ANNEX
[*ANNEX III*]

ACTION FICHE FOR UKRAINE

1. IDENTIFICATION

	Title	**Twinning and ENP Support Technical Assistance**		
	Total cost	*€20 million*		
	Aid method / Management mode	Project approach – *centralised management*		
	DAC-code	*43010*	Sector	*Multisector aid*

2. RATIONALE

2.1. Sector context

On 21 February 2005, the European Union and Ukraine signed a three-year Action Plan foreseeing the achievement of demanding objectives in a large number of sectors and activities, and in March 2007 entered negotiations on an Enhanced Agreement and a Deep Free Trade Agreement building up on these achievements. Administrative capacity and a true understanding of EU Rules have recently come to the fore as major blocking factors on Ukraine's path to implementation of the Action Plan and its successor Agreements.

The proposed measure aims at strengthening the capacity of the Ukrainian administration to face the implementation challenge. In areas where, by anticipation, discussions with the Ukrainian government have underlined the need for future sector-wide support, such as the reform of the law enforcement entities, environment, judiciary reform, transport, and the enhanced energy cooperation, the measure foresees the delivery of preparatory technical assistance. Such assistance will aim at drawing conditions from Ukraine's sectoral reform and development strategies and, where necessary, at helping Ukraine devise such strategies, in line with the Ownership objective of the Paris Declaration[1].

Expected results of the proposed measure are:

- Timely and cost-effective implementation of Ukraine's commitments under the above-mentioned documents;
- Timely and efficient preparation of future sector-wide support in jointly identified priority areas for proper ENP and the Enhanced Agreement implementation;
- Eased political dialogue for further enhancement of neighbourhood relations, based on successful realisation of joint objectives defined in bilateral agreements.

Worth is noting, at this stage, that nearly all other donors and IFIs have already agreed to use Ukraine's commitments set forth in EU-Ukraine bilateral agreements as a basis for designing their own aid conditionalities in the relevant sectors.

[1] Although at present Ukraine is not a party to the Paris Declaration on Aid Effectiveness, it intends to sign and ratify it in the foreseeable future.

2.2. Lessons learnt

The measure focuses on raising Ukraine's chances of achieving the key objectives without which its political dialogue with the EU will likely loose momentum as a consequence of insufficient implementing capacities.

It is worth noting that, as experience has shown since last year, there is a clear correlation between the areas identified as priority ones in the unofficial Action Plan Implementation Tool and the sectors whose responsible Ministries and Agencies have been the most active in requesting Twinning interventions. Experience reached with twinning projects has also: (a) shown the value, both to Ukraine and to the implementing EU Mandated Bodies, of careful preparation of projects; and (b) allowed to set up a workable institutional framework between the Ukrainian government and the Commission to prepare jointly twinning projects. It is expected that, practice helping, the timeline for designing, developing and contracting twinning projects can be significantly shortened by the time this Action programme will enter into force.

2.3. Complementary actions

The project draws on past experience and on-going projects, be they funded by the EU or by other donors. For instance, the delivery method has been chosen based on recent positive experience with twinning projects, and the successful use of preparatory assistance for designing sector-wide support. The results expected from sector-wide studies foreseen under Ukraine NAPs 2005 and 2006 has been taken into consideration, as well as the need to further past or on-going assistance, where follow-up is being required.

2.4. Donor coordination

All donors and IFIs are co-ordinated via the Donor-Government Working Group established and run by the Ukrainian Ministry of Economy in line with the Paris Declaration on Aid Effectiveness. A specific working group is in charge of co-ordinating support to administrative reform and governance, including actions to strengthen administrative capacity. In addition, other Donors and IFIs have generally agreed to use Ukraine's commitments set forth in the EU-Ukraine Action Plan as a basis for designing their own aid conditionalities in the relevant sectors, thus ensuring consistency of their activities with those contemplated in this action.

3. DESCRIPTION

3.1. Objectives

Overall objectives:

- To meet the pre-requisites of government-led donor coordination;
- To meet the objectives of the Action Plan and prepare to the challenges of the Enhanced Agreement;
- To assist Ukraine in preparing the sectoral reform and development strategies which would best benefit from the EC's sector and budget support.

Purposes (specific objectives):

- To strengthen the administrative capacity of the Ministry of Economy to manage and coordinate external assistance;

– To build the capacity of the Ukrainian ministries and agencies to enforce effectively the commitments set forth in the ENP Action Plan and is successor Enhanced Agreement, and their national reform programmes (following the priorities identified in the related Implementation Tools, like judiciary reform; police reform; regulatory reform);

– To prepare Ukraine and support the implementation of the contemplated deep free-trade agreement in sectors identified as key for its success (such as WTO SPS, Quality assurance, Market structures).

3.2. Expected results and main activities

Ukraine's public service generally suffers from its insufficient administrative capacity when confronted to the task of streamlining the country's necessary reforms and abiding by its international commitments (including those undertaken within the framework of bilateral relations with the EU). This factor affects also, to some extent, the capacity of the Ministry of Economy, in its quality of External assistance co-ordinator, to manage and co-ordinate aid.

The proposed measure will address this weakness, using whenever possible the advantages offered by the twinning modality. Improved administrative capacity, approximation, and national strategies in the sectors presently defined as priorities will allow to withdraw progressively from them and address other objectives of the ENP Action Plan and the future Enhanced Agreement. This approach assumes that Ukraine will go on with its administrative reform, thus creating the pre-conditions for retaining civil servants in public administration after implementation of the measure.

For the same reason of administrative weakness, technical assistance will still be required to properly prepare sector-wide projects. In that area, coordination with other Donors will be particularly sought for, in view of more efficiency, quicker results, and EU Commitment No. 1 of the Paris Declaration ("Provide all capacity building assistance through coordinated programmes with a preference towards multi-donor agreements"). For instance, where another Donor or IFI plans to investigate a particular sector or sub-sector of importance from an AP / Enhanced Agreement support prospective, the EC will contribute via co-financing arrangements so that EU specific concerns be taken into account during the investigation (including the re-development of reform and development strategies as appropriate).

One of these sectors will be law enforcement, where Ukraine is seeking to achieve a substantial reform, ensuring that the country will respect the human rights in its task of maintaining internal order. The set-up of indicators, preparing for a budgetary support in the foreseeable future, will also help Ukraine to achieve designing the implementation of its strategy and help it to get monitoring input, for instance by the Council of Europe, supported by civil society representatives.

Expected results:

– Enhanced understanding of EU issues among the Ukrainian relevant administrations;

– Improved Ukrainian taking on board of EU systems and laws;

– Better preparation and guarantee of proper implementation for budgetary support[2]

3.3. Stakeholders

The key stakeholders will be the concerned industries and society groups, policy-setting and implementing ministries and agencies, the judiciary system, and, though indirectly, the community of donors. The proposed measure will impact first and foremost on the policy-

[2] In line with the Paris Declaration on Aid Effectiveness.

setting and implementing agencies; however, enforcement of EU-compliant procedures should rapidly lead to involve the civil society and businesses in the project. Ukraine is characterised by a rich, though under-developed, civil society and business infrastructure, which will ease up their immediate involvement. The projects will its turn foster further development of this infrastructure.

As for twinning, all Ukrainian entities, including, to a certain extent, regional ones, can be potential stakeholders. For technical assistance for preparing budgetary supports, the first one to be prepared on Law Enforcement system will involve a lot of Ukrainian national and local stakeholders, including NGOs as one of the key issue will be the monitoring by the civil society.

In some other sectors like environment, civil society and business associations have declared their willingness to participate as stakeholders.

3.4. Risks and assumptions

Assumptions:

- The European Union pursues its ENP policy and enhanced cooperation with Ukraine in priority sectors (judiciary and law enforcement reform, energy, transport, environment, agriculture, implementation of WTO Norms and EU-compliant Quality assurance systems…)

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

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

Risks:

- The Ukrainian Government repeals its July 2006 decision to cancel the Administrative provisions limiting the presence and access to premises and information of foreign advisers in ministries and government agencies

- Government instability delays achievement of all necessary steps to enable budgetary support.

3.5. Crosscutting Issues

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

- Good governance and human rights:

Improved administrative capacity and rendering it aware of EU policies and systems will raise the democratic standards of governance; preparing a budget support for law enforcement system, implying improved wider and systematic consultation of the civil society and businesses, will provide Ukraine with a major step forward to democracy; the monitoring by civil society organisations will be a guarantee of setting up an efficient and stable surveillance of the law enforcement system, which is a vital one for democracy;

- Gender balance:

The measure has only indirect impact on this issue.

– Environment:

The measure will specifically prepare future sector-wide support in the environment sector, with a focus on water quality and the prevention of industrial risks, as one of the identified priorities for ENP AP implementation. In addition, the introduction of EU-compliant norms on the occasion of regulatory reform (via twinning projects) will impose the ex-ante evaluation of the impact on the environment of decisions likely to bear on it.

4. IMPLEMENTATION ISSUES

4.1. Implementation method

The measure will be implemented via service contracts (for the technical assistance component) and twinning contracts. As appropriate, financing agreements with specialised international organisations, including the Council of Europe, are envisaged, following the procedures of centralised management, insofar as sector-wide preparation and monitoring projects are concerned. Regarding twinning projects, ex-ante decentralised management, provided it is allowed, should be preferred given the peer-to-peer nature of the twinning formula, and the recent establishment of a national Twinning Programme administration office.

4.2. Procurement and grant award procedures

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

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

All programme estimates must respect the procedures and standard documents laid down by the Commission, in force at the time of the adoption of the programme estimates in question.

4.3. Budget and calendar

Each project component will include its own provision for evaluation, audit and visibility. An indicative breakdown of the budget could be:

Twinning projects …….	€ 15 million
Sectoral assistance ……	€ 5 million

Sectoral assistance, meant to assist Ukraine in preparing future sector and budgetary support, will target sectors jointly assessed as priorities in the context of the Action Plan and its successor agreements (including the anticipated free trade agreement). As of today, besides the energy sector and the correlated matters of energy efficiency and renewable energy

sources[3], priority sectors include the maintenance of public order; the judicial system; local development; environment; transport; quality assurance systems[4].

In the case of twinning projects, the beneficiary administrations are requested to make their co-financing of the measures explicit in the twinning project's budget attached to the twinning contract. Such contribution may be estimated at of one third (as a maximum) of the contribution of the Commission. In the case of technical assistance projects, Ukrainian beneficiaries are commonly requested to contribute the logistical arrangements (internalised cost) as well as political support in case the reform and development strategies in one or more of the concerned sectors need revision or update.

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

4.4. Performance monitoring

The monitoring of the measure will follow standard procedures, based on benchmarks to be agreed with each of its beneficiaries shortly after its start-up. Project monitoring will be based on periodic assessment of progress and delivery of specified project results and towards achievement of project objectives. Harmonisation of monitoring frameworks of other Donors is expected to be one of the outcomes of the government-led coordination process referred to in paragraph 2.4 "Donor co-ordination".

4.5. Evaluation and audit

In addition to regular ROM, a mid-term evaluation of the entire measure will be organised.

4.6. Communication and visibility

Proper communication and visibility of the measure will be achieved via widespread dissemination of project achievements and results (to be budgeted under each of the activities), as well as international visibility of twinning projects. A reasonable communication budget will be set aside for promotion of the latter.

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3 To be dealt with under a separate action within the framework of this Annual action programme.

4 The reform of Ukraine's quality assurance system (including strengthening of the institutions) and the adoption and enforcement of WTO sanitary and phyto-sanitary norms have been targeted under Tacis NAP 2006 assistance, in view of the forthcoming EU-Ukraine agreement in the area of conformity assessment and of the recent Memorandum of understanding on agricultural co-operation.

ACTION FICHE UKRAINE

1. IDENTIFICATION

Title	**Support to the implementation of Ukraine's Energy strategy ENPI/2007/18788**		
Total cost	*€87 million (EC contribution, including €22m related to Energy Efficiency and renewables allocated from the Governance Facility) Other expected contributions: EIB / EBRD: €400 million; World Bank DPL-2: $150 million*		
Aid method / management mode	– Sector budget support, non targeted (centralised management) – Project mode for related technical assistance (direct centralised management).		
DAC-code	23050	Sector	Gas distribution

2. RATIONALE AND COUNTRY CONTEXT

2.1. Economic and social situation

Basic existing preconditions

The three basic pre-conditions for implementing a sectoral energy support programme are currently met:

– there is a Government strategy for the sector whose objectives and principles are converging with those of the EU

– there is an active policy dialogue between the Government and the EC on energy related issues

– a monitoring mechanism of the co-operation outcomes has been put in place.

Macro-economic policy and Public finance management

The Annual Action Programme provides extensive information with respect to Ukraine's macro-economic situation and Public finance management system.

2.2. Cooperation policy of beneficiary country

Ukraine-EC energy cooperation is based on the Energy chapter of the Action Plan and the Energy MoU[5]. It has gained considerable momentum in 2006, thanks to a structure of sub-sectoral monitoring groups.

2.3. Government Sector Programme

A clearly defined framework for cooperation between the European Union and Ukraine in the energy sector, including objectives, deadlines and priorities, has been set out in the Energy MoU and the Aide-Mémoires signed between the Commission and the Ukrainian Energy Ministry in September and October 2006. In the three areas of direct concern to this

[5] Memorandum of Understanding between Ukraine and the European Union on enhanced co-operation in the field of energy of 1 December 2005.

cooperation, this framework will be complemented in the first months of 2007 with area-specific work plans currently under discussion.
Obvious convergence of the Energy MoU and the Ukrainian Energy strategy 2005-2030 released on 23 March 2006 guarantees ownership of the programme by the Ukrainian stakeholders. The Government is currently preparing a PFM reform, with technical assistance of the World Bank. This reform plan, which should involve the Ministry of Finance, the State Treasury and the Control and Revision Unit (KRU) is expected to be finalised soon for implementation over the period 2007-2009.

2.4. Lessons learnt

It will be the first time in Ukraine that an EC sector support operation will be launched. Therefore, there are no lessons learnt available in the country. World Bank experience in the sector as well as in budget support, however, will be taken into account during the formulation and implementation phases.

2.5. Complementary actions

Ukraine has started form 2007 an intensive energy sector rehabilitation and modernisation programme, that it intends to finance mainly via borrowings on the domestic or the international market, under the coordination and supervision of the Deputy Prime Minister for Infrastructure.
This programme in support of the energy strategy of the Ukraine is complemented by planned EIB/EBRD loan packages (under EC co-ordination) to be signed within the framework of EIB's first Ukraine mandate (before 31 July 2007) and to be followed by further lending operations to modernise the energy sector in relation with the objectives of the Energy MoU.
Complementary Tacis projects include a recently started support to prepare Ukraine to integrating the electricity trans-European networks and a forthcoming project in support of coal sector reform.
The World Bank is preparing a part on energy sector reform in its forthcoming DPL-2 operation.

2.6. Donor coordination

2.6.1. Energy: The Government has recently established a Government-led coordination mechanism, which includes thematic working groups, each co-led by a Government agency and a "lead donor". An Energy sector working group (Thematic group E) convened on 23 November 2006 (under EBRD co-leadership) and again on 27 February 2007 (under EC co-leadership). In addition, frequent working contacts of the EC Delegation with the World Bank, the EBRD and smaller donors involved in the energy efficiency segment (Denmark, Sweden, NEFCO) provide guarantees of cohesion and coordination of efforts.

2.6.2. Public Finance Management: Several donors are involved in assistance to the PFM reform. The PFM reform strategy and Action Plan are being prepared by the Government with technical assistance of the World Bank. Besides the World Bank and the European Commission, contributions in the form of technical assistance are made by France, the Netherlands, Canada, the United Kingdom and Sweden.
Donors' activities in the field of PFM are rather well coordinated. This coordination is carried out both at the level of the donors' coordination groups established under the Ministry of Economy and on a bilateral basis.

3. DESCRIPTION

3.1. Objectives

The objectives of the government strategy are to modernise Ukraine's energy sector with a view to making it sufficient to support Ukraine's rapid economic growth, and a net exporter

of secondary energy (aiming primarily at the EU market). This involves the reduction of the economy's energy intensity (from 89 cents per Euro of GDP in 2005 to 41 cents in 2030), and to develop Ukraine's capacity as a transit country for energy resources.
The objective of the measure is to reinforce EU-Ukraine energy co-operation for the implementation of the energy chapter of the Action Plan for Ukraine, which targets primarily integration of Ukraine into the EU Single Energy Market and reliability of Ukraine as a transit country for the purpose of energy supply security.

3.2. Expected results and main activities

Implementation by the Government of Ukraine of an overall energy policy converging towards EU energy policy objectives, which implies:

- Gradual convergence of the relevant Ukrainian laws and regulations towards the principles of the EU internal electricity and gas markets
- Development of gas and oil transport infrastructure allowing for diversification of supplies, as well as increased performance and improved safety and security of the gas transit network
- Restructuring of the solid fuel mines
- Progress on energy efficiency and the use of renewable energy sources
- Enhanced nuclear safety
- Development of strategic oil stocks

<u>Results expected from the Government's strategy to be encouraged by the measure comprise:</u>

- Sub-sectoral energy policy documents are prepared and adopted by the appropriate instance
- Measures for gradual convergence towards the principles of the EU internal electricity and gas markets are established. These measures are accompanied by a time schedule, a financing plan and are implemented (implying further restructuring of the gas and electricity markets)
- A law developing the National Electricity Regulatory Commission is adopted and implemented
- Ukraine participates in EU related energy events including a gradual involvement in the European Gas and Electricity Regulatory fora
- Infrastructure allowing diversification of oil and gas supplies are developed; the legal structure, performance, safety and security of gas transit is improved
- A feasibility analysis of electricity interconnection of Ukraine with the UCTE synchronous network is carried out
- The coal sector restructuring plan is further implemented, including implementation of clean coal technology
- Action plans for improving energy efficiency and enhancing the use of renewable energy are adopted
- The Memorandum of understanding on the closure of the Chernobyl nuclear power plant (NPP) is fully implemented and Ukraine complies with the internationally accepted nuclear safety standards
- The State Nuclear Regulatory Committee of the Ukraine is further strengthened
- Measures are taken to ensure the entry into force and implementation of the agreement concluded with Euratom on peaceful uses of nuclear energy

– A national nuclear waste strategy is adopted.

– Implementation of strategic oil stocks and improvement of the quality of oil products

The proposed action will target specifically:

– The long-term security of hydrocarbons transit through Ukraine

– Energy efficiency and promotion of renewable energy sources

– The integration of Ukraine into the EU Single Energy Market.

3.3. Stakeholders

The main national institutions involved in the implementation of the energy component of the programme are the Ministry of Fuel and Energy, the national company Naftohaz of Ukraine and its subsidiaries, the National Agency for Energy Efficiency, the National Electricity Regulatory Commission, to which a number of research institutes of the National Academy of Sciences could be added in the course of project preparation[6].
The Ministry of Finance will provide information on progress in the implementation of the PFM reform plan.
The Ministry of Economy, coordinator of the European Commission activities in Ukraine, will be closely associated to the management of the programme.
These institutions generally need assistance to build up their institutional capacity to refine, maintain, and monitor a national reform and development strategy for the energy sector, properly integrated with other sectoral strategies. External capacity building support could be provided, notably via twinning projects.

3.4. Risks and assumptions

Assumptions

– Ukraine is willing to conduct a policy dialogue with the European Union and other interested donors on the issue of PFM reform.

– Ukraine will keep to all of its commitments under the ENP Action Plan and the Energy MoU, and will continue demonstrating heightened interest in the proposed cooperation.

– Ukraine will not substantially revise the principles underlying its national energy strategy, and its government will be willing to follow the foreseen reform path, translating it into concrete policies.

Risks

– One or several of the ministries, agencies or companies involved in the programme might either be reluctant or not have the capacity to cooperate in an ordered manner. This risk can be mitigated via the use of established Energy MoU dialogue mechanisms and the provision of adequate technical assistance.

– Part of the activities (such as the audit of the hydrocarbons transportation systems) will be governed under specific secrecy legislation. This aspect will be carefully considered during the formulation phase, and when designing the disbursement benchmarks.

– The financial situation of Naftohaz of Ukraine deteriorates to a point that it affects the financial and operating capacities of its subsidiaries in charge of the gas and oil transportation systems. As a mitigation measure, the IFIs will focus on Naftohaz'

[6] Meaning those institutes which have been involved in developing the national energy strategy and are likely to take part in its monitoring, in concurrence with Energy MoU monitoring.

subsidiaries, in order to limit the impact of their contemplated lending operations on Naftohaz's creditworthiness.

3.5. Crosscutting Issues

The cross-cutting issues of good governance and human rights, as well as environment are clearly integrated into the proposed programme, through:

- The alignment of market regulations with EU norms, including in the areas of access to energy and energy tariffs for the population
- The progressive reform of the hydrocarbons transit systems (to be progressively unbundled as required by the relevant EU Directives)
- The importance given to energy-efficiency actions leading to reduced environmental impact of the energy infrastructure's operation

At this stage, the proposed programme has no identified impact on gender equality.

4. IMPLEMENTATION ISSUES

4.1. Implementation method

The programme will be untargeted budget support under centralised management. Funds will be channelled to the State Treasury.

Provision of a technical support will also be included in the programme and will be implemented via technical assistance. This € 5 million package will ensure proper follow-up of implementation, report on the evolution of the energy and PFM sectors, and provide for specific advice to facilitate achievement of critical Energy MoU objectives and programme benchmarks.

4.2. Procurement procedures

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

All programme estimates must respect the procedures and standard documents laid down by the Commission, in force at the time of the adoption of the programme estimates in question.

4.3. Budget and calendar

Indicative breakdown of overall amount by main component:

– Budget support:	€	82 million
– Related technical assistance to the Energy sector:	€	5 million

Budgetary support is expected to be disbursed in two tranches: a fixed tranche of €40 million in the first quarter 2008, and a second tranche of €42 million in the first half of 2009.

The programme will in principle be implemented within three years after the first budget tranche has been released.

Signature of the Financing Agreement between the European Commission and the Government of Ukraine shall create the condition for disbursement of the first instalment.

Assuming that signature of the agreement takes place before the end of 2007, and early enough for inclusion of the Commission grant into the State budget revenues for the fiscal year 2008, disbursement of the first instalment will take place during the first quarter of 2008.

As regards the disbursement of the second instalment, actual achievements will be compared to preliminary agreed benchmarks (see section 4.4). €11m of the €22m linked to energy efficiency and renewable energies will be included in the first instalment, while €11m of the second instalment will be dependent upon benchmarks related to energy efficiency and renewable energy.

Provision of a technical support will also be included in the programme and will be implemented via technical assistance. This € 5 million package will ensure proper follow-up of implementation, report on the evolution of the energy and PFM sectors, and provide for specific advice to facilitate achievement of critical Energy MoU objectives and programme benchmarks.

Further support to the implementation of the MoU on Energy might be envisaged over the next years, subject to relevant Commission Decision.

4.4. Performance monitoring and criteria for disbursement

4.4.1. Performance monitoring will be exerted by a Joint monitoring group whose basis has been laid down in August 2006 with the establishment of the Energy MoU monitoring group partnering the Ministry of Fuels and Energy and the European Commission. The larger Joint monitoring group will rely on official information provided by Ukraine and verified as appropriate by the ad-hoc Advisory group currently being established at the Ministry of Energy.

The monitoring mechanism foresees the production of half-yearly joint EU-Ukraine progress reports, which are based on reports delivered by the five working groups established to monitor the implementation of the MoU.

This mechanism will be used to monitor the implementation of the budget support programme. Since disbursement of budget support instalments is contingent on Ukraine meeting benchmarks, the monitoring reports will include an assessment of these benchmarks. Information requested for this assessment, including information relative to progress of the PFM reform, will be provided by the GoU.

4.4.2. Criteria for disbursement*:* Performance indicators will be defined during the second quarter 2007. They would typically include:

- General conditions such as:

The Government of Ukraine implements a macroeconomic and financial policy conducive to strong and sustainable economic growth and demonstrates commitment to implement the measures of the EU-Ukraine Action Plan related to macro-economic policy (article 19 of the AP);

The Government of Ukraine demonstrates commitment to implement the EU-Ukraine Action Plan measures related to public procurement (article 42) and financial control (article 44);

The Government of Ukraine demonstrates commitment to implement the EU-Ukraine Action Plan measures related to energy (articles 51 to 57).

- Energy-related benchmarks and indicators:

will concern the three areas of electricity and gas markets regulation, security of energy supplies and transit of hydrocarbons, and energy efficiency. They will be determined before

the start of the project as well as specific benchmarks, such as the audit of the existing hydrocarbon transit and supply network with a view to developing a modernisation and infrastructures master plan (section 3.4 (a) of the Energy MoU).). €11m of the €22m linked to energy efficiency and renewable energies will be included in the first instalment, while €11m of the second instalment will be dependent upon benchmarks related to energy efficiency and renewable energy.

- PFM-related benchmarks:

will be defined in line with the objectives set forth in the government strategy to be adopted soon with World Bank support. Impact indicators and outcome indicators will be set up according to the timetable set by the GoU in the Action Plan for implementation of the PFM reform.

4.5. Evaluation and audit

The measure will be subject to regular monitoring by the Joint monitoring group. A mid-term evaluation will be organised to check the overall validity of the monitoring system and of the disbursement criteria for the next tranches.

4.6. Communication and visibility

Proper communication and visibility of the action will be achieved via regular joint communication events on the occasion of the achievement of the disbursement criteria, as well as in connection with the results of technical assistance projects in the energy sector. A reasonable communication budget will be set aside for promotion of the measure.

ACTION FICHE FOR READMISSION-RELATED ASSISTANCE AND EUBAM-FLANKING MEASURES

1. IDENTIFICATION

Title:	Readmission-related assistance (Improving infrastructure and capacity to deal with irregular migrants and to reduce irregular migration flows through Ukraine) and EUBAM-flanking measures (Support to the implementation of EUBAM recommendations) ENPI/2007/18962		
Total cost:	EUR 35 million		
Aid method / Management mode:	Project approach – centralised management		
DAC-code:	15210	Sector:	Security system management and reform

2. RATIONALE

2.1. Sector context

Ukraine's policy towards irregular migration is determined by the "State Programme to Counter Illegal Migration for 2001-2004", the "Migration Processes Regulation Programme for the period 2003-2005" and, as regards the setting up of migrant custody centres, the "Standard Regulation for Centres for the Temporary Detention of Foreigners and Stateless Individuals who are in Ukraine illegally". Due to the country's (ongoing) political instability since the beginning of 2005, no update of the programmes has been conducted and the policy guidelines and strategic approaches outlined in the documents mentioned above remained valid and are being followed. Nevertheless, they are sufficient to help Ukraine in establishing the necessary infrastructure for keeping irregular migrants temporarily in custody.

Due to its geographic location and its rather transparent border with Russia, Ukraine became a major transit country for irregular migrants from Asia, the Middle East and Africa heading towards the EU. Moreover, the European Community and Ukraine initialled an agreement on the readmission of persons in October 2006 at the EU-Ukraine Summit in Helsinki. Once the agreement will be fully implemented, Ukraine will have to readmit all third country nationals who passed through the country and entered successfully but illegally the EU. Therefore the EC committed herself in a declaration annexed to the agreement to make available financial resources to help Ukraine coping with this challenge. Though the Government of Ukraine undertakes efforts to strengthen border control and border surveillance, which is also outlined in the State Border Guard Service's development concept for the period up to 2015, the country remains vulnerable for irregular migration.

According to Ukrainian legislation, the State Border Guard Service is responsible for keeping irregular migrants in custody for a period of 10 days; beyond this period, migrants have to be transferred under the responsibility of the Ministry of Internal Affairs. Presently, the State Border Guard Service does not have sufficient and the Ministry of Internal Affairs does not have any premises available for holding irregular migrants in custody. Moreover, conditions in detention centres have been heavily criticized by the Council of Europe's Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) as well as by a number of human rights organisations. Insufficient financial means attributed under the State budget do not allow covering all running costs of Migrant Custody Centres.

The EC is also involved in the international efforts to peacefully settle the so-called "Transnistria conflict". Apart from participating in the political dialogue, the EC is also looking to stabilise the situation at the Ukrainian-Moldovan State border, with particular attention to its 472 km long Transnistrian section which is much affected by criminal, especially smuggling activities. Since December 2005, an EU Border Assistance Mission (EUBAM) is monitoring border and customs controls and surveillance at this border and providing to a large extent capacity and confidence building support to the partner services in Ukraine (but also in Moldova). In May 2006 EUBAM came up with 41 recommendations on measures required to improve control standards and to approximate them to those of the EU. Since the recommendations have also considerable financial implications for the partner services, flanking measures will be required in order to achieve sustainable impact within EUBAM's deployment. The action contemplates flanking measures for the Ukrainian side of the EUBAM operation.

2.2. Lessons learnt

- In order to avoid duplication, donor coordination is an important aspect in particular in the migration area since a number of organisations are acting in Ukraine in this field. This will be done through donor-government thematic working groups.
- Refurbishing buildings need sufficient time for preparation due to over-bureaucratic rules in Ukraine which can easily lead to considerable delays. Moreover, particular attention has to be drawn to the land ownership for suggested construction sites. Therefore, preparations for the readmission-related assistance project started already now such as identification of sites which will be followed by feasibility studies and the development of blueprints. All documents should be ready once the funds of this AP will be available.
- The sustainability of EUBAM's capacity building activities will to a certain extent depend on flanking measures which will help the border guard and customs service to approximate to EU standards. Apart from advice provided by EUBAM, sophisticated control equipment needs to be supplied in order to achieve long-lasting effects of which also the EU benefits.
- Ukraine is characterised by poor inter-agency cooperation between competent ministries and state agencies. Both aspects of the project will promote inter-agency cooperation since joint working groups will be created in order to ensure timely and successful project implementation.
- As regards infrastructure projects, one of the most important lessons learned in the past is the need to have the land acquisition issue solved and detailed works design prepared before launching the works contract tender. Another lesson is that there is a certain risk of exceeding the works contract budget during the implementation stage; such a risk cannot be covered by the EC but should be taken by the Project Partner. Such a requirement is included in works contracts and is also made clear during tendering stage.

2.3. Complementary actions

The project will to a certain extent build upon the EC funded projects "Capacity Building of Migration Management: Ukraine 1 + 2" which are implemented by the IOM. A Migrant Custody Centre in Volyn oblast as well as a number of Temporary Holding Facilities is in the process of being refurbished, including the establishment of proper health care, legal advice, etc. The assistance amounts to approximately EUR 7 million. No other donors than the EC are investing in readmission-related assistance.

At the Ukrainian-Moldovan State border, the U.S. Defence and Threat Reduction Agency is funding a large-scale programme amounting to USD 28 million targeted at fighting the proliferation of weapons of mass destruction, nuclear material and components of dual use. Under the U.S. Millennium Challenge Account, USD 46 million was made available for anti-corruption measures in Ukraine which could have a certain impact on EUBAM's work.

2.4. Donor coordination

Under the government-led donor co-ordination mechanism set up by the Ministry of Economy in implementation of the Paris Declaration of Aid Effectiveness, two working groups on border management and migration issues have been established. Though a number of donors such as the U.S. State Department, the Swedish International Development Agency, and the Canadian International Development Agency are funding asylum/migration-related projects, none of the donors has or will provide readmission-related assistance. Regarding EUBAM-flanking measures, coordination with the U.S. programmes mentioned above is ongoing, to ensure synergy effects. Coordination is also achieved through quarterly EUBAM Advisory Board and monthly EUBAM Coordination meetings.

3. DESCRIPTION

3.1. Objectives

3.1.1 Overall objectives

- To improve Ukraine's capacity to reduce the influx of irregular migrants at Ukraine's Eastern border, and to deal with and to detain irregular migrants with a particular focus on the establishment of holding facilities and custody centres for migrants, the adequate treatment of irregular migrants in compliance with European best practices and humanitarian standards set by the Council of Europe, the European Court of Human Rights, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as the EU acquis communautaire.
- To contribute to approximating Ukraine's border management capacity towards EU/Schengen standards and improving the fight against cross-border and organised crime at the Moldovan-Ukrainian state border following the recommendations of the EU Border Assistance Mission to Moldova and Ukraine (EUBAM) aiming at supporting Ukraine in fulfilling their commitments under the EU-Ukraine ENP AP and the Partnership and Cooperation Agreement.

3.1.2 Specific objectives

- Infrastructure development: To support Ukraine in establishing/refurbishing and equipping temporary holding facilities and custody centres for irregular migrants in line with European standards in order to ensure adequate accommodation and treatment of readmitted or otherwise apprehended irregular migrants according the recommendations set by the Council of Europe and the CPT.
- Maintenance, overhead and living expenses for facilities and migrants: To contribute to the financing of running costs (communal utilities such as electricity, water, heating, garbage collection, etc.) of temporary holding facilities and migrant custody centres as well as of health and living costs for migrants in custody in order to ensure that recommended minimum standards set by the Council of Europe and the CPT are applied.
- Capacity building: To establish (i) effective human resources programmes (recruitment, training) for custody staff working in migrant holding facilities and custody centres, (ii) health care and legal assistance for migrants in custody, (iii) civil society support (through NGOs) with a view to give adequate treatment to migrants in custody in accordance with European human rights standards, and (iv) any form of support contributing to their quicker, safe, voluntary and dignified return to their home country
- Implementation of EUBAM's recommendations for improving control and surveillance standards at the Ukrainian-Moldovan state border: To assist the State Border Guard Service and the State Customs Service in building up appropriate operational and institutional

capacity in order to ensure effective border and customs controls and surveillance at the Ukrainian-Moldovan state border, through the supply of communication infrastructure, border/customs control and border surveillance equipment in line with European standards aiming at creating adequate border security that is commensurate with threats coming from illegal cross-border activities, while facilitating legitimate cross-border travel and commerce, and protecting civil liberties.

3.2. Expected results and main activities

- Migrant Custody Centres and Temporary Holding Facilities created: The project will refurbish a number of adequate sites for keeping irregular migrants in custody which will be compliant with the standards recommended by the Council of Europe. Necessary utility (i.e. electricity, water, heating, etc.) and communication infrastructure as well as equipment may also be supplied.
- Irregular migrants treated in line with European standards and increased capacity developed: Adequate procedures, health care, legal assistance, etc. compliant with Council of Europe standards will be set up; Ukrainian authorities', personnel's and NGO's capacity will be strengthened to ensure migrants' rights through e.g. comprehensive human resources programmes. Moreover, the project will contribute to the financing of certain maintenance and running costs such as communal utilities (e.g. electricity, water, heating, garbage collection, etc.) of Migrant Custody Centres and Temporary Holding Facilities.
- Border control and surveillance capacity improved following EUBAM recommendations and EU/Schengen standards: Infrastructure and equipment may be supplied to the competent services in order to enable them to better fight irregular migration and cross-border crime.

3.3. Stakeholders

3.3.1. Ministry of Internal Affairs of Ukraine

Since autumn 2005 the Ministry of Internal Affairs is responsible for holding irregular migrants in custody. However, the Ministry of Internal Affairs did neither receive the necessary infrastructure nor the human resources nor adequate financial means to implement this task. There is no capacity available to treat irregular migrants according to recognised international standards. Assistance is therefore required for both, infrastructure and capacity building measures.

3.3.2 State Border Guard Service of Ukraine

The State Border Guard Service is structured into five regional departments, with the Odessa one in charge of nearly the entire border with Moldova. The SBGS has been – to a certain extent – demilitarised but, in addition to classical tasks of control and surveillance of persons and goods, and the fight against cross-border crime and irregular migration, still also has the function of defending the state border, and a somewhat military structure / training system. However, the transformation into a law enforcement entity is already ongoing within the EC-funded project reforming the Service's human resources management system. The SBGS has the overall responsibility for border management, including coordinating the work of customs and other law enforcement agencies present at the border, and green and blue border surveillance.

3.3.3. State Customs Service of Ukraine

The State Customs Service is generally adequately staffed, but comparably less well equipped than border guards. The role of customs at the borders is often limited to preliminary documentary review, as most procedures are initiated and completed at the customs office of departure or destination. Administrative capacity appears to need reinforcement in some areas. Knowledge and harmonised application of customs rules and

procedures is generally better at the main transit points than at BCPs; training in certain specialised skills (e.g. application of risk assessment techniques) appears as necessary. The Ukrainian State Customs Service lacks criminal investigative powers; such law enforcement empowerment is a critical precondition to make the overall border management system EU/Schengen compliant.

3.4. Risks and assumptions

3.4.1 Assumptions underlying the project intervention

- Ukraine will ratify the EC-Ukraine readmission agreement and will readmit irregular migrants who entered the EU from Ukrainian territory. The realisation of this assumption is likely since the EC-Ukraine visa facilitation agreement will enter into effect only at the time when the readmission agreement will enter into force.

- Allocations in the state budget of Ukraine will be sufficient to fully cover the running costs for the migrant centres.

3.4.2 Risks

- Due to the over-bureaucratic procedures for construction works and some provisions which protect the national construction market from external competition, the establishment of Migrant Custody Centres could face delays.

- Physical risk: there is a certain risk of exceeding the works contract budget during the implementation stage, and such a risk cannot be covered by the EC but should be taken by the corresponding Project Partner. Such a requirement is included in works contracts and is also made clear during tendering stage.

3.5. Crosscutting Issues

The programme has a strong human rights and good governance dimension since migrants rights will be protected and governmental structures will follow Council of Europe standards.

4. IMPLEMENTATION ISSUES

4.1. Implementation method

Centralised management

Part of the project may be implemented through the signature of an agreement with an international organisation.

Some part of the readmission project could be implemented through grants to relevant NGOs managing such centres or some activities being part of the project.

4.2. Procurement and grant award procedures

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

Concerning the parts of the project where a contribution agreement is foreseen to be signed with an International Organisation, contracts must be awarded and implemented in

accordance with the procedures and standard documents laid down and published by the International Organisation concerned.

4.3. Budget and calendar

Indicative breakdown of overall amount by main components:

	Works (EUR)	Supplies (EUR)	Services (EUR)
Readmission-related assistance	20,000,000	6,000,000	4,000,000
EUBAM-flanking measures		5,000,000	

This indicative breakdown may be amended following notably the further design of a readmission strategy by the Ukrainian authorities.

The project is planned to be implemented within 4 years after conclusion of the contract.

4.4. Performance monitoring

Performance will be monitored by the EC Delegation and the Tacis/ENPI Monitoring Team. The implementing partner will have to submit regular progress reports and implementing plans.

4.5. Evaluation and audit

An ex-post / impact evaluation is planned to be conducted within a year after project completion.

4.6. Communication and visibility

Proper communication and visibility of the measure will be achieved via widespread dissemination of project achievements and results (to be developed by the implementing partner following the EC visibility guidelines, and annexed to the Description of the Action), as well as international visibility to be achieved through public events (kick-off event, opening ceremonies for the refurbished Migrant Custody Centres and handing over events for equipment) and updates published on the EC Delegation's website. A reasonable communication budget will be set aside for promotion of the action.