

ANNEX 3: ACTION FICHE (TWINNING AND ENP SUPPORT TECHNICAL ASSISTANCE)

ACTION FICHE FOR UKRAINE

THIS TEXT EXISTS ONLY IN ENGLISH

1. IDENTIFICATION

Title	Twinning and ENP Support Technical assistance CRIS: ENPI/2009/21364		
Total cost	<i>EC Contribution - €16 million</i>		
Aid method <i>Management mode</i>	Project approach (twinning and technical assistance) <i>Centralised management/Joint management</i>		
DAC-code	43010	Sector	Multisector aid

2. RATIONALE

2.1. Sector context

On 21 February 2005, the European Union and Ukraine signed a three-year ENP Action Plan foreseeing the achievement of ambitious objectives in a large number of sectors and activities. In recognition of the significant democratic and economic reforms underway in Ukraine, the EU and Ukraine in March 2007 opened negotiations on an Association Agreement that will replace the present Partnership and Cooperation Agreement (PCA) and will include a deep and comprehensive Free Trade Area as a core element thereof. The current EU-Ukraine ENP Action Plan is to be replaced by a new practical instrument. The new instrument should also be seen as a vehicle for preparing for and facilitating the implementation of the new Agreement. The new instrument should help to focus resources and institutions on priority tasks.

The year 2008 was an important one for Ukraine on the global stage, including from an economic perspective. Ukraine formally became a fully fledged member of the WTO on 16 May 2008. Ukraine's accession to WTO is a great achievement and a significant step in economic transformation of the country. In that context, full respect of the commitments undertaken is essential. As a result of the finalisation of Ukraine's WTO accession process, the EU and Ukraine launched negotiations for a free trade agreement between the EU and Ukraine on 18 February 2008. In the frame of the global financial crisis, Ukraine concluded an agreement with the IMF in late 2008 (a two-year stand-by arrangement for USD 16.5 billion), with as key objectives (i) to stabilize the domestic financial system which has been exposed to the international financial crisis and (ii) to facilitate the economy's adjustment to a large terms of trade shock.

EC-Ukraine visa facilitation and readmission agreements entered into force on 1 January 2008. The EU-Ukraine Summit of 9 September 2008 decided to launch a dialogue on visa-free travel of Ukrainian citizens to the EU as a long-term perspective.

In December 2008, the Commission adopted an ambitious Communication on a new 'Eastern Partnership', which will upgrade our offer to our Eastern partners, building on the European Neighbourhood Policy but going clearly beyond what is currently on the table. In particular, the Commission proposed a deepening of bilateral relations between the EU and each of its Eastern partners, as well as multilateral cooperation platforms in several fields.

Close cooperation and strong ownership by the Ukrainian authorities to ensure effective and policy driven implementation of EC assistance programmes in support of policy objectives is crucial. Policy dialogue is

even more important in preparation and implementation of budget support. There is a need for further integrating EC cooperation into the EU approximation process and for establishing appropriate government structures and mechanisms for planning and management, reflecting the shift from the technical assistance/project based approach to a policy driven/sector programme based approach. In the past years of Action Plan implementation, insufficient administrative capacity and understanding of Community rules and administrative functioning have come to the fore as significant blocking factors on Ukraine's path towards economic integration into the EU Internal Market.

The proposed measure will therefore have to address this challenge as a priority, using the twinning modality wherever appropriate.

The main priorities of the Country strategy Paper 2007-2013 and National Indicative Programme (NIP) 2007-2010 are: (i) Support for democratic Development and Good Governance; (ii) Support to the Regulatory Framework and Administrative Capacity Building; (iii) Support for Infrastructure Development. The importance of support for regulatory reform and administrative capacity building³, is specified in two sub-priorities:

1. Promoting mutual trade, improving the investment climate and strengthening social reform
2. Sector-specific regulatory aspects (in all ENP-relevant sectors)

Furthermore, the NIP stresses the challenges stemming from Ukraine's policy of gradual approximation with the EU's internal market rules. The envisaged EU-Ukraine Free Trade Area agreement notes that, in designing support in this area, emphasis should be placed not only on technical advice on approximation of legislation and alignment of procedures, including technical regulations, conformity assessment procedures and standards but also, equally importantly, on administrative capacity building to ensure national ownership and effective enforcement of approximated rules and regulations. The proposed measure, be it realised in the form of twinning projects or technical assistance for future sector wide support, will be dealing with both aspects.

The proposed measure aims therefore at strengthening the capacity of the Ukrainian administration to face the integration challenge. In areas where, by anticipation, discussions with the Ukrainian Government have underlined the need for sector-wide assistance (such as the reform of the law enforcement system, including the fight against corruption; the reform of the judiciary; border management and infrastructure, migration, environment; transport, removal of trade barriers), the proposed measure envisages the delivery of preparatory technical assistance. Such assistance will aim at drawing conditions from Ukraine's sectoral reform and development strategies and, where necessary, at helping Ukraine devise such strategies, in line with the Ownership objective of the Paris Declaration, to which Ukraine is a signing party.

While the Ukrainian government has developed or is working on sectoral reform strategies in priority sectors, many of them require in-depth revision and refinement in the light of the commitments taken under the ENP, and in anticipation of the upcoming DFTA. Therefore the proposed measure is and will remain consistent with the country's reform and development strategies, to which it will contribute directly, while strengthening Ukraine's capacity to maintain and update these strategies. The proposed measure will also help Ukraine strengthen its capacity

³ Ukraine NIP 2007-2010, Section 2 "Main priorities and goals"

to coordinate donors, develop or refine its national sectoral development strategies in priority sectors, and build Ukraine's capacity to achieve effectively its ENP / FTA objectives.

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

2.2. Lessons learnt

The measure focuses on raising Ukraine's chances of achieving the key objectives without which its political dialogue with the EU will likely lose momentum, as a consequence of insufficient implementing capacities. The project draws on past experience and on-going projects, be they funded by the Community or other donors. The delivery methods have been chosen based on recent positive experience with twinning projects (more than 30 twinning projects are now on-going or under preparation, starting from zero in 2006, and new requests for twinning projects flow in at an accelerated pace), and the successful use of preparatory assistance for designing sector-wide support (for instance in the agricultural, transport, financial services or energy sectors). The results expected from sector-wide studies foreseen under previous Action programmes for Ukraine have been given due consideration, as well as the need to further past or on-going assistance, where appropriate.

ENPI sector and programme-based assistance is envisaged to more effectively support the Ukrainian sector policies, strategies and plans. This is why EC technical and financial cooperation has to ensure strong ownership by Ukrainian authorities through the financing of policy-driven programmes to support jointly agreed policy objectives. This also applies to twinning operations. Mobilising significant human and financial resources to stimulate progress in Ukraine, twinning is an increasingly important instrument to "support approximation to meet EU norms and standards" in Ukraine. In this context, twinning provides a comprehensive and ambitious framework for work with Ukraine, identifying key areas of reform. Twinning projects acts as a catalyst in setting the country's public administration reform in motion, bringing together specialists from EU Member States and the Ukrainian administration, as well as promoting the effective adoption of Community legislation.

2.3. Complementary actions

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

2.4. Donor coordination

Other donors and IFIs have generally agreed to use Ukraine's commitments set forth in the EU-Ukraine ENP Action Plan (and the forthcoming new practical instrument) as a basis for designing their own aid conditionalities in the relevant sectors, thus ensuring consistency of external assistance. UA has signed the Paris Declaration and set up a complex donor-government coordination system under the Ministry of Economy, which does not work to its full potential. The existing Ukraine cooperation structures with the EU need to be increasingly policy driven and need to be adapted to the evolving relationship with the EU (Association Agreement and Free Trade Area). Further efforts are necessary to create a consolidated, clearly defined Ukrainian donor government coordination mechanism, in line with the Paris Declaration, and for taking measures to fully integrate donor assistance into its own planning and budgeting strategies and policies. The recent creation of the Bureau for EU and Euro-Atlantic Integration can be a further step in harmonisation and alignment of assistance.

3. DESCRIPTION

3.1. Objectives

Overall objective:

To meet the objectives of the EU-Ukraine ENP Action Plan (and new practical instrument) as well as prepare for implementation of the Association Agreement and the DCFTA.

Specific objectives:

To build the capacity of the Ukrainian ministries and agencies to comply effectively with the commitments set forth in the EU-Ukraine ENP Action Plan (new practical instrument), the Association Agreement and the DCFTA, as well as in their national reform and development programmes

To prepare Ukraine to, and support implementation of, the DCFTA in sectors identified as key for its success (like WTO SPS, Quality assurance, Market infrastructure)

To prepare the introduction of sector-wide support and to support its implementation, in whichever form, in the sectors recognised as priorities (including law enforcement, judicial reform and good governance, energy including energy efficiency, environment, transport, removing technical barriers to trade, border management and migration as well as public finance management)

3.2. Expected results and main activities

The main result of this measure is the enhanced political dialogue based on successful realisation of joint objectives defined in the Action Plan (new practical instrument), envisaged Association Agreement and the DCFTA. In practical terms it shall mean:

Timely and cost-effective implementation of Ukraine's commitments under the above-mentioned documents, along with regulatory reform and administrative capacity building;

Timely and efficient preparation⁴ and implementation of future sector-wide support in jointly identified priority areas for proper ENP and FTA implementation (including improved functioning of PFM system in Ukraine);

To achieve this, the following activities will be implemented:

1. Enhancing administrative capacity, that will be achieved through improving the ability of the Ukrainian civil servants to understand and make use of EU standards, and adapting the institutional structure to the requirements stemming from the bilateral agreements (e.g. participative dialogue with EU and international partners, elimination of functional conflicts of interest, modernisation of the scopes of responsibilities and decision-making procedures, involving changes in sector supervision and management practices). Where appropriate, administrative capacity will be enhanced through exchanges of technical expertise, support to capacity-building and institutional strengthening. Where relevant it may also include the provision of advice on regulatory approximation to EU standard.

The OECD/SIGMA analysis of Ukraine's public service (made in June 2006) identifies a lack of administrative capacity to understand, approximate and enforce EU-compliant legislation and regulation as the main weakness behind the country's difficulties in streamlining its reforms and abiding by its international commitments (including those undertaken within the framework of bilateral relations with the EU). The proposed measure will address this weakness using, as appropriate, the advantages offered by the twinning modality and/or by technical assistance.

This activity will be mainly implemented through Twinning modality.

2. The proposed measure will yield EU-compatible sector-wide strategies in the areas critical to achieve the objectives of the bilateral agreements (and where Ukraine is currently seeking to achieve substantial reform), and provide the tools for their implementation, possibly with the help of sector-based donor assistance. It will also, in particular, allow using a systemic approach towards legal approximation, helping to achieve in due time the critical mass of approximated legislation required by the bilateral agreements.

Given that the success or failure of implementation of national policies and strategies is strongly affected by the quality of the public financial management system (PFM) and in view of the on-going and forthcoming budget support operations, proper Public Finance Management is acquiring special importance. Efficient delivery of Budget Support relies upon effective medium-term budget forecast system and implies a continued strengthening of the PFM System including improvements in the current legal and institutional framework of public procurement. With respect to the objective agreed by the EC of channelling 50% of assistance through the recipient country's national budget, the proposed measure will provide capacity building for the Public finance management system.

To make sure that conditionalities set for the PFM sector in each of the forthcoming EC budget support operation are timely and duly met, it is proposed to use – in close cooperation with the World Bank (which has recently launched its EUR 65 million Public Finance Modernization Programme in Ukraine) and other donors (such as SIDA) in this area - an important part of the

⁴ Preparation will focus on deepening sector knowledge, (re)developing reform strategies in the light of EU-Ukraine bilateral agreements, and establish a framework of short-term and medium-term criteria conditioning budget support. Whereas the Ukrainian administration currently endeavours to refine existing decision-making processes in key Ministries following a EU-compatible decision preparation procedure (sector study, green paper, white paper,... developed by ad-hoc Policy support groups), this component of the measure may provide support to the Policy support groups in Ministries relevant to implement priority ENP/FTA objectives.

Twinning/TA allocation from AAP 2009 for supporting activities/institutions involved in the PFM sector. To a large extent, Twinning mechanism could be used as a tool for transferring relevant EU experience, including from Member States which have passed through a similar processes only rather recently, however, some activities may be implemented through technical assistance projects.

Under current circumstances, truly independent judiciary acquires special importance for the reform process. Certain steps have been taken towards consolidating the rule of law with regard to court reform and training of judges and prosecutors. In spite of the adoption of a concept ‘for the improvement of the judiciary in order to ensure fair trial in Ukraine in line with European standards’⁵, progress is being hindered by endemic corruption⁶, which is a main challenge for the development and economic growth of Ukraine, and by the lack of a truly independent judiciary. Particular attention should therefore be devoted to the fight against corruption and the continuation of the judicial reform, so as to ensure independence and efficiency of the judiciary. Previous Commission assistance has also allowed to deepen EU-Ukraine cooperation in judicial matters. This cooperation has highlighted, among other lessons, the need to further reform the judiciary in order to ensure its independence, impartiality and efficiency and strengthen EU-Ukraine judicial cooperation in civil and criminal matters.

3. Given that no specific Technical assistance component are foreseen under SBS operations in the Environment and Transport sectors, this measure shall foresee provision for technical support accompanying mentioned SBS programmes through technical assistance and – as appropriate - twinning operations. The twinning would mainly aim at the capacity strengthening. Technical assistance shall ensure sufficient implementation, providing support in monitoring, reporting, evaluation, audit, visibility, and other relevant activities. Precise needs will be further elaborated.

3.3. Risks and assumptions

Assumptions:

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

Ukraine pursues its objective of improved relations and economic integration with the EU, maintains its trend of increased co-financing of cooperation projects with the EU, and pursue its efforts to modernise its administration

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

Ukraine will go on with its administrative reform, thus creating the pre-conditions for retaining civil servants in public administration after implementation of the measure.

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

⁵ was approved the President of Ukraine on 10 May 2006

⁶ Ukraine was ranked 134th among the 180 countries investigated in the Corruption Perceptions Index of Transparency International, a deterioration compared to 2007 when Ukraine was ranked 118th out of 163 monitored countries.

Risks:

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

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

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

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

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

3.4. Crosscutting Issues

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

Good governance and human rights: Improved administrative capacity and rendering it aware of EU policies and systems will raise the democratic standards of governance; preparing for a sector-wide approach for the judicial and law enforcement system, implying improved wider and systematic consultation of the civil society and businesses, will take Ukraine a major step forward to democracy at central government level; the monitoring by civil society organisations will be a guarantee of setting up an efficient and stable surveillance of the judicial and law enforcement system.

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

Gender balance: The proposed measure has no direct impact per se on gender balance. However, certain activities funded by the measure may be designed to tackle gender inequality, or may have otherwise an impact on this issue. To be noted is the current gender imbalance in the Ukrainian Government, where about two thirds of the employees are female. At decision-making level, however, this imbalance does not exist: in the central Government, as at the end of 2006, 1643 heads of departments (and higher ranks) were male, whereas 1663 were female, for the same level of remuneration.

Environment: The measure will specifically complement a future sector-wide support in the environment sector. In addition, the introduction of EC-compliant norms on the occasion of

regulatory reform (via twinning projects) will impose the ex-ante evaluation of the impact on the environment of decisions likely to bear on it.

3.5. Stakeholders

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

Overall, the implementation of the Twinning programme on behalf of Ukrainian administration is supported by the PAO (Programme Administration Office), which is designed to assist the Delegation of the European Commission to Ukraine with the overall management of twinning projects. In Ukraine the role of PAO is carried out by the Main Department of Civil Service (through the Centre for Adaptation of the Civil Service to EC standards). According to the Government Regulation of 1/10/2008 No 868, the monitoring of twinning project implementation should be carried out by the Main Department of Civil Service. This includes participation in steering committee meetings, coordination of quarterly and summary reports, etc.

4. IMPLEMENTATION ISSUES

4.1. Implementation method

Component 1 – Twinning (indicative amount 9.8M€)

The implementation method for this component will be centralised management.

Component 2 – ENP Support Technical Assistance (indicative amount 6.2M€)

Sub-component 2a – national and international TA (indicative amount 1.2M€)

The implementation method for this sub-component will be centralised management by means of service contracts and supply contracts. This component includes the provision for monitoring/evaluation/translation and visibility.

Sub-component 2b – international expertise (indicative amount 5M€)

The implementation method for this sub-component will be joint management through the signature of agreements with the following specialised international organisations :

- Council of Europe, for activities falling under priority area 1 of the National Indicative Programme 2007-2010 and 2010-2013 (Democratic Development and Good Governance), for an indicative amount of 1.5M€
- UNDP, for activities falling under priority areas 1 (see above) and 3 (Economic and Social Development, including the sub-priority on regional development/Crimea Initiative) of the NIP, for an indicative amount of 1.5M€

- WTO, for activities falling under priority area 2 (Regulatory Framework and Administrative Capacity Building) of the NIP, for an indicative amount of 1M€
- UNEP, for activities falling under priority area 3 (see above, including the sub-priority on environment) of the NIP, for an indicative amount of 1M€

With reference to Article 53d of the Financial Regulation, the Commission and the following international organisations are bound by a long-term framework agreement laying down the administrative and financial arrangements for their cooperation:

- the United Nations ("Financial and Administrative Framework Agreement" of 29 April 2003), this agreement applying inter alia to UNEP;
- the WTO (August 2007);
- the Council of Europe (August 2004).

4.2. Procurement and grant award procedures

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

The essential selection and award criteria for the award of grants are laid down in the Practical Guide to contract procedures for EC external actions. The maximum possible rate of co-financing for grants is 80%. Full financing may only be applied in the cases provided for in Article 253 of the Implementing Rules of the Financial Regulation where financing in full is essential to carry out the action in question.

For all activities identified as to be best implemented under joint management, the contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the International Organisation concerned. In cases of joint management with WTO, the Authorising Officer proposes the application of their respective procurement rules on the basis of his own evaluation and comparison, which allows him to deem that their procurement rules are in accordance with the provisions laid down in Article 56(2) of the Financial Regulation.

4.3. Budget and calendar

Each project component will include its own provision for evaluation, audit and visibility. The indicative breakdown of the budget would include: component 1 – twinning projects €0.8 million, component 2 – sectoral technical assistance €6 million and a provision for monitoring/evaluation/translation and visibility of €0.2 million.

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

It is foreseen that all the operational duration of the project will be of 48 months after the signature of the Financing Agreement.

4.4. Performance monitoring

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

There is no standard indicator applicable to the DAC sector code of the proposed measure. It is proposed to use a modification of Standard indicator 407 “Scope of capacity-building actions”, considered at central government level, to assess global project performance, given the measure’s general focus on improving government administration. Harmonisation of monitoring frameworks of other donors is expected to be one of the outcome of the government-led coordination process referred to in section 2.4. The project will be implemented in line with the Backbone Strategy which is part of wider EC actions to implement the Paris Declaration and which aims to improve the effectiveness of EC aid with respect to capacity development.

4.5. Evaluation and audit

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

4.6. Communication and visibility

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