

## Annex 4 - Action Fiche for Ukraine

### 1. IDENTIFICATION

Title/Number	<b>Twinning and ENP Technical Assistance Support</b> CRIS no. ENPI/2010/22315		
Total cost	European Union contribution - €1 million		
Aid method / Method of implementation	Project approach (twinning and technical assistance) Direct centralised management		
DAC-code	15110	Sector	Public Sector Policy and Administrative Management

### 1. RATIONALE

#### 2.1. Sector context

In recognition of the significant democratic and economic reforms underway in Ukraine, in March 2007, the EU and Ukraine opened negotiations on an Association Agreement that will replace the present Partnership and Cooperation Agreement (PCA). The Association Agreement foresees the enhancement of EU-Ukraine relations in all areas of cooperation and will include a deep and comprehensive free trade area (DCFTA) as a core element thereof. To prepare for and facilitate the entry into force of the Association Agreement, a new cooperation framework - the EU-Ukraine Association Agenda - has been elaborated and entered into force on 24 November 2009, thus replacing the ENP Action Plan of 2005 (except for JLS matters). It is a practical and living document which focuses on the priorities for cooperation set out in it. Following Ukraine's accession to the WTO in 2008, negotiations between the EU and Ukraine on the establishment of a DCFTA have been successfully continued in 2009. The new Government set up in March 2010 has already expressed its commitment to resume the suspended cooperation with the IMF.

EU-Ukraine visa facilitation and readmission agreements entered into force on 1 January 2008. The EU-Ukraine Summit of 9 September 2008 decided to launch a dialogue on visa-free travel of Ukrainian citizens to the EU as a long-term perspective. In May 2009, the Joint Eastern Partnership Declaration of the Prague Summit reaffirmed the main principles and implementation modalities of the Eastern Partnership (EaP) proposed by the European Commission in 2008, as well as prepared the ground for further implementation steps. In particular, Ukraine participated in activities of EaP Thematic Platforms and hosted an expert panel on border management in October 2009.

As far as the bilateral dimension of the EaP is concerned, Ukraine and the EU have made significant progress in preparing for the launch of the Comprehensive Institution Building (CIB) programme. In particular, consultations on a draft CIB Framework Document defining main reform priorities and core institutions started in March 2010. In this context, it should be mentioned that the future CIB programme is intended to support Ukraine in upgrading capacity in a limited number of core institutions that will play an important role in the implementation of the Association Agreement, including the DCFTA.

Close cooperation and strong ownership by the Ukrainian authorities is crucial to ensure effective and policy driven implementation of EU assistance programmes in support of policy objectives. Policy dialogue is even more important in further preparation and implementation of sector-wide approach type operations, including through budget support. There is a need for further integrating EU cooperation into the EU approximation process and for establishing appropriate government structures and mechanisms for planning and management, reflecting the shift from the technical

assistance/project based approach to a policy driven/sector programme based approach. In the past years of Action Plan implementation, insufficient administrative capacity and understanding of EU rules and administrative functioning have come to the fore as significant blocking factors on Ukraine's path towards economic integration into the EU Internal Market.

As regards the coherence with the programming documents, the main priorities of the Country Strategy Paper 2007-2013 and National Indicative Programme (NIP) 2007-2010 are: (i) Support for democratic Development and Good Governance; (ii) Support to the Regulatory Framework and Administrative Capacity Building; (iii) Support for Infrastructure Development.

Furthermore, the new NIP 2011-2013 confirms and stresses the challenges stemming from Ukraine's policy of gradual approximation with the EU's internal market rules.

The proposed measure will therefore have to address these challenges as a priority, using the twinning modality wherever appropriate, preparing the ground for and supporting the initial implementation of the Comprehensive Institutional Building programme and any complementary measure it can entail, as well as identifying any relevant accompanying measures to facilitate the implementation of technical and financial cooperation through the use of technical assistance.

The proposed measure aims therefore at strengthening the capacity of the Ukrainian administration to face the integration challenge. In areas where, by anticipation, discussions with the Ukrainian Government have underlined the need for sector-wide assistance, including strengthening of the institutional capacity building (such as the reform of the judiciary and effectiveness of the courts, prosecution and law enforcement agencies, combating corruption; public administration reform, integrated border management justice, freedom and security, migration, energy cooperation, environment; transport, trade and trade-related matters, regional and rural), the proposed measure envisages the delivery of preparatory technical assistance. Such assistance will aim at drawing conditions from Ukraine's sectoral reform, institutional capacity building plans and development strategies and, where necessary, at helping Ukraine devise such plans and strategies, in line with the Ownership objective of the Paris Declaration, to which Ukraine is a signing party. The proposed measure will also help Ukraine strengthen its capacity to coordinate donors, develop or refine its national sectoral development strategies in priority sectors, and build Ukraine's capacity to achieve effectively its Association Agenda, Association Agreement and DCFTA objectives.

## **2.2. Lessons learnt**

The project draws on past experience and on-going projects, be they funded by the European Commission or other donors. The delivery methods have been chosen based on recent positive experience with twinning projects (more than 30 twinning projects are now on-going or under preparation, starting from zero in 2006, and new requests for twinning projects flow in at an accelerated pace), and the successful use of preparatory assistance for designing sector-wide support (for instance in the agricultural, transport, financial services or energy sectors). ENPI sector and programme-based assistance is envisaged to effectively support Ukrainian sector policies, strategies and plans. This also applies to twinning operations. Mobilising significant human and financial resources to stimulate progress in Ukraine, twinning is an increasingly important instrument to "support approximation to meet EU norms and standards" in Ukraine. Analysis of the first completed twinning projects, however, demonstrated that in the Ukrainian context, Twinning is not very effective as a catalyst for reforms. Therefore, in the new circumstances, it is stressed that the twinning programme shall have a clear connection to the Association Agenda and process. Any new project shall be in-built in the general "reform environment" in the sector in question (this means that there must be a clear commitment to reform in this sector prior to launching the twinning project, which will ensure achievement and enforcement of project results and recommendations, especially related to legislation).

## **2.3. Complementary actions**

As experience has shown over the last two years, there is a clear correlation between the areas identified as priorities in the ENP Action Plan Implementation Tool and the sectors whose responsible Ministries and Agencies have been the most active in requesting twinning and other forms of assistance. In this context, twinning projects are usually defined as a component of a larger sector-wide support programme (where activities are sometimes implemented in a coordinated manner with other actors such as the World Bank) or as a precursor project for further definition of a sector-wide programme. Each of them can therefore be seen as complementary to other actions, past or future, in the same sectors, including technical assistance to be designed within the framework of the proposed measure.

## **2.4. Donor coordination**

It is worth noting, at this stage, that nearly all other donors and International Financial Institutions have already agreed to use the commitments and objectives set forth in the Association Agenda as a basis for designing their own aid conditionalities or projects in the relevant sectors. Ownership by Ukraine of these same objectives, which are designed together in the context of a political dialogue, is not questionable. The proposed measure is fully compliant with the key principles of the Paris and Accra Declaration on Aid Effectiveness and EU commitments on development, notably ownership and harmonisation

Ukraine signed the Paris Declaration and set up a donor-government coordination system under the Ministry of Economy, which has so far not worked to its full potential. The Ministry of Economy jointly with major donors has made an attempt to improve coordination and in February 2010 generally agreed on the new structure. There is a recognised necessity both on the Ukrainian side and among donors to create a consolidated, clearly defined Ukrainian donor government coordination mechanism, in line with the Paris Declaration, and for taking measures to fully integrate donor assistance into its own planning and budgeting strategies and policies. The existing Ukraine cooperation structures with the EU are gradually changing to be policy driven and ensure effective inter-ministerial coordination in order to respond to the evolving relationship with the EU (Association Agreement and the DCFTA). It should be also mentioned that in the framework of the CIB programme preparation Ukraine and the EU agreed that the CIB should also contribute to strengthening Ukraine's coordination of external aid.

## **2. DESCRIPTION**

### **3.1. Objectives**

Overall objective:

To effectively facilitate meeting the objectives of the EU-Ukraine Association Agenda, as well as prepare for implementation of the Association Agreement and the DCFTA.

Specific objectives:

To build the capacity of the Ukrainian key institutions, bodies and entities to comply effectively with the commitments set forth in the EU-Ukraine Association Agenda, the Association Agreement and the DCFTA, as well as in their national reforms and development programmes.

To prepare identification and formulation of actions in the framework of the ENPI annual programming exercises, as well as to support implementation, follow up, monitoring and evaluation of those actions, in whichever form, in the areas and sectors recognised as priorities (including justice, freedom and security, migration, good governance, integrated border management, public

administration reform and public finance management, disarmament, facilitation of the entry into force of EU-Ukraine FTA (including DCFTA), energy including energy efficiency, environment, transport, regional and rural development).

### 3.2. Expected results and main activities

The main result of this measure are:

- Enhanced capacity of Ukrainian key institutions to successfully implement commitments under the Association process, along with regulatory reform and institutional capacity building;
- Timely and efficient preparation<sup>27</sup> and implementation of future sector-wide support, the CIB programme and other complementary actions in jointly identified priority areas.

To achieve these results, the following activities will be implemented:

1. Development of administrative and institutional capacities, through improving the ability of Ukrainian administration to understand and make use of EU standards, and adapting the institutional structure to the requirements stemming from the bilateral agreements (e.g. participative dialogue with EU and international partners, elimination of functional conflicts of interest, modernisation of the scopes of responsibilities and decision-making procedures, involving changes in sector supervision and management practices).

2. Application of a systemic approach towards legal approximation, helping to achieve in due time the critical mass of approximated legislation required by the bilateral agreements.

3) Enhancement of Public Finance Management capacities of the relevant Ukrainian authorities, especially with the objective agreed by the European Commission of channelling 50% of assistance through the recipient country's national budget .

4) Identification and formulation of actions related to implementation, follow up, monitoring and evaluation of actions in the areas and sectors recognised as priorities and agreed with the Ukrainian authorities (including justice, freedom and security, migration, good governance, integrated border management, public administration reform and public finance management, disarmament, facilitation of the entry into force of EU-Ukraine FTA (including DCFTA), energy including energy efficiency, environment, transport, regional and rural development).

### 3.3. Risks and assumptions

#### Assumptions:

The European Union pursues its ENP policy and enhanced cooperation with Ukraine in priority sectors.

Ukraine pursues its objectives set forth in the Association Agenda and progresses well in negotiating the Association Agreement and the DCFTA.

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<sup>27</sup> Preparation will focus on deepening sector knowledge, (re)developing reform strategies in the light of EU-Ukraine bilateral agreements, and establish a framework of short-term and medium-term criteria conditioning budget support. Whereas the Ukrainian administration currently endeavours to refine existing decision-making processes in key Ministries following a EU-compatible decision preparation procedure (sector study, green paper, white paper,... developed by ad-hoc Policy support groups), this component of the measure may provide support to the Policy support groups in Ministries relevant to implement priority ENP/FTA objectives.

Ukraine pursues its objective of improved relations and economic integration with the EU, develops mechanisms for co-financing of cooperation projects with the EU, particularly in the frame of the CIB programme, and pursues its efforts to modernise its administration.

The Government continues and enhances its donor coordination effort and supports improvement of decision-making processes in line with European practice.

Ukraine will continue with its administrative reform, thus creating the pre-conditions for retaining civil servants in public administration after implementation of the measure. To that end, a comprehensive strategy of Public Administration Reform (PAR) and its implementation plan shall be approved. This is particularly important under the 2011-2013 National Indicative Programme, as well as in the context of the CIB programme's preparation and implementation, particularly given that PAR will represent a strategic background for EU assistance activities.

Ukraine will in collaboration with the IMF, adopt a package of measures aimed at tackling the impact of the financial crisis and improving the economic situation.

Ukraine will develop a clear and comprehensive strategy of Public Finance Management (PFM) modernisation.

#### Risks:

Major economic and political risks which have an overwhelming impact on the implementation of any programme of co-operation (be it Technical Assistance or Sector Budget Support) relating to the ability of Ukrainian top level authorities to handle challenges stemming from the economic crisis.

The Change of Government leading to the significant turnover of staff at all levels of executive power puts under risk the continuity of reforms started earlier (in particular, in relation to PFM).

The Government does not provide sufficient political support to the reform processes supported by the twinning or technical assistance projects designed under this measure.

The Government does not complete the necessary steps to receive budget support under AAP 2007, 2008 and 2009.

The Government does not provide sufficient support to ensure efficient functioning of the Programme Administration Office (PAO) (in particular, this related to budget and staffing issues which became even more crucial in a situation when budget allocations for the functioning of budget financed institutions are significantly cut down)

Ownership of twinning operations needs to be improved and more resources (including enhanced material conditions for the preparation and implementation of twinning projects) and commitment from the beneficiaries are needed to optimise the impact of this important instrument. Moreover, more central oversight on the Ukrainian side in the implementation of twinning projects is needed to ensure that mandatory results agreed upon are met by the Ukrainian counterparts.

### **3.4. Crosscutting Issues**

Coherence with the cross-cutting issues can be characterised as follows:

Good governance and human rights: increased knowledge of EU policies and governance systems will raise democratic standards; the preparation for a sector-wide approach to reform the judicial and law enforcement system, implying improved wider and systematic consultation of civil society and the business community will take Ukraine a major step forward at central government level; monitoring

by civil society organisations will be a guarantee for an efficient and stable surveillance of the judicial and law enforcement systems.

The implementation of activities included in this measure shall ensure transparency of public administration processes, both in institutional and operational terms. Through achieving this, it will contribute to establishing system of public administration based on the rule of law, respect of the citizens' rights and ensuring accountability of the public finance management structures.

Gender balance: the proposed measure has no direct impact per se on gender balance. However, certain activities funded by the measure may be designed to tackle gender equality, or may have otherwise an impact on this issue.

Environment and climate change related issues will be streamlined as appropriate.

### **3.5. Stakeholders**

The key stakeholders will be the concerned society groups, policy-setting and implementing ministries and agencies and also, though indirectly, the donor community. The proposed measure will impact first and foremost on the policy-setting and implementing agencies; however enforcement of EU-compliant procedures should rapidly lead to involving the civil society and business community. Ukraine is characterised by a rich, though under-developed, civil society and business infrastructure, whose development the projects should foster. As for twinning, all Ukrainian government entities, including regional ones, are potential stakeholders.

Overall, the implementation of the Twinning programme on behalf of Ukrainian administration is supported by the Programme Administration Office (PAO). In Ukraine the role of PAO is carried out by the Main Department of Civil Service (through the Centre for Adaptation of the Civil Service to EU standards) in charge of coordination of all twinning-related aspects on behalf of the Ukrainian Government. As far as the CIB programme is concerned, a CIB coordinator should be appointed by the Government of Ukraine to ensure effective coordination of the CIB-related actions under the proposed measure.

## **3. IMPLEMENTATION ISSUES**

### **4.1. Method of implementation**

Direct centralised management.

### **4.2. Procurement and grant award procedures**

#### 1) Contracts

All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.

Participation in the award of contracts for the present action shall be open to all natural and legal persons covered by European Neighbourhood and Partnership instrument (Regulation (EC) N° 1638/2006 of the EP and of the Council - OJ L 310/1 of 9.11.2006). Further extensions of this participation to other natural or legal persons by the concerned authorising officer shall be subject to the conditions provided for in article 21(7) of the ENPI Regulation.

#### 2) Specific rules for grants

The essential selection and award criteria for the award of grants are laid down in the Practical Guide to contract procedures for European Commission external actions. They are established in accordance with the principles set out in Title VI 'Grants' of the Financial Regulation applicable to the general budget. When derogations to these principles are applied, they shall be justified, in particular in the following cases:

- Financing in full (derogation to the principle of co-financing): the maximum possible rate of co-financing for grants is 80%. Full financing may only be applied in the cases provided for in Article 253 of the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation applicable to the general budget.

- Derogation to the principle of non-retroactivity: a grant may be awarded for an action which has already begun only if the applicant can demonstrate the need to start the action before the grant is awarded, in accordance with Article 112 of the Financial Regulation applicable to the general budget.

#### **4.3. Budget and calendar**

The overall amount is set at €1 million. The indicative breakdown of the budget would include: component 1 – twinning projects €4.5 million, component 2 – technical assistance €6 million and a provision for monitoring/evaluation/interpretation/translation and visibility of €0.5 million.

In the case of twinning projects, the beneficiary administrations are requested to make their co-financing of the measures explicit in the twinning project's budget. Such contribution may be estimated at a maximum of one third of the contribution of the Commission. In the case of technical assistance projects, Ukrainian beneficiaries are commonly requested to contribute the logistical arrangements (contribution in kind).

It is foreseen that the operational duration of the action will be 48 months from the signature of the contracts.

#### **4.4. Performance monitoring**

The monitoring of the measure will follow standard procedures, based on benchmarks to be agreed during the preparation of each of the sub-projects to be defined under the measure, in co-operation with the Ukrainian government and other stakeholders and, in the case of twinning, based on the mandatory results agreed during the project preparation phase.

There is no standard indicator applicable to the DAC sector code of the proposed measure. It is proposed to use a modification of Standard Indicator 407 "Scope of capacity-building actions", considered at central government level, to assess global performance, given the measure's general focus on improving government capacities. The performance of the proposed indicators (see annex) will be monitored based on a periodic assessment of progress and delivery of specified project results and towards achievement of project objectives. Harmonisation of monitoring frameworks of other Donors is expected to be one of the outcome of the government-led coordination process referred to in section 2.4. The project will be implemented in line with the Backbone Strategy which is part of wider European Commission actions to implement the Paris Declaration and which aims to improve the effectiveness of EU aid with respect to capacity development.

#### **4.5. Evaluation and audit**

In addition to regular results oriented monitoring, a mid-term evaluation of the entire measure will be carried out. Each of the sub-projects to be defined under the measure will undergo financial audit, as foreseen by the standard procedures, which foresee that such audit be properly budgeted under each of such sub-projects.

#### **4.6. Communication and visibility**

Proper communication and visibility of the measure will be achieved via widespread dissemination of project achievements and results, as well as international visibility of twinning projects, for which a specific budget will be allocated (section 4.3).