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REVIEW # 6

PARLIAMENTARY EXPERT GROUP

PUBLIC ADMINISTRATION REFORM IN UKRAINE IN THE CONTEXT OF EUROPEAN INTEGRATION



PARLIAMENTARY
EXPERT GROUP ON
EUROPEAN INTEGRATION

Parliamentary Expert Group on European Integration is an independent expert community established by the Open Society Foundation NGO to promote implementation of the EU – Ukraine Association Agreement by improving the quality of lawmaking processes.

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Public administration plays a crucial role in the process of European integration, as it should be one of the drivers of the reforms needed to conform with the EU membership criteria. Public administration reform is one of the most important horizontal reforms since it provides the basis for effective sectoral policies and a solid foundation for the implementation of EU law.

Administrative capacity as one of the key criteria for joining the EU

EU accession criteria formulated at various stages have a direct impact on administrative systems of the candidate States and include:

- Stability of institutions preserving democratic governance, rule of law and human rights (Copenhagen criteria, 1993);
- Administrative and judicial modernization for transposition of *acquis communautaire* and its effective implementation (Madrid European Council Conclusions, 1995);
- Strengthening and improving operation of institutions (Luxembourg European Council Conclusions, 1997);
- Commitment of the candidate States to share the values and objectives of the European Union as set out in the Treaties (Helsinki European Council Conclusions, 1999).

Copenhagen criteria include the general requirements for candidate States and are divided into three groups: political, economic and “membership” criteria. EU law contains no consolidated specification of the exact indicators included in each group. At the same time, the analysis of the requirements for the candidate States allows one to distinguish the main components for each group of criteria. From the point of view of the design and functioning principles of a public administration system, the first (political) group of criteria is the most relevant one. In general, the third group of criteria, so-called “membership” criteria, will also influence a system of public administration through recognition, adaptation and practical implementation of EU *acquis* (law), that is, the totality of legal documents drawn up by the EU.

Meeting the “membership” criteria is a key aspect of preparing for membership in the European Union. It requires not only the inclusion of EU law provisions in the national law, but also their effective enforcement with the help of properly prepared administrative and judicial institutions. The administrative capacity to implement EU law, along with the political and economic criteria and the ability to fulfill the obligations of EU membership, is one of **the key subjects for oversight and evaluation of the European Commission** in relation to all candidate States.

At the current stage in the context of enlargement, the EU is paying a closer attention to the system of public administration. In November 2017, the European Commission in cooperation with the SIGMA Program of the Organization for Economic Co-operation and Development (OECD), developed the “Principles of Public Administration”, which are considered a starting point in the dialogue with the candidate States and potential candidates on reforming public administration. The Principles define what good public governance entails in practice and outline the main requirements and principles of public administration to be followed during the EU integration process. The EU *acquis* requirements and guidelines are the core of the Principles, where relevant. In other areas, the Principles are derived from international standards and requirements, as well as good practices in EU and OECD member countries.

The Principles are focused on the implementation of transparent and effective democratic governance, effective public administration needed for the EU integration. Hence, the EU enlargement criteria recognize and emphasize the need for countries to build a strong national public administration with the capacity to pursue the Principles of good public administration, and effectively transpose and implement

EU *acquis*. Although general criteria for good governance are universal, the Principles provide for some flexibility for the Government in their implementation due to the peculiarities of the country concerned, the challenges faced at the appropriate stage, etc.

In the area of policy-making

In the area of policy planning

In the area of policy implementation

Guidelines which are directly related to the implementation of the EU integration policies are the integral part of the Principles. In particular, the following are foreseen:

Clear horizontal procedures for governing the national European integration process are established and enforced under the co-ordination of the responsible body

Harmonized medium-term policy planning of all processes related to the EU integration consistent with the national policy planning framework

The European integration procedures and institutional set-up form an integral part of the policy development process and ensure systematic and timely transposition of the *European Union acquis*

The above Principles are implemented, including through the introduction of a **clear legal framework**.

A model of coordination in Ukraine before signing the Association Agreement

The previous experience in the field of EU integration policy coordination included considerable discreteness of the functions and powers of the authorities. Association Agreement negotiations, as well as the implementation of the Partnership and Cooperation Agreement between the European Union and Ukraine, the Ukraine-EU Action Plan, the EU-Ukraine Association Agenda, the EU-Ukraine Visa Liberalization Action Plan, other obligations and agreements, took place in the context of the division of competences between different central executive authorities. At the bilateral level, the following joint EU-Ukraine bodies existed: Ukraine-EU Summits, annual meetings with the participation of the President of Ukraine, Cooperation Council with the participation of the Prime Minister of Ukraine and the ministers, Committee on cooperation between Ukraine and the EU at the level of Vice Prime Minister of Ukraine and deputy ministers; 7 subcommittees of the Committee on cooperation between Ukraine and the EU considering highly specialized issues at the level of deputy ministers and department directors; Parliamentary Cooperation Committee at the level of leadership of the Verkhovna Rada of Ukraine; the Association Committee composed of senior civil servants of Ukraine and the EU from the various sectors of cooperation at the level of directors of departments of ministries; and other highly specialized bodies.

All listed bilateral bodies included Ukrainian parts that were to meet regularly, assess the association progress and solve the emerging problems. At the same time, in practice, their role, effectiveness and efficiency, in our opinion, was rather limited, causing the emergence of a “parallel” bureaucratic world of European integration, remote for other actors. A separate toolkit developed to ensure the functioning of these multiple units complicated the preparation and consideration of decisions, created a gap between the activities of Ukrainian parts of bilateral bodies and the established order of activities of the Government and the executive authorities. Internally, the coordination of the European integration policy was dispersed between the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine (Secretariat, Ministry of Foreign Affairs, Ministry of Economic Development, Ministry of Justice, Ministry of Finance, National Agency on Civil Service and other bodies) in a way that could not provide for proper and full implementation of the European commitments of Ukraine. In general, the institutional support for European integration was decentralized, dispersed and lacked coordination and a single institution that would be consistently responsible for the development, coordination, and, in part, for the implementation of this policy.

A model of EU integration policy coordination after signing the Association Agreement

The recent expert discussion on possible models of institutional support for European integration concentrated on four different options:

- Decentralized model, which existed until recently with most of the coordination tasks carried out by the Ministry of Foreign Affairs;
- Strictly centralized or “Presidential” model, the decision-making performed by a subunit on European integration, created within the Presidential Administration;
- Centralized - “Governmental”, the tasks on horizontal coordination of European integration policy performed by a subunit, created in the government;
- and a model envisioning an independent central executive body – a ministry or central executive body with a special status headed by a Deputy Prime Minister.

Most of the further discussion on this subject can be reduced to a choice between the latter two models.

The existing governmental coordination system should be perceived and applied exceptionally comprehensively. The system has the following key elements:

- Prime Minister of Ukraine and Vice Prime Minister of Ukraine on European integration;
- Government committee for European and Euro-Atlantic integration, international cooperation and regional development;
- Members of the Ukrainian parts of the Association Council and Association Committee, members of the working groups for the work of the Subcommittees of the Association Committee;
- Government Office for European and Euro-Atlantic Integration;
- deputy ministers and deputy heads of central executive bodies on European integration and specialized units of ministries (general directorates) responsible for development and implementation of various national policies, including drafting legal acts on European integration and their implementation, interaction with relevant structural divisions of EU institutions and agencies.

Expert recommendations

At this stage, in the context of European integration, the priorities on Ukraine’s public agenda should include both the inclusion of EU law into national legislation and its effective enforcement with the help of properly prepared administrative and judicial institutions, including through the introduction of a clear legal framework. In practice, this requires a single coordinating institution that would be consistently responsible for the development, and, in part, for the implementation of the national policy in the field of European integration.

In order to ensure the capacity of the newly-created Directorates of strategic planning and European integration, they should include the specialists on strategic planning, the experts on European and Euro-Atlantic integration, economists and budgeting specialists and the specialists on expert examination of the legislation.

European integration in the context of public administration reform in Ukraine

The Resolution “On Optimizing the System of Central Executive Authorities” (approved by the Cabinet of Ministers on December 27, 2017, No. 1013-p), provides for:

1. The target structure of the ministry’s staff, consisting of the following units:
 - Directorates responsible for policy development (covering all policy areas for which the ministry is responsible);
 - Directorate of strategic planning and European integration;
 - Secretariat of the ministry, which supports the ministry’s activities.
2. The competences of the Directorate of strategic planning and European integration.

The Directorate of strategic planning and European integration should carry out the tasks related to the strategic planning of the ministry’s activities, its institutional advance and coordination of policy development in the areas of the competence of the ministry. The foreseen activities of this Directorate include strategic planning of ministry’s activities, ensuring that the policy development activities of other structural subdivisions of the ministry’s apparatus are consistent with the goals and priorities defined by the Cabinet of Ministers’ Activities Programme, Government Priority Action Plan and other policy documents, the provisions of the EU-Ukraine Association Agreement and other international obligations of Ukraine. This Directorate may also include a structural subunit for examination of draft legal acts prepared by the Directorates of policy development.

EUROPEAN INTEGRATION BILLS APPROVED IN 2017

№	Title	Introduction date	Approval date
1	On Animal Feedstock Security and Hygiene	14.05.2015	21.12.2017
2	On Ukraine's accession to the Statute of the International Agency for Renewable Energy Sources (IRENA)	05.10.2017	05.12.2017
3	On the ratification of the financial agreement (the Higher Education of Ukraine project) between Ukraine and the European Investment Bank	14.09.2017	08.11.2017
4	On Ukraine's accession to the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin	12.10.2017	08.11.2017
5	On Electronic Trust Services	31.08.2015 (for the first time, recalled) 17.05.2016 (for the second time)	05.10.2017
6	On amending the Law of Ukraine On Accounting and Financial Reporting in Ukraine to improve certain provisions	10.08.2015 (for the first time, recalled) 16.06.2017	05.10.2017
7	On the ratification of the Agreement between Ukraine and the European Police Office on Operational and Strategic Cooperation	26.06.2017	12.07.2017
8	On Commercial Accounting of Utility Services	06.07.2016	22.06.2017
9	On the Energy Efficiency of Buildings	22.12.2014 (for the first time, recalled) 14.12.2016	22.06.2017
10	On the Energy Efficiency Fund	26.12.2016	08.06.2017

№	Title	Introduction date	Approval date
11	On the ratification of the third and the fourth additional protocols to the European Convention on the extradition of offenders	28.02.2017	07.06.2017
12	On the ratification of the European Agreement on the Transmission of Applications for Legal Aid	25.05.2017	07.06.2017
13	On Environmental Impact Assessment	03.06.2015	23.05.2017
14	On the Electricity Market of Ukraine	10.03.2016 (for the first time, recalled) 21.04.2016	13.04.2017
15	On the ratification of the Agreement between the Government of Ukraine and the European Union on Ukraine's participation in the EU program "Competitiveness of Small and Medium Enterprises (COSME, 2014-2020)	18.01.2017	22.02.2017
16	On the ratification of the Agreement on Cooperation between Ukraine and Eurojust	29.11.2016	08.02.2017
17	On amending certain laws regarding implementation of the Convention on the Conservation of European Wildlife and Natural Habitats	04.02.2015	07.02.2017
18	On amending certain laws on implementation of provisions of EU directives on protection of endangered flora and fauna	08.04.2015	07.02.2017
19	On Access to Construction, Transport and Power Engineering Facilities for Development of Telecommunication Networks	26.02.2016	07.02.2017
20	On amending certain laws regarding improvement of the level of corporate governance in joint stock companies	28.04.2016	23.03.2017

PROPOSALS TO THE ROADMAP FOR LEGISLATIVE APPROXIMATION IN THE FRAMEWORK OF THE ASSOCIATION AGREEMENT IMPLEMENTATION FOR 2018

1. Bills which can be approved in principle or in whole

No	Registration number	Title	Stage
1	2431	On amending certain laws on protection of economic competition regarding establishment by the Antimonopoly Committee of Ukraine the size of penalties for violations of the competition laws	Handed for additional second reading (26.01.2016)
2	4578	On amending certain laws on employment of disabled persons	Released by the Committee to be approved in the first reading (17.06.2016)
3	4584	On amending certain laws of Ukraine that regulate government statistics	Received the Committee submission for consideration (31.05.2016)
4	4589	On amending certain food safety laws of Ukraine	Released by the Committee to be approved in principle (06.12.2016)
5	4591	On Business Ombudsman	Endorsed in the first reading (31.05.2016)
6	4611	On Requirements to Food Contact Items and Materials	Released by the Committee to be approved in principle (20.09.2016)
7	4614	On amending the Customs Code of Ukraine to protect intellectual property in the movement of commodities across customs borders of Ukraine	Received the Committee submission for consideration (07.11.2017)
8	4775	On amending certain laws of Ukraine related to European groupings of cross-border cooperation	Received the Committee submission for consideration (07.02.2017)
9	6229	On Ensuring Transparency in Extracting Industries	Included onto the agenda (25.05.2017)
10	5627	On amending the Customs Code of Ukraine to bring transit procedures in line with the Convention on a common transit procedure and Convention concerning the simplification of formalities in trade in goods	Received the Committee submission for consideration

N ^o	Registration number	Title	Stage
11	6106	On Strategic Environmental Assessment	Endorsed in the first reading, prepared for the second reading
12	6023	On amending certain laws of Ukraine to improve the legal protection of geographical values	Received the Committee submission for consideration
13	6598	On amending certain laws on implementation of provisions of certain international agreements and EU directives on protection of flora and fauna	Released by the Committee to be approved in principle (16.01.2018)
14	6602	On amending the Law on Waste regarding the implementation of EU directives on waste management	Released by the Committee to be approved in principle (11.07.2017)
15	6085	On amending certain laws on cross-border cooperation	Endorsed in the first reading, prepared for the second reading (19.12.2017)

2. Bills related to important issues of public policy and being studied by the Committees

N ^o	Registration number	Title
1	7055	On Capital Markets and Regulated Markets
2	7316	On Rail Transport of Ukraine
3	7317	On amending certain laws of Ukraine to ensure the operation of vehicles in accordance with the requirements of the EU-Ukraine Association Agreement
4	7386	On amending certain automotive transport acts of Ukraine to harmonize them with the EU regulatory acts
5	7387	On amending certain regulatory acts of Ukraine to harmonize them with the EU legislation on transportation of dangerous goods
6	7466	On Effective Management of the Proprietary Rights of Copyright Holders in the field of copyright and (or) related rights
7	7473	On amending the Customs Code of Ukraine to implement Chapter 5 of Title IV of the EU-Ukraine Association Agreement