

PROJECT FICHE

Title	Improving Integrated Border Management in Ukraine ¹		
Indicative budget	€10 million		
Aid Method	Centralised management		
DAC-code	99810	Sector	Support to institutional, legal and administrative reform

1. RATIONALE

1.1. Strategic framework

EU-Ukraine cooperation is based on the Partnership and Cooperation Agreement (Art. 76 on customs cooperation), the EU-Ukraine ENP AP and the EU-Ukraine JHA AP. The Ukraine NIP 2004-2006 addresses support to the establishment of an integrated border management system through a set of capacity building measures aimed at implementing the EU-Ukraine JHA AP of December 2001² and supporting progress in making orderly and legal movement of goods and persons across the border as fast and easy as possible.³ On the other hand, the security aspect has been taken into due consideration; the NIP thus also emphasises the fight against organised crime of particular cross-border dimension such as trafficking in persons and drugs.⁴ Moreover, Ukraine's aspiration towards accession to the WTO which is a crucial step towards Ukraine's alignment to the EU's market for instance through a Free Trade Agreement (as outlined in the ENP AP⁵) has been taken into account in the NIP⁶ aimed at harmonising Ukraine's customs clearance standards, practice and attitude with those determined in the EU *acquis communautaire*.

An appropriate trade-off between trade facilitation and free cross-border movement of goods and persons and the prevention of and fight against international terrorism, cross-border criminal and smuggling activities needs to be established. In order to achieve these objectives, trade facilitation requires a gradual approximation of Ukraine's customs norms and standards to the EU *acquis communautaire*, embracing simplified administrative procedures, as well as transparent and predictable business conditions. Fight against crime calls for modern control techniques, infrastructure and equipment. All aspects mentioned above are addressed in the European Neighbourhood Policy and the "Hague Programme". All planned activities will also support the implementation of the EU's commitments resulting from the UN Security Council Resolution 1373 (2001) concerning measures to combat international terrorism as well as those determined in the UN Convention against Transnational Organized Crime (Palermo Convention).

1.2. Lessons learnt

¹ If it is necessary to fund the European Border Assistance Mission to Moldova and Ukraine in 2007 and beyond, the required budget will be taken from this project. In such case, the description of activities, expected results and main activities are then not any longer valid. No new project fiche will be drafted since all information is available in already existing documents.

² OJ C 77/1 of 29/03/2003.

³ See p. 10ff., pt. 1.2 UA NIP 2004-2006.

⁴ See p. 12f., pt. 1.2.3 and 1.2.4 UA NIP 2004-2006.

⁵ See p. 14, section 2.2 (economic and social reform and development); section 2.3 (trade, market and regulatory reform); and section 2.4 (cooperation in justice and home affairs).

⁶ See p. 9, pt. 1.1.2 and 1.1.3 UA NIP 2004-2006.

- a) Regarding support to Border Guard and Customs services, a programme rather than project approach has been identified being more appropriate to achieving sustainability and a strong momentum of beneficiary commitment.⁷ The project fiche will continue implementing a comprehensive multi-annual integrated border management programme in Ukraine in which regional and national programmes are complementary and following a holistic approach towards a modern, EU-type integrated border management system.
- b) Donor coordination is an important aspect for a successful project implementation in order to avoid competition among donors and duplication of work.⁸ In Ukraine, it is also the U.S. Government which supports border management improvement focussed at the Ukrainian-Moldovan state border and on the prevention of proliferation of weapons of mass destruction and components of dual use. Other international key players such as UNDP and IOM implement U.S. and EC funded projects in this area without having separate related projects in the pipeline. All of them affirmed that potential actions will be complementary to the EC's one in case they will implement own projects in this area.
- c) The time periods between commitments and contracting remained considerable. Delays in equipment procurement have been a persistent problem.⁹ The project fiche has been developed together with the future beneficiaries and follows a coherent multi-annual programme. While the NAP 2006 will be under consideration in Brussels, beneficiaries together with the EC Delegation will already work on a project document (Annex I to the contract) so that the project can be implemented immediately after the adoption of the NAP 2006.
- d) Interventions in the customs area have so far tightened customs controls at the border but did not foster cross-border trade since a heavy bureaucratic structure with inconsistent regulations and implementation practices remained in place (although the State Customs Service started a "single window" programme on a pilot basis, e.g. at Odessa seaport). The project will therefore particularly focus on customs clearance regulations, procedures and staff competence, and bringing them in compliance with EU standards.
- e) EC visibility has been another problem in past projects, in particular when projects were funded after a call for proposals or after submission from an international organisation. In this project, highest EC visibility will be ensured since the project has been developed together with the beneficiaries and implementation will be closely followed up by the EC Delegation (also if a third party will be contracted for implementation purposes).

1.3. Complementary actions

The NAP 2006 will promote the establishment of an integrated border management system focussed on border and customs services at all borders as well as on inland customs clearing houses and will be complemented by the CBC AP 2006. The intervention follows a comprehensive and multi-annual programme which started already in 1997 (CBC programme on border crossing points), continued with capacity building actions (infrastructure, equipment and human resources development) funded under RAPs 1997, 2000, 2002, 2004 and 2005 as well as Ukraine NAPs 2001, 2002, 2004 and 2005. All initiatives together form a part of a coherent multi-annual programme on border management improvement (including the customs regime). The intervention in the customs area is also based on an assessment focussed on "Reform and Modernisation of the State Customs Service in Ukraine" and finalised in December 2004.

⁷ See Tacis Evaluation Report of July 2005, p. 19.

⁸ See Tacis Evaluation Report of July 2005, p. 40.

⁹ See Tacis Evaluation Report of July 2005, p. 45, pt. 136.

1.4. Donor coordination

The project has been discussed with other potential donors in this area, i.e. the U.S. Government, USAID, IOM, the OSCE and UNDP. It turned out that only the U.S. Government provides substantial support to the Ukrainian border guard service targeted to the fight against the proliferation of weapons of mass destruction focussed at the border with Moldova. Some equipment has and will be delivered to the Moldovan border guards. The U.S. activities will be implemented by a consultancy, Raytheon, with its implementation office in Odessa. Frequent, quarterly coordination meetings with the U.S. and the consultancy's representatives take place and ensure complementarity of the actions. Apart from the U.S. Government, there is no other donor assisting Ukraine in the establishment of an integrated border management system.

2. COUNTRY CONTEXT

2.1. Cooperation related policy of beneficiary country

Cooperation between Ukraine and the EU is based on the PCA and since February 2005 also on the ENP AP. Presently, there are seven priorities envisaged in the EU-Ukraine political dialogue, amongst which are cooperation in the justice, freedom and security sector., . Ukraine's effort to become a party to the WTO – which is strongly supported by the EU – is an important step towards facilitating trade access to the EU's market. Concluding a Free Trade Agreement will further enhance Ukraine's trading opportunities with the EU. Ukraine's overall policy has been formulated in the Government's Action Plan "Towards the People" of February 2005 and, more explicitly as regards border management reform, in the (draft) "Development Concept of the State Border Guard Service up to 2015".

The country's domestic policy towards European integration requires a number of reforms in the border management and customs sector. These issues are discussed and elaborated further in respective sub-committees within the PCA framework and other ad-hoc working groups. The EU's assistance is already supporting serious reform steps.

2.2. Sector context

The Government's policy towards an EU-type integrated border management system follows the overall goal towards European integration as set out in the Action Plan "Towards the People" in February 2005. Guided by goal to possibly benefit more in the future from the EU's market through a Free Trade Agreement and before, to become a party to the WTO, the Government is prepared for taking serious steps towards reforming the customs system. In 2005, intensified customs legislative and regulatory activities took place which lead to amendments to the law on customs tariffs (March and July 2005), to customs valuation (autumn 2005), on classification and codification of goods (April 2005), on tariff adjustment of imported goods (November 2005), and on IPR protection (December 2005) in order to comply with EU and WTO standards. The activities on legal approximation will continue in 2006, additional draft laws with a view to further amend customs tariffs were still proposed at the end of last year. Customs clearance has also been modified and is now to a certain extent based on risk analysis. However, there is still an urgent need to further improve harmonisation of Ukraine's customs norms, standards and procedures to those of the EU's *acquis communautaire* and best practices. Although a new customs code entered into force on 1 January 2004, a heavy bureaucratic structure with inconsistent implementing rules remained which create a considerable obstacle to free cross-border trade and movement of goods. Further consolidation of secondary legislation and normative acts as well as red tape reduction by introducing simplified administrative procedures following the rule of law are key challenges. This calls also for structural reforms as well as for a reform of the human resources management system in the State Customs Service.

The Government of Ukraine undertakes considerable efforts to strengthen border control and surveillance of the green border in order to combat cross-border criminal activities such as trafficking of persons, drugs, arms and weapons as well as smuggling of high-taxed goods and counterfeit

products. In this context, an action plan “Stop Contraband” has been adopted and covers the period 2005-2006. To cope with these challenges makes great demands on the State Border Guard Service. The Government reacted already some years ago: based on a Presidential Decree of 16 November 2000, the Government initiated a reform of the military organised Border Troops into a law enforce-type State Border Guard Service in 2003. According to the reform programme, this transition shall be achieved by 2008. Significant legislative and organisational changes were done in 2004. However, many measures are still to be taken in order to become an EU-type border police service. The SBGS is currently in the process of finalising the preparations of a development concept up to the period of 2015 which will outline the future orientations. The overall objective of the development concept is the ambitious goal to achieve Schengen standards by 2015. Reforms will take the organisational structure, the human resources as well as the asset management.

Approximately 90-95% of the budget available for the SBGS and the SCS has been used for personnel costs in the past and it is unlikely that there will be significant alterations in the near future due to the economic and social situation in the country. Medium and long-term budgetary perspectives have not been established yet by the Government; it is therefore for the time being not possible to make forecast beyond the current work year. Besides even allocations formally established in an approved state budget are sometimes de facto unavailable due to insufficient state revenues. This implies that donors’ assistance will remain an element of capital importance for improving the services’ capacities and abilities to carry out its functions (including the provision of infrastructure and modern technical equipment) as well as to move towards a client oriented customs clearance system.

3. DESCRIPTION

3.1. Objectives

3.1.1. Overall objective

To establish an integrated border management system and to enforce the reform of customs legislation, clearance procedures and attitudes with a view to support a possible future Free Trade Agreement between Ukraine and the EU as well as to improve border control and surveillance in order to fight cross-border criminal activities effectively. Intervention is also aimed at helping to regularise cross border activities along the Transnistrian segment of the common border between Moldova and Ukraine.

3.1.2. Specific objectives

- a) Preparation for alignment to the EU customs system: To develop a coherent long-term strategy for the State Customs Service and to approximate Ukraine’s Customs Code’s administrative instructions and implementing provisions to those of the EU *acquis communautaire* and best international standards in accordance with the ENP AP target area “further revision of the Customs Code, taking into account EU legislation and recommendations already made”.
- b) Facilitation of cross-border trade and movement of persons: To simplify and streamline customs clearance obligations and procedures and to increase efficiency of the customs clearance system as well as to ensure transparent and accessible rules and practices. To improve efficiency of border and customs controls by make use of possible synergy effects through combined controls and introducing a systematic cooperation mechanism involving border guard, customs, health, veterinary and environmental services. This can include assisting Ukraine in implementing the World Customs Organisation's (WCO) Framework of Standards.
- c) Approximation of border control standards towards Schengen standards: To review and amend existing national strategies (e.g. the SBGS’s development concept up to 2015); to support or

initiate necessary organisational or structural reforms as well as supply of modern border control and surveillance equipment in line with European standards.

- d) Capacity building: To reform the State Customs Service's human resources management system focussed on staff recruitment, training and career development and to continue the State Border Guard Service's human resources management reform programme (started under NAP 2002) as deemed necessary (e.g. creation of Regional Training Centres).

3.2. Expected results and main activities

- a) Strategic documents for European integration reviewed and developed: The Government of Ukraine's objective is to benefit more from the possibilities offered by the EU's market (through a Free Trade Agreement) and to comply with Schengen standards in border control and surveillance. Based on the findings of the EU JFS assessment mission (which was carried out from December 2005 – February 2006) EU experts will together with the main beneficiaries review existing and work on amended or new strategies compliant with the EU *acquis communautaire* and the Schengen Common Handbook and best practices.
- b) Unified Customs Tariff of Ukraine (UCTU) harmonised with the EU Customs Nomenclature: Ukraine's increased participation in the EU internal market requires a harmonised customs nomenclature as well as consistent trade data statistics based on corresponding goods classification methods and data analysis. The current UCTU classification system (6-digit code) will therefore be brought in line with the EU Combined Nomenclature's 10-digit encoding system. Moreover, a Binding Tariff Information system as well as an EU compatible customs transit system will be developed.
- c) Transit: the existence of a well-functioning automated transit system would be instrumental in supporting customs controls while facilitating legitimate trade. The activities to be carried out in this respect include rendering Ukrainian transit legislation and procedures closer to the standards of the Common Transit Convention, setting up a computerised transit system and enhancing customs' capacity to operate this system.
- d) Customs clearance regulations and practices approximated to EU standards: The customs system currently in place creates major obstacles to cross-border trade and movement of goods. EU experts together with experts from the State Customs Service will work on the factual enforcement of a single window, one-stop entry point system for customs declarations and other formalities related to import or export of goods (instead of multiple communication channels to different authorities/agencies). This will lead to reduced, simplified and standardised data and documentation requirements for customs clearance and control, including the use of a fully fledged Single Administrative Document (SAD) and data messages. The system will become thus more transparent, predictable and will promote cooperation and uniform interactions between traders and the customs administration. This will include provisions on customs valuation, the publication of relevant acts and the creation of a single uniform procedure for appeals in respect of customs disputes including those of customs value (implementation of Art. VII GATT and the agreement on correct implementation of this article including the determination of the customs value based on the transaction value as defined by the WTO).
- e) Staff capabilities on efficient border and customs control increased: A modern and EU compatible border and customs control and clearance system will challenge the staff's abilities and skills. Such challenge can best be tackled by initiating a reform of the human resources management system focussed on transparent and objective staff recruitment, modern training strategies, plans and curricula as well as career development. While a reform programme has already started in the State Border Guard Service under NAP 2002, such reform is still outstanding in the State Customs Service. EU experts will work with the State Customs Service on the development of a reform programme which will be fully compliant with EU standards and best practices. As regards the

State Border Guard Service, the already ongoing programme may be continued if deemed necessary.

- f) Customs security/Trade facilitation: providing assistance to Ukraine's customs administration in implementing the World Customs Organisation (WCO) Framework of Standards, adopted in June 2005, with the aim of securing and facilitating the international trade supply chain. The Framework of Standards consists of two Pillars containing 17 security and facilitation standards. The activities to be carried out are the following: a) carry out a gap analysis between the current legislation, procedures, organisation and equipment of Ukraine's customs and the standards set out in the Framework of Standards" (based on the WCO self-assessment checklist), and b) prepare an action plan, together with a realistic timetable, for the further actions to be taken in view of filling the gaps between those standards and the existing situation.
- g) Risk analysis, post-import procedures and post-clearance audit established: Customs controls based on risk analysis and an efficient post-clearance audit control will allow to reduce physical controls at inland customs houses and border crossing points and thus foster Ukrainian trade flows towards the EU on the one hand and improve fight against cross-border criminal activities (smuggling of high-taxed, counterfeit, dangerous and noxious products) on the other. Risk based control expertise will be delivered by the risk analysis advisors of the European Border Assistance Mission to Moldova and Ukraine (EUBAM). The expert(s) will provide advice on verifying the origin of goods, on the development of central risk information and analysis systems and support the implementation of such system at local operational level. Moreover, EU experts will advise the State Customs Service in the setting-up and on quality management of post-clearance audit facilities.
- h) Border and customs control equipment provided: Ukraine is a major transit country for irregular migrants from the east and a source, transit and destination country for criminal cross-border activities such as trafficking of persons, drugs, arms and smuggling of high-taxed goods. Criminal organisations benefit from unsatisfactory control possibilities which cause serious security risks for both the EU and Ukraine. The assistance programme will thus provide modern border and customs control and surveillance equipment (e.g. thermo vision equipment, mobile x-ray scanners, hard- and software for biometric verification controls, customs laboratory equipment, etc.) which will enable the State Border Guard Service and the State Customs Service to better fight criminal cross-border activities and support the country in their ultimate goal to comply with Schengen standards.
- i) Intervention will be closely coordinated with the ongoing EUBAM activities, and where appropriate integrated in the EUBAM activities related to its intervention in Ukraine.

3.3. Stakeholders

3.3.1. State Border Guard Service of Ukraine (SBGS)

The SBGS fulfils three types of functions: a) implementation of border controls; b) fight against cross-border criminal activities and, c) defence of the state border. Ukraine initiated reforms from a military-type towards a law enforcement organisation following the EU-model in 2003 and develops currently a concept for the development of the service for the period up to 2015. Ukraine's stated ultimate objective is to reach Schengen standards.

Main elements of the (draft) development strategy are an organisational reform leading to a reduction of the number of hierarchy levels from the SBGS Administration to the local level. The currently existing five-level structure might be reduced to a three-level structure. Furthermore, the strategy takes already into account the ongoing human resources management reform project (NAP 2002) with a

view to become a professional law enforcement agency and to meet EU standards and requirements. The still existing conscript system should be abandoned by 2008. The technical needs will be a big challenge for the future: modern infrastructure needs to be established, in particular an online-connection from all border crossing points and border guard units to the regional command and the SBGS Administration. Control and surveillance equipment needs to be purchased meeting latest standards, i.e. enabling biometric verifier controls, thermo vision equipment, mobile x-ray scans, document verification devices, etc. Necessary funds will be also required for maintenance of the infrastructure and equipment.

The SBGS has established close cooperation with the EC Delegation and bilaterally with EU Member States. The SBGS also participates frequently in international conferences and seminars and is also the organiser of an annual security conference in Kiev. The SBGS Administration has been involved (together with the State Customs Service) in the project design and fully supports the initiative.

3.3.2. State Customs Service of Ukraine (SCS)

The SCS is a key administration in the economic development of a country. It has to fulfil two functions: a) clearance of import and export goods and thus enabling trade relations between countries; and b) fight against smuggling of high-taxed goods, components of dual use and fight against trade with counterfeit and pirated products. It is therefore the key institution to implement EU customs norms, standards and practices. The SCS is a member of the World Customs Organisation (WCO). However, Ukraine has not acceded to the Convention on the Simplification and Harmonisation of Customs Procedures (revised Kyoto Convention) yet which represents a cornerstone of the WCO's efforts to ensure that international trade is not hampered.

Although the SCS is in the course of a long-term effort towards modernisation, a comprehensive reform strategy taking into account all measures necessary for aligning Ukraine's customs system to the EU approach has not been developed yet. There is sufficient room for simplified procedures for customs clearance and strengthening control standards through the introduction of a control system based on risk analysis, modern methodology of the verification of origin of goods and expertise on commercial transactions. Post-clearance controls and audit is not deployed yet.

In short, transparent, clear and public clearance and control regulations need to be set in place as well as a customer oriented customs regime. These measures will ensure competitiveness and a smooth flow of increasing volumes of trade whilst enforcing pertinent controls in order to fight smuggling, fraud and tax evasion.

The SCS closely cooperates with the EC Delegation. A letter from the SCS to the EC Delegation in February 2005 highlighted the SCS's priority areas for further cooperation with the EU in customs related matters.

3.4. Risks and assumptions

3.4.1. Assumptions underlying the project intervention

Ukrainian border and customs authorities will remain committed to approximate to EU standards and follow the national policy towards EU integration.

Improved border and customs clearance and controls through provision of improved human resources management systems and modern equipment allowing for e-border and e-customs controls (complementing activities already started under previous programmes and the CBC 2006) will

facilitate smooth border and customs clearance thus reducing waiting hours at border crossing points and at the same time ensuring and improving security controls.

3.4.2. Risks

Significant political changes or instabilities after the Parliamentary elections in March 2006 could lead to a re-prioritisation of Ukraine's overall policy. In particular European integration could then become a less prominent issue for the Government which would have direct negative consequences for the establishment of an integrated border management system based on the EU model. If such political situation develops, this could require a substantial reformulation of the project.

Presently, the SCS has not yet reached the administrative capacity to adhere to the EU-EFTA Common Transit Convention (CTC) which Ukraine is looking forward to be associated, and its software is not compatible with the one used for the implementation of the CTC. The SCS requested support to approximate their national system with the CTC one in order to make them work in parallel. Such approach could create more obstacles to trade facilitation; therefore discussion with the SCS on a single system needs to be continued and will be most likely successful if the risks mentioned under (a) do not occur.

3.5. Conditionality

Close inter-agency cooperation and coordination between the SBGS and SCS will be required. The conditionality will be met once a working group on border issues requested/initiated by the Ministry of Economy (after a meeting between Commissioner Ferrero-Waldner and Minister Yatsenuk) has been established.

3.6. Crosscutting issues

The project aims at supporting Ukraine's domestic policy towards WTO accession, implementation of relevant obligations in the customs field (integration in world economy) as well as integrated border management (security aspect). Together with previous activities, it will contribute to improved cross-border trade relations with the EU and other neighboring countries and thus having a positive impact on Ukraine's economy (which will contribute inter alia to poverty reduction). Concerning the security aspect, it also aims at contributing to the fulfillment by Ukraine of its international obligations regarding fight against international terrorism and organized crime.

4. IMPLEMENTATION ISSUES

4.1. Implementation method

Centralised management.

4.2. Budget and calendar

4.2.1. Indicative budget breakdown (in M€)¹⁰

Main project component	SBGS	SCS
Harmonisation with EU norms and standards (legal and strategy development, human resources management reform, increase of staff capabilities)	0.5	1.5

¹⁰ If it is necessary to fund the European Border Assistance Mission to Moldova and Ukraine in 2007 and beyond, the required budget will be taken from this project. In such case, the description of activities, expected results and main activities are then not any longer valid. No new project fiche will be drafted since all information is available in already existing documents.

Provision of border/customs control equipment	4.5	3.5
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If possible and appropriate, a first component may be implemented through Twinning with EU Member States. However, taking into account the limited capacities of EU Member States and their involvement in the Western Balkans and candidate countries, the conclusion of an EU Contribution Agreement with an International Organisation will remain another possibility. In such case, cooperation may also be sought with IOM, UNDP, Eurocustoms or the WCO which have sufficient expertise and experience in implementing EC funded border/customs management projects. Special attention will be given to the compatibility with the ongoing EUBAM, currently implemented by UNDP.

A second component will be contracted after a tendering process (works, supply or service contracts).

4.2.2. Operational duration

The project is estimated to be implemented within 36 months.

4.3. Procurement and award of grants procedures

All contracts implementing the financing agreement 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.

4.4. Performance monitoring

Performance monitoring will be carried out by the project manager in the EC Delegation in Kiev as well as the Tacis Monitoring Team which will regularly assess the progress of the project implementation and submit its report to the EC Delegation in Kiev.

4.5. Evaluation and audit

Operations financed under this programme will be subject to supervision by the relevant Commission services and the Court of Auditors. The accounts and records of expenditure may be checked at regular intervals by an external auditor contracted by the Commission, without prejudice to the responsibilities of the Commission, including OLAF and the Court of Auditors.