

**Professor Danuta Hübner**

***„A huge breakthrough is ahead, and your country must be ready for it”***

**Meeting with Ukrainian Officials**

**Polski Instytut Spraw Międzynarodowych (PISM)**

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The 2024 will be a very challenging year. We have not finalized the adoption of the Ukraine Facility yet. It is supposed to be a multiannual fund covering the support for Ukraine until 2027, allowing the EU to avoid annual discussions on that matter. We have the position of the European Parliament, but the Spanish Presidency did not put this item high on the agenda. This is very unfortunate and it might undermine the capacity of the Ukrainian government to cope with budgetary expenditures of the first two - three months of 2024.

I trust that in December, the European Council will take political decisions on both opening the negotiations and on the Ukraine Facility. A new hurdle might be the judgment of the German Constitutional Court exacerbating the conditions for public debt management in Germany. This issue comes in addition to the Hungarian vetoing intention. Although growing number of problems related to the next enlargement demonstrates that the enlargement is not anymore purely hypothetical.

What is absolutely clear is that the Commission's report in March 2024 must bring a very simple message to the European Council, namely that Ukraine has met all the conditions related to the seven commitments, including on the issue of asset declaration of those in public functions, minorities and corruption. Let me use this example to share with you a message on how fundamental it is to take seriously all elements of the transposed European law. Skipping any elements leads then to the need of opening the legislative procedure, wasting precious time and undermining the trust.

Corruption perception matter is certainly difficult to cope with. There are many elements in the existing policy areas that are not directly related to corruption but make it difficult to eradicate corruption. For example when in the functioning of the

Ukrainian economy there are many policy elements which require licenses for private market actors, this creates an environment facilitating the corruption.

Let me pass to you a more general message in this context. Ukraine will need for years a mobilization of its citizens around the accession processes and, in this context, the narrative of Ukrainian political forces will be very important. It should not create irritation among the public at large. It should reduce disappointments and respond to serious concerns, and ensure the continuity of the accession policy.

The European Commission will finalize by mid 2024 an overhaul of major European policies with a view to adjust them to the potential enlargement related environment, reducing potential conflicts of interest and disputes.

If the European Council reaches in December agreement on the two issues, accession negotiations and Ukraine Facility, the European Commission could immediately start the screening of the six clusters and 35 chapters, which might take a year. I understand that the translation of the entire acquis into Ukrainian language is proceeding, that all directorates general of the Commission are deeply involved. I also hope that there is no complacency on the Ukrainian side. There is a lot of work ahead.

Of course every candidate joins the Union on the basis of their own merits, every enlargement is different when it comes to details. But there is a lot of commonalities when it comes to the so called eastern enlargements.

My memory tells me that in Poland we had rather slow beginning of the negotiations. I think here of the first two years of negotiations. You will probably also have periods of slowness and then, hopefully, of catching up. Building mutual trust is key. I don't think sufficient level of trust existed at the beginning in our case. In 1990s - and now I see similar elements, though with different factors behind - member states were still coping with the outcome of Maastricht and Amsterdam treaties, establishment of the EU, new areas of integration, in particular related to CFSP and Justice and Home Affairs, as well as the perspective of EMU looming on the horizon. This meant a massive extension of *acquis communautaire*, making our task much more difficult than in case of previous enlargements. Also the internal market was relatively new and brought a complex legislative and policy framework. There was also Schengen

acquis since Amsterdam treaty which augmented the issue of mutual confidence. There was also the break-up of Soviet Union and concerns about possible increase of international crime. The world was divided with all sorts of dictators and autocrats around. All those issues affected our accession process.

Member states saw the upcoming big-bang eastern enlargement to be more challenging than the previous ones. That is why the conditionality in the form of Copenhagen criteria of 1993 was introduced. These conditions are very general but they continue to be a fundamental framework, a structure for Commission's assessments across all aspects of candidates' preparedness. Also, the rule of law challenges added new dimension to the criteria.

Poland and Hungary applied in 1994. Slovenia in 1996. The Union established a pre-accession strategy in 1994. They also prepared a White Paper on the Single Market, addressing issues of the transposition and implementation of the internal market regulations.

We responded quickly with our own strategies for the whole process. Crucial signal on the EU commitment was the preparation by the Commission of Agenda 2000, the financial framework for the enlargement, endorsed by the European Council in 1997.

Decision to start negotiations was taken in December 1997 and the first group of six candidates, the so called Luxembourg group, opened negotiations in spring 1998 under the British presidency. The Helsinki group of the remaining six countries did it in 2000. Slowness of the process showed in my view that it was not really a priority. We felt the lack of urgency and also lack of engagement on the side of member states. There were dates and promises, but there was no enthusiasm or emotion of urgency.

At the beginning the Commission was less of a leader than it is today. There were issues between the Commission and the European Parliament, including the resignation of Jaques Santer's Commission, which strengthened the Council. Compared to the current situation, I would say that now the Commission is a strong leader in this geostrategic enlargement.

What was of particular importance for the candidates were the novelties introduced for the first time in the context of enlargement. There were two most important ones.

One was about pre-accession financial assistance with a strong conditionality, supporting reforms and structural adjustment. The other was the system of monitoring and verification of the implementation and enforcement of the acquis before the accession. Conditionality was everywhere, attached to every commitment and financial assistance. Very strict verification of implementation before the accession did not exist before, when Accession Treaties were signed on understanding that acquis will be implemented. Lack of compliance with the commitment was then approached by infringements and the ECJ procedures. I would say that compared to previous enlargements there was no trust that we would implement acquis unless it was done before the accession.

There will be an intergovernmental conference on accession negotiations with member states and Ukraine. The Commission will be providing all the necessary assistance. The acquis in our times was much smaller and was divided in 30 chapters, now you have 35, organized in six clusters. We provided our position on these chapters, and we received Member States' common positions in response. There was a clear framework for the negotiations, and off they began. They lasted four years and a half.

As you know, in principle, all acquis communautaire must be taken over by a potential new Member State. The issue at stake, as I mentioned was in our case, is also the implementation and enforcement. There are the initial positions. On the EU side they will embrace the entire acquis and only acquis. In some cases there might be some flexibility.

During the negotiations there might appear on the EU side some specific issues of importance for some member states. You should try to identify them as soon as possible.

In general the negotiations are organised on the basis of what you can call a sectoral approach as both chapters and clusters have some sort of sectoral logic. But there are linkages among issues, clusters can help identify them.

There are complex, difficult chapters, of particular importance in the context of accession, with very advanced acquis and there are less important, easier to reach

agreement chapters. But certainly, in our times, there were more chapters with rather limited acquis.

There is a timeline. Unlike what some people say dates are important. First of all for technical reasons but also for political reasons. In your administrative structure used to prepare and organize negotiations you would need civil servants that have been accumulating knowledge and expertise in previous stages of preparing for enlargement.

As I said, in general, the whole existing European law is to be transposed. Your legislation has to be aligned with the European law. And you will need to demonstrate that you have built the capacity to implement it. That implies functioning well staffed institutions. Transition periods or derogations should be limited. Sometimes they are needed because adjustment of the situation to the European law requires years, for example in environment, in particular after the war, and also huge investment. Good use of pre accession assistance can help. But in general and in principle, the less transition periods, the shorter they are, the more you will benefit from accession.

There is of course a monitoring of the realization of transition related tasks. This means there will be staged plans, reporting on the progress. Derogations can be temporary or permanent. I remember the example of Swedish tobacco to chew, or the Danish derogation regarding the purchase of real estates. In our negotiations the list of transition periods was much longer, as it will most likely be your case. But transition periods can be asked also by the EU side.

What is also negotiated is of course the financial aspect of membership. Both contribution to the budget and the transfers from the budget, in different policy areas. This might be one of the issues kept till the end package. There are also institutional issues, related to nomination of the commissioner, elections to European Parliament and number of seats in the EP, the share in the voting system.

I mentioned before that launching the negotiations with a clear time line implying the date of accession is necessary for technical reasons. We have had recently examples of open ended negotiations but we agreed that we failed both with neighbourhood policy where examples can be both Belarus and Ukraine and

enlargement policy when the list of failures is longer. In the current case we must deliver. Date is a benchmark that facilitates the planning of the whole process, it can be normally seen as the earliest possible date of accession. It is indispensable technically in this whole process. Politically it makes the accession a real issue. Back then Hungary had 2002 as a date, we assumed 2003. Not taking dates seriously can have negative consequences, generate disappointment among public at large.

It is also important when you prepare to negotiate that you look at your relations with the rest of the world, accession can worsen the links you have with some third countries. You have to look at it, together with the Commission analyse what can be done to avoid it. You also should give a hard look at everything that might destabilise some aspects of your economic or social situation. In general, it is good to understand which accession related issues might impact negatively some aspects of your internal situation. There are enormous benefits in being part of the integrated Europe, some benefits will come already during the negotiations, some in longer term. I suppose you have already done your cost benefit analysis, you will need to do more of them, more specific. I would even insist that legislative compliance should be accompanied by impact assessment for all those legal acts which have or will have important impact on the stakeholders. It is also natural and you certainly look at it to identify your national interests, in particular long term ones.

Some of them might not be compatible entirely with the accession, in particular in the short term. It would be important to reflect together with the Commission on how to cope with such issues.

To sum it up, I would say that you might find it legitimate to think ahead of what incorporating *acquis* into your legal system, which implies new legal framework in which your industry, agriculture, services, fishery, financial sector are going to function, will mean for Ukraine. You have to be forward looking, anticipating or even circumspect in avoiding wrong choices.

I mentioned that there will be those relatively easier chapters for negotiations and that it will mostly depend on how abundant is the *acquis* in a given sector. In our accession these were the chapters embracing education, research and development, SMEs or statistics. Today it might be different.

What I think is important is that when you transpose the law into the Ukrainian legislation it is important that the transposition is full, complete, so that the Commission when they will be looking into it, will not ask you to go back to the process and add lacking points.

If you do, during this whole process of harmonizing your law with the European law impact assessment of at least those most important for your economy acquis, then you will have information needed for the negotiating positions. You will know where you need transition periods. Poland had transition periods on 43 matters in 12 out of 31 negotiating chapters. In single market free movement of goods we got a transition period to implement the EU registration procedure for pharmaceutical products. In another freedom of single market - free movements of people - it was the member states that wanted a 7 year delay in opening fully access for Polish citizens who would like to work in the EU. Most member states used only two years of this limitation, but Austria and Germany kept it for seven years.

So think about the transition periods at an early stage of harmonization of law, think of impact assessment, when you have meetings with individual sectors, when you provide answers to the questionnaire, when you do screening and talk early to Commission how they see it.

While the initial position of the member states is the acquis and nothing but the acquis, during negotiations individual member states will have their own specific concerns related to your accession, and often small states hide behind big ones and all of a sudden you can have an unhappy group of member states. Normally their concerns and positions should be identified at early stage and taken into account in the negotiating positions of the EU but there can be surprises even at the end of negotiations of chapters and you will not be able to close them.

You know only too well that you will have to transpose all the existing acquis. You are also aware that the size and scope of the acquis has expanded since 2004, so the size of your challenge is simply bigger. Climate might be the most dramatic example of the expansion of acquis. But recently there was a rather high rate of legislative activity in many areas. For example compared to the 2004 enlargement, the financial sector, including the capital market, has experienced an unprecedented expansion. We had significant crises, pandemic, inflation, the consequences of

dependencies in the area of energy, we have been building capacities to succeed in two major transitions - climate related and digital. We are progressing on social dimension and industrial policy. We face dependencies on China where the risk of their weaponisation is high and we face the challenge of protecting the global rules based cooperation system.

Of course the single market remains the core area, but there are many more areas where the legislation strongly affects the cost for the entrepreneurs. We hope to have you with us in the challenges of common foreign and security policy.

For the Union some part of acquis are more important than others. So a good understanding of significance of different parts of acquis is important when you are designing your positions. The internal market remains the core. But there is much more that - what you probably realize - that will affect costs for your enterprises.

You have probably already discovered how important is the administration, experts, lawyers, interpreters, in every part of your administration. That is why keeping the staff you invest in throughout the whole process of accession remains key. It takes a lot of time to learn what is needed at different stages of integration. It is smart to use the available funding to prepare your own negotiators, or to have people able to manage the management of European funds. So avoid mistakes from previous eastern enlargement and do not change with every elections the teams engaged in European issues.

You can assume Commission is your friend, you should care about relationship with them, about trust in these relations and spare no effort to avoid losing this trust. Share your concerns with the Commission. What matters is also the quality of harmonization process. I said before that skipping even the smallest part of an EU legal act leads later to the need of repeating the process. You have already experienced such errors when working on the seven points crucial for the opening of the negotiations.

You have most likely realized that not every member states would keep their arms broadly opened to the upcoming enlargement to take place soon. That was also the case before 2004. So spare no effort to build a group of friends in the Council. In our times there was chancellor Kohl who united the two Germanies and had no doubt



about the need to bring other CEE countries into the EU. I would also say that in these times of global uncertainty, polarization and war we cannot take attitudes of today for granted. There are important elections in 2004, politicians come and go and you have to constantly add new bricks to this valuable construction of Ukraine's friends.

It is not only about the role of politicians. Civil servants, officials should be aware of the huge importance of links they establish at their level, of their contacts with officials from the administration of member states, twinning program plays often underestimated role in accelerating the required adjustments. And I wish you could take for granted the support of Ukrainians for the accession at the level of more than 90%. There will be factors reducing it, there will be moments in negotiations when you will bring home disappointment, there will be campaigns of enemies of your accession that will generate doubts affecting people. So do the utmost communicating, enhancing the development of accession friendly media, respond to all fake news and lies, be active on social media and your official websites.

You probably already have the law on civil service, and there is apolitical staff in the administration, with assurances for the stability in case of national and local elections. Administration is important not only in the context of preparing Ukraine for accession, ensuring the quality of negotiations. When you become a member state, well functioning administration is of key importance for your capacity to benefit from accession.

To conclude, let me admit that I don't know where are you regarding your negotiating positions, and what factors you took into account. I can imagine you would have to look into consequences for your economy, look beyond your war related situation, your market economy building, transformation of your state owned enterprises, institutional reforms, your long term fiscal situation, your essential national interest, risks to democracy and rule of law and your domestic political situation.

Our strength in the whole process of getting ready for accession came from the continuity of the process. We had two political parties with anti-European policies and ideologies but the European wall in the Polish Parliament was not allowing them to grow. The most important political factor was the continuity of political commitment to anchor Poland in the NATO and the EU. Governments were changing, political

colours as well but the commitment to continue getting ready was cast in stone. You have not yet tested your political parties on that account but be aware it will be important.