

ACTION FICHE UKRAINE
ANNUAL ACTION PROGRAMME 2010 PART 2

1. Identification

Title/Number	Support for Border Management Sector Policy in Ukraine ENPI/2010/22369		
Total cost	EU contribution EUR 66 million		
Aid method / Method of implementation	Sector Policy Support Programme: - Sector budget support (EUR 60 million, centralised management) - Project mode for complementary action (EUR 6 million, centralised management).		
DAC-code	15110	Sector	Public Sector Policy and Administrative Management

2. Rationale and country context

2.1. Country context and rationale for Sector Policy Support Programme (SPSP)

2.1.1. Economic and social situation and poverty analysis

From 2000 to 2007, Ukraine's economic performance was strong and poverty decreased substantially. However, the world financial crisis hit Ukraine hard in late 2008, with Ukraine's real GDP declining by 15.1% and consumer inflation surging to 16% year on year in 2009. Starting with the first quarter of 2010, the economy is showing signs of improvement, with an estimated GDP growth of 3-4% in 2010. Notwithstanding this positive development, the sustainability of public finances remains a concern. While the state budget deficit has been set at 5.3% of GDP in 2010, the International Monetary Fund (IMF) has not yet formally resumed its cooperation with Ukraine, as the budget foresees rather uncertain revenue sources and generous social policies not yet supported by solid economic reforms. Some of these points could prove difficult for the IMF to accept.

2.1.2. National development policy

The new Ukrainian Government has not yet adopted a formal coalition agreement or strategic development programme. However, an Economic Reform Programme for 2010-2014 was recently adopted. While the border management sector is not specifically targeted in the economic programme, there are important policy goals related to sustainable economic development, customs reform and improving the business climate.

2.2. Sector context: policies and challenges

(1) Sector Policy

There is a sector policy defined by the law enforcement programme on the "State Border Development and Reconstruction for the Period until 2015", adopted by the Government (Resolution No. 831) in 2007, and development strategies of the State Border Guard Service (SBGSU) and the State Customs Service of Ukraine (SCSU), which are referred against European standards and international best practices. Key challenges in the sector remain the lack of information exchange, shortcomings in management and strategic planning, corruption, and lack of funds for the modernisation of crucial infrastructure. The strategies currently in place identify these challenges and propose an approximation

towards EU practices. However, a more comprehensive strategic action plan with a clear timetable and performance indicators is still to be developed.

(2) *Sector Context and Medium Term Expenditure Framework*

The annexes to the above mentioned law enforcement programme contain a costing for a list of projects for borders and customs which have multi-year implications. However, there is neither a formal Medium Term Fiscal Framework (MTFF) nor a Medium Term Expenditure Framework (MTEF) in Ukraine. Cognizant of this important weakness, the new government has stated its commitment to gradually progress towards a MTFF/MTEF, which will be encouraged and monitored under this SPSP and within the overall European Commission-Government of Ukraine cooperation.

(3) *Coordination with beneficiary country and other donors*

A Government-led donor coordination process is in place. The main interlocutor for the EU in terms of assistance is the Ministry of Economy, with the reformed International Assistance Department under the authority of a Deputy Minister as counterpart for the coordination of technical cooperation. A Deputy Prime Minister is in charge of economic reform issues. For political issues, the principal counterparts are the Bureau for European Integration in the Cabinet of Ministers and the Ministry of Foreign Affairs.

The main donors involved in the sector are the EU, the US, the International Organisation for Migration (IOM), the World Bank and UNDP. With the reform of the Ministry of Economy, all donors' activities are now coordinated by the same Department (cf. section 2.6).

(4) *Institutional Capacity*

The Ministry of Finance and the Treasury possess the necessary tools to manage the overall fiscal situation. However, there remain some key institutional weaknesses, especially in budgeting, control, procurement and audit.

Both the SBGSU and the SCSU are well aware of the challenges involved in border management sector reform and the approximation to EU standards, as reflected in their respective development strategies.

(5) *Performance Monitoring*

There is no formal sector-wide performance monitoring system in place to date. However, the implementation of the development strategies and of the aforementioned State Border Development and Reconstruction programme is monitored by the agencies themselves and the Ukrainian Government. The creation of a Joint Monitoring Group in the context of the proposed sector budget support (SBS) will significantly improve performance monitoring through the establishment of clear benchmarks and the involvement of all key stakeholders. The technical assistance planned to accompany this measure will include components on strengthening monitoring and evaluation capacities inside the two institutions.

(6) *Macroeconomic framework*

As described above, real GDP declined by 15.1% in 2009, with the Government public deficit reaching 9% of GDP (not including bank recapitalisation costs). As a result, public debt rose rapidly, by 53.5% year on year to USD 37.7 billion (34.7% of 2009 GDP), with both external and domestic debt surging. The Central Bank's gross reserves were at USD 26.5 billion by end-2009, down 16% year on year.

The National Bank of Ukraine kept a firm grip on monetary aggregates last year, contributing to exchange rate stability and disinflation. Along with weaker economic activity, this caused a deceleration of the full year monetary base growth to 4.4% year on year (to UAH 195 billion), from 37% on average recorded in the previous five years. A consensus forecast for the Ukrainian economy is that the growth will be positive in 2010, partly because of the low statistical base of the previous year and partly because of the anticipated revival of external markets. Another important sign is that no economic sector

in Ukraine has been sending signals indicative of a fundamental crisis. Expert estimates vary from 2.7% to 4% for the real GDP growth in 2010.

(7) *Public Financial Management:*

The legal and institutional responsibilities in the field of public finance management (PFM) in Ukraine are, in general, clearly defined and assigned. In addition to key legislation, the government has approved a resolution on the PFM modernisation strategy in October 2007, which is, however, of a general nature, and has not yet been implemented. A more practical approach to the elaboration of PFM sector development was introduced as a chapter in the recently approved Economic Reform Programme which, however, requires further refining and precision.

Overall, budgeting performs relatively well in Ukraine, with an orderly budget process and the fundamental legislative framework largely in place. The most significant weakness in this area is the continued absence of a publicly verifiable multi-year perspective in fiscal planning. This absence poses a significant risk to overall fiscal discipline as well as to a more strategic use of limited resources and to improved efficiency. While the budget execution system does assure some degree of predictability in the flow of funds, uneven performances and fragmentation of responsibilities negatively impact on the overall assessment on the quality and transparency of budget execution.

2.3. Eligibility for budget support

An analysis of the three eligibility criteria for SBS confirms that the budget support eligibility criteria have been met:

- (1) A sector policy is under implementation; although the main policy document (Government resolution 831/2007) covers the modernisation of border infrastructure, not the operations of the beneficiary agencies as a whole, the sector policy reform programme has been complemented by development strategies of the two main beneficiary agencies, which make clear reference to EU standards in the border management field.
- (2) The macroeconomic stability eligibility criterion is met (for detailed assessment see section 2.1.1. and 2.2).
- (3) The detailed assessment in section 2.2 also confirms that the eligibility criterion related to Public Financial Management is met, with basic elements being in place. However, the PFM system still requires improvement and further approximation with EU standards, and progress will be needed over the medium-term, in particular on the preparation of a credible MTEF/MTEF.

2.4. Lessons learnt

A European Court of Auditors report in 2008 gave a satisfactory appraisal of most projects in the area of border management, as did a Multi-Project Results Oriented Monitoring (ROM) Analysis of border management, migration and asylum projects in Ukraine (2003 to 2010).

Both the SBGSU and the SCSU benefited from the TACIS and European Neighbourhood and Partnership Instrument (ENPI) programmes, which included supply of modern equipment and various capacity-building measures. While the past interventions have largely been successful, there clearly is a need for further support at sector level, encompassing strategic, structural and operational issues. More emphasis should be put on the legal and regulatory framework, promoting the harmonisation of border management with EU best practices. The SBS allows the Government to assume full responsibility for the sector development in a coordinated manner.

Budget support operations in Ukraine to date have shown that it took considerable time for policy makers in the Ministry of Economy, Ministry of Finance and the relevant sector ministries to understand

and appreciate this new implementing modality. However, interest in budget support has grown gradually throughout the last two years as the modality has become better known among key stakeholders and there is now firm commitment to it, not least in view of the more constrained budget situation. Nonetheless, low administrative capacity among implementing ministries and agencies remains a key concern and more attention must be given to improve monitoring and evaluation of sector policies and to strengthen related statistics. Emphasis should also be placed on improving the overall budget system and medium-term expenditure frameworks, both at central level as well as with line ministries and other public institutions. A tight follow up of commitments and conditionalities established by the various programmes is necessary, including synergies to be achieved with related conditionalities of international financial institutions' programmes, in order to improve coordination and performance on key reforms.

2.5. Complementary actions

The border management sector has benefited from substantial support from the EU over the last ten years, mostly through provision of specialised border control and surveillance equipment, refurbishment and construction of border crossing facilities and technical advice and training targeting institutional reform.

The EU Border Assistance Mission to Moldova and Ukraine (EUBAM) was established in November 2005 at the joint request of the presidents of Moldova and Ukraine, to assist with the modernisation of management of their common border in accordance with European standards, and to help in the search for a resolution to the "frozen conflict" over the separatist Transnistrian region of the Republic of Moldova. EUBAM works together with the border services and other law enforcement agencies of Moldova and Ukraine to develop their professional capacity, increase cross-border cooperation, decrease corruption and to enhance the public relations capabilities of partner services.

The United States have been supporting the Customs and Border Guard Services through large projects focused on drug control, training and management issues. The World Bank provides assistance to the SCSU through a loan supporting the establishment of e-customs.

The on-going preparation of the Platform 1 Eastern Partnership Flagship initiative on Integrated Border Management, as well as (in particular) customs actions planned within Platform 2 of the Eastern Partnership (Economic Integration and Convergence with EU Policies), is likely to provide additional inputs to the development of the border management sector in Ukraine, through exchange of best practice and pilot projects.

2.6. Donor coordination

The main donors involved in the sector are the EU, the US, IOM, the World Bank and UNDP. EU Member States such as Hungary and Poland provide additional support to EU funded projects. EUBAM and the United States' Agency for International Development (USAID) effectively coordinate their activities in the field, and donor coordination between the EU and other donors in the sector is sound and functioning.

The donor coordination framework is currently being revised by the new government. Within the reformed Technical Assistance Department in the Ministry of Economy, a new thematic subgroup/section on security of the state and its citizens (migration, border management, anti-trafficking, ecological safety, bio-security) is going to be installed by the Government with the support of donors and after a series of consultations. On the Ukrainian side, the leading organisation is the State Border Guard Service.

It is expected that the strong coordination group set up in the field of support to Border Management will continue to function. In addition to meetings of the thematic working subgroup, direct contacts with other donors continue. It is expected that the Söderköping Process Secretariat will continue to fulfil an

important coordinating function and act as a platform for information exchange, especially regarding migration and asylum issues.

3. Description

3.1. Objectives

The general objective of the Sector Policy Support Programme (SPSP), which builds on the Ukrainian Sector Strategy and the Association Agenda, is to support the efforts of the Ukrainian Government to achieve an effective balance between secure borders and the facilitation of legal movements of persons and goods, according to EU standards.

The specific objectives of the SPSP are as follows:

- Accompany the establishment of EU standards in all border control activities by 2015, as foreseen by national legislative decisions¹
- Adopt internal structures according to EU standards and ensure that services are better equipped and trained to these standards
- Improve the capacity of the SCSU and the SBGSU to combat smuggling, illicit trafficking and illegal migration while ensuring the respect of the legal rights of all persons crossing the border, and of their legal goods
- Support the modernisation of border infrastructure
- Promote the process of border demarcation in accordance with international standards

3.2. Expected results and main activities

The national sector strategy contemplates the following results, which will be supported by the proposed measure:

- Development, adoption and implementation of a Integrated Border Management Strategy
- Effective system of risk-based management in line with FRONTEX recommendations and the EU Customs Blueprint on Risk Management introduced, significantly increasing effective border control while decreasing the number of physical inspections of cargo
- Introduction of the single window concept, as defined by the United Nations Economic Commission for Europe (UNECE) and the EU Customs Blueprints on Inland and Border Control, thereby ensuring effective control while reducing waiting time at border control posts and enhancing coordination among border management services
- Enhanced facilitation, simplification and effectiveness of customs controls (including post clearance audit) through bringing control procedures and methods in line with the EU and international standards reflected in the relevant Customs Blueprints and revised Kyoto Convention
- Establishment of an inter-agency telecommunications network for the SBGSU and SCSU

¹ CABINET OF MINISTERS OF UKRAINE, Resolution of 13th June 2007 Ref. No. 831, Kyiv, State Targeted Law-enforcement Programme "State Border Development and Reconstruction" for the period till 2015 and the Customs' Service Order N° 948 from 13.10.09 "About Approving the Basic Priorities of the State Customs Service of Ukraine

- Land and Maritime border infrastructure modernised and border checking and surveillance capacities enhanced
- Significant progress in the demarcation of the state borders achieved
- Recognised EU and FRONTEX training curricula are integrated into the training programmes of the SBGSU and SCSU
- Full implementation of e-customs with a strong relation to the Customs Blueprints on Infrastructure and Equipment, and on Information and Communication Technology
- Much improved conditions in the temporary holding facilities for illegal migrants
- Comprehensive anti-corruption measures encompassing prevention/prosecution/sanctioning in core border management agencies effectively in place.

Activities to implement the measure will consist in setting up and running an appropriate system to monitor progress on the above-listed objectives and more specifically attainment of the agreed disbursement targets. This may imply the use of support technical assistance or specific equipment, budgeted for this purpose (section 4)

3.3. Risks and assumptions

The key risks are the following:

- Since SPSP transfers greater ownership to national authorities, some risks of implementation will also pass to the beneficiaries for strategy, procurement, monitoring, performance measurement, accounting and control, and ultimately the achievement of results, including SPSP Indicators
- A lack of motivation or even reluctance towards effective coordination between Border and Customs Agencies might impede unified strategy and implementation
- High number of control agencies at the border and lack of coordination
- A lack of stability and insufficient involvement at the management level
- PFM reform stalls

Assumptions:

- Relations with the IMF will remain constructive
- The authorities to remain motivated and consistent with their own strategies, including the investment of resources for training and the maintenance of a non-excessive level of staff turnover
- The commitment of the key stakeholders towards Integrated Border Management will sustain and lead to a reduction of the number of control agencies at the border
- The Government of Ukraine has a strong motivation to continue PFM reform, which is supported by the clear conditionality of the sector budget support

3.4. Stakeholders

The main stakeholders for the SBS are the State Border Guard and State Customs Services. These two agencies bear the primary responsibility for border management, effective border control and the facilitation of the movement of persons and goods. Both agencies need strengthening of their institutional capacity, an improved legal framework for their operations, and refined internal structures.

While EUBAM works with both agencies to improve their respective capacities, further external capacity support to both agencies will be provided through the technical assistance component of the action. Other services located at the border, including phytosanitary and ecological services, will also be targeted.

Key non-state actors in the border management context are Ukrainian and international business, including the European Business Association. Economic operators mostly concerned with effective customs procedures include Ukrainian companies importing goods and carriers/shipping agents. So are citizens crossing borders, both for personal or economic reasons, including in particular 'frequent users', i.e. those living near the borders.

3.5. Crosscutting Issues

Good governance as an important cross-cutting issue is fully integrated in the proposed programme through its targets related to the effective introduction of ethics and integrity standards, the introduction of more transparent and effective border crossing and customs clearance procedures.

Specific attention will be paid to the fundamental rights of vulnerable populations (e.g. asylum seekers, refugees, unaccompanied minors, victims of trafficking) crossing borders.

4. Implementation issues

4.1. Method of implementation

Direct centralised management by means of untargeted budget support (EUR 60 million)

Direct centralised management (EUR 6 million)

In case the amount of EUR 6 million foreseen for complementary measures cannot be fully contracted, the remaining amounts will become part of the final variable tranche.

4.2. Procurement 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.

Participation in the award of contracts for the present action shall be open to all natural and legal persons covered by the ENPI Regulation. Further extensions of this participation to other natural or legal persons by the concerned authorising officer shall be subject to the conditions provided for in 21(7) ENPI.

4.3. Budget and calendar

Budget support: EUR 60 million

Related technical assistance: EUR 6 million

The budget support is expected to be disbursed in 3 fixed tranches totalling EUR 25 million and 2 variable tranches totalling EUR 35 million (to be further defined in the Financing Agreement). Variable tranches are to be released subject to the matching of agreed indicators, to be agreed with the main partners. Implementation will be supervised by a joint monitoring group, to be supported with ad-hoc technical assistance. The technical assistance component will include an indicative allocation of EUR 0.5 million for evaluation, audit, and visibility actions.

In case the amount of EUR 6 million foreseen for complementary measures cannot be fully contracted, the remaining amounts will become part of the final variable tranche.

The indicative implementation period is 48 months after the signature of the Financing Agreement for the budget support, and 48 months after the signature of the contracts for the technical assistance part.

4.4. Performance monitoring and criteria for disbursement

Performance monitoring will be exerted by a Joint monitoring group led by the Ministry of Economy and the European Commission. The Joint monitoring group will rely on official information provided by Ukraine and verified as appropriate.

Disbursements of the tranches will be contingent on the continuous implementation by Ukraine of a sound macroeconomic and financial policy and on the adoption and effective implementation of an Action Plan for improving the Public Finance Management system, including the adoption and continuous implementation of a Public Procurement law and the reinforcement of a multi-year approach to budgeting. It will also be related to monitored progress towards achieving a set of benchmarks in the border management sector reform. Performance indicators will include:

For the fixed tranche: progress in macroeconomic policy and in public finance management, including the preparation of the MTFE/MTEF; establishment of a joint monitoring group based on satisfactory and workable intra-Ukrainian arrangements; proven progress in implementation of the relevant actions of the EU- Ukraine Association Agenda and the Ukrainian sector policy.

For the variable tranches: further reform of the SBGSU and SCSU, a refinement of their respective development strategies and their approximation to European standards and international best practices in the border management field, including changes to the legal and regulatory framework of their operations and clarification of their functions. This is to result in an enhanced facilitation of the movement of persons and goods through the adoption and implementation of Integrated Border Management Action Plans and legal acts.

4.5. Evaluation and audit

The programme will be subject to the regular monitoring by the joint monitoring group. A specific mid-term evaluation will be organised to, inter alia, review the validity of the monitoring system.

Evaluation of the results achieved will be reviewed and decided by the European Commission. In carrying out such review, the EU will, as appropriate, use the technical advice of external consultants recruited by the EU to verify technical reports and data transmitted by the Government of Ukraine. Programme evaluations and audits, whenever necessary, will also be decided and funded by the EU out of the technical assistance component of the programme. Part of the technical assistance component may be used to enhance the local capacities for auditing the programme.

4.6. Communication and visibility

The programme will follow the orientations of the Manual on Visibility of External Actions (e.g., press release at the signature of the Financing Agreement, visibility for reports and studies, etc).

Proper communication and visibility of the action will be achieved via regular joint communication events on the occasion of the achievement of the disbursement criteria, as well as in connection with the results of technical assistance projects in the border management sector. A reasonable communication budget will be set aside, to be funded out of the complementary action budget, for promotion of the measure throughout its lifetime.