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Baseline Measurement Report:

The
Principles
of Public
Administration

UKRAINE

June
2018

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The Principles of Public Administration

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS AND ACRONYMS	2
INTRODUCTION.....	4
OVERVIEW	5
STRATEGIC FRAMEWOK OF PUBLIC ADMINISTRATION REFORM	8
1. State of play and main developments: January 2016 – May 2018.....	8
2. Analysis	10
POLICY DEVELOPMENT AND CO-ORDINATION.....	22
1. State of play and main developments: January 2016 – May 2018.....	22
2. Analysis	23
Policy planning and co-ordination.....	23
Policy development.....	43
PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT	58
1. State of Play and Main developments: January 2016 – May 2018.....	58
2. Analysis	61
Policy, legal and institutional frameworks for public service.....	61
Human resource management	69
ACCOUNTABILITY	87
1. State of play and main developments: January 2016 – May 2018.....	87
2. Analysis	89
SERVICE DELIVERY	109
1. State of play and main developments: January 2016 – May2018.....	109
2. Analysis	111

LIST OF ABBREVIATIONS AND ACRONYMS

APIAA	Action Plan for Implementation of the Association Agreement
BRDO	Better Regulation Delivery Office
CEB	central executive body
CEBSS	central executive body of special status
CIO	chief information officer
CMU	Cabinet of Ministers of Ukraine
CoG	centre of government
CS	civil service
EEAI	European and Euro-Atlantic Integration
EI	European integration
eIDAS	EU Electronic Identification, Authentication and Trust Services
EIF	European Interoperability Framework
EPP	resolution of the CMU on Ensuring Public Participation
EU	European Union
FDBP	Future Directions of Budget Policy
GAP	Government Action Program
GDP	gross domestic product
GOEEAI	Government Office for European and Euro-Atlantic Integration
GPAP	Government Priority Action Plan
HRM	human resource management
HRMIS	Human Resource Management Information System
ICT	information and communications technology
IT	information technology
LAP	Law on Administrative Procedures
LCEB	Law on Central Executive Bodies
LCMU	Law on the Cabinet of Ministers of Ukraine
LCS	Law on Civil Service
LPC	Law on the Prevention of Corruption
LPSRP	Law on the Principles of State Regulatory Policy in the Sphere of Economic Activity
MoEDT	Ministry of Economic Development and Trade
MoF	Ministry of Finance
MoJ	Ministry of Justice
MoRDCHCS	Ministry of Regional Development, Construction, Housing and Communal Services
MP	member of parliament

Ukraine
List of Abbreviations and Acronyms

MSP	Ministry of Social Policy
MTGPAP	Medium-Term Government Priority Action Plan
NACP	National Agency on Corruption Prevention
NAUCS	National Agency of Ukraine for the Civil Service
OGP	Open Government Partnership
PAR	public administration reform
PARS	Strategy of Public Administration Reform
PFM	public financial management
PFMRS	Strategy for Public Finance Management System Reform
PSHRM	Public Service and Human Resource Management
RIA	Regulatory Impact Assessment
RoP	rules of procedure
SAI	Supreme Audit Institution
SAS	State Archive Service
SCMU	Secretariat of the Cabinet of Ministers of Ukraine
SCS	senior civil service
SCSC	Senior Civil Service Commission
SDS	Sustainable Development Strategy
SMEs	small and medium-sized enterprises
SOE	state-owned enterprise
SRS	State Regulatory Service
STP	State Target Program
ToC	Table of Conformance
TSNAP	administrative service centre (<i>tsentri nadannja administrativnih poslug</i>)
UREN	unique registry entry number
VAT	value-added tax
WCAG	Web Content Accessibility Guidelines

INTRODUCTION

SIGMA developed the Principles of Public Administration in 2014 to support the European Commission's reinforced approach to public administration reform (PAR) in the European Union (EU) Enlargement process, and in 2015 further developed them to advance PAR within the context of the European Neighbourhood Policy (ENP). Covering six key areas – the strategic framework of public administration reform; policy development and co-ordination; public service and human resource management; accountability; service delivery; and public financial management, including public procurement and external audit – the Principles define what good public governance entails in practice and outline the main requirements to be followed by countries during EU integration. The monitoring framework makes it possible to set country benchmarks and regularly analyse progress in applying the Principles.

In 2017, the Principles¹ were updated and a new Methodological Framework², was developed to improve clarity, without changing the substance of the conceptual framework.

In 2015, SIGMA undertook comprehensive Baseline Measurement against these Principles for the seven EU Enlargement candidate countries and potential candidates and, since then, has continued to monitor progress. In 2017, SIGMA published Monitoring Reports for the EU Enlargement candidate countries and potential candidates covering the May 2015 to June 2017 period. SIGMA also carried out a similar Baseline Measurement of Moldova in 2016 and a partial assessment of Georgia in 2018.

This Baseline Measurement for Ukraine covers all of the above-mentioned areas except public financial management (including public procurement and external audit). Two separate reform strategies are currently in place in Ukraine, the Public Administration Reform Strategy (PARS) and the Public Finance Management System Reform Strategy, but implementation of the latter began only in May 2017 with adoption of the Action Plan. Assessment of the public financial management area would therefore be premature and would not provide significant new information in addition to the situation analysis prepared during development of the Strategy. As requested by Ukraine's administration, this assessment is based on the methodology and indicators developed for the EU Enlargement candidate countries and potential candidates, which are more rigorous than those designed for ENP countries. This assessment covers data from 2017 and developments to mid-May 2018.

Indicator values (based on points allocated to each sub-indicator) are indicative and should not be used or interpreted outside the context of the full qualitative analysis provided under each Principle. Also, as the more challenging and rigorous European integration-related methodology has been applied, certain indicators are not so relevant in the Ukrainian context. In such cases, lower values are reported.

This report contains short- and medium-term recommendations to help the Ukrainian administration take concrete action to tackle some of the most important challenges identified for the PAR area. The analytical findings and recommendations are also designed to inform policy dialogue and discussions between the EU and the administration about priority areas for reform and potential support. Furthermore, according to the PARS, this baseline report will form the basis for a mid-term review that could lead to revision of the PARS.

¹ OECD (2017), SIGMA, The Principles of Public Administration, OECD, Paris, http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf.

² OECD (2017), SIGMA, *Methodological Framework for the Principles of Public Administration*, OECD, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

OVERVIEW

Ukraine has clearly demonstrated a commitment to modernise public governance and establish closer links with the European Union (EU) in recent years.

Among other results, this commitment led to the signing in 2014 of an Association Agreement (AA), which included the establishment of a Deep and Comprehensive Free Trade Area. The AA came into full force on 1 September 2017. Ukraine was also granted a visa-free regime, which entered into force in June 2017. Despite threats to its territorial integrity and a high level of corruption, Ukraine continues to make efforts towards reform, placing PAR among its priority areas. Support for PAR has been frequently expressed at the highest political level, including by the Prime Minister. Ukraine's reform process has received significant EU support, including through the EU Support Group for Ukraine and the EU Delegation.

An important step in reforming Ukraine's public administration was adoption of the PARS in June 2016. This document is aligned with the priority areas of the Principles of Public Administration and sets ambitious goals to be achieved by 2020. In fact, however, the low implementation rate of activities planned in the PARS suggests that it may be too ambitious. The Strategy is the result of political willingness to progress in PAR, but it is not based on a thorough, structured assessment of the state of affairs. This SIGMA Baseline Measurement is therefore the first comprehensive, detailed assessment of Ukraine's current public administration situation. Although adoption of the PARS sped up the reform process and streamlined reform efforts, it must be underlined that some important reforms had already been initiated earlier – for example in the civil service and in service delivery.

Overall, Ukraine has already made considerable progress in reforming some areas of its public administration. New legislation has been implemented in the civil service area that established a wide scope of the civil service and introduced many solutions that contribute to the professionalisation of the civil service. Another area in which concrete, positive results of reforms may already be observed is administrative justice.

In other areas such as remuneration of civil servants, reform has begun and although situation has improved, it is still far from being aligned with the Principles of Public Administration. Important legal changes have also been introduced in the area of civil servants' recruitment, but further steps are needed to improve both the legislative and practice-related aspects of the process.

The service delivery area is similar: many initiatives to modernise public services have been undertaken with considerable donor support, but most of them have not yet produced the desired results (one exception is the establishment of an administrative service centre network). What hampers administrative service development most is the lack of a basic law – a general Law on Administrative Procedures – to uniformly guarantee citizens' rights in interactions with the public administration.

In the area of organisation of the public administration, important efforts have been made to restructure selected ministries and transfer some of their functions to agencies. SIGMA has, however, identified possible risks of this reform process if it is not sufficiently planned and co-ordinated.

This assessment also reveals other important concerns in the steering and co-ordination of some reform initiatives. Overlapping competences of public bodies in co-ordinating policy planning and in monitoring the Government's performance in public service reform are clearly problematic. In some areas, responsibility is dispersed, unclear or incorrectly attributed. This is the case in access to public information, although in practice public authorities do provide a considerable amount of public information in a proactive manner.

A general shortcoming across all areas is that draft laws, strategies and reform initiatives are rarely costed properly. Because the majority of draft laws are initiated by Members of Parliament rather than the Government, they do not go through the usual quality control mechanisms that drafts prepared by the Government do. In addition, significant carrying forward of the commitments of Government plans to the next period indicates that the plans are generally too ambitious.

Ukraine Overview

The findings of this assessment are intended to help the Government of Ukraine to plan and implement further reforms in key areas of PAR and to revise the PARS. Continued strong political support and co-ordination, as well as additional efforts and resources, will be needed to generate and sustain the desired results.

1

Strategic Framework of Public Administration Reform

STRATEGIC FRAMEWOK OF PUBLIC ADMINISTRATION REFORM

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

1.1. State of play

The Cabinet of Ministers of Ukraine (CMU) has established a comprehensive framework for public administration reform (PAR) consisting of two strategic planning documents: the Strategy of Public Administration Reform in Ukraine for 2016-2020 (PARS) and the Strategy for Public Finance Management System Reform for 2017-2020 (PFMSRS). These two planning documents (hereafter referred to as the PAR Strategies) cover all six areas of the Principles of Public Administration³.

All key horizontal planning documents analysed for this assessment prioritise PAR. The Sustainable Development Strategy: Ukraine 2020 (SDS), the Government Action Program (GAP), the Medium-Term Government Priority Action Plan to 2020 (MTGPAP) and the Action Plan for Implementation of the Association Agreement between Ukraine and the European Union (APIAA) include activities that address the substance areas of PAR.

The financial sustainability of PAR is not ensured, however, as the PAR Strategies do not include cost estimates for individual reform activities or their sources of funding. The PARS includes expenditure estimates only at the aggregate level for reform areas, while the PFMSRS has not been costed at all. While the overall implementation rate of planned activities as well as the fulfilment of objectives is low, the situation with the PARS is slightly better compared to the PFMSRS.

The Secretariat of the CMU (SCMU) is responsible for overall co-ordination of the PAR agenda. Its Directorate of Public Administration monitors implementation of the PARS, while the Ministry of Finance (MoF) co-ordinates implementation of the PFMSRS. The SCMU is also the Secretariat for the PAR Co-ordination Council (PAR Council), which is the political-level co-ordination forum for PAR, including the public financial management (PFM) area. However, issues related to implementation of the PFMSRS have not yet been discussed at the PAR Council, and administrative-level co-ordination is not operational for either of the PAR Strategies.

1.2. Main developments

On 24 June 2016, the CMU adopted the PARS, along with its Action Plan covering 2016-2020⁴. It adopted the PFMSRS on 8 February 2017⁵ and the PFMSRS Action Plan for 2017-2020 on 24 May 2017⁶. In April⁷ and October 2017⁸, the CMU amended the PARS Action Plan, updating the co-ordination mechanisms, adjusting the deadlines for implementation of activities and removing information on activities that had been implemented.

³ OECD (2017), SIGMA, *The Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>.

⁴ Ordinance of the CMU No. 474-r of 24 June 2016, <http://zakon2.rada.gov.ua/laws/show/227-2015-%D1%80>

⁵ Ordinance of the CMU No. 142-r of 8 February 2017, <http://zakon2.rada.gov.ua/laws/show/142-2017-%D1%80>

⁶ Ordinance of the CMU No. 415-r of 24 May 2017, <http://zakon3.rada.gov.ua/laws/show/415-2017-%D1%80>

⁷ Ordinance of the CMU No 306 of 26 April 2017, <http://zakon3.rada.gov.ua/laws/show/306-2017-%D0%BF>

⁸ Ordinance of the CMU No. 726-r of 11 October 2017, <http://zakon3.rada.gov.ua/laws/show/726-2017-%D1%80>

Ukraine
Strategic Framework of Public Administration Reform

The PAR Council, established in May 2016⁹, has become operational. The Council has approved the reports on the implementation of the PARS during 2016 and 2017¹⁰, and both reports are available online¹¹.

⁹ Decree of the CMU No. 335 of 18 May 2016.

¹⁰ The 2016 report was approved on 24 February 2017 and the 2017 report was approved on 23 April 2018.

¹¹ 2016 report: <https://www.kmu.gov.ua/storage/app/media/uploaded-files/pro-vikonannya-u-2016-rotsi-strategii-reformuvannya-derzhavnogo-upravlinnya-na-2016-2020-rr.pdf>. Report covering 2016 and 2017: <https://www.kmu.gov.ua/storage/app/media/uploaded-files/pro-vikonannya-u-2016-2017-rokakh-strategii-reformuvannya-derzhavnogo-upravlinnya-ukraini-na-2016-2020-roki.pdf>

2. ANALYSIS

This analysis covers four Principles for the strategic framework of PAR area, grouped under one key requirement. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators¹², and an assessment of the state of play for each Principle. For each key requirement, short- and medium-term recommendations are presented.

Key requirement: The leadership of public administration reform and accountability for its implementation is established, and the strategic framework provides the basis for implementing prioritised and sequenced reform activities aligned with the government’s financial circumstances.

The values of the indicators assessing Ukraine’s performance under this key requirement are displayed below.

Indicators	0	1	2	3	4	5
Quality of the strategic framework of public administration reform				◆		
Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting		◆				
Financial sustainability of PAR	◆					
Accountability and co-ordination in PAR			◆			

Legend: ◆ Indicator value

Analysis of Principles

Principle 1: The government has developed and enacted an effective public administration reform agenda which addresses key challenges.

PAR is identified as a priority in the horizontal planning documents assessed. The SDS¹³, the GAP¹⁴, the MTGPAP¹⁵ and the APIAA¹⁶ contain reform activities in all five substance areas of PAR. PAR is one of the 62 reforms to be implemented according to the SDS. Objectives from all PAR areas are included among the tasks of the Government in the GAP, the MTGPAP lists PAR as the key priority for achieving the objective of effective governance, and the APIAA directly refers to the objective of implementing the PARS. The activities included in all three horizontal planning documents mirror the initiatives of the PAR planning documents (e.g. civil service reform, optimisation and development of e-government).

¹² OECD (2017), SIGMA, *Methodological Framework for the Principles of Public Administration*, OECD, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

¹³ Decree of the President No. 5/2015 of 12 January 2015.

¹⁴ Decree of the Verkhovna Rada (Parliament) No. 1099-VIII of 14 April 2016.

¹⁵ Ordinance of the CMU No.275-r of 3 April 2017.

¹⁶ Ordinance of the CMU No. 61-r of 25 October 2017.

Ukraine
Strategic Framework of Public Administration Reform

Prior to adoption of the PARS in 2016, the PAR areas were covered only through separate reform plans, such as the Anti-Corruption Strategy 2014-2017¹⁷, the Strategy for Civil Service Reform, Service in Local Self-Government Bodies in Ukraine for the Period until 2017¹⁸ and other similar plans. The area-specific concepts¹⁹ continue to be adopted in the five areas covered by the PARS, but they are complementary to the umbrella PAR plan and are not included in the same monitoring framework. Therefore, these area-specific plans are not covered in this assessment. The PFM area has been (and remains) covered by a separate planning document (the PFMSRS), but its implementation is foreseen to be monitored by the PAR Council (as is the PARS²⁰). The PFMSRS from 2017 is the follow-up to the 2013-2017 Public Financial Management System Development Strategy.

The PARS and the PFMSRS contain the situation analysis for all six areas defined in the Principles of Public Administration²¹. They also set policy objectives and identify specific reform actions for achieving them. The PFMSRS and the PARS Action Plan define performance indicators, which are linked to their objectives. Baseline and target values have been determined for outcome-level indicators in the PARS Action Plan, but not in the PFMSRS. Due to this, monitoring the fulfilment of reform objectives is possible for the PARS only, not for PFMSRS²².

Neither of the Strategies contains comprehensive information on cost estimates for the implementation of individual reform activities or the sources of their funding, however the PARS contains the aggregate cost estimates for reform areas and a detailed cost estimate for one activity (the establishment of the reform staff positions). The Action Plan for the PARS was amended in October 2017²³ to adjust the deadlines and exclude activities that had already been implemented. According to the original Action Plan, 42%²⁴ of the non-continuous activities had deadlines in 2016, and an additional 36%²⁵ were supposed to be completed by the end of 2017. The adjustment and the fact that the implementation rate of activities for 2016 was only 40% indicate that these deadlines were overly optimistic.

The two PAR Strategies are not completely coherent with one another regarding proposed measures, deadlines for their implementation and responsible institutions. Both plans contain activities for improving the strategic planning system. The PFMSRS foresees the adoption of the Law on State Strategic Planning, while the PARS indicates that the legal framework on strategic planning should be improved through an amendment to the Rules of Procedure of the CMU. In addition, according to the PFMSRS, the methodology for preparing strategic planning documents should be adopted by the end of the second quarter of 2018 (under the leadership of the Ministry of Economic Development and Trade), while the

¹⁷ Law No. 1699-VI, adopted by Parliament on 14 October 2015.

¹⁸ Decision No. 227-r of 18 March 2015.

¹⁹ Including: Concept for Development of Electronic Services System in Ukraine, adopted by Ordinance of the CMU No. 918-r of 16 November 2016; Concept for Development of Electronic Services System in Ukraine for 2017-2018, adopted by Ordinance of the CMU No. 394-r of 14 June 2017; Concept for the Development of Electronic Government in Ukraine, adopted by Ordinance of the CMU No. 649-r of 20 September 2017; Concept of E-Democracy Development in Ukraine, adopted by Ordinance of the CMU No. 797-r of 8 November 2017; and Concept for Optimisation of the Central Government System, adopted by Ordinance of the CMU No. 1013-r of 27 December 2017.

²⁰ According to the section on Strategy Implementation Co-ordination and Monitoring of the PFMSRS (p. 6), the PAR Council is in charge of overall co-ordination and monitoring of PFMSRS implementation.

²¹ OECD (2017), SIGMA, *The Principles of Public Administration*, OECD, Paris, http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf

²² For example, the World Bank Doing Business measurement is to be used for monitoring progress in the area of taxation, but it is not clear what the desired rank is. In addition, improvements in the reliability of budget forecasting are to be measured through the difference in projected and actual growth of the state's revenues, but the baseline and the target values have not been defined.

²³ Ordinance of the CMU No. 726-r of 11 October 2017.

²⁴ 62 of the 142 activities.

²⁵ 52 of the 142 activities.

Ukraine
Strategic Framework of Public Administration Reform

PARS foresees adoption of the same methodology six months earlier (under the leadership of the Minister of the CMU, with involvement of the Ministry of Economic Development and Trade). The coherence of the PAR Strategies with the legislative plans of the Government is also limited, as four of the six draft laws planned for development in 2018 according to the Strategies have not been included in the Government Priority Action Plan (GPAP) for 2018²⁶.

In the PAR Strategies, 75% of the activities are reform-oriented (i.e. aimed at creating changes in the existing legal or institutional system or directly leading to changes in expected practices).

Only the PARS and its Action Plan were disclosed for public consultation²⁷; there was no public consultation on the PFMSRS. However, non-governmental stakeholders were involved in the elaboration of both PAR Strategies, as official members of the working group²⁸ or as members of the PAR Council²⁹.

Due to inconsistencies identified between the PAR planning documents, limited coherence and limited consultations with the public during the drafting of the Strategies, the value of the indicator measuring the quality of the strategic framework of PAR is 3.

²⁶ The drafts not included in the GPAP are: 1) draft Law on Administrative Procedure; 2) draft Law on the Improvement of the Mechanism of Equalisation of Fiscal Capacity of Local Budgets; 3) draft Law on Consolidation of the Fiscal Rules; and 4) draft Law on the Extension of Powers of Local Self-Government Bodies Regarding the Administration and Control of the Payment of Local Taxes and Fees, in Particular the Regulation of Tax Rates and Fees.

²⁷ According to the evidence available to SIGMA, the PARS and its initial Action Plan were published for public consultation from 15 February until 1 March 2016, <http://civic.kmu.gov.ua/consult.mvc/kmu/consult/poll/project/4125>.

²⁸ Order No. 567 on the Inter-Agency Working Group on PFM System Development Issues of 2 July 2016.

²⁹ Representatives of the public initiative “Reanimation package of reforms” and the public organisation “All-Ukrainian Civil Platform: New Country”, as well as the Chairman of the Board of the Center for Political and Legal Reforms, were all present as members of the PAR Council when the PARS was finalised and approved at the Council session on 9 June 2016.

Quality of the strategic framework of public administration reform						
This indicator measures the quality of the strategy for public administration reform (PAR) and related planning documents (i.e. to what extent the information provided is comprehensive, consistent and complete), including the relevance of planned reforms.						
A separate indicator measures financial sustainability and cost estimates in detail.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Coverage and scope of PAR planning documents	5/5
2. Prioritisation of PAR in key horizontal planning documents	2/2
3. Coherence of PAR planning documents	0/4
4. Presence of minimum content of PAR planning documents	5/7
5. Reform orientation of PAR planning documents ³⁰	2/3
6. Quality of consultations related to PAR planning documents	1/2
Total³¹	15/23

The PARS and PFMSRS cover all substance areas of PAR and meet most of the content-related minimum requirements. Public consultation was conducted only for the PARS, not for the PFMSRS. PAR is prioritised in key horizontal planning documents, but the PAR planning documents are not entirely coherent with one another and with the GPAP.

Principle 2: Public administration reform is purposefully implemented; reform outcome targets are set and regularly monitored.

Monitoring and reporting mechanisms are described in each of the two PAR Strategies³². The PARS envisages preparation of annual reports under the leadership of the SCMU, with the reports to be discussed at meetings of the PAR Council by 1 April of each year. In addition, semi-annual and quarterly reports are to be prepared for the purpose of “obtaining operative information about the status of PAR implementation”³³ and to be considered by the PAR Council. In practice, annual³⁴ and semi-annual³⁵ reports have been approved by the PAR Council. The annual report for 2016³⁶ contains a narrative description of activities carried out during the year in the areas covered by the PARS, but it does not cover progress towards achieving outcome-level indicators. It also does not provide a clear overview of which activities planned for 2016 were implemented and which were not (together with explanations of

³⁰ Reform orientation is assessed as the share of activities included in the PAR Strategies which are aimed at creating changes in the existing legal or institutional system and directly leading to changes in expected practices (as opposed to regular, ongoing or process oriented activities like annual reporting, continuous monitoring, continuation of existing training programmes, etc.).

³¹ Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-23=5.

³² See Chapter VI of the PARS, Co-ordination, Monitoring and Evaluation of the Status of Implementation of this Strategy (pp. 28-29) and Chapter 5 of the PFMSRS, Co-ordination and Monitoring of Implementation of this Strategy (p. 5).

³³ PARS, p. 28.

³⁴ The 2016 report was approved on 24 February 2017 and the 2017 report was approved on 23 April 2018.

³⁵ Public Administration Reform: Short Overview of July 2017. Presentation prepared by the SCMU on the semi-annual implementation status of the PAR Strategy and its Action Plan.

³⁶ <https://www.kmu.gov.ua/storage/app/media/uploaded-files/pro-vikonannya-u-2016-rotsi-strategii-reformuvannya-derzhavnogo-upravlinnya-na-2016-2020-rr.pdf>.

Ukraine
Strategic Framework of Public Administration Reform

possible reasons why). The semi-annual report, prepared in the form of a presentation to the PAR Council in July 2017, provided action-by-action implementation status but did not contain data on the aggregate implementation rate of planned activities. The annual report³⁷ on implementation of the PARS, approved by the PAR Council in April 2018 (and covering 2016 and 2017), is a considerable improvement on the previous year's report. It provides both a narrative and a graphical overview of key reform achievements, and its annexes contain information on the implementation of individual activities as well as achievement of objectives (on the basis of the performance indicators).

According to the PFMSRS,³⁸ an Inter-agency PFM System Development Working Group, chaired by a Deputy Minister of Finance, is tasked with monitoring PFMSRS implementation and preparing quarterly and annual reports. The reports should be reviewed by the Special Working Group in charge of PAR in the PFM area, chaired by the State Secretary of the MoF, but the group is not operational. The PAR Council is in charge of overall co-ordination and monitoring of PFMSRS implementation³⁹. Quarterly reports have been prepared for the third and fourth quarters of 2017⁴⁰, but they were not discussed by the PAR Council. These reports contain tables indicating progress in implementing individual activities, but they do not contain the overall implementation rate of activities or any information on achieving objectives.

Representatives of non-governmental organisations have been involved in monitoring the PARS as members of the PAR Council, which discussed the PARS report. However, there has been no participation from civil society in monitoring the PFMSRS. The reports have not been discussed by the PAR Council or the Inter-agency PFM System Development Working Group.

Of the PARS and PFMSRS activities planned for 2017, 47% were implemented according to the annual report on PARS and the quarterly reports on the PFMSRS. The implementation rate was higher for the PARS (53%) than for the PFMSRS (41%)⁴¹.

³⁷ <https://www.kmu.gov.ua/storage/app/media/uploaded-files/pro-vikonannya-u-2016-2017-rokakh-strategii-reformuvannya-derzhavnogo-upravlinnya-ukraini-na-2016-2020-roki.pdf>

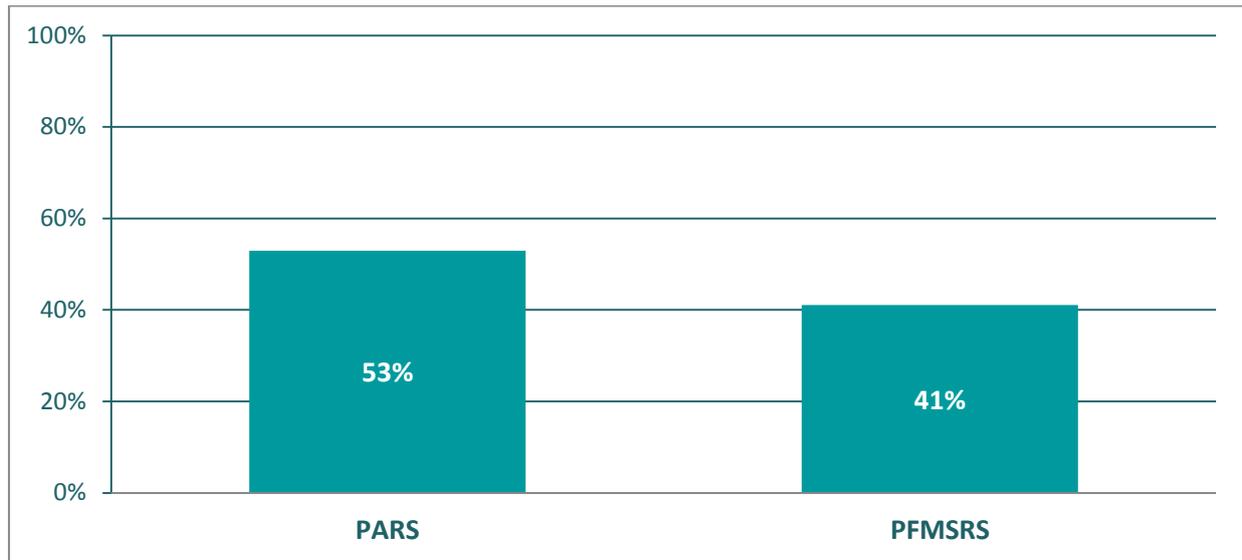
³⁸ PFMSRS, p. 6.

³⁹ *Ibid.*

⁴⁰ Fourth-quarter report: https://minfin.gov.ua/uploads/redactor/files/%D0%A1%D0%A3%D0%94%D0%A4%204%20%D0%BA%D0%B2%202017_%D1%80%D0%BE%D0%B7%D0%BC%D1%96%D1%89%D0%B5%D0%BD%D0%BD%D1%8F.pdf.

⁴¹ 27 of the 51 planned activities in the PARS were implemented in 2017 and 23 of the 56 planned activities in the PFMSRS were implemented in 2017.

Figure 1. Implementation rate of the PAR Strategies



Source: Reports on implementation of the PARS and the PFMSRS.

According to the annual report on PARS implementation, 8 of the 26 objectives to be achieved by the end of 2017 have been fulfilled⁴². The targets for PFMSRS objectives have not been set and it was not possible to calculate the share of achieved objectives for that PAR planning document. Therefore the overall rate of achievement for PAR objectives is 17%⁴³.

Detailed descriptions of the performance indicators (containing information on data sources, time of data availability and calculation formulas) have not been developed for the PAR Strategies.

As the monitoring mechanisms described in the PAR Strategies have not been fully operationalised, the implementation rate of activities is low, the fulfilment of objectives is only moderate for the PARS and has not been assessed for the PFMSRS, the value of the indicator measuring the effectiveness of PAR implementation and comprehensiveness of monitoring and reporting is 1.

⁴² The number of fulfilled objectives is calculated based on the achievement rate of performance indicators for each objective. The objective is considered as fulfilled if all targets to be achieved by the end of 2017 according to all performance indicators under that objective have been reached.

⁴³ 8 out of 46 objectives (26 for the PARS and 20 for the PFMSRS) have been fulfilled.

Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting						
This indicator measures the track record of implementation of PAR and the degree to which the goals were reached. It also assesses the systems for monitoring and reporting of PAR.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Comprehensiveness of PAR reporting and monitoring systems	3/8
2. Implementation rate of PAR activities (%)	1/4
3. Fulfilment of PAR objectives (%)	0/4
Total⁴⁴	4/16

Reports on PARS implementation have been discussed by the PAR Council, the highest political level foreseen in the monitoring mechanism, but those for the PFMSRS have not. Performance indicators have been used to monitor progress on the PARS, but reports on the PFMSRS focus on outputs only. The rate of implementation of activities is low for both of the PAR Strategies.

Principle 3: The financial sustainability of public administration reform is ensured.

Although PAR-related activities are funded in practice, the PAR Strategies do not contain consistent information on the costs of individual activities included in the planning documents or on the sources of funding. The PFMSRS does not contain any information on the funding required for the envisaged reform actions. Annex 1 of the PARS contains aggregate information on indicative implementation costs, as summarised on an annual basis by area and cost categories. The total indicative cost of the Strategy is planned at just over UAH 4.9 billion (about EUR 152.7 million). The only activity for which the tentative costs have been calculated separately is the creation of reform staff positions, which will require 81% of the entire cost of the PARS (just under UAH 4 billion or EUR 124 million). In addition, 11.5% is associated with implementing information and communications technology (ICT) – the second-highest cost item (UAH 567.1 million or EUR 17.6 million). However, it is not evident how these amounts were calculated because cost estimates have not been specified at the activity level for information technology (IT) projects or for other initiatives. Even the activity level estimates in the unofficial documents developed during elaboration of the strategy (provided by the administration for this assessment) do not add up to the totals for each area according to the adopted Action Plan⁴⁵.

According to information provided by the SCMU, the 2017 state budget envisaged the allocation of UAH 300 million (EUR 9.3 million) to the budget programme on Support to the Implementation of Comprehensive Public Administration Reform. These funds were released in August 2017⁴⁶ and were earmarked for the costs associated with the creation of the reform staff positions in ministries and the SCMU (this includes salaries and the necessary equipment for staffing these positions). The allocated amount is 60% of the amount tentatively indicated to be spent for the same purpose in 2017, according

⁴⁴ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

⁴⁵ For example, according to the Action Plan the summarised costs for the area “strategic framework for reforming public administration” are UAH 42.1 million, but the unofficial activity-specific estimates place the total cost at UAH 163.82 million. The total cost of the “strategic planning, formulation and policy co-ordination” area is UAH 174.6 million according to the Action Plan, but UAH 144.08 million according to the unofficial activity-specific estimates.

⁴⁶ Decision No. 647 on Some Issues on the Implementation of the Comprehensive Reform of Public Administration of 18 August 2017 and Order No. 581-r on the Transfer of Certain Budget Allocations [...] in Support of the Implementation of the Comprehensive Reform of Public Administration of 18 August 2017.

Ukraine
Strategic Framework of Public Administration Reform

to Annex 1 of the PARS. The inconsistency between planned and actual funding is caused by delays in implementing the reform.

PAR-related activities are also funded through other state budget programmes⁴⁷, but it is not possible to link this funding to activities foreseen in the PAR Strategies due to the absence of relevant costing information in the PAR planning documents. Several donors support reform initiatives, some of which are formally included in the PAR Strategies⁴⁸, but their involvement and planned financial contributions are not evident from the PAR planning documents.

It is therefore clear that PAR-related activities are funded from the state budget or by donors directly, but due to the lack of activity-specific cost estimates in the PARS and the absence of any cost estimates in the PFMSRS, it is not possible to determine the consistency of actual funding with planned funding for PAR. This lack of detailed financial information and sources of funding in the PAR Strategies limits the effectiveness of ensuring actual funding for the planned activities. In addition, it is not possible to assess the financial sustainability of the planned reforms. Therefore the value of the sub-indicator measuring actual funding of PAR is zero.

Due to the limited availability of data and information on the costs and sources of funding of planned reforms, especially at the level of individual activities, the value of the indicator measuring the financial sustainability of PAR is 0.

Financial sustainability of PAR						
This indicator measures to what extent financial sustainability has been ensured in PAR as a result of good financial planning.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Costed PAR activities (%)	0/3
2. Completeness of financial information in PAR planning documents	0/4
3. Actual funding of the PAR agenda	0/3 ⁴⁹
Total⁵⁰	0/10

PAR was funded from the state budget and by donors during the assessment period, but the short- and medium-term financial sustainability of the funding cannot be ensured due to shortcomings in PAR financial planning. While the PARS contains some indicative data on aggregate funding needs and cost estimates for creating reform staff positions, the PFMSRS does not contain any information on costs.

⁴⁷ For example, UAH 129.7 million in 2018 under the “Electronic Governance and Informatisation” programme, as well as UAH 103.6 million under “Professional Training of Civil Servants and Local Government Officials, Institution-Building and Adaptation of Civil Service to the EU Standards”.

⁴⁸ For example, a project on designing and implementing a Human Resource Management Information System – HRMIS (EUR 5 million) and a project supporting strategic communication and awareness-raising on Ukraine’s public administration reforms (EUR 282 000). Information included in the Donor Mapping Matrix was obtained from the SCMU.

⁴⁹ Actual funding for PAR is assessed by comparing the activity level cost estimates from the PAR planning documents with the amounts provided for in the annual state budget or the approved programming documents for donor-funded activities. Zero points have been awarded due to the lack of activity-level cost estimates in the PARS and due to the lack of any costing in the PFMSRS.

⁵⁰ Point conversion ranges: 0=0, 1-3=1, 4-5=2, 6-7=3, 8-9=4, 10=5.

The PAR Strategies also do not contain information on the anticipated financial involvement of donors, even though their contribution is substantial.

Principle 4: Public administration reform has robust and functioning management and co-ordination structures at both the political and administrative levels to steer the reform design and implementation process.

Overall responsibility for PAR is delegated to the Minister of the CMU, who chairs the PAR Council. The PAR Council has been established⁵¹ as the political-level body to co-ordinate implementation of the PARS and the PFMSRS⁵². It is comprised⁵³ of deputy ministers from the key ministries (finance, justice, social policy, economic development and trade, and regional development) as well as heads of agencies in charge of PAR areas and two representatives of non-governmental organisations. The Deputy State Secretary of the CMU is the Secretary of the Council. The PAR Council convened five times in 2017 to discuss the PARS implementation reports and other matters related to PAR (e.g. remuneration of civil servants, implementation of reform staff positions). However, according to agendas and minutes from Council sessions in 2017, it has not yet discussed any issues related to the PFMSRS.

The description of the administrative-level co-ordination mechanism in the PARS was amended in April 2017⁵⁴. The Special Working Group comprising the State Secretary of the CMU, state secretaries of ministries, the head of the National Agency of Civil Service, the head of the State Agency for Electronic Governance and selected high-level civil servants from other public authorities has been established as the administrative-level co-ordination body⁵⁵. According to the amended PARS, the Special Working Group should convene at least once a month and support the work of the PAR Council. However, information obtained from representatives of the SCMU indicates that in practice the members of the Special Working Group convene weekly to discuss the agenda of the upcoming meeting of the CMU. There is no link between the items discussed at the meetings of the Special Working Group and the agenda of the PAR Council. Therefore, although administrative-level co-ordination of PARS implementation has been established, it is not fully operational.

In addition to the Special Working Group, three thematic working groups based on the PAR substance areas have been set up by the PAR Council⁵⁶. However information was not provided on the meetings and decisions of these thematic working groups. Organisational and managerial responsibility for co-ordinating PARS implementation is allocated to the SCMU, specifically the Directorate of Public Administration (the SCMU's Department of Public Administration before its reorganisation⁵⁷). The Directorate supports the work of PAR co-ordination and monitoring mechanisms⁵⁸.

In addition to the PAR Council not having discussed any PFMSRS-related issues, the other co-ordination structures foreseen in the PFMSRS are not operational. The Inter-agency PFM System Development Working Group is tasked with monitoring PFMSRS implementation. The Working Group, established in

⁵¹ Decision of the CMU No. 335 of 18 May 2016 on Co-ordination Council of Public Administration Reform Issues.

⁵² PFMSR Strategy, Chapter 5, Co-ordination and Monitoring of Implementation of this Strategy (pp. 6-7).

⁵³ The most recent composition of the PAR Co-ordination Council was established by the Decision of the Minister of the CMU of 20 June 2017 on Composition of the Co-ordination Council on Public Administration Reform Issues.

⁵⁴ Ordinance of the CMU No. 306 of 26 April 2017, <http://zakon3.rada.gov.ua/laws/show/306-2017-%D0%BF>

⁵⁵ Decision of the PAR Co-ordination Council of 24 February 2017.

⁵⁶ The working group on strategic planning, formation and co-ordination of state policy, and organisation of the system of central executive authorities, chaired by the Minister of the CMU; the working group on public service and human resources management, chaired by the head of the National Agency of Civil Service; and the working group on provision of administrative services and the administrative procedure, chaired by the First Deputy Prime Minister.

⁵⁷ Decision No. 646 of 18 May 2017 on Issues of the Secretariat of CMU.

⁵⁸ Statutes of the Directorate of Public Administration of the SCMU, points 16-21.

Ukraine
Strategic Framework of Public Administration Reform

2012 for the previous PFM reform strategy, is chaired by the Deputy Minister of Finance and comprised of top-level civil servants from the institutions responsible for strategy implementation as well as representatives of non-state actors⁵⁹. According to information obtained from the MoF, the body was active during PFMSRS preparation but held no meetings in 2017. The PFMSRS also foresees the establishment of a Special Working Group in charge of PAR in the area of PFM, chaired by the State Secretary of the MoF, but this body has not been established. At the operational level, the Directorate for Strategic Planning and European Integration within the MoF is responsible for co-ordinating implementation of the PFMSRS (along with other strategic documents of the Ministry).

Managerial accountability for implementing the activities foreseen in the two PAR Strategies has not been assigned, as both action plans list only the institutions responsible for implementing activities, not the structural units within those institutions.

Due to shortcomings in establishing managerial accountability for PAR co-ordination and implementation, and non-functioning co-ordination mechanisms at the administrative level, the value of the indicator measuring accountability and co-ordination in PAR is 2.

Accountability and co-ordination in PAR						
This indicator measures the extent to which leadership and accountability in PAR are established, the regularity and quality of co-ordination mechanisms at both the political and administrative levels, and the performance of the leading institution.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Establishment of organisational and managerial accountability for PAR	4/6
2. Co-ordination mechanisms for PAR	4/10
Total⁶⁰	8/16

The management and co-ordination mechanisms for PAR are described in the planning documents. However, only the PAR Council at the political level is operational, and only in matters related to the PARS – not in those related to the PFMSRS. The administrative-level co-ordination bodies have been established but are not operational.

Key recommendations

Short-term (1–2 years)

- 1) The SCMU and the MoF should enhance the PAR Strategies (the PARS and the PFMSRS) to ensure they are fully aligned, set realistic deadlines, assign responsibilities for implementing reform activities at the level of specific structural units and include targets for all outcome-level indicators.

⁵⁹ The Union of Municipalities and the Kyiv School of Economics. The latest composition was adopted on 2 July 2016 by Order No. 567 of the Minister of Finance.

⁶⁰ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

Strategic Framework of Public Administration Reform

- 2) The SCMU and the MoF should provide cost estimates for all reform activities which require additional funding, with sources of funding indicated. The revised Strategies should be aligned with the actual fiscal capacity of the state or secured funding from donors.
- 3) The SCMU and the MoF should operationalise the administrative-level co-ordination bodies established for both of the PAR Strategies by regularly discussing reports and other PAR-related topics as well as proposing measures to the PAR Council and the CMU for ensuring the implementation of planned reforms.
- 4) The MoF should ensure that the regular reports on PFMSRS implementation are discussed by the PAR Council and that annual reports inform all stakeholders and the public on progress in implementing planned actions as well as in attaining objectives.
- 5) During revision of the PAR Strategies, the SCMU and the MoF should ensure comprehensive, co-ordinated consultation with non-state actors through written consultations and targeted working-group meetings, and should ensure their continuous participation in monitoring and evaluating the progress on PAR.

Medium-term (3–5 years)

- 6) Drafting of the next PAR Strategies (after expiration of the current planning documents) should be based on a thorough evaluation of the state of play in all substance areas of PAR, involving all stakeholders, and should analyse achievement of objectives of the current PAR Strategies.



POLICY DEVELOPMENT AND CO-ORDINATION

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

1.1. State of play

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

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

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

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

1.2. Main developments

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

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

In 2017, separate directorates for Strategic Planning and EI were established in 10 out of 18 ministries⁶³.

⁶¹ Order No. 275-r.

⁶² Decision of the CMU No. 1106.

⁶³ Decision of the CMU No. 644 of 17 August 2017 on Some Issues Related to the Structure of the SCMU, the Apparatus of Ministries and Other Central Executive Authorities.

2. ANALYSIS

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

Policy planning and co-ordination

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

The values of the indicators assessing Ukraine's performance under this key requirement are displayed below.

Indicators	0	1	2	3	4	5
Fulfilment of critical functions by the centre-of-government institutions					◆	
Fulfilment of European integration functions by the centre-of-government institutions				◆		

Legend: ◆ Indicator value

Analysis of Principles

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

The legal framework for the functioning of CoG institutions in Ukraine is established in the Constitution of Ukraine⁶⁵, the Law on the Cabinet of Ministers of Ukraine (LCMU)⁶⁶, the Rules of Procedure of the Cabinet of Ministers of Ukraine (RoP of the CMU⁶⁷) and the statutes of the Secretariat of the CMU (SCMU)⁶⁸, the Ministry of Finance (MoF)⁶⁹, the Ministry of Justice (MoJ)⁷⁰ and the Government Office for European and Euro-Atlantic Integration (GOEEAI)⁷¹. These legal acts assign the critical functions defined in the Principles of Public Administration⁷² to CoG bodies.

The SCMU is responsible for: 1) preparing the CMU sessions⁷³; 2) co-ordinating the policy content of

⁶⁴ OECD (2017), SIGMA, *Methodological Framework for the Principles of Public Administration*, OECD, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

⁶⁵ Constitution of Ukraine, approved by the Parliament on 28 June 1996.

⁶⁶ LCMU No. 794-VII, approved by the Parliament on 27 February 2014.

⁶⁷ Decision of the CMU No. 950 of 18 July 2007 on Approval of the Rules of Procedure (RoP) of the CMU.

⁶⁸ Decision of the CMU No. 850 of 12 August 2009 on Adoption of the Statute of the SCMU.

⁶⁹ Decision of the CMU No. 375 of 20 August 2014 on Adoption of the Statute of the MoF.

⁷⁰ Decision of the CMU No. 228 of 2 July 2014 on Adoption of the Statute of the MoJ.

⁷¹ Decision of the CMU No. 346 of 13 August 2014 on Adoption of the Statutes of the Government Office for European and Euro-Atlantic Integration.

⁷² OECD (2017), SIGMA, *The Principles of Public Administration*, OECD, Paris, p. 19, <http://sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>.

⁷³ RoP of the CMU, paragraph 16, and Statute of the SCMU, paragraphs 17.2. and 17.3.

Ukraine
Policy Development and Co-ordination

proposals and ensuring their coherence with the Government's priorities⁷⁴; 3) leading the preparation of the Government's annual work plan⁷⁵; 4) monitoring its performance⁷⁶; 5) communicating with the public⁷⁷; and 6) managing the relationship between the CMU and the President, as well as with the Parliament⁷⁸. The MoJ is responsible for ensuring the legal conformity of proposals⁷⁹, while the MoF is tasked with ensuring that policies are affordable⁸⁰. All proposals have to be consulted also with the Ministry of Economic Development and Trade (MoEDT) before they are submitted to the CMU, due to its role as the state-level co-ordinator of economic development and its mandate to co-ordinate strategic planning⁸¹. The State Regulatory Service (SRS) scrutinises the Regulatory Impact Assessment (RIA) conducted for legal acts affecting the business sector⁸². Once proposals have been submitted to the CMU for approval, the SCMU has the mandate to conduct a final review, including legal and financial scrutiny, as well as checking the sufficiency of the impact assessment⁸³. The GOEEAI co-ordinates the EI process, including checking the alignment of draft legal acts with the *acquis*.

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

However, there is still an overlap in the mandates of the Directorate for Policy Co-ordination and Strategic Planning of the SCMU and the MoEDT in monitoring GPAP implementation. According to Article 131 of the RoP of the CMU, the MoEDT is responsible for co-ordinating preparation of the report, but the Statute of the Directorate for Policy Co-ordination and Strategic Planning of the SCMU assigns that responsibility to the Directorate. In practice, the SCMU Directorate prepared the report for 2017, and it was formally submitted to the CMU for approval through the MoEDT.

To ensure uniform practice, guidelines and templates have been developed for preparing the GPAP⁸⁶, for monitoring government performance and for preparing regular reports⁸⁷. Separate guidelines have also been adopted for developing policy proposals⁸⁸, legal drafting⁸⁹ and public consultation⁹⁰. As

⁷⁴ RoP of the CMU, paragraph 52; Statute of the SCMU, paragraph 17.9; and Statute of the Directorate for Policy Co-ordination and Strategic Planning of the SCMU, paragraphs 5.10-5.12.

⁷⁵ RoP of the CMU, paragraph 4 (1) and Statute of the Directorate for Policy Co-ordination and Strategic Planning of the SCMU, paragraph 5.4.

⁷⁶ Statute of the Directorate for Policy Co-ordination and Strategic Planning of the SCMU, paragraph 5.8.

⁷⁷ Statute of the SCMU, paragraphs 17.25 and 17.26.

⁷⁸ *Idem*, paragraphs 17.13-17.16.

⁷⁹ RoP of the CMU, paragraphs 44-46 and Statute of the MoJ, paragraph 4.3.

⁸⁰ Statute of the MoF, paragraph 4.3.

⁸¹ The obligation to consult the MoEDT is stipulated in the RoP of the CMU paragraph 33 (5). The mandate to co-ordinate strategic planning is stipulated in the Statute of the Department of Economic Strategy and Macroeconomic Forecasting of the MoEDT, paragraph 2.

⁸² Law on the Principles of Regulatory Policy in Economic Activity, Article 24.

⁸³ RoP of the CMU, paragraph 52 (3).

⁸⁴ Law No. 2190, adopted by the Parliament on 9 November 2017.

⁸⁵ Decision No. 326, adopted by the CMU on 18 April 2018.

⁸⁶ A Framework for the Preparation of Proposals for the GPAP for 2018, elaborated by the SCMU in 2017.

⁸⁷ RoP of the CMU, Annex 12. In addition, the Medium-Term Government Priority Action Programme contains templates for quarterly and annual reporting on GPAP implementation (pp. 84-85).

⁸⁸ Methodology for conducting financial and economic calculations when drafting an act of the Cabinet of Ministers of Ukraine and a draft law introduced by the CMU for consideration by the Parliament, approved by the MoF on 21 March 2008 (Order No. 42); Decision of the CMU No. 308 on the Methodology for Impact Analysis and Performance Monitoring of a Regulatory Act of 11 March 2004. The annexes to the RoP contain detailed guidelines: Annex 4 on the content of the explanatory note and Annex 9 on the content of a political proposal.

requirements for developing sector strategies have not been established, however, there are no guidelines to support this process.

CoG bodies co-operate and co-ordinate their opinions during the preparation of the GPAP. The Directorate for Policy Co-ordination and Strategic Planning of the SCMU together with the GOEEAI discuss the proposed commitments first with the line ministries and then share the draft plan for comments with the MoF, the MoEDT and the MoJ before finalising its contents⁹¹.

The SCMU units review policy proposals submitted to the CMU for decision in a co-ordinated manner. Opinions from the Legal Department and the GOEEAI are consolidated under the leadership of the relevant sectoral department into one expert opinion and submitted to the Government Committee, together with the policy proposal⁹².

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

Fulfilment of critical functions by the centre-of-government institutions						
This indicator measures to what extent the minimum requirements for functions critical to a well-organised, consistent and competent policy-making system are fulfilled by the centre-of-government institutions.						
As this indicator is used to assess the fulfilment of the minimum requirements, it does not measure outcomes or include quantitative sub-indicators. The outcomes of some of these critical functions are captured by other indicators on policy development and co-ordination.						
Overall indicator value	0	1	2	3	4	5
Sub-indicators						Points
1. Critical functions are assigned to CoG institutions by legislation						7/8
2. Availability of guidelines to line ministries and other government bodies						3/4
3. Institutionalisation of co-ordination arrangements between the CoG institutions						4/4
Total⁹³						14/16

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

⁸⁹ Methodical recommendations on drafting laws and compliance with standard design technology, adopted by a decision of the Board of the MoJ of 21 November 2000.

⁹⁰ Decision of the CMU No. 996 of 3 November 2010 on Ensuring Citizens' Participation in the Elaboration and the Implementation of the State Policy.

⁹¹ The draft GPAP (similar to all other proposals submitted to the CMU) contains a separate reference letter from 27 March 2018 confirming that the draft plan was approved by the MoF and the MoJ. The SCMU consulted the MoEDT through meetings held during preparation of the plan and the MoEDT officially submitted the draft GPAP to the CMU for adoption.

⁹² The RoP of the CMU, Annex 8, provides the template for the expert opinion.

⁹³ Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-12=3, 13-14=4, 15-16=5.

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

The GOEEAI is the key institution assigned the critical functions related to EI in Ukraine. Its statute foresees responsibility for overall daily co-ordination of EI⁹⁴, planning of EI-related actions⁹⁵, monitoring country preparations for the EI process⁹⁶ and co-ordinating alignment of national legislation with the EU *acquis*⁹⁷, as well as co-ordinating the planning and overall monitoring of EU assistance⁹⁸. The function for co-ordinating accession negotiations has not been assigned, as Ukraine is not an EU candidate country.

Regulations and methodological guidelines support the line ministries and central executive bodies in the EI process. The RoP of the CMU contain basic instructions on how to ensure alignment between the proposed Ukrainian legislation and the EU *acquis*⁹⁹. The instructions are supported by methodological guidelines developed by the GOEEAI¹⁰⁰. The CMU has also adopted detailed regulations that stipulate the processes for EI planning¹⁰¹, for monitoring the implementation of plans¹⁰² and for translating the *acquis*¹⁰³. Currently, no guidelines exist on how to provide inputs to the planning and monitoring of EU assistance and on how to participate, manage and co-ordinate EI-related negotiations.

The Governmental Committee on European, Euro-Atlantic Integration, International Co-operation and Regional Development (EI Committee)¹⁰⁴ acts as a subsidiary working body of the CMU, discussing the items on the agenda of the upcoming CMU session in the field of EI. According to the RoP of the CMU, it hears reports on the status of Association Agreement implementation, proposals regarding APIAA updates and any other proposals from the GOEEAI¹⁰⁵. The RoP of the CMU thereby mandates the EI Committee as a political-level co-ordination body for EI. However, it is not performing all of its designated tasks as, according to agendas made available for this assessment, it did not discuss the APIAA prior to its adoption or the report on implementation of the APIAA in 2017. Sectoral meetings take place to co-ordinate implementation of the Association Agreement in the 24 areas covered by the Agreement, but a horizontal administrative-level co-ordination mechanism has not been set up.

The GOEEAI is in charge of preparing the APIAA and monitoring its implementation. The first APIAA was adopted in 2014¹⁰⁶ for a period of three years, and the most recent APIAA, covering the period to 2022,

⁹⁴ Statute of the GOEEAI, paragraph 3.

⁹⁵ *Idem*, paragraphs 4.4. and 4.5.

⁹⁶ *Idem*, paragraphs 3 and 4.20.

⁹⁷ *Idem*, paragraphs 3 and 4.12, and the RoP of the CMU, paragraph 52.

⁹⁸ *Idem*, paragraph 4.9.

⁹⁹ RoP of the CMU, Article 35 and Annex 1, which provide instructions on how to determine if the proposed act belongs to the legal sphere regulated by EU *acquis* and how to conduct a comparative analysis and prepare a Table of Conformance.

¹⁰⁰ EUUA (Ukraine–Europe) and Association 4U (n.d.), “Methodology on EU law compliance check and tables of compliance drafting”, <http://association4u.com.ua/images/components/comp1/EULaw/EU-law-compliance-check-and-tables-of-compliance---guidelines-by-A4U.pdf>.

¹⁰¹ Decision of the CMU No. 447 of 31 May 2017 on Issues of Planning, Monitoring and Evaluation of the Effectiveness of the Implementation of the Association Agreement between the European Union and its Member States, of the One Part, and Ukraine, of the Other Part.

¹⁰² *Ibid.* In addition, the Vice-Prime Minister for European and Euro-Atlantic Integration has adopted reporting templates through Resolution No. 12605/0/1-18 of 21 March 2018 on the Improvement of the Monitoring System and Evaluation of the Effectiveness of the Implementation of the Association Agreement between the EU and Ukraine.

¹⁰³ Decision of the CMU No. 512 of 31 May 2017 on the Procedure for Translating European Union *acquis communautaire* into the Ukrainian Language.

¹⁰⁴ Established with CMU Decision No. 330 of 11 May 2016.

¹⁰⁵ RoP of the CMU, Article 28.2 (2.1).

¹⁰⁶ Decision of the CMU No.847-r of 17 September 2014 on Adoption of the Action Plan for Implementation of the Association Agreement between Ukraine, on One Side, and the European Union, European Atomic Energy Community and their Members States, on the Other Side, for 2014-2017.

Ukraine
Policy Development and Co-ordination

was adopted in October 2017¹⁰⁷. Annual reports are prepared on the implementation of the Plan. The GOEEAI consistently provides opinions on draft legal acts dealing with transposition of the *acquis* before the legal acts are submitted to the CMU for decision¹⁰⁸.

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

Fulfilment of European integration functions by the centre-of-government institutions						
This indicator measures to what extent the minimum criteria for European integration functions are fulfilled by the CoG institutions.						
As this indicator is used to assess the fulfilment of the minimum criteria, it does not measure outcomes or include quantitative indicators. The outcomes of some of these critical functions are captured by other indicators on policy development and co-ordination.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Proportion of the EI functions that are assigned to the CoG institutions by law	5/6 ¹⁰⁹
2. Availability of guidelines to line ministries and other government bodies	2/4 ¹¹⁰
3. Government's capacity for co-ordination of EI	6/8
Total¹¹¹	13/18

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

¹⁰⁷ Decision of the CMU No. 1106-r of 25 October 2017 on Adoption of the Action Plan for Implementation of the Association Agreement between Ukraine, on One Side, and the European Union, European Atomic Energy Community and their Members States on the Other Side, for 2014-2017.

¹⁰⁸ Based on assessment of five sample draft laws dealing with transposition of the *acquis*: 1) draft Law on Amendments to Some Laws of Ukraine on the Tracing and Labelling of Genetically Modified Organisms and the Circulation, Tracing and Labelling of Food Products, Feed and/or Feed Additives, Veterinary Drugs Obtained Using Genetically Modified Organisms; 2) draft Law on Amendments to the Customs Code Concerning the Peculiarities of Taxation of Operations for the Import (transfer) of Goods into the Customs Territory of Ukraine by Natural Persons and on amendments to the Tax Code Regarding the Specifics of the Taxation of Import Transactions (forwarding) to the Customs Territory of Ukraine by Natural Persons; 3) draft Law on Amendments to the Customs Code, Tax Code and the Law on the Collection and Accounting of a Single Fee for Obligatory State Social Insurance in connection with the organization and holding of final matches of the UEFA Champions League and the UEFA Women's Champions League for the 2017/2018 season; 4) draft Law on Amendments to the Customs Code on Certain Issues in the Implementation of Chapter 5 of Chapter IV of the Association Agreement between Ukraine and the EU; 5) draft Law on Amendments to the Law on the State Registration of Legal Entities, Individuals-Entrepreneurs and Public Formations.

¹⁰⁹ Ditto.

¹¹⁰ The SIGMA methodology for EU Enlargement countries was used for this assessment, whereby maximum points can be awarded only to countries that are in the phase of accession negotiations.

¹¹¹ Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-13=3, 14-16=4, 17-18=5.

Key recommendations

Short-term (1–2 years)

- 1) The mandates of the SCMU and the MoEDT should be clarified so that one CoG body, preferably the SCMU as the co-ordinator of GPAP preparation, is assigned responsibility for monitoring implementation of the plan.
- 2) The EI committee should become fully functional as the political-level co-ordination body by consistently discussing EI-related plans and reports on their implementation. The horizontal administrative-level EI co-ordination mechanism should be established and operationalised.

Medium-term (3–5 years)

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

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

The values of the indicators assessing Ukraine’s performance under this key requirement are displayed below.

Indicators	0	1	2	3	4	5
Quality of policy planning		◆				
Quality of policy planning for European integration			◆			
Quality of government monitoring and reporting				◆		

Legend: ◆ Indicator value

Analysis of Principles

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

The legal framework for policy planning is established in the Budget Code of Ukraine and the RoP of the CMU. The RoP foresee adoption of the Government Action Programme (GAP)¹¹², which stipulates the priority tasks of the Government for the duration of its tenure, as well as the annual GPAP¹¹³ for the implementation of the GAP. In addition, the five-year and annual legislative plans are to be prepared by the MoJ on the basis of the GAP, EI-related obligations and proposals from central executive bodies¹¹⁴. The APIAA contains all activities related to EU accession¹¹⁵. The Budget Code

¹¹² RoP of the CMU, paragraph 5. The most recent GAP was adopted on 14 April 2016, <http://zakon0.rada.gov.ua/laws/show/1099-19/paran7#n7>.

¹¹³ *Idem*, paragraph 4.

¹¹⁴ *Idem*, paragraph 66.

¹¹⁵ Decision of the CMU No. 447 of 31 May 2017 on Issues of Planning, Monitoring and Evaluation of the Effectiveness of the Implementation of the Association Agreement between the European Union and its Member States, of the One Part, and Ukraine, of the Other Part.

Ukraine
Policy Development and Co-ordination

establishes the obligation to prepare the budget for the upcoming year¹¹⁶ and an indicative budget plan for the subsequent two years¹¹⁷. The indicative budget plan should be based on the GAP¹¹⁸. The processes for preparing and adopting the planning documents have also been established. The Parliament adopts the annual budget as well as the GAP. The CMU adopts the legislative plans as well as the APIAA.

In practice, the requirements for medium-term budget planning have not been implemented consistently, and the main fiscal plan is the annual budget. As a pilot project, the CMU adopted the Future Directions of Budget Policy (FDBP) for 2018-2020¹¹⁹, but its medium-term spending projections were only indicative. Also, the CMU has not fulfilled the requirement to adopt a five-year legislative plan.

In addition to the planning documents established by the legal framework, the President has adopted the Sustainable Development Strategy: Ukraine 2020 (SDS 2020)¹²⁰ and the CMU has adopted the Medium-Term Government Priority Action Plan until 2020 (MTGPAP)¹²¹. The SDS 2020 defines the overall priorities for defence policy as well as for socio-economic, organisational, political and legal development of the state. The MTGPAP stipulates five main objectives of the Government and priority actions for achieving them. The document is more detailed than the GAP, but the priority tasks of the GAP are also reflected in the MTGPAP. However, the status of the SDS 2020 and the MTGPAP has not been defined by legislation.

The main hierarchy for government planning documents is in place. According to the legal framework, the GAP is the basis for the FDBP and subsequently the annual budget and the GPAP¹²². In practice, the MTGPAP, developed on the basis of the SDS 2020 and the GAP, further specifies the medium-term objectives of the Government. The legislative plan contains the commitments of both the domestic MTGPAP and the GPAP, as well as of the EI plan.

The Directorate for Policy Co-ordination and Strategic Planning within the SCMU is responsible for the policy-planning function¹²³, but up to April 2018 the SCMU did not have the legal mandate to submit proposals to the CMU for approval. In practice, therefore, the Directorate prepared only the drafts of the MTGPAP and the GPAP (including the draft GPAP for 2018), while the MoEDT formally submitted the Plans to the CMU for approval.

Both the MoEDT¹²⁴ and the SCMU¹²⁵ are mandated to provide quality control for the development of strategic plans. However, the requirements and process for developing sector strategies have not been established. The procedure and content-related requirements have been established for State Target Programs (STPs)¹²⁶. The aim of the STPs is to facilitate the implementation of state policy in priority areas through concentrating financial, logistical and other resources, as well as industrial, scientific and

¹¹⁶ Budget Code of Ukraine of 8 July 2010, Articles 29-41 on the contents, preparation and adoption process of the annual budget.

¹¹⁷ *Idem*, Article 21.

¹¹⁸ *Ibid.*

¹¹⁹ Decision of the CMU No. 411-r of 14 June 2017 on Adoption of the Project of the Main Directions of the Budget Policy for 2018-2020.

¹²⁰ Sustainable Development Strategy "Ukraine 2020", adopted by Decree of the President No. 5/2015 of 12 January 2015.

¹²¹ Decision of the CMU No. 275-r of 3 April 2017.

¹²² See Article 4 (1) of the RoP of the CMU and Article 21 (1) of the Budget Code of Ukraine.

¹²³ Statutes of the Directorate for Policy Co-ordination and Strategic Planning of the SCMU, paragraph 5.4.

¹²⁴ Statutes of the Department for Economic Strategy and Macroeconomic Prognosis of the MoEDT, approved by Order of the MoEDT of 16 February 2016, paragraph 2.

¹²⁵ Statutes of the Directorate for Policy Co-ordination and Strategic Planning of the SCMU, paragraphs 5.10. and 5.12.

¹²⁶ Law No. 1621-IV on State Target Programs, approved by the Parliament 18 March 2004.

technical potential¹²⁷. The STPs must state the objective of the programme, the proposed activities for its achievement and the desired outcomes, and must include information about the costs of planned activities together with their sources of funding¹²⁸. As such, their focus and content-related requirements are similar to those of sector strategies, but the CMU has vetoed the adoption of STPs that require additional funds from the state budget¹²⁹. Nevertheless, some STPs have been adopted¹³⁰. As a result, procedural and content-related requirements have been established for STPs, which are rarely developed in practice, but such requirements do not exist for sector strategies, which continue to be adopted¹³¹.

Guidance is provided on how to submit input to the GPAP¹³² and for preparing the medium-term fiscal plan¹³³, but not on developing sector strategies or reporting on implementation of the GPAP.

Of the draft laws from the 2017 GPAP, 33% also appear in the 2018 plan¹³⁴. In addition, nearly half of the planned sector strategies were carried forward from the 2017 plan¹³⁵. The legislative commitments from the sector strategies are not included in the GPAP. The sample strategies¹³⁶ analysed for the assessment foresee the development of three draft laws¹³⁷ in 2018, but none of them appears in the GPAP for the year. In addition, the strategies do not contain estimates for the sources of funding needed for their implementation. It is therefore not possible to ensure that the funding needed for implementing the activities from sector strategies aligns with the spending foreseen by the FDBP.

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

Due to shortcomings in the legal framework; limited guidance on policy planning; a lack of financial information in sector strategies; a high share of commitments carried forward from one year to the

¹²⁷ *Idem*, Article 2.

¹²⁸ *Idem*, Article 9.

¹²⁹ Initially with Decision of the CMU No. 65 of 1 March 2014 on Saving of Public Funds and Prevention of Budget Losses. The decision was confirmed with Decision of the CMU No. 710 of 11 October 2016 on Effective Use of Public Funds.

¹³⁰ For example, the STP for the Development of Physical Culture and Sports for the period up to 2020 (adopted by the CMU on 1 March 2017).

¹³¹ The 2017 GPAP foresees development of the Strategy for the Development of State Banks, the Small and Medium Enterprise Development Strategy, strategies for tourism development and others.

¹³² A Framework for the Preparation of Proposals for the GPAP for 2018, prepared by the SCMU.

¹³³ Instructions for preparing the Main Directions of Budget Policy for 2019-2021, MoF letter of 31 January 2018 to all key spending units.

¹³⁴ 27 of the 82 draft laws covered in the 2017 plan are also included in the 2018 GPAP.

¹³⁵ 17 of the 35 sector strategies planned for adoption in 2017 appear in the 2018 GPAP (49%).

¹³⁶ Five strategies adopted at the end of 2017: 1) Medium-Term Strategy of Management of State Debt in 2017-2019; 2) Ukraine's Export Strategy: Roadmap for Strategic Development of Trade in 2017-2021; 3) Strategy of Reforming the System of State Control; 4) Strategy for Informing Citizens on Rights Guaranteed to them by the Constitution and Legislation of Ukraine for the Period until 2019; and 5) Strategy on Development of the System of Risk Management in the Area of Customs Control.

¹³⁷ Drafts of the: 1) the Law on the Introduction of the Institution of Authorized Economic Operators in Ukraine (from the Export Strategy); 2) amendments to the Customs Code of Ukraine on the introduction of the responsibility of the carrier for failure to submit or late submission of preliminary information in the amount and within the time limits specified by law, or for submission of inadequate preliminary information; 3) amendments to the Customs Code of Ukraine regarding the possibility of accepting preliminary decisions on customs valuation of goods by customs (both from the Strategy On Development of the System of Risk Management in the Area of Customs Control).

¹³⁸ 1) Economic Growth; 2) Effective Governance; 3) Human Capital Development; 4) Rule of Law; and 5) Security and Defence.

next; and limited alignment among planning documents, the value of the indicator measuring the quality of policy planning is 1.

Quality of policy planning						
This indicator measures the legislative, procedural and organisational set-up established for harmonised policy planning and the quality and alignment of planning documents. It also assesses the outcomes of the planning process (specifically the number of planned legislative commitments and sector strategies carried forward from one year to the next) and the extent to which the financial implications of sectoral strategies are adequately estimated.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the legal framework for policy planning	4/7
2. Availability of guidance to line ministries during the policy-planning process	2/4
3. Alignment between central policy-planning documents	2/6
4. Planned commitments carried forward in the legislative plan of the government (%)	2/4
5. Planned sectoral strategies carried forward (%)	1/4
6. Completeness of financial estimates in sector strategies	0/5
7. Alignment between planned costs in sector policy plans and medium-term budget (%)	0/3
Total¹³⁹	11/33

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

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

The Decision of the CMU on Issues of Planning, Monitoring and Evaluation of the Effectiveness of the Implementation of the Association Agreement between the European Union and its Member States, of the One Part, and Ukraine, of the Other Part¹⁴⁰, establishes the status of the EI-related planning document as well as the rules and requirements for its development. APIAA is the medium-term planning document containing EI-related commitments stemming from the Association Agreement or from decisions of the bilateral bodies established according to the Agreement¹⁴¹. The GOEEAI is responsible for preparing the APIAA and for monitoring its implementation¹⁴². Before the Plan is adopted by the CMU, the draft plan or any proposals for amendments should be discussed at the EI

¹³⁹ Point conversion ranges: 0-5=0, 6-11=1, 12-17=2, 18-23=3, 24-29=4, 30-33=5.

¹⁴⁰ Decision of the CMU No. 447 of 31 May 2017.

¹⁴¹ *Idem*, Article 2.

¹⁴² Decision of the CMU No. 346 of 13 August 2014 on Adoption of the Statutes of the Government Office for European and Euro-Atlantic Integration.

Ukraine
Policy Development and Co-ordination

Committee of the CMU¹⁴³. The legal framework does not stipulate any co-ordination during the APIAA preparation process with the other SCMU directorates dealing with preparation of the MTGPAP and the GPAP, or with the MoF; according to representatives of the GOEEAI, such co-operation does not take place in practice.

The first APIAA was adopted on 17 September 2014 for the period 2014-2017¹⁴⁴. It was amended in 2016 and 2017, and the sections on Trade and Trade-related Issues and on Economic and Development Co-operation were moved into separate plans¹⁴⁵. The most recent APIAA (covering 2017-2022) was adopted on 25 October 2017 and contains commitments from all sections of the Association Agreement. All APIAAs stipulate deadlines and the institutions responsible for implementing the commitments, which are structured according to the sections of the Association Agreement. The APIAA does not, however, include cost estimates or sources of funding to implement the planned activities.

Alignment between the APIAA and the GPAP on the basis of draft laws planned for development in 2018 is limited, as only 60% of the APIAA's legislative initiatives are included in the GPAP for 2018¹⁴⁶. From the 2014 APIAA, 38% of the commitments were carried forward to the 2017 Plan. The implementation rate of EI-related legislative commitments in 2017 could not be calculated, however, because the 2014 APIAA did not specify the exact titles of the legal acts to be adopted¹⁴⁷. Therefore it was not possible to determine whether a particular EI-related legislative activity had been implemented. The most recent APIAA, adopted in October 2017, is more specific and provides the titles of the legal acts to be adopted. The Report on the Implementation of the Association Agreement between Ukraine and the EU in 2017 does not specify the implementation rate of planned legislative activities, but it concludes that overall progress on implementation in 2017 was 41%.

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

¹⁴³ RoP of the CMU, paragraph 28.1 (2.1).

¹⁴⁴ CMU Order No. 847-R of 17 September 2014, <http://zakon2.rada.gov.ua/laws/show/847-2014-%D1%80/paran12#n12> (most recent version).

¹⁴⁵ <http://zakon2.rada.gov.ua/laws/show/217-2016-%D1%80/page> and <http://zakon2.rada.gov.ua/laws/show/503-2017-%D1%80/paran5#n5>.

¹⁴⁶ 116 out of 293 draft laws planned for development in 2018 according to the APIAA were not included in the 2018 GPAP.

¹⁴⁷ Activities were instead formulated as: 1) preparation of proposals for improving the legislation of Ukraine in the field of combating terrorism; and 2) development and implementation of a set of measures, in particular amendments to the legislation on the reform of the civil service and service system in local self-government bodies in accordance with European requirements.

Quality of policy planning for European integration

This indicator analyses the legislative set-up established for policy planning of the European integration (EI) process and the quality and alignment of planning documents for EI. It also assesses the outcomes of the planning process (specifically the number of planned legislative EI-related commitments carried forward from one year to the next) and the implementation rate of planned EI-related commitments.

Overall indicator value 0 1 **2** 3 4 5

Sub-indicators	Points
1. The legal framework enables harmonised planning of EI	2/2
2. Quality of planning documents for EI	2/6
3. EI-related commitments carried forward	2/4
4. Implementation rate of the government's plans for EI-related legislative commitments (%)	0/4
Total¹⁴⁸	6/16

The status of the APIAA and the process for developing it is established in the legal framework. However, there is no co-ordination between the GOEEAI and the other CoG bodies during the preparation of the Plan, and only 60% of legislative commitments from the APIAA are included in the GPAP. The APIAA sets deadlines for EI-related commitments, but it does not contain any cost estimates or information on sources of funding. Overall progress in implementing the Association Agreement in 2017 was low (41%), and 38% of commitments from the previous APIAA were carried forward to the 2017 Plan.

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

The legal framework stipulates the requirement to report regularly on the implementation of key horizontal central-planning documents: the budget¹⁴⁹, the GAP and the GPAP¹⁵⁰, the legislative plan¹⁵¹ and the APIAA¹⁵². There is no general requirement to report on the implementation of sector strategies.

The RoP establishes the general requirement to publish reports on the implementation of Government decisions online¹⁵³. In practice, the most recent report on implementation of the budget¹⁵⁴ and the

¹⁴⁸ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

¹⁴⁹ Budget Code of Ukraine, Articles 58-62 and RoP of the CMU, paragraph 132.

¹⁵⁰ RoP of the CMU, paragraph 131 and Law on the RoP of the Parliament of 10 February 2010, Article 228. As the GPAP from 2017 and from 2018 follows the 5-pillar structure of the MTGPAP, the report on the GPAP is effectively the annual report on the implementation of the MTGPAP.

¹⁵¹ RoP of the CMU, paragraph 69.

¹⁵² Decision of the CMU No. 447 on Issues of Planning, Monitoring and Evaluation of the Effectiveness of the Implementation of the Association Agreement between the European Union and its Member States, of the One Part, and Ukraine, of the Other Part, of 31 May 2017, points 11-13.

¹⁵³ RoP of the CMU, paragraph 132 (2).

¹⁵⁴ <http://www.treasury.gov.ua/main/uk/doccatalog/list?currDir=359194>.

Ukraine
Policy Development and Co-ordination

report on the APIAA¹⁵⁵ are publicly available, but the report on execution of the GPAP¹⁵⁶ and the legislative plan are not available¹⁵⁷. As there is no explicit legal obligation to report on sector strategies, there is no consistent practice of doing so, but the reports which have been prepared are publicly available¹⁵⁸.

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

The reports on implementation of the GPAP, the legislative plan and the APIAA focus on the description of outputs achieved. The report on implementation of the legislative plan provides a detailed tabular overview of progress in the development of each individual planned legal act. Reports on the GPAP and the APIAA provide a narrative overview of the actions that were implemented, but they do not mention which of the planned activities were not implemented and for what reason. Even though the MTGPAP contains outcome-level indicators for monitoring progress in each of its five pillars, these indicators are not consistently used in the annual reports. The report on implementation of the GPAP in 2017 contains selective information on the key performance indicators from the pillars on economic growth and effective governance¹⁵⁹, but none on indicators from the other MTGPAP pillars on human capital development, rule of law and the fight against corruption, or security and defence¹⁶⁰.

An incomplete set of sample reports on sector strategies was provided for assessment (four out of the five required) due to inconsistent reporting on strategies, and only three of the reports included information on outputs¹⁶¹. None of them included information on achieved outcomes. A separate monitoring mechanism exists for reporting on the implementation of state target programmes. Line ministries report to the MoEDT, which submits the consolidated report to the CMU. The report for

¹⁵⁵ <https://www.kmu.gov.ua/ua/diyalnist/yevropejska-integraciya/vikonannya-ugodi-pro-asociaciyu/zviti-pro-vikonannya-ugodi-pro-asociaciyu>.

¹⁵⁶ The Government has published only a summarised version of the report, which provides a graphical overview of the general improvements: <https://www.kmu.gov.ua/ua/diyalnist/programa-diyalnosti-uryadu/zvit-uryadu-za-2017-rik>, but not the complete version of the report, which was prepared for the CMU session.

¹⁵⁷ According to the information provided by the administration, the 2017 report on the implementation of the legislative plan was discussed at the CMU, but was not adopted.

¹⁵⁸ According to the four reports provided for assessment: 1) Report on the Implementation of the 2016-2020 Strategy for the Reform of Public Administration in 2016, <https://www.kmu.gov.ua/ua/news/249777403>; 2) 2017 Report on the Implementation of the Strategy of National Patriotic Education of Children and Youth for 2016-2020, <http://dsmsu.gov.ua/index/ua/material/33830>; 3) 2017 Report on the Implementation of the National Strategy for Promoting Civil Society in Ukraine for 2016-2020, <http://voladm.gov.ua/zvit-pro-vikonannya-planu-zaxodiv-na-2017-rik-shhodo-realizaci%D1%97-nacionalno%D1%97-strategi%D1%97-spriyannya-rozvitku-gromadyanskogo-suspilstva-v-ukra%D1%97ni-na-2016-2020-roki/>; and 4) 2017 Report on Implementation of the National Human Rights Strategy for the period up to 2020, https://minjust.gov.ua/section_548.

¹⁵⁹ The report includes information about the World Bank Doing Business index ranking and the average weight of gross fixed capital formation in gross domestic product (GDP), but no information is provided on the level of budget deficit compared with GDP, which is one of the key performance indicators for the effective governance pillar.

¹⁶⁰ The key performance indicators as established in the MTGPAP, but not referred to in the report include: 1) human development index; 2) mortality rate; 3) poverty level; 4) corruption perception; and 5) road accident levels.

¹⁶¹ Information on outputs achieved was included in the Report on Implementation of the PAR Strategy in 2016; the 2017 Report on the Implementation of the Strategy of National Patriotic Education of Children and Youth for 2016-2020; and the 2017 Report on the Implementation of the National Human Rights Strategy for the period up to 2020. The 2017 Report on the Implementation of the National Strategy for Promoting Civil Society in Ukraine for 2016-2020 does not provide a comprehensive overview of outputs, as it covers the activities in only one oblast (an administrative division unit of Ukraine).

Ukraine
Policy Development and Co-ordination

2017 covers the implementation of 13 state target programmes and provides an overview of spending and the outputs¹⁶².

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

Quality of government monitoring and reporting						
This indicator measures the strength of the legal framework regulating reporting requirements, the quality of government reporting documents and the level of public availability of government reports.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the legislative framework for monitoring and reporting	7/8
2. Quality of reporting documents	4/12
3. Public availability of government reports	3/5
Total¹⁶³	14/25

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

Key recommendations

Short-term (1–2 years)

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

Medium-term (3–5 years)

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

¹⁶² MoEDT performance report on state target programmes in 2017; report provided by the SCMU.

¹⁶³ Point conversion ranges: 0-3=0, 4-7=1, 8-12=2, 13-17=3, 18-21=4, 22-25=5.

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

The values of the indicators assessing Ukraine’s performance under this key requirement are displayed below.

Indicators	0	1	2	3	4	5
Transparency and legal compliance of government decision making				◆		
Parliamentary scrutiny of government policy making				◆		

Legend: ◆ Indicator value

Analysis of Principles

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

The RoP of the CMU establishes the legal framework for the Government session procedures. The SCMU is responsible for preparing the sessions and for communicating the decisions of the CMU to the relevant institutions and the general public¹⁶⁴. In addition, the SCMU has the authority to ensure that the policy proposals submitted for decision are coherent with the Government’s priorities and policies, as well as to check if the established procedures have been complied with (including consultation procedures)¹⁶⁵. The MoJ is responsible for the legal scrutiny of proposals during the interministerial consultation¹⁶⁶, but the SCMU also has the mandate to analyse the conformity of draft legal acts with the existing framework¹⁶⁷. A similar overlap exists in assessing the sufficiency of the financial estimates, for which both the SCMU¹⁶⁸ and the MoF¹⁶⁹ have the mandate. In addition, it is mandatory to consult the MoEDT on all proposals before submitting them to the CMU. The specific mandate of the MoEDT is limited to co-ordinating strategic planning¹⁷⁰, which is also one of the functions of the Directorate for Co-ordination of State Policies and Strategic Planning of the SCMU¹⁷¹. The GOEEAI of the SCMU is responsible for examining the conformity of draft proposals with Ukraine’s commitments in the sphere of EI¹⁷². The RIAs prepared for legal acts affecting the business sector have to be submitted to the SRS for opinion according to the Law on Principles of Regulatory Policy in Economic Activity¹⁷³.

The SCMU has the mandate to return proposals that do not comply with the established procedural requirements¹⁷⁴. However, it is not authorised to return proposals on its own initiative in case of substantial shortcomings or when it is evident that the differences between the opinions of relevant authorities have not been dealt with during the interministerial consultation. In such matters, only the

¹⁶⁴ RoP of the SCMU, paragraph 12 (3) and sections 3 and 3_1.

¹⁶⁵ *Idem*, paragraph 52 (3) and Annex 8 for the template of the Expert Opinion, provided by the SCMU.

¹⁶⁶ *Idem*, paragraphs 44-47.

¹⁶⁷ *Idem*, paragraph 52 (3).

¹⁶⁸ *Ibid*.

¹⁶⁹ Statute of the MoF, paragraph 4.3, and CMU Decision No. 375 of 20 August 2014.

¹⁷⁰ The obligation to consult the MoEDT, stipulated in paragraph 33 (5) of the RoP of the CMU. Paragraph 2 of the statute of the Department of Economic Strategy and Macroeconomic Forecasting of the MoEDT provides the mandate for co-ordinating strategic planning.

¹⁷¹ Statute of the Directorate for Policy Co-ordination and Strategic Planning of the SCMU, paragraph 5.8.

¹⁷² RoP of the CMU, paragraph 52 (3).

¹⁷³ Law on the Principles of Regulatory Policy in Economic Activity, Article 24.

¹⁷⁴ *Idem*, Article 52 (4).

Ukraine
Policy Development and Co-ordination

Government Committee is authorised to make the decision on the need to return the draft to the proposing body for further improvement¹⁷⁵. The decision regarding the return of proposals due to substantial shortcomings cannot be taken at the administrative level. Two out of the five sample draft laws assessed by SIGMA¹⁷⁶ were returned to the proposing body after discussions at the Committee level.

The analysis of samples confirms that the review of legal conformity was performed on all proposals. The packages were complete and all submission procedures had been followed. This was confirmed by the SCMU in its review. According to the explanatory notes, the implementation of all five draft laws would not require any additional funds and this was not contested by the MoF or the SCMU in their opinions¹⁷⁷. However, the draft Law on Amendments to Certain Legislative Acts of Ukraine on Conducting Forensic Psychiatric Examinations in Administrative Proceedings foresees new responsibilities for judicial experts. The draft Law on Amendments to Laws Ensuring Sustainable Development and Increase in the Number of Working Places in Mountainous and High-Mountainous Living Areas creates additional state guarantees for the development of mountainous regions, and the draft Law on Amendments to Certain Laws of Ukraine on Specific Issues of the Ministry of Internal Affairs and National Police stipulates additional tasks for the police in investigating crimes related to computer systems. The review of financial affordability of draft proposals is therefore ineffective. In addition, the expert opinions provided by the SCMU did not assess the coherence of the proposals with the priorities of the Government.

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

The RoP do not stipulate a deadline for submitting proposals to the Cabinet session agenda, so the timeliness of ministry submissions of regular agenda items to the Government session could not be assessed. Instead, the RoP require that the SCMU scrutinises submitted proposals within 15 days so that, as a rule, the Cabinet is able to consider the draft within a month of its submission¹⁸². Three of the

¹⁷⁵ *Idem*, Article 55.

¹⁷⁶ For assessment purposes, SIGMA reviewed full packages of documents attached to the following draft laws: 1) draft Law on Amendments to Certain Legislative Acts of Ukraine Regarding the Use of the Name and Attributes Belonging to the National Police of Ukraine; 2) draft Law on Amendments to Laws Ensuring Sustainable Development and Increase in the Number of Working Places in Mountainous and High-Mountainous Living Areas; 3) draft Law on Amendments to Certain Legislative Acts of Ukraine on Conducting Forensic Psychiatric Examinations in Administrative Proceedings; 4) draft Law on Amendments to Certain Legislative Acts of Ukraine Concerning the Safety of Nuclear Energy Use; and 5) draft Law on Amendments to Certain Laws of Ukraine on Specific Issues of the Ministry of Internal Affairs and National Police. The first two drafts were returned after Committee discussions.

¹⁷⁷ The MoF did not even provide an opinion on the Draft Law on Amendments to certain legislative acts of Ukraine on conducting forensic psychiatric examinations in administrative proceedings and the Draft Law on Amendments to certain laws of Ukraine on specific issues of the Ministry of Internal Affairs and National Police.

¹⁷⁸ Initiated by an MP but developed by the MoF, according to the explanatory note. Adopted 21 December 2017.

¹⁷⁹ Initiated by an MP but developed by the Administration of the State Service for Specialised Communication and Information, according to the explanatory note. Adopted 5 October 2017.

¹⁸⁰ Initiated by an MP but developed by the Ministry of Regional Development, according to the explanatory note. Adopted 22 June 2017.

¹⁸¹ KIIS (Kiev International Institute of Sociology) (2017), "Survey on business satisfaction with policy making and public service delivery", a survey commissioned by SIGMA, KIIS, Kyiv. The value of the sub-indicator is based on the percentage of responses indicating "strongly agree" and "tend to agree".

¹⁸² RoP of the CMU, paragraph 54.

Ukraine
Policy Development and Co-ordination

five sample proposals assessed were approved by the CMU within a month of their submission to the SCMU. Government committees decided to return the other two proposals to the sponsoring ministry for adjustments, but in these cases even the Committee-level discussions took place more than a month after the initial submission¹⁸³.

Paragraph 19 (3) of the RoP of the SCMU also allows the submission of materials to the agenda of the Cabinet session during the meeting, including urgent legislative drafts. However, according to information obtained during interviews, the current Prime Minister has stopped this practice.

Agendas of Cabinet meetings are published online before the start of the session¹⁸⁴. The SCMU is responsible for keeping the minutes of the meetings and for circulating them in electronic format to the members of the CMU, the President of Ukraine, the Parliament and other public bodies, according to the list approved by the State Secretary of the CMU. The decisions of the CMU are published online¹⁸⁵ and the SCMU publishes news items on key decisions through the press centre¹⁸⁶.

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

¹⁸³ The draft Law on Amendments to Certain Legislative Acts of Ukraine Regarding the Use of the Name and Attributes Belonging to the National Police of Ukraine was submitted on 10 October and discussed by the Committee on 16 November 2017. The draft Law on Amendments to Laws Ensuring Sustainable Development and Increase in the Number of Working Places in Mountainous and High-Mountainous Living Areas was submitted on 31 October and discussed by the Committee on 14 December 2017.

¹⁸⁴ <https://www.kmu.gov.ua/ua/timeline?&type=meetings>.

¹⁸⁵ <https://www.kmu.gov.ua/ua/npasearch>.

¹⁸⁶ <https://www.kmu.gov.ua/ua/timeline?&type=posts>.

Transparency and legal compliance of government decision making

This indicator measures the legal framework established for ensuring legally compliant decision making, the consistency of the government in implementation of the established legal framework, the transparency of government decision-making and businesses' perception of the transparency of government policy making.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Adequacy of the legislative framework for government session procedures	4/5
2. Consistency of the CoG in setting and enforcing the procedures	2/4
3. Timeliness of ministries' submission of regular agenda items to the government session (%)	0/3
4. Openness of government decision-making process	4/4
5. Perceived clarity and stability of government policy making by businesses (%)	0/4
Total¹⁸⁷	10/20

The procedures for submitting proposals to the Government sessions and for their review by CoG bodies have been established in the RoP of the CMU. However, the review of financial affordability conducted by the MoF and the SCMU is inconsistent and the SCMU does not assess the coherence of proposals with the Government's priorities. The effectiveness of SCMU scrutiny is limited because it is not mandated to return items in the case of substantial shortcomings and because line ministries submit draft laws directly to the Parliament through individual MPs. The RoP broadly defines the time limit for SCMU review but not the specific deadline for submitting proposals to the CMU agenda. The agendas and decisions of the CMU are published online.

Principle 7: The parliament scrutinises government policy making.

The Law on the CMU, the Law on the RoP of the Parliament¹⁸⁸ and the RoP of the CMU establish the procedures for co-ordinating Government decision making with the Parliament, as well as for parliamentary scrutiny of the CMU. According to the RoP of the Parliament, laws are generally considered in three readings, but they can also be adopted after the first or the second reading if the Parliament decides that "the draft law requires no exceptions and no substantive remarks were made by the deputies, the legislative research and expertise bodies of the Parliament or other entities authorised to engage in legislative drafting"¹⁸⁹. The President of the Republic or the Parliament can decide that a draft is to be considered as a priority draft law, in which case extraordinary deviations from the usual review procedures are allowed and all procedural deadlines can be shortened by up to 50%¹⁹⁰.

In 2017, all nine drafts considered as priority drafts were initiated by the President or by individual MPs, not by the CMU. However, 56% of the draft laws initiated by the CMU were adopted after just one reading instead of the general requirement of three readings¹⁹¹. For the purposes of this

¹⁸⁷ Point conversion ranges: 0-1=0, 2-5=1, 6-9=2, 10-13=3, 14-17=4, 18-20=5.

¹⁸⁸ Adopted 10 February 2010.

¹⁸⁹ RoP of the Parliament, Article 102 (4).

¹⁹⁰ *Idem*, Article 101.

¹⁹¹ According to the information provided by the Secretariat of the Parliament and the SCMU, 30 of the 54 draft laws initiated by the CMU were adopted on the first reading.

Ukraine
Policy Development and Co-ordination

assessment these drafts have been considered as adopted in extraordinary proceedings. In practice, the CMU initiates only a minority of draft laws, as 56% of all drafts were initiated by individual MPs in 2017 and 14% by the President¹⁹². The practice of adopting draft laws after just one reading is common for all drafts, regardless of the initiator¹⁹³.

Individual MPs, parliamentary factions and committees have the right to ask oral and written questions of the Prime Minister and ministers during the weekly 'Question Hour'¹⁹⁴. All members of the CMU are required to attend and they usually comply with the obligation, according to information obtained from the administration of the Parliament (no statistics are kept). The Question Hour is also publicly broadcast.

The same legal drafting rules apply to the CMU as to the Parliament¹⁹⁵. All draft laws submitted to the Parliament have to be accompanied by an explanatory note that summarises the results of the consultation procedures and the rationale behind the proposal¹⁹⁶. On the basis of the sample draft laws analysed for this assessment¹⁹⁷, it appears that this requirement is followed in practice. All draft laws initiated by individual MPs have to be submitted to the CMU for its opinion, through the Budget Committee¹⁹⁸. The CMU is explicitly required to provide an assessment of the budget impacts and of compliance with the laws governing budget relations. In practice, however, the Parliament does not consistently share draft laws for CMU opinion. This was not done for any of the samples analysed for this assessment¹⁹⁹.

The RoP of the Parliament foresees regular meetings of the Conciliation Commission of the Parliamentary Factions that decides on the agenda of the upcoming plenary session²⁰⁰. According to information from the SCMU and the administration of the Parliament, representatives of the CMU and the President's Administration also participate in meetings of the Conciliation Commission, and this is the main format for regular discussions on the upcoming agenda. The CMU does not share information with the Parliament regarding its legislative initiatives on an annual basis. The GAP is adopted by the Parliament, but the GPAP or the Legislative Plan are not submitted to the Parliament for information.

The majority of draft laws submitted to the Parliament by the CMU do not originate from the GPAP or the Legislative Plan. In 2017 only 24% of the CMU drafts were listed as commitments in the Plans²⁰¹.

¹⁹² 103 drafts were initiated by individual MPs and 26 by the President out of the 183 adopted in 2017 (information provided by the Secretariat of the Parliament and the SCMU).

¹⁹³ According to information provided by the Secretariat of the Parliament and the SCMU, 62 of the 120 drafts (excluding the 9 priority draft laws) initiated by individual MPs or the President were adopted after the first reading.

¹⁹⁴ RoP of the Parliament, Article 229.

¹⁹⁵ RoP of the CMU, paragraph 70. The legal drafting guidelines of the Parliament are available at: http://static.rada.gov.ua/site/bills/info/zak_rules.pdf.

¹⁹⁶ RoP of the CMU, paragraph 71.

¹⁹⁷ 1) The draft Law on Amendments to Certain Laws of Ukraine on Specific Issues of Activity of the Ministry of Interior and the National Police; 2) the draft Law on Amendments to Certain Laws of Ukraine Regarding the Safety of Nuclear Energy Use; 3) the draft Law on Amendments to Certain Legislative Acts of Ukraine Regarding Carrying out a Forensic Psychiatric Examination in Administrative Proceedings; 4) the draft Law on Amendments to the Customs Code of Ukraine; and 5) the draft Law on Amendments to Certain Legislative Acts of Ukraine Regarding Use of the Name and the Attributes of the National Police of Ukraine.

¹⁹⁸ RoP of the Parliament, Article 93 (1).

¹⁹⁹ 1) The draft Law on Amendments to the Tax Code of Ukraine (Regarding the Elimination of Discrimination Against Internally Displaced Persons in the Provision of Rental Housing); 2) the draft Law on Amendments to Certain Laws of Ukraine on Improving the Level of Social Protection of the Military Servicemen, Persons with Disabilities, Persons who are not Entitled to a Pension, Reducing the Retirement Age for Certain Categories of Persons; and 3) the draft Law on Amendments to Article 5 of the Law of Ukraine on Increasing the Prestige of Mining Work Regarding Increasing the Size of the Scholarship.

²⁰⁰ RoP of the Parliament, Article 73.

²⁰¹ The share is calculated on the basis of draft laws submitted to the Parliament from April to December as the GPAP was adopted on 3 April 2017 and the Legislative Plan even later on 9 August 2017. 112 out of 147 draft laws submitted by the CMU during this period did not originate from the Plans.

Ukraine
Policy Development and Co-ordination

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

The CMU is required to report to the Parliament annually on implementation of the GAP and the budget. The Parliament can also organise a special hearing to discuss any matters regarding implementation of the GAP²⁰⁴. In practice, these hearings do take place and are used to discuss implementation of policies²⁰⁵.

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

Parliamentary scrutiny of government policy making						
This indicator measures the extent to which the parliament is able to scrutinise government policy making. The legal framework is assessed first, followed by an analysis of the functioning of important parliamentary practices and outcomes.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Strength of regulatory and procedural framework for parliamentary scrutiny of government policy making	5/5
2. Completeness of supporting documentation for draft laws submitted to the parliament	3/3
3. Co-ordination of governmental and parliamentary decision-making processes	1/2
4. Systematic review of parliamentary bills by the government	0/1
5. Alignment between draft laws planned and submitted by the government (%)	0/2
6. Timeliness of parliamentary processing of draft laws from the government (%)	0/2
7. Use of extraordinary proceedings for the adoption of government-sponsored draft laws (%)	0/5
8. Government participation in parliamentary discussions of draft laws	2/2
9. Basic parliamentary scrutiny of the implementation of policies	2/2
Total²⁰⁶	13/24

²⁰² The Parliament adopted or rejected 217 out of 290 draft laws within a year after their submission by the CMU.

²⁰³ RoP of the Parliament, Article 111.

²⁰⁴ *Idem*, Article 228.

²⁰⁵ As evidenced by reports from 2017 on discussion of the following topics, together with recommendations for Parliament committees or the CMU: 1) state guarantees of social protection of participants in the antiterrorist operation, the revolution of dignity and members of their families: the status and prospects; 2) rights of the child in Ukraine: protection, observance, protection; 3) value orientations of modern Ukrainian youth; 4) actual issues of Ukraine's foreign policy; and 5) status and problems of funding education and science in Ukraine.

²⁰⁶ Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-16=3, 17-20=4, 21-24=5.

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

Key recommendations

Short-term (1–2 years)

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

Medium-term (3–5 years)

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

Policy development

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

The values of the indicators assessing Ukraine's performance under this key requirement are displayed below.

Indicators	0	1	2	3	4	5
Adequacy of organisation and procedures for supporting the development of implementable policies				◆		
Government capability for aligning national legislation with the European Union <i>acquis</i>		◆				
Evidence-based policy making		◆				
Public consultation on public policy			◆			
Interministerial consultation on public policy				◆		
Predictability and consistency of legislation				◆		
Accessibility of legislation				◆		

Legend: ◆ Indicator value

Analysis of Principles

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

There are currently 18 ministries in Ukraine, and their areas of responsibility are established by the individual statutes adopted with CMU resolutions. The legal framework places the ultimate responsibility for policy development on ministries. According to the Law on Central Executive Authorities, ministries ensure the formation and implementation of state policy in one or several areas, while other central executive bodies implement state policies²⁰⁷. This division of functions is followed in practice, as confirmed by analysis of the legislative plan for 2017, which stipulates that agencies subordinate to line ministries do not carry the sole responsibility for drafting laws. Only the central executive authorities, which are directly subordinate to the CMU, have a mandate for legislative drafting²⁰⁸.

However, the responsibility of ministries for policy development is diminished by the practice whereby ministries submit draft laws directly to the Parliament through individual MPs in order to bypass the consultation and decision-making procedures of the Government²⁰⁹.

²⁰⁷ Law on Central Executive Authorities of 17 March 2011, Article 1.

²⁰⁸ For example, according to Article 13 of the Law on Civil Service, the National Agency for Civil Service is responsible for policy development in the civil service area.

²⁰⁹ The practice of MPs presenting draft laws developed by line ministries as their own initiatives was confirmed in interviews with the administration and external stakeholders. Examples of this practice from 2017 include the Law on

Ukraine
Policy Development and Co-ordination

The mandates and functions of ministerial departments have been established by the statutes adopted by the respective ministers. Separate departments have been established according to the policy areas for which the ministry is responsible, along with legal departments, budget departments and units dealing with the administrative affairs of the ministry. In 2017, separate directorates for Strategic Planning and EI were established in ten ministries²¹⁰. According to the model statute for these directorates adopted by the CMU, they are responsible for improving the strategic planning of ministries' activities as well as for co-ordinating the work of other structural subdivisions to ensure their accordance with the priorities of the Government listed in the key central planning documents²¹¹. Recruitment of staff in these directorates was ongoing during the assessment period, and the new structures are not yet fully functional.

Deputy ministers are in charge of policy development and legislative drafting in ministries. They can represent the legislative initiatives of the CMU in the Parliament²¹². Departments and directorates within the ministries are subordinate to deputy ministers, according to their areas of responsibility²¹³. In addition, all draft acts have to be signed by the deputy minister before being submitted to the minister for final approval²¹⁴. The internal regulations of ministries refer to the general requirements for the policy-development process established by other legal acts, including the requirement for public consultation²¹⁵. In addition, the regulations stipulate the requirement to consult all affected departments within the ministry and the legal department as the final authority²¹⁶; working groups can also be established for drafting legal acts²¹⁷. Not all ministries have adopted such regulations²¹⁸, however, so internal policy-development procedures have not been comprehensively established across all ministries.

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

Audit of Financial Reporting and Auditing Activities and the Law on Energy Efficiency of Buildings. These were submitted to the Parliament by MPs but were developed by ministries, according to the explanatory notes. See also analysis under Policy Development and Co-ordination, Principle 6.

²¹⁰ Decision of the CMU No. 644 of 17 August 2017 on Some Issues Related to the Structure of the SCMU, the Apparatus of Ministries and Other Central Executive Authorities.

²¹¹ *Ibid.*

²¹² Law on the CMU, Article 27 (3).

²¹³ According to the statutes of the departments and organigrams from four sample ministries provided for this assessment (Ministry of Agrarian Policy and Food; Ministry of Economic Development and Trade; Ministry of Ecology and Natural Resources; and Ministry of Social Policy).

²¹⁴ Based on an assessment of regulations from four sample ministries. For example, see the Regulation of the Ministry of Ecology and Natural Resources, adopted by Ministry Order No. 391 of 3 August 2012, paragraph 59.

²¹⁵ Based on an assessment of regulations from four sample ministries. For example, see the Regulation of the Ministry of Agrarian Policy and Food, adopted by Ministry Order No. 541 of 16 December 2016, paragraph 2.3.

²¹⁶ *Idem*, paragraph 2.5.

²¹⁷ Regulation of the Ministry of Ecology and Natural Resources, adopted by Ministry Order No. 391 3 August 2012, paragraph 57.

²¹⁸ Only the regulations from the Ministry of Agrarian Policy and Food and the Ministry of Ecology and Natural Resources were provided for this assessment. Regulations from the Ministry of Social Policy and the Ministry of Economic Development and Trade were not provided or have not been adopted.

Ukraine
Policy Development and Co-ordination

The share of civil servants dealing with policy development in three of the four sample ministries was above 60%²¹⁹, but was only 40% in one of the sample ministries²²⁰. Staff dealing with functions not related to policy development work on the administrative affairs of the ministry. Departments dealing solely with implementation of policies are not part of the ministerial structures in three out of the four sample ministries analysed. Only the structure of the Ministry of Ecology and Natural Resources included the department dealing with environmental permits and licensing, as well as the department dealing with implementation of environmental projects.

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

Adequacy of organisation and procedures for supporting the development of implementable policies						
This indicator measures the adequacy of the regulatory framework to promote effective policy making, and whether staffing levels and the basic policy-making process work adequately at the level of ministries.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the regulatory framework for effective policy making	3/4
2. Staffing of policy-development departments (%)	2/2
3. Adequacy of policy-making processes at ministry level in practice	2/6 ²²¹
Total²²²	7/12

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

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

The GOEEAI is responsible for planning, co-ordinating and monitoring the *acquis* alignment process, as well as for ensuring conformity with national legislation²²³. The requirements for preparing EI-related policy proposals, as well as related interministerial and public consultations, are defined in the RoP of

²¹⁹ Based on staff data provided by the administration, 68% of the staff of the Ministry of Economic Development and Trade, 67% of the staff in the Ministry of Social Policy, and 65% of the staff of the Ministry of Agrarian Policy and Food are involved in policy development.

²²⁰ Ministry of Ecology and Natural Resources.

²²¹ Due to the set of samples provided for this assessment being incomplete, it was not possible to analyse the policy development processes in practice.

²²² Point conversion ranges: 0=0, 1-2=1, 3-5=2, 6-8=3, 9-10=4, 11-12=5.

²²³ Decision of the CMU No. 346 on Adoption of the Statutes of the Government Office for European and Euro-Atlantic Integration of 13 August, 2014, paragraph 4, and RoP of the CMU, paragraph 52 (6).

the CMU. These requirements are the same as for domestic proposals; the only exception is the Table of Conformance (ToC), which must be attached to all EI-related proposals²²⁴. In four of the five samples provided for this assessment, this requirement had been followed in practice²²⁵.

As one of the SCMU departments, the GOEEAI reviews the EI-related proposals after the interministerial consultation process, but only when the draft has been submitted to the CMU for decision. However, the SCMU does not have the mandate to return proposals due to substantial shortcomings. Only the Government EI Committee can return proposals to sponsoring bodies. The absence of administrative-level co-ordination between the line ministries and the SCMU during *acquis* alignment limits the effectiveness of the co-ordination process. Any need to improve EI-related proposals must first be addressed at the political level, even if there is no conflict between the opinions of the GOEEAI and the body that submitted the draft.

The legal framework establishes the process for organising the translation of the *acquis*²²⁶. The executive bodies that are expected to approximate specific legislation are obliged to submit proposals to the GOEEAI for the translation of EU legal acts. The proposals should be in line with the planning of EI commitments and are combined into an indicative plan for translation. The GOEEAI must submit the indicative plan for adoption to the CMU by 30 January of each year. The GOEEAI manages the translation process and implementation of the plan.

In practice, only the translations of three of the five most recent EU legal acts (planned for transposition in 2018²²⁷) had been finalised by the time of this assessment. As a result, no points are awarded for the sub-indicator measuring the translation of the *acquis* into the national language.

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

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

²²⁴ RoP of the CMU, paragraphs 35 and 50. Annex 1 of the RoP of the CMU contains the template for the ToC.

²²⁵ The five drafts analysed for this assessment dealing with transposition of the *acquis* are: 1) draft Law on Amendments to Some Laws of Ukraine on the Tracing and Labelling of Genetically Modified Organisms and the Circulation, Tracing and Labelling of Food Products, Feed and/or Feed Additives, Veterinary Drugs Obtained Using Genetically Modified Organisms; 2) draft Law on Amendments to the Customs Code Concerning the Peculiarities of Taxation of Operations for the Import (transfer) of Goods into the Customs Territory of Ukraine by Natural Persons and on amendments to the Tax Code Regarding the Specifics of the Taxation of Import Transactions (forwarding) to the Customs Territory of Ukraine by Natural Persons; 3) draft Law on Amendments to the Customs Code of Ukraine on Certain Issues in the Implementation of Chapter 5 of Chapter IV of the Association Agreement between Ukraine and the EU; 4) draft Law on Amendments to the Law on the State Registration of Legal Entities, Individuals - Entrepreneurs and Public Formations; 5) draft Law on Amendments to the Customs Code, Tax Code and the Law on the Collection and Accounting of a Single Fee for Obligatory State Social Insurance in connection with the organization and holding of final matches of the UEFA Champions League and the UEFA Women's Champions League for the 2017/2018 season. All except the fifth draft included the ToC.

²²⁶ Decision of the CMU No. 512 of 31 May 2017 on the Procedure for Translating Acts of the European Union *acquis communautaire* into the Ukrainian Language. See also the RoP of the CMU, paragraph 67.1.

²²⁷ 1) Regulation (EU) 2016/679; 2) Regulation (EU) 2016/424; 3) Directive (EU) 2016/1629; 4) Regulation (EU) 2016/425; and 5) Regulation (EU) 2016/426. According to information provided by the administration, translations of the last two EU legal acts had not been finalised by the time of this assessment.

Government capability for aligning national legislation with the European Union *acquis*.

This indicator measures the adequacy of the legal framework for the *acquis* alignment process, the government's consistency in using the tables of concordance in the *acquis* alignment process and the availability of the *acquis* in the national language. It also assesses the results of the *acquis* alignment process, focusing on the planned *acquis* alignment commitments carried forward from one year to the next and how the government is able to achieve its *acquis* alignment objectives.

Overall indicator value 0 **1** 2 3 4 5

Sub-indicators	Points
1. Adequacy of the regulatory framework for the <i>acquis</i> alignment process	4/5
2. Use of tables of concordance in the <i>acquis</i> alignment process (%)	1/2
3. Translation of the <i>acquis</i> into the national language	0/2
4. <i>Acquis</i> alignment commitments carried forward (%)	0/4
5. Implementation rate of legislative commitments for <i>acquis</i> alignment (%)	0/4
Total²²⁸	5/17

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

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

The RoP of the CMU establish the requirements for a broad impact assessment. The explanatory note accompanying all draft legal acts must contain a problem analysis, the objectives of the draft act, the reasons for its adoption, an overview of the opinions of stakeholders and an assessment of the regulatory impacts (financial, economic and regional), as well as effects on the labour market²²⁹. In addition to the general requirement for impact assessment, the Law on the Principles of State Regulatory Policy in the Sphere of Economic Activity (LPSRP)²³⁰ stipulates the obligation for RIAs of all regulations affecting businesses.

However, the two impact assessment processes foreseen by the RoP of the CMU and the LPSRP are established in parallel; they are not linked in the legal framework or in practice. The ministries and other central executive authorities that prepare regulations with business impacts are required to prepare RIAs and explanatory notes – with largely overlapping contents. The SRS conducts quality control on the RIAs²³¹, and the SCMU is responsible for assessing the quality of analysis in the explanatory notes²³². RIAs are shared with the SRS for opinion (together with the draft regulation), but

²²⁸ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-17=5.

²²⁹ RoP of the CMU, paragraph 50 and Annex 4 (template of the explanatory note) and Annex 4_1 (template of the forecast of impacts).

²³⁰ Adopted 11 September 2003.

²³¹ Decision of the CMU No. 724 of 24 December 2014 on Some Issues of the State Regulatory Service of Ukraine, paragraph 4.8.

²³² RoP of the CMU, paragraph 52 (3).

Ukraine
Policy Development and Co-ordination

as the RoP of the CMU do not refer to RIAs, they are not attached to the draft proposals during the consultation procedures or when they are submitted to the CMU for approval. The explanatory notes refer only to the results of the SRS consultation. As a result, despite the overlapping requirements for preparation of the analysis accompanying draft regulations, the CMU is not provided with the full packages of supporting materials for decision making.

The SRS has developed a methodology for assessing the impacts of regulatory acts, which contains methods and guidance on how to assess impacts on businesses and the state budget²³³, and the MoF has prepared a methodology for costing policy proposals²³⁴. Both methodologies provide guidance on assessing budget impacts, but they are not completely aligned with one another. For example, the SRS guidelines foresee the assessment of budget impacts for five years, while the current MoF methodology requires a two-year projection. In addition, the available guidelines do not contain practical examples for assessing impacts in all areas required by the legal framework.

The quality of analysis in the explanatory notes of the sample draft laws²³⁵ is poor, as they do not define the problems the law is designed to deal with or its objectives. There is no comparison of viable alternatives, and introduction of the proposed law is presented as the only option. Budgetary impacts are not assessed for any of the proposed laws although, on the basis of the proposed measures, these are likely to occur²³⁶. Explanatory notes either confirm that the implementation of the laws will not require any additional resources or predict positive fiscal impacts in the future, without providing any specific calculations or estimates. The cost estimates calculated for the RIAs are not used in the explanatory notes²³⁷. No information is provided on how the laws are to be implemented or how the effects of the proposed laws will be monitored and evaluated.

RIAs were prepared for two of the draft laws analysed²³⁸, due to their impacts on businesses. Compared with the explanatory notes, the RIAs contain a better definition of the problem and a broad description of the objective. However, the RIAs do not provide sufficient insight into justification for the proposal and the relevant impacts of its implementation.

Despite shortcomings in the budgetary impact assessment, the MoF did not provide negative opinions on any of the draft laws²³⁹. According to the RoP of the CMU, this qualifies as an approval²⁴⁰. A review of the SCMU expert opinions on the draft laws provided for this assessment reveals that other shortcomings regarding the quality of analyses in the explanatory notes also were not raised before

²³³ Decision of the CMU No. 308 of 11 March 2004 on Approving the Methods of Conducting an Analysis of Impacts and Monitoring the Effectiveness of the Regulatory Act, http://www.drs.gov.ua/regulatory_policy/postanova-kabinetu-ministriv-ukrayiny-pro-zatverdzhennya-metodyk-provedennya-analizu-vplyvu-ta-vidstehennya-rezultatynosti-regulyatornogo-akta-iz-zminamy-dopovnyamy.

²³⁴ Order of the MoF No. 428 of 21 March 2008 on the Methodology of Holding Financial and Economic Calculations in Preparation of Draft Acts of the CMU and Draft Laws Submitted to the Parliament by the CMU.

²³⁵ 1) Law on Public Consultations; 2) Law on the Liability of Military Personnel and Some Other Persons; 3) Law on the Basic Requirements for Buildings, as well as the Terms of Placement on the Market of Construction Products; 4) Law on Privatisation of State Property; and 5) Law on Mobilisation Preparation and Mobilisation.

²³⁶ For example: 1) the Law on the Basic Requirements for Buildings, as well as the Terms of Placement on the Market of Construction Products, requires that a Technical Regulation Commission be established, managed and administered; and 2) the Law on Privatisation of State Property requires the sale of state-owned assets. The MoF methodology also requires an assessment of possible revenues occurring as a result of the draft acts.

²³⁷ Evident from comparison of the explanatory note and the RIA for the Law on the Basic Requirements for Buildings.

²³⁸ Drafts of the: 1) Law on the Basic Requirements for Buildings, as well as the Terms of Placement on the Market of Construction Products; and 2) Law on Privatisation of State Property.

²³⁹ The assessment was conducted on the basis of explanatory notes of the draft laws. MoF opinions on the two draft laws likely to incur budgetary impacts (the Law on the Basic Requirements for Buildings as well as the Terms of Placement on the Market of Construction Products, and the Law on the Privatisation of State Property) were not provided for assessment.

²⁴⁰ RoP of the CMU, Paragraph 39.

Ukraine
Policy Development and Co-ordination

approval of the drafts by the CMU. The SRS provided a negative opinion on one of the drafts it received for review, but this did not stop further processing of the draft.

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

Evidence-based policy making						
This indicator measures the functioning of evidence-based policy making. It assesses the legal requirements and practice regarding the use of basic consultative processes, budgetary impact assessment and broad impact assessment. Moreover, it assesses the availability of training and guidance documents for impact assessment, the establishment of the quality control function, and the quality of analysis supporting the approval of draft laws.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Regulation and use of basic analytical tools and techniques to assess the potential impact of draft new laws	2/2
2. Regulation and use of budgetary impact assessment prior to approval of policies	1/3
3. Regulation and use of Regulatory Impact Assessments	1/3
4. Availability of guidance documents on impact assessment	1/2
5. Quality control of impact assessment	2/3
6. Quality of analysis in impact assessment	0/15
Total²⁴¹	7/28

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

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

The requirements for public consultation are established in the RoP of the CMU, the resolution of the CMU on Ensuring Public Participation (EPP)²⁴² and the LPSRP for consultations on regulatory acts affecting businesses. According to the RoP of the CMU, public discussions must be held for all draft acts that have social importance and concern citizens' rights and duties, provide benefits or advantages to particular business entities, and delegate functions of executive bodies or local governments to non-state organisations²⁴³. Public consultation is mandatory for legal acts, including secondary legislation, regulating certain matters such as the rights and freedoms of citizens, environmental and administrative services, and reports on budgets²⁴⁴. However, a clear and comprehensive requirement for conducting public consultations on all draft laws and bylaws has not been established. All executive

²⁴¹ Point conversion ranges: 0-2=0, 3-7=1, 8-12=2, 13-18=3, 19-23=4, 24-28=5.

²⁴² Resolution of the CMU No. 996 of 3 November 2010 on Ensuring Citizens' Participation in the Elaboration and the Implementation of the State Policy.

²⁴³ RoP of the CMU, paragraph 42.

²⁴⁴ EPP, Article 12.

bodies are obligated to publish their annual consultation plans on their websites to inform stakeholders in advance²⁴⁵. In addition, according to the LPSRP, consultation on all drafts affecting businesses must be announced up to five days in advance²⁴⁶.

The executive bodies are required to publish drafts for consultation on their website as well as on the website of the Government's portal²⁴⁷. The general minimum duration for written public consultation established by the EPP is 15 days²⁴⁸. All acts affecting businesses must be publicly available for comments and suggestions for at least one month, but not more than three months²⁴⁹. Other forms of consultation in addition to written online consultations are also foreseen by the regulations. These other forms include sending the draft act directly to the affected stakeholders²⁵⁰ and organising public discussions and discussions at the Public Council (a temporary advisory body established under the executive authority for consultation purposes)²⁵¹.

The explanatory notes must be published along with the draft acts, and RIAs must be published for all regulations affecting businesses²⁵². In addition, the EPP stipulates the obligation to publish the summary of each proposal and an overview of its consequences for different social groups and interested parties along with the draft regulation²⁵³. Results of the public discussions must be described in the explanatory note, including an overview of the comments received and how they were taken into account – or, if not, how the effects have been minimised²⁵⁴. In addition, the EPP requires that executive bodies prepare a report on the public discussion²⁵⁵ that contains the proposals received as well as feedback on them, and that the report be publicly available on both the ministry's website and the Government's civil society portal²⁵⁶.

Executive bodies publish consultation plans online²⁵⁷, including the title of the draft, the indicative time planned for the consultation and the name and phone number of the contact person. Of the four ministries for which SIGMA analysed consultation plans for 2018, three also provided the e-mail address of the contact person²⁵⁸.

In practice, however, online public consultations are not held consistently. Only two of the four sample ministries analysed for this assessment published at least half of their draft laws for consultation in 2017²⁵⁹. In several cases, the explanatory notes simply concluded that public discussions were not

²⁴⁵ *Idem*, Article 6.

²⁴⁶ LPSRP, Articles 9 and 13.

²⁴⁷ EPP, Article 17.

²⁴⁸ *Idem*, Article 12.

²⁴⁹ LPSRP, Article 9.

²⁵⁰ RoP of the CMU, paragraph 33 (7).

²⁵¹ EPP, Articles 11 and 13.

²⁵² Resolution of the CMU No. 996 of 3 November 2010 on Ensuring Citizens' Participation in the Elaboration and the Implementation of the State Policy, Article 17, and LPSRP, Article 9.

²⁵³ EPP, Article 17.

²⁵⁴ See RoP of the CMU, Annex 4, for the template of the explanatory note.

²⁵⁵ EPP, Articles 20-21.

²⁵⁶ <http://civic.kmu.gov.ua>.

²⁵⁷ http://civic.kmu.gov.ua/consult_mvc_kmu/news/article/show/3566.

²⁵⁸ 1) the Ministry of Ecology and Natural Resources; 2) the Ministry of Social Affairs; and 3) the Ministry for Agrarian Policy and Food. The MoEDT did not provide this information.

²⁵⁹ The Ministry of Agrarian Policy and Food published 50% of its draft laws in 2017 (four of eight drafts), as did the MoEDT (7 of 14 drafts), while the Ministry of Ecology and Natural Resources published 20% (one of five drafts) and the Ministry of Social Policy published only 13% (2 of 15 drafts).

necessary, even though the legal acts would have impacts on the environment or on the rights and freedoms of citizens²⁶⁰.

The consultation practices on five draft laws²⁶¹ were analysed for this assessment, on the basis of information provided by the administration and the materials available online²⁶². For one of the draft laws, there was no consultation at all with non-governmental stakeholders²⁶³, and for another of the draft laws, consultation was limited to discussions by the Public Council²⁶⁴. Stakeholders were informed in advance of the consultation procedures for three of the draft laws²⁶⁵. The minimum deadline of 15 days for written public consultation was respected for three draft laws. Explanatory notes were published for consultation alongside three drafts as well as RIA reports together with the two drafts for which they were prepared. According to the explanatory notes, comments were provided on two draft laws during the public consultation, but there were no details on the content of these comments or on any feedback on them. As a result, the materials submitted to the CMU for decision did not include information on the actual outcomes of the public consultations. A report on consultation outcomes was prepared for only one of the sample drafts provided²⁶⁶.

As a part of its expert opinion, the SCMU is required to check whether public discussions were held²⁶⁷. Only one of the expert opinions provided for this assessment covered the public consultation process²⁶⁸; the other two did not refer to the public consultation process even though both of the drafts²⁶⁹ did not meet the requirements for written public consultation or provide any explanation about it.

The RoP of the CMU sets out the requirements for interministerial consultation. The minimum length of time to provide an opinion is not stipulated, so it is up to the proposing body to establish a deadline for responses within the maximum time limits foreseen by the RoP²⁷⁰. The maximum time limits range from one day for proposals dealing with emergencies, up to one month, depending on when the proposal has to be submitted for CMU decision. All affected bodies must be consulted, and the obligation to consult the MoJ, the MoF and the MoEDT is specifically mentioned²⁷¹. All other bodies, including the MoF and the MoEDT, can approve the draft without responding²⁷², but the opinion of the MoJ is mandatory for submitting the draft to the CMU²⁷³. The SCMU, including the GOEEAI, is consulted only when the proposal is submitted for approval at the CMU. The RoP does not mention the

²⁶⁰ The Ministry of Social Policy did not consider consultations necessary for the draft amending the Law on the Status of War Veterans, Guarantees of Their Social Protection or the draft amending the Law on Compulsory State Pension Insurance. The Ministry of Ecology and Natural Resources did not consider consultations necessary for the draft amending the Law on Environmental Protection.

²⁶¹ Drafts of the: 1) Law on Public Consultations; 2) Law on the Liability of Military Personnel and some Other Persons; 3) Law on the Basic Requirements for Buildings, as well as the Terms of Placement on the Market of Construction Products; 4) Law on Privatisation of State Property; and 5) Law on Mobilisation Preparation and Mobilisation.

²⁶² Of the five draft laws requested from the administration, only three were provided with all accompanying materials (including SCMU expert opinions). The main source of information on consultation procedures were the explanatory notes.

²⁶³ Law on the Liability of Military Personnel and Some Other Persons.

²⁶⁴ Law on Mobilisation Preparation and Mobilisation.

²⁶⁵ According to a review of the consultation plans available online.

²⁶⁶ Law on Public Consultations, <https://minjust.gov.ua/files//55813>.

²⁶⁷ RoP of the CMU, Annex 8, expert opinion template.

²⁶⁸ Law on Public Consultations.

²⁶⁹ Law on the Liability of Military Personnel and Some Other Persons, and Law on Mobilisation Preparation and Mobilisation.

²⁷⁰ *Idem*, paragraph 38.

²⁷¹ *Idem*, paragraphs 33 (5) and 44-47.

²⁷² RoP of the CMU, paragraph 39 on “visaing by default”.

²⁷³ *Idem*, paragraph 50 (1).

Ukraine
Policy Development and Co-ordination

role of the SRS, which is required to provide an opinion on the RIAs.

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

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

As the comprehensive requirement for conducting public consultation on all draft legal acts has not been established and practice is inconsistent, the value of the indicator measuring public consultation on public policy is 2.

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

Public consultation on public policy						
This indicator measures the implementation of public consultation processes in developing policies and legislation. It assesses the regulatory framework, the establishment of the quality control function on public consultation and the consistency in publishing draft laws for written public consultation online, and tests whether minimum standards for public consultations were upheld for approved drafts laws.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the regulatory framework for an effective public consultation process	9/10
2. Quality assurance of the public consultation process	1/3
3. Regularity in publishing draft laws for written public consultation	1/4
4. Test of public consultation practices	3/24
Total²⁷⁵	14/41

²⁷⁴ *Idem*, paragraph 50 and Annexes 5-6.

²⁷⁵ Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-41=5.

Interministerial consultation on public policy						
This indicator measures the adequacy of the regulatory framework for the interministerial consultation process and tests the system in practice for five draft laws.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the regulatory framework for an effective interministerial consultation process	5/9
2. Test of interministerial consultation practices	9/12
Total ²⁷⁶	14/21

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

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

Both the MoJ and the SCMU perform the task of scrutinising legal quality, and their roles are defined by the RoP²⁷⁷. Their roles partially overlap, as they both analyse issues such as constitutionality and alignment with the existing legal framework. Guidelines for legal drafting have been developed by the MoJ and the Parliament, and they are available online²⁷⁸. The guidelines provide consistent instructions for legal drafting.

Training on legal drafting is not centrally organised, and the MoJ and SCMU staff responsible for legal scrutiny are not involved in designing or delivering such training²⁷⁹. Thus, it cannot be ensured that training on legal drafting addresses the most relevant shortcomings in draft legal proposals.

The Parliament adopted 14 new laws on the proposal of the Government in 2016, and amendments to 6 (43%) were initiated by the Government or the President within one year of adoption²⁸⁰. This high share of amendments to new laws indicates serious problems with the quality of legal drafting. This, in turn, has a negative impact on the consistency and clarity of the legal framework. According to a survey commissioned by SIGMA, only 33% of Ukrainian businesses consider government policy making clear and stable²⁸¹.

²⁷⁶ Point conversion ranges: 0-2=0, 3-6=1, 7-10=2, 11-14=3, 15-18=4, 19-21=5.

²⁷⁷ RoP of the MoJ, paragraph 4, legal examination.

RoP of the SCMU, paragraph 52, examination and editing.

²⁷⁸ Guidelines issued by the MoJ: <http://zakon5.rada.gov.ua/laws/show/v0041323-00>; parliamentary guidelines: http://static.rada.gov.ua/site/bills/info/zak_rules.pdf.

²⁷⁹ Finding based on interviews with representatives of the SCMU and the MoJ.

²⁸⁰ As the President of Ukraine also has the right to initiate legislation (according to Article 93 of the Constitution), amendments initiated by the President to the laws originating from the CMU are considered as amendments initiated by the executive.

²⁸¹ KIIS (2017), "Survey on business satisfaction with policy making and public service delivery", a survey commissioned by SIGMA, KIIS, Kyiv. The value of the sub-indicator is based on the percentage of responses indicating "strongly agree" and "tend to agree".

Ukraine
Policy Development and Co-ordination

The legal framework establishes the procedures for publishing legislation. According to the general requirement, all legal acts have to be made publicly available within 15 days of their adoption²⁸². The MoJ is responsible for keeping the registry of all legal acts²⁸³. Legal acts must be submitted for state registration within five working days of their adoption and published within 15 days of being received by the MoJ²⁸⁴. The procedures for publishing legal acts of the Parliament and the President are also established²⁸⁵.

In practice, legal acts are published in parallel on several online locations²⁸⁶, as well as in consolidated format. The online publication of secondary legislation is not entirely consistent, however. The regulation governing the state registry of legal acts explicitly requires the registration of regulations that affect socio-economic, political and personal rights, freedoms and lawful interests of citizens or that have an “inter-agency character”²⁸⁷. As a result, the MoJ has not, for example, registered regulations establishing the sanitary requirements for farms and for different areas of production²⁸⁸, and these regulations are not publicly available online. According to a survey of businesses commissioned by SIGMA, only 39% of respondents believe that information on the laws and regulations affecting their business is easy to obtain from the authorities²⁸⁹.

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

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

²⁸² Presidential Order No. 503/97 on Official Publication of Normative-Legal Acts and their Entry into Force, Article 1.

²⁸³ Decision of the CMU No. 731 of 28 December 1992 on Approval of the Regulation on the State Registration of Regulatory Acts of Ministries and Other Executive Bodies.

²⁸⁴ *Idem*, Articles 7 and 11.

²⁸⁵ Presidential Order No. 503/97 on Official Publication of Normative-Legal Acts and their Entry into Force, Article 1.

²⁸⁶ The Parliament website (<http://zakon2.rada.gov.ua/laws>) and two websites of the MoJ (<http://ovu.com.ua> and www.reestrnpa.gov.ua) contain both the laws and the secondary legislation. In addition, decisions of the CMU are published at <https://www.kmu.gov.ua/ua/npasearch>.

²⁸⁷ Decision of the CMU No. 731 of 28 December 1992 on Approval of the Regulation on the State Registration of Regulatory Acts of Ministries and Other Executive Bodies, Article 4.

²⁸⁸ For example, the following regulations were not registered and are not available online: 1) methodical instructions on sanitary-microbiological control of objects of use and facilities of establishments for children and adolescents (Resolution No. 24 of 24 April 1999); and 2) state sanitary rules and norms of safety for the health of clothing and footwear (Resolution No. 10 of 24 December 1998).

²⁸⁹ KIIS (2017), "Survey on business satisfaction with policy making and public service delivery", a survey commissioned by SIGMA, KIIS, Kyiv. The value of the sub-indicator is based on the percentage of responses indicating “strongly agree” or “tend to agree”.

Predictability and consistency of legislation

This indicator measures the predictability and consistency of legislation. It assesses the availability of training and guidance along with the establishment of the quality control function. The consistency of laws is assessed based on the ratio of laws amended one year after adoption, and predictability is assessed through the perceived consistency of interpretation of business regulations.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Availability of guidance documents on legal drafting	2/2
2. Quality assurance on legal drafting	3/3
3. Laws amended one year after adoption (%)	0/3
4. Perceived clarity and stability of government policy making by businesses (%)	0/2
Total²⁹⁰	5/10

Accessibility of legislation

This indicator measures both the regulatory framework for making legislation publicly available and the accessibility of legislation in practice, based on the review of the availability of legislation through the central registry and as perceived by businesses.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Adequacy of the regulatory framework for public accessibility of legislation	5/6
2. Accessibility of primary and secondary legislation in practice	4/8
3. Perceived availability of laws and regulations affecting businesses (%)	0/2
Total²⁹¹	9/16

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

Key recommendations

Short-term (1–2 years)

- 1) The procedures for interministerial consultation should be amended so that draft legislation dealing with *acquis* transposition is submitted to the GOEEAI for opinion prior to being submitted to the CMU for decision.

²⁹⁰ Point conversion ranges: 0=0, 1-2=1, 3-4=2, 5-6=3, 7-8=4, 9-10=5.

²⁹¹ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

Ukraine
Policy Development and Co-ordination

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

Medium-term (3–5 years)

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

3

Public Service and Human Resource Management

PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

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

1.1. State of play

The legislation establishes a wide horizontal scope²⁹² and allows for special provisions related to recruitment and dismissal through special laws.

The institutional and legal framework for a professional civil service (CS) has been established. Nevertheless, staffing plans are not in use, and the absence of a Human Resource Management Information System (HRMIS) hampers proper monitoring of CS policy and legislation implementation.

Recruitment procedures are based on merit according to the Law on Civil Service (LCS)²⁹³, but there are some shortcomings in the legislation, including an absence of uniform, detailed standards and procedures for job descriptions, evaluations and classifications, and professional job profiles are not defined based on a common competency framework. Regulations and methodological guidelines have been developed and training has been conducted for selection committees, but the shortcomings result in subjectivity in personnel selection, including for the senior civil service (SCS).

The new salary system established in the LCS is being implemented gradually, during a transition period that will last until January 2019, by which time the currently high proportion of variable pay elements should be reduced to 30%. Salary ranks linked to individual performance are not yet being applied and the new performance appraisal system has been prepared but not implemented yet.

The institutional and legal elements to ensure disciplinary accountability and prevent corruption are in place. However, the limitation period for imposing disciplinary sanctions is inadequate and allows serious disciplinary offences to go unpunished. The legal framework and institutional setting required to fight corruption are in place, but the updated strategic policy framework has not been enacted. The lack of automated access to the relevant registers is a major impediment to streamlining procedures for preventing and investigating corruption.

1.2. Main developments

The new LCS was passed on 10 December 2015 and entered into force on 1 May 2016. By the end of 2017, 46% of positions in central state administration institutions had civil servant status (78% when the National Police is excluded)²⁹⁴. Although it has some shortcomings, the new LCS is a considerable improvement on previous legislation.

In June 2016, the Strategy of Public Administration Reform (PARS) for 2016-2020 was adopted²⁹⁵, with Public Service and Human Resource Management (PSHRM) as one of the five key areas. In 2017, the Secretariat of the Cabinet of Ministers of Ukraine (SCMU) published the first report monitoring implementation of the PARS in 2016. A working group, led by the National Agency of Ukraine for the Civil Service (NAUCS), was created to co-ordinate and monitor strategy implementation in the PSHRM area and the NAUCS was reinforced with 30 new positions in 2016²⁹⁶. Since entry into force of the LCS,

²⁹² As defined in OECD (2017), SIGMA, *The Principles of Public Administration*, OECD, Paris, p. 40-41 http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf

²⁹³ Law No. 889-VIII of 10 December 2015 on the Civil Service.

²⁹⁴ National Agency of Ukraine on Civil Service (NAUCS).

²⁹⁵ Decision of the Cabinet of Ministers of Ukraine (CMU) No. 474 of 24 June 2016.

²⁹⁶ 2016 report on implementation of the PARS 2016-2020.

Ukraine
Public Service and Human Resource Management

48 normative acts concerning PSHRM have been adopted, including 34 decisions of the Cabinet of Ministers of Ukraine (CMU)²⁹⁷.

In March 2016, the CMU regulated the Senior Civil Service Commission (SCSC)²⁹⁸, established in the LCS, which is responsible for recruiting senior civil servants and for the disciplinary procedures affecting them. The SCSC met for the first time in July 2016²⁹⁹ and, after the specific entry requirements for the SCS had been established³⁰⁰, it managed 109 competitions that year³⁰¹, and 98 competitions³⁰² in 2017. The CMU also regulated the procedure for competitive access to non-SCS vacancies in March 2016³⁰³, amending it in 2017³⁰⁴, and the NAUCS defined the special requirements for access to these positions³⁰⁵. In 2016, more than 7 500 competitions were announced to fill vacancies in these CS categories.

In November 2016, the CMU approved the concept for introducing the CS positions of 'reform specialists'³⁰⁶. In 2017, 77 of these positions were filled through recruitment procedures specific to this group. In August 2017, a salary supplement for performing particularly important work³⁰⁷ was extended to the positions dealing with reform issues³⁰⁸. Supplement amounts ranged from two to four times the maximum monthly base salary established for that fiscal year³⁰⁹.

In the absence of a centralised HRMIS, development of which is envisaged in the PARS, in 2016 the NAUCS established the obligation for state authorities to report quarterly on the composition of the CS³¹⁰. This obligation is fulfilled regularly by the state bodies analysed in this assessment, and the reports provide data on total employment and CS employment in the central administration.

In 2016, 2017 and 2018, the CMU adopted decisions on the salaries corresponding to each fiscal year according to the salary structure established in the LCS and encompassing all state bodies and groups

²⁹⁷ Ditto.

²⁹⁸ Decision of the CMU No. 243 of 25 March 2016 on Approval of the Regulation on the Commission on the Issues of the Senior Civil Service.

²⁹⁹ Decision of the CMU No. 490 of 13 July 2016 on Formation of the Senior Civil Service Commission and the Approval of its Composition.

³⁰⁰ Decision of the CMU No. 448 of 22 July 2016 on Approval of Typical Requirements for Persons Who Apply for Civil Service Positions of Category A.

³⁰¹ 2016 report on implementation of the PARS 2016-2020.

³⁰² NAUCS Annual Report 2017, p. 8, <http://nads.gov.ua/page/publichnyy-zvit-nads-za-2017-rik>. The figure covers both central and local level administration. The number of competitions at the central level was 23.

³⁰³ Decision of the CMU No. 246 of 25 March 2016 on the Procedure of Competitive Recruitment for Civil Service Positions in Categories B and C.

³⁰⁴ Decision of the CMU No. 648 of 18 August 2017 amending Decision No. 246 on the Procedure of Competitive Recruitment for Civil Service Positions in Categories B and C.

³⁰⁵ NAUCS Order No. 72 of 6 April 2016 on Approval of the Procedure for Determining Special Requirements for Persons Applying for Positions of Civil Service Categories B and C.

³⁰⁶ Decision of the CMU No. 905 of 11 November 2016 on Approval of the Concept for the Introduction of Positions of Reform Specialists.

³⁰⁷ Decision of the CMU No. 15 of 18 January 2017 on Remuneration of Public Administration Employees.

³⁰⁸ Decision of the CMU No. 645 of 18 August 2017 amending the Decision of the CMU No. 15 of 18 January 2017 on Remuneration of Public Administration Employees.

³⁰⁹ Decision of the CMU No. 645 of 18 January 2017 establishes the monthly salary supplements for performing particularly important work, ranging from UAH 30 000 to UAH 40 000 for State Experts of Directorates, General Departments and the Government Office for the Coordination of European and Euro-Atlantic Integration, to UAH 45 000 to UAH 55 000 for the State Secretary of the CMU, State Secretaries of the ministries and heads of state bodies. The maximum base salary established by Decision of the CMU No. 15 for state bodies with jurisdiction in the entire territory of Ukraine is UAH 18 000 (wage group 1).

³¹⁰ NAUCS Order No. 223 of 21 October 2016 on Quarterly Reporting of the Quantitative Composition of Civil Servants.

Ukraine
Public Service and Human Resource Management

of public servants within its scope³¹¹. Regulations on the salaries of political authorities and heads of state bodies not included in the LCS were adopted as well³¹². The salary fund increased by 55% between 2016 and 2017 (from UAH 19.2 billion to UAH 29.7 billion)³¹³. As a result of additional funding and legislative reforms, the structure of the payroll began to change, with the share of variable pay in the total payroll decreasing (although it still remains too high).

In September 2016 and March 2017, the Government modified by-laws on the professional training of civil servants to adapt them to the training system stipulated in the LCS³¹⁴.

Finally, with respect to integrity in the CS, the Law on the Prevention of Corruption (LPC), passed in 2014³¹⁵, created the National Agency on Corruption Prevention (NACP). In 2017, the NACP established standards for public institutions to follow for approving and managing anti-corruption programmes³¹⁶, including for establishing units and responsible staff in this area in all public bodies.

³¹¹ Decision of the CMU No. 292 of 6 April 2016 on the Remuneration of Public Administration Employees; Decision of the CMU No. 289 of 6 April 2016 on Approval of the Provision of Application of Incentive Payments to Civil Servants, which expired with the entry into force of Decision of the CMU No. 15 of 18 January 2017 on Remuneration of Public Administration Employees; Decision of the CMU No. 24 of 25 January 2018 on the Ordering of the Wage Structure of Employees of State Bodies, Courts, Bodies and Institutions of the Justice System in 2018.

³¹² Decision of the CMU No. 304 of 20 April 2016 on the Conditions of Remuneration of Officials, Heads and Executives of Certain State Bodies, Which Are Not Covered by the LCS.

³¹³ Monitoring Report of the PAR Strategy 2016-2020 for 2016.

³¹⁴ Decision of the CMU No. 674 of 27 September 2016 on Reforming the System of Professional Training of Civil Servants and Local Self-Government Officials, amended by Decision of the CMU No. 207 of 29 March 2017. These decisions modify Decision of the CMU No. 1262 of 14 July 1999 on the Financial Provision of Advanced Training of Employees of Bodies of the State Authorities, Local Self-Government Bodies and the Administration of the Armed Forces.

³¹⁵ Law No. 1700–VII of 14 October 2014 on Prevention of Corruption (LPC).

³¹⁶ NACP Decision No. 75 of 2 March 2017 on Approval of the Standard Anti-Corruption Program of the Legal Entity.

2. ANALYSIS

This analysis covers seven Principles for the PSHRM area grouped under two key requirements. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators³¹⁷, and an assessment of the state of play for each Principle. For each key requirement, short- and medium-term recommendations are presented.

Policy, legal and institutional frameworks for public service

Key requirement: The scope of public service is clearly defined and applied in practice so that the policy and legal frameworks and institutional set-up for professional public service are in place.

The values of the indicators assessing Ukraine’s performance under this key requirement are displayed below.

Indicators	0	1	2	3	4	5
Adequacy of the scope of public service						◆
Adequacy of the policy, legal framework and institutional set-up for professional human resource management in public service			◆			

Legend: ◆ Indicator value

Analysis of Principles

Principle 1: The scope of public service is adequate, clearly defined and applied in practice.

The LCS defines the CS as a public, professional and politically neutral activity related to the practical implementation of tasks and functions of the state, comprising the drafting of public policies, executing policies and laws, ensuring the provision of public services, supervising compliance with legislation and managing public resources, including human resource management (HRM)³¹⁸.

The definition of the **horizontal scope**³¹⁹ of the CS is in line with the Principles and refers to positions in a government agency or in a state authority or their apparatus that execute authority functions directly related to the responsibilities of the government body and that adhere to the principles of the CS³²⁰.

The LCS regulates horizontal scope in various articles, combining positive and negative enumeration of entities and groups of public servants and including the possibility of exceptions through special legislation. Positive enumeration is presented in two different articles of the LCS: Article 3 and Article 91. The first establishes that the apparatuses of the CMU (the SCMU), the ministries and other executive bodies, local state administrations, prosecution bodies and the armed forces are included in the LCS, as well as those of the diplomatic service and other state bodies. The second details and

³¹⁷ OECD (2017), SIGMA, *Methodological Framework for the Principles of Public Administration*, OECD, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

³¹⁸ LCS, Article 1.1.

³¹⁹ As defined in OECD (2017), SIGMA, *The Principles of Public Administration*, OECD, Paris, p. 40-41 http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf

³²⁰ LCS, Article 1.2.

extends the scope of the LCS to auxiliary bodies established by the President, to the administration of the Parliament and the administrations of some central executive bodies of special status (CEBSSs) regulated in the Law on Central Executive Bodies (LCEB)³²¹: the Antimonopoly Committee of Ukraine; the Fund of State-Owned Property of Ukraine; the State Committee of Television and Broadcasting; and the NACP³²². It also extends the scope of the LCS to the administrations of other higher state bodies: the Representative Office of the President of Ukraine in the Autonomous Republic of Crimea; the Parliamentary Commissioner on Human Rights; the Constitutional Court; high specialised courts; the Council of Justice; the High Qualification Commission of Judges; the National Security and Defence Council; and the Accounting Chamber (including those governed by collegiate boards, whose members are excluded from the CS).

At the same time, the LCS explicitly excludes the following groups of professional positions from the CS³²³: judges and prosecutors; the staff of state-owned enterprises and of institutions and organisations subject to any form of state ownership; the staff of publicly funded educational institutions; military officers of the armed forces; personnel working in law enforcement functions; and employees of the National Bank of Ukraine. The LCS allows for legislation other than the LCS to be applied to working relations in the CS, specifically to the commencement and termination of employment³²⁴. The LCEB also admits exceptions to the recruitment and dismissal provisions of the CS for both central executive bodies³²⁵ and CEBSSs³²⁶.

While it appears that the horizontal scope is rather wide, as the LCS extends to a wide range of institutions (from ministries all the way up to the State Committee for Television and Radio Broadcasting), at the same time it excludes some groups of public employees (e.g. law enforcement). Furthermore, it invites the application of other laws in specific cases. This makes the horizontal scope quite complicated, requiring that the NAUCS has clear oversight of all the exceptions to ensure that merit principles and adequate levels of uniformity are being maintained, which was not the case at the time of this assessment.

Regulation of the **vertical scope**³²⁷ of the CS is set forth in different provisions of the LCS³²⁸ and the LCEB. Expressly excluded from the upper end of the CS are political authorities of executive bodies and other constitutional powers, as well as chairpersons and members of the steering boards of state collegiate organs, including the central executive bodies, the CEBSSs, and other state authorities such as the Audit Chamber and the Election Commission. The separation between political and CS positions is clear in the ministries, in which the position of Secretary of State belongs to the CS, reports directly to the minister and is responsible for internal management of the ministry, including HRM. However, in other state and central executive bodies the line between political and top administrative functions is less clear. First, the head of the administration of the President is excluded from the CS³²⁹. Second, the head of the administration of the Parliament is included in the CS, but through different appointment

³²¹ CEBSSs are regulated in Law No. 3166-VI of 17 March 2011 on the Central Executive Bodies (LCEB), Article 24.1.

³²² The first three institutions were created by the LCEB, while the special status of the NACP was established by the LPC, Article 4.

³²³ LCS, Article 3.3.

³²⁴ *Idem*, Article 5.2.

³²⁵ LCEB, Article 19.4.12, which establishes that the head of a central executive body “appoints to positions and dismisses according to the procedure stipulated by the legislation on the civil service, if otherwise is not provided by the law”.

³²⁶ The LCEB enumerates only three such bodies (the Antimonopoly Committee of Ukraine, the Fund of State-Owned Property of Ukraine and the State Committee of Television and Broadcasting) and allows for the creation of others by the CMU (Article 24.1).

³²⁷ As defined in OECD (2017), SIGMA, *The Principles of Public Administration*, OECD, Paris, p. 41 http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf

³²⁸ LCS, Articles 3.3, 6.2 and 91 and the transitional and final provisions.

³²⁹ *Idem*, Article 3.3.

Ukraine
Public Service and Human Resource Management

procedures for which minimum standards are not established in the LCS³³⁰. Third, although the heads of central executive bodies are included in the CS, for CEBSSs the LCEB invites exceptions through the application of special laws³³¹, and the LCS acknowledges the possibility that in some cases the heads of government agencies are not civil servants³³².

Political advisors are regulated by both the LCS and the LCEB³³³, as well as by secondary legislation³³⁴, clearly as non-civil servants, appointed and dismissed by political appointees. The LCEB limits their number to ten in the offices of ministers and the LCS prohibits them giving instructions to civil servants.

Table 1. Proportion of civil service positions and civil servants employed in the central state bodies, 2017

Groups of institutions	Number of civil service positions in the staff list	Other positions in the staff list	Total positions in the staff list	% civil service positions	Actual number of civil servants	% CS positions filled
Government bodies that ensure the exercise of the powers of the President of Ukraine, the Assembly and the Cabinet of Ministers	2313	221	2534	91%	1938	84%
Ministries	28692	3786	32478	88%	25015	87%
Central executive bodies	117741	164587	282328	42%	99681	85%
<i>Central executive bodies except the National Police</i>	<i>115031</i>	<i>16012</i>	<i>131043</i>	<i>88%</i>	<i>97340</i>	<i>85%</i>
Central executive bodies with special status	2954	227	3181	93%	2560	87%
Regulatory bodies	1508	96	1604	94%	1120	74%
Judicial and prosecutorial bodies	5561	13815	19376	29%	4234	76%
Scientific and Advisory bodies	526	1382	1908	28%	470	89%
Other state bodies	2435	8468	10903	22%	2017	83%
TOTAL	161730	192582	354312	46%	137035	85%
Total except the National Police	159020	44007	203027	78%	134694	85%

Source: National Agency of Ukraine on Civil Service.

At the lower end of the CS, the LCS clearly excludes from the CS any staff performing support functions³³⁵ defined adequately in the LCS and in the secondary legislation as positions that do not involve the exercise of public authority³³⁶.

In 2017, 78% of the positions in central state bodies belonged to the CS, excluding the National Police (Table 1). The proportions were 96% in the administration of the President, 88% in the administrations of the Assembly, ministries and other central executive bodies, 93% in CEBSSs and 94% in the regulatory authorities.

Recent legislative developments³³⁷ have led to the exclusion of heads of local state administrations from the CS. This is an acceptable solution as they perform – in part – political functions; however, their exclusion from the CS was not accompanied by the introduction of other regulations to ensure

³³⁰ *Idem*, Article 91.4.

³³¹ LCEB, Article 24.4.

³³² LCS, Article 17.1.5.

³³³ LCS, Articles 3.3 and 92; LCEB, Article 12.

³³⁴ Decision of the CMU No. 298 of 20 April 2016 on Issues about the Political Advisors in State Bodies.

³³⁵ LCS, Article 3.3.14.

³³⁶ *Idem*, Article 2.1.8, and Decision of the CMU No. 271 of 6 April 2016.

³³⁷ Law No. 2190-VIII of 9 November 2017 on Amending Some Laws of Ukraine Concerning Specific Issues of Civil Service.

Ukraine
Public Service and Human Resource Management

merit-based appointments for these positions and proper regulation of their duties and obligations.

The **material scope**³³⁸ of the LCS is complete, although the regulation of job classification is limited. It establishes the rights and duties of civil servants; the institutions responsible for managing the CS; the CS professional categories; eligibility criteria to enter the CS; recruitment; professional development; career advancement and promotion regulations; integrity measures for civil servants (although they are further developed in the LPC³³⁹); salaries; the disciplinary regime; and termination of employment procedures³⁴⁰.

The value for the indicator on adequacy of the scope of public service is 5 owing to the comprehensive regulation of the CS scope, although the legislation is unclear in some cases and allows for exceptions.

Adequacy of the scope of public service						
This indicator measures the extent to which there is a legal framework establishing an adequate horizontal, vertical and material scope for the public service ³⁴¹ , and whether it is consistently applied across the public sector.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Clarity in the legislative framework of the scope of the civil service	1/2
2. Adequacy of the horizontal scope of the public service	6/6
3. Comprehensiveness of the material scope of civil service legislation	2/2
4. Exclusion of politically-appointed positions from the scope of the civil service	2/2
5. Clarity of the lower division line of the civil service	1/1
Total ³⁴²	12/13

The definition of the horizontal scope of the CS is in line with the Principles, but its regulation is – in some cases – fragmented and unclear. The separation between political and CS positions is clear in ministries but not in other state bodies. Political advisors and support staff are clearly excluded from the CS.

³³⁸ As defined in OECD (2017), SIGMA, *The Principles of Public Administration*, OECD, Paris, p. 41 http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf

³³⁹ Law No. 1700-VII of 14 October 2014 on Prevention of Corruption (most recent edition 23 March 2017).

³⁴⁰ Vertical and horizontal scope are regulated in the LCS, Articles 3, 91 and 92. The rights and duties of civil servants are regulated in the LCS, Section II. The institutions responsible for managing the CS are regulated in the LCS, Section III. CS professional categories are regulated in the LCS, Article 6. Eligibility criteria to enter the CS are regulated in the LCS, Articles 19 and 20. Merit-based recruitment is regulated in the LCS, Section IV. Professional development is regulated in the LCS, Section V, jointly with merit-based career advancement and promotion. Integrity measures for civil servants are regulated in the LCS, Articles 8-11. Salaries are regulated in the LCS, Section VI. The disciplinary regime is regulated in the LCS, Section VIII, and termination of employment is regulated in the LCS, Section IX.

³⁴¹ In OECD (2017), SIGMA, *The Principles of Public Administration*, OECD, Paris, p. 40, http://sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf, SIGMA clarifies that it applies the **narrow scope** of public service, covering: 1) ministries and administrative bodies reporting directly to the government, prime minister or ministers (i.e. the CS, strictly speaking); administrations of the parliament, the president and the prime minister; 2) other administrative bodies at the level of the central administration, if they are responsible for safeguarding the general interests of the state or other public bodies; and 3) independent constitutional bodies reporting directly to the parliament. The scope of public service thus does not cover institutions at the level of sub-national administration and special types of public service, elected and politically appointed officials, or support and ancillary personnel in the administrative bodies.

³⁴² Point conversion ranges: 0-3=0, 4-5=1, 6-7=2, 8-9=3, 10-11=4, 12-13=5.

Principle 2: The policy and legal frameworks for a professional and coherent public service are established and applied in practice; the institutional set-up enables consistent and effective human resource management practices across the public service.

The central executive body, the NAUCS, is subordinated to the CMU, however the Minister of the CMU co-ordinates the work of central executive authorities whose activities are directed and co-ordinated directly by the Cabinet of Ministers of Ukraine, including the NAUCS³⁴³ and the Minister of the CMU is responsible for PAR-related activities, including the CS³⁴⁴. At the same time, the LCS sets forth a CS management system³⁴⁵ in which the CMU directly assumes political leadership of CS policy, and there is no mention of the Minister of the CMU or the SCMU. The secondary legislation gives generic responsibilities on state personnel policy to the Minister of the CMU³⁴⁶.

However, the Minister of the CMU does not have full control over personnel policy: the Ministry of Social Policy (MSP) is responsible for public sector salary policy and for labour policy and labour relations (and thus for elements of employment relations in the CS regulated by the Labour Law). The Ministry of Finance (MoF) is responsible for budget preparation and management, and therefore for determining the annual and mid-term budget ceilings for CS salaries and training. The NAUCS is responsible for preparing and implementing state CS policy³⁴⁷. This makes co-ordination of the remuneration policy rather fragmented, with three ministries and the NAUCS involved and no clarity on leadership. In addition, the National Academy of Public Administration (NAPA)³⁴⁸, a higher-education institution attached to the Presidency of the Republic, is responsible for scientific and methodological activities related to the CS training system. The NACP³⁴⁹ is a CEBSS responsible for formulating and implementing state anti-corruption policy, also within the scope of the CS, although other public authorities also participate in this area (as presented in Principle 7).

Some institutionalised mechanisms for policy co-ordination at the operational level are in place: the Expert Consultative Council has been set up by the NAUCS, involving representatives from civil society and academia to review CS policy and regulation initiatives³⁵⁰; and the MSP set up a working group in November 2017, in which the NAUCS participates, to discuss CS salary policy. Although the Consultative Council was very active in drafting the new CS legal framework, it did not have any meetings in 2016 and 2017.

CS policy is integrated into the PARS 2016-2020. The PARS Co-ordination Council, established by the CMU³⁵¹ to have consultative and advisory functions³⁵², has several working groups. One of these, led by the NAUCS, is responsible for co-ordinating and monitoring implementation in the PSHRM area. Some task forces have also been established to co-ordinate specific projects, such as HRMIS development.

³⁴³ Decision of the CMU No. 394 of 24 June 2016 on Approval of the Regulation of the Minister of the Council of Ministers, paragraph 5.4. Decision of the CMU No. 500 of 1 October 2014 on Provisions on the National Agency of Ukraine on Civil Service, paragraph 1.

³⁴⁴ PARS 2016-2020.

³⁴⁵ LCS, Section III.

³⁴⁶ Decision of the CMU No. 394 of 24 June 2016 on Approval of the Regulation of the Minister of the Council of Ministers, paragraph 5.11, establishes that the Minister shall ensure that the CMU implements effective personnel policy.

³⁴⁷ LCS, Article 13, and Decision of the CMU No. 500 of 1 October 2014, amended in 2015 and 2017.

³⁴⁸ LCS, Article 48.3.

³⁴⁹ LPC, Section II.

³⁵⁰ Order of the NAUCS No. 145 of 17 September 2014 on the Expert Consultative Council on the Reforming of the Civil Service.

³⁵¹ Decision of the CMU No. 335 of 18 May 2016 on the Co-ordination Council on the Reform of State Management.

³⁵² Decision of the CMU No. 335 on the Co-ordination Council of the Public Administration Strategy, amended by Decision of the CMU No. 306 of 26 April 2017, paragraph 1.

Ukraine
Public Service and Human Resource Management

The NAUCS reports directly to the Minister of the CMU³⁵³ and its head (a senior civil servant) participates in CMU meetings occasionally, when CS issues are discussed. The head of the NAUCS' term of appointment is five years, as for all other senior civil servants, which reinforces the political independence of the position. In 2016, the NAUCS' staff increased by 14%, with 30 new positions³⁵⁴. The NAUCS provides HRM units updated information on legislation and guidelines aimed at ensuring correct implementation, and it inspects implementation of the laws. These inspections mainly affected territorial administrations in 2017³⁵⁵. The NAUCS is also responsible for supporting the organisation of SCS recruitments, authorising competition announcements in other CS categories, and managing civil servant training.

Within each ministry, the Secretary of State is the head of the CS. In the framework of the budgeting process, the Secretary of State approves the annual staff list of the institution, appoints and dismisses staff (including the political advisors that work in the minister's office), assigns ranks to employees, organises training, awards bonuses, and decides when to launch disciplinary procedures and adopt disciplinary sanctions. Within each public body, depending on its size, a structural unit or position responsible for HRM and directly subordinated to the head of the CS in the institution exists³⁵⁶. Such units support the head of the CS in implementing HRM procedures, and the current focus of such units is mostly the operational, day-to-day administration of HRM. Although the NAUCS has actively promoted HRM training for the heads and staff of HRM units³⁵⁷, only one of the five institutions analysed for this assessment has a strategy for staff development and HRM³⁵⁸. None of them produces regular internal HRM reports and forecasts – only quarterly basic data for the NAUCS on the number of positions, employees and vacancies³⁵⁹. Preparing annual staffing plans is also not common practice.

The absence of an HRMIS is a major obstacle to the development of modern HRM practices, although the problem has been fully acknowledged by the administration and one of the PARS objectives is to establish a central information system. The scarcity of data on the CS is evident in the diagnostic of it included in the PARS, which has few quantitative references, some of which are taken from external reports³⁶⁰. The analysis of sample institutions showed that the datasets are not standardised and they do not always include complete data³⁶¹.

³⁵³ The Minister of the CMU also sets key performance indicators for the Head of NAUCS, Decision of the CMU No. 640 of 23 August 2017, Article 15.

³⁵⁴ 2016 report on implementation of the PARS 2016-2020. The NAUCS current total number of positions is 243, of which 227 (84%) are civil servants.

³⁵⁵ In 2017, the NAUCS conducted 90 inspections in ministries and other central executive bodies (3 planned and 87 unscheduled) and 11 official investigations. The regional branches of the agency carried out 584 inspections (227 scheduled and 357 unscheduled) and 10 official investigations. Inspections were conducted particularly in local state administrations, territorial bodies of central executive authorities, courts and local prosecutors' offices, among others.

³⁵⁶ LCS, Article 18.

³⁵⁷ The institutions analysed in this assessment were the Ministry of Economic Development and Trade (MoEDT); the MSP; the State Fiscal Service; the State Service for Geodesy; Cartography and the Cadastre; and the State Service for Food Safety and Consumer Protection. In 2017, HRM staff in four of the five institutions participated in training and workshops on modern HRM techniques, in some cases including study visits to EU countries and international workshop attendance.

³⁵⁸ The State Fiscal Service.

³⁵⁹ Order of the NAUCS No. 223 of 21 October 2016 on the Reporting of the Quantitative Composition of Civil Servants. This data includes the total number of employment positions, actual employment, and vacancies filled through competition and dismissals, distinguishing between civil servants and other employees.

³⁶⁰ The PARS contains basic aggregated data on the total number of civil servants, on the proportion of bonuses in total salaries and on female employment in the public sector, including senior positions, but this data is taken from the United Nations Development Programme (UNDP) and is not specific to the CS.

³⁶¹ The MSP and the State Service for Food Security and Consumer Protection do not have HR databases in place, but the State Service of Geodesy, Cartography and the Cadastre is establishing one. The State Fiscal Service and the MoEDT do have HR databases, but their functionality is limited.

Ukraine
Public Service and Human Resource Management

The PARS and the action plan for its implementation in the CS area include clear objectives, activities and deadlines, quantifiable targets and budget specifications (although not comprehensive) to achieve them. However, the 2017 Monitoring Report shows that only 33% of the planned activities were fully completed on time³⁶².

The optimal balance between primary and secondary legislation has not yet been fully achieved due to a lack of precision and the absence of by-laws in some key areas³⁶³.

Considering the factors analysed above, the value for the indicator on the adequacy of the policy, legal framework and institutional set-up for professional human resource management in public service is 2.

Adequacy of the policy, legal framework and institutional set-up for professional human resource management in public service						
This indicator measures the extent to which the policy, legal framework and institutional capacities are in place and enable consistent human resource management (HRM) practices across the public service, and assesses whether policies and laws are implemented to ensure proper management of the civil service, for example a functioning civil service database, availability and use of data, etc.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Establishment of political responsibility for the civil service	0/2
2. Quality of public service policy documents	3/4
3. Implementation and monitoring of public service policy	1/4
4. Right balance between primary and secondary legislation	0/2
5. Existence of a central, capable co-ordination body	3.5/4
6. Professionalism of HRM units in civil service bodies	1/2
7. Existence of a functional HR database with data on the civil service	0/4
8. Availability and use of data on the civil service	2/5
Total³⁶⁴	10.5/27

Political authority for CS policy has not been clearly assigned. Several ministries and other public bodies participate in formulating and implementing CS policy, without clear assignment of the leading role to any of the ministers, and some consultative councils and task forces have been established for effective policy co-ordination. The absence of an HRMIS hampers the development of modern HRM practices.

Key recommendations

Short-term (1–2 years)

- 1) The Government should clearly attribute political responsibility for CS policy co-ordination.

³⁶² <https://www.kmu.gov.ua/storage/app/media/uploaded-files/3-4-stan-dosyagnennya-indikatoriv-strategii-reformuvannya-derzhavnogo-upravlinnya-ukraini-na-2016-2020-roki.pdf>

³⁶³ The criteria and procedures for job descriptions, evaluations and classifications are not dealt with in the LCS (beyond the establishment of CS professional categories), and the secondary legislation is not yet in place.

³⁶⁴ Point conversion ranges: 0-3=0, 4-8=1, 9-13=2, 14-18=3, 19-23=4, 24-27=5.

Ukraine
Public Service and Human Resource Management

Medium-term (3–5 years)

- 2) The NAUCS should ensure implementation of an HRMIS and registration of complete data on all public service positions and employees.

Human resource management

Key requirement: Professionalism of public service is ensured by good managerial standards and human resource management practices.

The values of the indicators assessing Ukraine's performance under this key requirement are displayed below.

Indicators	0	1	2	3	4	5
Meritocracy and effectiveness of recruitment of civil servants			◆			
Merit-based termination of employment and demotion of civil servants				◆		
Merit-based recruitment and dismissal of senior civil servants					◆	
Fairness and competitiveness of the remuneration system for civil servants		◆				
Professional development and training for civil servants				◆		
Quality of disciplinary procedures for civil servants				◆		
Integrity of public servants			◆			

Legend: ◆ Indicator value

Analysis of Principles

Principle 3: The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit.

The LCS establishes that entry into the CS must be based on merit and prohibits access to CS positions without competition. Clear and non-discriminatory general criteria to enter the CS are established in the LCS³⁶⁵, and additional general requirements are adapted to each CS category³⁶⁶, related to education level, work experience and complementary language requirements that apply in each case. The same provision allows for the development of specific requirements for category B and C positions, to be determined by the appointing authority. Such requirements, regulated by the NAUCS³⁶⁷, may affect the work experience, education, knowledge, skills and competencies required for the position. There is an obligation to have job descriptions³⁶⁸, but they are not standardised and no job evaluation methodologies are available for categorising positions. An analysis of sample files showed that in most cases the job descriptions were rather formal and did not even provide a good basis for drafting job announcements. In most cases the announcements included more detailed requirements than stated in the job descriptions.

³⁶⁵ LCS, Article 19.

³⁶⁶ *Idem*, Article 20.

³⁶⁷ Order of the NAUCS No. 72 of 6 April 2016 on the Definition of Special Requirements for Persons Who Are Applying for Positions of CS Categories B and C.

³⁶⁸ LCS, Article 7.

Ukraine
Public Service and Human Resource Management

Recruitment procedures are managed internally by each institution, but this decentralisation entails some risks, especially in the absence of detailed criteria and procedures on job descriptions, evaluations and classifications. For instance, different requirements may be set for similar positions in different institutions and they may be classified differently, thereby awarding different salaries for similar responsibilities. In addition, establishing *ad hoc* requirements favouring some groups of candidates without clear grounds may infringe on the principle of equal access to CS positions. The NAUCS does, however, verify announcements before competitions are launched, which mitigates some of the risks mentioned above. Positive discrimination giving disadvantaged groups access to the CS is not expressly regulated in the LCS³⁶⁹, but it is established in the secondary legislation³⁷⁰.

No reference is made in the LCS, nor in the secondary legislation, to the existence of CS staffing plans. In the institutions analysed for this assessment, staffing plans are not yet used; this means that recruitment is done on an *ad hoc* basis as the need to fill a vacancy arises³⁷¹. Recruitment procedures lasted 27 calendar days on average in the institutions analysed, which qualifies as expedited processing considering the complexity of the recruitment procedures.

Each public institution, except those with less than 15 employees, must set up a selection committee with at least 5 members. The secondary legislation establishes that the selection committee may include representatives of the HRM unit, legal department, individual structural units and other employees of the public authority in which the competition is conducted, so the participation of political appointees is not expressly excluded³⁷². In fact, the analysis of sample data revealed that in at least one case a political appointee was on a selection committee³⁷³. The legislation also envisages the possibility of engaging external members from civil society, as well as relying on researchers and experts³⁷⁴. Nevertheless, specific experience in HR selection is not a requirement for selection committee members; efforts are, however, being made to improve the professionalism of selection procedures through training and guidelines. An automated bank of questions for the written test on legislation is being used, and another bank of practical cases adapted to different professional profiles is under development for the practical part of the test. For the time being, the practical part and the oral interview are prepared mostly *ad hoc* for each recruitment without the methodologies provided, and the assessment still appears subjective. The absence of well-designed professional profiles for each position, on which tests may be based, exacerbates this situation. In this context, existing guidelines on how to assess competencies and how to conduct interviews³⁷⁵ are valuable tools, but they are too generic.

³⁶⁹ LCS Article 4.1.7, mentions the absence of “unreasonable restrictions” in access to CS positions, which implies that “reasonable restrictions” in favour of some groups may be allowed.

³⁷⁰ Decision of the CMU No. 246 of 25 March 2018, amended by Decision of the CMU No. 648 of 18 August 2017 on the Procedure for Competitive Recruitment to CS Positions (paragraphs 4 and 20), confirms this approach and allows the “use of reasonable accommodation” during the recruitment procedure for persons with disabilities who are willing to participate in competitions, as well as the possibility to apply positive measures according to Law No. 5207-VI of 6 September 2012 on the Principles of Prevention and Counteraction of Discrimination in Ukraine.

³⁷¹ Only two of the five institutions analysed declared having a staffing plan, and only one of them has provided the document (the State Service of Food Security and Consumer Protection).

³⁷² Decision of the CMU No. 246, amended by Decision of the CMU No. 648, establishes that “the Selection Committee may include representatives of the HRM unit, legal department, individual structural units and other employees of a public authority where the competition is conducted” (paragraph 15).

³⁷³ In the MSP, the Deputy Minister was a member of a selection committee.

³⁷⁴ LCS, Article 27, and Decision of the CMU No. 246, amended by Decision of the CMU No. 648, points 15 and 18.

³⁷⁵ Order of the Head of the NAUCS of 25 September 2017 on the Guidelines for the Evaluation of the Professional Competence of a Candidate for a Position During the Course of the Competition.

Ukraine
Public Service and Human Resource Management

In November 2016 the CMU approved the creation of new reform specialist positions in the CS³⁷⁶, to which specific recruitment procedures apply³⁷⁷. The specific procedures include a separate selection committee made up of seven members instead of five, the obligation to engage three experts in HRM and the relevant policy area, and an additional test of candidates' analytical skills and their ability to work with information. It should be considered whether some of these special obligations, such as the reinforced composition of the selection committee, should be applied to all recruitments. The analytical skills test could also apply to many, if not all, other CS categories (at least to those dealing with policy co-ordination and monitoring, as well as to financial and legal experts). At the same time, however, it is not uncommon for these selection committees to include political appointees, which undermines the credibility of the entire process³⁷⁸. These competitions have attracted a very high number of candidates (26.7 per vacancy)³⁷⁹ and in 2017, 88 people were appointed to such positions³⁸⁰.

Competitions are used to fill all categories and groups of CS vacancies, and they are open to external candidates. Yet in 2017 the number of candidates per vacancy was only 1.7, which is not sufficient to ensure the quality of recruitments (data on eligible candidates was not available). The proportion of vacancies offered for competition and filled in the same year was, however, high (86%)³⁸¹. On average, 12% of civil servants recruited in 2016 in the five institutions analysed left within a year of appointment, indicating problems with the recruitment system and/or general working conditions that cause newly hired employees to leave (see Table 2). This also creates inefficiency and results in the need to re-run costly recruitment procedures.

Table 2. Retention rate of newly hired civil servants

Institution	Civil servants hired in 2016	Who left within a year	Retention rate
Ministry of Economic Development	70	15	79%
Ministry of Social Policy	43	5	88%
State Fiscal Service	8,372	1,010	88%
State Service for Geodesy, Cartography and the Cadastre	63	12	81%
State Service for Food Security and Consumer Protection	201	16	92%
Total	8,749	1,058	88%

Sources: Ministry of Economic Development and Trade; Ministry of Social Policy; State Fiscal Service; State Service for Geodesy, Cartography and the Cadastre; State Service for Food Security and Consumer Protection.

All vacancies are announced on the central recruitment website administered by the NAUCS³⁸². The central website is not user-friendly and is missing the functionalities to sort vacancies by type of position, institution, location and date, and to subscribe to new announcements. Considering the size of the Ukrainian administration and the volume of announcements, these functionalities are important to increase competitiveness in public competitions.

³⁷⁶ Decision of the CMU No. 905-p of 11 November 2016 on Approval of the Implementation of the Positions of Reform Specialists.

³⁷⁷ Decision of the CMU No. 246, amended by Decision of the CMU No. 648, paragraphs 69-85.

³⁷⁸ <https://career.gov.ua/site/view-article?id=14> . For instance, in the Ministry of Education and Science there are three Deputy Ministers on the selection committee.

³⁷⁹ There were 9 799 candidates for 367 vacancies. Information provided by the NAUCS.

³⁸⁰ In 2017, there were 367 competitions conducted for these positions. Information provided by the NAUCS on 6 December 2017.

³⁸¹ According to the NAUCS Annual Report 2017, of the 62 006 category B and C competitions open to external candidates in 2017, 53 339 appointments were made (i.e. 86% of the vacancies offered were filled).

³⁸² <http://nads.gov.ua/page/vakansiyi>

Ukraine
Public Service and Human Resource Management

The right to appeal recruitment procedures is included in the legislation, with the NAUCS acting as appeal body³⁸³. The NAUCS ordered that 35% of the appealed recruitment procedures be cancelled in 2017³⁸⁴.

Grounds for termination of employment included in the legislation are objective³⁸⁵, but detailed regulations on the criteria for restructuring or downsizing public institutions, and for dismissing civil servants in such cases, do not exist.

Data on the implementation of court rulings on dismissal decisions in favour of civil servants in 2017 is not available for the whole central administration³⁸⁶.

Considering the factors analysed above, the value for the indicator on merit-based recruitment is 2 and on termination is 3.

Meritocracy and effectiveness of recruitment of civil servants						
This indicator measures the extent to which the legal framework and the organisation of civil service recruitment support merit-based and effective selection of candidates wishing to join the civil service and whether this ensures the desired results in terms of competitive, fair and non-discretionary appointments that enhance the attractiveness for job-seekers and performance of the public sector.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework and organisation of recruitment	
1. Adequacy of the legislative framework for merit-based recruitment for civil service positions	13/18
2. Application in practice of recruitment procedures for civil service positions	4/18
Performance of recruitment practices	
3. Time required to hire a civil servant	2/2
4. Average number of eligible candidates per vacancy	0/4
5. Effectiveness of recruitment for civil service positions (%)	3/4
6. Retention rate of newly hired civil servants (%)	2/4
Total³⁸⁷	24/50

³⁸³ LCS, Article 28.6, and Decision of the CMU No. 246, amended by Decision of the CMU No. 648, paragraph 67.

³⁸⁴ In 2017, the NAUCS received 145 appeals of recruitment procedures (categories B and C) and ordered that the results of 51 of them be cancelled. Information provided by the NAUCS.

³⁸⁵ LCS, Section IX.

³⁸⁶ The MoEDT and the MSP reported that there were no court cases in 2017. The State Fiscal Service had 120 court cases, 93 in favour of the civil servant, out of which 71 were implemented. The State Service for Geodesy, Cartography and the Cadastre, and the State Service for Food Safety and Consumer Protection did not provide their data.

³⁸⁷ Point conversion ranges: 0–7=0, 8–16=1, 17–25=2, 26–35=3, 36–43=4, 44–50=5.

Merit-based termination of employment and demotion of civil servants

This indicator measures the extent to which the legal framework and the human resource management practices support fair termination of employment in the civil service and fair demotion of civil servants wherever it is envisioned in the legislation. The indicator does not deal with the termination of employment and demotion of senior civil servants.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
Legal framework and organisation of dismissals and demotions	
1. Objectivity of criteria for termination of employment in civil service legislation	6/6
2. Objectivity of criteria for demotion of civil servants in the legislative framework	2/2
3. Right to appeal dismissal and demotion decisions to the courts	2/2
Fairness and results of dismissal practices	
4. Dismissal decisions confirmed by the courts (%)	0/4
5. Implementation of court decisions favourable to dismissed civil servants (%)	2/4
Total³⁸⁸	12/18

The legal framework – in general - provides for merit-based recruitment for CS positions. However, the number of candidates per vacancy is too low to ensure recruitment quality. The professional composition of selection committees is not fully ensured in the legislation, although measures are in place to improve recruitment methods. Reasons for termination of employment are well aligned with the Principles.

Principle 4: Direct or indirect political influence on senior managerial positions in the public service is prevented.

Recruitment for the SCS is regulated by the LCS and follows similar procedural steps to those for the rest of the CS, except that a specific body (the SCSC) has been created to conduct competitions with the support of the NAUCS³⁸⁹, and requirements for SCS positions are determined specifically³⁹⁰.

The responsibilities of the SCSC go far beyond recruitment, however. They include approving the standard professional competence requirements of senior civil servants; reviewing and eventually deciding on senior civil servant dismissal proposals initiated by appointing authorities; proposing transfers of senior civil servants to equivalent or lower-level vacancies when their terms of appointment end; and conducting disciplinary proceedings against senior civil servants and submitting proposals of disciplinary measures to the appointing authorities.

To carry out these functions, the LCS stipulates an SCSC of mixed composition: five members from public institutions (the Verkhovna Rada [Ukraine’s Parliament], the Presidency, the CMU, the NAUCS and the NACP) and six members from external institutions (trade unions, employers’ associations, civil society, research institutions and individual experts). The NAUCS and the NACP participate *ex officio* through their respective heads, and representatives of the Presidency and the Parliament are nominated by these institutions, the first being a senior civil servant and the second unspecified,

³⁸⁸ Point conversion ranges: 0–2=0, 3–6=1, 7–9=2, 10–12=3, 13–15=4, 16–18=5.

³⁸⁹ LCS, Articles 14-16.

³⁹⁰ Decision of the CMU No. 448 of 22 July 2016 on Approval of Typical Requirements for Persons Applying to CS Positions of Category A.

making a political appointee a possibility. All other members are appointed by the CMU. In the case of civil society organisations, research institutions and other experts, the candidates are selected through open competition³⁹¹. This SCSC composition brings transparency to SCS management procedures and reduces the risks of manipulation of recruitments, but it does not guarantee the professionalism of recruitment because specific know-how and expertise in HR selection techniques is not compulsory³⁹², making recruitment-related training and methodological support for members of the SCSC all the more important.

There is also room to improve other aspects related to the professionalism of recruitments to fill SCS vacancies; including well-developed, standardised professional competence requirements for each position to provide a solid basis for designing tests and other assessment tools³⁹³. In the absence of such elements, two out of the three parts of the selection procedure (the practical part and the interview) currently involve considerable subjectivity. An external analysis³⁹⁴ confirms the deficiencies in professionalism of SCSC selection methods, and indicates that the external expertise resources designated in the legislation³⁹⁵ are not being used.

The data on the number of eligible candidates is not available. The selection procedure has a specific stage where the highest-ranked candidate must pass a special review in line with anti-corruption legislation³⁹⁶ before being appointed to the position. This process can take several months³⁹⁷ and may end with a non-appointment. However, almost all vacancies announced in 2017 in the central administration were filled by the end of that year³⁹⁸. The proportion of women in the SCS is low (16%)³⁹⁹.

Candidates for SCS positions may appeal recruitment decisions in court only⁴⁰⁰. The number of appeals of recruitment decisions in this category was low during September 2016 to December 2017: only 37⁴⁰¹ candidates appealed⁴⁰², out of which 22 were rejected by the courts and 15 cases were proceeding⁴⁰³.

Senior civil servants are appointed for a five-year renewable term. Expiration of the term of appointment constitutes grounds for dismissal, although the civil servant may be transferred to a vacancy of lower or equivalent level, if available. Other grounds for dismissal detailed in the legislation are the same as for other civil servants and are objective⁴⁰⁴.

³⁹¹ Decision of the CMU No. 314 of 20 April 2016 on Approval of the Procedure for the Election of Representatives of Public Associations, Scientific Institutions, Educational Institutions and Experts to the Commission on the Issues of the Senior Civil Service.

³⁹² LCS, Article 14.4.

³⁹³ The specific requirements for these positions are regulated by Decision of the CMU No. 448 of 22 July 2016, but it includes only a generic list of professional competencies without defining them.

³⁹⁴ Agency for Legislative Initiatives (2017), "Civil service reform in Ukraine: Specialised law implementation in 2016-2017", Agency for Legislative Initiatives, Kyiv.

³⁹⁵ LCS Article 16.7 makes it possible for the SCSC to have external advisors on its committees.

³⁹⁶ LCS, Article 41.4.

³⁹⁷ Information provided by the NAUCS.

³⁹⁸ According to data provided by the NAUCS, 18 successful candidates from 23 competitions were appointed; in addition, 2 competitions were pending as the successful candidates had not gone through the vetting procedure by the end of 2017. The data covers only competitions conducted at the central administration level as the positions of heads of local administration lost the civil servant status on 9 November 2017.

³⁹⁹ Information provided by the NAUCS.

⁴⁰⁰ LCS, Article 28.5.1.

⁴⁰¹ Information provided by the NAUCS.

⁴⁰² Ditto.

⁴⁰³ Ditto.

⁴⁰⁴ LCS, Article 87.

Ukraine
Public Service and Human Resource Management

The turnover in SCS positions is rather high at 16.8%⁴⁰⁵.

The value for the indicator on merit-based recruitment and dismissal of senior civil servants is 4.

Merit-based recruitment and dismissal of senior civil servants						
<p>This indicator measures the extent to which the legal framework and the organisation of recruitment and tenure conditions of the senior civil service support a professional senior management, free from undue political influence in access or termination of employment in senior civil service positions. This indicator relates to all competitions for senior positions, both external and internal.</p> <p>Recruitment and dismissal in senior positions is treated under a separate indicator due to the importance of the role of this group of civil servants and the increased risk of politicisation and favouritism. High priority accorded to merit and competitiveness in the recruitment process reduces the possibility for political influence in appointments to such positions.</p>						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework and organisation of recruitment and dismissal of senior civil servants	
1. Appropriateness of the scope for the senior civil service in legislation	2/3
2. Adequacy of the legislative framework for merit-based recruitment for senior civil service positions	13/15
3. Objectivity of criteria for the termination of employment of senior civil servants in the legislative framework	4/4
4. Legislative protection of the rights of senior civil servants during demotion	1/2
Merit-based recruitment and termination of employment in senior civil service positions in practice	
5. Application in practice of recruitment procedures for the senior civil service	6.5/9
6. Ratio of eligible candidates per senior-level vacancy	0 ⁴⁰⁶ /4
7. Effectiveness of recruitment for senior civil service positions (%)	4/4
8. Women in senior civil service positions (%)	0/4
9. Stability in senior civil service positions	3/4
10. Dismissal decisions confirmed by the courts (%)	4/4
11. Implementation of final court decisions favourable to dismissed senior civil servants (%)	4/4
Total⁴⁰⁷	41.5/57

Although the composition of the SCSC makes SCS management procedures more transparent, it does not guarantee the professionalism of recruitment. Well-developed, standardised professional competence requirements for SCS positions, which would provide a solid basis for designing tests and other assessment tools, are not in place. The effectiveness of recruitment procedures is high.

⁴⁰⁵ Information provided by the NAUCS. There were 149 senior civil servants (category A, without counting the heads of local state administration) employed at the beginning of the calendar year, and 25 left their positions in 2017.

⁴⁰⁶ Data available on total number of applicants only, not eligible candidates.

⁴⁰⁷ Point conversion ranges: 0-10=0, 11-19=1, 20-28=2, 29-37=3, 38-46=4, 47-57=5.

Principle 5: The remuneration system of public servants is based on job classification; it is fair and transparent.

The LCS establishes a uniform salary structure for all CS positions in the public sector⁴⁰⁸, whereas the salaries of political authorities and heads of state bodies not included in the CS are regulated through specific by-laws⁴⁰⁹. The CS salary structure is composed of a fixed part and a variable part. The fixed part includes a base salary, set according to classification of the job's position within nine salary groups, and two salary supplements consolidated with the fixed salary when they are awarded. One of the two supplements is a seniority premium, which amounts to 3% of the base salary for each year of service, to a maximum of 50%. The other is a salary rank award⁴¹⁰ that may be bestowed every three years based on performance, or before three years in the case of outstanding achievements or the accomplishment of high-responsibility tasks. The LCS establishes nine salary ranks, the amounts of which are decided annually by the CMU⁴¹¹. The variable part of the salary encompasses two different elements: first, salary supplements awarded for additional work due either to the temporary replacement of an absent civil servant or to performing the duties of a vacant position, the amount of which is a proportion of that position's salary; second, two different bonuses made up of an annual bonus based on performance appraisal results⁴¹², which will be applied for the first time in 2018, and a monthly or quarterly bonus also based on the individual's performance, expressed as the personal contribution of the civil servant to the overall results of the institution. The amount of the second bonus may not exceed 30% of the annual salary⁴¹³, although there is a transitional period lasting until 1 January 2019 to apply this limitation. No ceiling has been established for bonuses based on performance appraisals, but the secondary legislation specifies that all civil servants whose performance is evaluated as excellent will receive a bonus, the amount of which will represent the same salary proportion in all cases⁴¹⁴. Furthermore, the LCS allows CS managers to establish extra incentive payments for civil servants from payroll budget savings for two years after the LCS's entry into force – without limiting their amount⁴¹⁵.

This salary structure is complex and raises some serious issues. First, the variable pay still exceeds the levels considered appropriate in EU countries. In 2015, basic pay constituted only 26% of the payroll. Since adoption of the LCS and payroll increases, however, this structure has begun to improve: in 2017, basic pay constituted 45% of the total payroll⁴¹⁶. While the share of bonuses in the total pay decreased⁴¹⁷, the system of granting supplements for additional tasks is clearly abused, as they constituted 27% of the payroll in 2017. One of the PARS' goals is to reduce the proportion of bonuses and other salary incentives to 30% by 2019⁴¹⁸. Currently, however, the LCS imposes only two limitations: the limitation related to the maximum level of quarterly bonuses at the individual level,

⁴⁰⁸ LCS, Articles 50-52.

⁴⁰⁹ Decision of the CMU No. 304 of 20 April 2016 on the Conditions of Remuneration of Officials, Heads and Executives of Certain State Bodies, Which Are not Covered by the LCS.

⁴¹⁰ The ranks are defined in the LCS, Article 39.

⁴¹¹ Decision of the CMU No. 24 of 25 January 2018 on the Ordering of the Wage Structure of Employees of State Bodies, Courts, Bodies and Institutions of the Justice system in 2018.

⁴¹² LCS, Article 44.

⁴¹³ *Idem*, Article 50.3.

⁴¹⁴ Order of the MSP No. 646 of 13 June 2016 on the Model of Provision of Bonuses of Civil Servants in State Authorities, Other State Bodies and Their Apparatus, section II, point 3.

⁴¹⁵ LCS, transitional provisions, point 14.

⁴¹⁶ Analysis of the influence of LCS adoption on the remuneration system (Financial and Economic Analysis Office of the Parliament, 2017).

⁴¹⁷ This decrease in the share of bonuses in the total pay in recent years was demonstrated both by the data received from the NAUCS and from the Financial and Economic Analysis Office of the Parliament, 2017.

⁴¹⁸ PARS 2016-2020, section 3 (Public Service and HRM), priority 3 (Reforming the System of Remuneration of Civil Servants with the Provision of Financial Stability).

and the overall limitation that the bonus fund be set at 20% of the total payroll and increased if there are savings.

Second, allocation of a base salary according to the classification of jobs into nine salary groups is subject to several exceptions, as well as to salary rate increases for some groups of positions⁴¹⁹. This situation has been compounded since August 2017, when a monthly salary supplement was established specifically for positions dealing with reform issues⁴²⁰. The supplement ranged from UAH 30 000 to UAH 55 000 – up to three times the maximum monthly CS base salary of UAH 18 000 established for that fiscal year. The new scheme for reform positions entails considerable risks in relation to the sustainability of this solution, decreased motivation of other civil servants and distortion of general salary levels. Thus, although the regulations are detailed and transparent, they do not ensure the perception of equal salaries for equal duties in CS positions. The lack of detailed regulations on job descriptions, evaluations and classifications further contributes to this situation.

Third, the criteria for awarding salary ranks ahead of the standard three-year period, as well as for monthly and quarterly bonuses, lack precision. This results in an excessive margin of discretion for allocating an important part of a civil servant's remuneration⁴²¹. This high level of discretion is compounded by the lack of an integrated HRMIS that would facilitate monitoring and analysis of salary allocation across the CS, the identification of deviations, and the introduction of corrective measures.

Fourth, despite representing a high proportion of the salary, bonuses are distributed to most of the staff of the institutions analysed on the basis of criteria not related to performance⁴²². Furthermore, bonuses are partially financed from savings achieved in each institution's salary budget⁴²³.

Some comparative analyses on salaries have been conducted focussing on the internal equity and dynamics of different salary components⁴²⁴, as well as on the external equity of salary levels in comparison with other sectors⁴²⁵. The competitiveness of salaries in the public sector with average wages overall has improved⁴²⁶ and the salary fund increased by 55% from 2016 to 2017 (from UAH 19.2

⁴¹⁹ Decision of the CMU No. 15 of 18 January 2017 on Salaries for 2017 specifies the list of CS positions corresponding to each salary group but allows for exceptions established by special laws. At the same time, the allocation of base salaries in this Decision of the CMU allows increases for certain groups above the amounts fixed in the salary scale (e.g. a 10% increase for civil servants working in the Parliament, the Administration of the President, the SCMU, and the Accounting Chamber, among others; it also establishes a 20% increase for the heads of structural units, chiefs and lead specialists of the Ministry of Justice, and for executives and key specialists working in the Parliament, the Administration of the President and the SCMU).

⁴²⁰ Decision of the CMU No. 645 of 18 August 2017 on Amendments to Decision of the CMU No. 15 of 18 January 2017.

⁴²¹ Criteria for awarding salary ranks (LCS, Article 39) before the standard three-year period established in the LCS are too general ("outstanding achievements" and "accomplishing high-responsibility tasks") and overlap with the criteria for awarding bonuses. The criteria in Decision of the CMU No. 15/2017 on Salaries for 2017 are somewhat more developed, introducing the "performance of particularly important work", including activities related to state policy priorities, but precise definitions and indicators are still missing.

⁴²² Data provided by the five institutions analysed for this assessment shows that decisions on amounts and distribution of bonuses among employees are based on aspects not related to performance, such as general compliance with working hours and duties. The shares of employees receiving bonuses were between 72% and 100%.

⁴²³ LCS Article 52.6 establishes 20% of the annual salary budget and payroll savings as a source of funding for bonuses in each institution.

⁴²⁴ Analysis of the influence of LCS adoption on the remuneration system (Financial and Economic Analysis Office of the Parliament, 2017).

⁴²⁵ Piontkivska, I. (2017), "Civil service remuneration reform", Centre for Economic Strategy, <http://bit.ly/2CphK3r>.

⁴²⁶ The difference between average monthly wages in the public administration, defence and compulsory social security sector and those in the economy overall rose from 4% in 2015 (UAH 4 381 in the public sector and UAH 4 195 in the general economy) to 15% in 2016 (UAH 5 953 and UAH 5 183). State Statistics Service of Ukraine, https://ukrstat.org/en/operativ/operativ2014/gdn/prc_rik/prc_rik_e/dszpED_e.htm.

Ukraine
Public Service and Human Resource Management

billion to UAH 29.7 billion). However, the low number of candidates in open competitions points to insufficient salary levels. The compression ratio⁴²⁷ of the base salary in the CS is 1:7, which is adequate.

In 2017, there was a difference between the average monthly salaries of men and women in the public administration, defence and social security sector, although this difference (7%) was much lower than that for the general economy (27%)⁴²⁸. This data does not, however, distinguish between civil servants and other public employees, nor does it control for relevant variables other than gender that determine salary levels, such as educational and professional background.

Information on CS salaries is not easily accessible through government websites, it is only published in job announcements, and not in all cases⁴²⁹. Comprehensive information on salary scales and on average salary by professional category is therefore not available to the general public in a user-friendly and proactive way⁴³⁰.

Clear and coherent criteria for awarding variable elements of pay are lacking, little information is available on salary levels, managerial discretion is high and the motivational character of bonuses is low. Therefore, the value of the indicator on the remuneration system of civil servants is 1.

⁴²⁷ Defined as the ratio between the highest base salary and the lowest base salary in the government's civil service salary scale.

⁴²⁸ State Statistics Service of Ukraine, [https://ukrstat.org/en/operativ/operativ2017/gdn/Szp ed/Szp ed e/Szp ed 2017 e.html](https://ukrstat.org/en/operativ/operativ2017/gdn/Szp%20ed/Szp%20ed%20e/Szp%20ed%202017%20e.html)

⁴²⁹ Information on salaries is posted on the Government website (<http://www.career.gov.ua>), but only for higher positions.

⁴³⁰ Analysis of the websites <http://nads.gov.ua/page/vakansiyi> and <http://www.career.gov.ua>

Fairness and competitiveness of the remuneration system for civil servants						
This indicator measures the extent to which the legal framework and the organisation of the civil service salary system support fair and transparent remuneration of civil servants, in terms of both the legislative and organisational preconditions and the performance and fairness of the systems in practice.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework and organisation of the remuneration system	
1. Legal obligation to base salaries on job classifications	2/2
2. Comprehensiveness, clarity and transparency in legal definitions of salary, criteria and procedures for allocation	0/2
3. Availability of salary information	0/3
Performance and fairness of the remuneration system in practice	
4. Fairness in the allocation of base salaries in the job classification system	1/4
5. Base salary compression ratio	2/2
6. Managerial discretion in the allocation of bonuses	0/2
7. Motivational character of bonuses (%)	0/2
8. Competitiveness of civil service salaries (%)	0/3
Total⁴³¹	5/20

Although there is a uniform salary structure for the entire CS and important improvements were made as regards the share of basic salary in total pay, variable pay still forms a large share of the total salary and its distribution is not based on objective performance criteria in practice. Furthermore, the transitional provisions of the LCS allow additional incentive payments until 2019 without the setting of criteria. Public disclosure of CS salaries in a user-friendly format is not in place. Special pay arrangements for reform staff positions create considerable risks.

Principle 6: The professional development of public servants is ensured; this includes regular training, fair performance appraisal, and mobility and promotion based on objective and transparent criteria and merit.

The LCS details professional training as a right and duty of civil servants⁴³², and it expressly stipulates the right to training paid for by the state according to the public administration's needs. The LCS outlines a training system⁴³³, developed in the secondary legislation⁴³⁴, in which the NAUCS proposes a training policy and regulations to the CMU. NAPA, as a higher education institution attached to the President of Ukraine, provides academic and methodological support. Through their HRM units and under the supervision of the head of the CS in each institution, government agencies identify their

⁴³¹ Point conversion ranges: 0–3=0, 4–7=1, 8–10=2, 11–13=3, 14–16=4, 17–20=5.

⁴³² LCS, Article 7.1.6, and Article 8.1.11.

⁴³³ LCS, Articles 13, 18 and 48.

⁴³⁴ Decision of the CMU No. 674 of 27 September 2016 on Reforming the System of Professional Training of Civil Servants and Local Self-Government Officials, amended by Decision of the CMU No. 207 of 29 March 2017. These decisions modify Decision of the CMU No. 1262 of 14 July 1999 on the Financial Provision of Advanced Training of Employees of the Bodies of State Authorities, Local Self-Government Bodies and the Administration of the Armed Forces.

training needs, propose training priorities to the NAUCS, and manage participation of their civil servants in the training activities organised. Both public and private training professionals may provide their services to public institutions.

In practice, the NAUCS elaborates three-year operational training plans based on the Government's priorities and on the demands of central administration institutions (submitted annually to the NAUCS at its request). The NAUCS compiles the requests of the individual entities and prepares a draft proposal that details the distribution of training and funds by priority area and public training institution. This proposal receives MoF agreement and is then sent to the CMU for approval. So far, training needs analyses have not incorporated the individual professional development programmes mentioned in the LCS⁴³⁵ (based on individual performance appraisals), but this system is due to be implemented in 2018. Training services can also be contracted from the public training institutions of the central administration without tendering procedures (e.g. from the NAPA, the All-Ukrainian Centre for the Development of Professional Qualifications attached to the NAUCS, and training centres specialising in different sectors). The NAUCS monitors provision of the training services, including through participant questionnaires on training quality (with answers compiled by the training providers), and it also verifies compliance with the terms of the contract, including training expenditures. In 2017, 26 456 civil servants participated in training courses centrally co-ordinated by the NAUCS. No data is available on training activities, including area-specific courses organised by authorities themselves, although the share of these decentralised activities is low⁴³⁶.

In October 2017, the CMU approved a concept document on reforming the professional training system of civil servants⁴³⁷. Among other elements, the document proposes allocating at least 2% of the payroll to professional training, as well as enhancing market competition in professional training services for the public sector to improve training quality and the efficient use of training resources.

The new performance appraisal system established in the legislation⁴³⁸ is well aligned with the Principles. It involves an assessment of the individual civil servant's pre-defined objectives and key performance indicators, an interview between the civil servant and his/her superior, written registration of the results, and an opportunity for the civil servant to appeal the results. The evaluation would impact the civil servant's salary (bonuses), professional career (rank) and professional development (identification of training needs and elaboration of individual and capacity development plans), and two consecutive negative appraisals could lead to dismissal from the CS. This system has not yet been implemented, however, due to delayed approval of the related secondary legislation.

With regards to mobility and promotion, the LCS includes elements of both a traditional career-based system (e.g. awarding salary ranks based on seniority) and a position-based one (e.g. all competitions open to external candidates). Internal promotion, open only to civil servants, is not contemplated in the LCS. As mentioned in the recruitment section, as analysis of sample files showed that in at least one case a member of the selection committee was a political appointee, which also indicates that the absence of political interference in promotions is not guaranteed.

Internal mobility among positions of the same category and group, as well as secondment, is allowed without competition for the purpose of improving civil servant professional development⁴³⁹, and the Law provides for correspondence among categories and ranks in different public institutions across the CS system to facilitate it⁴⁴⁰. However, no data is available on the proportion of civil servants seconded

⁴³⁵ LCS, Article 49.

⁴³⁶ Information provided by the NAUCS.

⁴³⁷ Order of the CMU of 5 October 2017 on the Approval of the Concept Document on Reforming the Professional Training System of Civil Servants, Local-Self-Government Officials and Local Councillors.

⁴³⁸ LCS, Article 44, and Decision of the CMU No. 640 of 23 August 2017.

⁴³⁹ LCS, Article 48.8.

⁴⁴⁰ LCS, Article 39, and Decision of the CMU No. 306 of 20 April 2016 on Issues of Assigning the Rank of Civil Servants and the Relationship Between the Rank of Civil Servants and the Rank of Local Government Officials, Military Titles,

Ukraine
Public Service and Human Resource Management

or transferred in 2017, which denotes insufficient NAUCS monitoring and analysis of such procedures and their results.

Considering the factors analysed above, the value for the indicator on professional development and training for civil servants is 3.

Professional development and training for civil servants						
This indicator measures the extent to which the legal framework and the organisation of training, performance appraisal, mobility and promotion support fair professional development in the civil service.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework and organisation of professional development	
1. Recognition of training as a right and a duty of civil servants	2/2
2. Co-ordination of the civil service training policy	3/3
3. Development, implementation and monitoring of training plans	3/3
4. Evaluation of training courses	2/2
5. Professionalism of performance assessments	2/4
6. Linkage between performance appraisals and measures designed to enhance professional achievement	4/4
7. Clarity of criteria for and encouragement of mobility	2/2
8. Adequacy of legislative framework for merit-based vertical promotion	2/2
9. Absence of political interference in vertical promotions	0/2
10. Right of civil servants to appeal against performance appraisal decisions	2/2
11. Right of civil servants to appeal mobility decisions	2/2
Performance of professional development practices	
12. Training expenditures in proportion to the annual salary budget (%)	0/4
13. Participation of civil servants in training	0/5
14. Perceived level of meritocracy in the public sector (%)	3/5
Total⁴⁴¹	27/42

The NAUCS plays a central role in training planning and co-ordination. Medium-term operational training plans based on the Government's priorities are in place, but training needs analyses do not systematically integrate individual professional development needs, since implementation of the system for individual performance appraisals is only due to begin in 2018. Data on all training activities conducted and on the internal mobility of civil servants is scarce.

Diplomatic Rank and Other Special Titles, as amended by Decision of the CMU No. 789 of 9 November 2016 and Decision of the CMU No. 516 of 7 December 2017.

⁴⁴¹ Point conversion ranges: 0–6=0, 7–13=1, 14–21=2, 22–29=3, 30–36=4, 37–42=5.

Principle 7: Measures for promoting integrity, preventing corruption and ensuring discipline in the public service are in place.

Ukraine has ratified the United Nations Convention against Corruption, as well as the Council of Europe anti-corruption conventions. In October 2014, two different authorities were established: the LPC, passed in October of 2014⁴⁴², created the NACP as a CEBS responsible for formulating and implementing state anti-corruption policy⁴⁴³. At the same time, the National Anti-Corruption Bureau of Ukraine (NABU)⁴⁴⁴ was established as a state law enforcement agency responsible for the prevention, identification, suppression, investigation and disclosure of corruption committed by state and local government officials.

While the NABU is accountable to the President, the NACP reports to the Parliament and the CMU⁴⁴⁵. The LPC gives the Assembly the power to determine the main lines of anti-corruption policy⁴⁴⁶, and within this framework the NACP is responsible for proposing, co-ordinating and monitoring the policy and its action plan⁴⁴⁷. The Anti-Corruption Strategy for 2014-2017 was approved by the Parliament in October 2014⁴⁴⁸, alongside creation of the NACP and the NABU, and its action plan was adopted by the CMU in April 2015⁴⁴⁹. Both the policy and the action plan included specific objectives, activities and timelines, and the responsible organisations are clearly identified, but the cost of the activities is not specified. Although the previous Anti-Corruption Strategy expired in 2017 and the new one was approved by the CMU on 25 April 2018, the Parliament has not adopted it, which means that the operational strategic policy document and relevant action plans were missing at the time of this assessment⁴⁵⁰. The 2017 Monitoring Report of the previous Anti-Corruption strategy showed that 67% of the CS-related activities had been implemented⁴⁵¹.

The NACP is responsible for establishing standards and procedures to be followed by public institutions to analyse the risk of corruption and to prepare and manage anti-corruption programmes⁴⁵²; a responsible unit or person must be appointed in each public authority to ensure the development and implementation of such programmes. By the end of 2017, 121 anti-corruption programmes had been submitted to the NACP by public bodies, and it approved 112 (93%) of them⁴⁵³. In the same year, the NACP organised 36 training sessions on the prevention of corruption, in which 1 150 public servants took part⁴⁵⁴.

With respect to monitoring and control of integrity issues⁴⁵⁵, the NACP carried out 1 540 controls related to conflicts of interest, out of which 389 violations were reported. Political authorities, civil

⁴⁴² Law No. 1700-VII of 14 October 2014 on Prevention of Corruption.

⁴⁴³ LPC, Article 4.

⁴⁴⁴ Law No. 1698-VII of 14 October 2014 on the National Anti-Corruption Bureau of Ukraine.

⁴⁴⁵ LPC, Article 4.

⁴⁴⁶ *Idem*, Article 18.

⁴⁴⁷ *Idem*, Article 11.

⁴⁴⁸ Law No. 1699-VII of 14 October 2014 on the Bases for the State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014-2017.

⁴⁴⁹ Decision of the CMU No. 265 of 29 April 2015 on Approval of the State Program on Implementing the Principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2015-2017.

⁴⁵⁰ The draft strategy is available on the NACP website: <https://nazk.gov.ua/proekt-zakonu-ukrayiny-pro-zasady-derzhavnoi-antikorupciynoyi-polityky-v-ukrayini-antikorupciyna>

⁴⁵¹ NACP 2017 report on implementation of the Anti-corruption Strategy for 2015-2017. Eight out of 12 CS related activities were completed.

⁴⁵² LPC, Article 11.7, and Decision of the NACP No. 75 of 2 March 2017 on Approval of the Standard Anti-Corruption Program of the Legal Entity.

⁴⁵³ NACP report on implementation of the NACP work plan for 2017, activity 13.1.

⁴⁵⁴ *Idem*, activity 15.3.

⁴⁵⁵ Ukraine's Administrative Offences Code No. 8073-X of 7 December 1984, Chapter 13, establishes violations of restrictions to secondary employment, violations of restrictions to the reception of gifts, the non-fulfilment of

Ukraine
Public Service and Human Resource Management

servants and candidates wishing to enter the CS are obligated to file an electronic asset declaration⁴⁵⁶; in 2017, the NACP conducted 1 458 inspections for non-submission or untimely submission of asset declarations, and 634 in-depth verifications of such declarations. The NACP also conducted 8 398 special inspections of declarations of applicants to high corruption-risk positions, but data on the results of these activities is not available. Some steps were also taken by the NACP in 2017 to improve information systems to address corruption prevention and a unified state register of persons guilty of corruption or corruption-related offences was set up, although it is still at the testing phase⁴⁵⁷. Nevertheless, the NACP does not yet have automated access to the public registers necessary for verifying asset declarations, which is a major impediment to streamlining procedures in this area.

The legislation on corruption offences is complete⁴⁵⁸. The LPC establishes a comprehensive list of public officials who can be held liable for corruption offenses, including civil servants in central and local state administrations, but also private persons who deliver public services (notaries, auditors, independent intermediaries, contractors, etc.), as well as representatives from CS associations and scientific and educational institutions, among others⁴⁵⁹.

However, public perception of corruption is very high. Survey responses show that 20% of business people agree with the statement, "It is common for companies in my line of business to have to pay some irregular 'additional payments/gifts' to 'get things done'"⁴⁶⁰, and 14% of a sample of citizens state that they or someone in their household paid bribes in the last 12 months⁴⁶¹. These results demonstrate the high prevalence of corrupt practices in the public sector. Data available on NABU activities in the first half of 2017 shows that during that period the Bureau prepared indictments related to 121 persons, including top-ranking officials, senior civil servants, prosecutors, heads of state enterprises and judges, among others, and sent 78 proceedings to court⁴⁶². The same report signals the low performance of the courts in dealing with the proceedings, resulting in significant delays⁴⁶³.

The disciplinary regime and procedures that apply to civil servants are regulated in detail in the LCS⁴⁶⁴. The range of disciplinary sanctions is very limited⁴⁶⁵, however, which prevents correct application of the principle of proportionality. In addition, the statute of limitations does not distinguish between minor and serious offences, and it imposes very restrictive deadlines for the administration to pursue disciplinary accountability⁴⁶⁶, which allows some serious disciplinary offences to be committed with impunity.

Considering the factors analysed above, the value for the indicator on quality of disciplinary procedures for civil servants is 3. The value for the indicator on integrity of public servants is 2.

obligations of financial control and other offences connected with corruption as administrative offences. NACP activities concerning the control and punishment of such offences is based on this law.

⁴⁵⁶ LPC, Section VII.

⁴⁵⁷ NACP report on implementation of the NACP work plan for 2017, activities 11.8 and 11.9.

⁴⁵⁸ The penal code addresses fraud, embezzlement and money laundering, but not for public officials specifically. All other elements included in the Principles are regulated by either the LPC or the Criminal Code.

⁴⁵⁹ LPC, Article 3.

⁴⁶⁰ KIIS (Kiev International Institute of Sociology) (2017), "Survey on business satisfaction with policy making and public service delivery", a survey commissioned by SIGMA, KIIS, Kyiv.

⁴⁶¹ KIIS (2017), "Opinions and views of the Ukrainian people: December 2017", a survey commissioned by SIGMA, KIIS, Kyiv.

⁴⁶² NABU (2017), "Report: First half of 2017", NABU, Kyiv, pp. 13-15.

⁴⁶³ *Ibid.*

⁴⁶⁴ LCS, Section VIII.

⁴⁶⁵ *Idem*, Article 66. The list includes four types of sanctions, three of which incur only reprimands, reproofs and warnings, while the fourth leads directly to dismissal from the CS.

⁴⁶⁶ *Idem*. Articles 64.3 and 74.5 establish maximum deadlines to start disciplinary action: six months from the date on which the wrongdoing was detected, and one year from the date on which the wrongdoing was committed, irrespective of the type of offence.

Quality of disciplinary procedures for civil servants

This indicator measures the extent to which the legal framework and the organisation of disciplinary procedures support individual accountability, professionalism and integrity of civil servants and safeguard civil servants against unfair and arbitrary disciplinary cases.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
Legal framework and organisation of disciplinary system	
1. The adequacy of civil service legislation to uphold basic principles related to disciplinary procedures	2/4
2. Compliance between disciplinary procedures and essential procedural principles	6/6
3. Time limits for the administration to initiate disciplinary action and/or punish misbehaviour	1/2
4. Legislative safeguards for suspension of civil servants from duty	1/2
Performance of the disciplinary procedures	
5. Disciplinary decisions confirmed by the courts (%)	2/4
Total⁴⁶⁷	12/18

Integrity of public servants

This indicator measures the extent to which legislation, policies and organisational structures promote public sector integrity, whether these measures are applied in practice and how the public perceives the level of corruption in the public service.

The indicator does not address the internal administrative proceedings related to integrity, as that is covered by a separate indicator on disciplinary procedures.

Overall indicator value 0 1 **2** 3 4 5

Sub-indicators	Points
Legal framework and organisation of the public sector integrity	
1. Completeness of the legal framework for public sector integrity	5/5
2. Existence of a comprehensive public sector integrity policy and action plan	0 ⁴⁶⁸ /4
3. Implementation of public sector integrity policy	3/3
Public sector integrity in practice and public perceptions	
4. Use of investigations in practice	0 ⁴⁶⁹ /4
5. Perceived level of bribery in the public sector by businesses (%)	2/4
6. Bribery in the public sector by citizens (%)	0/4
Total⁴⁷⁰	10/24

⁴⁶⁷ Point conversion ranges: 0–3=0, 4–6=1, 7–9=2, 10–12=3, 13–15=4, 16–18=5.

⁴⁶⁸ The previous anti-corruption policy expired in 2017 and the new one is under development.

⁴⁶⁹ The administration has not provided SIGMA with complete data.

Two agencies created simultaneously in 2014 to prevent and investigate corruption are responsible for public sector integrity. The lack of automated access to administrative registers hampers investigations, however, and there are significant delays in managing criminal proceedings by the courts. Survey data signals that corruption among public officials is still high. The statute of limitations on disciplinary procedures imposes very restrictive deadlines for pursuing disciplinary accountability, which allows many serious disciplinary offences to be committed with impunity.

Key recommendations

Short-term (1–2 years)

- 1) The NAUCS should ensure that all competition announcements for recruitment to CS positions are published in an accessible and user-friendly format.
- 2) The NAUCS should continue its efforts to improve the selection methods used by the selection committees to fill category A, B and C vacancies, particularly for the practical part and the interview, by providing guidance, trainings, etc.
- 3) The Government should improve regulations on the composition of selection committees for category B and C recruitments to ensure that political appointees may not be members.
- 4) The Government should regulate the criteria and procedures used for elaborating CS job descriptions, evaluations and classifications to ensure a uniform system with clear criteria for allocating base salaries to CS positions.
- 5) The Government should improve public disclosure of CS salaries.
- 6) The NAUCS should ensure proper implementation of the new system of individual performance appraisals for civil servants, including the elaboration of individual professional development plans.
- 7) The Government should provide the NACP's inspectors with automated online access to relevant administrative registers to streamline control and verification of public officials' asset declarations.

Medium-term (3–5 years)

- 8) The Government should better define the criteria for variable pay and further limit its share in the total salary.
- 9) The Government should prepare a plan on how to ensure the sustainability of reform staff positions.
- 10) The Government should establish deadlines of a length adequate to impose disciplinary sanctions for serious offences, not less than three years from the date of the wrongdoing.

⁴⁷⁰ Point conversion ranges: 0–3=0, 4–7=1, 8–11=2, 12–15=3, 16–19=4, 20–24=5.

4

Accountability

ACCOUNTABILITY

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

1.1. State of play

While the institutional architecture of the state administration is comprehensively regulated, its organisational design and steering mechanisms do not ensure effective, results-oriented and efficient governance. The scope of autonomy granted to non-ministerial bodies does not reflect a rational steering model. Supervision over their activities is process-oriented and does not focus on holding agencies accountable for results while securing sufficient operational autonomy. Finally, a bureaucratic model of governance is also demonstrated by heavily centralised internal management of the ministries, whereby state secretaries (top-level civil servants) are overburdened with responsibility for decisions on practically all organisational matters.

In the area of access to public information, significant progress has been achieved in the proactive provision of public information. The amount of data available to citizens has increased considerably, thanks to new open data portals and extended legal requirements to disclose large datasets on public finance and decisions made by state administration bodies. However, ensuring effective and comprehensive supervision of implementing the Law on Access to Public Information⁴⁷¹ remains a challenge, and procedures to appeal refusal of access to information or administrative silence are unclear.

Basic guarantees of the independence of oversight institutions – the Ombudsman⁴⁷², the Supreme Audit Institution (SAI)⁴⁷³ and the courts – are secured, but citizens have a very low level of trust in these institutions. Furthermore, the Ombudsman does not have adequate mechanisms to monitor and analyse implementation of its recommendations, and the SAI does not aggregate and publish data on the share of its recommendations implemented. In addition to this, the Ombudsman is tasked with quasi-prosecutorial functions in supervising compliance with the regulations on access to information and data protection. This does not correspond with the dominant international model of the Ombudsman's mission and modus operandi.

Access to administrative justice is safeguarded by administrative courts, which handle cases in an efficient manner. However, there are no measures to ensure compensation to applicants affected by excessively long judicial proceedings.

Although legislation establishes extensive guarantees for seeking compensation in the case of wrongdoing by the state administration, there is no mechanism for collecting and analysing the courts' decisions in public liability cases. Therefore, it is not possible to assess whether the right to compensation is ensured in practice.

⁴⁷¹ Verkhovna Rada (Parliament) of Ukraine (2011), Bulletin No. 32.

⁴⁷² Ukrainian Parliament Commissioner for Human Rights.

⁴⁷³ Accounting Chamber (Ukrainian: Рахункова палата України).

1.2. Main developments

Significant progress in judicial reform remains the major development in the area of accountability. The reform package consisted of amendments to the Constitution adopted on 2 June 2016⁴⁷⁴, together with the new Law on the Judicial System and the Status of Judges⁴⁷⁵. Guarantees of judicial independence have been considerably strengthened by the abolition of the five-year probation period for junior judges and the introduction of lifetime appointments by the President, on the recommendation of the renewed High Council of Justice (which consists of members predominantly selected by judges). Previously, judges were appointed by the Parliament.

The Supreme Court, with newly appointed judges, became the court of highest instance for all types of cases. As a result, the High Administrative Court was abolished. The procedure for selection of new judges to the Supreme Court was conducted by the High Qualification Commission of Judges of Ukraine, and in November 2017 the President of Ukraine appointed 113 judges to the renewed Supreme Court. These appointees subsequently participated in an orientation course. It should be noted that while the appointment process was conducted by a body independent from the executive and legislature and under strong public scrutiny, several concerns about the transparency of the procedure were raised by civil society representatives⁴⁷⁶.

Regarding the institutional architecture of the Government, preparations have just begun for reorganising the central executive bodies (CEBs). The conceptual document for optimising the central government system was approved by the Cabinet of Ministers of Ukraine (CMU) in December 2017, with the aim of transferring to other CEBs those functions that are not inherent to ministries⁴⁷⁷.

It should be also noted that the new Law on Civil Service (LCS) that entered into force in May 2016 shifted responsibility for the operational management of ministries from ministers to top-level civil servants (i.e. state secretaries). This Law also introduced a uniform procedure for appointing and dismissing state secretaries and heads (and deputy heads) of bodies subordinated to the Government. According to this new model, state secretaries, heads and deputy heads of bodies are appointed by the CMU for a fixed term of five years, based on the proposal of the Commission on Senior Civil Service, which consists of representatives of all branches of state power, trade unions and non-governmental institutions.

In August 2017, the CMU adopted a procedure for assessing the performance of civil servants' official activities⁴⁷⁸. This procedure requires ministers to set tasks and key performance indicators for the heads of subordinated bodies. However, the mechanism for setting performance indicators envisaged by this resolution has not been implemented.

⁴⁷⁴ Verkhovna Rada (2016), Bulletin No. 28.

⁴⁷⁵ Verkhovna Rada (2016), Bulletin No. 31.

⁴⁷⁶ For example, see: Centre of Policy and Legal Reform and DEJURE Foundation (2018), "Establishment of the new Supreme Court: Key lessons", Kyiv, [http://pravo.org.ua/img/zstored/files/Establishment%20of%20SC%20key%20lessons\(1\).pdf](http://pravo.org.ua/img/zstored/files/Establishment%20of%20SC%20key%20lessons(1).pdf).

⁴⁷⁷ The Concept of Optimisation of the System of Central Executive Bodies, approved by Order of the CMU No. 1013 of 27 December 2017.

⁴⁷⁸ Resolution of the CMU No. 640 of 23 August 2017 on the Procedure for Assessment of the Performance of the Civil Servants' Official Activities.

2. ANALYSIS

This analysis covers five Principles for the accountability area grouped under one key requirement. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators⁴⁷⁹, and an assessment of the state of play for each Principle. For each key requirement, short- and medium-term recommendations are presented.

Key requirement: Proper mechanisms are in place to ensure accountability of state administration bodies, including liability and transparency.

The values of the indicators assessing Ukraine's performance under this key requirement are displayed below.

Indicators	0	1	2	3	4	5
Accountability and organisation of central government				◆		
Accessibility of public information				◆		
Effectiveness of scrutiny of public authorities by independent oversight institutions			◆			
Fairness in handling of administrative judicial disputes					◆	
Functionality of public liability regime			◆			

Legend: ◆ Indicator value

Analysis of Principles

Principle 1: The overall organisation of central government is rational, follows adequate policies and regulations and provides for appropriate internal, political, judicial, social and independent accountability.

The Law on Central Executive Bodies⁴⁸⁰ establishes the official typology of CEBs subordinated to the relevant ministries, consisting of agencies, services, inspectorates and CEBs with special status⁴⁸¹ (subordinated to the Parliament). This typology reflects the different functions performed by each type of body. However, its normative value is limited, as the Law on CEBs provides a uniform governance and accountability regime for agencies, services and inspectorates. The legal regime for these bodies does not differ in the scope of managerial, financial or strategic autonomy, or supervisory measures that could be applied by their parent ministries. Decisions on appointments (for a fixed term of five years) and dismissals of heads of agencies, services and inspectorates are made by the CMU, based on proposals by the Commission on Senior Civil Service, which is composed of representatives of all branches of state power as well as trade unions and non-governmental institutions.

⁴⁷⁹ OECD (2017), SIGMA, *Methodological Framework for the Principles of Public Administration*, OECD, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

⁴⁸⁰ Verkhovna Rada (2011), Bulletin No. 38.

⁴⁸¹ Antimonopoly Committee of Ukraine; State Property Fund of Ukraine; State Committee for Television and Radio Broadcasting of Ukraine (heads of these bodies are appointed by the Parliament).

Ukraine Accountability

A special regulation governs the appointment and dismissal of heads of CEBs with special status. According to the Constitution and the Law on CEBs, the heads of these institutions are appointed to office by the Parliament based on a proposal by the Prime Minister and can be dismissed only by the Parliament, which creates CEBs with special status accountable to the Parliament. Arrangements for CEBs with special status result from the constitutional model of the state and are therefore beyond the scope of this discussion.

Regarding CEBs subordinated to ministries, the model for appointing and dismissing heads introduced by the new LCS⁴⁸², appears to hamper ministers' capacity to steer non-ministerial bodies and ensure that they implement government policies. The Commission on Senior Civil Service is the body with the greatest influence on appointments and dismissals, but it is not accountable for the performance of these institutions. Ministers remain accountable for the performance of subordinated bodies, but they do not have a direct impact on the appointment of their heads. The rationale for this arrangement was to reduce the risk of political appointments to these positions, and the considerable role of the Commission in the recruitment process is not being contested here. However, this goal might also be achieved through more proportionate measures, ensuring a proper balance of depoliticisation, merit and effective governance.

On the other hand, ministers have extensive supervisory powers over the subordinated CEBs. Their powers are not limited to classical measures of bureaucratic accountability, such as approving annual plans, budgets and annual reports or requesting documents and issuing binding instructions. Their mandate also includes approving the internal organisational structure of CEBs, as well as appointing and dismissing heads and deputy heads of organisational units and territorial branches of CEBs⁴⁸³. As a result, the managerial autonomy of the heads of CEBs is significantly limited, while the ministries are distracted from policy-making activities.

That content of the annual plans of subordinated bodies is submitted to ministries for approval is further evidence of a culture of micro-management of CEBs subordinated to ministries. It also demonstrates difficulties with transforming the organisational culture in government bodies towards a focus on results rather than inputs (activities). The plans are in the form of a long list of tasks (planned activities) with no diagnosis of major problems and challenges in the area, specific objectives, performance indicators or targets. This determines the model of day-to-day supervision over subordinated bodies, focusing on outputs and compliance with procedures rather than on outcomes. Unfortunately, the recently adopted conceptual document for optimisation of the central government system does not address this issue.

All these factors lead to the conclusion that the steering model for CEBs subordinated to ministries is inconsistent. It is characterised by an unsustainable mixture of excessive independence of CEBs from ministries (e.g. appointment and dismissal of the heads, separate legal personality) and excessive ministerial control with regard to the internal management issues mentioned above. This arrangement also hampers the shift from process-oriented (bureaucratic) accountability to results-based accountability for bodies subordinated to the Government that should combine managerial autonomy with a strong accountability regime focused on outcomes.

The number of CEBs subordinated to ministries is quite low (35 agencies, services and inspectorates), as a large number of policy implementation functions remain in the ministries. The conceptual document for optimisation of the central government system (approved by the CMU in December 2017) envisages transferring these tasks to CEBs subordinated to ministries, to enable ministries to focus on policy issues. While the idea of institutional separation of 'steering' (policy making) and 'rowing' (policy implementation) is widely accepted in international practice and public management theory, the Government needs to be prepared to mitigate the risks associated with this process. The

⁴⁸² Verkhovna Rada (2016), Bulletin No. 4.

⁴⁸³ Powers of ministers in relation to the CEBs are enumerated in the Law on Central Executive Bodies, Article 18.

Ukraine Accountability

major challenge is to avoid over-agencification⁴⁸⁴ by keeping the process of creating new bodies under rigid control.

Recent cases of government reorganisation and review of government procedures regarding the creation of new bodies demonstrate the lack of a comprehensive and consistently applied analytical framework. Such a framework should ensure: 1) *ex ante* assessment of the need to establish new institutions; 2) review of delivery options and selection of those most suitable for relevant government functions; and 3) accountability and governance standards (scope of autonomy, supervisory measures, etc.) adequate to the mission and tasks of newly created bodies. No document specifies in detail the vision of the institutional architecture of government to be achieved through the planned reforms. In particular, the above-mentioned conceptual document for optimisation of the central government system does not include a map of institutions and their functions resulting from the planned reorganisation.

Furthermore, the ongoing process of reorganising the internal structure of the ministries is not based on a clear vision about the optimal and desired organisational model of a ministry. In particular, the Concept of Optimisation of the System of Central Executive Bodies as a policy framework for the reorganisation process does not clarify the hierarchical and functional relationship between the newly created directorates and existing ministry departments. The rationale and expected outcomes of introducing the directorates are not specified, which may result in chaotic reorganisation implemented in different manners across government, producing significant organisational risks and little additional value in terms of effective governance.

Apart from this, separate legal personality is granted to every CEB; one of the major practical consequences of this arrangement has been numerous court disputes among government bodies. Not only do ministries sue each other⁴⁸⁵, but subordinated CEBs file cases against their parent ministries: for example, a lawsuit submitted to the administrative court by the State Archive Service (SAS) against Ministry of Justice (MoJ) concerned the results of the Ministry's inspection of the SAS.

While disputes between government bodies may arise on various grounds, resolving them through judicial proceedings is dysfunctional. Government administration should operate as a hierarchy in which all conflicts are resolved with internal dispute resolution mechanisms. Not only is judicial dispute resolution inefficient and time-consuming, it undermines the overarching organisational principles of government administration: hierarchy, clear lines of subordination and unity. It also testifies to the failure of steering, co-ordination and communication mechanisms within the government administration.

A recent judgement of the Supreme Court⁴⁸⁶ may, however, limit judicial disputes among state administration bodies in the future. The judgement, which states that the right of state administration bodies to lodge lawsuits must be explicitly established by the law, means that the mandate for CEBs to sue one another cannot be based only on the principle of legal personality granted to each CEB. This ruling may effectively reduce the number of judicial disputes among state administration bodies, but the rationale for retaining separate legal personality for each government body still requires reconsideration, as there are no clear benefits to this arrangement.

The types of state-owned enterprises (SOEs) (state unitary enterprises, state commercial enterprises and state enterprises) and principles of internal governance are established by the Economic Code of Ukraine⁴⁸⁷. While most of them operate in various markets, some perform administrative functions or

⁴⁸⁴ Agencification is a process in which new agencies are created or existing agencies are given more autonomy.

⁴⁸⁵ For example, Case No. 826/15456/17: the Ministry of Health against the Ministry of Justice (MoJ) about the cancellation of Order of the MoJ No. 2859 of 9 November 2017.

⁴⁸⁶ Judgment of 25 January 2018, Case No. P/9901/77/18 800/414/17.

⁴⁸⁷ Verkhovna Rada (2003), Bulletin No. 18.

Ukraine
Accountability

provide services mainly for the ministry that established them⁴⁸⁸. The legislation does not set any functional criteria for selecting SOEs to perform specific government functions. Furthermore, there are neither significant limitations for applying this organisational form nor safeguards against forming SOEs to bypass or escape certain rules prescribed in legislation – for example, the human resource management regime imposed by the civil service legislation applicable to CEBs. It should also be noted that due to a large number of SOEs operating within the domains of some ministries, effective supervision over them is particularly challenging and hampers the ministries' capacity to focus on policy making.

In internal management of ministries, the major problem lies in overloading state secretaries (top-level civil servants) with tasks relating to day-to-day management of the ministry, particularly staff-related issues. While assigning state secretaries overall responsibility for managing the ministry was the right solution, delegating decision-making powers in some matters to lower-level officials should be encouraged. For instance, decisions on approving annual leave or staff member business trips could be made by heads of departments. Currently, all these decisions require the signature of the state secretary, regardless of the position of the employee concerned. Although there are no legal obstacles to delegation, this practice was not found in any of the ministries reviewed by SIGMA. In addition, the above-mentioned decisions of a technical nature are always issued in the form of an order by the state secretary⁴⁸⁹, creating an additional burden.

Table 1. Orders signed by state secretaries of selected ministries on approval of business trips, annual leave and participation in training (2017)

Ministry	Number of orders issued in 2017 by the state secretary
Ministry of Education and Science	2192
Ministry of Finance	557
Ministry of Internal Affairs	1235
Ministry of Justice	1379 ⁴⁹⁰

Source: Data provided by the relevant ministries.

⁴⁸⁸ For example, the Center for Evaluation and Information, a state enterprise established by the MoJ, focuses on providing analytical and research support for the MoJ.

⁴⁸⁹ In Ukrainian, *Наказ*. In practice, such orders also require signatures from several officials in the ministry.

⁴⁹⁰ Including disciplinary sanctions and orders signed by the Minister.

Ukraine
Accountability

Considering the factors analysed above, the value for the indicator on accountability and organisation of central government is 3.

Accountability and organisation of central government						
This indicator measures the extent to which the governance model of central government upholds lines of accountability and contributes to increasing the state's capacity, which is defined as the ability of the administrative apparatus of the state to implement policies, deliver services to citizens and support decision makers with policy advice. This includes assessing the legal and institutional framework for overall organisation of central government, as well as its implementation in practice.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Policy and legal framework for central government organisation	
1. Clarity and comprehensiveness of official typology of central government bodies	3/5
2. Adequacy of the policy and regulatory framework to manage central government institutions	1/5
3. Strength of basic accountability mechanisms between ministries and subordinated bodies	4/5
4. Managerial accountability mechanisms in the regulatory and legislative framework	3/5
Central government's organisation and accountability mechanisms in practice	
5. Consistency between practice and policy in government reorganisation	3/4
6. Number of public bodies subordinated to the parliament (%)	4/4
7. Accountability in reporting between central government bodies and parent ministry	3/4
8. Effectiveness of basic managerial accountability mechanisms for central government bodies	0/4 ⁴⁹¹
9. Delegation of decision-making authority within ministries	1/4
Total⁴⁹²	22/40

A comprehensive legislative framework establishing an official typology of state administration bodies is in place. Major challenges are an inconsistent accountability and governance framework for bodies subordinated to ministries and over-centralised internal management of ministries.

Principle 2: The right to access public information is enacted in legislation and consistently applied in practice.

According to the Law on Access to Public Information, the right of access to public information is guaranteed to everyone, and all bodies performing public functions (including private bodies executing public authority) are obliged to release information in forms prescribed by this Law within a short delay⁴⁹³. The scope of restrictions on access to information is narrow and a "public interest test" is required. This means that the relevant information holder cannot refuse to release information on one

⁴⁹¹ Assessment based on a review of documents (plans and reports) provided by the administration that clearly show the lack of a results-based approach to planning the activities of bodies subordinated to ministries.

⁴⁹² Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-40=5.

⁴⁹³ Within 5 business days following receipt of a request and 20 working days if the request is for a large volume of information or requires processing of a large amount of data (Article 21).

Ukraine
Accountability

of the statutory defined grounds⁴⁹⁴ unless it proves that “harm from disclosure of such information exceeds the public interest in releasing it”.

The Law establishes two main forms of access to information: 1) the obligation of information holders to release information proactively on relevant websites; and 2) upon request by an interested applicant. Proactive access to information has improved considerably over the past three years, as recognised by the international Open Data Index that measures the availability of key datasets on the websites of public institutions (Table 2). According to the latest ranking, Ukraine already performs better than six EU Member States. SIGMA’s review of public institution websites also confirmed good accessibility to key datasets (e.g. economic data, legislation, election results, public tenders and public registries). However, data accessibility on the websites of ministries and subordinated bodies requires further improvement, especially with regard to annual plans, budgets and reports of government bodies. Also, the mechanism for monitoring compliance with the extensive legal requirements to proactively disclose public information on the websites of public bodies is not fully effective⁴⁹⁵.

Table 2. Ukraine’s performance in the Global Open Data Index

	2015	2016/2017
Position in the global ranking	54	31
Total score (% of datasets meeting criteria of accessibility)	34%	48%

Source: Global Open Data Index, <https://index.okfn.org/place/ua/>.

This progress was possible thanks to the introduction of detailed legal requirements specifying datasets that must be published online and the launch of new portals providing access to large amounts of information. These include: 1) <http://data.gov.ua/>, a portal providing access to over 33 000 datasets from various public bodies (e.g. decisions on the results of competitions for civil service positions, public registries, plans and programmes of public bodies and financial reports); and 2) <https://spending.gov.ua/>, a portal established according to the 2015 Law on Openness of Public Funds that ensures access to information about contracts concluded by public bodies, subsidies and loans granted from public funds and payments made from the single treasury account.

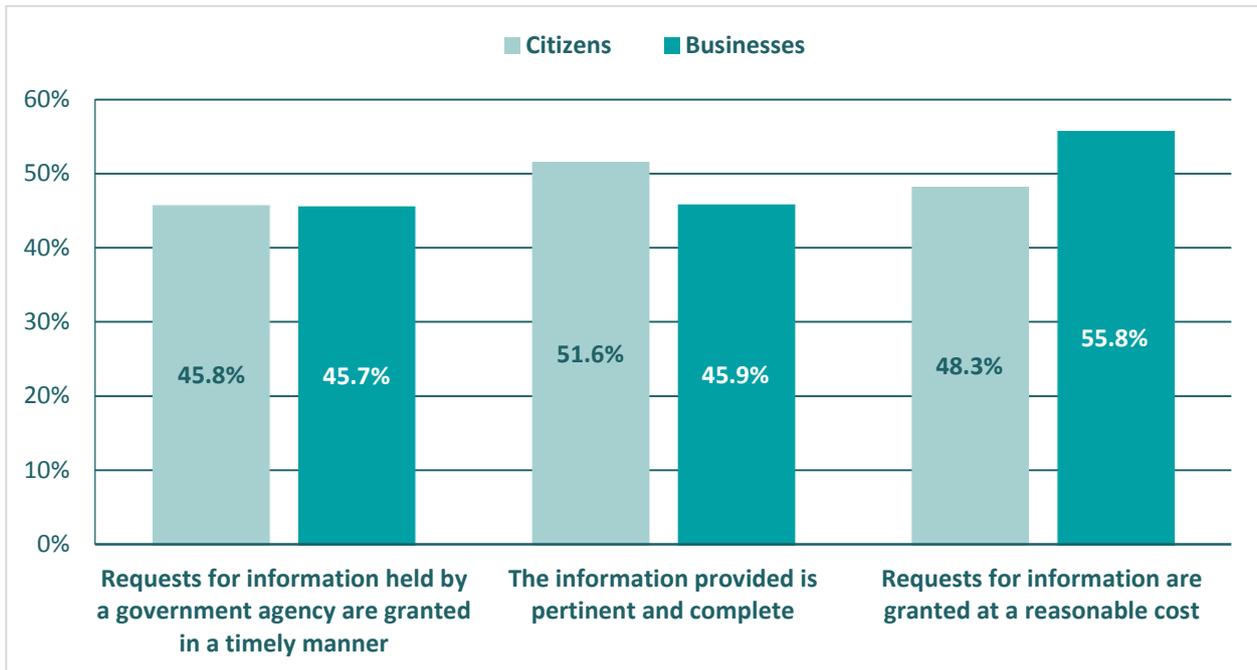
Accessibility of information upon request is relatively good, as measured by SIGMA-commissioned surveys of citizens and businesses⁴⁹⁶. Around half of respondents who had been in contact with public administration bodies declared that public information is provided in a timely manner and at a reasonable cost, and the quality of information received is satisfactory (Figure 1).

⁴⁹⁴ Law on Access to Public Information, Article 6. These grounds include national security, territorial integrity or public order with the purpose of preventing disturbances or crimes, protecting the health of the population, protecting the reputation or rights of others, preventing disclosure of information received confidentially and maintaining the authority and impartiality of justice.

⁴⁹⁵ According to the Decree of the President No. 559/2011 on Provisions on the State Committee for Television and Radio Broadcasting of Ukraine, this Committee is tasked with monitoring the content of CEB websites. However, the evaluation criteria are not specified and the Committee does not have the power to impose any measures in cases of non-compliance. What is more, the Committee does not co-ordinate its actions with the Ombudsman institution formally responsible for supervising implementation of the Law on Access to Public Information.

⁴⁹⁶ KIIS (Kiev International Institute of Sociology) (2017), "Opinions and views of Ukrainian people: December 2017" and "Survey on business satisfaction with policy making and public service delivery", surveys commissioned by SIGMA, KIIS, Kyiv.

Figure 1. Accessibility of public information upon request (% of citizens and businesses who totally agree or tend to agree with the following statements)



Source: KIIS (Kiev International Institute of Sociology) (2017), "Opinions and views of Ukrainian people: December 2017" and "Survey on business satisfaction with policy making and public service delivery", surveys commissioned by SIGMA, KIIS, Kyiv.

However, the procedural framework for accessing public information upon request requires further improvement to ensure sufficient protection of citizens' rights. Also, the appeal procedure in case of refused access to information or administrative silence is ill-designed. The appeal body is not clearly identified, as the Law on Access to Public Information states only that "the decision, action or inaction of the information processors can be appealed to the head of the information processor, the higher authority or the courts." There is no indication whether issuing a complaint to the court must be preceded by an administrative appeal. If an administrative appeal is required, there is no guidance on how to determine the competent higher authority in such cases. Furthermore, there is no regulation regarding the form of the appeal body's decision or the scope of its powers in handling appeals. For example, it is not clear whether the appeal body may order the first-instance body to release the information requested by the applicant. Finally, there is no deadline for delivering the final decision in the appeal procedure, except in the case of judicial proceedings. Most of these problems result from the lack of a law regulating general administrative procedures that would also provide a consistent and comprehensive procedural framework for cases relating to access to public information.

The institutional arrangement for supervising implementation of the Law on Access to Public Information is a major problem. No institution has sufficient power and resources to comprehensively monitor the practical application of the right to information and to implement corrective measures. The Ombudsman has been tasked with responsibility for control over observance of the Law⁴⁹⁷, but the catalogue of supervisory instruments is limited (e.g. no mandate to set standards and guidelines). The Ombudsman is responsible solely for creating and submitting to the court the protocols for imposing financial sanctions on public officials violating the right to information. This measure has limited impact on accessibility of public information, as imposing sanctions on individual public officials does not guarantee that the requested information will be disclosed. In addition, according to information provided by the Ombudsman institution, the share of protocols approved by the courts (with sanctions

⁴⁹⁷ Law on Access to Public Information, Article 17.

Ukraine
Accountability

imposed) is very low. Furthermore, this arrangement does not correspond with the core mission of the Ombudsman institution (see further comments under Principle 3).

Responsibility for issuing binding guidelines and recommendations on implementing the Law on Access to Public Information is not specified. This results in discrepancies in application of the Law. For example, non-governmental organisations complain about the lack of clear and uniform practice with regard to fees for access to information. While fees for copying documents are fixed⁴⁹⁸, some institutions ignore requests to share electronic versions of requested documents and instead send paper copies and require applicants to pay printing fees⁴⁹⁹.

Finally, there is no effective mechanism for the collection, aggregation and analysis of key statistical data on access to public information requests. On its own initiative, the Department of Information and Communications of the Government Secretariat collects and publishes information about the number of requests processed, accepted and refused by public authorities. But it has no data on grounds for refusal, decisions issued in appeal procedures and decisions challenged in the courts (including the ratio of complaints accepted by the courts)⁵⁰⁰. The Government Secretariat collects and publishes data on the number of requests, but such limited information is insufficient to draw meaningful conclusions about problems in application of the Law.

Considering the factors analysed above, the value for the indicator on accessibility of public information is 3.

⁴⁹⁸ Regulation of the CMU No. 740 of 13 July 2011 on Fees for Copying or Printing Documents Provided upon Request for Public Information.

⁴⁹⁹ UHHRU (Ukrainian Helsinki Human Rights Union) (2016), "Right to public information", UHHRU, Kyiv, <https://helsinki.org.ua/en/right-to-public-information/>.

⁵⁰⁰ Secretariat of the CMU, "How the executive authorities provided access to information", <https://www.kmu.gov.ua/ua/gromadskosti/dostup-do-publichnoyi-informaciyi/rezultati-anketuvannya-organiv-vikonavchoyi-vladi-ta-monitoringu-oficijnih-veb-sajtiv/yak-organi-vikonavchoyi-vladi-zabezpechuvati-dostup-do-informaciyi>.

Accessibility of public information						
This indicator measures the extent to which the legal and institutional framework regarding access to public information is established, promoting timely responses to public information requests free of charge or at a reasonable cost. It also covers the practical application of these legal requirements, with particular focus on proactive disclosure of public information and perceptions of availability of public information.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal and institutional framework for access to public information	
1. Adequacy of legislation on access to public information	8/10
2. Coverage of basic functions for implementing access to public information	1/5
Citizens' level of access to public information	
3. Proactivity in disclosure of information by state administration bodies on their websites (%)	3/5
4. Proactivity in disclosure of datasets by the central government (%)	5/5
5. Perceived accessibility of public information by the population (%)	1/2.5 ⁵⁰¹
6. Perceived accessibility of public information by businesses (%)	1.5/2.5 ⁵⁰²
Total ⁵⁰³	19.5/30

Noticeable progress has been achieved in recent years in access to public information. The legislative framework and technical arrangements have been improved to ensure that more information is disclosed proactively by public institutions. However, gaps in the legislation hamper effective supervision of the activities of public bodies in this area, and the institutional arrangements do not ensure sufficient co-ordination of the state's policy on access to public information.

Principle 3: Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest.

Oversight institutions (the Ombudsman, Accounting Chamber, courts) enjoy constitutional status, and the legislative framework creates solid ground for performing their functions independently from the executive. Compliance of the Ombudsman's status and mandate with international standards was confirmed by a score of 'A' granted by the Global Alliance of National Human Rights Institutions in 2014, within the accreditation process for ombudsman institutions⁵⁰⁴. According to the 2015 National Integrity System Assessment conducted by Transparency International, the overall performance of the Ombudsman institution has improved in recent years, and it has become "one of the strongest pillars of the national integrity system"⁵⁰⁵.

However, it is important to point out some concerns about the legislative framework. According to the

⁵⁰¹ KIIS (Kiev International Institute of Sociology) (2017), "Opinions and views of Ukrainian people: December 2017", a survey commissioned by SIGMA, KIIS, Kyiv.

⁵⁰² KIIS (2017), "Survey on business satisfaction with policy making and public service delivery", a survey commissioned by SIGMA, KIIS, Kyiv.

⁵⁰³ Point conversion ranges: 0-5=0, 6-10=1, 11-15=2, 16-20=3, 21-25=4, 26-30=5.

⁵⁰⁴ GANHRI (Global Alliance of National Human Rights Institutions) (2017), "Chart of the status of national institutions: Accreditation status as of 26 May 2017", http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf.

⁵⁰⁵ Transparency International Ukraine (2016), *National Integrity System Assessment: Ukraine 2015*, Transparency International Ukraine, Kirovohrad, https://ti-ukraine.org/wp-content/uploads/2016/12/nis_assessment_eng.pdf.

Ukraine Accountability

LCS, the head of the secretariat of the Ombudsman institution is appointed by the Ombudsman. But this is based on a proposal of the Commission on Senior Civil Service, which consists of members predominantly appointed by the Government⁵⁰⁶. This interferes with the Ombudsman's autonomy in managing the institution.

Furthermore, the investigatory powers of the Ombudsman institution, established by the Law on Ukrainian Parliament Commissioner for Human Rights⁵⁰⁷, are not fully effective. While the Law requires all public bodies to ensure access to documents and materials, there is no deadline for meeting this obligation. In practice, the Ombudsman institution sets some deadlines in requests addressed to the respective public bodies, but there are no legal grounds on which to demand a response within set deadlines.

Another issue is assigning the Ombudsman quasi-prosecutorial powers for supervising compliance with regulations on access to public information and personal data protection. According to the Code of Administrative Offences⁵⁰⁸, the Ombudsman is the body responsible for submitting requests to the court to impose financial sanctions on public officials violating these regulations. This arrangement reflects an archaic model of the Ombudsman's powers that exists today in only a few countries⁵⁰⁹. The dominant model of the Ombudsman institution focuses on protecting and promoting human rights via recommendations addressed to public authorities, rather than prosecuting public officials for misconduct. Furthermore, the Ombudsman institution's responsibility of conducting investigations and submitting cases to the courts creates an additional burden affecting its capacity to perform its core functions.

It should be underlined also that the Parliament does not provide adequate support to the Ombudsman institution. Since 2012, the Ombudsman has not been invited to present its annual reports to plenary sessions of the Parliament. Such presentations would amplify the impact of the Ombudsman's recommendations on executive bodies.

The Accounting Chamber faces similar problems. The LCS stipulates that the head of its administrative apparatus be selected by the Commission on Senior Civil Service, but this interferes with the Chamber's autonomy. Furthermore, the annual reports of the Chamber are not considered in a plenary session of the Parliament.

Beyond concerns about the legislative framework and co-operation with the Parliament, both oversight institutions require improvements in their internal management processes. The Ombudsman institution does not have mechanisms for monitoring implementation of its recommendations. It conducts more detailed checks, but only for recommendations addressed to detention facilities within the National Preventive Mechanism (a second monitoring visit). For other recommendations, it relies on replies received from relevant public authorities; the reliability of data on the number of fully implemented recommendations is therefore questionable. The Accounting Chamber has an internal procedure for monitoring the implementation of recommendations⁵¹⁰, but it does not aggregate and publish statistical data about the number and share of recommendations implemented.

The 2016 constitutional reform significantly strengthened guarantees of judicial independence and set foundations for necessary renewal of the judicial system. The introduction of lifetime appointments for judges, eliminating the Parliament's role in judicial appointments, and of the new High Council of

⁵⁰⁶ LCS, Article 91.

⁵⁰⁷ Verkhovna Rada (1998), Bulletin No. 20.

⁵⁰⁸ Supreme Soviet of the Ukrainian SSR (1984), Bulletin No. 51.

⁵⁰⁹ Council of Europe (1998), Making the Protection of Rights More Accessible to Citizens: The Ombudsman at Local and Regional Level: Proceedings, Messina, Italy, 13-15 November 1997, Council of Europe Publishing, Strasbourg, p. 13; Reif, L.C. (2004), The Ombudsman, Good Governance and the International Human Rights System, Springer Science+Media, Dordrecht, p. 403.

⁵¹⁰ Order of the Board of the Accounting Chamber No. 132 of 20 December 2012 on Exercising Control over the Execution of Resolutions and Conclusions.

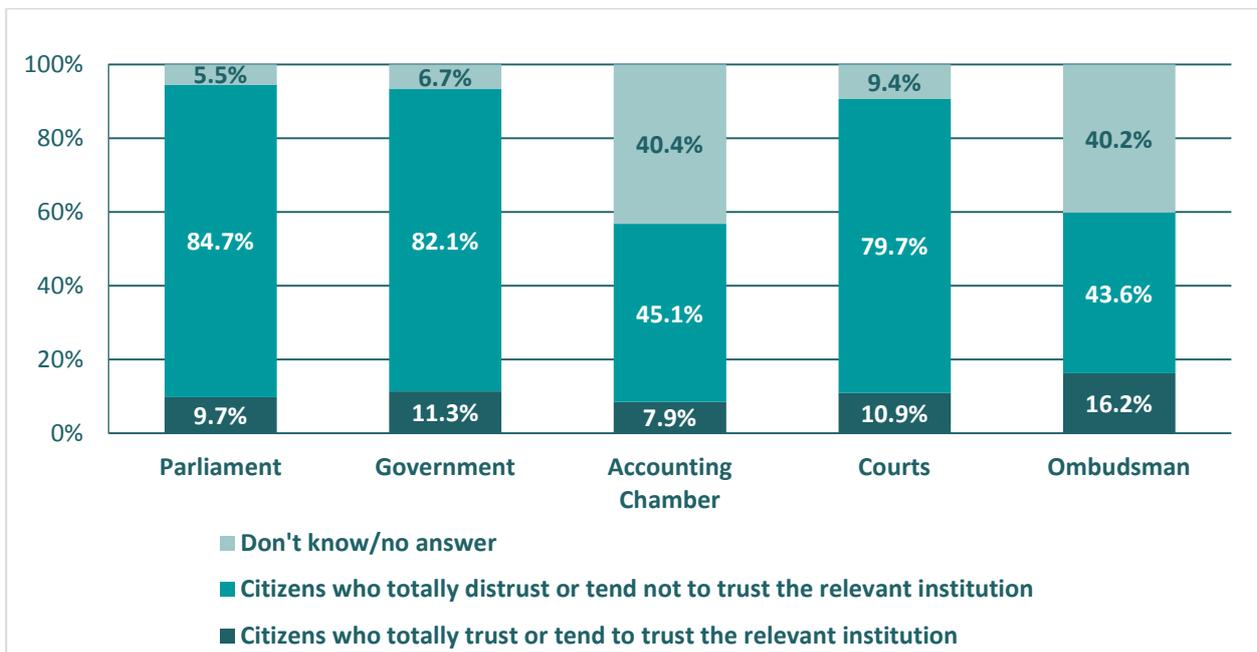
Justice (consisting predominantly of members selected by judges) were the most meaningful changes contributing to the insulation of courts from political interference.

However, some specific arrangements in the judicial system require further improvement. One of the major concerns raised by representatives of the judges is a lack of sufficient measures to protect their personal security. A special unit responsible for this task was dissolved after the Revolution of Dignity, and no alternative arrangement has been proposed. Moreover, judges are not sufficiently protected against criminal claims relating to their judicial activities. The Criminal Code provides for their liability for “knowingly delivering an unfair sentence, judgment or ruling”⁵¹¹. Not only is this provision vague, it also makes it possible to exert undue pressure on judges (e.g. by prosecutors dissatisfied with judicial decisions).

Allocation of cases to judges is not sufficiently secured from the risk of manipulation. While cases are distributed by an automated case management system without interference from executive bodies, several methods of manipulation exist. For example, the chief judge may influence case allocation by offering a judge strategically timed leave or by determining judges’ areas of specialisation⁵¹².

Although the legislative framework for oversight institutions meets key international standards, citizens’ trust in them remains extremely low, as is their level of trust in other state institutions (Figure 2). The Ombudsman is the most trusted institution, nonetheless a distrust ratio of 43% is alarming. It should also be noted that nearly 40% of respondents have no opinion about either of the oversight institutions, which may indicate low visibility of their work.

Figure 2. Citizens’ trust in oversight institutions in Ukraine compared with trust in the Government and the Parliament



Source: KIIS (2017), "Opinions and views of Ukrainian people: December 2017", a survey commissioned by SIGMA, KIIS, Kyiv.

According to the same public opinion poll, citizens believe that the media, individual citizens and civil society organisations are more effective in oversight of the Government than the Ombudsman or the Accounting Chamber. Over one-third of respondents perceive media and civil society as effective in scrutinising public authorities, whereas less than one-fifth of citizens feel that either oversight

⁵¹¹ Criminal Code, Article 375; Verkhovna Rada (2001), Bulletin Nos. 25-26.

⁵¹² GRECO (Council of Europe: Group of States Against Corruption) (2017), *Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors: Fourth Evaluation Report, Ukraine*, Council of Europe, Strasbourg, p. 43-44, <http://www.refworld.org/docid/5a1c32ba4.html>.

Ukraine
Accountability

institution performs this mission successfully. This demonstrates the scale of challenges faced by these oversight institutions and highlights the need for them to focus not only on performing their tasks in line with their statutory mission, but also on ensuring greater visibility and impact of their actions.

Considering the factors analysed above, the value for the indicator on effectiveness of scrutiny of public authorities by independent oversight institutions is 2.

Effectiveness of scrutiny of public authorities by independent oversight institutions						
This indicator measures the extent to which there is a functioning system of oversight institutions providing independent and effective supervision over all state administration bodies. The strength of the legislative framework is assessed, as well as the effectiveness of oversight institutions in changing practices in the state administration and building trust among the population.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal and institutional framework for oversight institutions	
1. Legislative safeguards for the independence and adequate mandate of the ombudsman institution	7/10
2. Legislative safeguards for the independence and adequate mandate of the SAI	9/10
3. Legislative safeguards for the independence of courts and judges	9/10
Effectiveness of oversight institutions	
4. Implementation of ombudsman recommendations (%)	0/8 ⁵¹³
5. Implementation of SAI recommendations (%)	0/8 ⁵¹⁴
6. Perceived independence of oversight institutions by the population (%)	0/5 ⁵¹⁵
7. Trust in oversight institutions by the population (%)	0/5 ⁵¹⁶
8. Perceived ability of oversight institutions and citizens to effectively hold the government accountable (%)	0/6 ⁵¹⁷
Total⁵¹⁸	25/61

The legislative framework for oversight institutions (the Ombudsman, Accounting Chamber and courts) meets key international standards, although several amendments to the legislation are necessary to ensure the desired level of independence of these institutions. The very low level of

⁵¹³ According to data provided by the Ombudsman institution, 1 961 recommendations were issued in 2017 and 1 197 were fully implemented. However, the list of fully implemented recommendations presented to SIGMA includes only 86 and the Ombudsman institution does not have a mechanism to ensure that actual implementation of the recommendations is monitored. Furthermore, Ombudsman annual reports do not contain information about the number of fully implemented recommendations.

⁵¹⁴ The Accounting Chamber established a procedure for monitoring implementation of recommendations. However, it does not aggregate, analyse and publish data about implemented recommendations (based on information provided by the Accounting Chamber and analysis of the annual reports).

⁵¹⁵ Based on KIIS (2017), "Opinions and views of Ukrainian people: December 2017, a survey commissioned by SIGMA, KIIS, Kyiv. According to this survey, 11% of citizens perceive the judicial system as independent from political influence. Perceived independence of the remaining oversight institutions are: a) Ombudsman – 14.7%; and b) Accounting Chamber – 10.3%. In comparison, 22% of citizens believe that the media is politically independent.

⁵¹⁶ Ditto.

⁵¹⁷ Ditto.

⁵¹⁸ Point conversion ranges: 0-10=0, 11-20=1, 21-30=2, 31-40=3, 41-50=4, 51-61=5.

citizens' trust poses another challenge for all oversight bodies. The Accounting Chamber does not systematically collect and publish information on the follow-up of its recommendations, and credible information on the level of implementation of Ombudsman recommendations is not available.

Principle 4: Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews.

The administrative justice system in Ukraine is three-tiered and consists of district administrative courts, administrative courts of appeal and the Supreme Court, acting as a court of cassation. In 2017, the re-established Supreme Court (with a chamber specialised in administrative cases) replaced the High Administrative Court that is now being abolished. The Code of Administrative Justice⁵¹⁹ provides extensive guarantees of judicial review of administrative actions. The general deadline for submitting cases to the administrative courts is long (six months). Administrative courts have the power to repeal unlawful administrative acts and order administrative bodies to refrain from unlawful actions, as well as to recognise unlawful omissions of state administration bodies and require the relevant body to perform specific activities.

Intentional non-enforcement of court rulings is subject to criminal liability⁵²⁰. Furthermore, the court may request the relevant public authority to provide a report on execution of the court's decision. In cases of non-execution, the court may set an additional deadline for implementation of the ruling, and if the relevant body fails to meet this deadline, a fine might be imposed.

The standard court fee for individual applicants in administrative cases is relatively high (8% of the average monthly salary), but some groups of applicants are *ex lege* exempted from the court fees (e.g. people with disabilities). There is also a procedure for granting exemption from fees for low-income applicants. In addition to this, a system of legal aid, including representation in court proceedings, has been established and is co-ordinated by the Co-ordination Centre for Legal Aid Provision, subordinated to the MoJ.

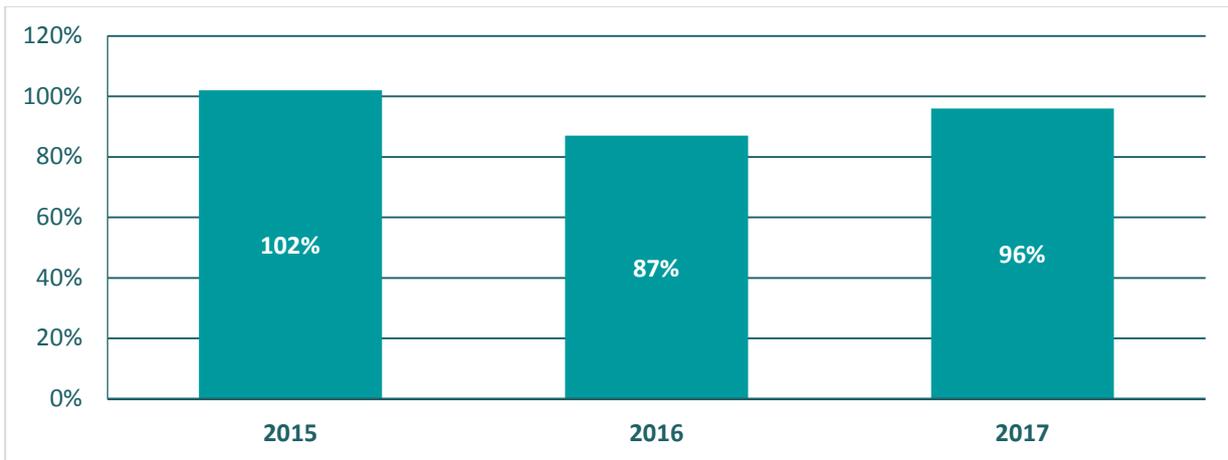
There are no remedies against excessive length of judicial proceedings in administrative cases. In March 2017, the MoJ established an inter-agency working group to develop solutions to the systemic problem of excessive length of pre-trial and judiciary proceedings, but no amendments to the legislation have been adopted yet. In administrative cases, however, the problem of excessive length of proceedings seems to be of minor significance. In 2017, the administrative courts of first instance managed to resolve nearly all incoming cases, and the average time needed to complete cases in first-instance courts is much shorter than the European average⁵²¹, although it has increased since 2015 (Figures 3 and 4). The major area of concern in this context is the renewed Supreme Court that began its operations with a backlog of nearly 40 000 cases (over 1 000 cases per judge) transferred from the abolished High Administrative Court.

⁵¹⁹ Verkhovna Rada (2005), Bulletin Nos. 35-37.

⁵²⁰ Criminal Code, Article 382.

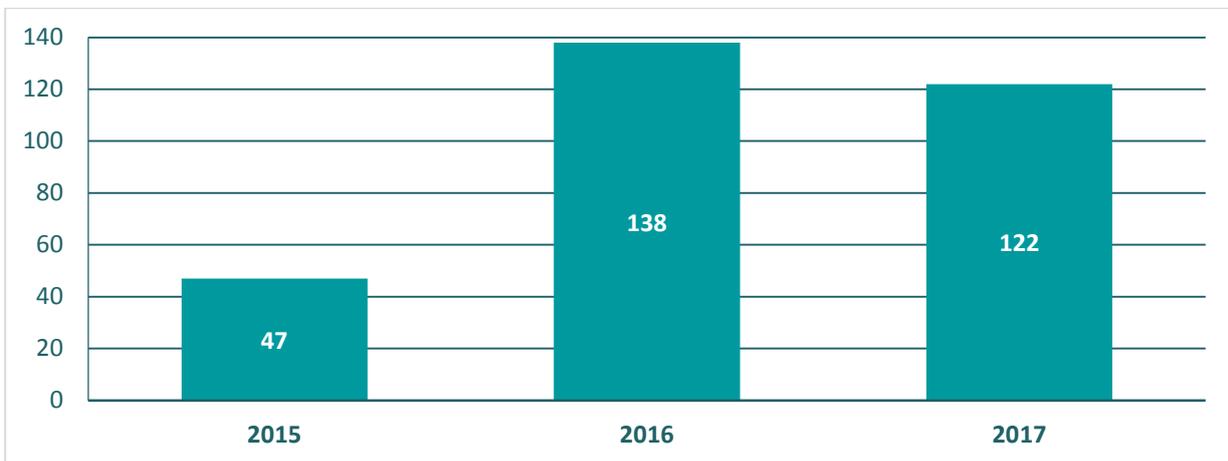
⁵²¹ According to the latest CEPEJ data for 2014, the average disposition time calculated from the disposition time of all states or entities (in days) is 341 days. CEPEJ (European Commission for the Efficiency of Justice) (2016), *European Judicial Systems: Efficiency and Quality of Justice*, p. 208, <https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%2023%20report%20EN%20web.pdf>.

Figure 3. Clearance rate in administrative courts of first instance (2015-2017)



Source: Data provided by the State Judicial Administration.

Figure 4. Calculated disposition time (in days) in administrative courts of first instance (2015-2017)



Source: Data provided by the State Judicial Administration.

Technical support for the work of administrative judges is relatively good. The ratio of one judge to one legal assistant is ensured in most of the administrative courts, and judges attend training programmes organised by the National School of Judges. The minimum training set by law⁵²² for every judge is at least 40 academic hours every three years, and data received from the High Qualification Commission confirms that training programmes are organised. The courts are consulted on the training curriculum, and it is approved by the High Qualification Commission of Judges. There are separate training programmes for judges of the appeal administrative courts, junior judges (those with less than three years of work experience) in administrative courts of first instance and more experienced judges in the first-instance courts⁵²³.

The case management system used in the administrative courts is at the basic level of advancement. It enables registration of all events in each case (e.g. new submissions from the parties or information about payment of court fees), access to judicial decisions and searching of cases. However, generating statistical reports on the workload of judges or detecting overdue cases requires additional work. The State Judicial Administration recently launched a new electronic system providing real-time access to data on the workload of all courts, but it has not yet developed a monitoring mechanism to ensure that

⁵²² Law on the Judicial System and the Status of Judges, Article 89.2.

⁵²³ <http://www.nsj.gov.ua/training/judges/andministrativna-urizdiktsiya/>.

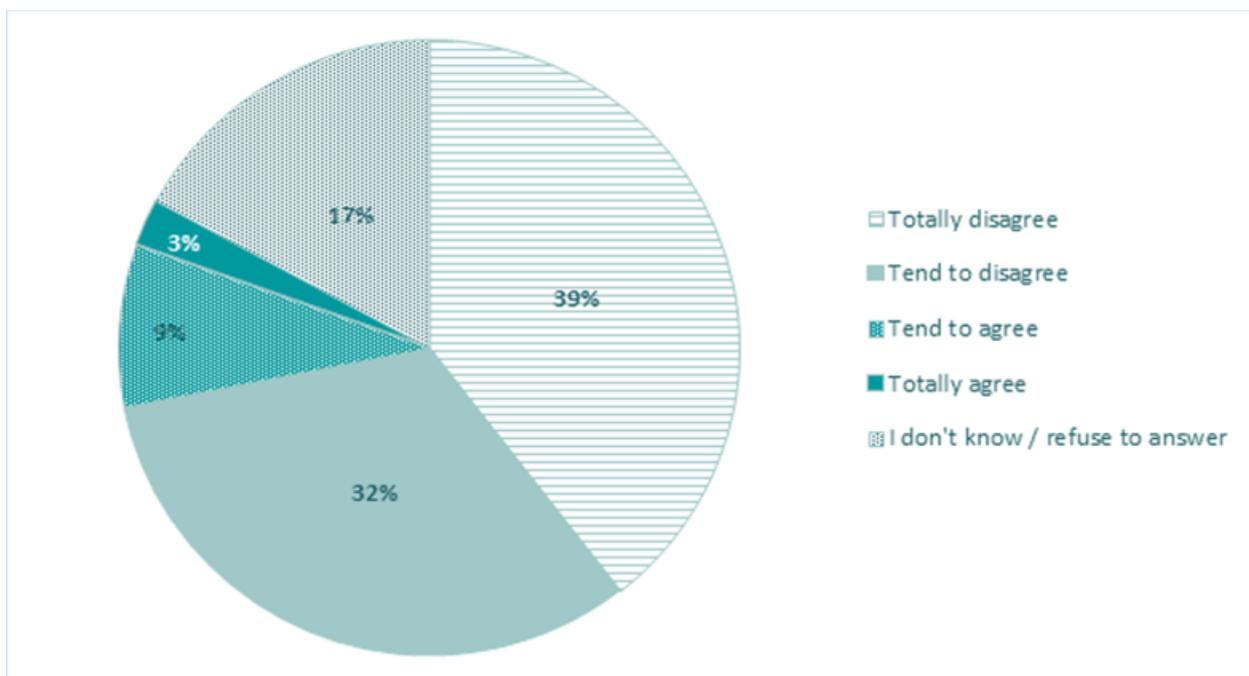
Ukraine
Accountability

statistical reports are regularly produced and analysed and that corrective measures are taken promptly when efficiency problems are detected.

Transparency of judicial decisions is good. According to the Law on Access to Court Decisions⁵²⁴, all judgements have to be made available online via the official registry of court decisions run by the State Judicial Administration⁵²⁵.

While the efficiency of the administrative courts is high and technical preconditions for their operation are secured, restoring citizens' trust in judicial independence remains the major challenge (Figure 5). Renewal of the judicial system (including re-establishment of the Supreme Court, reappointment of judges and strengthening guarantees of judicial independence) was crucial, but these measures were not sufficient to improve citizens' trust in the court system.

Figure 5. Perceived independence of the courts of political influence (% of citizens agreeing that courts are independent of political influence)



Source: KIIS (2017), "Opinions and views of Ukrainian people: December 2017", a survey commissioned by SIGMA, KIIS, Kyiv.

Considering the factors analysed above, the value for the indicator on fairness in handling of administrative judicial disputes is 4.

⁵²⁴ Verkhovna Rada (2006), Bulletin No. 15.

⁵²⁵ <http://reyestr.court.gov.ua>.

Fairness in handling of administrative judicial disputes

This indicator measures the extent to which the legal framework and the organisation of courts support fair treatment in administrative judicial disputes. It covers the main criteria for an effective judiciary in efficiency, quality (including accessibility) and independence. Outcomes, in terms of case flow and public perceptions of independence, are also measured.

Overall indicator value 0 1 2 3 4 5

Sub-indicators	Points
Legal framework and organisation of the judiciary	
1. Adequacy of the legislative framework for administrative justice	6/6
2. Accessibility of administrative justice	3/4
3. Effectiveness of remedies against excessive length of proceedings in administrative cases	0/2 ⁵²⁶
4. Use of an electronic case-management system	1/1
5. Public availability of court rulings	2/2
6. Organisation of judges handling administrative justice cases	4/5
Performance of the administrative the justice system	
7. Perceived independence of judicial system by the population (%)	0/5 ⁵²⁷
8. Calculated disposition time of first-instance administrative cases	5/5
9. Clearance rate in first-instance administrative courts (%)	4/5
10. Cases returned for retrial by a higher court (%)	3/5
Total ⁵²⁸	28/40

The right to challenge administrative acts and omissions in the courts is guaranteed, and the administrative courts handle cases efficiently. However, the vast majority of citizens do not perceive the courts as independent of political influence.

Principle 5: The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation.

The Law on Central Executive Bodies enshrines the general principle of public liability for damage caused to citizens and other entities by illegal decisions, actions or inactivity of officials of ministries and other CEBs in the course of executing public authority⁵²⁹. The detailed procedural framework for seeking compensation established in the Civil Code⁵³⁰ provides for three types of public liability⁵³¹:

- 1) damage inflicted on a physical or legal person as a result of illegal decisions, actions or inactivity of public bodies in implementing their authorities;

⁵²⁶ No such measures have been detected in the legal system.

⁵²⁷ Based on KIIS (2017), "Opinions and views of Ukrainian people: December 2017", a survey commissioned by SIGMA, KIIS, Kyiv.

⁵²⁸ Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-40=5.

⁵²⁹ Law on Central Executive Bodies, Article 27.2.

⁵³⁰ Verkhovna Rada (2003), Bulletin Nos. 40-44.

⁵³¹ Civil Code, Articles 1173-1175.

Ukraine
Accountability

- 2) damage inflicted on a physical or legal person as a result of illegal decisions, actions or inactivity of the official of a public body in implementing its authorities;
- 3) damage inflicted on a physical or legal person as a result of approval by the public body of a legal act recognised illegal and abrogated.

While this typology of the grounds and forms of public liability seems to embrace all potential cases in which public liability should be guaranteed, the distinction between damage caused by the state government and an official of the state government is unclear. Every act of a public official committed in the course of executing public authority is an act of the state. Thus, the second type of liability listed above appears to be superfluous and may, in practice, lead to discrepancies in interpretation and problems in application of the law. For example, it might be challenging for a potential applicant to choose the appropriate ground for seeking compensation in specific cases, and misjudgement in this respect may result in rejection of the claim.

Other procedural aspects of seeking compensation are well regulated. The time limit for issuing public liability claims is sufficient (three years) and the guaranteed compensation is comprehensive, covering both direct loss and lost profits. There is no discrimination in access to public liability procedures, as the above-mentioned provisions are applicable to damage caused to all natural and legal persons.

However, there is no mechanism for collecting and analysing data on judicial practice in public liability. Therefore, it is not possible to assess whether the procedure set out in the Civil Code is used by parties suffering damage from state activities or omissions. In addition to this, the Government does not collect data about the payments resulting from this type of cases.

Considering the factors analysed above, the value for the indicator on functionality of public liability regime is 2.

Functionality of public liability regime						
The indicator measures the extent to which there is a functioning system guaranteeing redress or compensation for unlawful acts and omissions of public authorities. It examines the strength of the legislative framework for public liability and whether it is applied in practice. Wrongful acts of the state against civil servants are excluded.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework for public liability	
1. Comprehensiveness of the scope of public liability	1/1
2. Coverage of the public liability regime to all bodies executing public authority	1/1
3. Non-discrimination in seeking the right to compensation	1/1
4. Efficiency and fairness of the procedure for seeking compensation	3/3
Practical implementation of the right to seek compensation	
5. Application of the public liability mechanism in the court in practice	0/3 ⁵³²
6. Proportion of entitled applicants receiving payments	0/3 ⁵³³
Total ⁵³⁴	6/12

Legislative guarantees are in place for seeking compensation in the case of wrongdoing by public authorities, but there is no mechanism for collecting, aggregating and analysing data on court practices in this area. Thus, it is not possible to assess the level of practical application of the public liability tools.

Key recommendations

Short-term (1–2 years)

- 1) Prior to the planned reorganisation of government (transferring policy implementation functions from ministries to subordinated bodies), the Government should develop a comprehensive methodological framework for managing the reorganisation, ensuring that: a) the scope of government functions is reviewed and unnecessary areas and forms of state intervention are eliminated (public interest test); b) all institutional delivery options for the remaining government functions are analysed, including decentralisation/deconcentration to local governments, outsourcing to the private sector, transferring to the judicial branch and agencification or delivery by the ministries (delivery options test); and c) there is an institution explicitly responsible and equipped with sufficient analytical capacity to co-ordinate the reorganisation process.
- 2) The Government should clarify the objectives and planned outcomes of the ongoing process of restructuring the ministries. In particular, the position of the newly established directorates in the hierarchical structure of the ministry and their relationship with existing departments needs further elaboration.
- 3) The Government should promote a culture of decentralised management in the ministries, based on delegation of decision making from the level of state secretaries to heads of departments,

⁵³² No data provided by the administration.

⁵³³ Ditto.

⁵³⁴ Point conversion ranges: 0-2=0, 3-4=1, 5-6=2, 7-8=3, 9-10=4, 11-12=5.

Ukraine
Accountability

while ensuring that state secretaries have overall responsibility for the ministry's system of internal control mechanisms. This may require amendments to the legislation to eliminate any direct and indirect obstacles to delegation.

- 4) The Parliament should invite the Ombudsman to present its annual report in a plenary session and should establish mechanisms for the Parliament to supervise the implementation of Ombudsman recommendations by state administration bodies (e.g. by requiring the Government to report on implementation of the recommendations on a regular basis, or by setting up a special parliamentary committee to monitor the implementation of recommendations).
- 5) The Government should develop a proposal to amend the LCS to ensure that the Ombudsman institution and the Accounting Chamber can independently appoint and dismiss the heads of their apparatus, while securing a merit-based, competitive and transparent recruitment process.
- 6) The Ombudsman should introduce internal mechanisms for monitoring implementation of its recommendations, and the Accounting Chamber should aggregate, analyse and publish data on implementation of its recommendations.
- 7) The MoJ, in co-operation with the Ministry of Finance and the State Judicial Administration, should introduce a mechanism to monitor implementation of public liability cases in administrative and judicial practice, in order to develop policies to improve administrative practices and reduce the number of liability cases in the future.

Medium-term (3–5 years)

- 8) The Government should develop a new steering model for bodies subordinated to the ministries, based on a clear and consistent vision of the autonomy they should have. This model, to be introduced gradually, should promote results-oriented management, combining operational autonomy of non-ministerial bodies with strong accountability for outcomes delivered by them. One of the elements to be addressed in this model should be a procedure for appointing and dismissing the heads of bodies subordinated to ministries to ensure an appropriate balance between stronger accountability to ministers and depoliticisation of appointments.
- 9) The Government should propose a comprehensive supervision and monitoring scheme in the area of access to public information, in which the following functions are clearly addressed:
 - a) collection, aggregation and analysis of statistical data on implementation of the Law on Access to Public Information, with the aim of identifying practical obstacles in access to information;
 - b) monitoring of compliance with legislative requirements on proactive provision of public administration;
 - c) issuing guidelines and interpreting application of the Law on Access to Public Information, as well as conducting training and providing information holders with legal and technical advice; and
 - d) reviewing legislation and proposing the amendments necessary to eliminate barriers to accessing information. This may require the establishment of a new independent supervisory body.



SERVICE DELIVERY

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

1.1. State of play

Ukraine's Strategy for Sustainable Development ('Ukraine 2020'), its Medium-Term Government Priority Action Plan to 2020, and its Action Plan for Implementation of the Association Agreement between Ukraine and the European Union 2018-2020 define objectives, actions and indicators for administrative reform. The main government-wide strategy addressing administrative reform and service delivery is the Strategy of Public Administration Reform (PARS) in Ukraine for 2016-2020 with its accompanying action plan⁵³⁵, which contains a chapter on delivering administrative services and developing a legislative framework for administrative procedures.

All these strategies define the development of online services and e-governance at large as top priorities for reforming the public administration in Ukraine. Regarding a policy framework that would enable the advancement of e-governance, essential steps have been taken such as adoption of the Concept for the Development of an Electronic Services System and its action plan for 2017-2018⁵³⁶, and the Development Concept of Digital Economy and Society in Ukraine for 2018-2020⁵³⁷, among others.

The main responsibility for implementing administrative service reform lies with the Ministry of Economic Development and Trade (MoEDT), whereas optimising and developing online services is being co-ordinated by the National Agency for e-Governance. The latter has a strong mandate to lead the digitalisation of the public administration in Ukraine.

Regarding administrative service delivery, a network of administrative service centres (TSNAPs⁵³⁸) has been established to increase public service accessibility throughout the country. In online service delivery, the Unified State Portal for Administrative Services⁵³⁹ (Services Portal) has been launched and other developments are currently underway, such as establishing an interoperability framework and a unified system for electronic identification.

Despite a clear policy objective to improve administrative service provision, the majority of administrative services have not yet reached a high maturity level and are not user-friendly. There are several reasons for this: first, the Law on Administrative Procedures has not been put in place, which means that the basic administrative principles have not yet been universally established, nor is there a uniform framework to protect citizen rights in administrative proceedings; second, the collection, maintenance and sharing of data stored in national registries is ineffective and duplicative, and there is no real-time data exchange yet, while the existing registries suffer from problems of incomplete and poor-quality data; third, a recently established system for electronic identification, authentication and signing has not yet been deployed and finally, there is little alignment between the re-engineering of administrative services by the MoEDT and the digitalisation of services by the National Agency for e-Governance, which has resulted in processes not being fully aligned. Overall, the full potential of technology to support public administration reform and simplification has yet to be realised.

⁵³⁵ Decision of the Cabinet of Ministers of Ukraine (CMU) No. 474-r of 24 June 2016.

⁵³⁶ Decision of the CMU No. 918-r of 16 November 2016.

⁵³⁷ Decision of the CMU No. 67-r of 17 January 2018.

⁵³⁸ In Ukrainian центри надання адміністративних послуг [tsentri nadannja administrativnih poslug].

⁵³⁹ Unified State Portal for Administrative Services: <http://poslugy.gov.ua/>.

1.2. Main developments

The PARS for 2016-2020 and its action plan⁵⁴⁰ were adopted by the Cabinet of Ministers of Ukraine (CMU) on 24 June 2016. The action plan was amended in 2017⁵⁴¹.

A comprehensive policy framework for advancing online services, and e-governance more generally, has been established through the Concept for the Development of Electronic Governance⁵⁴², the Concept for the Development of an Electronic Services System⁵⁴³ and its action plan for 2017-2018⁵⁴⁴, and the Concept for the Development of Digital Economy and Society in Ukraine for 2018-2020 and its action plan⁵⁴⁵. In addition, the Concept of E-Democracy Development was adopted in 2017⁵⁴⁶.

Essential steps to establish a common interoperability framework have also been taken. A resolution on Some Issues of Organising Electronic Interaction of State Electronic Information Resources⁵⁴⁷ was adopted; the draft Law on Public Electronic Registries⁵⁴⁸ has been prepared; the National Interoperability Development action plan foresees full harmonisation with the European Interoperability Framework (EIF) by 2020; and development of the Trembita technical interoperability platform was initiated in 2016.

A system for electronic identification, authentication and signing has been introduced, and in 2015 the State Migration Service's Unified State Demographic Registry was created to begin issuing unified national personal identifiers (i.e. unique registry entry numbers, or URENS)⁵⁴⁹ to all Ukrainian citizens. The Law on Electronic Trust Services was adopted in 2017⁵⁵⁰ to harmonise the EU Electronic Identification, Authentication and Trust Services (eIDAS) Regulation⁵⁵¹.

Implementation of the Law on Administrative Services⁵⁵² is ongoing. A vast network of TSNAPs has been established, increasing accessibility to administrative services throughout Ukraine. There were 746 centres as of January 2018: 278 created by local self-government bodies and 468 by local state administrations. The number of administrative services provided through the TSNAPs has increased considerably⁵⁵³. The Services Portal was also launched and individual ministries' administrative services are being integrated into the portal.

⁵⁴⁰ Decision of the CMU No. 474-r of 24 June 2016.

⁵⁴¹ Decision of the CMU No. 726-r of 11 December 2017.

⁵⁴² Decision of the CMU No. 649-2 of 20 September 2017.

⁵⁴³ Decision of the CMU No. 918-r of 16 November 2016.

⁵⁴⁴ Decision of the CMU No. 394-r of 14 June 2017.

⁵⁴⁵ Decision of the CMU No. 67-r of 17 January 2018.

⁵⁴⁶ Decision of the CMU No. 797-r of 8 November 2017.

⁵⁴⁷ Decision of the CMU No. 606 of 8 September 2016.

⁵⁴⁸ Draft Law on Public Electronic Registries, made available for public consultation on 2 March 2018. The draft Law was prepared by the National Agency for e-Governance and the Verkhovna Rada (Parliament) Committee for Information and Communication, supported by the Transparency and Accountability in Public Administration and Services (TAPAS) international technical aid project, funded jointly by the US Agency for International Development (USAID) and the UK Department for International Development (DFID), and implemented by the Eurasia Foundation with the Eastern Europe Foundation and the International Development Law Organization (IDLO).

⁵⁴⁹ Law on the Unified State Demographic Registry and Documents Confirming the Citizenship of Ukraine, Certifying a Person or His/Her Special Status.

⁵⁵⁰ Law No. 2155-VIII of 5 October 2017 on Electronic Trust Services.

⁵⁵¹ EU Regulation No. 910/2014 on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market.

⁵⁵² Law No. 5203-VI of 6 September 2012 on Administrative Services.

⁵⁵³ The list of administrative services has been expanded. For instance, Decision of the CMU No. 782 of 11 October 2017 added the following services to the list of administrative services provided through TSNAPs: issuing driving licences and registering a personal vehicle, as well as several social services.

2. ANALYSIS

This analysis covers four Principles for the service delivery area grouped under one key requirement. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators⁵⁵⁴, and an assessment of the state of play for each Principle. At the end of the chapter, short- and medium-term recommendations are presented.

Key requirement: The public administration is citizen-oriented; the quality and accessibility of public services is ensured.

The values of the indicators assessing Ukraine’s performance under this key requirement are displayed below.

Indicators	0	1	2	3	4	5
Citizen-oriented service delivery				◆		
Fairness and efficiency of administrative procedures	◆					
Existence of enablers for public service delivery		◆				
Accessibility of public services			◆			

Legend: ◆ Indicator value

Analysis of Principles

Principle 1: Policy for citizen-oriented state administration is in place and applied.

The CMU is committed to reforming the public administration and improving administrative processes and services. This commitment has been made manifest in a recently established government-wide policy framework, of which the main strategies are the Ukraine 2020 Strategy, the Medium-Term Government Priority Action Plan to 2020, the Action Plan for Implementation of the Association Agreement between Ukraine and the European Union 2018-2020, and the PARS for 2016-2020. These strategies place effective, citizen-centred public administration at the core of the reforms and define online service delivery and e-governance at large as among the top PAR priorities. Importantly, the Law on Administrative Services supporting these directions has been in place since 2012. Furthermore, the recently approved Concept of Electronic Governance Development, the Concept for the Development of an Electronic Services System and the Development Concept of Digital Economy and Society in Ukraine for 2018-2020 contain the fundamental ‘once only’, ‘openness and reuse’ and ‘digital by default’ principles, as well as equally essential initiatives to build a coherent state information system. There has been a positive shift in how e-governance is perceived within the administration – no longer as a vehicle for online service delivery only, but also as an instrument to involve people in policy-making processes. For this reason, both the Ukraine National Action Plan for the Open Government

⁵⁵⁴ OECD (2017), SIGMA, *Methodological Framework for the Principles of Public Administration*, OECD, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

Ukraine Service Delivery

Partnership (OGP) Initiative⁵⁵⁵ and the Concept of e-Democracy Development in Ukraine are worth mentioning even though they are not analysed in this report.

However, there is little alignment between the policies to simplify in-person administrative services and those to digitalise services, which could lead to inefficient and burdensome digitalised services. The PARS for 2016-2020 and the accompanying action plan currently include two distinct priorities for each: whereas one part of the action plan foresees re-engineering and digitalising 120 administrative services, another part aims to optimise only the 15 most-used and popular ones, following a life-event approach⁵⁵⁶. This lack of policy co-ordination between in-person and online service development is further illustrated in the Concept for the Development of an Electronic Services System and its action plan, which lists 45 services to be digitalised that, to a great extent, do not overlap with the administrative services' modernisation plan⁵⁵⁷; most differ from the services listed among the top 15 to be simplified.

The organisational set-up makes the CMU responsible for public sector reform and the MoEDT the main catalyst for decentralisation, simplification and improvement of administrative service delivery. The MoEDT, more specifically the Administrative Services Reform Office⁵⁵⁸, has begun to optimise the procedures of 15 administrative services, including a '3-in-1' service related to a childbirth⁵⁵⁹. These services will be digitalised after their re-engineering. Considering the cross-governmental nature of administrative service provision, the limited capacity of government institutions and the level of co-operation among them, as well as between government institutions and end users, pose a threat to the success of this expansive endeavour.

Finally, the MoEDT is also responsible for checking business-related Regulatory Impact Assessment (RIA) reports⁵⁶⁰. In practice, they are closely supported by the Better Regulation Delivery Office (BRDO), a donor-funded initiative. The CMU holds regular sessions on deregulation, for which the MoEDT prepares specific legal acts to simplify how the country does business. In 2017, the CMU held 4 such sessions, during which amendments to roughly 15 acts on licensing, control of small and medium-sized enterprises (SMEs), support to SMEs, and land and forest issues were approved⁵⁶¹. The MoEDT, with the assistance of the BRDO, has also prepared a set of draft laws on improving Ukraine's Doing Business rating⁵⁶², and regular SME testing⁵⁶³ is conducted. The State Regulatory Service (SRS) is the body that receives RIA reports, but they are not sent to the CMU with the draft law and the explanatory note, thus limiting their usefulness in decision making. Moreover, business-related RIAs are executed in parallel with regular RIAs analysed by the SRS and they duplicate each other to some extent, thus creating a heavier burden for ministries (for a full assessment of the RIA system, see chapter on Policy Development And Co-ordination of this report).

⁵⁵⁵ The OGP is an international platform for national stakeholders to make governments more open, accountable and responsive to citizens. Ukraine joined the initiative in 2011, making a commitment to adhere to the principles of open governance and to deliver a National Action Plan (<https://www.opengovpartnership.org/countries/ukraine>).

⁵⁵⁶ Using a life-event approach, public services are designed on the basis of life events such as births, marriages, deaths, starting a business, etc.

⁵⁵⁷ The administrative services simplification process, led by the MoEDT, more specifically the Administrative Services Reform Office, has begun to optimise the processes of 15 administrative services.

⁵⁵⁸ The Administrative Services Reform Office was established within the framework of a Canadian technical aid project led by Agriteam Canada Consulting Ltd.

⁵⁵⁹ The 3-in-1 childbirth service foresees unification of the following, currently separate administrative services: issuing a birth certificate and assigning a unique number for a newborn, registering a residence for a newborn and granting social subsidies. As a result of this administrative service re-engineering, the number of required documents will drop from 6 to 2, and the number of hours to complete the service from 12 to 1.

⁵⁶⁰ The Law on the Principles of State Regulatory Policy in the Sphere of Economic Activity, adopted 11 September 2003.

⁵⁶¹ Interview with the MoEDT, 23 February 2018.

⁵⁶² Draft Laws Nos. 6540-6543 proposed to the Parliament 6 June 2017.

⁵⁶³ SME testing checks the potential burdens of regulations on SMEs.

Ukraine Service Delivery

Simplifying and developing online services, however, is a responsibility of the National Agency for e-Governance; it is attached directly to the Prime Minister and both its mandate and size have grown considerably since its establishment in November 2014⁵⁶⁴. In addition, the Ministry of Justice (MoJ) is the key government organisation in developing business-related databases and related services, such as the registration of legal entities and individual entrepreneurs, or the termination of activity of individual entrepreneurs. Similar to the simplification of administrative services led by the MoEDT, the development of online services is characterised by weak horizontal co-operation, limited mainly to non-institutionalised *ad hoc* meetings. Still, the Interagency Council on e-Governance Development formed in 2009⁵⁶⁵ to advise the CMU has become more active in recent years, and a Working Group on Open Data Development has also been established.

Despite political support and high prioritisation, service delivery for citizens and businesses has not improved noticeably. There are some promising examples, such as the birth benefit application, but the majority of services are not digitally available, the processes are overregulated and ineffective, and services are not user-friendly. One of the most extreme examples is that of land plot registration, for which 54 documents and up to 2 years are required for processing⁵⁶⁶. The majority of digital services are not yet at the third or fourth level of sophistication⁵⁶⁷, and they often replicate cumbersome in-person service procedures. Finally, digital uptake is also low⁵⁶⁸.

Generally, more digital services are available to businesses than to individuals, including three out of four services that were analysed by SIGMA, such as declaring and paying value-added taxes (VAT), declaring and paying taxes levied on profits of companies, and registering a business. Citizens have access to online services largely related to the issuance of certificates (pension certificates, compulsory state social insurance certificates, etc.) and excerpts from state registries (e.g. the State Civil Registry and the Unified Registry of Legal Entities, Physical Persons, Entrepreneurs and Civic Associations), and registering for in-person service queues. Out of the three services for citizens that were analysed by SIGMA, only one, that of declaring and paying taxes levied on income of natural persons, was available digitally, whereas renewing a personal identification document and registering a personal vehicle were not yet available in electronic format. Both renewing a personal identification document and registering a personal vehicle receive a value of 0 due to excessive requirements for document submission and in-person contacts, in addition to the unavailability of these services in an electronic format.

For in-person services, citizens can use a vast network of TSNAPs established throughout the country as part of the decentralisation process that delegates powers to local self-government bodies to provide administrative services. The most recent developments concern the capacity of the TSNAPs to

⁵⁶⁴ Interview with the National Agency for e-Governance, 18 February 2018.

⁵⁶⁵ Decision of the CMU No. 4 of 14 January 2009 on the Establishment of the Intersectoral Council for Electronic Governance Development.

⁵⁶⁶ Administrative Services Reform Office's burden reduction plan for the 15 priority administrative services.

⁵⁶⁷ In the Concept of the Development of an Electronic Services System, online services are divided into four categories, following the methodology of the UN e-Government Survey. In the first phase, electronic access to information about administrative services is provided and in the second phase, forms can be downloaded, filled in and printed, but not submitted online. The third phase allows electronic submission of forms and online payment for services, and the service user can be identified electronically but the government's response (the service) is not offered digitally. At the fourth level, there is no physical interaction between service users and providers and the service can be obtained digitally.

⁵⁶⁸ According to the State Fiscal Service, 1.4% of natural-person taxpayers (self-employed are not counted) file income tax returns electronically, i.e. about 9 000 people. When a taxpayer receives only a wage or salary income or other income from an employer, the employer automatically files the tax and no tax returns are required to be filed by the taxpayer. A similar situation exists with income derived from the sale or inheritance (receipt as a gift) of property, wherein the tax is paid when the notarial deed is drawn up. Of approximately 20 million income-earners in 2017, 636 000 filed tax returns.

Ukraine Service Delivery

issue domestic and international passports for Ukrainian citizens⁵⁶⁹ as well as the state registration of land plots.

Regarding online service delivery, a Services Portal has been launched and it provides a number of administrative services that were integrated into the Portal in 2016-2017. However, the majority of administrative services is not yet available through the Services Portal and the main means of accessing digital services are still the websites of government institutions. Also, administrative services provided by local self-government bodies are entirely unavailable through the Portal.

A survey commissioned by SIGMA in 2017 shows that 28.6% of respondents are satisfied with administrative services for businesses and 40.1% are satisfied with digital services for businesses⁵⁷⁰. Of the citizens who have used administrative services provided by the central government, 35.7% are satisfied, and 54.4% are satisfied with digital services⁵⁷¹.

The value for the indicator on citizen-oriented service delivery is therefore 3.

⁵⁶⁹ According to the Law on the Unified State Demographic Registry and Documents Confirming the Citizenship of Ukraine, Certifying a Person or His/Her Special Status, as of 1 August 2017, administrative service centres can provide and accept documents for registering and issuing both domestic and international passports for Ukrainian citizens.

⁵⁷⁰ KIIS (Kiev International Institute of Sociology) (2017), "Survey on business satisfaction with policy making and public service delivery", a survey commissioned by SIGMA, KIIS, Kyiv. The breakdown of those satisfied is as follows: 21.3% are satisfied and 7.3% are highly satisfied with administrative services for businesses, whereas 24.6% are satisfied and 15.5% are highly satisfied with digital services for businesses.

⁵⁷¹ KIIS (2017), "Opinions and views of Ukrainian people: December 2017", a survey commissioned by SIGMA, KIIS, Kyiv. The breakdown of those satisfied is as follows: 32.9% are mostly satisfied and 2.8% are completely satisfied with administrative services provided by central government institutions to citizens, whereas 50.7% are mostly satisfied and 3.7% are completely satisfied with digital administrative services provided by central government institutions to citizens.

Ukraine
Service Delivery

Citizen-oriented service delivery						
This indicator measures the extent to which citizen-oriented service delivery is defined as a policy objective in legislation or official government plans and strategies. It furthermore measures the progress of implementation and evaluates the results achieved, focusing on citizens and businesses in the design and delivery of public services. Implementation and results are evaluated using a combination of quantitative and perception-based metrics.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Policy framework for citizen-oriented service delivery	
1. Existence and extent of application of policy for service delivery	6/8
2. Existence and extent of application of policy for digital service delivery	4/8
3. Existence of central co-ordination for digital government projects	2/4
4. Established policy for administrative simplification	8/12
Performance of citizen-oriented service delivery	
5. Perceived quality of public service delivery by citizens (%)	2/6
6. Renewing a personal identification document	0/6
7. Registering a personal vehicle	0/6
8. Declaring and paying personal income taxes	1.5/6
9. Perceived quality of public service delivery and administrative burdens by businesses (%)	1.5/6
10. Starting a business	4/6
11. Obtaining a commercial construction permit	4/6
12. Declaring and paying corporate income taxes	5.5/6
13. Declaring and paying value added taxes	4/6
Total⁵⁷²	42.5/86

The strategic framework for service delivery and digital service delivery is defined in several policy documents approved by the Government, most notably the PARS 2016-2020, the Concept of Electronic Governance Development and the Concept for the Development of an Electronic Services System. Ambitious-plans to simplify and digitalise administrative services are mostly in place, but currently there is only a small number of genuinely user-friendly services. Also, alignment among policies to simplify in-person administrative services and to digitalise them is poor. The Government’s better-regulation agenda has been systematically implemented.

Principle 2: Good administration is a key policy objective underpinning the delivery of public service, enacted in legislation and applied consistently in practice.

Ukraine’s Constitution enshrines the rule of law principle, which is the cornerstone of good public administration⁵⁷³. However, detailed and codified principles of good administration that would be binding for all state administration bodies do not accompany this general declaration.

⁵⁷² Point conversion ranges: 0-14=0, 15-28=1, 29-42=2, 43-56=3, 57-70=4, 71-86=5. Rounded up to 43 to calculate the point conversion. SIGMA uses a rounding up convention when the total number of points for an indicator includes 0.5 points.

⁵⁷³ Constitution of Ukraine, Article 8.

Ukraine

Service Delivery

The Government estimates that there are currently more than 300 laws in which specific administrative proceedings are regulated. This clearly demonstrates the scale of fragmentation and the difficulty in disseminating common procedural standards. The MoJ has established a working group to draft a Law on Administrative Procedures (LAP), which is under development. However, at this stage it remains unclear whether it will ensure full unification of basic procedural standards for the proceedings currently regulated by special laws. Therefore, the value of the sub-indicator on the existence of legislation on administrative procedures of general applicability is 0.

The need for general regulation of administrative proceedings has been amplified by a review by SIGMA of laws regulating the process by which public administration bodies resolve individual citizens' cases. This review analysed procedures concerning access to public information, taxation issues, business registration and construction permits. None of the relevant regulations guarantees all of the basic principles of good administration protecting the procedural rights of the parties; in particular, the right to be heard prior to a final decision and access to case files are not explicitly safeguarded in the laws regulating the procedures analysed.

Furthermore, there is no uniform, standard administrative act. While in most cases justification and legal grounds for decisions against a party in a proceeding are legally required, attaching detailed information about the party's right to appeal is not common. Deadlines for handling cases are usually set in special regulations, but remedies against administrative silence are not consistently regulated. In some cases the principle of 'silent consent' applies⁵⁷⁴, but in other procedures analysed by SIGMA, the party has no access to instruments to accelerate the proceedings (e.g. to request that a higher-instance authority, such as a ministry over its subordinate body, set a deadline for resolving the case). However, applying the silent consent rule entails an inherent risk of corruption and should be used with caution.

Another problem lies in the lack of a clear concept of appeal procedures within the administration⁵⁷⁵. For example, the Law on Access to Public Information states that decisions to refuse access to information (i.e. administrative silence) may be appealed to the head of the relevant body, higher authority or court⁵⁷⁶. It has not been clarified, however, who decides on the appeal body in individual cases and whether the applicant has the freedom to choose. It is also unclear whether he/she may submit appeals to more than one body, and what the deadlines are for challenging the decision of the first-instance body and for the appeal body to consider it. In many jurisdictions, these issues are resolved by relevant legal provisions on general administrative procedures, so the lack of such regulation in Ukraine generates uncertainty about the rights and obligations of the parties and creates conditions conducive to arbitrary actions.

It is not possible to assess the quality of administrative acts issued by state administration bodies, as there is no mechanism for collecting and aggregating statistical data on the number and share of administrative acts repealed by the administrative courts. As a consequence, the value of the respective sub-indicator is 0. Regarding the efficiency of administrative proceedings, only 45% of citizens who had contact with the administration declare that they have been served in an efficient manner (Figure 1).

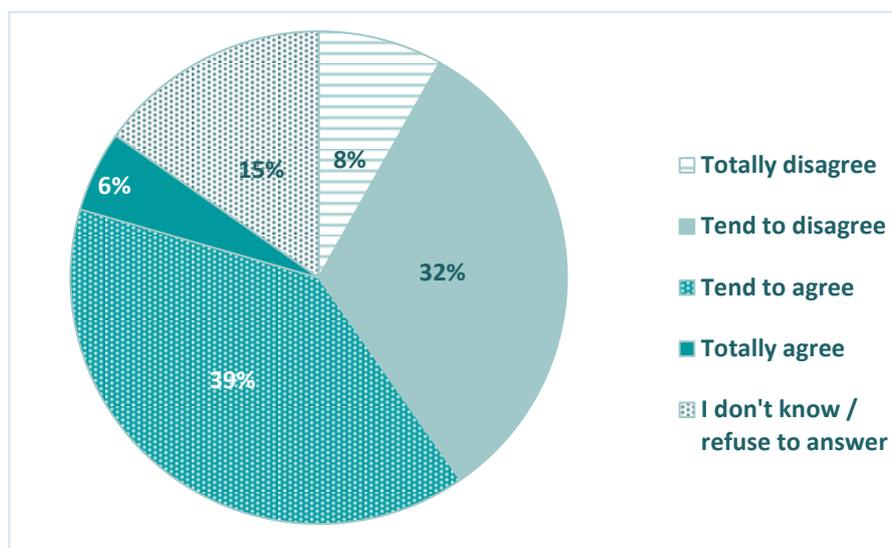
⁵⁷⁴ For example, the Tax Code states that if the tax control appeal authority does not decide on a taxpayer's complaint against a first-instance decision within the deadline specified by this law, the complaint is decided fully in favour of the taxpayer on the day following the deadline for resolving the case (Article 56).

⁵⁷⁵ Consideration of administrative cases in administrative courts is carried out in accordance with the rules established by the Code of Administrative Judicial Procedure of Ukraine No. 2747-IV of 3 October 2017.

⁵⁷⁶ Law on Access to Public Information, Article 23.

Ukraine
Service Delivery

Figure 1. Perceived efficiency of administrative proceedings (% of citizens agreeing that administrative proceedings in public institutions are efficient)



Source: KIIS (Kiev International Institute of Sociology) (2017), "Opinions and views of Ukrainian people: December 2017", a survey commissioned by SIGMA, KIIS, Kyiv.

Based on the above factors, the value for the indicator on fairness and efficiency of administrative procedures is 0.

Fairness and efficiency of administrative procedures						
The indicator measures the extent to which the regulation of administrative procedure is compatible with international standards of good administration and good administrative behaviour. This includes both the legal framework for administrative procedure and its practical applications.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework for administrative procedure	
1. Existence of legislation on administrative procedures of general application	0/3
2. Adequacy of law(s) on administrative procedures to ensure good administration	1/7
Fairness and efficiency of administrative procedures	
3. Perceived efficiency of administrative procedures in public institutions by citizens (%)	1/4
4. Repeals of or changes to decisions of administrative bodies made by the administrative courts (%)	0 ⁵⁷⁷ /4
Total⁵⁷⁸	2/18

⁵⁷⁷ Information not provided by the administration.

⁵⁷⁸ Point conversion ranges: 0-3=0, 4-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

There is no law that uniformly guarantees basic standards of good administration in all proceedings conducted by state administration bodies. Special regulations are incoherent and incomplete in providing adequate protection of citizens' rights within administrative proceedings.

Principle 3: Mechanisms for ensuring the quality of public services are in place.

Responsibility for monitoring service delivery performance is shared: the MoEDT collects information on the provision of services through the TSNAPs, whereas the Directorate of Public Administration of the Secretariat of the CMU collects information on the provision of online services (for example, on the volume of annual transactions, the level of service maturity, delivery channels, the number of complaints received and answered, and user satisfaction). As data is available for 2017 only, it is not yet possible to assess progress in administrative service delivery. No cross-governmental methodology has been developed to monitor progress in administrative service delivery, but the UN e-Government Survey methodology⁵⁷⁹ is being used to evaluate the maturity of online services. Regarding TSNAPs, the MoEDT regularly monitors their functioning, utilising information from regional state administrators and local self-governing bodies, as well as from frequently held roundtables. One of the most recent oversight plans involves developing an information system for monitoring the performance of TSNAPs⁵⁸⁰, which is supported by a donor-funded project.

No performance metrics are available on costing service provision. However, the MoEDT, in particular the Administrative Services Reform Office⁵⁸¹, has begun to optimise the procedures of 15 administrative services, aiming to reduce the number of documents required as well as service delivery times and costs⁵⁸². As part of this endeavour, a cost-benefit analysis of administrative services has been carried out. Additionally, the Services4U methodology for service re-engineering has been developed to guide government institutions in optimising administrative services. There is no evidence, however, that the methodology has actually been followed.

Apart from the requirements for government agency websites⁵⁸³ and the uniform service quality requirements for administrative service centres⁵⁸⁴, there is no co-ordinated effort to assist government institutions (or local self-governing bodies) in efficient and user-friendly service provision.

Ukraine's interoperability framework has not yet been deployed, so there is no real-time information exchange among state information resources. Additionally, data collection and maintenance is remarkably ineffective and duplicative. For instance, according to the report "State Electronic Information Resources: Status and Perspectives"⁵⁸⁵ based on analysis of the 23 most-demanded state registries, legal entity names and ID codes are being collected 64 times, and thus repeated in 64 registries. Furthermore, several of the registries such as the Unified State Demographic Registry, Property Rights Registry and Land Cadastre are not exhaustive, and some of the essential registries such as the Address Registry are missing. The lack of fully electronic and exhaustive registries and their

⁵⁷⁹ Concept for the Development of an Electronic Services System, approved by Decision of the CMU No. 918-r of 16 November 2016.

⁵⁸⁰ Decision of the CMU No. 726-r of 11 December 2017.

⁵⁸¹ The Administrative Services Reform Office has been established within the framework of a Canadian technical aid project led by Agriteam Canada Consulting Ltd.

⁵⁸² Optimisation of administrative services is expected to reduce the total number of documents by 76 million, and time by 1.5 million hours. Regarding cost, the 3-in-1 childbirth registration service, for instance, would reduce the cost by 100% (for the end user), and land plot state registration would drop from UAH 2 100 to UAH 360. These estimates do not include reductions in costs for the administration itself.

⁵⁸³ <http://zakon5.rada.gov.ua/laws/show/z1022-02>.

⁵⁸⁴ TSNAP service standards were developed by the MoEDT together with the Administrative Services Reform Office (Expert Deployment for Governance and Economic Growth [EDGE] project) and the USAID Leadership in Economic Governance Program.

⁵⁸⁵ Mapping report prepared for a project initiated by the National Agency for e-Governance and implemented within the TAPAS international technical assistance project funded by USAID and UK DFID.

Ukraine

Service Delivery

poor quality, as well as a lack of real-time interaction among state information resources, are detrimental to both the efficiency of decision-making processes and the quality of service provision.

In 2017, however, the National Agency for e-Governance made considerable progress in establishing a common interoperability framework. First, a resolution on Some Issues of Organising Electronic Interaction of State Electronic Information Resources⁵⁸⁶ was adopted to amend the procedure of registering a state electronic information resource in the National Registry of Electronic Information Resources. Second, the draft Law on Public Electronic Registries was prepared. Third, the 'once only' principle was incorporated into the Concept of Electronic Governance Development in Ukraine⁵⁸⁷, and the draft Law was made part of the ongoing Once-Only Principle Project. Fourth, the National Interoperability Development action plan was adopted, foreseeing full harmonisation with the EIF by 2020. The action plan also includes a time frame for technical, semantic, and organisational interoperability, some activities of which have already begun. For instance, the Trembita technical interoperability platform is in development, supported by an international technical assistance project. According to the action plan, the integration of top-priority public electronic registries into the system will be finalised in 2018.

A catalogue of administrative services has been compiled by the MoEDT as part of the administrative service simplification process. The purpose of this database is to compare and classify administrative services, but it also provides a basis for administrative service re-engineering. Ultimately, it aims to ensure the comprehensive and harmonised development of administrative services in Ukraine. That said, the National Registry of Electronic Information Resources⁵⁸⁸, the 'registry of registries', is managed by the National Agency for e-Governance. This registry aims to introduce a unified system for electronic information resources to avoid duplicative data collection and maintenance. Its main objective is to ensure the harmonised development of effective and user-friendly administrative services.

Ukraine recently established a system for electronic identification, authentication and signing. In 2015, the Unified State Demographic Registry in the State Migration Service was created to begin issuing URENS⁵⁸⁹ to all Ukrainian citizens: around 10 million Ukrainian citizens (24% of the population⁵⁹⁰) now possess this 14-digit number, so the registry is far from exhaustive. Distribution of the UREN is complicated, however, since it is assigned only when an ID card or passport is issued, which means it will take some time before all citizens have their own personal identification number. The situation is even more complex because several government institutions, for example the Pension Fund and the State Fiscal Service, have their own unique personal identifiers such as taxpayer registration card numbers and state insurance card numbers, both more widely used than the UREN. Currently, there is no strategy to boost distribution of the UREN. An additional concern is that because the UREN serves as the digital identity of Ukrainian citizens, it is regarded as sensitive personal information and the Unified State Demographic Registry is therefore not connected to the open network of state registries, but is rather part of a closed government network. There currently seems to be no clear solution on how to exchange data between databases in the closed government network and those connected to the Internet. This unresolved issue threatens the success of Trembita (the technical interoperability system being developed).

⁵⁸⁶ Decision of the CMU No. 606 of 8 September 2016.

⁵⁸⁷ Concept of Electronic Governance Development in Ukraine, approved by Decision of the CMU No. 649-p of 20 September 2017.

⁵⁸⁸ Decision of the CMU No. 326 of 17 March 2004 on Approval of the Regulation on the National Registry of Electronic Information Resources.

⁵⁸⁹ Law on the Unified State Demographic Registry and Documents Confirming the Citizenship of Ukraine, Certifying a Person or His/Her Special Status.

⁵⁹⁰ The State Statistics Service of Ukraine estimated the population to be 42 346 263 on 1 March 2018.

Ukraine

Service Delivery

The Law on Electronic Trust Services was adopted in 2017⁵⁹¹ to harmonise the digital signature framework with the EU eIDAS Regulation⁵⁹². However, compliance has not yet been attained at the practical level as government institutions still follow the previous Law on Electronic Digital Signature⁵⁹³ that did not regulate electronic identification of individuals and legal identities other than through digital signatures. The legally binding electronic signatures can be obtained from 24 certification centres and, as referred to above, are used both for authentication and for giving a digital signature. However, according to business and civil society representatives, several public institutions do not accept digital signatures and demand handwritten ones on official documents.

No tools or techniques for quality management and assurance are in use. Although the Government introduced a central quality management policy in 2006⁵⁹⁴ to develop, implement and operate the management system in accordance with DSTU ISO 9001-2001 requirements, it was abolished in 2011⁵⁹⁵ by the Decision of the CMU on Reduction of the Amount and Enlargement of State Target Programs, and has not been replaced with an alternative quality management policy. The value of the respective sub-indicator on the use of quality management tools and techniques is therefore 0.

The main means of gathering feedback on administrative services is user satisfaction surveys, carried out in only a handful of government institutions. In some cases, in-person meetings and roundtables have been held, but SIGMA was not informed of the use of advanced engagement tools (mystery shopper, prototype testing, etc.). Nevertheless, data on user satisfaction with administrative services, collected by the Directorate of Public Administration of the SCMU from individual ministries, reveals that when user satisfaction surveys are carried out, satisfaction rates are remarkably high, even reaching 100%.

The value for the indicator on existence of enablers for public service delivery is therefore 1.

⁵⁹¹ Law No. 2155-VIII of 5 October 2017 on Electronic Trust Services.

⁵⁹² EU Regulation No. 910/2014 on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market.

⁵⁹³ Law No. 852-IV of 22 May 2003 on Electronic Digital Signature.

⁵⁹⁴ Approved by Decision of the CMU No. 614 of 11 May 2006.

⁵⁹⁵ Decision of the CMU No. 704 of 22 June 2011.

Ukraine
Service Delivery

Existence of enablers for public service delivery						
This indicator measures the extent to which citizen-oriented service delivery is being facilitated by the existence and implementation of enabling tools and technologies, such as public service inventories, interoperability frameworks, digital signatures and user feedback mechanisms. It evaluates how effective the central government is in establishing and using those tools and technologies to improve the design and delivery of public services.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Central and shared mechanisms to better enable public service provision	
1. Central monitoring of service delivery performance	1/3
2. Adequacy of interoperability infrastructure	0.5/3
3. Existence of common standards for public service delivery	1/3
4. Legal recognition and affordability of electronic signatures	2/3
Performance of central and shared mechanisms for public service delivery	
5. Use of quality management tools and techniques	0/4
6. Adoption of user engagement tools and techniques	1/4
7. Interoperability of basic registers	1.5/4
Total⁵⁹⁶	7/24

Quality management in public administration is not promoted by the Government, and user engagement and feedback tools are just beginning to be used. The policy framework and action plan for interoperability have been adopted, but technical preparations are still ongoing. Although the main registries are digitally accessible, they are often not exhaustive and there is no real-time data exchange among state electronic information resources. The system for electronic identification, authentication and signing has been regulated, but the universal unique identifier is not yet used throughout the registries. The catalogue of administrative services has been created with an overall aim of harmonising administrative service provision.

Principle 4: The accessibility of public services is ensured.

To give citizens equal territorial access to public services, a vast national network of TSNAPs has been established. As part of the decentralisation process to transfer state administrative services to local self-governing bodies, the number of services provided through the TSNAPs has increased. Some of the essential services recently added to the list include issuing domestic and international passports⁵⁹⁷, state registration of civil status acts⁵⁹⁸, and issuing extracts from the State Land Registry. Since 2018, supporting the creation of TSNAPs has become the responsibility of a dedicated unit in the Ministry of Regional Development, Construction, Housing and Communal Services⁵⁹⁹ (MoRDCHCS).

As of 1 January 2018, there were 746 TSNAPs in Ukraine, of which 278 were established by local self-

⁵⁹⁶ Point conversion ranges: 0-4=0, 5-8=1, 9-12=2, 13-16=3, 17-20=4, 21-24=5.

⁵⁹⁷ According to the Law on the Unified State Demographic Registry and Documents Confirming the Citizenship of Ukraine, Certifying a Person or His/her Special Status, as of 1 August 2017, administrative service centres provide and accept documents for registering and issuing both domestic and international passports for Ukrainian citizens.

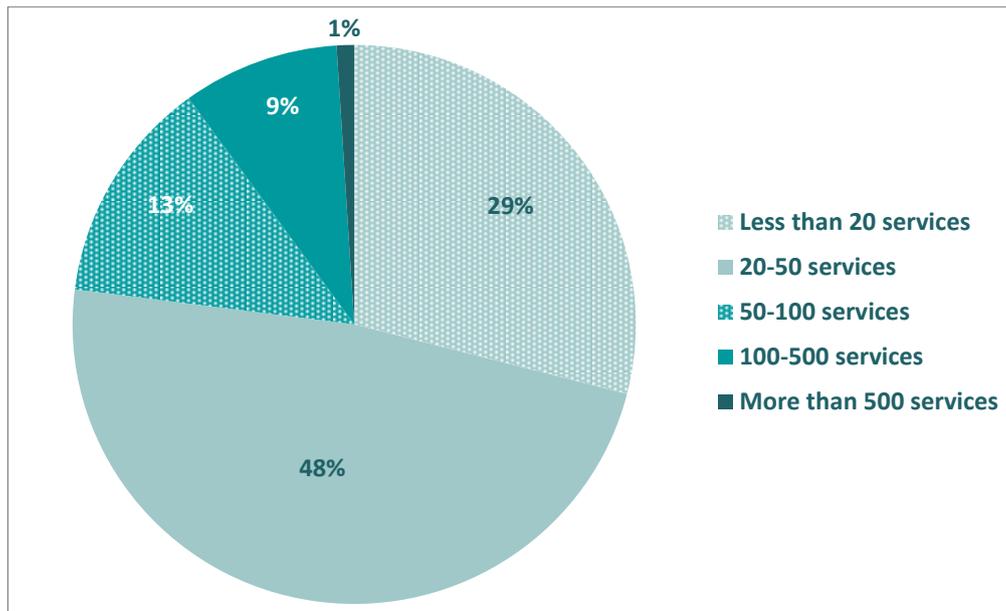
⁵⁹⁸ Law No. 6150 on Amendments to the Law of Ukraine on State Registration of Civil Status Acts, approved 28 February 2017.

⁵⁹⁹ Interview with the MoRDCHCS, 22 February 2018.

Ukraine
Service Delivery

government bodies (including 41 territorial subdivisions), 468 by local state administrations (including 10 *rayons* (territorial units), in the city of Kyiv and 6 territorial subdivisions). In addition, 43 remote workplaces (mobile service units) have been established by local government bodies for the administrators of service centres. Due to the lack of central co-ordination and unequal financial resources, however, the number and quality of administrative services provided by the TSNAPs vary considerably (Figure 2). In addition to TSNAPs, the largest administrative service providers (the Ministry of Internal Affairs, the State Migration Service, the State Fiscal Service, etc.) operate numerous territorial service centres of their own.

Figure 2. Number of administrative services provided by TSNAPs in one working day (% of TSNAPs)



Source: Administrative Services Reform Office (2017), presentation on network of administrative services, 1 July 2017.

Data on public awareness about TSNAPs is not available, but some efforts to educate the public have been carried out: for instance, a Ministry of Information Policy campaign about the work of the TSNAPs aired on Ukrainian national television in 2017. A public website also provides information on the TSNAPs, but it is not easy to navigate and lacks a search function to find the nearest one providing a particular service. The main and most up-to-date source for finding information on administrative services and where they can be obtained remains the websites of the bodies that provide these services.

In addition to increasing in-person service accessibility, the Government has set clear and ambitious goals for raising accessibility to online services. A one-stop-shop portal (the Unified State Portal of Administrative Services⁶⁰⁰) has been launched to provide a number of administrative services. Services in areas such as buildings and construction, business registration, real estate and land relations can be accessed through the portal, making the MoJ, the MoEDT and the State Service of Ukraine for Geodesy, Cartography and Cadastre the leading service providers through the portal. However, access to online services is primarily through the websites of individual ministries: for example, all tax-related services (declaring and paying tax levied on income of natural persons, tax levied on profits of companies and VAT) are available only on the State Fiscal Service website. In fact, some individual ministries' websites do not include a link or reference to the Services Portal even when the ministry's online services are integrated into the Portal⁶⁰¹, and administrative services provided by local self-government bodies are entirely unavailable through the Services Portal. The Unified State Open Data

⁶⁰⁰ <http://poslugy.gov.ua/>.

⁶⁰¹ For example, the MoJ: <https://online.minjust.gov.ua/>.

Ukraine Service Delivery

Web Portal⁶⁰² has been opened up, however, and the number of available datasets has increased considerably: from 6 987 datasets in 2016 to 25 109 in 2017.

According to the survey “Opinions and Views of Ukrainian People: December 2017”⁶⁰³, only 15.3% of citizens were satisfied with administrative services in general, while 35.7% who had requested central government services were satisfied. For digital services provided by central government institutions, 54.4% of respondents found the experience completely or mostly satisfactory. Similarly, businesses were more pleased with digital services (40.1%) than with in-person services (28.6%). Finally, only 31.7% of respondents considered the time required to obtain public services to be good or excellent, and 23.6% were satisfied with the cost, indicating low levels of satisfaction. The respective sub-indicator on perceived time and cost of accessing public services therefore has a value of 0.

The legal framework addressing citizens with special needs is formally in place but its implementation, including physical access to buildings as foreseen in the Law on Construction, is ambiguous. A plan was prepared under the leadership of the Ministry of Social Policy and was approved by the CMU to improve the situation by 2020⁶⁰⁴, and the CMU also set up a special committee on accessibility, led by the First Deputy Minister of Regional Construction. In addition, all local governments have established accessibility committees that include representatives of non-governmental organisations. However, no studies have been conducted to assess progress on a regular basis. Regarding TSNAPs, requirements for their operation and service provision have been set, including the basic requirements for serving people with disabilities⁶⁰⁵.

The use of plain language is not promoted by the central government, resulting in government decisions that are not easy for average citizens to understand.

Concerning statistics on public service accessibility, the website of the State Statistics Service⁶⁰⁶ provides regularly updated data to 2017 on education and health. The data is available to the public and covers the entire Ukrainian territory⁶⁰⁷, but it is not broken down according to the territorial divisions of the country. As a result, the value of the corresponding sub-indicator is 0.

Requirements for government agency websites⁶⁰⁸ provide very general guidance on website structure, but they do not attempt to unify visual presentation or content. This has resulted in considerable differences in government website design and graphical presentation generally but, more importantly, they are very inconsistent in the information they provide. Additionally, many documents are available only in a Portable Document Format that is not machine-readable, therefore not searchable or accessible to the visually impaired. Also, government website test runs conducted by SIGMA revealed an average of 45 errors according to Web Content Accessibility Guidelines (WCAG) 2.0 standards, far higher than is generally acceptable (see Figure 3). Consequently, the value of the sub-indicator on compliance of government websites with WCAG 2.0 is 0.

The value for the indicator on accessibility to public services is 2.

⁶⁰² Unified State Open Data Web Portal: <http://www.data.gov.ua/>.

⁶⁰³ KIIS (2017), “Opinions and views of Ukrainian people: December 2017”, a survey commissioned by SIGMA, KIIS, Kyiv.

⁶⁰⁴ Decision of the CMU No. 1393-p of 23 November 2015 on a Series of Action to Achieve Compliance with Recommendations.

⁶⁰⁵ Decision of the CMU No. 588 of 1 August 2013.

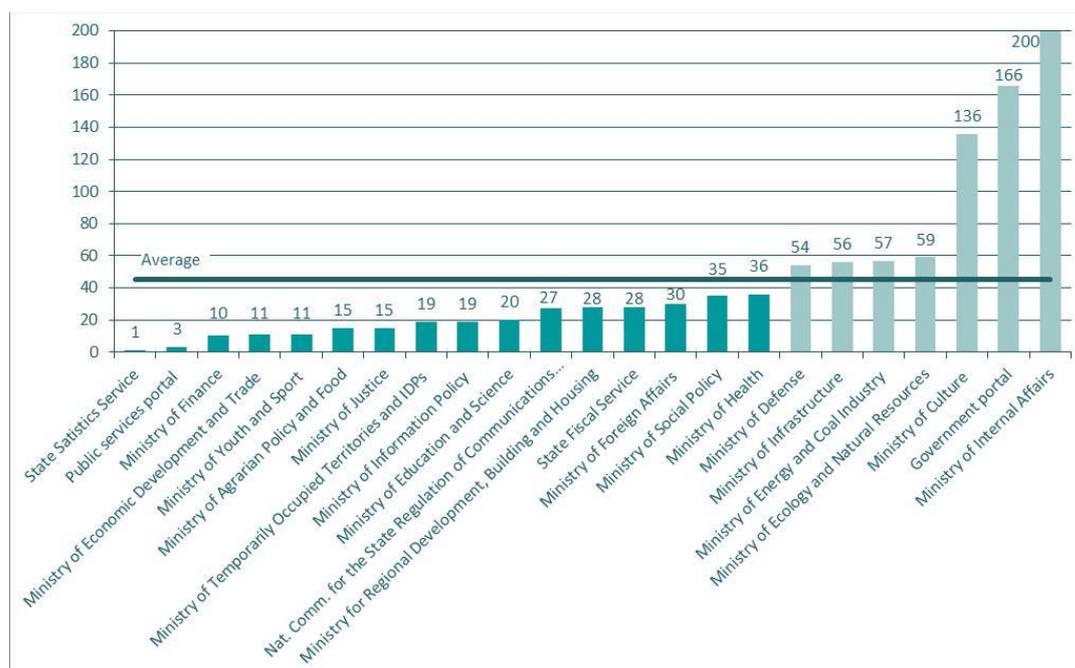
⁶⁰⁶ State Statistics Service of Ukraine, <https://ukrstat.org/en>.

⁶⁰⁷ Excluding the Autonomous Republic of Crimea, the city of Sevastopol and part of the anti-terrorist operation zone since 2014.

⁶⁰⁸ <http://zakon5.rada.gov.ua/laws/show/z1022-02>

Ukraine
Service Delivery

Figure 3. Government website compliance with Web Content Accessibility Guidelines (WCAG), 2018



Source: SIGMA tests of government website compliance with WCAG, February 2018.

Accessibility of public services

This indicator measures the extent to which the access to public services is promoted in policy formulation and implementation. It evaluates whether this policy framework leads to measurably easier access for citizens, measures citizen perceptions of accessibility to public services and tests the actual accessibility of government websites. Dimensions covered are territorial access, access for people with disabilities and access to digital services.

Overall indicator value

0 1 **2** 3 4 5

Sub-indicators

Points

Policy framework for accessibility

1. Existence of policy for the accessibility of public services	3/3
2. Availability of statistical data on accessibility to public services	2/3
3. Adequacy of policy framework for public service users with special needs	1/4
4. Existence of common guidelines for government websites	1/2

Government performance on accessibility

5. Compliance of government websites with Web Content Accessibility Guidelines (WCAG)	0/3
6. Perceived satisfaction with public services across the territory by population (%)	1/3
7. Perceived accessibility of digital public services by population (%)	2/3
8. Perceived time and cost of accessing public services by population (%)	0/3
Total ⁶⁰⁹	10/24

⁶⁰⁹ Point conversion ranges: 0-4=0, 5-8=1, 9-12=2, 13-16=3, 17-20=4, 21-24=5.

A general policy and standards on public service accessibility have been determined, and a plan to improve physical accessibility for people with disabilities has been adopted by the CMU. Though a regulatory framework to ensure accessibility to public buildings is in place, precise norms and their enforcement remain an issue. The Unified Portal for State Administrative Services has been inaugurated, but accessibility to services is still very limited. Regarding website accessibility, the Government does not require that WCAG standards be met, and compliance is poor. Satisfaction with the digital services provided by central government institutions is quite high, but satisfaction with general public services across the country is low and people report that the time and costs involved in receiving public services are not acceptable.

Key recommendations

Short-term (1–2 years)

- 1) The MoJ should develop the Law on Administrative Procedures and the Parliament should adopt it to grant citizens the right to good administration and to support the Council of Ministers' service delivery improvement agenda by legislating fundamental principles in line with good international practice. The MoJ, in co-operation with the MoEDT, should ensure that the draft is harmonised with the existing Law on Administrative Services.
- 2) Co-ordination among key participants in service delivery reform, such as the MoEDT, the National Agency for e-Governance, the MoJ and the MoRDCHCS, should be improved by reviewing and clarifying their respective roles and responsibilities in managing different strands of the reform. This would better integrate the currently distinct processes of administrative service re-engineering, digital service development, and decisions on the use of different channels (digital and in-person, including through TSNAPs) for service delivery. The capacities of the key participants should be reviewed and strengthened to make them commensurate with the high ambitions of the reform.
- 3) To implement the ambitious administrative service re-engineering and digitalisation agenda, cross-government co-ordination mechanisms should be established at the operational level, for instance through the network of the heads of information technology (IT) departments of all ministries and agencies, in which, when appropriate, the representatives of key institutions active in the field of service delivery reform would also be represented (from the MoEDT, the National Agency for e-Governance, the MoJ and the MoRDCHCS). Additionally, the National Agency of Ukraine on Civil Service, in co-operation with the relevant bodies, should develop a training agenda on service re-engineering and digitalisation. More general training on e-governance should be developed and deployed to raise civil servant awareness on e-governance in general, and on concrete reforms, digital tools and their impact on work in particular.
- 4) The CMU should ensure implementation of the interoperability framework according to the action plan, which would replace current bilateral interagency data exchanges. Rules should be established and enforced to grant legitimate data-seekers (public bodies as well as private entities) access to basic registries, so as to apply the 'once only' principle and allow for pre-filled digital application forms in practice and to ensure that the same data is not being collected and maintained by several government bodies.
- 5) The MoEDT should ensure that the uniform portal is the main gateway to Government services, and develop and enforce the rules governing how new services or amendments to existing services are communicated to users through the portal as well as through individual agency websites.
- 6) The National Agency for e-Governance should design an analysis of digital service quality (e.g. analysing user satisfaction and information about website visits, such as completion rates and dropout points) and should ensure it is embedded into every digital service. It should monitor the data collected and report the results regularly to the CMU through the MoEDT .

Ukraine
Service Delivery

- 7) The CMU, acting on the proposal of the MoEDT, should set and enforce rules governing the Government's support for the establishment of TSNAPs and the services delivered through them, to ensure that administrative services are, to the largest extent possible, of equal quality and accessibility. The CMU should also take a decision regarding the future of service delivery networks of individual government agencies vis-à-vis the TSNAPs to whom increasingly more services are being handed over, taking into account the legitimate concerns of government agencies for the security and quality of the services they are responsible for.

Medium-term (3–5 years)

- 8) The Ministry of Social Policy should devise a coherent strategy to improve accessibility to physical as well as electronic services for people with special needs.
- 9) The CMU should enforce the Law on Trust Services to put into operation a well-functioning digital identity management system. The MoEDT, in co-operation with the National Agency for e-Governance, should devise a clear plan to boost the issuance of unique electronic identifiers (through the Unified State Demographic Registry).
- 10) The CMU should request that the MoEDT develops and implements a systemic programme of digital service awareness-raising for the general public, and provides them with the skills necessary to maximise their potential to use digital services, limiting the emergence of digitally disadvantaged groups.
- 11) After adoption of the Law on Administrative Procedures, the MoJ should ensure that special legislation is harmonised with the Law within a predefined timeframe, and that civil servant training and general awareness-raising are conducted to allow for proper implementation of the Law.

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