

Public administration in Ukraine

Assessment against the Principles of Public Administration

December 2023



SIGMA Monitoring Reports

Public administration in Ukraine

SIGMA Monitoring Reports analyse the performance of public administrations through a set of standard indicators based on the Principles of Public Administration. They assess both the preconditions for a good public administration (good laws, policies, institutional capacity, and procedures) and how an administration performs in practice.



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List of abbreviations and acronyms

ACU	Accounting Chamber of Ukraine
AMCU	Antimonopoly Committee of Ukraine
APIAA	Action Plan for Implementation of the Association Agreement
ASC	Administrative Service Centre
BC	Budget Code of Ukraine
BD	Budget Declaration
CAF	Common Assessment Framework
CEB	central executive body
CHU	Central Harmonisation Unit
CMU	Cabinet of Ministers of Ukraine
COG	centre of government
CPB	central purchasing body
CSCS	Commission on Senior Civil Service
CSL	Civil Service Law
DACK	District Administrative Court of Kyiv
DPL	Defence Procurement Law
EBRD	European Bank for Reconstruction and Development
EC	European Commission
EI	European integration
eIDAS	electronic Identification, Authentication and Trust Services
EIR	Electronic Information Resource
ESA	European System of Accounts
EU	European Union
GAWP	Government Annual Work Plan
GOCEEAI	Government Office for Coordination on European and Euro-Atlantic Integration
GPA	Agreement on Government Procurement
GPAP	Government Priority Action Plan
HCJ	High Council of Justice
HQCJ	High Qualification Commission for Judges
HR	human resources
HRM	human resource management

HRMIS	Human Resource Management Information System
HSPG	High School of Public Governance
IMF	International Monetary Fund
ISSAIs	International Standards of Supreme Audit Institutions
IWG	Interministerial Working Group
KSU	key spending unit
LAP	Law on Administrative Procedure
LLC	Limited Liability Company
MDA	Multi-Donor Account
MDT	Ministry of Digital Transformation
MFA	Macro Financial Assistance
MoE	Ministry of Economy
MoF	Ministry of Finance
MoJ	Ministry of Justice
MTBF	medium-term budgetary framework
MTDMS	Medium-term Debt Management Strategy
MTGAP	Medium-Term Government Action Plan
NABU	National Anti-Corruption Bureau of Ukraine
NACP	National Agency of Corruption Prevention
NAPA	National Academy of Public Administration
NAUCS	National Agency of Ukraine on Civil Service
PARS	Public Administration Reform Strategy
PFM	public financial management
PFMS	Public Finance Management Strategy
PFMSR	Public Finance Management System Reform
PIFC	public internal financial control
PPL	Public Procurement Law
PPP	public-private partnership
PPS	Public Procurement Strategy
RIA	Regulatory Impact Assessment
RoP	rules of procedure
RSP	reform staff position
RST	Reform Support Team
SAS	State Audit Service
SCMU	Secretariat of the Cabinet of Ministers of Ukraine
SCS	senior civil service
SRS	State Regulatory Service
STP	State Target Program

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TNA	training needs assessment
TSA	Treasury Single Account
UNDP	United Nations Development Programme
VRU	Verkhovna Rada of Ukraine
WCAG	Web Content Accessibility Guidelines

Executive brief

The public administration of Ukraine demonstrates high resilience and agility during the war

Public administration reform (PAR) has been among the priority topics of the political agenda in Ukraine since the Revolution of Dignity in 2014. A PAR Strategy was adopted in June 2016. In 2018, SIGMA carried out a Baseline Assessment against the Principles of Public Administration in all areas except public financial management (PFM). The findings and recommendations informed later updates of the PAR Strategy in 2018 and the new strategy one adopted in 2021 to cover the period until 2025.

On 24 February 2022, the Russian Federation launched a large-scale war of aggression against Ukraine. The war disrupted the normal functioning of the public administration system and put a massive strain on the public service. According to the National Agency of Ukraine on Civil Service, during 2022, 4 355 civil servants moved abroad, 3 637 were drafted into the army, 4 713 remained in Ukrainian territories occupied by the aggressor or in the boundaries of combat areas, 108 were killed, 80 were wounded and 205 disappeared.¹

The war undoubtedly shifted political priorities. The public governance system had to adjust to the new circumstances. Demonstrating strong agility and resilience, the government decision-making machinery continued to function and provide services to citizens and businesses. Moreover, the implementation of both the PAR and PFM strategies continued with numerous projects not directly associated with adjustments to the war situation.

This report identifies strengths and weaknesses of Ukraine's public administration system and provides recommendations for the way forward. In agreement with the Ukrainian authorities and the European Commission, it presents the state of play at the end of 2021, before the start of Russia's war of aggression against Ukraine, as well as the situation in 2023, almost two years into the war. This approach enabled SIGMA to capture the changes from the 2018 Baseline Monitoring Report on Ukraine² until the end of 2021, as well as the direct and indirect impacts of the war.

Despite the war, the overall performance of the public administration in 2023 remained at almost the same level as in 2021, with moderate variations across the areas. Strategic leadership and co-ordination of PAR, and service delivery even improved during this period. While not all improvements in the service delivery area can be captured in the indicator values, the narrative part of the report highlights outstanding achievements in development and uptake of new digital services and simplification of numerous administrative procedures.

Certain measures have been taken temporarily by virtue of the introduction of martial law, as they were considered indispensable for the protection of national defence interests. Some of these measures have had a negative impact on the indicator values, for example those related to openness and transparency or merit-based recruitment. On the other hand, some measures, such as the simplification of administrative procedures, have even had a positive impact on public administration performance. When martial law is lifted, the measures with positive impact on public administration performance could be re-evaluated, and some could be maintained to the benefit of citizens and businesses.

An effective recovery process and EU accession depend on strong public institutions

Soon after the outbreak of Russia's war of aggression, Ukraine applied for membership to the EU and the OECD. On 23 June 2022, the European Council granted EU candidate country status to Ukraine. On 5 October 2022, the OECD Council recognised Ukraine as a prospective member and opened initial

¹ Annual Report of the National Agency of Ukraine on Civil Service for 2022.

² OECD (2018), *Baseline Measurement Report: Principles of Public Administration, Ukraine*, OECD, Paris, <https://www.sigmaweb.org/publications/Baseline-Measurement-Report-2018-Ukraine.pdf>.

accession dialogue. Both accession processes, while not the same, are mutually reinforcing and are further increasing the relevance of PAR. For the EU, PAR and sufficient administrative capacity constitute one of the “fundamentals” of the accession process, alongside economic governance and competitiveness, the rule of law and fundamental rights.³ For Ukraine, administrative capacity will be vital for all stages of successful accession negotiations – well thought-through alignment of national legislation with the EU *acquis* and its correct implementation, and once membership is achieved, for full-fledged participation in the decision-making processes of the EU and assuming its obligations.

Administrative capacity and alignment to the Principles of Public Administration will be of crucial importance for the recovery process. The reconstruction of public infrastructure will, for example, require effective planning and co-ordination, competitive and transparent procurement procedures, highly professional public servants with integrity, as well as streamlined and business-friendly administrative procedures.

This report provides data, insights and recommendations aimed at supporting the Government to advance with public administration reforms as an important part of the EU accession and recovery processes. A strong emphasis is put on the EU integration systems, structures and processes. In the experience of new EU member countries from 2004 onwards, these have proven to be crucial for an effective accession process. For this report, SIGMA used the same methodological framework as for the EU candidate countries and potential candidates in the Western Balkans, which allows comparisons between Ukraine as a new candidate country and countries which have been in the accession process for some time now.

The public administration improved its overall performance since the 2018 SIGMA Baseline Monitoring Report

The most significant improvements are in service delivery and digitalisation, prompted by the establishment of the Ministry of Digital Transformation and the launch of the *State in a Smartphone* programme, the Trembita interoperability framework and the Diia e-government portal⁴ and mobile application. From an under-average performer in the area of service delivery in 2018, Ukraine has emerged as the frontrunner among the EU enlargement countries in 2023.

Improvements are also significant in areas of strategic framework of PAR (strategy, leadership, co-ordination, and monitoring of reforms) and in the accountability area, which includes the organisation of public administration, freedom of information, administrative justice and independent oversight bodies.

Performance in policy development and co-ordination has largely remained at the level of 2018. A setback has been noted in public service and human resource management (HRM), partially due to extraordinary measures introduced during the COVID-19 pandemic and under the martial law.

While SIGMA’s 2018 Baseline Monitoring Report did not cover PFM and this report does not enable a comparison of indicator values, the narrative part of the report clearly identifies recent improvements in this area as well.

³ COM/2014/0700 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Enlargement Strategy and Main Challenges 2014-15, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A52014DC0700>

⁴ Diia portal: <https://diia.gov.ua>.

Figure 1. The overall indicator averages by area in 2018, 2021 and 2023

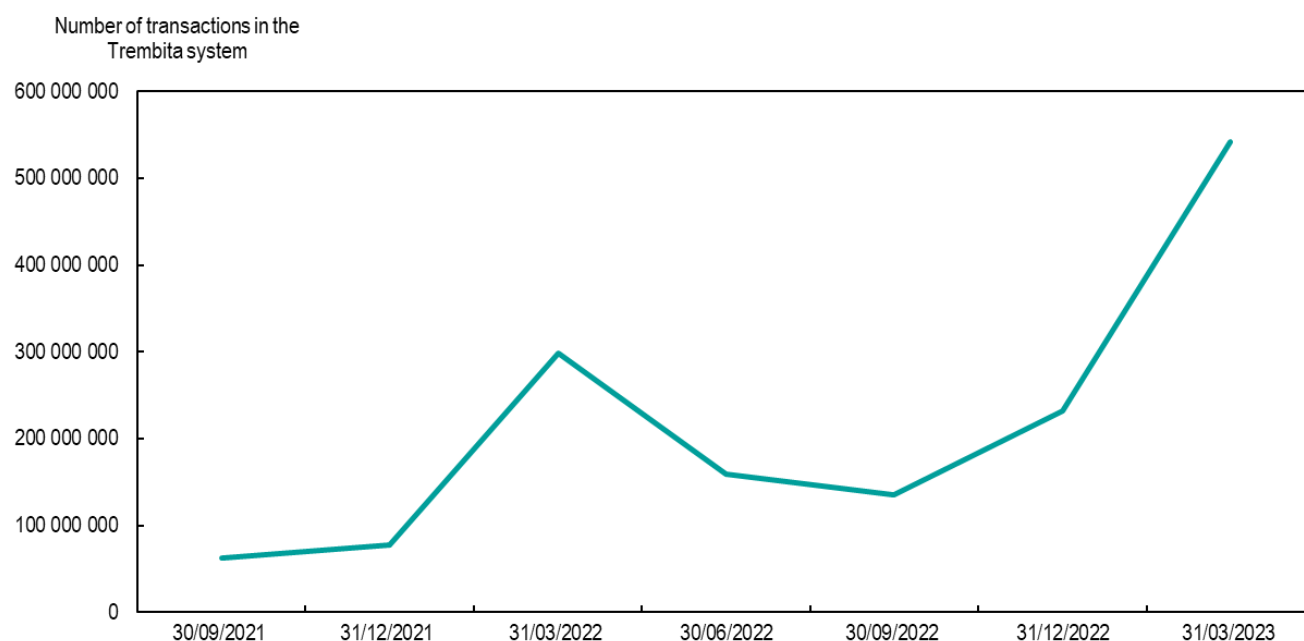
	2018	2021	2023
Strategic framework of PAR	1.5	1.5	3
Policy development and co-ordination	2.5	2.6	2.6
Public service and HRM	2.8	2.4	2.1
Accountability	2.8	3.4	3.2
Service delivery	1.5	4.3	4.5
Public financial management	NA	2.9	2.8
Budget management and internal audit and control	NA	2.9	2.8
Public procurement	NA	3.2	3.0
External audit	NA	2.5	2.5

Note: The figure presents area averages for each area. The arithmetic mean of the sub-indicators is used to calculate the area average.

Service delivery and digitalisation are the strongest performers

SIGMA witnessed a profound transformation of administrative services in Ukraine. All key enablers of e-government have been put in place, and services are being streamlined and digitalised. Ukraine has been rapidly catching up with the frontrunners in digital government and has, according to the United Nations E-Government Development Index, significantly improved its global position – from rank 82 in 2018 to rank 46 in 2022.⁵ The dynamics of usage of the Trembita interoperability system is outstanding: the number of digital transactions increased from 62.7 million in the third quarter of 2021 to 541.3 million in the first quarter of 2023. The number of Diia portal users has reached around 1.5 million per day.

Figure 2. Transactions in the Trembita system have exploded, September 2021 - March 2023



Source: Data based on EU4DIGITALUA, March 2023[2] and EU4PAR, December 2021[3].

⁵ UN E-Government Knowledgebase, 2022 E-Government Development Index, <https://publicadministration.un.org/egovkb/en-us/Data/Compare-Countries>.

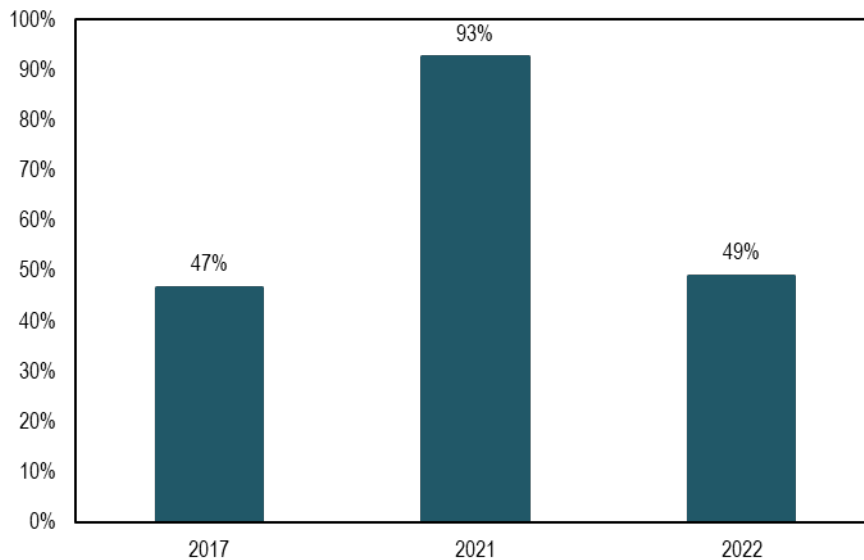
In parallel, physical access to services has been constantly improving, through strengthening of the Administrative Services Centres across the territory of the country. There are currently more than 1 100 Administrative Services Centres offering a standardised set of services to citizens and businesses.

A significant gap in the legal framework of public administration was filled by adoption of the Law on Administrative Procedure on 17 February 2022. The law is aligned with international standards and includes all key legal safeguards for citizens and legal persons in administrative procedures, including the right to be heard, to access the files, to receive a decision with rationale and to appeal to a higher administrative instance or a court. The law will come into full effect in December 2023. The Government is aware of the massive challenges of its implementation and is taking the necessary steps to make sure the law is effectively implemented in all administrative procedures. Initiatives have been noted that avoid application of the Law by total exclusion of certain administrative areas from its applicability through sector legislation. It will be important to avoid such initiatives and only introduce special regulation for certain aspects of the procedure when it is justified by the specific nature of an administrative area.

Solid strategic frameworks for PAR and PFM are in place

Since the beginning of 2022, a comprehensive strategic framework is in place, setting out policy objectives that are closely monitored through a set of performance targets and are publicly reported against. The PAR Co-ordination Council, a political-level management and co-ordination body involving all relevant stakeholders (including non-state actors), is operational, regularly discusses challenges related to implementation of the reform and takes decisions on the required changes. The combined implementation rate of actions of both PAR and PFM strategies stands at 49%, with 54.7% of performance indicator targets achieved during 2022. The PAR Strategy was updated at the end of 2022 to include actions to increase capacities to handle the intensified European integration (EI) process and adjust priorities according to the circumstances of war. The PFM Strategy should also be updated in the same manner. The quality of the strategic framework of PAR would also benefit from proper costing, given the current and post-war resource constraints.

Figure 3. Implementation rate of planned PAR-related actions was affected by the war



Source: SIGMA calculations based on information provided in annual monitoring reports for the Public Administration Reform Strategy (PARS) 2016-2021, the Public Finance Management Strategy (PFMS) 2017-2020, the Public Procurement Strategy 2016-2022, the PARS 2022-2025 and the PFMS 2022-2025.

Challenges in public service and HRM continue, while reform processes are under way

The Civil Service Law, enacted in 2015, constitutes a solid legal basis for HRM in public administration, including for merit-based recruitment through open competitions. However, the quality of recruitment processes deteriorated after 2018, and open competitions were suspended during the COVID-19 pandemic, then briefly restored, and suspended again by virtue of martial law. From January 2020 to June 2023, open competitions were practiced for only 16 months.

Figure 4. Competitive and merit-based recruitments were not used for most of 2020-2023



Source: SIGMA, based on legislation in force.

The salaries of public servants are not competitive compared to the private sector, including employers directly competing for the same pool of talent. In addition, variable pay, based on availability of resources (which varies from institution to institution) and on managerial discretion, remains a significant part of salaries, leading to a low-level of stability and predictability of individual salaries. While salary reform has been high on the Government agenda for years and amendments to the Civil Service Law addressing some of the issues have been prepared and submitted to the Parliament, the reform process has not yet yielded tangible results. The concept of Reform Staff Positions (RSPs), launched with the aim to strengthen the capacity for developing and implementing key national reforms, has yielded some positive results in terms of quality of recruitment processes and salary structure for these positions. However, the number of RSPs has been in decline for some time now.

Significant challenges exist for senior managerial positions. The public administration struggles to find and retain highly competent managers. There is room for improvement regarding the quality and impartiality of the procedures for assessing candidates. Certain roles, usually filled in the EU member states by senior non-political public managers (directors general or similar), are performed by political appointees – deputy ministers. By virtue of martial law, open competitions have been suspended for top managerial positions in the same way as for other public service positions. Even before this suspension, the selection procedures had been in need of significant improvement.

Turnover in the public service is high and increased to critical levels during the war. In 2019, it was 12% and in the first quarter of 2023 it reached 20%. For senior managerial positions, it was at its highest level in 2020 at 58%, in 2021 it dropped to 51%, while during the war it fell to 26% in 2022.

Due to these weaknesses in the public service and HRM area, there is a large dependence on external advisory teams and technical assistance projects, financed by international partners. Long-term sustainability is thus a serious concern and comprehensive public service and HRM reforms will be crucial to address these challenges.

The core functions and procedures for policy development and co-ordination, including European integration (EI), are established, but actual implementation needs to be enhanced

Key functions for policy and law making, including EI, are established and assigned to the relevant centre-of-government institutions, with the SCMU performing the majority of such functions.

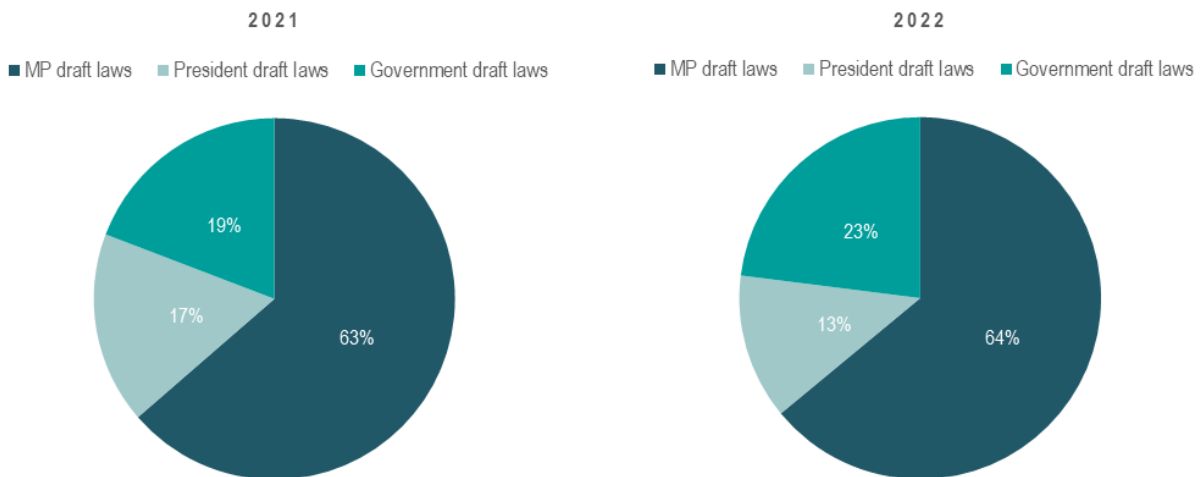
Some indicator values in the policy planning area have improved slightly compared to 2018, mainly because of the enhanced framework for medium-term and sector policy planning. However, Russia’s war of aggression against Ukraine has negatively affected practical implementation, leading to delays in preparing some planning documents, or even suspending some of them, and a shift to short-term priorities.

The functions and guidelines pertaining to EI co-ordination are in place and the EI policy planning system and procedures for a medium to long period are formally established. However, the capacity of the Government to ensure effective co-ordination of EI processes needs to be enhanced and the EI plans will have to be significantly revised in line with requirements of candidate country status. The implementation of EI-related legislative commitments will have to be increased to meet the ambitious objectives set by the Government.

Overlaps and fragmentation mark the system of regulatory impact assessment. The legal obligation for more comprehensive public consultation on draft laws and regulations has not been established, as the draft law on public consultations aiming to address this issue is pending final approval in the Parliament. Businesses’ perception of the clarity and stability of government policymaking is low (27%).⁶ However, clear procedures and rules for drafting and publishing legislation are established and adhered to.

The regulatory framework for parliamentary scrutiny and oversight is established, and its application has improved. The role of the Government as initiator of draft laws is limited compared to the practice in EU member states as Ukrainian Members of Parliament remain the key initiators of draft laws. This could pose a challenge for the Government to pursue a coherent policy agenda and effective alignment with the EU *acquis*. In general, the Governments have better capacity for ensuring quality of draft legislation based on professional judgement, evidence and consultation with stakeholders.

Figure 5. Members of Parliament remain key initiators of draft laws



Source: SIGMA analysis and estimate based on a report of parliamentary activity submitted to SIGMA during the assessment. The share of laws registered and adopted in 2021 and 2022 by the initiator.

⁶ SIGMA Business Opinion Survey 2023 (conducted in April 2023).

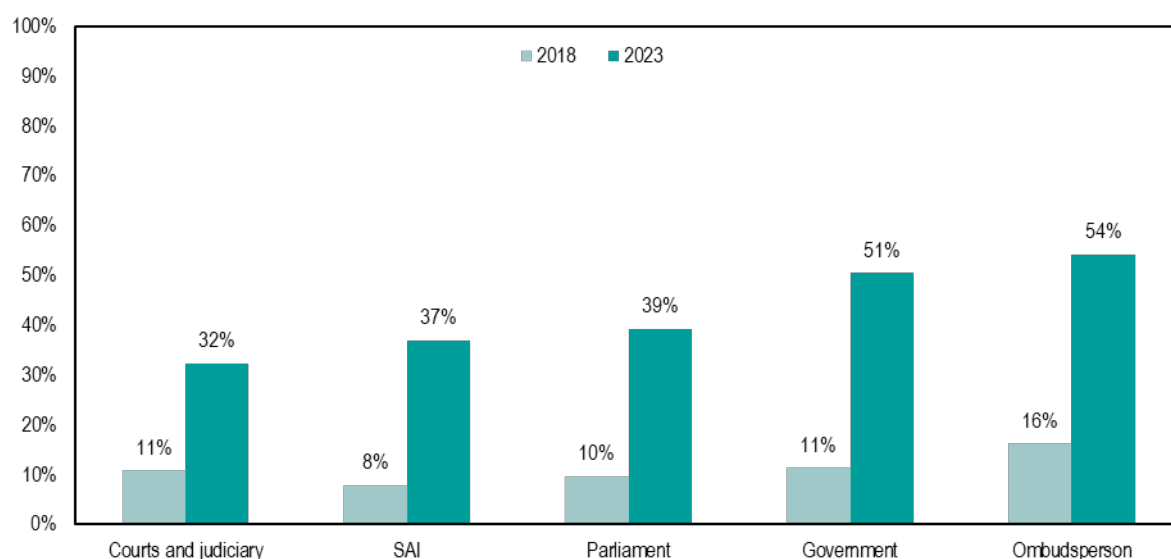
The macro-organisational structure of public administration is rational, a good legislative framework for access to public information is in place and trust in independent oversight bodies has increased

While a sound macro-organisational architecture of public administration is in place and agencies have not increased in numbers, ministries tend to micromanage their subordinated bodies instead of managing them strategically by objectives. Internal organisation of ministries underwent only a partial reform, so that the organisational structures, division of responsibilities and accountability lines at the highest levels of political and administrative leadership in the ministries remain ambiguous.

Freedom of public information has been a strength of public administration since the Revolution of Dignity. However, there is some margin for improvement in oversight and monitoring of access to information as this role is currently attributed to the Ombudsperson, which typically is not the recommended institutional set-up.

Oversight bodies enjoy higher public trust than in 2018 and improved perception of their effectiveness in scrutinising public administration. While this can be partially attributed to the “rally around the flag” effect, many important changes have been implemented since 2018. However, the special procedure, introduced by the Law on the Legal Regime of the Martial Law, empowering the Parliament to arbitrarily dismiss heads of bodies appointed by the legislature, already activated regarding the Ombudsperson, falls short of international standards of independence of oversight bodies.

Figure 6. Public trust in oversight bodies and government

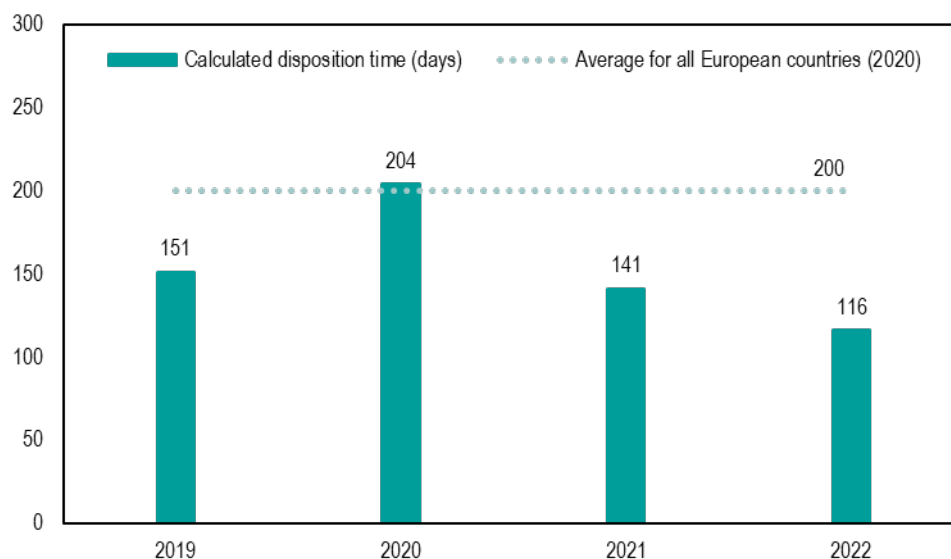


Note: The percentage of respondents who responded “totally trust” or “tend to trust” to five separate questions on trust in oversight institutions: “How much trust do you have in courts and judiciary/ parliament/ government/ ombudsperson/ Supreme Audit Institution (SAI)?”.

Source: SIGMA calculations based on the KIIS (Kyiv International Institute of Sociology) 2017 “Survey on business satisfaction with policymaking and public service delivery” (commissioned by SIGMA) and the SIGMA Public Opinion Survey 2023.

Fewer incoming cases made it possible to reduce disposition time in the first instance administrative courts and kept the performance of administrative justice significantly above the European average.

Figure 7. Disposition time in the first instance administrative courts in Ukraine



Source: Data for Ukraine: State Judicial Administration; Data on the European average: CEPEJ, *European judicial systems – CEPEJ Evaluation Report – 2022 Evaluation cycle (2020 data)*, Strasbourg 2022, <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>.

While Russia’s war of aggression disrupted the progress in PFM, the foundations are solid enough to restore the system during the recovery phase

The government was forced to introduce extraordinary fiscal measures, suspend some of the regular procedures and depart from fiscal rules. Hence, the war has a significant negative impact on PFM. While the pre-war rules and procedures can be restored after the war, significant international support will be needed for fiscal consolidation.

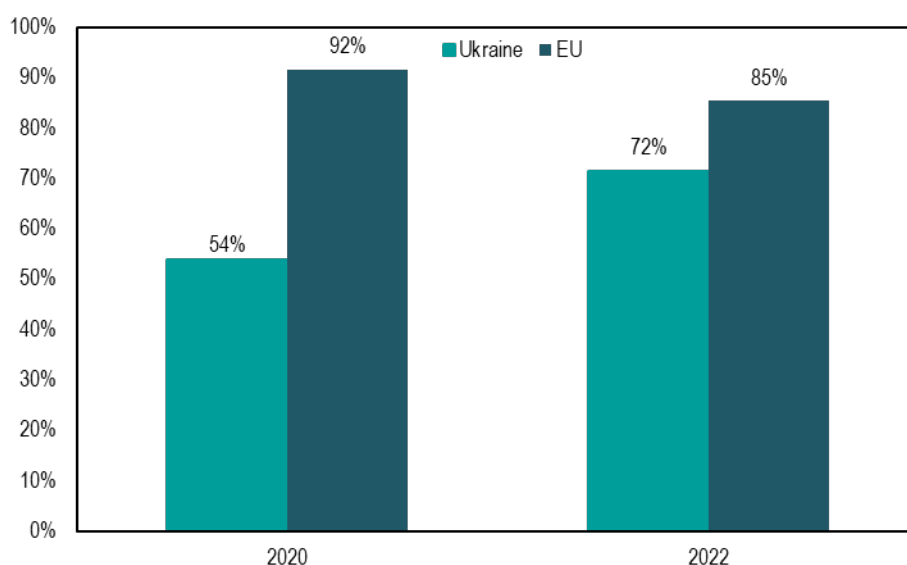
The quality of the medium-term budget framework has improved in recent years. The reform in this area was interrupted by the war, but the Ministry of Finance (MoF) is preparing the renewal of the medium-term budgetary process in 2024. However, the differences between medium-term revenue and expenditure plans and outturn have been significant, even in the pre-war year of 2021.

The annual budget process is well established in the legislation and fosters budget discipline. The treasury function operates effectively. Additionally, management of fiscal risks by the MoF is performing well.

While in-year and annual budget reporting is clearly defined in the legislation and well organised, there are issues related to the audit of local governments, and the Accounting Chamber of Ukraine (ACU) does not issue an opinion on the consolidated annual financial statements of the Government.

Debt management is facing challenges: the war made it impossible to meet the debt targets and state debt is growing. However, its level is still significantly below the EU average and within the convergence criteria.

Figure 8. State debt outturn in Ukraine and the EU average as a percentage of GDP in 2020 and 2022



Source: Medium-term Debt Management Strategy and MoF data

Despite the completeness of the regulatory and operational framework, the effective implementation of internal control in the public sector entities still lags behind in some crucial areas. Internal audit is widely implemented in the public sector and is in line with international standards, although there is room for improvement in the capacity of internal audit units and the quality of internal audit work. The PFM System Reform Strategy 2022-2025 aims to address these challenges.

While the independence of the ACU is largely established by the legislation, there is scope for improvement on financial independence, and the audit work of the ACU is not fully in line with the International Standards of Supreme Audit Institutions (ISSAIs).

A strong framework for public procurement and a robust e-procurement system are in place, but further harmonisation of the legislation with the EU *acquis* is required

There is a strong institutional capacity for public procurement with the Ministry of Economy as policymaker, recognised as responsive and co-operative by the public procurement community, and with the State Anti-Monopoly Service as an efficient review body. In 2021-2022, a mass-scale professionalisation project was implemented, and more than 45 000 procurement officers were certified as “authorised persons”.

While the legislation on public procurement includes several aspects of the EU *acquis*, there is still work to be done on legal harmonisation. The same applies to concessions and private-public partnerships.

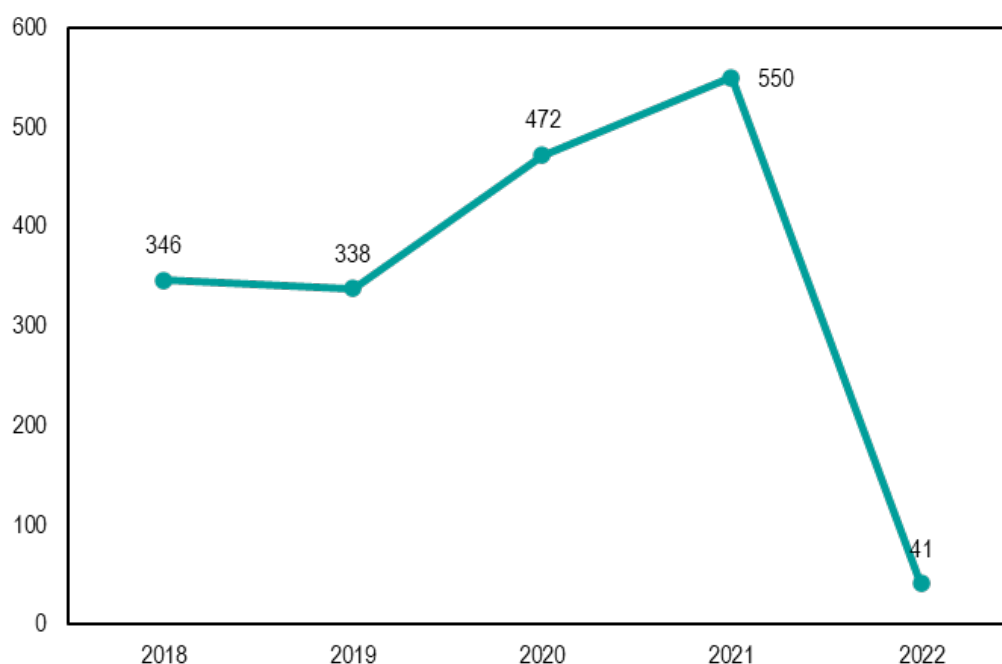
Since October 2022, under martial law, the procurement system has been regulated by a decree that provides for procurement procedures that are simplified and faster, but still competitive and transparent. The regulation has been generally well-received, due to the flexibilities it provides. However, the rules are sometimes unclear, open to different interpretations and too often modified.

As opposed to the EU member states, both the law and practice strongly prioritise contract awards based on the lowest price only.

The ProZorro e-procurement system is transparent and user-friendly. During the martial law regime, the ProZorro system was quickly adjusted to develop and implement simplified functionalities, aligning with the new simplified procedures. However, more than one-third of the overall value of the procurement market takes place outside of the system.

In 2022, the total value of concluded contracts witnessed a significant decline of 49.8%. The number of competitive procedures decreased by 67.9% compared to 2021, and the level of competition (the average number of bids per tender) also declined, with a value of 1.86 in 2022, compared to 2.06 in 2021.

Figure 9. Value of competitive procurement procedures has plummeted during the war (UAH billion), 2018-2022



Source: Annual reports of the Ministry of Economy for 2018-2022.

The way forward

Among the many challenges associated with successful EU accession process, initial accession dialogue with the OECD, post-war recovery and modernisation of the public governance system, the following deserve to be addressed as a matter of priority:

- Maintain solid strategic frameworks of PAR and PFM, strengthen co-ordination and synergies between them (for example policy and budget planning, process streamlining, service delivery and digitalisation), and put more emphasis on outcomes and tangible results, as opposed to only outputs.
- Sustain the upward trend in digitalisation, service quality and accessibility, while ensuring effective implementation of the Law on Administrative Procedure to effectively protect the rule of law and the rights of parties in administrative procedures; make sure sector legislation is aligned with the Law and doesn't introduce unjustified exceptions from its application.
- Strengthen EI co-ordination to boost the implementation of EI legislative commitments, revise EI planning documents and set up the negotiation structures in line with obligations as an EU candidate country.
- Strengthen co-operation between the Government and the Parliament to improve quality of legislation, taking into account the Government's responsibility for designing and implementing national policies and the Parliament's responsibility to scrutinize government policymaking.

- Streamline and reinforce the system of regulatory impact assessment, including for legislation transposing the EU *acquis*, and introduce mandatory and effective public consultation on draft laws and regulations.
- Enhance the capacity of the civil service so it can cope with challenges of EU integration, recovery and national reforms without dependence on support from external consultants.
- Restart merit-based recruitment and reintroduce open competitions as soon as the security situation allows; improve the procedures to ensure selection of candidates with the right experience, knowledge, skills and competences for the job.
- Continue the reform of the grading and salary system in the public service to improve competitiveness and fairness, while fully factoring in the constraints and unpredictability of the financial situation in designing the implementation timeline.
- Rethink the scope and improve selection procedures for senior management in the public service.
- Continue improving the organisational structure of ministries, drawing on lessons from the reorganisation of pilot ministries, and integrate the RSP concept in future grading and salary systems.
- Continue budget management reforms, particularly regarding improvement of the medium-term budget framework and its planning credibility.
- Reinforce the role and responsibilities of line ministries in the budget process in the policy sectors they are responsible for.
- Improve internal control and internal audit and continue alignment of the work of the ACU with international standards (ISSAIs).
- Harmonise the public procurement legislation with the EU *acquis*, including an evaluation of the compliance of local component criteria with the EU rules.

Introduction

The Principles of Public Administration and the European integration (EI) path – measuring the fundamentals

The *Principles of Public Administration*⁷ set out what good public governance entails in practice and outline the main requirements to be followed by countries during the European Union (EU) integration process. Good public governance is key for achieving economic growth, competitiveness and better quality of life. Democratic governance and the rule of law require capable, accountable and effective public administrations. In its 2014 and 2018 Enlargement Strategies, the European Commission (EC) highlighted public administration reform (PAR) as one of three “fundamentals first” areas of the EU enlargement process: “Addressing reforms in the area of rule of law, fundamental rights and good governance remains the most pressing issue for the Western Balkans. It is also the key benchmark against which the prospects of these countries will be judged by the EU”.⁸

A country series, with a long-term perspective

The results of 2018 SIGMA Baseline Monitoring Report led to amendments to Ukraine’s Public Administration Reform (PAR) Strategy, and its action plan, which had been adopted in 2016. Discussions on a follow-up monitoring report started between SIGMA and the Secretariat of the Cabinet of Ministers of Ukraine (SCMU) in September 2020.

Russia’s unjustified large-scale war of aggression against Ukraine, which started in February 2022, did not derail the plans of the Government of Ukraine to carry out the assessment. In the draft Ukraine Recovery Plan, presented by the Prime Minister of Ukraine at the Lugano Ukraine Recovery Conference in July 2022, the SIGMA monitoring process featured prominently in the part devoted to PAR. Furthermore, the decision of the European Council in June 2022 to grant Ukraine EU candidate country status further reinforced the need for this monitoring process.

In October 2022, the SCMU sent an official letter asking SIGMA to start preparations for the monitoring process in 2023. The process started in February 2023.

This monitoring report assesses the state of play and progress in improving the quality of Ukraine’s public administration, including PFM for the first time.

There are two periods assessed in this report: the first covers the situation until end of December 2021 (i.e. before the start of the war) and the second covers the situation as of the end of June 2023. The data collection period was February to June 2023. The war continued during the assessment period, so

⁷ OECD (2017), *The Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

⁸ European Commission (2018), *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, p. 4, https://www.eeas.europa.eu/sites/default/files/western_balkans_strategy_en_0.pdf.

meetings were conducted virtually rather than in person. National experts provided invaluable support during this period in securing the necessary data.

Structured to provide key insights and recommendations to decision makers and detailed performance data to practitioners

The structure of the report mirrors that of the Principles. Each Principle has a dedicated section for its associated indicator(s). A country-wide executive brief and summaries for each of the six thematic areas provide a concise overview of the key findings of SIGMA's monitoring process. The analytical findings and the short- and medium-term recommendations are designed to guide reform efforts and inform the policy dialogue and discussions between the EC and the Government.

SIGMA wishes to thank the Government for its collaboration in providing the necessary administrative data and documentation, as well as for its active engagement during the two rounds of validation to improve the factual accuracy of all the information used. We also thank the experts from EU member countries who contributed to the report. Finally, the support of the EC is, as always, much appreciated.

Methodology

Overall approach – focus on implementation and outcomes, analysing a variety of primary data sources against precise criteria and benchmarks for an objective assessment

The *Methodological Framework for the Principles of Public Administration*⁹ contains a set of standard indicators that SIGMA applies consistently to measure the preconditions and enablers of successful reforms (good laws, policies and procedures, institutional structures and human resources) and the actual implementation of reforms and subsequent outcomes (how the administration performs in practice).

The overall approach recognises that no single measurement method can fully capture the complex issues related to organisational and behavioural change. SIGMA uses information from administrative data, surveys, statistics, interviews, etc., which is cross-checked and triangulated to arrive at a balanced assessment.

Data sources and validation

The main quantitative and qualitative methods applied in the framework are:

- desk reviews of legislation, regulations, reports (most recent are analysed if adopted before December 2021 for the 2021 monitoring year and July 2023)
- interviews (conducted virtually May-June 2023 with 100+ interviewees, including representatives of civil society)
- review of cases and samples of government documentation (most recent are analysed before the end of September 2023)
- observations of practice and on-site verification (conducted virtually April-June 2023 with national expert support)
- analysis of administrative data from public registries and national statistics (most recent before the end of September 2023)
- surveys of the population and businesses (conducted March-April 2023)
- surveys of 300 contracting authorities (conducted March-April 2023).

Data was collected through SIGMA's tool for data collection, analysis and validation (PAR.IS). More than 4 000 documents were received for analysis. In 2023, around 100 government officials were provided direct access to SIGMA's detailed working sheets for calculation of numerical sub-indicator values and justifications for fulfilment of each of the criteria, in addition to fact-checking the draft monitoring reports. The monitoring reports only show the overall indicator values, but the detailed criteria-level analysis will be accessible through a public portal.¹⁰

⁹ OECD (2019), *The Methodological Framework of the Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-May-2019.pdf>.

¹⁰ <https://par-portal.sigmaweb.org/>.

Indicator values reflect the level of maturity and preparedness of administrations – from 0 to 5

The indicator values provide an indication of the administrative capacity and overall performance of national public administrations. This provides an indication of the capability to effectively implement the EU *acquis* and participate in the policy-making processes of the EU.

The point allocation is constructed so that a country can only receive an overall value of 2 on the basis of the quality of its legislative and regulatory framework, and a value of 3 cannot be achieved without showing that implementation of key processes is happening in practice. In order to obtain a value of 4, a country needs to show a consistent achievement of relevant outcomes. The value of 5 is reserved for outstanding performance and full compliance with the Principles and the standards for good public governance.

Averages of the indicator values have also been calculated for each of the six thematic areas of the Principles of Public Administration. This enables comparison of overall trends across the whole administration, over time, and across the region, as shown in the indicator comparison charts:

1. Strategic framework of public administration reform
2. Policy development and co-ordination
3. Public service and human resource management
4. Accountability
5. Service delivery
6. Public financial management.

Understanding how the indicator values are calculated

Across the six thematic areas, the framework is composed of 48 Principles. Each Principle has one or two indicators. There are 52 indicators in total, with 340 sub-indicators and 1 000 individual criteria. Indicator values are presented at the top of the overview tables, on a scale from 0 (lowest) to 5 (highest). The indicator value is based on the total number of points received for the sub-indicators. The point conversion tables are accessible in the Methodological Framework. A three-digit reference number precedes the titles of the indicators: the first number refers to the area, the second to the Principle and the third shows whether this is the first or second indicator under that Principle.

If the required information to assess a sub-indicator is not available or is not provided by the administration, 0 points are awarded. All data requested is needed for a well-functioning public administration, and SIGMA does not estimate performance in the absence of credible evidence.

There were some changes in methodology for calculating overall indicator values containing survey-based data in 2021. The 2021 assessment of the state of public administration was conducted retrospectively in 2023, resulting in the unavailability of survey-based data for certain sub-indicators. To ensure comparability between the 2021 overall indicator values and the 2018 benchmark and 2023 values, SIGMA modified the formula used to calculate these overall indicator values. The change involved removing the survey-based criteria from the total points of the indicator. The point conversion ranges used to convert points into total indicator scores were then adjusted, using a proportional scaling method to align them with the point conversion ranges from the 2019 methodology.

Comparability of the results of population and business surveys

Russia's war against Ukraine has changed the demographic structure, caused economic disruption, and influenced the behaviour of citizens and businesses. These effects may have had an impact on the 2023 survey results. Therefore, it is important to be cautious when making direct comparisons with the pre-war results. For the purposes of the report, potential biases in the survey results caused by the conflict are not discussed.

Strategic framework of public administration reform

The Principles of Public Administration

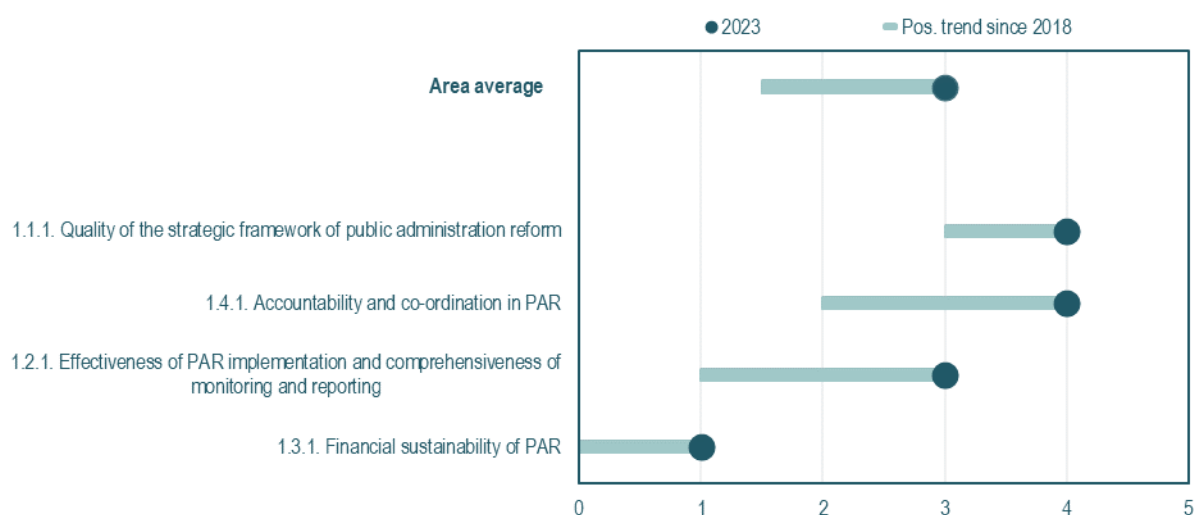
Principle 1	The government has developed and enacted an effective public administration reform agenda which addresses key challenges
Principle 2	Public administration reform is purposefully implemented; reform outcome targets are set and regularly monitored.
Principle 3	The financial sustainability of public administration reform is ensured.
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.

Summary

Ukraine made steady progress in strengthening its strategic framework for public administration reform (PAR). While challenges remain to be addressed on practical aspects associated with this policy area, especially ensuring its financial sustainability, most key elements have been established and are largely functional.

Even after the outbreak of Russia's large-scale war of aggression against Ukraine, the implementation of reforms has continued. This is important, given the European Union (EU) candidate status granted to Ukraine in June 2022. Effective management and co-ordination of the EU accession process, as well as close co-ordination between different branches of power, will require even more efforts and strengthened capacity of public administration to advance reforms across different sectors. Lower performance in 2021 is explained by the lack of an overarching strategy covering the whole area of public financial management (PFM) and weaker quality in a number of analysed aspects of the Public Procurement Strategy (PPS).

Figure 10. The overall indicator values per Principle in area of strategic framework of PAR



Note: The area average is a simple arithmetic mean of the sub-indicators. The sub-indicators are sorted from smallest to largest.

Source: SIGMA elaboration based on the assessment data.

PAR remains one of the Government's priorities and has a clear set of measures planned to achieve set policy objectives. The key horizontal planning documents – the Government Work Programme, its annual priority actions plans and the National Economic Strategy 2030 – clearly address PAR as one of the priority areas.

Ukraine renewed its strategic framework for PAR during 2021. The current strategic framework is well-established through two key planning documents – the Public Administration Reform Strategy (PARS) 2022-2025 and the Public Financial Management Strategy (PFMS) 2022-2025, along with action plans as integral parts of both strategies – that cover all areas of the Principles of Public Administration. These documents set out policy objectives, identify ambition levels through use of performance indicators with clear targets for each year, plan actions that are needed to achieve those targets, and set clear accountability lines and deadlines for implementation. In December 2022, following the decision to grant Ukraine EU candidate country status and self-assessment of administrative capacities of public institutions regarding the European integration (EI) process, Ukraine updated the PARS 2022-2025 to include several actions linked with the need to improve the capacities of the civil service.

The implementation of planned reforms is closely monitored and regularly reported to the PAR Co-ordination Council. Annual implementation reports for 2022 for both PARS 2022-2025 and PFMS

2022-2025 were prepared and approved at the meeting of the PAR Co-ordination Council. Non-state actors took an active part in the discussion and provided their comments on the quality of the reports and topics covered, resulting in a decision of the PAR Co-ordination Council to provide additional information on some points. It should be noted that, in addition to annual reports, the Ministry of Finance (MoF) also prepared quarterly reports during 2022 and published them on their website. The monitoring and reporting system worked equally well in 2021, when annual reports for implementation of PARS 2016-2021 and semi-annual reports of PPS 2016-2022 were regularly prepared.

Monitoring reports on implementation of planning documents provide general information on the implementation rate of planned actions, as well as on achievement of set targets of performance indicators. The implementation rate of actions planned for 2022 within the PARS 2022-2025 was 89.3%, while for the PFMS 2022-2025 it was 40%. This difference can be explained by fact that the PARS 2022-2025 was amended in December 2022, and the amendments included changes to a number of deadlines to consider the impact of war (22.7% of total actions). This was not done in the case of the PFMS 2022-2025. A more stable situation can be observed in achievement of target values of performance indicators. During 2022, 59.3% of planned targets were achieved in the case of the PARS 2022-2025, and 50% in the case of the PFMS 2022-2025.

Financial sustainability of PAR continues to remain a challenge compared to 2018. The only notable improvement regarding quality of costs associated with implementation of the PARS 2022-2025 and the PFMS 2022-2025 is the fact that almost all planned actions (83.4% of the total in both action plans) clearly define the source of funding. However, only in the PARS 2022-2025 and only in 11 cases (21.2% of total 52 actions planned) are actual cost estimates provided on additional financial resources required. Full costing has not been carried out in either case. At the same time, SIGMA was provided with evidence that funding has been allocated in annual budgets for 2022 and 2023 for implementation of four of the five most costly actions of the PARS 2022-2025. This was not the case in 2018 and 2021, thus signalling a gradual improvement.



Management and co-ordination mechanisms for the PARS 2022-2025 and the PFMS 2022-2025 are established and functioning. The PAR Co-ordination Council, which involves political-level decision-makers including wide representation of members of parliament and non-state actors, has overall responsibility for the whole PAR agenda. Although the frequency of Council meetings has been impacted by the ongoing war, it has still met and discussed reform four times within the assessment period. At the administrative level, the practice since early 2022 has been similar, with the management and co-ordination mechanism for PARS 2022-2025 meeting almost on a weekly basis, according to the Secretariat of the Cabinet of Ministers of Ukraine (SCMU), and co-ordination structures for the PFMS 2022-2025 functioning on an as-needed basis. This is in line with requirements set out by the assessment methodology.

Overall institutional and managerial accountability for PAR is clearly established and is cascaded down to individual level. The SCMU bears overall responsibility for implementation of the PARS 2022-2025 and the MoF for the PFMS 2022-2025, as clearly stated in both strategies. These accountability lines are reiterated in statutes of both institutions, in statutes of structural units and at the level of individual job descriptions. In addition, responsibility for implementation of reform actions or participation in implementation is attributed either to structural units or personally to heads of those units.

Analysis

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

Overall, the value of the indicator “Quality of the strategic framework of public administration reform” is 4. This shows a steady improvement in the overall quality of the PAR agenda since 2018. The improvement is observed particularly in meeting quality requirements for PAR planning documents, their coherence and consistency with other planning documents, and in the process of engagement with external stakeholders through consultations.

Indicator 1.1.1 - 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 (1.1.3) measures financial sustainability and cost estimates in detail.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
1. Coverage and scope of PAR planning documents			5/5	4/5	5/5	
2. Prioritisation of PAR in key horizontal planning documents			2/2	1/2	1/2	
3. Coherence of PAR planning documents			0/4	4/4	2/4	
4. Presence of minimum content of PAR planning documents			5/7	4/7	6/7	
5. Reform orientation of PAR planning documents (%)			2/3	2/3	2/3	
6. Quality of consultations related to PAR planning documents			1/2	0/2	2/2	
Total			15/23	15/23	18/23	

Note: More information about the point conversion ranges can be found in the Methodology section.

PAR remains one of the Government’s priorities, as stated by the key horizontal planning documents. The Government Work Programme of the Cabinet of Ministers of Ukraine (CMU)¹¹ and the annual plans of priority actions of the Government for 2021 and 2023¹² that are prepared to implement the set priorities of the Government clearly spell out substantive sections¹³ on PAR, covering all key substantive areas, as defined by the Principles of Public Administration. Similarly, the National Economic Strategy 2030¹⁴ covers most of the areas, with the exception of public service and human resource

¹¹ Decision of the CMU No. 471 of 12 June 2020.

¹² Decision of the CMU No. 221 of 14 March 2023.

¹³ See descriptions of priorities Nos. 2, 4, 6 and 19 as examples covering the areas of service delivery and digitalisation, effective governance and policy development, public service and human resource management, and public financial management, including public procurement.

¹⁴ Ordinance No.179 of the CMU of 3 March 2021.

management, with plans for reform actions that would increase Ukraine's economic development. Although the Action Plan on implementation of the Association Agreement,¹⁵ the central planning document for EI, identifies general implementation of the PAR as one of the actions under political criteria, it cannot be assessed as covering all substantive areas of the Principles of Public Administration. In addition, assigned deadlines for this action date back to 2018 and therefore cannot be considered relevant for the current assessment.

The strategic framework for PAR is well-established and covers all substantive areas as defined by the Principles of Public Administration. The two planning documents – the PARS 2022-2025¹⁶ and the PFMS 2022-2025¹⁷ – set out clear policy objectives and identify performance indicators for measuring achievement and set out ambition levels through performance targets planned for each year. Both strategies also include detailed action plans, with planned reform measures, identify responsible institutions and deadlines for implementation, and identify sources of financing. It should be noted that clear cost estimates are provided for only 4.9% of the actions (11 out of 52 actions of the PARS 2022-2025 and 0 out of 171 actions of the PFMS 2022-2025). Both documents also provide basic information on functioning of PAR management and co-ordination, as well as monitoring and reporting. Almost the same approach can be observed for 2021, when the PARS 2016-2021¹⁸ and the PPS 2016-2022¹⁹ were in force. There was no planning document covering the rest of the PFM area during 2021, which explains the lower value of the relevant indicator for 2021. While the MoF elaborated the PFMS by mid-2021, final inter-ministerial consultations took longer than expected, and the PFMS was adopted just before the end of 2021.

The PARS 2022-2025 and the PFMS 2022-2025 are both internally and mutually coherent. No inconsistencies were found between these two strategic planning documents in terms of their reform objectives and content. However, out of four draft laws planned within these strategic documents for 2023, only two were included in the government legislative plan for 2023, thus leading to minor misalignment with the plan of priority actions of the Government for 2023. While it is not expected that all actions of the strategic framework of PAR would be duplicated in the annual Government Priority Action Plan, in the case of draft laws envisaged to be adopted, this consistency between planning documents should be observed. It should also be noted that the formulations of legislative actions in both action plans do not give the exact titles of draft laws or regulations that are planned to be amended or elaborated. This negatively impacts the quality of operational planning documents and makes it more difficult to ensure their alignment and traceability in relation to other government planning documents.

The action plans of both strategies include mostly reform-oriented actions, with a few exceptions where some process-oriented, regular, or continuous actions are also mentioned. In total, more than 77% of the actions of both action plans²⁰ are assessed as reform-oriented. The same was the case with the previous strategic framework, where actions from the PARS 2016-2021 were assessed to be 91% reform-oriented, while actions from the PPS 2016-2022 were assessed to be 72.7% reform-oriented.

Non-state stakeholders were consulted on the current strategic framework for PAR. Both the PARS and the PFMS were developed in a collaborative manner, as non-state stakeholders were actively involved in elaboration of both. For the PARS 2022-2025, the discussions related to elaboration of the different chapters can still be viewed on YouTube, making it possible to understand the logic behind the final set of reforms that were included. Both strategies were also formally published for public

¹⁵ Ordinance No.1106 of the CMU of 25 October 2017.

¹⁶ Ordinance No.831-p of 21 July 2021.

¹⁷ Ordinance No.1805-p of 29 December 2021.

¹⁸ Ordinance No.474-p of 24 June 2016 (amended by Ordinance No.1102-p of 18 December 2018).

¹⁹ Ordinance No.175-p of 24 February 2016.

²⁰ For the PARS 2022-2025, this sub-indicator is 73.1%; for the PFMS 2022-2025, it is 78.4%.



consultation for at least ten working days. As for previous planning documents, there was consultation with the public on the draft PARS 2016-2021, but there is no evidence of consultation for the PPS 2016-2022.

Conclusion

During 2021, Ukraine renewed its strategic framework for PAR with adoption of two comprehensive new planning documents. PAR is acknowledged as one of the priorities of the Government in key horizontal planning documents. The strategic framework for PAR is currently well-established and mutually consistent and covers all key areas of the Principles of Public Administration. Non-state actors were involved in the elaboration process of both strategies, and public consultations were held. Consistency with the annual plans of priority actions of the Government should be improved regarding key planned legislative initiatives.

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

Overall, the value of the indicator “Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting” is 3 in 2023. Overall implementation of PAR action plans and achievement of set outcome-level indicator targets has improved, as has the overall quality of the monitoring system. Ukraine scored lower in 2021 due to the absence of a valid PFMS, and the lack of a proper performance measurement framework for the PPS 2016-2022.

Indicator 1.2.1 – 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
1. Comprehensiveness of PAR reporting and monitoring systems			3/8	3/7	6/7	
2. Implementation rate of PAR activities (%)			1/4	4/4	1/4	
3. Fulfilment of PAR objectives (%)			0/4	0/4	3/4	
Total			4/16	7/15	10/15	

Note: More information about the point conversion ranges can be found in the Methodology section.

The basic mechanisms for effective monitoring, reporting and evaluation of both the PARS 2022-2025 and the PFMS 2022-2025 are clearly established through the relevant planning documents, and they have been functioning in practice over the assessment period. This was also the case in 2021 with the PARS 2016-2021 and the PPS 2016-2022. Despite the ongoing war, annual monitoring reports for implementation of both the PARS 2022-2025 and the PFMS 2022-2025 during 2022 have been prepared and were discussed by the PAR Co-ordination Council on 7 June 2023. It should be noted that the MoF has also been regularly preparing quarterly monitoring reports on implementation of the PFMS 2022-2025 and publishing them on its website,²¹ as envisaged in the strategy. Similarly, annual

²¹ MoF website: <https://mof.gov.ua/uk/zvit> (accessed 18 June 2023).

monitoring reports were prepared in the past for the PARS 2016-2021, as were semi-annual reports on implementation of the PPS 2016-2022.

Both the PARS 2022-2025 and the PFMS 2022-2025 include a set of outcome-level performance indicators with target values for each year of implementation that allow measurement of progress towards achievement of set reform objectives. These indicators are used in annual monitoring reports to illustrate key achievements, along with information on implementation of each planned reform action. It should be noted that both the PARS 2022-2025 and the PFMS 2022-2025 have technical information (“indicator passports”) developed for each outcome-level indicator. In the past, the PARS 2016-2021 also had both indicators and detailed technical information (“indicator passports”) that were used for monitoring. However, the PPS 2016-2022 did not have any outcome-level performance indicators. This is why the score for the relevant sub-indicator for the 2021 assessment period is lower than that of the 2023 assessment.

As full members of the PAR Co-ordination Council, non-state actors are involved in review and discussion of both the PARS 2022-2025 and the PFMS 2022-2025 reports. While this was also the case for the PARS 2016-2021, there is no evidence that the semi-annual reports on implementation of the PPS 2016-2022 were reviewed or discussed with non-state actors.

According to information provided in the annual reports on implementation, the implementation rate of actions with deadlines in 2022 reached 89.3%²² for the PARS 2022-2025 and 40%²³ for the PFMS 2022-2025. It should be noted that, in the case of the PARS 2022-2025, it was impacted by amendments made to the action plan in December 2022 to take stock of negative impacts observed due to the ongoing war of aggression by Russia. Implementation deadlines were adjusted for 10 actions out of a total of 44 in the initial action plan (22.7%), 3 actions were deleted, and 11 new actions were added. Similar implementation rates for actions were observed for 2021, where they reached 95.2%²⁴ for the PARS 2016-2021 and 83.3%²⁵ for the PPS 2016-2022.

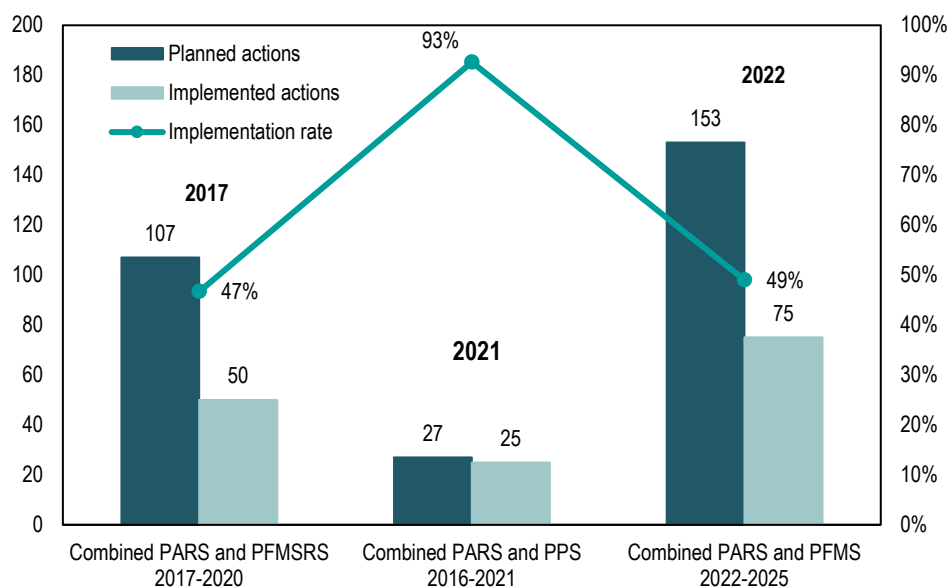
²² According to data from annual monitoring report, 25 implemented actions from 28 in total planned for 2022.

²³ According to data from annual monitoring report, 50 implemented actions from 125 in total planned for 2022.

²⁴ According to data from annual monitoring report, 20 implemented actions from 21 in total planned for 2021.

²⁵ According to data from the last semi-annual monitoring report, five implemented actions from six in total planned for 2021.

Figure 11. Implementation rate of planned PAR-related actions in 2017, 2021 and 2022



Source: SIGMA calculations, based on information provided in annual monitoring reports for the PARS 2016-2021, the PFMS 2017-2020, the PPS 2016-2022, the PARS 2022-2025 and the PFMS 2022-2025.

Achievement of the set targets for outcome-level indicators used to measure set objectives reached 59.3%²⁶ for the PARS 2022-2025 and 50%²⁷ for the PFMS 2022-2025. Direct comparison with 2021 can be made only in case of the PARS 2016-2021, which achieved 57.1%,²⁸ as the PPS 2016-2022 did not use performance indicators for measuring achievement of set objectives.

Conclusion

The PAR agenda has a functioning monitoring and reporting framework that provides all involved stakeholders, including non-state actors, donor organisations and civil society with information on implementation of planned reform actions and achievement of set performance targets. The implementation rate of reform actions has been negatively impacted during the ongoing war, while achievement of performance targets remains comparable with the pre-war situation on achievement of the PARS 2016-2021 performance targets.



²⁶ According to data from the last semi-annual monitoring report, 16 out of 27 outcome-level indicator targets set for 2022.

²⁷ According to data from the last semi-annual monitoring report, 13 out of 26 outcome-level indicator targets set for 2022.

²⁸ According to data from the last semi-annual monitoring report, 12 out of 21 outcome-level indicator targets set for 2022.

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

Overall, the value of the indicator “Financial sustainability of PAR” is 1. There is a slight positive change in comparison to 2018. Financial sustainability of the reform agenda remains the weakest area of the current strategic framework for PAR. Neither of the PAR planning documents has full financial cost estimates of the planned reform actions, which creates risks for implementation of reforms.

Indicator 1.3.1 – Financial sustainability of PAR			
This indicator measures to what extent financial sustainability has been ensured in PAR as a result of good financial planning.			
2023 indicator value	0	1	2 3 4 5
Trend 2018-2021 	Trend 2021-2023 		Points
			2018 2021 2023
1. Costed PAR activities (%)	0/3*	0/3	0/3
2. Completeness of financial information in PAR planning documents	0/4	0/4	0/4
3. Actual funding of the PAR agenda	0/3	0/3	1/3
Total	0/10	0/10	1/10

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

Only 4.9%²⁹ of the action plans of both the PARS 2022-2025 and the PFMS 2022-2025 provide costing information. In the case of the PARS 2022-2025 only 21.2%³⁰ of the actions (11 out of 52) clearly indicate the amount of funding (in thousands of UAH) needed for implementation. All the rest of the actions are foreseen to be implemented within the amounts available from the state budget or from international donor support, but no cost assessment is provided, not even to clearly indicate that zero funding would be required. In case of the PFMS 2022-2025, there are no actions at all that indicate the amount of funding needed for implementation, and the source of funding is stated in only 78.4% of cases. A similar situation could be observed in 2021, when none of the actions planned for implementation of the PPS stated clear cost estimates, with all having only generic references to the state budget and donor support as sources of funding.

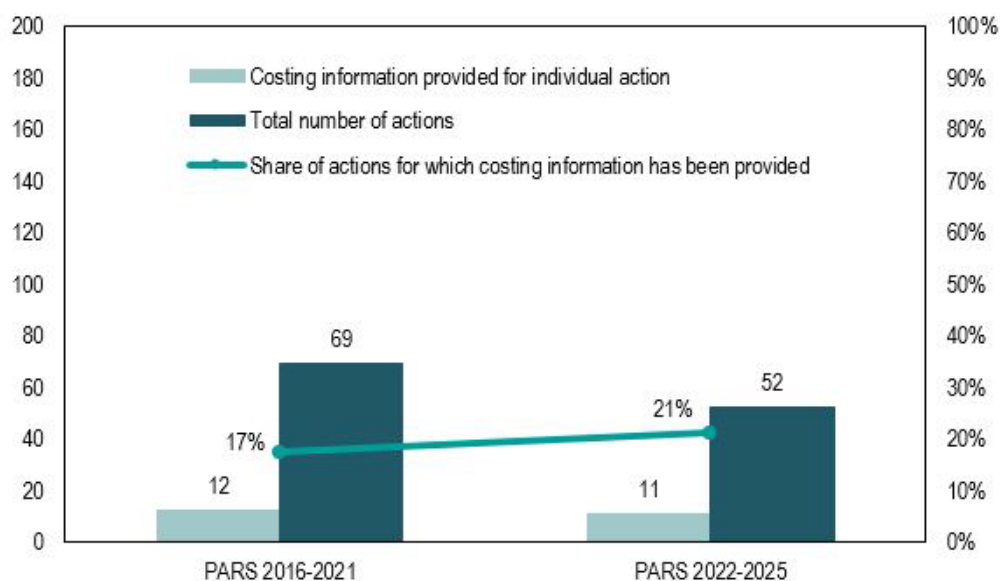
There is no evidence that systematic cost estimates are prepared to assess fiscal implications for implementation of the PAR agenda. Although there are specially designated chapters on financing of reform in both the PARS 2022-2025 and the PFMS 2022-2025, there are no calculations presented on how much the reform would cost in general, how much of it would be covered by the state budget and donors, and the size of the gap for which financing is still to be found. If this issue is addressed during revision of both strategies, the specific methodology on carrying out financial and economic calculations during the preparation of the draft act of the CMU and the draft law³¹ prepared by the MoF should be applied to calculate costs associated with implementation of the PAR agenda, thus observing good practice as suggested at national level.

²⁹ For the two action plans, only 11 out of 223 actions.

³⁰ An improvement in comparison to the PARS 2016-2021, where only 17.4% (12 out of 69 actions) provided clear amounts information on funding needed. All of those were supposed to be covered through the EU Technical Assistance project “Support to comprehensive public administration reform”.

³¹ Order of the MoF No. 428 of 21 March 2008 (updated with Order No. 510 of 6 December 2019).

Figure 12. Rate of PAR-related actions in 2021 and 2022 with clear costing information



Source: SIGMA calculations based on information provided in annual monitoring reports for the PARS 2016-2021, the PPS 2016-2022, the PARS 2022-2025 and the PFMS 2022-2025.


The actual funding allocated to implement the PAR agenda is largely ensured, according to information provided by the SCMU. Assessment of the alignment of financial cost estimates of the most expensive PAR reform measures with the allocated funding in the state budget or donor-funded projects showed that financing for four out of five actions has been provided in both the 2022 and 2023 annual budgets and relevant donor-funded projects.

Conclusion

The financial sustainability of PAR remains rather weak. Full and complete information about cost estimates for planned PAR actions is not available. At the same time, funding for the most expensive actions of the PARS 2022-2025 for which costing estimates had been identified has been provided as planned through both the annual budgets and donor-funded projects, which is a positive development compared to the previous strategy.

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, the value of the indicator “Accountability and co-ordination in PAR” is 4, a significant improvement compared to 2 in 2018. Organisational and managerial accountability for PAR is clearly established. Robust management and co-ordination structures are established and functioning at the political level. They meet regularly to discuss achieved progress and involve representatives of non-state organisations. The assessment of 2021 is lower than that of 2023, because there were no political or administrative level management mechanisms established for the PPS.

Indicator 1.4.1 – 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 level, and the performance of the leading institution.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
1. Establishment of organisational and managerial accountability for PAR			4/6	4/6	6/6	
2. Co-ordination mechanisms for PAR			4/10	0/10	8/10	
Total			8/16	4/16	14/16	

Note: More information about the point conversion ranges can be found in the Methodology section.

There are clear accountability lines established for both the PARS 2022-2025 and the PFMS 2022-2025. The accountability frameworks for overall management of the PAR agenda are clearly established and discussed in dedicated chapters of both strategies. While the SCMU is responsible for overall co-ordination and management of the PARS 2022-2025,³² the MoF is formally assigned to perform a similar role for the PFMS 2022-2025.³³ The statutes of relevant structural units of both institutions also envisage these responsibilities and cascade them down to job descriptions of individual employees. In addition, responsibility for implementation of specific reform actions of both action plans are assigned to different involved institutions, either to structural units or the heads of those structural units by specific resolutions of ministers or state secretaries (e.g. in the case of the SCMU, the MoF and the Ministry of Justice) or by internal electronic management systems (e.g. in the case of the Ministry of Digital Transformation, the Ministry of Economy and the National Agency of Ukraine on Civil Service). A similar approach towards accountability lines was employed in the PARS 2016-2021 and the PPS 2016-2022. However, SIGMA was not provided with evidence on formal assignment of roles and responsibilities for implementation of individual actions during 2021. Hence, the assessment of the relevant criterion is weaker for 2021.

A comprehensive PAR management and co-ordination mechanism has been established and is functional at the political level. Both the PARS 2022-2025³⁴ and the PFMS 2022-2025³⁵ clearly

³² Chapter VI, “Co-ordination, monitoring, and evaluation of Strategy implementation status”.

³³ Chapter on “Strategy co-ordination and monitoring, and assessment of the progress of its implementation”.

³⁴ Chapter VI, “Co-ordination, monitoring, and evaluation of Strategy implementation status”.

³⁵ Chapter on “Strategy co-ordination and monitoring, and assessment of the progress of its implementation”.

envisage that the PAR Co-ordination Council is the political-level management and co-ordination mechanism for overseeing their implementation. All relevant institutions are represented at the Council.³⁶ It should be noted that representatives of the relevant committees of the Verkhovna Rada of Ukraine (the Parliament) are also members of the PAR Co-ordination Council and regularly participate in its meetings. This is a unique and very commendable practice of such management and co-ordination mechanisms observed by SIGMA. In addition, there is wide representation of non-state actors at the Council, with four formal members. The PAR Co-ordination Council met once in 2022 and three times in the first half of 2023 to discuss relevant issues and make decisions based on the agreements reached. While the PAR Co-ordination Council³⁷ also ensured its role in relation to the PARS 2016-2021, there was no such approach employed in the case of the PPS 2016-2022, which explains the lower indicator values for relevant sub-indicators for 2021.

Administrative level co-ordinations mechanisms are equally well formalised and functioning. The administrative-level group for management and co-ordination of implementation of the PARS 2022-2025 is established³⁸, and it includes all key stakeholders from the SCMU, the National Agency of Ukraine on Civil Service, the Executive Director of the Reform Delivery Office of the CMU, and a representative of the EU Technical Assistance project “EU4PAR”. According to the SCMU, the group meets on almost a weekly basis, and SIGMA has been provided evidence of these regular and thematic meetings devoted to PAR issues. Decisions of the group are formalised by the participants on a as-needed basis, and their implementation is monitored by the relevant directorate of the SCMU. Administrative-level co-ordination of implementation of the PFMS 2022-2025 is also formally established, with clearly defined membership of the core group and a number of thematic sub-groups³⁹, as well as representatives of relevant state institutions and non-state actors. This mechanism has been functioning less frequently than in the case of the PARS 2022-2025, but it meets the assessment criteria.

Conclusion

Overall co-ordination of PAR and implementation of specific reform actions is clearly attributed at institutional, structural and individual levels. PAR has a robust management and co-ordination structure established at both political and administrative levels that regularly meets, discusses achievements and challenges, and takes decisions. Participation of members of parliament ensures good co-operation between the legislative and executive branches during preparation and implementation of reforms. Non-state actors are also actively engaged in discussions regarding PAR.

³⁶ The list of Members of the PAR Co-ordination Council was updated and reapproved by the Minister of the CMU on 21 February 2023.

³⁷ Decision of the CMU No. 335 of 18 May 2016.

³⁸ Decision of the Minister of the CMU No. 1843/0/2-22 of 11 January 2022.

³⁹ Decision of the Minister of Finance No. 142 of 2 March 2021.

Policy development and co-ordination

The Principles of Public Administration

Principle 1	Centre-of-government institutions fulfil all functions critical to a well-organised, consistent and competent policy-making system.
Principle 2	Clear horizontal procedures for governing the national European integration process are established and enforced under the co-ordination of the responsible body.
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.
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.
Principle 5	Regular monitoring of the government's performance enables public scrutiny and support the government in achieving its objectives.
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.
Principle 7	The parliament scrutinises government policymaking.
Principle 8	The organisational structure, procedures and staff allocation of the ministries ensure that developed policies and legislation are implementable and meet government objectives.
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 <i>acquis</i> .
Principle 10	The policy-making and legal-drafting process is evidence-based, and impact assessment is consistently used across ministries.
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.
Principle 12	Legislation is consistent in structure, style and language; legal drafting requirements are applied consistently across ministries; legislation is made publicly available.

Summary and recommendations

Overall, Ukraine has made little progress in policy development and co-ordination. In some areas, Ukraine has continued to implement reform measures, while in others progress has been recorded, some of it due to Russia’s war of aggression against Ukraine. Planning and implementation of European integration (EI) policies, monitoring and reporting of government performance, transparency of government decision-making and public consultations are some of the areas that require improvement. There have been slight advances in the establishment of functions and mandates for the centre-of-government (CoG) institutions and the quality of policy planning, along with improvements in the consistency of interministerial consultations. The application of tools for assessing alignment of national legislation with the European Union (EU) *acquis* has improved to some extent, but the pace of implementation of EI legislative commitments remains low. Furthermore, there has been a slight and fragile enhancement in the quality of impact assessments of policies, but sustained efforts will be necessary to preserve this modest achievement and progress further.

Figure 13. Overview of indicator values per Principle in the area of policy development and co-ordination



Note: The area average is a simple arithmetic mean of the sub-indicators. The sub-indicators are sorted from smallest to largest.
 Source: SIGMA calculation based on the assessment data.

Key CoG functions are established and assigned to the relevant key institutions. The Secretariat of the Cabinet of Ministers of Ukraine (SCMU) is the main CoG institution performing several key functions. The

overlaps in institutional mandates for government policy monitoring and reporting identified in 2018 have been eliminated through changes to the rules of procedure (RoP). The CoG bodies co-ordinate their opinions and positions during the preparation of government work planning documents and policy proposals submitted to the Cabinet of Ministers of Ukraine (CMU) for adoption. Development of policies and laws within ministries and other executive bodies of the Government is supported by the body of guidelines, which are periodically issued and circulated by the CoG institutions. Guidelines for development of sector strategies have been developed but are not yet adopted.

The majority of key functions and guidelines pertaining to EI co-ordination have been assigned and established. The Government Office for Coordination on European and Euro-Atlantic Integration (GOCEEAI) examines the draft laws and bylaws and checks their alignment with the EU *acquis*. The functions and mechanisms for the management of EU accession negotiations are not established. The capacity of the Government to ensure effective co-ordination of EI processes needs to be significantly enhanced. Although the Co-ordination Commission for implementation of the Association Agreement between the EU and the European Atomic Energy Community and their Member States was formed, it has not been able to meet since Russia's large-scale war of aggression against Ukraine, and an interministerial administrative body has not yet been established.

The policy planning system has gradually evolved since 2018, and improvement has been recorded in some areas since then. The medium-term and sector planning frameworks were enhanced by introducing core requirements and procedures in regulations. However, the war has negatively affected implementation, leading to delays and a shift towards short-term priorities. The quality and the level of alignment of government policy planning documents could not be fully assessed, as the Government work plan and the medium-term budgetary framework (MTBF) were not adopted for 2022. While the quality of sector strategies shows moderate improvement over past years, the elements of performance measurement, monitoring, reporting and costing of sector reforms efforts remain the weakest areas.

While the EI policy planning system and procedures for a medium-to-long period are formally established, there are weaknesses in implementation. The existing procedures do not lead to substantial regular updates of the multi-year EI plan in line with realities, hence reducing the EI plan's usefulness as a realistic planning tool for EU *acquis* approximation and translation. The implementation rate of EI-related legislative commitments is 22% in 2022, and the EI plan's alignment with the Government Priority Action Plan (GPAP) 2023 could not be established.

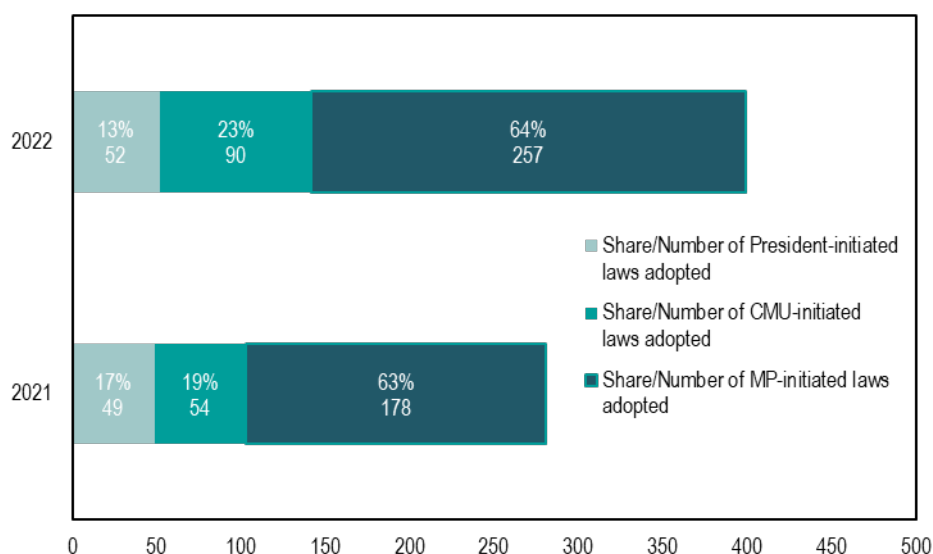
The regulations require regular monitoring and reporting on government and sector performance, but they fall short of stipulating that those reports be publicly available. The practice of preparing and publishing reports is adversely affected by the war, as there are no valid Medium-Term Government Action Plan (MTGAP) and GPAP reports, hindering the assessment of their quality. The reporting on sector strategies shows improvement compared to previous years, but their focus remains on outputs. While regular reports on the EI plan are available, the publicly released annual reports only focus on outputs and do not provide information on unimplemented activities and the reasons behind their non-implementation. Reporting on State Target Programs (STPs) was interrupted due to the active phase of war in 2022.

The formal requirements and practical functioning of government decision-making were impacted by the war. Normative change was introduced allowing urgent decisions and draft acts of the CMU to be adopted bypassing approval and consultation requirements during the period of martial law. Nearly a quarter of CMU decisions were passed through this urgent procedure in the beginning of the war. The transparency of government decision-making has declined largely because of the restrictions imposed due to the war. Publication of Government agendas and associated materials are now suspended due to martial law. The requirement for CoG bodies to examine proposals is in place, but may be skipped or shortened in urgent cases under the period of martial law. The effectiveness of scrutiny is limited, as the SCMU does not have the authority to return proposals of insufficient quality, and flaws persist in reviewing financial affordability of proposals and their alignment with government priorities.

The regulatory framework for parliamentary scrutiny and oversight is established, and its application has improved. Government representatives participate regularly in the work of the Parliamentary Committees and the plenary sessions, but there are fewer opportunities for members of

parliament (MPs) to directly address the Government with their questions through the Government Hour. The Parliament consults with the CMU consistently on laws initiated by MPs. The CMU follows its GPAP more consistently when preparing and submitting draft laws to the Parliament. Fewer laws were adopted in extraordinary procedure. However, the Government continues to have a limited role in proposing new laws, with most initiatives coming from MPs, increasing the risk of laws being developed and adopted without comprehensive impact analysis, EU law compliance assessment and public consultations. Such a situation also risks impeding the government's responsibility for planning, designing and implementing national policies. In addition, the Parliament's timeliness in processing the Government's drafts has also deteriorated.

Figure 14. CMU initiatives in the Parliament in 2021 and 2022



Note: The share and number of adopted draft laws in 2021 and 2022 is taken from the Parliamentary activity reports for 2021 and 2022.
Source: SIGMA calculation based on reports provided by the Parliament.

Within the government, ministries hold the primary responsibility for drafting laws and policies, while implementation is carried out by other executive authorities. Accountability of ministries for legislative initiatives is limited by the continuing practice of draft laws from the ministries being submitted to the Parliament through individual MPs. There are no internal ministry regulations for drafting laws and policies and no consistent practices in place that would enable ministries to effectively co-ordinate and consult draft laws and policies within the ministry. Legal services are always involved, but this is not the case for the financial and budgetary departments, which are rarely consulted. The majority of analysed sample ministries have over half of their staff working in policy development departments.

The institutional and procedural framework for aligning national legislation with the EU *acquis* is in place, but challenges occur in timely transposition. The requirement for public consultation and regulatory impact assessment of legislation that transposes EU regulations has been removed, which may negatively affect the quality of such legislation. The GOCEEAI is responsible for co-ordinating and monitoring the process of aligning legislation with the EU *acquis*. The opinions on *acquis* alignment are consistently issued, but timely transposition is not ensured. According to SIGMA assessment, the implementation rate of solely legislative commitments for EU *acquis* alignment is 11% in 2021 and 7% in 2022. However, according to the government monitoring system, "Pulse of Agreement", that takes into account also non legislative commitments, the overall implementation rate under APIAA was 60% in 2021 and 42% in 2022. Required annual translation plans are regularly prepared, but translations are not always available on time.

The regulations define the requirements for carrying out analysis of draft acts and policies and their impacts through different tools and instruments, which makes the system fragmented.

Regulatory impact assessment (RIA) is required, but the scope is narrow and covers only legal acts that affect the business sector. Furthermore, a recent legislative amendment in 2022 introduced a blanket exception from RIA for all regulatory acts transposing EU regulations. In addition, a parallel system of broad impact assessment exists for all acts. The ministries and other central executive authorities preparing regulations with business impacts are required to prepare RIAs and explanatory notes with overlapping contents. This does not help the final decision-making to be based on the overall analysis of all impacts and risks through one single instrument/report. The quality of impact analysis has not improved since 2018, with weak information provided in supporting documents, which hinders evidence-based decision-making. Implementation issues, fiscal impacts and alternatives remain inadequately addressed during the policy-development process. Quality assurance, although performed, is insufficient and does not address the deficiencies.

Public consultation in Ukraine is insufficiently regulated, as the obligation to consult on all draft laws and bylaws adopted by the Government has not been established; the draft law on public consultations is pending adoption by the Verkhovna Rada of Ukraine (VRU). Understandably, fewer consultations were held in 2022 compared to the previous year. The rules for public consultation are not effectively enforced, leaving deficiencies unaddressed. The quality assurance of the public consultation process is mandatory and carried out in practice, but its effectiveness remains insufficient. However, the interministerial consultations are well-regulated and consistently carried out. Compliance with the rules and effective quality control are evident, although meeting the minimum time requirements for consultations can be challenging due to the need for urgent decisions during the war.

Clear procedures and rules for drafting and publishing legislation are established and adhered to. Scrutiny of legal quality is also effectively ensured, although there is overlap of functions between the two responsible institutions, the SCMU and the Ministry of Justice (MoJ). All primary and secondary legislation is generally available centrally and in consolidated format on several state-run electronic databases that are accessible online free of charge. However, the Government did not adopt mandatory bylaws on time to support implementation of analysed sample laws, with only a 33% success rate in 2021 and 11% in 2022.

Short-term recommendations (1-2 years)

1. The Government should strengthen the EI planning system, including effective monitoring and reporting. The EI plan should be aligned with the Government Priorities Action Plan for respective years and should include realistic measures for EU approximation and for strengthening institutional and administrative capacity.
2. The Government should strengthen procedures, structures, and capacities for more effective EI co-ordination, in line with the new demands and obligations arising from EU candidate status. It should set up the EI accession negotiation structures and mechanisms.
3. Co-operation between the Government and the Parliament should be strengthened to ensure quality of legislation, taking into account the Government's responsibility for designing and implementing national policies, including legal harmonisation with the EU *acquis*, as well as the responsibility of the Parliament to scrutinize government policies.
4. The capacity of the SCMU to perform the centre-of-government functions, in particular to carry out effective quality control of policies and regulations and to support the Prime Minister and the government's decision-making process, should be strengthened.
5. The Parliament should finalise adoption of the law on public consultation to ensure that all laws and bylaws developed by the Government, with reasonable exceptions, undergo effective public consultations. Once the law is adopted, the Government should ensure its full enforcement by consistent quality control, oversight, and necessary training.



Medium-term recommendations (3-5 years)

6. The Government should review existing rules and requirements for regulatory impact assessment, aiming to streamline and simplify the system, unify rules for all types of primary and secondary legislation (including those related to transposition of the EU *acquis*) and to avoid unnecessary overlap and duplication. Impact assessments should undergo streamlined and enhanced quality control and be available to assist the Government to make informed decisions.
7. The Government should operationalise the policy and budget planning architecture and its monitoring and reporting, as envisaged in the legislation, as soon as the circumstances allow it. The Government should ensure that all key planning documents and their reports are consistently in place within the stipulated deadlines and published. Special attention must be paid to co-ordination and coherence of planning documents, including the budget documents.

Analysis

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

Overall, the value of the indicator “Fulfilment of critical functions by the centre-of-government institutions” is 5. The improvement that was achieved in 2021 and is reconfirmed in 2023 is due to elimination of overlaps in the functions pertaining to monitoring and reporting of government performance. The guidelines for sector strategy planning and development issued by the CoG are absent, the only gap under this principle.

Indicator 2.1.1. 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 (CoG) 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
	2018	2021	2023			
1. Critical functions are assigned to CoG institutions by legislation	7/8	8/8	8/8			
2. Availability of guidelines to line ministries and other government bodies	3/4	3/4	3/4			
3. Institutionalisation of co-ordination arrangements between the CoG institutions	4/4	4/4	4/4			
Total	14/16	15/16	15/16			

Note: More information about the point conversion ranges can be found in the Methodology section.

All key CoG functions necessary for a well-organised and consistent policy-planning and policy-making system are formally established and assigned to the relevant CoG institutions. The regulatory framework assigning these functions includes the Law on the Cabinet of Ministers of Ukraine⁴⁰, the Budget Code⁴¹, the Law on Principles of Regulatory Policy in Economic Activity⁴² (Law on Regulatory Policy) and the RoP of the CMU.⁴³

The SCMU is the responsible CoG institution for: 1) preparing the CMU sessions⁴⁴; 2) co-ordinating the policy content of proposals and ensuring their coherence with the Government's

⁴⁰ Law on the CMU No. 794-VII, approved by the Parliament on 27 February 2014.

⁴¹ Budget Code of Ukraine of 8 July 2010 No. 2592-VI.

⁴² Law on Principles of Regulatory Policy in Economic Activity.

⁴³ Decision of the CMU No. 950 of 18 July 2007 on Approval of the RoP of the CMU.

⁴⁴ RoP of the CMU, paragraphs 16-17.

priorities;⁴⁵ 3) leading the preparation of the Government's medium-term and annual work plans⁴⁶; 4) monitoring its performance⁴⁷; 5) communicating with the public⁴⁸; and 6) managing the relationship between the CMU and the President, as well as with the Parliament.⁴⁹

The changes to the RoP of the CMU in 2020, which assigned co-ordination of the preparation of the GPAP report to the Directorate for Policy Co-ordination and Strategic Planning of the SCMU, eliminated the overlaps in mandate with the Ministry of Economy (MoE) that were present before 2021.

The other critical CoG functions are assigned to ministries and executive bodies. The MoJ is responsible for ensuring the legal conformity of proposals⁵⁰ and the Ministry of Finance (MoF) for ensuring the affordability of policies.⁵¹ There must be consultation with the MoE on all draft proposals to assess the impact on indicators of economic and social development⁵², and from 2019 also with the Ministry of Digital Transformation (MDT), which carries out the digital examination.⁵³ The State Regulatory Service (SRS) is responsible for scrutinising the RIA conducted for draft legal acts affecting the business sector.

The SCMU supports ministries by preparing and distributing guidelines with templates for the preparation of and monitoring and reporting on the GPAP.⁵⁴ Separate guidelines are also in place for development of policy proposals⁵⁵, legal drafting⁵⁶ and public consultation.⁵⁷ However, comprehensive and detailed guidelines for developing sector strategies have not yet been issued.⁵⁸

Key CoG institutions co-ordinate their work during preparation of the Government Annual Work Plan and policy proposals. This is carried out through meetings with ministries to discuss comments of

⁴⁵ RoP of the CMU, paragraph 52.3.

⁴⁶ *Idem*, paragraph 5¹.8.

⁴⁷ *Idem*, paragraph 5¹.

⁴⁸ *Idem*, paragraph 28.

⁴⁹ Statute of the Department for Interaction with the VRU, Other State Bodies of the SCMU (2022).

⁵⁰ RoP of the CMU, Chapter 4.

⁵¹ *Idem*, paragraphs 33 and 70.

⁵² *Idem*, paragraph 33 (5).

⁵³ *Idem*, paragraph 37¹.

⁵⁴ Resolutions of the Prime Minister No. 53370/0/1-20 of 30 December 2020 and No. 35741/0/1-22 of 27 December 2022 on the preparation of the GPAP for 2021 and 2023; Letter of the State Secretary of the SCMU No. 270/0/2-23 of 4 January 2023 on Recommendations for the preparation of proposals for GPAP 2023 and provision of contacts of the SCMU; Letter of the Minister of the SCMU No. 12737/0/2-21 of 19 April 2021 regarding monitoring of the GPAP.

⁵⁵ Order of the MoF No. 428 of 21 March 2008 on Methodology for conducting financial and economic calculations when drafting an act of the CMU and a draft law introduced by the CMU for consideration by the Parliament, <https://zakon.rada.gov.ua/laws/show/z0297-08#Text>; CMU Decision No. 308 of 11 March 2004 on the Methodology for Impact Analysis and Performance Monitoring of a Regulatory Act. Annex 4 of the RoP of the CMU contains detailed guidelines on the content of the explanatory note.

⁵⁶ 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.

⁵⁷ Decision of the CMU No. 996 of 3 November 2010 on Ensuring Citizens' Participation in the Elaboration and the Implementation of the State Policy.

⁵⁸ The SCMU developed the draft Guidelines regarding the development of sector strategies in relevant fields, but they were not adopted during the assessment and hence not taken into account.

the SCMU and the MoF on the draft GPAP.⁵⁹ The SCMU internal units are involved in reviewing individual policy proposals to prepare a consolidated opinion to inform final government decision-making.

Conclusion

Key CoG functions are all established and assigned to relevant institutions. Overlaps in some of the functions that were observed in 2021 have been fully eliminated. The CoG bodies co-ordinate their opinions during the preparation of the GPAP and for policy proposals submitted to the CMU for adoption. The policy development and planning process is supported by guidelines, except for the development of sector strategies, such as guidelines to line ministries, which have not yet been adopted.

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

Overall, the value of the indicator “Fulfilment of European integration functions by the centre-of-government institutions” is 3. While the overall value remains the same as in 2018, the new political EI co-ordination body did not function in 2022, and the administrative body is not yet in place. The EI plan is not regularly updated.

Indicator 2.2.1. Fulfilment of European integration functions by the centre-of-government institutions						
This indicator measures to what extent the minimum criteria for European integration (EI) 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021	Trend 2021-2023		Points			
			2018	2021	2023	
1. Proportion of the EI functions that are assigned to the CoG institutions by law			5/6	5/6	5/6	
2. Availability of guidelines to line ministries and other government bodies			2/4	2/4	2/4	
3. Government's capacity for co-ordination of EI			6/8	4/8	4/8	
Total			13/18	11/18	11/18	

Note: More information about the point conversion ranges can be found in the Methodology section.

Ukraine was granted EU candidate status in June 2022, which creates additional obligations, demands and expectations, including for adequate and more effective EI co-ordination. The swift change of the status from the association to candidate country has also impacted the pace and priorities of work,

⁵⁹ Letter of the Minister of the CMU No. 8919/0/2-21 of 19 March 2021 on the meeting to discuss SCMU and MoF proposals for the draft GPAP 2021 and Letter of the Minister of the CMU No. 2928/0/2-23 of 8 February 2023 on provision of additional justifications and information for the finalisation of the GPAP, 2023.

putting Ukraine in a transitional phase towards the establishment of new EU accession negotiation structures, mechanisms and planning and reporting systems.

The majority of functions necessary for effective co-ordination and management of the EI process are established. The GOCEEAI serves as the designated institution within the SCMU responsible for the overall daily co-ordination of EI.⁶⁰ This includes planning and monitoring the implementation of EI, including costing and ensuring the alignment of legislation with the EU *acquis*.⁶¹ Furthermore, the Directorate of Coordination of International Technical Assistance of the SCMU is responsible for co-ordinating EU assistance.⁶² Only the function and guidelines for managing and co-ordinating EU accession negotiations, as well as the guidelines for planning and monitoring EU assistance, are yet to be agreed and established. The former has become more relevant considering Ukraine's new status as a full candidate for EU membership.

Political and administrative co-ordination of the EI process needs improvement. In September 2020, the Government established a revised political structure for co-ordinating EI efforts. This placed the Coordination Commission for implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (Commission), at its core.⁶³ This Commission serves as a platform for top-level political co-ordination of EU integration matters. Led by the Prime Minister, the commission includes the Deputy Prime Minister for European and Euro-Atlantic Integration as the deputy chairman, along with competent ministers, the First Deputy Chairperson of the VRU, the Deputy Head of the Office of the President of Ukraine and the Director-General of the GOCEEAI.

The ongoing war of aggression by Russia against Ukraine has hindered the functioning of the established political-level co-ordination structure. Since the onset of the war, the Commission has been unable to meet, despite its previous practice of holding quarterly meetings⁶⁴ (five meetings between October 2020 and February 2022). The EI Committee of the CMU, chaired by the Vice-Prime Minister for European and Euro-Atlantic Integration, was meeting regularly to discuss the issues related to EI draft laws. The co-ordination platform at the administrative level is not established.

Ukraine adheres to established rules and requirements for examining the alignment of domestic legislation with the EU *acquis*.⁶⁵ The GOCEEAI fulfils its role⁶⁶ by consistently issuing opinions on

⁶⁰ Decision of the CMU No. 759 of 4 October 2017 about the Government Office for the Coordination of European and Euro-Atlantic Integration (Statute of the GOCEEAI).

⁶¹ Statute of the GOCEEAI, paragraph 4.

⁶² Statute of the Directorate of Coordination of International Technical Assistance of the SCMU, article 5.

⁶³ Resolution of the CMU No. 851 of 2 September 2020 on Establishment of the Coordination Commission for Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the One Part, and Ukraine, of the Other Part.

⁶⁴ *Idem*, paragraph 10.

⁶⁵ RoP of the CMU, paragraph 33.

⁶⁶ Based on the assessment of five sample draft laws dealing with transposition of the *acquis*: 1) Draft Law on Amendments to the Law on Prevention and Counteraction to Legalizing (Laundering) of Proceeds from Crime, Terrorism Financing, and Financing the Proliferation of Weapons of Mass Destruction regarding the Protection of the Financial System of Ukraine from of the Actions of the State Carrying Out Armed Aggression Against Ukraine, and the Adaptation of Ukrainian Legislation to Certain Standards of the Financial Action Task Force and the Requirements of the EU Directive 2018/843; 2) Draft Law on Collective Bargaining Agreements; 3) Draft Law on Chemical Safety and Management of Chemical Products; 4) Draft Law on Amendments to the Law of Ukraine on Road Traffic regarding the Implementation of Legislation; and 5) Draft Law on Amendments to Certain Laws of Ukraine regarding the Protection of Humans from the Impact of Ionizing Radiation.

laws which aim to transpose EU legislation.⁶⁷ Since the end of 2021, the staff capacities of the GOCEEAI increased; systematised positions went from 45 to 67 and filled positions from 39 to 49.⁶⁸ However, the Action Plan for Implementation of the Association Agreement (APIAA) is not regularly (at least annually) updated, which can create challenges for realistic planning, impede taking necessary remedial actions and addressing the risks.. While planning of EI activities is centrally co-ordinated, the latest update of the multiyear APIAA was done in 2020. Overall, the execution of core EI-functions related to legal approximation, translation of EU legislation, planning and monitoring of the EI process is heavily reliant on external assistance provided by donors which limits the strengthening of internal administrative capacity.

Conclusion



All key functions and relevant guidelines necessary for effective EI co-ordination have been established, except those related to managing the EU accession negotiations and the guideline for monitoring EU assistance. The GOCEEAI consistently examines all draft laws to check their alignment with the EU *acquis*. EI co-ordination at both the administrative and political levels is not fully established and functional, largely due to the challenges created by the war.

⁶⁷ In 2021, the GOCEEAI reported issuing 3 195 opinions on draft laws and bylaws submitted by executive bodies to the CMU. In 2022, the GOCEEAI issued a total of 2 553 opinions.

⁶⁸ Staff numbers of the GOCEEAI are based on information provided during the assessment interviews.

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.

Overall, the value of the indicator “Quality of policy planning” is 2. The value has improved since 2018 due to the system established for sector strategies and a small improvement in the quality of sector strategies. However, due to the absence of adopted key government policy and financial planning documents, the value of several sub-indicators could not be assessed.

Indicator 2.3.1. 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
1. Adequacy of the legal framework for policy planning			4/7	5/7	5/7	
2. Availability of guidance to line ministries during the policy-planning process			2/4	3/4	2/4*	
3. Alignment between central policy-planning documents			2/6	0/6*	0/6*	
4. Planned commitments carried forward in the legislative plan (%)			2/4	0/4*	0/4*	
5. Planned sectoral strategies carried forward (%)			1/4	0/4*	0/4*	
6. Presence of minimum content in sector strategies			0/3*	2/6	4/6	
7. Completeness of financial estimates in sector strategies			0/5	0/5	1/5	
8. Alignment between planned costs in sector policy plans and medium-term budget			0/3*	0/3*	0/3*	
Total			11/33	10/39	14/39	

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

The hierarchy and steps for preparation of the planning documents in Ukraine are established by the Law on the Cabinet of Ministers of Ukraine, the Budget Code, and the RoP of the CMU. The National Economic Strategy 2030⁶⁹, adopted in March 2021, provides a long-term economic development vision and priorities. The political Programme of Activities of the CMU, which is prepared at the start of the Government’s term and covers the whole tenure of the Government, and the annual message of the President of Ukraine to the VRU serve as the fundamental pillars for medium-term planning. The medium-term planning components include the MTGAP⁷⁰, a three-year MTBF Budget

⁶⁹ Decision of the CMU No. 179 of 3 March 2021 on the Approval of the National Economic Strategy for the period until 2030.

⁷⁰ RoP of the CMU, paragraph 4.

Declaration (BD) introduced through December 2018 legal amendments⁷¹, and a multi-year APIAA.⁷² The annual GPAP, which, starting from 2020, incorporates the previously separate Legislative Plan, is prepared based on the Programme of Activities of the CMU and the MTGAP.⁷³ Although the ongoing war interrupted the preparation and adoption of the GPAP 2022, the MTGPA 2023-2025 and the BD 2023-2025⁷⁴, the CMU drafted and approved the Plan on the Issue of Introducing and Ensuring the Implementation of Measures of the Legal Regime of the Martial Law in Ukraine.⁷⁵

The basic requirements and steps for the preparation of sector strategies are formalised through regulations and applied in practice. The requirements for sector strategies, which provide a basis for medium- and long-term planning of reforms in specific policy areas, were introduced in 2021.⁷⁶ They must include analysis, objectives, indicators and targets, tasks, an operational plan for three years and cost estimates. The sources of financing are not required. In 2022, the Government adopted eight sectoral strategies after 24 February, compared to ten in the same period in 2021.

The preparation of STPs for implementation of state policy in priority areas by concentrating financial, logistical and other resources is also regulated⁷⁷, with content-related requirements similar to those for sector strategies. The adoption of new STPs is limited to exceptions as specified in regulation⁷⁸, but some, stipulated by acts of higher legal force, continue to be adopted.⁷⁹

Overall responsibility for co-ordinating and managing the government policy-planning system is delegated through regulations to the SCMU (for MTGAP, the GPAP and sector planning), the MoF (for fiscal planning) and the GOCEEAI (for EI planning).

Guidance and co-ordination for preparing key government planning documents are provided by the CoG bodies. Detailed instructions and templates are issued and feedback is provided to ministries by the SCMU during preparation of the GPAP and of inputs for regular reporting.⁸⁰ The MoF issued

⁷¹ Budget Code of Ukraine of 8 July 2010, Chapter 6. The BD is to be approved by the CMU no later than 1 June of the year preceding the three-year planning period.

⁷² 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.

⁷³ RoP of the CMU, paragraph 5¹ point 6.

⁷⁴ The BD 2022-2024 was approved by the CMU (Resolution of the CMU No. 548 of 31 May 2021). With the introduction of the martial law, the rules for the preparation of the BD in 2022 and 2023 were suspended (Law No.2134-IX of 15 March 2022 on Amendments to Chapter VI “Final and Transitional Provisions” of the Budget Code of Ukraine).

⁷⁵ Decision of the CMU No. 181 of 24 February 2024 on the Issue of Introducing and Ensuring the Implementation of Measures of the Legal Regime of Martial Law in Ukraine.

⁷⁶ *Idem*, paragraph 57.

⁷⁷ Law No. 1621-IV on State Target Programs, approved by the Parliament on 18 March 2004.

⁷⁸ Decision of the CMU No. 710 of 11 October 2016 on Effective use of Public Funds.

⁷⁹ For example, Youth of Ukraine, 2021-2025 approved by CMU Order No. 579 of 2 June 2021.

⁸⁰ Letter of the Minister of the CMU of 27 January 2021 No. 2408/0/2-21 with a template for preparing proposals for the MTGAP 2022-2024; Letter of the SCMU No. 12737/0/2-21 of 19 April 2021 on the GPAP reporting; Letter of the State Secretary of the CMU No. 270/0/2-23 of 4 January 2023 on Guidelines for preparation of the GPAP 2023; Letter of the Minister of the CMU No. 2928/0/2-23 of 8 February 2023 on SCMU comments for the draft GPAP; Letter of the Secretariat of the CMU No. 6584/0/2-23 of 21 March 2023 on monitoring the implementation of the GPAP 2023.

guidance and templates for preparation of the BD 2022-2024⁸¹, but there is still not sufficient guidance provided to ministries for the development of sector strategies. Although the quality of the sample strategies adopted in 2021 and 2022⁸² has improved slightly compared to those of 2018, they still lack comprehensive performance measurement frameworks, cost estimates and sources of funding, and provisions for monitoring and reporting. These deficiencies are also noted in the SCMU's opinions of the sample strategies submitted to the CMU for approval.⁸³

It is not possible to assess the alignment and coherence between different government planning documents, such as the GPAP and the BD due to the absence of formally approved and valid documents during the war. The GPAPs have historically been adopted in March, while the RoP of the CMU stipulate that the GPAP should be approved within a month after the State Budget (typically approved in November-December) or other deadline established by the decision of the Prime Minister.⁸⁴ In 2023, the GPAP was also approved in March.

Conclusion

The quality of the government planning system has improved since 2018, largely due to enhancement of the regulatory framework and practice for sector planning. However, the war has negatively affected the administration's capacities to improve implementation, leading to a shift towards short-term and urgent priorities, delays and absence of planning documents. Guidance is generally ensured for key government planning documents, but insufficiently for sector strategies.

⁸¹ Forms/guidelines for the key spending units for preparation of the BD, 2022-2024 were provided by the MoF. As preparation of the BD is suspended in 2022 and 2023 due to the war, the guidelines were not prepared.



⁸² Based on assessment of five sample strategies from 2021 and five from 2022. The 2021 sample included: 1) State Forest Management Strategy of Ukraine until 2035; 2) Strategy for the Development of Hydrometeorological Activity in Ukraine for the Period up to 2030; 3) Strategy for the Implementation of Digital Development, Digital Transformations, and Digitalization of the State Financial Management System for the Period until 2025; 4) Strategy for Combating Torture in the Criminal Justice System; and 5) Strategy for the Integration of Internally Displaced Persons and the Implementation of Medium-Term Solutions on Internal Displacement for the Period Until 2024. The 2022 sample included: 1) Strategy for the Implementation of Gender Equality in the Field of Education until 2030; 2) Penitentiary System Reform Strategy for the period until 2026; 3) Communication Strategy on European Integration of Ukraine for the Period until 2026; 4) Water Strategy of Ukraine for the Period until 2050; and 5) Strategy for Reforming the State Material Reserve System for the Period until 2025.

⁸³ The SCMU has reviewed each of the sample strategies submitted for SIGMA assessment and issued an opinion.

⁸⁴ RoP of the CMU, paragraph 4.7.

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.

Overall, the value of the indicator “Quality of policy planning for European integration” is 1. The indicator value has deteriorated since 2018 due to the absence of an up-to-date and comprehensive plan for implementation of activities related to EI. The low implementation rate of EI legislative commitments has also contributed to weaker assessment results for this area compared to 2018.

Indicator 2.4.1. 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.			
2023 indicator value	0	1	2 3 4 5
Trend 2018-2021 	Trend 2021-2023 		Points
	2018	2021	2023
1. Adequacy of the legislative framework for harmonised planning of EI	2/2	2/2	2/2
2. Quality of planning documents for EI	2/6*	2/6*	2/6
3. EI-related commitments carried forward (%)	2/4	0/4*	0/4*
4. Implementation rate of the government's plans for EI-related legislative commitments (%)	0/4	0/4	0/4
Total	6/16	4/16	4/16

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

The basic requirements and procedures for the preparation of the EI plan are in place, but it is not regularly updated. The APIAA is the central government planning document for EI processes. Formally, it is designed as a medium-term planning document that includes commitments arising from the Association Agreement and other activities and obligations arising from the decisions of the bilateral bodies established under the Agreement.⁸⁵ However, the APIAA does not serve effectively as a planning document for several reasons. The existing procedures do not ensure that the APIAA, which covers multiple years, is updated regularly and that the planned activities and related deadlines are aligned with other short-term planning documents and help in organisation and allocation of sufficient resources.⁸⁶ Since its adoption in October 2017, the APIAA has been revised six times (once in 2018, twice in 2019 and three times in 2020). All revisions, except that of November 2019, were limited to changing the names of ministries, rather than being driven by practical implementation, evolving EU legislation, work of bilateral bodies or shifting priorities. Additionally, the APIAA does not ensure the planning of the transposition of all EU *acquis* (and measures for strengthening institutional and administrative capacity)

⁸⁵ 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.

⁸⁶ Decision of the CMU No. 447 of 31 May 2017 only stipulates that the plan is updated if there is proven need to do so (Articles 5-6).

to uphold the obligations of membership since the Association Agreement covers only part of the EU *acquis*.⁸⁷

In the absence of updated accurate information about the deadlines and lead institutions of EI activities, it is not possible to plan and monitor EI processes effectively in both the short and long term.

The quality and implementation of APIAA, as well as its alignment with other plans, is mediocre.

The APIAA identifies tasks and activities which are planned in line with the Association Agreement chapters and have clear deadlines. However, according to the GOCEEAI, out of the 615 measures related to transposition of EU *acquis* acts included in the APIAA, 154 are no longer relevant or in force. Furthermore, it is not possible to establish the alignment between the APIAA and GPAP for 2023 (compared to 60% in 2018), as none of the APIAA's 12 EI legislative initiatives planned to be adopted by the CMU in 2023 were included in the GPAP for 2023, due to different practices in setting the deadlines.

According to the SIGMA calculations, the implementation rate of EI-related only legislative commitments was 20% in 2021 and 22% in 2022.⁸⁸ However, according to the government monitoring system, "Pulse of Agreement", that takes into account also non legislative commitments, the overall implementation rate under APIAA was 60% in 2021 and 42% in 2022.⁸⁹

The GOCEEAI prepares and publishes annual reports on implementation of the APIAA⁹⁰, based on quarterly output reports of ministries.⁹¹ These annual reports serve as summary documents, highlighting key achievements, but they lack specific details on implemented actions. It is also not possible to verify and confirm the quality and effectiveness of implementation of activities for each reporting year because of the outdated information available in APIAA. Additionally, the GOCEEAI consistently monitors the implementation of the EI legislative initiatives which are included in the GPAP. Monitoring is done through the electronic web portal, ensuring ongoing oversight.

Conclusion

While the EI policy planning system is formally established in the regulatory framework, in practice the usefulness of the APIAA as a comprehensive and up-to-date plan for all EU integration related measures is limited. The EI plan sets actions in time and in line with *acquis* chapters. However, the implementation rate of EI-related legislative commitments is low, and there is no alignment between the GPAP and the APIAA.

⁸⁷ According to the GPAP 2023, it is planned to develop a national plan for the approximation of the EU *acquis* which is to replace the APIAA.

⁸⁸ The APIAA activities referring to the same draft law and with the same implementation deadline were counted as one EI legislative initiate. Only activities with reference to draft laws were included in calculation.

⁸⁹ GOCEEI data and calculations for 2021 and 2022, <https://pulse.kmu.gov.ua/ua/a/year/2021>, <https://pulse.kmu.gov.ua/ua/a/year/2022>.

⁹⁰ Implementation Reports for the EU-UA Association Agreement for 2021 and 2022 have been submitted to SIGMA for review.

⁹¹ Such quarterly reports have been submitted to SIGMA for review.

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

Overall, the value of the indicator “Quality of government monitoring and reporting” is 2. This shows a negative trend since 2018 and through 2021 due to remaining regulatory uncertainty regarding the requirement to publish reports and the declining practice of preparing and publishing reports.

Indicator 2.5.1. 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
1. Adequacy of the legislative framework for monitoring and reporting			7/8	5/8	5/8	
2. Quality of reporting documents			4/12	4/12*	4/12*	
3. Public availability of government reports			3/5	3/5	2/5*	
Total			14/25	12/25	11/25	

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

Basic requirements for monitoring and reporting on government performance are established in regulations. The regulations require regular monitoring and annual reporting on the MTGAP and the GPAP.⁹² The 2021 amendments to the RoP of the CMU introduced a requirement to report on implementation of sectoral strategies⁹³, which is an improvement compared to 2018. The reports on sector strategies are now required to be submitted to the CMU on an annual basis. Quarterly reporting by ministries is also required on implementation of the APIAA⁹⁴ and monthly, quarterly and annual reporting on the implementation of the State Budget.⁹⁵ The legislation also requires that the reports on budget implementation and sector strategies be publicly available on official ministerial websites.⁹⁶ However, there is no formal requirement for publication of reports on implementation of the MTGAP, the GPAP and the APIAA.

The practice of preparing monitoring reports on implementation of planning documents was adversely affected by the war, resulting in several shortcomings. The government did not produce a report on the implementation of GPAP 2021, while for 2022 there was no formally approved annual work plan of government at all. This makes it impossible to assess the quality of reporting on implementation of the GPAP. It is also not possible to assess the quality of the MTGAP report (or if the report is effectively linked/ integrated with the GPAP report), as the MTGAP was not approved for the assessed period.

⁹² RoP of the CMU, paragraphs 5¹ and 59.

⁹³ *Idem*, paragraph 59.

⁹⁴ 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, points 11-12.

⁹⁵ Budget Code, Articles 59-61.

⁹⁶ *Idem*, Article 28.5. RoP of the CMU, paragraph 59.

While regular reports on the APIAA are available, the publicly released versions of these reports only focus on outputs and do not provide information on unimplemented activities and the reasons behind their non-implementation.

Due to the active phase of the war at its beginning in 2022 and, in particular, the lack of up-to-date statistical data on some STP's indicators, not all central executive authorities (which are state programme customers) submitted reports on the implementation of STPs for 2021 on time.⁹⁷ At the same time, in 2023, the central executive authorities (which are state programme customers) provided the MoE with reports on the implementation of the STPs for 2022 within the prescribed period, as well as additionally reports for 2021. Based on these reports, the Ministry of Economy prepared the Informational and Analytical Materials on the Progress of the Implementation of State Target Programmes in 2021 and 2022, as well as proposals for each programme.⁹⁸

Based on a review of a sample of five strategy reports, the quality of sector strategy reports in 2022 has improved slightly compared to previous years. All five sample reports from 2022⁹⁹ include information on achievement of outputs, compared to four out of five sample reports¹⁰⁰ from 2021.¹⁰¹ However, reporting on progress towards achievement of objectives and outcomes remains inadequate. Only one out of five reports from 2021 provided comparative and systematic information on outcomes¹⁰², while none of the sample reports from 2022 did so.

Conclusion

Regulations require preparation of regular reports on implementation of key planning documents, including for sector strategies. There are no comprehensive requirements, however, for making reports publicly available for all key central planning documents. The practice of preparing and publishing reports has been adversely affected by the war, as no reports have been prepared on implementation of the MTGAP and the GPAP. The reports on sector strategies show improvement compared to previous years, but their focus remains on outputs. Reporting on STPs was interrupted due to martial law.

⁹⁷ Law on Protection of the Interests of Reporting Subjects and Other Documents during the Period of Martial Law or a State of War.

⁹⁸ MoE (2023), Informational and Analytical Materials on the Progress of the Implementation of State Target Programmes in 2021 and 2022.

⁹⁹ The sample included: 1) 2022 Implementation Report for National Strategy for Reforming the Justice System for Children until 2023; 2) Analytical Report on the State of Implementation of the National Strategy in the Field of Human Rights in 2022; 3) Report on the State of Implementation of the Strategy of the Integrated Automated Radiation Monitoring System for the Period up to 2024; 4) Report on the Progress of Implementation of the Action Plan for the Implementation of the Strategy for the Reform of the State Finance Management System for 2022-2025 for 2022 and 5) Report on the State of Implementation of the Action Plan for 2020-2022 regarding the Implementation of the Integrated Border Management Strategy for the Period until 2025.



¹⁰⁰ The exception was the 2020 Implementation Report for National Strategy for Reforming the Justice System for Children until 2023, which is not systematic, as it is not clear what outputs and outcomes were planned with the strategy.

¹⁰¹ The sample included: 1) 2020 Implementation Report for Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society for the Period up to 2020; 2) 2020 Implementation and Monitoring Report for State Regional Development Strategy for the Period up to 2020; 3) 2020 Implementation report for Energy Strategy; 4) 2020 Implementation Report for National Strategy for Reforming the Justice System for Children until 2023; and 5) 2020 Implementation Report for National Human Rights Strategy for the Period until 2020.

¹⁰² 2020 Implementation and Monitoring Report for State Regional Development Strategy for the Period up to 2020.

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

Overall, the value of the indicator "Transparency and legal compliance of government decision making" is 2, lower than the value recorded in previous years. The weakening in this area is largely because of additional limitations and restrictions imposed due to the war, related to the openness and transparency of government sessions and public availability of government agendas. The quality assurance of policy proposals, although slightly improved in 2021, is insufficient, especially to ensure compliance with government priorities and financial feasibility of policy proposals.

Indicator 2.6.1. 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 clarity and stability of government policymaking.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
1. Adequacy of the legislative framework for government session procedures			4/5	4/5	4/5	
2. Consistency of the CoG in setting and enforcing the procedures			2/4	3/4	2/4	
3. Timeliness of ministries' submission of regular agenda items to the government session (%)			0/3*	0/3*	0/3*	
4. Openness of the government decision-making process			4/4	4/4	3/4	
5. Perceived clarity and stability of government policymaking by businesses (%)			0/4	Not available	0/4	
Total			10/20	11/16	9/20	

Notes: *Data not available or not provided. Not available= A survey was not conducted in 2021. The point conversion range has therefore been modified by removing the survey-related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The total number of points is therefore 16 rather than 20. Point conversion ranges: 0-1=0, 2-4=1, 5-7=2, 8-10=3, 11-14=4, 15-16=5. More information about the point conversion ranges can be found in the Methodology section.

The war impacted the formal requirements and practical functioning of the government machinery, including the decision-making system. The amendments to the RoP of the CMU in late December 2021 explicitly outlined the adjustments that would occur in government decision-making processes if martial law were to be declared.¹⁰³ Consequently, the amendments came into effect on the 24 February 2022.

The most significant normative change was the exemption that stipulated that "during a period of martial law in Ukraine or in some of its localities, in urgent cases requiring an immediate decision, the Prime Minister or another member of the CMU, with the agreement of the Prime Minister, may submit a draft act to the CMU for consideration without complying with the approval and consultation requirements of this Decree, without undergoing a legal examination by the MoJ, and without a hearing at a meeting of

¹⁰³ Resolution of the CMU No. 1454 of 29 December 2021 on Amendments to the RoP of the CMU.

the Cabinet Committee".¹⁰⁴ According to the SCMU, such an extraordinary procedure was used at the beginning of the war for nearly a quarter of the acts adopted, 587 of the 2 612 acts adopted by the CMU in 2022.

For regular acts of a non-urgent nature, the standard procedure for preparation, follow-up and communication on government sessions established in the RoP of the CMU is applied.¹⁰⁵ These acts are required to undergo a legal review by the MoJ¹⁰⁶ and a budgetary review by the MoF.¹⁰⁷ Legal acts that impact the business sector, along with their RIA reports, are also submitted to the SRS.¹⁰⁸

All draft acts submitted to the CMU for adoption undergo review by the SCMU. This review includes both substantive aspects, such as compliance with government policies, and financial and legal scrutiny, as well as procedural aspects, ensuring that the applicable procedural rules, including for consultation, have been followed during preparation and submission of the acts.¹⁰⁹ If the SCMU identifies any procedural violations, it has the authority to independently return the draft act to the proposer, providing instructions on what needs to be addressed or completed.¹¹⁰ However, if the act is found to have substantive shortcomings, the SCMU cannot decide autonomously. In such cases, only the Governmental Committee can reject the act.¹¹¹ According to the SCMU, in 2022, the Committees rejected, removed or returned 45 draft acts out of 578 considered, and in 2021, they rejected, removed or returned 182 out of a total of 1 123 acts considered.

The requirements for quality assurance are implemented but maintain an insufficient level of effectiveness. The analysis of sample laws approved by the government in 2022¹¹² shows that legal conformity was duly checked for all proposals. All five samples reviewed had the required mandatory opinions, had complete documentation packages and followed the necessary submission procedures. However, the review of alignment with government priorities and previously announced policies, as well as of the financial affordability of proposals, appears to be inconsistently carried out in practice. Although the MoF examined all five samples, in three cases significant budgetary implications could be anticipated due to new legislative changes.¹¹³ Despite these potential costs, the proposals were approved without

¹⁰⁴ RoP of the CMU, paragraph 55².

¹⁰⁵ *Idem*, Section 3.

¹⁰⁶ *Idem*, paragraphs 44-47.

¹⁰⁷ *Idem*, paragraph 33.5.

¹⁰⁸ Law on the Principles of Regulatory Policy in Economic Activity, Article 24.

¹⁰⁹ RoP of the CMU, paragraph 52.

¹¹⁰ *Ibid.*

¹¹¹ *Idem*, paragraph 55.3.

¹¹² The sample included: 1) Draft Law on the Announcement of the Natural Territories of the City of Morshyn, the Natural Territories of the Morshyn Deposit of Mineral Therapeutic Brines and the Natural Territories of the Nyniv Deposit of Mineral Therapeutic Brines of the Lviv Region as a State Resort Value; 2) Draft Law on Amendments to the Law of Ukraine On the Status of War Veterans, Guarantees of their Social Protection Regarding Medical Care for War Veterans; 3) Draft Law on the Ratification of the Protocol Between the CMU and the Government of the Republic of Moldova on Amendments to the Agreement on Free Trade between the CMU and the Government of the Republic of Moldova Dated November 13, 2003; 4) Draft Law on the Suspension of the Agreement on Co-operation in the Field of Labor Migration and Social Protection of Migrant Workers and the Protocol on Amendments and Supplements to the Agreement on Cooperation in the Field of Labor Migration and Social Protection of Migrant Workers of April 15, 1994 in Ukraine's Relations with the Russian Federation and the Republic of Belarus; and 5) Draft Law on the Introduction of Changes to some Legislative Acts Regarding the Functioning of Institutions for The Execution of Punishments and Institutions of Pre-trial Detention in Conditions of Martial Law.

any comments. The expert opinions of the SCMU do not fully and consistently analyse the alignment of the proposal with the government priorities or previously adopted policies.¹¹⁴

Because of the extraordinary situation in which the Government has been functioning since the start of Russia's large-scale war of aggression against Ukraine, changes were introduced in the procedures and transparency of government meetings. In particular, the requirement to publish government meeting agendas (with draft proposals) beforehand was abolished.¹¹⁵ However, the official website of the Government continues to share government decisions and news containing key messages.¹¹⁶ The frequency of government meetings has remained consistent, with 168 meetings held in 2022 and 156 in 2021. The minutes of these meetings are distributed to all participants and stakeholders through the electronic system.

The perception of businesses regarding the clarity and stability of policymaking has been low in Ukraine. The share of those businesses who believe that "laws and regulations affecting my company are clearly written, not contradictory and do not change too frequently" has decreased from 33% in 2018 to 27% in 2023, based on a survey of business representatives commissioned by SIGMA.¹¹⁷

Conclusion

Despite the extraordinary situation created by the ongoing war, the key CoG institutions continued implementing the necessary procedural and substantive checks on final proposals to ensure that government decision-making is evidence-based and transparent. However, the effectiveness and quality of scrutiny of individual policy proposals have some weaknesses, as the SCMU does not have the authority to return proposals of insufficient quality, and flaws persist in reviewing financial affordability of proposals and their alignment with government priorities. Advance publication of government meeting agendas is no longer required under the period of martial law. Organisation of government meetings continues as normal, and key government decisions and messages are communicated to relevant stakeholders.

¹¹³ These three cases are: 1) Draft Law on the Announcement of the Natural Territories of the City of Morshyn, the Natural Territories of the Ries of the Morshyn Deposit of Mineral Therapeutic Brines and The Natural Territories of the Nyniv Deposit of Mineral Therapeutic Brines of the Lviv Region as a State Resort Value; 2) Draft Law on Amendments to the Law of Ukraine on the Status of War Veterans, Guarantees of their Social Protection Regarding Medical Care for War Veterans; and 3) Draft Law on the Introduction of Changes to Some Legislative Acts Regarding the Functioning of Institutions for the Execution of Punishments and Institutions of Pre-trial Detention in Conditions of Martial Law.

¹¹⁴ Two out of five sample SCMU opinions provided analysis on coherence of the proposal with the government priorities and policies: 1) Draft Law On the ratification of the Protocol between the CMU and the Government of the Republic of Moldova on amendments to the Agreement on Free Trade between the CMU and the Government of the Republic of Moldova; and 2) Draft Law on the Introduction of Changes to Some Legislative Acts Regarding the Functioning of Institutions for the Execution of Punishments and Institutions of Pre-trial Detention in Conditions of Martial Law.

¹¹⁵ According to paragraph 17.3 of the RoP of the CMU, the requirement to publish agendas in advance on the official website of the CMU may be suspended "in the event of the introduction of martial law in Ukraine or in some of its localities".

¹¹⁶ Government Portal, Official Website <https://www.kmu.gov.ua/npasearch> (Ukrainian) and <https://www.kmu.gov.ua/en/npasearch> (English).

¹¹⁷ SIGMA business opinion survey 2023.

Principle 7: The parliament scrutinises government policymaking.

Overall, the value of the indicator “Parliamentary scrutiny of government policymaking” is 3. There were positive developments in 2021 in government-parliament co-ordination: the CMU ensures that the VRU receives its legislative initiatives for planning the work in the Parliament. Additionally, there was an improvement in the CMU providing its opinions on bills initiated by MPs.

Indicator 2.7.1. Parliamentary scrutiny of government policymaking						
This indicator measures the extent to which the parliament is able to scrutinise government policymaking. The legal framework is assessed first, followed by an analysis of the functioning of important parliamentary practices and outcomes.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021	Trend 2021-2023		Points			
			2018	2021	2023	
1. Strength of regulatory and procedural framework for parliamentary scrutiny of government policymaking			5/5	5/5	5/5	
2. Completeness of supporting documentation for draft laws submitted to the parliament			3/3	3/3	3/3	
3. Co-ordination of governmental and parliamentary decision-making processes			1/2	2/2	2/2	
4. Systematic review of parliamentary bills by government			0/1	1/1	1/1	
5. Alignment between draft laws planned and submitted by the government (%)			0/2	0/2	0/2*	
6. Timeliness of parliamentary processing of draft laws from the government (%)			0/2	0/2	0/2	
7. Use of extraordinary proceedings for the adoption of government-sponsored draft laws (%)			0/5	0/5	0/5	
8. Government participation in parliamentary discussions of draft laws			2/2	2/2	2/2	
9. Basic parliamentary scrutiny of the implementation of policies			2/2	2/2	2/2	
Total			13/24	15/24	15/24	

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

The requirements and conditions for parliamentary scrutiny of government policymaking are established in regulations.¹¹⁸ Procedures in place provide an opportunity for MPs to raise written and oral questions for the Government on various policy issues and allow the Parliament to debate and scrutinise government policies.¹¹⁹ In practice, there has been a decrease in the number of MP requests addressed to the Government and other state and private institutions, from 2 187 requests in 2021 to only 301 in the war-stricken year of 2022. Additionally, there were fewer opportunities for MPs to ask questions of the Government during the weekly Question Hour for the Government. This session

¹¹⁸ Law on the RoP of the Parliament of 10 February 2010 No. 14-15; RoP of the CMU, No. 950 of 18 July 2007.

¹¹⁹ RoP of the VRU, Articles 228-232.

requires the presence of all members of the CMU, who are expected to respond to both oral and written inquiries by MPs. In 2022, only two Question Hours were conducted, compared to 19 in 2021. Similarly, the number of hearings decreased from 35 in 2021 to 18 in 2022.

The draft laws as a legislative initiative of the CMU are required to be submitted to the VRU in line with the RoP of the VRU.¹²⁰ The review of a sample of laws submitted to the Parliament showed that all documents required by existing regulations were included in the packages submitted.¹²¹ However, the absence of requirements for comprehensive impact assessment, EU *acquis* compliance assessment¹²² and conduct of public consultation for draft laws considered by the VRU leads to different quality requirements for drafting legislation in the CMU and VRU. Consequently, it is still a frequent practice that ministries submit draft laws directly to the Parliament via individual MPs to shorten the process by bypassing the consultation and decision-making processes of the Government, thereby reducing their own accountability and role in policy development.¹²³

Government representatives regularly participate in the parliamentary proceedings by attending plenary sessions and committee meetings. Rules in place require that the member of the CMU accompanies the draft law initiated by the CMU in all stages of consideration in the VRU.¹²⁴ The members of the CMU can also participate upon invitation of the VRU¹²⁵ when other draft laws or issues of importance are considered. Although detailed statistics were not provided, the representatives of the Secretariat of the VRU stated during the assessment interview that, as a rule, the members of the CMU or deputy ministers participate when required or invited.¹²⁶ In 2022, there were 15 plenary sessions¹²⁷, compared to 110 plenary sessions in 2021.¹²⁸ The decrease is attributed to the decision to operate under a single plenary session regime since the imposition of martial law on 24 February 2022.¹²⁹

Representatives of the Government and other state bodies attended committee meetings 1 633 times in 2021 and 1 221 times in 2022. Overall, the activity of the parliamentary committees remained consistent

¹²⁰ RoP of the CMU, paragraph 70.

¹²¹ The following draft laws and supporting documents were checked for 2022: 1) Amendments to the Criminal Code of Ukraine and other legislative acts of Ukraine on forced mobilization into illegal armed or paramilitary formations created in the temporarily occupied territory and/or armed or paramilitary formations of the aggressor state; 2) Amendments to the Criminal Code of Ukraine and others legislative acts of Ukraine on the forcible removal of a person in conditions of armed aggression; and 3) Amendments to some legislative acts of Ukraine on the rules of ethical behaviour of People's Deputies of Ukraine.

¹²² In line with Resolution of the VRU No. 2483-IX of 29 July 2022 on Some Measures to fulfil Ukraine's Obligations in the field of European Integration, the Parliament resolved that the Committees of the VRU should be provided with the tables of concordance and translations of the EI-related draft laws for consideration of draft laws in the first reading, which should be posted on the official website of the VRU.

¹²³ Continuation of such practice was confirmed during assessment interviews with ministries and institutions.

¹²⁴ RoP of the CMU, Articles 111 and 114.

¹²⁵ RoP of the VRU, Article 6.

¹²⁶ The Secretariat of the VRU confirmed during the assessment interview that ministers or deputy ministers are always present when the draft law of the CMU is discussed. They also attend other plenary and committee sessions when invited by the VRU.

¹²⁷ All statistical data on the work of the Parliament in 2022 has been taken from the Report on the Work of the VRU of the Ninth Convocation for 2022.

¹²⁸ All statistical data on the work of the Parliament in 2021 has been taken from the Report on the Work of the VRU of the Ninth Convocation for 2021.

¹²⁹ Report on the Work of the VRU of the Ninth Convocation for 2022, p. 1.

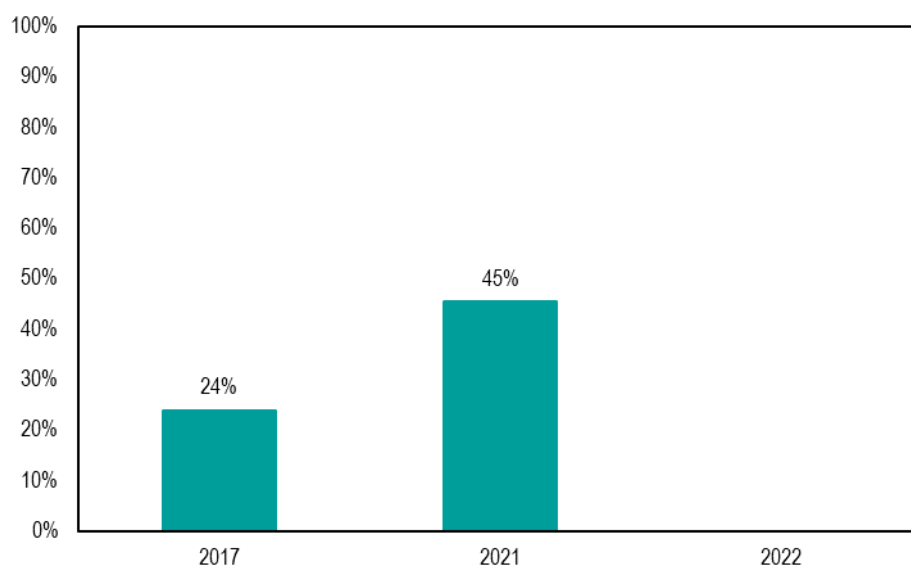
compared to the pre-war period. The committees of the VRU addressed 6 155 issues in 759 sessions in 2021 and 4 499 issues in 795 sessions in 2022.

The co-operation and co-ordination between the VRU and the Government are organised in a consistent manner. In June 2021, the Government appointed its permanent representative to the VRU. This representative, along with the Director of the SCMU's Department for Interaction with the VRU and other state bodies of the SCMU, attends the regular Monday meetings of the Conciliation Council. This practice has continued during the wartime period, as confirmed by the Secretariat of the VRU and the minutes of the meetings.¹³⁰

The Government officially submits its list of legislative initiatives for the next year to the Parliament in the autumn, coinciding with the VRU's preparation of its own annual legislative plan. This practice was confirmed for both 2021 and 2022.¹³¹

The Government has more consistently followed its GPAP during 2021 when submitting the draft laws to VRU, but there are still challenges. In 2021, only 45% of draft laws submitted to the VRU were formally included in the GPAP for the same year. This compares more favourably than the results of 2017, when only 24% of actual submitted legislative proposals had been originally planned. It was not possible to calculate the relevant indicator for 2022 because there was no valid, officially approved GPAP for the year.

Figure 15. Share of alignment between planned and submitted draft laws, 2017-2022



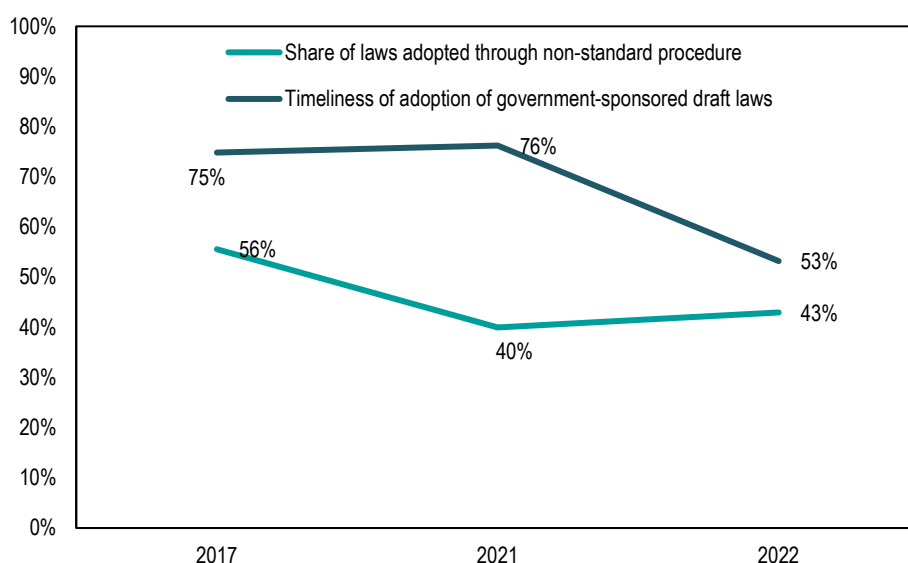
Source: SIGMA calculation based on reports provided by the Ukrainian administration for the assessment.

During 2022, the Parliament also adopted fewer government-sponsored draft laws in non-standard procedure: the share declined from 56% in 2017 to 43% in 2022. However, the timeliness of processing CMU draft laws by the Parliament within a year has fallen significantly, from 75% in 2017 and 76% in 2021 to 53% in 2022.

¹³⁰ The minutes of the following meetings were checked: 16 November 2022; 1 December 2022; and 13 December 2022 (Secretariat of the VRU to provide additional minutes for 2022).

¹³¹ Letter of the Prime Minister of 8 November 2022 to the Chairman of the VRU including a list of planned legislative initiatives proposed to be adopted by the VRU in the following year.

Figure 16. Share of laws adopted through non-standard procedure and timeliness of parliamentary processing, 2017-2022



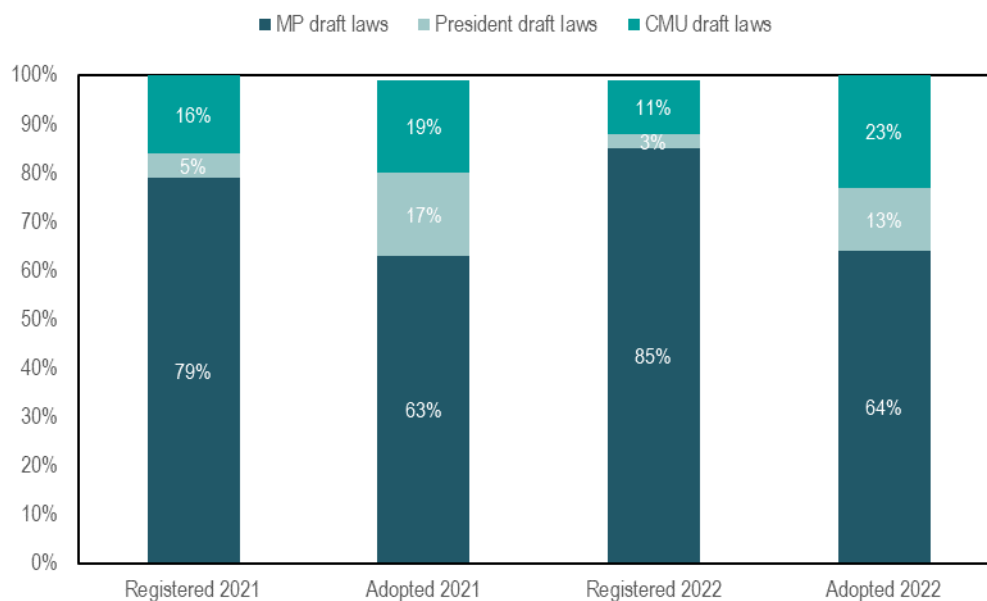
Source: SIGMA analysis and estimate based on a report of parliamentary activity submitted to SIGMA during the assessment.

The Government is consulted more consistently on MP-sponsored legislative proposals. Since 2018, there has been an improvement in the practice of providing government opinions on bills initiated by MPs. The analysis of samples of the three most recently initiated laws during 2021 and 2022 demonstrates that the Parliament consistently requested and obtained official opinions from the Government on these bills.¹³²

Overall, the CMU role in initiating draft laws discussed and adopted by the VRU remains limited. In 2022, of all draft laws registered in the VRU, only 10% were initiated by the Government, 4% by the President and 86% by MPs. Of the 399 bills adopted by the VRU, 19% were on the Government's initiative, 17% on the President's initiative, and 63% on the initiative of MPs. A similar pattern was observed in 2021.

¹³² The sample included: 1) Draft Law on Amendments to the Criminal Code of Ukraine and Others Legislative Acts of Ukraine on Forced Mobilization Into Illegal Armed or Paramilitary Formations Created in the Temporarily Occupied Territory and/or Armed or Paramilitary Formations of the Aggressor State; 2) Draft Law on Amendments to the Criminal Code of Ukraine and Others Legislative Acts of Ukraine on the Forcible Removal of a Person in Conditions of Armed Aggression; 3) Draft Law on Amendments to Some Legislative Acts of Ukraine on the Rules of Ethical Behaviour of People's Deputies of Ukraine; 4) Draft Law on the Status of a MP as the Founder of the State Independence of Ukraine; 5) Draft Law on Amendments to the Article 195-6 of the Code of Ukraine on Administrative Offenses Regarding Increased Liability for the Sale of Pyrotechnic Products to Children; and 6) Draft Law on Amendments to some Legislative Acts of Ukraine on Medical Internship and Clinical Residency.

Figure 17. Share of laws registered and adopted in 2021 and 2022 by the initiator



Source: SIGMA analysis and estimate based on a report of parliamentary activity submitted to SIGMA during the assessment.

Conclusion

The regulatory framework for parliamentary scrutiny and oversight of government policymaking is established. Despite the continuing challenges, the Parliament and its working bodies have been functioning normally, with government representatives participating regularly. Co-ordination between the Parliament and the Government on legislative planning remains regular. A larger share of government-sponsored draft laws originates from the GPAP, and fewer government-sponsored laws are adopted in extraordinary procedure. The share of laws initiated by the CMU in the Parliament remains low, and the Parliament's timeliness in processing the Government's drafts has deteriorated.

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

Overall, the value of the indicator “Adequacy of organisation and procedures for supporting the development of implementable policies” is 3, unchanged from 2018. The main challenge remains ensuring that policies and legislation are developed in consultation with all relevant internal departments of a ministry.

Indicator 2.8.1. Adequacy of organisation and procedures for supporting the development of implementable policies						
This indicator measures the adequacy of the regulatory framework to promote effective policymaking, and whether staffing levels and the basic policy-making process work adequately at the level of ministries.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021	Trend 2021-2023		Points			
			2018	2021	2023	
1. Adequacy of the regulatory framework for effective policymaking			3/4	3/4	3/4	
2. Staffing of policy-development departments (%)			2/2	2/2	2/2	
3. Adequacy of policy-making processes at ministry level in practice			2/6	2/6	2/6	
Total			7/12	7/12	7/12	

Note: More information about the point conversion ranges can be found in the Methodology section

The policymaking procedures within ministries remain insufficiently regulated, and internal co-ordination is limited. Formally and in practice, the drafting of legislation and policies primarily falls under the responsibility of the ministries, while their implementation is carried out by other executive authorities.¹³³ This practice is supported by the GPAPs for 2021 and 2023, which indicate that only ministries are listed as initiators of policy and legislative drafts, excluding subordinate agencies. Apart from the ministries, the preparation of such drafts is mandated also to central executive agencies, whose activities are co-ordinated by the CMU through the minister. Procedures in place for such central executive bodies require that the draft acts of the CMU be consulted and approved by the minister who directs and co-ordinates the activities of the central executive body subordinated to the CMU.¹³⁴ The draft acts of the CMU prepared by such bodies are submitted and presented for consideration to the CMU by a relevant minister.¹³⁵

In the ministries, policy development and legislative drafting are co-ordinated by deputy ministers, to whom departments and directorates are subordinated according to the division of areas of responsibility.¹³⁶ Ministries do not have clear internal rules and procedures for organising the policy-

¹³³ Law on Central Executive Authorities No. 3166-VI of 17 March 2011, Articles 1-2. RoP of the CMU, paragraph 33.

¹³⁴ RoP of the CMU, paragraphs 33 and 37.

¹³⁵ *Idem*, paragraph 48.

¹³⁶ As evidenced by the Order of the Ministry of Agrarian Policy No. 825 on the Distribution of responsibilities between the Minister of Agrarian Policy and Food, his first deputy and deputies of 24 October 2022.

development processes.¹³⁷ The practice of internal co-ordination within ministries can therefore vary. According to the information gathered through interviews, legal services are always involved and are also required to be involved in accordance with the General Regulation on the Legal Service of a Ministry, Other Executive Authority, State Enterprise, Institute and Organisation, adopted by the CMU in 2008 and still in force today. On the other hand, this is not the case for the financial and budgetary departments, which, according to information from interviews, are rarely consulted on preparation of new legal or policy proposals. The policy proposals submitted for assessment¹³⁸ by the ministries responsible for the economy, social affairs and the environment did not contain any specific material from the internal consultation process, so it was not possible to analyse the policy-making process in practice. Only the Ministry of Agrarian Policy and Food provided, as a sample, a list confirming that all heads of departments of the ministry agreed with the draft law developed.

Ministries have over half of their staff working in policy-development departments, based on the sample. In 2022, the share of civil servants dealing with policy development in three out of four sample ministries was above 50%.¹³⁹ Although the share of policy-development staff remained similar in 2021 and 2022, the total number of policy-development staff in the four sampled ministries decreased from an estimated 1 010 in 2021 staff members to 880 at the end of 2022, reducing the capacity for drafting of policies and laws. The number of policy-development staff in the Ministry of Social Policy was reduced by half, with some departments having less than one-third of positions filled at the end of 2022.

¹³⁷ Based on interviews with a sample of four ministries, only one appeared to have clear internal rules and procedures for drafting legislation. The sample included ministries responsible for agriculture, the environment, the economy and social affairs.

¹³⁸ The sample from the Ministry of Social Policy included: 1) Draft Law on Ukraine's Withdrawal from the Protocol to the Agreement between the States - Members of the Commonwealth of Independent States on Social and Legal Guarantees of Military Servicemen, Persons Discharged from Military Service, and Members of Their Families of February 14, 1992; 2) Draft Resolution on Some Issues of Providing Housing Subsidies and benefits for payment of housing and communal services; 3) Draft Strategy of Human Development; and 4) Draft Law on Amendments to the Law on Pension Provision of Persons Released from Military Service. The sample from the Ministry of Environment included: 1) Draft Law on the Ratification of the Agreement between Ukraine and the European Union on Ukraine's Participation in the EU LIFE Program - Environment and Climate Action Program; 2) Draft Law on Chemical Safety and Management of Chemical Products; 3) Draft Law on the National Register of Emissions and Transfer of Pollutants; and 4) Draft Law on Amendments to Certain Legislative Acts of Ukraine Regarding the State Environmental Monitoring System, Information on the State of the Environment (Environmental Information) and Information Support for Environmental Management. The sample from the MoE included: 1) Draft Law on the Halt in Ukraine's relations with the Russian Federation and the Republic of Belarus of the Agreement on Cooperation in the Field of Labour Migration and Social Protection of Migrant Workers and the Protocol on introduction of Amendments and Additions to the Agreement on Cooperation in the Field of Labour Migration and Social Protection of Migrant Workers of April 15, 1994; 2) Draft Law on Amendments to the Code of Labour Laws of Ukraine regarding Legal Succession in Labour Relations; 3) Draft Law on the Legal Regime of All-Union Property Public Associations of the Former Union of the SSR; and 4) Draft Law on the Moratorium on the Alienation of All-Union Property Public Associations of the Former Union of the SSR. The sample for the of Ministry Agrarian Policy and Food included only two drafts, as no drafts from 2021 were submitted for review: 1) Draft Law on Making Changes to some Legislative Acts of Ukraine on Improving the Efficiency of Use of Land by Individuals and State Entities Sector of the Economy; and 2) Draft Law on Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of State Regulation in the Field of Fisheries, Conservation and Rational Use of Aquatic Bioresources and the Field of Aquaculture.



¹³⁹ The Ministry of Economy had a ratio of 69% (compared to 72% in 2021), the Ministry of Agrarian Policy and Food had 58% (48% in 2021), and the Ministry of Environment and Natural Resources 56% (49% in 2021). The Ministry of Social Affairs had a ratio of 44% in 2022 (compared to 54% in 2021).

Conclusion

The responsibility for drafting policies and legislation is attributed to ministries. Ministerial rulebooks and statutes describe the areas of responsibility for each directorate and department, but there are still no written procedures that regulate the policy-development process within ministries. The majority of ministries have over half of their staff working in policy-development departments, but the actual number of policy-development staff in sampled ministries decreased from 2021 to 2022.

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*.

Overall, the value of the indicator “Government capability for aligning national legislation with the European Union *acquis*” is 2, which is a slight improvement since 2018. The positive trend was due to better use of tables of concordance by ministries and provision of translation of the EU *acquis*. There was a negative development in the regulatory framework in 2022 which exempted EI-related legislative initiatives from RIA obligations and public consultation.

Indicator 2.9.1. Government capability for aligning national legislation with the European Union <i>acquis</i>						
This indicator measures the adequacy of the legal framework for the <i>acquis</i> alignment process, the government's consistency in using tables of concordance in the <i>acquis</i> alignment process and the availability of the <i>acquis</i> in the national language. It also assesses the results of the <i>acquis</i> alignment process, focusing on the planned <i>acquis</i> alignment commitments carried forward from one year to the next and how the government is able to achieve its <i>acquis</i> alignment objectives.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
1. Adequacy of the regulatory framework for the <i>acquis</i> alignment process			4/5	5/5	3/5	
2. Use of tables of concordance in the <i>acquis</i> alignment process (%)			1/2	2/2	2/2	
3. Translation of the <i>acquis</i> into the national language			0/2	0/2	1/2	
4. <i>Acquis</i> alignment commitments carried forward (%)			0/4*	0/4*	0/4*	
5. Implementation rate of legislative commitments for <i>acquis</i> alignment (%)			0/4*	0/4	0/4	
Total			5/17	7/17	6/17	

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

The institutional set-up for ensuring alignment of national legislation with the EU *acquis* is in place, but recent changes to the regulatory framework have exempted EI-related legislative proposals from RIA. As a structural unit of the SCMU, GOCEEAI is responsible for planning, co-ordinating and monitoring the *acquis* alignment process.¹⁴⁰ Key requirements for preparing EI-related policy and legislative proposals and consultations are defined in the RoP of the CMU. In urgent cases, as

¹⁴⁰ The Regulation on the Government Office for the Coordination of European and Euro-Atlantic Integration assigns these responsibilities to the Government Office for the Coordination of European and Euro-Atlantic Integration.

outlined in the December 2021 amendment to the RoP of the CMU, the procedures may be bypassed during a state of war.¹⁴¹

With the amendments to the Law on Regulatory Policy from November 2022, draft acts that affect businesses and in any way transpose EU *acquis* no longer need to undergo RIA and be submitted to the SRS for review. The change was introduced by the Law on Materials and Objects Intended for Contact with Food Products,¹⁴² which has nothing directly to do with regulatory policy management issues and is only due to enter into force three years after the date of its publication (i.e. at the end of 2025), with the exception of the changes concerning RIA and review by the SRS, which entered into force immediately. According to information from the interviews, the amendment was only added to the law in the second reading, which means that it didn't undergo a governmental procedure. The reason was said to be to speed up the procedures of the *acquis* transposition. However, RIA is an important tool to ensure evidence-based and consultative transposition of EU law and to ensure selection of the correct and most optimal transposition options and timelines, to maximise net benefits for the country and avoid "gold plating". The amendment has therefore removed a tool that, in the context of transposition, was supposed to help find solutions that best suit Ukraine, since European regulation generally allows for several variants of domestic solutions, depending on the specificities of the country.

Since December 2020, the GOCEEAI has had a mandate to review the proposals submitted by ministries for interministerial consultation to check their alignment with the EU *acquis*.¹⁴³ Furthermore, the GOCEEAI is obliged to review all proposals submitted to the CMU and to give an opinion on each proposal on whether the individual case complies with the EU *acquis* or if it interferes with areas regulated by the EU *acquis*.¹⁴⁴ The GOCEEAI issued 2 553 opinions on draft laws and bylaws submitted by executive bodies to the CMU in 2022, and 3 195 opinions in 2021.¹⁴⁵ The assessment samples¹⁴⁶ confirm that the GOCEEAI is consistent in issuing its opinions, as all five samples contained a basic table in which GOCEEAI issues its opinion in accordance with requirements.¹⁴⁷ It is worth noting, that the EU legal approximation and the quality control are heavily supported by external assistance provided by donors to the ministries and the GOCEEAI.

The new legal framework for the process of organising the translation of the EU *acquis* was established in 2023.¹⁴⁸ The annual translation plans are developed based on the APIAA and the annual

¹⁴¹ RoP of the CMU, paragraph 55².

¹⁴² Law No. 2718-IX of 3 November 2022.

¹⁴³ RoP of the CMU, paragraph 33, point 5¹.

¹⁴⁴ Order of the State Secretary of the CMU No. 22 of 31 January 2022 on Preparation of Draft Legislation to Meetings of the CMU.

¹⁴⁵ Statistical information was provided by the GOCEEAI.

¹⁴⁶ The sample included: 1) Draft Law of Ukraine on Amendments to the Law of Ukraine on Prevention and Counteraction to Legalizing (Laundering) of Proceeds from Crime, Terrorism Financing, and Financing the Proliferation of Weapons of Mass Destruction" regarding the Protection of the Financial System of Ukraine from of the Actions of the State Carrying Out Armed Aggression Against Ukraine, and the Adaptation of Ukrainian Legislation to Certain Standards of the Financial Action Task Force and the Requirements of the EU Directive 2018/843; 2) Draft Law of Ukraine on Collective Bargaining Agreements; 3) Draft Law of Ukraine on Chemical Safety and Management of Chemical Products; 4) Draft Law of Ukraine on Amendments to the Law of Ukraine on Road Traffic regarding the Implementation of Legislation: and 5) Draft Law of Ukraine on Amendments to Certain Laws of Ukraine regarding the Protection of Humans from the Impact of Ionizing Radiation.

¹⁴⁷ Order of the State Secretary of the CMU No. 22 of 31 January 2022.

¹⁴⁸ Resolution of the CMU No. 451 of 2 May 2023 on the Procedure for translating into the Ukrainian language of the EU *acquis* acts and into the English language of Ukrainian legislation acts related to the fulfilment of Ukraine's obligations in the field of European integration.

GPAP, taking into account priorities by ministries and areas. The indicative annual plan for translation must be submitted to and approved by the CMU Committee of European and Euro-Atlantic Integration by 30 July each year. The translation plan for 2023 was prepared and adopted, as were the plans for 2022 and 2021.¹⁴⁹ However, it is worth noting that the organisation of actual translations of the EU *acquis* included in the plans depends on the donor support, mostly from the EU.

In practice, the translation is not always available in time for legal approximation. The translation of four out of the five most recent EU legal acts planned to be transposed based on the GPAP in 2023 were available and confirmed. For 2021, only three out of five translations were available, which is of particular concern as more time has passed since the planned transposition of the relevant EU act and there was still no translation available.

It was not possible to assess the share of the EU *acquis* commitments carried forward, as the APIAA was last updated in 2020. The implementation rate of legislative commitments for EU *acquis* alignment is only 11% in 2021 and 7% in 2022.¹⁵⁰

Conclusion



The institutional and procedural framework for ensuring evidence-based, transparent and effective alignment of national legislation with the EU *acquis* has weakened because of the decision to bypass the requirement to assess the impacts of new legislation that transposes EU regulations and to conduct public consultation. The GOCEEAI is the lead government institution responsible for co-ordinating and monitoring the process of aligning legislation with the *acquis*. The opinions on *acquis* alignment are consistently issued for EI proposals, but timely transposition is not ensured. Required annual translation plans are regularly prepared, but translations are not always available on time to help achieve informed EU law transposition.

¹⁴⁹ All three plans were submitted for SIGMA review.

¹⁵⁰ APIAA activities referring to the same draft law or bylaw with the same implementation deadline were counted as one *acquis* alignment commitment. Only activities with clear reference to draft laws or bylaws were taken into account.

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

Overall, the value of the indicator “Evidence-based policymaking” is 2. The slight and fragile improvement in policymaking, which continues from 2021 into the war-stricken year, is mainly due to more comprehensive description of problem analysis and mechanisms for monitoring in RIAs. Nevertheless, the application of RIA has decreased in 2023, as has the scope of legislation for which RIA is required.

Indicator 2.10.1. Evidence-based policymaking						
This indicator measures the functioning of evidence-based policymaking. It assesses the legal requirements and practice regarding the use of basic consultative processes, budgetary impact assessment and 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
1. Regulation and use of basic analytical tools and techniques to assess the potential impact of new draft laws			2/2	2/2	2/2	
2. Regulation and use of budgetary impact assessment prior to approval of policies			1/3	1/3	1/3	
3. Regulation and use of broad Regulatory Impact Assessments			1/3	2/3	1/3	
4. Availability of guidance documents on impact assessments			1/2	1/2	1/2	
5. Quality control of RIAs			2/3	2/3	2/3	
6. Quality of analysis in impact assessments			0/15	2/15	2/15	
Total			7/28	10/28	9/28	

Note: More information about the point conversion ranges can be found in the Methodology section

Analysis of policies and their impacts is required by regulations as part of the explanatory note which is prepared for all draft laws.¹⁵¹ The explanatory notes provide analysis of the problem under consideration and the objectives and rationale for government intervention. They also provide some financial and economic calculations, as well as information on conducted external stakeholder consultation. A review of a sample of five laws analysed as part of this assessment has confirmed that explanatory notes were prepared in all five cases.

The rules in place require financial and economic analysis of new laws if implementation of the act requires financing from the state or local budgets.¹⁵² The analysis is provided as part of the explanatory memorandum, and the MoF provides its assessment of impacts through opinions. The

¹⁵¹ RoP of the CMU, paragraphs 34 and 50.

¹⁵² *Idem*, paragraph 34.

review of five samples of new legislative packages prepared by the Government in 2022 shows that only two sample laws included appropriate fiscal calculations.¹⁵³

There is also a requirement to prepare comprehensive RIA on draft laws that affect the business sector.¹⁵⁴ However, the scope of RIA was narrowed in 2022 when an exemption was introduced for all acts transposing EU regulations, creating a blanket RIA exemption for EU cases, which has huge risks for evidence-based alignment of national legislation with EU law. Implementation of RIA in practice is not consistent, as only two out of five sample laws adopted by the Government in 2022 contained an RIA report.¹⁵⁵

Guidelines for analysis of impacts are available, but they do not provide practical tools and examples. The SRS developed guidelines on how to prepare RIA, which contain methods and guidance on how to assess impact on business and budget.¹⁵⁶ There are also examples for the M-test and related calculations. The MoF prepared a methodology on how to cost policy proposals.¹⁵⁷ The two guidelines available do not provide practical examples and tools on how to practically assess the impacts in all areas required by the regulations.

The quality of impact analysis has not improved since 2018 and remains poor. From five sample draft laws¹⁵⁸, approved by the CMU at the end of 2022, only two have undergone full RIA. The quality of the impact analysis in all five supporting documents is weak and does not allow for serious, evidence-based decision-making. None of the five samples has considered any alternatives.¹⁵⁹ Supporting documents also very rudimentarily explain what the regulatory solution is aiming to solve¹⁶⁰, but not specifically how it is to be solved. None of the five samples discuss implementation issues. Fiscal impact analyses are also generally poorly included. For example, RIA for the draft Law on the Accelerated Review of State Instruments for Regulating Economic Activity merely states that the implementation of the law will have no budgetary impact, although it envisages a reduction in the administrative burden on businesses and in administrative procedures (which logically reduces the workload of public administration), as well as the creation of a special state commission, which was also criticised by the

¹⁵³ These samples were: 1) Draft Law on Chemical Safety and Management Chemical Products; and 2) Draft Law on Hops and Hop Products. Three other packages stated that no additional funds were needed for the implementation, although the proposed provisions created new obligations or commitments.

¹⁵⁴ Law on Regulatory Policy.

¹⁵⁵ These samples were: 1) Draft Law on Chemical Safety and Management Chemical Products; and 2) Draft Law on Hops and Hop products.

¹⁵⁶ 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.

¹⁵⁷ 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 Drafts Submitted to the Parliament by the CMU.

¹⁵⁸ The sample included: 1) Draft Law on the Announcement of the Natural Territories of the City of Morshyn, the Natural Territories of the Morshyn Deposit of Mineral Therapeutic Brines and the Natural Territories of the Nyniv Deposit of Mineral Therapeutic Brines of the Lviv Region as a State Resort Value; 2) Draft Law on Hops and hop products; 3) Draft Law on the Customs Tariff of Ukraine; 4) Draft Law on Accelerated Review of Instruments of State Regulation of Economic Activity; and 5) Draft Law on Chemical Safety and Management of Chemical Products.

¹⁵⁹ Supporting documents for the Draft Law on the Customs Tariff of Ukraine explain why alternatives are not possible, while in other cases there are no explanations why alternatives would not be possible.

¹⁶⁰ For example, "establishing principles for conducting inspections of production from the hop stalk to the final product, identifying controlling institutions and their powers, specifying sanctions that are established for violation of legal requirements".

MoF in its opinion. The information provided in RIA reports is not used to enhance explanatory notes and inform decision making.¹⁶¹ Notwithstanding this, all the drafts were approved.

The quality control of impact assessment of policies is insufficient, although it is performed in most cases and by all responsible institutions. The SRS conducts quality control on the RIAs, and the SCMU is responsible for assessing the quality of analysis in the explanatory notes. As of December 2020, there is a provision¹⁶² in the RoP of the CMU that a RIA, if one has been carried out, must be submitted together with the draft act, so that the CMU is now also aware of the broad impact analysis in the decision-making process. In addition to the SRS, the RIA report is now also reviewed by the SCMU, but the exact roles of both institutions and how they should co-ordinate their analysis are not specified.

A review of the opinions provided by the SCMU and the MoF on sample draft laws reveals that deficiencies are not raised before approval of the draft laws by the CMU. In two out of five sample cases¹⁶³, the lack of budgetary impact analysis was not raised by either the MoF or the SCMU although, based on the proposed measures in the draft laws, it is likely to occur.

Conclusion

The regulatory framework establishes the requirement to analyse draft acts, but broad RIA is required only for acts affecting business. The quality of impact analysis in supporting documents remains very weak, hindering evidence-based decision-making. Identification of alternatives, analysis of fiscal and other impacts and elaboration of implementation arrangements remain inadequately addressed. Quality assurance, although performed by the SRS, the MoF and the SCMU, is formalistic and does not address substantive deficiencies.



¹⁶¹ Evident from comparison of the explanatory note and the RIA report for the Draft Law on Sewage Disposal in Populated Areas.

¹⁶² RoP of the CMU, paragraph 50 point 1 line 5.

¹⁶³ Draft Law on Accelerated Review of Instruments of State Regulation of Economic Activity and Draft Law on the Customs Tariff of Ukraine.

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.

Overall, the value of the indicator “Public consultation on public policy” is 1. This is a negative trend since 2018, mainly because certain tools required for effective stakeholder engagement, such as prior notifications, collection, analysis and reporting on feedback, were not implemented consistently during 2021 and 2022. The regularity of publishing laws for consultation by ministries has dropped since 2021. A positive development in 2022 is increased scrutiny of consultation during the quality assurance process.

Indicator 2.11.1. 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 draft laws.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
1. Adequacy of the regulatory framework for an effective public consultation process			9/10	9/10	9/10	
2. Quality assurance of the public consultation process			1/3	1/3	3/3	
3. Consistency in publishing draft laws for written public consultation			1/4	1/4	0/4*	
4. Test of public consultation practices			3/24	0/24	0/24	
Total			14/41	11/41	12/41	

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

The requirement to conduct public consultation on policy proposals remains insufficiently regulated, which affects its effectiveness. While the regulatory framework covers multiple requirements for public consultation¹⁶⁴, the obligation to consult on all draft laws and bylaws has not been established. Consultation is only required on draft acts on "issues related to the socio-economic development of the state, implementation and protection of the rights and freedoms of citizens, satisfaction of their political, economic, social, cultural and other interests".¹⁶⁵ The Government had prepared the Law on Public Consultation in 2020, which was approved by the Parliament in its first reading. A broad working group had already produced an upgraded version in the second reading at the end of 2021. However, the legislative process was then put on hold due to the war.

¹⁶⁴ Obligation to inform in advance about public consultation, obligation to report on public consultation and to make the report public, minimum duration for consultation, procedure for consultation.

¹⁶⁵ Resolution of the CMU of 3 November 2010 No. 996 on ensuring public participation in the formation and implementation of state policy, Article 12.

The legislation sets minimum time frames for consultations (15 days for general written consultation¹⁶⁶ and one month for all acts affecting businesses¹⁶⁷) and requires advance notification in the form of annual indicative plans for consultations.¹⁶⁸ However, this practice is not ensured, as of the four sample draft laws that underwent consultation in 2021¹⁶⁹, only one¹⁷⁰ was included in the annual ministerial consultation plans.

Consistency in publishing draft laws for public consultation remains insufficient. Analysis of the performance of line ministries regarding the regularity of conducting public consultation shows that four sample ministries have increased consultation since 2018, but this positive move was negatively impacted by the war in 2022 (Table 1).

Table 1. Consistency in publishing draft laws in four sample ministries

	2018	2021	2022
Ministry of Agrarian Policy and Food	50%	60%	50%
Ministry of Economy	50%	69%	Not available
Ministry of Environmental Protection and Natural Resources	20%	40%	40%
Ministry of Social Policy	13%	77%	Not available

Note: SIGMA calculation, based on data submitted for SIGMA assessments in 2018 and 2023 and publicly available data.

Inconsistent public consultation can be attributed to the extraordinary situation the country is facing as a result of war. However, the gaps in regulations which require public consultation on only selected categories of draft laws and regulations¹⁷¹ narrow the scope of required consultation, and the percentage of draft laws published for written public consultation had already been low before the war.

The quality of consultations for 2022 could not be verified, as consultations were not conducted for any of the samples. Based on the SCMU data, public consultations were not held for any of the five sample draft acts¹⁷², even though at least two drafts (the draft Law on Chemical Safety and Management of Chemical Products and the draft Law on Hops and Hop Products) require public consultation according to the provisions of the Law on State Regulatory Policy, because they directly affect the business sector.

¹⁶⁶ Resolution of the CMU No. 996 of 3 November 2010 on Ensuring Public Participation in the Formation and Implementation of State Policy, Article 12.

¹⁶⁷ Law on State Regulatory Policy, Article 9.

¹⁶⁸ Resolution of the CMU No. 996 of 3 November 2010 on Ensuring Public Participation in the Formation and Implementation of State Policy, Article 6.

¹⁶⁹ 1) Draft Law on Service in Local Self-Government Bodies; 2) Draft Law on Geographical Indications of Alcoholic beverages; 3) Draft Law on the National Register of Emissions and Transfer of Pollutants; and 4) Draft Law on Assisted Reproductive Technologies.

¹⁷⁰ Draft Law on the National Register of Emissions and Transfer of Pollutants.



¹⁷¹ Resolution of the CMU No. 996 of 3 November 2010 on Ensuring Public Participation in the Formation and Implementation of State Policy, Article 12.

¹⁷² The 2022 sample included: 1) Draft Law on the Announcement of the Natural Territories of the City of Morshyn, the Natural Territories of the Morshyn Deposit of Mineral Therapeutic Brines and the Natural Territories of the Nyniv Deposit of Mineral Therapeutic Brines of the Lviv Region as a State Resort Value; 2) Draft Law on Hops and Hop products; 3) Draft Law on the Customs Tariff of Ukraine; 4) Draft Law on Accelerated Review of Instruments of State Regulation of Economic Activity; and 5) Draft Law on Chemical Safety and Management of Chemical Products.

In 2021, consultations were carried out for four out of the five samples provided. However, comments from the public were received in only two cases.¹⁷³ Furthermore, the CMU was not informed of what the comments were and how they were addressed. The explanatory notes only mention that consultations were held and who participated.

Quality assurance of the public consultation process is mandatory¹⁷⁴ and practiced. The SCMU is the central institution responsible for overseeing the public consultation process and checking compliance with the existing procedures. The SCMU carries out its quality-control function by issuing opinions on all proposals. The SCMU's opinions, although available for all five sample draft laws in 2022, do not always highlight deficiencies and gaps in the process, which indicates that the quality control process is ineffective. In 2021, only one SCMU opinion was provided for review of the public consultation process¹⁷⁵ while the other four did not refer to public consultation, although one draft did not meet the requirements.¹⁷⁶

Overall, the value of the indicator "Interministerial consultation on public policy" is 4. This marks an improvement since 2018, especially through the enhanced regulatory framework. Minimum duration was established, and interministerial conflict resolution mechanisms were formalised.

Indicator 2.11.2. 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
1. Adequacy of the regulatory framework for an effective interministerial consultation process			5/9	9/9	9/9	
2. Test of interministerial consultation practices			9/12	9/12	9/12	
Total			14/21	18/21	18/21	

Note: More information about the point conversion ranges can be found in the Methodology section.

Interministerial consultation is well-regulated and consistently practiced. In 2020, a minimum duration of ten days was introduced for interministerial consultation.¹⁷⁷ In emergency situations, this period can be shorter, even as short as six hours.¹⁷⁸ The legislation also stipulates that all interested bodies must be

¹⁷³ Comments from the public were received for: 1) Draft Law on Service in Local Self-Government Bodies; and 2) Draft Law on Geographical Indications of Alcoholic Beverages. The other three drafts in the sample were: 1) Draft Law on Sewage Disposal of Populated Areas; 2) Draft Law on the National Register of Emissions and Transfer of Pollutants; and 3) Draft Law on Assisted Reproductive Technologies.

¹⁷⁴ RoP of the CMU, paragraph 52.

¹⁷⁵ Draft Law on Geographical Indications of Alcoholic Beverages.

¹⁷⁶ Draft Law on Sewage Disposal in Populated Areas.

¹⁷⁷ RoP of the CMU, paragraph 38.

¹⁷⁸ *Ibid.*

consulted, as well as the MoJ, the MoF, the MoE and the MDT.¹⁷⁹ The opinion of the MoJ is mandatory, while the other bodies may approve the act without a response.¹⁸⁰ The proposing authority must inform the Government of the results of the interministerial consultation in an explanatory note and in separate tables with detailed information on the opinions of the interested bodies consulted (including any unresolved differences of opinion).¹⁸¹

Judging by the analysis of samples, interministerial consultation practice follows the established rules diligently. In four of the five 2022 samples¹⁸², the proponent consulted all mandatory and selected interested ministries, and all mandatory ministries responded. In the fifth case, the Draft Law on the Accelerated Review of State Instruments for the Regulation of Economic Activity, although the proponent did not initially follow the rules set out, the affected ministries were consulted afterwards, following the intervention of the SCMU and the Government Committee on Economy, Financial Policy, Fuel and Energy Complex, Strategic Industries, Community and Territorial Development and Infrastructure. This case also demonstrates that quality control with regard to interministerial consultation is both in place and effective.

Furthermore, in all five cases, as required by the rules, the CMU was informed of the results of the interministerial consultation in the explanatory memorandum and in separate tables providing detailed information on the views of the consulted bodies (including unresolved differences).

The only requirement that could not be verified from the documentation provided was respect of the minimum time limit for consultations.

Conclusion

Regulations do not ensure full and consistent public consultation on all policy proposals, which remains of major concern. This limits the possibility of engaging with key stakeholders and the general public during policymaking. The rules for public consultation are not effectively enforced, leaving deficiencies unaddressed. As a consequence of the war, fewer consultations were held in 2022 than in 2021.

Interministerial consultations are well-regulated and consistently carried out, even during wartime. Compliance with the rules and effective quality control are evident, based on an analysis of samples. The results on interministerial consultation, including unresolved differences, are reported in supporting documentation.

¹⁷⁹ *Idem*, paragraphs 33 and 44.

¹⁸⁰ *Idem*, paragraph 39.

¹⁸¹ *Idem*, paragraph 50.

¹⁸² The 2022 sample included: 1) Draft Law on the Announcement of the Natural Territories of the City of Morshyn, the Natural Territories of the Morshyn Deposit of Mineral Therapeutic Brines and the Natural Territories of the Nyniv Deposit of Mineral Therapeutic Brines of the Lviv Region as a State Resort Value; 2) Draft Law on Hops and Hop Products; 3) Draft Law on the Customs Tariff of Ukraine, 4) Draft Law on Accelerated Review of Instruments of State Regulation of Economic Activity; and 5) Draft Law on Chemical Safety and Management of Chemical Products.

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

Overall, the value of the indicator “Predictability and consistency of legislation” is 3 and has remained stable since 2018. A positive development since 2018 is the improved legal certainty, as none of the government-sponsored laws were amended within a year in 2022. However, the timeliness of adoption of bylaws is an issue of concern.

Indicator 2.12.1. 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021	Trend 2021-2023		Points			
			2018	2021	2023	
1. Availability of guidance documents on legal drafting			2/2	2/2	2/2	
2. Quality assurance on legal drafting			3/3	3/3	3/3	
3. Laws amended one year after adoption (%)			0/3	1/3	3/3	
4. Perceived clarity and stability of government policymaking by businesses (%)			0/2	Not available	0/2	
5. Timeliness of adoption of mandatory bylaws (%)			*	0/3	0/3	
Total			5/10	6/11	8/13	

Notes: *Sub-indicator did not exist in 2018. Not available= A survey was not conducted in 2021. The point conversion range has therefore been modified by removing the survey-related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The total number of points is therefore 11 rather than 13. Point conversion ranges: 0-2=0, 3=1, 4-5=2, 6-7=3, 8=4, 9-11=5. More information about the point conversion ranges can be found in the Methodology section.

Procedures and guidelines to ensure the quality of the legal drafting process are in place. Both the MoJ¹⁸³ and the Legal Department of the SCMU¹⁸⁴ are responsible for legal scrutiny, meaning that their roles partly overlap. They both assess the constitutionality and alignment with the existing legal framework, but the SCMU can make legal editorial changes to the draft legislation. The MoJ has published legal drafting guidelines¹⁸⁵, as has the Parliament for bills enacted by MPs.¹⁸⁶

¹⁸³ RoP of the CMU, Chapter 4.

¹⁸⁴ *Idem*, paragraph 52.

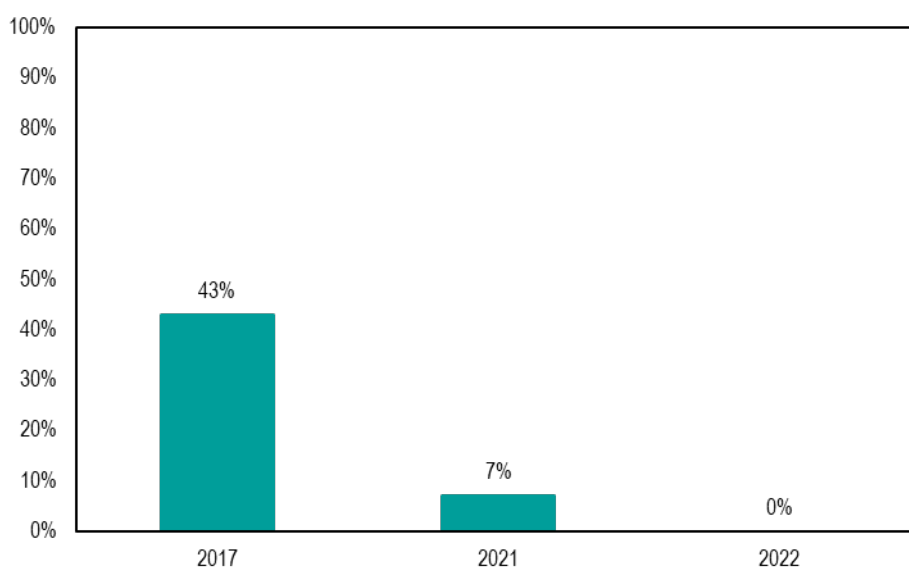
¹⁸⁵ Guidelines on Drafting Laws and Compliance with Normative Design Technique, adopted by Resolution No. 41 of the board of the MoJ of 21 November 2000.

¹⁸⁶ Rules for Design of Draft Laws and Basic Requirements of the Legislative Technique, 4th Edition.

The MoJ consistently ensures that its legal drafting instructions are applied in practice and draft acts are legally coherent. In practice, in 2022, all analysed law proposals¹⁸⁷ were supported with the obligatory analysis of the MoJ and the Legal Department of the SCMU. Overall, the volume of opinions issued by the MoJ remained similar for both assessed years: the MoJ issued 3 205 legal review opinions in 2021 and 2 967 in 2022.

Fewer government-sponsored laws were amended within one year of their adoption in 2022 compared to 2021. In the case of the four new laws initiated by the Government and the President and adopted in 2021 by the Parliament, one had an amendment prepared by the President within one year of adoption. In 2022, none of the new laws had amendments prepared by either the Government or the President within one year after adoption. In 2017, this share was 43% (six out of fourteen new laws were amended within one year). However, the share of new laws initiated by MPs revised within the first year of adoption was 54% in 2022 and 50% in 2021.

Figure 18. Share of laws amended within one year after adoption, 2017-2022



Source: SIGMA calculation, based on the information and data provided by the Parliament for this assessment.

The Government performs worse in ensuring timely adoption of the required regulations to support implementation of laws. Only 33% of all required regulations introduced by laws adopted in

¹⁸⁷ MoJ opinions were provided for review for all five sample draft laws in 2022: 1) Draft Law on the Announcement of the Natural Territories of the City of Morshyn, the Natural Territories of the Morshyn Deposit of Mineral Therapeutic Brines and the Natural Territories of the Nyniv Deposit of Mineral Therapeutic Brines of the Lviv Region as a State Resort Value; 2) Draft Law on Amendments to the Law of Ukraine On the Status of War Veterans, Guarantees of their Social Protection Regarding Medical Care for War veterans; 3) Draft Law on the Ratification of the Protocol Between the CMU and the Government of the Republic of Moldova on Amendments to the Agreement on Free Trade between the CMU and the Government of the Republic of Moldova Dated November 13, 2003; 4) Draft Law on the Suspension of the Agreement on Cooperation in the Field of Labor Migration and Social Protection of Migrant Workers and the Protocol on Amendments and Supplements to the Agreement on Cooperation in the Field of Labor Migration and Social Protection of Migrant Workers of 15 April 1994 in Ukraine's Relations with the Russian Federation and the Republic of Belarus year; and 5) Draft Law on the Introduction of Changes to some Legislative Acts Regarding the Functioning of Institutions for the Execution of Punishments and Institutions of Pre-trial Detention in Conditions of Martial Law.

2021 were approved on time. The situation was worse in 2022, when the rate was 11%. Of the 61 by-laws required by the three sample laws, only 7 were adopted on time in 2022; in 2021, 3 were adopted on time out of a total of 9.

The perception of businesses of the clarity and stability of policymaking remains low. According to the 2023 SIGMA business opinion survey, only 27% of responding businesses tend to agree or strongly agree that the laws and regulations affecting their companies are clearly written, not contradictory or not revised too frequently. In 2017, the share was 33%.

Overall, the value of the indicator “Accessibility of legislation” is 3. The value remains unchanged, but a slight increase is assessed due to rules being in place for publishing acts in consolidated form. The major weaknesses remain full publication of all secondary acts, including of ministries, and low business perception of availability of laws and regulations affecting business.

Indicator 2.12.2. 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021	Trend 2021-2023		Points			
			2018	2021	2023	
1. Adequacy of the regulatory framework for public accessibility of legislation			5/6	6/6	6/6	
2. Accessibility of primary and secondary legislation in practice			4/8	4/8	4/8	
3. Perceived availability of laws and regulations affecting businesses (%)			0/2	Not available	0/2	
Total			9/16	10/14	10/16	

Notes: Not available= A survey was not conducted in 2021. The point conversion range has therefore been modified by removing the survey-related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The total number of points is therefore 14 rather than 16. Point conversion ranges: 0-2=0, 3-4=1, 5-7=2, 8-10=3, 11-12=4, 13-14=5. More information about the point conversion ranges can be found in the Methodology section on page 8.

The process, deadlines and responsibilities of relevant bodies for publishing and consolidating legislation are all set in relevant regulations.¹⁸⁸ Legal acts must be published in official printed publications within 15 working after their adoption.¹⁸⁹ In line with the rules, there are several official printed publications where the acts are published after approval. The Official Gazette of Ukraine and the Government Courier

¹⁸⁸ The relevant regulations are: 1) Decree of the President No. 503/97 about the Procedure for Official Publication of Normative and Legal Documents Acts and their Entry into Force; 2) Decree No. 376 of 23 April 2001 on Approval of the Procedure for Maintaining the Unified State Register of Normative Legal Acts and its Use; and 3) Order No. 102/5 of 22 December 2006 on the Publication and Distribution of the Newsletter "Official Bulletin of Ukraine".

¹⁸⁹ Presidential Order No. 503/97 on Procedure for Official Publication of Normative and Legal Acts and their Entry into Force, Article 1.

are the two main publications where acts are published.¹⁹⁰ Also, laws and other acts of the VRU are officially promulgated in the newspapers *Holos Ukrayiny* and *Vidomosty Verkhovnoyi Rady Ukrayiny*, while laws and acts of the President of Ukraine are officially promulgated in the Official Gazette of the President of Ukraine.¹⁹¹

The MoJ is in charge of maintaining the central registry of all legal acts.¹⁹² Legal acts must be submitted for state registration within three working days of their adoption (in case of laws, within three working days of signing by the President of Ukraine), while international treaties must be submitted within five working days from the date of their entry into force.¹⁹³ The acts are included in the registry within five working days from their receipt by the MoJ. All acts in the registry are kept in consolidated form.

All primary and secondary legislation is available free of charge¹⁹⁴ and in a consolidated format on several state-run online locations.¹⁹⁵ In practice, however, there are cases when some regulations of ministries are not publicly available online.¹⁹⁶

The 2023 SIGMA business opinion survey shows that 43% of business representatives reported that information on laws and regulations affecting their companies was easily obtainable from the authorities. The result was an improvement compared to 2017, when the share was 39%.

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² Decree of the CMU No. 376 of 23 April 2001 on Approval of the Procedure for Maintaining the Unified State Register of Normative Legal Acts and its Use; CMU Decision No 731 of 28 December 1992 on Approval of the Regulation on the State Registration of Regulatory Acts of Ministries and Other Executive Bodies.

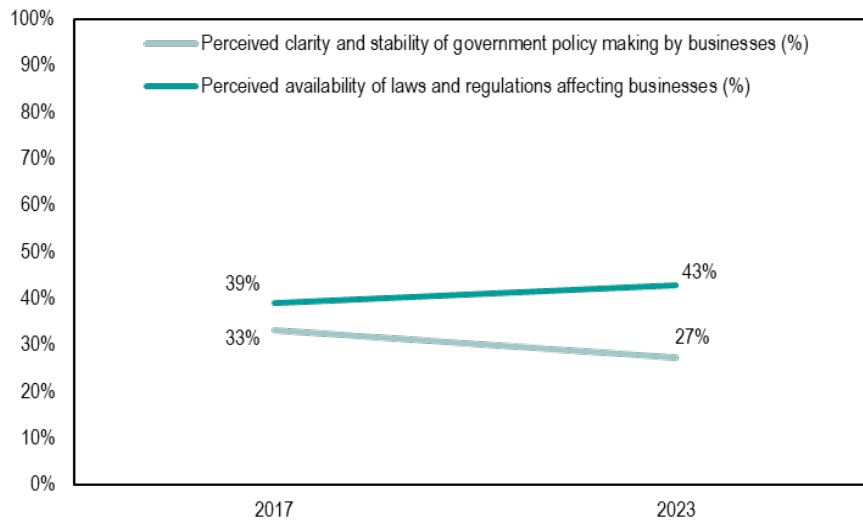
¹⁹³ Decree No. 376 of 23 April 2001 on Approval of the Procedure for Maintaining the Unified State Register of Normative Legal Acts and its Use, Article 8.

¹⁹⁴ *Idem*, Article 16.

¹⁹⁵ Primary and secondary legislation is available at the following URLs: <https://zakon.rada.gov.ua/laws/main/index>, <https://www.kmu.gov.ua/npasearch> and <http://www.reestrnpa.gov.ua/>.

¹⁹⁶ For example, the following regulations were not registered and available online: 1) Resolution No. 24 of 24 April 1999 on Methodical instructions on sanitary-microbiological control of objects of use and facilities of establishments for children and adolescents; and 2) Resolution No. 10 of 24 December 1998 on State sanitary rules and norms of safety for the health of clothing and footwear.

Figure 19. Perceived stability and availability of laws by businesses



Notes: The percentage of respondents who responded “strongly agree” or “tend to agree” to the following questions: “Laws and regulations affecting my company are clearly written, not contradictory and do not change too frequently” and “Information on the laws and regulations affecting my company is easy to obtain from the authorities”.

Source: SIGMA calculations based on the KIIS (Kyiv International Institute of Sociology) 2017 “Survey on business satisfaction with policymaking and public service delivery” (commissioned by SIGMA) and the SIGMA Public Opinion Survey 2023 (conducted in April 2023).

Conclusion

Clear procedures and rules for drafting legislation are established and adhered to. Scrutiny of legal quality is also effectively ensured, although there is overlap of functions between the two responsible institutions. All primary and secondary legislation is available centrally and in consolidated format on several state-run electronic databases accessible online free of charge. However, the Government significantly underperforms in adopting mandatory bylaws on time.

Public service and human resource management

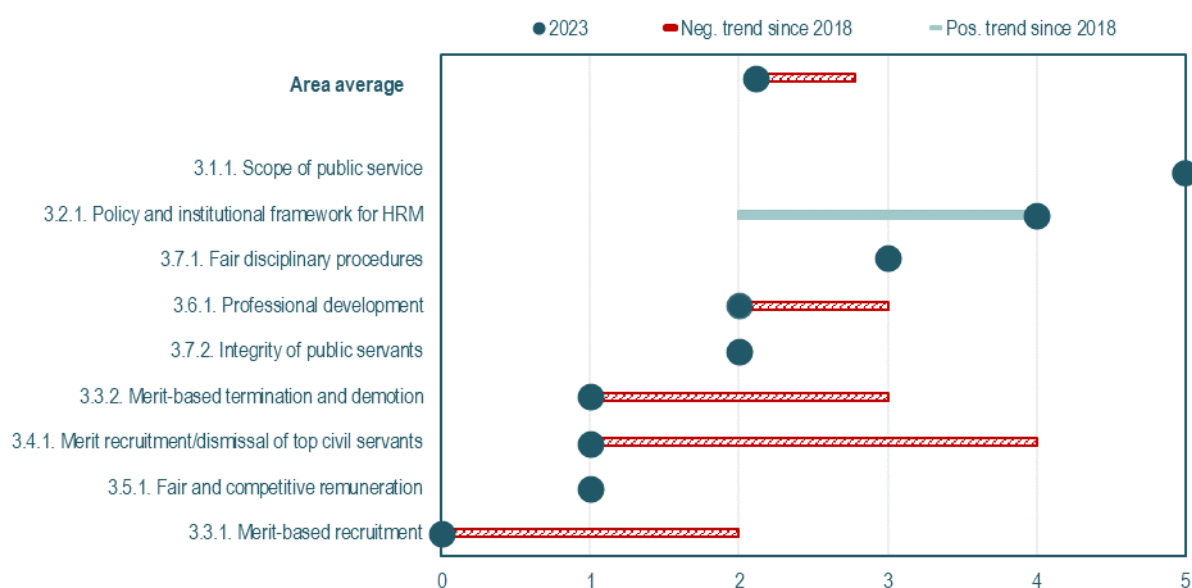
The Principles of Public Administration

Principle 1	The scope of public service is adequate, clearly defined and applied in practice.
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.
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.
Principle 4	Direct or indirect political influence on senior managerial positions in the public service is prevented.
Principle 5	The remuneration system of public servants is based on job classifications; it is fair and transparent.
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.
Principle 7	Measures for promoting integrity, preventing corruption and ensuring discipline in the public service are in place.

Summary and recommendations

The civil service in Ukraine has been heavily impacted by Russia's war of aggression and the subsequent introduction of martial law. Special measures were implemented in recruitment, dismissals, transfers, promotions, work organisation and integrity, resulting in a reduced emphasis on merit-based practices. Furthermore, there has been a significant decrease in funds allocated for civil servant salaries and training, which affected various performance indicators.

Figure 20. The overall indicator values per Principle in area of public service and human resource management



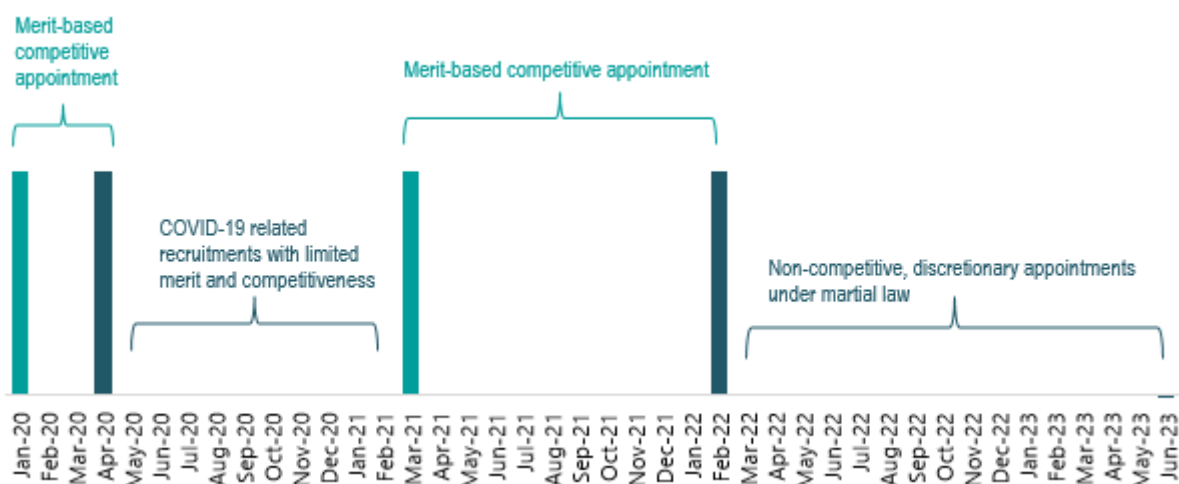
Note: The area average is a simple arithmetic mean of the sub-indicators. The sub-indicators are sorted from smallest to largest.
Source: SIGMA elaboration based on the assessment data.

The horizontal and vertical scope of the civil service is defined in line with the Principles of Public Administration. Wartime has expanded the institutional scope of the civil service (with the creation of military administration) and impacted the workforce – many civil servants have left the country, migrated to other regions or been drafted into the army. The provisions related to martial law have introduced new procedures that apply to civil servants and thus temporarily modified the material scope of civil service legislation.

The strategic framework for civil service reform has continuously been in place and implemented, and it was only marginally adjusted to the challenges resulting from the war. Despite still unclear political responsibility for the civil service, the National Agency of Ukraine on Civil Service (NAUCS) undertakes numerous initiatives to help professionalise human resources (HR) functions in public administration and address extraordinary challenges in human resource management (HRM). The central Human Resource Management Information System (HRMIS) started operation in March 2021, but has not been rolled out to all government bodies. As it is not mandatory, it is meeting resistance.

Between 2020 and 2023, the application of fully competitive and merit-based recruitment, as mandated by the Civil Service Law (CSL), was mostly suspended. Initially, this was due to special regulations implemented during the COVID-19 pandemic, and later due to the imposition of martial law. While there have been certain improvements since 2018, such as the establishment of the Centre for Assessment of Candidates in 2019, the quality of competitive and merit-based recruitment has deteriorated. Deadlines for application submission have been shortened, the principle of selecting the highest-ranked candidate abandoned, and administrative appeal instance for dissatisfied candidates abolished. The turnover in the civil service is exceptionally high (20% in 2021 and 17% in 2022) compared to acceptable practice in HR.

Figure 21. Merit-based, competitive recruitments to the civil service were applied only for 16 months over the period 2020-2023



Source: SIGMA, based on Ukrainian legislation

Despite clear definitions of the scope and responsibilities of the senior civil service, continuous problems exist regarding the composition of the Senior Civil Service Commission, which has also been stripped of essential competences. The management of the senior civil service experienced significant disruptions from 2020 to 2023, with non-merit-based recruitments occurring outside the bounds of the competitive procedures mandated by the CSL. These deviations were a response to the COVID-19 pandemic and the imposition of martial law. Furthermore, politically motivated dismissals in 2020 and 2021 led to a considerable turnover within the senior civil service.

The current salary system continues to present serious imperfections in terms of fairness, transparency and structure of the salary components. The government is determined to progress with the reform launched in 2020 despite the war. Significant allowances for reform staff positions (RSPs) are matched by a variable part of salaries of non-RSPs. Both are difficult to sustain due to budgetary restrictions. The RSPs project requires reconsideration.

Since 2018, a substantial overhaul of the professional development system for civil servants has been undertaken. This reform included the establishment of a training services market, accreditation of training programmes and the development of the Knowledge Management Portal. Promotions under the martial law are flawed and discourage many civil servants from advancing in their careers, as prior dismissal from the civil service is a condition for temporary appointment to a higher position.

The disciplinary system in the civil service has not undergone any important changes since 2018, and the provisions are in line with the Principles. However, a significant share of disciplinary sanctions is not confirmed by the courts. Moreover, the martial law introduced new grounds for launching disciplinary procedures.

Experience of corruption and perception of corruption in Ukraine have significantly decreased. While the legal framework related to anti-corruption and integrity of public officials is comprehensive, the martial law suspended the obligation to submit asset declarations. The adoption of the Anti-Corruption Strategy was delayed, resulting in the absence of a strategy during 2021 and 2022.

Short-term recommendations (1-2 years)

1. The Government should restore, as soon as possible, the application of Civil Service Law provisions that ensure merit-based recruitment and promotions, including reopening and upgrading of the Unified Portal for Civil Service Vacancies.
2. The Parliament and the Government should continue with the preparation of a comprehensive reform of the civil service salary and grading system to improve fairness, transparency and competitiveness of salaries. The implementation timeline should take into account the budget constraints and unpredictability of the financial situation.
3. Political responsibility for civil service policy development, co-ordination, and implementation should be clearly assigned to a member of the Cabinet of Ministers of Ukraine (CMU).

Medium-term recommendations (3-5 years)

4. The Government should enhance the capacity of the civil service, particularly through proper design of senior civil service management, public service salaries and grading reform, and an improved recruitment system for all levels of civil service positions, so that it can cope with the challenges of EU integration, recovery and national reforms without dependence on the support of external consultants. In this context, it should evaluate the concept of RSPs and develop a strategy for eventually integrating them in the future job classification, grading and salary system.
5. The Government should strengthen the professionalism of senior civil service recruitment procedures and eliminate political influence in the assessment of candidates. Discretion could be allowed for ministers and the CMU to select among candidates recognised in the assessment process as fitting the profile.
6. The Government should ensure digitalisation of HR procedures and their roll-out across public administration bodies.

Analysis

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

Overall, the value of the indicator “Adequacy of the scope of public service” is 5. The scope of the civil service has not significantly changed compared to the 2021 and 2018 SIGMA Assessments; it is comprehensive and well-defined.

Indicator 3.1.1. 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 ¹⁹⁷ , and whether it is consistently applied across the public sector.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021	Trend 2021-2023		Points			
			2018	2021	2023	
1. Clarity in the legislative framework of the scope of the civil service			1/2	1/2	1/2	
2. Adequacy of the horizontal scope of the public service			6/6	6/6	6/6	
3. Comprehensiveness of the material scope of civil service legislation			2/2	2/2	2/2	
4. Exclusion of politically appointed positions from the scope of the civil service			2/2	2/2	2/2	
5. Clarity of the lower division line of the civil service			1/1	1/1	1/1	
Total			12/13	12/13	12/13	

Note: More information about the point conversion ranges can be found in the Methodology section.

The CSL¹⁹⁸ clearly defines the civil service as a public, professional and politically impartial activity involving practical implementation of tasks and functions of the state. The horizontal scope, defined in line with the SIGMA Principles, is broad. CSL applies not only to ministries, but also to: 1) other central executive bodies, including regulatory agencies; 2) regional and (de-concentrated) local state administration; 3) independent institutions; 4) the administration of the President and the Parliament; 5) bodies of Prosecutor’s office; and 6) bodies of military administration and bodies of diplomatic

¹⁹⁷ In OECD (2017), *The Principles of Public Administration*, OECD, Paris, p. 40, 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 civil service, 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 the sub-national administration and special types of public service, elected and politically appointed officials, or support and ancillary personnel in the administrative bodies.

¹⁹⁸ Law No. 889-VIII on Civil Service, of 10 December 2015, with later amendments.

service.¹⁹⁹ Special provisions apply to some public institutions, most frequently in the area of remuneration, in addition to or instead of CSL.²⁰⁰

The vertical scope of the civil service is well defined too. The legislation excludes political positions from the scope of application of the CSL²⁰¹ and clearly draws the lower division line of the civil service by excluding support positions.²⁰²

Russia's large-scale war of aggression against Ukraine has so far had limited impact on the scope of the civil service, but significant impact on the civil service workforce. The President can establish military administrations in the regions.²⁰³ They are usually created based on the existing structures of government administration and are attributed new competences related to implementation of martial law, defence, civil protection, public security and order, protection of critical infrastructure, protection of civil rights, freedoms and legal interest. Additional staff is allocated to deal with these competences.

In 2022, 4 355 civil servants went abroad and 3 637 were drafted into the army. In all, 4 713 civil servants remained in the territories of Ukraine captured by the aggressor or in the boundaries of combat areas²⁰⁴, 108 civil servants died, 80 were wounded and 205 disappeared.²⁰⁵ Another consequence is the redistribution of work among civil servants: 45% of respondents to a NAUCS survey reported an increase in workload, 21% reported a decrease and 5% stopped working.²⁰⁶ To adjust to this situation, employees' annual leave can be shortened to 24 days by decision of the employer, employees working on critical infrastructure can be refused leave, and the heads of bodies can increase the duration of their working hours to up to 60 hours per week.²⁰⁷ The COVID-19 pandemic helped the civil service to prepare for this extraordinary situation – in 2020 NAUCS issued methodological recommendations on remote work.²⁰⁸

The martial law temporarily modified the material scope of civil service legislation. The changes and their consequences are described in later in this chapter.

Although not formally a part of the civil service, the Reform Support Teams (RSTs) must be mentioned in this context. Since 2016, they have been established as a part of the so-called Ukraine Reform Architecture in selected ministries, state agencies and the Office of the Cabinet of Ministers of Ukraine

¹⁹⁹ CSL, Article 3.

²⁰⁰ A special remuneration scheme exists, for example, for the Customs and the Tax administration (according to Customs and Tax codes) and some regulatory bodies.

²⁰¹ CSL, Article 3, paragraph 3.

²⁰² *Idem*, Article 2, paragraph 1, point 4; Article 1, paragraph 1; Article 3, paragraph 3, point 14. Support positions are further defined by Decree of the Cabinet of Ministers of Ukraine (CMU) No. 271 of 6 April 2016 on the approval of the criteria for determining the list of positions of employees of state bodies performing maintenance functions, with later changes.

²⁰³ Law of Ukraine No. 28 of 12 May 2015 on the Legal Regime of Martial Law, with later changes, Article 4.

²⁰⁴ NAUCS, Statistical Data on the Composition of Civil Servants during the period of Martial Law, as of 31 December.2022.

²⁰⁵ NAUCS Annual report for 2022, p. 6. Data refers to all civil servants, including judicial authorities, prosecutor's offices and local state administration.

²⁰⁶ NAUCS, Survey results "Organisation of the work of civil servants and payment under the conditions of martial law", May 2022.

²⁰⁷ Law No. 2352-IX of 1 July 2022 on the organization of labour relations under martial law, with later changes, Article 12.

²⁰⁸ NAUCS order No 215-20 of 13 November 2020 on the organisation of the work of civil servants outside the administrative building of the state body.

(CMU)²⁰⁹, with the support of donors, primarily the European Union (EU), and managed by the European Bank for Reconstruction and Development (EBRD).²¹⁰ These are external experts, mainly of Ukrainian nationality, recruited through a competitive selection process and employed on temporary contracts. While formally they do not have decision-making powers, in practice they play an important role in the elaboration, co-ordination and implementation of state policies.

While the creation of RSTs provides Ukraine with additional, highly skilled staff²¹¹ to advance with reforms in the short term and has been highly instrumental in boosting the development and implementation of reforms in numerous areas, the concept is not sustainable in the long term. It may lead to dependence on externally financed consultants to do civil servants' work without being subject to civil service rights and obligations. Ukraine lacks a longer-term vision on how to ensure sustainability of such support, preferably by integrating this capacity into the civil service.

Conclusion

The horizontal and vertical scope of the civil service of Ukraine is well defined and in line with the Principles. The war has had a significant impact on the civil service, resulting in a disrupted workforce, with many civil servants either leaving the country, relocating to other regions or being conscripted into the army. The provisions related to the martial law have temporarily modified the material scope of civil service legislation. The RSTs brought new competences to government administration, but there is no vision on how to ensure sustainability and maintain this capacity in the longer term.



²⁰⁹ Currently RSTs exist in the Ministry of Finance (MoF), the Ministry of Economy, the Ministry of Communities and Territories Development, the Ministry of Infrastructure, the Ministry of Environmental Protection and Natural Resources, the Ministry of Education and Science, the State Agency of Automobile Roads, and the State Customs Service, <https://rdo.in.ua/en/ura>.

²¹⁰ RSTs are financed by the EBRD Ukraine Stabilisation and Sustainable Growth Multi-Donor Account (MDA), managed by the EBRD. Contributors to the MDA are Austria, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Norway, Poland, Sweden, Switzerland, the United Kingdom, the United States and the European Union, the largest donor.

²¹¹ The examples of analysed announcements for RST staff show that the level of requirements for these positions is much higher than the usual requirements for civil servants. For example, the announcement for a senior project manager in the MoF in 2023 related to public financial management reform and budget expenditures optimisation required, among other criteria, at least five years (and preferably ten years) of relevant experience in project management, finance, audit, investment banking/corporate advisory roles, economic research and analysis, or financial consulting.

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.

Overall, the value of the indicator “Adequacy of the policy, legal framework and institutional set-up for professional human resource management in public service” is 4. The main development since the 2018 SIGMA baseline monitoring was the creation of the central HRMIS.

Indicator 3.2.1. 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
1. Establishment of political responsibility for the civil service			0/2	0/2	0/2	
2. Quality of public service policy documents			3/4	3/4	3/4	
3. Implementation and monitoring of public service policy			1/4*	3/4	3/4	
4. Right balance between primary and secondary legislation			0/2	2/2	2/2	
5. Existence of a central, capable co-ordination body			3.5/4	4/4	3.5/4	
6. Professionalism of HRM units in civil service bodies			1/2	2/2	2/2	
7. Existence of a functional HR database with data on the civil service			0/4	3/4	3/4	
8. Availability and use of data on the civil service			2/5	2/5	2/5	
Total			10.5/27	19/27	18.5/27	

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

The PAR Strategy 2022-2025, which follows the PAR Strategy 2016-2021, also comprises the reform of the civil service. In the PSHRM area, it contains 25 measures. The Action Plan for PSHRM includes 15 actions, which do not always match these objectives. Less than half of the actions in the PSHRM area are costed. In 2022, although 93% of planned activities were implemented, only 29% of target values of performance indicators were achieved. A similar discrepancy between the implementation of planned actions and the achievement of objectives was observed in 2021. This suggests that either the planned activities were not always aligned with the intended objectives, or the targets set were overly ambitious. The PSHRM component of the PAR Strategy was not adjusted to the challenges of the war; only some deadlines were postponed, reflecting the delays already experienced.²¹²

²¹² None of the activities were removed from the Implementation Plan for 2022-2025, but one was added:

²¹¹ Organisation of a functional audit of executive bodies under martial law in accordance with the methodology approved by the NACS.

The right balance between the primary and secondary legislation is maintained, with exception of the provision regulating the RSPs, who are civil servants (unlike members of RSTs). The concept of RSPs was introduced as an instrument to enhance the capacity of the civil service to develop and implement key national reforms. The idea was to establish a number of positions with more demanding requirements, more advanced recruitment procedures and a significantly higher fixed part of the salary. Although the RSP concept constitutes a major policy innovation and a substantial change to the civil service system, these positions are regulated only by the secondary legislation as a separate, distinct group of positions in the civil service in relation to the recruitment and selection process²¹³ and remuneration (they are beneficiaries of specific allowances).²¹⁴ However, RSPs are not even mentioned in the CSL, and there is no clear authorisation in the CSL to design specific selection provisions for them. Their allowances are based on transitional, temporary provisions of the CSL, which keep being extended.²¹⁵

The political responsibility for the civil service remains unclear. It is formally assigned to the CMU²¹⁶, but in practice shared between the Minister of the CMU and the head of NAUCS. On the one hand, the Minister of the CMU has general co-ordination and supervision responsibilities for all 13 bodies subordinated to the CMU, including NAUCS. On the other hand, the CSL attributes the role of policy development and implementation in the field of civil service directly to the NAUCS. However, the head of the NAUCS is a category A civil servant, not a political appointee, and not a member of the CMU.²¹⁷ The relevant SIGMA recommendation from 2018 to fix this unclarity has not been implemented.

The NAUCS has considerable competences related to management of the civil service. It is not only responsible for the civil service, but also participates in the elaboration of policies on employment and HRM in local self-government bodies, has responsibility for developing and monitoring salary scales for civil servants and prepares proposals for improving the efficiency of HRM in state bodies.²¹⁸ It plays an important role in the organisation and co-ordination of training, conducts inspections and actively supports the HR units in civil service bodies by producing orders, instructions and other supporting materials. While the Head of the NAUCS produces annual reports about its numerous activities²¹⁹, comprehensive, regular reports on the state of affairs in the civil service are not prepared.

The NAUCS fosters consistency and co-ordination of HRM in the civil service, among others by organising regular meetings of the HRM Council, which gathers over 100 participants representing HR staff from central executive bodies²²⁰, and the Richelieu Forum, annual international conferences on civil service reform. Since February 2022, the NAUCS has been even more actively addressing new challenges. It has designed central training programmes to tackle the topics related to the ongoing

²¹³ Decree of the CMU No. 246 of 25 March 2016 on the approval of the procedure for holding a competition for public service positions, with later amendments, an entire chapter on the peculiarities of holding competitions for the positions of reform staff of categories B and C, points 69-85-2.

²¹⁴ Decree of the CMU No. 15 of 18 January 2017 on the issue of remuneration of employees of state bodies, with later amendments.

²¹⁵ CSL, Section XI, transitional provisions, point 14.

²¹⁶ *Idem*, Article 12, paragraph 1, point 1 and Law on the CMU, Article 20, paragraph 1, point 5.

²¹⁷ Decree of the CMU No. 394 of 24 June 2016 on the approval of the Regulation on the CMU, with later changes, point 3.2 and point 6; CSL, Article 13; Decree of the CMU No. 500 of 1 October 2014 on the approval of the Regulations on the NAUCS, with later changes, point 1.

²¹⁸ Decree of the CMU No. 500 of 1 October 2014 on the approval of the Regulations on the NAUCS, with later changes, point 3.2; points 4.7 and 4.8; and point 4.9-1.

²¹⁹ Obligation resulting from Article 45 of the CSL.

²²⁰ NAUCS Order No. 48 of 15 February 2018 on the Human Resources Council, with later changes.

war²²¹, supported the mobility of civil servants by the creation of the so-called “recovery reserve”²²² and supported public bodies with relevant instructions and clarifications.²²³

Most HR units from selected institutions²²⁴ have HR strategies in place²²⁵, which is an improvement compared to 2018, and their staff undergoes regular training on HRM. However, there is little evidence that HR units work as business partners and supply managers with evidence-informed advice and forecasts.²²⁶

The most important improvement is the creation of the central HRMIS, which started operation on 31 March 2021. The system has several modules and should allow for real-time reporting. The availability of comprehensive, high-quality HR data is essential for effective civil service management and evidence-informed decision-making at both central and organisational levels, enhancing accountability and transparency towards political leaders and the public. For now, only a minor part of public bodies uses the system, as it is not mandatory.²²⁷ The target set out in the PAR Strategy is to have 50% of all institutions using the HRMIS by the end of 2023²²⁸. The unwillingness of public administration bodies to implement the centralised HRMIS (they claim the central system does not adequately reflect their needs) limits the availability and transparency of information and impedes the evidence-based management of the civil service, including strategic workforce planning. The fact that a HRM information system integrated with payroll is not in place, leads to lack of transparency and delayed access to salary data. This also hinders assessing the impact of different scenarios, in the context of the ongoing salary reform. Finally, maintaining separate HR systems is not cost-efficient.

Conclusion

The central HRMIS has been developed, but its implementation remains limited across most institutions. Although a strategic framework for civil service reform exists, it lacks appropriate adaptation to the prevailing challenges caused by the ongoing war. Furthermore, political responsibility for the civil service remains unclear. The NAUCS has taken numerous steps to enhance HR functions in public administration and is proactively tackling the current HRM challenges.

²²¹ Described in more detail under Principle 3.6, Professional development and training for civil servants.

²²² *Ibid.*

²²³ For example, the explanation No. 147 of 1 March 2022 regarding the recruitment to state bodies under martial law and Joint clarification by the NAUCS, the Ministry of Economy and the Ministry of Reintegration of Temporarily Occupied Territories of 19 May 2023 on the remuneration of employees who directly exercise their powers in the territories impacted hostilities.

²²⁴ The Ministry of Economic Affairs, the Ministry of Social Policy, the Tax Service, the Treasury and the Customs.

²²⁵ The Ministry of Social Policy: HR Strategy for 2020-2022; the Tax Service: HRM Programme of the State Tax Service for 2020-2023; the Treasury: HR Strategy for 2020-2024; Customs: Personnel Management Strategy of Customs for 2021-2024.



²²⁶ Except for Customs, which has shared examples of relevant evidence-based reports that contribute to decision-making by the management of public bodies.

²²⁷ The draft law that introduces mandatory use of the HRMIS is under consideration by the Parliament, Draft No. 6496, new proposed Article 17, paragraph 12-5.

²²⁸ Strategy for Public Administration Reform in Ukraine for 2022-2025, p. 17, <https://www.kmu.gov.ua/storage/app/sites/1/reforms/pars-2022-2025-eng.pdf>

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.

Overall, the value of the indicator “Meritocracy and effectiveness of recruitment of civil servants” is 0. Significant deterioration of the situation results from amendments to the CSL, which made the recruitment process less merit-based, and the suspension of competitive recruitment to civil service positions under martial law.

Indicator 3.3.1. 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.						
This indicator measures only external recruitment. The indicator on merit-based recruitment and dismissal of senior civil servants covers recruitment and promotion to senior managerial positions, and the indicator on professional development covers promotions to other positions.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
Legal framework and organisation of recruitment						
1. Adequacy of the legislative framework for merit-based recruitment for civil service positions			13/18	7/18	1/18	
2. Application in practice of recruitment procedures for civil service positions			4/18	3/18	0/18	
Performance of recruitment practices						
3. Time required to hire a civil servant			2/2	2/2	0/2*	
4. Average number of eligible candidates per vacancy			0/4	0/4*	0/4*	
5. Effectiveness of recruitment for civil service positions (%)			3/4	0/4*	0/4*	
6. Retention rate of newly hired civil servants (%)			2/4	2/4	2/4	
Total			24/50	14/50	3/50	

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

The Law on the Legal Regime of Martial Law stipulates that “during the period of martial law, persons are appointed to civil service positions without competitive selection”.²²⁹ This formulation does not allow for competitive recruitment, even if a public institution wishes so. Direct appointments are accompanied by certain limitations: appointments are made for a fixed ^{term} not exceeding 12 months after the termination of the martial law, and such employees cannot be transferred to other civil service positions.²³⁰

²²⁹ Law No. 389-VIII on the Legal Regime of Martial Law of 12 May 2015, with later amendments, Article 10, paragraph 5.

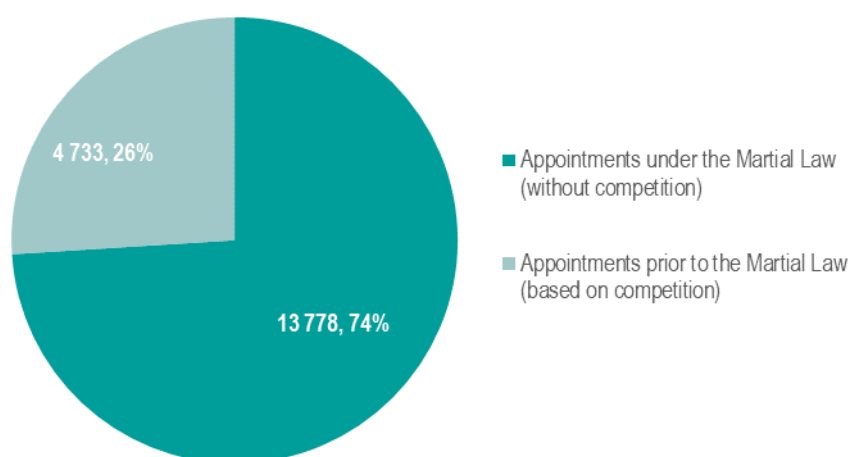
²³⁰ Law on the Legal Regime of Martial Law, Article 10, paragraph 7.

Recruitment processes are organised by HR units and are based on the application of candidates and documents confirming their citizenship, education, and professional experience. The regulation of examination techniques is absent, as it is left to the discretion of individual institutions.

Functioning of the Unified Portal for Civil Service Vacancies was suspended for security reasons on 25 February 2022.²³¹ Since then, public administration struggles to inform potential candidates about vacant positions. Instead, HR units use other channels, including their institution's websites, social media and country-wide recruitment portals.²³² Limited information about vacancies, coupled with increased departures from the civil service and unattractive salaries, makes the situation very challenging.²³³ Nevertheless, 13 778 civil servants were appointed in 2022 and 6 894 more were appointed in the first quarter of 2023.

The necessity and proportionality of the restrictions limiting merit-based competitive recruitment that were implemented in February 2022 have not been reassessed and are still in effect as of September 2023. This has resulted in a growing number of temporarily employed civil servants whose positions will need to be open for recruitment once the martial law is lifted. This will constitute a major disruption in the functioning of the civil service.

Figure 22. Vast majority of appointments in 2022 made without competition



Source: Data received from the NAUCS.

The suspension of open and competitive recruitment due to the war came after another period of exception to the Principles of Public Administration, from April 2020 to March 2021. Due to the COVID-19 pandemic, competitive, merit-based selection procedures as foreseen by the CSL were suspended, and selection for fixed-term contracts was introduced instead.²³⁴ Despite vacancies being announced during

²³¹ Decree of the CMU No. 263 of 12 March 2022 on some issues of ensuring the functioning of information and communication systems, electronic communications systems, public electronic registers in the conditions of martial law, point 4.

²³² For example, <https://www.work.ua/>.

²³³ Interviews with representatives of HR units from central administrative bodies conducted in April 2023.

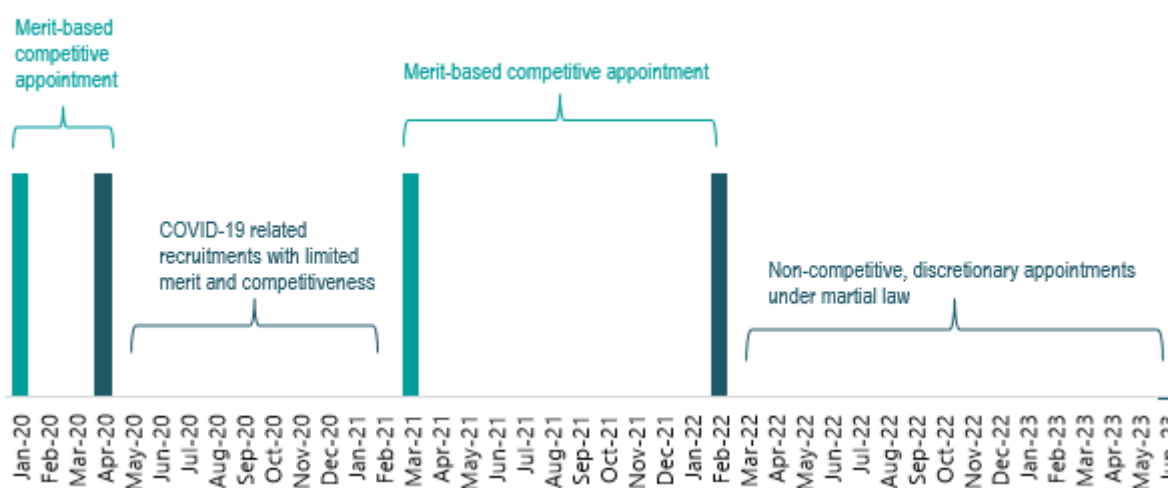
²³⁴ Law No. 553-IX[1] of 13 April 2020 on Amendments to the Law of Ukraine on the State Budget of Ukraine for 2020", Part 8 of Section II "Final Provisions"; Law No. 1285-IX[4] of 23 February 2021 on Amendments to Certain

the quarantine period, the procedures lacked full competitiveness and merit-based selection, as they only involved interviews. Additionally, the deadlines for document submission were unreasonably short (“no less than three days”), and the principle of appointing the highest ranked candidate was not incorporated into the procedure.²³⁵

Although the pandemic affected HR procedures in most European countries, governments did not suspend merit-based recruitment.²³⁶ The exceptional regime in Ukraine lasted for a long time and had significant consequences. As of March 2021, according to the NAUCS data, in 10 months more than 14 241²³⁷ of the country’s civil servants were selected without proper assessment of the candidate’s competence and mandatory selection of the best candidate. Once the quarantine regime was lifted, more than 14 000 regular competitions were announced to replace staff temporarily appointed under the quarantine regime.²³⁸

Overall, from January 2020 to June 2023 (a period of 42 months), open, merit-based and competitive recruitment as prescribed by the civil service legislation was applied for only 15 months.

Figure 23. Competitive, merit-based recruitment not used for most of the period from 2020 to 2023



Source: SIGMA, based on legislation in force.

Laws of Ukraine Regarding the Resumption of Competitions for Civil Service Positions and Other Civil Service Issues, Part 4 of Section I.

²³⁵ Resolution of the CMU No. 290 of 22 April 2020 on some issues of appointment to civil service positions during the period of quarantine established to prevent the spread of the acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus on the territory of Ukraine, with later amendments.

²³⁶ OECD (2020) *Public Administration: Responding to the COVID-19 Pandemic: Mapping the EU member states' public administration responses to the COVID-19 pandemic (for EU Enlargement and Neighbourhood countries)*, OECD, Paris, <https://sigmaweb.org/publications/SIGMA-mapping-response-EU-members-coronavirus.pdf>.

²³⁷ Statistical data on civil service positions for which the selection of candidates is carried out under a contract (as of 2 March 2021), <https://nads.gov.ua/news/statistichni-dani-shchodo-posad-derzhavnoyi-sluzhbi-dobir-kandidativ-na-yaki-zdiysnyuyetsya-za-kontraktom-stanom-na-02032021>.

²³⁸ Statistical data on the number of announced competitions for civil service positions as of 31 October 2021, <https://nads.gov.ua/news/statistichni-dani-shchodo-kilkosti-ogoloshenih-konkursiv-na-posadi-derzhavnoyi-sluzhbi888888>.

Despite the temporary arrangements mentioned above, several improvements have been implemented in the recruitment procedure since 2018. These include the establishment of the Centre for Assessment of Candidates²³⁹ in 2019, facilitating the application process through the Unified Civil Service Vacancy Portal, which enables candidates to electronically submit documents with digital signatures. Additionally, knowledge-based tests on legislation can now be taken remotely, and remote interviews are also permitted.²⁴⁰ In 2021, the NAUCS introduced procedures to ensure reasonable accommodation for disabled candidates.²⁴¹

Nevertheless, the selection techniques used for non-managerial staff as envisaged by the legislation are old-fashioned and continue to focus mostly on formal criteria and verification of knowledge.²⁴² More advanced techniques, like situational tasks and testing abstract thinking, continue to be mandatory only for managerial positions.²⁴³ Evidence-informed staffing plans containing forecasts of future employment needs are not prepared. Structured interviews are not obligatory, and it is not mandatory to appoint HR staff as members of selection committees. Mandatory publishing of questions for candidates to civil service puts in question the predictive value of selection methods.²⁴⁴

Furthermore, certain legislative amendments have led to a decline in the quality of recruitment procedures. The legal timeframe for submitting applications has been reduced to a mere seven days²⁴⁵, and the requirement to appoint the highest ranked candidate has been eliminated. Instead, the appointing entity now has the discretion to choose from the top three candidates.²⁴⁶

In addition, while the NAUCS previously served as an appeal body for candidates to the civil service²⁴⁷, current provisions foresee direct appeals to the court.²⁴⁸ However, appeals to courts against recruitment decisions are not used in practice, as competitive recruitment procedures are not applied under martial law.

The selection techniques used for RSPs constitute good practice: engaging external experts in the assessment²⁴⁹, testing analytical abilities as well as knowledge²⁵⁰ through tests of cognitive thinking,

²³⁹ According to Decree of the CMU No. 246 of 25 March 2016 on the approval of the procedure for holding a competition for public service positions, with later amendments, point 1, the Centre of Evaluation conducts testing for Category A positions, reform staff positions and positions of Category B and C in ministries and other central bodies of executive power, with certain exceptions.

²⁴⁰ Decree of the CMU No. 246 of 25 March 2016 on the approval of the procedure for holding a competition for public service positions, with later amendments, paragraphs 19, 3, and 6-1.

²⁴¹ NAUCS Order No. 157-21 of 1 October 2021 on the approval of the methodology for providing persons with disabilities wishing to participate in the competition for civil service positions with reasonable accommodation.

²⁴² Decree of the CMU No. 246 of 25 March 2016 on the approval of the procedure for holding a competition for public service positions, with later amendments, paragraph 26.

²⁴³ *Idem*, paragraphs 26 and 41.

²⁴⁴ *Idem*, paragraphs 29 and 77.

²⁴⁵ CSL, Article 23, paragraph 5.

²⁴⁶ *Idem*, Article 28, paragraph 1.

²⁴⁷ OECD (2018), *Baseline Measurement Report: The Principles of Public Administration : Ukraine*, p. 72, OECD, Paris, www.sigmaweb.org/publications/Baseline-Measurement-Report-2018-Ukraine.pdf.

²⁴⁸ CSL, Article 28, paragraph 6.

²⁴⁹ Decree of the CMU No. 246 of 25 March 2016 on the approval of the procedure for holding a competition for public service positions, with later amendments.



²⁵⁰ *Idem*, paragraphs 73 and 74.

solving situational tasks, and testing foreign language proficiency, followed by an interview.²⁵¹ These techniques were intended to serve as a model for regular civil service positions, but they were not replicated.

While the RSP concept turned out to be a positive development in terms of the quality of recruitment, structural challenges of positioning the newly hired reform staff were not addressed properly. (see Accountability area)

In 2021, the length of recruitment procedures conducted according to the CSL was rather short (42 days on average in selected institutions). The retention of newly hired civil servants is stable at 87% (data is available for selected institutions only).²⁵² The data to analyse the effectiveness of recruitment and the number of eligible candidates per position is not available.

Overall, the value of the indicator “Merit-based termination of employment and demotion of civil servants” is 1. Among other factors, the value of the indicator is impacted by the introduction of the possibility to dismiss civil servants after a single negative performance appraisal result and the power to introduce additional grounds for dismissals in their contracts.

Indicator 3.3.2. Merit-based termination of employment and demotion of civil servants						
This indicator measures the extent to which the legal framework and the HRM 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
Legal framework and organisation of dismissals and demotions						
1. Objectivity of criteria for termination of employment in civil service legislation			6/6	0/6	0/6	
2. Objectivity of criteria for demotion of civil servants in the legislative framework			2/2	2/2	2/2	
3. Right to appeal dismissal and demotion decisions to the courts			2/2	2/2	2/2	
Fairness and results of dismissal practices						
4. Dismissal decisions confirmed by the courts (%)			0/4	0/4	1/4	
5. Implementation of court decisions favourable to dismissed civil servants (%)			2/4	3/4	1/4	
Total			12/18	7/18	6/18	

Note: More information about the point conversion ranges can be found in the Methodology section.

²⁵¹ *Idem*, paragraphs 75 to 85-2.

²⁵² Based on the data from five selected institutions, 87% on average in 2023 and 86% on average in 2021.

The CSL has several flaws in provisions regulating dismissals of civil servants: 1) it does not set out the criteria for individual decisions regarding dismissals of civil servants in the case of reorganisations; 2) it allows for dismissal after a single negative performance appraisal (which is a regress compared to 2018); and 3) it contains other provisions that create risks in terms of ensuring protection of civil servants' employment.

Since 2018, another notable change has been the implementation of fixed-term employment contracts for civil service positions. Prior to organising a competition, the head of the civil service has the authority to determine whether a position should be filled through a contract.²⁵³ These contracts have a duration of up to three years, with the possibility of extension for another three years.²⁵⁴ The contracts should outline various elements, including tasks, key performance indicators related to efficiency, effectiveness, quality, and timeliness of performance.²⁵⁵ While this introduces the basis for performance-informed HRM, it also creates risks of a two-tier civil service and keeping a large number of civil servants on temporary contracts without justification (e.g. temporary replacement or time-limited projects). Moreover, these contracts can also include grounds for dismissal beyond what is regulated by the CSL.²⁵⁶

Data on court rulings related to dismissed civil servants from the selected institutions (central data is not available) shows that the courts frequently rule in favour of dismissed civil servants, as was the case in 45% of the court rulings in 2022 and 81% in 2021.

Appeal against dismissal is ensured by the legislation. Demotions are only possible with the consent of civil servants or as a result of downsizing or reorganisations to avoid dismissal of civil servants, if they cannot be transferred to equivalent positions.²⁵⁷

The martial law introduced additional provisions related to the employment framework. Employees can be suspended from work for certain periods on the initiative of either the employer or the employee. When suspension is the initiative of the employer, there are no determined criteria except that the suspension cannot be a hidden punishment.²⁵⁸

The turnover of civil servants since the end of February 2022 is significant: some civil servants left the country, and many changed their place of residence. By the end of the first quarter of 2023, over 24 000 civil servants had left their positions, resulting in a turnover rate of 20%.²⁵⁹ Public bodies try to address these challenges by authorising remote work for those who have stayed in Ukraine and granting unpaid leave to those who have left the country.

²⁵³ CSL, Article 31-1, paragraph 3.

²⁵⁴ *Idem*, Article 31-1, paragraphs 8 and 13.

²⁵⁵ CSL, Article 31-1, paragraph 5, point 5.

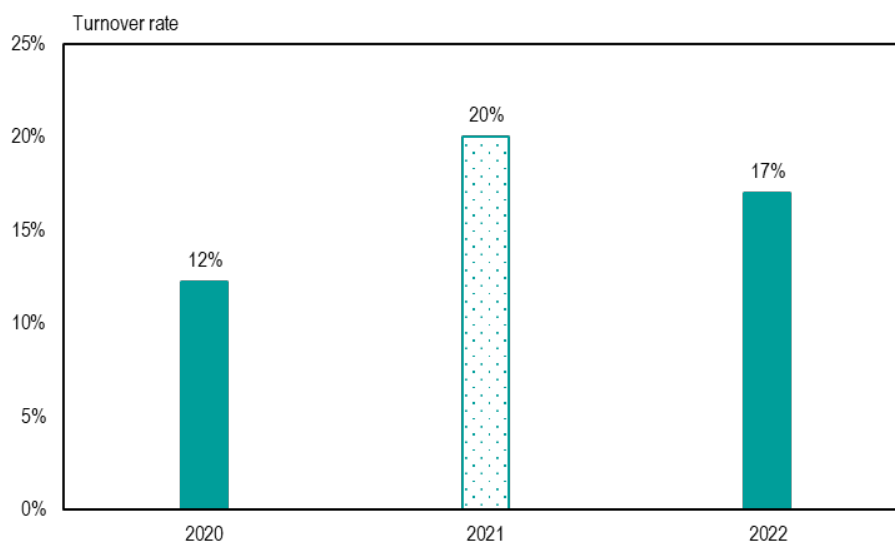
²⁵⁶ *Idem*, Article 88-1; Article 31-1, paragraph 12, point 3.

²⁵⁷ *Idem*, Article 11 ; Article 7, paragraph 1, point 10; Article 87, paragraph 3.

²⁵⁸ Law on Labour Relations under the Martial Law, Article 13.

²⁵⁹ There were 17 586 terminations during ten months of 2022 and 7 052 terminations during three months of 2023, which represents a 20.3% turnover for the period of 13 months.

Figure 24. Very high turnover in the civil service in Ukraine 2020-2022



Note: Higher turnover in 2021 is partly due to the end of COVID-19-related fixed-term contracts and the need to organise competitions for these positions.



Source: Data received from the NAUCS

Conclusion

Between 2020 and 2023, there was limited application of the competitive and merit-based recruitment processes mandated by the CSL. Initially, this was due to special regulations related to COVID-19, and later to the imposition of martial law. The provisions concerning dismissals do not provide comprehensive protection for the rights of civil servants. Turnover in the civil service is very high.

Principle 4: Merit-based recruitment and dismissal of senior civil servants

Overall, the value of the indicator “Merit-based recruitment and dismissal of senior civil servants” is 1. This represents a clear regress compared to 2021 and 2018. The main reason for the decline is the application of non-competitive recruitment to senior positions under martial law. In 2021, the value was lower than in 2018, mostly because of the possibility of discretionary dismissals from senior civil service positions which led to very high turnover.

Indicator 3.4.1. 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 of political influence in appointments to such positions.</p>			
2023 indicator value	0	1	2 3 4 5
Trend 2018-2021 	Trend 2021-2023 		Points
	2018	2021	2023
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	2/3	2/3
2. Adequacy of the legislative framework for merit-based recruitment for senior civil service positions	13/15	10/15	2/15
3. Objectivity of criteria for the termination of employment of senior civil servants in the legislative framework	4/4	0/4	0/4
4. Legislative protection of the rights of senior civil servants during demotion	1/2	0/2	0/2
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	2.5/9	0/9
6. Ratio of eligible candidates per senior-level vacancy	0/4	0/4	0/4
7. Effectiveness of recruitment for senior civil service positions (%)	3/4	0/4	0/4
8. Women in senior civil service positions (%)	0/4	2/4	2/4
9. Stability in senior civil service positions (%)	3/4	0/4	0/4
10. Dismissal decisions confirmed by the courts (%)	4/4	2/4	4/4
11. Implementation of final court decisions favourable to dismissed senior civil servants (%)	4/4	4/4	4/4
Total	40.5/57	22.5/57	14/57

Note: More information about the point conversion ranges can be found in the Methodology section.

The category of senior civil servants in Ukraine encompasses, among others, state secretaries in ministries and heads of central executive bodies, who are not members of the CMU, with a limited number of exceptions.²⁶⁰ State secretaries are assigned responsibilities for HRM, and their role is limited mostly to administration of a ministry and operational matters, while policy development is left to deputy ministers.²⁶¹ The goal of the reform related to introduction of directorates and RSPs²⁶² was to create bigger organisational structures responsible for policy areas and headed by directors general (more details in Accountability chapter). As a result of inconsistent and incomplete implementation of this reform, the responsibility for policy areas is assigned to political appointees – deputy ministers – instead of senior public service managers, as in the vast majority of EU and OECD member states.²⁶³

In the assessment period, appointments to senior civil service positions frequently occurred without competition or merit-based criteria, and dismissals were often at the discretion of decision-makers at the political level. From September 2019 to March 2021, provisions of the LCS allowed for the dismissal of senior civil servants without justification within four months from the appointment of the Prime Minister, minister, or head of a central executive body (CEB), at their discretion. If top managers who were dismissed were not offered another position within six months, they were dismissed from the civil service.²⁶⁴ While the possibility of removing top managers from positions by political discretion exists in some EU and OECD member states, it contributed to an exceedingly high turnover in these positions in Ukraine, instability that is damaging for public administration. Once competitions were reintroduced, the regular provisions related to dismissals started to be applied. They present the same flaws as the provisions applying to non-senior civil service positions: insufficient protection during reorganisations; possibility of dismissal after just one negative performance appraisal; and the possibility to introduce additional grounds for dismissals in contracts.²⁶⁵

The data regarding turnover in senior civil service positions during the period of 2020-2022 highlights a notable absence of stability within these roles.

²⁶⁰ CSL, Article 6, paragraph 2, points 1, Law on CEB, Article 24.

²⁶¹ Law on CEB, Article 10; Law on CEB, Article 8, paragraph 2, point 21 and Article 9 do not specify the responsibilities of deputy ministers, leaving it to ministers to determine them. CMU Resolution No. 243 of 5 April 2017 on some issues of implementation of the Law of Ukraine on Civil Service clarifies the divisions of responsibilities between deputy ministers and state secretaries.

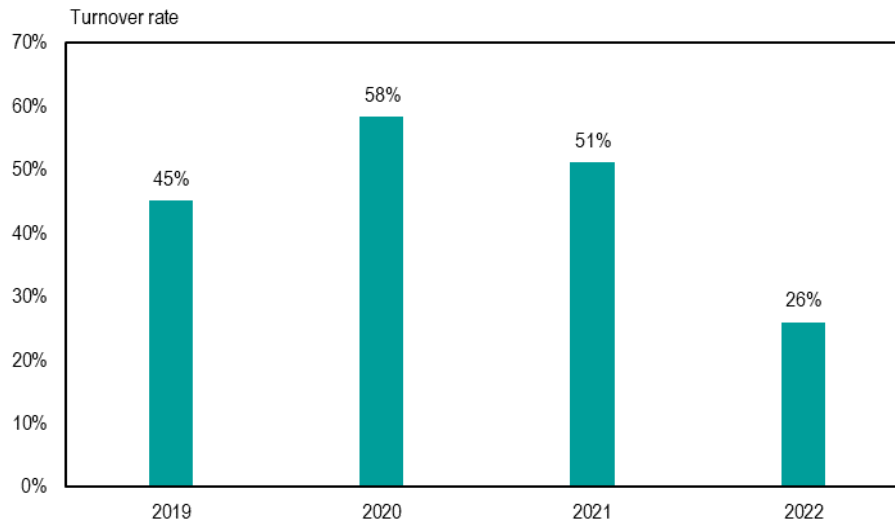
²⁶² Concept for optimisation of the central government system, approved by CMU Decree No. 1013-p of 27 December 2017.

²⁶³ Kuperus H., A, Rode (2016), *Top Public Managers in Europe. Management and Employment in Central Public Administration*, Ministry of Interior and Kingdom Relations, the Hague.

²⁶⁴ LCS, Article 87-1. This article was introduced by Law No. 117-IX of 19 September 2019 on Amendments to Some Laws of Ukraine Regarding the Reset of Power and was excluded by Law No. 1285-IX of 23 February 2021 on Amendments to Certain Laws of Ukraine Regarding the Resumption of Competitions for Civil Service Positions and Other Civil Service Matters.

²⁶⁵ Discussed in more detail under Principle 3.

Figure 25. Continuous very high turnover in senior civil service positions in 2020-2022.



Source: Data received from the NAUCS.

Due to the COVID-19 quarantine, merit-based competitions to senior positions conducted in accordance with the CSL were suspended between April 2020 and March 2021. Direct appointments were made instead, using a simplified procedure: public announcements, analysis of documents and interviews conducted by the appointing entities.²⁶⁶ Contracts concluded following the simplified recruitment procedures were valid until a regular appointment, but no later than to 6 December 2021.²⁶⁷ There were 102 category A positions filled without proper competitions during the COVID-19 quarantine period.²⁶⁸ This constituted over half of all senior civil service positions at that time.²⁶⁹

Since February 2022, competitions have been suspended by the provisions of the Martial Law. Appointments are made based on the candidate's application and basic documents. Up to June 2023, 56 candidates were appointed to senior positions using these provisions.

Overall, during most of the assessed period, appointments to senior civil service positions were carried out without competition in accordance with the CSL. Moreover, as of June 2023, there were acting officials in 17 senior civil service positions, with 14 cases where the three-month time limitation was not respected.²⁷⁰

²⁶⁶ Resolution of the CMU No. 290 of 22 April 2020 on some issues of appointment to civil service positions during the period of quarantine established to prevent the spread of the acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus on the territory of Ukraine, with later amendments.

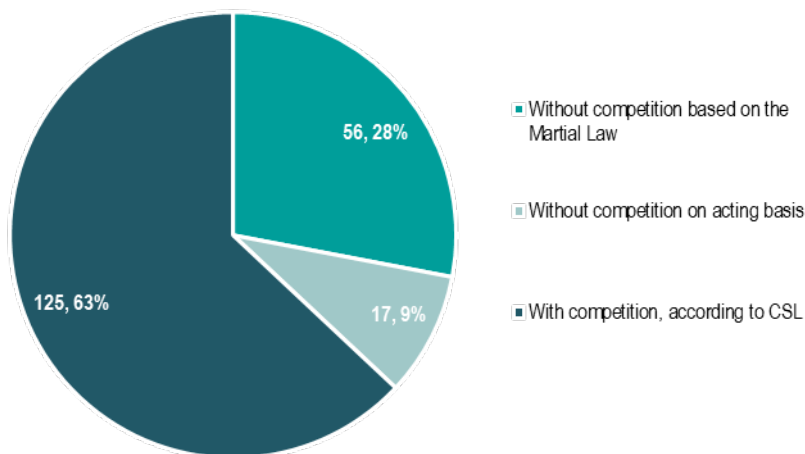
²⁶⁷ Part 8 of Section II, Final Provisions of the Law of Ukraine on Amendments to the Law of Ukraine on the State Budget of Ukraine for 2020 of 13 April 2020 No. 553-IX, which entered into force on 18 April 2020. Competitions were resumed by cancelling their suspension, in accordance with part 4 of Section I of the Law of Ukraine on Amendments to Certain Laws of Ukraine Regarding the Resumption of Competitions for Civil Service Positions and Other Civil Service Issues of 23 February 2021 No. 1285-IX, which entered into force on 6 March 2021. Contracts were valid for no more than nine months from the date when COVID-related provisions ceased to be applied.

²⁶⁸ There were 85 people appointed in 2020, and 17 more in 2021 before the specified resolution became invalid on the basis of CMU Resolution No. 237 of 24 March 2021.

²⁶⁹ There were 177 senior civil service positions at the end of 2021 and 166 at the end of 2020.

²⁷⁰ Maximum three months, according to LCS, Article 31, paragraph 8.

Figure 26. A large share of current senior civil servants have been appointed without competition (as of June 2023)



Note: At the end of 2022, the total number of senior civil servants was 198, and this value was used to prepare the figure. Since then, the total number may have changed, so the shares could vary slightly.

Source: Information received from the NAUCS

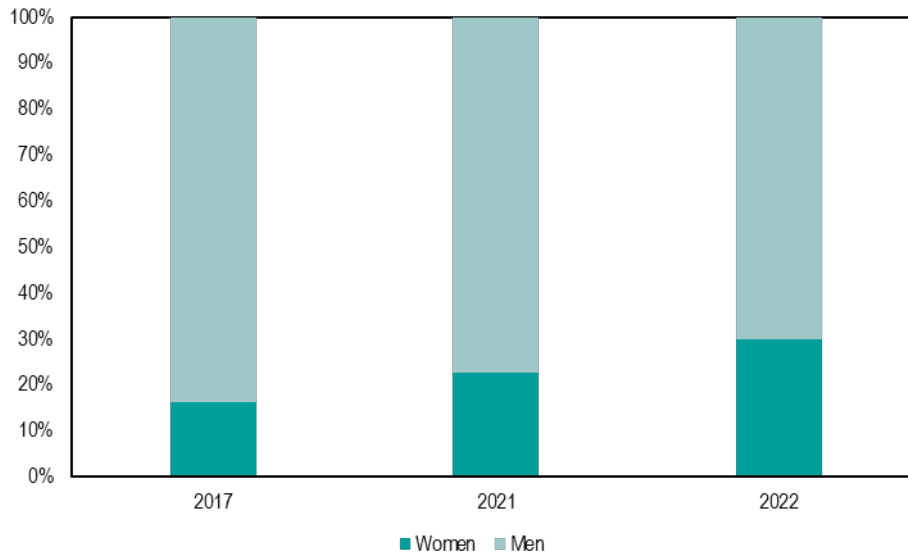
The Commission on Senior Civil Service (CSCS) does not organise recruitment under the martial law, but it still performs a number of other functions.²⁷¹ Since 2018, the competences of the CSCS have been reduced. It no longer gives consent to early dismissals of category A positions, does not contribute to transfers of category A positions by making proposals on where to transfer them, and does not approve the list of civil service positions.²⁷² The current composition of the CSCS does not ensure professional management of the civil service, free from political influence. First, the term of most of its members coincides with the term of the political bodies that appoint them – the Parliament, the President and the CMU. Second, the position of HR expert is filled by a deputy minister with no prior HR experience.

Gender balance in senior civil service positions is still far from being achieved (Figure 27), but the share of women in these positions has increased steadily from 2017 (59 women out of 198 senior civil servants at the end of 2022).

²⁷¹ The responsibilities of the SCSC go beyond recruitment. They include approving the standard professional competence requirements of senior civil servants, conducting disciplinary proceedings against senior civil servants and submitting proposals of disciplinary measures to the appointing authorities.

²⁷² Amendments to Article 15 LCS, made by Law No 117-IX of 19 September 2018 on amendments to some laws of Ukraine on the reboot of power, with later amendments.

Figure 27. The share of women in senior civil service positions has increased steadily





Source: Data received from the NAUCS.

Conclusion

Due to partial and inconsistent implementation of the RSP concept, large policy areas in ministries are managed and co-ordinated by political appointees (deputy ministers) instead of senior public service managers. There are ongoing systemic issues regarding the composition and functioning of the CSCS. Furthermore, the CSCS has been deprived of certain crucial competences. From 2020 to 2023, the management of the senior civil service faced significant disruptions. Due to the COVID-19 pandemic and the implementation of martial law, non-merit-based recruitments were conducted, deviating from the competitive procedures mandated by the CSL. Additionally, politically motivated dismissals in 2020 and 2021 resulted in a substantial turnover within the senior civil service.

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

Overall, the value of the indicator “Fairness and competitiveness of the remuneration system for civil servants” is 1, representing a decline compared to 2021 and 2018.

Indicator 3.5.1. 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 system in practice.			
2023 indicator value	0	1	2 3 4 5
Trend 2018-2021 	Trend 2021-2023 		Points
			2018 2021 2023
Legal framework and organisation of the remuneration system			
1. Legal obligation to base salaries on job classifications			2/2 2/2 2/2
2. Comprehensiveness, clarity and transparency in legal definitions of salary, criteria and procedures for allocation			0/2 0/2 0/2
3. Availability of salary information			0/3 3/3 1/3
Performance and fairness of the remuneration system in practice			
4. Fairness in the allocation of base salaries in the job classification system			1/4 0/4* 0/4*
5. Base salary compression ratio			2/2 2/2 2/2
6. Managerial discretion in the allocation of bonuses			0/4 0/4 0/4
7. Motivational character of bonuses (%)			0/2 0/2 0/2
8. Competitiveness of civil service salaries (%)			0/3 0/3* 0/3*
Total			5/22 7/22 5/22

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

Since 2018, there have been no significant revisions to the salary system for civil servants, which continues to exhibit various flaws. As noted in the Concept document approved by the government, apart from uncompetitive salaries compared to the private sector, persistent structural issues contribute to the unattractiveness and complexity of the system. These include: 1) the absence of job classifications based on responsibility and complexity; substantial salary disparities for similar positions across institutions; 2) a complex salary structure with significant variability based on managerial discretion²⁷³; 3) a substantial seniority allowance; 4) ambiguous procedures for awarding bonuses; 5) a lack of

²⁷³ In ministries and territorial bodies, the fixed part of the salary constitutes on average 62% of total salary, NAUCS Report about the results of training of the experimental project with the draft of the conditions of payment of civil servants of state bodies, which are participants of the experimental project, for 2022, taking into account the results of the classification of positions, 1 July 2021.

evidence-based staff planning, leading to a high number of vacant positions maintained solely to inflate the bonus fund; and 5) limited availability of salary information.²⁷⁴

The base salary compression ratio in the civil service is 7.5.²⁷⁵ The Government approved the reform of the system in 2020 to address many of the problems identified above. NAUCS persistently leads this workstream. Experimental project on the conditions of civil servants remuneration based on the classification of positions involving four institutions²⁷⁶ led to amendments in the job-evaluation methodology. A salary survey conducted to compare the salaries of civil servants with equivalent positions in the business sector²⁷⁷ revealed that, while the difference in pay between lower positions is minimal, the discrepancy grows to the benefit of business for positions higher on the hierarchical ladder. The Government approved a draft law addressing some of the challenges (e.g. by getting closer to ensuring the 70/30 ratio between fixed and variable parts of the salary) and providing the basis for further changes and sent it to the Parliament in late 2022. The legislative process continues despite the war.

The war has impacted the salaries of civil servants. The part of the budget for remuneration of civil servants was reduced by 20% compared to 2021.²⁷⁸ Depreciation of the UAH and decreasing purchasing power significantly worsened the financial situation of civil servants. Downtime work periods can be introduced, with the reduction of salaries of civil servants (but not lower than two-thirds of the official salary).²⁷⁹ In addition, the provisions exempt employers from the responsibility for delayed payment of wages if they result from hostilities or *force majeure*.²⁸⁰ In May 2022, 54% of civil servants had already reported a decrease of their remuneration.²⁸¹ However, fixed salaries are not affected so far and, for the time being, only the variable part of salary has been reduced. In some institutions, the variable part constitutes the majority of take-home remuneration.

²⁷⁴ Order of the CMU No. 622 of 27 May 2020 on the approval of the concept of reforming civil servants' remuneration system and the approval of the plan of measures for its implementation ; OECD (2018), *Baseline Measurement Report: Principles of Public Administration, Ukraine*, OECD, Paris, <https://www.sigmaweb.org/publications/Baseline-Measurement-Report-2018-Ukraine.pdf>.

²⁷⁵ However, if mandatory allowances of the RSPs were included and compared to the lowest salary of non-RSPs, the compression ratio would increase to 1:15 and exceed the level recommended by SIGMA. The allowances can be cancelled or reduced, but only in the case of untimely performance of tasks or deterioration of the quality of work, according to the Regulation on the application of incentive payments to civil servants, approved by Resolution of the CMU No. 15 of 18 January 2017, point. 9.

²⁷⁶ The NAUCS, the Secretariat of the CMU, the Ministry of Finance and the Ministry of Digital Transformation.

²⁷⁷ The survey encompassed data from 2020 and, as a benchmark, included data on more than 600 positions in 206 companies.

²⁷⁸ Resolution of the CMU No. 401 of 1 April 2022 on the Allocation of Funds to the Reserve Fund of the State Budget and the State Budget Law for 2023.

²⁷⁹ Decree of the CMU No. 221 of 7 March 2022 on some issues of remuneration of employees of state bodies, local self-government bodies, enterprises, institutions and organisations financed or subsidised from the budget, in conditions of martial law. Downtime work was applied, for example, to around 4 000 civil servants employed in Customs.

²⁸⁰ Law on Labour Relations under Martial Law, Article 10.

²⁸¹ NAUCS, results of the survey on Organisation of civil servants' work and payment under the conditions of martial law, May 2022.

To motivate civil servants to relocate to de-occupied territories, special provisions were introduced: salaries in the territories of active hostilities are doubled, and those in the areas at risk of hostilities are increased by 50%.²⁸²

The RSP initiative was introduced to attract specialists qualified in the preparation and implementation of state reforms, by offering them significantly higher salaries. RSP holders receive a large, fixed, mandatory allowance (in the case of expert-level positions, the allowance is over three times higher than the base salary²⁸³), setting their total remuneration at levels incomparable with other civil servants. In practice, however, the total average salaries of RSPs and non-RSPs are comparable for category B positions because of the large bonuses the latter group receives. At the same time, salary disparities for similar positions across institutions can reach 50%, putting in question the internal fairness of the current system.²⁸⁴ With no central distribution of such positions, the RSP initiative has been inconsistently applied, and the use of RSP positions depends more on the budgets of individual institutions than on their needs. Three of the six ministries with the highest workload in relation to EU policy areas do not participate in the RSP scheme at all.²⁸⁵ The Government planned to have as many as 2 000 RSPs by the end of 2020, but this target has not been achieved. Furthermore, due to current budgetary reductions and the change in their financing (since 2021, they are no longer funded through a dedicated programme)²⁸⁶, there has been a decline in the number of RSPs (at the end of 2022, there were 568 RSPs, including 21 in Category A). The decline was particularly sharp in 2023: in the first four months of 2023, the number of RSPs in the ministries fell from 562 to only 335. At the same time, the number of directorates where RSPs are situated decreased from 59 to 40 in all ministries.²⁸⁷ Some ministries used to benefit from the RSP scheme, but they decided to withdraw.²⁸⁸ The current PAR Strategy foresees the inclusion of RSPs in the regular salary scale of civil servants.

²⁸² Resolution of the No. 391 of 25 April 2023 on some issues of remuneration of employees of state bodies and local self-government bodies during the martial law.

²⁸³ The level of base salary of the specialist of the state body working in a ministry is UAH 8 300. The allowance for RSPs at the level of state expert of the directorate/general department is UAH 30 500. CMU Decree No. 15 of 18 January 2017 on the issue of remuneration of employees of state bodies, with later amendments.

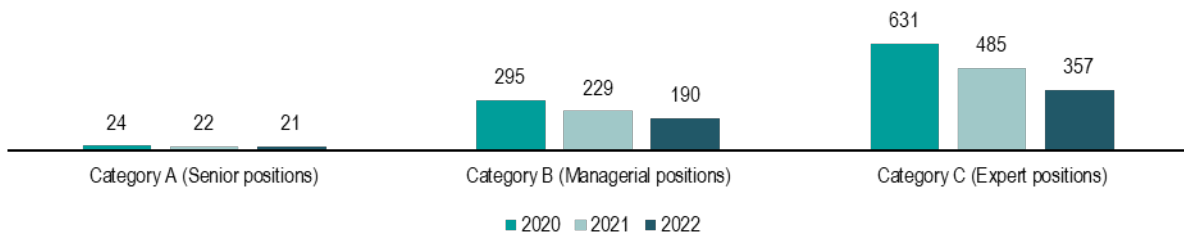
²⁸⁴ NAUCS data for Category B positions in selected ministries.

²⁸⁵ The workload resulting from the EU integration process was identified by NAUCS. The Ministries involved are: Ministry of Economy; Ministry of Agrarian Policy and Food; Ministry of Communities, Territories Development and Infrastructure; Ministry of Environmental Protection and Natural Resources; Ministry of Energy; and Ministry of Justice. NAUCS report on the results of two surveys of the central executive authorities and other government authorities to assess their capacity to implement the EU law into Ukrainian legislation, p. 15.

²⁸⁶ Order of the CMU No. 905 of 11 November 2016 on the approval of the Concept of the introduction of positions of reform staff, with later changes.

²⁸⁷ Data presented by the Secretariat of the CMU during the Co-ordinating Council on Public Administration Reform held on 29 June 2023.

²⁸⁸ Ministry of Foreign Affairs, Ministry for Communities, Territories and Infrastructure Development and Ministry of Regions.

Figure 28. The number of reform staff positions is in decline



Source: NAUCS data.

Conclusion

The current salary system continues to present serious imperfections, which had already been identified in 2018. Proper job classification is not in place, and the variable part of the salary, based on managerial discretion, constitutes an excessively significant part of the salary, all of which impede the principle of equal pay for equal work. Some of the issues are to be addressed by the launched reform, and the NAUCS is determined to progress with it despite the change of situation caused by the war. Significant allowances for RSPs are matched by the variable part of salaries of non-RSPs. Both are difficult to sustain due to budgetary restrictions. The RSPs project requires reconsideration.

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.

Overall, the value of the indicator “Professional development and training for civil servants” is 2, which is a regress compared to 2018. The main reason is the introduction in 2022 of non-merit-based promotions that require prior dismissals.

Indicator 3.6.1. 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. .						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
Legal framework and organisation of professional development						
1. Recognition of training as a right and a duty of civil servants			2/2	2/2	2/2	
2. Co-ordination of the civil service training policy			3/3	3/3	3/3	
3. Development, implementation and monitoring of training plans			3/3	3/3	2/3	
4. Evaluation of training courses			2/2	2/2	2/2	
5. Professionalism of performance assessments			2/4*	2/4*	2/4*	
6. Linkage between performance appraisals and measures designed to enhance professional achievement			4/4*	0/4*	0/4*	
7. Clarity of criteria for and encouragement of mobility			2/2	2/2	2/2	
8. Adequacy of legislative framework for merit-based vertical promotion			2/2	2/2	0/2	
9. Absence of political interference in vertical promotions			0/2	0/2	0/2	
10. Right of civil servants to appeal against performance appraisal decisions			2/2	1/2	1/2	
11. Right of civil servants to appeal mobility decisions			2/2	0/2	0/2	
Performance of professional development practices						
12. Training expenditures in proportion to the annual salary budget (%)			0/4	0/4	0/4	
13. Participation of civil servants in training (%)			0/5	2/5	1/5	
14. Perceived level of meritocracy in the public sector (%)			3/5	Not available	4/5	
Total			27/42	19/37	19/42	

Notes: *Data not available or not provided. Not available= A survey was not conducted in 2021. The point conversion range has therefore been modified by removing the survey-related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The total number of points is therefore 37 rather than 42. Point conversion ranges: 0-5=0, 6-11=1, 12-19=2, 20-26=3, 27-32=4, 33-37=5. More information about the point conversion ranges can be found in the Methodology section.

Since 2018, NAUCS has implemented major changes to the professional development system in the civil service. The reform led to the development of a new regulation on training, improvement of training needs assessment (TNA), development of accreditation procedures for educational programmes and

training evaluation mechanisms, creation of the Knowledge Portal and establishment of the market of professional development providers for civil servants.²⁸⁹ Since 2019, the Knowledge Management Portal, which contains about 1 700 e-learning courses, allows civil servants to select a training programme, register, participate and receive a certificate. To be awarded the highest performance-appraisal grade, all civil servants are required to obtain a certain number of credit points through certified courses.²⁹⁰ However, the accreditation process should be performed by self-regulating professional associations conducting independent assessment but, in practice, it is still performed by the NAUCS.²⁹¹

The NAUCS leads and co-ordinates implementation of training in the civil service. It approves central training programmes, the so-called general advanced training programmes. In the period 2020-2022, the NAUCS approved 1 570 general advanced training programmes²⁹², of which 1 090 (69%) were implemented. The main reasons for the limited implementation rate were the COVID-19 pandemic and Russia's war against Ukraine. In 2022, the Ukrainian School of Government was renamed the High School of Public Governance (HSPG) and became subordinated to the NAUCS. It plays an important role in developing and implementing training programmes for civil servants. The NAUCS prepares three-year TNAs as well as annual TNAs, and the annual training plans are based on identified needs.

The ongoing war has significantly impacted professional development in the civil service. The actual spending on training of civil servants fell short of the ambitious 2% of the salary fund recommended by the CMU.²⁹³ The expenditures amounted to 0.05% in 2021 and were further reduced to 0.015% in 2022.²⁹⁴ However, many e-learning courses are available to civil servants that reduce training costs. Nevertheless, the percentage of trained civil servants fell from 50% in 2021 to 39% in 2022, and some institutions did not manage to organise any training, unless training was offered by development partners. The substance of training courses was also adjusted: the NAUCS approved 31 training programmes related to functioning of the public service under martial law, and the HSPG developed 14 advanced training programmes related to de-occupation, reintegration, and management of de-occupied territories.

The legislation on performance appraisals meets the basic criteria set by SIGMA. Performance is assessed against individual objectives, with the use of indicators, civil servants participate in defining their objectives and performance interviews are mandatory.²⁹⁵ The performance of civil servants is

²⁸⁹ Decree of the CMU No. 106 of 6 February 2018 on the approval of the regulation on the system of professional training of civil servants, heads of local state administrations, their first deputies and deputies, officials of local self-government and deputies of local councils, with later amendments; Order of the NAUCS No. 211-19 on the approval of the procedure for the organisation of professional development of civil servants, heads of local state administrations, their first deputies and deputies, officials of local self-government and deputies of local councils of 28 November 2019 with later changes.

²⁹⁰ Decree of the CMU No. 640 of 23 August 2017 on the approval of the Procedure for evaluation the results of official activities of civil servants, with later amendments, Annex 5

²⁹¹ Decree of the CMU No. 106 of 6 February 2018 on the approval of the regulation on the system of professional training of civil servants, heads of local state administrations, their first deputies and deputies, officials of local self-government and deputies of local councils, with later amendments, paragraph 13.

²⁹² Of the 1 570 general advanced training programmes approved, 210 were in 2020, 468 in 2021 and 592 in 2022.

²⁹³ Decree of the CMU No. 106 of 6 February 2019 on the approval of the regulation on the system of professional training of civil servants, heads of local state administrations, their first deputies, officials of local self-government and deputies of local councils, with later amendments. Point 2 recommends planning of funds for training in the amount of no more than 2% of the wage fund.

²⁹⁴ Resolution of the CMU No. 401 of 1 April 2022 on directing funds to the reserve fund of the state budget, with later amendments.

²⁹⁵ CSL, Article 44, paragraphs 2 and 4; Decree of the CMU No. 640 of 23 August 2017 on the approval of the procedure for evaluating the results of official activities of civil servants, with later amendments.

assessed based on effectiveness, efficiency and quality.²⁹⁶ However, data on performance appraisals for all civil servants is not available, which negatively impacts several sub-indicators and does not allow evaluation of how the system works in practice.

Internal promotions of civil servants were affected by the martial law in an unexpected way. As competitions required for promotions²⁹⁷ are no longer organised²⁹⁸, the only way to be promoted to a higher position is by direct appointment for a fixed term, which must be preceded by dismissal from the current position. This procedure is widely applied in the Ukrainian administration now, but it has various negative consequences. Not only is it not competitive, it also excludes civil servants who do not accept temporary appointments. Moreover, it hampers career development and has financial costs. Upon these “artificial” dismissals, civil servants are paid in cash the equivalent of their unused annual leave, and since there is no limitation on transferring unused annual leave from year to year, this can go back many years and involve significant cost for institutions.²⁹⁹

The CSL³⁰⁰ regulates transfers of civil servants conducted with their consent, including for the purpose of professional development, but the Law on Labour Relations under Martial Law³⁰¹ allows all employers to transfer employees to another position without their consent. Moreover, under martial law, some civil servants may be drafted into the army.³⁰² As of March 2023, there were 3 147 civil servants serving in the Territorial Defense Forces of the Armed Forces of Ukraine and voluntary formations of territorial communities.³⁰³

The NAUCS has addressed challenges in administering conflict-affected areas by creating a “recovery reserve”³⁰⁴ to supply personnel for military administration in de-occupied territories. An IT system will match reserve subscribers with staffing needs. Appointments made under the martial law will be temporary and will not require compulsory competence examinations.

²⁹⁶ Decree of the CMU No. 640 of 23 August 2017 on the approval of the procedure for evaluating the results of official activities of civil servants, with later amendments, point 4.

²⁹⁷ CSL, Article 40.

²⁹⁸ Law on the Legal Regime of Martial Law, Article 10, paragraph 5.

²⁹⁹ The head of NAUCS publicly mentioned a case of accumulation of unused annual leave resulting in the payment of the equivalent of EUR 400 000 to a civil servant. Interview with the Head of the NAUCS, Natalia Aliushyna, of 25 May 2023, <https://glavcom.ua/interviews/holova-natsahentstva-z-derzhsluzhbi-natalija-aljushina-chinovniki-katehoriji-a-mali-bi-otrimuvati-po-250-tis-hrn-929657.html>.

³⁰⁰ CSL, Article 41; Article 48, paragraph 8.

³⁰¹ Law on Labour Relations under Martial Law, Article 3, paragraph 1.

³⁰² The reservation (exemption) from drafting obligation is regulated by Resolution of the CMU No. 76 on some issues of implementation of the provision of the Law of Ukraine on Mobilisation Training and Mobilisation regarding the reservation of conscripts for the period of mobilisation and for wartime of 27 January 2023, with later amendments.

³⁰³ NAUCS data as of 31 March 2023. Data are provided for the central executive bodies (ministries and other institutions subordinated to ministries, the Prime Minister and the Government), without taking into account the judiciary and prosecutor’s office and local state administrations.

³⁰⁴ Decree of the CMU No. 524 of 23 May 2023 on the implementation of an experimental project on the creation of a reserve of employees of state bodies to work in the de-occupied territories of Ukraine.

Despite the challenges and the introduction of non-competitive appointments, perception of meritocracy in the public sector has increased by 31%.³⁰⁵

Conclusion

Since 2018, a substantial overhaul of the professional development system for civil servants has been undertaken. This reform included the establishment of a training services market, accreditation of training programmes and the development of the Knowledge Management Portal. The Government is trying to address current challenges by creating a recovery reserve and developing relevant training programmes. Promotions under the martial law are flawed and discourage civil servants from advancing in their careers.

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

Overall, the value of the indicator “Quality of disciplinary procedures for civil servants” is 3, remaining stable compared to 2021 and 2018. The disciplinary procedures are well regulated, but in many cases courts do not confirm sanctions imposed by public authorities.

Indicator 3.7.1. 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021	Trend 2021-2023		Points			
			2018	2021	2023	
Legal framework and organisation of disciplinary system						
1. The adequacy of civil service legislation to uphold basic principles related to disciplinary procedures			2/4	4/4	4/4	
2. Compliance between disciplinary procedures and essential procedural principles			6/6	6/6	6/6	
3. Time limits for the administration to initiate disciplinary action and/or punish misbehaviour			1/2	1/2	1/2	
4. Legislative safeguards for suspension of civil servants from duty			1/2	1/2	1/2	
Performance of the disciplinary procedures						
5. Disciplinary decisions confirmed by the courts (%)			2/4	0/4	0/4	
Total			12/18	12/18	12/18	

Note: More information about the point conversion ranges can be found in the Methodology section.

³⁰⁵ According to the SIGMA Survey, the average response of public employees to the question “In the public sector most people can succeed if they are willing to work hard” was 5.5 in 2018, and to increased to 7.2 in 2022 (on the scale from 1 to 10, when 10 means “strongly agree”).

The disciplinary system in the civil service has not undergone any significant changes since 2018, and the provisions are in line with the basic principles related to disciplinary procedures. However, the legislation does not distinguish between serious and minor violations, and it imposes restrictive deadlines to pursue disciplinary accountability. As a result, some serious disciplinary offences can be committed with impunity. A significant share of disciplinary sanctions are not confirmed by courts.³⁰⁶

Under martial law, disciplinary procedures are also impacted. Failure to grant remote working rights or absence from work can be grounds for disciplinary sanctions.³⁰⁷ Working from abroad is prohibited, unless on official business trips, and it can result in disciplinary measures.³⁰⁸ Furthermore, certain actions taken during martial law may go unpunished.³⁰⁹



³⁰⁶ Based on the analysis of five institutions (the Ministry of Economy, the Ministry of Social Policy, the Tax Administration, the Treasury and Customs), the rate of disciplinary decisions confirmed by the courts was 18.5% in 2022 and 27.9% in 2021.

³⁰⁷ Resolution of the CMU No. 440.2022 of 12 April 2022 on some issues of organising work of civil servants and employees of state bodies during martial law, point 3.

³⁰⁸ *Ibid.*

³⁰⁹ Individuals with state or local self-government functions are not liable, including criminally, for decisions or acts with unforeseen negative consequences or justified risks necessary to counter armed aggression or resolve armed conflict. Law on the Legal Regime of Martial Law, Article 9, paragraph 3. Additionally, individuals failing to meet specific reporting obligations are exempt from responsibility. Law No. 2436-IX of 27 July 2022 on protecting the interests of reporting subjects and other documents during martial law or a state of war.

Overall, the value of the indicator “Integrity of public servants” is 2, the same as the values from 2021 and 2018.

Indicator 3.7.2. 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
Legal framework and organisation of public sector integrity						
1. Completeness of the legal framework for public sector integrity			5/5	5/5	3/5	
2. Existence of a comprehensive public sector integrity policy and action plan			0/4	0/4	3/4	
3. Implementation of public sector integrity policy			3/3	0/3*	0/3*	
Public sector integrity and public perceptions						
4. Use of investigations in practice			0/4*	1/4	2/4	
5. Perceived level of bribery in the public sector by businesses (%)			2/4	Not available	3/4	
6. Bribery in the public sector experienced by the population (%)			0/4	Not available	0/4	
Total			10/24	6/16	11/24	

Notes: *Data not available or not provided. Not available= A survey was not conducted in 2021. The point conversion range has therefore been modified by removing the survey-related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The total number of points is therefore 16 rather than 24. Point conversion ranges: 0-2=0, 3-5=1, 6-7=2, 8-10=3, 11-13=4, 14-16=5. More information about the point conversion ranges can be found in the Methodology section.

The general institutional and legal set-up related to integrity and anti-corruption for public servants has not changed significantly and is complete. The two main actors are the National Agency of Corruption Prevention (NACP) and the National Anti-Corruption Bureau (NABU). The NACP is a central body of executive power with special status, responsible for elaboration and implementation of state anti-corruption policy.³¹⁰ Its chairman is appointed and dismissed by the CMU, based on the results of open competition.³¹¹ The NACP is accountable to the Parliament and the CMU.³¹² The NABU is a central executive agency responsible for prevention, detection, suppression, investigation and solving of corruption and other criminal offenses.³¹³ Its head is appointed by the CMU, based on competition.³¹⁴

³¹⁰ Law No. 1700-VII on prevention of corruption of 14 October 2014, with later amendments, Article 4, paragraph 1.

³¹¹ *Idem*, Article 5, paragraph 1.

³¹² *Idem*, Article 4, paragraph 2.

The NABU is accountable to the Parliament; it also submits annual reports to the President and the CMU.³¹⁵

The legal framework regulating the integrity of public servants is comprehensive. It regulates conflict of interest³¹⁶, secondary employment³¹⁷, revolving doors³¹⁸, reception of gifts and benefits³¹⁹, disclosure of assets³²⁰, and whistle-blower protection, and it includes the Code of Conduct.³²¹ The penal code regulates offences of fraud, deception and corruption perpetrated by public officials.³²² The obligation to submit annual asset declarations was suspended under martial law, with effect for declarations for 2021 and 2022.³²³ It was restored in September 2023³²⁴. The NACP stopped verification of asset declarations for that period, but continues lifestyle monitoring. The suspension has significantly complicated investigations related to the conflict of interest, as asset declarations were an important source of information.

The Parliament approved the Anti-Corruption Strategy for 2021-2025 only in June 2022, and the Government adopted the Anti-Corruption Program for 2023-2025 in March 2023.³²⁵ Because of the late adoption of these documents, the strategic framework related to anti-corruption was not in place in 2021 and 2022.

A public opinion survey run by the NACP in 2022 revealed a very significant decrease in reported corruption. In 2021, 8.6% of respondents indicated that they have encountered corruption when dealing with executive bodies and local self-government bodies providing administrative services, whereas in 2022, this value dropped to 2.6%.³²⁶ The diminishing level of perception and experience of corruption is confirmed by SIGMA surveys from 2017 and 2023.

³¹³ Law on the National Anti-Corruption Bureau of Ukraine, Article 1.

³¹⁴ *Idem*, Articles 6 and 7.

³¹⁵ *Idem*, Article 26.

³¹⁶ Law No. 1700-VII on prevention of corruption of 14 October 2014, with later amendments, Article 1.

³¹⁷ *Idem*, Article 25.

³¹⁸ *Idem*, Article 26.

³¹⁹ *Idem*, Article 23.

³²⁰ *Idem*, Article 45 and subsequent secondary legislation.

³²¹ Order of the NAUCS No. 158 of 31 August 2016 on General Rules of Ethical Behaviour of Civil Servants and Local Self-Government Officials, with later amendments.

³²² Criminal Code of Ukraine, No. 2341-III of 5 April 2011, with later amendments.

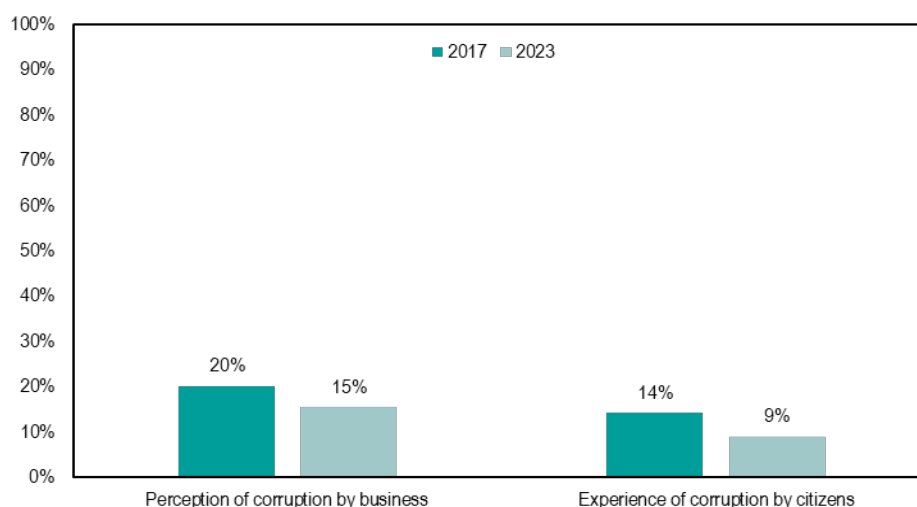
³²³ Law No. 2115-IX of 3 March 2022 on the protection of the interests of subjects submitting reports and other documents during the period of martial law or a state of war, subparagraph 1 of paragraph 1.

³²⁴ Law No. 3384-IX of 20 September 2023 on amendments to some laws of Ukraine on determining the procedure for submitting declarations of persons authorised to perform the functions of the state or local self-government, in conditions of martial law, <https://zakon.rada.gov.ua/laws/show/3384-IX#Text>.

³²⁵ Resolution of the CMU No. 220 of 4 March 2023 on the Anti-Corruption Program.

³²⁶ *Corruption in Ukraine 2022: Understanding, perception, prevalence*, National Agency on Corruption Prevention, EU Anti-Corruption Initiative and the Ministry of Foreign Affairs of Denmark, https://nazk.gov.ua/wp-content/uploads/2023/05/KORUPTSIYA-V-UKRAYINI-2022-analitychnyj-zvit_Engl_final.pdf.

Figure 29. Decreased perception of corruption by business and experience of corruption by citizens



Notes: Perception of corruption by business shows the share of respondents who answered “tend to agree” and “strongly agree” to the question: “Thinking about officials, to what extent would you agree with the following statement? It is common for firms in my line of business to have to pay some irregular ‘additional payments/gifts’ to ‘get things done’”. “Experience of corruption by citizens” shows the share of respondents who answered “yes” to having paid a bribe for any of the following public institutions: police, registry and permit services, utilities, tax revenues, land services or any government agency.

Source: SIGMA calculations based on the KIIS (Kyiv International Institute of Sociology) 2017 “Survey on business satisfaction with policymaking and public service delivery” (commissioned by SIGMA) and the SIGMA Public Opinion Survey 2023.

Conclusion

Experience and perception of corruption in Ukraine have decreased significantly. Although the legal framework related to anti-corruption and integrity of public officials is comprehensive, the obligation to submit asset declarations was suspended due to the martial law. The adoption of the Anti-Corruption Strategy was delayed, resulting in the absence of a strategy during 2021 and 2022. The disciplinary procedures are in line with basic procedural principles, but adaptation to the war context allows certain actions taken during martial law to go unpunished.

Accountability

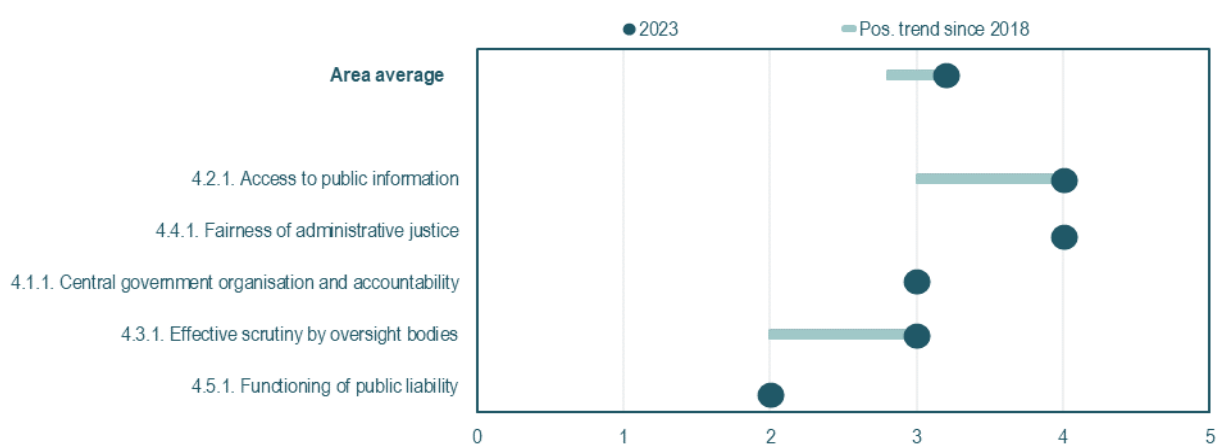
The Principles of Public Administration

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.
Principle 2	The right to access public information is enacted in legislation and consistently applied in practice.
Principle 3	Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest.
Principle 4	Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews.
Principle 5	The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation.

Summary and recommendations

Ukraine managed to keep the system of public accountability operational, demonstrating that the existential threat to the country does not have to imply curbing mechanisms for internal and external control of the executive. Furthermore, in the area of access to public information and independent oversight bodies, the overall performance improved in comparison with 2018. A strong “rally around the flag effect”, manifested by increased trust into all public institutions, was the major factor behind the positive trend. In the sphere of administrative justice, efficient handling of cases by the administrative courts led to better performance than in 2021 (and the same as in 2018). This overall optimistic picture is disturbed by the absence of coherent and clear policy on ensuring access to information collected in public registers, as well as the lack of tangible progress in the domain of organisation of public administration.

Figure 30. The overall indicator values per Principle in area of accountability



Note: The area average is a simple arithmetic mean of the sub-indicators. The sub-indicators are sorted from smallest to largest.

Source: SIGMA elaboration based on the assessment data.

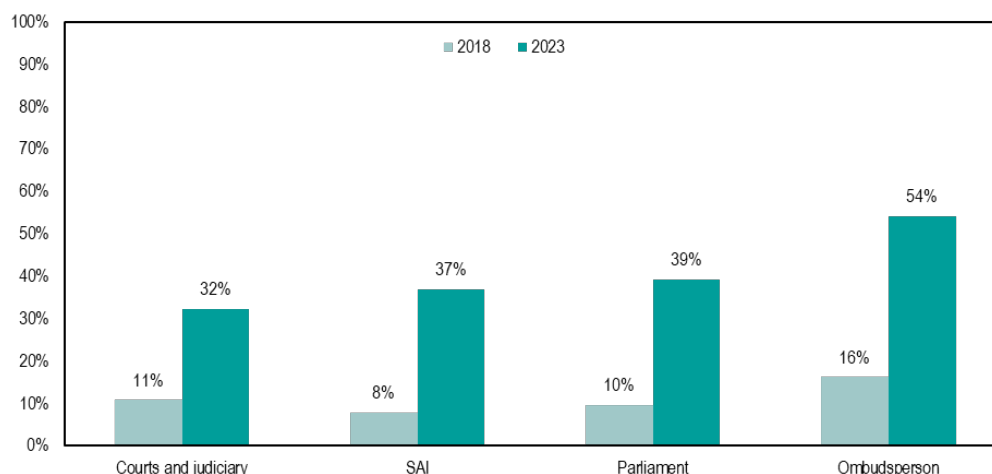
There have been no significant redesign of the organisational architecture of public administration, which is rational considering the need to maintain stability in the administrative apparatus during wartime conditions. However, the Government did not manage to address some problems that do not require any structural reforms, such as promoting more results-oriented performance management of agencies and removing obstacles for delegation of decision-making in the ministries. Only a small step forward was achieved with regard to tackling long-standing challenges of separate legal personality of all central and territorial executive bodies. The reorganisation of ministries, with its hallmark of setting up directorates as a special type of department, was suboptimal and is a step backward, along with the closely linked concept of reform staff positions (RSPs).

A good legislative framework for accessibility of public information remains in place, but potentially excessive restrictions in access to some public registers during wartime affect the overall assessment of the transparency regime. While a more restrictive, precautionary-based approach to transparency of data from public registers is justified under the current conditions, the Government transferred to the administrators of these datasets nearly full discretionary powers to decide on limitations and conditions of access to them. Among the most problematic cases are limitations on access to: registers of court decisions; the register of persons who committed corruption offenses; the cadastre; the registry of companies; and the register of declarations of assets of public officials.

Oversight bodies enjoy higher public trust (compared to 2018) and increased perception of their effectiveness in scrutinising public administration. However, the special procedure empowering the Parliament, the Verkhovna Rada of Ukraine (VRU), to dismiss heads of bodies appointed by the legislature arbitrarily, on the basis of a no-confidence vote falls short of international standards of independence of oversight bodies. This procedure has already been used with regard to the

Ombudsperson. On the other hand, for the first time since 2012, the Ombudsperson had the opportunity to present its annual report in the plenary session of the VRU and recorded an increased rate of implementation of its recommendations. Despite record-high trust in courts, the progress in judicial reform is slow and marked with a long-term institutional vacuum. The commission conducting the process of assessment of candidates for judicial appointments was not operational for over three-and-a-half years, and the High Council of Justice has been dysfunctional for over a year. This resulted in nearly 2 000 vacancies and a backlog of around 9 600 disciplinary cases relating to judges.

Figure 31. Public trust in oversight bodies

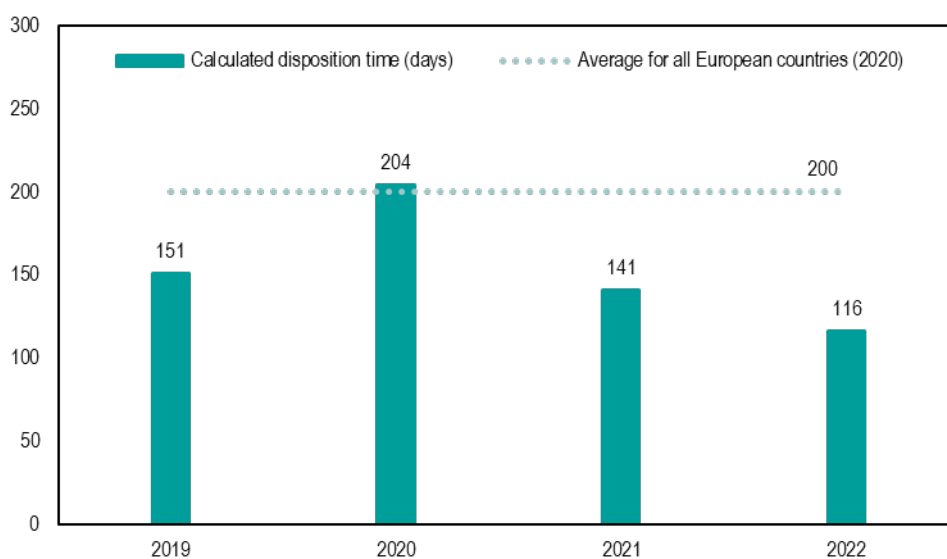


Note: The percentage of respondents who responded “totally trust” or “tend to trust” in five separate questions: “How much trust do you have in courts and judiciary/ parliament/ ombudsperson/ Supreme Audit Institution (SAI)?”.

Source: SIGMA calculations based on the KIIS (Kyiv International Institute of Sociology) 2017 “Survey on business satisfaction with policymaking and public service delivery” (commissioned by SIGMA) and the SIGMA Public Opinion Survey 2023.

In 2022, despite extraordinary circumstances and without any procedural changes, administrative courts reduced the average time for case resolution in the first instance. This was possible due to a significant decrease in new cases (over 25% fewer cases compared to 2021). The courts maintained a similar case-disposition level despite an increasing number of vacancies caused by the absence of the body responsible for judicial appointments. The reform of the crucial Kyiv administrative court, prompted by well-documented allegations of corruption, is in its early phase. Work on the restoration of the court operations began in February 2023.

Figure 32. Fewer incoming cases allowed a reduction in disposition time in the first-instance administrative courts in Ukraine



Source: Data for Ukraine: State Judicial Administration; Data on the European average: CEPEJ, *European judicial systems CEPEJ Evaluation Report – 2022 Evaluation cycle (2020 data)*, Strasbourg 2022, <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>.

No progress was made with regard to implementation of SIGMA's recommendation to set up monitoring of administrative and judicial practice in public liability cases. Absence of such a mechanism makes it impossible to detect and mitigate the most common cases of administrative wrongdoing resulting in pecuniary liability of state bodies.

Short-term recommendations (1-2 years)

1. Drawing on lessons from the reorganisation in pilot ministries, the Government should, develop a clear vision of internal organisation of ministries in order to clarify responsibilities and accountability lines, particularly at the level of senior political and civil service leadership.
2. The Government should reform the relations between the ministries and their subordinated bodies so that the ministries would steer these bodies through clearly defined objectives and monitor their achievement, rather than micromanaging them.
3. The Parliament should bring the legislation regulating the status of independent oversight bodies back in line with international standards, especially by removing the possibility to dismiss heads of these bodies through the procedure of a non-confidence vote and ensuring that the Ombudsperson and the Accounting Chamber can independently appoint and dismiss the heads of their apparatus, while securing a merit-based, competitive and transparent appointment procedure.



Medium-term recommendations (3-5 years)

4. The Government should review the model of monitoring and supervision in the area of access to public information, taking into account the expansion of responsibilities of the ombuds institution currently tasked with some functions in this area.

Analysis

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.

Overall, the value of the indicator “Accountability and organisation of central government” is 3 (the same as in 2018 and 2021), which reflects a lack of noticeable progress in addressing the challenges of managerial accountability and results-oriented performance management of the bodies under ministries.

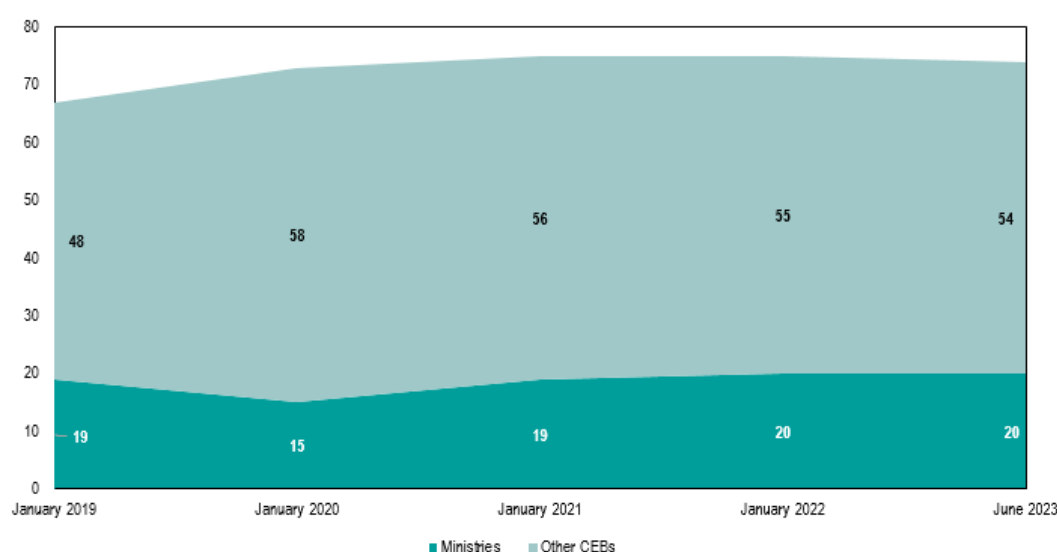
Indicator 4.1.1. Accountability and organisation of central government						
This indicator measures the extent to which the governance model of central government upholds lines of accountability and contributes to increasing the state's capacity, which is defined as the ability of the administrative 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
Policy and legal framework for central government organisation						
1. Clarity and comprehensiveness of official typology of central government bodies			3/5	4/5	4/5	
2. Adequacy of the policy and regulatory framework to manage central government institutions			1/5	1/5	1/5	
3. Strength of basic accountability mechanisms between ministries and subordinated bodies			4/5	5/5	5/5	
4. Managerial accountability mechanisms in the regulatory framework			3/5	3/5	3/5	
Central government's organisation and accountability mechanisms in practice						
5. Consistency between practice and policy in government reorganisation			3/4	1/4	1/4	
6. Number of public bodies subordinated to the parliament			4/4	4/4	4/4	
7. Accountability in reporting between central government bodies and parent ministry			3/4	3/4	3/4	
8. Effectiveness of basic managerial accountability mechanisms for central government bodies			0/4	0/4	0/4	
9. Delegation of decision-making authority within ministries			1/4	2/4	2/4	
Total			22/40	23/40	23/40	

Note: More information about the point conversion ranges can be found in the Methodology section.

The normative framework for organisation of public administration remains structured around the Law on Central Executive Bodies (CEBs)³²⁷, providing the official typology of CEBs, comprising ministries, agencies, services and inspectorates. The distinction between the various types of non-ministerial CEBs lacks normative value, as they all are subject to a uniform governance and accountability scheme.

The organisational landscape of CEBs is stable, with a comparatively low number of non-ministerial bodies³²⁸, which is partially related to the significant role of state-owned enterprises (SOEs) in performing administrative functions.³²⁹ A visible shift towards agencification, promoted by the 2017 Concept of Optimisation of the System of CEBs³³⁰, was recorded only in 2019. Given the insufficient institutional readiness, highlighted by SIGMA in 2018, for establishing and efficiently managing new entities (including lack of strong *ex ante* analysis), it was reasonable to refrain from progressing towards the expansion of public agencies.

Figure 33. Evolution of the number of ministries and other central executive bodies



Source: SIGMA analysis based on the amendments to the Resolution of the Cabinet of Ministers of Ukraine (CMU) No. 442 of 10 September 2014 on centralising of the system of central executive bodies and the list of ministries and Resolution No. 442 of the CMU dated 10 September 2014 (<https://zakon.rada.gov.ua/laws/show/442-2014-%D0%BF#Text>)

³²⁷ Bulletin of the VRU, 2011, No. 38.

³²⁸ According to SIGMA calculations, the number of public agencies in Ukraine is almost the lowest in the Western Balkans and the European Neighbourhood countries (Johnsøn, J., L. Marcinkowski and D. Sześciło (2021), "Organisation of public administration: Agency governance, autonomy and accountability", *SIGMA Papers*, No. 63, OECD, Paris, p. 44, <https://doi.org/10.1787/07316cc3-en>).

³²⁹ OECD (2021), *OECD Review of the Corporate Governance of State-Owned Enterprises: Ukraine*, OECD Publishing, Paris, p. 28, <http://www.oecd.org/corporate/soe-review-ukraine.htm>. As demonstrated by OECD data, the number of SOEs in Ukraine is among highest in the world. Examples of SOEs performing administrative functions include Ukrainian State Air Traffic Services (air traffic management), Ukrainian Sea Ports Administration and Judicial Information Systems (management of IT systems in courts and public register of court decisions).

³³⁰ The Concept of Optimisation of the System of CEBs, approved by Order of the CMU No. 1013 of 27 December 2017.

The period of 2021-2022 was marked by a negative trend of centralisation, putting four more bodies under direct subordination of the Cabinet of Ministers of Ukraine (CMU) without clear justification.³³¹ More recently, the Government launched the initiative of functional audits of ministries and other CEBs, focusing primarily on review of the staffing and network of territorial branches. So far, it has brought limited results, with reductions of the maximum number of employees in two ministries and four CEBs.³³² A restrained approach to more advanced structural changes is understandable under the war conditions, when modifying the administrative apparatus may amplify risks for continuity of its operations.

Some progress in addressing long-standing problems stemming from the separate legal personality of all CEBs (including each territorial branch of CEBs) is the most tangible development in the legislative framework for government administration. Within the framework of the reorganisation of the tax and customs administrations, the territorial units of both institutions were deprived of their legal personality and transformed into structural divisions of the central bodies.³³³ This enables greater flexibility in managing the territorial network and provides for clearer hierarchy. However, this reform has not so far been replicated for territorial bodies operating in other sectors.

The relations between ministries and agencies are comprehensively regulated by the Law on CEBs, accompanied by the orders of the individual ministries regulating interaction with their subordinated bodies in a relatively uniform manner. Formally, all elements of the classical accountability regime are in place, including the mandate of the portfolio ministries to approve plans, budgets and reports of the agencies, request documents and information, and inspect their operations. Each agency also has a counterpart in the portfolio ministry (i.e. a unit responsible for monitoring their activities). However, in practice, the agencies are autonomous in planning their operations, and the ministry's approval is only a formality. The inspection mechanism remains on paper only, as none of the four ministries interviewed indicated any case of inspections conducted in their subordinated bodies.³³⁴

On the other hand, some elements of ministerial micro-management of the subordinated bodies are traceable. For example, the approval of the ministry is usually required for the appointment of the heads of territorial units of the agencies. It should be also noted that the annual plans of the agencies represent an output-oriented approach, focusing on individual activities rather than specific outcomes and targets relating to them. Thus, the ministerial involvement in crafting the plans of agencies concentrates on considerations at the operational level, not on setting objectives and holding agencies accountable for achieving them. No perceptible progress has been recorded in shifting towards more results-oriented performance management of agencies, as recommended by SIGMA.

Internal governance of ministries suffers from unclear distribution of powers at the top level of management (i.e. between deputy ministers and state secretaries). Both are empowered to lead the work of the ministerial staff and give them instructions. The CMU Resolution³³⁵ aiming at clearer delineation of responsibilities created a model that is not explicitly envisaged in the Law on CEBs. It introduced hierarchical subordination of the heads of departments to the deputy ministers, reducing the role of state secretaries to managing auxiliary units of the ministry.

³³¹ Bureau of Economic Security, State Service for Food Safety and Consumer Protection, State Agency of Ukraine on Cinema, State Service for Ethnopolitics and Freedom of Conscience.

³³² Secretariat of the Cabinet of Ministers of Ukraine (SCMU) data.

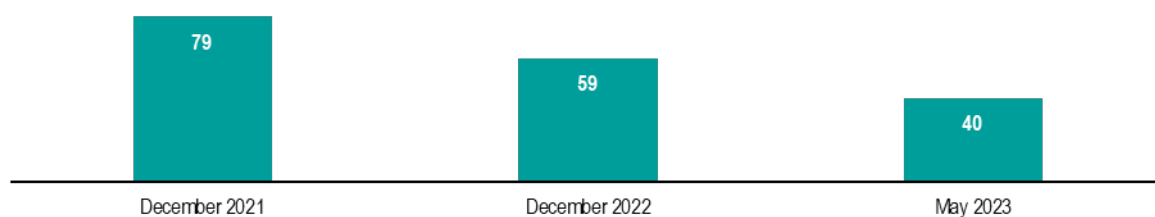
³³³ Law on Amendments to the Customs Code of Ukraine and some other legislative acts of Ukraine in connection with the implementation of the administrative reform of 14 January 2020, Bulletin of the Verkhovna Rada, 2020, No. 28.

³³⁴ Ministry of Justice, Ministry of Finance, Ministry of Environmental Protection and Natural Resources, and Ministry of Economy.

³³⁵ Resolution No. 243 of the CMU of 5 April 2017 on some issues of implementation of the Law of Ukraine on Civil Service.

Promoting managerial accountability through greater delegation of decision-making powers in the ministries also remains a challenge. SIGMA's recommendation³³⁶ to cascade some organisational responsibilities of state secretaries to lower levels of management (especially heads of departments and services) has not been addressed within the framework of reorganisation of ministries. This process concentrated mainly on creating new organisational units (i.e., directorates). There is no clear functional difference between directorates and already existing departments; their main characteristic is populating them with so-called RSPs. The establishment of directorates led to the creation of parallel, even competing structures in ministries and failed to fulfil the objective of developing a renewed capacity for reform development and implementation. While the RSP concept was to a large extent a successful innovation in terms of recruitment, the structural solutions for positioning the reform staff in the ministries was suboptimal (see the PSHRM area). Considering the decrease of the number of RSPs, the concept of directorates is also on the decline. The number of directorates is steadily shrinking, raising questions about the overall direction and sustainability of this reform.

Figure 34. Number of directorates in the ministries



Source: Secretariat of the Cabinet of Ministers of Ukraine (SCMU) data.



Conclusion

The organisational architecture of the Government has remained stable. While there is a constant legislative framework in place with limited structural changes, no progress was recorded with regard to modernisation of the governance of agencies and promoting managerial accountability within the ministries. The direction of internal reorganisation of ministries is in question, considering the suboptimal results and the unclear future of the newly created directorates.

³³⁶ OECD (2018), *Baseline Measurement Report: Principles of Public Administration, Ukraine*, OECD, Paris, pp. 106-107, <https://www.sigmaweb.org/publications/Baseline-Measurement-Report-2018-Ukraine.pdf>.

Principle 2: The right to access public information is enacted in legislation and consistently applied in practice.

Overall, the value of the indicator “Accessibility of public information” is 4, illustrating progress compared to 2018 that can be attributed to the enhanced monitoring of compliance with transparency standards, as well as improved perception of communication with public authorities among citizens and businesses.

Indicator 4.2.1. 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
	2018	2021	2023			
Legal and institutional framework for access to public information						
1. Adequacy of legislation on access to public information	8/10	8/10	8/10			
2. Coverage of basic functions for implementing access to public information	1/5	3/5	3/5			
Citizen's level of access to public information						
3. Proactivity in disclosure of information by state administration bodies on websites (%)	3/5	4/5	3/5			
4. Proactivity in disclosure of datasets by the central government (%)	5/5	5/5	2/5			
5. Perceived accessibility of public information by the population (%)	1/2.5	Not available	2.5/2.5			
6. Perceived accessibility of public information by businesses (%)	1.5/2.5	Not available	2/2.5			
Total	19.5/30	20/25	20.5/30			

Notes: Not available= A survey was not conducted in 2021. The point conversion range has therefore been modified by removing the survey-related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The total number of points is therefore 25 rather than 30. Point conversion ranges: 0-4=0, 5-8=1, 9-13=2, 14-17=3, 18-21=4, 22-25=5. More information about the point conversion ranges can be found in the Methodology section.

The 2011 Law on Access to Public Information³³⁷ is recognised as one of the most progressive in Europe.³³⁸ Prioritising of proactive transparency and open data is particularly welcomed. The Open Data Portal contains nearly 30 000 datasets.³³⁹ Minor restrictions in publication of data were introduced by the Law on the Legal Regime of the Martial Law, especially with regard to proactive disclosure of draft

³³⁷ Bulletin of the VRU, 2011, No. 32.

³³⁸ According to the Global Right to Information Rating, which measures the quality of legislation on access to information, the Ukrainian law scores as the fifth best in Europe, <https://www.rti-rating.org/country-data/>.

³³⁹ Open Data Portal, <https://data.gov.ua>.

normative acts.³⁴⁰ However, access to several public registers was switched off at the beginning of the war, upon decisions of the relevant authorities managing them. Access to some of them, including the Open Data Portal, has been gradually restored, with significant restrictions remaining in place (Table 2). While this was justified as a precautionary measure, no consistent, government-wide policy was developed on criteria for closures and limitations of access to information from public registers. The government resolution from March 2022 provides administrators of the systems with extensive discretion in deciding on restrictions of access to registers.³⁴¹

Table 2. Accessibility of selected public registers under martial law

Register	Regime of public access under martial law (as of 26 June 2023)	Detailed conditions
Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Organisations https://usr.minjust.gov.ua	Partially available	Available only upon identification of the requester through the qualified electronic signature with additional software to be downloaded.
Land Cadastre http://map.land.gov.ua/	Partially available	The official Land Cadastre portal is currently not working. Citizens may obtain necessary information from the Cadastre through the electronic cabinet after their identification using a qualified electronic signature, and then receive information about ownership title and other property rights to land plots and their characteristics by cadastral numbers and upon payment.
State Register of Civil Status Acts http://dracs.minjust.gov.ua/	Unavailable	Access provided only for authorised persons (registrars). Access for individual users is not working (one cannot check their own data, as was possible prior to restrictions)
Unified State Registry of Persons Who Committed Corruption or Corruption-related Offenses https://corruptinfo.nazk.gov.ua/	Unavailable	Individual users may still obtain certificates for themselves, but access for other users to the functions of searching and reviewing information about persons brought to criminal, administrative, disciplinary responsibility for committing a corruption or corruption-related offense and checking the certificates of the Unified State Register of persons who have committed corruption or corruption-related offenses is currently switched off.
Uniform State Register of Declarations of persons authorised to perform functions of the state and local self-governments https://portal.nazk.gov.ua/	Unavailable	It remains possible to submit individual declarations, but it is not possible to review declarations of the persons included in the Register.
State Register of Movable Property Encumbrances https://orm.minjust.gov.ua/	Unavailable	The Register is currently unavailable.

Note: The registers listed were generally available to all users without restrictions prior to introduction of the martial law.

Source: SIGMA analysis.

³⁴⁰ Law on the Legal Regime of the Martial Law, Bulletin of the VRU, 2015, No. 28, Article 9.10.

³⁴¹ Resolution of the CMU No. 263 of 12 March 2022 on some issues of ensuring the functioning of information and communication systems, electronic communication systems, public electronic registers in the conditions of martial law. It was amended by Resolution No. 1364 of 6 December 2022 which states that public registers are restored once the hostilities or temporary occupation ends and technical characteristics determined by the conditions of the state of war allow, but the administrators of such registers can terminate access to them immediately in the event of a threat of unauthorised access, <https://zakon.rada.gov.ua/laws/show/1364-2022-%D0%BF/ed20221206#Text>.

The Law on the Regime of the Martial Law³⁴² did not introduce any additional restrictions in access to information upon request. While the legal framework has not changed, the new circumstances clearly affected its interpretation, especially expanding the scope of application of restrictions aiming at protection of national security and territorial integrity. At the procedural level, the war also justifies activation of the *force majeure* clause enabling public authorities to delay responding to information requests. While it is commendable that the Ombudsperson issued guidelines on application of the grounds for postponement of processing of public information requests³⁴³, no such document has been produced with regard to the even more important issue of interpretation of the restrictions in access to information under war conditions. The Ombudsperson provides information holders with assistance on this matter in individual cases.

Due to the lack of a comprehensive mechanism for monitoring administrative and judicial practice, the actual level of responsiveness of the administration to public information requests in the current circumstances cannot be fully assessed. The SCMU collects only basic data on the number of public information requests received by public authorities, demonstrating a considerable decrease in 2022. However, there are no statistics on the average time to process requests and share decisions refusing access to information, as well as most common grounds for restricting access to information. Significant obstacles in accessing information had already been reported in 2021, by both the Ombudsperson³⁴⁴ and civil society³⁴⁵, in the context of the COVID-19 pandemic. On the other hand, a survey commissioned by SIGMA confirms a more positive perception of communication with public authorities among citizens and businesses.

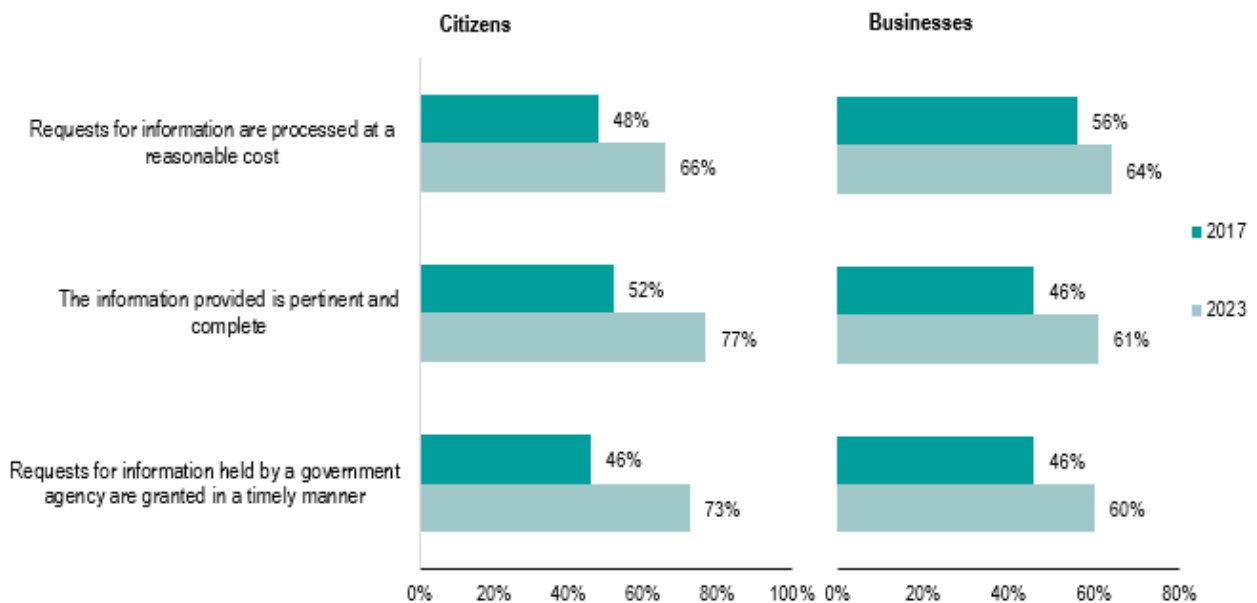
³⁴² Law on the Legal Regime of the Martial Law, Bulletin of the VRU, 2015, No. 28.

³⁴³ Commissioner for Human Rights of the VRU, Peculiarities of consideration of requests for information and delays in their satisfaction under martial law, Kyiv 2022, <https://ombudsman.gov.ua/storage/app/media/Воєнний%20стан/Право%20на%20звернення%20та%20інформацію/Право%20на%20інформацію/Розгляд%20запитів%20на%20інформацію%20та%20відстрочка%20в%20їх%20задоволенні.pdf>.

³⁴⁴ Annual Report of the Commissioner for Human Rights of the VRU on the observance and protection of the human rights and freedoms in Ukraine in 2021, Kyiv 2022, pp. 79-80.

³⁴⁵ IREX, Vibrant Information Barometer 2022, Kyiv 2022, https://www.irex.org/VIBE_2022_Ukraine.pdf.

Figure 35. Perception of transparency of public bodies among citizens and businesses (% of respondents who “totally agree” or “tend to agree” with relevant statements)



Source: SIGMA calculations based on the KIIS (Kyiv International Institute of Sociology) 2017 “Survey on business satisfaction with policymaking and public service delivery” (commissioned by SIGMA) and the SIGMA Public Opinion Survey 2023.

The task of supervising compliance of public authorities with transparency requirements is assigned to the Ombudsperson, who in addition to processing individual complaints also monitors websites and inspects public institutions with regard to compliance with transparency requirements. The Ombudsperson also submits to courts the protocols for imposing sanctions for violations by public institutions of the right to access information. These quasi-prosecutorial powers contrast with the contemporary model of ombudsperson institutions, which primarily operate through non-binding recommendations that lack formal enforceability.

While the active role of the Ombudsperson remains important to promoting a transparency culture among public bodies, SIGMA’s recommendation to strengthen the mechanisms for independent oversight in this field was not implemented. In particular, Ukraine did not follow the increasing number of European countries that created a specialised supervisory body exclusively for this area (or in combination with the protection of personal data).³⁴⁶ Considering that the Ombudsperson institution has to operate in several new areas related to the war, its capacity to serve as an effective guardian of transparency will be limited, amplifying the need for a more specialised monitoring mechanism.



³⁴⁶ Such bodies exist in Albania, Belgium, Croatia, Estonia, France, Germany, Hungary, Ireland, Kosovo*, Malta, Montenegro, the Republic of North Macedonia, Portugal, Serbia, Slovenia, Spain and the United Kingdom. * This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo’s declaration of independence.

Conclusion

A good legislative framework on access to information, combined with slightly improved monitoring of its implementation, contributed to progress in this area. Although access to several public registers remains restricted under wartime conditions and there is no clear and comprehensive policy and normative framework, the efforts of public institutions to respect their transparency obligations are reflected in a positive perception of communication with authorities among citizens and businesses.

Principle 3: Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest.

Overall, the value of the indicator “Effectiveness of scrutiny of public authorities by independent oversight institutions” is 3, the same as in 2021, marking progress compared to 2018. It has been strongly influenced by the increased trust and perception of the effectiveness of oversight bodies in wartime conditions, but also by improvements in implementation of the Ombudsperson’s and SAI’s recommendations.

Indicator 4.3.1. 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 	Points				
		2018	2021	2023		
Legal and institutional framework for oversight institutions						
1. Legislative safeguards for the independence and adequate mandate of the ombudsman institution		7/10	7/10	8/10		
2. Legislative safeguards for the independence and adequate mandate of the SAI		9/10	8/10	8/10		
3. Legislative safeguards for the independence of courts and judges		9/10	10/10	10/10		
Effectiveness of and public trust in oversight institutions						
4. Implementation of ombudsman recommendations (%)		0/8	0/8	2/8		
5. Implementation of SAI recommendations (%)		0/8*	8/8	4/8		
6. Perceived independence of oversight institutions by the population (%)		0/5	Not available	1/5		
7. Trust in oversight institutions by the population (%)		0/5	Not available	2/5		
8. Perceived ability of oversight institutions and citizens to effectively hold the government accountable (%)		0/5	Not available	3/5		
Total		25/61	33/46	38/61		

Notes: * Data not available or not provided. Not available= A survey was not conducted in 2021. The point conversion range has therefore been modified by removing the survey-related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The total number of points is therefore 46 rather than 61. Point conversion ranges: 0-8=0, 9-15=1, 16-23=2, 24-30=3, 31-38=4, 39-46=5. More information about the point conversion ranges can be found in the Methodology section.

The legislative framework for independent oversight institutions (Commissioner of the VRU for Human Rights and the Accounting Chamber) remains generally in line with international standards, with the important exception of the special procedure for early dismissal of members of these bodies introduced

by the Law on the Legal Regime of the Martial Law in May 2022.³⁴⁷ It enables the VRU to dismiss any official appointed by the legislature for a fixed term through a no-confidence vote.

This mechanism has been already activated. In May 2022, a few weeks after enacting the no-confidence vote procedure, the mandate of the Ombudsperson was terminated by the legislature. The Resolution of the Parliament lacked substantial justification. According to media reports, allegations of inactivity in the process of establishing humanitarian corridors and exchange of war prisoners, as well as discontent with media activity of the Ombudsperson, were raised as the grounds for dismissal.³⁴⁸ It should be noted in this context that international standards for ombudsperson institutions envisage the possibility of premature dismissal in the case of misbehaviour or misconduct, but not in the case of “loss of confidence” in the incumbent.³⁴⁹ In line with this approach, the Law on the Commissioner of the VRU for Human Rights enables early termination of the mandate in the case of a “breach of oath”.³⁵⁰ However, this procedure was not activated, and the VRU decided to apply a mechanism that is not compatible with basic guarantees of independence of the Ombudsperson institution.

The controversies around the premature dismissal of the previous Ombudsperson did not undermine the public perception of the Ombudsperson institution’s capacity to effectively scrutinise the Government, which has doubled since 2018 (similarly to other oversight bodies). The trust in the Ombudsperson has also considerably increased. As in 2018, the Ombudsperson institution is the most trusted oversight body and the only one that is trusted by the majority of population. While trust in oversight bodies has increased significantly during the war, it remains well below 50% of the population on average.

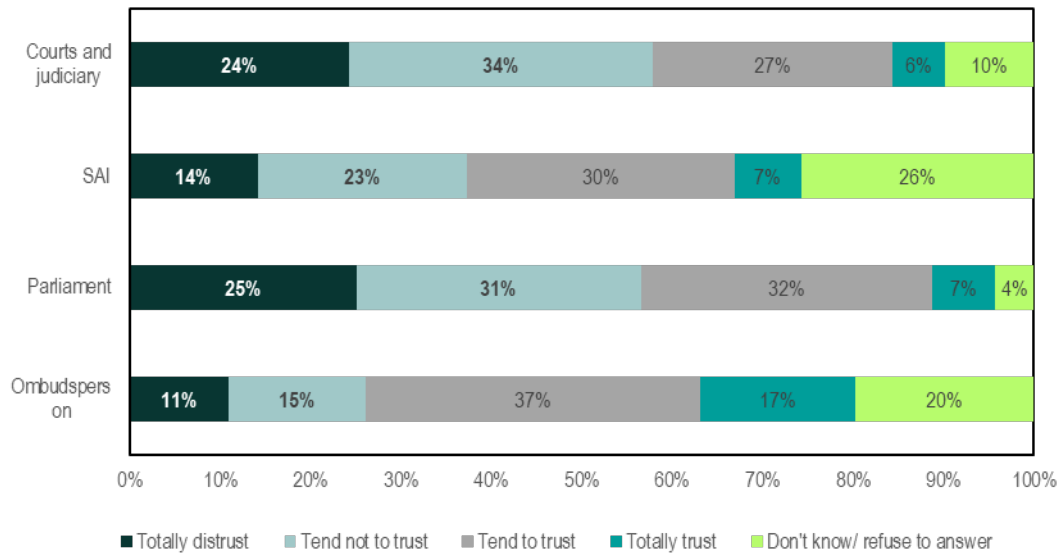
³⁴⁷ Law on the Legal Regime of the Martial Law, Article 12.4.

³⁴⁸ “Denisova dismissed as Verkhovna Rada Commissioner for Human Rights”, <https://www.ukrinform.net/rubric-politics/3496579-denisova-dismissed-as-verkhovna-rada-commissioner-for-human-rights-source.html>; “Verkhovna Rada dismisses Denisova from Ombudswoman position”, <https://imi.org.ua/en/news/verkhovna-rada-dismisses-denisova-from-ombudswoman-position-i45877>.

³⁴⁹ See, for example, Principles on the protection and promotion of the Ombudsman Institution (Venice Principles), adopted by the Venice Commission at its 118th Plenary Session, Venice, 15-16 March 2019, Principle 11, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e).

³⁵⁰ Law on the Commissioner for Human Rights of the VRU, Article 9.

Figure 36. Public trust in oversight institutions



Note: The percentage of respondents who responded to four separate questions on trust in oversight institutions: “How much trust do you have in courts and judiciary/ parliament/ ombudsperson/ Supreme Audit Institution (SAI)?”.

Source: SIGMA Public Opinion Survey 2023.

The Ombudsperson institution has been proactive in facilitating access to its services under wartime conditions. It established a network of 24 regional representative offices to receive and process citizens’ complaints. This contributed to a rapid increase in the number of cases received. For the first five months of 2023, the Commissioner’s offices had already recorded more cases than in all of 2022, which could also be perceived as an implicit sign of trust in the institution and its visibility. On the other hand, it creates a particular organisational challenge for the institution and amplifies the question of whether it should be continuously tasked with special responsibilities in the areas of access to public information and personal data protection that are assigned to specialised independent bodies in the vast majority of European countries.

In line with SIGMA’s recommendations³⁵¹, there is clear progress in monitoring implementation of the Ombudsperson’s recommendations. The annual reports contain the list of recommendations and information on the status of implementation of each of them. The reported implementation rate almost doubled to 39% in 2022, compared to 21% in 2021³⁵², although the majority of the recommendations are still not sufficiently addressed by the public authorities. The implementation rate also remains significantly lower than for the Accounting Chamber. In 2022, the public authorities implemented 63% of the Accounting Chamber’s recommendations. While this is a much higher rate than for the Ombudsperson, it marks significant a decrease compared to 2021, when the rate was 82%. The Ombudsperson’s co-operation with the Parliament has also improved, especially considering that, in May 2023, for the first time since 2012, the Ombudsperson was invited to present its annual report in the plenary session of the VRU.

In contrast with these positive developments, judicial reform remains incomplete³⁵³, affecting the overall quality of independent oversight of the executive, and posing a long-term threat to the current record-

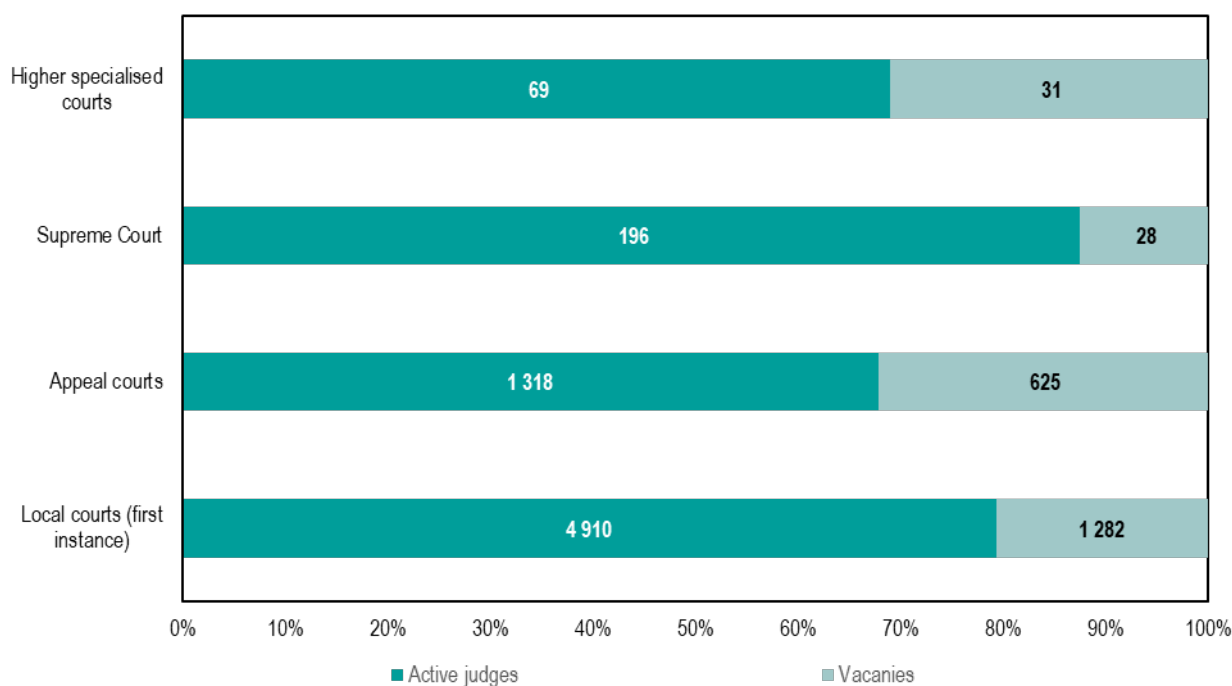
³⁵¹ OECD (2018), *Baseline Measurement Report: Principles of Public Administration, Ukraine*, OECD, Paris, p. 107, <https://www.sigmaweb.org/publications/Baseline-Measurement-Report-2018-Ukraine.pdf>.

³⁵² Ombudsperson data.

³⁵³ The assessment does not cover the specialised High Anti-Corruption Court.

high trust in the judiciary. While the legislative framework for governance of the judicial system and ensuring its independence is in place, the assessment period was marked by institutional dysfunction. Between October 2019 and June 2023, the High Qualification Commission for Judges (HQCJ), responsible for assessing candidates for judicial positions, did not function, as the mandate of the previous members was terminated by law. This resulted not only in nearly 2 000 vacancies across all instances (Figure 37), but also left in a vacuum about 300 judges who (under rules abolished in 2016) were appointed for an initial period of five years.³⁵⁴ Upon the expiration of this period, they cannot perform judicial functions, while receiving basic salary and awaiting decisions of the HCJ and the High Council of Justice (HCJ) regarding permanent appointment.

Figure 37. Vacancies on judicial positions in the courts, May 2023



Note: 100% = total number of judicial positions.

Source: High Qualification Commission for Judges data.

Just few days before Russia's large-scale invasion, the majority of members of the HCJ resigned. According to independent experts, this decision was linked with the integrity assessment launched for members and candidates to the HCJ shortly before.³⁵⁵ Even before this decision, the HCJ had not been fully operational. Due to the non-functioning of the HCJ, it could not make decisions on judicial appointments. Gaps in the legislation also led to suspension of the system of disciplinary liability of

³⁵⁴ HQCJ data.

³⁵⁵ Chyzyk, H. (2022), "Judicial Reform in Times of War: What the EU can learn from the Ukrainian experience with judicial reform", VerfBlog, <https://verfassungsblog.de/judicial-reform-in-times-of-war/>, DOI: [10.17176/20221222-001557-0](https://doi.org/10.17176/20221222-001557-0). "Most members of main judicial body to resign over reform", <https://kyivindependent.com/most-members-of-main-judicial-body-to-resign-over-reform/>.

judges, with a current backlog of over 9 600 disciplinary cases unresolved.³⁵⁶ Only in January 2023 did the HCJ restore its operations with newly appointed members.



Conclusion

Oversight institutions managed to earn more public trust for their operations in the wartime conditions, but the level remains below EU averages. Removal of the previous ombudsperson through a procedure that is not compatible with international standards has been paired with better co-operation with the legislature and an increase in implementation of the recommendations of the institution by the successor. The main challenge to a fully functional system of external oversight of the executive lies in the necessity of completing the comprehensive judicial reform.

³⁵⁶ HCJ data.

Principle 4: Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews.

Overall, the value of the indicator “Fairness in handling of administrative judicial disputes” is 4. While this score is the same as in 2018, compared to 2021, progress was achieved thanks to efficient handling of administrative cases.

Indicator 4.4.1. 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 and the administrative judiciary is characterised by efficiency, quality (including accessibility) and independence. Outcomes in terms of case flow and public perceptions of independence are also measured.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
Legal framework and organisation of judiciary						
1. Adequacy of the legislative framework for administrative justice			6/6	6/6	6/6	
2. Accessibility of administrative justice			3/4	3/4	3/4	
3. Effectiveness of remedies against excessive length of proceedings in administrative cases			0/2	0/2	0/2	
4. Use of an electronic case-management system			1/1	1/1	1/1	
5. Public availability of court rulings			2/2	0/2	0/2	
6. Organisation of judges handling administrative justice cases			4/5	5/5	5/5	
Performance of the administrative system						
7. Perceived independence of judicial system by the population (%)			0/5	Not available	1/5	
8. Calculated disposition time of first-instance administrative cases			5/5	4/5	5/5	
9. Clearance rate in first-instance administrative courts (%)			4/5	3/5	5/5	
10. Cases returned for retrial by a higher court (%)			3/5	3/5	3/5	
Total			28/40	25/35	29/40	

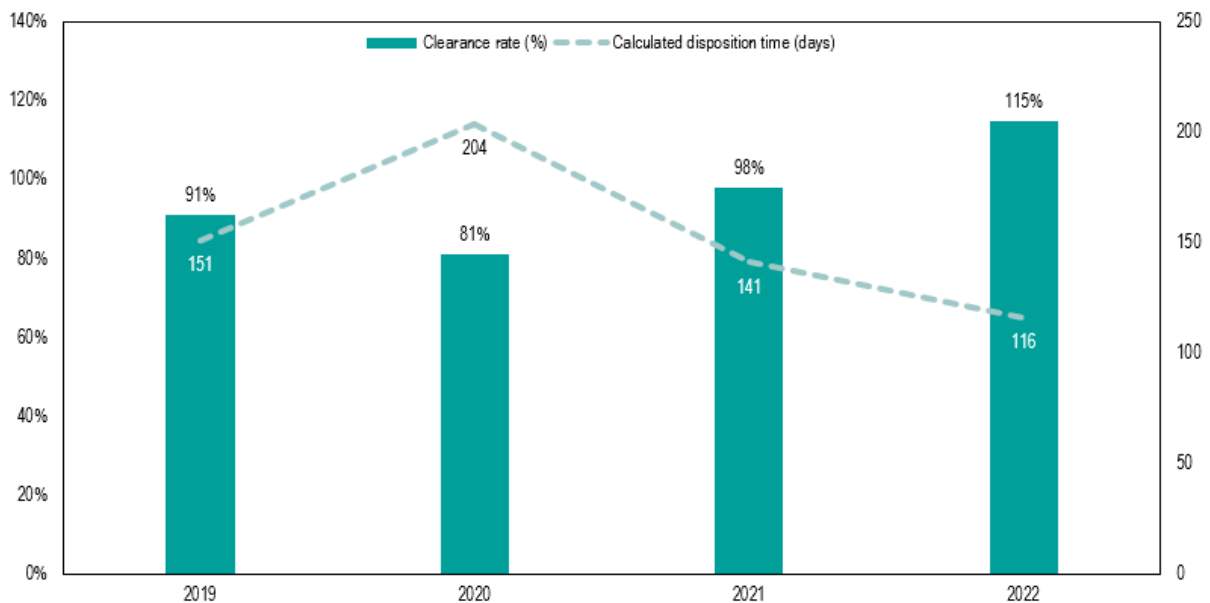
Notes: Not available= A survey was not conducted in 2021. The point conversion range has therefore been modified by removing the survey-related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The total number of points is therefore 35 rather than 40. Point conversion ranges: 0-5=1, 6-11=1, 12-18=2, 19-24=3, 25-30=4, 31-35=5. More information about the point conversion ranges can be found in the Methodology section.

The procedural framework for judicial review of all types of administrative actions and omissions is in place, including the powers of the administrative courts to supervise execution of judicial decisions.³⁵⁷ There is a three-tier system of administrative courts comprising 27 district courts, 8 appeal courts and the Supreme Court with jurisdiction in extraordinary remedies. The access to administrative justice is facilitated by a well-established system of legal aid and possibilities to seek exemptions from fees.

³⁵⁷ Code of Administrative Justice of Ukraine, Bulletin of the VRU, 2005, Nos. 35-37.

Although the administrative courts are also affected by the problem of vacancies in judicial positions, they demonstrated extraordinary performance in disposing cases in 2022. They managed to not only handle the incoming cases, but also significantly reduce the backlog of old cases and shorten the average waiting time for rulings, especially in comparison with the COVID-affected year of 2020. This can be partially attributed to a considerably lower influx of new cases (a drop of more than 25%), but it is still worth noting that despite the wartime conditions, the courts managed to dispose nearly the same number of cases as in 2021.³⁵⁸ This also shows good performance of the mechanism introduced by the Law on the Legal Regime of the Martial Law for transferring cases from the courts directly affected by the military actions.³⁵⁹ While the systemic problem of excessive length of judicial administrative proceedings has currently diminished somewhat, reducing the demand for special measures, the absence of progress in developing legislation for effective remedies against delays (including a compensation mechanism) needs to be highlighted.

Figure 38. Key indicators of judicial performance in administrative matters in the first-instance courts



Source: State Judicial Administration data.

Basic technical support for judicial work is guaranteed. The number of legal assistants is similar to the number of judges. The National School of Judges offers training to judges, helping them fulfil the minimum statutory requirement of 40 training hours over a period of three years.³⁶⁰ The electronic case-management system meets the basic standards, enabling registration and searching of cases, as well as measuring the workload of judges, although there is no possibility to generate more advanced statistics on the performance of judges or cases delayed. However, the State Judicial Administration provides comprehensive data on the workload of the courts in its annual reports.

³⁵⁸ State Judicial Administration data.

³⁵⁹ Law on the Legal Regime of the Martial Law, Article 26.

³⁶⁰ Law on the Judicial System and the Status of Judges, Bulletin of the VRU, 2016, No. 31, Article 89.2.

Still, two-thirds of the population perceive the judiciary as politically dependent.³⁶¹ While slightly increased trust might be attributed to the “rally around the flag” effect, poor assessment of the political independence of the courts demonstrates that the systemic failures in the judicial system have not yet been addressed. Efforts to eliminate long-standing integrity and independence challenges in the administrative judiciary were marked in the recent period by the adoption of the Law on Dissolution of the District Administrative Court of Kyiv (DACK) handling the complaints against administrative decisions of central authorities.³⁶² This decision was applauded by civil society organisations, as the leadership of DACK and its prominent judges were subject to numerous journalistic reports and investigation by the National Anti-Corruption Bureau of Ukraine (NABU), documenting corruption.³⁶³ However, absence of a functioning system of disciplinary liability of judges raises concerns about whether and how the fate of the DACK’s judges will be determined. Furthermore, the massive organisational effort associated with creation of the new court will require effective and co-ordinated management, involving all major actors in the system: the HCJ, HQCJ and the State Judicial Administration.

Another matter of concern, potentially hindering integrity and trust in the judiciary, is the persistent problem with public availability of court rulings. While all judicial decisions are subject to publication in the Unified State Register of Court Decisions³⁶⁴, in 2021 the Ombudsperson had already noticed the practice of restricting disclosure by the SOE managing the register, upon the request of the prosecutorial bodies.³⁶⁵ This practice lacks a clear and explicit legal basis. During the war, transparency of court decisions suffers from further restrictions motivated by security concerns, despite the lack of any amendments to the Law on Access to Court Decisions stipulating rules and conditions for such restrictions.

Conclusion

Despite unprecedented challenges for continuation of judicial activities, the administrative courts have demonstrated very good performance in handling cases and preventing backlogs. The long-awaited process of reform of the main administrative court of Kyiv has been launched. The overall optimistic picture is disturbed by problems with transparency of the court rulings and lack of effective remedies against excessive length of judicial proceedings.

³⁶¹ SIGMA public opinion survey 2023.

³⁶² Law on liquidation of the District Administrative Court of the city of Kyiv and the formation of the Kyiv City District Administrative Court of 13 December 2022.

³⁶³ “The DACK was liquidated: what’s next?”, <http://en.dejure.foundation/tpost/625n61zu61-the-dack-was-liquidated-whats-next?amp=true>; “A City District Administrative Court was registered in Kyiv. It will replace the liquidated DAC”, <https://babel.ua/en/amp/news/91694-a-city-district-administrative-court-was-registered-in-kyiv-it-will-replace-the-liquidated-dac>.

³⁶⁴ Law on Access to Court Decisions, Bulletin of the VRU, 2006, No. 15.

³⁶⁵ Annual Report of the Commissioner for Human Rights of the VRU on the observance and protection of the human rights and freedoms in Ukraine in 2021, Kyiv 2022, pp. 72-82.

Principle 5: The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation.

Overall, the value of the indicator “Functionality of public liability regime” is 2, the same as in 2018 and 2021. This indicates a persistent problem with lack of monitoring of the practical functioning of the legislative guarantees of public liability.

Indicator 4.5.1. Functionality of public liability regime						
This 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						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021	Trend 2021-2023		Points			
				2018	2021	2023
Legal framework for public liability						
1. Comprehensiveness of the scope of public liability			1/1	1/1	1/1	1/1
2. Coverage of the public liability regime to all bodies exercising public authority			1/1	1/1	1/1	1/1
3. Non-discrimination in seeking the right to compensation			1/1	1/1	1/1	1/1
4. Efficiency and fairness of the procedure for seeking compensation			3/3	3/3	3/3	3/3
Practical implementation of the right to seek compensation						
5. Application of the public liability mechanism in the courts in practice			0/3*	0/3*	0/3*	0/3*
6. Payments made to entitled applicants (%)			0/3*	0/3*	0/3*	0/3*
Total			6/12	6/12	6/12	6/12

Notes: * Data not available or not provided. More information about the point conversion ranges can be found in the Methodology.

The right to compensation for material and moral damage caused by illegal decisions, actions or inaction of state authorities, local self-government bodies and their officials exercising public powers is enshrined in the Constitution of Ukraine.³⁶⁶ This principle of public liability is further reiterated in the Law on the CEBs, which also provides the state with the right of recourse against public officials who cause damage.³⁶⁷

The procedural framework for seeking compensation, established in the Civil Code³⁶⁸, remains compatible with international standards.³⁶⁹ It guarantees compensation for both actions and omissions of public authorities. All bodies exerting public powers are considered as liability holders. The deadline for initiating public liability claims is sufficiently long, three years after the applicant might have become

³⁶⁶ Constitution of Ukraine, Article 56.

³⁶⁷ Law on the CEBs, Articles 27.2 and 27.3.

³⁶⁸ The Civil Code of Ukraine, Bulletin of the VRU, 2003, Nos. 40-44, Articles 1173-1175.

³⁶⁹ In particular, Recommendation No. R (84) 15 of the Committee of Ministers of the Council of Europe relating to public liability, adopted by the Committee of Ministers of 18 September 1984, <https://rm.coe.int/16804e3398>.

aware of the damage. There is clear regulation of the scope of compensation that covers both actual loss and lost profits.

However, due to lack of data, assessing the actual performance of the public liability regime, as well as identifying and eliminating key areas of administrative wrongdoing, poses a challenge. Despite SIGMA's recommendations³⁷⁰, no progress was made in establishing a mechanism for monitoring administrative and judicial practice in public liability cases. Such cases are not recognised as a separate category in judicial statistics. A separate line exists in the state budget for payment of compensation, but it relates to all types of damages caused to citizens, not only damages caused by the actions or inactions of administrative bodies, but also inquiries, pre-trial investigations, prosecutorial actions and court decisions. No organisation is tasked with analysing the most common cases of administrative wrongdoing and proposing the necessary corrective measures at the administrative and legislative levels.

Conclusion

The public liability regime remains an area where, despite an adequate legislative and procedural framework, assessment of its application is hindered by the lack of any mechanism for monitoring administrative and judicial practice.

³⁷⁰ OECD (2018), *Baseline Measurement Report: Principles of Public Administration, Ukraine*, OECD, Paris, p. 107, <https://www.sigmaweb.org/publications/Baseline-Measurement-Report-2018-Ukraine.pdf>.

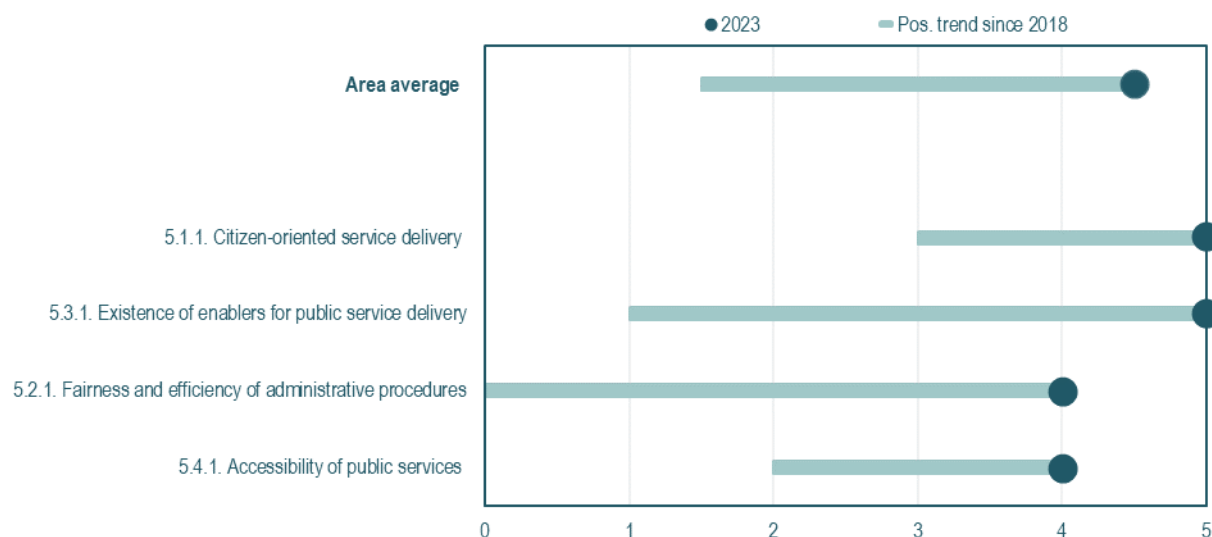
Service delivery

The Principles of Public Administration

Principle 1	Policy for citizen-oriented state administration is in place and applied.
Principle 2	Good administration is a key policy objective underpinning the delivery of public service, enacted in legislation and applied consistently in practice.
Principle 3	Mechanisms for ensuring the quality of public service are in place.
Principle 4	The accessibility of public services is ensured.

Summary and recommendations

Figure 39. The overall indicator values per Principle in the area of service delivery



Note: The area average is a simple arithmetic mean of the sub-indicators. The sub-indicators are sorted from smallest to largest.
Source: SIGMA elaboration based on the assessment data.

Developing effective and efficient design and delivery of administrative services has been a policy imperative for Ukraine since 2014. However, this initiative received a significant boost in 2019 when the Government launched its *State in a Smartphone* initiative.³⁷¹ This was followed by several policy documents and normative acts aiming to reform the service design and delivery area.

The PAR Strategy 2022-2025³⁷² set as the core objective for this area ensuring the provision of high-quality services and good administrative procedures. Special attention is given to further advancement of digitalisation of services and expansion of the network of Administrative Service Centres (ASCs).

Several key enablers to secure the delivery of services have been improved. Experimentation in government has been legally possible before and during the war. Public authorities are encouraged to pursue innovation and convert it into legislation if successful.³⁷³ The interoperability framework (Trembita) is becoming stronger, although it has not yet reached its full capacity. The share of databases that have active electronic interactions has increased even during wartime (from 60% in the last quarter of 2021 to 71% in the first quarter of 2023) with some ups and downs due to the war. Similarly, the number of electronic operations in Trembita was close to tenfold higher in the same period (from 62.7

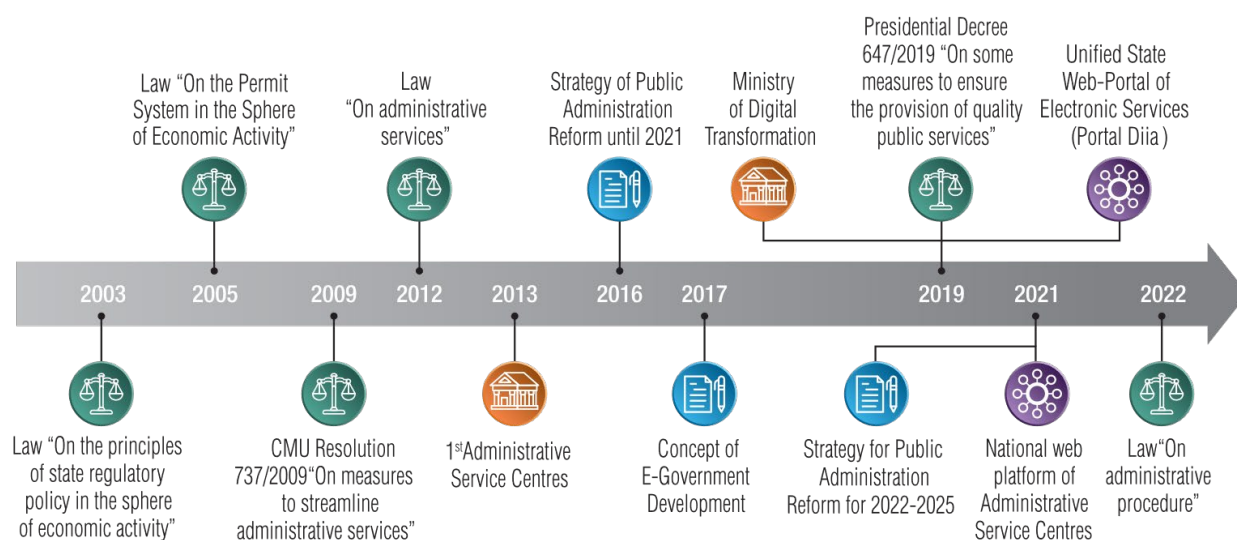
³⁷¹ Presidential Decree No. 558, adopted on July 2019, entrusted the executive with the creation of a web portal and mobile application of electronic services. The Ministry of Digital Transformation presented the project “State in a Smartphone”, including the presentation of the Diia Brand on 26 September 2019. A press brief can be found in the website of *Livyi Bereg* (Left Bank) news agency, https://lb.ua/news/2019/09/27/438454_ukraine_prezentovali_brend.html

³⁷² Decision of the CMU No. 831 of 21 July 2021.

³⁷³ Examples of this: Decision of the CMU No. 382 of 25 April 2023 on the implementation of an experimental project on the restoration of settlements that suffered as a result of the armed aggression of the Russian Federation; and Decision of the CMU No. 524 of 23 May 2023 on the implementation of an experimental project on the creation of a reserve of employees of state bodies to work in the de-occupied territories of Ukraine.

million to 541.3 million operations).³⁷⁴ Finally, the Diia mobile app and the Diia portal³⁷⁵ are becoming the hub for citizens and business services, allowing citizens to store, use and share online and offline the ID card and 13 other credentials with full legal validity equal to physical documents. The success of Diia, especially its resilience and adaptability to offer new services during wartime, has created a positive multiplier effect regarding innovation. Indeed, Diia has served as inspiration and purpose for public officials to improve, simplify and modernise services. International support, together with inspiration and vision from Ukrainian public authorities and officials, has been a key factor of such success.

Figure 40. Overview of Administrative Service Reform initiatives in Ukraine to date



Source: Thijs, N., I. Mackie and M. Krievins (2022), "Service design and delivery in the European Neighbourhood Policy East region: A comparative report on designing and delivering administrative services in Armenia, Azerbaijan, Georgia, Moldova and Ukraine", SIGMA Papers, No. 64, OECD Publishing, Paris, <https://doi.org/10.1787/c6debcce-en>.

Institutional co-ordination, under the leadership of the Secretariat of the Cabinet of Ministers of Ukraine (SCMU) for the whole public administration reform (PAR), is ensured through inter-departmental working groups, which include civil society and international experts. The Ministry of Digital Transformation (MDT) oversees e-services and monitors performance of physical services. The Ministry of Justice (MoJ) ensures the implementation of the new Law on Administrative Procedure (LAP) to protect the rights of citizens and businesses. Finally, the Ministry of Economy (MoE) plays an important role in the simplification of services, particularly those related to businesses.

During wartime, the Ukrainian public administration has proven to be resilient and agile. It was able to restore services rapidly. The accessibility of services in the territory has been maintained and even in some cases strengthened despite the destruction of facilities and equipment because of the active fighting in certain territories. The territorial network of ASCs is continually expanding³⁷⁶, with 1 127 functioning as of early 2023. During the war, 30 centres were made unusable by the bombings, but 10 mobile units were used as a replacement whenever possible. The functions of the ASCs have not

³⁷⁴ Data from the reports: EU4DIGITALUA, March 2023[9] and EU4PAR, December 2021[10].

³⁷⁵ Diia portal: <https://diia.gov.ua>.

³⁷⁶ OECD (2018), *Baseline Measurement Report: The Principles of Public Administration*, Ukraine, Paris, <https://www.sigmaweb.org/publications/Baseline-Measurement-Report-2018-Ukraine.pdf>.

only been maintained during 2022 and 2023, but even expanded, as some ASCs have also been performing new functions, such as organising and providing humanitarian assistance. The combination of ASCs and digital services has made it possible to receive public services across the country even in the most difficult situations.

Finally, many regulations regarding service delivery have been amended to adjust to wartime realities, with extension of deadlines, removal of administrative steps and simplification in general, recommended by the Interministerial Working Group (IWG) created by the Government to simplify procedures related to economic activity.³⁷⁷

Short-term recommendations (1-2 years)



1. The Government should sustain the upward trend in digitalisation, service quality and accessibility and make sure that it is spread across all public administration institutions.
2. The Government should ensure that all measures for effective implementation of the LAP (harmonisation of sector primary and secondary legislation, training, support to users, etc.) are undertaken, establish effective monitoring of implementation and ensure that no unjustified exceptions from the application of administrative procedure are introduced through sector legislation. The LAP should be effectively implemented in digitalised procedures as well.
3. During recovery, the Government should evaluate all temporary simplification and deregulation efforts implemented during the war, deciding which ones could become permanent, taking into consideration the principles of good administration, agility, efficiency and user-friendliness, as well as protection of the public interest and legal certainty.

³⁷⁷ Decision of the CMU No. 44 of 13 January 2023 on the establishment of the Interministerial Working Group on the Issues of Accelerated Review of Instruments of State Regulation of Economic Activity.

Analysis

Principle 1: Policy for citizen-oriented state administration is in place and applied.

Overall, the value of the indicator “Citizen-oriented service delivery” is 5 for 2023, showing progress compared to 2018. The adoption of a policy on offline and digital service delivery and administrative simplification accounts for this progress.

Indicator 5.1.1. 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
Policy framework for citizen-oriented service delivery						
1. Existence and extent of application of policy on service delivery			6/8	8/8	8/8	
2. Existence and extent of application of policy on digital service delivery			4/8	8/8	8/8	
3. Central co-ordination for digital government projects			2/4	4/4	4/4	
4. Established policy on administrative simplification			8/12	10/12	10/12	
Performance of citizen-oriented service delivery						
5. Perceived quality of public service delivery by the population (%)			2/6	Not available	6/6	
6. Renewing a personal identification document			0/6	1/6*	Not available	
7. Registering a personal vehicle			0/6	2.5/6	2.5/6	
8. Declaring and paying personal income taxes			1.5/6	4/6	6/6	
9. Perceived quality of public service delivery and administrative burdens by businesses (%)			1.5/6	Not available	2.5/6	
10. Starting a business			4/6	5.5/6	1.5/1.5	
11. Obtaining a commercial construction permit			4/6	4/6	Not available	
12. Declaring and paying corporate income taxes			5.5/6	6/6	2/2	
13. Declaring and paying value-added taxes			4/6	4/6	2/2	
Total			42.5/86	57/74	52.5/61.5	

Notes: *. *Data not available or not provided. 1. Not available = Some indicators were not possible to be calculated due to the following reasons: a). A social survey was not conducted in 2021. b) World Bank Doing Business Report was discontinued in 2023. c) some scenarios for the calculation of the indicator are no longer valid due to the war, like the extension of validity of physical ID cards in Ukraine during the martial law³⁷⁸. 2. The values for the 2021 sub-indicator related to the World Bank's *Doing Business* report are based on data from 2019, as the World Bank *Doing Business* report was discontinued in 2020. 3. The point conversion range has therefore been modified for both years 2021 and 2023 proportionally adjusting them to the maximum possible points given the available indicators:

a. Point conversion ranges for 2021: 0-12=0, 13-24=1, 25-36=2, 37-48=3, 49-60=4, 61-74=5. Point conversion ranges for 2023: 0-10=0, 11-20=1, 21-30=2, 31-40=3, 41-50=4, 51-61.5=5. More information about the point conversion ranges can be found in the Methodology section.

³⁷⁸ CMU Resolution No.1202 of 21 October 2022.

Since 2014, Ukraine has established the policy objective of efficient administrative services. This focus gained further momentum in 2019 with the introduction of the *State in a Smartphone* initiative. Subsequently, the Government implemented various policy documents and normative acts to reform service design and delivery. For example, Decree No. 558/2019³⁷⁹ mandated the creation of a single state web portal and mobile app (Diia) and an audit of the functioning of all national electronic information resources to unify normative principles of functioning. Decree No. 647/2019³⁸⁰ adopted important measures to increase the quality of services, such as the obligation to develop and monitor service standards and the rationalisation of administrative fees. This effort to improve the policy and normative framework for user-centricity continued in the following years. For example, the Law on the Peculiarities of Providing Public (Electronic) Services³⁸¹, which establishes and develops a set of user-centric principles (citizen orientation, inclusivity and accessibility, transparency and openness, etc.), or the Law on Public Electronic Registries³⁸² which establishes a clear regulatory framework for data governance in Ukraine, including important user-centric principles such as prohibiting public authorities from asking citizens to provide data that already exists in a public registry (Article 25).

Regarding the institutional set-up, the landmarks in this period are the creation of the MDT and the State enterprise Diia. The lack of co-ordination noted in the SIGMA 2018 Baseline Measurement Report³⁸³ concerning the digital and physical transformation of services was successfully addressed. The strategies related to services and procedures are under the responsibility of the Deputy State Secretary of the CMU, the MDT, the MoJ and the MoE. The MDT is driving the conversion of physical into digital services, but also monitoring the functioning of the ASCs. Together with the MoE and the different line ministries and executive agencies, the MDT is contributing to the optimisation and simplification of administrative services.³⁸⁴

Service delivery as a policy area is addressed by two cycles of the PAR Strategies, 2016-2021³⁸⁵ and 2022-2025.³⁸⁶ Both documents assign responsibility for achieving objectives and executing actions in detail, improving the situation in 2018, including measures for administrative simplification of selected services. CMU Decree No. 365 of February 2021³⁸⁷, amended in September 2022 and in April 2023, approved the priority areas and projects of digital transformation of services, making explicit the bodies responsible for executing these activities. The Decree includes 23 areas (e.g., Justice, Health Care, Territorial Development, Economy and Trade, etc.) and 94 concrete actions. The MDT has developed dashboards to monitor implementation of these projects. The Roadmap on the Integration of Ukraine into the European Union (EU) Digital Single Market for the years 2021-2023, based on the recommendations

³⁷⁹ Decree of the President of Ukraine 558/2019 of 31 July 2019 on some measures to improve access of individuals and legal entities to electronic services.

³⁸⁰ Decree of the President of Ukraine 647/2019 of 4 September 2019 on some measures to ensure the provision of quality public services.

³⁸¹ Law on the Peculiarities of Providing Public (Electronic) Services of 5 November 2021, published in the Bulletin of the Verkhovna Rada, 2021, No. 47, p. 383.

³⁸² Law of Ukraine on Public Electronic Registers No. 1907-IX, as amended by Law No. 2130-IX of 15 March 2022 and Law No. 2597-IX of 20 September 2022.

³⁸³ OECD (2018) *Baseline Measurement Report: The Principles of Public Administration*, Ukraine, Paris, <https://www.sigmaweb.org/publications/Baseline-Measurement-Report-2018-Ukraine.pdf>.

³⁸⁴ For example, the letter of the MDT to the Secretariat of the CMU of 13 November 2020 reporting on the stage of optimisation of the 19 administrative procedures contained in item 66 of the PAR Action Plan for 2016/2021.

³⁸⁵ Decision of the CMU No. 474 of 24 June 2016.

³⁸⁶ Decision of the CMU No. 831, adopted on 21 July 2021.

³⁸⁷ Decision of the CMU No. 375 of 17 February 2021, as amended by CMU Decisions No. 900-p of 4 August 2021, No. 1011 of 10 September 2022 and No. 369 of 21 April 2023.

of the European Commission (EC), contains 141 activities to be performed by 29 State authorities to adopt the latest digital norms and standards of the EU.³⁸⁸

Regarding the performance of citizen-oriented service delivery, the SIGMA methodology foresees in-depth analysis of seven public services.³⁸⁹ The analysis of these services shows moderate progress since 2018, mainly due to digitalisation. However, this increase in the score does not fully reflect completely the huge positive transformation of the service delivery area that is currently happening in Ukraine through digitalisation of many other public services, with the support of the EU and other international donors.

Between 2019 and 2021, many developments in service delivery were effectively implemented. The Diia App mobile application, which was launched on 6 February 2020³⁹⁰, allows citizens to use an electronic ID card and thirteen other digital documents³⁹¹ in a very user-friendly manner. In March 2021, the Parliament passed a law making digital and physical national identity cards equally valid.³⁹²

These identity documents can be used in both online and offline transactions. Citizens can show their electronic documents to public and private service providers to prove their credentials (with the verifiable QR code) and even share the electronic documents (send them through the Diia App) if the provider requires a copy to provide the service (e.g. to check into a hotel, or to submit documents to a university). Moreover, by February 2022, the Diia App also offered 26 fully mature end-to-end electronic services. The development of the Diia App has not been halted by the war. On the contrary, the MDT has been launching new electronic services to fulfil the vision of the *State in a Smartphone*. For example, one of the new Diia App services is reporting incidents for inclusion in the register of damaged property. Since March 2022, the Diia application and portal have received over 463 000 reports about damaged and destroyed property of Ukrainians due to the Russian full-scale war.³⁹³ Since May 2023, citizens can also apply for financial assistance to repair an apartment or house. Other services introduced during the war include the following: reporting on the condition of internally displaced people, applying for social benefits for internally displaced people, buying war bonds, providing information on the movement of Russian troops or watching Ukrainian TV and radio, which was the only way for Ukrainians in certain zones to get Ukrainian news about the situation.³⁹⁴

The Diia App also incorporates a function of citizen consultation, which is being used by Ukrainian authorities to launch questions directly to citizens on several topics, with a great number of citizens

³⁸⁸ EU (2022), Digital Public Administration Factsheet 2022, Ukraine, <https://joinup.ec.europa.eu/collection/nifo-national-interoperability-framework-observatory/digital-public-administration-factsheets-2022>

³⁸⁹ Three services for citizens (renewing a physical ID Card, registering the purchase of a second-hand vehicle and declaring personal income tax) and four for businesses (starting a business, obtaining a commercial construction permit, declaring corporate income tax and declaring value-added tax).

³⁹⁰ “President, Prime Minister, Ministry of Digital Transformation presented Diia mobile app”, <https://www.kmu.gov.ua/en/news/prezident-premyer-ministr-mincifra-prezentovali-mobilnij-zastosunok-diya>.

³⁹¹ International passport, permanent and temporary residence permit, student car, driver’s licence, vehicle registration certificate, vehicle insurance policy, tax identity number, birth certificate, pension certificate, certificate of internally displaced person, and green and yellow COVID certificates.

³⁹² Law No. 1368-IX on Amendments to the Law of Ukraine on the Unified State Demographic Register and Documents Confirming Ukrainian Citizenship, Identity or Special Status, published in the Bulletin of the Verkhovna Rada, 2021, No. 27, p.224.

³⁹³ Submit an application for the repair of damaged housing in Diia, <https://diia.gov.ua/news/podavajte-zayavu-pro-remont-poshkodzhenogo-zhitla-v-diyi-u-zastosunku-dostupna-programa-yevidnovlennya>, accessed 23 June 2023.

³⁹⁴ Due to the actions of the invader, in certain zones or locations, Ukrainian TV and radio signals were not available, but when mobile data was available through Starlink or other possibilities, Ukrainians still could get live information about the situation.

participating.³⁹⁵ Currently over 19.2 million Ukrainians use the Diia app, and the daily number of users is about 1.5 million.

The Diia Portal is a centralised website that offers information about fully mature public services grouped by topics or life events to facilitate findability. Some services which are better suited for bigger screens are developed in the portal and not in the app. However, the Diia Portal and the Diia App are complementary, as the e-signature of the Diia mobile application can be used to sign electronic documents in the Diia Portal.

The Diia Portal also has a specialised section providing services for small and medium-sized businesses. Finally, the number of services fully matured in Diia expanded from 50 in December 2020³⁹⁶ to 72 in 2022³⁹⁷. Ukraine's position on the United Nations E-Government Development Index kept rising, from 82nd (out of 193 countries) in 2018, to 69th in 2020 and 46th in 2022³⁹⁸ (Figure 41). According to a 2023 survey by the United Nations Development Programme (UNDP), usage of the Diia app and portal has increased fourfold in three years, from 13% of respondents having used Diia in 2020 to 30% in 2021 and 51.6% in 2022.³⁹⁹

³⁹⁵ The consultation about keeping or removing 8 March as a national bank holiday received 2 138 838 votes, and the consultation about moving the dates of the Christmas Holidays received 1 531 253 votes.

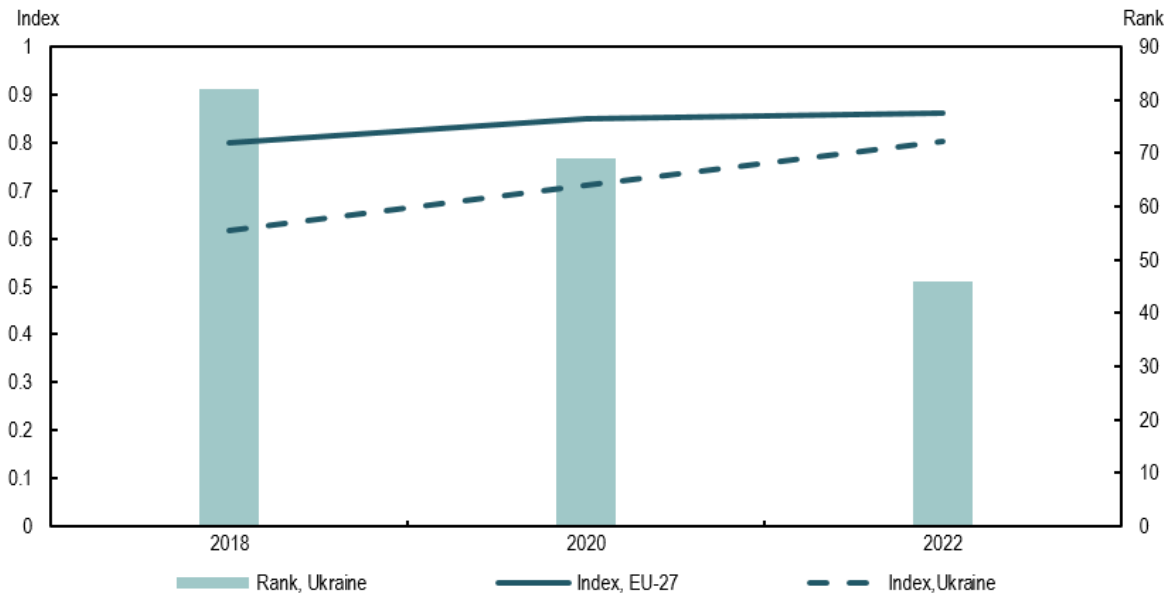
³⁹⁶ Website of the Ministry of Digital Transformation: <https://thedigital.gov.ua/news/mikhaylo-fedorov-prezentuvav-100-peremog-mintsifri-za-2020-rik-ta-anonsuvav-masshtabni-natsionalni-proekti>

³⁹⁷ Data provided by the Ministry of Digital Transformation on 26 July 2023.

³⁹⁸ UN E-Government Knowledgebase, Ukraine, <https://publicadministration.un.org/egovkb/en-us/Data/Country-Information/id/180-Ukraine>.

³⁹⁹ Website of the UNDP Ukraine press releases: [https://www.undp.org/ukraine/press-releases/63-ukrainians-use-state-e-services-user-numbers-grow-third-year-row-survey#:~:text=Most%20respondents%20\(52%25\)%20used,up%20from%2030%25%20in%202021.](https://www.undp.org/ukraine/press-releases/63-ukrainians-use-state-e-services-user-numbers-grow-third-year-row-survey#:~:text=Most%20respondents%20(52%25)%20used,up%20from%2030%25%20in%202021.)

Figure 41. E-Government Development Index 2018-2022, Ukraine and EU-27



Source: The United Nations E-Government Development Index 2018, 2020, and 2022, The United Nations E-Government Development Database, <https://publicadministration.un.org/egovkb/en-us/Data-Center>, accessed 5 July 2023.

Regarding physical services, user-centricity has also improved. The network of ASCs has been expanded. The simplification of 15 administrative services which was still in design phase in 2018 is now a reality, and the Government also simplified more services in 2019, 2020 and 2021. For example, registration of imported vehicles can be done in the ASCs. Importers no longer need to hand the customs declaration and proof of payment taxes to the registrar, as interoperability allows the registrar to check this information.⁴⁰⁰ The same is true for reregistration of second-hand vehicles, where the public servant checks in the information system all information regarding taxes, fines, insurance or stolen vehicles. Thus, the seller and the owner only need to show their ID cards, while the purchase contract can be done in the public premises. Another example is the e-baby (*eMalyatko*⁴⁰¹) service, which integrates up to ten different administrative services for parents of a newborn child⁴⁰², or the ID-14 service, where natural persons aged 14 and over who apply for an ID card at the same time can also register at the tax office and obtain a taxpayer number using the same form.⁴⁰³

For businesses, the Government created the IWG⁴⁰⁴, to simplify procedures related to economic activity. Co-chaired by the MoE and the MDT, with seven additional members, the IWG, has held eight meetings

⁴⁰⁰ Resolution of the CMU No. 989 of 4 December 2019 and amended CMU Resolutions No. 1388 of 7 September 1998 and No. 260 of 25 March 2016.

⁴⁰¹ Resolution of the CMU No. 1166 of 27 December 2019.

⁴⁰² State birth registration and determination of the child's origin; registration of place of residence; appointment of assistance at the birth of a child; registration in the State Register of natural persons - taxpayers; determining whether a new-born child qualifies for Ukrainian citizenship; entering information about a newborn child into the Unified State Demographic Register with the assignment of a unique entry number in it, and other services.

⁴⁰³ Resolution of the CMU No. 691 of 10 July 2019.

⁴⁰⁴ Decision of the CMU No. 44 of 13 January 2023 on the establishment of the IWG on the Issues of Accelerated Review of Instruments of State Regulation of Economic Activity.

as of June 2023 and reviewed 671 regulations from 15 State authorities. For example, the IWG issued the recommendation to cancel 39 regulations from the MoE and digitise 38, and to cancel 61 from the Ministry of Environment and digitise 63. Furthermore, the IWG is also considering proposing a new piece of legislation to change the way the State supervises control of economic activities. They are shifting towards a risk-based regulation regime, where inspection resources are deployed to economic activities that pose a major risk of not complying with regulatory objectives, measured in terms of probability of occurrence and the size of impact.⁴⁰⁵ One example of simplification of business procedures is the re-engineering and digitalisation of the procedure for registering a business. Since 2019, entrepreneurs can declare their intention to register the legal entity as a value-added taxpayer during the application for state registration of a legal entity⁴⁰⁶, thus integrating two different procedures into one. Moreover, users of the Diia Portal can register a Limited Liability Company (LLC) based on a model charter online. In 2022, out of 19 317 LLC registrations, 4 220 (21.8 %) were registered on the basis of applications submitted electronically.

In 2022, physical facilities and communications infrastructure were damaged or occupied in many areas of the country. By May 2022, the quality of data transmission had decreased on average by 13% over fixed internet networks and by 26% over mobile networks⁴⁰⁷, and one out of five ASCs had been damaged or destroyed.⁴⁰⁸ Several risks potentially affected the integrity of basic registries, such as Russian hacker attacks, physical destruction of servers and other crucial equipment, or unauthorised access to data on occupied territories, as well as the risk of registration fraud due to lack of judicial supervision and effective enforcement agencies. From the demand side, the invasion also brought pressures to public services. During the first weeks, many citizens had to abandon their homes and settle abroad or in a different part of Ukraine, becoming internally displaced persons needing a range of support services from the state.

Despite both demand- and supply-side shocks to the service delivery system, the Ukrainian public administration has been able to restore services rapidly and adopt and implement new regulations and new services to react to the new needs of the population.

Conclusion

The Government continues working towards the implementation of a citizen-oriented service delivery policy and culture. Digitalisation of documents and services is now a reality, and it has contributed to reducing administrative burden for citizens and businesses. Simplification of physical services has also progressed, largely based on the possibilities offered by interoperability of registries. The network of ASCs has also expanded, ensuring physical accessibility to public services. During wartime, the Ukrainian service delivery system has proven to be resilient and agile and able to adapt to new circumstances and needs.

⁴⁰⁵ Information provided by the MoE on 14 June 2023.



⁴⁰⁶ Law No. 132-IX of September 20, 2019 on Amendments to Certain Legislative Acts of Ukraine to Stimulate Investment Activity in Ukraine.

⁴⁰⁷ OECD (2022), "Digitalisation for recovery in Ukraine", OECD Policy Responses: Ukraine, Tackling the policy challenges, <https://www.oecd.org/ukraine-hub/policy-responses/digitalisation-for-recovery-in-ukraine-c5477864/>.

⁴⁰⁸ Centre of Economic Recovery (2022): Policy briefs on Ukraine's recovery. Extended background analytics.

Principle 2: Good administration is a key policy objective underpinning the delivery of public service, enacted in legislation and applied consistently in practice.

Overall, the value of the indicator “Fairness and efficiency of administrative procedures” is 4 in both 2021 and 2023, which represents a major improvement compared to 2018. The hallmark of this progress is the LAP⁴⁰⁹, which ensures compliance with the right to good administration, guaranteeing the right of citizens to have their affairs dealt with impartially, fairly and equally.

Indicator 5.2.1. 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.							
2023 indicator value	0	1	2	3	4	5	
Trend 2018-2021 	Trend 2021-2023 	Points			2018	2021	2023
Legal framework for administrative procedure							
1. Existence of legislation on administrative procedures of general application				0/3	3/3	3/3	
2. Adequacy of law(s) on administrative procedures to ensure good administration				1/7	7/7	7/7	
Fairness and efficiency of administrative procedures							
3. Perceived efficiency of administrative procedures in public institutions by the population (%)				1/4	Not available	3/4 ⁴¹⁰	
4. Repeals of, or changes to, decisions of administrative bodies made by the administrative courts (%)				0/4*	0/4*	0/4*	
Total				2/18	10/14	13/18	

Notes: ** Data not available or not provided. Not available= A survey was not conducted in 2021. 2. The point conversion range for 2021 has therefore been proportionally adjusted to the new maximum possible points: Point conversion ranges: 0-0=1, 3-5=1, 6-7=2, 8-10=3, 11-12=4, 13-14=5. More information about the point conversion ranges can be found in the Methodology section.

The new LAP was finally adopted by the Parliament and signed by the President on 17 February 2022, just a week before the war began. It was the culmination of a long legislative process to ensure that fairness and procedural rights and guarantees govern all administrative procedures in Ukraine.

⁴⁰⁹ The Law on Administrative Procedure was initially passed in the Verkhovna Rada on 16 November 2021. After the proposals of the President, it was finally adopted by the Parliament and signed by the President on 17 February 2022, just before the war started. It was published in the Official Gazette on 16 June 2022. This Law will take effect on 15 December 2023, with the exception of the obligations of the CMU to submit proposals of legislative acts to the Parliament and to adopt the necessary sub-legal acts in order to bring all administrative procedures in compliance with this Law, both of which took effect the day after its publication.

⁴¹⁰ Changes in social survey responses about the efficiency of administrative procedures in 2023 cannot directly be interpreted as changes in the efficiency of administrative procedures since 2018, due to the situation created by the unjustified Russian large-scale war of aggression against Ukraine.

The LAP explicitly includes all principles composing the right to good administration. Indeed, its formulation complies with the procedural safeguards established in democratic countries for citizens in dealing with public authorities, and with the standards established by the Jurisprudence of the European Court of Justice in defining the principle of good administration. Moreover, the new LAP also unifies legal concepts and rules, reducing the burden for citizens and businesses of navigating through a myriad of regulations. The LAP applies to relations between public authorities and natural and legal persons with regard to consideration and resolving administrative cases by adoption and execution of administrative acts. The LAP has a subsidiary character, as special legislation may regulate certain categories of administrative cases differently. However, these special regulations must comply with the principles of good administration set out by the LAP. Therefore, it is important that the scope of application of the LAP is kept general and comprehensive, to guarantee that special legislation respects the principles of good administration.

The LAP is an important milestone, but harmonisation of special legislation and sub-legal acts is key to correct implementation to ensure that citizens and businesses of Ukraine enjoy the level of protection guaranteed by the LAP without needing to initiate an administrative dispute.

The authorities have started harmonising existing regulations with the requirements of the LAP. First, in early 2023, the Government installed a commission co-chaired by the Secretariat of the CMU and the MoJ.⁴¹¹ The commission comprises 35 members, roughly half from outside the executive and a quarter from international organisations, including the OECD⁴¹² and different EU programmes and missions. Ukrainian civil society and public universities are also represented.

Second, an initial list of 134 regulations to be harmonised was established. The MoE, whose inventory comprises 20 regulations⁴¹³, champions the list. In March 2023, a plan was presented to include the first batch for harmonisation of 24 special pieces of legislation in an omnibus law.

Finally, the Higher School of Public Governance⁴¹⁴ has implemented a comprehensive training programme for this process. As of May 2023, 34 trainers (of whom 12 are civil servants) have been certified in administrative procedures and 555 civil servants (from central and local government including State labour specialists, judges and specialised agencies) upgraded their qualifications in this area.⁴¹⁵ The results of the LAP harmonisation remain to be seen, as implementation is still pending.

Regarding the regulations of the three special administrative procedures analysed for this report (requesting public information, registering a business and obtaining a commercial construction permit), none of them present limitations regarding the right to be heard, the right to access the files, the right to receive a motivated decision (both regarding the facts and the legal basis) and the right to an effective remedy. The mandatory character of the principles of good administration recognised by the LAP guarantees that all these procedures will comply with the basic rights and safeguards of citizens and businesses when dealing with public authorities. Of course, harmonisation of sub-legal acts and administrative practice is a key requirement not only for these three procedures, but for all special administrative procedures.

The right to good administration is not at odds with the simplification and digitalisation of public services. In fact, there are many synergies between the two. The LAP unifies deadlines, concepts, and procedural steps, which is very useful for simplifying and standardising administrative services. Digitalisation allows for a more efficient way to implement people's rights in their relationship with the administration, such as

⁴¹¹ Order of the State Secretary of the CMU of 7 February 2023 on the creation of the Working Group for the preparation of proposals for the implementation of the LAP.

⁴¹² Represented by the SIGMA Programme.

⁴¹³ The list was sent by letter by the Deputy State Secretary of the CMU following the mandate of the Decision by the Prime Minister of Ukraine, No. 14838/37/1-22 of 2 March 2023.

⁴¹⁴ Website of the Higher School of Public Governance: <https://hs.gov.ua/en/>.

⁴¹⁵ Information provided by the NAPA on 12 June 2023.



the right to access files, submit allegations and avoid having to send information already in possession of the administration. Therefore, it is recommended that the Government develop guidelines or methodologies that ensure that all digital services align with the principles, rights and procedural guarantees of the new LAP.

Conclusion

A major novelty in the legal system, the LAP was approved and published, and it will start to be applied on 15 December 2023. It enshrines all standards and safeguards needed to ensure the right to good administration. Harmonisation of sector laws with the LAP and other measures to ensure effective implementation is underway.

Principle 3: Mechanisms for ensuring the quality of public service are in place.

Overall, the value of the indicator “Existence of enablers for public service delivery” is 5. This represents considerable progress compared to 2018. The key driver of service quality enhancement is the interoperability of registers and data exchange, which is being used to simplify both front-end forms and back-end processes.

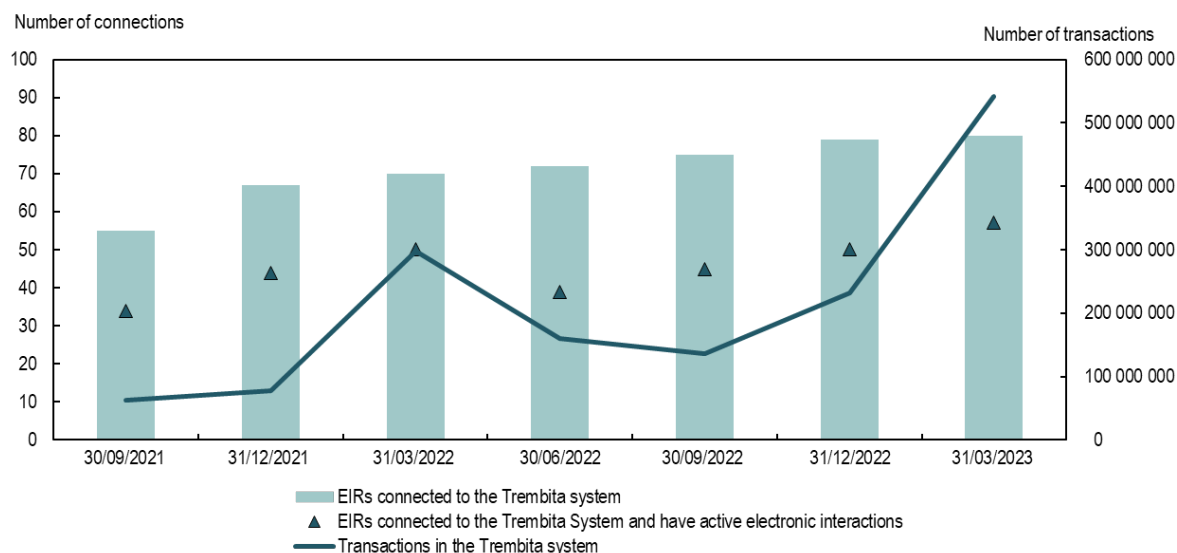
Indicator 5.3.1. Existence of enablers for public service delivery						
The indicator measures the extent to which citizen-oriented service delivery is facilitated by enabling tools and technologies, such as public service inventories, interoperability frameworks, digital signatures and user feedback mechanisms. It evaluates how effective the central government is in establishing and using these tools and technologies to improve the design and delivery of public services.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
Central and shared mechanisms to better enable public service provision are in place						
1. Central monitoring of service delivery performance			1/3	2/3*	2/3	
2. Adequacy of interoperability infrastructure			0.5/3	3/3	3/3	
3. Existence of common standards for public service delivery			1/3	3/3	3/3	
4. Legal recognition and affordability of electronic signatures			2/3	3/3	3/3	
Performance of central and shared mechanisms for public service delivery						
5. Use of quality-management tools and techniques			0/4*	3/4	3/4	
6. Adoption of user engagement tools and techniques			1/4	3/4	3/4	
7. Interoperability of basic registers			1.5/4	4/4	4/4	
Total			7/24	21/24	21/24	

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

The electronic interactions of the State main data registers (population, vehicles, land, businesses), technically known as Electronic Information Resources (EIRs), are accomplished through the Ukrainian

interoperability system⁴¹⁶, the Trembita system.⁴¹⁷ The growth of the system is steady, despite a downturn during the first nine months of the war (Figure 42). Between September 2021 and March 2023, the number of EIRs connected to the Trembita system grew from 55 to 80, and the share of those with active electronic interactions went up from 60% to 71%. This translates into an upward evolution of digital transactions from 62.7 million in the third quarter of 2021 to 541.3 million in the first quarter of 2023.

Figure 42. Implementation of the Trembita system, 30 September 2021 to 31 March 2023



Source: Data based on EU4DIGITALUA, March 2023^[2] and EU4PAR, December 2021^[3], <https://eufordigital.eu/discover-eu/eu4digitalua/>

Moreover, the Ukrainian results for the monitoring of the implementation of interoperability layers of the European Interoperability framework (Scoreboard 2) show excellent performance, with a maximum score of 4/4 for every interoperability layer.⁴¹⁸ The legal principle of supplying information “once only” is not only in place in legislation⁴¹⁹, but is also being applied in several services, where citizens are no longer required to bring documents to accredit information that is already in public registers and databases. Moreover, Diia online forms have been streamlined, reducing the number of fields that have to be filled by citizens and business, either eliminating these fields on the forms or pre-filling the information.

Regarding electronic signature, in May 2023, Ukraine became the first non-EU country to be included in the EU’s trusted list. Therefore, the Ukrainian qualified electronic signatures issued by Ukrainian qualified trust service providers are recognised as advanced electronic signatures. according to the electronic

⁴¹⁶ Decision of the CMU No. 606 of 8 September 2016 and last amended on 23 June 2021. Access is at: <https://se.diia.gov.ua/trembita>.

⁴¹⁷ The Trembita system was approved by Decision of the CMU No. 606 of 8 September 2016 on Some issues of electronic interaction of electronic information resources.

⁴¹⁸ European Commission (2022), *Digital Public Administration Factsheet 2022: Ukraine*, p. 6, <https://joinup.ec.europa.eu/collection/nifo-national-interoperability-framework-observatory/digital-public-administration-factsheets-2022>.

⁴¹⁹ Law on administrative services No. 32, last amended on 22 September 2021, Articles 7 and 9.

Identification, Authentication and Trust Services (eIDAS) Regulation.⁴²⁰ As a result, Ukrainian electronic signatures can be verified and confirmed in EU countries.⁴²¹

Regarding service quality, regulations were adopted to assign responsibilities for monitoring service performance to the MDT⁴²², to establish the methodology for monitoring the quality of public services⁴²³, and to adopt common standards for public service delivery.⁴²⁴ The authorities have provided assistance on how to apply these new regulatory responsibilities through YouTube webinars⁴²⁵ and online courses⁴²⁶, handbooks by the MDT and partners⁴²⁷, and support from the association of centres for the provision of administrative services.⁴²⁸

The use of quality management tools, such as those from the International Organization for Standardization, the European Foundation for Quality Management and the Common Assessment Framework (CAF), has improved but is still limited. CMU Order No. 1646 of 28 December 2020⁴²⁹ established the obligation for all Heads of Central Executive Bodies to conduct an inspection of the quality management system of the authority. Based on the results of this inspection, an action plan for improving the quality management system was to be approved. In order to fulfil this task, and working groups were created in the central authorities of executive power. The Center for Adaptation of the Civil Service to the Standards of the European Union, the country resource centre and a net promoter of CAF and quality management tools in general, provided training in CAF and quality management for members of these working groups, jointly with the Higher School of Public Governance (training 538 civil servants in 2021). Moreover, the Center for Adaptation has also developed an online course “Improving the efficiency and quality of management in the field of public administration and local self-government by applying the model of the Common Assessment Framework (CAF)”

While the use of user-engagement tools and techniques in the institutions sampled for this report is limited (about 50% of the sampled institutions used conventional tools to gather citizens’ views about their services in the year previous to the assessment), the MDT is monitoring public perception of their digital services, not only through the Diia App or Portal, but also through a general population survey in collaboration with the UNDP in Ukraine, which showed that 79% of respondents who used public electronic services consider their experience rather positive or very positive. The MDT is also conducting user-satisfaction surveys for users of the ASCs through a digital app. The results are publicly available in a Dashboard.⁴³⁰

⁴²⁰ eIDAS, <https://digital-strategy.ec.europa.eu/en/policies/discover-eidas>.

⁴²¹ “European integration in digital space is getting closer: Ukrainian e-signatures to be allowed for use in the European Union”, <https://eu4digitalua.eu/en/news/european-integration-in-digital-space-is-getting-closer-ukrainian-e-signatures-to-be-allowed-for-use-in-the-european-union/>.

⁴²² Decision of the CMU No. 864 of 11 August 2021, Article 2, Paragraph 6.

⁴²³ Decision of the MDT No. 145 of 11 November 2021.

⁴²⁴ Decision of the MDT No. 173 of 10 October 2021.

⁴²⁵ Available at: <https://www.youtube.com/playlist?list=PLt69WrKGvnb7V3B4K2kCDihsRIT4Rjcp1>.

⁴²⁶ Available at: <https://courses.prosto.in.ua/courses/use-shcho-treba-znaty-dlia-roboty-v-tsnap>.

⁴²⁷ Available at: <https://prosto.in.ua/ua/biblioteka/posibnyky>.

⁴²⁸ Publications of the All-Ukrainian Association of Centers for the Provision of Administrative Services: <https://kyivcnap.gov.ua/Content/dovidnyk.pdf>, <https://kyivcnap.gov.ua/Content/Kodeks.pdf>.

⁴²⁹ Ordinance of the CMU No. 1646-p of 28 December 2020 on tasks and key indicators of effectiveness, efficiency and quality of official activity of civil servants holding positions of heads of central executive bodies for 2021



⁴³⁰ Available at the Diia website: <https://center.diia.gov.ua/dasbord-iz-rezultatami-ocinki-rivna-zadovolenosti-vidviduvaciv-akistu-adminposlug-v-centrah>.

Conclusion

The enablers of service delivery are in place. A key driver of the enhanced performance is the consolidation of an interoperability framework. Electronic databases and registers are connected, and interactions and transactions are growing steadily. Electronic identity and electronic signature are in place and user-friendly. User-satisfaction surveys are broadly used for online services and for ASCs.

Principle 4: The accessibility of public services is ensured.

Overall, the value of the indicator “Accessibility of public services” is 4, which represents substantial progress compared to 2018. Accessibility has improved through the expansion and strengthening of the network of ASCs and the adoption of a policy framework for users with special needs.

Indicator 5.4.1. Accessibility of public services						
The 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 citizens' 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.						
2023 indicator value	0	1	2	3	4	5
Trend 2018-2021 	Trend 2021-2023 		Points			
			2018	2021	2023	
Policy framework for accessibility						
1. Existence of policy for the accessibility of public services			3/3	3/3	3/3	
2. Availability of statistical data on accessibility to public services			2/3	3/3	3/3	
3. Adequacy of policy framework for public service users with special needs			1/4	3/4	3/4	
4. Existence of common guidelines for government websites			1/2	2/2	2/2	
Government performance on accessibility						
5. Compliance of government websites with Web Content Accessibility Guidelines (WCAG)			0/3	0/3	0/3	
6. Perceived satisfaction with public services across the territory by the population (%)			1/3	Not available	2/3	
7. Perceived accessibility of digital public services by the population (%)			2/3	Not available	3/3	
8. Perceived time and cost of accessing public services by the population (%)			0/3	Not available	3/3	
Total			10/24	11/15	19/24	

Notes: Not available= A survey was not conducted in 2021. The point conversion range has therefore been modified by removing the survey-related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The number of maximum possible points is therefore 15 rather than 24. Point conversion ranges: 0-2=0, 3-4=1, 5-6=2, 7-8=3, 9-10=4, 11-12=5. More information about the point conversion ranges can be found in the Methodology section.

One of the cornerstones of the expansion of the territorial accessibility of public services is the development of the network of ASCs, regarding both the number of centres and the number of services that are provided in such centres.

Table 3. Evolution of Administrative Service Centers, 2020-2023

Year	2020	2021	2022	2023 (April) % of ASCs destroyed by war and unusable
ASC	882	1 055	1 110	2.66%
Territorial units	59	124	131	2.27%
Remote workplaces	356	1 713	2 082	1.71%
Mobile ASCs	15	28	29	13.79%

Source: 1. Data provided by the Ministry of Digital Transformation as of 31 December for 2020, 2021 and 2022, but as of April for 2023.

The front-office locations are supported by territorial units and the remote workplaces of local self-government administrations. Under the decentralisation reform, each of the 1 470 municipalities was supposed to have its own ASC by a specific date, depending on its status.⁴³¹ The list of state administrative services, determined by CMU Order No. 523, includes 410 services.⁴³² The number of state administrative services delivered by each ASC depends on its category: ASCs in Kyiv city should deliver 397 services; ASCs in cities of oblast significance (regional administrations) should deliver up to 390; ASCs in district centres should deliver 345; ASCs in other municipalities should deliver 182; and visitors to territorial divisions and remote workplaces should be able to access 75.

ASCs have proven to be a key element of the resilience of Ukraine's service delivery system during Russia's war of aggression. In fact, ASCs have not only continued to provide their habitual services but have expanded their portfolios to cover the new needs of citizens, including services for internally displaced people and humanitarian assistance. Similarly, Ukrainian authorities have shown resilience by using mobile units to provide ASCs in territories where they were the only solution to deliver such services.

Accessibility, findability and navigability of electronic services in the Diia Portal are good. Services are clustered following a mixed approach of "life events" for citizens (e.g. I had a child, I plan to buy a home) and businesses (e.g. I plan to engage in agricultural activities) on one hand and traditional departmental boundaries (e.g. Agriculture, Transport) on the other. Accessibility to digital services is promoted by offering the possibility to log into the Diia App using the bank identification system. That means that anyone who has online banking in Ukraine can easily download Diia and start using electronic services, electronic documents and electronic signature.

In 2022, the Government established mandatory Web Content Accessibility Guidelines (WCAG) for government websites⁴³³, which represents another positive change. WCAG compliance in the sample of all ministerial departments and the websites of ten agencies shows steady results since 2018: the average number of errors was 45 in 2018 and 42 in 2023.

⁴³¹ By 1 January 2022, if the municipality was the administrative centre of its district on 1 January 2020, regardless of the number of residents; by 1 January 2023, if the municipality has more than 10 000 residents; and by 1 January 2024, for municipalities with fewer than 10 000 residents, provided that they receive financial support for this purpose from the State Budget.

⁴³² Order of the CMU No. 523 of 16 May 2014.

⁴³³ Decision of the CMU No. 3 of 4 January 2022 on the procedure for publishing information on the activities of executive authorities on the Internet.

However, other methodologies for assessing accessibility of websites, such as the analysis of 100 government web resources carried out by the UNDP, shows that the number of websites with average or above-average basic accessibility went up from 61% in 2021 to 73% at the beginning of 2023.⁴³⁴ Moreover, the Diia portal introduced a new section in December 2022, Diia.Barrier-free⁴³⁵, focusing on accessibility, showing the policy commitment to offer digital services accessible to everyone.

Conclusion

The accessibility of services has improved substantially. This is mostly due to the expansion of the network of territorial ASCs for physical services. The Diia portal and the Diia App are also playing an important role in service accessibility, as the hub for easy access to digital public services. Although the number of services available as fully digital is still limited, the pace of incorporation and the increase of the take-up ratio is very fast. The portal is comprehensive in terms of accessibility to information and user-friendliness.

⁴³⁴ “Government websites increasing the level of their web accessibility, UNDP study finds”, <https://www.undp.org/ukraine/press-releases/government-websites-increasing-level-their-web-accessibility-undp-study-finds>.

⁴³⁵ “Diia portal gains new section – Diia.Barrier-free”, <https://www.undp.org/ukraine/press-releases/diia-portal-gains-new-section-diiabarrier-free>.

Public financial management

The Principles of Public Administration

Budget management

-
- Principle 1** The government publishes a medium-term budgetary framework on a general government basis that is founded on credible forecasts and covers a minimum period of three years; all budget organisations operate within it.
- Principle 2** The budget is formulated in line with the national legal framework, with comprehensive spending appropriations that are consistent with the medium-term budgetary framework and are observed.
- Principle 3** The ministry of finance (or authorised central treasury authority) centrally controls disbursement of funds from the treasury single account and ensures cash liquidity.
- Principle 4** There is a clear debt management strategy in place and implemented so that the country's overall debt target is respected and debt servicing costs are kept under control.
- Principle 5** Transparent budget reporting and scrutiny are ensured.

Internal audit and control

-
- Principle 6** The operational framework for internal control defines responsibilities and powers, and its application by the budget organisations is consistent with the legislation governing public financial management and the public administration in general.
- Principle 7** Each public organisation implements internal control in line with the overall internal control policy.
- Principle 8** The operational framework for internal audit reflects international standards, and its application by the budget organisations is consistent with the legislation governing public administration and public financial management in general.
- Principle 9** Each public organisation implements internal audit in line with the overall internal audit policy documents, as appropriate to the organisation.

Public procurement

-
- Principle 10** Public procurement regulations (including public private partnerships and concessions) are aligned with the European Union *acquis*, include additional areas not covered by the *acquis*, are harmonised with corresponding regulations in other fields, and are duly enforced.
- Principle 11** There is central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.
- Principle 12** The remedies system is aligned with the European Union *acquis* standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.
- Principle 13** Public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring the most efficient use of public funds and making best use of modern procurement techniques and methods.
- Principle 14** Contracting authorities and entities have the appropriate capacities and practical guidelines and tools to ensure professional management of the full procurement cycle.

External audit

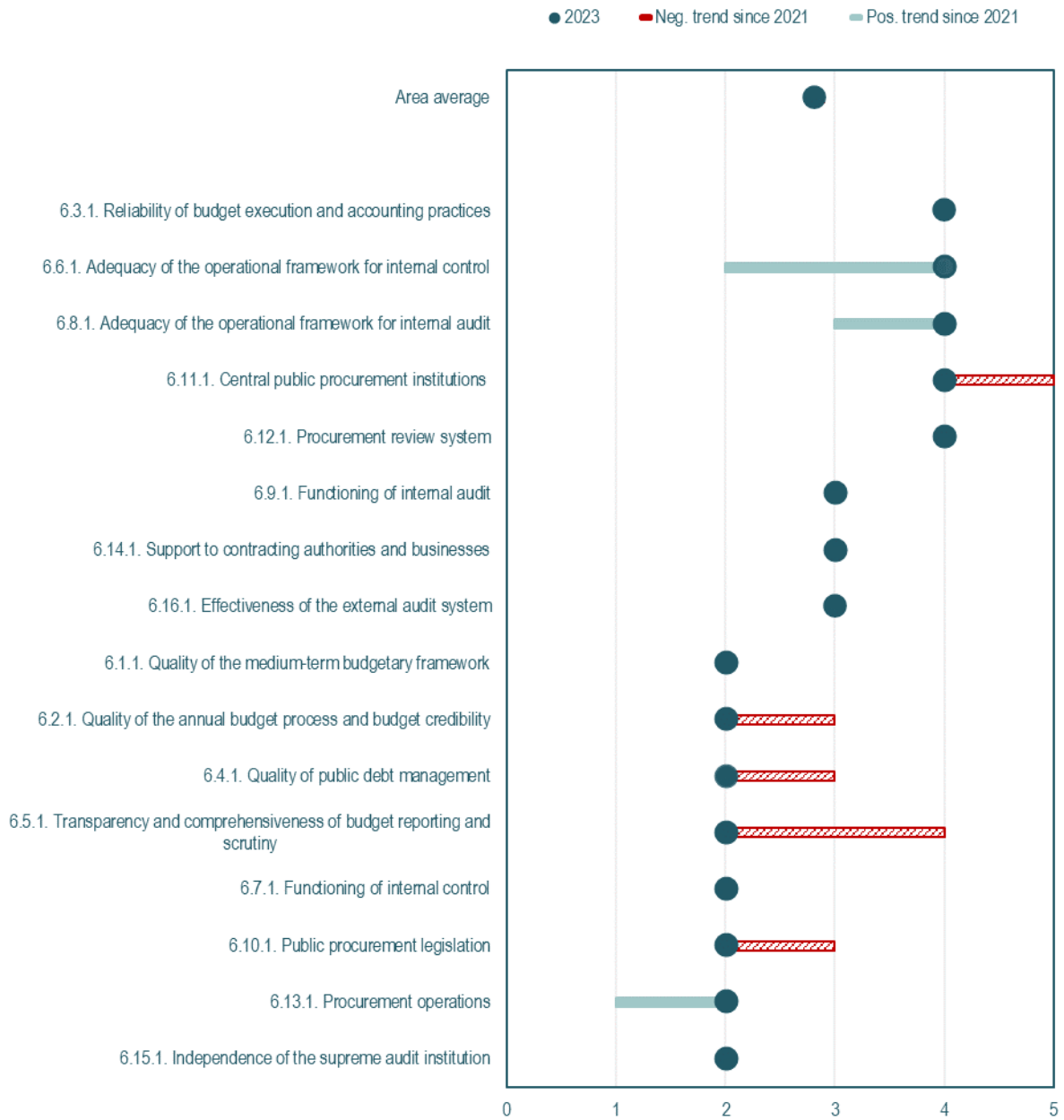
-
- Principle 15** The independence, mandate and organisation of the supreme audit institution are established, protected by the constitutional and legal frameworks and respected in practice.
- Principle 16** The supreme audit institution applies standards in a neutral and objective manner to ensure high quality audits, which positively impact on the functioning of the public sector.
-

Summary and recommendations

In 2018, SIGMA carried out a baseline measurement for Ukraine against the Principles of Public Administration that focused on five of the six areas of the Principles; public financial management (PFM) (including public procurement and external audit) was not part of that assessment. The implementation of the Public Finance Management System Reform (PFMSR) Strategy 2017-2020 had only begun in May 2017, and assessment of that area would therefore have been premature.

PFM in Ukraine improved in the period 2018-2021. The remaining challenges were included in the new PMFSR 2022-2025. However, Russia's large-scale war of aggression against Ukraine forced the government to introduce extraordinary measures, suspend procedures and depart from fiscal rules. The war has a significant negative impact on PFM. However, the rules and procedures can be restored after the war. For fiscal consolidation, significant international support will be needed.

Figure 43. The overall indicator values per Principle in the area of public financial management



Note: The area average is a simple arithmetic mean of the sub-indicators. The sub-indicators are sorted from smallest to largest.
 Source: SIGMA elaboration based on the assessment data.

In the domain of budget preparation, **the quality of the medium-term budgetary framework (MTBF) has been improved** through the introduction of a clear legal framework for preparation, consideration, and approval of the MTBF, as well as the introduction of a new medium-term Budget Declaration since 2018. Budget preparation has also been improved through the addition of policy-based information, mainly related to non-financial performance to inform decision-making. The reform was interrupted in 2022 due to Russia's large-scale war against Ukraine, but the Ministry of Finance (MoF) is getting ready to renew the medium-term budgetary process in 2024.

However, **the credibility of medium-term revenue and expenditure plans in the MTBF remains low.** The difference between estimates and outturns for revenues was 8.2% in 2021 and 35.9% in 2022, and for expenditures it was 15.8% for 2021 and 93.3% for 2022. The existence of discrepancies is fully understandable in 2022 due to the ongoing war, but the high discrepancies in 2021 also signal issues with the credibility of budget planning. The Government has established clear quantitative fiscal rules and monitoring of fiscal risks, but an independent fiscal oversight body remains to be established.

The annual budget process is well established in key budget legislation to foster budget discipline, with an orderly budget calendar that is adhered to. The war has not affected it substantially. The role of the Parliament in scrutinising and approving draft budgets is enforced. However, the credibility of revenue and expenditure plans in the annual budget remains weak. Furthermore, there are some issues that need attention, such as the high number of key spending units (KSUs).

The treasury function in Ukraine operates effectively and will be further improved with more accurate cash flow forecasts based on estimates from budget organisations, on the basis of the new rules approved by the Cabinet of Ministers of Ukraine (CMU). **Public debt management is facing challenges as a consequence of the war**, but the level of public debt remains below the average of EU Member States. Institutional arrangements for public debt management are yet to be completed, transferring the core borrowing function from the MoF to the newly established State Debt Agency. As part of the EU Macro-Financial assistance and the Extended Fund Facility of the International Monetary Fund (IMF), Ukraine receives loans to ensure its macro-financial stability. These loans will have a substantial impact on the overall debt level and their overall management.

In-year and annual budget reporting is clearly defined in the legislation and well organised by the Government even in wartime, although with some interruptions and delays due to the current situation. However, there are issues related to the audit of financial statements of local governments in line with international standards. Furthermore, the Accounting Chamber does not issue an opinion on the consolidated annual financial statements of the Government of Ukraine. A positive aspect is that the MoF manages fiscal risks in accordance with good practice.

Ukrainian authorities have established a fairly complete legal and operational framework for internal control and internal audit, with many of the essential elements of a good public internal financial control system, such as the allocation of the budget to public sector managers and the coverage of different types of audit performed by the internal audits. The MoF provides guidance and performs active monitoring of internal control and internal audit development across the public sector.

Despite the completeness of the regulatory and operational framework, effective implementation of internal control in public sector entities still lags behind in some crucial areas, notably regarding delegated managerial accountability and risk management. Internal audit is widely implemented in the public sector and is in line with international standards, although there is room for improvement in the capacity of internal audit units and the quality of internal audit work. The State Audit Service (SAS) performs audit-type activities in addition to its financial inspection function, which could have an influence on the development of public internal financial control. The new PFMSR Strategy 2022-2025 aims to address these challenges.

While the independence of the Accounting Chamber of Ukraine (ACU) is established by the legislation, it is not sufficiently protected by the Constitution, which only mentions its role. Additionally, the financial independence of the Accounting Chamber when formulating budget requests is not ensured, as it follows the same procedure as the rest of the KSUs.

No mandatory audits are assigned to the ACU, including the audit on the annual financial statements of the Government, and its audit work is not fully in line with the International Standards of Supreme Audit Institutions (ISSAIs). Furthermore, its mandate overlaps to some extent with that of the SAS. Efforts are being made to implement a new methodology to improve the content and quality of the audit work. Co-operation and co-ordination with the relevant committees in the Parliament, the Verkhovna Rada of Ukraine (VRU), regarding audit reports, and particularly recommendations, does not follow a systematic approach.

Ukraine's public procurement system exhibits both strengths and weaknesses. There is strong institutional capacity, but there is still work to be done on legal harmonisation with the EU

acquis. The outbreak of the war led to amendments in the procurement legislation, providing some flexibility but also bringing uncertainty. The complaints review system is solid, and improvements have been made even during the war. The ProZorro e-procurement system is transparent and adaptable, although a significant portion of procurement still occurs outside the system. The focus on lowest price and local component requirements raises concerns. The war has impacted the number of competitive procedures, but efforts have been made to boost professionalisation.

The Public Procurement Law (PPL), adopted in 2015, with later amendments, includes several aspects of the EU *acquis*. However, significant amendments will be required to make it fully aligned with the EU Directives. The issues requiring further alignment include the scope (exclusions), procurement procedures and techniques, selection of economic operators and contract award. The PPL and practice of its implementation strongly prioritise contract award based on the lowest price only. The application of the local component requirement (added to the PPL in 2021) is not fully in line with the principle of equal treatment and potentially discriminates against EU companies (in procedures below the EU thresholds).

Legislation on concessions and public-private partnerships (PPPs) requires further alignment with the EU rules. The most notable inconsistencies include provisions favouring local companies and allowing preference for certain private partners.

After the outbreak of Russia's war against Ukraine in February 2022, the procurement legislation was significantly amended several times. Initially, the application of the PPL was partially suspended. As of October 2022, the procurement system under the martial law is regulated by Decree No. 1178, which provides for procurement procedures that are simplified and faster, but still competitive and transparent. Decree No. 1178 has been generally well received, due to the flexibilities it provides. However, the rules are sometimes unclear, open to different interpretations and too often modified.

The institutional framework for public procurement in Ukraine is in place. The Ministry of Economy (MoE) is responsible for policymaking, legislation and implementing the public procurement system. The MoE is recognised by the procurement community as a responsive and co-operative institution. The State Audit Service (SAS) controls the procurement procedures.

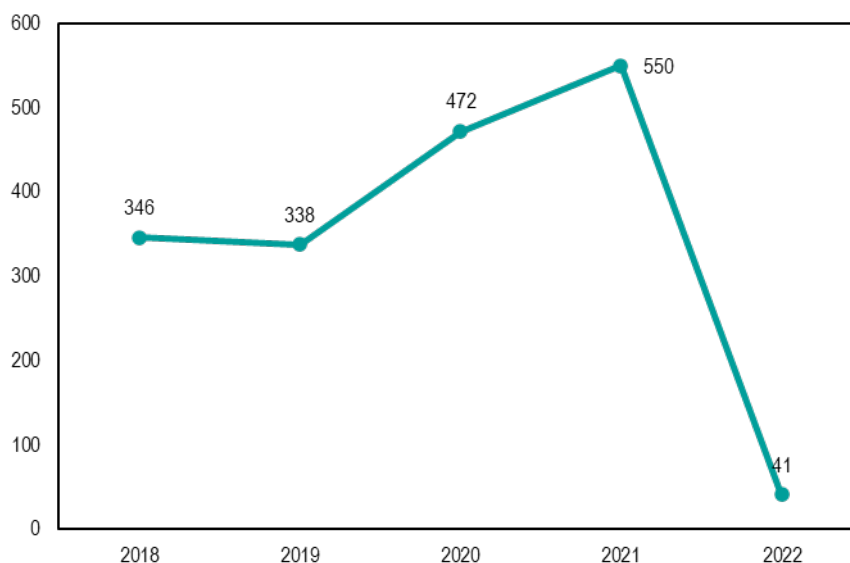
The Antimonopoly Committee of Ukraine (AMCU) is responsible for reviewing complaints in public procurement. Provisions on the procurement review process by the AMCU are largely in line with the EU *acquis*, but a significant portion of public procurement activities falls outside the jurisdiction of the AMCU. The review process is fully digitalised, but the method of publication of AMCU's decisions does not support user-friendly browsing and searching.

The ProZorro e-procurement system is transparent and user-friendly. During the martial law regime, the ProZorro system was quickly adjusted to develop and implement simplified functionalities, aligning with the new simplified procedures. However, more than one-third of the overall value of the procurement market takes place outside the ProZorro system.

In 2022, the total value of concluded contracts witnessed a significant decline of 36%, dropping to UAH 615 billion from UAH 964 billion in 2021. The number of competitive procedures decreased by 56% compared to 2021, and the level of competition (the average number of bids per tender) also declined, with a value of 1.86, compared to 2.06 in 2021.

In 2021-2022 a mass scale professionalisation project was implemented (more than 45 000 procurement officers were certified as "authorised persons"). The MoE, supported by the EU technical assistance project, continues to provide training on procurement and develop guidelines, manuals and commentaries.

Figure 44. Value of competitive procurement procedures (UAH billion), 2018-2022



Source: Annual reports of the MoE for 2018-2022.

Short-term recommendations (1-2 years)

1. The Government should initiate a process of reduction in the number of key spending units that are neither ministries nor constitutional bodies to reinforce the role of line ministries in the budget cycle and increase their responsibility for the sectors under their charge.
2. The Government should optimise the functioning of public sector auditing by addressing the capacity shortages for internal audit. It should clarify the role of the State Audit Service at methodological and practical levels and ensure that its activities are co-ordinated with those of other bodies and that its functioning does not hamper full development of internal audit.
3. The Government should adopt a multi-annual Public Procurement Strategy.
4. The Parliament should fully harmonise the Public Procurement Law with the EU *acquis*. The Ministry of Economy should conduct a comprehensive impact assessment of application of provisions on the local component requirement, assessing the costs and benefits and its compliance with the *acquis*.
5. The Government and the Parliament should ensure full independence of the ACU at all levels of the regulatory and operational frameworks, as well as its protection by the Supreme Court from any interference with its independence and mandate.

Medium-term recommendations (3-5 years)

6. The Government and the Parliament should ensure independent oversight of their budget plans and the enforcement of fiscal rules, for example by establishing an independent fiscal institution, such as a fiscal council.
7. The Government, the Parliament and the ACU should ensure that the execution of the state budget is audited annually and in accordance with international standards.
8. The responsible institutions should undertake a thorough analysis of the existing automatic risk-indicators system and implement necessary improvements.


9. The Ministry of Economy should facilitate the transition from the use of the price-only award criteria by leading an extensive awareness campaign, building capacity, and providing training for procurement officers to effectively implement non-price award criteria.
10. The Ministry of Economy and the e-procurement system administrator should enhance and modernise the publication of the decisions of the AMCU in the ProZorro system, enabling user-friendly and smart browsing of legal issues adjudicated by the AMCU.

Analysis

Budget management

Principle 1: The government publishes a medium-term budgetary framework on a general government basis that is founded on credible forecasts and covers a minimum period of three years; all budget organisations operate within it.

Overall, the value of the indicator “Quality of the medium-term budgetary framework” for 2023 is 2, the same as in 2021. Although the score is the same, Russia’s war against Ukraine has had a direct impact on this indicator. Elaboration of the Budget Declaration (BD), the key MTBF document, was suspended for 2022 and 2023, and the credibility of medium-term revenue plans has decreased.

Indicator 6.1.1. Quality of the medium-term budgetary framework						
This indicator measures how well the medium-term budgetary framework (MTBF) is established as a fiscal plan of the government, focusing on the process of budget preparation and four areas that influence the quality of the budget documents. A good MTBF should increase transparency in budget planning, contribute more credible forecasts and ultimately lead to a better general government budget balance.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
				2021	2023	
1. Strength of the medium-term budgetary framework				9/12	6/12	
2. Strength of the fiscal rules				2/5	4/5	
3. Credibility of medium-term revenue plans (%)				2/4	0/4	
4. Credibility of medium-term expenditure plans (%)				0/4	0/4	
Total				13/25	10/25	

Note: More information about the point conversion ranges can be found in the Methodology section.

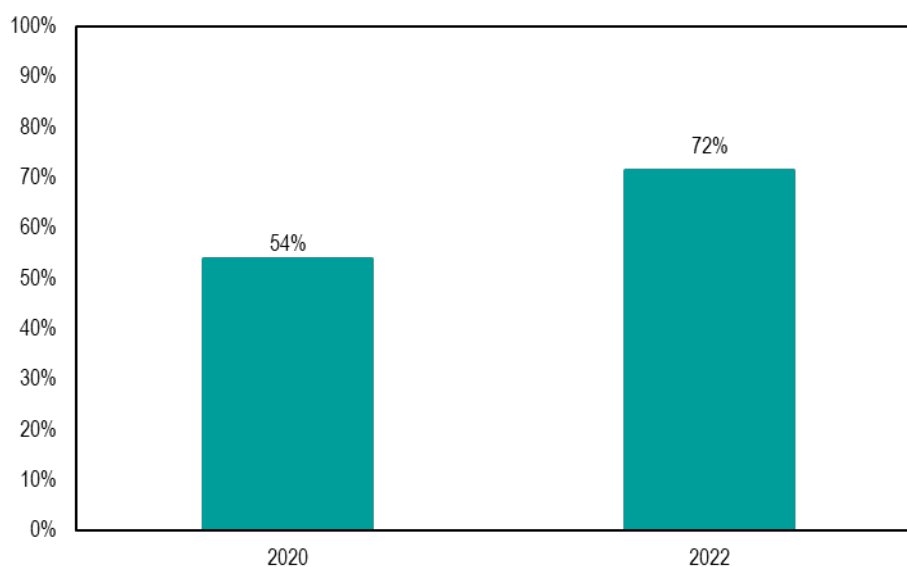
The Budget Code⁴³⁶ (BC) sets out the main rules for the MTBF. The Government made efforts to strengthen the budgetary process in 2018 through amendments to the BC and introduction of the BD as a fiscal strategy, indicating budget aggregates for three years. In 2021, the BD was approved on 31 May, and the budget requests by KSUs were submitted on 13 August. However, in 2022 and 2023, the BD was not prepared due to the war. Ceilings were communicated directly by the MoF to the KSUs on 11 August 2022, and budget requests were received on 18 August.

The BD includes the macroeconomic and fiscal framework, policy goals and objectives and state budget aggregates for the medium term. It is prepared on the basis of strategic activity plans of the institutions and should be approved by the Government by 1 June every year and submitted to the Parliament within three days. In turn, the Parliament discusses the MTBF and presents its opinion to the Government. The political process to discuss the MTBF is clearly defined in the Rules of Procedure (RoP) of the VRU and provides opportunities to enforce the medium-term budget planning. The BD includes a section on the relationship between local and state budgets, as well as a forecast of local budget revenues, but it lacks information on the expenditure side of local budgets.

⁴³⁶ Budget Code of Ukraine, Bulletin of the VRU, 2010, No 50-51, p. 572.

The amendments to the BC in 2018 included other improvements, such as the introduction of new requirements related to policy-based information (for example, expenditure ceilings for KSUs⁴³⁷ in the BD are accompanied by non-financial performance information⁴³⁸). The alignment of fiscal rules for the budget balance, public debt and guarantees with the Maastricht criteria⁴³⁹ is another positive development.⁴⁴⁰ However, due to the war, fiscal rules are temporarily suspended for the years 2022 and 2023. Furthermore, there is no oversight of the government fiscal plans by an independent institution, such as a fiscal council.

Figure 45.State debt outturn in relation to the fiscal rule, as a percentage of GDP in 2020 and 2022



Source: MoF data.

The credibility of medium-term revenue and expenditure plans remains low. The difference between the planned revenues in the BD 2020-2022 for 2021 and the outturn of 2021 was 8.2%. The difference between planned revenues in the BD 2020-2022 for 2022 and the outturn of 2022 was 35.9%.

The credibility of medium-term expenditure plans was also unsustainable, with a difference of 15.8% in 2021 and 93.3% in 2022. The BD has not been an accurate instrument for multi-year planning, due to the influence of the COVID-19 pandemic in 2021 and the ongoing war.

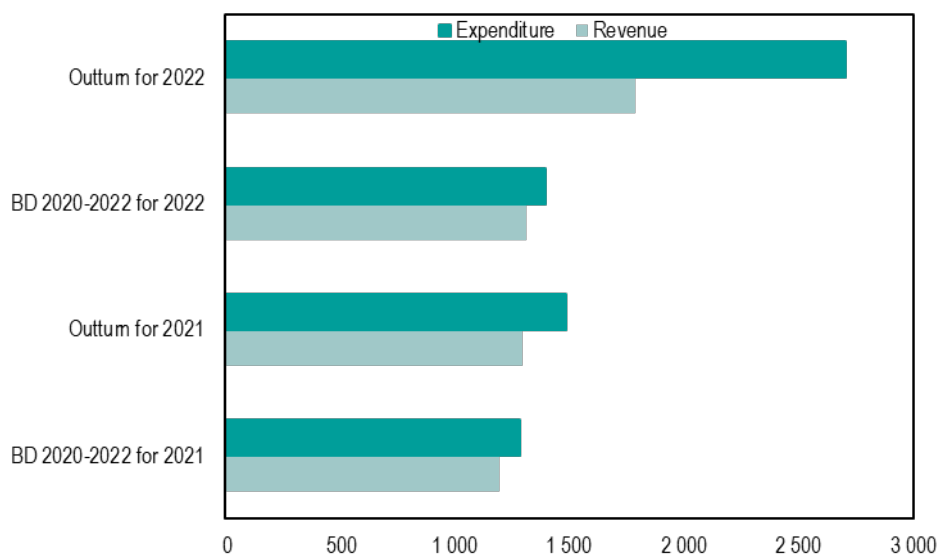
⁴³⁷ First-level budget organisations, according to the BC, Article 22.

⁴³⁸ Quantitative performance indicators, measurement of goals and objectives of budget institutions at medium-term.

⁴³⁹ Budget deficit below 3% of GDP, state debt and state guarantees below 60% of GDP and state guarantees below 3% of revenue of the state budget general fund.

⁴⁴⁰ BC, Chapter 3, Articles 14 and 18.

Figure 46. Differences between medium-term revenue and expenditure plans, UAH billion




Source: MoF budget data.

Conclusion

The legislative framework and practice in the medium-term budget framework had been strengthened before Russia's large-scale war of aggression. The reform was paused in 2022 when the war started. However, the MoF is getting ready to renew the medium-term budgetary process in 2024. The fiscal rules were aligned with the convergence criteria but are suspended during the war. Differences between medium-term revenue and expenditure plans and outturn were already significant before the war, and in 2022 they exploded due to the war.

Principle 2: The budget is formulated in line with the national legal framework, with comprehensive spending appropriations that are consistent with the medium-term budgetary framework and are observed.

Overall, the value of the indicator “Quality of the annual budget process and budget credibility” is 2, compared to 3 in 2021. The deterioration is a direct consequence of Russia’s war of aggression. The greatest negative impact on this indicator comes from the low credibility of revenue and expenditure plans in the annual budget, with substantial deviations between revenue and expenditure plans and outturns. Aggregate and sector ceilings of the MTBF have been exceeded as a consequence of the war, and it has also affected implementation of the budget calendar.

Indicator 6.2.1. Quality of the annual budget process and budget credibility						
This indicator analyses the process of budget preparation and the level of transparency and quality of the budget documents. Quality parameters include the link between the multi-annual and annual budget, the budget preparation process, selection of priorities for new expenditures, comprehensiveness and transparency of budget documentation, scrutiny and oversight of the budget proposal and rules for in-year budget adjustment.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
				2021	2023	
1. Operational alignment between the MTBF and the annual budget process				3/4	2/4	
2. Reliability of the budget calendar				4/4	3/4	
3. Transparency of the budget proposal before its adoption in parliament				6/8	6/8	
4. Quality in the budgeting of capital investment projects				3/5	3/5	
5. Parliamentary scrutiny of the annual budget				3/5	3/5	
6. Transparency and predictability of procedures for in-year budget adjustments				1/4	1/4*	
7. Credibility of revenue plans in the annual budget (%)				1/4	0/4	
8. Credibility of expenditure plans in the annual budget (%)				1/4	0/4	
Total				22/38	18/38	

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

The legal framework for annual budget preparation is well established in the BC, which also defines the inputs that spending units have to provide depending on their role in the process and the scope of the powers granted to them. Based on this, the BC⁴⁴¹ defines two types of bodies, main managers of budget funds (KSUs) and managers of budget funds at lower level. KSUs have wide competences regarding budget preparation and implementation, including co-ordination of the spending units at lower level, for which budget processes go through their respective KSU.⁴⁴²

⁴⁴¹ As defined by the BC, Article 22, paragraph 5.

⁴⁴² For example, the Ministry of Environmental Protection and Natural Resources is the KSU for its five subordinated bodies: State Agency of Forest Resources; State Environmental Inspection; State Agency for Management of the Exclusion Zone, State Geology and Subsoil Service; and State Agency of Water Resources. The Ministry of

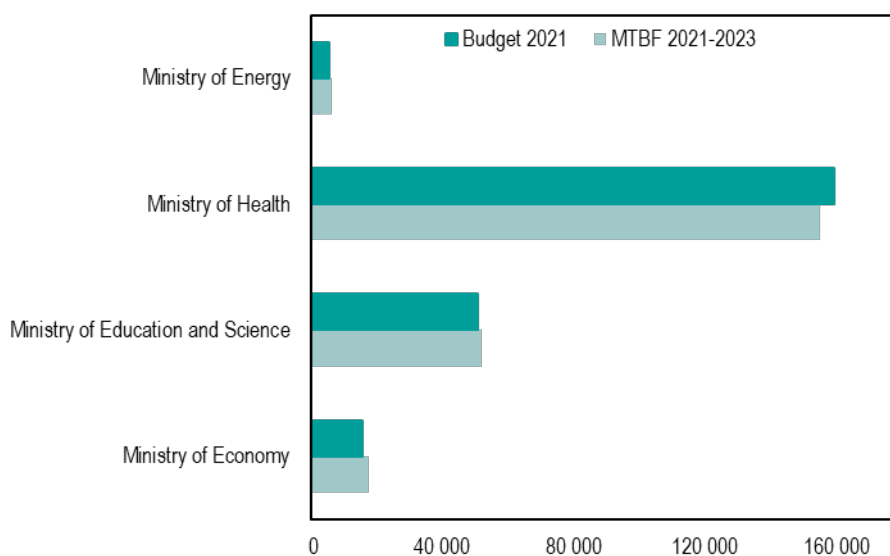
The KSUs in the state budget provide comprehensive inputs to both the MTBF and the annual budget. However, the number of KSUs is still high (85, including regional administrations) and could be optimised in the future.

The Government approves the ceilings for KSUs in the Annex to the BD, which since 2018 also provides non-financial information in terms of performance indicators for KSUs.

Operational alignment between the MTBF and the annual budget for 2021 was precise. Planned expenditure in the MTBF for 2021 was just under UAH 1.29 billion and the approved budget 2021 was just over UAH 1.3 billion, with a deviation of 0.27%. Due to the war, the deviations between the MTBF and the annual budget in 2022 increased. In the BD 2022-2024, aggregate expenditure has been established at UAH 1.39 billion for 2022, and the amount approved in the annual budget for 2022 at UAH 1.5 billion, with a deviation of 7.5%.

Institutional ceilings established in the MTBF are not sustainable for the annual budgets in war time; for randomly selected line ministries, deviations between the MTBF 2022-2024 and the annual budgets for 2021 and 2022 are higher than 2%. For example, expenditure deviations between the annual budget for 2022 and the MTBF 2022-2024 were 39% for the Ministry of Economy (MoE), 11.5% for the Ministry of Health and 20.1% for the Ministry of Energy. In 2021, for most of the ministries, the annual budget did not exceed the MTBF ceilings, except in the case of the Ministry of Health, where the deviation was 2.6%, showing the impact of the COVID-19 pandemic.

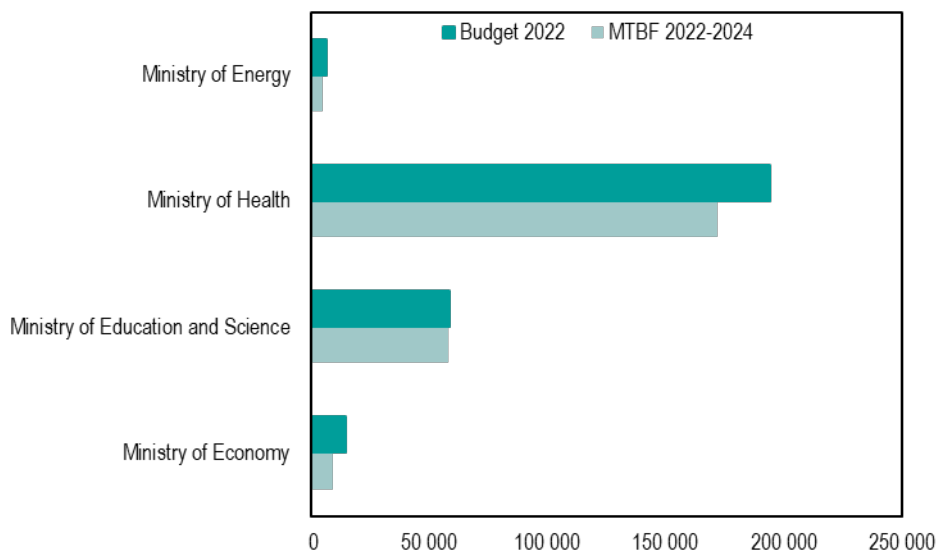
Figure 47. Discrepancy of ceilings for selected ministries in 2021, UAH million



Source: MoF budget data.

Economy is the KSU for its three subordinated bodies: State Service on Labor Issues; State Reserve Agency; and State Service of Export Control.

Figure 48. Discrepancy of ceilings for selected ministries in 2022, UAH million



Source: MoF budget data.

The budget calendar defined by the BC⁴⁴³ is reliable and respected by spending units. The time allocated for the preparation of their budget requests in 2021 was sufficient (2.5 months from the date of approval of the BD⁴⁴⁴). In 2022, the timing was affected by the war, as the spending units had only 14 days⁴⁴⁵, according to the budget circular, to prepare their budget requests.

The budget Classification, defined by the BC⁴⁴⁶, includes: 1) programme classification; 2) administrative classification; 3) functional classification broken down by sub-functions and groups, specifying state functions; and 4) economic expenditure classification. There is also a classification of budget financing by type of creditor and by type of debt obligation, as well as debt classification aimed to further specify debt obligations.

The budget documentation is comprehensive. It presents the links between the budget and the Government's policy objectives and includes non-performance financial information, but no data on long-term projections is provided.

Budgeting of capital investment projects remains an integral part of the annual budget preparation cycle as set out in the BC⁴⁴⁷, although management of capital investment is assigned to the MoE. The selection procedure and the criteria for the independent assessment of large investment projects, carried out by the MoE, are defined by secondary legislation.⁴⁴⁸ The outturn of capital investment in the annual budget fluctuates significantly: it was 144.4% in 2021 and 63.2% in 2022.

⁴⁴³ BC, Article 22.

⁴⁴⁴ From 31 May to 13 August 2021.

⁴⁴⁵ From 29 July to 12 August 2022.

⁴⁴⁶ BC, Article 10.

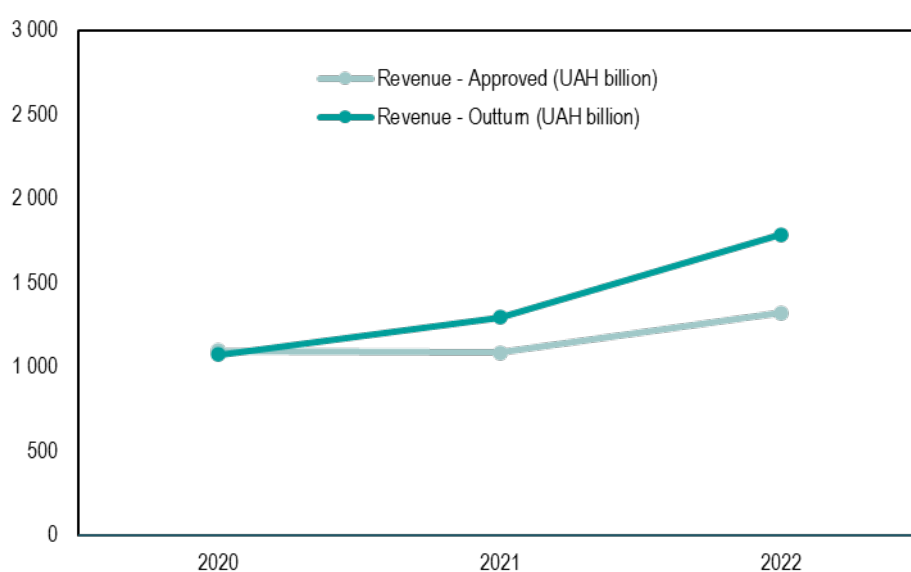
⁴⁴⁷ BC, Article 33.

⁴⁴⁸ Resolution of the CMU No. 571 of 22 July 2015 on issues of state investment project management; Resolution of the CMU No. 701 of 9 June 2011 on the procedure for conducting state expert evaluation of investment.

The role of the Parliament in scrutinising the annual budget is clearly defined and well developed. Obligations to discuss the BD and the annual draft budget are established in the BC and in the RoP of the VRU⁴⁴⁹. The number of budget amendments approved by the Parliament is very large, 10 in 2021 and 14 in 2022. There are clear rules for in-year budget adjustments, but no ceilings are established for those adjustments.

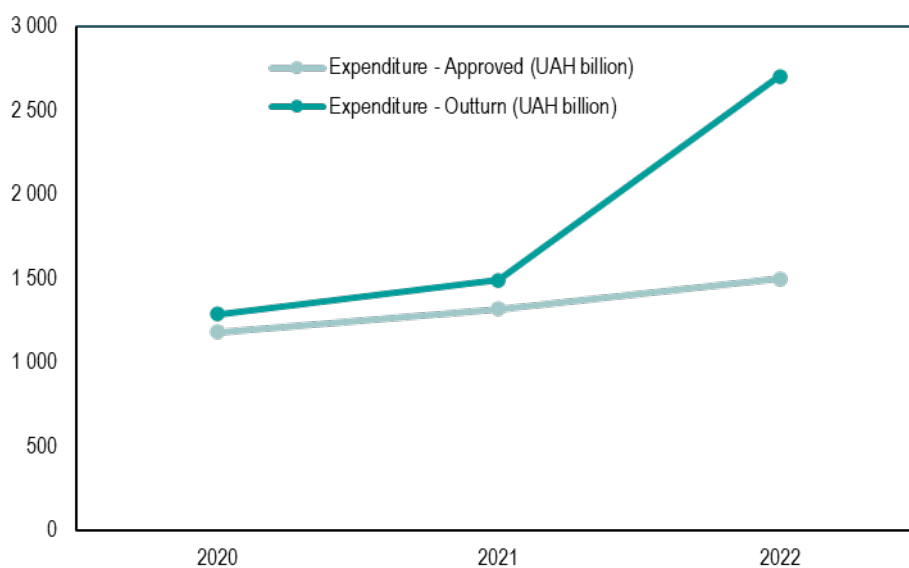
Differences between revenue and expenditure plans and outturns in the annual budget remained low in 2020. In 2021, the COVID-19 pandemic had an impact on the values and in 2022 they were substantially affected by the war. The difference between the planned revenue and outturn was 1.8% in 2020 and 16.5% in 2021. For expenditure, the difference between plan and outturn was 8.9% in 2020 and 12.9% in 2021. In 2022, the difference was 35% for revenues and 80.4% for expenditure, as shown in Figures 49 and 50.

Figure 49. Difference between approved and outturn revenue 2020-2022



Source: MoF budget data.

⁴⁴⁹ BC, Article 33 and Law on the RoP of the VRU, Section 1; Bulletin of the VRU, 2010, Nos. 14-15, Nos. 16-17, p.133, Article 152.

Figure 50. Difference between approved and outturn expenditure 2020-2022


Source: MoF budget data.

Conclusion

The war has not substantially affected the annual budgeting process. It is well established in legislation and fosters budget discipline. The role of the Parliament in scrutinising and approving draft budgets is enforced. However, the credibility of revenue and expenditure plans in the annual budget was weak before the war, and the discrepancies between the approved expenditures and outturn significantly increased in 2022 due to the war. The high number of KSUs needs to be addressed.

Principle 3: The ministry of finance (or authorised central treasury authority) centrally controls disbursement of funds from the treasury single account and ensures cash liquidity.

Overall, the value of the indicator “Reliability of budget execution and accounting practices” in 2023 is 4, the same as in 2021. This is indicative of the Treasury’s good performance in controlling the disbursement of public funds according to the sub-indicators in the principle and efforts to improve cash flow forecasting. The quality of the Treasury operations has not been affected by the war.

Indicator 6.3.1. Reliability of budget execution and accounting practices						
This indicator measures the quality of cash and commitment management, controls in budget execution and accounting practices. These aspects ensure reliable information on government spending and thus a foundation for management decisions on government funds.						
Effective cash flow and planning, monitoring, and management of commitments by the treasury facilitate predictability of the availability of funds for budgetary units. Reliable accounting practices that include constant checking and verification of the recording practices of accountants are important to ensure good information for management.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
				2021	2023	
1. Presence of a treasury single account (TSA)				2/2	2/2	
2. Frequency of revenue transfer to the TSA				1/1	1/1	
3. Frequency of cash consolidation				1/1	1/1	
4. Credibility of cash flow planning				0.5/2	0.5/2	
5. Budget classification and chart of accounts				2/2	2/2	
6. Frequency of bank-account reconciliation for all central government bank accounts				1/2*	1/2	
7. Availability of data on the stock of expenditure arrears				2/2	2/2	
8. Expenditure arrears (%)				3/3	3/3	
Total				12.5/15	12.5/15	

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

The Treasury Single Account (TSA) is properly established. The BC⁴⁵⁰ provides for the Treasury to maintain budget resources through the TSA, opened in the National Bank of Ukraine.⁴⁵¹ All entities collecting central government revenue transfer the collections daily⁴⁵², and government’s bank balances are consolidated at the end of each operational day.

⁴⁵⁰ BC, Article 43.

⁴⁵¹ Regulation of the State Treasury No.435 of 25 November 2010.

⁴⁵² MoF Order No. 43 of 29 June 2013.

Cash flow planning is prepared by the MoF centrally and is based on historical data. A new regulation of the CMU⁴⁵³, that will enter into force within nine months after the date of termination of the legal regime of martial law, requires all budget entities to submit information to the MoF for cash flow forecasts.

Budgetary financial commitments are registered and reported to the Treasury monthly, according to the provisions of the MoF.⁴⁵⁴

The management of the stock of expenditure arrears is well organised. Legislation⁴⁵⁵ provides that data on the stock of expenditure arrears shall be submitted by the Treasury monthly, within 25 days after the end of each month, to the VRU, the President of Ukraine, the CMU, the ACU and the MoF. The actual stock of expenditure arrears is insignificant: 0.27% of total budget expenditures for 2020 and 0.35% of total budget expenditures for the year 2022.

Conclusion

The treasury function in Ukraine performs well. The TSA Account is well established; revenue transfers and consolidation of government bank balances are operating on a daily basis. Additionally, management of the stock of expenditure arrears is good practice, and the actual stock makes up an insignificant percentage of the total budget expenditure. The accuracy of cash flow forecasts will be improved through the use of estimates from KSUs for its projections, under a new regulation.


⁴⁵³ Decree of the CMU No. 970 of 30 August 2022.

⁴⁵⁴ Order of the MoF, No.41, of 30 January 2018.

⁴⁵⁵ BC, Article 59, paragraph 2.

Principle 4: There is a clear debt management strategy in place and implemented so that the country's overall debt target is respected and debt servicing costs are kept under control.

Overall, the value of the indicator “Quality of public debt management” is 2, compared to 3 in 2021. The deterioration of the indicator is a direct consequence of the war. Annual reporting on public debt was delayed, and full information on deviations from estimates or targets and the reasons for them is logically not available. Other reasons for the low value of the indicator in both 2021 and 2023 are the lack of information about local governments’ debt and the risks associated with the composition and the maturity of debt. Fiscal rules are suspended in accordance with the martial law and, therefore, the indicators related to the difference between debt outturn and target, as well as to the level of debt as a share of GDP, are not considered in the 2023 assessment.

Indicator 6.4.1. Quality of public debt management						
This indicator measures the procedures and organisation established for the management of public debt and the outcomes achieved, in terms of debt risk mitigation practices, the share of public debt to gross domestic product (GDP), and the difference between public sector debt outturn and target.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
				2021	2023	
1. Existence of requirements and limitations for borrowing in the legal framework				2/3	2/3	
2. Existence and minimum content of a public debt management strategy				3/4	3/4	
3. Clarity of reporting on public debt				4/4	2/4	
4. Risk mitigation in the stock of public debt				2/6	2/6	
5. Difference between public sector debt outturn from target (%)				0/3	Not considered	
6. Public debt as a share of GDP (%)				2/2	Not considered	
Total				13/22	9/17	

Note: Not considered = the fiscal rules are suspended in 2023, and therefore the data cannot be taken into account. The point conversion range has been modified by removing points related to the fiscal rule from the total. The point range was then proportionally adjusted to the new point total to calculate the 2023 overall indicator value. The total number of points is therefore 17 rather than 22. Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-12=3, 13-15=4, 16-17=5. More information about the point conversion ranges can be found in the Methodology section.

No material changes in the performance of debt management have occurred in the period 2021-2023. According to the BC⁴⁵⁶, the State Debt Agency is assigned to carry out central government borrowing and guarantees. In turn, the MoF is to conduct control of state debt management and provide methodological support. However, the newly established agency has not yet begun to exercise its powers and, in accordance with the BC⁴⁵⁷, the MoF is currently responsible for all the functions related to the management of state debt and state-guaranteed debt.

⁴⁵⁶ BC, Article 15

⁴⁵⁷ BC, Final provisions 3-5.

There are two main strategic documents guiding debt management: the Medium-term Debt Management Strategy (MTDMS) for 2018-2020 and for 2021-2024, and the annual debt management programme. The MTDMS assesses the current situation and dynamics of state debt and defines goals, objectives and measures over the medium term. The annual debt management programme is prepared to ensure treasury liquidity and to carry out annual debt repayments. The MTDMS includes information on developments of state debt and state-guaranteed debt, but it does not include information on local debt, which would be necessary to have a general government debt outlook. One of the reasons for this deficiency is the lack of full alignment with international standards (i.e. European System of Accounts [ESA] 2010) of public debt definitions in the legislation. Ukrainian legislation does not include local debt in the definition of public debt, as required by ESA 2010.

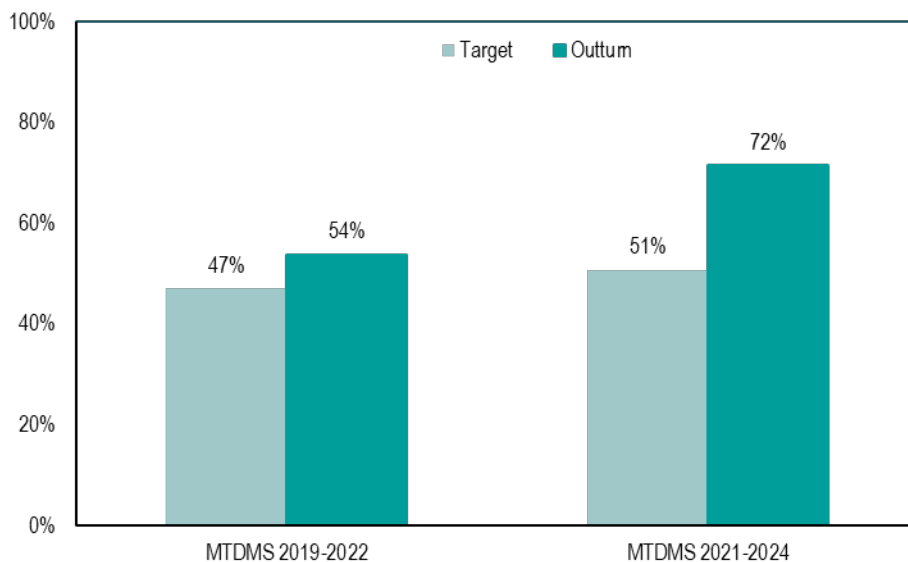
Requirements and limitations for borrowing at central and local levels exist in the legal framework. The annual budget law defines the limits for annual borrowing for the central government, and the BC⁴⁵⁸ sets limits for local debt, which cannot exceed 200% of the medium-term revenue of local government.

Public debt reporting includes local government and social security funds debt. In the pre-war period, reports were published on the implementation of the MTDMS and of the debt management programme, that contained explanations for deviations from the targets, but the publication of these reports has been suspended due to the war. State-owned enterprises (SOEs) report on their debt quarterly, but a consolidated report of all SOEs is not available. It should be noted that, due to martial law, publication of financial reports, including debt, were suspended from March 2022.

The MTDMS sets debt targets for the medium term. Logically, debt targets have not been met due to the COVID-19 pandemic in 2020 and, even more, to the start of Russia's large-scale war of aggression in 2022. However, although the debt targets have not been met, the level of debt remains at a reasonable level compared to the average of EU Member States.

The debt target established in the MTDMS 2019-2022 for 2020 was 47% and outturn was 53.8%. The debt target in the MTDMS 2021-2024 for 2022 was 50.8% with outturn of 71.5%.

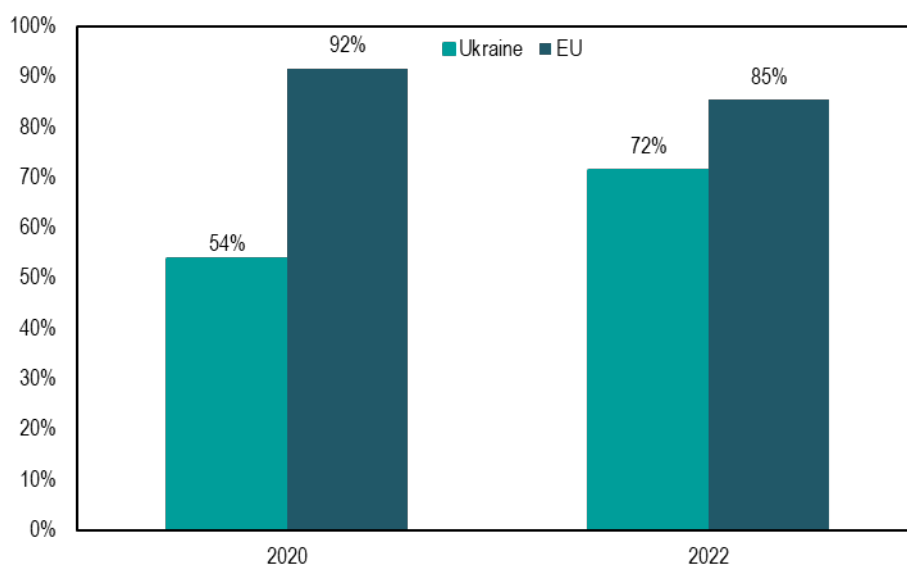
Figure 51. Debt targets versus outturn (%) in 2020 and 2022



Source: MTDMS and MoF data.

⁴⁵⁸ BC, Article 18, paragraph 3.

Figure 52. State debt outturn of Ukraine and the EU, as a percentage of GDP in 2020 and 2022



Sources: MoF data and IMF data.⁴⁵⁹ It is worth highlighting that the fiscal rules, including the percentage of debt in relation to GDP, have been suspended as a consequence of the war, in application of the escape clause foreseen by the BC⁴⁶⁰, and therefore are not considered for the 2023 assessment.

It should be noted that, since February 2022, successive Macro Financial Assistance (MFA) support to Ukraine, in the form of loans, has been proposed and provided by the European Commission. An emergency MFA for up to EUR 1.2 billion was adopted on 24 February 2022. To finance immediate funding needs, an exceptional MFA support of up to EUR 9 billion was further adopted on 12 July 2022. A new MFA operation of EUR 5 billion was adopted on 20 September 2022. Finally, on 14 December 2022, a new MFA+ Instrument of EUR 18 billion was adopted. The first instalment of this last MFA (EUR 3 billion) was disbursed on 17 January 2023.

On 31 March 2023, the IMF also approved a 48-month Extended Fund Facility of loans for Ukraine of a total of USD 15.6 billion, as part of a USD 115 billion support package for Ukraine. The programme aims to anchor policies that sustain fiscal, external, price and financial stability, support the economic recovery, enhance governance and strengthen institutions to promote long-term growth in the context of reconstruction and Ukraine's path to EU accession.

Conclusion


Debt management in Ukraine faces challenges as a consequence of the war: debt targets are not being met, and state debt is growing. However, the level of debt remains at a reasonable level compared to the average of EU Member States. Institutional arrangements for carrying out borrowing and provision of state guarantees are yet to be completed, as core borrowing has not yet been transferred to the newly established State Debt Agency. The definition of public debt is not fully in line with international standards (ESA 2010), and therefore the MTDMS contains information only on the central government debt.

⁴⁵⁹ IMF, General government gross debt, Percent of GDP, 2023, https://www.imf.org/external/datamapper/GGXWDG_NGDP@WEO/OEMDC/ADVEC/WEOWORLD/EU.

⁴⁶⁰ BC, final provisions, Article 23.1: Article 18 of the BC shall not apply, among others, in the case of introduction of martial law in Ukraine or in some of its localities.

Principle 5: Transparent budget reporting and scrutiny are ensured.

Overall, the value of the indicator “Transparency and comprehensiveness of budget reporting and scrutiny” is 2, compared to 4 in 2021. The deterioration is a direct impact of Russia’s war against Ukraine. The greatest negative impact on the indicator comes from the suspension of the publication of in-year reports on government revenue, expenditure and borrowing, and from the fact that the ACU’s annual report on budget implementation in 2022 has not been submitted and discussed by the VRU.

Indicator 6.5.1. Transparency and comprehensiveness of budget reporting and scrutiny						
This indicator measures the extent to which the government facilitates external monitoring of the execution of the budget through the publication of relevant information, as well as the credibility of that information and whether it is used effectively to ensure accountability. The degree of budget scrutiny on the basis of the published information is also assessed.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
					2021	2023
Comprehensiveness of published information						
1. Quality of in-year reports of government revenue, expenditure and borrowing					6.5/7	1/7
2. Quality of the annual financial report of the government					6/7	7/7
3. Quality of annual reports of state-owned enterprises, extra-budgetary funds and local government					4/5	4/5
4. Clarity of national accounting standards and consistency with international standards					4/4	4/4
5. Existence of reporting on fiscal risks identified in the budget					1/1	1/1
Scrutiny and oversight using published information						
6. Quality of the annual financial reporting on the use of public finances					0/3	0/3
7. Timeliness of submission of the SAI report to parliament					1/2	0/2
8. Timeliness of parliamentary discussion on the report of the SAI					3/3	0/3
Total					25.5/32	17/32

Note: More information about the point conversion ranges can be found in the Methodology section on page 8.

Article 28 of the BC specifies the requirement for the Treasury to publish monthly and quarterly in-year reports on budget implementation. The reports are being published by the end of the month following the reporting period. The reports show data for each KSU, but deviations from the original spending estimates are not explained. The process of publishing the in-year reports has been suspended by the Government since the outbreak of the war.

Monthly reports of local governments are published, including information mainly on local government revenue and expenditure and on inter-budgetary transfers. The Treasury produces quarterly reports on the implementation of the consolidated budget, but the data available for central and local government is not broken down.

According to the legislation⁴⁶¹, an annual financial report shall be submitted to the Parliament by April 1 and the Treasury shall publish the report within ten days after submission. The annual financial reports of 2021 and 2022 were approved by the Government, with only a slight delay for the 2022 report, which was approved on 25 April 2023.

The annual financial report mirrors the format of the annual budget and explains variations from the originally approved budget, including variations of capital investment projects. As mentioned before, since 2018, the annual financial report includes non-financial performance information on the achievement of planned targets and results.

The Law on Accounting and Financial Reporting⁴⁶² provides for SOEs to submit and publish their audited financial reports by 1 April and 1 June after the year end (depending on the type of SOE). A consolidated report on the financial performance of the SOE sector is published annually by the MoF in the Fiscal Risk report.

Local governments submit their annual financial statements to the Treasury by 1 March after the year end⁴⁶³, but there is no practice for financial statements to be audited.

According to the BC⁴⁶⁴, all spending units(s) shall apply accounting standards in preparing annual financial reports. Both the accounting standards used in the preparation of annual financial statements and the guidelines for applying accounting standards for the preparation and presentation of financial statements are laid down in Orders of the MoF.⁴⁶⁵ The accounting standards enable reclassification of financial assets and liabilities according to ESA 2010.

Monitoring of fiscal risks is well organised. They are monitored by the responsible unit of the MoF, which has the necessary legal⁴⁶⁶ mandate to approach the institutions and receive data needed for fiscal risk management. As a result, the MoF annually prepares information on fiscal risks related to budget implementation⁴⁶⁷ as a part of the budget documentation. The report includes, among other elements, chapters on macroeconomic risks, risks related to debt, SOEs, the pension system, the financial sector and public-private partnerships.

The ACU prepares and submits to the Parliament a report with conclusions on the implementation of the annual state budget, but it does not issue an opinion on the consolidated annual financial statement of the Government. Parliamentary RoP⁴⁶⁸ establish a clear and timely process for the consideration of the ACU's report on annual budget implementation prior to the vote on the Annual Budget Law. The ACU published its conclusions on the implementation of the annual state budget for 2021 and 2022 in May 2023.

Conclusion

In-year and annual budget reporting is clearly defined in the legislation and well organised by the Government. While performance in 2021 was sound, the war has caused delays and has led to the suspension of in-year reporting. The accounting standards applied in the preparation of the annual

⁴⁶¹ BC, Article 61.

⁴⁶² The Law on Accounting and Financial Reporting, Chapter 4.

⁴⁶³ BC, Article 28.

⁴⁶⁴ BC, Article 56.

⁴⁶⁵ Order of the MoF No. 1541 of 28 December 2009 on Approval of the National Regulation (Standard) on Public Sector Accounting 101 - Presentation of Financial Statements; Order of the MoF No. 977 of 29 November 2017 on Approval of standard form No.5-ds "Notes to the annual financial statements".

⁴⁶⁶ BC, Article 32¹.

⁴⁶⁷ The report "Information on fiscal risks and impact on the indicators of the 2022 budget".


⁴⁶⁸ RoP of the VRU, Article 162.

financial statements comply with international public sector accounting standards. Furthermore, although the ACU issues an annual report on budget implementation, it does not issue an audit opinion on the consolidated annual financial statements of the Government. Management of fiscal risks by the MoF is performing well.

Internal control and audit

Principle 6: The operational framework for internal control defines responsibilities and powers, and its application by the budget organisations is consistent with the legislation governing public financial management and the public administration in general.

Overall, the value of the indicator “Adequacy of the operational framework for internal control” is 4, compared to 2 in 2021. The main reason for the improvement is the adoption of the PFMSR Strategy 2022-2025, which sets out a clearer pathway for specific actions to improve internal control arrangements.

Indicator 6.6.1. Adequacy of the operational framework for internal control						
This indicator measures the extent to which the operational framework for internal control (financial management and control) is established, in terms of policy and strategic content, the regulatory framework, and adequate review and reporting mechanisms.						
A separate indicator measures the implementation of the operational framework for internal control.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
					2021	2023
1. Existence of policy for the development of internal control					1/6	5/6
2. Completeness of the regulatory framework for internal control					5/5	5/5
3. Comprehensiveness and regularity of the annual review and reporting on internal control					2/5	3/5
Total					8/16	13/16

Note: More information about the point conversion ranges can be found in the Methodology section.

The primary legal requirements related to implementing and maintaining systems of internal control are regulated in the BC⁴⁶⁹, and further specified in secondary legislation.⁴⁷⁰ All public sector managers are required to organise and ensure internal control within their entities, in line with internationally accepted standards on internal control. These include ministries and other central executive bodies, regional

⁴⁶⁹ BC, Article 26.

⁴⁷⁰ Resolution of the CMU No. 1062 of 12 December 2018 on the basic principles of implementation of internal control by managers of budgetary funds and introduction of amendments to Resolutions of the CMU No. 1001 of September 28, 2011.

administrations (oblasts) and Kyiv City Administration, and other KSUs of the state budget.⁴⁷¹ The obligation to organise and ensure internal control also applies to local self-government bodies.

Legislation includes essential aspects of internal control, such as the delegation of decision-making authority in central government organisations and the organisation of a risk management system at entity level. The Central Harmonisation Unit (CHU) of the MoF periodically conducts an analysis of changes in horizontal legal provisions that might affect the implementation and development of internal control. In addition to the regulatory framework, the CHU provides guidance to public sector managers and specialists through training activities, as well as practical manuals.⁴⁷²

Starting from 2022, the policy for the development of internal control is guided by the PFMSR Strategy 2022-2025, which identifies several outstanding issues related to internal control after the implementation of the previous PFMSR Strategy, 2017-2020.

The overall objective to be achieved in the area of internal control is to increase the effectiveness of internal control and to strengthen managerial accountability at all levels of the public sector.

The Action Plan under the PFMSR Strategy 2022-2025 is the main guideline for the CHU to define short- and medium-term activities related to internal control. The actions are mainly focused on developing guidance and implementation of practical aspects of internal control, including risk management, as well as on developing and offering training programmes for public sector managers and relevant specialists on internal control and building awareness of it. Additionally, the Action Plan includes activities to automatise aspects of internal control by creating an interactive portal for public internal financial control (PIFC).

The actions mentioned in the PFMSR Strategy 2022-2025 related to internal control are connected with reforms in other areas, and it covers aspects related to budget management. However, the chapter devoted to PIFC does not make a direct connection with the reforms in the budget management area related to these aspects.

The CHU monitors the implementation of internal control and provides the Government with an annual comprehensive report on PIFC (including both internal control and internal audit), based on the consolidated information from reports provided by all public sector institutions required to implement internal control (in 2022, 97% of them submitted such reports to the CHU). Based on this consolidated report on PIFC, the Government, through the Minister of Finance, issues a general instruction to public sector managers to address the deficiencies identified in the report.⁴⁷³ This instruction asks managers to ensure proper organisation and implementation of internal control and internal audit, and to take measures to eliminate the identified shortcomings and prevent them in the future. However, it does not contain more in-depth specific actions, with objectives, targets, and key outcome indicators for all public organisations to address the weaknesses identified in the PIFC report and improve implementation across the public administration.

Conclusion

The legal and operational framework for internal control is largely in place. The CHU provides guidance and actively monitors the development of internal control across the public sector. The PFMSR Strategy, 2022-2025 aims to improve the effectiveness of internal control and the implementation of managerial accountability and defines actions for this purpose. However, there is not a strong connection of internal

⁴⁷¹ In total: 74 ministries and other central executive bodies (including the Debt Management Agency which has not yet taken up its functions); 25 regional administrations and Kyiv City state administrations; and 30 other KSUs (including the High Court on Intellectual Property, which has not yet taken up its functions). The Cabinet of Ministers of the Autonomous Republic of Crimea and the Sevastopol City State Administration are not taken into account, since the Autonomous Republic of Crimea is temporarily occupied due to war.


⁴⁷² Examples include methodological Guidance on aspects of Risk Management for managers of budget funds and the Basic Training Program on internal control for public sector managers and financial specialists.

⁴⁷³ Letter from the MoF No. 33030-07-3/8498 of 29 March 2023.

control reforms with budget management reforms. No specific actions are presented to thoroughly address the issues identified in the PFMSR Strategy or in the annual consolidated report on PIFC across the public administration.

Principle 7: Each public organisation implements internal control in line with the overall internal control policy.

Overall, the value of the indicator “Functioning of internal control” is 2, the same as in 2021. This reflects the absence of progress in addressing key aspects related to internal control, such as the lack of implementation of decentralised managerial accountability and the absence of effective risk management in public sector bodies.

Indicator 6.7.1. Functioning of internal control						
This indicator measures the extent to which internal control systems are implemented in practice within the budget organisations and between ministries and their subordinate organisations, and the immediate results in terms of improved managerial accountability and governance arrangements between ministries and subordinated bodies.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
				2021	2023	
1. Number of first-level budget organisations that are neither ministries nor constitutional bodies				0/3	0/3	
2. Alignment between management and budget structures (%)				3/3	3/3	
3. Credibility of controls for avoiding commitments above the expenditure ceilings				2/2	2/2	
4. Availability of reporting of total cost and physical progress of major investment projects				2/2	2/2	
5. Effectiveness of basic managerial accountability mechanisms for central government bodies				0/4	0/4	
6. Delegation of decision-making authority within ministries				2/4	2/4	
7. Regularity and completeness of risk management practices				0/3	0/3	
8. Existence of reporting on irregularities				0/2	0/2	
Total				9/23	9/23	

Note: More information about the point conversion ranges can be found in the Methodology section.

In general, several key aspects that support an adequate system of internal control are in place and functioning, including a logical, structured allocation of the budget to public sector managers, reporting and monitoring of major investment projects, and the existence of credible controls to avoid commitments above established expenditure ceilings. Some essential elements related to the functioning of internal control within public entities still need improvement and are addressed in the PFMSR Strategy 2022-2025.

The first aspect that needs attention is a key conditional cornerstone for effective internal control systems: effective delegated managerial accountability. The assessment has revealed that basic managerial accountability arrangements within public sector entities and with their subordinated bodies are currently lagging behind when compared to good EU practices. The annual plans and reports of government bodies mainly contain output indicators, with few or no indicators related to outcome and/or

performance. Well established, systematic in-year mechanisms for performance monitoring are functioning poorly. Furthermore, within public sector entities, operational managerial decisions that could easily be delegated to lower-level managers are still channelled through senior management level in most cases. Examples include approval of business trips or annual leave.

The second key cornerstone for effective internal control systems that lags behind concerns risk management. SIGMA analysed the completeness of risk management arrangements in a sample of five budget organisations, including whether an annual risk assessment was conducted against the institution's objectives, risk mitigation measures were in place and responsible persons were identified. The results showed that, in most cases, risk management is not integrated in day-to-day managerial processes, risk analysis is not usually embedded in internal planning and reporting, and risk information is not connected to managerial decision-making. Risk registers and risk mitigation plans are mostly connected to the mandatory anti-corruption programme that every central government body must comply with, and risk registers are developed and maintained by designated anti-corruption units, not by management. There is no evidence of broader risk analysis or entity-wide risk-mitigation measures connected to organisational objectives.


The ability of public sector entities to deal with and report irregularities is not clear. It is not general practice to have internal regulations, guidance or procedures specific to public entities in place related to the reporting of irregularities. Only two of the five sampled entities had approved such regulations or procedures, and they are usually understood as an obligation related to the implementation of the anti-corruption programme, rather than part of the regular management of public funds. The detection and reporting of irregularities is also limited, with only one of the sampled institutions reporting an irregularity.

Conclusion

Despite the completeness of the regulatory and operational framework and the existence of some of the essential elements supporting an adequate system of internal control, its effective implementation in public sector entities still lags behind in the areas of delegated managerial accountability and risk management. The implementation of planned actions in the PFMRS Strategy 2022-2025 to address these challenges has been postponed due to Russia's war of aggression. Procedures for effective management and reporting of irregularities are generally not in place.

Principle 8: The operational framework for internal audit reflects international standards, and its application by the budget organisations is consistent with the legislation governing public administration and public financial management in general.

Overall, the value of the indicator “Adequacy of the operational framework for internal audit” is 4, compared to 3 in 2021. This is mainly due to the introduction of certification of internal auditors and the approval of the PFMRS Strategy, 2022-2025.

Indicator 6.8.1. Adequacy of the operational framework for internal audit						
This indicator measures the extent to which the operational framework for internal audit (IA) has been established, assessing the adequacy of the regulatory framework, the institutional set-up, and co-ordination and quality assurance mechanisms.						
A separate indicator measures the implementation of the framework and the results achieved.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
					2021	2023
1. Adequacy of the regulatory framework for internal audit					3/5	4/5
2. Organisational capacity for internal audit					3/5	3/5
3. Co-ordination, development and guidance of the internal audit system					3/5	5/5
4. Existence of a system for quality assurance for internal audit					1/3	1/3
Total					10/18	13/18

Note: More information about the point conversion ranges can be found in the Methodology section.

The general requirements for the establishment of the internal audit function in the Ukrainian public sector are defined in the BC⁴⁷⁴ and further specified in secondary legislation⁴⁷⁵, including the objectives, coverage and implementation requirements for the internal audit function. The same entities that are required to implement internal control are also required to implement the internal audit function.

The internal audit function is guided by a set of national internal audit standards and a code of ethics, mostly aligned with international standards set by the Institute for Internal Auditors⁴⁷⁶, which cover fundamental aspects, such as the independent and objective role of the internal audit function, reporting arrangements, and organisational and performance requirements. The CHU provides guidance in the form of methodological manuals to support internal audit in practice.

⁴⁷⁴ BC, Article 26, Control and Audit in the Budget Process.

⁴⁷⁵ Government Decree No. 1001 of 29 September 2011, on some issues connected with the development of internal audit structural units as well as procedures for internal audit in ministries and other central executive authorities, their territorial organisations and budget institutions within the scope of ministries and other central public administration authorities.

⁴⁷⁶ The Institute of Internal Auditors defines the international standards for internal audit. The Standards are mandatory requirements consisting of statements of basic requirements for the professional practice of internal auditing and for evaluating the effectiveness of its performance.

In 2023, Audit Committees have been introduced at the central government level public entities⁴⁷⁷ to support and assist the heads of entities on the development of internal audit activities, on a consultative and advisory basis.

Internal audit units have been established in all public entities that are required to do so.⁴⁷⁸ In around 90% of those public entities, the internal audit function has been implemented and audits have been carried out. In the remaining 10%, audits have not been conducted, in particular due to understaffing and to the impact of the war.

Recent amendments to the secondary legislation specify minimum requirements for staffing of internal audit units. At least two internal auditors are required for entities with more than 50 employees, while for those with less than 50 employees⁴⁷⁹, at least one internal auditor is required. However, information provided by the CHU shows that, at the level of Central Executive Authorities, 27% of the total positions for internal audit were not filled at the end of 2022 and at least 20 entities have not yet brought their structures in line with the minimum number of internal auditors required. At the regional level, the percentage of unfilled internal audit positions was 37%.

There is wide variety in the staffing of internal audit units among public sector entities. For example, as mentioned, a number of internal audit units are only required to have one member of staff and, as a result, they are not able to meet all the requirements of international standards.

In 2023, there has been a positive development with the introduction of a national certification system for public sector internal auditors.⁴⁸⁰ To support and co-ordinate the certification process, a certification commission has been established within the MoF.

The policy for the development of internal audit is guided by the PFMRS Strategy 2022-2025, which sets the goal to enhance the effectiveness, capacity, and independence of internal audit. The Action Plan defines specific measures to achieve this general goal. Apart from the certification process and the creation of Audit Committees, other positive developments are measures aimed at shifting the focus to system-based and performance audits and raising the response rate to internal audit recommendations, as well as the digitalisation of internal audit by creating an interactive portal for PIFC. The strategy does not mention specific actions aimed at increasing staff numbers in internal audit units or using the existing capacity more efficiently.

In line with national and international standards, the internal audit function is subject to a programme of internal and external quality assurance. The CHU has developed specific procedures and performs the external quality assessment. In 2022, four external quality assessments were completed. Given the total potential coverage of the function (127 public entities) and the relatively limited capacity of the CHU, the risk exists that external quality assessments will not be able to cover all government agencies with a certain frequency.

The CHU provides the Government with a comprehensive report on PIFC annually, including internal control and internal audit. For internal audit, the report contains consolidated information from the reports provided by all public sector institutions that are required to have the function in place. Based on the

⁴⁷⁷ Government Decree No. 1001 of 28 September 2011, Article 15.

⁴⁷⁸ In total: 74 ministries and other central executive bodies (including the Debt Management Agency, which has not yet taken up its functions); 25 regional and Kyiv City state administrations; and 30 other KSUs of the state budget (including the High Court on Intellectual Property, which has not yet taken up its functions). The Cabinet of Ministers of the Autonomous Republic of Crimea and the Sevastopol City State Administration are not taken into account, since the Autonomous Republic of Crimea is temporarily occupied due to the large-scale aggression by Russia against Ukraine.

⁴⁷⁹ Only three entities, according to information provided by the CHU.

⁴⁸⁰ Order of the Ministry of Finance No. 144, of 18 May 2022 on Approval of the procedure for carrying out certification of employees of divisions of internal audit, registered by the Ministry of Justice on 20 June 2022, No. 676/38012.

consolidated report, the Government issues a general instruction to public sector managers to address the deficiencies identified. This is at a general level and does not go into detail. It does not specify any more in-depth or detailed actions defining objectives, targets and key performance indicators to address the weaknesses identified in the PIFC report and improve implementation.

It should be noted that the SAS⁴⁸¹, which is responsible for financial inspection in Ukraine, also carries out audit-type activities, with objectives related to compliance aspects or to efficiency and effectiveness in the activities of the controlled institutions. These activities are similar to the compliance or performance audits conducted by internal audit. SAS carries out its activities in public sector bodies, including SOEs.


Conclusion

The legislative and operational framework for the internal audit function is largely in place and mostly in line with international standards and good practices. The CHU provides additional guidance and actively monitors the development of internal audit across the public sector. There are challenges related to the capacity of the internal audit function in terms of staffing which affect the efficiency and effectiveness of internal audit and the internal and external quality assurance requirements. The SAS performs a combination of financial inspection and internal audit competences that could have an influence on the development of PIFC.

⁴⁸¹ Statute of the State Audit Service, approved by Decree of the CMU No. 43 of 3 February 2016.

Principle 9: Each public organisation implements internal audit in line with the overall internal audit policy documents, as appropriate to the organisation.

Overall, the value of the indicator “Functioning of internal audit” is 3, the same as in 2021. The main deficiencies relate to the limited coverage of different types of audits and to the quality of audit reports.

Indicator 6.9.1. Functioning of internal audit						
This indicator measures the extent to which internal audit is implemented and whether activities effectively contribute to improved management of public finances within the budget organisations.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
					2021	2023
1. Strength of planning of internal audit in budget organisations					5/7	5/7
2. Quality of audit reports					1/6	2/6
3. Follow-up and implementation of audit recommendations (%)					3/3	3/3
Total					9/16	10/16

Note: More information about the point conversion ranges can be found in the Methodology section.

In general, the functioning of internal audit is in line with the established legislative and procedural requirements. Most of the internal audit units deliver their strategic and annual plans in a timely manner, based on their own risk assessment.

The guidance and templates provided by the CHU are generally used. The audits included in the internal audit plans are compliance-oriented in most cases. However, there is a positive trend in the share of performance audits, which rose from 30% in 2020 to 48% in 2022.⁴⁸² Addressing horizontal risks across the public sector is currently not in the scope of internal audit, nor is the combination of different audit disciplines in single audit engagements.

Review of a sample of five internal audit reports from budget organisations revealed that the basic elements regarding objective and scope are adequately addressed in all five reports. The general structure of the audit reports contains the required elements in line with the national internal audit standards. However, most of the sampled reports show poor connections between the recommendations and the audit evidence gathered. In addition, most of the sampled internal audit reports remain at the level of compliance checks, rather than assessing or analysing internal control in a systematic way.

Internal audit units in general adhere to the requirements set in the national standards regarding the follow-up of recommendations. The share of acceptance and implementation of audit recommendations is high. According to information provided by CHU, in 2022 more than 85.9% of recommendations by internal audit were implemented within one year, compared to 87% in 2021.

The internal audit representatives of the five sampled public entities indicated that, in general, the guidance provided by the CHU is perceived as sufficient. This includes the ability to participate in training sessions, the provision of supplemental guidance in the form of manuals and procedural guidelines and the policy and regulatory framework developed by the CHU.

⁴⁸² CHU MoF: “Information on the functioning of state internal financial control for 2022”.


Conclusion

The functioning of internal audit in practice adheres in general to the requirements set by the legislative framework and the national internal audit standards. Reports are prepared according to the basic requirements, although the recommendations are not effectively linked with the audit evidence. The coverage of different types of audit shows a positive trend. However, it could be improved by adding more system-based focused audits on aspects like performance and information technology, performing horizontal audits to address public sector wide cross-cutting risks or combining different audit disciplines in single audit engagements.

Public procurement

Principle 10: Public procurement regulations (including public-private partnerships and concessions) are aligned with the European Union *acquis*, include additional areas not covered by the *acquis*, are harmonised with corresponding regulations in other fields, and are duly enforced.

Overall, the value of the indicator “Quality of legislative framework for public procurement and PPPs/concessions” is 2, compared to 3 in 2021. This decline is attributed to the impact of the martial law regime and the introduction of new rules that deviate from the standards required for compliance with the EU *acquis*.

Indicator 6.10.1. Quality of legislative framework for public procurement and PPPs/concessions -		
This indicator measures the quality of the legislative framework for public procurement and public-private partnerships (PPPs)/concessions, above and below EU thresholds. Opportunities for participation of small and medium-sized enterprises (SMEs) in public procurement are assessed, as well as whether practical measures are taken to allow proper implementation of the legislation. The other indicators in the public procurement area analyse the actual implementation of laws and regulations and the results thereof.		
2023 indicator value	0	1 2 3 4 5
Trend 2021-2023 	Points	
	2021	2023
Compliance of public procurement legislation with the <i>acquis</i> above EU thresholds		
1. Level of alignment of public procurement legislation with the EU Directives	2/6	2/6
2. Scope of public procurement legislation	2/6	2/6
3. Public procurement procedures	2/4	0/4
4. Publication and transparency	5/5	5/5
5. Choice of participants and award of contracts	2/5	2/5
6. Availability of procedural options	1/4	1/4
Public procurement procedures below EU thresholds		
7. Advertising of public procurement procedures	2/3	2/3
8. Contract award procedures	6/7	4/7
Opportunities for participation of SMEs in public procurement		
9. Opportunities for participation of SMEs in public procurement	2/5	2/5
Availability of measures for the practical application of the legislative framework		
10. Availability of measures for the practical application of the legislative framework	5/5	4/5
Quality of legislation concerning PPPs/concessions		
11. Coverage of legislation on PPPs/concessions	2/2	2/2
12. Value for money, free competition, transparency, equal treatment, mutual recognition and proportionality for PPPs/concessions	4/8	4/8
Total	35/60	30/60

Note: More information about the point conversion ranges can be found in the Methodology section.

The PPL⁴⁸³ has been amended on numerous occasions since its adoption in 2015. Before the war, the most significant changes were introduced in 2019 and 2021. After the introduction of martial law on 24 February 2022, the public procurement system has been subject to frequent legislative changes.

The PPL reflects the key elements of the 2014 EU Public Procurement Directives.⁴⁸⁴ The PPL covers the classic and utilities sectors and regulates the award of contracts both above and below the EU thresholds. The PPL also incorporates the relevant provisions of the Remedies Directives.⁴⁸⁵ The relevant secondary legislation has been adopted.

However, further alignment is still needed. Exclusions from the scope of the PPL go beyond what is allowed by the EU law (e.g. an exclusion related to the Kyiv ring road, award of contracts abroad and production of official documents). Furthermore, the PPL does not include the following procedures and techniques: 1) competitive procedure with negotiations; 2) innovation partnerships; 3) design contests; 4) dynamic purchasing systems; and 5) qualification systems. Electronic auctions and competitive dialogue are not fully consistent with the EU Directives. The PPL allows for the use of negotiated procedures without prior publication in cases that exceed the strict definition of the EU law, such as award of contracts for organising events of major national significance.⁴⁸⁶ Provisions on qualitative selection of economic operators (related to the equivalent of the European Single Procurement Document), reliance on resources of third parties and the right to demonstrate “self-cleaning” prior to the exclusion are not fully consistent with the EU Directives. Finally, the PPL strongly prioritises the evaluation of tenders based solely on price, by stipulating that the weight assigned to the price criterion must be a minimum of 70%.

An amendment to the PPL⁴⁸⁷, which was adopted before the war and entered into force in July 2022, introduced a mandatory local component requirement for selected machines and equipment. The local component requirement will be applied for a duration of ten years. It started at 10% in 2022, increased to 15% in 2023, and will reach 40% by 2028 and until the end of the ten-year period. The degree of local component is calculated by the manufacturers and then verified by the MoE using the prescribed formula. The PPL exempts the contracts falling within the scope of Ukraine’s international commitments (i.e. under the World Trade Organization Government Procurement Agreement (GPA) and the Association Agreement with the EU⁴⁸⁸) from the application of the local component requirement. For this exemption to apply, two conditions must be met: the estimated value of the procurement should be equal to or exceed the EU thresholds, and the economic operators offering goods of EU origin must provide a certificate confirming the EU origin.⁴⁸⁹ Otherwise, where the estimated value of procurement falls below

⁴⁸³ PPL, No. 922-VIII of 25 December 2015, with later amendments (in force from April 2016), <https://zakon.rada.gov.ua/laws/show/1977-20#n11>.

⁴⁸⁴ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

⁴⁸⁵ Council Directive 89/665/EEC of 21 December 1989 on the co-ordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts; Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

⁴⁸⁶ PPL, Chapter X "Final and Transitional Provisions" paragraphs 3² and 3³.

⁴⁸⁷ Law [No. 1977-IX of 16 December 2021](https://zakon.rada.gov.ua/laws/show/1977-IX) on amendments to the Law of Ukraine "On Public Procurement" regarding the creation of prerequisites for the sustainable development and modernisation of domestic industry, <https://zakon.rada.gov.ua/laws/show/1977-20#n11>.

⁴⁸⁸ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, Chapter 8 of Title IV, more specifically Articles 148-156 and Annex XXI.

⁴⁸⁹ Explanation provided by the MoE, June 2023.

the EU threshold or there is no certificate of EU origin, the local component requirement applies. The Association Agreement with the EU fully applies to contracts above the EU thresholds⁴⁹⁰, but also explicitly requires⁴⁹¹ that contracts below the EU thresholds still adhere to the principles of transparency, non-discrimination and equal treatment. The local component requirement is not in line with the principle of equal treatment and potentially discriminates against companies offering goods produced in the EU (in procedures below the EU thresholds). According to the interpretation presented by the MoE, the local component requirement is fully in line with Ukraine's international obligations, but it seems that this interpretation refers to the contracts above the EU and GPA thresholds only. Contracting authorities and other stakeholders⁴⁹² have expressed mixed reactions towards the local component requirement, mainly due to burdensome formalities that need to be fulfilled. The ambiguity of the localisation rules has led to varying interpretations among contracting authorities regarding their practical implementation.

In response to Russia's war against Ukraine, the PPL was partially suspended in February 2022 by Decree No. 169.⁴⁹³ Contracting authorities had the discretion to choose between Decree 169, which permitted the use of direct awards, or the PPL. In June 2022, the Decree was amended⁴⁹⁴ to enable simplified procurement and e-catalogues. In October 2022, it was replaced by Decree No. 1178⁴⁹⁵, which establishes a simplified and significantly faster open procedure as the priority method. It implements shorter time limits for the review of complaints. Compared to the PPL, the Decree extends the list of specific cases of exclusions. Additionally, it removes the threshold value limit for procurement from e-catalogues. Finally, the Decree introduces simplified procurement for contracts below the minimum thresholds.

Decree No. 1178 has been generally well-received.⁴⁹⁶ Contracting authorities appreciate the flexibilities in simplified open bidding, allowing quicker award of contracts. E-catalogues are seen as useful but not a comprehensive solution, due to their limited coverage of standard goods. There are concerns about the current rules being unclear, open to different interpretations and contradictory. The main criticism is the frequency of legislative changes. Despite effectively upholding the principles of transparency and equal treatment through the open bidding procedure, when compared to the PPL, the Decree deviates further from compliance with the EU *acquis*.

The Defence Procurement Law⁴⁹⁷ (DPL) entered into force on 1 January 2021, but it was not fully applicable until the completion of necessary secondary legislation in August 2022. While the DPL

⁴⁹⁰ Association Agreement, Article 149, paragraph 3.

⁴⁹¹ *Idem*, Article 153, paragraph 4.

⁴⁹² Transparency International Ukraine, "How the Idea of Localization in Procurement Turned into an Unsolvable Problem", <https://ti-ukraine.org/en/blogs/how-the-idea-of-localization-in-procurement-turned-into-an-unsolvable-problem/>.

⁴⁹³ Decree of the Cabinet of Ministers of Ukraine (CMU) No. 169 of 28 February 2022 on some issues of defence procurement of goods, works and services under martial law, with later amendments (in force from February 2022 to November 2022), <https://zakon.rada.gov.ua/laws/show/169-2022-%D0%BF#Text>.

⁴⁹⁴ Decrees of the CMU on making changes to the resolutions of the CMU No. 822 of 14 September 2020, No. 169 of 28 February 2022, and No. 723 of 24 June 2022, <https://zakon.rada.gov.ua/laws/show/723-2022-%D0%BF#n2>.

⁴⁹⁵ Decree of the CMU No. 1178 of 12 October 2022 on the approval of the specifics of public procurement of goods, works and services for customers provided for by the Law of Ukraine on Public Procurement for the period of the legal regime of martial law in Ukraine and within 90 days from the date of its termination or cancellation, with later amendments (in force from October 2022), <https://zakon.rada.gov.ua/laws/show/1178-2022-%D0%BF#Text>.

⁴⁹⁶ SIGMA interviews, May 2023.

⁴⁹⁷ DPL, No. 808-IX of 17 July 2020, with later amendments (in force from January 2021), <https://zakon.rada.gov.ua/laws/show/808-20#Text>.

incorporates some requirements from the EU Defence Directive⁴⁹⁸, it includes provisions that are not compliant with the principle of equal treatment, such as provisions on domestic preferences and requirements for localisation, employment of domestic employees and offsets. The DPL contains a deficient definition of contracting authorities, lacks certain procedures, criteria and requirements for the qualification of economic operators, does not fully address subcontracting, and lacks specific defence provisions for review. Under the martial law, defence procurement is governed by Decree No. 1275⁴⁹⁹, which suspended the application of the DPL and moves further away from compliance with EU law.

The Concessions Law⁵⁰⁰, adopted in 2019, is largely compliant with the EU requirements concerning transparency and competitiveness of the award procedure. However, it falls short of full compliance with the EU Concessions Directive.⁵⁰¹ The inconsistencies relate to the personal and material scope of the law, provisions concerning qualification and selection of economic operators, duration of concession contracts and contract modifications, remedies and review procedures. The existence of provisions requiring the concessionaires to have Ukrainian residence and give preference to initiators of concessions notably deviates from the EU rules.

At the time of its adoption in 2010, the PPP Law⁵⁰² was intended to be a general framework law with a wider scope than the Concessions Law. However, the new 2019 Concessions Law modified a number of provisions of the PPP Law. While the procedures outlined in the PPP Law are generally competitive and transparent, the allowance for preference to certain private partners is not in line with EU principles of equal treatment and non-discrimination. Furthermore, by explicitly stating that the PPL does not apply to the selection of private partners, the PPP Law contradicts the EU interpretation⁵⁰³ that PPP contracts meeting the definition of a public contract should adhere to public procurement rules.

Conclusion

The PPL reflects the key elements of EU *acquis*, but further significant alignment is needed. Decree No. 1178 strikes a reasonable balance between transparency and flexibility required for expediting contract awards during the martial law regime, but clarity and stability are needed. The introduction of a local component requirement potentially contradicts the equal treatment and non-discrimination principle (in procedures below the EU thresholds).

⁴⁹⁸ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

⁴⁹⁹ Decree of the CMU No. 1275 of 11 November 2022 on some issues of defence procurement during the period of the legal regime of martial law, with later amendments (in force from November 2022), <https://zakon.rada.gov.ua/laws/show/1275-2022-%D0%BF#Text>.

⁵⁰⁰ Law on Concessions No.155-XI of 03 October 2019, with later amendments (in force from October 2019), <https://zakon.rada.gov.ua/laws/show/155-20/ed20220101#Text>.


⁵⁰¹ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

⁵⁰² Law on Public-Private Partnerships No. 2404-VI of 1 July 2010, with later amendments (in force from October 2010), <https://zakon.rada.gov.ua/laws/show/2404-17/ed20230331#Text>.

⁵⁰³ SIGMA (2016), *Concessions and PPPs, Brief 18*, OECD Publishing, Paris, pp. 5-6, <https://www.sigmaweb.org/publications/Public-Procurement-Policy-Brief-18-200117.pdf>.

Principle 11: There is central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.

Overall, the value of the indicator “Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently” is 4, down from 5 in 2021. This decline is attributed to the failure to adopt the new Public Procurement Strategy.

Indicator 6.11.1. Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently -						
This indicator measures to what extent public procurement policy is systematically developed, implemented and monitored, how central public procurement functions are distributed and regulated, and to what extent the preparation and implementation of policies is open and transparent.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
	2021			2023		
Quality of the policy framework for public procurement						
1. Quality of the strategy for development of public procurement and PPPs/concessions	4/5			0/5*		
2. Quality of the operational action plan	4/5			0/5		
3. Implementation of the strategy and the action plan (%)	3/5			0/5		
4. Monitoring of strategy implementation	4/5			4/5		
Capability of central procurement institutions and their performance						
5. Adequacy of the legal framework to ensure capable institutions	10/10			10/10		
6. Clarity in definition and distribution of central procurement functions in the legislation	10/10			10/10		
7. Performance of the institutions involved, their capacity and resources	18/20			14/20		
Capability of central procurement institutions and their performance						
8. Presence and quality of monitoring and data collection	10/10			10/10		
9. Accessibility of public procurement data	8/10			8/10		
Total	71/80			56/80		

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

The MoE is responsible for developing and implementing the public procurement policy, preparing draft legislation, managing the e-procurement system, collecting and disseminating information and developing manuals, guidelines and other tools, providing recommendations and advice, and facilitating international co-operation. The MoE prepares annual reports on the functioning of the public procurement system.

The Public Procurement and Competition Policy Department of the MoE employs 27 staff members. The availability of human and financial resources has been severely affected by the ongoing war.

The MoE is recognised as a responsive and co-operative institution. It actively involves practitioners in the process of drafting regulations. However, some changes to the regulations, such as the

amendment⁵⁰⁴ to Decree No. 1178 suspending e-auctions at the beginning of 2023, were implemented without adequate consultation.

The MoE shares information through its official website⁵⁰⁵ and social media platforms⁵⁰⁶, providing regularly updated resources, responses to inquiries, video tutorials⁵⁰⁷ and webinars.⁵⁰⁸ However, contracting authorities criticised⁵⁰⁹ the information provided as overly formalistic and lacking clear explanations and expressed a strong need for more practical guidance.

The control of public procurement procedures is carried out by the SAS, a body under the supervision of the Ministry of Finance.⁵¹⁰ The SAS may initiate its control based on notifications of possible irregularities detected by automatic risk indicators (a tool implemented in the e-procurement system), information received from authorised institutions, media reports, information published in the e-procurement system and information received from civil society organisations. If, upon assessment, the SAS concludes that a violation of the PPL has occurred, and if the contracting authority fails to rectify its behaviour accordingly, the SAS is under obligation to bring an action before the court. Implementation of the automatic risk indicators in the e-procurement system in 2020⁵¹¹ has provided the SAS with the capability to detect potential violations during ongoing procurement procedures. However, the utilisation of this tool by SAS remains limited, for reasons related to the deficiencies in functionality and the lack of human resources.⁵¹² In 2021⁵¹³, only 102 controls (less than 1% of all monitoring proceedings) were initiated based on the automatic risk indicators. Furthermore, the initiation of monitoring based on these indicators occurs on average four months after the call for tenders.⁵¹⁴

The Public Procurement Reform Strategy 2016-2022 and the corresponding Roadmap⁵¹⁵ expired in 2022. Prior to the outbreak of the war, the country had made notable progress in implementing the Strategy. The Public Finance Management System Reform Strategy 2022–2025 includes some measures to enhance monitoring, competitiveness, efficiency, and transparency in public procurement.

⁵⁰⁴ Decree No. 1495 of 30 December 2022, <https://zakon.rada.gov.ua/laws/show/1495-2022-%D0%BF#n2>.

⁵⁰⁵ Public Procurement website, <https://infobox.prozorro.org/>.

⁵⁰⁶ Facebook: <https://www.facebook.com/prozorro.gov.ua>; <https://www.facebook.com/PublicProcurementofUkraine>.

⁵⁰⁷ Video tutorials: "Professionally about public procurement": <https://www.me.gov.ua/Documents/MoreDetails?lang=uk-UA&id=e06d0d8f-a4ab-43a4-b89b-facd80ee66cd&title=VideoKursprofesiinoProZakupivli>.

⁵⁰⁸ YouTube: <https://www.youtube.com/@prozorrotv9868/videos>.

⁵⁰⁹ SIGMA interviews, May 2023, and responses of contracting authorities in SIGMA Public procurement survey for contracting authorities 2023, Question A10: "Finally, in reflection of the questions from this questionnaire, do you have any comments related to public procurement practices you would like to add, or comments to the questionnaire?"

⁵¹⁰ PPL, Article 8.

⁵¹¹ Order of the Ministry of Finance No. 647 of 28 October 2020 on the approval of the methodology for determining automatic risk indicators, their list and the order of application, <https://zakon.rada.gov.ua/laws/show/z1284-20#Text>.

⁵¹² Strengthening institutional and organizational capacities of the relevant public bodies in control and audit, p.21; this report has been prepared by the EU funded Project: "Support to the Public Procurement Reform in Ukraine".

⁵¹³ Annual report of the MoE for 2021, p.47.

⁵¹⁴ Strengthening institutional and organizational capacities of the relevant public bodies in control and audit, p.16; this report has been prepared by the EU funded Project: "Support to the Public Procurement Reform in Ukraine".

⁵¹⁵ Approved by Resolution of the CMU No. 175 of 24 February 2016, <https://zakon.rada.gov.ua/laws/show/175-2016-%D1%80#Text>.

However, a new comprehensive public procurement strategy is necessary. The MoE has announced⁵¹⁶ that it has initiated activities on the preparation of the new Strategy.

Concessions and PPPs fall under the responsibility of the Department on Investments, Innovations and Intellectual Property of the MoE.

Conclusion

The institutional framework for public procurement in Ukraine is well-established, providing a solid foundation for effective implementation. The MoE is a proactive institution, but it needs to provide clearer and more practical guidance to contracting authorities. The SAS controls procurement but underutilises automated risk indicators. A new public procurement strategy is needed.

⁵¹⁶ SIGMA interviews, May 2023, and Annual report of the MoE for 2022, p. 44.

The AMCU is responsible for reviewing complaints in public procurement. Complaints in the area of PPPs and concessions are examined by the administrative and commercial Courts of Ukraine.

The law governing the AMCU⁵¹⁷ was amended in 2021⁵¹⁸, resulting in changes in organisation of the AMCU. The law introduced a specific category of authorised persons for reviewing complaints, appointed by the Head of the AMCU. In March 2023, four authorised persons were recruited, and in May, two commissions with the new authorised persons were formed.⁵¹⁹

The PPL is mostly compliant with the EU Remedies Directives.⁵²⁰ However, the time limit of five days⁵²¹ for submission of complaints to the AMCU is too short and does not comply with the Remedies Directive. Other inconsistencies relate to the standstill period and ineffectiveness.

The review procedures specified in the PPL and the AMCU Law do not apply to concessions, and the Concessions Law⁵²² and Public-Private Partnership Law⁵²³ do not meet the requirements of the Remedies Directives.

The number of complaints has been steadily increasing since 2015, except for 2022⁵²⁴ when a significant decline (only 3 865 complaints) occurred due to the martial law regime. In 2021⁵²⁵, the highest number of complaints to date was received, 14 828 compared to 12 675 in 2020.⁵²⁶ The submission of over 4 000 complaints in the period from January to May 2023⁵²⁷ indicates a recovery to pre-war levels.

⁵¹⁷ Law on the AMCU No. 3659-XII of 26 November 1993, with later amendments (in force from January 1994), <https://zakon.rada.gov.ua/laws/show/3659-12#top>.

⁵¹⁸ Law No. 1219-IX of 5 February 2021 on amendments to some laws of Ukraine regarding the powers of the AMCU in the field of public procurement, <https://zakon.rada.gov.ua/laws/show/1219-20#n6>.

⁵¹⁹ Information published on the AMCU website, <https://amcu.gov.ua/napryami/oskarzhennya-publichnih-zakupivel/komisia-z-rozglyadu-skarg>.

⁵²⁰ Council Directive 89/665/EEC of 21 December 1989 on the co-ordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts; Council Directive 92/13/EEC of 25 February 1992 on the co-ordinating of the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

⁵²¹ PPL, Article 18, paragraph 8, fourth subparagraph.

⁵²² Law on Concessions No.155-XI of 3 October 2019, with later amendments (in force from October 2019), <https://zakon.rada.gov.ua/laws/show/155-20/ed20220101#Text>.

⁵²³ Law on Public-Private Partnerships No. 2404-VI of 1 July 2010, with later amendments (in force from October 2010), <https://zakon.rada.gov.ua/laws/show/2404-17/ed20230331#Text>.

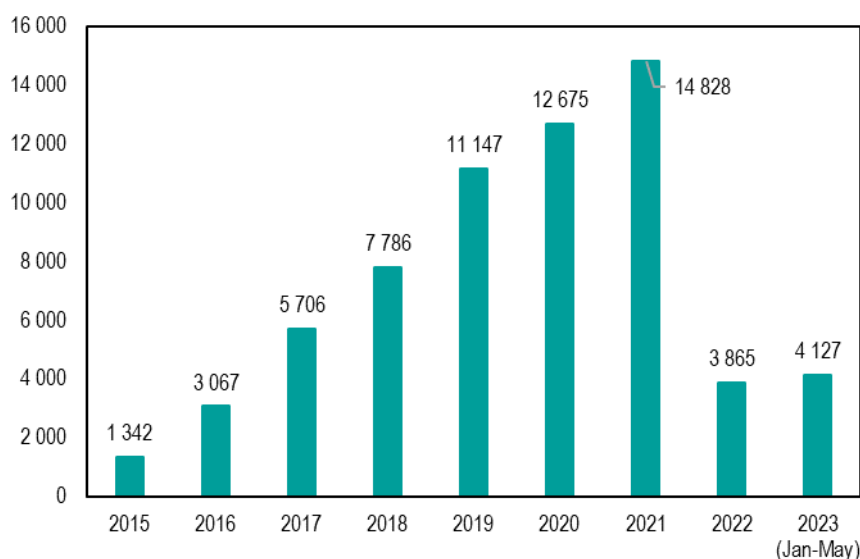
⁵²⁴ Annual report of the MoE for 2022, p.39.

⁵²⁵ Annual report of the MoE for 2021, p.45.

⁵²⁶ Annual report of the AMCU for 2020, p.125.

⁵²⁷ SIGMA interviews, May 2023.

Figure 53. Number of complaints submitted to the AMCU, 2015-2023 (January-May)



Source: Annual Report on Competition Policy Developments in Ukraine for 2019 and Annual reports of the MoE for 2021 and 2022.

The AMCU has the authority to review complaints regarding alleged violations in public procurement procedures. It has no jurisdiction to review simplified procurement or direct contracts awarded outside the Prozorro system. In 2021, only 7.7%⁵²⁸ of all contracts were awarded through public procurement procedures, and this share decreased further in 2022 to 3.9%.⁵²⁹ As a result, a significant portion of public procurement activities in Ukraine is beyond the scope of the AMCU's review.

The AMCU operates with a limited staff of only 33, comprising 7 members and 24 supporting staff. While the appointment of authorised persons with the specific role of reviewing complaints is a step towards improving case resolution, the significant and ongoing influx of complaints indicates a need for measures to strengthen the AMCU's administrative capacities in order to maintain the quality of decisions.

The AMCU respects the statutory time limits for deciding on complaints. In the reviewed sample of the AMCU's decisions, they refer to applicable law and principles and generally demonstrate a clear rationale. In some cases, the decisions focus on formal errors, but so do the complaint allegations. However, when the formal errors do not impact the outcome of the procedure, this is clearly stated in the decision.

The AMCU asserts⁵³⁰ that the majority of complaints pertain to typical cases, suggesting that there is no need for the AMCU to employ tools to ensure consistency of decisions, as they rely on institutional memory and accumulated knowledge. However, it has been repeatedly raised by contracting authorities and other stakeholders⁵³¹ that there is a perceived shift in the predictability of AMCU decisions, with some decisions being difficult to understand, lacking detailed explanations, and exhibiting contradictory

⁵²⁸ Annual report of the MoE for 2021, p.38.

⁵²⁹ Annual report of the MoE for 2022, p.29.

⁵³⁰ SIGMA interviews, May 2023.

⁵³¹ *Ibid.*

interpretations. Additionally, conflicting opinions between the AMCU, the SAS and the MoE were identified as a prominent issue during the interviews.⁵³²

The complaints system is fully digitalised, from the submission of complaints, communication and exchange of information between the parties (including telecommunication facilities for hearings) up to publication of AMCU decisions. However, the presentation of AMCU decisions on the e-procurement platform is not user-friendly or easily searchable. Currently, there is no dedicated section on the e-procurement system for AMCU decisions, and each decision is only published within the specific procurement file where the complaint was submitted.⁵³³ This limitation hinders access to AMCU decisions, making it challenging for stakeholders to obtain information on previous case law related to specific situations or legal issues. As a result, the published information has limited value and relevance. However, there is a commercial, fee-based e-service⁵³⁴ that enables users to conveniently search through the AMCU's decisions using various criteria. A comprehensive search engine to ensure wider access to the AMCU's case law free of charge would greatly enhance legal continuity, certainty, and transparency.

The decisions of the AMCU can be challenged before the District Administrative Court in Kyiv. The number of decisions challenged before the court has been relatively low, with only 466 decisions challenged in 2021 (3% of all cases) and 79 challenges in 2022 (2% of all cases). The main issue lies in the long judicial procedures, lasting from 6 to 24 months.⁵³⁵ Reaching the Court's final decision in such long timeframes brings into question the practical relevance of the ruling to the procurement procedure in question and manifestly discourages parties from seeking judicial protection.

Conclusion

The AMCU exhibits a good level of independence. The number of complaints has been increasing, except for a sharp decline in 2022. The appointment of authorised persons for complaint review is a positive step. A significant portion of public procurement activities falls outside the jurisdiction of the AMCU. The lack of a dedicated section in ProZorro for AMCU decisions hinders access and search capacity and thus limits their value. Lengthy judicial procedures discourage seeking judicial protection.

⁵³² For instance, the emergence of differing interpretations regarding the use of the 24-hour correction mechanism, as evidenced by examples https://radnuk.com.ua/praktyka_zakupivel/iaku-pozytsiiu-obyraie-dasu-shchodo-24-hodyn-minekonomiky-chy-amku/ and <https://konsaltua.com/news/24-godyny-na-vypravlennya-pomylok-chy-mozhna-dozavantazhuvat-vidsutni-v-skladi-tendernoyi-propozyciyi-dokumenty-poglyady-amku-dasu-sudiv/>, has become a notable point of contention.


⁵³³ For example <https://prozorro.gov.ua/tender/UA-2020-09-04-010839-b>.

⁵³⁴ Clarity App: <https://amcu.clarityapp.pro/>.

⁵³⁵ Data received from the AMCU.

Principle 13: Public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring the most efficient use of public funds and making best use of modern procurement techniques and methods.

Overall, the value of the indicator "Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations" remains at a low level of 2, with no increase since 2021. Key practice-oriented indicators show little to no change, indicating a lack of progress.

Indicator 6.13.1. Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations -						
This indicator measures the extent to which public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring most efficient use of public funds. It measures performance in the planning and preparation of public procurement, the transparency and competitiveness of the procedures used, the extent to which modern approaches and tools are applied, and how the contracts are managed once they have been concluded.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
				2021	2023	
Planning and preparation of the public procurement procedure						
1. Due attention is given to the planning process				2/5*	3/5	
2. Presence and use of cost estimation methods and budgeting				1/2	1/2	
3. Perceived quality of tender documentation by contracting authorities and economic operators (%)				Not available	1/4	
Competitiveness and transparency of conducted procedures						
4. Perceived fairness of procedures by businesses (%)				Not available	3/4	
5. Contracts awarded by competitive procedures (%)				0/5	0/5	
6. Contracts awarded based on acquisition price only (%)				0/5	0/5	
7. Average number of tenders submitted per competitive procedure				1/3*	0/3*	
8. Contracts awarded when one tenderer submitted a tender (%)				1/2	1/2	
Use of modern procurement methods						
9. Adequacy of regulatory framework for and use of framework agreements				1/5*	1/5*	
10. Adequacy of regulatory and institutional framework and use of centralised purchasing				1/5*	1/5*	
11. Penetration of e-procurement within the procurement system				5/5	5/5	
Contract management and performance monitoring						
12. Presence of mechanisms requiring and enabling contract management				2/6*	4/6*	
13. Contracts amended after award (%)				3/4	3/4	
14 Use of ex post evaluation of the procurement process and of contract performance				0/6	0/6	
Risk management for preserving the integrity of the public procurement system						
15. Existence of basic integrity tools				2/4	2/4	
Total				19/55	25/65	

Note: No surveys were conducted in 2021 on contracting authorities and businesses. The point conversion range has been modified by removing the survey-related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The total number of points is therefore 55 rather than 65. Point conversion for 2021 ranges: 0-10=1, 11-19=1, 20-29=2, 30-38=3, 39-47=4, 48-55=5. More information about the point conversion ranges can be found in the Methodology section on page 8.

The PPL requires the use of the e-procurement system ProZorro for the award of contracts with a value equivalent to or exceeding UAH 50 000.⁵³⁶

Table 4. Thresholds for the application of the Public Procurement Law

Type of procuring entity	Type of contract	Threshold (UAH)	Procurement method
Contracting authorities ⁵³⁷	Supplies and services	≥ 200 000 ⁵³⁸	Public procurement procedures ⁵³⁹
	Works	≥ 1 500 000 ⁵⁴⁰	
Contracting authorities	Supplies and services	50 000 > 200 000	Simplified procurement ⁵⁴¹
	Works	50 000 > 1 500 000	
Contracting entities	Supplies and services	50 000 > 1 000 000	
	Works	50 000 > 5 000 000	
Contracting authorities and entities	Supplies, services and works	< 50 000	Public procurement principles and publication of the contract award report in ProZorro
			Option to utilise e-catalogues for the purchase of standard goods

In 2021⁵⁴², the total value of concluded contracts reached UAH 963 billion, representing 17.1% of GDP.

The PPL was suspended due to the outbreak of the war in February 2022, but competitive and transparent procurement⁵⁴³ through the ProZorro system was reinstated in October 2022.

⁵³⁶ EUR 1 275 at the exchange rate of 8 June 2023, available at <https://bank.gov.ua/en/markets/exchangerates>.

⁵³⁷ The term “contracting authorities” covers public authorities and bodies referred to in Article 2, paragraph 1, points 1-3 of the PPL.

⁵³⁸ EUR 5 104 at the exchange rate of 8 June 2023, available at <https://bank.gov.ua/en/markets/exchangerates>.

⁵³⁹ Open bidding, restricted bidding, competitive dialogue or exceptionally negotiated procedure, PPL, Article 13.

⁵⁴⁰ EUR 38 283 at the exchange rate of 8 June 2023, available at <https://bank.gov.ua/en/markets/exchangerates>.

⁵⁴¹ PPL, Article 14.

⁵⁴²Data provided by the MoE.

⁵⁴³ Decree of the CMU No. 1178 of 12 October 2022 on the approval of the specifics of public procurement of goods, works and services for customers provided for by the Law of Ukraine on Public Procurement for the period of the legal regime of martial law in Ukraine and within 90 days from the date of its termination or cancellation, with later amendments (in force from October 2022), <https://zakon.rada.gov.ua/laws/show/1178-2022-%D0%BF#Text>.

Table 5. Thresholds for the application of Decree No. 1178

Type of procuring entity	Type of contract	Threshold (UAH°)	Procurement method
Contracting authorities and entities	Supplies and services	≥ 100 000 ⁵⁴⁴	Open bidding
	Works	≥ 1 500 000 ⁵⁴⁵	E-catalogues for standardised goods ⁵⁴⁶
Contracting authorities and entities	Supplies and services	50 000 > 100 000	Simplified procurement ^{547, 548}
	Works	50 000 > 1 500 000	E-catalogues for standardised goods Public procurement principles and publication of the contract award report in ProZorro
Contracting authorities and entities	Supplies, services and works	< 50 000	Direct award

Despite the challenging circumstances of the ongoing full-scale war, efforts have been made to maintain the continuity of public procurement operations, including the use of the Prozorro system.

Based on the available data for 2022⁵⁴⁹, the total value of concluded contracts amounted to UAH 615 billion, indicating a significant decrease.

In terms of value in 2022⁵⁵⁰, approximately 33% of the total value of procurement was awarded through open bidding and 10.31% through simplified procurement. The major part of procurement value was awarded through other methods, such as direct contracting outside the Prozorro system (35.57%) and negotiated procedures (20.26%).

⁵⁴⁴ EUR 2 552 at the exchange rate of 8 June 2023, available at <https://bank.gov.ua/en/markets/exchangerates>.

⁵⁴⁵ EUR 38 283 at the exchange rate of 8 June 2023, available at <https://bank.gov.ua/en/markets/exchangerates>.

⁵⁴⁶ ProZorro Market, <https://prozorro.gov.ua/ProzorroMarket>.

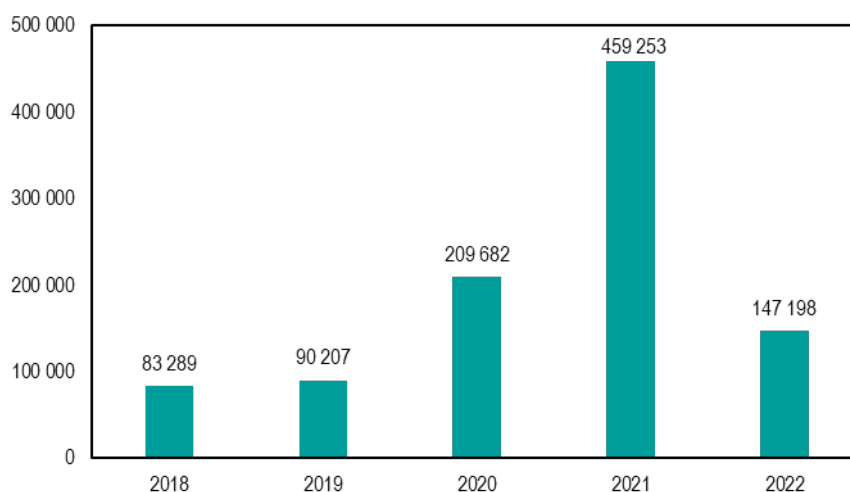
⁵⁴⁷ Decree No. 1178, Point 11.

⁵⁴⁸ Order No. 25 of 20 October 2022, available at <https://radnuk.com.ua/pravova-baza/nakaz-dp-prozorro-25/>.

⁵⁴⁹ Data provided by the MoE.

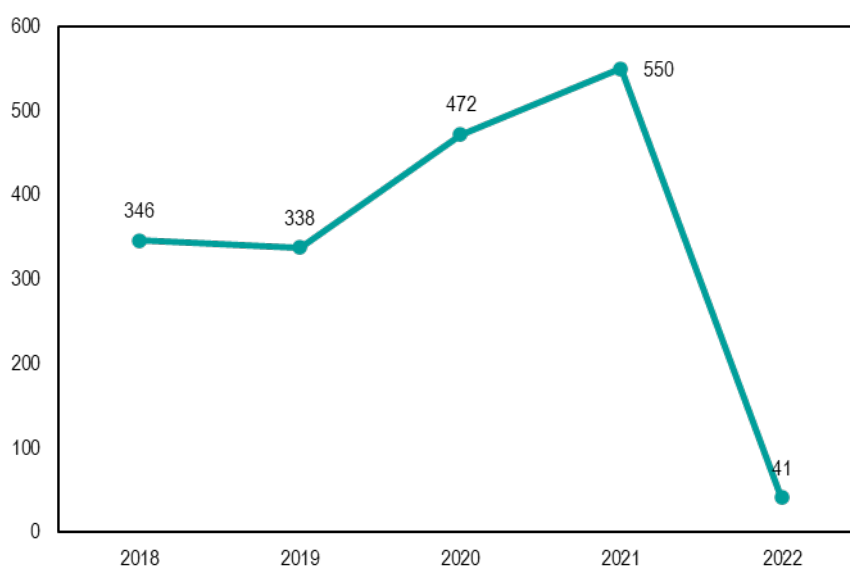
⁵⁵⁰ Annual report of the MoE for 2022, p.32.

Figure 54. Number of competitive procurement procedures, 2018-2022



Source: Annual reports of the MoE for 2018-2022.

Figure 55. Value of competitive procurement procedures (UAH billion), 2018-2022



Source: Annual reports of the MoE for 2018-2022.

The ProZorro e-procurement system is widely recognised for its transparency and user-friendliness.⁵⁵¹ During the martial law regime, the ProZorro system was quickly adjusted to develop and implement simplified functionalities, aligning with the new simplified procedures. However, the existence of mismatches between the requirements and procedures outlined in Decree No. 1178 and the actual

⁵⁵¹ In 2021, ProZorro had 34 383 registered contracting authorities and 263 138 active economic operators, while in 2022, the numbers slightly decreased to 29 610 registered contracting authorities and 242 067 active economic operators.

features and capabilities of the ProZorro system has been observed⁵⁵², leading to practical challenges in the implementation of procurement procedures.

One of the notable features of public procurement in Ukraine is the long-standing tradition of the mandatory use of e-auctions in competitive procurement procedures. Thus, the decision to temporarily suspend e-auctions at the start of 2023⁵⁵³, although made in response to the impact of the war on the electricity supply⁵⁵⁴, was met with dissatisfaction among the public procurement community.⁵⁵⁵ The reinstatement of e-auctions in May 2023⁵⁵⁶ brought about a change in approach. The default practice now requires the use of e-auctions, unless the contracting authority provides a justification for not utilising the e-auction functionality.

The overreliance on price as the sole award criterion (99.7% in both 2021 and 2022⁵⁵⁷) indicates a significant imbalance in prioritising price over quality.⁵⁵⁸ This practice has roots in the lack of necessary expertise in utilising non-price criteria. Moreover, controlling bodies require additional explanations and economic justifications when non-price award criteria are used.⁵⁵⁹ The mandatory use of e-auctions further reinforces the preference for price-focussed evaluations.

The average number of tenders submitted per competitive procedure declined in 2022, (1.86, compared to 2.06 in 2021⁵⁶⁰). In 2022, 35% of the competitive procedures received only one tender, marking a slight increase from 33% in 2021.

There is a positive trend in the reduction of unsuccessful procurement procedures, with the percentage decreasing from 5.53% in 2021 to 2% in 2022.⁵⁶¹ This positive development can be attributed to two legal changes. First, the removal of the requirement for a minimum of two tenders has had a positive effect in fewer procedures being cancelled. Second, the introduction of the 24-hour correction mechanism allowing participants to correct certain inaccuracies in their tender has also played a role. However, differing official interpretations⁵⁶² regarding the use of the 24-hour correction mechanism have become a notable point of contention in the public procurement community.

⁵⁵² SIGMA interviews, May 2023 and responses of contracting authorities in SIGMA Public procurement survey for contracting authorities 2023, Question A10: “Finally, in reflection of the questions from this questionnaire, do you have any comments related to public procurement practices you would like to add, or comments to the questionnaire?”

⁵⁵³ Decree No. 1495 of 30 December 2022, <https://zakon.rada.gov.ua/laws/show/1495-2022-%D0%BF#n2>

⁵⁵⁴ “Уряд змінив правила проведення торгів на Prozorro: Тимчасово відмінили аукціони” (“The government has changed the rules for conducting auctions on ProZorro: Auctions have been temporarily cancelled”), MoE website, <https://me.gov.ua/News/Detail?lang=uk-UA&id=3483cd5a-5b3d-4e5e-81e2-3067a6298b43&title=Prozorro>.

⁵⁵⁵ Transparency International Ukraine, “Does ProZorro Need Three-Round Auctions?”, <https://ti-ukraine.org/en/blogs/does-prozorro-need-three-round-auctions/>.

⁵⁵⁶ Decree No. 471 of 12 May 2023, <https://zakon.rada.gov.ua/laws/show/471-2023-%D0%BF#n7>.

⁵⁵⁷ Data received from the MoE.

⁵⁵⁸ The EU average is 55%, https://single-market-economy.ec.europa.eu/single-market/public-procurement_en.

⁵⁵⁹ SIGMA interviews, May 2023.

⁵⁶⁰ Data received from the MoE.

⁵⁶¹ Based on the data of the Annual reports of the MoE for 2021 and 2022.

⁵⁶² Conflicting opinions between the ACMU, the SAS and the MoE, evidenced by examples https://radnuk.com.ua/praktyka_zakupivel/iaku-pozytsiui-obyraie-dasu-shchodo-24-hodyn-minekonomiky-chy-amku/ and <https://konsaltua.com/news/24-godyny-na-vypravlennya-pomylok-chy-mozhna-do-zavantazhuvaty-vidsutni-v-skladi-tendernoyi-propozyciyi-dokumenty-poglyady-amku-dasu-sudiv/>, were identified as a prominent issue during the SIGMA interviews, May 2023.

The planning and preparation of public procurement procedures are generally transparent and efficient. Contracting authorities are required to publish annual procurement plans on the Prozorro system.⁵⁶³

There are areas for improvement, particularly in the quality of tender documentation. Based on the experiences of businesses, 18.5%⁵⁶⁴ chose not to participate in public procurement procedures due to unclear selection or evaluation criteria, non-objective criteria or burdensome procedures. Additionally, 9.7%⁵⁶⁵ of businesses decided against participating in public procurement procedures due to concerns that the deal had already been predetermined before the tender was published.

Since 2017, the establishment of central purchasing bodies (CPBs) has been taking place in Ukraine. Initially, a CPB for general commodities⁵⁶⁶ was set up, followed by the CPB for procurement of medicines and medical devices⁵⁶⁷ in 2018 and a CPB for IT procurement⁵⁶⁸ in 2021. Additionally, between 2020 and 2023 seven regional CPBs have been established. CPBs are responsible for organising procurement procedures on behalf of their customers (including framework agreements), with the aim of achieving cost savings through aggregated volumes and standardising recurring purchases, thereby enhancing public procurement practices. However, their performance needs improvement. In 2021, CPBs launched only 900⁵⁶⁹ procurement procedures, accounting for less than 0.02% of all public procurement procedures. The total value of procurement awarded through central purchasing was UAH 5.5 billion, which represented less than 0.6% of the overall procurement value in 2021. In 2022, these figures declined even further to only 611 procedures (0.02%) with a value of UAH 2.4 billion (0.5% of total procurement value).

The CPBs have the authority to establish and operate so-called electronic catalogues⁵⁷⁰, which are standardised databases of qualified suppliers, and their products and are accessible through the ProZorro Market online store.⁵⁷¹ E-catalogues offer a simple and efficient purchasing process, where the contracting authority can select products from a list and place an order or ask for a price quotation. Initially, e-catalogues were limited to purchases below UAH 50 000⁵⁷², but this threshold has been removed⁵⁷³, making e-catalogues an option equal to open bidding, but exempted from monitoring and complaint procedures. Currently, all three central-level CPBs manage e-catalogues for consumer goods,

⁵⁶³ ProZorro system website, <https://prozorro.gov.ua/search/plan>.

⁵⁶⁴ SIGMA business opinion survey 2023: 117 out of the 301 companies in the sample had decided not to take part in a public tender or procurement procedure. Of the 301 companies, 56 provided the reason that "The criteria seemed to be tailor-made for certain participants" (18.5%), 24 stated that "Unclear selection or evaluation criteria" was the reason (8.1%), and 51 stated that "The procedure seemed too bureaucratic or burdensome" (17%). Following standard methodology, the highest percentage determines the point allocation.

⁵⁶⁵ SIGMA business opinion survey 2023: 117 out of the 301 companies in the sample had decided not to take part in a public tender or procurement procedure. Of the 117 companies, 29 provided the reason that "The deal seemed to have been sealed before the tender was published" (9.7%).

⁵⁶⁶ State Institution "Professional Procurement".

⁵⁶⁷ State Enterprise "Medical Procurement".

⁵⁶⁸ State Enterprise "Ukrainian special systems".

⁵⁶⁹ Data provided by the MoE.

⁵⁷⁰ In accordance with Decree No. 822 of 14 September 2020, <https://zakon.rada.gov.ua/laws/show/822-2020-%D0%BF#Text>

⁵⁷¹ E catalog - ProZorro Market and ProZorro+ electronic catalog, <https://smarttender.biz/en/prozorro-market/>.

⁵⁷² PPL, Article 3 paragraph 3.

⁵⁷³ Decree No. 1178, Point 10.

medical goods, and IT products. In 2022, there was record⁵⁷⁴ growth in the use of e-catalogues, with over 3 600 customers making more than 14 000 purchases, marking a 44.4% increase from 2021. The total value of these purchases amounted to nearly UAH 1.8 billion, a substantial increase from UAH 381 million in 2021.⁵⁷⁵

In 2022⁵⁷⁶, the SAS monitored 11 800 procurement procedures, which represent less than 0.4%⁵⁷⁷ of the total number of procedures in that year. Violations were detected in 7 900 cases. In 2022, the SAS compiled 374 protocols on administrative offenses.

Concessions and PPPs have remained low in numbers. Despite the adoption of a relevant government decree, the ongoing war and lack of funding have hindered the development and implementation of the necessary functionality in the e-procurement system.

Conclusion

The ongoing war has impacted procurement operations and led to a decline in the value and number of concluded contracts, and the use of competitive procedures remains low. The use of price as the only award criterion remains high, while the average number of tenders decreased. There is a positive trend in reducing unsuccessful procurement procedures. The performance of CPBs and the use of e-catalogues have shown potential, but their performance needs enhancement.

⁵⁷⁴ Annual report of the MoE for 2022, p. 30.


⁵⁷⁵ Annual report of the MoE for 2021, p. 32.

⁵⁷⁶ Annual report of the MoE for 2022, p. 41.

⁵⁷⁷ In 2022, 2 950 319 public procurement procedures were announced, Annual report of the MoE for 2022, p. 27.

Principle 14: Contracting authorities and entities have the appropriate capacities and practical guidelines and tools to ensure professional management of the full procurement cycle.

Overall, the value of the indicator “Availability and quality of support to contracting authorities and economic operators to strengthen professionalisation of procurement operations” is 3, unchanged from 2021. While there have been both positive and negative developments, they have not impacted the overall score.

Indicator 6.14.1. Availability and quality of support to contracting authorities and economic operators to strengthen professionalisation of procurement operations -						
This indicator measures the availability and quality of support given to contracting authorities and economic operators to develop and improve the knowledge and professional skills of procurement officers and to advise them in preparing, conducting and managing public procurement operations. This support is usually provided by a central procurement institution.						
This indicator does not directly measure the capacity of contracting authorities and entities. The assessment is of the scope of the support (whether all important stages of the procurement cycle are covered), its extent, and its quality and relevance for practitioners (whether it provides useful, practical guidance and examples). Surveys of contracting authorities and economic operators are used to gauge the relevance and practical applicability of the support.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					

	2021	2023
Availability and quality of manuals, guidelines, standard tender documents and other operational tools		
1. Availability and quality of manuals and guidelines	4/4*	3/5
2. Availability and quality of standard tender documents, standard forms and standard contract models	3/4*	2/5
Availability and quality of training and advisory support		
3. Access to quality training for procurement staff	2/4*	2/5
4. Availability of advice and support for contracting authorities and economic operators	3/4*	4/5
Procurement procedures cancelled		
5. Procurement procedures cancelled (%)	4/5	5/5
Total	16/21	16/25

Note: There has not been a survey in 2021. The point conversion range has been modified by removing the survey-related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The total number of points is therefore 21 rather than 25. Point conversion for 2021 ranges: 0-3=1, 4-7=1, 8-10=2, 11-13=3, 14-17=4, 18-21=5. More information about the point conversion ranges can be found in the Methodology section on page 8.

The professionalisation of the public procurement function in Ukraine was one of the objectives of the Public Procurement Reform Strategy 2016-2022. It involved the replacement of tender committees with persons authorised to organise and conduct public procurement procedures. The transition process began in 2021 and was completed in 2022. The MoE played a crucial role in this process, first by

approving the legal provisions⁵⁷⁸ to define the legal status and general principles guiding the work of authorised persons, second by establishing a testing procedure⁵⁷⁹ and third, by developing a pool of test questions.⁵⁸⁰ In November 2021, the testing module was integrated into the ProZorro system.⁵⁸¹

In 2021, approximately 33 000 individuals passed the test, representing 97% of contracting authorities, and in 2022, over 13 000 people were tested.⁵⁸²

The training of public procurement officers is not mandatory, and there is no centralised curriculum. Training opportunities are provided by a range of private and public entities.⁵⁸³

As part of the efforts to facilitate the transition to authorised persons, the MoE⁵⁸⁴ developed a series of 12 video tutorials called "Professionally about procurement" in 2021. These tutorials provide basic information, address frequently asked questions and discuss specific topics, such as non-price award criteria and framework agreements.

During 2022 and 2023, the MoE organised some webinars on the legal changes related to the martial law regime. The webinars are broadcast live on the MoE's social media platforms, and the recorded sessions are accessible for viewing on ProZorro's YouTube channel.⁵⁸⁵

According to the results of the 2023 SIGMA survey, 56.2%⁵⁸⁶ of contracting authorities and businesses perceive the training programmes as useful or very useful. There is a high demand for free-of-charge advanced training programmes specifically to be provided by the MoE and ProZorro, given the viewpoint⁵⁸⁷ that existing training, whether offered commercially or free of charge, predominantly provides general content and places significant emphasis on legal aspects.

⁵⁷⁸ Order of the MoE No. 40 of 8 June 2021 on approval of the Model Regulation on the authorised person, <https://zakon.rada.gov.ua/rada/show/v0040930-21#Text>.

⁵⁷⁹ Order of the MoE No. 376-21 of 6 August 2021 on approval of the Procedure for organising testing of authorised persons, <https://zakon.rada.gov.ua/laws/show/z1271-21#Text>.

⁵⁸⁰ Order of the MoE No. 873-21 of 1 November 2021 on approval of the list of test questions for confirmation by an authorised person of the level of possession of the necessary (basic) knowledge in the field of public procurement with answer options, <https://www.me.gov.ua/LegislativeActs/Detail?lang=uk-UA&isSpecial=True&id=eec4aa82-4fe7-486b-8306-bf9cc1181cfd>

⁵⁸¹ "Пройти та перевірити результати тестування Уповноважених осіб" ("Pass and check the results of the testing of Authorised Persons"), <https://exam.prozorro.gov.ua/entry>.

⁵⁸² Data provided by the MoE.

⁵⁸³ For example, Kyiv School of Economics, Procurement Advisor, SE ProZorro, National Civil Service Agency, operators of the electronic platforms.

⁵⁸⁴ With the support of the TAPAS Project and the Reform Support Team.

⁵⁸⁵ ProZorro TV (YouTube), <https://www.youtube.com/@prozorrotv9868/videos>.

⁵⁸⁶ SIGMA procurement survey of contracting authorities and SIGMA business opinion survey 2023, conducted March-April 2023: 340 contracting authorities and 301 businesses answered the survey; 55.3% of contracting authorities and 57% of businesses found the training "useful" or "very useful".

⁵⁸⁷ SIGMA interviews, May 2023, and responses of contracting authorities in SIGMA Public procurement survey for contracting authorities 2023, Question A10: "Finally, in reflection of the questions from this questionnaire, do you have any comments related to public procurement practices you would like to add, or comments to the questionnaire?"

In May 2023, the MoE launched⁵⁸⁸ free online courses developed with the assistance of the EU project.⁵⁸⁹

The MoE disseminates information through its official website⁵⁹⁰ and the Prozorro website⁵⁹¹, as well as on social media⁵⁹² platforms. The MoE's website is regularly updated with responses to specific inquiries, informative letters and general answers.⁵⁹³ Additionally, it serves as a platform for submitting questions and seeking clarification. The SIGMA 2023 survey shows that the majority of contracting authorities and businesses (65.8%) find the answers generally helpful.⁵⁹⁴ The MoE is indeed regarded as very responsive, but contracting authorities also criticised⁵⁹⁵ the information provided as overly formalistic. The lack of practical guidance and recommendations from MoE is consistently noted by stakeholders.⁵⁹⁶

The MoE has been active in preparation of manuals and guidelines.⁵⁹⁷ Supported by the EU project, in 2022 the MoE developed a commentary on the public procurement legislation of Ukraine and methodological recommendations on the award and execution of public procurement contracts. Furthermore, also in 2022, the EU project prepared a review of judicial practice in the field of public procurement.

The models of standard tender documents for open bidding and competitive dialogue⁵⁹⁸ were established in 2016 and have not been updated since. They detail the mandatory information specified by the PPL, but lack practical examples. In 2021, the MoE and the AMCU collaboratively developed a sample of tender documents for catering services specifically designed for educational institutions. Furthermore, in 2022, with the support of the EU project, samples of contracts for supply, services, works

⁵⁸⁸ Online courses on public procurement, <https://infobox.prozorro.org/articles/onlayn-kursi-z-publichni-zakupivel-na-platforni-prometheus>.

⁵⁸⁹ EU funded Project: "Support to the Public Procurement Reform in Ukraine", EuropeAid/140597/DH/SER/UA.

⁵⁹⁰ Public Procurement website, <https://me.gov.ua/Tags/DocumentsByTag?lang=uk-UA&id=d4b4ca89-6635-454b-8a57-a5a2a9b5de4f&tag=PublichniZakupivli>.

⁵⁹¹ ProZorro Infobox, <https://infobox.prozorro.org/>.

⁵⁹² ProZorro on Facebook, <https://www.facebook.com/prozorro.gov.ua>; MoE Department of Public Procurement on Facebook, <https://www.facebook.com/PublicProcurementofUkraine>.

⁵⁹³ Information resource website, <https://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=8245ceea-6349-45c2-a2cf-35791699407f&title=InformatsiiniResurs>.

⁵⁹⁴ SIGMA procurement survey of contracting authorities and SIGMA business opinion survey conducted March-April 2023: 340 contracting authorities and 301 businesses answered the survey; 61.9% of contracting authorities and 69.7% of businesses answered "Yes" that the answers provided were generally helpful. The arithmetic mean is 65.8%.

⁵⁹⁵ SIGMA interviews, May 2023, and responses of contracting authorities in SIGMA Public procurement survey for contracting authorities 2023, Question A10: "Finally, in reflection of the questions from this questionnaire, do you have any comments related to public procurement practices you would like to add, or comments to the questionnaire?"

⁵⁹⁶ SIGMA interviews, May 2023.

⁵⁹⁷ Website of the MoE, <https://www.me.gov.ua/Documents/MoreDetails?lang=uk-UA&id=baffdfc5-cf61-4a3e-af46-4d559ebb0e67&title=GolovnaTematichniListi>.

⁵⁹⁸ Order of the MoE No. 680 of 13 April 2016 on approval of sample tender documentation, <https://zakon.rada.gov.ua/rada/show/v0680731-16#Text>.

and framework agreements⁵⁹⁹ were produced. Satisfaction with the available standard forms and models is moderate, with 46%⁶⁰⁰ of contracting authorities and businesses perceiving them as useful or very useful.

Since 2015, with endorsement of the MoE, a network of public procurement professionals actively engaging on social media has evolved.⁶⁰¹ This network serves as a valuable platform for procurement officers to connect with their peers and seek advice outside of official channels.

Conclusion

The transition from tender committees to authorised persons was successfully completed in 2022, including testing and granting access to the e-procurement system. Training opportunities are provided by various entities, but there is a demand for advanced programmes. The MoE is active in dissemination of information, but stakeholders seek more practical guidance. Specialised advice is scarce, leading contracting authorities to rely on external consultants.

⁵⁹⁹ Актуальні зразки договорів про закупівлю товарів, робіт, послуг та рамкових угод (Current samples of contracts for the purchase of goods, works, services and framework agreements), <https://infobox.prozorro.org/articles/zrazki-dogovoriv-pro-zakupivlyu-tovariv-robit-poslug-ta-ramkovih-ugod> .


⁶⁰⁰ SIGMA procurement survey of contracting authorities and SIGMA business opinion survey 2023, conducted March-April 2023: 340 contracting authorities and 301 businesses answered the survey; 51.4% of contracting authorities and 40.5% of businesses found the standard forms and/or models "useful" or "very useful". The arithmetic mean is 46%.

⁶⁰¹ Popular groups in the public procurement community include: The Community of Reformers of the Public Procurement System of Ukraine (13 200 participants), <https://www.facebook.com/groups/ppinua/>; Public Procurement of Ukraine (22 700 participants), <https://www.facebook.com/groups/konsaltua/>; Analytical Tools in PROZORRO (3 900 participants), <https://www.facebook.com/groups/prozorroinstruments/>; and DOZORRO Community (800 participants). Transparency International Ukraine has also established a Working Group comprising representatives from the MoE, the AMCU, the SAS, large contracting authorities, economic operators and consultants. This group aims to discuss system problems, address issues, and develop proposals for resolution.

External audit

Principle 15: The independence, mandate and organisation of the supreme audit institution are established, protected by the constitutional and legal frameworks and respected in practice.

Overall, the value of the indicator “Independence of the supreme audit institution” is 2, the same as in 2021. The low level of the indicator is due to the lack of provisions related to the independence of the ACU in the Constitution, the control of the executive over the ACU’s budget and its limited mandate. The low perception of the population of the ACU’s independence also had an impact on the indicator value.

Indicator 6.15.1. Independence of the supreme audit institution						
This indicator measures the extent to which external audit by the supreme audit institution (SAI) is conducted independently, and the internationally recognised conditions for the effective functioning of the SAI are found in law and practice.						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
					2021	2023
1. Constitutional and legal independence of the SAI					1/4	1/4
2. Organisational and managerial independence of the SAI					4/5	3/5
3. Adequacy of the SAI mandate and alignment with International Standards of Supreme Audit Institutions (ISSAIs)					1/3	1/3
4. Access to information and premises					1/1	1/1
5. Perceived independence of the SAI by the population (%)					Not available	0/3
Total					7/13	6/16

Note: Not available = a survey was not conducted in 2021. The point conversion range has been modified by removing the survey related points from the total. The point range was then proportionally adjusted to the new point total to calculate the 2021 overall indicator value. The total number of points is therefore 13 rather than 16. Point conversion ranges: 0-2=0, 3-4=1, 5-7=2, 8-9=3, 10-11=4, 12-13=5. More information about the point conversion ranges can be found in the Methodology section on page 8.

The Constitution of Ukraine refers to the powers of the ACU as the institution responsible for exercising control over the revenue of the state budget and the use thereof, on behalf of the VRU.⁶⁰² The Constitution does not contain specific provisions related to the independence of the ACU. Regarding the members of the ACU, the only reference in the Constitution is to the appointment and dismissal of the Chairman and the members by the VRU.⁶⁰³

The independent role and position of the ACU are defined in the Law on the Accounting Chamber.⁶⁰⁴ The ACU Law prohibits any interference or intervention of state authorities, local self-government bodies, political parties and public associations, enterprises, institutions and organisations. It also refers to its

⁶⁰² Constitution of Ukraine, Article 98.

⁶⁰³ Constitution of Ukraine, Article 85.

⁶⁰⁴ Law on the Accounting Chamber, reports of the VRU 2015, No. 36, Article 360.

organisation as a collegial body, composed of thirteen members, and outlines the procedure for appointment and dismissal of the Chairman and other members of the ACU.

The lack of these provisions at constitutional level could limit the independence of the ACU and its members, but it has been respected in practice, with no removal for reasons not specified in the legislation.

The legal framework does not foresee the protection of the ACU by the Supreme Court against any interference with its independence and audit mandate. Furthermore, the executive has direct control over the ACU's budget formulation and approval, as it follows the regular general procedures formulated in the BC, by submitting its budget requests to the MoF. Thus, the financial independence of the ACU is not guaranteed.

The mandate of the ACU is defined in the BC as control over the receipt and use of funds from the state budget to monitor compliance with budget legislation and specific audit activities towards state debt and state guaranteed debt.⁶⁰⁵ Its mandate is further specified in the ACU Law⁶⁰⁶, which refers to both financial and performance audits. Compliance audits are not mentioned as a separate type of audit. The scope, according to the ACU Law, covers both revenues and expenditures of all public entities at central, regional and local level as well as SOEs. However, the role of the ACU regarding local governments or SOEs, according to the ACU Law, is only to deal with aspects that have consequences for the state budget (e.g. subsidies from the state budget) or upon request of the entities.

To some extent, the mandate of the ACU overlaps the mandate of the SAS, which has the competence to carry out an evaluation of the economic, efficient, and effective management of budget funds. The SAS has the mandate to audit local governments and SOEs. A positive development is the inclusion in the PFMRS Strategy 2022-2025 of specific activities aimed at clearer co-ordination and co-operation between the ACU and the SAS.

Neither the BC nor the ACU Law assign the ACU a clear mandate to audit the consolidated financial statements of the Government. The ACU is only responsible for issuing, as foreseen in the BC⁶⁰⁷, an annual report on the implementation of the Law on the State Budget, including conclusions on implementation, an assessment of the effectiveness of the management of state budget funds, and proposals on elimination of violations identified in the budget reporting period and on improvement of the budget process in general.

Audited entities are obliged to make available all information, documents and materials necessary for the ACU to carry out its audit work. The ACU also has the right to gain access to databases, registers and automated systems created at the expense of state budget funds.⁶⁰⁸

The ACU reports are submitted to the legislature and are made available to the public.

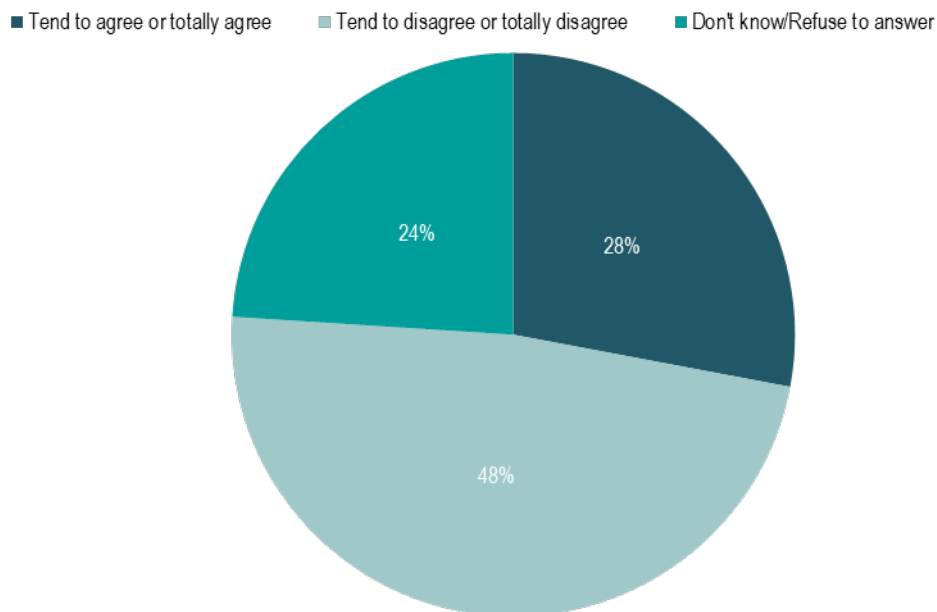
The SIGMA public opinion survey of 2023 revealed that only 28% of the population perceives the ACU as independent.

⁶⁰⁵ BC, Article 110.

⁶⁰⁶ ACU Law, Article 7.

⁶⁰⁷ BC, Article 62, and ACU Law, Article 7, paragraphs 3 and 4.

⁶⁰⁸ ACU Law, Article 8.

Figure 56. Perception of the independence of the Accounting Chamber


Source: SIGMA public opinion survey 2023.

Conclusion

While the independence of the ACU is established by the ACU Law, it is not sufficiently protected by the Constitution, which only mentions its role. The ACU cannot seek protection from the Supreme Court, and its financial independence is not guaranteed, as the executive controls the ACU's budget submission and execution. The mandate of the ACU is broad, but it does not include the audit of the consolidated financial statements of the Government or fully auditing SOEs. There is an overlap with the mandate of the SAS.

Principle 16: The supreme audit institution applies standards in a neutral and objective manner to ensure high quality audits, which positively impact on the functioning of the public sector.

Overall, the value of the indicator “Effectiveness of the external audit system” is 3, the same as in 2021. The overall rating balances the positive development of the approval of improved guidance in the areas of performance audit and compliance audit with a drop in the share of recommendations implemented.

Indicator 6.16.1. Effectiveness of the external audit system						
This indicator measures the extent to which external audits contribute to improved management of public finances and how the supreme audit institution applies standards to ensure high-quality audits (e.g. through its manuals and quality assurance system).						
2023 indicator value	0	1	2	3	4	5
Trend 2021-2023 	Points					
					2021	2023
1. Coverage of mandate by external audit					3/6	3/6
2. Compliance of audit methodology with ISSAIs					1/6	6/6
3. Quality control and quality assurance of audits					3/6*	3/6*
4. Implementation of SAI recommendations (%)					6/6	4/6
5. Use of SAI reports by the legislature					4/6*	4/6*
Total					17/30	20/30

Notes: *Data not available or not provided. More information about the point conversion ranges can be found in the Methodology section.

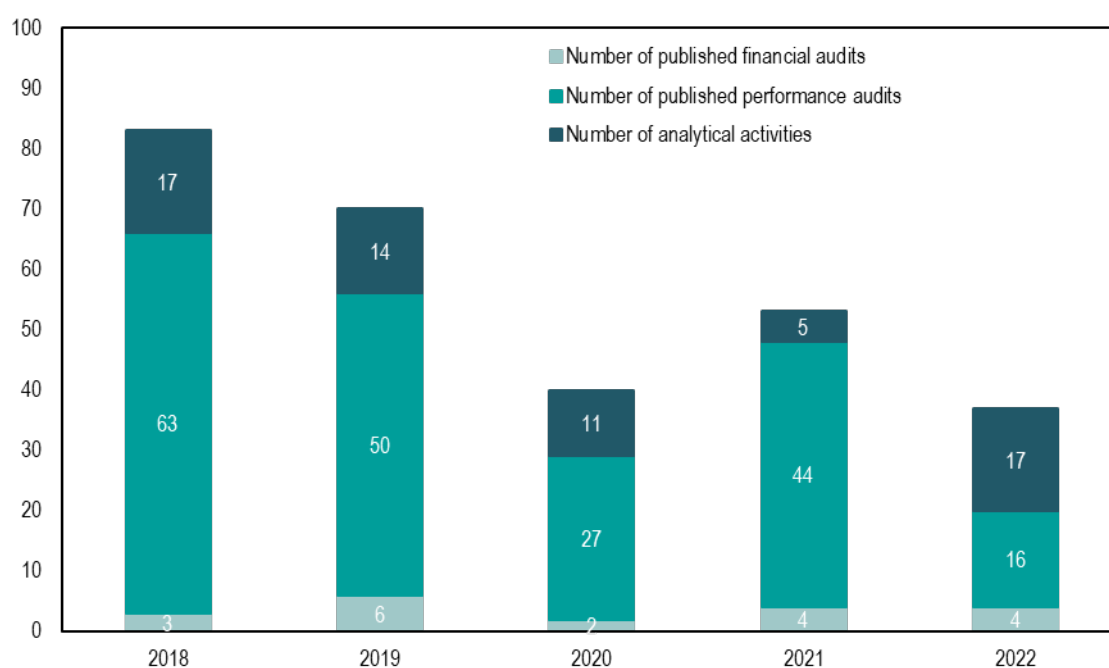
The ACU does not have a mandate to audit the financial statements of the Government, although it issues a mandatory report on the implementation of the Law on the State Budget.⁶⁰⁹ In 2022, the ACU completed 20 audits, including 4 financial audits and 16 performance audits. Additionally, the ACU carried out 17 analytical activities, including the analysis of the draft law on the State Budget submitted to the VRU⁶¹⁰ and reports on the implementation of the Law on the State Budget.⁶¹¹

⁶⁰⁹ BC, Article 62, and ACU Law, Article 7, paragraphs 3 and 4.

⁶¹⁰ ACU Law, Article 3, paragraph 2.

⁶¹¹ According to the information provided by the ACU, reports were issued on the first quarter, first half of the year and on the period January-September 2022.

Figure 57. Number of audits per type carried out by the Accounting Chamber of Ukraine over the last five years



Source: Website of the Accounting Chamber of Ukraine.

Regarding compliance with international standards, according to the ACU Law⁶¹², the activities of the ACU are based “on the principles of the International Organization of Supreme Audit Authorities, the European Organisation of Supreme Audit Institutions and the International Standards of Supreme Audit Institutions”, but “only in the part that does not contradict the constitution and laws of Ukraine”. This phrasing in the law allows leeway for practices that are not in line with international standards.

It should be noted that, in its financial audits, the ACU does not provide audit opinions on the financial statements. Furthermore, the audits defined by the ACU as performance audits with the objective of assessing the effectiveness in the use of budget funds are, in fact, in many cases compliance-oriented activities with inspection-like elements. They focus mainly on the assessment of regulatory aspects, budget expenditure requirements or accuracy of accounting records rather than performance. The inclusion of inspection-type checks is not in compliance with the ISSAIs.

Methodological guidance for financial, performance and compliance audits in line with ISSAIs has been developed in co-operation with international donor support.⁶¹³ The ACU adopted the new manual of procedures and methodological guide for financial audit in 2022⁶¹⁴ and approved the methodological guidance for performance and compliance audit on 6 June 2023. Since these approved methodologies are very recent, the audits conducted in 2022 have been carried out in line with the previous inspection-oriented methodology and therefore are not in compliance with the ISSAIs.

⁶¹² ACU Law, Article 3.

⁶¹³ Methodological guidance developed in the framework of the EU-project “Strengthening the capacity of external audit in line with international standards” (EU4ACU).

⁶¹⁴ Procedure for Financial Auditing by the Accounting Chamber and Methodological Guide on Financial Audit, approved by decision of the ACU of 22 December 2022.

In 2015, the ACU issued internal recommendations for the development of a quality control system⁶¹⁵ aligned with the ISSAIs.⁶¹⁶ The recommendations refer to both the internal ongoing quality control and the external quality assurance expert review of delivered reports. According to the ACU, the recommendations were fully implemented in the activities of the ACU and are used by structural units of the ACU when performing quality control, but only evidence of regular quality assurance expert reviews of individual audit reports has been obtained (63 in 2021 and 39 in 2022).

There are formal mechanisms to channel ACU reports to the VRU⁶¹⁷ and to the Budget Committee, which is responsible for handling those reports. The ACU follows and adheres to the deadlines provided by the ACU Regulations.⁶¹⁸ On the side of the VRU, there are clear rules for the consideration of the mandatory ACU annual report on budget implementation⁶¹⁹, but there is no institutionalised procedure or legal obligation for the VRU to respond to audit reports issued by the ACU. However, in practice, the relevant VRU Committees discuss the reports issued by the ACU, organise hearings and issue recommendations if deemed necessary.

The ACU monitors the implementation of the audit recommendations in line with the follow-up procedure set out in the ACU Regulations. According to the ACU's data⁶²⁰, all recommendations made in 2020 and 2021 were accepted by the auditees. The ACU issued 976 recommendations in 2021, out of which 612 were implemented in 2022 (63%). This shows a negative trend compared to implementation in 2021, when 476 out of the 581 recommendations made in 2020 were implemented (82%), but this is fully understandable in the context of the war.

Conclusion

In general, the ACU performs mostly compliance-oriented audits with inspection-type elements and does not provide for an opinion on the financial statements in its financial audits of public sector entities. Recent updates of the audit methodology, still in an initial implementation phase, show potential improvement and future alignment with international standards. There is no systematic institutionalised process for the VRU to respond to the audit reports or to follow up on their recommendations, but the relevant committees discuss the reports and issue recommendations when deemed necessary. All of the ACU's recommendations have been accepted by the auditees, and the implementation rate is high, albeit with a decrease in wartime in 2022.

⁶¹⁵ Recommendations on the management and quality control of audits carried out by the ACU, approved by Decision of the ACU No. 8-5 of 10 November 2015.

⁶¹⁶ In particular, ISSAI 40 Quality control for SAIs, ISSAI 1220 Quality control of audit of financial statements and ISSAI 5600, Peer Review Guide.

⁶¹⁷ ACU Law, Article 37. Regulations of the ACU Nos. 31-3, of November 2019, approved by Decision of the ACU No. 22-7 of 28 August 2018, Chapter 7.

⁶¹⁸ ACU Regulations, Chapter 41: The VRU is informed within 15 working days from the moment of approval by the ACU of the report and/or conclusions drawn up as a result of the state external financial audit.

⁶¹⁹ RoP of the VRU, Article 162.

⁶²⁰ ACU report for 2021, approved by Decision of the ACU No. 10-2 of 28 April 2022, published on 29 April 2022, and ACU Report for 2022 of 27 April 2023.

Public administration in Ukraine

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