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„Legislative process in the EU accession perspective”
Discussing best practices in legislative processes with Members of Verkhovna
Rada
Brussels, 25.05.2023

Ukraine has made an incredible effort toward accession to the EU during the Russian aggression. It takes a lot of your political and psychological resources to wage this defence against invaders and at the same time move on with the process of accession to the Union. And I would like to salute you for this!

But of course to keep on this high level of mobilization is a difficult task.

You are preparing not only to become an EU member. You are preparing to become one of the largest members in the EU, and that puts on you special obligations to be not only prepared to benefit from membership but also to take your part of responsibility for the EU as a whole. Let me tell you that national angle of looking at accession process would not be enough.

The whole process is also about building your credibility. Everything you are doing during this process of accession is interlinked and takes you step by step toward membership. You should have clear target. Be assertive when it comes to your vital interests, but choose your interests thoughtfully.

You also have a big work to do with the society. Being elected politician helps. It is heartbreaking to see that more than 90% of Ukrainians are in favor of the membership.

Still they will have to know the conditions, the reasons why you accept certain demands and why you may dispute some others. Explain it. Only then trust can be built. The citizens cannot be passive observers of what your elites are doing. It is difficult under conditions of total war, but your citizens should be active participants in the dialogue. The accession should become something that people will not see as

distant from their own lives, but as something that is a part of their and their families' life, with direct impact on following generations.

Of course, Ukraine, to become a full member of the EU, must align its laws with the entire *acquis communautaire*. It is a fundamental pre condition for joining. But I also think it is important to use this process as opportunity to improve the quality of Ukrainian law, both existing and newly created, to modernize the approach to legislating. For many years the EU has been on a path toward better law making. Brussels power to legislate has been recognized globally as so-called Brussels effect. Ukraine has been already for a while in a high quality regulatory environment. It is important to see it as learning process, especially as you are also preparing your legislators to what they will be doing after accession. You need many excellent legislators.

You can explain to your voters how important it is what you are doing in Verkhovna Rada, aligning the Ukrainian law with *acquis*. Tell them that Ukrainians will be able like every EU citizen to invoke in a Ukrainian court rules established in the European law which is famous for the protection of human rights, minorities, women, people with disabilities. Also, Ukrainian courts will be able to ask the ECJ pre judiciary questions when having doubts whether Ukrainian law is in conflict with European law. It is true that European laws will have precedence over the laws of Ukraine. But once Ukraine is a member state it will participate in shaping and deciding on European law through the legislative process.

I can imagine that you are fed up with all those people like myself who share with you their own experience. Your situation is so different and at the same time it is similar so I hope you will be able to find some good practices in our stories on how other countries made it to EU.

It is important that in the accession process you see and respect the link between all its elements - questionnaire, screening, filling legislative gaps, opinions, approximation of law, impact assessment, structural adjustments, negotiations. I am mentioning those links because there is this tendency that after every elections politicians are tempted to bring new people replacing those that have already acquired knowledge and deep expertise. As you know European affairs are difficult,

it takes time to get in terms with them, so keep your experts, invest in their training. Katerina Mathernova, one of your greatest friends in the Commission told me there is a program starting soon with financial assistance dedicated for Rada to help young smart Ukrainians grow as experts - and you will need many of them. I am also pointing to those links because when you work on approximating laws you can see where difficult issues are, so already at this stage you can see where transition periods will be needed for adjustment and necessary investment that would make Ukraine fit for accession. So during legislative effort draw lessons for your negotiation positions.

You certainly look at costs and benefits of the accession. You have to be aware that most of the costs come in the short term, most benefits come with some delay. Don't let yourselves, or the public, get discouraged by it.

It would be also useful if you could think early enough about preparing Ukrainian courts to boldly apply the provisions of Community law in a direct manner. This is not a substitute for the correct and timely transposition of Community law, but it is good to show that, in cases of legislative omissions, Ukrainian courts will not hesitate to apply EU law directly.

It is necessary to maintain a high level of interest among decision-makers regarding the quality of administration, civil service , legislation. This will have huge impact on the quality of Ukrainian membership in the future, which depends on the quality of administration and apolitical civil service. It will facilitate in the longer term the implementation of systemic changes, modernize the practice of the administration work hopefully together on a necessary change in the administrative culture. In Poland, at time of accession process, we were just beginning to build civil service, modernize administration, raise salaries, change the public image of bureaucracy.

On the executive side in Poland we had a strong coordination centre with the prime minister on the top of political dimension and very powerful coordination office, involving as well as sectorial coordinators deputy ministers and their teams across all ministries and central offices. These teams included officials, experts and stakeholders at all phases of accession process, coping with approximation of laws,

needed reforms, policy changes, public consultations and finally working on negotiation positions and being part of negotiating teams. This way we did not lose the expertise and we kept the institutional memory also for the time after accession. Rada can play a hugely important role building consensus of all major political groups on the priority of accession to the EU. All countries from CEE that joined the EU used accession process as a momentum for political unification. As elected politicians you can be very effective in making accession an overarching theme, unifying political forces .

Of course the pre-accession period involves a very high intensity of legislative work in Rada. I know you already experience it. These are hundreds of legal acts. In Poland, achieving the level of obligatory adjustment required the Sejm to pass 255 laws that implemented 1589 EU directives. I give this example to show that sometimes you can transpose many directives into much smaller number of Ukrainian bills of law. You need good supportive legal service in Rada and a good supportive research division.

I have heard that you put a lot of emphasis on the speed of approximation of law. It is important but let me say that this is not the only aspect that matters. I would like to encourage you to do, as often as it is justified and feasible, impact assessment of what you transpose into Ukrainian law. Normally, that is the responsibility of the executive when drafting law. We, in the European Parliament, have also right to do our own impact assessment during legislative process. I think it is useful to understand the impact of new legislative framework on the competitiveness of your businesses in the single market. Behind every piece of legislation there are businesses and citizens affected by it. There are reforms needed, changes to economic policies, of institutions, of policies, there is deep structural transformation of Ukrainian industry, agriculture, service sectors. The results of these assessments will be used to formulate Ukrainian negotiating positions and negotiate transition periods, temporarily exempting Ukrainian businesses from the application of Community law. The impact assessment is closely linked to the public consultation process. In addition, it can help businesses and other groups in preparing for Ukraine's membership in the EU. I remember that in Poland during the accession process, Polish small and medium size enterprises, unlike the big ones, could not

afford employing legal experts to help them to adjust. We used European funds, also bilateral support from member states that were interested in building business links to facilitate adjustment and changes to the business models.

The Sejm introduced a special legislative procedure for EU related legislation, so called European track or fast track. It was based on the traditional system with some modifications to facilitate and guarantee effectiveness of the process. To give you some hints - the first reading was possible within 3 days (instead of 7) providing there was a translation of the *acquis* in question. The translation was delivered ahead of the legislative work either by the Council of Ministers (if the bill was proposed by the CoM) or the special unit in the Sejm, responsible for translations. The Sejm Committee in charge of a legislative adjustment treated this procedure seriously and was obliged to adopt a detailed procedural plan for each draft and present it to the Speaker of the House. The Committee could request an opinion from a respective sectoral committee and that committee was obliged to present its opinion on the draft law in a given time framework. The reports of the Committee were considered in the Plenary immediately, could not be postponed or blocked. In order to speed up the process it was decided that amendments to a draft could be proposed in writing by minimum three deputies in the first reading and minimum five deputies in the second reading. That ensured that the works would not be blocked by unnecessary, unsubstantial frivolous proposals for amendments. Each draft was accompanied by justification for applying „European track“. That prevented obviously non EU related legislation to omit traditional legal track. Each bill of law coming to the Parliament (not only those approximating the law) was accompanied by the legal opinion on compliance with the *acquis* (or justification when it was not in line with the *acquis*). If the draft was prepared by deputies, then such an opinion was prepared by the parliamentary experts within the Chancellery of the Sejm (Legislative Bureau, Sejm's Bureau of Research).

There are different options regarding the way the Rada can play its role in overseeing the government in the pre accession process and shaping in general the relations with the EU and member states. There are two options regarding specialized committee: the Nordic choice of a grand committee and the one that Poland and other 2004 enlargement countries chose.

In the Polish case the approach evolved depending on the stage of the pre accession process. Two factors played role in the evolution of approach: importance of parliamentary oversight and intensity of legislative adjustment. I can imagine that Rada has clarity on whether it wants to have minimum involvement and influence on European integration and as a consequence leaves most things to the Government and its administration or if it wants to be an active partner and full player in the process using to maximum its constitutional control power over Government, ensure efficient legislation and engage in international diplomacy.

Another question to be answered regards relations between the role of European integration committee and sectoral committees. Should it be a centralised model, with European integration committee as a main player or a de-centralised model with considerable sectoral committees' engagement. Then it remains to be determined whether all issues connected with European integration should be divided institutionally into two parts, political oversight and purely legislative agenda, each coped with by a separate body or one body in the Parliament should be in charge of both matters. There is of course the issue of the link between those bodies and the plenary.

Regarding political oversight, the role of the Sejm embraced multiple activities and actions. These included:

- oversight of the implementation of Association Treaty and Adjustment Program
- motions, opinions for the Government concerning European integration issues
- consultations and negotiations with European institutions
- giving „green light” for crucial decision i.e. application for membership
- policy debates on EU affairs
- supervision of EU assistance (PHARE, SAPARD, ISPA)
- monitoring negotiations in the screening phase and in regard to respective chapters for negotiations (mandating and looking at Ministers)
- accepting and monitoring Government Strategic documents i.e National Program for Preparation to Membership and its implementation, National Integration Strategy etc.
- briefings from government, also during negotiations

Another important competence of the Sejm in the integration process was establishing its legal responsibilities in the process of accession. This included Parliament having to grant consent to the ratification of the Europe Agreement by the President (4 July 1992). The EU integration process found its legal ground in the 1997 Constitution of the Republic of Poland, adopted by the National Assembly. Still, accession to the area of common currency will most likely require change of the Constitution. By a decision of the Sejm, in 2003, a referendum was held on the consent to ratify the Treaty of Accession. The house considered that the people, not the Parliament, should decide on Poland's membership in the EU.

The Sejm also participated in the process of Poland's European integration through broadly-understood parliamentary diplomacy. The EU-Poland Joint Parliamentary Committee managed relations with the European Parliament from 1993 to 2003, that is almost throughout the entire accession process. The Committee comprised deputies, members of both chambers, senators and members of the EP. On 30 April 2004, i.e. the day before the entry into force of the Treaty of Accession and the formal accession of Poland to the EU, deputies and senators held a solemn Assembly.

The process of adapting Ukrainian law to Community law will not end with the signing of the Accession Treaty. It will continue in a very dynamic manner, all the more so because any shortcomings or legislative deficiencies from that moment on will be presented almost immediately to the Ukrainian side within the framework of infringement proceedings under Article 258 TFEU.

Poland's accession to the European Union was first of all a political process of huge strategic importance. Economically, it was both a challenge and unprecedented opportunity, like it is today for Ukraine. But it was as well a never experienced administrative effort for a country with no tradition of civil service, of coordination and sharing, with dominant vertical structures, low salaries and low social position of those employed in public administration.

Many things have been done, and there is a lot of work to be done, but in the deepest, moral sense, Ukraine is already in Europe. European values we all fight for

have also their pragmatic dimension. Accession process is a self-standing public good policy that cannot become a victim of factional or sectoral disputes. It should be taken out from the area of interparty competition. It should be treated as a common good of the Ukrainian nation.