

# CHAPTER 15 (ENERGY): What can Ukraine learn from other EU Member States and candidate countries?

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## List of Abbreviations

**CBAM:** Carbon Border Adjustment Mechanism

**CJEU:** Court of Justice of the European Union

**CNG:** Compressed natural gas

**EIA:** Environmental Impact Assessment

**EPC:** Energy Performance Certificate

**ETS:** Directive: Emission Trading System Directive

**IGC:** Intergovernmental conference

**LNG:** Liquefied natural gas

**LPG:** Liquefied petroleum gas

**NBRP:** National Building Renovation Plan

**NEURC:** National Energy and Utilities Regulatory Commission

**NGO:** Non-government organisation

**TSO:** Transmission system operator

**REMIT:** Regulation on Wholesale Energy Market Integrity and Transparency (Regulation (EU) No 1227/2011)

**RED:** Renewable Energy Directive

**RES:** Renewable energy sources

**TEN-T:** Trans-European Transport Network

## 1 Introduction

This study is intended to assist the Ukrainian government in preparations for the EU accession negotiations on Chapter 15, Energy. Additionally, this study will be relevant for other stakeholders interested in or planning to participate in the EU integration processes on the relevant topic, e.g. stakeholder consultations. This study is prepared in anticipation of the next important milestone on the EU accession of Ukraine, the 2<sup>nd</sup> Intergovernmental Conference in July 2025.

This paper presents the EU accession negotiation process as adapted from a new methodology established in 2020. It summarises the preparedness of Ukraine for the negotiations on Chapter 15, the results of the screening, as well as the governance emerging around the negotiation process, and possible forthcoming challenges. The paper also analyses previous energy-related negotiations and governance in other candidate countries, as their experience may be instructive for Ukraine. The paper builds on a Chatham House discussion that took place in Kyiv on 15<sup>th</sup> October 2024, organised as the first exchange with experts on the Chapter 15 perception and particular challenges. The suggestions expressed during the meeting are reflected in the structure and content of this study.

EU enlargement has proven to be a successful process allowing efficient state-building and institutional modernisation. Even before formally joining the EU, reforms in candidate countries have transformed economies and modernised public institutions, leading to increased economic growth and greater prosperity. In Ukraine, this process will be combined with the post-war reconstruction, presenting additional challenges. In December 2023, ten years after Croatia became the previous country to join the EU and while accession of Western Balkan countries was slowing, the European Council launched a new enlargement process to the east, initiating accession talks with Ukraine and Moldova.

The 2<sup>nd</sup> Intergovernmental Conference (IGC) in July 2025 will kick-start the EU accession negotiations and possibly also correspond to the opening of Chapter 15 under the cluster on Green Agenda and Sustainable Connectivity.

This paper provides an overview of the accession process underway, explaining how and why it differs from previous waves of enlargement, how previous accession bids were negotiated regarding the chapter on energy (Chapter 15), the possible challenges for Ukraine and how it should prepare for the negotiations.

Methodology: literature review, authors' expertise from their own experience, and qualitative interviews.

All comments and feedback for this paper are welcome at the Green Deal Ukraine project. Readers are encouraged to contact [greendeal.ua@helmholtz-berlin.de](mailto:greendeal.ua@helmholtz-berlin.de).

## 2 Summary and Recommendations

**Since the start of the full-scale invasion**, Ukraine's EU accession has taken on increased significance. Ukraine must undergo this process swiftly in order to become a Member State by 2030. Ukraine's EU accession also gains particular importance amid the ongoing and post-war reconstruction efforts.

**Meanwhile, the process has also been dynamic from the EU side.** In 2020, the EU introduced a more stringent and comprehensive framework. The EU enlargement process has evolved to address previous challenges in Member States regarding the rule of law and democratic governance.

Energy sector negotiations are historically challenging, typically requiring up to three years to negotiate Chapter 15. However, Ukraine's situation presents unique complexities due to ongoing post-war economic recovery and institutional restructuring.

### Key challenges and recommendations for Ukraine

1. *Institutional organization.* While Ukraine has established an interagency working group to oversee negotiations, the current structure may be overly expansive. Ukraine should consider a more streamlined and structured approach to negotiations involving key stakeholders such as transmission system operators and regulatory agencies in a formalized capacity.
2. *Legislative transposition of EU acquis.* Ukraine must incorporate approximately 170,000 pages of EU laws, regulations, and directives into its national framework, a task that has the potential to overwhelm legislative processes. Ukraine may need to implement special parliamentary fast-track procedures during accession periods to expedite the legislative process.
3. *Structural and procedural deficiencies in Ukraine's legislative framework.* Ukraine's legal tradition often results in fragmented legislative transposition, where multiple laws are used to address a single EU directive. This can significantly slow the acquis transposition process. Ukraine should consider consolidating related directives into overarching legislative frameworks rather than transposing them through fragmented laws.
4. *Most pressing energy sector reforms.* Electricity market integration, carbon pricing, oil stock reserves, and renewable energy policies will not be easy milestones. Ukraine will likely need to demonstrate tangible progress in market liberalization and energy regulatory independence before its negotiations can advance.
5. *EU energy policies are evolving.* The energy acquis is a dynamic framework, constantly updated to reflect technological advancements and climate commitments. Ukraine must establish dedicated units within ministries to monitor and adapt to new EU regulations.

Overall, Ukraine's EU accession process, particularly concerning the energy sector, requires a well-coordinated and strategic approach. By learning from past enlargement experiences, streamlining negotiation structures, accelerating legislative transposition, and proactively addressing reform benchmarks, Ukraine can position itself for successful EU membership. The process will be complex and time-intensive, but with robust planning, strong institutional coordination, and proactive policy alignment, Ukraine can overcome those challenges and become an EU Member State within the next wave of enlargement.

**For the more medium- and long-term, we suggest setting up an efficient framework for regional energy market integration, using the Baltic Energy Market Integration Plan (BEMIP) as a benchmark. This group should be composed by UA, MD and their EU neighbours.** The BEMIP was crucial for the development of the regional cooperation and enhancement of security of supply in the Baltic region and to drive the integration of the Baltic states into the European energy market, including synchronisation with CESA (European Commission, n.d.). While such a group would work mainly on the

mid- and long-term solutions and include all relevant actors, it would also weigh into the short-term measures through a holistic approach. Therefore, this plan should include all grid actions recommended above.

### 3 Negotiation process

EU membership requires candidate countries undergo a process of demanding reforms. It is not an easy task due to the volume of the acquis and the difficulty of changes in multiple areas of the economy, policymaking, and functioning of governmental institutions.

Ukraine will need to follow the new enlargement methodology, approved by the EU in 2020, which introduced six clusters. The energy sector (Chapter 15), along with the environment and climate change, trans-European networks, and transport policy form, is now part of Cluster IV, Green Agenda and Sustainable Connectivity. However, some energy regulation will be affected also from other clusters requirements. Cluster IV may be opened in 2025 but likely in 2026 as negotiations on Chapter 15 are expected to take more than three years.

There will be several challenges in the process, which Ukraine should consider now. Firstly, organization in the government will need to be revised, as the current organization might not be a fit for the accession needs. Secondly, Ukraine's legal technique of exact laws covering only a specific topic, and slow legislative processes could delay the transposition of EU laws. Finally, a uniform approach towards the transposition of regulations and decisions needs to be defined, which may require Constitutional changes.

Membership in the EU is perceived as a guarantee of democratic stability and economic prosperity within the EU market. The majority of citizens in candidate countries' are, therefore, supportive of the accession, with the exception of Serbia (Dartford, 2022). This support is necessary as candidate countries must commit to many demanding reforms during the accession process. Joining the EU requires fundamental changes to public institutions, policymaking, markets, and many additional policy areas. Candidate countries are required to accept the full EU acquis – the entire body of directives, regulations, and policy recommendations stemming from the EU case law created by the Court of Justice (CJEU) and international agreements – and incorporate these requirements into the national legal system. The EU acquis is nearly 170,000 pages and covers a wide scope of sectoral policies from taxation, trade, energy, nuclear, agriculture, and food safety to climate policy, judiciary, human rights, and many others. Transposing it into national laws, standards, and practices is an enormous task, but it also leads to much of the democratic stability and economic prosperity citizens are looking for from membership.

**Pre-2020 enlargement process.** Previously, countries that applied for membership received candidate status and started the negotiating and reform process in all areas covered by the acquis. The European Commission had a key role in the process. Existing EU Member States voted at key junctures in the accession process, such as kickstarting it and ultimately approving membership. This did not necessarily expedite the process. For example in the case of Croatia, the most recent country to join the EU, the accession process lasted nearly a decade from application to membership (Shahini, 2024).

**The process change.** The primary reason for change was problems with the rule of law standards applied during the most recent waves of enlargement. The current enlargement methodology from 2020 engages EU Member States much more directly with the accession process. It foresees unanimous voting procedures at the opening and closing of accession negotiations, which now happen in six different staggered stages (clusters). In addition, some previous reforms required and delivered during the negotiation process are now preconditions for opening accession talks or to be granted candidate status. These changes have resulted in

a drastic slowdown of the process and Ukraine should take this into consideration when designing the roadmap for the transposition and implementation of all the EU acquis. The key reasons for delay prior to the 2020 methodology were bilateral conflicts (North Macedonia/Greece and Bulgaria, Serbia/Kosovo), inability to deliver reforms (Bosnia and Herzegovina), and a non-prioritisation of enlargement ambition inside the EU (Albania, Montenegro - started negotiations in 2012). In fact, in 2019, French President Emmanuel Macron argued that the EU enlargement process needs an overhaul before talks could begin with prospective members and issued a non-paper showing how this could look. Some of these proposals are included in the revised enlargement methodology, particularly clusters with the prevailing “Fundamentals Cluster”. This increased role of EU Member States allows any of them to block candidate countries from moving to the next step, even over bilateral issues that are not directly related to the EU accession process (e.g. Hungary).

To address a fear of bringing countries into the EU with questionable rule of law standards and institutions, the revised enlargement methodology places rule of law reforms at the core of the accession process. Reforms in areas like the judiciary, the functioning of democratic institutions, public procurement, and anti-corruption measures are grouped in this ‘Fundamentals’ cluster. Negotiations on these fundamentals therefore open first and close last and progress under this cluster will determine the overall pace of negotiations.

The new enlargement methodology introduced six clusters. The energy sector (Chapter 15), the environment and climate change (Chapter 27), trans-European networks (Chapter 21), and transport policy (Chapter 14) form now part of Cluster IV, “Green Agenda and Sustainable Connectivity”.

Several topics that are relevant to the Ministry of Energy are not in Chapter 15, but in other chapters of the Cluster IV or potentially in a different cluster, e.g. energy statistics in Fundamentals Cluster, Chapter 18.

### **Experience of other countries**

The first country to undergo the new enlargement methodology is Albania. The IGC, which was held on 15 October 2024, opened the “Fundamentals Cluster” which included setting the interim benchmarks for the rule of law chapters (23 and 24) and the closing benchmarks for chapters on public procurement (5), statistics (18), and financial control (32). Alternatively, Montenegro had opened practically all negotiation chapters before 2020, and Serbia also started the negotiation process before the new methodology entered into force.

### **3.1 Timing**

Negotiation clusters may be opened at the IGC, which is organised once per year with the first IGC for Ukraine organised on 25 June 2024. This adopted a negotiation framework that summarised the enlargement methodology from 2020. It also envisaged the opening benchmarks of the Fundamentals Cluster (roadmap for public administration reform and the rule of law chapters – Chapters 23 and 24, Action Plan on the protection of the rights of persons belonging to national minorities, etc.). Once the opening benchmarks are met, the European Council will, by unanimity, decide on the opening of that cluster. It may open other clusters simultaneously if the opening benchmarks for that other cluster are met or proceed with these clusters at a later date.

### **Case of Ukraine**

Some measures are already envisaged in the Ukraine Plan (related to the Ukraine Facility). In judicial and anticorruption areas, these are not planned until Q2 2027. While the 13 EU Member States which joined the EU in 2004-2013 completed the chapter on energy within three years, it is expected that Chapter 15 may require longer negotiation in the case of Ukraine. Montenegro, for example, has been under negotiation for five years.

Deputy Prime Minister Olga Stefanyshyna, in her interview with Europeiska Pravda on 6 September 2024, announced that the Fundamentals and Internal Market Clusters will most likely be opened with Ukraine for negotiation in the first half of 2025. According to that statement, we can expect that the Green Agenda and Sustainable Connectivity Cluster will be opened in 2026.

**Table 1. Steps in the negotiation process for Ukraine**

Application for EU membership	28 February 2022
Commission opinion on Ukraine’s application for membership	17 June 2022
European Council decision on opening negotiations	15 December 2023
Ukraine Plan outlined opening benchmarks for the Fundamentals Cluster	15 April 2024
The First IGC framed the accession negotiations	25 June 2024
European Commission’s report on enlargement	Late 2024
European Commission assesses if the opening benchmarks from the Fundamentals Cluster are fulfilled	Late 2024, early 2025
European Council approves the common position and decides on opening negotiations on the Fundamentals Cluster	Likely in June 2025
Bilateral Screening of transposed acquis	Likely 2025
European Council approves the Screening Report and opening benchmarks established for the Green Agenda cluster	Likely 2025
European Council decides on opening benchmarks for Chapters 14, 15, 21 and 27	Likely in June 2025
Opening benchmarks fulfilled by Ukraine	
Ukraine must prepare a negotiation position, including requests for derogations	
European Commission assesses if the opening benchmarks are fulfilled	Likely late 2025, or early 2026
European Council decides on opening negotiations on cluster Green Agenda and Sustainable Connectivity	Likely in June 2026
IGC opens negotiations on the cluster	Likely in June 2026
European Council decides on final benchmarks	N/A
European Council decides on provisionally closing of Chapter 15	N/A
All chapters reviewed with the possibility of being reopened, e.g. with a new acquis.	N/A
European Council decides on closing the Fundamentals Cluster	2030 or later

Source: Authors (2024)

**Table 2. Negotiation time on energy chapter of previous EU accession bids**

Country	Negotiations opened/closed	Problematic issues
<b>Bulgaria</b>	Second half of 1999/Second half of 2002	Closing of two blocks of nuclear power plant Kozloduy, non-cost reflective prices of electricity
<b>Croatia</b>	April 2008/November 2009	Market-based allocation of cross-border capacities
<b>Estonia</b>	Second half 1999/July 2002	Generation of electricity from shale oil
<b>Latvia</b>	First half of 2001/December 2002	-
<b>Lithuania</b>	First half of 2001/December 2002	Closing of Ignalina nuclear power plant

<b>Montenegro</b>	December 2015/December 2020	Oil stocks formation
<b>Poland</b>	Second half of 1999/December 2002	National monopolies in the gas and electricity sector
<b>Romania</b>	March 2002/June 2004	Unbundling of electricity incumbent, cross-subsidization of electricity consumers
<b>Serbia</b>	June 2021/ -	Unbundling of state-owned gas incumbent and opening of the gas market

Source: Authors (2024)

### 3.2 Ukraine Facility

The revised enlargement methodology strives for credibility, predictability, dynamism, and stronger political steer. With that aim, the European Union introduced an additional development aid mechanism by two regulations. In the case of Ukraine, it is the Ukraine Facility, and in the case of the Western Balkans, it is the Reform and Growth Facility for the Western Balkans.

The EU's Ukraine Facility is a comprehensive financial support program, active from 2024 to 2027, designed to aid Ukraine in the wake of ongoing war impacts and align with EU standards on its EU accession path. This facility will provide up to €50 billion in grants and concessional loans directed toward three main pillars, incl. structural reforms and investments:

1. **The Ukraine Plan:** includes support to reforms within the accession process and urgent financial needs.
2. **Ukraine Investment Framework:** provides guarantees and blended finance to attract public and private investments for rebuilding and growing Ukraine's economy, while also managing risk for investors in this high-risk environment.
3. **Technical Assistance and Civil Society Support:** includes technical guidance and capacity building for Ukraine's local governance and civil society groups, vital for implementing EU-related reforms, fostering democratic values, and building institutional resilience.

The facility's disbursements are conditional upon Ukraine's adherence to democratic governance, human rights protections, and the rule of law (DG NEAR, 2024). The Ukraine Plan, a reform plan drafted by the Government of Ukraine, was adopted as an Implementing Regulation of the Ukraine Facility. The Ukraine Plan bypasses Chapter 15 negotiations with its roadmap of reform measures. Serbia and Montenegro, both which already opened an energy chapter, have an obligation to provide a roadmap for energy-related acquis transposition as part of their opening benchmarks in the negotiation. The Ukraine Plan is already, at least partially, such a roadmap. Its timely implementation is therefore a condition for receiving funds promised in the Ukraine Facility.

**Table 3. Roadmap of reform measures in the energy sector (based on the Ukraine Plan)**

Reform measure	Due in
Entry into force of the secondary legislation on the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) law	Q3 2024
Introduction of a market-based framework for renewable energy	Q3 2024
Entry into force of the legislation exempting the decisions of the energy regulator from the state registration procedure	Q4 2024
Roadmap on the separation of activities between public service obligations (PSO) and non-PSO activities in state-owned enterprises	Q1 2025

Adoption of the Roadmap on the process of separation of the Renewable Energy Surcharge from the transmission tariff	Q2 2025
Entry into force of the legislation to support development of the efficient and more sustainable district heating	Q3 2025
Adoption of the Law on the transposition of the electricity integration package, implementation is due by Q2 2026	Q4 2025
Entry into force of the amendments to the Law of Ukraine “On the National Energy and Utilities Regulatory Commission” ensuring independence of NEURC	Q4 2025
Nomination of electricity market operator	Q4 2025
Entry into force of the legislation on changing the conditions of taxation of participants in the electricity market /Tax Code, Customs Code	Q2 2026
Adoption of a Roadmap for the gradual liberalization of the gas and electricity market, to be implemented after the expiration of the martial law	Q2 2026
Adoption of clear rules for network connection and disconnection and improving procedures for individual heat substation installation in multi-apartment buildings to ensure proper remote control and demand management.	Q3 2026
Submission of an audit report confirming the separation of public service obligations (PSO) and non-PSO activities	Q3 2027

Source: (Ukraine Facility, n.d.)

### 3.3 Organisational challenges and lessons from previous candidate countries

On August 27<sup>th</sup>, 2024, the Cabinet of Ministers of Ukraine adopted a resolution, which provides for the establishment of an Interagency Working Group on the Negotiation Process for Ukraine's Accession to the EU. This resolution also considers the adaptation of Ukrainian Legislation to EU law, as well as 36 additional working (negotiation) groups to prepare Ukraine's negotiating positions on relevant sections of the EU negotiating framework. The list of authorities, institutions, and agencies whose representatives are members of the energy working group has been approved in the Annex to the resolution as group 16. Those included are:

- Deputy Minister of Energy, Head of the Working (Negotiation) Group on Energy
- Representative of the Government Office for Coordination of European and Euro-Atlantic Integration of the Secretariat of the Cabinet of Ministers of Ukraine
- Secretary of the working (negotiating) group on energy issues
- Representative of the Ministry of Energy
- Representative of the Ministry of Environment
- Representative of the Ministry of Infrastructure
- Representative of the Ministry of Health
- Representative of the Ministry of Economy
- Representative of the Ministry of Finance
- Representative of the National Energy and Utilities Regulatory Commission
- Representative of the State Agency on Energy Efficiency and Energy Saving
- Representative of the State Statistics Service
- Representative of the National Agency for the Prevention of Corruption
- Representative of the Nuclear Regulatory Inspectorate
- Representative of the State Energy Inspection Office
- Members of the Parliament (members of the Committee on EU Integration, members of committees of the Verkhovna Rada of Ukraine, who are in charge of issues related to energy)
- Representative of the Office of the President of Ukraine
- Representative of the Secretariat of the Verkhovna Rada of Ukraine

- Representative of the Secretariat of the Cabinet of Ministers of Ukraine
- Representative of the Service of the Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine
- Representatives of business associations
- Representatives of public associations

The composition of the working group on energy was approved and its constituent meeting took place in December 2024. Representatives of the government, the Parliament, the Office of the President of Ukraine, Office for the Coordination of European and Euro-Atlantic Integration, the National NEURC, civil society, and business associations participated in the meeting. In the near future, the working group will focus on an estimation of approximation of Ukraine's current energy regulations compliance to the EU acquis. This must be complete to prepare for the meeting with the European Commission in July 2025, during which Ukraine shall update the EU on the current level of approximation.

### **Shortcomings of the working group**

The working group might be too big to be operational, although the Cabinet of Ministers may have opted for a wide membership of working groups in order to involve all interested stakeholders.

Another challenge for negotiations in Ukraine will be a lack of qualified workforce and budget. Preparation for negotiations, drafting laws transposing EU acquis into national law, and implementation of the new legislation will require a significant increase of government staff. For example, accession negotiations in Poland required an additional 1500 people employed. Ukraine will likely struggle to employ qualified specialists in civil service, especially such a significant number of people. Hence, it needs to think of employment strategy, including training of the existing staff and plan for future staff. Financing should also be considered, as the government sometimes utilises projects and teams funded by donor countries. However, this is not always a sustainable solution, as the recent experience with USAID has demonstrated. Therefore, an instrument such as IPA (previously TACIS) could be used to cofinance the wages for EU departments officials.

### **Experience of other countries**

The majority of the 13 recent EU Member States appointed Central Coordination Bodies. These were often located within the Prime Minister's Office, the Ministry of Foreign Affairs, or a dedicated European Affairs Office. For example, in Poland, the Committee for European Integration (UKIE) initially managed the coordination, while Hungary and Slovenia used the Office for European Affairs. Montenegro appointed three negotiators for the energy sector, with one being the Chief Negotiator. They organised public debate for each legal act and strategy, which was the result of negotiations.

The structures established during the accession process in some countries continued to serve as the foundation of national EU policy coordination mechanisms, providing a strong internal framework for ongoing participation in EU policymaking as a full-fledged Member State.

Some new Member States incorporated feedback mechanisms to consult with national stakeholders, including businesses, civil society, and labour groups. This helped balance national and sectoral interests. Among the newer EU member states, Slovenia was unique in requiring parliamentary approval for its negotiation positions during the EU accession talks and in its creation of negotiation working groups. It chose eleven experts from various sectors, rather than politicians, to conduct the negotiations. While the country's leadership has changed, this EU negotiation team remained stable, consisting of the same eleven members. This stability particularly benefited Slovenia by providing continuity and expertise in negotiating with the EU and representing the best interests of Slovenia.

### Internal organisation in Ukraine's case

The creation of a Central Coordination Body is only the very first step for Ukraine on its path to accession. However, Ukraine should start thinking as a full-fledged member of the EU already now in how it organises its internal body.

- In every Ministry, state agency, or other central body, there should be a department to follow the development of new acquis. This may be achieved with the assistance of the Ukrainian Embassy to the European Union. Best practices suggest organising a unit responsible for the approximation of Ukrainian legislation to EU law. In other, newer, EU Member States, the Head of such a department served as a “sherpa” in coordination with the Central Coordination Body, conveying messages appropriately.
- The electricity transmission system operator (Ukrenergo) is already actively participating in the work of ENTSO-E as a full-fledged member. The National Commission for State Regulation of Energy and Public Utilities (NEURC) should also begin cooperation with the Agency for Cooperation of Energy Regulators (ACER). The first step of this cooperation is membership in its Electricity, Gas, and Retail Market Working Groups. This is possible for the regulators from the Energy Community Contracting Parties, as Montenegro shows. Montenegro's regulator is already fully engaged in the Electricity Working Group. However, participation in the REMIT Committee will be possible only after the full implementation of REMIT Regulation in the Energy Community. This means that even when Ukraine fully implements this regulation, it will likely need to wait on the other Energy Community countries.
- **Translation.** Ukraine, like every accession candidate, must translate all acquis into the chosen official language. This includes not only the existing laws and regulations but also those to be adopted prior to full member status. Such an endeavour will likely need to be organised centrally at the level of the Government. Yet, the Ministry must be selective in using translators who are capable of translating appropriate technical expressions and specific energy vocabulary as stated in the energy-related acquis.

### Legal technique and procedure challenges

Ukraine has a well-established legal history of enacting laws covering only a specific topic. This practice is widespread in many post-Soviet countries, likely a result of the lack of trust that the governments will operationalise primary law provisions without corruptive intentions in the secondary legislation. The result of this practice is Ukraine has transposed single directives in multiple laws (e.g., Renewables Directive) or adopted a separate law for a single regulation with several secondary legal acts (e.g., Remit Law transposing REMIT Regulation). Many EU Member States (e.g., Ireland, Slovenia, etc.) are adopting one law per directive or more general laws that allow the transposition of multiple directives at once in one law, allowing more details in numerous secondary legal acts.

Hence, the transposition of 170,000 pages of acquis may paralyse the work of Verkhovna Rada for years. As a solution, other countries (e.g., Slovenia, Poland) introduced a special parliamentary fast-track procedure in the period of EU accession for laws directed at only transposing the acquis.

Verkhovna Rada has three procedures for the adoption of law: regular procedure (lasts more than 100 days in best case scenario), reduced procedure with fewer speakers (can be used only for laws with less than 100 articles or items), and a special procedure for urgent draft laws (terms may be reduced by two times maximum). See *Chapter 4, Potential accelerated procedure in the Ukrainian Parliament* for more details on this. A wider parliamentary consensus may be needed to streamline the acquis transposition.

### Transposition of regulations and decisions

While the EU Member States need to transpose only directives, candidate countries must also transpose regulations and decisions. Regulations are adopted by the European Commission (delegated or implementing

acts), the Council, or in the ordinary legislative procedure, by the Council and European Parliament at the initiative of the European Commission. These regulations are translated into national languages, published in the European Union's Official Journal, and usually enter into force in 20 days. Directives lay down specific results that must be achieved, but each Member State is free to decide how to transpose directives into national laws within the prescribed deadline (from several months to years). Regulations have direct application throughout every Member State and enter into force on a set date in all the Member States. Decisions, alternatively, are EU laws relating to specific cases and directed at individual or select few Member States, companies, or private individuals. They are binding upon those to whom they are directed.

To transpose both regulations and decisions, Ukraine must first change its Constitution stating that

“Ukraine may, by virtue of international agreements, delegate to an international organisation or international institution the competence of organs of state authority in relation to certain matters”.

Until then, Ukraine must transpose each regulation or decision by national legal act, be it primary law or secondary legislation. This is then adopted by the Cabinet of Ministers, Ministry of Energy, or the NEURC in some cases. While directives still offer some freedom on the design of the national legal text, regulations, and decisions must be transposed word for word. It is recommended for Ukraine to define a uniform approach to the transposition of regulations and decisions. Notably, Ukraine's Constitution cannot be changed during martial law, meaning any changes to the procedure cannot occur until post-war suspension of martial law.

### **Division of Labour and Competencies**

The portfolio of the Ministry of Energy, responsible for implementing Chapter 15, does not cover the entire contents of this chapter. Nuclear safety, for example, is the responsibility of the Ministry of Environment. Likewise, several acts are divided in responsibility between multiple Ministries, e.g., Energy Efficiency Directive or Energy Performance of Buildings Directive, split among the Ministry of Energy, Ministry of Infrastructure, and State Agency for Energy Efficiency.

## 4 Deep dive in selected stages

Negotiations on each cluster can commence once the candidate country fulfils the general opening benchmarks. For negotiations on energy to begin, other opening benchmarks in the Green Agenda cluster will need to be met. While the Ukraine Facility Plan serves as opening benchmark in a way, the government should have a plan for the transposition and implementation of all energy-related acquis. As for the interim benchmarks, they are envisaged in the Fundamentals Cluster only. Closing benchmarks address topics that are particularly sensitive during the negotiations; in past negotiations, these were related to rules for the internal market in electricity and gas, access to the network for cross-border exchanges in electricity, renewable energy targets, management of oil reserves, implementation of energy efficiency acquis, and nuclear safety.

In terms of implementing the energy acquis, Ukraine already has experience through the Energy Community and Association Agreement. However, the Energy Community acquis is adapted rather than directly copied from the EU acquis, and some of its deadlines differ from those in the Ukraine Facility Plan. These differences should be clarified during the negotiation process or in the action plan for the transposition of energy-related acquis. Furthermore, the Ministry of Energy should have a strong understanding of the EU Green Deal, as it is a mutually interlinked legal package, even though not all of its legislation concerns energy.

Given that 2030 is a rather ambitious deadline for accession, Ukraine may need to request derogations for certain pieces of legislation, postponing implementation until after it becomes a Member State. Each request for derogation must be accompanied by a justification and a plan detailing when and how the derogated obligations will be fulfilled. Ukraine could request derogations for RED II, the Oil Stocks Directive, and the ETS, but it needs to start preparing its position and include it in the initial negotiating stance.

### 4.1 Opening benchmarks

Opening benchmarks were set up in the EU in 2005 and are therefore relatively recent instruments that earlier accession countries had not experienced before. Montenegro and Serbia, for example, had to present their plans on how to reach 90-day oil stock reserves, drawing on the experience from the previous wave of enlargement. Almost all of the 12 countries that joined the EU in the 2004-2013 period, with the exception of Hungary, asked for derogations in implementing the Oil Stocks Directive. Serbia, in particular, was notorious for its persistent breaches of the Energy Community Treaty by non-implementation of the Gas Directive. Consequently, it had to adopt a legally binding plan, including a timetable for the complete unbundling of its gas incumbent as an opening benchmark.

#### How do opening benchmarks work?

Negotiations on each cluster are opened as a whole, after fulfilling the opening benchmarks. Hence, **negotiations on energy cannot begin even if the opening benchmarks on energy are met**, if the opening benchmarks on other chapters (e.g. transport or environment) have not yet been satisfied. As a result of the screening process, carried out per cluster, priorities for accelerated integration and key reforms will be agreed between the EU and Ukraine. Once these priorities have been sufficiently addressed, the cluster - covering all associated chapters - is opened without further conditions, and closing benchmarks are set for each chapter. If significant reforms have already been implemented before opening, the timeframe between opening the cluster and closing individual chapters should be limited, preferably within a year, dependent on the progress of the reforms, with a focus on the remaining measures needed to achieve full alignment.

Ukraine can best prepare for the opening of the negotiation cluster by developing a solid plan for the transposition and implementation of all energy-related acquis before the screening process. Such a plan should be created in the early 2025.

#### 4.1.1 Experience of other countries

**Table 4. Opening benchmarks of the accession countries in the negotiations between 2008 and 2024**

Country	Opening benchmark
<b>Croatia</b>	None
<b>Montenegro</b>	To present a detailed action plan to align its national legislation with the acquis relating to the mandatory 90-day oil or petroleum product reserves, the establishment of a central body responsible for the mandatory oil reserves, and the improvement of storage capacities.
<b>Serbia</b>	<ol style="list-style-type: none"> <li>1. To present an action plan to align with the acquis on minimum stocks of crude oil and/or petroleum products. This plan should indicate a timetable for legislative alignment, the establishment of emergency response measures, for acquiring storage capacity, and for a phased approach to increasing stock levels to the minimum level set by the acquis.</li> <li>2. To adopt a legally binding plan, including a timetable for the complete unbundling of the gas sector to implement the internal energy market acquis. This should include unbundling of the vertically integrated, state-owned incumbent.</li> </ol>

Source: Authors (2024)

#### 4.1.2 Case of Ukraine

As mentioned above, the Ukraine Plan represents an opening benchmark in its own right. It outlines reforms that should allow electricity market coupling, cost-reflective pricing in the electricity, gas, and district heating sectors, and independence of the regulator (NEURC).

Overall, the energy sector is best prepared for the acquis approximation within the “Green Agenda and Sustainable Connectivity” cluster, as stated in the European Commission’s Opinion on Ukraine’s application for EU membership from June 2022.

The experiences of other countries demonstrate that opening benchmarks generally consist of a concrete plan of reforms. Such benchmarks could be requested in the areas where Ukraine is lagging behind its obligations as a Contracting Party to the Energy Community Treaty. The necessary reforms were widely noticed in the international community after the Commission’s Opinion in June 2022. In addition to the reforms promised in the Ukraine Plan, these include:

- The establishment of a radioactive waste management fund and a nuclear decommissioning fund (which can be combined), along with a demonstration that Ukraine will have resources available at the end of the estimated operational life of the nuclear power plants. These resources must correspond to the estimated cost of radioactive waste management and decommissioning, in compliance with Commission Recommendation 2006/851/Euratom and Council Directive 2011/70/Euratom of 19 July 2011, which establishes a Community framework for the responsible and safe management of spent fuel and radioactive waste.

- The introduction of carbon pricing mechanisms that incentivise the reduction of emissions, i.e. with a cap aligned with the goals of the Paris Agreement.
- Fulfilment of the certification conditions for the unbundling of Ukrenergo and Gas TSO.
- Exclusion of the renewable energy surcharge from Ukrenergo's total revenues within the transmission tariff, and the establishment of a separate surcharge for that purpose.

Some **highlights from the recent Enlargement Report** (30 October 2024) serve as a useful guideline where further efforts are needed:

- In November 2023, Ukraine adopted a law on oil stock reserves based on an industry-related model. This new law is largely aligned with the Oil Stocks Directive.
- Alignment with the Gas Security of Supply Regulation is pending.
- Network tariffs do not reflect the level of investments and maintenance needed for energy and climate reforms.
- State interventions in the gas market during the war reduce the efficiency of operations and alignment with EU rules; this needs to be addressed as a priority.
- The independence of the NEURC remains limited, with unresolved issues regarding its status as a central executive body.
- Alignment with sustainability and greenhouse gas emission saving criteria for biofuels, bioliquids, and biomass is still missing.
- Ukraine needs to work on separating its renewable energy surcharge from the transmission tariff.
- There was no progress on the introduction of mandatory energy efficiency criteria in public procurement.
- Full alignment with the 2018 Energy Performance of Buildings Directive and enforcement of minimum energy performance requirements are particularly critical (European Commission, 2024).

## 4.2 Interim benchmarks

Interim benchmarks did not exist before 2005 and were only set for the fundamental chapters, Chapters 23 and 24. There are no interim benchmarks for the other chapters. For Chapters 23 and 24, opening benchmarks are roadmaps with indicators that make up the interim benchmarks. For Ukraine, they are envisaged in the Fundamentals Cluster in the conclusions from the IGC in June 2024.

## 4.3 Closing benchmarks – the experience of other countries

Closing benchmarks reflect topics that were particularly sensitive during the negotiations. The EU insists on seeing alignment with these benchmarks before the accession of a new Member State. Below are examples of:

- Croatia, which wanted to continue with non-market-based allocation of cross-border capacities for the import and export of electricity, and did not allow competition in the exploration of hydrocarbons;
- Montenegro, which had repetitive internal political problems with the implementation of the action plan for the opening benchmarks and with the certification of electricity TSO;
- Slovenia, which insisted on the continuation of operation of its only nuclear power plant (while Austria insisted on closing it) and found a compromise that envisaged the construction of earthquake observatories.

**Table 5. Examples of closing benchmarks**

Country	Closing benchmarks
<b>Croatia</b>	<ol style="list-style-type: none"> <li>1. To adopt a new mining act, aiming at full alignment with Directive 94/22/EC on the conditions for granting and using authorisations for the prospection, exploration, and production of hydrocarbons and coming into effect, at the latest, by the date of accession.</li> <li>2. To fully implement Directive 2003/54/EC concerning common rules for the internal market in electricity, Directive 2003/55/EC concerning common rules for the internal market in natural gas, and Regulation (EC) No. 1228/2003 on conditions for access to the network for cross-border exchanges in electricity.</li> <li>3. To set an ambitious target for the percentage of electricity produced from renewable energy sources to be achieved by 2020.</li> </ol>
<b>Montenegro</b>	<ol style="list-style-type: none"> <li>1. To complete legislative alignment with the acquis on oil reserves, establish an administrative structure for the management of oil reserves and start establishing reserves following the action plan (presented as an opening benchmark).</li> <li>2. To comply with the internal energy market acquis, including the separation of all energy entities following any of the models defined in the acquis.</li> <li>3. To comply with the energy efficiency acquis.</li> </ol>
<b>Slovenia</b>	To construct earthquake observatories in the vicinity of a nuclear power plant in Krško by the date of accession at the latest.

Source: Authors (2024)

#### 4.4 Negotiation of conditions and deadlines for transposition/implementation of the acquis

Every accession country is expected to transpose and implement the acquis before becoming a Member State, except for explicit derogations.

Experience shows that several Member States had problems with fully implementing the acquis several years after becoming part of the EU, with some Member States failing to align with their promises. Perhaps, the most notable is Croatia, which became a Member State on 1 July 2013 but did not transpose the Electricity and Gas Market Directives and Gas Regulation in full until 2017. The European Commission started the relevant infringement procedures against Croatia in 2015, because of non-transposition and again in 2017 because of improper implementation.

##### 4.4.1 Different sources and deadlines of acquis for Ukraine (EU acquis, Association Agreement, Energy Community Treaty, and Ukraine Plan)

In terms of implementing the acquis related to the energy sector, Ukraine is already a veteran. Since 2011, it has been a Contracting Party to the Energy Community Treaty. In 2014, it signed an Association Agreement with the EU. Ukraine's Annex XXVII, which envisages the transposition of the energy acquis, was last renewed in 2019, and contains a list of acquis with the planned deadlines. Mostly, they are the same as in the Energy Community acquis, but there are also slight differences (e.g., in the case of REMIT Regulation), with Annex XXVII also including some nuclear safety-related acquis, which are not part of the Energy Community acquis.

The Energy Community acquis is also slightly adapted and not merely copied from the EU acquis. An example of the difference is evidenced in the Energy Efficiency Directive where the minimum percentage of annually

renovated public buildings set by the Energy Community is substantially less ambitious than in the EU directive.

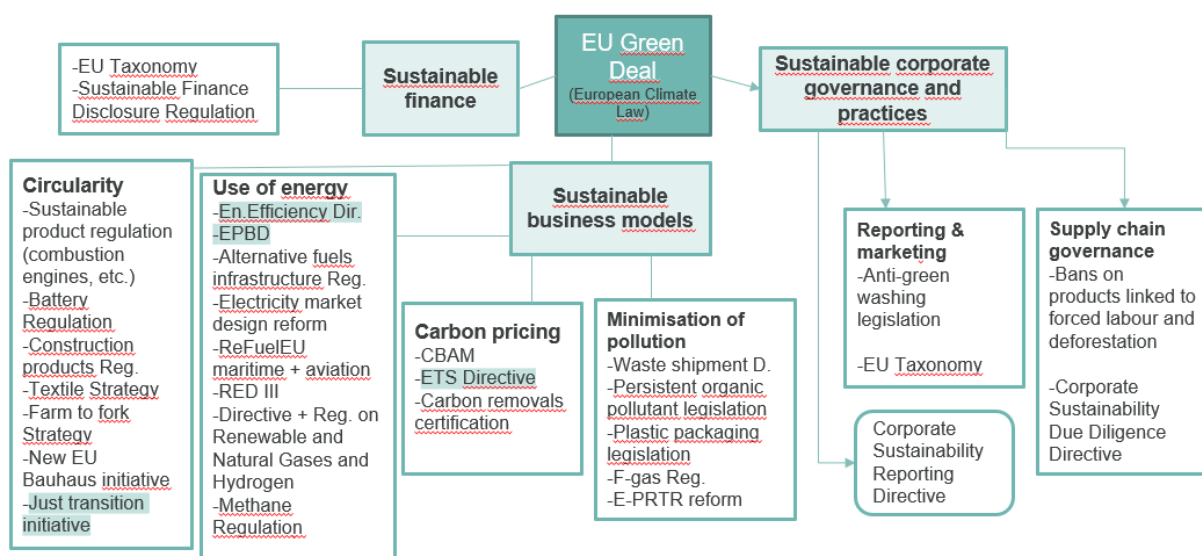
As mentioned above, the Ukraine Plan envisages some implementation deadlines that are different from those relevant to the Energy Community. All differences should be clarified during the negotiation process, ideally in the action plan for the transposition of energy-related acquis to be presented in the negotiating position.

Energy-related acquis with an indication if it is already a part of the Energy Community acquis is listed in Annex I.

Energy acquis, together with the Green Deal, became an all-inclusive and mutually interlinked legal package consisting of more than 50 legal acts and dozens of initiatives. Several of them are not part of Chapter 15, but the Ministry of Energy will have to be acquainted with all of them and participate in the preparatory process when Ukraine forms a negotiation position for those directives and regulations.

The picture below shows the general content of the Green Deal, with grey-coloured text indicating directives/regulations/initiatives that are part of the Energy Community acquis or activities.

**Figure 1. Key legislation and initiatives under the EU Green Deal**



Source: Authors (2024)

#### 4.5 Derogations/Transitional Measures

The EU always expects that a country negotiating accession will transpose all acquis that exist at the time of negotiation into its national legal framework before entering the EU as a Member State. This is quite a heavy burden for accession countries but, on the other side, there is no guarantee on when Ukraine will become an EU Member State. The year 2030 seems to be quite optimistic for Ukraine. Therefore, the deadlines for the implementation of acquis should start at the date of accession or, at a particular time afterwards and not in a set year declared in advance. Of course, this cannot be relevant for the Energy Community acquis, which has the deadlines for the transposition already agreed on by the Energy Community Ministerial Council.

When preparing a negotiation position, it is very important to realistically assess the expected date of becoming a Member State. All requests for derogations of the implementation of the existing acquis have to be clearly stated at the beginning in the initial negotiation position. Only requests for derogations in the implementation of the future acquis can be expressed later.

Each request for derogation has to be accompanied by a clear justification and a concrete plan for when and how the potentially derogated obligations will be fulfilled. As shown in the overview of the approved derogations granted to existing EU Member States, most derogations were on the implementation of the Oil Stocks Directive, primarily because many of these countries were importers of oil and oil products, making it very costly to store the average 90-day consumption quantity in oil stocks.

The EU may agree to a candidate state's request for transitional measures, provided that such measures are limited in time and scope, and are accompanied by clearly defined stages of application of the acquis. For areas related to the internal market, regulatory measures should be implemented quickly, and transitional periods should be short and few. In areas where significant adaptation is required, that involves considerable effort and cost, appropriate transitional provisions may be foreseen and should be part of a detailed and budgeted plan. In any case, transitional arrangements cannot include changes to EU rules or policies, disrupt their proper implementation, or lead to significant distortions of competition. In this context, the interests of the Union and the candidate state must be considered. Such transitional arrangements and special provisions, including safeguard provisions, may be agreed in the interest of the Union.

Transitional measures should be accompanied by a detailed plan for the implementation of the relevant provisions of the acquis. Such a plan should already be in place at the time of the request for transitional provisions and should be supported by detailed financial calculations of the needs, sources and schedule for their provision.

All derogations must be adopted by consensus of all EU Member States. Distortion of competition is therefore a particularly sensitive issue. Experience shows that several derogations were approved for new Member States in the environmental area, where pollution had a local effect on the territory of the accession countries. While in the energy sector, practically only a derogation from the costly Oil Stocks Directive was approved without a major discussion.

#### 4.5.1 Experience of other countries

Despite the previous rounds of EU enlargement being more predictable, accession dates were also postponed during those processes. Optimistic deadlines are usually expressed by politicians to maintain momentum in negotiations but should be treated with caution. This is evident in the case of the Czech Republic, illustrated in Table 6, which provides an overview of approved derogations. It opened negotiations on the energy chapter in 1999 and provisionally closed them in 2001. The Czech Republic requested a derogation for the implementation of the Gas Directive until the end of 2004. Since it signed the Accession Treaty only in 2003 and officially joined the EU on 1 May 2004, it had derogation for eight months only, raising the question of whether effort was worthwhile.

#### **Hidden derogations**

Slovenia signed its Accession Treaty on 16 April 2003 but became a Member State only on 1 May 2004. During this period, the EU was in the process of adopting Regulation (EC) 1228/2003 on conditions for access to the network for cross-border exchanges in electricity. This regulation envisaged the end of the administrative allocation of cross-border capacities and the beginning of market-based allocation. At this stage, negotiations on the chapter on energy was already over. However, Slovenia, as a future Member State, requested a derogation, citing its unique position on the edge of post-war former Yugoslavia, its strong electricity transmission grid, and the ongoing process of reorganisation of loss-making state-owned electricity generators as justification. The European Commission wanted to be helpful and informally suggested designing a derogation in a hidden way, which was not widely discussed within the European Council.

The Commission inserted in the text of the Regulation (EC) 1228/2003 Article 11 envisaging: *“This Regulation shall be without prejudice to the rights of Member States to **maintain** or introduce measures that contain more detailed provisions than those set out in this Regulation and the guidelines referred to in Article 8.”*

Based on this provision, Slovenia, before becoming a Member State, introduced a set of rules that effectively resulted in the an allocation of cross-border capacities in favour of a newly established holding of state-owned electricity generating companies. These rules allowed the holding to generate approximately €60 million in annual profit, which would otherwise be earned by various privately owned traders. Slovenia maintained this regime until the end of 2008.

**It is harder to get further derogations for already existing obligations**

Croatia, in its negotiation position at the beginning of negotiations, requested two derogations: a delayed build-up of oil stocks (granted), and a derogation in the implementation of allocation and the use of cross-border capacities, in line with Regulation (EC) No 1228/2003 and its Annex (Congestion Management Guidelines). Croatia wanted to administratively allocate 1,000 MW of import and export capacities for electricity until the end of 2018. This Regulation had previously been the basis for Slovenia’s hidden derogation in 2003, which lasted approximately four years and generated around €60 million annually due to preferential treatment. Croatia tried to justify this derogation by citing its special geographical position and the consequences of the conflict on the territory of former Yugoslavia.

This Croatian request was rejected, particularly because the obligation stemming from Regulation (EC) 1228/2003 was already part of the Energy Community acquis to which Croatia was a Contracting Party, and for which no derogation had been granted. Due to this initial request for derogation, the EU showed more interest in monitoring this issue. Croatia not only had to adopt the relevant law (as one of the closing benchmarks) but also had to submit a detailed report on the outcomes of the cross-border transmission capacity allocation procedures, including the result of the procedures on all borders and for all allocated time frames, more than three years prior to accession.

The cases of Montenegro and Serbia shows that further derogations of existing obligations are possible. The implementation deadline for the Oil Stocks Directive within the Energy Community was 1 January 2023. Both accession countries were required to present an action plan showing when the directive could be implemented and, in both cases, the timelines were extended beyond 2023. Furthermore, the prolongation of the deadline for the transposition of the electricity integration package for 2.5 years in the Ukraine Plan was accepted without any objections.

**Requests for derogations must be reasonable**

Serbia opened its energy chapter negotiations only in 2021 but has not yet finalised them. In the negotiating position at the beginning of the accession process, Serbia accepted the EU acquis under Chapter 15 as in force on 1 January 2021. Serbia declared that it would be ready to implement it by the date of accession to the EU, with the exception of Council Directive 2009/71/Euratom, Article 1 (objectives of the Directive – to promote nuclear safety) and Council Directive 2011/70/Euratom, Article 4, paragraph 4 (radioactive waste shall be disposed of in the Member State in which it was generated), for which Serbia requested transitional measures of 20 and 30 years respectively.

The EU only politely invited Serbia to provide further detailed information to substantiate its request, as there were no clear grounds for granting such transitional periods.

**Table 6. Overview of approved derogations in energy**

Country	Year of closing the chapter/entering the EU	Transitional arrangements
Bulgaria	2002/2007	Build-up of oil stocks to the required level, until the end of 2012
Croatia	2009/2013	Build-up of oil stocks to the required level, until 1 July 2016

<b>Czechia</b>	2002/2004	Build-up of oil stocks to the required level, until the end of 2005; Implementation of the Gas Directive until the end of 2004
<b>Estonia</b>	2002/2004	Build-up of oil stocks to the required level until the end of 2009 Implementation of the Electricity Directive until the end of 2008.
<b>Latvia</b>	2002/2004	Build-up of oil stocks to the required level until the end of 2009
<b>Lithuania</b>	2002/2004	Build-up of oil stocks to the required level until the end of 2009
<b>Poland</b>	2002/2004	Build-up of oil stocks to the required level until the end of 2008
<b>Romania</b>	2004/2007	Build-up of oil stocks to the required level until the end of 2011
<b>Slovenia</b>	2002/2004	Build-up of oil stocks to the required level until the end of 2005

Source: Accession Treaties

#### 4.5.2 Potential Ukrainian requests

Ukraine is a war-torn country, and the EU could have more understanding of its derogation requests. The authors believe that the following elements of energy acquis are the most challenging for Ukraine (due to the high costs of implementation):

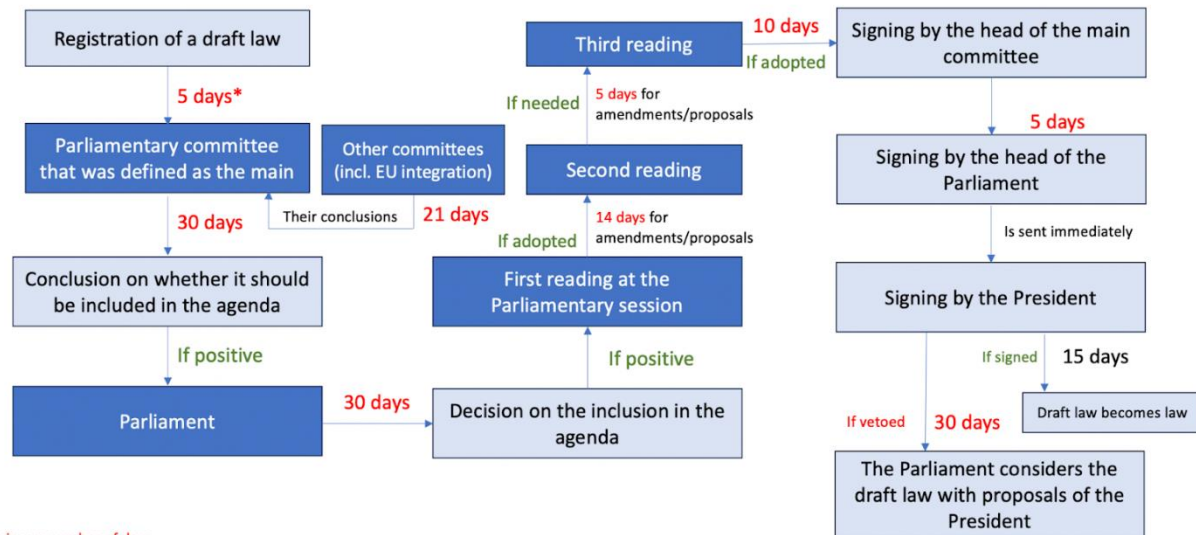
- Renewables II Directive (see further explanation in Annex II).
- Oil Stocks Directive (implementation according to the law as adopted in 2023).
- Emission Trading System Directive (which belongs to Chapter 27 but has a major effect on the energy sector - see further explanation in Annex III) etc.

## 5 Potential accelerated procedure in the Ukrainian Parliament

Given that Ukraine will need to adopt hundreds of laws before joining the EU and before 2030, an accelerated procedure will be needed. Parliament will need to agree on a special procedure for all EU integration laws, to provide for their accelerated consideration. This may be similar to the existing special procedure for urgent draft laws. If the Cabinet of Ministers initiates most of these draft laws, this may also result in a faster adoption. Slovenia's experience may be used as an example, as the Slovenian Parliament implemented a "fast-track" procedure to swiftly align domestic legislation with the EU's acquis communautaire and streamline the process of adopting the laws related to EU integration.

Before the full-scale invasion, the average time of adoption of the law in the Verkhovna Rada of the ninth convocation was 121 days, from the moment of the bill registration to the moment of its signing by the President. At the same time, Ukraine will need to adopt hundreds of laws to fully align its legislation with the EU acquis in the near future. While the current progress of alignment in the energy area is 78%, Annex XXVII to the EU-Ukraine Association Agreement has not been updated since 2019. Hence, it does not include the most recent regulatory developments in the EU, including under the EU Green Deal.

**Figure 2. Current parliamentary procedure of adopting a law**



Source: Law on the Rules of Procedure of the Verkhovna Rada of Ukraine (2024)

Under the Parliamentary Rules, there are several ways to accelerate the consideration of a draft law:

- Under the **reduced procedure** of discussing a draft law in the Parliament (Art. 31 of the Law on Parliamentary Rules), the number of speakers is shorter and includes only the initiator of a proposal, the head of the main committee, two fractions supporting the bill, and two fractions opposing it. This procedure cannot be used for codes or draft laws with more than 100 articles or items.
- Under the **special procedure** for urgent draft laws (Art. 101), the term for consideration of the draft law, for the introduction of alternative draft laws, as well as for making proposals and amendments, consideration by the committees and others may be reduced. Terms may be reduced by up to a 1/4. A draft law may be defined as urgent by the President or by the Parliament. The procedure is agreed on by the Parliament ad hoc. The draft law is then considered at the nearest plenary session of the Parliament.

Importantly, the reduced procedure does not necessarily mean a faster adoption of the law. Before the full-scale invasion, in the Verkhovna Rada of ninth convocation, draft laws considered under the reduced procedure, took an average of 134 days to be adopted (51% adoption rate), which is above the average time for adoption. This is because under the reduced procedure the time of discussion is shorter, but the terms of consideration, in general, do not necessarily change.

While urgent draft laws were adopted faster - after 98 days on average (58% adopted), which is faster than the average. Furthermore, draft laws initiated by the President or by the Cabinet of Ministers were typically adopted faster than the ones initiated by the members of Parliament.

Considering the extensive EU acquis that Ukraine will need to transpose before joining the Union, along with the political ambition to do so before 2030, a fast-track procedure will be needed. The Parliament will need to agree on a special procedure for all EU integration laws to provide for their accelerated consideration. This may be similar to the special procedure for urgent draft laws. If the Cabinet of Ministers initiates most of those draft laws, this may also result in a faster adoption.

**Example of Slovenia:** During Slovenia's EU accession process, the Slovenian Parliament implemented a "fast-track" procedure to align domestic legislation swiftly with the EU's *acquis communautaire*. This streamlined process was specifically designated for laws related to EU integration, enabling Slovenia to swiftly adopt necessary reforms and ensure compliance with EU standards. Draft legislation that intended to

align the Slovenian legislation with the EU one was given a special “label” of the EU integration. This approach facilitated Slovenia's eventual EU membership on May 1, 2004, after years of aligning policies in areas such as the free movement of goods, customs regulations, and environmental standards.

## 6 Conclusions and Recommendations

If Ukraine aims to achieve EU membership by 2030, it must navigate the accession process at a rapid pace. The process will be complex due to the volume of the acquis, difficulty of reforms needed to be implemented, and the need for changes in the functioning of the government itself.

Ukraine will need to follow new accession approaches introduced by the EU, while facing a lack of qualified workforce. Additionally, implementing the acquis during the ongoing war and in the post-war period poses a myriad of other significant challenges.

While Ukraine has solid experience of implementing the EU legislation, particularly in the energy sector, it will face multiple hurdles on its accession journey of which the government should begin addressing now. Based on the analysis above, the following recommendations for energy negotiations (Chapter 15) are proposed to help Ukraine navigate this path more smoothly:

- The Ministry should follow closely the development of a new acquis in Brussels at an early stage. In every Ministry, state agency, or other body, there should be a department responsible for following the development of new acquis. The Head of such a department usually serves as a “sherpa” in coordination with the Central Coordination Body.
- The NEURC should become a member of ACER’s Electricity, Gas, and Retail Market Working Groups.
- All existing and new acquis should be translated into the Ukrainian language.
- The ministry, as well as all Ukrainian authorities, will need to establish an effective way of transposing regulations, particularly technical ones, such as delegated regulations and decisions of the EU institutions verbatim, without any adaptations or modifications.
- The Ukrainian government should consider adopting an accelerated procedure of consideration of draft legislation in the Parliament, if such draft laws aim to further aligning the Ukrainian law with the EU acquis. Without such EU integration labelling and a fast-track procedure, the accession process may be much longer than Ukraine anticipates.
- Ukraine should consider adopting the Law/Regulation of the National Strategy for European Integration, a document describing the structure and tasks of state bodies related to integration and membership negotiations
- Ukraine should discuss and make a political decision regarding which elements of the acquis may require a potential derogation and the corresponding timeline. The government should also prepare a justification for such a request, along with a detailed implementation plan of such regulation.

Ukraine should draw lessons from previous enlargements, optimising negotiation frameworks, expediting legislative alignment, and proactively preparing its negotiation positions. Although the process will be complex and time-consuming, effective planning, strong institutional synergy, and forward-thinking policy planning can help Ukraine navigate these hurdles and secure its place in the next phase of EU expansion.

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## Annexes

### Annex I: Energy-related acquis

There are several tracks where Ukraine has obligations to implement EU legislation in the energy sector. Energy Community was established in 2006 to extend the EU internal energy market rules and principles to countries in South East Europe, the Black Sea region and beyond. Ukraine joined the Energy Community in 2011. It, hence, predates the Association Agreement, which was signed in 2017.

#### Electricity

- Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024 amending; Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union's electricity market design;
- Regulation (EU) 2024/1747 of the European Parliament and of the Council of 13 June 2024 amending Regulations (EU) 2019/942 and (EU) 2019/943 as regards improving the Union's electricity market design;
- Directive (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity;
- Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity;
- Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation;
- Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management;
- Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing;
- Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation;
- Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration;
- Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators;
- Regulation (EU) 2016/1388 of 17 August 2016 establishing a network code on demand connection
- Regulation (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules;
- Commission Delegated Regulation (EU) 2024/1366 of 11 March 2024 supplementing Regulation (EU) 2019/943 of the European Parliament and of the Council by establishing a network code on sector-specific rules for cybersecurity aspects of cross-border electricity flows
- Regulation (EU) 543/2013 of 14 June 2013 on submission and publication of data in electricity markets;
- Regulation (EU) 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency;
- Regulation (EU) 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.
- and soon Demand Response Network Code.

#### Gas

- Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen, amending Directive (EU) 2023/1791 and repealing Directive 2009/73/EC (recast);
- Regulation (EU) 2024/1789 of the European Parliament and of the Council of 13 June 2024 on the internal markets for renewable gas, natural gas and hydrogen, amending Regulations (EU) No 1227/2011, (EU) 2017/1938, (EU) 2019/942 and (EU) 2022/869 and Decision (EU) 2017/684 and repealing Regulation (EC) No 715/2009 (recast);
- Regulation (EU) 703/2015 of 30 April 2015 establishing a network code on interoperability and data exchange rules;

- Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems;
- Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonized transmission tariff structures for gas;
- Regulation (EU) 312/2014 of 26 March 2014 establishing a network code on gas balancing of transmission networks.

#### Cross-cutting

- Regulation (EU) 2019/942 of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators ( \* only selected provisions of articles 1-7, 14, 28-29 are already obligatory under the Energy Community Treaty);
- Regulation (EU) 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency - REMIT ( only selected provisions are already obligatory under the Energy Community Treaty).
- Regulation (EU) 2024/1106 of the European Parliament and of the Council of 11 April 2024 amending Regulations (EU) No 1227/2011 and (EU) 2019/942 as regards improving the Union's protection against market manipulation on the wholesale energy market

#### Security of supply

- Regulation (EU) 2019/941 of 5 June 2019 on risk-preparedness in the electricity sector;
- Regulation (EU) 2017/1938 of 25 October 2017 concerning measures to safeguard the security of gas supply.

#### Hydrocarbons

- Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products.
- Directive 94/22/EC on the conditions for granting and using authorisations for the prospection, exploration, and production of hydrocarbons.

#### Renewable energy

- Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652;
- Directive 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources;
- Commission Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin;
- Commission Delegated Regulation (EU) 2024/2613 of 24 July 2024 amending Delegated Regulation (EU) 2022/2202 supplementing Regulation (EU) 2021/1153 of the European Parliament and of the Council by establishing a list of selected cross-border projects in the field of renewable energy;
- Commission Delegated Regulation (EU) 2022/2202 of 29 August 2022 supplementing Regulation (EU) 2021/1153 of the European Parliament and of the Council by establishing a list of selected cross-border projects in the field of renewable energy.

#### Energy efficiency

- Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast);
- Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast);

- Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure;
- Commission Delegated Regulation (EU) No 244/2012 of 16 January 2012 supplementing Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings by establishing a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements for buildings and building elements.
- Regulation (EU) 2017/1369 of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU;
- Delegated Regulation (EU) 2017/254 of 30 November 2016 on the use of tolerances in verification procedures;
- Delegated Regulation (EU) 2019/2013 of 11 March 2019 supplementing Regulation (EU) 2017/1369 with regard to energy labelling of electronic displays;
- Delegated Regulation (EU) 2019/2014 of 11 March 2019 supplementing Regulation (EU) 2017/1369 with regard to energy labelling of household washing machines and household washer-dryers;
- Delegated Regulation (EU) 2019/2015 of 11 March 2019 supplementing Regulation (EU) 2017/1369 with regard to energy labelling of light sources;
- Delegated Regulation (EU) 2019/2016 of 11 March 2019 supplementing Regulation (EU) 2017/1369 with regard to energy labelling of refrigerating appliances;
- Delegated Regulation (EU) 2019/2017 of 11 March 2019 supplementing Regulation (EU) 2017/1369 with regard to energy labelling of household dishwashers;
- Delegated Regulation (EU) 2015/1094 of 5 May 2015 supplementing Directive 2010/30/EU with regard to the energy labelling of professional refrigerated storage cabinets;
- Delegated Regulation (EU) 2015/1186 of 24 April 2015 supplementing Directive 2010/30/EU with regard to the energy labelling of local space heaters;
- Delegated Regulation (EU) 2015/1187 of 27 April 2015 supplementing Directive 2010/30/EU with regard to energy labelling of solid fuel boilers and packages of a solid fuel boiler, supplementary heaters, temperature controls and solar devices;
- Delegated Regulation (EU) 1254/2014 of 11 July 2014 supplementing Directive 2010/30/EU with regard to energy labelling of residential ventilation units;
- Delegated Regulation (EU) 518/2014 of 5 March 2014 on labelling of energy-related products on the internet;
- Delegated Regulation (EU) 65/2014 of 1 October 2013 supplementing Directive 2010/30/EU with regard to the energy labelling of domestic ovens and range hoods;
- Delegated Regulation (EU) 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU with regard to energy labelling of vacuum cleaners;
- Delegated Regulation (EU) 812/2013 of 18 February 2013 supplementing Directive 2010/30/EU with regard to the energy labelling of water heaters, hot water storage tanks and packages of water heater and solar device;
- Delegated Regulation (EU) 811/2013 of 18 February 2013 supplementing Directive 2010/30/EU with regard to the energy labelling of space heaters, combination heaters, packages of space heater, temperature control and solar device and packages of combination heater, temperature control and solar device;
- Delegated Regulation (EU) 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU with regard to energy labelling of household tumble driers;
- Delegated Regulation (EU) 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU with regard to energy labelling of air conditioners;
- Delegated Regulation (EU) 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU with regard to energy labelling of televisions;
- Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products.

#### Implementing Regulations

- Commission Regulation (EU) 2016/2282 of 30 November 2016 with regard to the use of tolerances in verification procedures;

- Commission Regulation (EU) 2016/2281 of 30 November 2016 implementing Directive 2009/125/EC of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy-related products, with regard to ecodesign requirements for air heating products, cooling products, high temperature process chillers and fan coil units;
- Commission Regulation (EU) 2015/1189 of 28 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for solid fuel boilers;
- Commission Regulation (EU) 2015/1188 of 28 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for local space heaters;
- Commission Regulation (EU) 2015/1185 of 24 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for solid fuel local space heaters;
- Commission Regulation (EU) 2015/1095 of 5 May 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for professional refrigerated storage cabinets, blast cabinets, condensing units, and process chillers;
- Commission Regulation (EU) No 1253/2014 of 7 July 2014 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for ventilation units;
- Commission Regulation (EU) No 548/2014 of 21 May 2014 on implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to small, medium and large power transformers;
- Commission Regulation (EU) No 66/2014 of 14 January 2014 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for domestic ovens, hobs and range hoods;
- \*Commission Regulation (EU) No 813/2013 of 2 August 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for space heaters and combination heater;
- Commission Regulation (EU) No 814/2013 of 2 August 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water heaters and hot water storage tanks;
- Commission Regulation (EU) No 666/2013 of 8 July 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for vacuum cleaners;
- Commission Regulation (EU) No 617/2013 of 26 June 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for computers and computer servers;
- Commission Regulation (EU) No 932/2012 of 3 October 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for household tumble driers;
- Commission Regulation (EU) No 622/2012 of 11 July 2012 amending Regulation (EC) No 641/2009 with regard to ecodesign requirements for glandless standalone circulators and glandless circulators integrated in products;
- Commission Regulation (EC) No 641/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for glandless standalone circulators and glandless circulators integrated in products;
- Commission Regulation (EU) No 547/2012 of 25 June 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps;
- Commission Regulation (EU) No 206/2012 of 6 March 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for air conditioners and comfort fans;
- Commission Regulation (EU) No 327/2011 of 30 March 2011 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for fans driven by motors with an electric input power between 125 W and 500 kW;

- Commission Regulation (EU) No 1016/2010 of 10 November 2010 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for household dishwashers;
- Commission Regulation (EU) No 1015/2010 of 10 November 2010 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for household washing machines;
- Commission Regulation (EU) 2015/1428 of 25 August 2015 amending Commission Regulation (EC) No 244/2009 with regard to ecodesign requirements for non-directional household lamps, and Commission Regulation (EC) No 245/2009 with regard to ecodesign requirements for fluorescent lamps without integrated ballast, for high intensity discharge lamps, and for ballasts and luminaires able to operate such lamps and repealing Directive 2000/55/EC of the European Parliament and of the Council, and Commission Regulation (EU) No 1194/2012 with regard to ecodesign requirements for directional lamps, light emitting diode lamps and related equipment;
- Commission Regulation (EC) No 245/2009 of 18 March 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for fluorescent lamps without integrated ballast, for high intensity discharge lamps, and for ballasts and luminaires able to operate such lamps, and repealing Directive 2000/55/EC of the European Parliament and of the Council, as amended;
- Commission Regulation (EU) No 1194/2012 of 12 December 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for directional lamps, light emitting diode lamps and related equipment;
- Commission Regulation (EC) No 244/2009 of 18 March 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for non-directional household lamps, as amended;
- Commission Regulation (EC) No 859/2009 of 18 September 2009 amending Regulation (EC) No 244/2009 as regards the ecodesign requirements on ultraviolet radiation of non-directional household lamps;
- Commission Regulation (EU) No 347/2010 of 21 April 2010 amending Commission Regulation (EC) No 245/2009 as regards the ecodesign requirements for fluorescent lamps without integrated ballast, for high intensity discharge lamps, and for ballasts and luminaires able to operate such lamps
- Commission Regulation (EC) No 643/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for household refrigerating appliances;
- Commission Regulation (EC) No 642/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for televisions;
- Commission Regulation (EU) No 4/2014 of 6 January 2014 amending Regulation (EC) No 640/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for electric motors;
- Commission Regulation (EC) No 640/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for electric motors + Corrigendum OJ L 46, 19.2.2011;
- Commission Regulation (EC) No 278/2009 of 6 April 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for no-load condition electric power consumption and average active efficiency of external power supplies, as amended;
- Commission Regulation (EC) No 107/2009 of 4 February 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for simple set-top boxes, as amended;
- Commission Regulation (EC) No 1275/2008 of 17 December 2008 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for standby and off mode electric power consumption of electrical and electronic household and office equipment, as amended;
- Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels, as amended;
- Commission Regulation (EC) No 643/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for household refrigerating appliances, as amended.

Nuclear safety:

- Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel.
- Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations.
- Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste.
- Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionizing radiation.
- Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations.
- Council Directive 2003/122/Euratom of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources.
- Council Directive 90/641/Euratom of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionizing radiation during their activities in controlled areas.

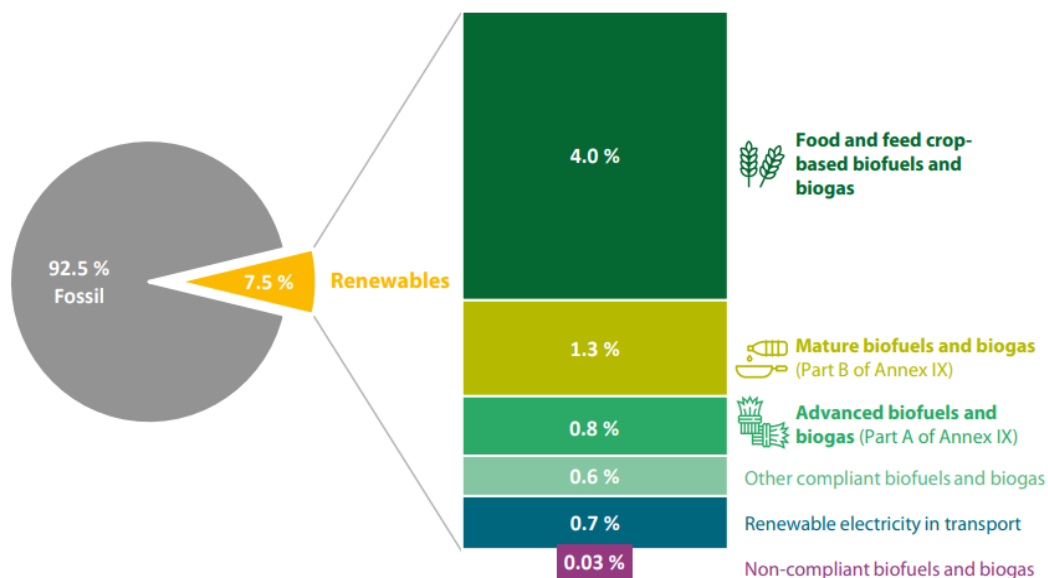
## Annex II: Arguments for derogation related to biofuels in transport

The Energy Community adopted the Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (RED II Directive) in 2021. Among others, it establishes in Article 25 the obligatory target to reach a share of renewable energy within the final consumption of energy in the transport sector by at least 14 % by 2030. This seems entirely unrealistic, keeping in mind that biodiesel and bioethanol for Ukraine as an Energy Community Contracting Party, which didn't reach its target in 2020 are capped at 2%, while fuels from spent cooking oil are capped at 1,7%. All the rest shall be advanced fuels, renewable electricity-running vehicles, and biogas. The minimum for advanced fuels in 2030 is 3,5%. Together with a minimum required volume (14%) this is all prescribed by the RED II Directive (2018/2001) – Art 25. Ukraine put this target even in the National Energy and Climate Plan adopted in June 2024.

Advanced biofuels are substantially more expensive than fossil fuels, biodiesel, and bioethanol. and this is the reason why the whole EU did not reach its ambitions and not a single Energy Community Contracting Party. Very recently the European Court of Audit published an excellent overview of the implementation of biofuels policy in the EU.

We can see that most of the EU Member States (15 out of 27) did not reach their 2020 target. Perhaps, this is the reason why the European Commission did not start an infringement procedure against any Member State that failed to deliver the appropriate level of biofuels in transport.

**Figure 3. Fuel mix in the EU, 2021**



Source: ECA (2023)

It is obvious that the EU is far from 10% in 2020 and has almost no chance of reaching 29% in 2030 – this is a new target from the just adopted Renewables III Directive (not relevant for the Energy Community yet), most probably even not 14%.

Back to Ukraine: if the EU in the last 20 years did not succeed in reaching more than 3,5% of advanced biofuels and biogas in transport (mostly this is a share of Sweden, France, Italy, and Germany), how likely is it that Ukraine will reach 12% in the period 2024-2030?

Neighbouring Moldova had a similar dilemma. They decided to put 9% in the draft NECP, and they even enshrined this percentage in the recently adopted Renewables law. This share comes out of a study launched by the Energy Community Secretariat, which was published in December 2020 (available on the web page of the Secretariat: Documents/Studies/Renewables). They based their decision on the study (page 39, chapter 3.1.1.) where it is stated: "The overall target for RES-T of 14% can be reduced as far as the cap on crop-based biofuels is lower than 7% (this is the case of Moldova and also Ukraine). Where the cap on crop-based biofuels is 2%, the overall target can thus be reduced to 9%."

### Annex III: ETS Directive

The Carbon Border Adjustment Mechanism Regulation envisages that Ukraine will have the same price for greenhouse gas emissions as the EU in 2030 (currently some 0.7 EUR/ton in Ukraine and some 70 EUR/ton in the EU) based on ETS Directive implementation. Industry and population would not survive such a price shock. Therefore, Ukraine will need a transitional period to gradually increase the price of greenhouse gas emissions and implement the ETS Directive gradually, some elements even after entering the EU as a Member State.

In 2023, the ETS Directive has been extended to new sectors – emission from fuels used for combustion in buildings, road transport and additional sectors (mostly small industry not covered by the previous EU ETS). This so-called ETS2 will be fully operational in 2027, while the monitoring and reporting phase will commence in 2025.

The following elements of negotiation position are relevant (listed as an example):

#### **Scope/Coverage**

- ***What should be the sectoral coverage?***
  - **electricity only;**
  - **other CBAM sectors (iron, steel, fertilisers, cement, aluminium, H2);**
  - **other non-CBAM sectors (e.g. other industries, CHP/ centralised heating);**
  - **gradual extension of the coverage to all EU ETS sectors.**

We believe the sectoral coverage should be in the first few years of ETS's existence in the electricity sector and other CBAM sectors only, to reduce the impact of CBAM.

At the minimum, Ukraine's ETS should cover the same GHGs as the EU ETS. Anyhow, CO2 represents by far the biggest GHG (in electricity generation, steel and cement production, the only one in aluminium production almost the only one, apart from perfluorocarbons).

#### **Institutional Set-Up; and Enforcement**

- ***What should be the level of penalties?***

Penalties should be low at the beginning of the implementation period (e.g., the value of 1.2 tons of CO2 in the beginning, including the cost of surrendering) and only after two or three years of existence of ETS introducing a similar penalty policy as in the EU.

- ***At which point should the competent authorities be designated and start their implementation activities?***

They should be designated and start their activities no later than 2025 if UA wishes to avoid CBAM in 2026.

#### **CAP AND LINEAR REDUCTION FACTOR (LRF)**

- ***How to calculate the initial cap (i.e. total amount of available GHG allowances), noting that Monitoring, Reporting, Verification, and Accreditation data should be available as of 2026?***

With the calculation of the initial cap, Ukraine will have to be innovative. For the National Allocation Plans (NAPs), the basic year should be 2030, and trends from 2026 to 2030 calculated according to the NECP and other documents (CO2 emissions for the industry sector based on the PRIMES trend as was done in the 2019 *Study on 2030 overall targets for the Energy Community*.)

- ***How to define the LRF? What would be the regional ETS emission reduction target for the covered sectors?***

LRF should be based on the sum (calculation) of trends of emissions for the period 2026 – 2030. For the period 2030-2050, LRF should mirror the ambition to align with the EU ETS price.

- ***How will the number of allowances be calculated?***

Our suggestion is to base it on the National Allocation Plan (NAP), like in the EU in 2005-2012 (Phase 1 and 2) – emissions per country, without transferring some allowances into common EU mechanisms.

### **Registry**

- ***Who could manage a registry before accession?***

The best would be the European Commission, as for the rest of the EU.

- ***How could a regional registry be organised in the best way?***

The same way as is in the EU: with the regional registry and input being provided by the national administrator of the registry, including the opening, suspension of access to, and closure of accounts.

### **Allocation:**

- ***Considering that, in general, the electricity sector does not receive free allocations in the EU, and that the CBAM regulation conditions a CBAM exemption for electricity imports into the EU on the establishment of an ETS for electricity by 2030 with an equivalent carbon price to that of the EU ETS, should the national ETS provide for free allocation for the electricity production?***

We do not see any difference with the EU Member States with lower GDPs that were able to provide free allowances to installations for electricity producers for the modernization of their respective energy sectors, e.g. until 2035 or even 2040. Therefore, the allocation of free allowances should also take place in Ukraine with the same logic.

- ***Considering the trend to phase out free allocation under the EU ETS in line with the phasing-in of CBAM, should the national ETS provide for free allocation for the industry sectors, and if so, should it be based on EU benchmarks and follow the same phase-out trajectory of the EU ETS on free allocation?***

Industry and the level of technological development in Ukraine are mostly incomparable to the EU industrial sector. The Ukrainian industry needs free allocations for a much longer period than the one in the EU. Apart from that it needs access to EU budget funds and free allocation for its modernization and access to financial markets (Modernization Fund and commercial financing). This should also be part of the national negotiation position. Without free allocation and access to EU co-financing, any introduction of ETS will be economically and, therefore, politically very challenging.

- ***How should national auctions be organised?***

We support the common auction platform as it is in the EU (EPEX). Most probably the only realistic solution is selling Ukraine's allowances at a common auction platform.

We see it as necessary to link the Ukrainian ETS with the EU ETS based on Article 25 of the ETS Directive (Links with other greenhouse gas emissions trading systems). Ukrainian allowances shall be recognized in the EU as well. An option, perhaps, would be to do this by amending Art 25 of the ETS Directive via the Accession Treaty.

### **Revenue usage**

- ***Should the revenues from auctioning be earmarked for climate purposes?***

Earmarking for climate purposes shall be understood as more flexible. This should allow Ukraine to finance very different costs of the coal regions in transition needs. The introduction of carbon pricing will have severe consequences on all elements of the state budget, and it should have sufficient flexibility to respond to those consequences which cannot be all earmarked in advance.

### **Flexibilities and graduality:**

The EU ETS has had historically several phases with different levels of flexibility and graduality for its Member States. It entails, among others, the use of international offsets (terminated in 2020); free allocation for electricity (currently only under specific conditions for some Member States), and industry, especially under carbon leakage risk and that will be phased out for the CBAM sectors; gradual sectoral scope expansion (to include with time aviation and maritime transport).

- ***What types of graduality or flexibilities could the Ukrainian ETS benefit from?***
  - Free allocation of allowances much longer than in the EU;
  - Free allocation of carbon credits for modernisation under EU ETS.
  - Recognition of Ukrainian ETS by the EU based on Art 25 of the ETS Directive.

## Annex IV: Summary of new energy-related directives and regulations<sup>1</sup>

**Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024 amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union's electricity market design**

**Regulation (EU) 2024/1747 of the European Parliament and of the Council of 13 June 2024 amending Regulations (EU) 2019/942 and (EU) 2019/943 as regards improving the Union's electricity market design**

The directive and regulation established a so-called new electricity market design. The most important innovations brought by the new electricity market design relate to:

- the right of customers to share electricity in the sense of self-sufficiency in energy from renewable sources, which they receive in whole or in part from active customers with an installed photovoltaic power plant or other source of renewable energy or energy storage. The right is regulated by registering a sharing agreement based on co-ownership, lease, or sale agreement. Customers shall be able to conclude several energy-sharing agreements and the right to more than one metering and billing point,
- the right of final customers to a fixed-price electricity supply contract concluded for a specified period of at least one year,
- managing supplier risk by implementing a hedging strategy for fixed-price contracts,
- improving the implementation of the concept of emergency supply in declared crisis conditions in cases of contract termination and termination of the supplier's activities,
- the possibility of access to affordable energy for household customers, small business customers, and small and medium-sized enterprises in declared crisis conditions through temporarily targeted public interventions in setting prices for electricity supply,
- an obligation for an electricity operator to connect publicly accessible and private recharging points for electric vehicles to the electricity grid with smart charging and bidirectional charging functionalities,
- the possibility of introducing a program to support the provision of fossil fuel-free flexibility, implemented through a public call for tenders for the provision of flexibility, where flexible generation providers are selected through a transparent, non-discriminatory, and competitive process,
- Mapping of the areas for priority renewable energy sources deployment (RES mapping), and exemptions from nature impact acceptability assessments and environmental impact assessments for priority RES areas.

**Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen, amending Directive (EU) 2023/1791 and repealing Directive 2009/73/EC (recast)**

**Regulation (EU) 2024/1789 of the European Parliament and of the Council of 13 June 2024 on the internal markets for renewable gas, natural gas and hydrogen, amending Regulations (EU) No 1227/2011, (EU) 2017/1938, (EU) 2019/942 and (EU) 2022/869 and Decision (EU) 2017/684 and repealing Regulation (EC) No 715/2009 (recast)**

Directive is a framework to promote sustainable gas markets, focusing on integrating renewable gas, low-carbon gas, and hydrogen while phasing out fossil fuels. It facilitates the inclusion of renewable gases into the energy market, sets consumer protections for those connected to hydrogen systems, and introduces standards for market transparency and competition.

Key points in the directive include incentives for renewable hydrogen production, especially from wind and solar energy, and setting emissions reduction thresholds for low-carbon hydrogen. The directive promotes cross-border trade of hydrogen within the EU, aiming for a competitive, open market that mirrors established practices in electricity and natural gas trading. Additionally, it requires that the transition to hydrogen align with consumer protection standards like those in the natural gas market, although specific provisions differ for households and industrial users.

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<sup>1</sup> Presented only acquis that is not part of the Energy Community acquis or acquis covered by the EU-Ukraine Association Agreement

The new rules, along with the accompanying Regulation (EU) 2024/1789, will be phased in starting February 2025, with EU Member States given a two-year window to align their national legislation with these standards.

**Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 (RED III Directive)**

Directive (EU) 2018/2001 is already obligatory under the Energy Community Treaty. RED III Directive (EU) 2023/2413 significantly amends the 2018 Renewable Energy Directive (RED II) to strengthen the EU's renewable energy targets and streamline procedures. Here are some of the key updates introduced:

- Higher renewable energy targets: the directive sets a binding EU-wide renewable energy target of 45% by 2030, an increase from the previous 32% goal in RED II. Additionally, it includes specific sub-targets for industry, heating, and transport sectors to accelerate renewables deployment across all sectors.
- Acceleration of permitting processes: to address bottlenecks in renewable project permitting, the directive mandates that member states establish "renewable acceleration areas" by 2026, where faster permitting processes apply. Projects within these areas will benefit from simplified Environmental Impact Assessments (EIA) and less bureaucratic oversight to reduce development delays.
- Energy communities and self-consumption: the revised directive emphasizes community participation and self-consumption, promoting local renewable energy communities and allowing individuals to generate, store, and share their own renewable energy more easily. This aims to encourage broader public involvement and acceptance.
- Public buildings and renewable installations: public buildings must serve as examples by supporting renewable installations, often in partnership with local authorities or energy communities. Public procurement processes are encouraged to favour renewable energy projects, and EU guidelines now support energy communities using public spaces for renewable development.
- Transport and industry specific targets: in the transport sector, at least 29% of the energy must come from renewable sources by 2030, with additional incentives for renewable fuels of non-biological origin (RFNBOs) in heavy industries like steel and chemicals.
- A greater role for hydrogen: The directive introduces specific targets for the use of renewable hydrogen, both in industries and as part of cross-border renewable energy sharing initiatives. This promotes the use of green hydrogen as a viable, sustainable fuel option across the EU.

**Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast)**

Previous Directive 2012/27/EU on energy efficiency is already obligatory under the Energy Community Treaty. A new directive introduces a more ambitious and binding framework. Key changes include the following:

- Stricter Energy Reduction Targets: The directive now enforces an EU-wide, legally binding target of an 11.7% reduction in final energy consumption by 2030, based on 2020 levels. Member states are also expected to achieve an average annual energy savings of 1.49% from 2024 through 2030, nearly doubling the previous rate of 0.8%.
- Public Sector Leadership: The public sector must achieve a 1.9% annual reduction in energy consumption and continue a 3% yearly renovation rate for public buildings, extending these requirements across all levels of government.
- Energy Efficiency for vulnerable groups: addressing energy poverty, the directive mandates prioritization of energy efficiency upgrades for low-income and vulnerable populations, as well as social housing sectors.
- Enhanced role of data centres and digitalization: to improve accountability, large data centres are now required to report their energy and water usage, with the data collected in an EU-level database. Additionally, large enterprises must implement energy management systems and undergo regular energy audits if they consume more than 10 Tj annually.

- Support for decarbonized district heating and cooling: the directive outlines stricter criteria for district heating and cooling systems, aiming for full decarbonization by 2050. It encourages local governments to develop sustainable heating and cooling plans for larger municipalities.
- Private sector engagement: private investments are encouraged through improved energy efficiency financing frameworks. The directive also requires that businesses consuming high energy levels develop and report action plans to enhance energy efficiency.

### **Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast)**

Directive 2010/31/EU on the energy performance of buildings is already obligatory under the Energy Community Treaty. The new directive significantly updates prior EU legislation. Key changes include heightened requirements for energy efficiency, mandatory national renovation plans, and a stronger focus on both renewable energy integration and support for vulnerable households. Key changes include the following:

- Obligation for all new buildings to be zero-emission by 2030 and to integrate solar readiness, starting with larger public and non-residential buildings by 2026. The directive mandates that Member States establish *National Building Renovation Plans (NBRPs)* by 2025 to outline a clear strategy for achieving a zero-emission building stock, particularly targeting the renovation of the most energy-inefficient buildings. NBRPs will include national targets, financing mechanisms, and indicators for monitoring progress, as well as measures to prevent energy poverty and support vulnerable communities (particularly low-income or marginalized households) through public consultations and targeted protections.
- Strengthened requirements on *Energy Performance Certificates (EPCs)*. The directive standardizes formats across the EU to improve transparency and comparability in the real estate market. New minimum energy performance standards for non-residential and residential buildings ensure that older buildings meet energy-efficient benchmarks when undergoing major renovations, sale, or rental.
- “Solar-ready” construction and the installation of electric vehicle charging points are mandatory in various public and private building types.
- The directive encourages the phasing out of fossil fuels in heating systems by 2040 and supports one-stop shops to help citizens and local businesses navigate the technical and financial aspects of building upgrades.

### **Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure**

Key elements of the directive include:

- Development of alternative fuel infrastructure: the directive mandates EU Member States to develop national policy frameworks for expanding infrastructure to support alternative fuels, including electricity, hydrogen, biofuels, natural gas (CNG and LNG), and liquefied petroleum gas (LPG). Each country is expected to assess current infrastructure and set targets and objectives for future development.
- Electric vehicle charging points: one significant aspect is the requirement for an adequate number of publicly accessible electric vehicle (EV) charging points by the end of 2020, ensuring that EVs can travel across the EU without range limitations. The directive encourages both public and private sector involvement in setting up these charging stations.
- Natural gas refuelling points: for both compressed natural gas (CNG) and liquefied natural gas (LNG), the directive sets targets to increase the availability of refuelling points, especially along key transport routes (such as the TEN-T core network). This infrastructure is meant to support both road vehicles and ships, contributing to cleaner transportation in both sectors.
- Hydrogen infrastructure: although non-binding, the directive encourages Member States to support hydrogen refuelling stations, particularly in areas where there is a potential for high hydrogen fuel cell vehicle use.
- Standardization and Interoperability: to ensure that infrastructure can be used across the EU, the directive sets out technical specifications for alternative fuel infrastructure, promoting

interoperability and standardization. This includes common standards for charging connectors and communication protocols.

- Information to Consumers: the directive requires that users of alternative fuel vehicles have easy access to information about the location and availability of refuelling and recharging points.

### **Council Directive 2003/122/Euratom of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources**

This directive aims to prevent incidents involving radioactive sources, protect workers and the public, and standardize safety practices across the EU. It underscores the importance of a comprehensive control system and the shared responsibility between Member States and operators to prevent radiation hazards. Key provisions include:

- Authorization and tracking: the directive requires Member States to establish a system for authorization, tracking, and control of High-Activity Sealed Sources. Facilities that handle high-activity sources must obtain licenses, and all sources must be registered, labelled, and inventoried regularly. The directive also mandates reporting any transfer or disposal of these sources to ensure they do not become "orphan" (uncontrolled and unaccounted for).
- Security measures and safety standards: the directive obliges operators to implement safety and security measures to prevent unauthorized access, loss, or theft of radioactive materials. Facilities are required to have trained personnel, emergency protocols, and physical security measures in place.
- Financial provisions and disposal plans: license holders are responsible for ensuring that financial resources are available for safe handling, storage, or disposal of radioactive sources. This includes having a disposal plan for sources that are no longer in use.
- Handling of orphan sources: the directive outlines protocols for identifying, recovering, and securing orphan sources, which are potentially dangerous radioactive materials that have lost regulatory control. Member States are required to establish systems for detecting orphan sources, often through monitoring at borders or recycling plants.
- Training and public awareness: Member States must ensure that workers handling radioactive sources receive training on safety procedures, risks, and emergency responses. They must also create public awareness programs to educate people on recognizing and reporting lost or abandoned sources.

### **Council Directive 90/641/Euratom of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionizing radiation during their activities in controlled areas**

The directive establishes protective measures for outside workers (contractors or temporary staff) who may be exposed to ionizing radiation while working in controlled areas of nuclear or radiological facilities. The directive aims to ensure these workers receive the same level of safety and health protection as permanent employees in radiation environments. Key provisions include:

- Radiation monitoring and dose records: Employers and operators must monitor the radiation exposure of outside workers and maintain individual dose records. This information helps ensure workers do not exceed permissible radiation limits.
- Information and training: the directive mandates that outside workers be fully informed about potential radiation risks and protective measures before they begin working in controlled areas. Workers must also receive adequate training to safely carry out their tasks under radiation exposure conditions.
- Coordination of responsibilities: both the employer (or contracting company) and the facility operator share responsibility for radiation safety. Operators are required to ensure controlled areas are safe, while employers must verify that workers have valid medical certifications and dose records.
- Medical surveillance: outside workers must undergo regular medical assessments to confirm their fitness for tasks involving radiation exposure. Medical certifications are required to be up to date before any exposure-prone work.
- Rights of access to safety records: workers have the right to access their radiation exposure records, helping them keep track of cumulative exposure over time.

## Annex V: Other EU accession- related documents

**Table 7. Negotiation positions and benchmarks**

Country	EU position	Country position	Benchmarks	Other
<b>Current Member States</b>				
<b>Bulgaria</b>	-	-	-	<a href="#">Roadmap</a> from the EC
<b>Croatia</b>	EU <a href="#">position</a>	Croatian <a href="#">position</a>	Closing <a href="#">benchmarks</a>	Intermediate, revised EU <a href="#">position</a>
<b>Romania</b>	-	Romanian <a href="#">position</a> (revised)	-	- <a href="#">Roadmap</a> from the EC -Info on oil stock transition <a href="#">period</a> -Chapter <a href="#">closure</a>
<b>Czech Republic</b>	-	-	-	-Transitional <a href="#">arrangements</a>
<b>Estonia</b>	-	-	-	-Transitional <a href="#">arrangements</a>
<b>Hungary</b>	-	-	-	-
<b>Poland</b>	-	-	-	-
<b>Cyprus</b>	-	-	-	-
<b>Latvia</b>	-	-	-	-
<b>Lithuania</b>	EU <a href="#">position</a> (not the initial one)	-	-	-
<b>Malta</b>	EU <a href="#">position</a> (not the initial one)	-	-	-
<b>Slovenia</b>	-	-	One condition for opening <a href="#">negotiations</a>	Negotiating <a href="#">base</a> (short)
<b>Candidates</b>				
<b>Albania</b>	Not opened yet?	-	-	<a href="#">Council</a> conclusions and other
<b>Montenegro</b>	-	-	Opening and closing <a href="#">benchmarks</a>	-
<b>North Macedonia</b>	-	-	-	-
<b>Bosnia and Herzegovina</b>	-	-	-	-
<b>Serbia</b>	EU <a href="#">position</a>	Serbian <a href="#">position</a>	-	-

Source: European Parliament

**Table 8. European Parliament factsheets and resolutions**

Country	Factsheet	Resolution	Other
<b>Current Member States</b>			
<b>Bulgaria</b>	<a href="#">Link</a>	-	Resolution on <a href="#">accession</a>
<b>Croatia</b>	-	-	-
<b>Romania</b>	-	On state of <a href="#">negotiations</a> (2002), <a href="#">2001</a>	-
<b>Czech Republic</b>	<a href="#">Link</a>		Resolution on <a href="#">report</a>
<b>Estonia</b>	<a href="#">Link</a>	On state of <a href="#">negotiations</a> (2001)	-
<b>Hungary</b>	-	On state of <a href="#">negotiations</a> (1997)	-
<b>Poland</b>	<a href="#">Link</a>	On state of <a href="#">negotiations</a> (2000), <a href="#">2001</a>	-
<b>Cyprus</b>	<a href="#">Link</a>	On state of <a href="#">negotiations</a> (2001)	-
<b>Latvia</b>	<a href="#">Link</a>	-	Resolution on the <a href="#">report</a> (several countries)
<b>Lithuania</b>	<a href="#">Link</a>	-	-
<b>Malta</b>	<a href="#">Link</a>	On state of <a href="#">negotiations</a> (2001), <a href="#">1999</a>	-
<b>Slovenia</b>	<a href="#">Link</a>	On state of <a href="#">negotiations</a> (2001)	-
<b>Candidates</b>			
<b>Albania</b>	-	-	Resolutions on the <a href="#">reports</a>
<b>Montenegro</b>	-	-	Resolutions on <a href="#">reports</a>
<b>North Macedonia</b>	-	-	Resolution on the <a href="#">reports</a>
<b>Bosnia and Herzegovina</b>	-	-	Resolution on the <a href="#">report</a>
<b>Serbia</b>	-	-	Resolution on <a href="#">report</a> , Screening <a href="#">report</a>

Source: Authors



