



Brussels, 22.4.2024
C(2024) 2756 final

ANNEX

ANNEX

to the

COMMISSION IMPLEMENTING DECISION

on the release by the European Union of the second instalment of the exceptional bridge financing of the Ukraine Facility

ANNEX

Assessment of the satisfactorily fulfilment of the policy conditions included in the Memorandum of Understanding between the European Union and Ukraine linked to the exceptional bridge financing, signed on 13 March 2024

Executive summary

In accordance with the provisions of the Memorandum of Understanding between the European Union and Ukraine linked to the exceptional bridge financing, signed on 13 March 2024 (the ‘MoU’) and of the Loan Agreement signed between the same parties on 14 March 2024, on 5 April 2024 Ukraine submitted a request for funds for the second instalment, in line with Annex 1 of the Loan Agreement. In line with the requirements of the MoU, the request for funds was accompanied by a cover note and supporting documents to demonstrate the fulfilment of the policy conditions.

Ukraine provided due justification of the satisfactory fulfilment of the five policy conditions of the second instalment of the exceptional bridge financing support as set out in the MoU. Based on the information provided by Ukraine, the Commission considers that all five policy conditions were satisfactorily fulfilled. The Selection Commission on Conducting Competition to the High Council of Justice Service of Disciplinary Inspectors was established and the competitions for its Head, Deputy Head and Disciplinary Inspectors was launched (policy condition 1.1). The Action Plan aimed at preventing and/ or mitigating the negative consequences of risks identified in the third National Risk Assessment (policy condition 1.2) was approved and entered into force on 27 December 2023 and formulated based on the results of the assessment. The National Revenue Strategy for 2024-2030 was adopted on 27 December 2023 (policy condition 1.3) and includes measures aiming to align Ukraine's tax legislation with the requirements of EU legislation in certain areas, improve personal income taxation and property taxation, address the informal economy, tax expenditures and exemptions and propose an IT Strategy of the State Tax Service. Further, resolution approving the procedure for using budget program funds for the creation of industrial parks was adopted and entered into force on 24 March 2024 (policy condition 1.4) which is aimed to be used as a tool for attracting investments in the de-occupied areas. Finally, the protocols of information interaction between the State Land Cadastre and the State Register of Property Rights on Real Estate are enabling the automatic data transfer about the price (value) of a real estate and property rights to it to the State Land Cadastre (policy condition 1.5) and the information exchange has become operational.

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Policy Condition 1.1.

Description of the policy condition: The High Council of Justice establishes the Selection Commission on Conducting Competition to the High Council of Justice Service of Disciplinary Inspectors and launches the competition for its Head, Deputy Head and Disciplinary Inspectors.

Context

The objective of this policy condition is the resumption of an improved disciplinary system for judges which will help to enhance the accountability, integrity and professionalism of the judiciary in Ukraine. An effective and independent work of the High Council of Justice (HCJ), including the launch of the HCJ Service of Disciplinary Inspectors will help consolidate the results of the judicial reform and build public trust in the judiciary.

Evidence provided

- 1) Summary document (Cover Note) duly justifying the fulfilment of the policy condition;
- 2) Copy of the law № 3378-IX "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and certain laws of Ukraine on changing the status and procedure of forming the Service of Disciplinary Inspectors of the High Council of Justice" (the Law) available online at the following link: <https://zakon.rada.gov.ua/laws/show/en/3378-20?lang=uk#Text>. The Law was adopted on 6 September 2023, published on 18 October 2023 and entered into force on 19 October 2023;
- 3) Copy of the Decision of the HCJ of 7 December 2023 № 1235/0/15-23 on the establishment of a competition commission for conducting a competition for the positions of the Head of the Disciplinary Inspectors Service, his Deputy and Disciplinary Inspectors;
- 4) Copy of the Decision of HCJ of 19 December 2023 № 1334/0/15-23 on launching the competition for the position of the Head of the Disciplinary Inspectors Service, his Deputy and Disciplinary Inspectors;
- 5) Copy of the Decision of the HCJ of 30 January 2024 № 280/0/15-24 on extension of the deadline for accepting documents from candidates for the positions of the Head of the Service of Disciplinary Inspectors and His Deputy and Disciplinary Inspectors;
- 6) Copy of the Protocol of the competition commission session dated 5 February 2024 № 1 approving the Regulation of the competition commission for conducting the competition for the positions of the Head of the Disciplinary Inspectors Service, his deputy, and the disciplinary inspectors.

Analysis

The justification and substantive evidence provided by the Ukrainian authorities cover all constitutive elements of the policy condition.

The law No. 3378-IX "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and certain laws of Ukraine on changing the status and procedure of forming the Service of Disciplinary Inspectors of the High Council of Justice" (the Law) entered into force on 19 October 2023. Pursuant to paragraph 2(4) of Section II "Final and Transitional Provisions" of the Law, the Service of Disciplinary Inspector is an independent structural unit within the Secretariat of the High Council of Justice. The Service of Disciplinary Inspectors is established to exercise the powers of the High Council of Justice (HCJ) to carry out disciplinary proceedings against judges. The Service of Disciplinary Inspectors consists of disciplinary inspectors of the HCJ, the Head of the Service, his/her deputy and employees who provide organisational support to the Service of Disciplinary Inspectors. In line with the requirements of the Law and based on the decision of the HCJ of 7 December 2023 No. 1235/0/15-23, a competitive commission was established for conducting a competition to the Service of Disciplinary Inspectors. The composition of the competition commission includes 3 representatives of the HCJ and 3 international experts.

The competitions for the Head, Deputy Head and Disciplinary Inspectors of the Service of Disciplinary Inspectors were launched based on the Decision of the HCJ of 19 December No 1334/0/15-23, in line with the requirements of paragraph 3 of Section II "Final and Transitional Provisions" of the Law. The launch of the competitions was published on the official website of the HCJ and on the official web portal of the judiciary of Ukraine. The competitions were launched for the Head (1 position), the Deputy Head (1 position) and 24 Disciplinary Inspectors of the Service of Disciplinary Inspectors. Based on the decision of the HCJ of 30 January 2024 № 280/0/15-24, the deadline for accepting applications from candidates was extended until 14 February 2024. The Regulation of the competition commission for conducting the competitions for the positions of the Head, Deputy Head and Disciplinary Inspectors of the Service of Disciplinary Inspectors was approved by the competition commission on 5 February 2024. The Regulation provides for the powers of the competition commission and its members, the Head and Deputy Head of the competition commission and for the procedure for organising and holding sessions.

Commission Assessment: Satisfactorily fulfilled

Policy Condition 1.2

Description of the policy condition: Approval and entry into force of the Government Order on Approval of the Action Plan aimed at preventing and/ or mitigating the negative consequences of risks identified in the third round of the National Risk Assessment in the field of prevention and counteraction to legalisation (laundering) of proceeds of crime, terrorist financing and financing of proliferation of weapons of mass destruction for the period up to 2026.

Context

The objective of this policy condition is to further align Ukraine's legal framework with the EU *acquis* and FATF (Financial Action Task Force) standards and to create an effective anti-money laundering system in Ukraine enabling to better tackle economic crime and to improve the overall business climate in Ukraine. Mitigating the threats of money laundering and terrorist financing requires targeted and coordinated efforts of all the participants of the system for prevention of and counteraction to legalisation (laundering) of the proceeds from crime, terrorist financing and financing of proliferation of weapons of mass destruction.

In 2022, the third round of the National Risk Assessment in the field of prevention and counteraction to legalisation (laundering) of proceeds of crime, terrorist financing and financing of proliferation of weapons of mass destruction was conducted. The third round of the National Risk Assessment identified areas vulnerable to the legalisation (laundering) of proceeds of crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, to which the participants of the national prevention and counteraction system must pay special attention to minimise the identified risks. On 29 December 2022, the report on the third round of the National Risk Assessment was approved. The results of the third round of the National Risk Assessment are the basis for the formation and adjustment of policies and the determination of priorities in the field of anti-money laundering in Ukraine.

Evidence provided

- 1) Summary document (Cover Note) duly justifying the fulfilment of the policy condition;
- 2) Copy of the Order of the Cabinet of Ministers of 27 December 2023 No. 1207-p on Approval of the Action Plan Aimed at Preventing the Occurrence and/or Reducing the Negative Consequences of the Risks Identified by the Results of the Third National Risk Assessment in the Field of Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction, for the Period up to 2026 available here: <https://zakon.rada.gov.ua/laws/show/1207-2023-%D1%80#Text>.

- 3) Copy of the Third National Risk Assessment report (2022) on Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction;
- 4) Document mapping the risks identified in the National Risk Assessment with the measures proposed in the Action Plan.

Analysis

The justification and substantive evidence provided by the Ukrainian authorities covers all constitutive elements of the policy condition.

The Action Plan was approved with the Government Order, which was approved and entered into force on 27 December 2023. The text of the Action plan is an annex to the Government Order.

The Action Plan is formulated based on the results of the third National Risk Assessment, which identified corresponding threats (vulnerabilities) to subjects of financial monitoring. The Action Plan outlines the main national vectors for the development of the financial monitoring system with key directions of state policy in the areas of prevention and counteraction to legalisation (laundering) of proceeds of crime, terrorist financing and financing of proliferation of weapons of mass destruction for the next three years.

The measures of the Action Plan are divided into groups, each of which specifies the performers and the deadline for implementation, with the aim of covering all components of the national financial monitoring system, e.g. improving legislation in the field of financial monitoring, improving the activities of subjects of state financial monitoring and other authorities; increasing the effectiveness of law enforcement and other state bodies; providing openness of information about the ultimate beneficial owners of legal entities; international cooperation and other.

The Action Plan contains a set of institutional, legislative, organisational, and practical measures to improve the national system of prevention and countermeasures in accordance with international standards and the system of strategic planning in this area, aimed at:

- Effective risk management in the system of prevention and countermeasures;
- Effective definition and implementation of state policy in the field of prevention and countermeasures in accordance with international standards;
- Increased compliance with international standards of the national system of prevention and countermeasures;
- Improvement of information technology tools;
- Effective cooperation and information exchange between the relevant state bodies, as well as with competent bodies of foreign countries and international organisations in the specified field;
- Methodological support and feedback to the activities of the subjects of primary financial monitoring;

- Design of innovative solutions for improving the qualifications of specialists in the field of prevention and countermeasures;
- Increased cooperation with the private sector and the general public.

The Action Plan has 45 measures, all of which focus on preventing and/ or mitigating different negative consequences of risks identified in the third round of the National Risk Assessment. Examples include:

- Preparation of proposals for amendments to the Tax Code of Ukraine and other legislative acts regarding the regulation of the circulation of virtual assets in Ukraine in accordance with Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, taking into account the FATF standards, which aims to prevent and mitigate the risks related to the remote services or using virtual assets and the risk of non-compliance with anti-money laundering and combating the financing of terrorism (AML/CFT) legislation.
- Preparation of proposals for amendments to certain laws of Ukraine regarding the implementation of the requirements of the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) regarding Ukraine's compliance with Recommendation 28 of the Financial Action Task Force (FATF) which is aimed at preventing and mitigating the risk of lack of legal regulation of some representatives of Designated non-financial Businesses and Professions (DNFBP) and the risk of using the subjects of primary financial monitoring for the purpose of legalisation (laundering) of proceeds from crime, financing of terrorism and financing the proliferation of weapons of mass destruction.
- Preparation of proposals for improving and clarifying certain legal acts in the field of prevention and counteraction, as well as ensuring the implementation of new international standards in this area. This measure is aimed at addressing the risk related to failure to bring legislation in the field of prevention and counteraction in line with international recommendations.

Commission Assessment: Satisfactorily fulfilled

Policy Condition 1.3.

Description of the policy condition: Adoption of the National Revenue Strategy for 2024-2030. The Strategy includes measures such as:

- proposals for amending Ukraine’s tax legislation in line with the requirements of EU legislation (in terms of taxation on value added tax and excise taxes, measures to combat tax evasion, etc.);
- proposals for amending Ukraine’s tax legislation to improve personal income taxation;
- proposal for an IT Strategy of the State Tax Service;
- measures to address the informal economy;
- measures to reform property taxation;
- measures to address tax expenditures and exemptions.

Context

The objective of this policy condition is to ensure macroeconomic and financial stability while continuing to align with EU requirements in the area. The Strategy is crucial to ensure proper resources for wartime expenditures as well as the immediate recovery, reconstruction and modernisation needs.

Evidence provided

1. Summary document (Cover Note) duly justifying the fulfilment of the policy condition;
2. Copy of the Order of the Government № 1218-p of 27 December 2023 adopting the National Revenue Strategy until 2030;
3. Copy of the National Revenue Strategy until 2030, available on the website of the Ministry of Finance at the following link:
https://www.mof.gov.ua/storage/files/National%20Revenue%20Strategy_2030_.pdf ;
4. Additional explanatory document providing comments to justify how the elements of the condition (i.e. the measures included in the National Revenue Strategy) were covered.

Analysis

The justification and substantive evidence provided by the Ukrainian authorities covers all constitutive elements of the policy condition.

The National Revenue Strategy until 2030 was adopted by the Order of the Government No 1218-p on 27 December 2023. The text of the Strategy was provided in a separate document.

With respect to the proposals for amending tax legislation in line with the requirements of EU legislation, indicator 4.3.3(b) proposes to bring the rules of residence permit in line with EU legislation, building on prior alignment efforts with the EU acquis. Section 4.3.5 of the

Strategy proposes measures bringing the VAT legislation in line with the EU VAT Directive (namely Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax), notably by abolishing reduced rates and benefits that are not provided for by the Directive. The Strategy also includes measures aiming to improve the administration of excise taxes. Measures under section 4.3.6 envisage a comprehensive excise tax reform and propose actions bringing the excise tax legislation in line with the one of the EU, including by approximating excise rates on tobacco, alcohol and fuel products to the minimum rates in force in the EU. These measures aim to advance the alignment with the EU acquis, in line with the requirements of the policy condition, but also increase revenues to the state budget.

With respect to the proposals for amending Ukraine's tax legislation to improve the personal income taxation, section 4.3.2 proposes to change of the model of the personal income taxation, notably through legislative changes to allow the introduction of a progressive personal income tax rate, combined with a revision of benefits, special taxation conditions and exceptions from the tax base.

With respect to the proposal for an IT Strategy of the State Tax Service, indicators 4.2.3(a) to 4.2.3(c) focus on digitalisation and data proposing measures consolidating the IT systems in the State Tax Service by means of an independent administrator. In particular, the reforms identified in the section 4.2.3 concern the implementation of the IT Strategy at the level of the Ministry of Finance up until 2025, as well as propose the creation of a long-term Digital Development Plan until 2030 for the State Tax Services, as per the policy condition. All these measures are relevant and contribute to the improvement of the IT environment in the State Tax Service, fully aligned with the text of the policy condition.

With respect to the measures to address the informal economy, indicator 4.3.1 on the reform of the simplified taxation system will narrow the scope of the simplified taxation, while introducing safeguards, and eliminating competition distortions due to abuse. Specifically, the Strategy proposes to introduce an obligation to keep records and documentary evidence of the origin of goods and minimise the possibilities of using benefits of the simplified taxation system in view of minimising the payment of taxes by hiding volumes of sales. Section 4.3.3 proposes measures improving the legislation on taxation of profits of enterprises, by introducing provisions of the Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, to ensure additional protection against tax evasion. More generally, the implementation of many of the measures proposed by the Strategy would help address directly or indirectly the informal economy.

With respect to the measures to reform property taxation, Section 4.3.10 proposes legislative changes determining the legal principles for assessing properties in view of better reflecting their market value and consequently applying taxation more efficiently. Section 4.3.9 proposes legislative changes granting additional powers to local self-government to

administer and collect local taxes and fees on property. In addition, the Strategy proposes measures to improve the accuracy of property registration in State registers and databases.

With respect to the measures to address tax expenditures and exemptions, indicator 4.3.3(a) proposes a revision of the existing investment regimes under the corporate income tax, expanding the application of cost-based tax incentives and introducing rules for instant depreciation. Section 4.3.11 proposes a unified approach to tax benefits, to avoid distortions, tax evasion, abuse and losses to the budget revenues. In that regard, the Strategy recommends a revision of all tax incentives, understood as tax expenditures and exemptions, based on an assessment of their effectiveness. Section 4.3.12 concerns the use of incentives for the development of the processing industry, in view of attracting investments, stimulating growth, by eliminating inconsistencies across tax incentives for taxpayers within the same area of activity.

Commission Assessment: Satisfactorily fulfilled

Policy Condition 1.4.

Description of the policy condition: Adoption and entry into force of the resolution of the Cabinet of Ministers of Ukraine on approving the procedure for using budget program funds for the introduction of industrial parks support as a tool for attracting investments in the de-occupied areas.

Context

The objective of this policy condition is to support the introduction of industrial parks, which will stimulate the transition to the production of goods with higher added value and will be an additional incentive to attract foreign direct investment.

This will allow the government to allocate public funds to support the development and operation of industrial parks as a mechanism to attract investments in de-occupied areas. Increased local economic activity is expected to contribute to increased job opportunities in the de-occupied territories.

The policy condition represents an important element for the successful implementation of the 'Industrial Parks Development Strategy for 2023-2030, approved by the Cabinet of Ministers on 24 February 2023.

Evidence provided

1. Summary document (Cover Note) duly justifying the fulfilment of the policy condition;
2. Copy of the Resolution of the Cabinet of Ministers of Ukraine, of 29 March, 2024 No 341, on the use of funds provided for in the state budget for state incentives, Creation of industrial parks, available at the following link:
<https://www.kmu.gov.ua/npas/pro-zatverdzhennia-poriadku-vykorystannia-koshtiv-p-a341>;

Analysis

The justification and substantive evidence provided by the Ukrainian authorities covers all constitutive elements of the policy condition.

Resolution No. 341 concerning the procedures for the use of funds in the state budget for the creation of industrial parks was approved by the Cabinet of Ministers and entered into force on the date of the publication in the Official Journal on 29 March 2024.

The Resolution establishes the 'Industrial Park Development Office' as a state institution under the Ministry of Economy and the procedures for the use of funds under the program 'State Stimulation of Industrial Parks'. The purpose of using budget funds is to provide favourable conditions for the creation and functioning of industrial parks, attracting

investments, in particular in the de-occupied territories, and the development of the economy by equalising the economic development of regions and improving the quality of life of the population. According to the Resolution, the instrument can also be applied in other geographical areas where it may be deemed appropriate and effective in stimulating economic activity.

The Resolution outlines that budget funds can be directed towards:

- construction of engineering and transport infrastructure (roads, communication lines, means of heat, gas, water and electricity, engineering communication, etc.) necessary for the creation and operation of industrial parks;
- full or partial compensation of the interests on loans to applicants for the arrangement and/ or implementation of economic activities within the industrial parks;
- compensation of costs to applicants for connection to engineering and transport networks;
- ensuring the functioning of the Industrial Park Development Office.

The Resolution establishes the reporting obligations of applicants towards the Ministry of Economy, including the submission of reports on the use of funds received, and audit reports on the annual financial statements. The Resolution also establishes that the Ministry of Economy shall monitor the effectiveness of use of funds disbursed to applicants, including through quarterly monitoring of the reports submitted by applicants and annual monitoring of audit reports.

Commission Assessment: Satisfactorily fulfilled

Policy Condition 1.5.

Description of the policy condition: The protocols of information interaction between the State Land Cadastre and the State Register of Property Rights on Real Estate are enabling the automatic data transfer about the price (value) of a real estate and property rights to it to the State Land Cadastre.

Context

The State Land Cadastre, held by the StateGeoCadastre, and the State Register of Real Estate under the Ministry of Justice contain key real estate information in Ukraine. Where the State Land Cadastre records information about land parcel identification and technical details of the land, the State Register of Real Estate focuses on legal ownership, lease and other property rights to the land as well as encumbrances. Both registers include information about ownership and the value of the land.

Allowing automatic transfer of key information about the land from one register to the other in real-time, including ownership rights to it and the price, would ensure that this information is always identical in both registers. Such inter-operability of the registers would limit space for arbitrariness, help avoid potential issues in proving property rights and increase transparency, all leading to strengthened property rights to land and easier access to evidence of ownership. Furthermore, StateGeoCadastre uses the information on transactions involving land plots for market monitoring data with the results regularly published on its official website, requiring up-to-date information.

Ensuring the interoperability of the two registers with respect to the key information regarding the land ownership is one of the steps in the wider reform to establish land ownership rights and ensure a functional land market in Ukraine.

Evidence provided

1. Summary document (Cover Note) duly justifying the fulfilment of the policy condition;
2. Copy of the Order of the Ministry of Justice of Ukraine and the Ministry of Economic Development, Trade, and Agriculture of Ukraine No. 4060/5/2416 of 23 November 2020, approving the Procedure for the interaction of the information systems of the State Register of Property Rights to Real Estate and the State Land Cadastre, available at the following link:
<https://zakon.rada.gov.ua/laws/show/z1177-20#Text> ;
3. Copy of the protocol to facilitate the exchange of information between the State Enterprise "National Information Systems" (technical administrator of the State Register of Rights, owned by the Ministry of Justice), and the State Enterprise "State Land Cadastre Centre" (administrator of the State Land Cadastre, held at the

State Service of Ukraine on Geodesy, Cartography and Cadastre - StateGeoCadastre), approved on 1 March 2024;

4. Copy of the Contract on informational interaction between the Ministry of Justice of Ukraine and State Service of Ukraine on Geodesy, Cartography and Cadastre no. 173/3, signed on 27 March 2024;

The following screenshots of information from both registers on an example of a land plot transaction were also provided:

5. Recent extracts from the State Land Cadastre;
6. Information from the State Register of Property Rights to Immovable Property and the Register of Property Rights to Immovable Property, the State Register of Mortgages, the Unified Register of Prohibitions for the Alienation of Immovable Property;
7. Fragment of the exchange file from the State Register of Property Rights to the State Land Cadastre.

Analysis

The justification and evidence provided by the Ukrainian authorities cover all constitutive elements of the policy condition.

Order No. 4060/5/2416 approving the Procedure for interaction of information systems of the State Register of Property Rights to Immovable Property and the State Land Cadastre, and the Procedure itself, creates the legal basis to enable information interaction between the State Register of Property Rights to Real Estate and the State Land Cadastre.

Based on the Procedure, the Protocol, approved on 1 March 2024, defines the procedure of interaction of information systems of the State Register of Rights to Real Estate and the State Land Cadastre, a list of information, structure and the format of information files transmitted and accepted.

According to the Protocol, the Ministry of Justice of Ukraine will receive, upon request, information files from the State Land Cadastre system in real-time about registered land plots, including data on owners and users of land plots. The State Service of Ukraine for Geodesy, Cartography, and Cadastre will receive information files from the State Register of Property Rights to Real Estate about the following:

- 1) registered property rights to land plots and their encumbrances;
- 2) the price (value) of real estate and property rights to it or the amount of payment for the use of real estate under relevant transactions;
- 3) information files containing detailed information (changes to them) from the State Register of Rights regarding land plots;
- 4) information files on the list of cadastral numbers of land plots.

Agreement no. 173/3. defines the exact electronic information interaction between the Ministry of Justice and StateGeoCadastre within the framework of the Trembita system

(owned by the Ministry of Digital Transformation), including an overview of the code used for the information sharing system.

The screenshots of information from both registers on an example of a transaction of a specific land plot and the accompanying explanatory document prove that the system is operational, and the data transfer takes place.

Fragments of the exchange file from the State Register of Property Rights to the State Land Cadastre illustrates the receipt of information about ownership, including detailed data on any potential changes, and the price at which it was sold.

The information coming from the official data exchange between the State Land Cadastre and the State Register of Property Rights contains information on all agricultural land plots that were alienated under contracts of purchase and sale or other reasons. The table is updated daily and available online on the StateGeoCadastre.

Commission Assessment: Satisfactorily fulfilled