

CHALLENGES AND PERSPECTIVES ON THE ROAD TO THE EU FOR UKRAINE

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In June 2022, European Council granted Ukraine the status of EU candidate. In this context, a set of 7 expected reforms steps recommended by the European Commission were communicated to Ukraine. These reform priorities were pretty concisely formulated and have become strong benchmarks for continuing reforms of institutions in judiciary, law enforcement and fighting corruption; legislative regulation of the oligarchs, of the media and of the rights of people belonging to national minorities.¹

It is understood that in order to move to the next phase – to start accession negotiations, Ukraine needs to implement these 7 steps. Actually, it is logical that all of them relate to the first, political, Copenhagen criteria of membership in the EU (ensuring stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities).

It should be stressed that all these 7 steps do not start from scratch but are meant to continue the reform process started long ago: actually, the 7 steps are mostly to ‘finalise’, ‘further strengthen’, ‘ensure’ and ‘implement (the existing law)’.

Because of that, and because Ukrainian government wants to move fast on EU accession phases, initially, in summer, it declared intention to implement all of the 7 benchmarks by the end of 2022. However, it is already obvious that their full implementation will take longer – for objective reasons, as such complex issues require multi-stakeholder processes.

E.g. to adopt a legislation in line with Venice Commission recommendations (on selecting judges of Constitutional Court; on the oligarchs; on minorities), Ukraine needs to receive this Commission’s opinion for the draft legislation before finally adopting it. For selecting new members of the judicial self-government bodies, relevant commissions need to be formed, competitions announced and all applied candidates reviewed. It all takes time; so, though active work started on all 7 benchmarks, and much progress made, still, it is far from being close to completion on neither of them.

Civil society monitoring and advocacy for proper implementation of the 7 benchmarks is important legitimizing factor, ensuring local ownership, and thus, a longer-term sustainability of the reforms done under EU conditionality. In practice, many civil society reforms advocates are being deeply involved in implementation process of all 7 benchmarks – by discussing legislation drafts and advocating their amendments, by working in the selection commissions etc.²

Implementing EU-Ukraine Association Agreement (AA) is also important for Ukraine’s reform, approximation to the EU and preparation for effective EU accession talks. The agreement, signed in

¹ Full text here (following the sentence ‘The Commission, recommends that Ukraine be granted candidate status, on the understanding that the following steps are taken’): https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232

2014, foresees harmonisation of a majority of EU acquis. So, in practical terms it is as if Ukraine has already opened all accession negotiations chapters.³ So, implementing AA is crucial for preparing to meet the second (economic) and third (legislative approximation) Copenhagen criteria for EU membership.

Here also, quite a lot of work has been already done in previous 8 years. According to Ukrainian government's estimations, 63% of the necessary homework under the Association Agreement has been already implemented by the end of 2021. Though the European Commission did not present its own percentage estimate to compare, but the key indicator was that over 2020-21, European Commission started to prepare a number of decisions on further Ukraine's sectoral integration to the Single market in recognition of the 'homework' done by Ukraine under respective Association Agreement's chapters (on customs, technical regulations, e-communications, public procurement etc.).

NB: AA with a Deep and Comprehensive Free Trade Area (DCFTA), providing perspective for progressive integration to the single market is something unique, and lacking with other candidate countries. In the case of Western Balkans, their stabilisation and association agreements did not provide such perspective, and sectoral integration to the Single market became an issue only after starting EU accession talks. AAs with Moldova and Georgia also have DCFTAs, but more modest in the scope and ambition for the sectors in question (e.g. in services).

Therefore, back in summer, Ukrainian government also expressed intent to quickly (by the end of the year) finalise implementation of the remaining homework under AA. Still, the volume is huge, and issues requiring change of regulation are too complex. Also, necessary communication and analysis of the European Commission of the draft and adopted legislation requires time. So, the progress here is also visible, and, if political will remains, indeed, major achievements in implementing remaining AA commitments (and thus, a bulk of EU acquis required under future EU accession talks) should be expected already in 2023.

Implementing 7 benchmarks will open the way to open EU accession talks – in 2023. While implementing AA will make Ukraine more prepared to move quickly through them. Of course, making decision on opening negotiations will require political decision by EU member states. What is necessary is that this decision would be merit-based, without other strings attached like artificial packaging, or, in fact, dependency, on the progress and political developments in other candidates (as used to happen with candidates in the Western Balkans).

Of course, the Russo-Ukrainian war is the major factor. On the one hand, the war upheaval decreased the power of many vested interests, and created political will to move quick through all necessary conditionality. On the other hand, martial law objectively involves restriction of some freedoms, and creates temptation for the government to trade proper policy cycle for the speed of making decisions. To be able to move quickly to the right direction, Ukraine needs close guidance by the European Commission, which should remain in close coordination with Ukrainian civil society.

EU candidacy, accession process and preparation for membership is the best framework for the ongoing early (during the war) recovery and especially the post-war reconstruction and modernisation – as it would ensure that the funds allocated would be efficiently used to sustain profound regulatory reforms and economic development within the single European market.

2 Their integrated opinion of the progress is presented in a joint 'Candidate check' monitoring initiative: <http://neweurope.org.ua/en/visual-materials/kandydat-check-de-ukrayina-perebuyaye-u-vykonanni-semy-rekomendatsij-yes-shhodo-kandydatstva/>

3 As explained by the Brussels-based Centre for European Policy Studies (CEPS) in its Opinion on Ukraine's EU application: <https://www.ceps.eu/ceps-publications/opinion-on-ukraines-application-for-membership-of-the-european-union>

4 See Ukrainian government's report on implementation of Association Agreement as of end of 2021: https://eu-ua.kmu.gov.ua/sites/default/files/inline/files/euua_report_2021_eng.pdf

To support Ukraine on its path to EU integration, EU and Germany would be advised to:

1. Provide all necessary means – military equipment (air defence, artillery, tanks etc.), macro-financial assistance and material (e.g. electric equipment) aid – to help Ukraine to win the war, defeat Russian forces, liberate its currently occupied areas and come back to post-war reconstruction as soon as possible.
2. Closely monitor and guide Ukrainian government on implementation of the 7 steps, in close coordination with Ukrainian civil society which monitors these processes in detail.
3. As soon as these 7 conditions met, make political decision on opening accession negotiations, based solely on Ukraine's own merit (without creating artificial 'baskets' of candidate states).
4. Meanwhile, invest in increased physical connectivity between EU and Ukraine, to provide effective transportation means for facilitated movement of goods and people.
5. Also, according to AA provisions, make decisions to further open EU single market for Ukraine in relevant sectors as soon as it implements required homework of acquis approximation under AA.