative and regulatory framework to that of the EU – the main instrument of the Commission’s support has been the Ukraine-European Policy and Legal Advice Centre (UEPLAC), a structure first established in 1994 to underpin the understanding, implementation and ownership by the Ukrainian authorities of the whole process of approximation to EU principles and laws in all areas mentioned in the PCA. During the period under review two contracts allowed continuation of UEPLAC support for the approximation process. UEPLAC activities are demand-driven, its main partner on the Government side being the State Department for Legal Approximation. Within the sphere of internal market and economic and trade-related reforms, UEPLAC provided advice and expertise to the Ministry of Justice, the Ministry of Economy, the Ministry of Agrarian Policy, the Ministry of Finance and other public institutions on such areas as company law, free movement of goods, public procurement, taxation, and financial services. It produced a number of legal studies, notably in the field of Company Law, legislation on Limited Liability Companies, insolvency matters, taxation including environmental taxation, market surveillance, public procurement, State aid, and others. As far as the last two subjects are concerned, UEPLAC contributions complemented - through the provision of specific legal expertise - the assistance provided by the Commission to the Antimonopoly Committee.

The European Commission also provided financial support to the Blue Ribbon Analytical and Advisory Centre (BRAAC), a think-tank established by UNDP to monitor the reform process in various areas including the economy, and to provide advice to the Government.

Positive developments in the reform of the legal environment governing economic activity were recorded. In a review of the structural reforms implemented in Ukraine since 2005, the IMF noted that tax preferences have been eliminated, and that over 9,000 business regulations have been reviewed and nearly 5,000 repealed or amended. The adoption in September 2008 of a Law on Joint-Stock Companies, although it does not fully correspond to EU Directives on Company Law or to best practice in corporate governance, is considered by all stakeholders to have been an important step forward. But entrepreneurs’ associations highlight continuing gaps. They concern in particular the status of Limited Liability Companies, still governed by the “Law on Business Associations” adopted in 1991, which does not provide participants in limited-liability company with effective tools to protect their rights and to ensure a balance of interests. Also missing is a Land Law, which would establish a single registry of real estate property rights and guarantee proprietary rights.

Very little progress can be reported as regards the third objective of the EU-Ukraine Action Plan: improving the investment climate by ensuring transparency, predictability and simplification of regulation and its application. Entrepreneur associations and analysts underline that a heavy administrative burden still weighs down on enterprises. For instance, the draft law of September 2008 on required documentation for business activity lists more than 200 different documents that may be required from entrepreneurs. Tax inspections and the intricate tax system are serious barriers to business development. Difficulties for entrepreneurs also arise from contradictions between new laws and regulations and earlier

items of legislation on the same subject which were not amended accordingly. The Commercial Code is frequently mentioned in this respect. While the Civil Code is generally market-oriented, the Commercial Code aims to preserve a privileged position for the public sector and allows governmental interference in private commercial relations. The lack of consistency in the legal and regulatory framework, the lack of implementation regulations for the new laws or non-enforcement of those regulations, may result in different State bodies adopting different approaches to the same problem.

This situation has resulted in a low ranking for Ukraine in international surveys on the business climate. Ukraine ranked 142 out of 183 countries in the 2010 “Ease of Doing Business” survey of the World Bank and has not improved its position since this survey is conducted. In the 2009 survey of the World Economic Forum on competitiveness, Ukraine ranked 120 out of 133 countries with respect to the business-friendly character of its institutions. The factors most frequently cited by the interviewees as particularly problematic for doing business in Ukraine are: (1) policy instability; (2) access to financing; (3) corruption; (4) tax regulations; and (5) government instability.

In parallel to its activities in support of the establishment of a legal framework conducive to private sector development, the European Commission implemented projects directly targeting certain key sectors of the Ukrainian economy. A three-year project implemented in 2006-2009 supported development of the insurance sector and a 2¹/₂-year project aimed at strengthening the financial services sector was launched in 2009.

Three projects were implemented in support of development of small and medium businesses. The two year project “Improving SME environment” was implemented in 2003-2004 in two relatively poor oblasts, Ivano-Frankivsk and Vynnykiv. It contributed to significant development of the business service market in the two regions, to involvement of local governments in the establishment of business centres and business incubators, and to increased ability of SMEs to access credit. A follow-up project, implemented in 2007-2009 at national level with the State Committee for Regulatory Policy and Entrepreneurship (SCURPE), focused on the capacity of Ukrainian SMEs to develop their exports and attract foreign investors. Although it was implemented at a time of deep economic crisis, this project delivered positive results, allowing Ukrainian SMEs to develop business relations with European enterprises. The third project, implemented in 2008-2009, aimed at supporting the introduction and implementation in Ukraine of the European Charter for Small Enterprises. In their final report the consultants delivered a rather severe assessment of the Ukrainian SME policy. They point out that Ukraine does not have a SME strategy and that the main focus of support for SMEs is on improving the regulatory environment. The National Programme for Small Business Development action plan is prepared annually in the absence of a strategy framework and without taking the resources into consideration. In February 2009 the GoU and the Commission have decided to establish an “Enterprise Policy Dialogue”, which should stimulate the exchange of experience and advise on suitable projects for technical and financial cooperation.

The Commission’s interventions in support of economic sectors have probably made a contribution to the economic recovery which Ukraine enjoyed from 2000 to 2008. During this period the number of SMEs increased by more than 50% to more than 330,000. Their share in total enterprise employment increased over the same period from 15.1% to 24.3% and their share of total enterprise sales doubled from 8.1% to 16.3%. Investment increased

from less than 20% of GDP in 2000 to 27% in 2007 and 2008 with similar growth rates for government and private investments. Whereas in 2000 bank loans and other lending contributed only 1.7% to financing of investments, the share of this source of finance increased steadily up to 17.3% in 2008, with the share of enterprise self-finance decreasing correspondingly from 68.6% to 56.7%.

The Judgment Criterion is partially validated. EC interventions contributed to significant progress in the approximation to that of the EU of the legal and regulatory framework governing economic activity, however without noticeable positive impact on the business climate.

4.4.3 Economic growth contributes to poverty alleviation (JC 4.3)

The project in support of SME development in Ivano-Frankivsk and Vovchyn is the only intervention of the Commission in the field of economic development which explicitly aimed at contributing to poverty alleviation. But resumption of economic growth from the early 2000s in any case had a massive impact on poverty. The number of persons with an income per head below subsistence level decreased from 39.2 million and as high as 80.2% of the total population in 2000, to 8.1 million and 18.1% respectively in 2008.

The Judgment Criterion is validated. Economic growth on its own contributed to a major reduction in poverty levels.

4.4.4 The Commission's cooperation contributed to reducing regional imbalances (JC 4.4)

Reducing regional imbalances and improving local development capacities is an objective of the EU-Ukraine Action Plan. The European Commission contributed to the fulfilment of this objective through a series of projects targeting all levels of the Ukrainian territorial administration from small villages to regions (oblasts).

At village level, the 3.5-year project “Community-based approach to local development” mobilises local communities around their development priorities. This project is co-financed by the European Commission (€12.0 million) and UNDP (€1.3 million) and is implemented by UNDP. Partnerships have been established with 24 oblasts and the Autonomous Republic of Crimea, as well as with 209 pilot rayons and 1,139 village councils. Investments - of which the costs are shared by the project, local authorities and local CSOs - are carried out on the development of health facilities, energy saving equipment, water supply networks, waste management, and transport systems.

During the period under review three projects addressed medium-sized cities. The project “Municipal services support” implemented from 2005 to 2007 targeted water supply services in ten cities in five different oblasts: Cherkasi, Chernigiv, Kharkiv, Lugansk, and Sumy. It supported the partner municipalities in assessing the efficiency of their water supply services, enhancing inter-relations between service providers and city authorities, rationalising tariff setting, designing development plans, and programming investments. Four of the ten cities which benefited of this first project were selected for the four-year project “Sustainable local development”, launched in October 2006 and still under

implementation. As with the previous project, the objectives of this project are to enhance the management capacity of the local authorities and to help them in the design and implementation of development plans. But the range of municipal services addressed by the project has been enlarged to other sectors involved in sustainable development such as sanitation, solid waste management and public heating. Besides the provision of technical assistance to a total amount of €5.0 million a budget of €10.5 million has been made available to finance equipment for the partner cities and the surroundings rayons. The third project, “Technical assistance support to Ukrainian municipalities”, launched in December 2008, is intended to finance feasibility studies on possible EBRD loans to Ukrainian cities.

Two projects were implemented in support of economic and social development at regional level. “Assistance to regional development”, implemented from 2004 to 2008, aimed at supporting the development and implementation of transparent and efficient national regional policies stimulating economic growth. The follow-up project “Support to sustainable regional development”, launched in July 2008 with a budget of €6 million for technical assistance and €9 million for works, has a similar objective. Besides capacity-building and the financing of investments in the Lugansk region and the city of Sverdlovsk, this project puts a strong focus on drawing up a regional development policy and on the reform of the related legal and institutional framework as well as on the development of appropriate coordination mechanisms between the central and regional governments. A core component of this project consisted of assistance to the Ukrainian authorities on the design of a Regional Development Fund, including defining the mobilisation modalities for internal and external resources for the Fund, and setting up the investment planning and coordination mechanisms. The European Commission had made clear that it was ready to channel to the Fund a significant share of its financial assistance for regional development.

The European Commission’s interventions in support of local and regional development have been effective to the extent that they contributed to enhancing the management capacity of the partner authorities, supplied equipment which the beneficiaries would not have been able to finance from their own resources, and consequently contributed to improvements in the quality of public services provided to the populations of the villages, cities and regions where they were implemented. Local partners took ownership of the projects. A monitoring report on the project “sustainable local development” notes in this respect that “while at the project beginning the cities were mostly interested in obtaining equipment, at present there is a good understanding that knowledge gained due to cooperation with the project experts is no less important than the equipment delivered.”

But the interventions at city level were also meant to be pilots with an approach replicable in other places, and the ultimate objective of the projects on regional development was the formulation and implementation of a regional development policy, which would have involved a profound reform of the financial relations between the central and local governments. This process is still on-going.

As regards cities, the monitoring report of the project “sustainable local development” mentioned above noted in 2009: “The design [of the project] envisages that the impact will be extended to the country level through the development of a comprehensive sustainable local development strategy which could be applied to all the medium-sized Ukrainian cities. The project's ability to fulfil this task still remains uncertain. No clear demand and interest in such a model has been demonstrated yet by the central authorities.” Furthermore local

governments have very little discretion in allocating funds and administering the respective programmes. 85% of their budget expenses go to health, education and social services, areas in which spending decisions are subject to a rigid vertical structure of input norms dictated by central line ministries. Finally, local governments receive the bulk of their revenue from the central government with limited possibilities and incentives for increasing their own resources. Very few cities could afford the investments carried out in those cities that benefited from the European Commission's projects.

As for regional development, in 2006 the Cabinet of Ministers approved a National Strategy for Regional Development up until 2015. Its implementation would have involved far-reaching reforms of the institutional and legal framework governing relations between the central and local governments. These reforms, albeit actively debated, have not been implemented. The strategy further assumed that regional policy would be implemented with the help of new instruments: regional contracts between the central government and regions; programmes for reducing the backwardness of certain territories; targeted national programmes; and regional development strategies. But little progress has been made in the implementation of these instruments, and the proposal of establishing a Regional Development Fund has not been endorsed by the Cabinet of Ministers.

The Judgment Criterion is not validated. EC interventions improved the management capacity of a sample of local governments and subsidised investment in public infrastructure, but in the absence of a reform of intergovernmental financial relations their impact has been restricted to the localities where they have been implemented.

4.5 Trade and Foreign Direct Investments

EQ5: To what extent has the Commission co-operation contributed to strengthening economic links between Ukraine and the EU through the development of trade and of direct investments?

EQ 5 on Trade and Foreign Direct Investments – Answer Summary Box

Trade and Foreign Direct Investment are areas in which there is evidence of a strong complementarity between, on the one hand, the policy dialogue and direct relations between the Commission Services and their Ukrainian counterparts and, on the other hand, the support given by the Commission cooperation to the reform of the legal and regulatory framework governing trade and FDI.

The Commission effectively assisted Ukraine in preparing for its accession to WTO, which took place in May 2008. But WTO accession commits Ukraine to harmonise, by 30 December 2011, all its standards, technical regulations and SPS regulations with international standards. Between 2003 and 2006 the European Commission provided support for this harmonisation process through a series of technical assistance projects. This support was continued from 2007 through twinning projects at the State Committee for Technical Regulations and Consumer Protection (DSSU) and at the National Accreditation Agency (NAAU). In addition to enhancing the capacities of the partner institutions, these projects contributed to the recognition of NAAU by the European Cooperation for Accreditation and to preparation of legal framework reforms on such issues as metrology, product liability, general safety of

products, and market surveillance. Reform of the SPS regulations is currently addressed within the framework of a SWAp project under implementation at the Ministry of Agrarian Policy. Finally, in December 2009 the European Commission and the Government signed the Financial Agreement on a four-year budget support programme intended to support reform of the Ukrainian quality assurance system.

The EU has become Ukraine's main trading partner. Ukrainian exports suffer from a high concentration on a limited number of products that are very sensitive to economic fluctuations. Delayed VAT refunds are a disincentive for SMEs to engage in exports and hence are an obstacle to diversification of Ukrainian exports. A Commission project that precisely aimed at developing the export capacity of Ukrainian SMEs succeeded at establishing trade and investment relations between Ukrainian and European SMEs, but did not deliver its full impact because the newly appointed management of the Ukrainian partner did not take ownership of the project.

In spite of a business climate which remains quite unsatisfactory, foreign direct investment in Ukraine has rapidly increased since 2005. But FDI is an area which the Commission did not directly address until very recently.

Developing trade relations between Ukraine and the EU has from the beginning been an important objective of the Commission's cooperation with this country. Numerous objectives listed in the PCA and the EU-Ukraine Action Plan aim at creating favourable conditions for this development. But this cooperation area has become still more important since, following the accession of Ukraine to the WTO in 2008, the two Parties have opened negotiations on the establishment between the EU and Ukraine of a deep and comprehensive Free Trade Area (DCFTA). As part of the future Association Agreement, the DCFTA is designed to extend Ukraine's access to the European market and encourage further European investment in Ukraine.

4.5.1 The Commission's cooperation supported the adoption of a legal and regulatory framework conducive to the development of trade and of foreign investments (JC 5.1)

A World Bank review of Ukrainian trade policy released in 2004 concluded that "overall, Ukraine's statutory trade regime at the moment is quite liberal compared with both the EU and transition economies in Central and Eastern Europe before they joined the EU" and noted a steady trend toward trade liberalisation in terms of reductions in average tariff levels. It further noted that, compared to OECD countries, Ukraine seems to be quite liberal in terms of non-tariff protection. But it also noted that "available business surveys point to serious implementation problems of non-tariff barriers (e.g., in the area of certification) that raise effective trade barriers and sours the business climate."

As far as import duties are concerned, Ukraine has still not approved the Customs Tariff Law which would, de-jure, bring import duties for goods in line with Ukraine's WTO accession commitments. However, failure to pass the above-mentioned law does not mean that Ukraine fails to meet its WTO obligations in this respect. Ukrainian customs services operate pursuant to the Law of Ukraine on the Ratification of the Protocol of Accession of Ukraine to the World Trade Organisation (No. 250-VI of 10.04.08), consequently applying WTO-compatible tariffs. Ukraine's IPR-related legal base is almost fully in compliance with

the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and other international norms, even if its enforcement may still leave something to be desired. But the issue of Technical Trade Barriers (TTB) still remains and will be more difficult to solve.

The Ukrainian technical regulation system still relies to a large extent on the inter-State standard of the former USSR (GOSTs). As of 1 March 2006 Ukraine had 16,765 inter-State standards in effect, all developed prior to 1992 and many in the 1980s. This system deeply differs from what is understood as standardisation, certification or conformity assessment in Europe and OECD countries. Standards are compulsory for most goods and many services, whereas in most of the world compliance with standards is voluntary. Mandatory certification procedures cover over 400 types of goods and services and affect a significant share of Ukrainian enterprises, including low-risk businesses and sectors which are already regulated in other ways. One single body, the State Committee for Technical Regulations and Consumer Protection (DSSU), is responsible for both development and approval of standards, for issuing certificates, for conducting inspections of producers, and for ensuring market surveillance and protection of consumer rights; that is to say a combination of responsibilities and powers which can lead to significant conflicts of interest. So far, since 2001 accreditation is the sole quality infrastructure function entrusted to a separate agency.

This situation is detrimental to exports by both Ukrainian and European companies, whose exported products have to comply with two very different systems of standards thus incurring heavy compliance costs. In addition, since any product or process innovation requires registering of a new standard or technical specification, this system slows down the adoption by Ukrainian enterprises of new technologies and hence reduces their competitiveness.

As a part of its commitments to becoming a WTO member Ukraine has to harmonise all of its standards with international standards and technical regulations by 30 December 2011. In fact harmonisation of its standards with European standards began in the early 2000s but at a very slow pace. In 2006 the Government adopted a Concept Paper complemented by Green and White papers on the reform of the quality assurance system and approved a State Programme on Standardisation for 2006-2010, which resulted in an acceleration of the harmonisation process. By 1 July 2009 5,717 national standards harmonised with European standards were being applied in Ukraine. In May 2010 the Government approved an Action Plan detailing the harmonisation measures to be implemented in 2010 and 2011.

Beyond the revision of the standards, harmonisation with the EU of the Ukrainian standardisation, metrology and certification systems entails a restructuring of its institutional set-up with the creation of independently managed and financed agencies in charge of the various functions involved. It also entails an upgrading of the facilities and equipment of the Ukrainian testing and metrological laboratories. Measures also have to be taken by Ukraine in the field of sanitary and phytosanitary control with a view of moving from a system of State control to a system of State supervision ensuring traceability throughout the food chain and a switching of the focus from food quality to food safety.

These trade-related issues are an area in which there is evidence of strong complementarity between, on the one hand, the policy dialogue and direct relations between the

Commission Services and their Ukrainian counterparts and, on the other hand, the assistance provided under the Commission's cooperation.

The policy dialogue between the Commission and Ukrainian authorities on trade and investment-related issues is shaped by the annual meetings of the Sub-Committee on Trade and Investment, headed on the Commission side by a senior official of DG Trade. The Sub-Committee surveys the development of trade between Ukraine and the EU. Participants exchange information on and debate the implementation of the PCA and the EU-Ukraine Action Plan in relation to trade and investment (restrictions on trade, trade-related taxation issues, technical barriers to trade, sanitary and phytosanitary issues, protection of intellectual property rights, public procurement in relation to trade, and so on), and on the investment climate in Ukraine. They review progress in implementation of the cooperation projects relating to trade and foreign direct investment. Bilateral meetings specifically devoted to Intellectual Property Rights (IPR) take place regularly between the Commission and the Ukrainian authorities

Besides Sub-Committee meetings, more permanent relations exist between experts from the Commission Services and of the Ukrainian administration. For instance, successive versions of the Tax Code have been sent to the Commission for comments by DG Taxud experts. On sanitary and phytosanitary issues, Ukraine received the support of several missions from the EU's Food and Veterinary Office. Support in the area of consumer protection is provided to Ukraine by DG Health and Consumers.

Throughout the period under review the European Commission implemented technical assistance projects aimed at supporting the reform of the Ukrainian institutional, legal and regulatory framework in trade-related issues and at strengthening the capacity of the institutions involved through capacity-building activities and provision of equipment. Three relatively large projects were implemented between 2003 and 2006. They were concerned respectively with standards, technical regulations and conformity assessment; protection of intellectual property rights; and agricultural standards, certification and control mechanisms. They were intended to help Ukraine meet its obligations under the PCA and the WTO. As mentioned above Ukraine's negotiations on joining WTO, which started in 1994, were successfully completed in 2008. There is no doubt that the Commission's assistance has made a positive contribution to this achievement. The EC projects contributed to reforming the legal and regulatory framework relating to standardisation and certification. They transferred know-how and practical skills to the Ukrainian beneficiaries, notably DSSU, the National Accreditation Agency and the Veterinary Services, and contributed to establishing links between these institutions and international organisations. They left methodological materials and recommendations for follow-up. The monitoring reports produced at the project completion stage nevertheless underlined that there remained wide scope for work in the project-related areas, and a great need for additional external assistance.

In December 2005 Ukraine and the EU agreed on an Action Plan on Conformity Assessment and Acceptance of Industrial Products (ACAA), which provides a framework for further cooperation in the field of standardisation, metrology and compliance assessment. Two two-year twinning projects contributed to the implementation of this Action Plan. The first, implemented from September 2007 to December 2009, linked DSSU with the French and German agencies in charge of standardisation and metrology.

The second, implemented from January 2008 to July 2010, linked the National Accreditation Agency of Ukraine (NAAU) with the Dutch agencies in charge of standardisation, metrology and accreditation and the Swedish agency for accreditation and conformity assessment. These projects contributed to further development of the ACAA Action Plan and to preparation of legal framework reforms on such issues as product liability, general product safety and market surveillance. NAAU obtained recognition of the European Cooperation for Accreditation in the area of personnel certification. Numerous training sessions were organised for the staff of the beneficiary agencies and other stakeholders. The high level of expertise of the European partners in these projects, and the quality of their inputs, are unanimously acknowledged. But the management of DSSU, which is reluctant to accept the planned split of the agency into specialised bodies, did not take full ownership of the project.

SPS measures are addressed by the project “Implementation of Ukraine’s commitments under WTO and ENP frameworks in the rural sector”. This three-year project, launched in October 2008, is an application of the SWAp approach to agricultural and rural development. One of its four components provides assistance for the harmonisation of Ukrainian food safety legislation with EU standards and supports capacity development in this area. This project suffered somewhat from being launched at a time when the economic crisis was severely constraining public budgets.

Finally, in December 2009 the European Commission and the Government of Ukraine signed the Financial Agreement on a budget support programme “Promoting mutual trade by removing technical barriers to trade between Ukraine and the European Union”. This programme, which will run until 2013, has a total budget of €45 million of which €39 million is for the budget support component and €6 million for complementary support including technical assistance. In 2010 the budget support component will consist of a fixed tranche of €12 million; from 2011 onwards disbursements to a maximum of €27 million will be linked to performance indicators reflecting progress in implementation of the reform of the standardisation, metrology and conformity assessment system. The Commission’s partners in the implementation of this programme are the Department for Regulatory Policy of the Ministry of Economy and DSSU.

It is worth noting that development on the one hand of the Ukrainian legislation on technical regulation, standardisation, conformity assessment, market surveillance, metrology and accreditation in line with the EU *acquis*, and on the other hand of a comprehensive strategy for reform of the SPS, food and feed, animal health and welfare policy, are both listed among the priorities of the Association Agenda for the year 2010.

Other issues that are important for the development of fair trade relations are public procurement and State aid. As mentioned in the previous chapter, these two issues are being addressed by the project currently being implemented by the Antimonopoly Committee in cooperation with the Ministry of Finance. Little progress has yet been achieved as regards State aid, but a new law on public procurement, which appears to comply with international standards, was adopted in June 2010.

Beyond the reform of the legal and regulatory framework related to trade, enforcement of the existing legislation may also be an issue. In particular, arrears in the payment of VAT refunds to exporters are a recurrent problem. This was further aggravated recently when the economic crisis started to impact negatively on revenue inflows into the State Treasury.

By the end of 2008 and during 2009 refunds to exporters had come to a virtual standstill. The Government announced that it would issue bonds in lieu of cash refunds. Foreign enterprises complain that they are discriminated against *vis-à-vis* Ukrainian competitors which have better political connections. This issue is obviously a matter for policy dialogue between the Commission and the Government.

The Judgment Criterion is validated. The Commission interventions made an important contribution to Ukraine's accession to WTO and actively support the harmonisation of standards, norms and SPS regulations with international standards.

4.5.2 The Commission's cooperation contributed to integration of Ukraine in the world economy and to strengthening the capacity of Ukrainian enterprises, in particular SMEs, to sell their products on foreign markets and in particular in the EU (JC5.2 & JC5.3)

The Ukrainian economy is wide open to trade. Between 2000 and 2008 imports and exports accounted for more than 50% of GDP. But if the development of exports played a positive role in the resumption of economic growth in the early 2000s, the contribution of trade to GDP growth was negative during the second half of the decade and from 2005 the trade balance started to exhibit increasing deficits.

The development of imports from the EU has been particularly dynamic with the result that the EU has become the largest import partner of Ukraine, supplying close to 45% of its total imports in 2007. One could have expected progress on regulatory approximation with EU standards, technical regulations, conformity assessment procedures, sanitary and phytosanitary regulations, and controls to facilitate access of Ukrainian products to the European market and hence stimulate the development of Ukrainian exports to the EU. But no such development was observed during the period under review. Ukrainian exports to the EU have grown slowly, and the share of the EU in total Ukrainian exports declined from 34% in 2004 to less than 30% in 2007.

Against the background of the world economic crisis, which severely hit the Ukrainian economy from the second half of 2008, Ukrainian imports fell in 2009 by 44% and exports by 37%. EU exports to Ukraine, which had already decreased by 20% in 2008, fell by a further 44% in 2009. The EU nevertheless remained the largest import partner of Ukraine in 2009, with a market share of 34%, ahead of Russia at 28.9%. Ukrainian exports to the EU were also severely affected by the economic crisis. After a marked slowdown in 2008 they fell by 45% in 2009. The share of the EU in Ukrainian exports diminished to 24%, while the share of Russia slightly increased to 21.4%.

**Table 8: Ukraine's external trade
(in million Euros)**

	Ukrainian exports			Ukrainian imports			Trade balance	
	Total	To EU 27	% EU	Total	From EU 27	% EU	Total	With EU 27
2004	26,090	8,868	34.0%	23,353	7,676	33.0%	2,737	1.192
2005	27,202	8,217	30.2%	29,138	9,858	33.8%	-1,937	-1.641
2006	31,203	8,970	28.7%	46,386	20,092	43.3%	-15,183	-11,122
2007	37,789	11,289	29.9%	54,835	24,597	44.9%	-17.046	-13,308
2008	44,882	12,298	27.4%	67,841	19,523	33.8%	-12.795	-7.224
2009	28,240	6,786	24.0%	32,388	10,997	34.0%	-4.148	-4.211

Source: Eurostat

These developments reflect weaknesses in the Ukrainian economy. The poor performance of Ukrainian exports on EU markets may be related to the slowness with which Ukraine has aligned its standards, technical regulations and SPS regulations with international standards. The extremely high sensitivity of these exports to economic fluctuations is a consequence of the high concentration of Ukrainian exports in a small number of base products. In 2008 three groups of products accounted for more than 60% of total Ukrainian exports to the EU: iron and steel (28.8%), fuels (19.9%) and agricultural products (18.5%). These products, in particular iron and steel, which in the dynamic international economic environment that prevailed in the early 2000s were powerful drivers of the economic recovery in Ukraine, are also the hardest hit in a world recession. Finally, delayed VAT refunds are a disincentive to export, especially for SMEs confronted with cash flow problems.

During the period under review the European Commission implemented in 2007-2009 a two-year project aimed at enhancing the competitiveness of Ukrainian SMEs and in particular at developing their capacity to export. The objectives of this project were (a) to improve State policy in the sphere of SME support; (b) to facilitate commercial links with EU companies and other foreign enterprises; and (c) to increase awareness of business internationalisation in the public and SME sectors. The beneficiary of the activities targeting objective 'a' was the State Committee for Regulatory Policy and Entrepreneurship (SCURPE). The monitoring reports assess the effectiveness of the project positively, pointing out in particular that its effectiveness in relation to objective 'b' has even been higher than could have been expected under the prevailing harsh economic situation. Partnership and development missions were successful in terms of establishing contacts between Ukrainian and Western companies. However such a project directly benefits only a few tenths of the total number of enterprises. Greater impact was expected from improvement of the State policy and from the continuation and development on a larger scale of the activities initiated by the project by the Ukrainian partner. Unfortunately the new management of SCURPE, which was appointed shortly before the end of the project, did not take ownership of its results.

The Judgment Criterion is not validated. Impact of the only project in support of SMEs' export capacity was limited and the sustainability of its results is in doubt.

4.5.3 The Commission's cooperation contributed to the development of trade between the EU and Ukraine and to investments of EU companies in Ukraine (JC5.4)

Progress towards harmonisation of the legal and regulatory framework relative to economic activity with that of the EU, and the prospect of a deep and comprehensive Free Trade Area between Ukraine and the EU, should stimulate the development of foreign direct investments in Ukraine, particularly by European companies. However, as shown in the previous chapter, the reform process of the legal framework governing economic activity is relatively slow, while inadequate enforcement of the legislation, the bureaucratic practices of the administration, corruption, and political instability all impact negatively on the business climate. Both the World Bank survey "Ease of Doing Business" and the Competitiveness Reports of the World Economic Forum depict a very poor business climate which is likely to deter foreign companies from investing in Ukraine. In the 2009 World Economic Forum Report Ukraine ranked 82 out of 133 countries. Institutions (ranked 120), market efficiency (109), macroeconomic stability and financial market sophistication (106 for both indicators) are the factors most negatively assessed. More positive assessments are given to market size (29), higher education and training (46) and labour market efficiency (49).

Nevertheless FDI statistics reported by UNCTAD show a strong increase in FDI flows into Ukraine, particularly since 2005, the "Orange Revolution" and the privatisation of the steel producer Kryvorizhstal to the Mittal Group. From less than US\$0.7 billion in 2002 the flow of FDI increased year after year to US\$10.7 billion in 2008. But when related to Ukraine's population figures, FDI remains modest: US\$232 *per capita* in 2008 against for instance US\$434 in Poland and US\$497 in Russia.

Foreign investors in Ukraine are mainly European companies. According to figures provided by the State Statistical Committee, out of a total of US\$40.0 billion by end-2009, the FDI stock owned by European companies amounted to US\$31.4 billion.

In addition to the unfavourable business climate, foreign direct investment suffers from the absence of an effective promotion policy. A report of the Commission-funded project in support of SMEs in 2009 noted in this respect that "there are a number of government organisations both at the national and regional level responsible for attracting FDI in Ukraine. However, the lack of co-ordination and clear definition of functions, absence of a single investment project database and the lack of a standard 'investment profile' used for preparation of investment projects, are all inhibiting efficient and coherent operation of these organisations." The Government appointed since the 2010 Presidential election has started to address this issue. In May 2010 a Decree of the Council of Ministers entrusted the State Agency of Ukraine for Investments and Development (previously State Agency of Ukraine for Investments and Innovation) with the responsibility for formulating and implementing policy relating to foreign investment promotion.

Until very recently the contribution of the European Commission to the development of foreign investments in Ukraine had consisted in its support for the reform of the legal and

regulatory framework governing economic activity. In February 2010 the European Commission undertook to address this issue more directly. It launched at the Ukrainian Centre for Foreign Investment Promotion Centre a twinning project in which the EU partners are the German Ministry of Economy and Technology and the Polish State Investment Agency. The aim of this project is to enhance the institutional capacities of the Ukrainian Centre for Foreign Investment Promotion (InvestUkraine) and improve its performance through implementation of leading European practices. According to the Decree mentioned above InvestUkraine is subordinated to the State Agency of Ukraine for Investments and Development.

The Judgment Criterion is not validated. EU FDI in Ukraine is increasing but there is little evidence of any contribution to this development by the EC cooperation.

4.6 Environment

EQ6: To what extent has the policy dialogue between the Commission and the Government of Ukraine, as well as the Commission's interventions in the field of environment and in other sectors, contributed to sustainable development and environment protection

EQ 6 on Environment – Answer Summary Box

During the period under review projects related to the environment implemented under the EC National Programme for cooperation with Ukraine consisted of a series of small projects addressing issues of water management and waste management at the levels of rayons and cities. Environmental governance was addressed through regional programmes which strengthened the capacity of the Ministry of Environmental Protection (MoEP) to draft legislation, implement complex projects and cooperate with its counterparts in neighbouring countries, but did not succeed at achieving lasting impact at national level.

Evaluators did not find any evidence that during the period 2002-2009 under review the Commission implemented cooperation activities aimed at strengthening environmental governance, enhancing the capacity of MoEP to enforce existing environmental legislation, or assisting Ukraine in implementation of its international obligations.

This situation has however started to change. In 2010 the GoU finalised the draft of a National Environment Strategy up until 2020, the drawing up of which benefited from comments from the Commission's relevant DGs; and the negotiations between the Commission and the GoU on the environment chapter of the Association Agreement have been completed satisfactorily. At the end of 2009 the Commission launched two projects aimed at assisting Ukrainian authorities in implementing their obligations under international conventions. A twinning project linking the MoEP with its counterparts in Austria and the Czech Republic should be launched during 2010. The adoption by the Ukrainian Parliament of the National Environment Strategy will pave the way for €35 million of budget support for implementation of this strategy.

During the period 2002-2009 under review, the regional TACIS programme was the main instrument of EC cooperation with Ukraine in the field of environment. The National Programme mainly financed small projects at local level in the areas of water management and waste management, these projects being most frequently implemented by CSOs or local government agencies following formal calls for proposals.

Recent developments tend towards much greater involvement of the National Programme in environmental issues. In 2008 the Commission provided the Council of Europe with a €1.5 million grant for assisting Ukraine in identifying and protecting natural habitats due to be part of the Emerald Network. In October and December 2009 two projects each of twelve months duration were launched to support the Ukrainian authorities in the implementation of their commitments under the International Conventions Espoo, Aarhus, Danube and Ramsar. The Twinning project “Support to the Ministry of Environmental Protection of Ukraine (MoEP) in implementation of the Law on the Ecological Audit” should be launched in 2010; it will link MoEP with its counterparts in Austria and the Czech Republic. In addition, €35 million is provisioned for budget support for the implementation by the Ukrainian Government of its Environment Strategy.

Besides cooperation, a policy dialogue developed between Ukraine and the EU within the framework of the Sub-Committee on Energy, Transport, Information Society, Nuclear Safety and Environment, while negotiation of the Association Agreement has led to exchanges between the MoEP and the European Commission’s relevant DGs.

4.6.1 The Commission’s cooperation with Ukraine contributed to establishing conditions for an effective environmental governance (JC 6.1)

Projects implemented under the National Programme during the period under review addressed water management, waste management and other environment-related issues in a number of rayons and cities. Similar interventions were implemented under the CBC programmes in which Ukraine is involved, as well as through local development projects. These interventions addressed environment-related issues from a practical point of view and at local level. They did not aim at promoting changes in environmental governance at national level.

Under the TACIS Regional Programmes Ukraine was involved in a series of projects addressing a range of issues related to environmental governance:

- Water management, river basin management and implementation of the EECCA strategy;
- Protection of the Black Sea;
- Sustainable land use of the Eurasian steppe;
- Implementation of Global Climate Change commitments;
- Support to Kyoto Protocol Implementation.

These activities are continuing under the ENPI regional programmes.

Given that environmental protection is an issue that straddles borders, especially with regard to river basins, coastal zones or air pollution, it makes sense that the EC addresses

this issue through regional projects which not only promote EU standards but also develop cooperation between neighbouring countries and strengthen Ukraine's participation in international *fora* for protection of the environment.

An evaluation of the TACIS regional projects in the field of environment concluded that these projects were successful in the sense that they produced a variety of useful outputs and were appreciated by most stakeholders. They were designed in a comprehensive fashion, combining legislative work with advocacy, awareness raising, and promotion of international cooperation. They also promoted a multidisciplinary approach by including experts from different fields to work on environmental protection. By means of close cooperation with the MoEP these projects strengthened the capacity of MoEP staff with respect both to drafting of legislation and to their knowledge of state-of-the-art projects on environmental protection.

However these projects failed to achieve a lasting global impact on the protection of the environment in Ukraine, since they did not address the issue of environmental governance in a comprehensive manner. Furthermore, to the extent that they addressed governance issues, they focused on the drafting of specific legal documents or administrative provisions, but subsequently did not effectively check that their outputs were ratified and implemented.

Until very recently the key policy document in the area of environmental protection remained the “Main Directions of the State Policy of Ukraine in the Field of Environmental Protection, Use of Natural Resources and Environmental Safety”, which dates back to 1998.

The annual programmes of measures developed by the GoU for legal approximation to the EU provided for the development of a National Environment Strategy to 2020 and production of complementary documents in such areas as protection of water resources, development of natural reserves and conservation of biodiversity. These measures were not implemented in a timely manner. Nevertheless some progress was made, namely the adoption in these areas of Concept Papers which are a preliminary step to the formulation of State programmes. In particular, the Concept of the National Environmental Policy of Ukraine up to 2020 was approved by the Council of Ministers in October 2007, thereby providing guidelines for the development of the National Strategy.

To date, the drafting of the National Environment Strategy to 2020 is complete and the document is pending adoption by the Parliament. At the beginning of the process UEPLAC provided a draft environment strategy document, which was however considered too descriptive and too process-oriented by the MoEP. More useful were the comments provided by the Commission Services and some EU Member States, notably Germany and Sweden, on successive versions of the draft strategy document, and also the discussion between the Commission and the Government on the environment chapter of the Association Agreement. According to DG Environment, the National Environment Strategy to 2020 is in line with the relevant EU Directives. In addition, a timetable for the concrete steps required for its implementation (e.g. adoption of national legislation, designation of competent authorities, establishment of procedures for decision-making, information exchange and consultation) has been agreed between the European Commission and the Government. The Commission therefore considers that negotiation

of the environment chapter of the Association Agreement has been satisfactorily completed.

Adoption by the Parliament of the National Environment Strategy to 2020 will pave the way for Commission's support to its implementation through a budget support programme.

Civil society is very active in the field of environment through a network of specialised CSOs which contribute to the policy debate and survey enforcement of the legislation by the Government at central and local levels, as well as observance by the Government of its obligations under international conventions. It may be noted in this respect that the steps taken following non-compliance of Ukraine with its obligations under the Aarhus and Espoo conventions were initiated by CSOs. The MoEP has implemented a programme for development of Aarhus centres in each region of Ukraine, but CSOs complain that too often these centres exist on paper only. Environment CSOs have been consulted on the draft National Environment Strategy. They attempted to reinforce the results-oriented character of the strategy through the inclusion of performance indicators, which however were removed from the document submitted to the Parliament.

The Judgment Criterion is not validated. EC projects delivered results but the approach was not systematically directed to establishing conditions for effective environmental governance.

4.6.2 The Commission's cooperation contributed to the GoU's taking effective action for preventing deterioration of the environment, protecting human health and achieving rational use of natural resources (JC 6.2)

Three aspects related to the enforcement of the environmental legislation need to be considered here: Environmental Impact Assessments (EIA); integration of environmental considerations into sectoral policies; and control and penalty systems.

Proper legislation and key procedures for environmental impact assessments have been in place since the end of the 1990s. EIA in Ukraine comprises two separate procedures: so-called OVNS (EIA undertaken by the developer) and State environmental expertiza (EIA undertaken by environmental protection agencies). State environmental expertiza is obligatory for activities and objects which pose a high risk to the environment. The list of such activities and objects is set out in a decree of the Cabinet of Ministers. The procedure for screening activities not listed as requiring compulsory EIA is not clear. Recently a new draft decree was promulgated which incorporates a screening approach used in EU legislation and the Espoo Convention. Ukraine is a party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), which sets procedures for consultations with other countries in the event of significant likely adverse impacts of planned activities on the environment of other countries.

But implementation of this legislation leaves much to be desired. The personnel of both public agencies and consulting companies which undertake planning and project development, including OVNS/EIA, lack the capacity to carry out this work effectively. In

practice the experts involved use outdated data and methodologies developed during the Soviet era.

The legislation is frequently ignored, particularly as regards public participation in the EIA process. According to the Law on Expertiza the public must be informed at a pre-project stage, at the OVNS stage, and at the environmental “expertiza” stage; the authorities carrying out environmental “expertiza” must hold public hearings or open meetings to sound out public opinion; the outcomes of public participation must be taken into account; and the final conclusions of the environmental “expertiza” must be published. In practice these requirements are frequently not fulfilled. The public has no opportunity to participate in the environmental “expertiza” because of late and ineffective information and a lack of willingness on the part of the authorities and developers to ensure the transparency of the decision-making process. The conclusions of the environment “expertiza” are seldom published and, even worse, they are often classified. There is no register of conclusions of environmental “expertiza”. This situation raises serious doubts as to the transparency of the EIA process.

To date the strategic planning of social and economic development and sectoral policies hardly takes environmental protection considerations into account. Strategic Environmental Assessments are not carried out and alternatives are not considered. The Law of Ukraine “On State Forecasting and Development of the Programs of Economic and Social Development of Ukraine”, which defines the order of preparation, approval and content of economic and social development programmes, does not provide for environmental considerations. Environment CSOs point out in particular that nothing has been undertaken on “greening” the transport and energy sectors.

Adoption of the National Environment Strategy should lead to major improvements in this area for it foresees the introduction of strategic environmental assessments of the plans and programmes for the different sectors of the economy as well as of regional development plans and programmes.

The authorisation and enforcement systems of Ukraine have all the necessary elements and in general correspond to international practice in environmental protection management. But authorisation, enforcement and compliance practice differs significantly from the EU standards primarily because of the absence of the practical toolkits and technical conditions which should accompany permits. The system was inherited from Soviet times and relies on outdated norms. This leads to a large gap between declared strict legal standards and actual environmental impact.

Inspectors and other personnel working on enforcement lack the capacity, the human and financial resources, and above all up-to-date data and the modern technology needed for data collection and analysis. The Ministry of Environment delegates to its territorial agencies the authority to administer and issue permits. The 27 regional (oblast) agencies together employ 130 officers who handle permits for more than 15,000 enterprises. Their salaries are significantly lower than what they could earn in the private sector. This results in a high staff turnover and raises suspicions of corruption.

Finally, the level of fines for polluters is much too low to be an incentive for investing in environment-friendly equipment and technologies rather than continuing to pollute.

Evaluators did not find evidence of EC interventions during the period under review targeting the issues raised in this paragraph. But “strengthening of the administrative capacity at national, regional and local levels, including through development of effective inspection and enforcement capacities” is included in the environment chapter of the Association Agreement agenda.

The Judgment Criterion is not validated. The EC cooperation did not address the Government’s capacity to implement environmental protection measures.

4.6.3 The Commission’s cooperation contributed to Ukraine fulfilling its international commitments in the field of environment protection and being actively involved in regional cooperation on environmental issues (JC 6.3)

Ukraine is party to a number of major international conventions and protocols in the field of environment. It signed the Espoo Convention in 1991 and the Aarhus Convention in 1998; both Conventions were ratified in 1999. The most recent ratifications include the Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity, the Framework Convention on the Protection and Sustainable Development of the Carpathians, the Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, and the Amendment to the Annex B to the Kyoto Protocol to the UN Framework Convention on Climate Change.

As noted above, at the end of 2009 the Commission launched two projects aimed at assisting the Ukrainian authorities in fulfilling their commitments under international conventions, with a particular focus on the Aarhus and Espoo Conventions.

This assistance is very relevant, for up to now Ukraine’s implementation of international instruments has been unsatisfactory. Meetings of the Parties (MOP) of the Espoo Convention (IV) and Aarhus Convention (II and III) found Ukraine non-compliant with its obligations under these conventions in the course of construction of the Danube – Black Sea Deep Water Canal. In addition, the decisions by Aarhus Convention MOPs found Ukraine in general non-compliant with some Aarhus Convention provisions. In 2008 the third MOP of the Aarhus Convention adopted a conditional caution to Ukraine following the county’s failure to implement its 2005 recommendations. A similar conditional caution by the Espoo Convention MOP did not take effect owing to Ukraine’s withdrawal of its final decision on the Danube-Black Sea Canal.

In December 2008 the Cabinet of Ministers adopted an Action Plan for addressing the issues raised by the Aarhus Convention MOP. Since the issues at stake extended beyond the sole responsibility of the MoEP, the Action Plan foresaw the establishment of an inter-agency working group. The existence of such a working group could not be confirmed at the time of the evaluators’ field mission. Updated Action Plans for legal improvements, administrative capacity-building, implementation and enforcement of the Espoo and Aarhus Conventions and other related obligations under relevant multilateral environment Agreements were proposed under the EC project mentioned above. The project also

prepared a draft Order of the Cabinet of Ministers on Taking into Account of Public Opinion in Environmental Decision-Making.

Ukraine developed a complex national system for reporting on the implementation of international conventions. However, the last report stems from 2006, raising questions about the usefulness of such a system.

Ukraine's compliance with the Kyoto Protocol is largely the result of a significant decrease in industrial production as compared to the base year of 1990. But national implementation does not address adaptation to climate change and reduction of GHG emissions per GDP unit. The ratio (index) of CO₂ emissions per GDP unit for Ukraine is 7,483 metric tons of CO₂ per US\$1 million of GDP, *vis-à-vis* the world average of 846 and the European average of 640. Ukraine has no national strategy for reducing emissions of greenhouse gases. In 2005 it adopted a National Action Plan for Implementation of Kyoto Protocol and a number of other legal acts of which the key objective was to facilitate the use of financial mechanisms under the Kyoto Protocol. In particular, significant attention was given to clearing the way for trade in emissions and joint implementation projects, for instance through the adoption of a whole body of secondary legislation, the signing of several bilateral agreements, notably with France and the Netherlands, and the creation in 2007 of the National Environmental Investment Agency.

The Judgment Criterion is not validated. Ukraine's compliance with international conventions on the environment is unsatisfactory, but the Commission's support for the fulfilment of international commitments only started in 2009.

4.7 Energy

EQ7: To what extent has the Commission supported the development of sustainable, secure and efficient supply and use of energy?

EQ 7 in Energy – Answer Summary Box

Cooperation between the European Commission and Ukraine in the energy sector is framed by a Memorandum of Understanding signed in December 2005. This document defines road maps for five sub-sectors or issues: nuclear safety; integration of electricity and gas markets; security of supply and transit of hydrocarbons; the coal sector; and energy efficiency and promotion of renewable energies, this last issue having been added to the MoU in 2008.

Since 1996 the Commission has continuously provided assistance to Ukraine with a view to contributing to compliance by the Ukrainian nuclear energy industry with internationally accepted safety standards. A safety evaluation review and a review of the Ukrainian safety regulatory system recently released by the International Atomic Energy Agency (IAEA) have demonstrated that nuclear safety in Ukraine has significantly improved. However, the independence of SNCRU, the nuclear regulatory authority, remains fragile and the efficiency of donors' assistance needs to be improved.

Less tangible outcomes can be attributed to EC interventions in the other energy sectors. Rather than delivering immediate results, the main Commission's interventions on integration of electricity and gas markets, on hydrocarbon supply and transit, and on the restructuring of

the coal sector, were meant to provide assistance to the Government with the formulation and implementation of reforms. Except for the project addressing the coal sector, these interventions effectively delivered their expected outputs. But since they were completed relatively recently, and because implementation entails huge investment, most of their outcomes are still awaited.

The issue of energy efficiency was hardly addressed by the EC cooperation during the period covered by the evaluation. Following inclusion of this issue in the MoU on energy cooperation in 2008, the European Commission and the GoU agreed in December 2009 on a budget support programme aimed at supporting implementation of the GoU strategy for improving energy efficiency.

Ukraine adopted in 2006 an “Energy Strategy for the Period until 2030”, which provides for major convergence with EU energy policy objectives with a view to making the energy sector not only sufficiently developed to support Ukraine’s economic growth, but also a net exporter of secondary energy aimed primarily at the EU market.

Within the context of the EU-Ukraine Action Plan adopted by the EU-Ukraine Cooperation Council on 21 February 2005, the Government of Ukraine and the EU signed in December 2005 a Memorandum of Understanding (MoU) on cooperation in the field of energy. This document sets out how the two sides plan to organise their work to bring their energy markets closer together. It provides a coherent view of the objectives of the policy dialogue on energy-related issues.

The MoU recognises that: “in the field of energy, the EU and Ukraine share convergent interests and both could benefit from the integration of their respective energy markets, thereby enhancing the energy security of the European Continent. In this context, the gradual adoption by Ukraine of the EU *acquis* would constitute a significant step towards Ukraine’s objective of gradual integration and deepening of political co-operation with the EU. Enhanced co-operation with the EU could boost the necessary reforms and, together with an improved investment climate, facilitate attraction of the necessary investment from both the IFIs and the private sector in Ukraine’s energy sector.”

The MoU addresses four energy issues: nuclear safety; integration of electricity and gas markets; security of supplies and transit of hydrocarbons; and effectiveness, safety and environmental standards in the coal sector. For each sector a roadmap has been agreed. A fifth sector - energy efficiency and renewable energies - was added to the MoU in 2008¹³.

Besides the projects targeting the energy sector, which are presented and assessed in this sub-section, the Commission supports the implementation of the GoU energy strategy through a €82 million budget support programme. This programme is analysed below in sub-section 4.9 on budget support.

¹³ On developments in the energy sector, see also Annex 9.

4.7.1 The Commission's cooperation contributed to improved nuclear safety (JC 7.1)

Ukraine operates four nuclear power plants (NPPs) with 15 nuclear generators. Although NPPs with a total capacity of 13.2 GW represent only 26% of the total electricity production capacity, they generate about half of Ukrainian electricity output. Energoatom, a State-owned company under the Ministry of Fuel and Energy, is in charge of operating all Ukrainian NPPs. It is also engaged in the construction of new power units, rehabilitation of those in operation, purchase of nuclear fuel and removal of radioactive waste. Safety issues relating to the nuclear industry are the responsibility of the State Nuclear Regulatory Committee of Ukraine (SNRCU), an independent body created by presidential Decree in December 2000. SNRCU sets criteria, requirements and conditions for nuclear safety; issues permits and licences for activities in the sector; and supervises implementation of legislation, norms, rules and standards on nuclear and radiation safety. It also oversees the Chernobyl decommissioning work and the management and transport of nuclear waste.

Ukraine has an ambitious programme for developing its nuclear capacity. A decision has been taken to build, financed by a €4.5 billion loan from Russia, two more nuclear units, completion of which is expected in 2014/2015.

The MoU on energy states: “In order to strengthen public confidence and for the EU to reinforce the role of Ukraine as a trading partner in the electricity market, Ukraine must meet internationally recognised nuclear safety and environmental standards. Hence, the safety of nuclear installations is a primary objective for both parties, who will continue to promote in Ukraine an efficient nuclear safety culture in line with the principles of the Convention on Nuclear Safety.”

The European Commission has provided assistance to Ukraine in the field of nuclear safety since 1996. According to the CRIS database, the Commission's assistance to Ukraine in the field of nuclear safety involved commitments totalling €174.2 million over the period 2002-2009. In addition, the Commission contributed €87.1 million to the Chernobyl Shelter Fund.

The Commission's assistance in the field of nuclear safety in Ukraine mainly covers four domains:

- on-site assistance (OSA) with two components: (i) provision of safety-related equipment (“hard OSA”) and (ii) transfer of EU operators' best practices, and improvement of the safety culture among NPP management and staff (“soft OSA”);
- design safety aspects, aimed at carrying out comprehensive assessments of safety-related issues;
- emergency preparedness;
- Support to SNRCU and to its technical support organisation, the State Scientific and Technical Centre for Nuclear and Radiation Safety (SSTC).

In addition, support has been provided for the development of a National Strategy for radioactive waste management and for the decommissioning of Chernobyl.

A comprehensive review of EC interventions on nuclear safety carried out under TACIS in countries of the former Soviet Union was released in May 2010. The findings and

conclusions of this study, based on analysis of numerous projects implemented in Ukraine, are relevant to the current evaluation.

Five “hard OSA” projects addressing high and extremely high safety concerns (categories III and IV in the IAEA ranking of safety issues) were implemented in Ukraine during the period covered by the evaluation. They supplied such pieces of equipment as safety valves, fire protection equipment, and pumps. All these projects, which were a response to urgent issues, were implemented and completed successfully and made an important contribution to safety improvements in the Ukrainian NPPs. Ten more “hard OSA” projects were dedicated to the treatment and storage of solid and liquid radioactive waste within the nuclear power plants, while smaller interventions were dedicated to the instalment of testing and diagnostic systems. The installation of Safety Parameter Display Systems (SPDS) in Ukrainian NPPs represents a key step in the process of safety upgrading.

As regards “Soft OSA” the TACIS Nuclear Safety Review underlined that bringing about changes in human attitudes, including management and operational styles, is much more challenging than providing a NPP with a new piece of equipment. It nevertheless considers that the transfer of experience provided by the Western utility contractors, including provision of training on EU nuclear sites, delivered sustainable achievements as regards the strengthening of a nuclear safety culture in the management and staff of Ukrainian NPPs.

Design safety projects are consultancy-type projects that address design and engineering issues. They are usually implemented in such a way that an EU design or engineering organisation works on a specific technical problem in close collaboration with its counterpart in the partner country. The evaluation by the Tacis Nuclear Safety Review of a sample of design safety projects, including three in Ukraine, led to the conclusion that they had been implemented successfully, resulting in direct improvements in safety in related NPPs and in a significant transfer of specific state-of-the-art know-how from Western experts to Ukrainian experts, thereby ensuring sustainability of their outcomes and potential transfer of the know-how to other NPPs with similar design characteristics.

Emergency Preparedness projects contributed to establishing an early warning system and developed a decision support system in the national emergency centre in Ukraine; to installing rings of detectors around several NPPs to provide inputs to early warning systems; and to designing a prototype data exchange system in the national emergency centres of Belarus, the Russian Federation and Ukraine for more effective communication of data and information, both within and between countries. According to the TACIS Nuclear Safety Review, the projects related to emergency preparedness have been implemented satisfactorily and have been well received by the beneficiaries.

The existence of an independent Regulatory Agency with a complete regulatory framework, implementing a modern licensing regime, with effective inspection and enforcement capacities and practice is a crucial precondition for nuclear safety. Since the European Commission started its assistance to Ukraine in the field of nuclear safety, six projects have been implemented to strengthen SNRCU and SSTC capacities through the transfer of Western European safety principles and practice, the most recent having been implemented between January 2006 and June 2008 with a budget of €2.5 million. During the period 2002-2009 smaller projects provided additional support to SNRCU on specific issues such as the evaluation of Safety Analysis Reports on operating units or the licensing of Plant Improvement Projects. A two-year project “Technical support to SNRCU and its

TSOs in assessment of implementation of safety upgrading measures and lifetime management programmes at NPP units” was launched in December 2008.

According to the Nuclear Safety Review, this assistance to SNRCU has been effective and indeed increasingly so over time as tangible impacts on the regulatory system have become more evident. This includes:

- approval and subsequent issue of ‘General Provisions for Safety Assurance of Nuclear Power Plants’ and a revised version of ‘Operational Safety Rules for Reactor Installations’;
- development of new regulations;
- adoption by the SNRCU Board of a concept for developing the regulatory pyramid;
- development and implementation of a Quality Management System with plans for its certification in 2008;
- development of a more systematic and transparent policy and approach to communication with the public;
- development in 2007 of an Action Plan to enhance the efficiency of SNRCU;
- a strategy for the Development and Reform of SNRCU (2008-2010).

The review nevertheless stresses that “notwithstanding the considerable progress made, further cooperation in the regulatory area would be of mutual benefit. In particular, there is a need to consolidate what has already been achieved, to continue to support the licensing process of further modernisation measures or safety improvements and to assist SNRCU further in a number of areas, not least in completing the regulatory pyramid and strengthening the regulatory system and its application to nuclear facilities other than NPPs.”

A Safety Evaluation Review and an Integrated Regulatory Review Service (IRRS) were carried out under the aegis of the International Agency for Atomic Energy (IAEA) by teams comprising international and Ukrainian experts. Both reports were released in 2010. The safety evaluation found full compliance with most of IAEA’s safety standards requirements. Less than full compliance was found in areas such as equipment qualification, analysis of severe accidents and methodology for calculation of seismic margins, but the evaluation noted that progress is being made on the resolution of inadequate compliance. As for the IRRS, it concluded that “SNRCU is effectively regulating nuclear safety and is *de facto* an independent body.”

The assessment of SNRCU capacity by the experts who implemented the EC support project is less positive. In their final report, released in December 2008, they pointed out remaining weaknesses:

- SNRCU remains highly dependent on decisions at government level;
- the budgetary lump sum through which the State budget finances SNRCU does not guarantee its economic independence;
- in some instances Ukrainian rules are not in compliance with internationally recognised rules, or are not enforced; the minimum demand should be that Ukrainian rules are strictly followed and, if that is impossible, that all deviations are documented and noted by authorised Ukrainian bodies;
- the structure of the regulatory pyramid needs to be settled as soon as possible;

- SNRCU management approach is old fashioned, slow and time-consuming, and does not encourage motivation at lower levels in the hierarchy.

Regarding the effectiveness of the EC support, the experts noted that there are too few specialists responsible for EC projects at SNRCU. Their ability to accept ownership of the projects is limited and there are examples of project documents being completed but then just filed. They concluded that assistance to SNRCU and SSTC should be continued, but recommended that it is given a stronger focus towards realising the objective of establishing effective management as an “overall process” and to strive for “concrete results and sustainable capability”.

The Judgment Criterion is validated. Substantial EC assistance implemented successfully contributed to improved nuclear safety even if further assistance is still needed.

4.7.2 The Commission’s cooperation contributed to gradual convergence towards the principles of the EU internal electricity and gas markets (JC7.2)

Electricity

Since the mid-1990s Ukraine’s power sector has been structured according to the major business activities: generation, transmission, distribution and supply of electricity. The Ukrainian electricity market is currently organised under a single-buyer model. A wholesale electricity market (WEM) was established in 1996, with the state enterprise Energorynok functioning as single buyer and market administrator. Transmission is organised within Ukrenergo, which owns and operates the high voltage network. Distribution is carried out via 27 regional distribution and supply companies (so-called Oblenergos). Supply is provided by Oblenergos (with regulated tariffs) and independent (non-regulated tariffs) bodies. The sector’s regulation is the responsibility of the National Electricity Regulatory Commission (NERC) established in 1994 simultaneously with the restructuring of the power sector.

Electricity tariffs for households and exports are regulated and set by NERC, while retail tariffs for other customers reflect wholesale price fluctuations. Retail tariffs for households are below the cost recovery level, which implies cross-subsidies from enterprises to households.

Ukraine’s high-voltage grid has interconnections with its neighbouring countries, including Russia, Moldova, Belarus, Poland, Slovakia, Hungary and Romania. Only the power plants on Burshtyn Island in Western Ukraine are connected with the European UCTE¹⁴ grid. Ukraine is a net exporter of electricity. Since 2004 net exports have fluctuated between a maximum of 10.4 GWh in 2006 and a minimum of 4.1 GWh in 2009, averaging about 4% of Ukraine’s electricity output.

¹⁴ Union of the Coordination of the Transmission of Electricity. In 2009, UCTE was integrated together with other organisations of electricity transmission system operators into the European Network of European Transmission System Operators (ENTSOE).

Because of excess capacity and low power prices, there has been relatively little investment in the power sector during the last 20 years, particularly in thermal power plants and transmission capacities. More than 92% of thermal power plants have outlived their design life. Some 34% of above-ground 220-330 kV transmission lines have operated for 40 years or more, and need to be replaced. The GoU Energy Strategy to 2030 estimates the investments needs of the sector to be to UAH522 billion (€85 billion) over the period, of which about half will be earmarked for thermal power plants and the transmission lines.

On the issue of integration the MoU reads: “The parties will devote their best endeavours to enable the integration of the Ukrainian electricity and gas markets into the European Union's internal energy market. For this to be realised requires the implementation of key elements of the *acquis communautaire* on energy, environment, competition and renewables.” Early in 2006 a meeting between EU and Ukrainian officials confirmed these commitments. The parties noted positively that “the objective of Ukraine to become *synchronously* connected to the UCTE network.”

During the period under review the EC implemented two projects aimed at assisting Ukraine with meeting the conditions for integration in the European electricity market.

The project “Support to Ukraine progressive integration into electricity TENS” was implemented in 2007-2008. Its objectives were (i) to assess Ukraine’s current power infrastructure and interconnection compatibility, and address relevant energy security issues; (ii) to assist in strengthening Ukrainian legislation and institutional capacity regarding integration into the EU electricity network; and (iii) to support the development of a Ukrainian strategy and implementation plan for progressive participation in electricity TENS. Besides the Ministry of Fuel and Energy, key players in the electricity sector – Energorynok, Ukrenergo, the JSC Energy Company of Ukraine, NERC – were involved in the project.

Although the project contract was signed in June 2006, its actual implementation was hindered by contractual problems up to December 2006 and by logistical problems (lack of operational office facilities) up to the end of March 2007. In spite of the *de facto* shortening of the project duration, the project team managed to deliver most of the outputs it was expected to deliver: studies of the technical issues related to the participation of Ukraine in electricity TENS; study of electricity exchange pricing; analysis of environmental issues; analysis of the legislative and institutional basis for the network interconnections and proposals for modifications in line with EU requirements; and a study of electricity exchange pricing. All of these studies presented concrete proposals and recommendations, but to date only a few steps have been taken to implement them.

At the end of 2009 the Ministry of Fuel and Energy reported that it is still working, in close cooperation with ENTSOE, on the development of a comprehensive Action Plan for integration of the Ukrainian power system into the electricity TENS, drawing on the results of the TACIS project.

In their final report the consultants pointed out that upgrading of the whole Ukrainian grid to UCTE standards will need considerable resources. The critical issue is disconnection of the Eastern part of Ukraine from the Russian Federation¹⁵, which requires major

¹⁵ This results from the choice of synchronous connection of the Ukrainian grid to the UCTE grid. It involves a change in the current synchronous connection between the Ukrainian and Russian grid into a batch connection.

investments. In the base case scenario, estimation of the total investment needed to add line length and transformers ranges from €450 million to €550 million over the period 2010 to 2020, and large additional investments, estimated in the range of €630–€800 million, will be required for the telecommunication system, modernisation of dispatching and control of the system, operation of the system, and so on. To date the only project under implementation is the construction of a high voltage transmission line between Rivne NPP and Kyiv under joint financing from EIB and EBRD.

In November 2007 the Cabinet of Ministers adopted an Action Plan for implementing a reform of the wholesale electricity market, which would break with the current single-buyer system and allow participants to negotiate and agree the terms of contracts among themselves. A draft Law on the Principles of the Electricity Market Operation has been developed and is currently subject to consultations with stakeholders.

The second EC project in support of electricity integration was a twinning project implemented between March 2007 and April 2009. It associated NERC with the Italian Regulatory Authority for Electricity and Gas. The project objectives were to promote institutional strengthening of NERC and to assist with the longer-term development and implementation of international best practice in energy sector regulation. Its implementation suffered, at least earlier in its implementation period, from a lack of ownership by the beneficiary. Furthermore some project activities had been designed on the assumption that a number of legislative reforms would be approved prior to inception of the project or at least in the very early stages of project implementation. As the project developed it became evident that reforms would not be forthcoming within its lifetime and a number of activities had to be reviewed in scope and content. Despite these difficulties, the project achieved useful results:

- it produced an “ideal law” for reinforcing the responsibility of NERC, which was used by the Government to draft a Law on NERC status, functions and organisation;
- a new cost-reflecting tariff methodology which is being implemented at Oblenergos;
- a monitoring methodology on the quality of service (numbers of cuts, voltage stability, etc.);
- a monitoring methodology for a future WEM, which however remains somewhat theoretical as long as the new WEM concept has not been finalised and adopted.

It must be noted that, besides the EC, other donors - notably the World Bank and USAID - have provided assistance to NERC, with some overlap between projects.

Gas

Changes are also taking place in the gas sector which should help remove obstacles to the integration of Ukraine into the EU gas market.

Since 2006 the market regulatory functions of NERC, initially restricted to electricity, have been extended to the gas market. Two draft laws addressing the status, functions and organisation of NERC have been registered with the Verkhovna Rada and are under consideration by the relevant Rada Committee.

A draft law on Gas Market Operation was prepared by NERC and the Ministry of Fuel and Energy in 2009. The Commission Services assisted with the development of this law by providing comments on drafts. Production of this piece of legislation allowed the

European Council of Ministers to approve in December 2009 the accession of Ukraine to the Energy Community. However the European Council of Ministers stated that this decision would only become effective when a Gas Law complying with the *acquis communautaire*, in particular with EU Gas Directive (2003/55/EC), has been adopted by the Ukrainian Parliament. The Gas Law was actually adopted by the Verkhovna Rada in July 2010.

Consumers in Ukraine used to pay only a small percentage of the cost of imported or locally-produced gas. As part of the Stand-By Agreement concluded with the IMF in 2008, the Government committed itself to phasing out the direct subsidy to consumers over a three-year period, and the indirect subsidy (through energy transformers who use gas) by mid-2010. In fact NERC increased domestic gas tariffs by 35% with effect from 1 December 2008. Nevertheless gas tariffs currently still remain far below actual costs.

In November 2009 the EC launched a second two-year twinning project at NERC, addressing regulation of the gas market. The European partner in this project is the Italian Regulatory Authority for Electricity and Gas, which already led the previous twinning project at NERC. This project should make an important contribution to implementation of the newly-adopted Gas Law.

The Judgment Criteria is partially validated. Relevant EC support was provided in support of integration of the Ukrainian electricity and gas markets into the EU's internal energy market. Implementation is not far enough advanced for an assessment of the results but the basics are right.

4.7.3 The Commission's cooperation contributed to more secure supply and transit of natural gas (JC7.3)

On the issue of hydrocarbons supply and transit, the MoU reads: "Ukraine is a key transit country for hydrocarbon supplies to the EU with 40% of the EU's imports of natural gas transiting through the Ukraine network and for oil, in addition to the transit through the existing Druzhba network, the ongoing extension of the Odessa-Brody oil pipeline to Poland would open a new major transit route for EU oil imports from the Caspian basin and the international market. In this context, ensuring a safe, transparent and reliable transit system is of paramount importance for both the EU and Ukraine."

Rather than in the framework of bilateral cooperation, issues related to the transit of oil and gas between Ukraine and the EU have mainly been addressed through the INOGATE programme, which is an international energy cooperation programme between the European Union, the littoral States of the Black and Caspian Seas and their neighbouring countries. Partners in the INOGATE programme have agreed to work together towards achieving four objectives: (i) converging energy markets on the basis of the principles of the EU internal energy market; (ii) enhancing energy security; (iii) supporting sustainable energy development; and (iv) attracting investment to energy projects of common and regional interest.

During the period 2002-2009 two projects directly concerning Ukraine were implemented, both in 2005-2006 in the framework of the INOGATE programme with financing from the TACIS regional programme. The first provided an assessment of the commercial,

technical and environmental feasibility of the extension to Plock, in Poland, of the Odessa-Brody crude oil pipeline completed by Ukraine in 2001. This study demonstrated the economic viability of the pipeline extension project. But to date no concrete step has been undertaken to implement the project. The second project was an audit of the Operation System of Gas Transit in Ukraine. It concluded that major investment estimated at €2.5 billion between 2007 and 2013 was needed to maintain Ukraine's transit network capacity. It also underlined that to maintain its position as the main transit country, Ukraine should create an operational environment which is attractive and secure from the points of view of all parties. This involves the legal and regulatory framework and economic, financial, tariff, technical (e.g. reliability, transparency of operations) and other aspects.

On the basis of the EC-funded audit of the Ukrainian gas transit system, the Government of Ukraine prepared a Master Plan detailing how the rehabilitation and modernisation would proceed, and the European Commission undertook to organise a conference to address with all interested parties the financial and policy issues involved in implementation of this plan.

The international conference on the Modernisation of the Ukraine's Gas Transit System took place in Brussels on 23 March 2009. The Joint Declaration issued at the end of the Conference was signed by the Prime Minister of Ukraine, the EC commissioner for Energy, the EC Commissioner for External Relations and European Neighbourhood Policy, the President of the EIB, the first Vice-President of the EBRD, and a representative of the World Bank. The signatories welcomed:

- the interest expressed by the participants in supporting and assisting with the modernisation of Ukraine's Gas Transit System (UGTS);
- the Master Plan on the Modernisation of the UGTS as presented during the Conference, including the identification of bankable projects;
- the readiness of the Government of Ukraine to co-operate with IFIs and to carry out a Gas Sector Reform Programme in 2010-2011.

The Government of Ukraine committed itself to:

- ensuring the independence of the Ukrainian gas transmission operator in terms of its legal structure, organisation, decision-making and accounts;
- developing a Gas Sector Reform Programme by the end of 2009 at the latest for implementation in 2010-2011.

Further commitments were to the effect that:

- the EC, the Government of Ukraine, and creditors would cooperate in seeking to establish a technical coordinating unit within Naftogaz of Ukraine which could take charge of (i) the establishment of a full modernisation business plan that would set out the timetable and sequencing of work, (ii) overseeing the work on the modernisation of the UGTS and (iii) contributing to development of the arrangements for the funding of the modernisation plan;
- the EC would consider providing assistance to the Government of Ukraine for the practical implementation of the gas sector reforms;
- the EC would provide support through the Neighbourhood Investment Facility or appropriate funding sources if this is necessary to support leveraging of loans from the IFIs.

In October 2009 the EC and the Government agreed to launch the development of feasibility studies for the priority projects, in particular for the “Soyuz” gas transit system. Adoption of the new Gas Law mentioned above, provided it is compliant with the EU Directive, removes an obstacle to the implementation of the Master Plan for Modernisation of the Ukraine’s Gas Transit System.

Through the INOGATE programme the Commission also contributed, in close co-operation with specialised bodies of the countries involved (NJSC "Naftogaz of Ukraine", SE "Beltransgaz" in Belarus and SC "Moldovagas" in Moldova) in the establishment of the Eastern European Regional Centre for Hydrocarbon Metrology in Boyarka and in the development of its human and technical capacities. The Centre, inaugurated in December 2006, provides state-of-the-art calibration services for gas transfer within the region and to other countries. Two additional projects, financed from the bilateral cooperation programme, were launched in 2008 and 2009. They aim respectively at validation, certification and subsequent commercialisation of the Centre, and at expanding its activities to oil, oil products and liquefied gas as well as to the monitoring, optimisation and control of hydrocarbon transit flows. It is expected that the metrology line will be fully ready for accreditation in July 2010.

In 2005 and 2007 the bilateral programme financed two small studies (total budget €250,000) aimed at assisting Ukraine with the development of a strategic oil reserve system. A draft law was prepared, which was expected to be adopted by the end of 2007. The Commission, together with Ukrtransnafta, started to prepare a twinning project aimed at building up the institutional capacity of the body (to be defined in law) which would be responsible for the management of the oil reserve. However, since by the end of 2009 no progress had been made towards adoption of the law, preparation of the twinning project was suspended.

The Judgement Criterion is partially validated. EC interventions contributed to the formulation of a modernisation plan for the gas transit system and facilitated discussions between the GoU and IFIs. But, except for the Metrology Centre at Boyarska, financed by the EC, implementation of the modernisation plan has not yet started.

4.7.4 The Commission’s cooperation contributed to the restructuring of solid fuel mines (JC7.4)

Ukraine’s coal industry - which includes about 160 mines of which 25 are private, employs several hundred thousand employees, and is managed by a hierarchy of State organisations - suffers from numerous problems including inefficiency and low productivity, hazardous working conditions, and labour strikes. Coal production halved during the first five years following Ukraine’s independence, but has remained broadly stable since then at around 60 million tons per year. Since the mid-1990s GoU has been following a policy of privatisation and of shutting down unprofitable mines. In spite of this the government still provides significant subsidies to the heavily-indebted sector and increases in efficiency have been modest. Difficult social conditions, late payment of wages, and insufficient re-training and job-placement programmes, together make reform and privatisation particularly controversial and delicate issues.

In 2005 the Cabinet of Ministers of Ukraine issued a *Concept for the Development of the Coal Industry*, which outlines plans for restructuring and developing the coal sector up until 2030. The government will continue to corporatise State-owned mines, and then privatise them through competitive tenders. The Government's main goals are to:

- develop existing production capacity by attracting investment in better technology;
- use coal reserves efficiently by overhauling production facilities;
- adapt coal industry enterprises to market conditions, providing a viable legal framework to encourage private investment;
- transform the structure of the industry through clear segregation of functions between various governing bodies;
- enhance worker safety and social protection of all workers;
- ensure compliance with applicable environmental regulations.

At the same time the Ministry of Coal Industry, which existed in the early 1990s but had been later merged with the Ministry of Fuel and Energy, was re-established.

The Coal Sector Policy Support Programme, a €8.9 million project developed by the Commission in close cooperation with the Ministry of Coal Industry, was launched in September 2008 to assist the Government with the implementation of its policy. Its five components address comprehensively the main issues involved in the restructuring and development of the sector, namely:

- institutional strengthening of the Ukrainian coal-mining industry;
- development of a Master Plan for the restructuring of the Ukrainian coal industry;
- setting-up of a Social Development Fund to fulfil the social obligations arising out of the coal restructuring process;
- improving occupational safety in the coal-mining industry;
- preparing a catalogue of contaminated sites.

The efficiency and effectiveness of the project during the first twelve months of its implementation have been very low. No agreement could be reached between the Ministry and the project team on such important issues as the scope of activities within specific components; the involvement of other Ministries and the IFIs; planning and forecasting of resource allocation from both sides; a common vision of the implementation of pilot measures; a schedule for delivery of results; procedures for transfer of ownership; project milestones; and so on. At the end of 12 months evaluation of mine assets and assessment of the social and economic consequences of the restructuring process had not yet started. Consultants were denied access to information. By the end of 2009 the situation was so worrying that the Commission was considering terminating the project.

Following the appointment of a new project team leader and the reshuffling of the Ministry following the Presidential election, the situation improved. But as of June 2010, six months before the scheduled project end, none of the expected outputs was yet at finalisation stage.

The Judgment Criterion is not validated. The project implemented to support the restructuring of the coal sector has not yet delivered the expected outputs.

4.7.5 The Commission's cooperation contributed to progress on energy efficiency and the use of renewable energies (JC7.5)

Ukraine's energy efficiency is extremely low. According to statistics from the International Energy Agency its GDP energy intensity in 2007 was three times as high as in the EU: 0.41 toe/thousand US\$ against 0.14. There are several reasons for this poor rating. First, low energy prices do not stimulate efficient energy use, especially for residential consumers. Second, the economy is dominated by energy-intensive industries such as cast iron, steel, cement and chemicals. Third, most of these industries still use outdated technologies. However since 2000 some progress in energy saving has been achieved: during the period 2001-2006 energy intensity was reduced by an annual average of slightly above 5%.

In March 2010, the Government adopted a State Economic Programme 2010-2015 for energy efficiency, which envisages a reduction in energy-intensity of 20% over this period. The implementation cost of this programme is estimated at UAH250 billion (€24 billion) of which slightly less than 20% would be financed by the State budget and local governments, the remaining 80% consisting of investments by the private sector.

In the second half of the 1990s, the Commission contributed to the creation of the Ukrainian Energy Service Company (UkrESCO), formed in 1998. In 1998 and 2005 UkrESCO contracted two €20 million loans from the EBRD from which it finances energy-saving investments in the private sector. During the period 2002-2009 under review, EC interventions in support of energy savings were on the one hand a small project providing assistance with energy consumption monitoring by local governments, and on the other hand the financing of energy saving equipment by the EC projects in support of local development. As regards renewable energy sources, the EC implemented in 2005-2007 a project aimed at stimulating the use of biomass, the main output of which should have been the creation of a Biomass Energy Services Company; but because of disagreement with the Government on the status of this company, this objective was not achieved.

The inclusion in the 2008 MoU on energy cooperation of a roadmap on energy efficiency and renewable energies is giving new impetus to cooperation in this area. Several TAIEEX conferences addressing energy efficiency and renewable energies have been organised. In December 2009 the Government and the EC signed an agreement for a €70 million budget support programme, of which €7.0 million was for technical assistance, to be implemented between 2010 and 2012 in support of the GoU's energy efficiency strategy.

The Judgment Criterion is not validated. Energy efficiency and renewable sources of energies have been hardly addressed by the Commission's cooperation during the period under review.

4.8 Border management

EQ8: To what extent have the Commission's interventions in the area of border management contributed to facilitating the legal movement of goods and persons while making more effective the control of illegal cross-border activities?

EQ 8 on Border Management – Answer Summary Box

During the period under review border management been a major area of cooperation between the European Commission and Ukraine.

The EC developed with the State Border Guard Service (SBGS) lasting and confident cooperation relations. Provision of technical assistance and supply of equipment have effectively contributed to the design and implementation by SBGS of a medium-term development plan, which should make it “Schengen compatible” by 2015.

Cooperation with the State Customs Service of Ukraine (SCSU) did not develop by anything like the same extent and very limited progress has been made towards integrated border management. EC contributions to the rehabilitation and equipment of border crossings have somewhat facilitated the movement of goods and persons between Ukraine and the EU, and some positive steps have been made towards harmonising Ukrainian customs procedures with international standards, but international surveys show that the effectiveness and transparency of customs operations remain low.

The EUBAM project is a remarkable example of donor cooperation involving the European Commission, 22 EU Member States and UNDP. This project succeeded in developing a cooperative approach between Ukraine and Moldova for establishing at the sensitive frontier between the two countries an effective and efficient border management system relying on close cooperation between the customs and border guard services of the two countries and on the implementation to controls of risk analysis approach.

A Readmission Agreement signed between the EU and Ukraine in 2007 entered into force on the 1 January 2010. Although several projects were implemented between 2005 and 2009 to enhance the capacity of the Ukrainian authorities to handle refugees and asylum-seekers, human rights NGOs express serious concern over this issue.

During the period 2002-2009 covered by the evaluation the Commission implemented in the area of border management some 40 projects involving total commitments above €100 million. These projects developed capacity-building activities targeting the State Customs Service of Ukraine (SCSU) and the State Border Guard Service (SBGS), provided equipment to these organisations, and financed the rehabilitation or construction of border-crossing facilities and of accommodation centres for irregular migrants and refugees.

Policy dialogue between the EU and Ukraine on these issues takes place within the framework of the Sub-Committee on Customs and Cross-Border Cooperation chaired on the Ukrainian side by the Chairman of the Customs Service of Ukraine and on the EU side by the Director of DG Taxud International Affairs. Both parties exchange information on

developments in the EU and Ukrainian customs policies and discuss implementation of the customs section of the EU-Ukraine Action Plan. A Joint Committee monitors implementation of the EU-Ukraine Readmission Agreement.

A sectoral budget support programme designed to support the GoU's endeavours to improve border management is in preparation.

4.8.1 The Commission's interventions facilitated the legal movement of goods and persons across borders (JC 8.1)

The EC cooperation mobilised substantial funds for the construction and rehabilitation of border infrastructure and for the equipment of SCSU and SBGS with modern technology. The refurbished border crossings at the borders between Ukraine and Poland (Jagodyn, Rava-Ruska) and between Ukraine and Hungary (Uzhgorod, Chop) are state-of-the-art, as also is the new equipment made available to customs officers and border guards.

Although a Project Supervision Unit (PSU) was put in place to carry out the daily management and supervision of the project's implementation, these infrastructure projects incurred significant delays and the costs were frequently underestimated. But in the end all construction projects were completed to a high standard. The improved infrastructure has resulted in less waiting time at the borders and more effective control, especially through the use of x-ray scanners.

But Ukraine underestimated the cost of maintaining infrastructure and of operating high-technology equipment; insufficient resources are available for that purpose. This means that the sustainability of EC support in this field is currently not secure. Indeed part of the equipment had to be taken out of use for lack of financial means for their operation. Another related problem is that the mobile x-ray scanners that were supplied by the EC cannot be moved to other border crossings which lack the required infrastructure for their use. Moving these scanners is also costly and, in view of the limited resources, SCSU and SBGS decided against this, despite the fact that such a system would greatly increase effective controls along the entire border.

Besides the rehabilitation of border crossings and the provision of equipment, the EC contributed to developing the capacity of both SBGS and SCSU.

The one-year project "Reform and Modernisation of the Ukrainian Customs Administration", implemented in 2004 with funds of the Regional Programme, aimed at enhancing the effectiveness and efficiency of the Customs Service through improvements in administrative instructions, implementation of more effective customs control and clearance procedures, and introduction of risk assessment and post-clearance audit. It included an important training component as well as provision of IT equipment. This project suffered from including too many activities in a very short period of time: 50 activities to be implemented in 10 months. If both SCSU management and the project team praised the quality of their cooperation, and if SCSU expressed full satisfaction with the benefits derived from the project, SCSU cooperation with the EC did not develop as well as it did with SBGS and the management of customs operations still suffers serious weaknesses.

Some positive developments can nevertheless be noted in the area of customs procedures. In 2006 Ukraine became a member of the revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures. The regulation for the adoption of the Single Administrative Document entered into force in January 2008. The law amending the Customs Code allowing for *ex officio* action by the customs authority in respect of pirated and counterfeit goods was adopted in November 2006 and an implementation regulation was adopted. SCSU prepared a draft of the new Customs Code which was submitted to the Parliament in July 2008, but it has not yet been adopted. Compared to the current Customs Code, the new Code is an improvement in terms of terminology; the system of customs regimes and the rules of their use; the definition of the rules on issuance of permit documents by customs authorities; the establishment of the main principles of the simplified procedure for customs control and customs declaration of goods transported through the Ukrainian customs border; and so on. It is however not fully compliant with EU standards, in particular as regards the valuation procedure for imported goods, which is a sensitive issue for European companies exporting to Ukraine, and a source of corruption.

Some modest steps have been made towards integrated border management. Stimulated by the EUBAM project¹⁶, SCSU and SBGS now undertake a common quarterly security assessment. But to date permanent coordination mechanisms have not been developed and there exists no system for maintenance and exchange of data between services.

The 2009 Global Enabling Trade Report published by the World Economic Forum reveals persistent weaknesses in Ukraine's management of custom operations. Effectiveness and efficiency of clearance are given a 2.2 mark on a scale ranging from 1 (very low) to 5 (very high); with a 3.5 mark on a scale ranging from 1 (common) to 7 (never occur) irregular payments in exports and imports are assessed as being; the corruption perception index with a 2.5 mark on a scale ranging from 1 (highly corrupt) to 10 (clean) denotes a relatively high level of corruption among customs officers. Altogether the report ranks Ukraine 95th out of 121 countries as regards the effectiveness of its border administration.

International road transporters complain of very long waiting times at the Ukrainian borders. They point out that nine different control services are involved in checking vehicles and cargo, that Ukrainian customs officers submit vehicles and cargo to full customs and other controls (or nearly so), and that the installed throughput capacities are underused.

The Judgment Criteria is partially validated. Rehabilitation and equipment of border crossings has somewhat facilitated the movement of goods, but the effectiveness of customs operations remains poor.

¹⁶ See below § 4.8.2

4.8.2 The Commission’s interventions contributed to a more effective fight against cross-border illegal activities, in particular trafficking in human beings and drugs (JC8.3)

The State Border Guard Service benefited during the period under review from two successive capacity-building projects “Reinforcing the State Border Guard Service of Ukraine’s Human Resources Management (HUREMAS)” for a total duration of 45 months, as well as of the supply of equipment to a total cost of €34.5 million.

The EC support has helped to make the State Border Guard Service a more professional organisation by supporting reform of training of the border guards, including the design of curricula fulfilling EU standards and refurbishment of training facilities, and by supporting a more transparent and meritocratic recruitment and promotion procedure. As of January 2008 conscripts are no longer recruited for border guard duties. To make this support more sustainable, a train-the-trainers programme was devised and carried out. Although this is a long-term effort and results are difficult to measure at this stage, there are indications that training and recruitment have already resulted in making SBGS more effective in combating illegal border activities. Furthermore, the training of the border guards has improved their knowledge of English and their communication skills, making them more service-oriented and customer-friendly. During the field visit to the border, the evaluation team were able to gather evidence that modern technology is used and that the border guards display a professional conduct of their duties. With the help of EUBAM, SBGS is moving towards a risk analysis system, including systematic profiling. SBGS is committed to an ambitious long-term (until 2015) reform strategy aimed at making it “Schengen compatible”.

The HUREMAS I & II projects are also a good example of successful multi-donor cooperation since they were jointly funded by the EC and USAID and implemented by the International Organisation for Migration (IOM).

As regards the fight against illegal cross-border activities, special mention must be made of the European Union Border Assistance Mission to Ukraine and Moldova (EUBAM), launched in 2005 at the request of the Governments of Ukraine and Moldova. EUBAM contributes to improving customs controls and border management between Ukraine and Moldova in a sensitive region, Transnistria, which does not recognise the authority of the Government of Moldova. EUBAM is a remarkable example of international cooperation. The project is funded by the European Commission and by EU Member States, 22 of which fund second staff from their national services to the Mission; administrative and logistical support is provided by UNDP.

EUBAM is a very successful example of donor’s support for combating illegal border activities and promoting cooperation between neighbouring countries in the field of border management. The list of its achievements is long, but can be summarised in the good progress made by Ukraine (and Moldova) towards a modern border management system. This reflects not only practical changes but also a changed mindset of officials in terms of moving away from unilateral concepts such as border defence or protection. With support from EUBAM, border controls have become more efficient (reduced waiting times) and more effective (increased seizure of drugs) through the use of a modern approach to risk analysis, including profiling of targets for controls. This means a move away from 100%

controls at the border to a concentration on about 15% of the traffic which is checked more thoroughly. Furthermore, Ukraine and Moldova have set up an automated Pre-arrival Information System (PIES), which informs the other side of the border what goods are due to pass, leading to significant efficiency gains in the whole procedure. Under the auspices of EUBAM both countries have now a system in place at all levels of the hierarchy of working groups, information exchange and personal contacts, both internally and shared with the neighbour. This means that the changes introduced in terms of cooperation are likely to be sustainable.

The Judgment Criteria is validated. The Border Guard Service has become more professional and is better equipped. Ukraine and Moldova effectively cooperate in the management of their common border.

4.8.3 The Commission's interventions contributed to more effective management of migration flows (JC8.2)

Due to its geopolitical position, irregular migrants use Ukraine as a transit country on their way to Western Europe. They come from Russia, Azerbaijan, Moldova, Uzbekistan, and also from Afghanistan, India, Bangladesh, Pakistan, China and Vietnam. They enter through the eastern border with Russia and, unable to leave Ukraine, they remain stranded there. According to Government statistics, between 2004 and 2008 67,000 third country nationals have been either refused entry, apprehended or detained at the border.

According to Ukrainian law, irregular migrants are subject to a formal legal process once their country of origin is identified, to determine whether they have a right to seek asylum in the country. If not, they subject to deportation. State Border Guard officials invite apprehended irregular migrants to return to their country of origin voluntarily, but an authorised procedure of forced removal remains in place if necessary. The Ukrainian refugee law has several shortcomings, pinpointed by UNHCR and NGOs. Asylum-seekers face problems with access to territory, to asylum, and to a substantive refugee status determination procedure. In fact the admission rate of asylum-seekers is extremely low. In addition a lack of funds for the creation of adequate refugee reception and integration programmes results in a highly inhospitable asylum environment in Ukraine.

In June 2007, after five years of negotiations, Ukraine signed with the European Union a Readmission Agreement which was ratified by the Ukrainian Parliament in January 2008. This agreement commits Ukraine to readmitting on its territory its own nationals, third-country nationals or stateless persons who have illegally entered the territory of a EU Member State direct from Ukraine and who at the time of entry held a valid residence authorisation or a valid visa issued by Ukraine. This agreement entered into force in January 2008, but it is only from the 1 January 2010 that Ukraine is committed to readmitting on its territory nationals from third-country with which it does not have concluded a treaty or arrangement on readmission.

At the time when Ukraine and the EU concluded the Readmission Agreement, Ukrainian media expressed fears that hundreds of thousands of irregular migrants would be returned to Ukraine. Implementation of the Agreement has shown that these fears were unfounded; from January to June 2010 only 138 nationals and foreign citizens were readmitted in Ukraine under the Readmission Agreement.. But more solidly grounded criticisms have

been raised against this agreement. The Ukrainian Refugee Council underlines that “Ukraine cannot be considered a ‘safe third country’ for asylum seekers and refugees at all. Refugee-assisting agencies have heard again and again of systematic violations of the rights of refugees, in violation of the provisions of international conventions ratified by Ukraine.” UNHCR also expressed reservations on the Readmission Agreement.

The EC support for the development of SBGS’s capacity mentioned above contributes to strengthening Ukraine’s capacity to handle irregular migration. But more specific interventions have been implemented for that purpose.

Between 2005 and 2009 Ukraine was party to a dozen of projects financed under the AENEAS Programme established by Regulation (EC) N° 491/2004 to provide “specific and complementary financial and technical aid to third countries in order to support their efforts to improve the management of migratory flows”. Most of these projects also involved other countries of the region: Moldova, Belarus, Georgia and in one case Russia. They addressed the issues of asylum seekers and refugees, fight against human trafficking, labour migration and capacity building in migration management. Special mention may be made of the project “GDISC Ukraine – Capacity Building and Technical Support to Ukrainian authorities to Effectively Respond to Irregular Transit-Migration (ERIT)” implemented between 2008 and 2010. Through the organisation of conferences, working sessions and study tours this project promoted exchanges of experience and cooperation between the Ukrainian institutions in charge of refugees and asylum-seekers and their counterparts in six EU Member States: the Czech Republic, Hungary, Poland, Slovakia, the Netherlands and the United Kingdom.

Within the framework of the National Programme for Ukraine the Commission financed a large project “Capacity Building of Migration Management” implemented in two phases between 2005 and 2008 by IOM. This project aimed at improving the protection and well-being of detained irregular migrants through refurbishment and equipment of migrant accommodation centres (MAC) and temporary holding facilities (THF); training of the personnel employed in these centres; and involvement of civil society organisations in the establishment of Centres for Migrant Advice (CMA).

The project delivered most of the outputs expected of it. Five THFs and two MACs have been refurbished and equipped, although the latter has a capacity of only 250 persons against a planned figure of 1,260. Recommendations were provided to the draft State Concept on Migration. Training courses, seminars and study tours focusing on national and international human rights law, procedures relating to accommodation, legal rights of the detainee and humanitarian living standards were attended by more than 1,200 participants. Seven CMAs were established by NGOs. But the sustainability of the project achievements is jeopardised by institutional instability and the insufficient resources allocated to the running and maintenance of the MACs and THFs and to the funding of CMAs, as well as by the lack of political will to address this issue seriously.

A report released in 2010 by Amnesty International draws a worrying picture of the situation in Ukraine as regard the situation of refugees and asylum-seekers. The report notes that during the 11 years when the State Committee for Nationalities and Religion had been tasked with granting asylum, the asylum function was restructured ten times, each time resulting in serious gaps in protection for refugees and asylum-seekers. In 2008 a Cabinet of Ministers’ Decision to create a State Migration Service never took effect because

it was vetoed by the President. The evaluation of the AENEAS programme also noted that very frequent reshuffling of officials at ministerial level has seriously impaired the effectiveness of the projects implemented in Ukraine under this programme.

More globally, Amnesty International reports that “there is no adequate and fair asylum procedure in Ukraine and its asylum system fails to comply with international law. Migrants, refugees and asylum-seekers are subjected to a range of human rights violations. Most importantly, they are at risk of being forcibly returned to countries where they face persecution or serious human rights violations including torture or other ill-treatment (*refoulement*). Moreover, migrants are routinely detained for up to six months without being able to challenge their detention; people in need of international protection are rarely granted asylum and there are no other forms of protection; they are subjected to considerable hardship because there is virtually no state support; and they are at risk of discrimination and racist attacks from state officials and members of the public.”

The Judgement Criteria is partially validated. Construction of accommodation centres and training of the staff involved in migration management have improved the capacity of Ukrainian authorities to address this issue, but CSOs denounce repeated violations of the rights of refugees and asylum seekers.

4.9 Budget Support

EQ9: To what extent does the Commission’s move towards the use of Budget Support facilitate the implementation of reforms, contribute to improve the institutional and regulatory frameworks and to improved management and performance?

EQ 9 on Budget Support – Answer Summary Box

The entry into force of ENPI on the 1 January 2007 authorised the Commission to provide budget support to Ukraine provided eligibility criteria are met. A first Sectoral Budget Support (SBS) programme in support of the implementation of the Government Energy Strategy was launched in September 2008, followed in December 2009 by two more SBS focusing on energy efficiency and on the removal of barriers to trade.

These SBS are consistent with the Commission’s principles in respect of budget support programmes. The process of programme identification revealed that eligibility criteria were met. They include fixed and variable tranches. Disbursement of tranches is always contingent on the fulfilment of general conditions, and the amount of the variable tranche actually disbursed is linked to actual achievements measured against a series of indicators.

The Energy SBS suffered from having been hastily prepared and from the EC Delegation’s lack of experience with budget support. Technical and Administrative Provisions were insufficiently specific as regards the special conditions and performance indicators attached to the programme. The Commission requested the establishment of a Joint Monitoring Group, which duplicates existing monitoring structures. The TA project in support of implementation of the SBS started eighteen months after signature of the Financing Agreement whereas it would have been most useful during the earlier months of programme implementation.

A policy dialogue between the Commission and the GoU on energy policy existed prior to the implementation of the Energy SBS. The SBS's specific contribution to this dialogue lies in the definition and monitoring of a set of indicators that allow assessment of progress towards the fulfilment of jointly-agreed objectives. Unfortunately the Ministry of Fuel and Energy refused to let donors other than the Commission participate in the JMG, thus missing an opportunity for more effective donor coordination.

The financial resources provided by the Energy SBS are channelled by the GoU to a programme for structural reforms in the MoFE budget, and are utilised to finance investment projects.

Improving the quality of Public Finance Management is one of the key objectives pursued by the Commission through the provision of budget support. The way this issue is addressed in Ukraine is not satisfactory. The Government's PFM Modernisation Plan, implementation of which is one of the general conditions of the SBS, focuses on the efficiency and transparency of budget operations rather than addressing the identified weaknesses of the system; the Delegation monitors developments in the field of PFM, but there is no structure in place for an in-depth policy dialogue on this issue between the Commission and the GoU.

In September 2008 a Financing Agreement was signed between the Commission and the GoU for the provision to Ukraine of budget support to a total of €82 million (plus €5 million of technical assistance) in support of implementation of the GoU strategy in the energy sector. It is the first budget support programme ever implemented by the Commission in Ukraine.

In December 2009 Financing Agreements were signed for two more sectoral budget support (SBS) programmes, namely:

- a SBS supporting the removal of technical barriers to trade (€39 million to be disbursed in four tranches plus €6 million of technical assistance);
- a SBS in support of Ukraine's strategy in the area of energy efficiency and renewable energy sources (€63 million to be disbursed over a three-year period plus €7 million of technical assistance).

4.9.1 The Commission's SBS inputs are adapted to the specific sector needs and context (JC9.1)

Provision of sectoral budget support to Ukraine was a decision of the European Commission. The entry into force from the 1 January 2007 of Regulation 1638/2006 establishing the European Neighbourhood and Partnership Instrument (ENPI) made it possible for the Commission to utilise this financing modality, which it could not utilise under the TACIS Regulation. By the end of 2006 the Commission undertook identification of a budget support programme to be implemented in Ukraine.

The Commission initially envisaged a SBS supporting reform of the Public Finance Management System. But during the process of programme identification between December 2006 and March 2007, the GoU was still working with the technical assistance of the World Bank on the formulation of its PFM Modernisation Strategy, which was adopted by the Council of Ministers in October 2007. Furthermore a principal agreement had already been reached between the GoU and the World Bank that the latter would

finance through a loan most of the implementation cost of the PFM Modernisation Plan. The Commission therefore concluded that conditions for implementing in Ukraine a SBS in support of the PFM reform were not met.

In contrast the preconditions *were* met for implementing a SBS in the energy sector, since:

- the GoU had adopted a sector strategy consistent with the principles and policies promoted by the European Union - the GoU energy sector strategy up to 2030 – and the GoU and the EU had agreed on policy documents defining common objectives in the energy sector: the energy section of the EU-Ukraine Action Plan and the Memorandum of Understanding on cooperation in the field of energy;
- there existed on energy issues a structured policy dialogue between the Government and the EU: the Sub-Committee on energy, transport, nuclear safety and environment and the MoU Working Group, complemented by five sub-groups corresponding to the five road maps formulated in the MoU;
- a mechanism for monitoring the outcomes of the government strategy implementation had been established, namely the progress reports on MoU implementation.

Signature of the Financing Agreement of the Energy SBS was initially expected to take place before end-2007. It actually took place one year later.

The Energy SBS is non-targeted: EC funds made available to the State Treasury are not earmarked for the financing of specific expenses or budget lines. Its total budget of €82 million is split into a fixed tranche of €40 million and a single variable tranche of €42 million. The Action Fiche indicates that additional contributions to the financing of the Government's energy strategy are expected from the EIB/EBRD to a total of €400 million and of the World Bank to a total of US\$150 million. Although the size of the Energy SBS is quite large when compared to the projects implemented by the EC in Ukraine, it is quite small when compared to the €40 billion revenue (UAH297.9 billion) of the consolidated budget of Ukraine in 2008, or to the volume of investments required by the implementation of the GoU Energy Strategy.

As is common to the budget support programmes of the Commission, disbursement of all tranches of the Energy SBS is contingent on three general conditions:

- implementation by the Government of a sound macroeconomic policy;
- existence of a reform programme aimed at improving the quality of public finance management;
- existence of a sector strategy.

The Energy SBS suffered from having been hastily prepared and from the EC Delegation's lack of experience with budget support. In particular the Technical and Administrative Provisions (TAP) were insufficiently specific, notably as regards the special disbursement conditions and the indicators attached to the variable tranche. They were complemented in August 2008 by a document "Performance Indicators for Disbursement" adopted by the Energy MoU Working Group and annexed to the third joint EU-Ukraine Report on implementation of the MoU on Energy Cooperation.

The TAP indicated that "Performance monitoring will be exercised by a Joint Monitoring Group whose basis has been laid down in August 2006 with the establishment of the Energy MoU monitoring group partnering the Ministry of Fuel and Energy (MoFE) and

the European Commission.” This formulation suggested that monitoring the SBS conditions and indicators would be carried out by the MoU Working Group on the basis of the reports produced by its five sub-groups.

Nevertheless the document “Performance Indicators for Disbursement” adopted in August 2008 laid down as a special condition for disbursement of the fixed tranche of the Energy SBS a requirement to “establish a Joint Monitoring Group (JMG) with a view to following up fulfilment of the programme’s conditions.” This JMG was established in November 2008 but had its first meeting only in September 2009. A second meeting took place in February 2010. The Delegation wishes the JMG to held meetings in two different formats: at technical level for examination and discussion of the reports produced by the MoFE on fulfilment of the performance indicators, and at the level of the Ministry and the Head of Delegation to endorse these reports. To date JMG meetings have only taken place at technical level.

The evaluators were not presented with convincing arguments for the establishment of the JMG in addition to the Working Group on the implementation of the Energy MoU and its five sectoral working groups. The establishment of this structure entails the risk of a disconnection between the monitoring of the performance indicators and the policy dialogue, whereas on the contrary the indicators should feed into the policy dialogue.

A second special condition for the disbursement of the fixed tranche was the adoption of the Law on State Budget 2008 and of the financial regulation necessary for implementing the SBS programme. This condition was fulfilled through a resolution of the Cabinet of Ministers on 19 November 2008 although a complementary decision was still lacking.

The TAP annexed to the Financing Agreement did not list the indicators, the degree of fulfilment of which would determine the share of the variable tranche actually disbursed. They were specified in the “Performance Indicators for Disbursement” adopted in August 2008, which lists 22 indicators and sub-indicators referring to:

- Public procurement: Law on public procurement submitted to the Parliament, then implemented (weight: 20%)
- Strengthening of the capacity and independence of the National Electricity Regulatory Commission (12%)
- Stabilisation of the quasi-fiscal deficit in the energy sector (5%)
- Concrete progress in preparation for Ukraine’s integration into the EU energy market (12%)
- Adoption and implementation of a modernisation plan for the oil and gas transit network (10%)
- Finalisation of a financial agreement with IFIs for priority projects (5%)
- Draft of the primary and secondary legislation necessary to achieve harmonisation with the EU oil directives (7%)
- Design and start of construction of a pilot international gas metering station (12%)
- Reduction of the energy intensity of the Ukrainian economy (10%)
- Improvement of the energy efficiency of the gas compressor stations on the gas transit system (7%).

The table “Performance Indicators for Disbursement” does not specify the verification sources of these indicators, nor does it explain how a value is attributed to the indicators and how the aggregated value of indicators determine the size of the variable tranche actually disbursed.

All energy-related indicators are in line with the Energy MoU and address key issues for its implementation. However, at the first meeting of the JMG in September 2009 it was acknowledged that some indicators should be more clearly formulated. The GoU also requested that the construction of a gas metering station, a sensitive issue in relations between Ukraine and Russia, is removed from the list of indicators.

After concluding that the general and special conditions for disbursement of the fixed tranche of €40 million were met, DG Relex gave its agreement at the end of November 2008 to the Delegation’s proposal to disburse this tranche. But owing to the lack of adequate payment credits, disbursement took place in two instalments of respectively €23 million in December 2008 and €17 million in October 2009.

At the time of the evaluators’ field mission (June 2010), the GoU had not yet requested disbursement of the variable tranche. In any event, because of the suspension of the IMF programme at the end of 2009, the general condition for disbursement in respect of macroeconomic policy was no longer being fulfilled. Resumption of cooperation between Ukraine and the IMF from August 2010 has removed this obstacle.

Disbursement of the fixed tranche in two instalments over two years, and the delayed disbursement of the variable tranche when compared to the initial timetable, raise doubts over the predictability of the resources provided by the SBS programme.

The Financing Agreement of the Energy SBS makes provision of up to €5 million for technical assistance in support of implementation of the SBS programme. The tendering process for a technical assistance project was launched in September 2009 with a planned budget of €3.5 million. Implementation of the project started in May 2010. It will assist the Ministry of Fuel and Energy (MoFE) with the management, monitoring and reporting of the Energy SBS and should put in place an effective mechanism for joint review and collaboration of all stakeholders involved. The TA project will also provide *ad hoc* assistance to the MoFE for the fulfilment of the SBS indicators and for the implementation of the EU-Ukraine Joint Declaration on the modernisation of Ukraine’s Gas Transit Network. One can only regret that eighteen months elapsed between the signature of the SBS financing agreement and the start of the TA project.

The TAPs attached to the Financing Agreements of the two SBS (trade barriers and energy efficiency) signed in December 2009 do not have the weaknesses noted in the TAP of the Energy SBS. But both request the establishment of a specific JMG. Whereas this may be justified for the SBS supporting the removal of technical trade barriers, that related to the SBS in support of Ukraine's strategy for energy efficiency and renewable energy sources might duplicate the working group in charge monitoring the MoU road map on energy efficiency.

The Judgement Criterion is not validated, on the grounds of: limited volume of funds compared to the resources requested by the implementation of the strategy; insufficiently specific TAPS; creation of a redundant monitoring structure; late provision of technical assistance; lack of predictability of disbursements.

4.9.2 Commission’s SBS contributes to improvements in the relationship between external assistance and the national budget and policy processes (JC9.2)

The Energy SBS did not contribute to establishing a dialogue on energy policy between the Commission and the GoU. Such a dialogue already existed in the framework of the Sub-Committee on Energy, Transport, Environment and Nuclear Safety, and through the Working Group on the implementation of the Energy MoU and its five sectoral sub-working groups. The specific contribution of the SBS to the policy dialogue lies in the definition of a set of indicators, monitoring of which would allow an assessment of progress towards achievement of the MoU objectives.

The Energy SBS did not succeed in enlarging the policy dialogue between the Government and the donors. MoFE refused to let donors other than the Commission participate in the JMG of the Energy SBS. Even EIB and EBRD are not invited to participate in the JMG although the MoU on Energy recognises that they should be closely involved in its implementation. The Delegation notes in this respect in the EAMR 2008 that its Ukrainian counterparts “do not understand the benefits of donor coordination and their leading role in this process. Some Ukrainian Ministries are still trying to coordinate bilaterally with donors or even set up alternative donor coordination structures.”

A major advantage of budget support, as compared to project aid, is that the resources provided by the donor are spent in compliance with the budget procedures of the partner country, thus contributing to reducing the transactions costs of foreign aid. In the case of Ukraine this entailed a serious fiduciary risk as long as the Ukrainian Law on Public Procurement departed from international standards and did not guarantee a fair and transparent procurement process. In the Energy SBS this issue is addressed through an indicator attached to the variable tranche, which requests from the GoU that a new Procurement Law is drafted, adopted by the Parliament and implemented. 20% of the variable tranche, that is €8.4 million, is linked to fulfilment of this indicator. The question may be asked whether it would not have been more appropriate to make this issue a special condition, fulfilment of which would have conditioned the disbursement of all SBS tranches including the first fixed tranche. In any event, as noted above a new Procurement Law, which at first examination seems to be compliant with international standards, was adopted by the Parliament in June 2010.

According to the Ukrainian Budget Law public funds may be allocated to “programmes”, which are a list of tasks to be implemented by a Ministry to achieve a specific goal. Programmes give rise to the formulation of a “budget programme passport” that defines the amount of money needed to perform the said programme during a given budget year; the legislative basis for its performance; its goal, related tasks and activities; and the spending unit responsible for the programme’s implementation. The Resolution of the Cabinet of Ministers regarding implementation of the Financing Agreement for the “Support to the Implementation of the Energy Strategy of Ukraine”, dated 19 November 2008, specifies that the funds provided by the Energy SBS will be allocated to the MoFE, and within the MoFE budget to the programme “Structural reform in the energy sector”. The Resolution further states that the EC funds will be mainly used for investment; non-investment expenses should not represent more than 10% of the EC contribution. The

Delegation, while underlining that it does not intervene in the use of SBS allocations, is favourable to this approach to the extent that it initiates a dialogue between the Ministry of Finance and the MoFE and is a step towards policy-based budgeting and ultimately towards medium-term budgeting. But this earmarking of EC funds could also be used by the MoFE as an argument for preventing the Commission from making the overall budget of the Ministry the subject of policy dialogue.

The Judgment Criterion is not validated: very limited progress in the policy dialogue in which IFIs are not involved; SBS funds earmarked for the financing of investment projects.

4.9.3 Commission's SBS contribute to improve the policy preparation and implementation, including the use of budget as policy instrument (JC9.3)

The first progress report on the fulfilment of SBS indicators first presented by the GoU in September 2009, then updated in February 2010, shows mixed results. Progress was recorded as regards the draft of a new Public Procurement Law (adopted by the Parliament in June 2010); regulation of the electricity and gas markets (Draft Laws submitted to the Parliament); modernisation of the Gas Transit System (Plan to 2016 developed by Naftogaz), integration into electricity TENs (Action Plan under development); discussions and finalisation of financing agreements with IFIs for priority infrastructure projects (agreement on a loan for a high voltage transmission line); and reduction of energy intensity. But other issues remained unaddressed such as the adjustment of energy prices on production costs; the design of a strategy for protecting the poor from the effects of electricity and gas price increases; and the management of strategic oil reserves and the harmonisation of the relevant legislation with the EU Oil Directives. It is noticeable that in many cases progress may be partly attributed to the support from EC projects such as the TA to the Antimonopoly Committee, the Twinning project at NERC, or the TA project in support of integration into electricity TENs.

The EC Manual on Budget Support states that “success or failure of implementation of national policies and strategies is strongly affected by the quality of the public financial management system” while the European Court of Auditors in its 2005 Report relative to EDF budget aid to ACP countries stressed that improving public finance management is one of the key objectives of budget aid. It is furthermore crucial in terms of accountability of the Commission to European citizens.

The Commission has a dynamic approach to this issue. It does not request that the PFM system is satisfactory, but that a plan aimed at improving the quality of PFM has been designed and is being implemented. This is an eligibility criterion for the provision of budget support as well as a general condition for disbursement during programme implementation.

During the identification phase of the Energy SBS the Commission carried out an assessment of the Ukrainian PFM system based on two reports that had been recently been released: the PEFA assessment and the SIGMA report on governance.

One of the three general conditions attached to the Energy SBS as well as to the two other SBS programmes for which Financial Agreements were signed reads “Satisfactory progress on implementation of the programme to improve and reform public finance management

as reflected, *inter alia*, in the Government's Strategy for the Modernisation of Public Finance Management System and a Strategy and Action Plan for reforming public procurement in the short- and medium-term perspective, being developed with the assistance by SIGMA". As noted above, a draft Law on Public Procurement had been submitted to the Parliament, which adopted it in June 2010. As for the PFM Modernisation Plan 2008-2013, its implementation started in March 2008 following signature of a loan agreement with the World Bank.

However the way the PFM issue is currently addressed remains unsatisfactory.

The Public Finance Modernisation Plan gives priority to improving the efficiency and transparency of budget operations over enhancement of the intrinsic quality of public finance management. Of the US\$65 million budget of the plan, US\$61.2 million is allocated to the development of an Integrated Public Finance Management System, US\$1.2 million to project management and only US\$2.6 million to activities aimed at strengthening the institutional capacity of the institutions involved (Ministry of Finance, State Treasury and Control and Revision Committee). The weaknesses of the Ukrainian PFM system identified in the PEFA assessment, notably as regards transparency of inter-governmental fiscal relations, the predictability of the availability of funds for commitment of expenditure, medium-term budgeting, the effectiveness of internal controls and audits, or the nature and follow-up of external audit, are in no case addressed.

As requested in the EC Guidelines on the programming, design and management of budget the EC Delegation to Ukraine produces annually and sends to EC Headquarters a report on developments in Public Financial Management. The Guidelines underline that this report is required "because it is important that Headquarters and Delegations, after the signature of Financing Agreement, maintain a regular structured dialogue on the PFM situation in the partner country." But there is currently no framework for an in-depth policy dialogue between the Commission and the Government on PFM issues. The JMGs established to monitor progress in the implementation of the SBS programmes are obviously not appropriate structures for that purpose. The Sub-Committee on Economic and Social Issues, Finance and Statistics meets only once a year, its scope is too broad for allowing an in-depth dialogue on PFM issues, and it is restricted on the donor side to the EC and EU Member States even though other donors, notably the World Bank, are also active in this area.

The Judgment Criterion is not validated. Some progress is noted in implementation of the strategy, but may as well be attributed to technical assistance. PFM is not addressed in a satisfactory manner.

4.9.4 The Commission's interventions through budget support offer value added(JC9.4)

In its External Assistance Management Report (EAMR) for 2009, the Delegation writes that "the lengthy and painstaking preparatory phases for budget support operations are proving to be a valuable tool for policy dialogue within government services, the Commission and other donors. (...) On the positive side, we can report that projects, programmes and budget support operations are acting as good catalysts bringing together

different sides of the UA public administration, non-governmental partners where appropriate, international organisations. Beneficiaries report about an improved circulation of information and ideas, about capacities being raised as well as networking with EU institutions and organisations.”

Representations of EU Member States interviewed by the evaluators acknowledge that the Commission, because of the policy dialogue it is conducting with the Government and because of the size of its financial assistance to Ukraine, can legitimately consider providing part of its assistance to Ukraine as budget support. They also consider, however, that in the political situation that prevailed in Ukraine since 2006/07, implementing budget support was premature.

The Judgment Criterion is only very partially addressed. Because of the weaknesses pointed out under the three previous JCs, the value-added of the Energy SBS is very limited. It mainly consists in initiating, for both the GoU and the Commission, a learning process on how to make good use of this new cooperation tool.

4.10 Efficiency

EQ10: To what extent has the mix of financing modalities, instruments and implementation mechanisms, as well as the regulatory framework, positively contributed to the impact of EC interventions?

EQ 10 on Efficiency – Answer Summary Box

The entry into force of ENPI on the 1 January 2007 significantly enlarged the variety of instruments available to the Commission for its cooperation with Ukraine and hence its potential flexibility. But most of the cooperation activities implemented during the period 2002-2009 covered by the evaluation were implemented under TACIS, an instrument primarily designed for the provision of technical assistance.

The Commission made flexible use of TACIS which it utilised for the supply of equipment and the financing of works projects as well as for the provision of technical assistance. Resorting to grants allowed the Commission to make effective use of the know-how and experience of several international organisations, and to involve local governments, their agencies and CSOs in the implementation of projects.

There is in Ukraine an increasing demand for Twinning projects, which demonstrated in the context of Enlargement that they are an efficient tool for supporting approximation of legislation and implementation of EU standards.

The relatively high marks given in the monitoring reports to the effectiveness and efficiency of the sample of interventions selected for the evaluation show that implementation mechanisms were appropriate for achieving the cooperation objectives in the prevailing institutional context, taking into account the capacities of the beneficiaries.

4.10.1 Financing instruments and their mix have been chosen so as to allow attainments of the cooperation objectives taking into account Ukraine’s institutional context (JC10.1)

Until 2007 the Commission’s interventions were implemented within the framework of the TACIS Regulation of December 1999, which was designed mainly for the provision of Technical Assistance. Entry into force of the ENPI from 1 January 2007 as the main instrument for cooperation with Ukraine enlarged the range of financing instruments available to the Commission and increased flexibility. New cooperation tools such as Budget Support, Pool Funding, Twinning or TAIEX can be used in the context of Sector-Wide Approaches to implementing the Commission’s strategy priorities. Interest subsidies and other ways of blending grants and loans are available to leverage investments by financing institutions. The possibilities for the Commission financing investments in infrastructure or supplying equipment are enlarged.

But a large majority of the interventions implemented during the period 2002-2009 covered by the current evaluation were implemented under the TACIS regulation. They accounted for 76.3% of total commitments and 86.9% of disbursements during this period against 12.4% and 4.9% respectively for ENPI interventions. Other financing instruments used during the period under review such as the Nuclear Safety Instrument (8.0% of commitments and 5.2% of disbursements) and the European Instrument for Democracy and Human Rights (1.6% and 1.9%) were intended for specific intervention domains.

The Commission made very flexible use of the TACIS instrument in respect of the financing modalities of projects and the nature of interventions. Close to 30% of TACIS commitments for technical assistance (€101,090 out of a total of €348,250) consisted of grants to international organisations, local governments and their agencies, and to international or Ukrainian CSOs. Although TACIS was primarily meant for providing Technical Assistance with limited investment content, one-third of EC commitments under TACIS were allocated to supply and works projects.

Table 9: Distribution of TACIS commitments by nature of intervention

Nature	Number of contracts	Commitments in million Euros
Services	383	348.25
Supplies	84	149.35
Works	14	34.15
Others (*)	77	9.17
Total (**)	558	533.25

(*) Audits, draft of terms of reference, translations, etc.

(**) Excluding contributions to the Chernobyl Shelter Fund, Fuel Gap and complements to EBRD loans

Source: CRIS

Supply and works projects benefited the few sectors where investments were most needed: equipment of border guards and of the customs service; rehabilitation of border crossings; development in cities of water supply and waste management installations; supply of safety equipment to nuclear plants in addition to the items of equipment supplied through the Nuclear Safety Instrument; and to a lesser extent provision of equipment to the

laboratories in charge of food safety control.

€5.4 million of TACIS funds were provided to EBRD to supplement the loans provided by this institution in support of the development of regional banks, credit to SMEs and micro-credit schemes.

The programming documents (CSPs and NIPs) do not explicitly address the choice of financing instruments. This choice is made at a later stage when projects or measures have been identified. But even at that stage the Action Fiches may leave open the choice between alternative or complementary implementation and financing modalities.

The Judgment Criterion is validated. The Commission made flexible use of the TACIS so as to efficiently meet the needs it wanted to address.

4.10.2 Implementation mechanisms have been chosen so as to allow attainment of the cooperation objectives taking into account the institutional context and the beneficiary capacities (JC10.2) and Interventions have been carried out within their allocated budget and planned schedule (JC10.3)

CSPs and NIPs address the issue of implementation mechanisms when addressing the lessons learned from past cooperation. The two CSPs formulated during the period under review underlined the need for the Commission to focus its interventions on a limited number of areas, and to move from stand-alone projects towards programme and sector-wide approaches. These orientations did not materialise. The Commission implemented a very large number of projects addressing a large range of issues. As can be seen in the table above, between January 2002 and September 2009 the Commission concluded under TACIS 383 service contracts with an average size of €910,000. Even if one excludes projects financed through a grant, the average size of the service contracts awarded through tenders remains quite modest at €1.1 million. The average size of the service contracts implemented under ENPI in 2008 and 2009 was again of the order of €1.1m. To date only the project “Implementation of Ukraine’s commitments under WTO and ENP frameworks in the rural sector”, launched in 2008, adopts a Sector-Wide Approach.

Resorting to grants as a financing modality for a significant number of its Technical Assistance projects has allowed the Commission to make use of the know-how and experience of a variety of international organisations: Council of Europe; International Labour Organisation; International Organisation for Migration; Organisation for Security and Cooperation in Europe; UNDP; United Nations Population Fund. This also made it possible to involve local governments and their agencies in the implementation of EC-funded projects, as well as international and Ukrainian CSOs.

There is in Ukraine an increasing demand for Twinning projects although beneficiaries regret that these projects do not include an investment component. From seven in 2006/07, the number of requests for Twinning projects increased to 25 in 2009/10. Since the first Twinning project was launched in March 2007, 18 projects have been completed or are under implementation. In the framework of the EC Enlargement process Twinning has proved an efficient tool for supporting harmonisation of the legislation and enforcement of EU standards. Twinning is utilised for stand-alone projects or as a

complement to other types of interventions such as, for instance, the two Twinning projects at NERC, which are part of the EC assistance to Ukraine for integration into the EU energy markets. Until the end of 2009 an EC-funded project assisted the Ukrainian institutions interested in Twinning with the formulation of their projects. Since January 2010 this task has been taken over by the Ukrainian Main Civil Service Department.

Results from the monitoring reports show that implementation mechanisms have been appropriate to the institutional context and beneficiary capacities. On average the 18 projects of the sample for which ROM reports are available are given marks of 3.15 and 3.18 on a scale from 1 to 4 with respect to their efficiency and effectiveness respectively. Although lower, the average assessment of the projects with respect to their expected impact and sustainability was still close to 3.

Similar observations are presented in the Delegation's External Assistance Monitoring Report (EAMR) for 2007, which points out that "80% of projects monitored in 2007 were rated as having good or very good impact prospects, 73% of projects having good or very good sustainability. 73% of projects were assessed as of good or very good quality, serious deficiencies were found in none of the projects. Good efficiency and effectiveness of implementation have been recorded for 68% and 79% of monitored projects respectively."

With very few exceptions projects were implemented within their planned budgets and timeframes. In the context of the rapid economic growth that prevailed in Ukraine until 2008, sharp price increases for construction material and services led to downsizing of the ambitions of a few works projects. As noted above¹⁷ this problem affected in particular the refugee accommodation capacity. As far as Technical Assistance projects are concerned, several had a relatively slow start but managed to catch up and eventually delivered all their expected outputs.

The Judgment Criteria are validated. The Commission also demonstrated flexibility in the implementation modalities of its interventions, the efficiency and effectiveness of which have been clearly above average. With very few exceptions interventions were implemented within their planned budget and timetable.

4.10.3 Intervention implementation takes account of monitoring and evaluation results (JC10.4)

All projects with a budget above €1 million are monitored at least once a year. Smaller projects may be monitored at the request of the Delegation.

Following the delivery of their report, monitors have a meeting in the Delegation with the Task Manager responsible for the given project. Task Managers fill in a response sheet in which, in particular, they indicate for each recommendation made by the ROM report whether that recommendation is going to be adopted (or, if rejected, the reasons for rejection) and who will implement it. Successive ROM reports on the projects of the sample show that recommendations are in most cases taken into account.

¹⁷ See above § 4.8.3

Monitoring reports are for the Commission a powerful means to ensure that projects deliver their expected outputs and are implemented effectively and efficiently. But because projects are monitored during their implementation period whereas their outcomes and impact most frequently materialise later, ROM reports provide very limited information on how far the ultimate objectives of EC interventions have been achieved.

CSPs make reference to the most recent evaluations of the Commission's country strategy and of the evaluation of the TACIS Regulation, and make explicit how the conclusions and recommendations of these evaluations have been taken into account in the design of the strategy. Actually, an examination of how far the recommendations of the previous evaluation, released in 2003, have been taken into consideration demonstrates that all of these recommendations have actually been implemented¹⁸.

But evaluators did not find evidence that projects or groups of projects had been evaluated, and very few projects were followed by *ex post* monitoring which would have allowed assessments of how far expected outcomes and impacts had been achieved.

The Judgment Criterion is partially validated. Country strategy evaluations, instrument evaluations and monitoring reports have been taken into account in the programming of EC cooperation, but few *ex post* project monitoring exercises and no project or sectoral evaluations were carried out.

¹⁸ See Annex 10

5. Conclusions

The answers to the Evaluation Questions in the previous chapter are based on the findings that conclude each specific question. The overall Conclusions of the evaluation presented in this chapter constitute a synthesis of these answers.

The Conclusions are formulated in four groups corresponding to the following themes:

- relevance of the cooperation strategy;
- outcomes and impacts of the interventions and of the cooperation strategy;
- efficiency of implementation and financing modalities;
- policy dialogue.

As regards the relevance of the interventions, this evaluation concludes that the Commission has focused its efforts on those institutional aspects that are the most important for facilitating a mutually profitable rapprochement between Ukraine with the EU. This has been achieved in close cooperation with the Government and with increasing involvement of CSOs. However, the Commission's angle of vision has been dominant and social protection has not been addressed in a comprehensive manner (C 1 to C3).

Significant outcomes have resulted from the major Commission support for adaptation of the legal and regulatory framework in a number of areas, notably economic and trade legislation, social assistance, nuclear safety, elaboration of action plans to facilitate the integration into the European energy market, and the fight against illegal cross-border activities. The support to areas favouring democracy and human rights has stimulated a mobilisation of domestic stakeholders - actors in the judicial sector, CSOs - around a central reform axis. The outcomes of the interventions in the environment sector and in the domain of social protection have been very limited. In all areas of interventions designing reform programmes proved easier to support successfully than implementing the agreed reforms (C4 to C8).

Regarding aid modalities and efficiency it should be recalled that the bulk of the cooperation examined in this evaluation was conducted under the TACIS Regulation which was primarily designed for the implementation of projects. This instrument has been used with great flexibility, and with very few exceptions the projects delivered their expected outputs. However in many cases the outcomes of these interventions are still running their course, the sustainability of some interventions is questionable, and there has been no assessment of the impact of individual projects or of the combined contribution of different interventions in a particular sector. With the introduction of the ENP more aid modalities became available, in particular Budget Support, an instrument that is particularly appropriate for supporting policy reforms but the efficient use of which is still in an initial phase of the learning curve on both the Commission and Government sides. The potential benefits of effective donor coordination have not been reaped; it remained limited to the basic stage of exchange of information with no influence in terms of complementarities or synergies (C9 to C12).

The whole analysis underlying the answers to the Evaluation Questions, as well as the previous Conclusions, point to the paramount importance, but also to the difficulty, of policy dialogue with the government of Ukraine. C13 and C14 highlight the limits but also the successes of the policy dialogue the Commission has endeavoured to conduct so far.

These Conclusions will be spelled out and developed in this chapter, while chapter 6 sets out the Recommendations derived from them.

5.1 Relevance of the cooperation strategy

Conclusion 1 – The Commission’s cooperation with Ukraine underpins institutional, legal and economic transformations which facilitate further rapprochement between Ukraine and the EU for the benefit of both parties

Based on EQ1

Since the end of the 1990s Ukraine has made clear that European Integration is a structuring objective of its policy and has expressed its willingness to make use of the Commission’s cooperation to foster the democratic and economic transformation processes that this objective implies.

In the Common Strategy on Ukraine adopted in 1999 by the European Council, the EU acknowledged Ukraine's European aspirations and welcomed Ukraine's pro-European choice. The Council stated that “the EU remains firmly committed to working with Ukraine at national, regional and local levels, in order to support a successful political and economic transformation in Ukraine, which will facilitate Ukraine's further rapprochement with the EU”. It recognised that “a successful, stable and secure Ukraine is in the best of interests of the EU”.

The Partnership and Cooperation Agreement, which entered into force in 1998, and the EU-Ukraine Action Plan adopted in 2005, committed Ukraine to implementing, and the EC to supporting, a set of measures aimed at facilitating the rapprochement between Ukraine and the EU. Since then the adoption of the European Neighbourhood Policy (ENP) has offered Ukraine the opportunity to further the EU political association and deeper economic integration. The ongoing negotiations on an Association Agreement and on the establishment between Ukraine and the EU of a Deep and Comprehensive Free Trade Area aim at materialising this enhancement of the relationship between Ukraine and the EU.

The PCA and the EU-Ukraine Action Plan framed the EC cooperation with Ukraine throughout the 2002-2009 period under review. To the extent that these documents were designed with a view to creating conditions for Ukraine’s rapprochement with the EU, they oriented the EC cooperation towards achievement of objectives fully consistent with those of the ENP.

Conclusion 2 – The Government of Ukraine is closely involved in the programming of the EC cooperation and CSOs have been increasingly associated with it, but the Commission is perceived as exerting a strong lead in this process

Based on EQ1

During the period under review, two Country Strategy Papers (2002-2006 and 2007-2013) and three National Indicative Programmes (2002-2003; 2004-2006; 2007-2010) were elaborated. They were complemented by Annual Action Plans. These programming documents were developed in close cooperation with the Government represented by the National Coordinating Unit.

From 2007 the European Commission increasingly included CSOs in the programming of its assistance to Ukraine.

Involvement of the GoU and of CSOs in the programming of the EC cooperation should ensure that it meets the needs of the country and its population. Nevertheless the NCU and some CSOs express the view that the Commission is exerting strong pressure to favour action that primarily serves EU interests. The removal of social issues from the cooperation priority areas in the CSP 2007-2013 and the refocusing on FTA of the assistance to economic development lends credence to these criticisms.

Conclusion 3 – Although the social protection system is in dire need of reforms, social issues have not been addressed in a comprehensive manner and have been downgraded in the EC cooperation priorities

Based on EQ3

During the earlier years of the period under review the Commission implemented in the health sector interventions which, although they led to very positive outcomes, did not succeed in promoting reform of a healthcare system which is inefficient and increasingly inequitable. Employment policy and the pension system have not been addressed. With the CSP 2007-2013 social issues were removed from the priority areas of the EC cooperation with the consequence that, during the later years of the period under review, these issues have only been addressed as components of projects in support of local development.

5.2 Outcomes and impacts of the strategy implementation

The figure below provides at the level of results a synthesised overview of the EC cooperation achievements. Information in this table is organised in relation with the three intermediate impacts identified in the intervention logic. For each intermediate impact it differentiates the various results which the EC cooperation aimed at producing in order to contribute to achieving these intermediate impacts.

Figure 3: Overall achievement of expected results

High Med. Low

Results	Comments		EQ
Intermediate impact: Democracy and Good Governance improved			
	Positive aspects	Negative aspects	
Democracy, the rule of law and fundamental freedoms respected	<ul style="list-style-type: none"> • Comprehensive and continuous support to the judiciary • Involvement of all judicial professions • Support to CSOs • Contribution to the development of pluralistic media 	<ul style="list-style-type: none"> • Failure of the judicial system reform limited the effectiveness of EC interventions • Sustainability of CSOs not addressed 	EQ2
Citizens involved in decision-making processes	<ul style="list-style-type: none"> • Collaboration between CSOs and government bodies at central and local level promoted 	<ul style="list-style-type: none"> • Sustainability of CSOs and of institutions established by EC projects is not ensured 	EQ2
PFM improved	<ul style="list-style-type: none"> • Improvements of key components of the PFM system 	<ul style="list-style-type: none"> • Absence of an in-depth policy dialogue on PFM reform 	EQ4 EQ9
Orderly movement of goods and people across borders facilitated Effective control of illegal cross-border activities	<ul style="list-style-type: none"> • Border Guard Service more professional and better equipped • Border-crossings rehabilitated • Capacity-building in the field of migration management • Creation of accommodation centres for refugees and asylum-seekers • Effective management of the border between Ukraine and Moldova 	<ul style="list-style-type: none"> • Management of customs operations remains unsatisfactory • Concerns about the treatment of refugees and asylum-seekers 	EQ8
Environment protected	<ul style="list-style-type: none"> • Negotiation of the Environment chapter of Association Agreement successfully completed • The EC has undertaken to substantially strengthen its support to this sector 	<ul style="list-style-type: none"> • Regional project and projects at local level did not have an impact on environmental governance 	EQ6

Intermediate impact: Economic growth stimulated and competitiveness improved			
Business and investment development stimulated SME sector expanding	<ul style="list-style-type: none"> • Approximation of the legal framework governing economic activity to that of the EU • Development and implementation of competition policy • Adoption of a new law on public procurement • Support to the development of SMEs, and of the banking and insurance sectors 	<ul style="list-style-type: none"> • Uneven implementation of the legal framework results in a poor business climate 	EQ4
Mutual trade promoted Ukraine meets WTO requirements	<ul style="list-style-type: none"> • Cooperation between EC DGs with their Ukrainian counterparts • Ukraine's accession to WTO • On-going harmonisation of standards and SPS regulations • Capacity development in the field of standardisation, conformity assessment, metrology • Development of SME export capacity 	<ul style="list-style-type: none"> • Delayed VAT refund is a disincentive to export • FDI not directly addressed • Poor business climate deters FDI 	EQ5
Sustainable, efficient and secure supply and use of energy	<ul style="list-style-type: none"> • Effective contribution to nuclear safety • Support to the development of strategies and action plans for integration into the European electricity and gas markets • Support to the renovation and development of the gas transit system 	<ul style="list-style-type: none"> • Outcomes of support to integration into EU electricity and gas markets have still to come • Low efficiency of the project addressing the coal sector • Little assistance to energy efficiency improvements 	EQ7
Intermediate impact: Living standard and level of social protection improved			
Social costs of economic restructuring mitigated	<ul style="list-style-type: none"> • Successful piloting of integrated social services • Development of the Government capacity to design a more effective and financially sustainable social assistance system (on-going) 	<ul style="list-style-type: none"> • Pensions and employment not addressed 	EQ3
Sustainable health sector established	<ul style="list-style-type: none"> • Technical issues addressed contributing to major progress in the fight against tuberculosis and HIV/AIDS 	<ul style="list-style-type: none"> • Unsuccessful attempt to address the issue of health financing and management 	EQ3
Reduction of regional disparities	<ul style="list-style-type: none"> • Enhancement of local governments' management capacity • Up-grade of public infrastructure at local level 	<ul style="list-style-type: none"> • Lack of reform of inter-government relations • Replicability of EC projects unlikely 	EQ4

As can be seen from this figure, the largest impacts have been achieved by those EC cooperation activities aimed at stimulating economic growth and trade. Although positive developments have been achieved in democracy and good governance as well as in living standards and social protection and assistance, effectiveness of the EC cooperation in these domains has suffered from the inability of the Government to have its reform projects adopted and implemented. More details are given under Conclusions 4 to 8 below.

5.2 Outcomes and impacts of the strategy implementation

Conclusion 4 – Significant results have been achieved by the EC support to the delivery of social assistance¹⁹, to reforms of the legal and regulatory framework governing economic activity and trade, to the development and modernisation of the energy sector, to improved nuclear safety, and to a more effective fight against illicit cross-border activities

Based on EQ3, EQ4, EQ5, EQ7 and EQ8

Piloting by the EC of a model of integrated social services for exposed families and children contributed to improved coherence and efficiency in a system of social assistance which lacked coherence and was poorly targeted. The inclusion in the project of a training-of-trainers programme and the establishment of a training centre supported dissemination of the model.

The strong economic growth enjoyed by Ukraine from 2001 to 2008 was to a large extent made possible by improvements in the legal and regulatory framework governing economic activity, to which the Commission's cooperation actively contributed. The EC cooperation was also strongly supportive of the reforms which led to Ukraine's accession to the WTO in 2008 and it continues to assist Ukraine in the fulfilment of its commitments as a WTO member. However the Ukrainian economy remains fragile, as demonstrated by the severity of the recession it suffered in 2009, and the uneven implementation of the legal framework results in a poor business environment.

Reviews by IAEA showed significant improvements in nuclear safety, a domain which has benefited from continuous EC assistance since the second half of the 1990s.

The Commission helped Ukraine to develop actions plans for integration into the EU electricity and gas markets and for rehabilitation of the gas transit system. It intervenes as a facilitator in relations between Ukraine and IFIs for the financing of the huge investments required for implementation of these plans.

Provision of technical assistance and supply of equipment contributed to enhancing the professionalism and effectiveness of the State Border Guard Service, and the rehabilitation and equipping of border crossings has somewhat facilitated the movement of goods and

¹⁹ Social assistance is understood as the provision of social services to specific vulnerable groups (single mothers, orphans, disabled persons, etc.) as opposed to social protection, which consists in the provision of social services and allowances (healthcare, pensions, unemployment benefits, etc) to the whole population. Whereas the EC support to social assistance delivered positive results, attempts to promote reforms of social protection, in particular of the health system, met strong resistance and did not achieve their expected results (See above EQ3 and below Conclusion 5).

persons between Ukraine and the EU. Cooperation with the Customs Service has however been less fruitful.

Conclusion 5 – In the absence of structural reforms the expected impacts of EC interventions in the areas of justice, health and local development did not fully materialise

Based on EQ4, EQ5, EQ7 and EQ8

The EC cooperation contributed to enhancing the capacity of the judiciary and its efficiency but, in the absence of a consensus on structural reforms, independence and fairness of justice have not been achieved.

Similarly, rejection by stakeholders of the proposals for reform of the management and financing of the healthcare system have restricted the impact of EC interventions in this sector to technical improvements in the diagnosis and treatment of tuberculosis and HIV/AIDS.

Finally, unless a reform of inter-governmental financial relations makes the revenue of local governments less dependent on subsidies from the State budget and gives local governments more responsibility on the expenditure side of their budget, the models promoted by the EC for improving the management of local budgets and the quality of the services provided to the population are unlikely to have an impact beyond those cities and regions in which they are implemented. The Commission's proposal to create a Regional Development Fund, which would have contributed to alleviating this problem, was refused by the Government.

Conclusion 6 – The Commission supported the development of Civil Society Organisations without paying sufficient attention to sustainability

Based on EQ2 and EQ3

During the period under review the EC supported through more than 40 projects the development of CSOs and the strengthening of their capacities. This support particularly benefited CSOs operating at local level in the provision of social services and assistance to vulnerable groups. A larger project "Strengthening civil society in Ukraine" implemented in five Oblasts promoted cooperation between CSOs and local authorities in implementation of local development projects and provision of social services. But in both cases the sustainability of the partner CSOs and of the structures established by the projects was not addressed.

Conclusion 7 – EC interventions in the field of environment were not comprehensive enough to have a sustainable impact on environmental governance, but a breakthrough has recently been achieved through the policy dialogue

Based on EQ6

In the field of environment the Commission implemented at regional and local levels projects which did not address environmental governance comprehensively and, moreover, it did not support the Ukrainian authorities' enforcement of existing legislation.

However the adoption by the Government of a National Environment Strategy and the satisfactory completion of the environment chapter of the Association Agreement have created the conditions for development of cooperation between the EC and the GoU addressing environment policy and its implementation in a comprehensive manner. Budget support is regarded as the main implementation modality for cooperation in this domain.

Conclusion 8 – Although it was prepared for through projects aimed at enhancing the human and physical capacity of Ukrainian authorities to address migration issues, the entry into force of the EU-Ukraine Readmission Agreement aroused concerns from human rights CSOs

Based on EQ8

To prepare the entry into force of the EU-Ukraine Readmission Agreement on 1 January 2010, the EC financed the construction of accommodation centres for refugees, and delivered to those Ukrainian institutional staff involved in the management of migration a range of training courses, seminars and study tours focusing on national and international human rights law, procedures related to accommodation and the legal rights of detainees, and humanitarian living standards.

However human rights CSOs are expressing concerns about ill-treatment in Ukraine of refugees and asylum-seekers and about repeated violations by the Ukrainian authorities of the relevant international conventions they have ratified.

It is worthwhile pointing out in this respect that the GoU has accepted a monitoring system whereby national/international NGOs, EU Member States, IOM, UNHCR visit migration related detention places and report back to the respective Ukrainian authorities to allow them remedying certain situations.

5.3 Aid modalities and efficiency

Conclusion 9 – The Commission made flexible use of the TACIS instrument and managed the projects in such a manner that they delivered their expected outputs, but few attempts were made to assess project outcomes and impacts

Based on EQ10

As its name indicates, TACIS (Technical Assistance to the Commonwealth of Independent States) was initially designed as an instrument for the provision of technical assistance to the Republics of the former Soviet Union. The Commission managed in Ukraine to make flexible use of this instrument under which it both implemented technical assistance projects and also supplied equipment and financed works for the benefits of those sectors most in need of that sort of assistance. Provision of grants allowed the Commission to

make use of the know-how and experience of several international organisations, as well as to entrust local governments and their agencies with the implementation of projects.

Both monitoring reports and findings from interviews with beneficiaries indicated that with very few exceptions EC projects delivered the outputs they were meant to deliver. But very few attempts were made by the Commission to assess the outcomes and impacts of its interventions at project or sector levels through *ex post* monitoring and evaluation.

Conclusion 10 – The Commission implemented a large number of small projects and resorted on only one occasion to a Sector Wide Approach

Based on EQ10

The two CSPs formulated during the period under review stated the Commission's intention to focus its interventions on a limited number of areas and to move from stand-alone projects towards programme and sector-wide approaches. These intentions did not materialise.

During the eight years under review the Commission concluded for its cooperation with Ukraine 383 TACIS service contracts of which only nine involved commitments above €5 million. The average size of the TACIS service contracts was €910,000 and the average size of the ENPI service contracts concluded to date has been hardly any greater.

Projects addressed a large range of sectors and issues, but only one adopted a Sector-Wide Approach.

Conclusion 11 – To date budget support has not delivered its potential benefits, but both the Commission and the Government are on a learning curve as regards implementation of this cooperation tool

Based on EQ9

Evidence is provided in the answer to Evaluation Question 9 that the SBS programme supporting the implementation of the GoU Energy Strategy has to date not delivered the potential benefits of this cooperation tool, which would be expected variously to include increased ownership; a more stable macroeconomic framework; an improved framework for public policy and public expenditure; higher potential for overall impact; increased coherence; lower transaction costs; greater harmonisation of donor practices and alignment with government procedures; improved capacity development; improved domestic accountability; and increased efficiency and sustainability.

It would however be premature to draw definite conclusions from this experience. The Energy SBS is the first budget support programme ever implemented by the Commission in Ukraine. It suffered from the lack of experience of the Commission and of the GoU in the implementation of this cooperation tool, from poorly drafted TAP, and from the late start of the complementary technical assistance, which could have helped alleviate some of the implementation problems.

The GoU and the Delegation are in the initial phase of the learning curve on implementation of budget support. The TAP of the two SBS for which Financial Agreements were signed in December 2009 do not have the shortcomings noted in the first Energy SBS, and interviews conducted by the evaluators at the Ministry of Economy in relation to SBS support for removal of barriers to trade revealed a good level of understanding of the obligations that budget support imposes on the Ukrainian partner as well as of the potential of this cooperation tool.

An important issue that still needs to be addressed is PFM. The EC has provided technical assistance to some institutions involved in PFM and is monitoring developments in this sector. But there is to date no structure for an in-depth policy dialogue between the GoU and donors on PFM.

Conclusion 12 – Donor coordination is mainly restricted to exchange of information and has not prevented overlaps between projects

Based on EQ1 and EQ9

During the period under review donor coordination was split between the Ministry of Finance which was interacting with IFIs, and the Ministry of Economy which was the interlocutor for donors providing Technical Assistance. Furthermore the EC and bilateral donors, including the EU Member States, had different interlocutors within the Ministry of Economy, namely the National Coordinating Unit and the Directorate for Coordination of International Technical Assistance. Following the presidential election of 2010 and the appointment of a new government, donor coordination has been entrusted to a single department in the MoE.

The refusal of the Government to include IFIs in the Joint Monitoring Group of the Energy SBS is illustrative of the Government's preference for negotiating with donors on a bilateral basis.

The Delegation holds monthly meetings with the cooperation sections of the EU Member States' representations in Ukraine and maintains close relations with the World Bank and other non-EU donors. The efforts of major donors driven largely by the EC resulted in numerous cases of joint actions such as joint demarches to the Ukrainian government on policy issues. The establishment of the Major Donor group has made these efforts more proactive resulting in a largely united approach from the donor community to a range of policy issues and donor coordination in particular. For the first time the whole of assistance to Ukraine was mapped by the Delegation, which maintains an updated database for the EU donor group.

Nevertheless in the absence of donor coordination led by the Government this basically amounts to information exchanges. To date Sweden is the only EU Member State engaged in joint programming with the EC, namely in the environment sector.

5.4 Policy dialogue

Conclusion 13 – In the complex political situation that prevailed in Ukraine in the second half of the period under review the policy dialogue did not succeed in promoting, in such sectors as justice, healthcare or local development, the structural reforms that the EC cooperation was meant to support

Based on EQ2, EQ3, EQ4

As noted above (Conclusion 5) EC interventions in the sectors of justice, healthcare or local development, while delivering positive results, did not achieve their full impact because the structural reforms they were meant to support, or in some cases had contributed to preparing, did not take place.

This situation is to a large extent due to a complex political situation which from 2006 led to quasi-paralysis of the Government's capacity to push reforms forward. In this situation the policy dialogue did not succeed in breaking the deadlocks that prevented the adoption of reforms and their implementation.

Conclusion 14 – Negotiations on the Association Agreement and on the Deep and Comprehensive Free Trade Area have given a new impetus to the policy dialogue between the Commission and the Government of Ukraine and have contributed to developing relations between the EC DGs and their Ukrainian counterparts

Based on EQ5, EQ6

The PCA, which entered into force in 1999, established a permanent policy dialogue between the EU and Ukraine structures that range from the annual Summit meetings between the President of Ukraine and the EU Presidency along with the President of the Commission and the EU's High Representative, to Sub-Committee meetings between experts at sectoral level. While acknowledging the usefulness of these structures, all stakeholders stress that the adoption by the EU of the European Neighbourhood Policy and the start of negotiations on an Association Agreement and a Deep and Comprehensive Free Trade Agreement have given a new impetus to the policy dialogue between the two parties, and have contributed to developing direct cooperation relations between the experts of the EC Directorates and their counterparts in the Ukrainian Government.

6. Recommendations

This chapter presents the recommendations deriving from this evaluation. They aim at providing EC policy-makers and managers with advice based on the conclusions of the evaluation with the purpose of improving the programming, design and implementation of the EC cooperation with Ukraine.

Cross-references to the supporting Conclusions are annotated below each Recommendation. Division of responsibilities between the EC Services at HQ and those in the Delegation has been defined. Conditions of implementation and the expected consequences are also specified where relevant.

The evaluators consider that three groups of general recommendations emerge from the conclusions of the previous section. They are, in declining order of importance:

- recommendations aimed at strengthening the achievement of the expected outcomes of ongoing and planned interventions;
- a recommendation aimed at improving the balance between support for economic development and support for social development;
- recommendations aimed at improving the efficiency of interventions.

Each recommendation is based on one or several cross-referenced conclusions. Whereas the underlying conclusions state the current situation, the recommendations include suggestions for operational steps to achieve a specific improvement.

6.1 Strengthening the achievement of expected outcomes

Recommendation 1 – Strengthen the link between cooperation and policy dialogue

Based on conclusions C13 and C14

Implementation responsibility: HQ and Delegation

A distinct comparative advantage of the EC cooperation lies in its potential synergy with the extensive policy dialogue between the Commission and the Government of Ukraine. Measures should be taken to exploit this advantage fully.

The provision of an increasing share of EC aid as budget support provides an interesting opportunity in this respect. It could contribute to strengthening the links between cooperation and policy dialogue, provided that examination and discussion of the results of the performance monitoring carried out as part of the BS implementation process are made a major item in the meetings of the relevant policy dialogue structures.

More generally, cooperation is addressed by sectoral sub-committee meetings as a separate agenda item, with the risk of disconnecting cooperation from policy issues. It would be more appropriate if, under each item of an agenda, policy dialogue structures were to examine the contribution that the cooperation has made or could make to progress on the issue debated, and similarly what difficulties faced by cooperation interventions could be alleviated by policy measures.

It must be noted that significant progress in this direction has already been achieved to the extent where from this year the Cooperation Committee and Sub-Committees structure their discussions around specific priorities of the Association Agenda.

Recommendation 2 – Enter into an in-depth policy dialogue with the Government on Public Finance Management

<i>Based on conclusion C11</i>	<i>Implementation responsibility: HQ and Delegation</i>
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Because the efficiency of the resources it provides to the State Budget is strongly affected by the quality of the PFM system, and because it is accountable to European citizens for the efficient use of funds allocated to cooperation, the Commission in all countries to which it provides aid in the form of budget support pays close attention to improvements in the PFM system and conducts a policy dialogue with the Government on this issue. The structure for such a policy dialogue involving the EC and other donors active in the field currently does not exist in Ukraine and should therefore be established.

A proposal to finance, jointly with other donors, an update of the PEFA assessment, six years after a first assessment was carried out by the World Bank, could be a means by which the Commission can initiate such a policy dialogue.

Recommendation 3 – Monitor the outcomes and impacts of EC interventions

<i>Based on conclusion C9</i>	<i>Implementation responsibility: Delegation</i>
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Monitoring reports allow the Commission to check that the projects it implements deliver their expected outputs and hence contribute to effective project management. But because they are produced during the project implementation phase, monitoring reports cannot provide reliable information either on project outcomes and impacts that in most cases materialise after completion of the projects, or on the sustainability of their achievements, even though it is positive outcomes, impacts and sustainability that interventions are meant to achieve.

The carrying-out of *ex post* monitoring exercises and evaluations of achievements in key sectors of the EC cooperation shortly before undertaking the formulation of a CSP or NIP, along with an analysis of such assessments with the GoU and CSOs, would constitute an extremely useful input to the programming exercise as well as a means of improving the effectiveness and efficiency of EC interventions. This would also contribute to the development in Ukraine itself of an evaluation culture linked to accountability.

6.2 Improving the balance between support for economic development and support for social development

Recommendation 4 – Devote more attention to the social dimension of development and address social issues in a comprehensive manner

Based on conclusion C3

Implementation responsibility: Delegation

The Common Strategy on Ukraine adopted by the European Council in 1999 noted that “in implementing a programme that establishes a functioning market economy, a well targeted social security system must be put in place, so that the social aspects of the transition to a market economy are taken into account” and committed the Union to supporting both social and economic development of Ukraine.

Alleviating the social costs of the transition to a market economy is no more such an acute issue as it was during the 1990s. But promoting the development in Ukraine of a social protection system comparable to what exists in EU countries is important for economic as well as for political reasons. Fair competition between Ukraine and the EU in the framework of the Free Trade Area implies a gradual convergence of the costs borne by both economies for the financing of social protection. From a political point of view, one cannot expect the Ukrainian population to actively support the adoption by Ukraine of a “European model” of society if the social dimension of this model should be cast aside.

The development of an effective and efficient social protection system should accordingly be given more attention in the EC cooperation and addressed more comprehensively than it was during the period covered by the evaluation. This concerns in particular the healthcare system, which is in need of deep reform; education, which is key to the transition of Ukraine to a knowledge-based economy; and employment policy. As far as social assistance is concerned, an EC project currently under implementation assists the Ministry of Labour and Social Affairs with the design of an effective and affordable social assistance policy; further assistance is likely to be needed with its implementation.

6.3 Improving the efficiency of interventions

Recommendation 5 – Improve the design and management of budget support programmes

Based on conclusion C11

Implementation responsibility: Delegation

In many countries of the European Neighbourhood budget support has proved its capacity to effectively support the implementation by the partner government of development and reform strategies. The difficulties met by the Commission in the implementation of its first budget support programme in Ukraine suggest recommendations aimed at improving the effectiveness of this cooperation instrument in the Ukrainian context.

Rather than to support the implementation of sector-wide strategies use BS to support the implementation of precisely identified reforms

The advantages that can be expected from this approach are

- a significant financial contribution to the costs involved in the implementation of the given reform, and hence a stronger leverage in the policy dialogue with the Ukrainian partners;
- the possibility to define a set of performance (or process) indicators covering all main key issues involved in the reform, and thus allowing a close monitoring of the reform process;
- coincidence between the duration of the BS programme and the implementation timeframe of the reform, and hence creating the possibility to link disbursements of the variable tranches to the successive implementation stages of the reform and to accompany the reform process up to its completion.

The SBS in support of the removal of technical barriers to trade whose financing agreement has been signed in December 2009 is close to this recommendation. It is meant to support the restructuring of the Ukrainian quality insurance system and the harmonisation of technical standards and norms with international standards. Its budget (€39 million) is commensurate with the cost involved in this reform process and its duration (four years) corresponds to the planned implementation timeframe of the reform. The indicators attached to its variable tranches reflect the main achievements expected from the reform in its successive stages.

It is worth noting that such a BS programme might be implemented as a follow-up of a technical assistance project through which the Commission (or another donor) would have assisted the Government in defining in a given sector or sub-sector a reform strategy and the action plan and time table for its implementation.

Provide technical assistance from the preparation stage of the BS programme to its final implementation phase

During the preparation phase of the BS programme the task of technical assistance would be (i) to make the Ukrainian partners aware of what BS is, what they can expect from this cooperation tool and what their obligations are, and (ii) to contribute to the identification and calibration of the indicators to be attached to the variable tranches.

During the implementation phase of the BS programme, technical assistance would contribute to the monitoring of the reform implementation process and of the related indicators, and assist the Ukrainian partners in preparing periodic Reform Progress Reports for submission to the Reform Monitoring Group.

This technical assistance, which could be provided through a series of short term missions, would be strictly devoted to the implementation of the BS programme. Would there be a need for technical assistance to implement the reform itself, it should in our view be provided through a distinct project.

Establish a Reform Monitoring Group

This monitoring group would be a policy dialogue structure intended to periodically carry out, on the basis of the Reform Progress Reports, a joint Government-donors examination of progress of the reform implementation process.

Members of this group would be:

- the relevant line Ministry represented at Ministerial level;
- representatives of the other government bodies, institutions, enterprises and CSOs involved in the implementation of the reform;
- the Ministry of Finance represented by the Head of the Budget Department or its deputy;
- the European Commission represented by the Head of Delegation;
- all other donors active in the given sector.

On the basis of the Reform Progress Reports and of the information received during the meetings of the Reform Monitoring Group, the Delegation would then make proposals to the EC headquarters for disbursement of the BS variable tranches.

Conclusions of the Reform Monitoring Group meetings would be transmitted to the relevant Sub-Committees and to the Cooperation Committee (or to the relevant policy dialogue structures established by the Association Agreement).

Have an in-depth policy dialogue on Public Finance Management

Whereas the Reform Monitoring Group will very probably have to discuss the budget resources allocated by the Ministry of Finance to the implementation of the reform, it is not the appropriate place for a policy dialogue between the GoU and donors on PFM issues. Hence, the necessity, mentioned under Recommendation 2, to establish, in parallel to the Reform Monitoring Group(s), a policy dialogue structure especially devoted to PFM.

Recommendation 6 – When implementing projects give priority to Twinning and Sector Wide Approaches with the explicit objective of promoting reforms up to their implementation	
<i>Based on conclusion C3, C5, C10</i>	<i>Implementation responsibility: Delegation</i>

The comparative advantage of the EC cooperation *vis-à-vis* bilateral donors lies in legal reform and approximation, which can be effectively supported through Twinning projects and in support for the design and implementation of structural reforms at sector level, which can be provided most consistently through Sector-Wide Approaches. Besides budget support the EC should therefore concentrate its cooperation on these two types of intervention and leave to bilateral donors small TA projects for which they can more rapidly and flexibly mobilise resources.

For both Twinning projects and Sector Wide Approaches, the objectives of the EC interventions should be extended beyond the delivery of draft laws or action plans and aim at supporting the Ukrainian partner right up to adoption of the reform by the Executive and the Parliament. This implies including in project activities support for such tasks as the Ukrainian partner’s advocacy of the proposed reforms before the relevant committees of the Parliament, the organisation of information campaigns, and the involvement of CSOs in support of the reforms.

Recommendation 7 – Strengthen donor coordination

Based on conclusion C12

Implementation responsibility: Delegation

Coordinating donor support is primarily a responsibility of the Government. The evaluation pointed out that donor coordination suffered from a split of this responsibility between different governmental bodies, from a lack of co-ordination between different centres of powers in the Ukrainian government (Presidential Secretariat, Bureau for European Integration, Ministry of Finance, Ministry of Economy, Coordinating Unit ...) and from a preference on the Government's side for bilateral relations. It belongs to the GoU to state unambiguously which state body has the lead on the overall donor coordination.

But even so there are steps that could be taken by the EC to improve donor coordination.

The EC should make a firm proposal to the Government that all donors providing assistance to a given sector, whatever the modalities of their assistance, should participate in the structures established to monitor the implementation of the relevant EC SBS programmes.

EU Member States could be more actively involved in the policy dialogue between the EC and the Government. EU Member States are indeed invited to attend the meetings of the policy dialogue structures established by the PCA, but few attend these meetings. Involving the EU Member States in the preparation of the policy dialogue meetings, some insistence from the Delegation on their attendance at policy dialogue meetings concerned with sectors in which they are active, and joint debriefings between the Delegation and EU Member States of the policy dialogue meetings, might taken together help enhance coordination between the EC and the EU Member States.

The Delegation should pursue its efforts towards joint programming of its assistance with EU Member States with a view of promoting a division of labour based on the principle of comparative advantage.

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Should the recommendations be prioritised, we would single out the three following ones:

▪ **Improve the design and management of budget support programmes**

because budget support is likely to become the main cooperation modality of the EC with the GoU whereas the first attempt to make use of this cooperation tool has demonstrated serious weaknesses in the design of the programme and in its implementation.

▪ **Enter into an in-depth policy dialogue with the Government on Public Finance Management**

because improving the quality of PFM has a direct impact on the efficiency of the cooperation resources provided as budget support and because conducting a policy dialogue with the GoU on PFM issues is the only means available to the Commission,

when providing budget support, to fulfil its accountability obligations towards European citizens.

▪ **Strengthen the link between cooperation and policy dialogue**

because negotiations of an Association Agreement and of a Deep and Comprehensive Free Trade Area has very significantly enhanced the quality of the policy dialogue between the EU and the GoU, thus creating conditions for closer complementarity between policy dialogue and cooperation.