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DIGITAL INTEGRATION OF UKRAINE TO THE EU: WINDOW OF OPPORTUNITIES OR ELUSIVE GOAL?

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With the full-scale Russian invasion, Ukraine has made digital transformation and technologies one of the pillars of its resilience and strength. Digital integration is an area where Ukraine has already achieved significant progress. Ukraine's practical experience of introducing digital technologies is highly valued by the EU, while Ukraine follows the implementation of the European regulations and standards to become part of the EU Single Digital Market and digital space overall. This article provides an overview of the results and gaps in the digital integration processes of Ukraine, with the designed recommendation of how to achieve the maximum win-win in EU-Ukraine cooperation in the digital domain.

Introduction

The EU's digital policy is a dynamic area enhanced by the fast development of technologies and the benefits they bring to the economies and people of the region. Not only does the EU make digital policy a priority for its domestic agenda but it also takes advantage of its power when it comes to the geopolitical agenda, where technologies long ago started to impact the playing field, especially in the triangle of the US-EU-China.

EU digital policy is based on a human-centred approach, aimed at the respect and protection of fundamental human rights, and promotion of democratic technology

governance, where data protection and cybersecurity are the points of convergence. In 2015, the EU adopted its broad strategy on the Digital Single Market (DSM) which rests on three main pillars: improving access to digital goods and services; an environment where digital networks and services can prosper; and digital being a driver for growth.¹ The DSM includes: e-healthcare, e-transport, e-government, e-trade, telecommunications, development of artificial intelligence, 5G, cyber security, cloud computing, Big Data, the Internet of Things, 3D printing, and IT.² It is also a framework document that first of all is about the harmonisation of the regulations and the approaches to the development of a digital society within the EU.

1 Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe*, European Commission, 2015, 20.08.2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0192>

2 Fact Sheet 'The ubiquitous digital single market', European Parliament, 20.08.2023, <https://www.europarl.europa.eu/factsheets/en/sheet/43/the-ubiquitous-digital-single-market#:~:text=0n%206%20May%202015%2C%20>

Ukraine is an advanced country when it comes to digital policy and cybersecurity. The digital integration agenda is defined by the integration of Ukraine into the EU Digital Single Market, which also means adopting the EU rules and legislation to access such a market. The Association Agreement (AA) defines the requirements concerning digital integration within Chapter IV, Chapter V and Annexes XVII and XXXVII.³ Research dated 2020 outlined the significant economic benefit for Ukraine from the integration into the EU's DSM: reduction of transaction and costs in the trading of goods and services between the EU and Ukraine; growth of business efficiency and the GDP of Ukraine (from 2.5 up to 12.1%); and an increase in the well-being of the citizens of Ukraine. Potential benefits for the EU include better access and lower prices for innovative digital goods and services; protection of consumer rights; and the development of innovative products and services and digital infrastructure.⁴

In 2018, Ukraine adopted the roadmap of integration into the EU Digital Single Market on the basis of the Association Agreement.⁵ Analysis of Ukraine's progress in implementing the AA in the area of electronic communication and e-commerce for the period from 2014 to 2019 indicates that Ukraine achieved progress in the electronic trust services, but lots of work still had to be done in accordance with the



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European Electronic Communications Code adopted by the EU in 2018, and satisfying the rest of the requirements: development of the broadband connection, strengthening of the independence of the telecommunication regulator, e-governance, implementation of the cyber security standards, and data protection regulation, etc.⁶

'Quantum Jump' in Ukraine's Digital Integration

With the establishment of the Ministry of Digital Transformation in Ukraine, digital transformation and harmonisation with EU regulations began to be significantly fostered. In 2020, the Ministry presented an updated roadmap of the integration to the Digital Single Market that implied the implementation of the 75 EU acts, with 141 measures to take before 2023.⁷ In 2021, another important development took place – the Ukraine-EU Associate Committee approved the amendments to Annex XVII, concerning telecommunication

- 3 Movchan V, Kosse I, Integration within the association: Dynamics of the implementation of the agreement between Ukraine and the EU, 2021, http://www.ier.com.ua/files/Projects/Integration_UA_EU/Report_Integration_final_ua.pdf
- 4 Yavorskyi P, Taran S., Shepotylo O., Gamanyuk O., Ukraine's integration into the EU's single digital market: potential economic benefits, International Trade Research Center Trade+ at the Kyiv School of Economics and NGO "Ukrainian Center for European Policy", 2020, <https://ucep.org.ua/wp-content/uploads/2023/01/ukraines-integration-into-the-eus-digital-single-market-potential-economic-benefits.pdf>
- 5 The "road map" includes 57 European integration projects – Klympush-Tsintsadze, Ukrinform, 20.06.2018, <https://www.ukrinform.ua/amp/rubric-polytics/2484375-u-doroznu-kartu-vkluceni-57-evrointegracijnih-proektiv-klimpuscincadze.html>
- 6 Ukraine and Association Agreement: Monitoring of the implementation 2014-2019, Ukrainian Centre for European Policy, Conrad Denaur Foundation in Ukraine, Kyiv, 2020, pp.149-153, https://ucep.org.ua/wp-content/uploads/2021/01/zvit_5_2020_web_FINAL_2.pdf
- 7 The Digital Ministry presented the updated Roadmap for integration into the EU's Single Digital Market, Ministry of Digital Transformation of Ukraine, 2020, <https://thedigital.gov.ua/news/mintsifra-predstavila-onovlenu-dorozhnyu-kartu-integratsii-do-edinogo-tsifrovogo-rinku-es>

services. Ukraine set the goal of getting a so-called “digital visa-free agreement,” which meant in practice becoming part of the internal market in the sector for electronic communications.⁸

Back in 2020, the abovementioned report stated that, in terms of digital integration, Ukraine was ready for the ‘Quantum jump’. It was possible due to the work done in 2020-2022 within the digital integration process, and the whole digital transformation that modernisation of the legislation implied.

In January 2022, the Ukrainian Law “On Electronic Communications” entered into force. The law implements the European Electronic Communications Code, simultaneously with the EU states. In February 2022, another crucial law entered into force – the Ukrainian Law “On the National Commission Carrying Out State Regulation in the Fields of Electronic Communications, Radio Frequency Spectrum and the Provision of Postal Services. It provides a legal status for the regulatory body in the field of electronic communications (NKEK), and its powers and independence are fully in line with European approaches.⁹ Apart from the regulations, Ukraine prioritises digital development, putting the needs of its citizens at its core; and that has resulted in the rapid digitalisation of public services with the Diia app and platform. Ukraine was the first country in the world to introduce digital passports. In December 2022, the European Commission supported the application of

the international consortium POTENTIAL (which includes Ukraine) to develop a European digital wallet (European Digital Identity Wallet).¹⁰ Also, the functioning of the infrastructure was significantly upgraded. In September 2021, the national broadband plan for 2021-2022 was approved, and included the establishment of the broadband coverage platform ‘broadband.gov.ua’.¹¹ Moreover, Ukraine has also adopted the Digital Competence Framework for Educators, and has been actively developing the Diia education platform with accessible educational materials for citizens.¹²

EU’s Support Complementing Ukraine’s Efforts of Digital Integration with Ups and Downs

Since 2016, the EU has been supporting Ukraine in this digital transformation. It has launched the flagship regional program, EU4Digital Initiative, to support digital transformation and the harmonisation of digital markets in those countries that are part of the Eastern Partnership (EaP). In 2020, Ukraine, in cooperation with the EU, launched a continuation project called EU4DigitalUA (2020-2024). This project aims to enhance the process of digital transformation in Ukraine, and focuses on five key goals: interoperability and digital government infrastructure; institutional strengthening and capacity development; communication and informing the public; development of electronic services; and cyber security and data protection. Last but not least, the EU continues to support the

8 Order dated October 28, 2021. No. 1361, Cabinet of Ministers Of Ukraine, Kyiv, <https://zakon.rada.gov.ua/laws/show/1361-2021-p#Text>

9 Report on the implementation of the Association Agreement in 2022, Cabinet of Ministers of Ukraine, 2023, p.71, https://eu-ua.kmu.gov.ua/sites/default/files/inline/files/zvit_pro_vykonannya_ugody_pro_asociaciyu_za_2022_rik.pdf

10 Report on the implementation of the Association Agreement in 2023, Cabinet of Ministers of Ukraine, 2023, p.71, https://eu-ua.kmu.gov.ua/sites/default/files/inline/files/zvit_pro_vykonannya_ugody_pro_asociaciyu_za_2022_rik.pdf

11 Internet for everyone: The government approved the plan of measures for the development of broadband access for 2021-2022, Ministry of Digital Transformation, Governmental Portal, 2021, <https://www.kmu.gov.ua/news/internet-dlya-kozhnogo-uryad-zatverdiv-plan-zahodiv-iz-rozvitku-shirokosmugovogo-dostupu-na-2021-2022-roki>

12 Diia.Osvita, <https://osvita.diia.gov.ua>

digital transformation of Ukraine through the project “Support for Digital Policy in Ukraine” (2021-2024) aimed at the fulfilment of Ukraine’s obligations under the Association Agreement between Ukraine and the EU.¹³



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After Russia’s full-scale invasion, the EU along with all its other support, has been committed to providing help to Ukraine in the digital domain as well. Since February 2022, two landmark processes have started. Firstly, on April 8, 2022, the European Commission and the Parliament issued a joint statement of EU and Ukrainian operators, regarding the provision of free accommodation and free calls from abroad to Ukraine. In April 2023, the EU Council and the European Commission supported Ukraine joining the free-roaming agreement with the EU on a permanent basis. For this, the European Commission proposed to include provisions on roaming in Annex XVII-3 of the EU-Ukraine Association Agreement, and it was approved by the Council of the European Union.¹⁴ Secondly, in September 2022, the European Commission supported the accession of Ukraine to the Digital Europe Program. Within this programme,

Ukrainian businesses, organisations, and public administration bodies will be able to benefit from the programme’s funding and support, in areas such as supercomputers, artificial intelligence, and digital skills.¹⁵

Such support is the result of years of work by Ukraine, and the EU’s commitment towards Ukraine’s integration into the EU digital space, providing it with the most benefits. On Ukraine obtaining the status of candidate country in June 2022, and after the visit of the Commission and the EU-Ukraine summit in February 2023, the agenda for 2023 in terms of digital integration was clearly defined:

- Updating the Roadmap of Ukraine’s integration into the Single Digital Market, based on the EU’s Digital Decade programme by 2030;
- Assessment of the sphere of trust services of Ukraine by the EU;
- Ukraine’s integration into the EU Digital Economy and Society Index (DESI);
- Launch of 5G technology and joining the EU transport 5G corridors;
- Approval of the updated Annex 17-3, which will ensure the receipt of the internal market regime in the telecoms sector, and bring it closer to a single roaming space with the EU.¹⁶

As of August 2023, a great deal of progress has been achieved. Now Ukraine is obliged to put its legislation on the roaming sector in accordance with the EU before April 2024. Moreover, in April 2023, Ukraine achieved another milestone: the European Commission recognised that Diia.Signature-

13 Ukraine, EU4Digital, <https://eufordigital.eu/uk/countries/ukraine/>

14 Ministry of Statistics: Roaming as if at home for Ukrainian refugees continues for another year, Ministry of Digital Transformation, Governmental Portal, 2021, <https://www.kmu.gov.ua/news/mintsyfry-rouminh-nache-vdoma-dlia-ukrainskykh-bizhentsiv-prodovzhuietsia-shche-na-rik>

15 Ukraine joined the “Digital Europe” Program: what does it mean, Ministry of Digital Transformation, 2023, <https://thedigital.gov.ua/news/ukraina-doluchilasya-do-programi-tsifrova-evropa-shcho-tse-oznachae>

16 Ukraine is approaching a single digital market with the EU, Liga Zakon, 2023, 06.02.2023, https://biz.ligazakon.net/news/217228_ukrana-nablizhatsya-do-dinogo-tsifrovogo-rinku-z-s

EU complies with the EU's eIDAS regulation, and can be used to sign documents or contracts valid in both Ukraine and the EU.¹⁷ For its part, Ukraine has already recognised EU-qualified trust services.



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But there is still a lot of work ahead. The development of 5G has significantly slowed down, because of the difficulties in allocating necessary frequencies for the deployment of the 5G, as well as because of the damage to all the ICT Infrastructure by the Russian attacks. Another important task for Ukraine is to be included in the EU's Digital Economy and Society Index, which measures the progress of the digital transformation of the EU member states. That was initiated by Ukraine rather than was set as a requirement of the EU.¹⁸ However, the main problem lies within the collection of data required by the EU to include Ukraine in this Index. Nevertheless, the DESI case proves that Ukraine's digital integration is not only about the

requirements outlined in the Association Agreement, but also about a broader scale of actions initiated by Ukraine, so as to be on the same page as the EU member states when it comes to digital development.

Considering all the progress and all the other work carried out on telecommunications, electronic identification, and so on, the one area of policy that has always lacked attention is data protection. If Ukrainian business wants to be able to work in the EU market, it has to comply with GDPR principles – the legal obligation of Ukraine under the Association agreement. Two draft versions of the new law on data protection are still on hold: the draft law on the protection of data No.5628 dated June 7, 2021,¹⁹ and the draft law on the National Commission for the Protection of personal data and access to public information No.6177 dated October 18, 2021.²⁰

In terms of cybersecurity, in 2021, Ukraine updated its strategy, dated 2016. Ukraine has been the constant target of Russian cyber-attacks, and accumulated a unique experience of resilience that has been of interest to the EU. Thus, in 2021, the first Cyber Dialogue between the EU and Ukraine was conducted. The dialogue confirmed their joint commitment towards building safe cyberspace, but in practical terms, the EU embarked on providing significant support for Ukraine in the implementation of the NIS Directive and other necessary requirements for harmonisation with EU legal and

17 Important step towards digital visa-free regime: Ukrainian e-signatures and seals on digital documents can be verified in EU member states, Ministry of Digital Transformation at Governmental Portal, 04.05.2023, <https://www.kmu.gov.ua/en/news/vazhlyvyi-krok-do-tsyfrovoho-bezvizu-ukrainski-elektronni-pidpysy-ta-pechatky-na-tsyfrovykh-dokumentakh-mozhut-pereviriaty-v-derzhavakh-chlenakh-ies>

18 Mangelo O., "Ukraine plans to become a part of the Single European Digital Market before EU membership – head of policy development in the field of telecommunications", Ministry of Digital Transformation, Interfax, 19.04.2023, <https://interfax.com.ua/news/interview/904978.html>

19 Draft Law on Personal Data Protection, The Verkhovna Rada of Ukraine, 25.10.2022, <https://itd.rada.gov.ua/billInfo/Bills/Card/40707>

20 Draft Law on the National Commission on Personal Data Protection and Access to Public Information, The Verkhovna Rada of Ukraine, 18.10.2021, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72992

institutional bases.²¹ The second Cyber Dialogue was conducted in September 2022, confirming the support of the EU for Ukraine in the implementation of the regulations and resistance against cyber-attacks.²²

Digital Integration: An Elusive Goal or Just a Challenge to Address?

Implementation of the EU's digital regulatory acts is a constantly-moving target that requires consistency and close coordination with the EU. In 2021, the EU issued the communication "2030 Digital Compass: The European Way for the Digital Decade". The Digital Compass sets clear objectives to be achieved in terms of the following four pillars: a digitally skilled population and highly skilled digital professionals, secure and performant sustainable digital infrastructures, the digital transformation of businesses, and the digitalisation of public services.²³

The digital domain is constantly developing in the EU, with a number of new regulations and indicatives that the EU has set up yet to roll out. The most recent EU files need to be examined and taken into consideration: The Digital Services Act and Digital Markets Act. They aim at creating a safer digital space, where the fundamental rights of

users are protected, and establishing a level playing field for businesses.²⁴ These acts are ground-breaking and strive to regulate digital platforms and the services they provide. They may also affect the Ukrainian companies operating in the EU market.



Implementation of the EU's digital regulatory acts is a constantly-moving target that requires consistency and close coordination with the EU

Another highly discussed issue is artificial intelligence regulation. In 2023, the European parliament approved the EU Artificial Intelligence Act. It sets "harmonised rules for the development, placement on the market and use of AI systems in the Union following a proportionate risk-based approach".²⁵ Geopolitically, the topic of the regulation of AI is crucial for the EU. Ukraine has started work on the development of the legislative base for artificial intelligence. According to the Deputy Minister for Digital Transformation Oleksandr Borynyakov, the EU approach is not the only option to follow.²⁶ While Ukraine considers different

21 Ukraine and the EU launched the Cyber Dialogue, Ministry of Foreign Affairs of Ukraine, 04.06.2021, <https://mfa.gov.ua/news/ukrayina-ta-yes-zapochatkuvali-kiberdialog>

22 Ukraine and the EU held the second round of dialogue on cyber security issues, State Service of Special Communication and Information Protection of Ukraine, 4.10.2022, <https://cip.gov.ua/en/news/ukrayina-ta-yes-proveli-drugii-raund-dialogu-z-pitan-kiberbezpeki>

23 Europe's Digital Decade – Questions and Answers, European Commission, 9.03.2021, https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_984

24 The Digital Services Act package, European Commission, <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>

25 European Commission, Regulation of the European Parliament and of the Council laying down harmonized rules artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts, COM(2021) 206 final, Brussels, 2021, https://eur-lex.europa.eu/resource.html?uri=cellar:e0649735-a372-11eb-9585-01aa75ed71a1.0001.02/DOC_1&format=PDF

26 Nesenjuk A., Palantir is tearing up, OpenAI and Microsoft are in touch. How the Ministry of Digitization wants to attract top AI companies to Ukraine and is doing its version of regulation. Blitz interview of Oleksandr Borynyakov, Forbes, 7.08.2023, <https://forbes.ua/innovations/palantir-rvetsya-openai-ta-microsoft-na-zvyazku-yak-mintsifrikhoche-zaluchiti-v-ukrainu-topovi-shi-kompanii-i-robit-svoyu-versiyu-regulyuvannya-blits-intervyu-oleksandra-borynyakova-07082023-15281>

approaches to regulation, including work on its own, it is important to align with the EU AI Act, in terms of the principles and the risk-based approach.


Last but not the least is cybersecurity. The EU has also been active in the introduction of new regulations in the cybersecurity domain: the update of the NIS Directive to NIS2, design of the EU Cyber Resilience Act that strives to make business more resilient to cyber threats, and the EU Cyber Solidarity Act in May, 2023 aiming to create a “Cybersecurity Shield” and establish operation residence in the domain, while also introducing a Cybersecurity Academy initiative.²⁷ In the meantime, Ukraine is working on harmonisation with the NIS Directive moving to NIS2 requirements, but recent regulations need to be on the agenda as well.

Conclusion and Recommendations to Foster Ukraine-EU Cooperation in the Digital Domain

Ukraine has huge practical experience of fast digitalisation and cyber resilience in the context of the full-scale invasion, and what might be called the first World Cyberwar. Having a large number of best practices to share with other countries and with the EU, Ukraine has also significantly advanced the in harmonisation of legislation within the area of telecommunications, electronic identification and trust services, digital skills, broadband development, and generally the requirements set by Annex XVII with all its updates.

The EU sees Ukraine as a reliable and trusted partner, and provides constant help and support. Digital policy and digital integration are already constituents of a win-win process for Ukraine and for the

EU, as Ukraine has lots of best practices and unique experience in the digitalisation of public services, digital education and cyber security. But Ukraine still has lots of work to do to close the current gaps in legislation, and take advantage of digital integration to the greatest extent, becoming not only a valuable partner of but, in the end, a valuable member of the EU.



Having a large number of best practices to share with other countries and with the EU, Ukraine has also significantly advanced the in harmonisation of legislation within the area of telecommunications, electronic identification and trust services, digital skills, broadband development

First, Ukraine needs to continue to work on tasks defined for 2023: updating the Roadmap of Ukraine’s integration into the Single Digital Market, and starting assessment of the sphere of trust services. These two tasks can be fulfilled in close coordination with the EU partners. At the same time, on a unilateral basis, Ukraine needs to develop an action plan for the deployment of 5G networks, taking into account conditions in which ICT infrastructure is applied during war time. The private telecommunications sector should be an active participant in this process. The same goes for the harmonisation of the legislation for accession to the single roaming space with the EU. To achieve inclusion in the EU’s Digital Economy and Society Index (DESI), Ukraine has to prepare, collect and standardise data for the assessment.

²⁷ Omelianenko V. EU’s and Ukraine’s approaches to digital diplomacy in the geopolitics of technologies, Ukrainian Prism, 2023, <http://prismua.org/en/english-eus-and-ukraines-approaches-to-digital-diplomacy-in-the-geopolitics-of-technologies/>

Second, Ukraine needs to adopt the law this year to align its regulations with the EU's GDPR. This should be the focus of Ukrainian civil society and the government.

Third, at a time when cyberwar operational resilience is crucial, as well as the strategic systemic changes in the institutional and legislation setting, Ukraine needs a systematic approach and fast implementation of the NIS2 regulation which above all puts emphasis on the safety of the critical infrastructure. Considering the new legislative proposals of the EU, Ukraine needs to develop a roadmap for the integration into the EU cybersecurity, with clearly delineated tasks, deadlines and entities responsible for it. In the coming Cyber Dialogue in September 2023, digital integration should be on the agenda and discussed in detail, with the request to the EU to assist on a regular basis in implementation of its legally binding acts in Ukraine. At the same time, Ukraine is to share its best practices in the area of the cyber security, namely the efficiency of its public-private partnership, defensive and offensive capabilities, and provision of cybersecurity in times of a cyberwar. In this regard, Ukraine also needs the implementation of a cyber-diplomacy strategy, in order to evaluate the global geopolitical state of play in cyberspace, reinforcing both bilateral relations with the EU, and joint cooperation within multilateral fora, so as to advocate for support in the cyber war, and in making Russia responsible for its cybercrimes, and for them to be qualified as such.

Last but not least, sealing gaps in legislation is only a matter of time and coordinated work of the respective ministries along with the legislators, while the most important step forward is in the way of "thinking", i.e. finding a human centred regulatory approach that respects and enforces the

fundamental rights and freedoms of citizens, and strives to bring the most benefits from the development of technologies. Such an approach includes systematic and strategic work on the legislative and institutional coherence and cooperation in the realisation of digital policies, and safeguarding cybersecurity, with the evaluation, detection and response to the risks, while taking advantage of the opportunities provided by the digital environment.

In September 2023, the European Commission will present a comprehensive review of Ukraine's European integration process, with regard to its candidate status. But digital integration remains a significant window of opportunity for Ukraine, owing to the fact that it is a changing and constantly transformative domain, where Ukraine needs to build a solid foundation within the digital integration processes, and then upon this to apply and promote its own approaches and practices that are of high value and highly needed in the EU.

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